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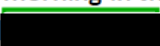
Dear



**Decision to Accept an Enforceable Undertaking**

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 offence arising from your conduct towards children during the period from 6 August 2021 to 23 November 2021, whilst employed as a trainee at Communities@Work Abacus Child Care and Education Centre SE-00009744 (the Service), operated by Communities@Work PR-00005824 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the *National Law*) and the *Education and Care Services National Regulations* (the *National Regulations*) are provided for your convenience at the end of this decision.

**Facts**

3. On 29 November 2021, the Provider notified the Authority of numerous interactions between yourself and children over an extended period of time, from 6 August 2021 to 23 November 2021.
4. The Authority conducted an investigation into suspected offences of inappropriate discipline under section 166(3) of the *National Law*. During the course of the investigation, the Authority obtained extensive documentation from the Provider and carried out witness interviews.
5. The Authority determined that there was sufficient evidence to support a case to answer for one incident of inappropriate discipline (on 6 August 2022) and concerns regarding the risk to children should you be permitted to continue to be involved in their education and care.
6. On 22 March 2022, you were issued with a show cause notice (the Notice) by the Authority, including out the allegation of 6 August 2022 and risk concerns arising from other alleged inappropriate interactions, supporting evidence, and a guide to respond.
7. Refer Attachment A for a copy of the Notice (without attachments due to size).
8. On 4 April 2022, the Authority received your response to the Notice (Response). Refer Attachment B for a copy of the Response.
9. The specific allegation considered was that, on 6 August 2021, in the late morning in the outdoor area, whilst educating and caring for children at the Service, you grabbed  (a child being educated and cared for by the Service) by his upper arms, pulled him off a bike, then yelled

words to the effect of “we don’t do that!” close to his face, in response to [REDACTED] arguing with another child (unknown) in contravention of section 166(3) of the *Law*.

10. The Notice also included additional allegations of inappropriate interactions, which are not individual educator offences under the *National Law* but are relevant to assessing the level of risk to children posed by an individual educator.

#### Relevant Legislative Provisions

##### **Section 166(3) – Offence to use inappropriate discipline**

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.

##### **Section 184 - Deciding whether to give prohibition notice**

- (1) If the Regulatory Authority gives a show cause notice under section 183 to a person, the Regulatory Authority must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.
- (2) If the Regulatory Authority decides not to issue a prohibition notice to the person, the Regulatory Authority must give the person notice of the decision.
- (3) The Regulatory Authority may accept an undertaking from a person under section 179A instead of giving a prohibition notice under this Division.

##### **Section 179A - Enforceable undertakings**

- (1) 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.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (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.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.

- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

### **Authority's Decision and Reasons**

11. The Authority has considered all available evidence regarding the allegations of inappropriate discipline and inappropriate interactions, including your comprehensive and well-structured Response.
12. Although it is noted that you admitted an offence of inappropriate discipline on 6 August 2021, in your Response, you outlined the circumstances leading to the interaction, being [REDACTED] ramming his tricycle into the tricycle of another child and laughing about it. Those actions lead you to panic and instinctively act to prevent potential harm to the other child.
13. In the circumstances, although the interaction escalated beyond what was appropriate to mitigate risk of harm to the other child, the Authority has determined that the conduct was not instigated for disciplinary purposes and does not fall within section 166(3) of the *National Law*.
14. For these reasons, the Authority finds that the allegation of inappropriate discipline is not substantiated.
15. Regarding the additional inappropriate interactions alleged, the Authority notes that you do not recall all of them but the interactions of 23 November 2021 (Incident [REDACTED] in your Response) were particularly problematic, with your experiencing two meltdowns that day.
16. Your expressed remorse, clear evidence of learnings from and reflection on your experience, and extensive discussion of the effect of your disabilities on your capacity to self-regulate and manage triggers have been considered by the Authority as mitigating factors.
17. It is noted that you are participating in ongoing therapeutic support to learn to better manage triggers and implement appropriate disability adjustments in the workplace.
18. Considering the entirety of the evidence and submissions, the Authority has determined that an enforceable undertaking is an appropriate course of action to adequately manage the level of risk to children whilst providing you with the opportunity to complete your Certificate III and arrange employment in a supportive, inclusive and informed environment.
19. The proposed enforceable undertaking is attached and marked Attachment C. You will see that there have been some slight amendments from your proposed terms in Section 1 of your Response.
20. The proposed enforceable undertaking is carefully formulated to address what the Authority views as a potential risk to children, whilst providing you with an opportunity to complete your training and implement self-regulation strategies. Please be aware that the only alternative available to the Authority is prohibition.

21. If the enforceable undertaking is accepted, failure to comply with any of its terms allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *National Law* to enforce the undertaking. It is also open to the Authority to withdraw its consent to the Enforceable Undertaking and to issue a prohibition notice.
22. To accept the undertaking please sign for the "Person" on Attachment C and return to Authorised Officer Tanya Masterman within 14 days of receiving this decision. The undertaking may be returned via email at [tanya.masterman@act.gov.au](mailto:tanya.masterman@act.gov.au) or by post to:

Children's Education and Care Assurance  
Attn: Tanya Masterman  
GPO Box 158  
CANBERRA ACT 2601

23. If you elect to return the signed undertaking by post, please advise by email as, due to COVID-19, the Authority has been experiencing some substantial delays in receipt of mail.
24. A countersigned copy will be returned for your records.
25. **Please note that the offer to accept an enforceable undertaking in lieu of prohibition is made under section 184(3) of the Law. If you wish to enter the enforceable undertaking, it is essential that you sign and return the undertaking within the required time frame. If the signed undertaking is not received within the required 14 days, the Authority may review its decision.**

#### **Legislation**

26. The *National Law* applies to you as an educator employed within the early education and care sector.
27. The *National 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 *National Law* and *National 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 on (02) 6205 2012 or by email at [tanya.masterman@act.gov.au](mailto:tanya.masterman@act.gov.au).

Yours Sincerely



Clare Brookes  
Senior Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support  
ACT Education Directorate  
24 May 2022