



[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Caution Letter

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated a suspected contravention of the *Education and Care Services National Law Act (ACT)* (the *Law*), occurring at Ducklings Early Education SE-40014603 (the Service), operated by LP Childcare Management Pty Ltd PR-40018855 (the Provider), on 27 January 2021.
2. Electronic links 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

3. 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] [REDACTED] raising a reasonable suspicion of inappropriate discipline.
4. Due to the high risk to children when inappropriately disciplined, the Authority conducted a formal investigation. As part of the investigation, the Authority obtained CCTV footage, documentation and obtained witness statements, utilising powers under section 215 of the *Law*.
5. The Authority determined that there was sufficient evidence to support an allegation of inappropriate discipline under section 166(3) of the *Law*. Accordingly, a Show Cause Notice (the Notice) was issued to you on 16 April 2021. Refer [Attachment A](#).
6. Your response to the Notice (Response) was received by the Authority on 27 April 2021. Refer [Attachment B](#).

Consideration of Response

Allegation

7. It was alleged that, on 27 January 2021, at approximately 4:25pm in Studio 8 at the Service, you grabbed [REDACTED] [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] [REDACTED] outside, in contravention of section 166(3) of the *Law*.

Relevant Legislation

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

Section 166 of the *Law*- 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.

Allegation – Evidence and Submissions

9. Evidence gathered relevant to the Allegation consisted of:

- a. Documentation obtained from the Provider, including statements from the Provider's investigation, notes of meetings held between yourself and the Provider, and prescribed records;
- b. CCTV footage; and
- c. Witness statements obtained by the Authority.

10. In your Response, in relation to the specific allegation:

- a. *You admitted that you had been abrupt and forceful while taking [REDACTED] outdoors;*
- b. *You should have gone slower and obtained the cooperation of [REDACTED] and [REDACTED]*
- c. *You acknowledged that you were in contravention of the Law;*
- d. *You apologised for your misconduct and expressed remorse.*

11. You further raised that you had not yet begun studying the "Support Behaviour of Children and Young People" component of your Certificate III qualification in Early Childhood Education and Care, and expressed a wish to learn from your mistake and continue working in early childhood education and care.

Authority's Finding

12. The Authority is satisfied, on the balance of probabilities, that you have contravened section 166(3) of the *Law*, as your actions on 27 January 2021 can be described as discipline that was unreasonable in the circumstances.

Reasons

13. Because an offence under section 166(3) of the *Law* has been substantiated, it is necessary that the Authority consider what, if any, compliance action is required to ensure the health, safety and wellbeing of children is protected.

Obligations upon Regulatory Authority, Providers, Services and Nominated Supervisors

14. The starting point for the Authority is the *Law*. 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; ...'

15. 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.
16. 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.
17. 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*.
18. 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.
19. 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 your acknowledgement of having contravened the *Law*, your expressed remorse, that you are in the early stages of your Certificate III studies and had not yet undertaken the behaviour support component, and your wish to learn from the mistake and continue in the early childhood education sector.

Decision

20. Considering the evidence, the objectives and guiding principles of the *Law*, the absence of previous compliance issues and the mitigating circumstances outlined above, the Authority has decided to issue this Caution, rather than statutory compliance action.
21. This Caution serves to remind you of your obligations, as an educator, to ensure that your actions in no way compromise the safety, health and well-being of children being educated and cared for by yourself.
22. Unreasonable discipline includes physical punishment or any behaviour management strategy likely to cause physical and/or psychological harm to a child. Smacking, pulling, yelling, and threatening a child are the most common forms of conduct viewed as inappropriate discipline.
23. However, inappropriate discipline can be more subtle and include other forms of physical or psychological forms of coercion. Rough handling of children is a disciplinary issue when it is in a

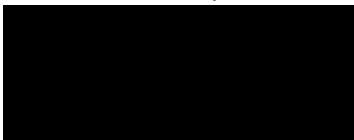
context that is intended to shape a child's behaviour. Likewise, harmful physical or psychological techniques to shape children's responses are also inappropriate discipline.

24. You are encouraged to seek further training to improve your skills in supporting children who exhibit challenging behaviours and how to address the reasons for those behaviours.
25. The substantiated breach of section 166(3) of the *Law* has been recorded and may be considered by the Authority in the event of any further substantiated breaches of the *Law*.

Legislation

26. The *Law* applies to you as an educator employed within the early education and care sector.
27. 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>.
28. 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>
29. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman by email at tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate
25 May 2021