

██████████  
By email to ██████████

Dear Ms ████████

### ACT Regulatory Authority – Investigation Outcome

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as the Children’s Education and Care Assurance (CECA), recently investigated suspected offences at Lavender Lane Childcare Service – SE-00009802 (the Service) previously operated by G8 Education Limited – PR-00000898 (the Provider).

#### Facts

2. On 18 January 2024, the ACT Regulatory Authority (the Authority) received a notification alleging an educator had held a child’s hands above their head and forcefully pushed them into a room.
3. Due to the seriousness of the allegations and risk of harm to children when subjected to inappropriate interactions amounting to unreasonable discipline, the Authority determined to investigate.
4. On 10 April 2024, the Authority sent you a Show Cause Notice (the Notice) for the purpose of affording you with procedural fairness and ensuring natural justice to respond to the allegation raised. Refer copy of Notice at Attachment A (minus attachment – can be provided again on request).
5. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contraventions of the *Law*, and potential compliance actions being considered if the allegations were substantiated.

#### Allegation of Inappropriate Discipline

6. It is alleged that on 18 January 2024, you, Ms ██████████, as an educator at the Service, subjected a child, believed to be ██████████ (3:7) to discipline unreasonable under the circumstances, in that you held both of her arms above her head and pushed her into a room, in contravention of section 166(3) of the *Law*.
7. During the investigation, sufficient evidence was gathered by way of documents and statements. This included documents submitted by the Provider by operation of a Section 215 Notice under the *Education and Care Services National Law (ACT)* (the *Law*).
8. On 23 April 2024, the Authority received your response to the Notice. Refer to response at Attachment B.

#### Law

9. The following provision of the *Law* was engaged by the allegation:

**Section 166(3) of the Law – Offence to use inappropriate discipline.**

A staff member, or volunteer at, supervisor of an education and care service must not subject any child being educated and cared for by a service to-

- (a) Any form of corporal punishment; or
- (b) Any discipline that is unreasonable under the circumstances.

Penalty: \$11 400, in the case of an individual

### **Obligations upon Regulatory Authority**

10. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely: "*to ensure the safety, health and wellbeing of children attending education and care services*".
11. The guiding principles of the national Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
  - (a) *That the rights and best interest of the child are paramount; ...*
  - (f) *That best practice is expected in the provision of education and care services.*
12. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
  - (c) *To monitor and enforce compliance with this law;*
  - (d) *To receive and investigate complaints arising under this law.*
13. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
14. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
15. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

### **Reason and Decision**

16. The Authority has considered all evidence gathered via the investigation process, inclusive of your response to the Notice and is satisfied, on the balance of probabilities, the allegation is proven as detailed, therefore substantiating a contravention of section 166(3) of the *Law*.
17. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has considered:
  - a. The conduct of forcefully holding a child's hands and pushing a child, and the impact of this on [REDACTED] on 18 January 2024.
  - b. Your response to the Notice and recognition of additional support required for the child's behaviour.
  - c. Any previous history of substantiated offences against the *Law*.
  - d. The objectives and guiding principles of the *Law*.

18. In the circumstances, the Authority has decided not to take statutory compliance action, but to issue you with this letter as a formal Caution.
19. This Caution services to remind you of your obligations, as an educator, to ensure that your actions in no way compromise the safety, health and wellbeing of children being educated and cared for by yourself.
20. The Authority strongly encourages you to seek further training in how to manage children's behavioural issues in an appropriate manner. To assist you in this, and to ensure that you are aware of and understand how inappropriate discipline is viewed with an education and care setting, please find attached to this letter an ACECQA Fact Sheet on inappropriate discipline at [Attachment C](#).
21. More helpful information can also be located at:  
<https://www.acecqa.gov.au/resources/supporting-materials/infosheet>
22. In choosing to participate in the education and care sector, you have a responsibility, and obligation, to ensure that, always, your interactions with children meet the professional standards expected under the *Law and Regulations*, to support the health and well-being of all children being educated and cared for by you.
23. The Authority has determined that, unless new relevant information is received, no further enquiry or action is required in this instance, and therefore consider this matter now finalised.
24. If you have any questions relating to the investigation findings, please contact Authorised Officer Declan Barbagallo via email at [declan.barbagallo@act.gov.au](mailto:declan.barbagallo@act.gov.au)

Yours sincerely



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Education and Care, Regulation and Support

16 May 2024