



Ms [REDACTED]
Nominated Supervisor
Lavender Lane Child Care Service

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. As you are aware, 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. Authorised Officers are currently investigating an allegation that an educator, known to be [REDACTED], inappropriately disciplined a child being educated and cared for on 13 January 2023 at Lavender Lane Child Care Service SE-00009802 (the Service) operated by G8 Education Limited PR-00000898 (the Provider).
3. The Authority’s records indicate that you were the nominated supervisor at the relevant time, having commenced in that role on 11 January 2023.
4. Web addresses to the Law and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
5. Authorised Officers have obtained evidence from the Provider and the Authority has determined that there is a case to answer for you, as the Nominated Supervisor, regarding suspected offences. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
6. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegation may constitute an offence under sections 166 and 167 of the Law. If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required.
8. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Background

9. On 13 January 2023, the Authority received a notification from the Provider alleging that an educator known as ██████ used inappropriate discipline on a 4-year-old child. Refer Attachment A.
10. The Provider further advised that a proactive risk mitigation strategy implemented whilst they undertook their investigation was to suspend the educator known as ██████ employment from the Service pending the outcomes of the Providers investigation. Refer to Attachment B.
11. Due to the risk to children if inappropriately disciplined, the Authority determined to investigate the allegation.

Allegation One and Two – Section 166 and 167 of the Law

12. It is alleged that, on 13 January 2023, you, as the Nominated Supervisor, failed to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances in that a child, known as ██████, was inappropriately disciplined by way of lifting off the ground from one arm and moved several steps by Mr ██████ in contravention of section 166(2) of the *Law*.
13. It is alleged that, by failing to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances on 13 January 2023, you, as the Nominated Supervisor, has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(2) of the *Law*.

Legislation Relevant to Allegations

14. The following provisions of the *Law* and *Regulations* are relevant to Allegation One:

Section 166(2) of the Law - Offence to use inappropriate discipline

A nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Penalty: \$10 000

Section 167(2) of the Law - Offence relating to protection of children from harm and hazards

A nominated supervisor 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

Evidence Relevant to Allegation One and Two

15. Records from the National Quality Authority ITS database indicate that you were the nominated supervisor at the time, having commenced in that role on 11 January 2023. Refer [Attachment C](#).
16. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*.
17. Records produced by the Provider supported the following:
- The Service was operating on 13 January 2023.
 - ██████████ was an educator at the Service and working directly with children in the Toddler room on 13 January 2023.
 - ██████████ was enrolled at the Service and signed into the Preschool room on 13 January 2023.
 - CCTV footage of the alleged incident.
 - Original notification of allegations received from the Provider on 13 January 2023 (refer Attachment A)
- Refer evidence at [Attachment D](#).
18. Relevant extracts from a statement between ██████████ and ██████████, Provider's investigator) on 18/01/2023 are:

██████████ ***It is alleged that on 13.01.2023 around 8.48am in the Preschool yard you have yelled at child ██████████.***

██████████ ***What is your response to this allegation?***

██████████ *I did do that, umm everything in there I did do. Umm at the time I was under a lot of stress having been only a trainee and not having any other full-time workers in my room. At the time almost feeling like a room leader, I did also at the time I had not fully completed all the mandatory training to be allowed onto floor. When I was taken off the floor that day and was told to sit in the office and study, during that 1 hour in the office I read through pretty much the child protection policy and realised that pretty much everything I had done was on that list of what not to do, when ██████████ came in to tell me to go home, that I need to go home she noticed that I was doing*

██████████ ***It is alleged on 13.01.2023 around 8.48am in the Preschool yard you have picked up child ██████████ off the ground by his right arm above the elbow.***

██████████ ***What is your response to this allegation?***

██████████ *Umm that I did do that and at the time I was aware that if I am picking up a child I should be using both arms and by grabbing him by one arm and myself holding him by one arm I have put the child in danger.*

██████████ ***Did you check to see if ██████████ was hurt?***

██████████ *Umm I did not as at the time I thought it would be better if I just distanced myself from*

██████████ ***Did ██████████ appear upset or distressed?***

██████████ *He was very distressed at the time.*

At the time you picked him up?

Umm it would have been towards when I carried him away from where I picked him up and was yelling at him and his responses to that.

It is alleged on 13.01.2023 around 8.48am in the Preschool yard that you have used restrictive intervention when holding child [REDACTED] off the ground by his right arm above the elbow using his left hand, suspending child [REDACTED] by the arm with [REDACTED] feet at approximately level height to your knees.

What is your response to this allegation?

Same with the previous one, that I did do that and I was aware at the time that this was not something I should be doing.

It is alleged on 13.01.2023 around 8.48am in the Preschool yard that you have taken around eight steps while holding child [REDACTED] by his right arm above the elbow using your left hand.

What is your response to this allegation?

Same with this, I did do that at the time I had known that I should not be doing something like that.

19. Relevant extracts from a statement between [REDACTED] and [REDACTED] (Provider's investigator) on 24/01/2023 are:

On dates unknown it is alleged you have bullied children at Lavender Lane Conder by;

- **snatching toys away from them,**
- **teasing them,**
- **speaking rudely to children**

What is your response to this allegation?

Um I have definitely done the first one. I have done the first one but if I have done the second and third it was not on purpose.

So the first time I have remembered doing that; We had trucks that ended up outside somehow. [REDACTED] had picked up 3-4 of them and was putting them in his pockets to take them home with them. This was around pick up time. I asked him to give them back to me. I was new to the centre at the time and with previous experience with [REDACTED] and [REDACTED] I knew that he was likely to run off, so I grabbed the trucks from him quickly. At the time I thought he would run off and put them somewhere. It would have happened about a month after I started – late August/early September.

I can't remember any other name of children, but I have definitely done it on other occasions, to stop them hurting another child or hurting themselves.

I believe I have never snatched a child to bully them, it's been to stop them hurting someone or themselves.

Have you ever teased a child while working at Lavender Lane Conder?

Now that I think about it, there was a recent occasion who with a casual Pancage. I was in there with 2 casuals, my room leader had hurt her back earlier that week. Another

casual at the time I can't remember their name, were sitting in the room, assisting another child to go to sleep.

There was a child [REDACTED], in the toddler room. What we had done was, [REDACTED] has a stuffed dog teddy that she is attached to. During sleep time, she refused to lie down, so we took the dog, and threw it to each other. She was basically effectively playing piggy in the middle with. [REDACTED] was focused on getting her dog back. I can't remember if she was crying or distressed.

After a few throws we put it on her bed.

She picked up the dog and went to the reading area, that do not sleep or refusing to lay down.

This happened I probably I say around 3-13th January this occurred.

There are no other instances I can remember where I have teased a child.

20. Relevant extracts from Witness B's statement are:

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

21. Relevant extracts from Witness C's statement are:

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

Contraventions Supported by Allegations

22. Evidence gathered appears to support contraventions of section 166(2) and 167(2) of the Law.

Fitness and Propriety as Nominated Supervisor

23. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:

- a. be over 18 years of age;
- b. have adequate knowledge and understanding of the provision of education and care to children; and
- c. have the ability to effectively supervise and manage an education and care service.

24. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations.
25. At minimum, fitness and propriety includes honesty, knowledge and ability.
26. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.
27. During the course of the investigation, evidence gathered included documentation indicating that you as nominated supervisor, did not ensure that no child being educated or cared for by the service was subjected to any discipline that was unreasonable in the circumstance.
28. This evidence raises a concern about your ability to manage and supervise an education and care service.
29. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Potential Compliance Action

30. 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 any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
 - a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
31. Relevant legislation for enforceable undertakings and partial prohibition appears below. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

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.

Section 182(3) - Grounds for issuing a prohibition notice

- (3) The Regulatory Authority may give a prohibition notice to a person to –
 - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Right of response

32. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. 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.

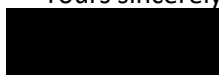
33. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to Vittorio.Colosimo@act.gov.au or by post to

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

Caution

34. 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*.
35. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
36. 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.
37. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
38. 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>
39. Should you have any questions about this Show Cause Notice please contact Senior Investigator Vittorio Colosimo on email Vittorio.Colosimo@act.gov.au.

Yours sincerely



Jo Williams
Director
Education and Care Regulation and Support
ACT Education Directorate

18 April 2023