



Ms [REDACTED]
Person with Management or Control
RE: Galileo Early Learning
Email: [REDACTED]

Dear Ms [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 (CECA). The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the Law). One of the Authority's roles is to investigate suspected offences under the Law.
2. As you are aware, the Authority investigated suspected offence at Galileo Early Learning SE-00009828 (the Service) operated by [REDACTED] PR-40022141 (the Provider).
3. The suspected offence relates to inadequate supervision of a child, [REDACTED] ([REDACTED]) aged 2 years, who is alleged to have suffered a broken collarbone while in attendance and using the Service trampoline.
4. Authorised Officers have now finished gathering information (unless further lines of enquiry emerge), and the Authority has considered all evidence, determining that, while there is insufficient evidence to support an injury to [REDACTED] occurring within the Service, there is a case for the Provider to answer regarding the Service's trampoline usage.
5. However, the Authority's investigation is 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 as a person with management or control of the provider.
6. Web addresses to the Law and the *Education and Care Services National Regulations* (the Regulations), and detailed instructions of how to respond, are provided for your convenience at the end of this notice.
7. If substantiated, the allegation may constitute an offence under sections 167 of the Law. If, after considering all available evidence, the Authority finds an offence is substantiated, it will need to consider whether compliance action is required.
8. The Authority considers many factors when determining appropriate compliance action, with the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions also appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the investigation to date support an offence under the *Law* relating to the protection of children from harms and hazards likely to cause injury.

Allegation relating to Law

10. The evidence obtained during the investigation raise the following allegation of an offence under the *Law* –

Allegation

It is alleged that on 19 January 2023, the Provider failed to ensure that every reasonable precaution was taken to protect children attending the Service from harm and any form of hazard likely to cause injury, in that, the Service trampoline was not operated within the guidelines and specifications of the manufacturer, contravention of s167(1) of the *Law*.

Background

11. On 20 January 2023, the Provider notified the Authority of a parent complaint alleging that her daughter suffered a broken collarbone at the Service. Refer to Attachment A.
12. It was determined by the Authority that there were reasonable grounds to suspect that an offence had, or may have, occurred at the Service and a decision was made to investigate a suspected offence under sections 167 of the *Law*.

Legislation Relevant to Allegation

13. The following provision of the *Law* is relevant to Allegation One:

Section 167(1) of the *Law* - Offence relating to protection of children from harm and hazards

The approved provider 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.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Evidence Relevant to Allegation

14. Information furnished by the Provider on 24 February 2023, pursuant to a Notice allowable under 215 of the *Law*, demonstrate the trampoline was in regular use by children at the Service. Relevant documents include:
 - a) █████ Statement and meeting minutes.
 - b) Risk Assessment Trampoline and photos.
 - c) Outdoor supervision plan

Refer Attachment B

15. On 3 March 2023, the Authority conducted an unannounced visit at the Service using powers under section 199 of the *Law*. During the visit photos were taken of the trampoline. Refer to Attachment C (AO Cropper Statement).
16. As a result of the visit a manual for the recommended use of the Trampoline, Model number S002211, was obtained. Refer to Attachment D.
17. A review and comparison of the trampoline manual S002211 and the risk assessment indicated the manufacturers warnings were not adequately followed. In particular the following was noted:
 - a) Manufacturer’s warning concerning number of persons using the trampoline at any one time;
 - b) Manufacturer’s warning on trampoline regarding children aged 0-6 not addressed.
 - c) Manufacturer’s specifications relating to distances from objects at installation not adhered to.
 - d) Worn parts not replaced as specified in manufacturer manual.
18. Some witness statements were also obtained exercising powers under section 215 of the *Law*. To clarify, educator witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority’s investigation.
19. Relevant extracts from Complainant ’s statement include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. Relevant extracts from Witness A’s statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contraventions Supported by the Allegation

21. Evidence gathered appear to support contraventions of sections 167(1) of the *Law*.

Potential Compliance Actions

22. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions if the offence is substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.
23. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
24. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
25. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.
26. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process.

Right of response

27. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a

written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.

28. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to brian.cropper@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

29. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are **protected disclosures** under section 296 of the *Law*.
30. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
31. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
32. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.
33. 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>
34. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au

Yours sincerely



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

12 May 2023