



██████████
Person with Management or Control
G8 Education Limited
Re: Blinky Bill Early Childhood Centre

Email: ██████████

Dear ██████████,

Decision to issue Administrative Action

1. As you are aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently investigated an allegation of inappropriate discipline occurring at Blinky Bill Early Childhood Centre, SE- 00009751 (the Service) operated by G8 Education Limited, PR-00000898 (the Provider) between 11 and 14 January 2021 inclusive.
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT) (the Law)*.
3. Web addresses to the *Education and Care Services National Law Act (ACT) (the Law)* and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this decision.

Facts

4. Between 18 and 21 January 2021 inclusive, 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 an educator, known to be Mr ██████████, was subjecting preschool children to inappropriate discipline and interactions.
5. Due to the seriousness of the allegation and risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate.
6. On 16 June 2021, because of evidence gathered during the Authority's investigation supporting contraventions of the *Law*, the Authority sent the Provider a Show Cause Notice (the Notice). Refer copy of the Notice (minus attachments due to size – can be provided upon request) at Attachment A.
7. The Notice outlined the grounds for issue, and the evidence relied on by the Authority supporting allegations that, between 11 and 14 January 2021, the Provider was in contravention of sections 166(1) and 167(1) of the *Law*.

8. Specifically, the allegations raised via the Notice are as follows:

Allegation One

It is alleged that about 1:53pm on 11 January 2021, the Provider failed to ensure that no child was subjected to a form of discipline, unreasonable in the circumstances, in that an educator, known to be [REDACTED], took hold of a child, believed to be [REDACTED], by the back of the shirt and dragged him backward into a room, in contravention of section 166(1) of the *Law*.

Allegation Two

It is alleged that about 2.04pm on 11 January 2021, the Provider failed to ensure that no child was subjected to a form of discipline, unreasonable in the circumstances, in that an educator, known to be [REDACTED] took hold of two children, believed to be [REDACTED] and [REDACTED], roughly handling [REDACTED] and interfering with the ear of [REDACTED], contravening section 166(1) of the *Law*.

Allegation Three

It is alleged that about 11:23am on 13 January 2021, the Provider failed to ensure that no child was subjected to a form of discipline, unreasonable in the circumstances, in that an educator, known to be [REDACTED], took hold of a child, believed to be, [REDACTED], and then pulled and dragged him by the arm, stood over him and interfered with his ear, contravening section 166(1) of the *Law*.

Allegation Four

It is alleged that between 11 and 14 January 2021 inclusive, the Provider failed to ensure every reasonable precaution was taken to protection children from harm and hazards, in that an educator, known to be [REDACTED], subjected children being educated and cared for at the service, to inappropriate discipline and interactions, giving rise to a contravention of section 167(1) of the *Law*.

9. In addition, the Notice also outlined the compliance actions being considered by the Authority should any offence be substantiated.
10. On 29 June 2021, the Authority received the Providers response to the Notice. Refer copy of response at Attachment B.

Law

11. Provisions of the *Law* relevant to the Allegation are:

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) any discipline that is unreasonable in the circumstances.

Section 167(1) of the Law - Offence relating to protection of children from harm and hazards

The approved provider 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.

Regulation 155 - Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that-

- a) encourages the children to express themselves and their opinions; and
- b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- c) maintains at all times the dignity and rights of the child; and
- d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- e) Has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Reasons

12. The Authority has carefully considered the Provider's response to the Notice, along with all available evidence, and is satisfied, on the balance of probabilities, that a contravention of section 166(1) of the Law is substantiated, being that, on 11 and 13 January, the Provider failed to ensure that no child was subjected to inappropriate discipline by educator, [REDACTED].
13. Furthermore, the Authority is also satisfied that a contravention of section 167(1) of the Law is substantiated on the balance of probabilities in that, between 11 and 14 January 2021, the Provider did not practically support, and supervise the inexperienced educator, [REDACTED], resulting in inappropriate interactions with children, which constituted a failure to ensure every reasonable precaution was taken to protect children from harm and hazard.
14. The Authority acknowledges the Provider's response advising of various policies and systems in place to inform educator interactions, however, the Authority notes that the Provider has not produced any evidence to refute that the incidents took place. Section 166(1) of the Law is a mandatory requirement on a Provider to ensure that children are not subject to inappropriate discipline.
15. Additionally, noting multiple allegations, regardless of policies and systems in place for education, [REDACTED] was identified as inexperienced in respect to the Service, and evidence via CCTV footage substantiates, on the balance of probabilities, that he was not being practically or appropriately supervised or supported in his interactions with children, which were not addressed by other educators in the room either.

16. Furthermore, the Authority acknowledges that the condition to the Service's approval, lifted on 16 June 2021, involved engagement of an external consultant to advise on various compliance concerns, such as supervision and general compliance with the *Law* and *Regulations*. The Authority also notes that there is also ongoing compliance monitoring and support by an independent consultant.
17. With the incidents involving ██████████ taking place in January 2021, the Authority is satisfied that steps taken in fulfilment of that condition have appropriately addressed the failings that led to the incidents. The Provider has also listed various steps in the Show Cause Response that are aimed at addressing failings.
18. 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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue this Administrative action.
19. In determining whether to issue the Provider with an Administrative action, the Authority took the following into consideration:
- a) The Notifications of Incident were submitted within the prescribed timeframe, and the Service's previous compliance history;
 - b) The Provider's response to the incident at the time, as well as the Provider's subsequent implementation of further strategies deemed appropriate in mitigating risk of a similar incident.
 - c) Previous compliance action resulting in the engagement of a consultant in relation to supervision and general compliance with the *Law and Regulations*.
20. Regarding the substantiated offence under sections 166 (1) and 167(1) of the *Law*, the Authority is satisfied that strategies and policies implemented by the Provider will meet the expectations of the Authority, and therefore further statutory action is not required.
21. The substantiated contravention has been recorded on your Service file and may be considered by the Authority in any future applications for approvals, amendments, or waivers. They may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be substantiated.

Legislation

22. 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>

23. 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>

24. Should you have any questions about this Decision please contact Authorised Officer Brian Cropper at email Brian.Cropper@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

29 July 2021