

[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated an allegation that you inappropriately disciplined a child on 27 January 2021 at Ducklings Early Education SE- 40014603 (the Service), operated by LP Childcare Management Pty Ltd PR-40018855 (the Provider).
2. 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.
3. I am considering compliance action based on suspected contraventions of the *Law* supported by evidence gathered during the investigation. Potential compliance actions include prohibition pursuant to section 182 of the *Law* or an enforceable undertaking pursuant to section 179A of the *Law*.
4. I consider that your alleged conduct may constitute inappropriate discipline, which is an offence under the *Law*.
5. “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 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.

Background

6. On 28 January 2021, the Authority was notified by the Provider of a complaint that, at approximately 4:25pm during the afternoon of 27 January 2020, you had roughly handled a child [REDACTED]. The Provider advised that:
 - a. CCTV footage had been viewed;
 - b. the complaint was being investigated;
 - c. appropriate reports were being made to government authorities;
 - d. HR processes had been commenced; and

- e. you had been suspended from your role pending the outcome of the investigation.
7. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to obtain copies of all evidence relevant to the investigation, including CCTV footage.

Allegations of Inappropriate Discipline

Allegation One

8. It is alleged that, on 27 January 2021, at approximately 4:25pm in Studio 8 at the Service, you grabbed [REDACTED] by the back of the neck of his shirt with your right hand, then forcefully walked him from the Studio 8 meeting rug to the glass sliding doors, which you then opened and forced [REDACTED] outside, in contravention of section 166(3) of the *Law*.

Evidence relevant to Allegation One

9. Evidence relevant to Allegation One obtained from the Provider included:
- a. Statement from [REDACTED] parent regarding [REDACTED] disclosure (see Attachment A);
 - b. Witness statements, redacted where appropriate (see Attachment B);
 - c. CCTV footage. Still images from the CCTV footage are Attachments C.1 and C.2;
 - d. Notes of your meetings with Provider representatives on 1 and 3 February 2021 (see Attachment D).
10. During the investigation, the Authority obtained further statements from witnesses, relevant extracts from which appear below.
11. Relevant extracts from Witness A's statement are:

- a. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

e.

Contravention Supported by Allegation One

13. The weight of evidence obtained by the Authority in relation to Allegation One supports a contravention of the following section of 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

14. Should the allegation be substantiated, the statutory compliance actions available to the Authority to consider include prohibition or an enforceable undertaking, 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.

Section 179A of the Law – Enforceable undertaking

- (3) This section applies-
 - a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1) (a) applies the Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.

Effect of a Prohibition Notice

15. 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.

Effect of an Enforceable Undertaking

16. Should a decision be made to offer you an enforceable undertaking, under section 179A of the *Law*, and you accept the undertaking, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Right of response

17. You have a right to respond to the allegations set out in this notice. Should you wish to view the CCTV footage, please advise the contact officer, who will arrange for you to attend a viewing at the Authority's office in Stirling.
18. 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.
19. 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.
20. Please direct your written submission via email to Senior Investigator Tanya Masterman at Tanya.Masterman@act.gov.au or by post to:

Tanya Masterman
Senior Investigator
Children's Education and Care Assurance
GPO Box 158
CANBERRA ACT 2601

Caution

21. 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

22. The *Law* applies to you as an educator and to any service you may be employed at.
23. 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>.
24. 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>
25. Should you have any questions about this Show Cause Notice please contact Tanya Masterman by email on tanya.masterman@act.gov.au.

Yours sincerely,



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Regulation
Education Directorate

16 April 2021