

Ms [REDACTED]
Nominated Supervisor
Lavender Lane Child Care Service

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Formal Caution

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance (CECA), investigated suspected offences relating to an educator, known to be [REDACTED], inappropriately disciplining a child being educated and cared for on 13 January 2023, Lavender Lane Child Care Service SE-00009802 (the Service) operated by G8 Education Limited PR-00000898 (the Provider).
2. The Authority is satisfied that you, whilst in the capacity as the Nominated Supervisor of the Service, have contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to the Law and the *Education and Care Services National Regulations (the Regulations)* are provided for your convenience at the end of this decision.

Facts

4. On 13 January 2023, the Authority received a notification from the Provider, alleging that an educator known as [REDACTED] used inappropriate discipline on a 4-year-old child. Refer Attachment A.
5. Due to the risk of harm and hazards to children, likely to cause injury resulting from inappropriate discipline, the Authority determined to investigate.
6. On 18 April 2023, because of evidence gathered throughout the investigation that supported contraventions of the Law, the Authority sent you a Show Cause Notice (SCN). Refer copy of the Notice (minus attachments) at Attachment B.
7. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, on 13 January 2023, you, in the capacity of Nominated Supervisor, contravened section 166(2) of the *Law*, giving rise to a contravention of Section 167(2) of said *Law*.
8. In addition, the SCN outlined the compliance actions being considered by the Authority should the allegation be substantiated.

9. On 1 May 2023 you emailed the Authority your response to the SCN within the agreed timeframe. Refer copy of response (minus attachments) at Attachment C.

Allegation

10. It is alleged that on 13 January 2023, you, as the Nominated Supervisor failed to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances. In that a child, known to be [REDACTED], was inappropriately disciplined by way of lifting off the ground from one arm and moved several steps by Mr [REDACTED], in contravention of section 166(2) of the *Law*, engaging section 167(2) of the *Law*.

Law

11. The following provisions of the Law were engaged by the investigation and Decision.

Section 166(2) of the *Law* – Offence to use inappropriate discipline

A nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to -

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

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Evidence and Submission

12. The Authority's records indicated that you were the nominated supervisor of the Service at the relevant time.
13. Evidence gathered relevant to the allegation consisted of:
 - a. prescribed records furnished by the Provider pursuant to a notice issued under section 215 of the *Law*.
14. In your written response, you advised that you were the nominated supervisor and had commenced on 11 January 2023. You also advised you were not provided with a handover from the previous nominated supervisor.
15. You denied the allegations put forward to yourself and provided information to refute the allegation. The information provided did not demonstrate what measures you put in place as Nominated Supervisor to ensure the incident would not occur, but rather the information provided was by way of mitigation and explanation.

16. Under section 166(2) of the *Law*, it is a nominated supervisor's responsibility to ensure no child being educated and cared for by the service is subjected to discipline unreasonable in the circumstances. It is an offence of strict liability. Ensuring no child is subject to discipline unreasonable in the circumstances is also a reasonable precaution to protect children from harm and from hazards likely to cause injury, so a failure to ensure adequate supervision engages an offence under section 167(2).
17. It is imperative that any person working in the early education and care sector, who accept the responsibilities of a nominated supervisor, are fully aware of their responsibilities and obligations, regardless of performing other roles, duties or when absent from the Service.

Obligations upon Regulatory Authority, Providers, Services and Nominated Supervisors

18. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. 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; ...'
19. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
 - (a) that the rights and best interests of the child are paramount; ...
 - (f) that best practice is expected in the provision of education and care services.
20. 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*.
21. The *Law* works to protect a particularly vulnerable part of 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*.
22. A key object 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.

Decision


23. After careful consideration of your response and all available evidence, the Authority is satisfied that, on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 166(2) of the *Law*, giving rise to a further contravention of 167(2) of said *Law* namely-

- a. Failing to ensure no child being educated and cared for by the Service was subjected to discipline unreasonable in the circumstances on 13 January 2023, in contravention of section 166(2) of the *Law*;
and
 - b. Failing to take every reasonable precaution to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on 13 January 2023, in contravention of section 167(2) of the *Law*.
24. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your immediate actions taken to mitigate risk of re-occurrence of the incident, the Authority has decided to issue this Caution rather than statutory compliance action.

Legislation

25. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>.
26. The *Law* and Regulations can be viewed at:
- <http://www.acecqa.gov.au/national-law>, and
 - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
27. If you have any questions relating to this letter, please contact Senior investigator Vittorio Colosimo by way of email at Vittorio.Colosimo@act.gov.au.

Yours sincerely


Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support

30 May 2023