



Mr [REDACTED]
Person with Management and Control
Affinity Education Group Limited
RE: Sage Education and Childcare

Email: [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (the Authority). 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 (ACT) (the Law)* and the *Education and Care Services National Regulations (the Regulations)*.
2. The Authority recently received a complaint alleging that the *Law* was contravened at Sage Education and Childcare SE-40007193 (the Service), now known as Papilio Early Learning Turner, operated by Affinity Education Group Limited PR-40001112 (the Provider) as a result of the complaint a Risk Audit (the Audit) was conducted at the Service on 24 February 2022.
3. Web addresses to the *Law* and the *Regulations* are provided for your convenience at the end of this notice.
4. As part of the Audit, the Authority received documentation via email which raised a suspected contravention, regarding staffing levels and various breaches of *the Regulations*. If substantiated, the allegations may constitute offences under 169(1) of the *Law* and *Regulation* 177(2). If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
5. If any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions include the following (further details appear at the end of this Notice):
 - a. Non-statutory Administrative Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced;
 - c. Compliance Notice; or
 - d. Conditions on Service Approval.

6. I am considering compliance action based on suspected contraventions of the *Law* and the *Regulations* arising from the Risk Audit (the audit) carried out on 24 February 2022, regarding staffing, failure to take reasonable precautions to protect children from harm and from hazard and the providers ability to maintain the accuracy of prescribed documents.

Grounds for issuing Show Cause for Compliance Action

7. The Authority is considering compliance action based on evidence that supports contraventions of the *Law* arising from the Audit undertaken on 24 February 2022. Specifically, the evidence obtained via email that suggests two sets of grounds that support offences under the *Law* and the *Regulations*.
8. The evidence obtained during the Audit supports offences under the *Law* within the following areas:
 - a. Staffing arrangements; and
 - b. Record Keeping.
9. Information received during the Audit provided reasonable grounds to suspect additional offences under the *Law* and *Regulations*. The Authority decided that the below compliance matters will be actioned through the normal monitoring and compliance process, enabling the Provider and Service to action and rectify the non-compliance through a table provided via a non-statutory email. Matters that are to be addressed within the non-compliance table are:
 1. Policies and procedures to be followed – Regulation 170
 2. Offence relating to required programs and Educational Program – s168(c) and Regulation 73
 3. Health and hygiene and safe food practices and Laundry and hygiene facilities – Regulation 77(1)(a) and Regulation 106(2)
 4. Furniture and equipment to be safe, clean and in good repair – Regulation 103

Background

10. On 21 February 2022, the Authority deliberated on a complaint, regarding staffing arrangements and interactions with children, resulting in the Authority decision to conduct a risk audit at the Service.
11. The Audit was conducted by two Authorised Officers on the morning of 24 February 2022. On arrival Authorised officers met with [REDACTED], Area Manager, and [REDACTED], the Responsible Person. Authorised Officers reviewed policies and procedures prior to walking through the Service escorted by [REDACTED] and [REDACTED] Authorised Officers spoke to educators, reviewed checklist and documented the visit's findings.
12. Further information was obtained via email from [REDACTED] Refer Attachment A for documentation relevant to this notification.

13. It was determined by the Authority on 7 March 2022, that the evidence is inconclusive due to the inaccuracy of prescribed enrolment records and working directly with children records, alleging contravention of Section 169(1) of the *Law* and *Regulation 177(2)*. Refer Attachment B for inaccuracies within the prescribed records.

First set of grounds – Staffing arrangements

Allegation One

14. It is alleged that, on Thursday 24 February 2022 the provider did not ensure adequate staffing at all times during which children were being educated and cared for by the Service, in contravention of section 169(1) of the *Law*, engaging further contraventions of Regulation 123, and Regulation 122.

Legislation Relevant to Allegation One

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

Section 169(1) of the *Law* - Offence relating to staffing arrangements

An Approved Provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Regulation 123 (1) and (2) –Educator to child ratio-centre – based service

- (1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios —
- (a) for children from birth to 24 months of age— 1 educator to 4 children;
 - (b) for children over 24 months and less than 36 months of age— 1 educator to 5 children;
 - (c) for children aged 36 months of age or over (not including children over preschool age)— 1 educator to 11 children;
 - (d) for children over preschool age, 1 educator to 15 children.
- (2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

Regulation 122 –Educators must be working directly with children to be included in ratios

An educator cannot be included in calculating the educator to child ratio of a centre- based service unless the educator is working directly with children at the service.

Regulation 13 – Meaning of *working directly with children*

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Evidence Relevant to Allegation One

16. On 24 February 2022, the Authority requested additional documents. It was agreed that the documents could be emailed and were received on 25 February 2022. Refer to Attachment A
17. Ratio analysis was carried out utilising working directly with children records and children's attendance records. Where records were incomplete or unclear, assumptions have been made in favour of the Provider where possible. The working directly with children records and child attendance records indicated that the Service was not operating on 24 February 2022, with the relevant number of educators, educating and caring for the children as prescribed and in accordance with *Regulation 123*. Refer Attachment C for ratio analysis.
18. The analysis conducted identified the service ratios were not met on 24 February 2022 and staffing numbers were down between one and three educators throughout the day:
 - a) 7:45-8am down 1 educator
 - b) 8:30-8:45am down 2 educators
 - c) 8:45-9:30am down 3 educators
 - d) 9:30-10:00am down 2 educators
 - e) 10am-11:30am down 1 educator
 - f) 11:30am – 12:30 down 2 educators
 - g) 12:45pm-1:30 down 1 educator
 - h) 1:30-1:45pm down 2 educators
 - i) 1:45-2pm down 1 educator
 - j) 2:30-3:00pm down 1 educator
 - k) 5pm-5:15pm down 2 educators
 - l) 5:15-5:30pm down 1 educator

Contraventions Supported by Allegation One

16. Evidence gathered appears to support a contravention of section 169 (1) of the *Law and Regulation 123* and *Regulation 122*.

Second Set of Grounds – Prescribed documents and other documents to be kept by the approved provider

Allegation Two – Regulation 177(2)

17. It is alleged that, on 24 February 2022, the Provider failed to take reasonable steps to ensure the documents referred to in *Regulation 177(1)(h)* and (k) are accurate, in contravention of *Regulation 177(2)*.

Legislation Relevant to Allegation Two

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
- (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151.
 - (k) Child enrolment records as set out in regulation 160.
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: \$2000

Evidence Relevant to Allegation Two

18. Documentation obtained included working directly with children records and children’s attendance records and staffing roster for 24 February 2022. Refer Attachment B
19. Child attendance records identified:
- a) Child attendance records identified some children had not been signed out for the day.
 - b) Discrepancies between the number of children counted at the time of audit (69) and the number recorded on the child attendance records (67).
 - c) Child attendance had been recorded by educators and the children had been grouped in time slots. The record was not accurate as it did not reflect the actual times children arrived and left the Service.
20. Working directly with children records identified:
- a) An educator identifying herself as [REDACTED] was cleaning the kitchen after Senior Toddlers had eaten lunch at approximately 12:15pm. On receiving the record, the educator was not signed in as working directly with children till 2:25pm and during the Audit the educator identified she had been working within the Senior Toddlers room prior to their lunch.
 - b) Educator [REDACTED] had not recorded working directly with children and was identified by Authorised Officers at approximately 12:30pm as settling children for sleep within the Senior Toddlers room.

- c) The Responsible Person, [REDACTED], was left in the Tiny Tots room at 1:30pm. It was noted on receiving the Tiny Tots working directly with children records, that [REDACTED] had not signed into or out-off the record.
 - d) On the day of audit Authorised Officers were advised educators are still able to receive breaks (shortened ones), but on receiving the record some educators had not recorded breaks.
- 21) Educators' names were not consistent and preferred names are used within the working directly with children record, therefore identifying educators within the attendance records and staffing roster was fraught.
- 22) The Provider did not take reasonable steps to ensure that the working directly with children's records and child attendance records were accurate before producing them to the Regulatory Authority

Contravention supported by Allegation Two

21. Evidence gathered appears to support a contravention of Regulation 177(2).

Potential Compliance Action

22. The Authority reiterates that no decision has been made at this time – this letter is a step in the audit process. However, procedural fairness requires that the Authority takes this opportunity to advise you of potential compliance actions, if any offences are substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d. Conditions on Service Approval under section 55 of the *Law*.
23. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified as a result of the Audit.
24. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified as a result of the investigation.

Right of response

25. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. 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.
26. At Attachment D 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 Delphine.Coutin@act.gov.au or by post to

Children's Education and Care Assurance
Attention Delphine Coutin
GPO Box 158
Canberra ACT 2601.

Caution

25. Please 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 *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>.
27. 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>
28. Should you have any questions about this Show Cause Notice please contact Assistant Director, on telephone (02) 6207 1105 or email delphine.coutin@act.gov.au

Yours sincerely



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

7 April 2022