

Mr [REDACTED]
Learning Support Assistant
[REDACTED]

Email: [REDACTED]@gmail.com

Dear Mr [REDACTED]

Decision to Issue Formal Caution

1. As you are aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently conducted an investigation into an allegation that you used inappropriate discipline towards a child at Gordon Primary School – Preschool Unit, SE-00011193 (the Service) operated by ACT Education Directorate, PR-00006465 (the Provider) on 4 May 2020.
2. Specifically, it was alleged that on 4 May 2020, about midday, while at the outdoor space play area at the Service, you removed a child from the play area where he was allegedly throwing tanbark at staff. It is alleged that you moved him to the veranda deck of a nearby building and prevented him from leaving while repeatedly requesting him to sit.
3. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.

Facts

4. On 17 September 2020, the Authority issued you a Show Cause Notice (the Notice) requiring your response with 14 days. Refer Attachment A
5. The Notice advised that the Authority was considering compliance action based on evidence that indicated a contravention of the Law identified during the Authority's investigation. Specifically, the evidence obtained during the investigation suggested grounds that engaged an offence under section 166(3) the Law.
6. The Notice advised that the Authority was, if the allegations substantiated, considering compliance action including an enforceable undertaking pursuant to section 179A of the Law, and a Prohibition Notice pursuant to section 182 of the Law.
7. On the 29 October 2020, the Authority received your response to the Notice after an extension for response had been agreed to. Refer response at Attachment B.

Law

8. Evidence obtained during the investigation engaged section 166(3) of the Law, which provides the following:

Section 166(3) of the Law – Offence of inappropriate discipline

A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to-

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

Penalty \$10 000

Decision and Reasons

9. The Authority is satisfied, after careful consideration of your response to the Notice and all available evidence, that on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 166 (3) of the *Law* namely-
 - I. That on the 4 May 2020, as an educator at the Service, you subjected a child being educated and cared for to discipline that was unreasonable in the circumstances, contravening section 166(3) of the *Law*.
10. In its determination, the Authority has considered evidence gathered by the investigation, carefully considered your submissions relating to the unfamiliar environment inclusive of children attending the Safe and Supervised Site, your reflections and actions subsequent to the incident. Your comments were noted in relation to a lack of teaching assistance and that the child appeared not to have been injured as a result of the interaction.
11. The Authority does, however, consider that your conduct did not comply with the requirements of section 166(3) of the *Law*, in that, by removing a child from the play area to a veranda deck and preventing the same child from leaving that area, inclusive of physical restraint, you have subjected a child to discipline that was unreasonable in the circumstance.
12. In deciding if a compliance action should be taken, the Authority has taken into account the fact that you have reflected on your conduct from 4 May 2020 and advised of additional training being undertaken to mitigate the risk of a similar response to a child's behaviour.
13. Furthermore, the Authority has also taken into consideration that the *Law* has a protective role and the Authority must consider the rights of children and best practice.
14. The Authority has decided on this occasion to not engage the proposed actions of an Enforceable Undertaking or Prohibition, but to issue you this Caution. This Decision is a reminder that you are obligated as an educator, to ensure that your actions in no way, compromise the safety, health and well-being of children being educated and cared for by yourself.
15. The Authority has also taken into consideration that people and entities that choose and consent to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case you have chosen and consented to participating in the education and care of children and have a responsibility to comply with the standards required by the *Law* at the very least.

16. When choosing to participate in the education and care sector by employment as an educator, you are obligated to ensure your conduct meets the professional standard expected under the *Law*.
17. This letter will be recorded on our files and may be taken into consideration if any new evidence is received that warrants further investigation into this matter, or if any other matters involving your conduct with children are notified to the Authority in the future.
18. The National Law is made up of an Act and Regulations which can be viewed at:

<http://www.acecqa.gov.au/national-law> and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
19. Should you have any questions about this Decision please contact Senior Investigator Brian Cropper on telephone (02) 6207 1104 or email brian.cropper@act.gov.au.

Yours Sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

27 November 2020