

Mr [REDACTED]
[REDACTED]
[REDACTED]
Email: [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently assessing a notified incident, submitted by Alfoom Investments Pty Ltd - PR-40000959 (the Provider), and regarding an interaction that you had with a two-year-old child at Gungahlin Kinder Haven - SE-40001554 (the Service) on 7 June 2023.
3. Web addresses to the *Education and Care Services National Law (ACT)* (the *Law*), and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
4. Authorised Officers have obtained evidence in relation to the matter. However, the Authority’s enquiries are not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*.
7. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.
8. If, after considering all available evidence, the Authority finds an offence has occurred, or is satisfied that you may pose an unacceptable risk to children, it will need to consider whether compliance action is required.

9. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Possible compliance actions include the following (further details appear at the end of this Notice):
 - a. The Authority issuing you with non-statutory caution;
 - b. A Prohibition Notice pursuant to section 182 of the *Law*.

Background

10. On 31 May 2023, you entered an Enforceable Undertaking with the Authority, in relation to substantiated inappropriate discipline of a child when you were employed at Lavender Lane Early Learning Conder on 13 January 2023. Refer copy of the Decision (minus attachments) and signed Undertaking at Attachment A.
11. On 9 June 2023, the Authority received a notification from the Provider alleging that you used inappropriate discipline on a 2-year-old child, known to be [REDACTED]. Refer Attachment B.
12. The Provider further advised that a proactive risk mitigation strategy implemented whilst they undertook their investigation was to suspend your employment from the Service pending the outcomes of the Providers investigation. Refer Attachment C.
13. Due to the risk of harm to children if subjected to inappropriate discipline, the Authority determined to conduct additional enquiries into the alleged conduct.

Allegation of Inappropriate Discipline

14. It is alleged that, on 7 June 2023, while engaged as an educator at the Service, you were witnessed using inappropriate discipline against a child, known to be [REDACTED] (aged 2 years), in a manner unreasonable in the circumstance.
15. The described conduct included physically lifting the child up by one arm to be face to face with you after the child allegedly attempted to bite you. In addition, you are also alleged to have then held onto the child in a restrictive manner when the child wanted to move away from you, in contravention of section 166(3) of the *Law*.

Evidence relevant to Allegations

16. Evidence relevant to the Allegation were obtained from the Provider and included (but are not limited to) prescribed records as well as records relating to the Provider's internal investigation:
 - a. Working Directly with Children records identifying you as working at the Service on 7 June 2023 (refer Attachment D);
 - b. Child Attendance records identifying [REDACTED] being in attendance at the Service on 7 June 2023 (refer Attachment D);
 - c. CCTV footage of the alleged incident. (Refer to Attachment E for CCTV footage and CCTV timeline of events as outlined by the Provider)

- d. Provider's internal investigation records (refer Attachment F)
- e. Provider's investigation interview with you on 21 June 2023 (Attachment G)

Contravention Supported by Evidence

17. The evidence currently available to the Authority relevant to the Allegation is sufficient to support the following offence under the *Law*:

Section 166(3) – Offence to Use Inappropriate Discipline

- (3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to-
 - (a) any form of corporal punishment; or
 - (b) any discipline that is unreasonable in the circumstances.

Potential Compliance Actions

18. Should the offence be substantiated on the balance of probabilities, the Authority will need to consider whether any compliance action is required. As well as administrative action such as a formal Caution Letter, the potential statutory compliance actions are issuing a prohibition notice, as set out below:

Section 182 of the Law – Grounds for giving prohibition notice

- (1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed –
 - (a) to remain on the education and care service premises; or
 - (b) to provide education and care to children.
- (2) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following –
 - (a) an approved provider;
 - (b) a nominated supervisor;
 - (c) an educator;
 - (d) a family day care educator;
 - (e) an employee;
 - (f) a contractor;
 - (g) a volunteer;
 - (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service –or in any other capacity

Section 183 – Show cause notice to be given before prohibition notice

- (1) Before giving a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***) –

- (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
- (b) stating the reasons for the proposed prohibition; and
- (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

Effect of a Prohibition Notice

19. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
- (a) provide education and care to children for an education and care service; or
 - (b) be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
 - (c) carry out any other activity relating to education and care services.

Right of response

20. Please note that the Authority has made no decision at the time of sending the Notice and will make no decision without giving you a reasonable opportunity to respond.
21. If you do not respond to the Notice at all, or within the allowed timeframe, the Authority can only consider the evidence it already has when deciding if any offences have been substantiated on the balance of probabilities and, if so, what (if any) compliance action should be taken.
22. You have a right to respond to the allegations set out in this notice. You may respond in writing or by way of a recorded interview with two Authorised Officers.
23. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if compliance action should be taken. If you need additional time, please direct a request with reasons to the contact officer.
24. At Attachment H to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
25. If you wish to respond in a recorded interview with Authorised Officers, please advise the contact officer within seven days. A convenient time will be arranged for you to attend at the Authority's premises in Stirling, ACT, to provide your response in person. You are permitted to bring a support person to that interview, if the person does not have any connection with the Provider or the Service.
26. If you respond in writing, please direct your written submission via email to Authorised Officer Janine Fairburn at janine.fairburn@act.gov.au or by post to:

Janine Fairburn
Children's Education and Care Assurance
GPO Box 158, CANBERRA ACT 2601

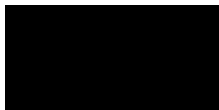
Caution

27. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.

Legislation

28. The *Law* applies to you as an educator and to any service you may be employed at.
29. 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>.
30. 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>
31. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn at janine.fairburn@act.gov.au.

Yours sincerely,



Jo Williams
Director – Regulatory Operations
Children’s Education and Care Assurance
Education and Care Regulation and Support

28 July 2023