



Mr [REDACTED]
Person with Management or Control
Affinity Education Group Limited
Papilio Early Learning Yarralumla

Email: [REDACTED]@affinityeducation.com.au
Cc: [REDACTED]@affinityeducation.com.au

Dear Ms Mr [REDACTED]

Decision to Issue Compliance Notice

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted a compliance audit at Papilio Early Learning Yarralumla SE- 00009805 (the Service), operated by Affinity Education Group Limited PR-40001112 (the Provider).
2. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations).
3. Web addresses for the Law and the Regulations are provided for your convenience at the end of this notice.

Background Facts

4. On 26 May and 7 June 2022, two Authorised Officers (AOs) entered the service to complete compliance audits. The audit reports have been finalised and based on the evidence collected a decision to issue a Compliance Notice was made on 9 June 2022.
5. Both AOs reports have been attached at Attachment A and Attachment B, outlining the non-compliance identified during both visits. The table of non-compliance within both reports lists the non-compliance in accordance with the Law and Regulations.
6. The conversations held with the Nominated Supervisor (NS) at the time of the compliance audit, identified that the NS had limited knowledge or implementation of the Law and Regulations to meet compliance. The Governance of the service lacked leadership especially around the provider's policies and procedures and the ability to implement strategies to reduce and mitigate the protection of children from harm and hazards.
7. The audit identified a lack of process around health and hygiene practices. This was evident particularly in the Jr Preschool and Preschool rooms where children were not provided with

washing and drying facilities that enabled safe and convenient use. The lack of first aid stock in every room also identified that the service has no process in place to monitor this.

8. The audits identified adequate supervision was not being met at all times for all children being educated and cared for by the service, in contravention of Section 165(1) of the *Law*, engaging a further contravention of section 167(1) of the *Law*. The circumstances involved a child being left on the change table without an educator directly observing or holding the child. Furthermore, a child was observed in the preschool bathroom struggling to wash their hands for several minutes, with educators unaware.
9. The audits identified a lack of process around prescribed documents, checking for inaccuracies before signing off and follow up on children enrolled at the service who identify with a medical condition.
10. The service was not following the provider's policies and procedures, educators stated that communication is poor, and they don't understand what is expected of them. This was evident around the administration of medication when an educator stated she did not know she was required to document the administration of Panadol given to a child. In addition, embedded practices were lacking around nappy change and supervision.
11. Enrolment files were missing current medical information and the review of Medical Management Plans, Risk Minimisation and Communication Plans for the past year had not taken place. Enrolment forms identified blank pages and missing information including an acknowledgment box stating the parent has been provided with a copy of the Medical Conditions Procedure within the enrolment pack and has read the Medical Conditions Policy which was not completed by the parent.
12. Programs had been developed and was displayed in each room. The provider's policy requires two summative assessments to be completing throughout the year. The summative assessments are currently being finalised for mid-year. However, the evaluations on children's learning were found to be consistent for the month of May but prior to this were inconsistent. The stories provided to AOs mostly captured group activities or whole of centre participation in an evacuation. There was no evidence provided to assess evaluations for individual children. The NS stated that this is an area they are working on and only a few had been completed this year.
13. On its face, such evidence supported the following breaches of the Law and Regulations listed below.

Law and Regulations

Legislative Provisions Relevant to Allegation

Section 165(1) of the *Law* - Offence to inadequately supervise children

The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual

\$50 000, in any other case.

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.

Penalty: \$10 000, in the case of an individual

\$50 000, in any other case.

Regulation 89 – First aid kits

- (1) The approved provider of an education and care service must ensure that first aid kits are kept in accordance with this subregulation, wherever the service is providing education and care to children—
 - (a) an appropriate number of first aid kits must be kept having regard to the number of children being educated and cared for by the service; and
 - (b) the first aid kits must be suitably equipped; and
 - (c) the first aid kits must be easily recognisable and readily accessible to adults, having regard to the design of the education and care service premises.

Penalty: \$2000.

Regulation 103 – Premises, furniture and equipment to be safe, clean and in good repair

- (1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Penalty: \$2000.

Regulation 106 – Laundry and hygiene facilities

- (2) The approved provider of the service must ensure that laundry and hygienic facilities are located and maintained in a way that does not pose a risk to children.

Regulation 108 – Space requirements – outdoor space

- (2) The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least 7 square metres of unencumbered outdoor space.

Penalty: \$2000.

Regulation 109 – Toilet and Hygiene facilities

The approved provider of an education and care service must ensure that—

- (a) adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and
- (b) the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.

Regulation 113 – Outdoor space – natural environment

The approved provider of a centre-based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment.

Example—

The use of natural features such as trees, sand and natural vegetation.

Regulation 170 – Policies and procedures to be followed

- (1) The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: \$1000.

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 -
 - (a) the documentation of child assessments or evaluations for delivery of the educational program as set out in regulation 74;
 - (b) an incident, injury, trauma and illness record as set out in regulation 87;
 - (c) a medication record as set out in regulation 92;
 - (d) in the case of a centre-based service, a staff record as set out in regulation 145;
 - (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151;
 - (l) 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

Section 161A of the Law – Offence for nominated supervisor not to meet prescribed minimum requirements

The approved provider of an education and care service must not nominate an individual to be a nominated supervisor of that service unless that individual meets the prescribed minimum requirements for nomination as a nominated supervisor.

Penalty: \$5000, in the case of an individual.
\$25 000, in any other case.

Compliance History

14. In determining appropriate compliance action, I have considered the compliance history of the Service, which has had compliance history prior to this Decision.

Decision

15. Considering the evidence obtained on the days of audit, the Service compliance history, and the objectives and guiding principles of the *Law*, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
16. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

177 – Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.
Penalty: \$6 000, in the case of an individual
 \$30 000, in any other case.

17. The compliance notice is Attachment C to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
18. You must produce evidence of the steps required by **the time indicated within the Notice at Attachment C**.
19. The Authority will also be maintaining its auditing of the Service to ensure compliance is appropriately monitored, so as to ensure the health, safety and wellbeing of children being educated and cared for.

Rights of Review

20. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
21. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

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, or the Compliance Notice please contact jana.damjanovska@act.gov.au or by phone on 6207 1114.

Yours Sincerely



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

29 June 2022