



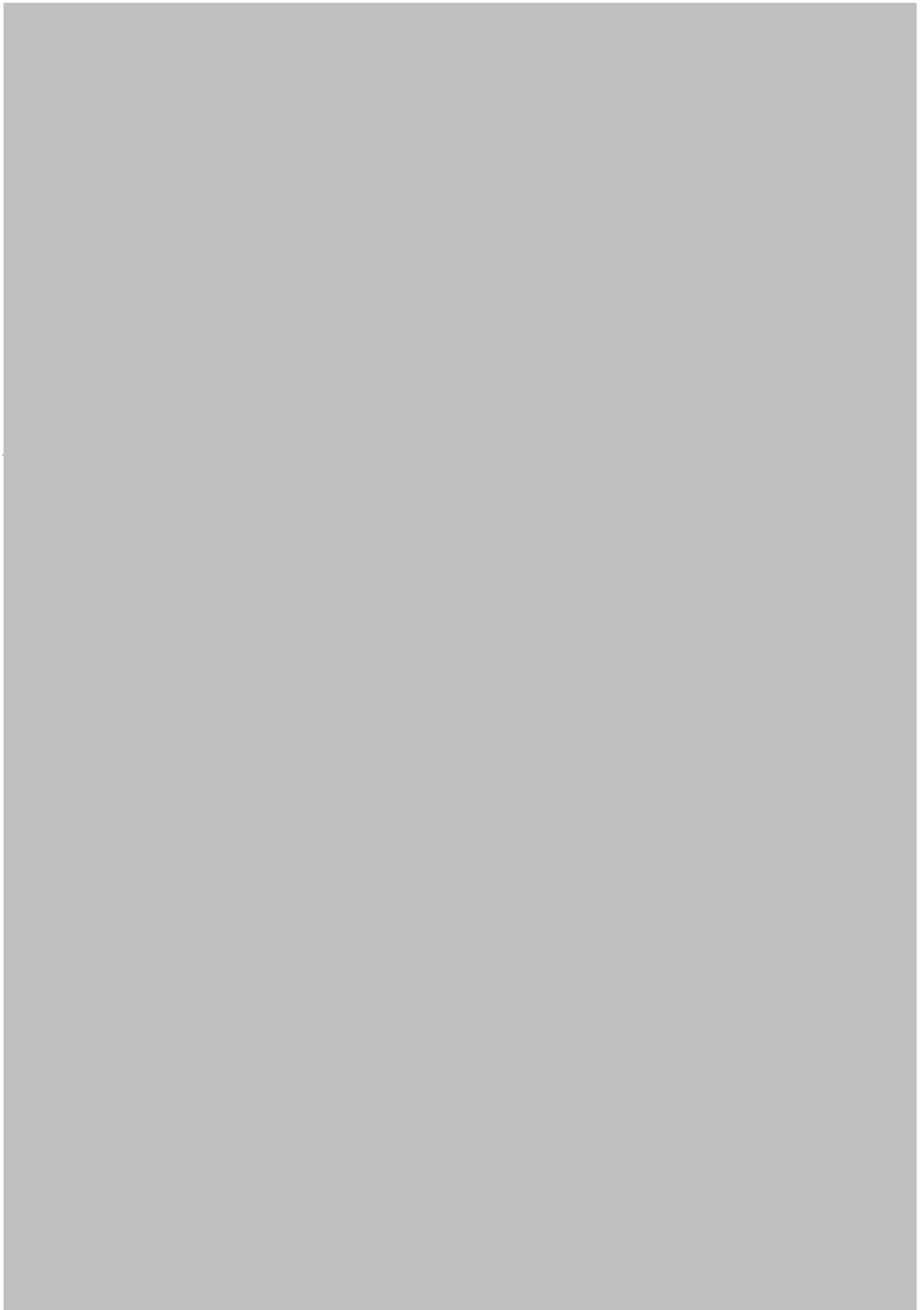
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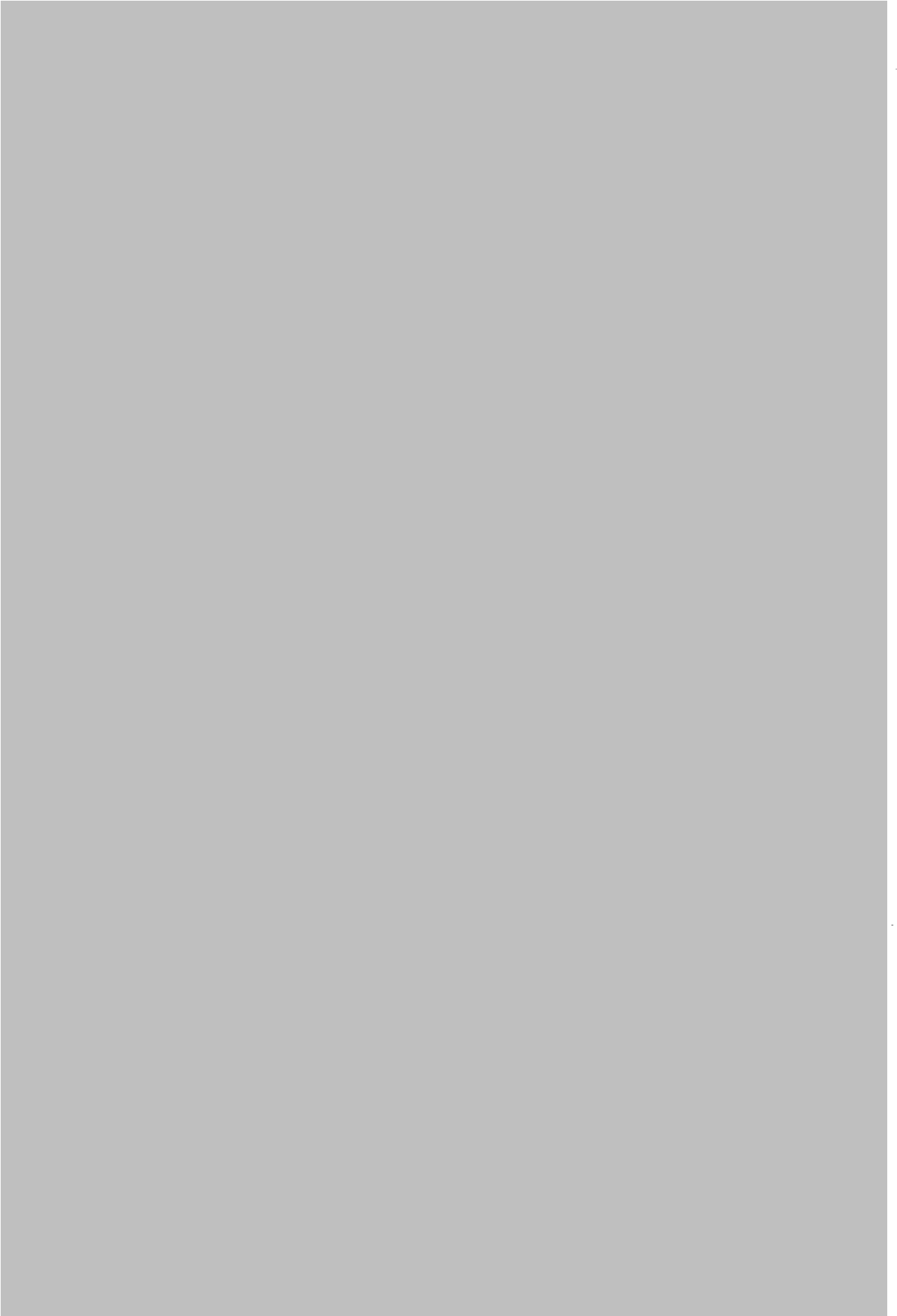
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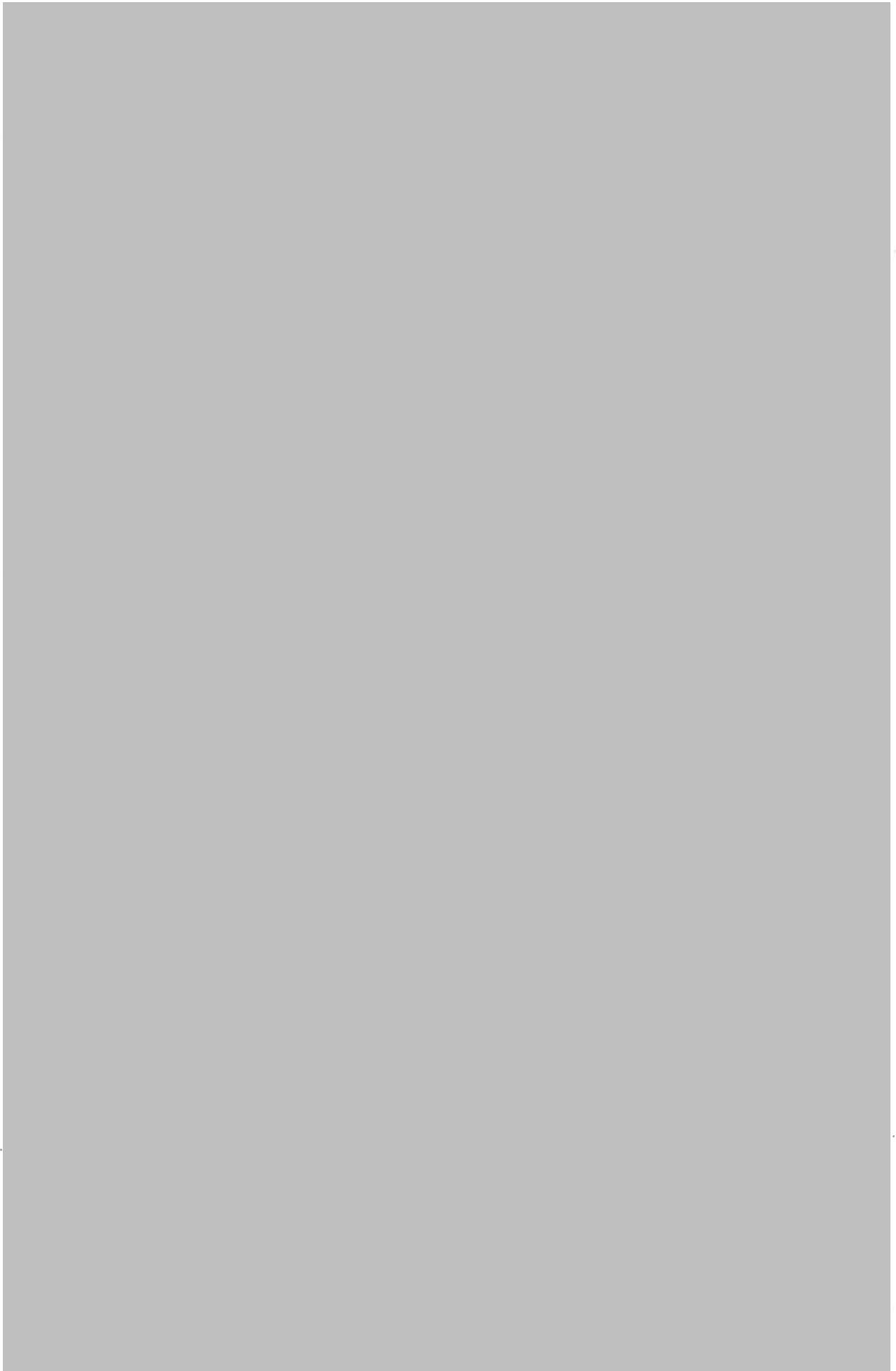
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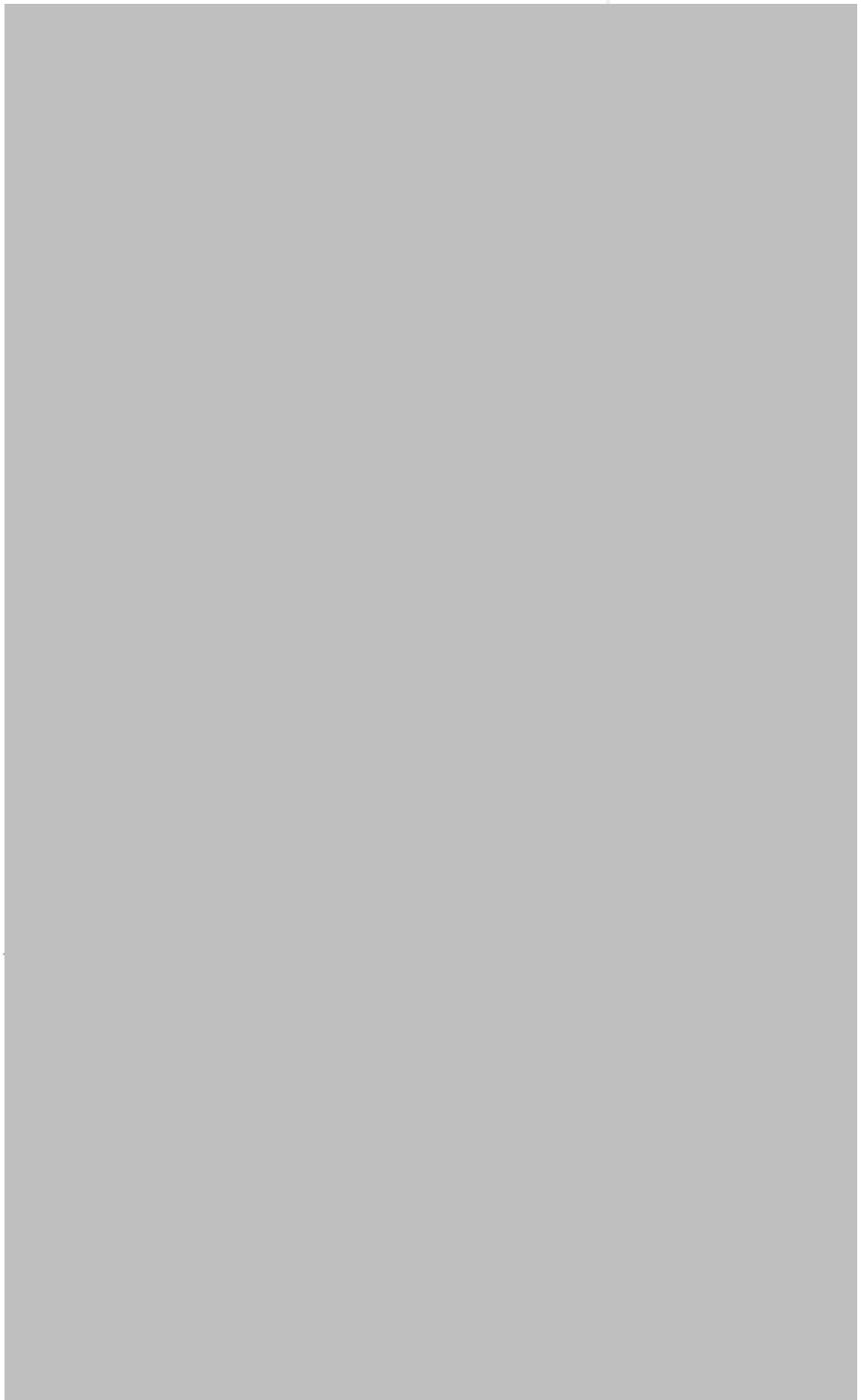
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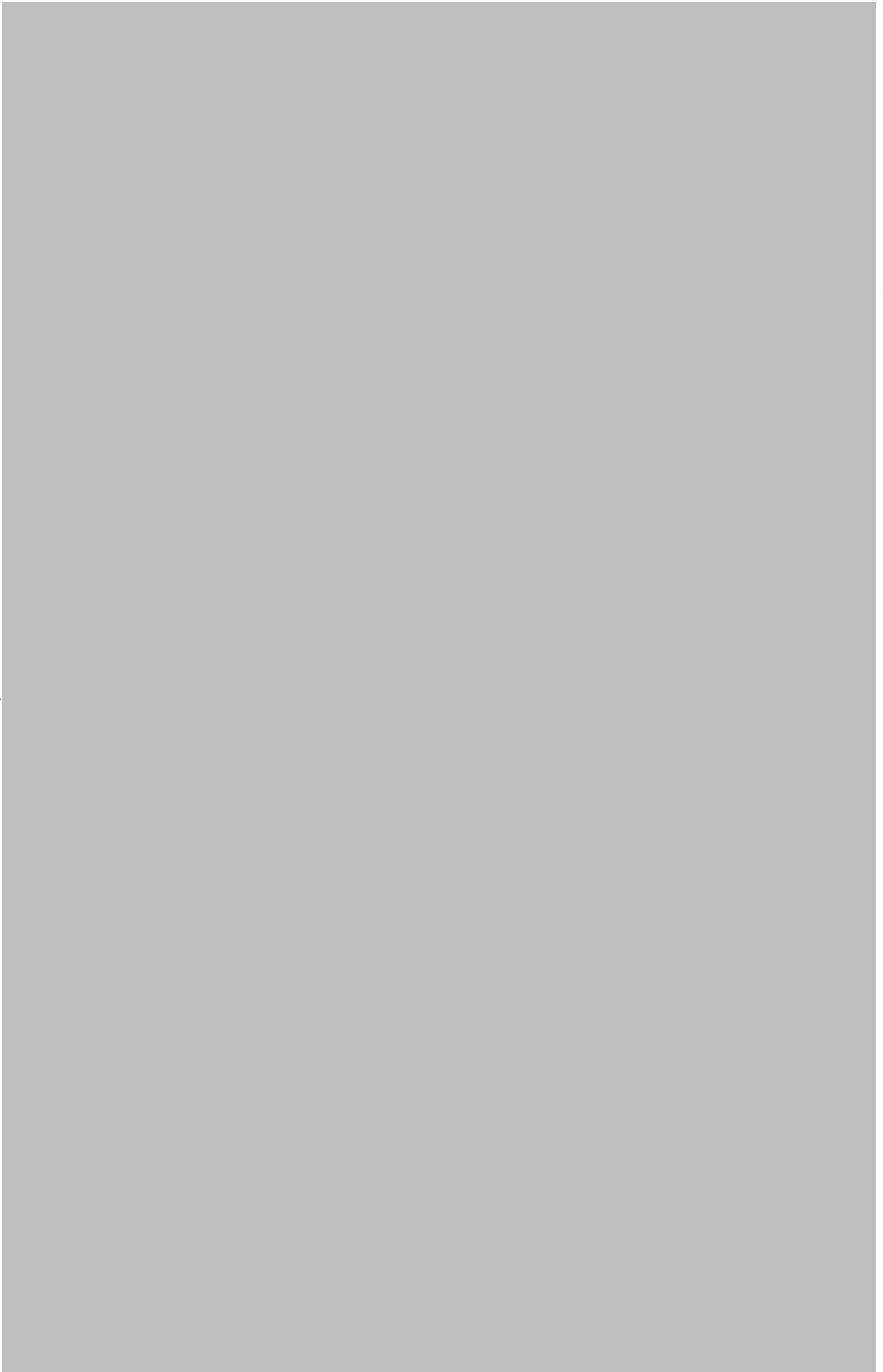
Updated June 2019 | due to be revised August 2021



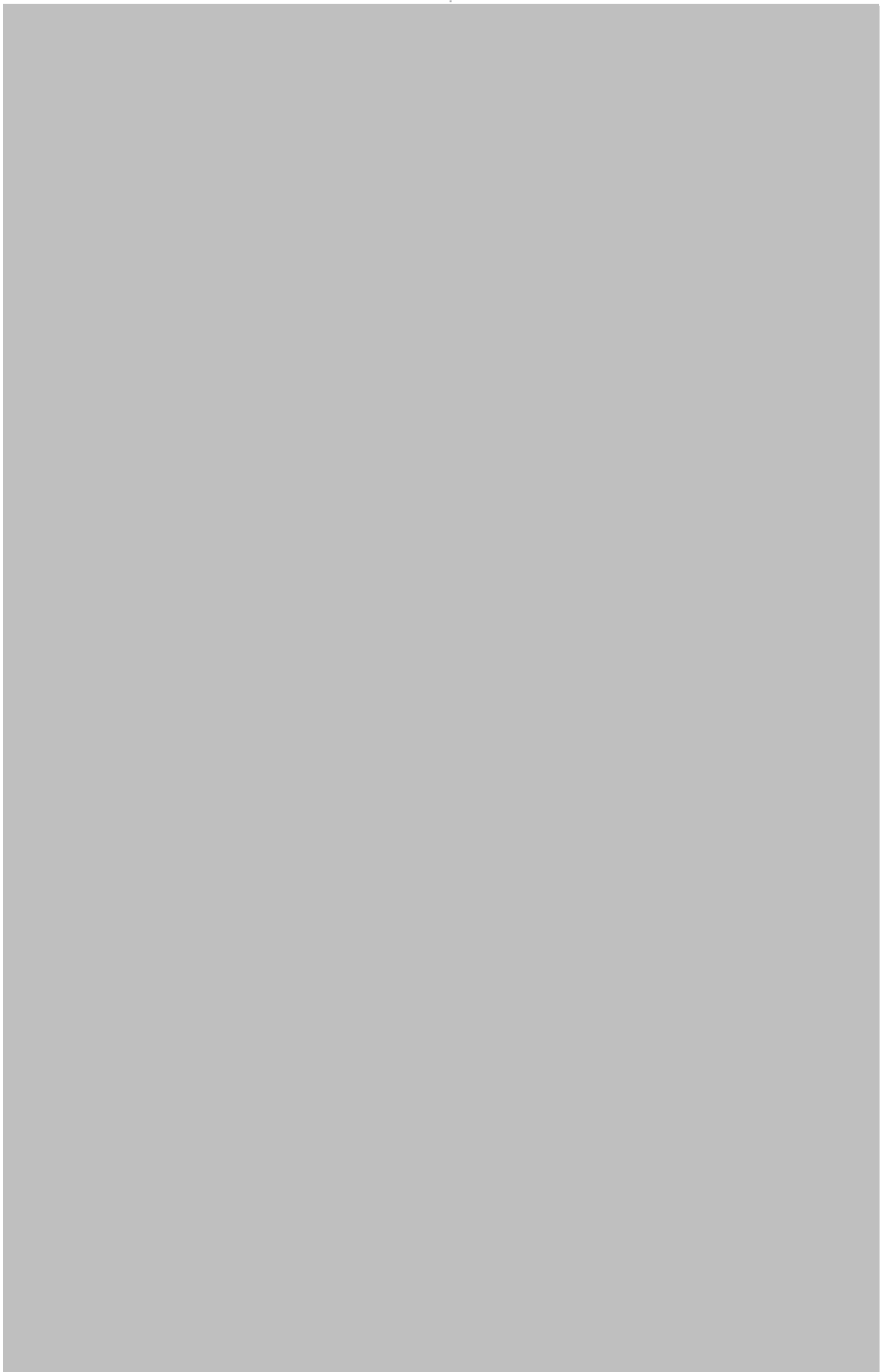


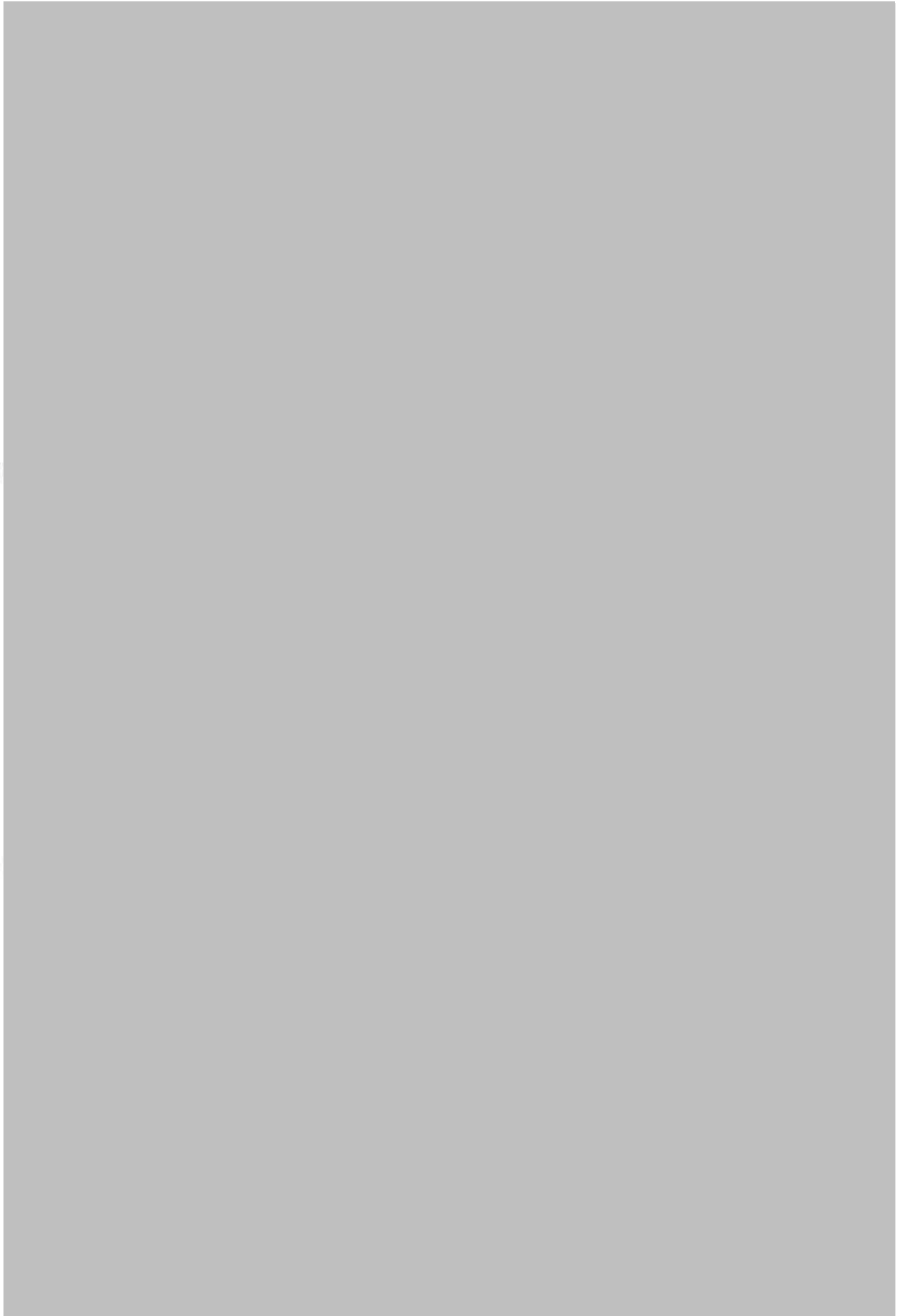




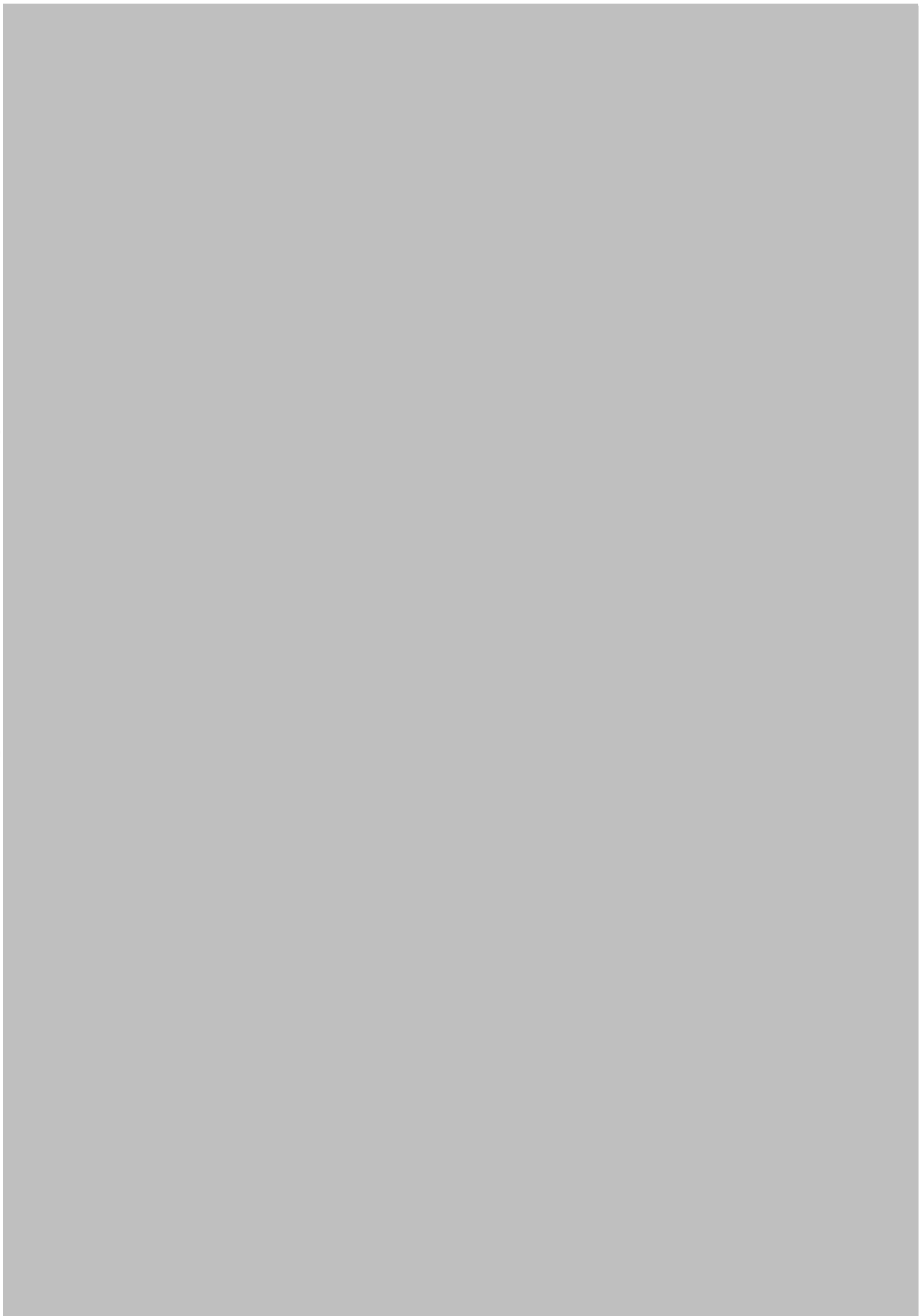


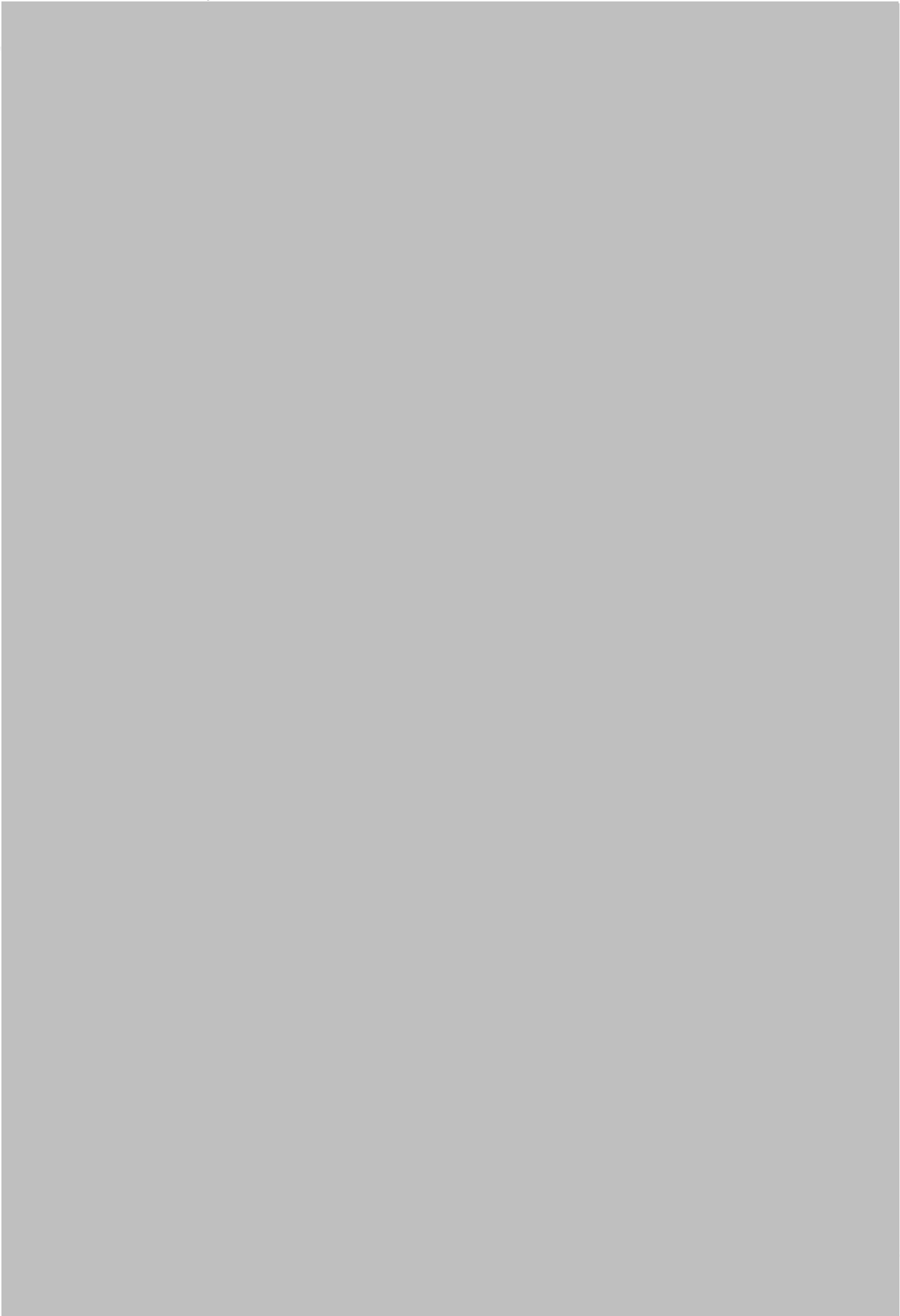


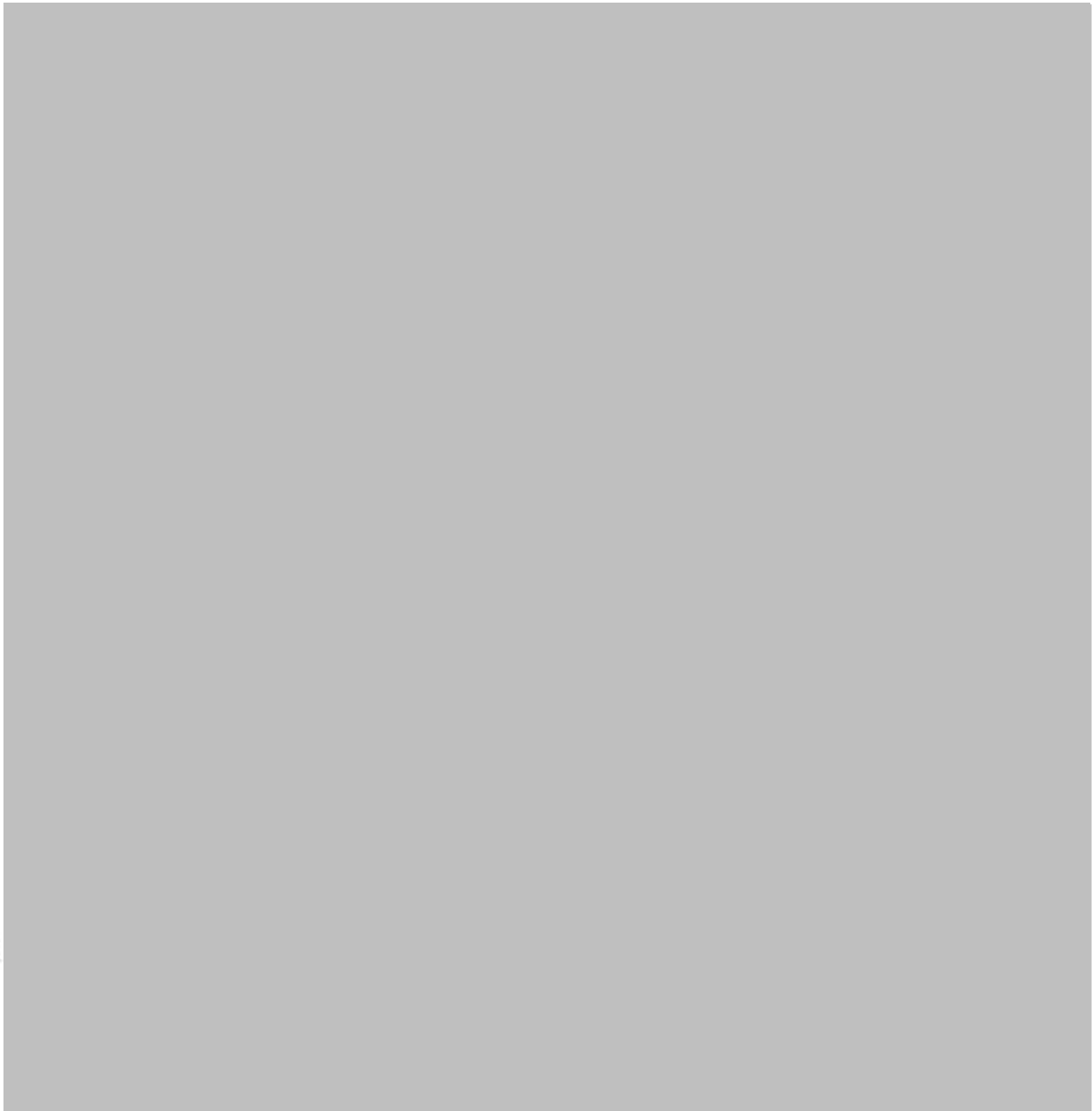












Fairburn, Janine

From: [REDACTED]
Sent: Friday, 20 September 2019 2:51 PM
To: Masterman, Tanya
Cc: [REDACTED]
Subject: Fwd: ACT Regulatory Authority - Decision
Attachments: Decision.pdf; Attachment A.pdf; Attachment B.pdf; Attachment C.pdf

Hi Tanya,

Thank you for your notification. The notice is disappointing however the timing is well timed and we will respond accordingly.



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Begin forwarded message:

From: "Masterman, Tanya" <Tanya.Masterman@act.gov.au>
Subject: ACT Regulatory Authority - Decision
Date: 20 September 2019 at 2:14:06 pm AEST
To: [REDACTED]

UNCLASSIFIED

Dear [REDACTED]
Further to the recent investigation regarding Brindabella Christian College Early Learning Centre – Charnwood, all material (including the Provider’s response to show cause notice) has been considered by the Authority’s Case Management Committee.

Please find attached the Authority's Decision, together with Attachments A, B and C.
You will see that the first action required under the Compliance Notice is due within 14 days of receipt of the Notice.

Yours sincerely

Tanya Masterman | A/g Assistant Director

Phone 02 6205 2012 | Email tanya.masterman@act.gov.au

Early Childhood Policy and Regulation | Education | ACT Government

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive, Stirling 2611

GPO Box 158 Canberra ACT 2601

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- please notify the sender and delete all copies of this transmission along with any attachments immediately.
- you should not copy or use it for any purpose, nor disclose its contents to any other person.



[REDACTED]
 Person with Management or Control
 Brindabella Christian Education Ltd
 T/A Brindabella Christian College Early Learning Centre – Charnwood
 PO Box 5103
 LYNEHAM ACT 2602

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Compliance Notice

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated suspected contraventions of the *Education and Care Services National Law Act 2010*¹ (the Law), occurring at Brindabella Christian College Early Learning Centre – Charnwood SE-00011290 (the Service), operated by Brindabella Christian Education Ltd PR-00005809, (the Provider) on 14 May 2019.
2. Electronic links to the Law and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this letter.

Background Facts

3. On 14 May 2019, a direct complaint was received by the Authority regarding the conduct of educators in the [REDACTED] room towards [REDACTED] children, known as [REDACTED] at the Service earlier that day.
4. Due to the high risk to children when inappropriately disciplined, the Authority conducted an investigation. During the investigation, the Authority obtained documentation and conducted formal interviews with witnesses.
5. The Authority determined that there was sufficient evidence to support suspected offences on four grounds, being:
 - a. Inappropriate discipline contrary to section 166(1) of the Law (Allegations One, Two and Three);
 - b. Inappropriate interactions, contrary to section 167(1) of the Law (Allegation Four);
 - c. Failing to ensure staff members followed policies and procedures, contrary to Regulation 170 (Allegation Five); and
 - d. Inaccuracy of prescribed records, contrary to Regulation 177(2) (Allegation Six).

¹ Adopted in the ACT by the *Education and Care Services National Law Act (ACT) 2011*

6. Accordingly, a Show Cause Notice (the Notice) was issued to the Provider on 17 July 2019. Refer Attachment A.
7. The Provider's response was received by the Authority on 2 August 2019, within the required time as extended by request. Refer Attachment B.
8. It is noted that the Provider's response to the Notice incorporated the Service's [REDACTED] response to a Show Cause Notice, received by the Authority on 31 July 2019.

First Set of Grounds – Inappropriate Discipline

Evidence

9. The first set of grounds in the Notice contained three allegations of inappropriate discipline, specifically addressed below.
10. In the Provider's response to the Notice, a general statement was made that the events in Allegations One, Two and Three were *"more accurately described as the appropriate implementation of strategies determined by our staff in consultation with parents to provide the best possible care to our children and their families (with a significant dose of misinterpretation of events by a casual observer)*.
11. **Allegation One** - It was alleged that, on 14 May 2019, [REDACTED] told a child, [REDACTED]
 - a. words to the effect of *"if you don't stop being naughty I'll send you somewhere else and you won't be able to come back here or see your mummy or daddy again"*;
 - b. words to the effect of *"if you don't go to sleep right now, I'll call your mummy and daddy and tell them to not come and get you today"*.
12. In the Provider's response to the Notice, the Provider included a transcript of an interview with [REDACTED] and relied upon that as a response to that allegation, including
 - a. [REDACTED] is a difficult sleeper;
 - b. [REDACTED] has not used the word "naughty";
 - c. [REDACTED] recalled stating *"you really really need to go to sleep otherwise I am going to have to call mum and dad and just let them know that you didn't sleep"*;
 - d. [REDACTED]
 - e. [REDACTED] being swaddled was due to a request from parents;
 - f. The placing of log pillows on [REDACTED] was because [REDACTED] likes the weighted feeling;
 - g. [REDACTED] has a "very, very loud voice".
13. The Provider further stated that the actions were sanctioned by [REDACTED] were a response to the specific sleep needs of the child, and reflective of daily routines in the centre. It was further noted that [REDACTED]
14. **Allegation Two** - It was alleged that, on 14 May 2019, when lunch was being served in the [REDACTED] room and [REDACTED] had put [REDACTED] to bed, [REDACTED]
 - a. Removed [REDACTED] from [REDACTED] bed and pulled [REDACTED] by the arm to the table, while [REDACTED] was crying and yelling that [REDACTED] wanted to go to bed; and

- b. When [redacted] went back to [redacted] bed, [redacted] again removed [redacted] from [redacted] bed and dragged [redacted] to the table, while [redacted] was crying and yelling that [redacted] wanted to go to bed.
15. In the Provider's response to the Notice, the Provider included a transcript of an interview with [redacted] and relied upon that as a response to that allegation, including:
- There have been many conversations with parents about the fact that [redacted] would often say [redacted] wanted to go to bed rather than eating;*
 - [redacted] wanted [redacted] encouraged to come back to the table;*
 - [redacted] actions as described by Witness A were "normal behaviour" for [redacted]*
 - [redacted] removed [redacted] to calm [redacted] so asked [redacted] to deal with it for 5 minutes;*
 - [redacted] tapped out, as has been discussed before;*
 - Strategies have been discussed with the family regarding eating lunch because if [redacted] runs back to [redacted] bed constantly, all the other children will follow too;*
 - The issues happen with morning tea, afternoon tea and lunch; [redacted] doesn't want it.*
16. The Provider further stated that the actions observed by Witness A were "sanctioned by [redacted] a response to the specific sleep and eating needs of the child, and reflective of daily routines in the Centre."
17. **Allegation Three** - It was further alleged that, on 14 May 2019, when [redacted] was at the lunch table and crying about wanting to go to bed, [redacted] took a spoonful of [redacted] lunch and put it in [redacted] mouth when [redacted] was yelling, held [redacted] chin to close [redacted] mouth and held [redacted] arms down when [redacted] tried to push [redacted] hands away.
18. The Provider's response to the Notice relied on the transcript of interview with [redacted] as a response to Allegation Three, including:
- [redacted] had [redacted] that day;*
 - From the start of lunch, [redacted] was crying and expressed [redacted] did not like the food and did want to try it;*
 - When shown the food, [redacted] "lost the plot" and "did not want a bar of it" to the point where [redacted]*
 - [redacted] took [redacted] out to the [redacted] room to see [redacted] who was able to calm [redacted] down;*
 - [redacted] then agreed to try the food, but when [redacted] put food in [redacted] mouth [redacted] started crying with it in [redacted] mouth, spitting some of it out;*
 - [redacted] held [redacted] hand under [redacted] chin to catch food;*
 - After washing [redacted] hands, [redacted] returned and [redacted] agreed to try again and was "happy as anything";*
 - [redacted] had been quite emotional all day;*
 - Normally when [redacted] is given food [redacted] will try it.*

19. The Provider further stated with regards to Allegation Three that the actions observed by Witness A were “sanctioned by [REDACTED] a response to the specific sleep and eating needs of the child, and reflective of daily routines in the Centre.”
20. The Provider placed further reliance upon the response to Show Cause Notice submitted by the Nominated Supervisor, [REDACTED]

Law

21. Evidence obtained during the investigation engages section 166(1) of *the Law*, which provides as follows:

Section 166 of the Law- Offence to use inappropriate discipline

- (1) 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.

Authority’s Findings – Section 166 Offences Substantiated

22. The Authority is satisfied, on the balance of probabilities, that the Provider has contravened section 166(1) of the *Law*, as the actions of [REDACTED] on 14 May 2019 can be described as discipline that is unreasonable in the circumstances. Approved providers are subject to strict liability regarding inappropriate discipline, as indicated by the words “must ensure” and the lack of any fault element in the offence.
23. Unreasonable discipline includes physical punishment or any behaviour management strategy likely to cause physical and/or psychological harm to a child. Smacking, pulling, yelling and threatening a child are the most common forms of conduct viewed as inappropriate discipline.
24. However, inappropriate discipline can be more subtle and include other forms of physical or psychological forms of coercion. Rough handling of children is a disciplinary issue when it is in a context that is intended to shape a child’s behaviour. Likewise, harmful physical or psychological techniques to shape children’s responses are also inappropriate discipline.
25. It is important to bear in mind that the obligations of Providers, Nominated Supervisors and Educators towards children may not always coincide with parents’ requests. For example, if a parent requests some form of discipline that is unreasonable (such as isolation), it is your responsibility as a Provider to ensure that child is educated and cared for in an appropriate way, rather than condoning inappropriate conduct towards a child (even when requested by parents).
26. With regards to Allegation One, although there is some variance in the words used between what Witness A states they heard and what [REDACTED] recalls saying, the use of a threat or warning of calling parents is not a reasonable method of discipline to use to try and encourage sleep or at any time. It also does not comply with the Provider’s “Interactions with Children Policy”.
27. Where there is a conflict in details between [REDACTED] account included in the Provider’s response to the Notice and the evidence of Witness A, the Authority prefers the evidence of Witness A, due to the complaint being received by the Authority within hours of the incidents, the absence of motivation for exaggeration, corroboration of Witness A’s evidence of other incidents/matters by

Witnesses B and D bolstering Witness A's credibility, and the level of distress displayed by Witness A shortly after observing the incidents complained of.

28. With regards to Allegation Two, it is noted that the allegation was not denied by [REDACTED] in [REDACTED] interview with [REDACTED]. The allegation was put to [REDACTED] at 0:02:41:0 and appears on page two of the transcript provided. When asked to elaborate, [REDACTED] did not address the allegation against [REDACTED] but talked about [REDACTED] behaviour.
29. With regards to Allegation Three, the accounts of [REDACTED] behaviour around eating were inconsistent. [REDACTED] stated that the behaviour described was "normal", whereas [REDACTED] agreed to a direct suggestion that it was "not a normal day" when discussing [REDACTED] behaviour. The Provider stated that the events were "reflective of daily routines in the Centre". [REDACTED] had mentioned tapping out and handing care of [REDACTED] over to [REDACTED] after [REDACTED] was already upset and kept going back to [REDACTED] bed, whereas [REDACTED] account was that all the children came to the tables, did the grace song and gave out all the food, [REDACTED] was sitting there from the start, then started crying.
30. The details of [REDACTED] account and Witness A's account differ in minor respects. Again, where there is conflict in details of the incident, the Authority prefers the evidence of Witness A for the reasons outlined above in paragraph 27.
31. Whilst resistance to or avoidance of eating can be difficult to manage, trying to make a child eat when they are showing clear signs of tiredness and significant distress is not appropriate, nor is putting food in a child's mouth when they are distressed about eating. An acceptable option is to let a child sleep if they need/wish to and offer food (with alternatives if required) when they are in a more appropriate frame of mind, particularly when a child has difficulties with eating.

Second Set of Grounds – Inappropriate Interactions

Evidence

32. It was alleged that [REDACTED] told [REDACTED] 'you've been feral today', when [REDACTED] was rolling around near the pillows during library time. That statement was attested to by both Witness A and Witness B.
33. In the transcript of [REDACTED] interview, provided with the Provider's response to the Notice, [REDACTED] denied making that statement. [REDACTED]
34. The Provider has stated in its response to the Notice that:
 - a. *It is not reasonable for a provider to control every word uttered by staff;*

- b. *It is not reasonable for a provider to make a comprehensive list of every word from an evolving language that might be considered as harmful (and therefore the isolated incident cannot be a breach);*
- c. *When used as a term describing behaviour of students, "feral" might be construed as being no different to words such as "unacceptable" or "inappropriate" [redacted] children don't understand any of these words);*
- d. *When talking to [redacted] "feral" is more likely to be used to communicate information to other colleagues in the room rather than the child who has no idea what it means;*
- e. *The incident itself can (and has) provided a focal point to discuss the meaning of sections 167 and 155 with our staff (especially as it inter-relates with our policies) showing that rather than evidencing a breach it evidences the organise nature of our compliance regime.*

Law

35. Evidence obtained during the investigation engages section 167(1) of *the Law*, which provides as follows:

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

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared 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;
- (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 each child;
- (d) Gives each child positive guidance and encouragement toward acceptable behaviour;
- (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.

Authority's Findings – Section 167 Offence Substantiated

- 36. The Authority finds that [redacted] did directly tell [redacted] "you've been feral today" as the comment was attested to by two witnesses.
- 37. Although the Provider's position is that calling a child's behaviour "feral", is no different from "unacceptable" or "inappropriate", that is based on a false assumption that [redacted] children are unable to comprehend and have no idea what it means.
- 38. The Authority finds this position concerning, as it evidences a disregard for the rights and dignity of children. It is also noted that the comment was directed to the child [redacted] not referencing [redacted] behaviour.

39. In [redacted] interview, [redacted] refers to encouraging “listening bodies” in preparation for school. It is pointed out that toddlers (and even some school-aged children) are not developmentally ready to behave in the manner described.
40. Although a Provider cannot control every word uttered by staff, the evidence set out in the Notice regarding interactions with children, together with the Provider’s response to the Notice, indicates that children’s rights and dignity are not sufficiently respected in the [redacted] room and there is a lack of positive guidance and encouragement towards acceptable behaviour, having regard to the age, physical development and abilities of each child.

Third Set of Grounds – Failure to Ensure Policies and Procedures are Followed

Evidence

41. It was alleged that the Provider had failed to take reasonable steps to ensure staff followed the Sleep and Rest Policy and the Interactions with Children Policy. Relevant extracts of both policies and procedures were included in the Notice.
42. Witnesses A and B gave evidence concerning the way in which [redacted] interacted with children, and Witnesses A, B, C, D and E all mentioned sending a child to another room as a behaviour management strategy. Although Witness E stated that practice was eliminated and some other witnesses stated it did not happen anymore, Witness A was aware of it after being present at the Service [redacted] 2019.
43. Witness A attested to [redacted] being prevented from sleeping by [redacted] bringing him back to the table after he had taken himself to bed.
44. In the Provider’s response to the Notice, transcripts of interviews with [redacted] were included and relied upon, together with the Nominated Supervisor’s response to a show cause notice.
45. [redacted] confirmed that [redacted] had been brought back to the table instead of sleeping, as it was a strategy negotiated with parents.
46. The Provider also attached copies of recently amended policies, signed by staff to indicate they have read and understood.

Law

Evidence obtained during the investigation engages Regulation 170, which states:

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.

Authority’s Findings – Breach of Regulation 170 Substantiated

47. The Authority is satisfied that the Provider has not taken reasonable steps to ensure that staff followed the Sleep and Rest Policy and Interactions with Children Policy.

48. The behaviour management strategies outlined by [REDACTED] in their interviews do not align with the evidence given by Witnesses A and B. Witness B had been concerned about [REDACTED] interactions with children for “some time”, intended to speak with the Assistant Director about it but had not had the opportunity.

Fourth Set of Grounds – Inaccurate Prescribed Records

Evidence

49. It was alleged that the Provider had not taken reasonable steps to ensure that working directly with children records were accurate. Working Directly with Children records for the week commencing Monday 13 May 2019 were obtained from the Provider, under a notice allowable under section 215 of the *Law*, contained the following inaccuracies specified in the Notice:
- a. No-one was signed in as covering breaks in Toddler 2 on 14 or 16 May 2019;
 - b. On 16 May 2019, [REDACTED] was signed in to both Toddler 1 and Toddler 2 at the same time;
 - c. On Friday 17 May 2019, [REDACTED] signed in to [REDACTED] at 8:25am and did not sign out.
50. It is noted that the Provider advised in its response that staff at the Service have been reminded of the importance of accurate records. The Provider stated that it was confident that current practices were fully compliant and welcomed the opportunity to prove such compliance.

Law

51. Evidence obtained during the investigation engages Regulation 177, which states:

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.
- (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.

Authority’s Findings – Breach of Regulation 177(2) Substantiated

52. The Authority is satisfied that the Provider has not taken reasonable steps to ensure working directly with children records were accurate for the week commencing Monday 13 May 2019. The records were incomplete and inaccurate on their face and were produced to the Authority under notice as an accurate record of educators working directly with children.

Obligations upon Regulatory Authority, Providers and Services

53. The foundation for the Authority’s obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely:

“to ensure the safety, health and wellbeing of children attending education and care services”.

54. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:
- (a) *that the rights and best interests of the child are paramount;*
 - (2) *that best practice is expected in the provision of education and care services.*
55. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which include:
- (a) *to administer the National Quality Framework;*
 - (c) *to monitor and enforce compliance with this law;*
 - (d) *to receive and investigate complaints arising under this law;*
 - (f) *to work in collaboration with the National Authority to support and promote continuous quality improvements in education and care services.*
56. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
57. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children. This requires, as a minimum standard, compliance with the *Law* and *Regulations*.
58. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.
59. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

Section 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.

Decision

60. The Authority has noted the steps taken by the Provider and/or Nominated Supervisor in response to the allegations, including:

- a. [REDACTED] will be provided mentoring and support, with key focus areas around interactions with children and behaviour guidance strategies, including direct supervision in a room with an early childhood teacher to support and monitor [REDACTED] interactions with children; and
- b. Recruiting a lead educator to work with [REDACTED] in the T2 rooms to supervise and support [REDACTED] further development;
- c. Change in leadership structure, to include an Assistant Director/Nominated Supervisor Non-Teaching for each Service and [REDACTED] new role as [REDACTED] [REDACTED] across both Centres;
- d. Behaviour Buster training with [REDACTED]

61. Considering the evidence, the Provider's response, the objectives and guiding principles, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
62. The Compliance Notice is Attachment C to this Decision. The Provider is required to take steps directed in the Notice to comply with the relevant provisions.
63. The Provider must produce evidence of the steps required by **the times indicated for each step within the Compliance Notice at Attachment C.**
64. Additionally, the Authority is concerned at the Provider's position in justifying and minimising the conduct alleged, in particular, defending the practice of calling a child "feral", and its reasoning that the conduct alleged was sanctioned by parents and reflective of daily routines in the Service.
65. Where an approved provider is not an individual (as is the case in this instance), each person with management and control must be a fit and proper person to be involved in the provision of an education and care service, pursuant to section 12 of the *Law*.
66. Section 21 of the *Law* permits reassessment of fitness and propriety of original persons with management and control and assessment of new persons with management and control by the Regulatory Authority at any time, as follows:

21. Reassessment of fitness and propriety

- (1) The Regulatory Authority may at any time assess-
 - (a) whether an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or
 - (b) whether a person with management or control of an education and care service operated by an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or
 - (c) whether a person who becomes a person with management or control of an education and care service operated by the approved provider after the grant of the

provider approval is a fit and proper person to be involved in the provision of an education and care service.

(2) Sections 13 and 14 apply to the reassessment.

67. Accordingly, the Authority requires that each person with management and control undergo assessment or reassessment (as the case may be) of fitness and propriety. This will be carried out within one month of completion of the required training specified in the attached Compliance Notice.
68. The assessment or reassessment will involve demonstrating to the Regulatory Authority, via interview and/or written assessment (at the Regulatory Authority's discretion), an adequate understanding of an approved provider's obligations under the National Quality Framework.


Review Rights

69. 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).
70. 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

71. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
72. 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>
73. Should you have any questions about this Decision or Compliance Notice please contact Senior Investigator Tanya Masterman, on telephone (02) 6205 2012 or email tanya.masterman@act.gov.au

Yours Sincerely


Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

20 September 2019



ACT
Government
Education

[REDACTED]
Person with Management or Control
Brindabella Christian Education Ltd
T/A Brindabella Christian College Early Learning Centre – Charnwood
PO Box 5103
LYNEHAM ACT 2602

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, have recently investigated allegations of inappropriate discipline and inappropriate interactions by educators at Brindabella Christian College Early Learning Centre Charnwood SE-00011290 (the Service), operated by Brindabella Christian Education Ltd PR-00005809 (the Provider).
2. Electronic links to the *Education and Care Services National Law* (the Law), and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. I am considering compliance action based on suspected contraventions of the Law indicated by evidence gathered during the investigation. Potential compliance actions include, but are not limited to, a Compliance Notice or conditions on Service Approval, authorised by sections 177 and 55 of the Law respectively.
4. The grounds for issuing this show cause notice arise from a direct complaint received by the Authority and subsequent investigation regarding the conduct of educators on 14 May 2019 whilst employed at the Service. There are four grounds, being:
 - a. Inappropriate discipline (Allegations One, Two and Three);
 - b. Inappropriate interactions (Allegation Four);
 - c. Failure to ensure staff members follow policies and procedures (Allegation Five); and
 - d. Inaccuracy of prescribed records (Allegation Six).

Background

5. On 14 May 2019, a direct complaint was received by the Authority regarding the conduct of two educators, being [REDACTED] in the [REDACTED] room at the Service that day.

6. On 23 May 2019, a notice allowable under section 215 of the *Law* was sent to the Provider to obtain relevant documents, including:
 - a. Working Directly with Children records;
 - b. Child attendance records;
 - c. Staff records; and
 - d. Relevant policies and procedures.
7. Evidence gathered supports three allegations of inappropriate discipline and one allegation of failing to protect children from harm and from hazards likely to cause injury, each of which engages offence provisions under the *Law*. Evidence gathered further supports an allegation of failing to ensure policies and procedures are followed and failing to ensure prescribed records are accurate, in breach of the Regulations.

First Set of Grounds – Inappropriate Discipline

Allegation One

8. It is alleged that, on 14 May 2019, [REDACTED] told a child, [REDACTED]
 - a. words to the effect of *“if you don’t stop being naughty I’ll send you somewhere else and you won’t be able to come back here or see your mummy or daddy again”*; and
 - b. words to the effect of *“if you don’t go to sleep right now, I’ll call your mummy and daddy and tell them to not come and get you today”*

Evidence relevant to Allegation One

9. Documents produced from the Provider identified that:
 - a. [REDACTED] was an educator employed by the Provider working at the Service on 14 May 2019;
 - b. [REDACTED] was working directly with children in the [REDACTED] room on 14 May 2019 from 9:25 to 10:30am, from 10:45am to 1:30pm and from 2:30pm to 6:00pm;
 - c. [REDACTED] was a child enrolled in the [REDACTED] room and present on 14 May 2019 from 8:41am to 4:38pm.
10. During the process of investigating the complaints, the Authority obtained statements from witnesses, relevant excerpts from which are included below.
11. Relevant excerpts from Witness A’s statement are:





Contravention Supported by Allegation One

12. The evidence obtained by the Authority relevant to Allegation One supports a contravention of the following section of the *Law*:

Section 406 – Offence to Use Inappropriate Discipline

- (1) 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.

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

\$50,000, in any other case

Allegation Two

13. It is alleged that, on 14 May 2019, when lunch was being served in the [redacted] room and [redacted] had put [redacted] to bed, [redacted]
- a. Removed [redacted] from [redacted] bed and pulled [redacted] by the arm to the table, while [redacted] was crying and yelling that [redacted] wanted to go to bed; and
 - b. When [redacted] went back to [redacted] bed, [redacted] again removed [redacted] from [redacted] bed and dragged [redacted] to the table, while [redacted] was crying and yelling that [redacted] wanted to go to bed.

Evidence relevant to Allegation Two

14. Documents produced by the Provider identified that:
 - a. [REDACTED] was an educator employed by the Provider working at the Service on 14 May 2019;
 - b. [REDACTED] was working directly with children in the [REDACTED] room on 14 May 2019 from 7:10-10:00am, from 10:15am to 12:30pm, and from 1:30 to 3:45pm;
 - c. [REDACTED] was a child enrolled in the [REDACTED] room and present on 14 May 2019 from 7:37am to 5:12pm.
15. During the process of investigating the complaints, the Authority obtained statements from witnesses, relevant excerpts from which are included below.
16. Relevant excerpts from Witness A's statement are:



Contravention Supported by Allegation Two

17. The evidence obtained by the Authority relevant to Allegation Two supports a contravention of section 166 of the *Law*, as appears in paragraph 12 of this notice.

Allegation Three

18. It is alleged that, on 14 May 2019, when [REDACTED] was at the lunch table and crying about wanting to go to bed, [REDACTED] took a spoonful of [REDACTED] lunch and put it in [REDACTED] mouth when [REDACTED] was yelling, held [REDACTED] chin to close [REDACTED] mouth and held [REDACTED] arms down when [REDACTED] tried to push [REDACTED] hands away.

Evidence relevant to Allegation Three

19. On 23 May 2019, a notice allowable under section 215 of the *Law* was sent to the Provider to obtain relevant documents. Documents obtained identified that:
- a. [REDACTED] was an educator employed by the Provider working at the Service on 14 May 2019;
 - b. [REDACTED] was working directly with children in the [REDACTED] room on 14 May 2019 from 9:25 to 10:30am, from 10:45am to 1:30pm and from 2:30pm to 6:00pm;
 - c. [REDACTED] was a child enrolled in the [REDACTED] room and present on 14 May 2019 from 7:37am to 5:12pm.
20. During the process of investigating the complaints, the Authority obtained statements from witnesses, relevant excerpts from which are included below.
21. Relevant excerpts from Witness A's statement are:



Contravention Supported by Allegation Three

22. The evidence obtained by the Authority supports a contravention of section 166 of the Law, as appears in paragraph 12 of this notice.

Second Set of Grounds – Inappropriate Interactions**Allegation Four**

23. It is alleged that, on 14 May 2019 [REDACTED] told a child [REDACTED] “you’ve been feral today” when [REDACTED] was rolling around during library time.

Evidence Relevant to Allegation Four

24. On 23 May 2019, a notice allowable under section 215 of the Law was sent to the Provider to obtain relevant documents. Documents obtained identified that:
- a. [REDACTED] was an educator employed by the Provider working at the Service on 14 May 2019;
 - b. [REDACTED] was working directly with children in the [REDACTED] room on 14 May 2019 from 9:25 to 10:30am, from 10:45am to 1:30pm and from 2:30pm to 6:00pm;
 - c. [REDACTED] was a child enrolled in the [REDACTED] room and present on 14 May 2019 from 7:37am to 5:12pm.
25. During the process of investigating the complaints, the Authority obtained statements from witnesses, relevant excerpts from which are included below.
26. Relevant excerpts from Witness A’s statement are:

[REDACTED]

27. Relevant excerpts from Witness B’s statement are:

[REDACTED]

Legislation Relevant to Allegation Four**Section 167 – Offence relating to protection of children from harm and hazards**

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Section 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 each 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.

Contravention Supported by Allegation Four

28. The evidence obtained by the Authority supports a contravention of Regulation 155, which automatically engages a contravention of section 167 in that failure to ensure appropriate interactions is a failure to take reasonable precautions to protect children from emotional harm.

Third Set of Grounds – Failure to Ensure Policies and Procedures are Followed by Staff Members**Allegation Five**

29. It is alleged that the Provider has failed to take reasonable steps to ensure that the staff members have followed the following policies and procedures:
- a. Sleep and Rest Policy; and
 - b. Interactions with children policy.

Evidence relevant to Allegation Five

30. On 23 May 2019, a notice allowable under section 215 of the Law was sent to the Provider to obtain relevant documents. Documents obtained identified that:
- a. The Sleep and Rest Policy states that Educators will:
 - i. ensure that there are appropriate opportunities to meet each child's need for sleep, rest and relaxation;
 - ii. ensure that children who do not wish to sleep are provided with alternative quiet activities and experiences, while those children who do wish to sleep are allowed

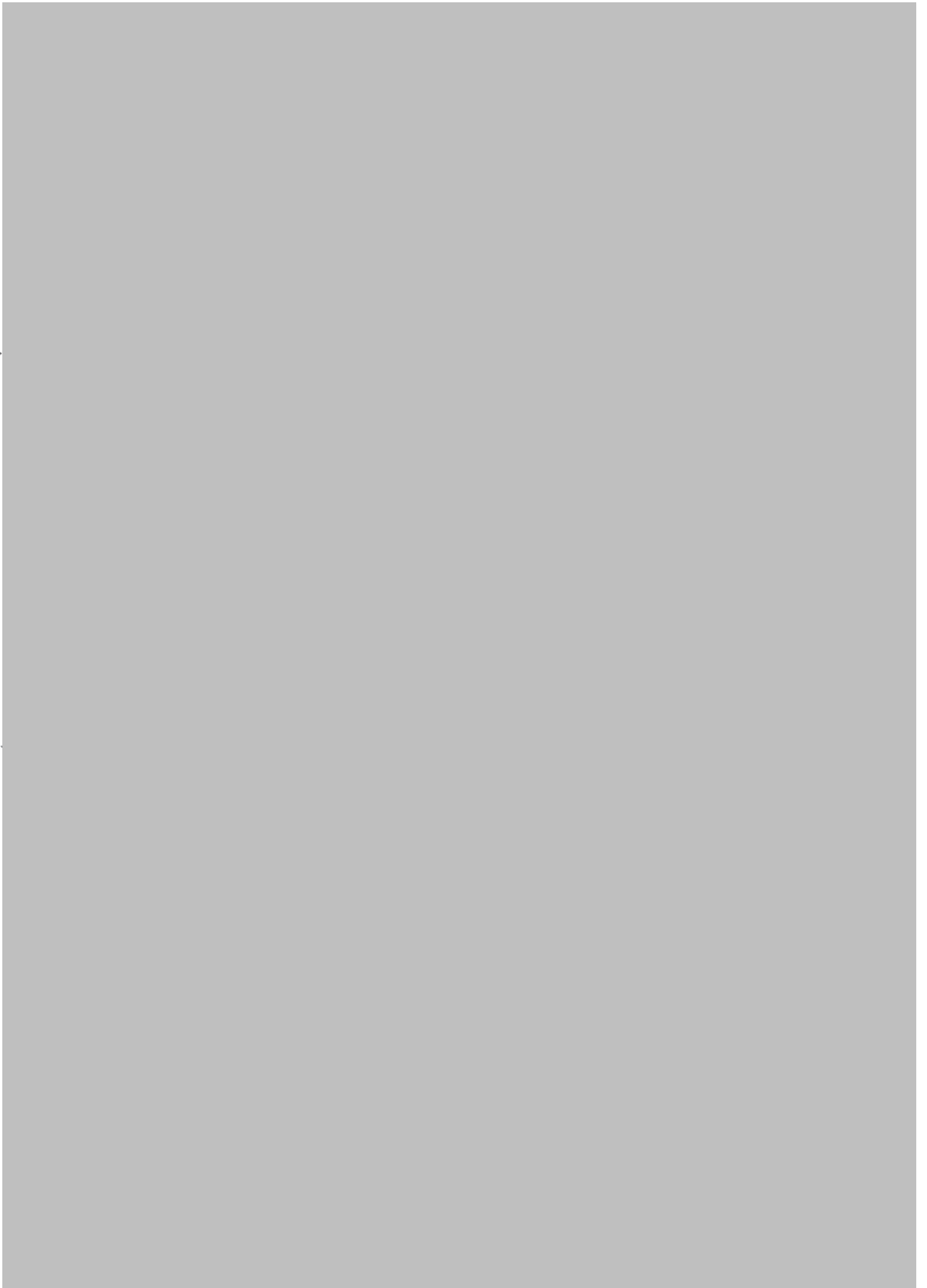
to do so, without being disrupted. If a child requests a rest, or if they are showing clear signs of tiredness, regardless of the time of day, there should be a comfortable, safe area available for them to rest (if required);

- iii. respond to children's Individual cues for sleep (yawning, rubbing eyes, disengagement from activities, crying etc.
 - iv. develop positive relationships with children to assist in settling children confidently when sleeping and resting
- b. The Interactions with Children Policy states that Management and Educators will:
- i. create a welcoming and relaxed atmosphere in which children experience equitable, friendly and genuine interactions with all Educators;
 - ii. use appropriate language and behaviour will be role modelled by educators;
 - iii. guide children's behaviour positively;
 - iv. respect the rights of children;
 - v. speak to children in a positive manner at all times, promoting respect, tolerance and empathy;
 - vi. show empathy to children;
 - vii. no child is ever isolated for any reason other than illness, accident or pre-arranged appointment with parental consent. During this time they will be under adult supervision
- c. [REDACTED] were educators employed by the Provider and working in the [REDACTED] room at the relevant times.

31. During the process of investigating the complaints, the Authority obtained statements from witnesses, relevant excerpts from which are included below.

32. Relevant excerpts from Witness A's statement are:





33. Relevant excerpts from Witness B's statement are:



34. Relevant excerpts from Witness C's statement are:



35. Relevant excerpts from Witness D's statement are:



36. Relevant excerpts from Witness E's statement are:



Contraventions Engaged by Allegation Five

37. The evidence obtained by the Authority supports a contravention of Regulation 170, which states:

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.

Fourth Set of Grounds – Inaccurate Prescribed Records

Allegation Six

38. It is alleged that the Provider has not taken reasonable steps to ensure that prescribed records, being working directly with children records, are accurate.

Evidence Relevant to Allegation Six

39. On 23 May 2019, a notice allowable under section 215 of the *Law* was sent to the Provider to obtain relevant documents. Documents obtained included working directly with children records for the week commencing Monday 13 May 2019. Refer Attachment A – working directly with children records.

40. The following inaccuracies were noted:

- a. No-one was signed in as covering breaks in [redacted] on 14 or 16 May 2019;
- b. On 16 May 2019, [redacted] was signed in to both [redacted] at the same time;
- c. On Friday 17 May 2019, [redacted] signed in to [redacted] at 8:25am and did not sign out.

41. On 29 May 2019 it was confirmed by email from [redacted] that [redacted] was covering breaks in [redacted] on 14 May 2019. Refer Attachment B – email [redacted]

Contravention engaged by Allegation Six

42. The evidence obtained by the Authority supports a contravention of Regulation 177(2), as set out below:

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.
- (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.

Potential Compliance Actions

43. Should the allegations (or any of them) be substantiated, the statutory actions available to the Authority to consider under Parts 3 and 7 include, but are not limited to, conditions on Service Approval or a Compliance Notice under sections 55 or 177 of the *Law*, respectively, as set out below:

Section 55– Amendment of service approval by Regulatory Authority

- (1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.
- (3) The Regulatory Authority must give written notice of the amendment to the approved provider.
- (4) An amendment under this section has effect-
 - (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or
 - (b) if another period is specified by the Regulatory Authority, at the end of that period.

Section 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.

Right of response

- 44. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
- 45. At [Attachment C](#) to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.

46. Please direct your written submission via email to Senior Investigator Tanya Masterman at tanya.masterman@act.gov.au or by post to:

Tanya Masterman
Senior Investigator
Children's Education and Care Assurance
GPO Box 158
CANBERRA ACT 2601


Caution

47. 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.

Legislation

48. The *Education and Care Services National Law Act 2010* (the *Law*) applies to you as a Provider and to any service you may operate.
49. 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>.
50. The *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>
51. Should you have any questions about this Show Cause Notice please contact Tanya Masterman by telephone on (02) 6205 2012 or email to tanya.masterman@act.gov.au.

Yours sincerely


Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Regulation
Education Directorate

17 July 2019

Attachment A



Charmwood ELC Team Room Sign on

Room: [Redacted] Week Start: 18/5/19 Week End: 17/5/19

Name:	IN	OUT	Qualifications:	IN	OUT	Signature:	Comments
Monday	7:10	10:00	10:00	1:00	5:45	[Redacted]	
Tuesday	7:10	10:00	10:00	1:30	5:45	[Redacted]	
Wednesday	7:10	10:00	10:00	1:30	5:45	[Redacted]	
Thursday	7:10	10:00	10:00	1:30	5:45	[Redacted]	
Friday	7:10	10:00	10:00	1:30	5:45	[Redacted]	

Name:	IN	OUT	Qualifications:	IN	OUT	Signature:	Comments
Monday	9:30	10:45	1:30	7:30	6:00	[Redacted]	
Tuesday	9:30	10:45	1:30	7:30	6:00	[Redacted]	
Wednesday	9:30	10:45	1:30	7:30	6:00	[Redacted]	
Thursday	9:30	10:45	1:30	7:30	6:00	[Redacted]	
Friday	9:30	10:45	1:30	7:30	6:00	[Redacted]	

Name:	IN	OUT	Qualifications:	IN	OUT	Signature:	Comments
Monday						[Redacted]	
Tuesday						[Redacted]	
Wednesday						[Redacted]	
Thursday						[Redacted]	
Friday						[Redacted]	

Name:	IN	OUT	Qualifications:	IN	OUT	Signature:	Comments
Monday	9:00	10:30	12:30	1:30	5:30	[Redacted]	
Tuesday	9:00	10:30	12:30	1:30	5:30	[Redacted]	
Wednesday	9:00	10:30	12:30	1:30	5:30	[Redacted]	
Thursday	9:00	10:30	12:30	1:30	5:30	[Redacted]	
Friday	9:00	10:30	12:30	1:30	5:30	[Redacted]	



Charmwood ELC Team Room Sign on

Room: [Redacted] Week Start: 13/5/19 Week End: 17/5/19

Name:	Qualifications:		Signature:	Comments
	IN	OUT		
Monday	8:00	10:25	[Redacted]	
Tuesday	8:00	10:00	[Redacted]	
Wednesday	8:00	10:30	[Redacted]	
Thursday	8:45	10:30	[Redacted]	
Friday	8:00	11:45	[Redacted]	

Name:	Qualifications:		Signature:	Comments
	IN	OUT		
Monday	9:00	11:55	[Redacted]	
Tuesday	8:55	11:00	[Redacted]	
Wednesday			[Redacted]	
Thursday			[Redacted]	
Friday			[Redacted]	

Name:	Qualifications:		Signature:	Comments
	IN	OUT		
Monday	9:00	10:45	[Redacted]	
Tuesday	8:45	10:45	[Redacted]	
Wednesday	9:00	10:45	[Redacted]	
Thursday	9:00	11:15	[Redacted]	
Friday	8:40	10:45	[Redacted]	

Name:	Qualifications:		Signature:	Comments
	IN	OUT		
Monday			[Redacted]	
Tuesday			[Redacted]	
Wednesday			[Redacted]	
Thursday			[Redacted]	
Friday			[Redacted]	

Charmwood ELC Team Room Sign on

Room: [Redacted] Week Start: 13/05/19 Week End: 17/05/19

Name:	IN	OUT	IN	OUT	Signature:	Comments
[Redacted]					[Redacted]	
Monday	8:15	2:00	7:30	4:30	[Redacted]	
Tuesday	8:20	1:40	7:20	4:40	[Redacted]	
Wednesday	8:20	1:45	7:15	4:30	[Redacted]	
Thursday	8:15	1:20	1:55	4:30	[Redacted]	
Friday	8:25				[Redacted]	

Name:	IN	OUT	IN	OUT	Signature:	Comments
[Redacted]					[Redacted]	
Monday					[Redacted]	
Tuesday					[Redacted]	
Wednesday					[Redacted]	
Thursday	8:07	1:00	1:43	4:35	[Redacted]	
Friday	8:28	1:45	1:15	4:35	[Redacted]	

Name:	IN	OUT	IN	OUT	Signature:	Comments
[Redacted]					[Redacted]	
Monday					[Redacted]	
Tuesday					[Redacted]	
Wednesday					[Redacted]	
Thursday					[Redacted]	
Friday					[Redacted]	

Name:	IN	OUT	IN	OUT	Signature:	Comments
[Redacted]					[Redacted]	
Monday					[Redacted]	
Tuesday					[Redacted]	
Wednesday					[Redacted]	
Thursday					[Redacted]	
Friday					[Redacted]	

Charmwood ELC Team Room Sign on

Room: [Redacted] Week Start: 13/5/19 Week Ends: 17/5/19



Name:	Qualifications:		Signature:	Comments
	In	Out		
Monday	7:30	10:40	[Redacted]	
Tuesday	7:30	10:45	[Redacted]	
Wednesday	7:30	10:45	[Redacted]	
Thursday	7:30	10:45	[Redacted]	
Friday	7:30	10:45	[Redacted]	

Name:	Qualifications:		Signature:	Comments
	In	Out		
Monday	9:30	1:00	[Redacted]	
Tuesday	9:30	1:00	[Redacted]	
Wednesday	9:30	1:00	[Redacted]	
Thursday	9:30	1:00	[Redacted]	
Friday	9:30	1:00	[Redacted]	

Name:	Qualifications:		Signature:	Comments
	In	Out		
Monday	9:30	1:00	[Redacted]	
Tuesday	9:30	1:00	[Redacted]	
Wednesday	9:30	1:00	[Redacted]	
Thursday	9:30	1:00	[Redacted]	
Friday	9:30	1:00	[Redacted]	

Name:	Qualifications:		Signature:	Comments
	In	Out		
Monday	9:30	1:00	[Redacted]	
Tuesday	9:30	1:00	[Redacted]	
Wednesday	9:30	1:00	[Redacted]	
Thursday	9:30	1:00	[Redacted]	
Friday	9:30	1:00	[Redacted]	

Attachment B

Masterman, Tanya

From: [REDACTED]@bcc.act.edu.au
Sent: Wednesday, 29 May 2019 10:45 AM
To: Masterman, Tanya
Cc: [REDACTED]
Subject: RE: Brindabella Christian College ELC Charnwood Campus 25 Notice

Dear Tanya,

I have clarified with [REDACTED] and the team and we have determined that [REDACTED] was called upon to cover breaks in [REDACTED] as there were only [REDACTED] however [REDACTED] has forgotten to sign out of [REDACTED]. Please be assured that all staff and ratios were maintained at all times. [REDACTED] has since reminded all staff in their diligence of signing in and out of rooms. Up until 9:30am children are family grouped [REDACTED] then transition into their own space. Throughout the day [REDACTED] combine in shared experiences.

Regards



From: Masterman, Tanya <Tanya.Masterman@act.gov.au>
Sent: Wednesday, 29 May 2019 10:07 AM
To: [REDACTED]@bcc.act.edu.au
Subject: RE: Brindabella Christian College ELC Charnwood Campus 25 Notice

UNCLASSIFIED

Dear [REDACTED]

Thank you for your response. I note that there were [REDACTED] on 14 May 2019 (all having arrived by 8:45) and working directly with children records provided do not indicate anyone providing break cover.

Could you please clarify?

Yours sincerely

Tanya Masterman | Senior Investigator
 Phone 02 6205 2012 | Email tanya.masterman@act.gov.au
 Early Childhood Policy and Regulation | Education | ACT Government
 Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive, Stirling 2611

Attachment C



4 Step Guide to Responding to a Show Cause Notice

This resource has been developed to assist you in responding to a Show Cause Notice.

Step 1: Read your Show Cause Notice and Identify the reasons that you have been required to show cause

The ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, has a function to monitor and enforce compliance in respect to Education and Care Services operating in the ACT. You can access the complete *Education and Care Services National Law Act (ACT) 2011* (the *Law*) and the *Education and Care Services National Regulation* (the *Regulation*) at <http://www.acecqa.gov.au/national-law>.

If you are sent a Show Cause Notice, it is your opportunity to formally respond to the Authority to the allegations discussed in the notice. If you don't respond to the notice at all, or within the allowed timeframe, the Authority can only take into account what it already knows when deciding if any compliance action should be taken.

You should read your Show Cause Notice carefully, make note of the prescribed timeframe to respond (generally within 14 days) and the specific alleged contraventions of *Law* or *Regulation* that has resulted in you receiving a Show Cause Notice.

You may choose to consult a legal practitioner to assist you to understand your rights and responsibilities. Legal Aid ACT helps people in the ACT with their legal problems. You can call the Legal Aid Helpline on 1300654314 or visit <http://www.legalaidact.org.au/>

Step 2: Commence drafting your show cause response

It is important to note that:

- Your show cause response should be formal and formatted as an official business letter.
- Your show cause response must address each allegation set out in the notice.
- If your response is refuting allegations of non-compliance, then your response must clearly explain how, and why, the allegations are incorrect. Include any evidence to support your explanation.
- If your response is agreeing to non-compliance, then your response could explain the context within which the non-compliance occurred including what has led to the non-compliance.
- Your response could also set out any steps you have taken, or will take, and the strategies you have implemented to ensure future compliance:
- It is strongly recommended that you include any documentation or evidence supporting your response. Supporting documentation will be used as evidence by the Authority in

considering an outcome. Depending on your circumstances, your supporting documentation may differ. Some examples of supporting documentation include employment records, attendance rosters, policy and procedure, photographs, records of communication and incident reports.

- Please note that it is a criminal offence to supply false and misleading information. Any documents, or evidence, must be genuine.

Step 3: Analyse and reflect on your show cause response

Remember, responding to a show cause notice is your opportunity to address allegations put to you in relation to a specific incident or circumstance.

Generally Part 6 of the *Law* sets out the majority of the specific offences related to operating an education and care service. Read through your response to the Show Cause Notice and confirm that all allegations have been addressed. Each separate alleged offence will be clearly outlined in the Show Cause Notice under a bold heading starting with the relevant section of *Law* or *Regulation*. Your response should also address allegations in the same way with clear references given for any attachment of supportive documentation/evidence.

Part 7 sets out the majority of the compliance actions that may be taken by the Authority in circumstances where offences have been found with the *Law*. The Show Cause Notice will indicate if the range of actions or a specific action is being considered by the Authority. In circumstances where your response is agreeing to any non-compliances, you may wish to suggest a compliance action that you feel is fair and appropriate in the circumstances.

Have you attached all relevant supportive evidence? Ensure that documentation you attach to your response is evidence to support any claims or statements you have made in regard to your compliance.

If you feel you haven't been afforded enough time to respond, contact the Authorised Officer identified in the Show Cause Notice as soon as you identify that you may need more time – extension for response is allowable dependant on the circumstances.

You can also contact an Authorised Officer if you have any questions about the Show Cause Notice or need some clarity in regards to specific requirements for response. Be aware that an Authorised Officer will not be able to assist you in how to word your response.

Step 4: Submit your show cause response

It is suggested that you should always make two copies of your show cause response and ensure you obtain proof of your submission.

If sending your response by email, request a read receipt. If sending by post, send via registered post to confirm receipt or request that the Authorised Officer who receives your submission notify you.



Tanya Masterman
 Senior Investigator
 Children's Education and Care Assurance Early Childhood Regulation
 Education Directorate

2 August 2019

Dear Tanya,

Re: Show Cause Notice – Brindabella Christian College Early Learning Centre – Charnwood

I am writing in response to a letter from Clare Brookes dated 17 July 2019. The opportunity to investigate and respond to the allegations highlighted in your letter has resulted in a review of our policies and procedures and reflections on the checks and balances employed to ensure their consistent application.

Using your dot point four on page one of your letter as a format, my investigations reveal that:

- a. Events interpreted as inappropriate discipline are more accurately characterised as the appropriate implementation of strategies determined by our staff in consultation with parents to provide the best possible care to our children and their families (with a significant dose of misinterpretation of events by a casual observer).
- b. The grounds for allegations of inappropriate interactions amount to an isolated incident that you have characterizing as breaching Section 155 (based upon an interpretation of the use of the word "feral" in relation to a child's behavior) whereas we view the same isolated incident as an opportunity to discuss perceptions of organizational policy.
- c. Actions of our staff on 14th May 2019 described as being in contravention of policy and procedure were in fact examples of our staff being aware of the individual needs of each student and making appropriate adjustments to maximise each child's safety and experience.
- d. The Centre has taken the opportunity to remind all staff of the importance of accurate records, using the issues raised in your report to highlight the issues that can arise.

Formal Response to Breach Allegations

Allegation One

The [redacted] of Early Learning Centres at Brindabella, [redacted] interviewed the educator [redacted] regarding the allegations raised. The contents of the interview clearly show that the actions observed by Witness A were:

- 1) Sanctioned by [redacted]



- 2) A response to the specific sleep needs of the child;
- 3) Reflective of daily routines in the Centre.

A copy of the transcript of the conversation is attached as Appendix A. Original sound recordings can be provided if required.

I note that the room in which the events transpired does not have any measurement of length, width or diameter above approximately six metres. It would require a person to very deliberately whisper not to be heard by any other person in the room. Notwithstanding this,

_____ has acknowledged and implemented strategies to _____ with children in confined spaces.

Allegation Two

The _____ of Early Learning Centres at Brindabella _____ interviewed the educator, _____ regarding the allegations raised. The contents of the interview clearly show that the actions observed by Witness A were:

1. Sanctioned by _____
2. A response to the specific sleep and eating needs of the child;
3. Reflective of daily routines in the Centre.

A copy of the transcript of the conversation is attached as Appendix B. Original sound recordings can be provided if required.

Allegation Three

The _____ of Early Learning Centres at Brindabella, _____ interviewed the educator _____ regarding the allegations raised. The contents of the interview clearly show that the actions observed by Witness A were:

4. Sanctioned by _____
5. A response to the specific sleep and eating needs of the child;
6. Reflective of daily routines in the Centre.

A copy of the transcript of the conversation is attached as Appendix A. Original sound recordings can be provided if required.

Further information regarding each of these allegations has been provided to Tanya Masterman by _____. A copy of _____ response is shown as Appendix C. In each case the observations of Witness A can be explained. The explanation does not however support evidence of a contravention of Section 166.

Allegation Four

The event described as potentially contravening sections 167 and/or 155 occurred on 14 May 2019 when a _____ educator told a _____ child _____ behavior had been "a bit feral today". I would argue the following:-

- It is not reasonable for a provider to control every word uttered by staff;
- It is not reasonable for a provider to make a comprehensive list of every word from an evolving language that might be considered as harmful (and therefore the isolated incident cannot be a breach);



- When used as a term describing behavior of students, "feral" might be construed as being no different to words such as "unacceptable" or "inappropriate" (children don't understand any of these words);
- When talking to [REDACTED] 'feral' is more likely to be used to communicate information to other colleagues in the room rather than the child who has no idea what it means;
- The incident itself can (and has) provided a focal point to discuss the meaning of sections 167 and 155 with our staff (especially as it inter-relates with our policies) showing that rather than evidencing a breach it evidences the organic nature of our compliance regime.

Allegation Five

Responding to the allegations that we as a service provider have failed to follow the requirements of Regulation 170 is either very simple or very difficult. It is simple if one accepts that each of the witnesses that work in Brindabella Early Learning Centres clearly articulate an understanding of relevant policies. Those who do not work at a Brindabella Early Learning Centre can complicate matters because they report events and observations in accordance with what they think the policy ought to be. I therefore refer you to each of the interviews with staff referred to in witness statements. These clearly show that our employees understand our policies.

I have also attached copies of policies that have recently been amended. You will note that each staff member signs the policy to indicate that they have read and understood the policy. [REDACTED] has more to say on staff training etc in [REDACTED] response to similar allegations and I refer you to [REDACTED] response.

Allegation Six

As a provider of both education and care services, Brindabella Christian Education Ltd is consistently emphasising the importance of sound record keeping by our staff. The three incidents shown in your report are of concern. We are, however, confident that our current practices are fully compliant with regulation 177 and that any punitive action taken in relation to this matter has the potential to be counter-productive. We welcome any opportunity to prove that current systems are fully compliant.

Thank you for drawing these matters to my attention. I look forward to having these allegations resolved as quickly as possible.



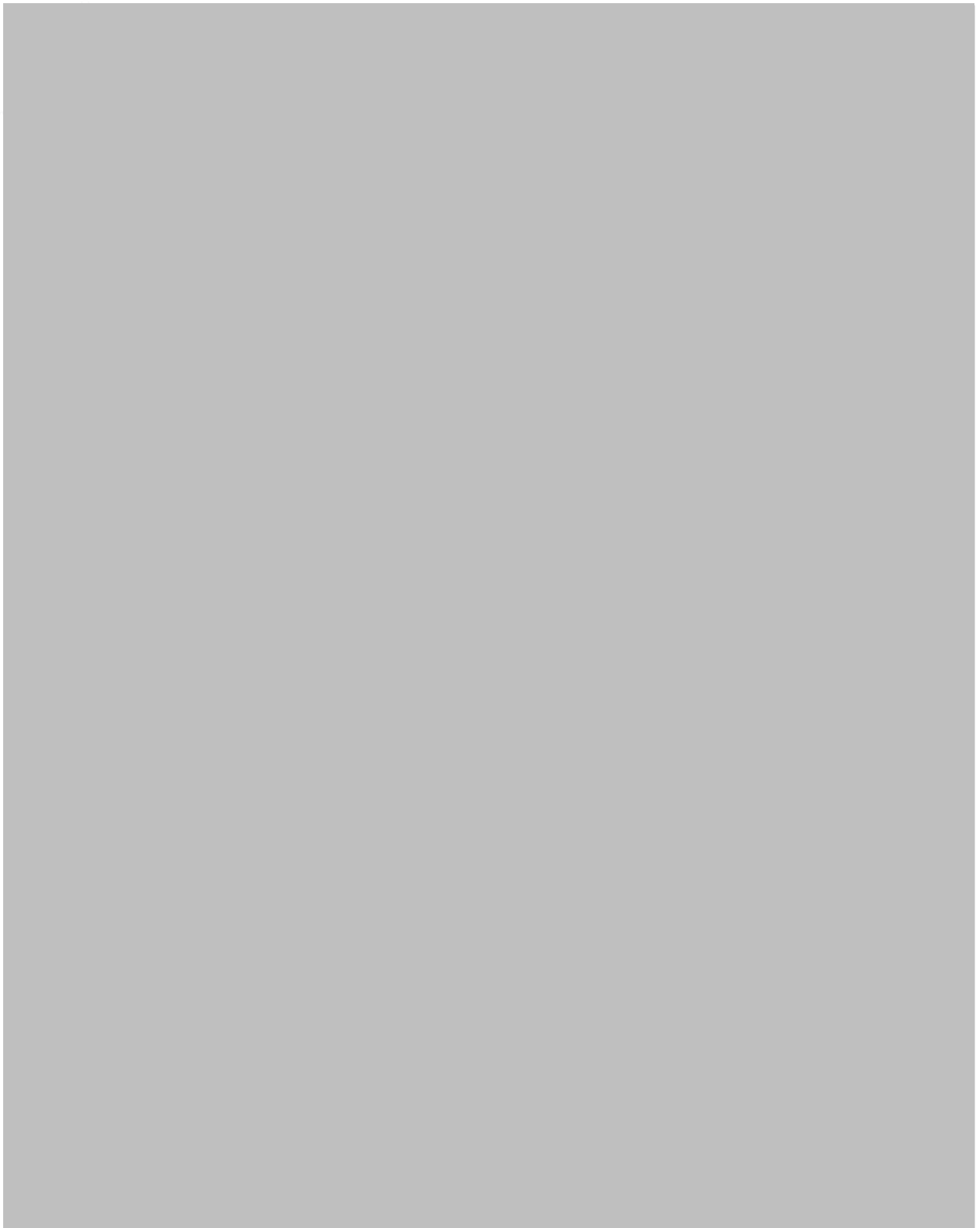
Person with Management or Control Brindabella Christian Education Ltd
T/A Brindabella Christian College Early Learning Centre- Charnwood PO Box 5103
LYNEHAM ACT 2602

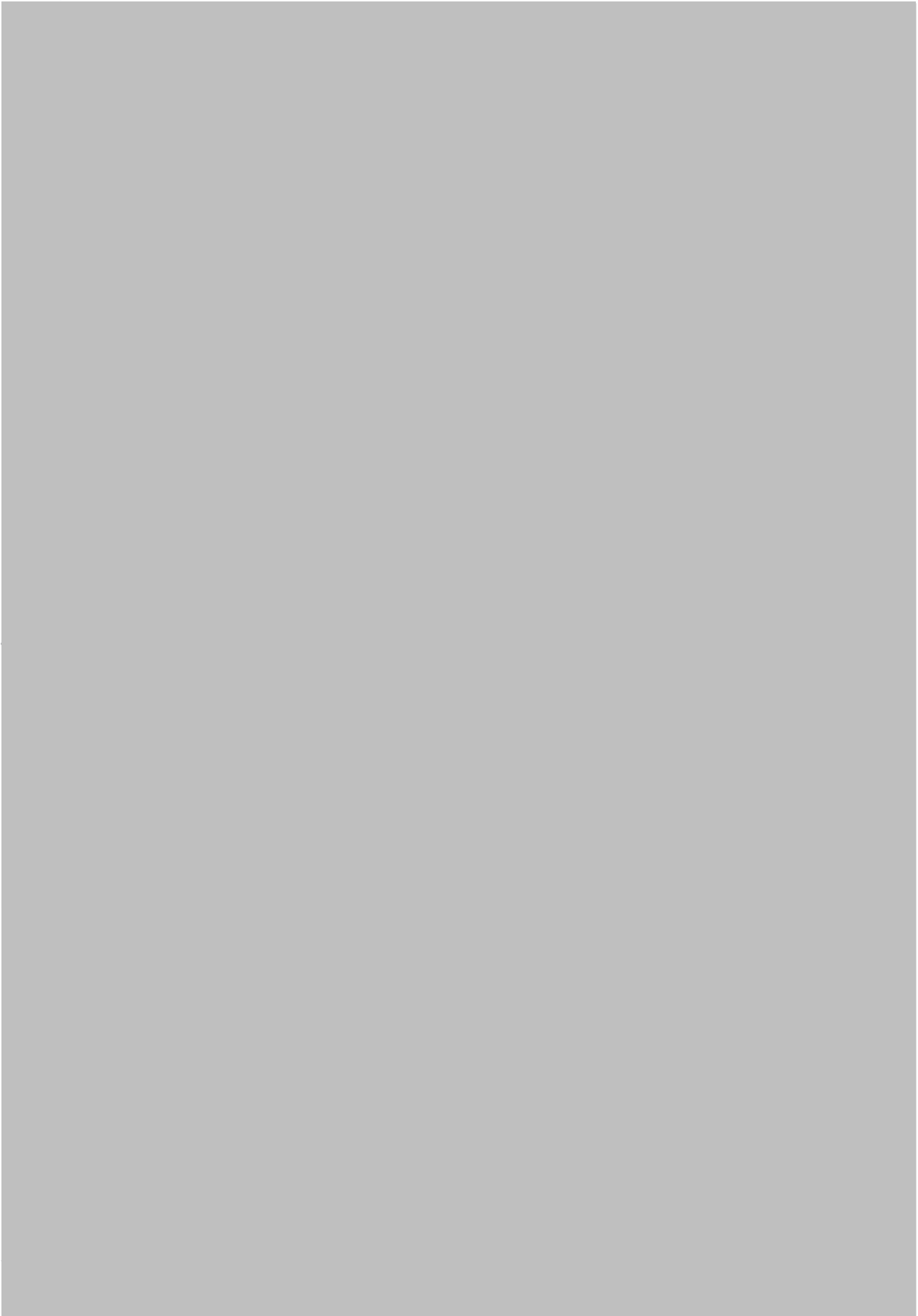
Transcription Details:

Date: 25 July 2019

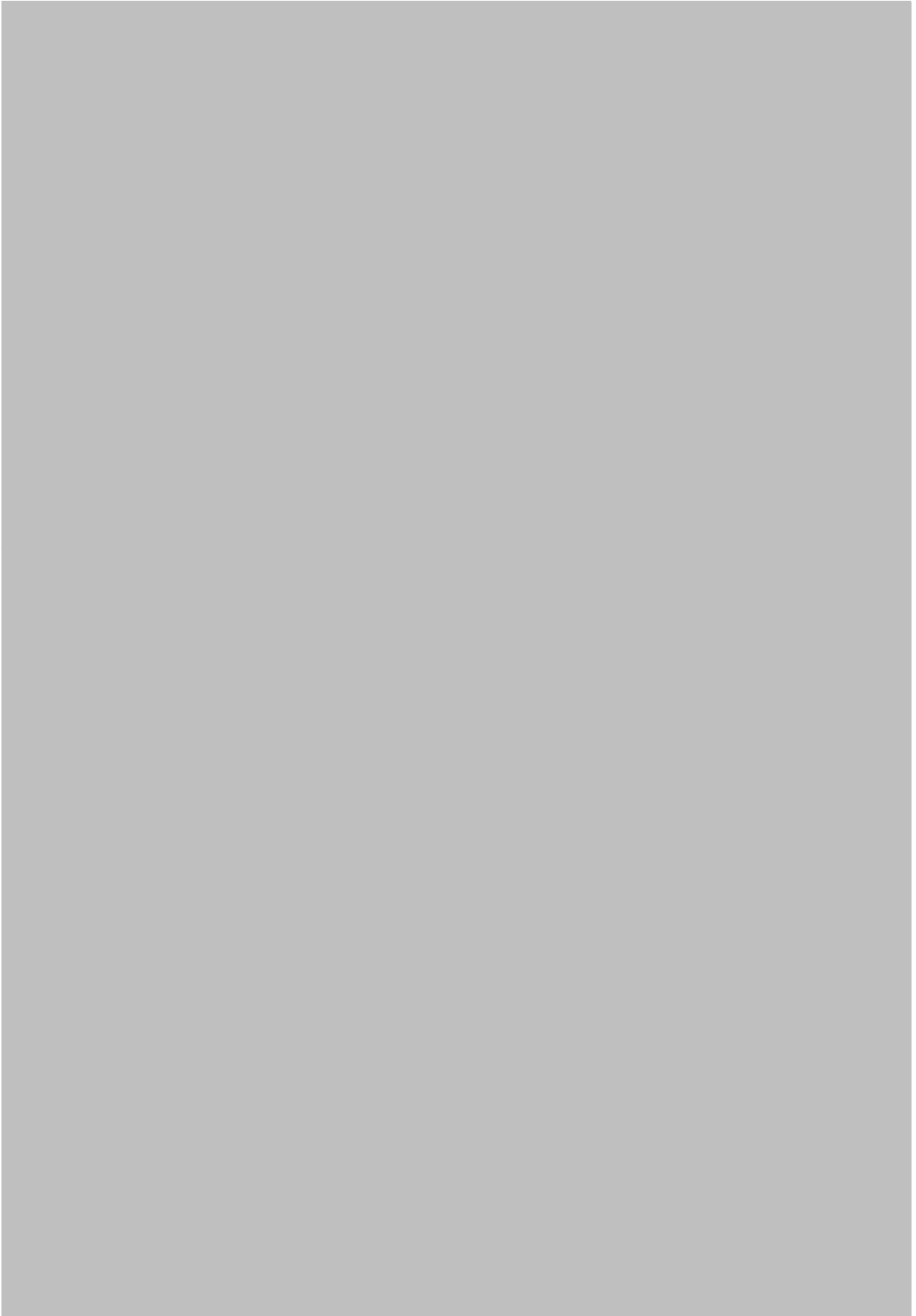
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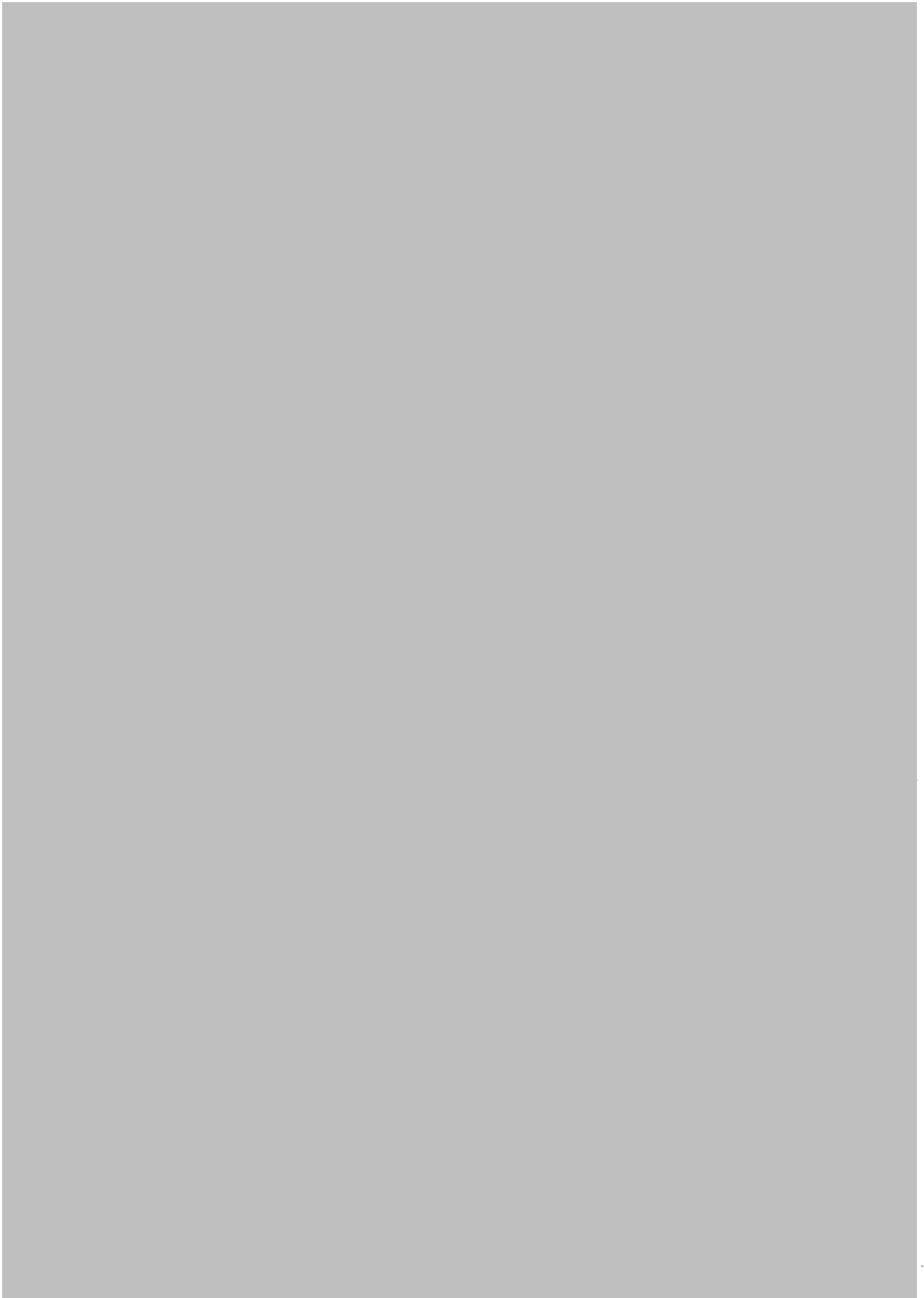
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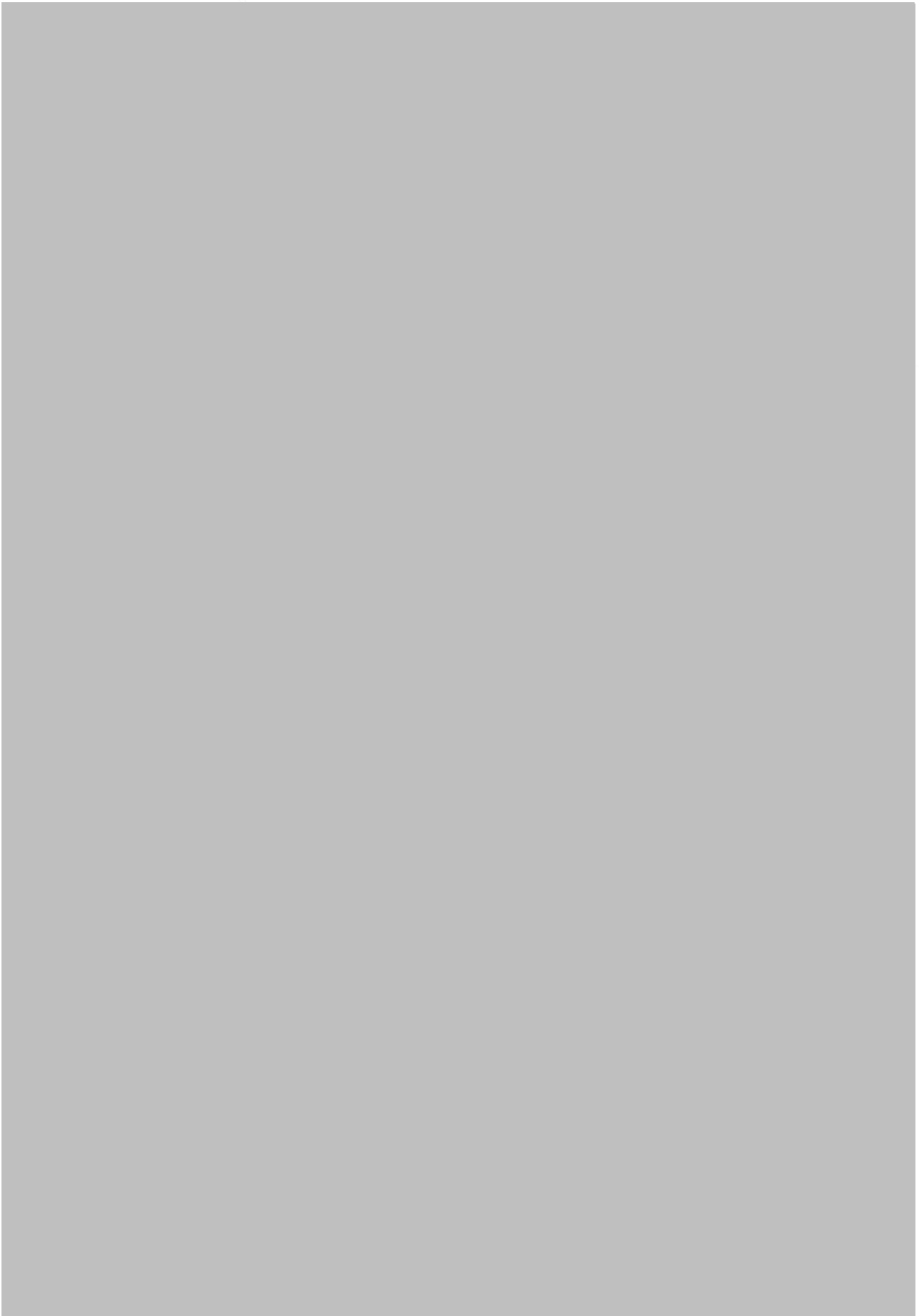


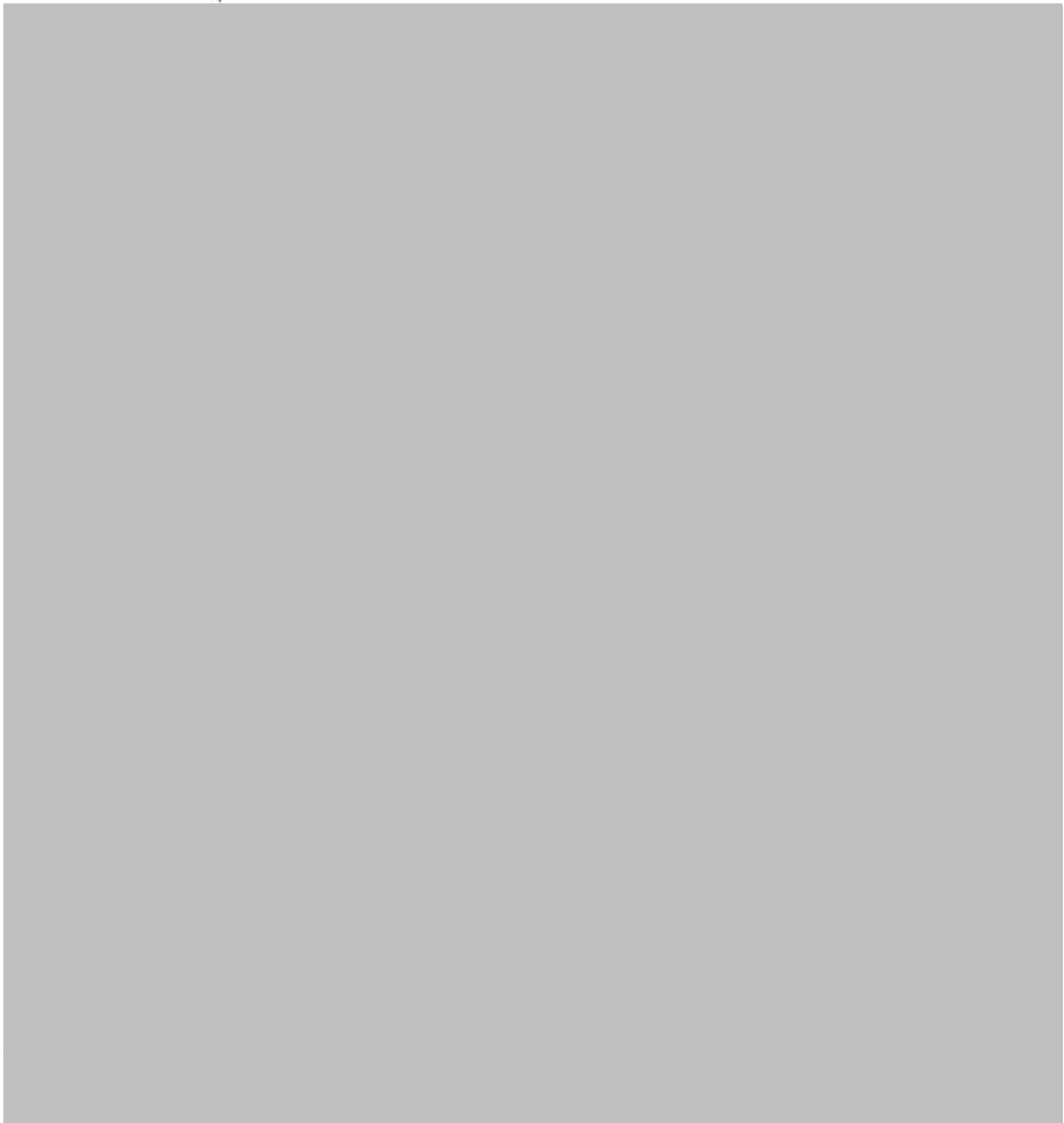












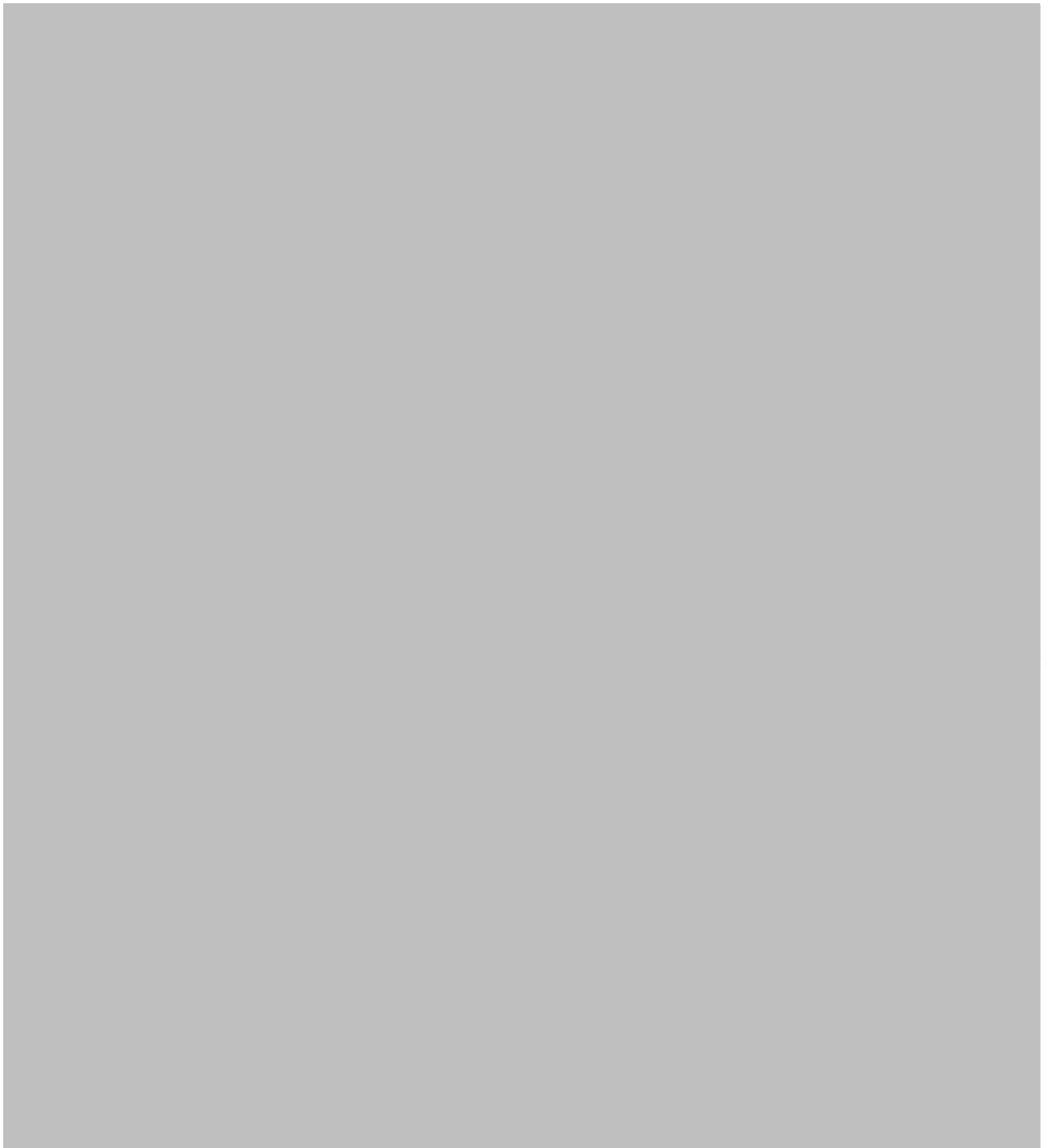
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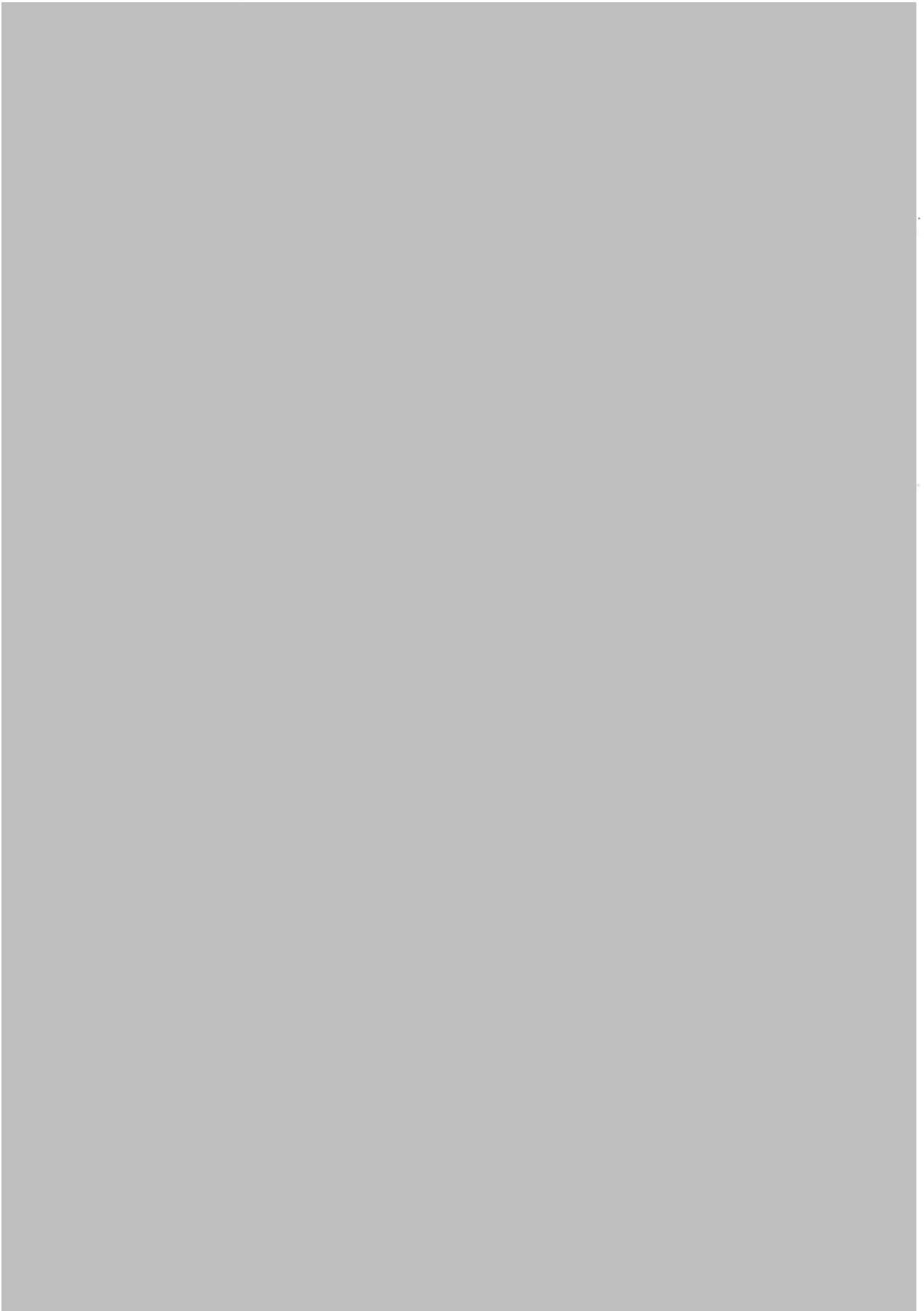
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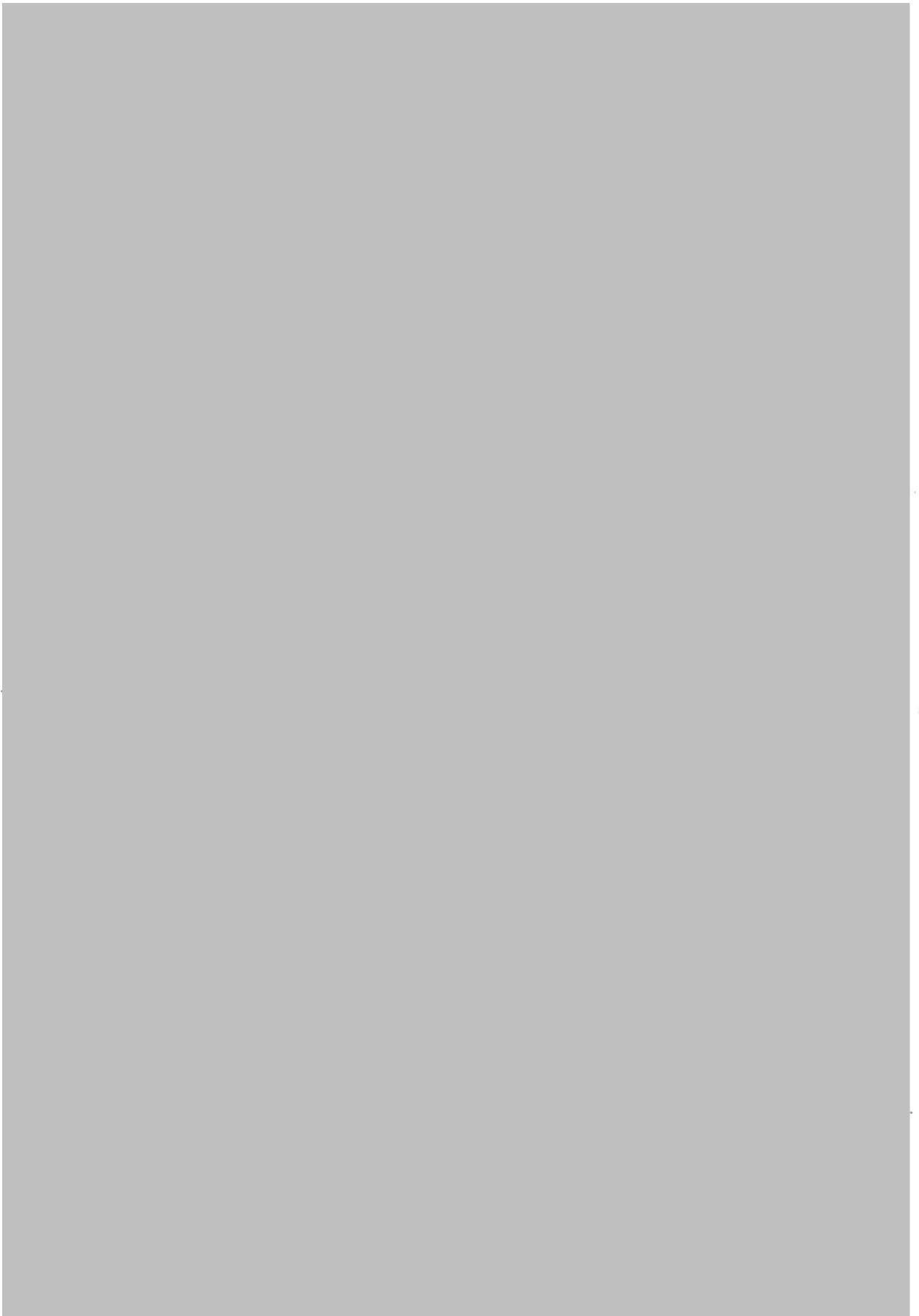
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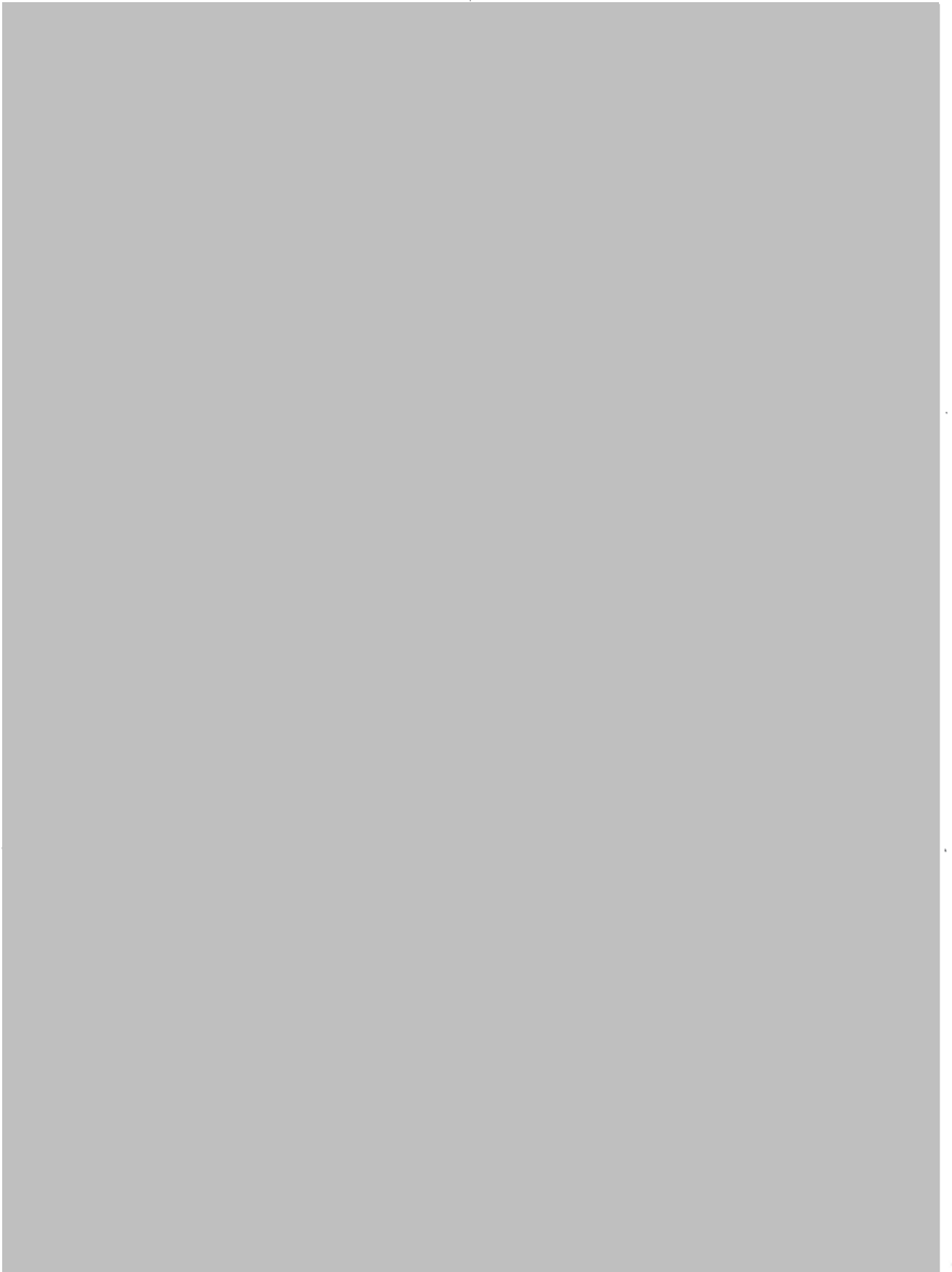
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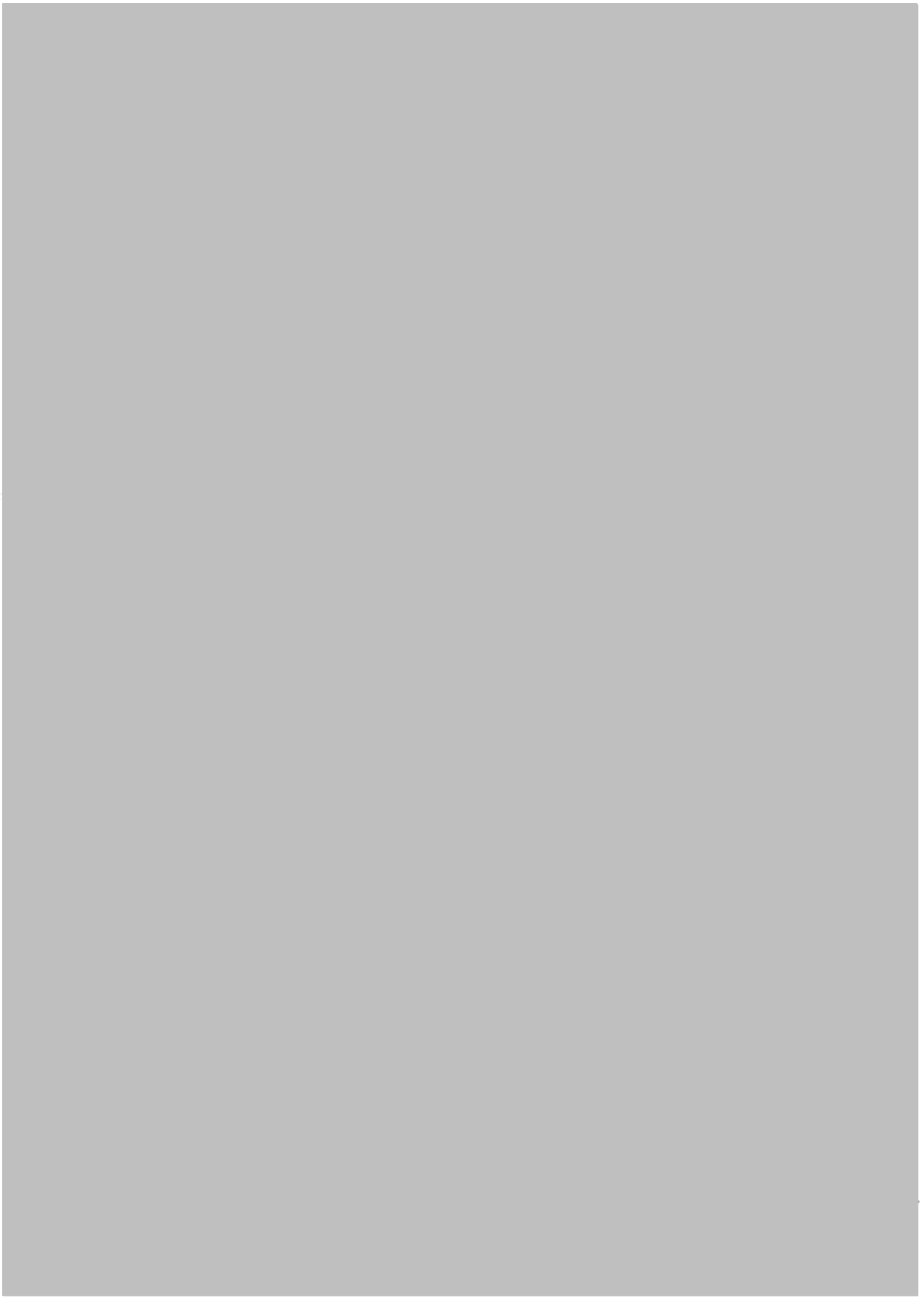
Start of Transcription

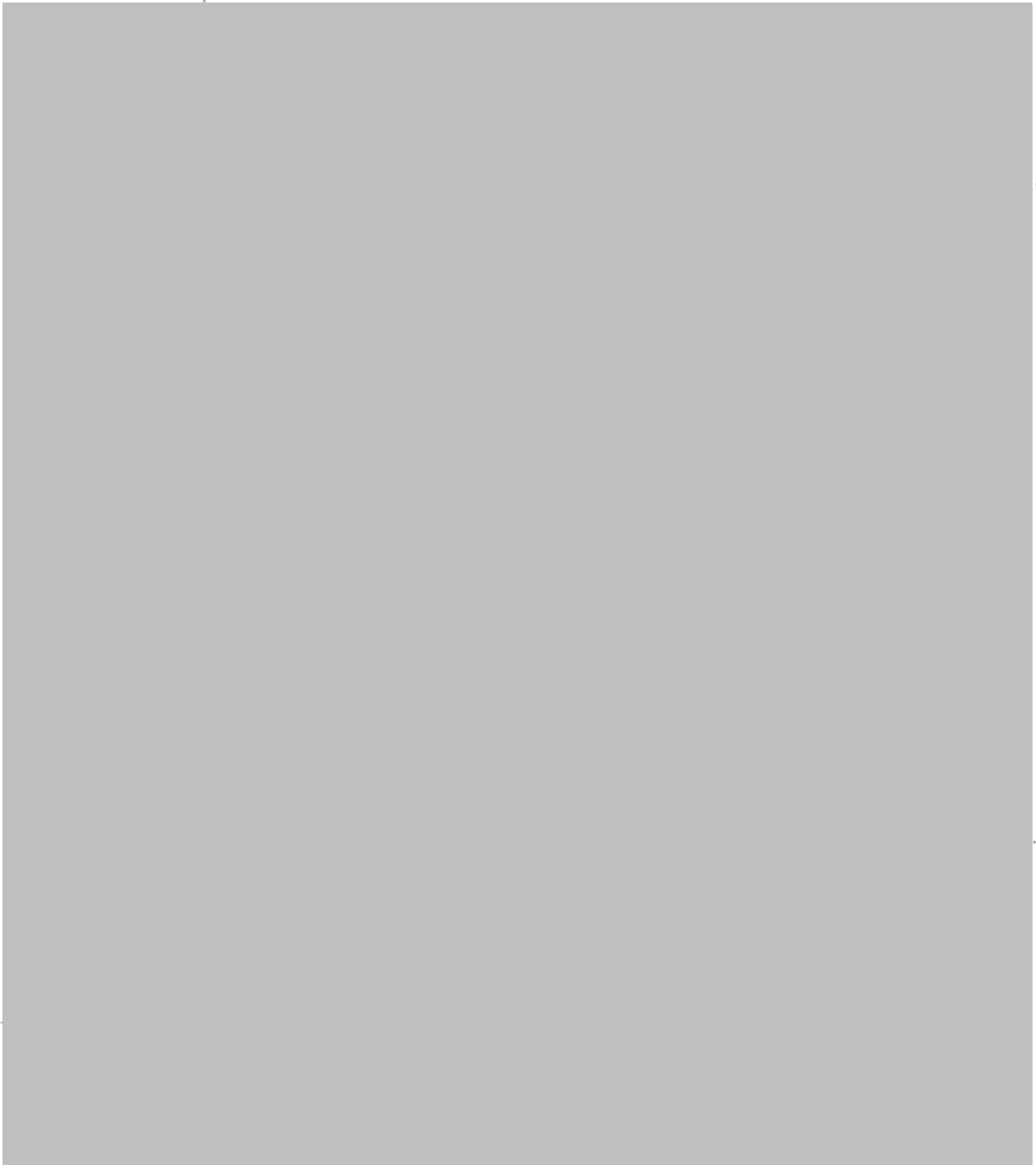












End of Transcription



31 July 2019

Tanya Masterman Senior Investigator
 Children's Education and Care Assurance GPO Box 158
 CANBERRA ACT 2601

Dear Tanya,

I am writing to respond to the 'Show Cause Notice' issued by the ACT Regulatory Authority relating to allegations of inappropriate discipline and inappropriate interactions by educators at Brindabella Christian College Early Learning Centre Charnwood SE-0001.1290 (the Service), operated by Brindabella Christian Education Ltd PR-00005809 (the Provider).

I can confirm that at the relevant time [REDACTED] were the [REDACTED] for Brindabella Christian Education Ltd.

Allegation One

It is alleged that, on 14 May 2019, [REDACTED] told a child [REDACTED]

- a. words to the effect of "If you don't stop being naughty I'll send you somewhere else and you won't be able to come back here or see your mummy or daddy again"; and
- b. words to the effect of "If you don't go to sleep right now, I'll call your mummy and daddy and tell them to not come and get you today"

Response

Both [REDACTED] (Charnwood Campus) conducted an interview with [REDACTED] on 25 July 2019. [REDACTED] I have attached a copy of the transcript from that conversation and can provide an audio copy should you require.

As transcribed in that meeting, when asked, [REDACTED] explained [REDACTED] response. Please see Appendix A, [REDACTED] [0:01:47.8] and continuing.

[REDACTED] also explained the nature of the language used with [REDACTED] (eg; Burrigo and icecream) as key words that help [REDACTED] to determine how [REDACTED] wanted to rest at that time. Please see Appendix A, [REDACTED] [0:04:50.4]

[REDACTED] discussed that there are key words that [REDACTED] responds to based on the information provided by [REDACTED] family. It had been disclosed that it was a practice requested by the parents to contact them if [REDACTED] did not sleep.

[REDACTED] explained that they were working with the children to develop their self expression by identifying their feelings and did confirm that [REDACTED] stated [REDACTED] would have to call [REDACTED] mummy and daddy, [REDACTED] request if [REDACTED] did not sleep.



Allegation Two

It is alleged that, on 14 May 2019, when lunch was being served in the [redacted] room and [redacted] had put [redacted] to bed, [redacted]

- c. Removed [redacted] from [redacted] bed and pulled [redacted] by the arm to the table, while [redacted] was crying and yelling that [redacted] wanted to go to bed; and
- d. When [redacted] went back to [redacted] bed, [redacted] again removed [redacted] from [redacted] bed and dragged [redacted] to the table, while [redacted] was crying and yelling that [redacted] wanted to go to bed.

Response

Both [redacted] (Charnwood Campus) conducted an interview with [redacted] on 25 July 2019. I have attached a copy of the transcript from that conversation and can provide an audio copy should you require.

As transcribed in that meeting, when asked, [redacted] explained [redacted] response. Please see Appendix B, [redacted] [0:02:04.0].

During this interview it was established that [redacted] often struggled during meal time and that in consultation with the family a strategy was developed to encourage [redacted] to sit at the table and try the meal provided. [redacted] also explained that [redacted] displayed a repetitive behavior of going back and forth to [redacted] mat. [redacted] also described in [redacted] statement that [redacted] did not want to get upset with [redacted] so [redacted] implemented the procedure of "Tapping Out" as is practice in the Centre.

As transcribed in that meeting, when asked, [redacted] explained [redacted] response. Please see Appendix B, [redacted] [0:04:25.6] and [redacted] [0:04:50.1].

Allegation Three

It is alleged that, on 14 May 2019, when [redacted] was at the lunch table and crying about wanting to go to bed, [redacted] took a spoonful of [redacted] lunch and put it in [redacted] mouth when [redacted] was yelling, held [redacted] chin to close [redacted] mouth and held [redacted] arms down when [redacted] tried to push [redacted] hands away.

Response

Both myself and my colleague [redacted] (Charnwood Campus) conducted an interview with [redacted] on 25 July 2019. I have attached a copy of the transcript from that conversation and can provide an audio copy should you require.

As transcribed in that meeting, when asked, [redacted] explained [redacted] response. Please see Appendix A, [redacted] [0:12:04.1]



explained that vividly remembered that day as had explains that is a fussy eater and that there had been strategies discussed and developed with and the team in as to how they would encourage to eat.

explained the steps took to calm down including going to located in for support, the explanation gave in response to the allegation of holding chin closed has been explained as placing hand under chin to catch the food as did not want clothes to get messy. In addition to this has explained in Appendix A, [0:15:01.4] that was having an emotional day and was missing has also described their focus with the children about learning to express their emotions and how to communicate.

Follow up

The leadership Team and I will work closely with to ensure is given the appropriate mentoring and support to extend skills and knowledge . At the service I will ensure that our key focus areas with and development is around interactions with children and behaviour guidance strategies. Pending the outcome will be placed under direct supervision and an Early childhood Teacher, in a room that can closely support and monitor interactions and work with Children. Another Strategy that has been put in place in light of this is Within the change of the leadership team and support structure at Charnwood ELC. From this change we will also be able to have regular check in sessions with and the to ensure this type of issue does not arise again.

With relation to our support plan and changes with the allegations against We are currently recruiting for a Lead Educator either Diploma or Degree Qualified in our room to work with and supervise and support further development of skillset as a Lead Educator.

The leadership team Structure Change explained in the above statement is outlined as follows:

- The position of is being advertised as with this change we will ensure that each of our Sites have a Nominated Supervisor allocated to each Centre to support myself in the role.
- (educational leader) has now been appointed in a across both campuses to ensure that staff are adequately supported with regards to curriculum, practice, policy and procedure. This role will also allow for more one on one mentoring and the ability to focus on set goals for individual educators.

Please be aware that we have been actively working with the staff in the development of their skills and have provided a multitude of training and support over the past 6 months also With relation to



all allegations in the Show Cause notice/the services notice of a 215 request there have been a number of actions taken to ensure all staff are aware of best practice we have also had a major review of policy and procure during the last few months and this is now reflective in our management please see the following attachments for your reference:

- Appendix A [redacted] Interview voice recording
- Appendix B [redacted] Interview voice recording
- Staff meeting is taking place on Monday 12 August. During this meeting we will be revisiting policy and procedure relating to interactions with children as well as the Behaviour Buster workshop. I have attached a copy of our planned agenda, see Appendix C
- On 9 January 2019 All staff participated in Protective Behaviors Training and mandated reporting training, see Appendix D
- On 13 and 14 February 2019 [redacted] met with [redacted] to discuss their development and support plans for 2019, see Appendix E
- On 15 February 2019 an email was sent to all staff in relation to encouraging children to eat and interactions, see Appendix F
- 25 February email relating to [redacted] joint Belief statements in response to staff meeting, see Appendix G
- 29 April 2019 Minutes from staff meeting, Appendix H
- 14 May 2019 Email communication from [redacted] Appendix I
- 29 May 2019 Communication Record with [redacted] and written warning, Appendix J
- 18 June 2019 Communication record, all Charnwood staff individually with [redacted] Appendix K
- 1 July Staff meeting agenda and SIDS training, Appendix L
- Appendix M; signed policy's reviewed

Also provided:

- Voice recordings of interviews (Can be provided upon request, see appendix A and Appendix B for transcribed notes.)
- *Appendix C Agenda for August Staff Meeting*
- *Staff Handbook*
- *Staff code of conduct*
- *Behaviour Buster with [redacted] is being scheduled for August to conduct in house training with all staff.*
- Staff will be given additional time to complete modules on ECA Learning Hub



This information and supporting documents have been provided, in response to the 'Show Cause Notice' issued by the ACT Regulatory Authority relating to allegations of inappropriate discipline and inappropriate interactions by educators at Brindabella Christian College Early Learning Centre Charnwood SE-00011290 (the Service), operated by Brindabella Christian Education Ltd PR-00005809 (the Provider). Should you require any further information, please do not hesitate to contact me.

Regards





[REDACTED]
 Person with Management or Control
 Brindabella Christian Education Ltd
 T/A Brindabella Christian College Early Learning Centre – Charnwood
 PO Box 5103
 LYNEHAM ACT 2606

Email: [REDACTED]

Dear [REDACTED]

COMPLIANCE NOTICE
Section 177, Education and Care Services National Law (ACT)

Approved provider name: Brindabella Christian Education Ltd
Approved provider number: PR-00005809

I am satisfied that Brindabella Christian College Early Learning Centre - Charnwood- SE-00011290, operated by Brindabella Christian Education Ltd PR-00005809 is not complying with the provisions of the *Education and Care Services National Law (ACT)* (the *National Law*) and the *Education and Care Services National Regulations* (the *National Regulations*) as outlined hereunder.

In making the decision to issue this compliance notice, I have considered the number of contraventions, the nature of the risk posed to children by the contraventions, and the compliance history of Brindabella Christian Education Ltd and its services in the ACT.

Provision of the National Law and National Regulations	Description	Steps to be taken by the Approved Provider
National Law Section 166(1)	(1) 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.	(1) Provide documentation and evidence of action/strategies outlined by the Provider which have been undertaken to ensure that all interactions with and discipline of children are consistent with the National Law and Regulations, for example: (a) Evidence of engagement of new Lead Educator to work with [REDACTED] in [REDACTED] (b) Evidence of engagement of [REDACTED] (including resumé);
National Law Section 167(1)	(1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care	

	<p>for by the service from harm and from any hazard likely to cause injury.</p>	<p>(c) Evidence of new position description for [REDACTED]</p> <p>(d) Evidence of completion of Behaviour Buster course completed in August;</p> <p>Evidence to demonstrate compliance is required within 14 days of receipt of this Notice.</p> <p>(2) All Persons with Management and Control, Nominated Supervisors and Educators are to undergo training, expressly approved by the Regulatory Authority, regarding National Quality Standard 5.1 (Relationships between Educators and Children) including:</p> <p>(a) Element 5.1.1 (Positive Educator to Child Interactions), including an understanding of the basis of equitable, respectful and reciprocal relationships between educators and children); and</p> <p>(b) Element 5.1.2 (Dignity and Rights of the Child), including an understanding of the United Nations Convention on the Rights of the Child).</p> <p>Evidence to demonstrate arrangement of such training is required within 28 days of receipt of this Notice.</p> <p>(3) Within three calendar months of the date of receipt of this letter, provide evidence of completion of the training referred to in (2) above.</p> <p>Evidence to demonstrate compliance is required within three calendar months of the date of receipt of this Notice</p>
<p>National Regulations Regulation 170</p>	<p>(1) The approved provider of an education and care 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.</p>	<p>Provide evidence of action/strategies implemented to ensure that staff members understand the importance of following policies and procedures and best practice, in preference to parent instructions where those instructions conflict with policies and procedures and/or best practice.</p>

		Evidence to demonstrate compliance is required within 14 days of the date of receipt of this Notice
National Law Section 175	(1) An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.	Provide documentation and evidence of action/strategies outlined by the Provider which have been undertaken to ensure that WDWC records are maintained accurately, for example:
Regulation 177	(1) For the purposes of section 175(1) of the <i>Law</i> , the following documents are prescribed in relation to each education and care service operated by the approved provider- (a) In the case of a centre-based service, a record of educators working directly with children as set out in Regulation 151; (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.	(a) Evidence of educators' understanding of the meaning of working directly with children under Regulation 13 and their responsibility to complete WDWC records; (b) Completed WDWC records from the Service spanning a period of two weeks. Evidence to demonstrate compliance is required within 14 days of the date of receipt of this Notice

Time for Compliance

You are required to provide written evidence of your compliance **by the times indicated within the above table**, to the ACT Regulatory Authority (the Authority), Children's Education and Care Assurance, ACT Education Directorate.

Failure to comply

It is an offence for an approved provider to fail to comply with this compliance notice within the period specified. If you do not take the required actions, or do not take those steps within the required timeframe, I may consider imposing further sanctions, including suspension of your service approval or prosecution. The penalty that a court may impose is \$6000 for an individual and \$30,000 for an entity.

Review of decision

A decision to issue a compliance notice is a reviewable decision for internal review by the Regulatory Authority. 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. An application for review must be submitted to the Regulatory Authority within 14 days after the day on which you are notified of this decision.

Service's record of compliance

Details of this compliance notice must be recorded in the service's record of compliance including: the reason the compliance notice was issued; the steps specified in the notice; and the date by which the steps specified must be taken. The information must not identify any person other than the approved provider.

The information does not need to be recorded until after the period for applying for internal review has expired.

Publication

Under section 270(5) of the National Law, the Regulatory Authority may publish information about this compliance notice. If no review is requested within 14 days, details of this compliance notice will be published on www.det.act.gov.au.

If you have any questions about this notice, please contact Authorised Officer Tanya Masterman on tanya.masterman@act.gov.au or 02 6205 2012.



Clare Brookes
Senior Director
Early Childhood Policy and Regulation
ACT Education Directorate

20 September 2019

Fairburn, Janine

From: Fairburn, Janine
Sent: Wednesday, 20 May 2020 10:17 AM
To: Fairburn, Janine
Subject: FW: Administration Letter - Brindabella Christian College Early Learning Centre Charnwood
Attachments: Administration Letter - 26092019.pdf
Importance: High

UNOFFICIAL

From: Beaver, Jeffrey
Sent: Thursday, 26 September 2019 4:47 PM
To: [REDACTED]
Subject: Administration Letter - Brindabella Christian College Early Learning Centre Charnwood
Importance: High

UNOFFICIAL

Good afternoon [REDACTED]

Please find attached an Administration Letter from the Authority.

Regards,

Jeff Beaver | Senior Investigator
Phone 02 6207 3917 | Email : jeffrey.beaver@act.gov.au
Early Childhood Policy and Regulation | Education Directorate | ACT Government
Hedley Beare Centre for Teaching and Learning, Stirling 2611 | PO Box 158, Canberra City 2601
www.act.gov.au



[REDACTED]
 Person with Management or Control
 Brindabella Christian Education Ltd
 T/A Brindabella Christian College Early Learning Centre Charnwood
 46 Lhotsky Street,
 Charnwood ACT 2615

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Letter

1. As you may be aware, Authorised Officers from Children's Education and Care Assurance, also known as the ACT Regulatory Authority (the Authority), recently conducted enquiries into an allegation that a child being educated and cared for by an education and care service was missing or could not be accounted for at Brindabella Christian College Early Learning Centre Charnwood SE-00011290 (the Service), operated by Brindabella Christian Education Ltd, PR-00005809 (the Provider).
2. The enquiries related to whether the Service failed to adequately supervise a child and failed to ensure that every precaution was taken to protect that child from harm and hazard likely to cause injury.
3. I am satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law Act 2010*¹ (the Law) and the *Education and Care Services National Regulations 2011* (the Regulation) in respect to operating an education and care service.

Facts

4. On 5 September 2019, the Authority received a Notification of Incident (NOT-40377831) and associated attachments from the Provider. This Notification reported that, on 5 September 2019, a child [REDACTED] was located, unsupervised, in the ELC's infant's playground by an educator from another service. The child was unaccounted for at the Service for less than 10 minutes before being found "... hiding in a cubby house".
5. Upon being checked by staff, no first aid was deemed necessary, and the child's parent was contacted and advised of the incident shortly thereafter.
6. On 6 September 2019, the Authority requested further information from the Provider, which was received that same day. A desk top analysis of the documents produced by the Provider determined that staffing levels in the [REDACTED] Room (that room being the child's room) at the time of the incident appeared adequate.

¹ As adopted in the ACT through the *Education and Care Services National Law (ACT) Act 2011*.

7. The information provided also included statements from educators, photographs, a map of the area in question, and evidence that the Service had communicated supervision requirements to its staff. Further, the Service provided evidence of a more rigorous head-count process to be followed by staff, as well as more educators being given access to the IT system to aid in that mitigation strategy.
8. The Authority considered compliance action, based on information from the Provider, which established a failure to adequately supervise the child, in contravention of section 165 of the *Law*. That offence automatically engages a further offence under section 167 of the *Law*, being a failure to ensure that every precaution was taken to protect children from harm and hazard likely to cause injury.

Law

Section 165 of the Law - Offence to inadequately supervise children

- (1) 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.

Section 167 of the Law – Offence relating to protection of children from harm and hazards

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from hazard likely to cause injury.

Consideration of Provider's Response to Incident

9. The Provider conceded the incident occurred and reported the matter to the Authority within the required statutory timeframe. The Provider advised that it has, since the incident, revised its head-count procedure and communicated to all staff and educators its expectations in relation to child supervision. Further, the Provider has produced evidence it communicated the details of the incident with the parent at the earliest possible opportunity.

Reasons

10. I am satisfied that, on 5 September 2019, a child being educated and cared for by the Service, [REDACTED] was located, unsupervised, in the Service's infant's playground. The child was unaccounted for at the Service for less than 10 minutes before being found by an educator "... *hiding in a cubby house*". Such an incident engages an offence under section 165 of the *Law*. That offence automatically engages an offence of failure to ensure that every precaution was taken to protect that child from harm and hazard likely to cause injury, contrary to section 167 of the *Law*.
11. In mitigation, I considered the following:
 - a. The Provider's information relating to its reflection on the incident and proposed enhancements and risk mitigation strategies associated with head-counts and child supervision expectations;
 - b. The child appears not to have exited the grounds of the Service;
 - c. Once the Provider was made aware of the incident, it notified the Authority within the required timeframes;
 - d. The Provider/Service notified the child's parent promptly; and
 - e. The Provider responded promptly to requests for information from the Authority.

Decision

12. The Authority determined that strategies to be implemented to address the risk of inadequate supervision and precautions taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury will meet the expectations of the Authority.
13. Accordingly, the Authority will not be initiating statutory compliance action in this instance and has determined the Provider and/or Service has appropriately managed the incident.
14. This decision, however, is intended to bring to your attention the need to make relevant changes to your supervision arrangements across the Service; to ensure that children are adequately supervised and protected from harm and hazard likely to cause injury at all times they are being educated and cared for by the Service.
15. This letter will be recorded on your Service 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 Regulations* be found.
16. If you have any queries regarding this letter or if you require any information in order to understand your obligations under *the Law and Regulation*, please contact Jeffrey Beaver on (02) 6207 3917 or alternatively at jeffrey.beaver@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

26 September 2019

Brookes, Clare

Subject: Meeting regarding Brindabella
Location: Sean's office, HBCTL

Start: Fri 27/09/2019 9:30 AM
End: Fri 27/09/2019 10:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Early Childhood Policy
Required Attendees: Early Childhood Policy; Moysey, Sean; Brookes, Clare; Krajina, Danielle
Optional Attendees: Masterman, Tanya; Tooth, Lynda

Case Summary Report

Initiation

Case Assessment

Evidence Collection
& Analysis

Recommendation

Approval

Closure

Case	
#	CAS-50008818
Case Status	Closed
Managing Jurisdiction	ACT
Owner	Jeffrey Beaver
Case Regarding	
Service ID	SE-00011290
Name	Brindabella Christian College Early Learning Centre Charnwood
Approved Provider	Brindabella Christian Education Ltd, PR-00005809
Case Details	
Priority	2-Medium
Managing Region	
Case Type	Incident
Case Category	Serious Incident
Source	Notification
Incident Date	05/09/2019
Lodged Date	05/09/2019
Triage Date	16/10/2019
Case Summary	child left unsupervised, unaccounted for in outdoor play space. Found by an educator from the ASC program.
Related Details	
Notification	NOT-40377831
Notified Of Outcome	No
Incident Details	
Incident Type	Child locked in/out of the service
Incident Time	04:00 PM
Emergency Services Attended	No
Location	Outdoors -- Play space
Child Locked - Duration	Less than 10 mins
Recommendation	
Recommendation By	Jeffrey Beaver
Recommendation Date	09/09/2019
Recommendation Notes	Child unattended for approx 15 minutes in secure playground area of the Service. Appears child was hiding during transition and room consolidation at around 3.55pm. Service notified parent. Procedures have been revised to include mandatory head counts every half hour, going inside, going outside and room consolidation times. All staff email sent to advise of required procedures. Ratios appear adequate at the time. Service conducted investigation and numerous statements taken. Service appears to have taken the matter very seriously and acted promptly. Service managed. Recommend traige assessment for consideration of Administrative Action for s165 offence
Approval	
Approved By	Jeffrey Beaver
Approval Date	2/10/2019

Case Summary Report

Initiation	Case Assessment	Evidence Collection & Analysis	Recommendation	Approval	Closure
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Approval Notes	Traiged 16 September 2019 - Admin Letter to be sent. Letter sent 26 Sept 2019. NFA
Case Outcome	
No Further Action	Yes
Administrative compliance action created	Yes
Statutory compliance action created	No
Handled in other case	No

Confidential Data		Total: 1
Record ID	Incident Details	
SHH-00428041	At 4:11pm notification from responsible person onsite at our Charnwood Campus, alerted to an incident that found a child Named: from our room in the ELC infants playground un-attended hiding in a cubby house at 4:05pm. explained that the last time had seen staff in that space was at 4:00pm, and that no one was visually present on finding the child. explained then took the child into the ELC preschool playground (through one pool gate) to see where the educaotrs and children from the room had gone. There was met by the staff and they explained that they did not know where they went. then proceeded to the room where the two rooms combine at the end of day carried/escorted into the space and explained to the educaotrs that they had left outside in yard.	
Preventative Steps Taken	Head check system is already in place ensure all staff are fully aware of how to utalise the sytem. aA new room leader in the room is set to start on monday the 9-9-2019. At monthly staff meeting re train all staff on how to use the head check kiosk system.	
Details of Action Taken	On reciving notice I then proceeded to call All staff on site at time of incident and asked to write statment and send in by close of business 5/9/2019.	

Actions - Highlighted rows have not been closed						Total: 1
Action ID	Action Type	Date Taken	Type	Record ID	Owner	
ACT-00016965	Compliance Action	02/10/2019	Letter issued	CA-00026555	Jeffrey Beaver	

Areas of Breach - Standard List					Total: 2
AoB ID	Type	Date of Alleged Offence	Law/Section/Regulation	Area of Breach Outcome	
INA-00210905	Law	05/09/2019	165 Offence to inadequately supervise children	Confirmed Breach	
INA-00210906	Law	05/09/2019	167 Offence relating to protection of children from harm and hazards	Confirmed Breach	

Areas of Breach - Compliance Action Links					
Compliance Action ID	AoB ID	Type	Date of Alleged Offence	Law/Section/Regulation	Area of Breach Outcome
CA-00026555	INA-00210905	Law	05/09/2019	165 Offence to inadequately supervise children	Confirmed Breach
	INA-00210906	Law	05/09/2019	167 Offence relating to protection of children from harm and hazards	Confirmed Breach
	Compliance Action Type		Letter issued		
	Compliance Action Outcome		Further action taken		
	Action Taken		NFA		

Case Summary Report

Initiation

Case Assessment

Evidence Collection
& Analysis

Recommendation

Approval

Closure

Activities						Total: 1
Regarding	Activity Type	Activity Status	Priority	Created By	Created On	
CAS-50008818	Case Resolution	Completed	Normal	Jeffrey Beaver	2/10/2019 5:07 PM	
Subject	CAS-50008818					
Description						

Compliance Actions						Total: 1
Compliance Action ID	Date Of Compliance Action	Type	Outcome	Action Taken	Compliance Action Status	
<u>CA-00026555</u>	26/09/2019	Letter issued	Further action taken	NFA	Further action taken	
Sub-Type			Issued To	Provider		
Date Closed	02/10/2019		Issued To Name	PR-00005809		

Fairburn, Janine

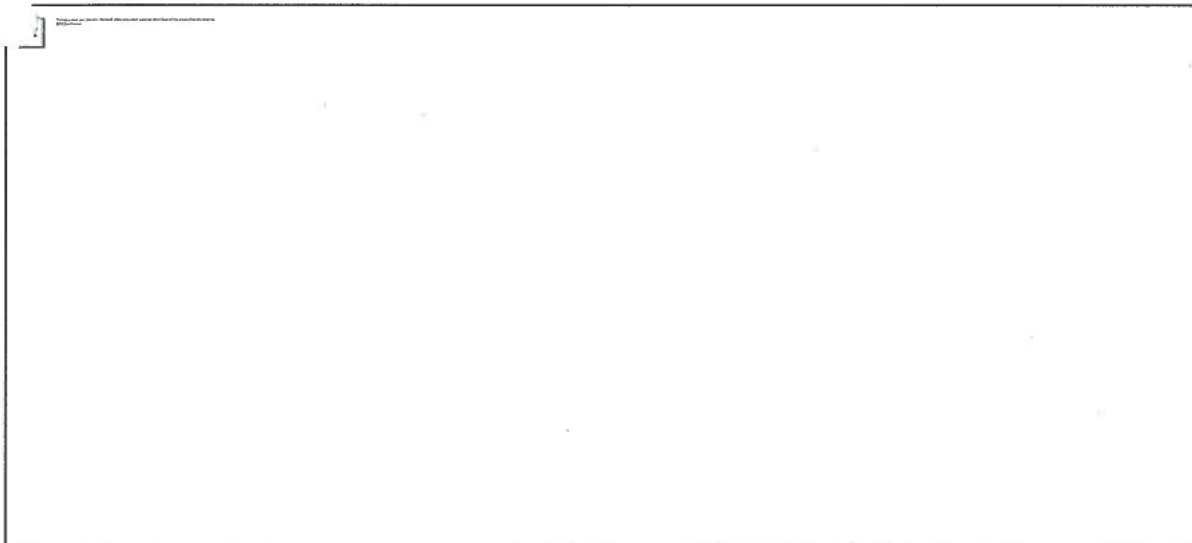
From: [REDACTED]@bcc.act.edu.au>
Sent: Friday, 4 October 2019 4:24 PM
To: Masterman, Tanva
Cc: [REDACTED]
Subject: Brindabella Christian College Compliance Notice section 177 Response part 1
Attachments: Response 4.10.19 Compliance Notice.pdf; supporting documents 1.zip

Importance: High

Dear Tanya,

Please see attached response and documentation relating to 177 Notice issued on Friday 20 September 2019. Due to the amount of supporting documentation I will be sending this through in 2 separate emails. Please do not hesitate to contact me should you require any further information.

Regards



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4 October 2019

Dear Ms Tanya Masterman,

Re **COMPLIANCE NOTICE, Section 177, Education and Care Services National Law {ACT}**

Approved provider name: Brindabella Christian Education Ltd
Approved provider number: PR-00005809

I am replying on behalf of [REDACTED] in response to the Compliance Notice, Section 177 issued on 20 September 2019 to Brindabella Christian College Early Learning Centre - Charnwood- SE- 00011290, operated by Brindabella Christian Education Ltd PR-00005809 in relation to the service not complying with the provisions of the *Education and Care Services National Law {ACT}* (the *National Law*) and the *Education and Care Services National Regulations* (the *National Regulations*) as outlined hereunder, I am submitting the required responses and documentation as requested.

Below is a brief description of each response and the supporting documentation. Please do not hesitate to contact me should you require any further information.

Regards



Provision of the National Law and National Regulations	Description	Steps to be taken by the Approved Provider
National Law Section 166(1)	(1) 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.	(1) Provide documentation and evidence of action/strategies outlined by the Provider which have been undertaken to ensure that all interactions with and discipline of children are consistent with the National Law and Regulations, for example: (a) Evidence of engagement of new Lead Educator to work with [REDACTED] in [REDACTED] NB: see attachment 1A As per document 2 of 102

		<p>attached, we have been advertising this position for some time. We have already conducted 3 interviews; however the candidates were not suitable for the position. We are scheduled to conduct another interview this afternoon at the Charnwood Campus. [REDACTED] have been working very closely with [REDACTED] to support practice and interactions with children.</p> <p>(b) Evidence of engagement of [REDACTED] (including resume); NB: see attachment 1B</p> <p>[REDACTED] and [REDACTED] accepted role as Nominated Supervisor on [REDACTED]. Resume, contract and copy of NS01 form attached</p> <p>(c) Evidence of new position description for [REDACTED] NB: see attachment 1C New position description and timetable for [REDACTED]</p> <p>(d) Evidence of completion of Behaviour Buster course completed in August; NB: see attachment 1D Invoice provided Photos from workshop Sign in sheet Post on Facebook from [REDACTED] page by [REDACTED] Minutes from previous staff meeting</p>
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<p>National Law Section 167(1)</p>	<p>(1) 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 .</p>	<p>Evidence to demonstrate compliance is required within 14 days of receipt of this Notice.</p> <p>(2) All Persons with Management and Control, Nominated Supervisors and Educators are to undergo training, expressly approved by the Regulatory Authority, regarding National Quality Standard 5.1 (Relationships between Educators and Children) including:</p> <p>(a) Element 5.1.1 (Positive Educator to Child Interactions), including an understanding of the basis of equitable, respectful and reciprocal relationships between educators and children); and</p> <p>(b) Element 5.1.2 (Dignity and Rights of the Child), including an understanding of the United Nations Convention on the Rights of the Child) NB: see attachment 2A and 2B Participation in Ethics in Action workshop at ECA Conference, Ethics in Action resource workbooks purchased at Conference. Leadership Provocations Kit also purchased. Training completed by [redacted] on ECA Learning Hub. Email sent to [redacted] [redacted] with details of ECA learning Hub modules to complete and training nights to attend with staff. Email sent to all staff advising of training to be completed on ECA learning hub prior to customized training with [redacted]</p> <p>Evidence to demonstrate arrangement of such training is required within 28 days of receipt of this Notice.</p> <p>NB: see attachment 3 Confirmation to [redacted] [redacted] for training scheduled 28/10/19</p>
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		<p>31/10/19</p> <p>(3) Within three calendar months of the date of receipt of this letter, provide evidence of completion of the training referred to in (2) above.</p> <p>As outlined above.</p> <p>Evidence to demonstrate compliance is required within three calendar months of the date of receipt of this Notice</p>
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<p>National Regulations Regulation 170</p>	<p>(1) The approved provider of an education and care 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.</p>	<p>Provide evidence of action/strategies implemented to ensure that staff members understand the importance of following policies and procedures and best practice, in preference to parent instructions where those instructions conflict with policies and procedures and/or best practice.</p> <p>Evidence to demonstrate compliance is required within 14 days of the date of receipt of this Notice</p> <p>NB: see attachment 4</p> <p>Staff Handbook revised.</p> <p>Policy and Procedure email</p> <p>Sleep and Rest for Children Policy</p> <p>Staff code of Conduct Policy</p> <p>Also see attachments 5A</p>
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<p>National Law Section 175</p>	<p>(1) An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.</p>	<p>Provide documentation and evidence of action/strategies outlined by the Provider which have been undertaken to ensure that WDWC records are maintained accurately, for example:</p> <p>(a) Evidence of educators' understanding of the meaning of working directly with children under Regulation 13 and their responsibility to complete WDWC records;</p> <p>NB: see attachment 5A</p> <p>Staff meeting agenda</p> <p>Staff meeting attendance records</p> <p>Staff meeting minutes</p> <p>(b) Completed WDWC records from the Service spanning a period of two weeks.</p> <p>NB: see attachment 5B</p> <p>WDWC records for week 1 and week 2 provided for each room.</p> <p>Unable to submit completed</p>
<p>Regulation 177</p>	<p>(1) For the purposes of section 175(1) of the <i>Law</i>, the following documents are prescribed in relation to each education and care service operated by the approved provider-</p> <p>(a) In the case of a centre-based service, a record of educators working directly with children as set out in Regulation 151;</p> <p>(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.</p>	

		<p>week 2 as yet due to COB being later than CECA COB. Will resend fully completed record on 8 October 2019.</p> <p>Evidence to demonstrate compliance is required within 14 days of the date of receipt of this Notice</p>
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