

Mr [REDACTED]
Person with Management and Control
Gungahlin Montessori Academy Pty Ltd
RE: Gungahlin Montessori Academy

Email: [REDACTED]@montessoriacademy.com.au
gungahlin@montessoriacademy.com.au

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: NOT-40902105

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an investigation into a Notification of Incident (NOT-40902105) relating to Gungahlin Montessori Academy - SE-40020141 (the Service) operated by GUNGAHLIN MONTESSORI ACADEMY PTY LTD - PR-40017814 (the Provider).
2. The notification of incident advised that an educator had grabbed a child and pulled them by the shirt after the child went to touch the blower vac cleaning equipment.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations (the Regulations)* in this instance. Web addresses to the Law and the Regulations are provided for your convenience at the end of this Decision.

Facts

4. On 13 September 2023, a notification was submitted to the authority (NOT-40902105), alleging that on 13 September 2023, an educator at the Service, [REDACTED], had grabbed a child believed to be [REDACTED] by the shirt and pulled him after he tried to touch the blower vac cleaning equipment. Refer copy of the NOT-40902105 at [Attachment A](#).
5. On 15 September 2023, the Provider, upon request, submitted additional documents in relation to NOT-40902105 (Refer correspondence at [Attachment B](#)). Additional information included Internal Report, CCTV Footage Timeline, Email Correspondence with Family, Witness Statements, CCTV Footage.

Law

6. The Notification engaged the following provisions of the Law:

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

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

Penalty: \$11 400, in the case of an individual
\$57 400, in any other case.

Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 167 of the *Law* in this instance.
8. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that every reasonable precaution was taken to protect children from harm and hazard by having an educator using the power vac equipment to clean a room while children were still present and playing on 13 September 2023.
9. The Authority is satisfied that a reasonable precaution to have been taken would have been to wait until children had left the room to clean with the blower vac equipment.
10. The Authority further notes that the response to the Show Cause Notice provided on 20 August 2024 ([Attachment C](#)) states that [REDACTED] was performing her designated duty of cleaning the outdoor area following a play session and that at the time of the incident [REDACTED] had been signed out of the service and was under his father's supervision. It can be clearly seen on the CCTV Footage that while [REDACTED] has the blower vac equipment out and is performing her cleaning duties there are approximately 9 children playing in the room, with multiple children touching the blower vac equipment prior to [REDACTED] [REDACTED] grabbing [REDACTED] by the shirt and pulling him away from the equipment.
11. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.
12. Considering the evidence, the objectives and guiding principles of the *Law*, and the compliance history of the Service, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
13. In relation to substantiated breach engage by the Provider under section 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
 - (a) Evidence that training has been provided to staff around the undertaking cleaning duties with children present.
 - (b) Evidence to support that a review and update of the risk assessment has been undertaken, considering the use of the blower vac cleaning equipment around children.

14. Requested information should be submitted to the Authority by close of business 14 days from the date of receipt of this Decision. Information can be sent by email to declan.barbagallo@act.gov.au or by post to:

Authorised Officer, Declan Barbagallo
Children's Education and Care Assurance (CECA)
ACT Education Directorate
PO Box 158, CANBERRA ACT 2601

15. This Decision will be recorded on the Service's 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 associated Regulations be found.

Legislation

16. The *Law* applies to you as a provider and any service you operate. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp> . 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>.
17. Should you have any questions about this Decision please contact me at declan.barbagallo@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Children's Education and Care Assurance
Education and Care, Regulation and Support

22 October 2024