



[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 allegations that you, as an educator, inappropriately disciplined children enrolled at Blinky Bill Early Childhood Centre SE-00009751 (the Service) operated by G8 Education Limited PR-00000898 (the Provider) on 11 and 13 January 2021.
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. This notice offers you the opportunity to respond to the allegations prior to any determination being made. If the allegations are substantiated, I will be considering compliance action based on suspected contraventions of the Law supported by evidence gathered during the investigation. Compliance actions available for consideration by the Authority include an enforceable undertaking pursuant to section 179A of said Law or a Prohibition Notice pursuant to section 182 of the Law.

Grounds for issuing Show Cause for Compliance Action

4. Between 18 and 21 January 2021, multiple Notifications, including Notifications of Complaint (NOT-40503150-NOT-40503432 and NOT-40504133) were received by the Authority from the Provider. These Notifications alleged that children were being subjected to inappropriate discipline by you, whilst in the capacity of an educator at the Service. Refer to Attachment A.
5. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate the allegations.
6. I consider that your alleged conduct toward nominated children at the Service may constitute inappropriate discipline, which is an offence under section 166(3) of the Law.
7. Under the Law, discipline is interpreted as any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child, such as (but not restricted to) yelling, using threatening or humiliating language, isolating, or shaming children.

Allegations of inappropriate discipline

Allegation One

8. It is alleged that about 1:53pm on 11 January 2021, you subjected a child, believed to be, [REDACTED], to a form of discipline that was unreasonable in the circumstances, by taking hold of said child by the back of the shirt and dragged him backward into a room, contravening section 166(3) of the *Law*.

Allegation Two

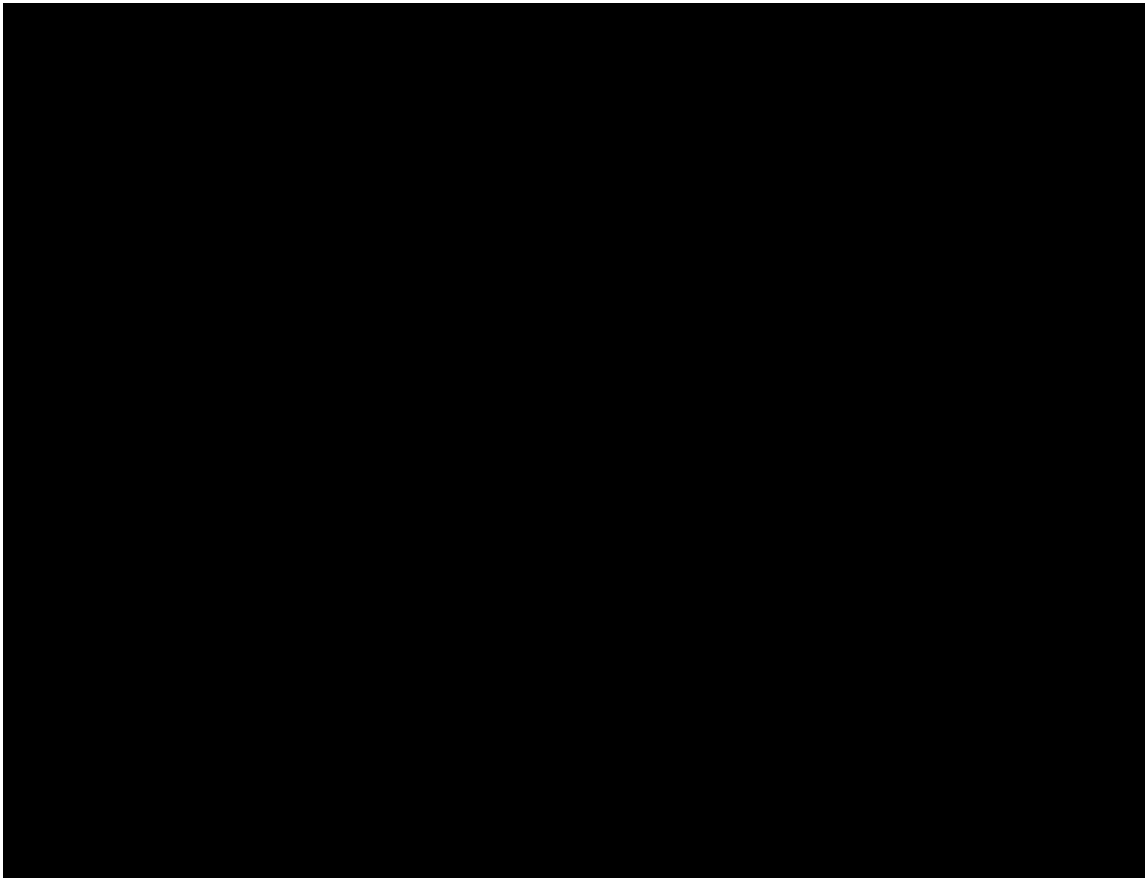
9. It is alleged that about 2.04pm on 11 January 2021, you subjected children, believed to be, [REDACTED] and [REDACTED], to a form of discipline that was unreasonable in the circumstances, by roughly handling [REDACTED] and interfering with the ear of [REDACTED], contravening section 166(3) of the *Law*.

Allegation Three

10. It is alleged that about 11:23am on 13 January 2021, you subjected a child, believed to be, [REDACTED] to a form of discipline that was unreasonable in the circumstances, by pulling and dragging him by the arm, stood over him and interfered with his ear, contravening section 166(3) of the *Law*.

Evidence Relevant to Allegations

11. Documents obtained from the Provider include, but is not limited, to the following:
 - a) Working directly with children records for dates 11 to 15 January 2021 (inclusive); and
 - b) Child attendance records for dates 11 to 13 January 2021 (inclusive).
Refer to evidentiary documents at Attachment B.
12. On 24 February 2021, the Provider furnished to the Authority closed circuit television (CCTV) footage of conduct outlined in allegations one to three inclusive. The footage identifies you appearing to be doing the following:
 - a) Dragging a child believed to be [REDACTED] by the back of the shirt on 11/01/2021 between 1:53:03pm - 1:53:05pm AEDT inclusive from two camera angles.
 - b) Pulling a child believed to be [REDACTED] by the arm and interfering with the ear of child believed to be [REDACTED] on 11/02/2021 between 2:04:07pm and 2:04:21 AEDT inclusive.
 - c) Pulling a child, believed to be [REDACTED], by the arm, standing over him and interfering with his ear on 13 January 2021 between 11:23:56am and 11:24:19am AEDT inclusive.
13. Due to the size of the footage, actual footage can be provided upon request. Still pictures are available at Attachment C.
14. During the process of investigating, the Authority obtained evidence from a witness which included child identification from still shots from relevant video footage and an admission from [REDACTED]. Relevant excerpts from Witness A statement include:



Refer to evidentiary Annexure documents at Attachment D

Law

15. The evidence obtained by the Authority supports a contravention of the following section of the *Law*:

Section 166 – 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.

Contraventions Engaged by Allegations

16. Evidence gathered relevant to the allegations one to three include the documentation supplied under 215 Notice, closed circuit television, still photographs and a witness statement.
17. Relevant evidence gathered appear to indicate that on 11 January 2021 and 13 January 2021, while in the capacity of an educator at the Service, you subjected [REDACTED], to discipline deemed unreasonable in the circumstances.

Potential Compliance Actions

18. The compliance actions being considered by the Authority are:

Section 179A of the Law – Enforceable undertaking

- (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 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.

Section 182 of the Law – Grounds for issuing 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 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 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 paragraph (a) to (g) in relation to the approved education and care service or in any other capacity.

Section 185 of the Law – Content of Prohibition notice

- (1) A prohibition notice given to a person under section 182(1) must state that the person is prohibited from doing one or more of the following –
 - (a) Providing education and care to children for an education and care service;
 - (b) Being engaged as an educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;

(c) Carrying out any other activity relating to an education and care service.

19. Should a decision be made to offer you an enforceable undertaking pursuant to section 179 of the *Law*, this may require you to undergo additional training and or work under supervision. Should a decision be made to issue a Prohibition Notice, pursuant to section 182 of the *Law*, you would be immediately prohibited from doing one or more of the activities specified in section 185(1) of the *Law*, which appear above.

Right of response

20. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
21. 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. Should you require further assistance with understanding this process please contact the officer listed in this Notice to organise a meeting with the Authority.
22. Please direct your written submission via email to Authorised Officer, Brian Cropper at brian.cropper@act.gov.au or by post to:

Brian Cropper
Authorised Officer
Children's Education and Care Assurance
GPO Box 158
CANBERRA ACT 2601

Caution

23. I am informing you that the details of the Provider's internal investigation were obtained as part of the Authority's investigation and have been provided in the interests of procedural fairness. All information obtained during the course of the investigation are protected disclosures under section 296 of the *Law*.
24. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
25. 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.
26. The Education and Care Services National Law applies to you as an educator. 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>.

27. The National Law is made up of an Act and Regulations which can be viewed at:

<http://www.acecqa.gov.au/national-law>, and

<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

28. Should you wish to view the CCTV or if you have any questions about this Show Cause Notice please contact Brian Cropper on telephone (02) 6271104 or email brian.cropper@act.gov.au

Yours Sincerely



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

16 June 2021