ACT Government
Education

Mr [redacted]
Person with Management or Control
Guardian Community Early Learning Centres Pty Ltd
RE: Guardian Childcare & Education Barton

Email: [redacted]

Dear Mr [redacted]

**Decision to issue Administrative Action RE: NOT-00058210**

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-00058210) relating to Guardian Childcare & Education Barton SE-40003620 (the Service) operated by Guardian Community Early Learning Centres Pty Ltd PR-0000823 (the Provider).

2. The notification of incident advised that on 23 July 2024, [redacted] (4 yrs) was carried under the arms by an Educator to correct the behaviour of running (and not listening).

3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses to the *Law* and the associated *Regulations* are provided for your convenience at the end of this Decision.

**Facts**

4. On 26 July 2024, a notification of incident (NOT-00058210) was submitted to the Authority by the Provider advising that on 23 July 2024, [redacted] was running around the Service when an Educator told him twice to stop running, when he didn't listen, the Educator lifted [redacted] under the arms and walked him into another room. Refer copy of the NOT-00058210 at Attachment A.

5. Additional information submitted with NOT-00058210 included the following:
   - Educator file note;
   - Educator log;
   - Educator record;
   - Educator induction;
   - Witness Statement – One;
   - Witness Statement – Two;
   - Witness Statement – Three;
   - [redacted] Enrolment form.

   Refer to Attachment B.

6. NOT-00058210 further advised that steps taken by the Provider to prevent or minimise a similar incident included:

- The Centre Manager was alerted and immediately commenced collecting witness statements to confirm account of events.
- The centre has commenced a fact-find into this incident and a coaching conversation was undertaken with the educator.
- The centre has engaged Portfolio Manager and Guardian's People & Culture team for further support with performance conversations.

**Law**

7. The Notification engaged the following provisions of the *Law*:

**Section 166(1) of the Law - Offence to use inappropriate discipline**
The approved provider 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) (b) any discipline that is unreasonable in the circumstances.

Penalty: $11 400, in the case of an individual
$57 400, in any other case.

**Decision**

8. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 166 of the *Law* in this instance.

9. In relation to section 166 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that children were not subjected to inappropriate discipline while in the care of the Service on 23 July 2024.

10. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.

11. The Authority is satisfied that [redacted] was inappropriately disciplined by an educator responsible for his education and care at the time. The Authority would like to remind the Service about what constitutes inappropriate interactions with children via the attached ACECQA factsheet. Refer to Attachment C.

12. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.

13. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.

14. This decision services to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.

15. This Decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. It may also be considered in determining the action to be taken, should further breaches of the Law or associated Regulations be found.

**Legislation**

16. The *Law* applies to you as a provider and any service you operate. 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 . 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.

1. Should you have any questions about this Decision please contact me at Vittorio.Colosimo@act.gov.au.

Yours Sincerely,

**Vittorio Colosimo**
A/g Assistant Director Investigations
Regulation and Compliance
Education Directorate

2 September 2024