



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

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the Law), together with receiving and investigating complaints arising under the Law.
2. As you are aware, the Authority has recently investigated suspected offences relating to a child being smacked by an educator at Gungahlin Montessori Academy - SE-40020141 (the Service) operated by Gungahlin Montessori Academy Pty Ltd - PR-40017814 (the Provider), on 11 October 2023.
3. The Authority is satisfied that the Provider was not complying with the provisions of the Law in respect to this matter. Web addresses to the Law and associated Regulations are provided for your convenience at the end of this Decision.

Facts

4. On 11 October 2023, the Authority received a notification (NOT-40911319) alleging an educator [REDACTED] had smacked a child, [REDACTED] on the back.
5. Due to the risk of harms and hazards likely to cause injury if children are inappropriately disciplined, the Authority determined to investigate the matter, which engaged suspected offences under sections 166 and 167 of the Law.
6. On 15 February 2024, the Authority sent the Provider a Show Cause Notice (the Notice), advising the Provider that the Authority had determined there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the Law.
7. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contravention of the Law, and potential compliance actions being considered if the allegations was substantiated. Refer copy of Notice at Attachment A (minus attachments due to size, can be provided again upon request).
8. The Notice set out the following allegations to the Provider for response:

Allegation One

9. It is alleged that on 11 October 2023, the Provider failed to ensure that no child being educated and cared for by the Service, was subjected to any form of corporal punishment, in that, a child believed to be [REDACTED] (3:7) was slapped on the back by an educator, contravening section 166(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

Allegation Two

10. It is alleged that by 11 October 2023, the Provider failed to ensure that reasonable precaution was taken to protect children from and any form of hazard likely to cause injury, in that there were insufficient supports for educators and a child, believed to be [REDACTED] (3:7) with challenging behaviours and complex needs, contravening section 167(1) of the *Law*.
11. On 29 February 2024, the Provider submitted a response by email to the Notice within timeframe (the Response). The Response included a letter of response, along with 12x attachments as follows:
- Child Protection Training Photo of Attendance;
 - [REDACTED] Meeting Minutes and Care Meeting 9th Oct;
 - 2023 Record of Staff Professional Development;
 - 2023 Certificate [REDACTED]
 - [REDACTED] inclusion support:
 - [REDACTED] mail, [REDACTED] Email 1 [REDACTED]
 - Inclusion Support Visit Log; and
 - [REDACTED] Stat Dec and [REDACTED] Statutory Declaration

Refer to a copy of the Response at Attachment B (minus attachments due to size, can be provided again upon request).

Law

12. Provisions of the *Law* relevant to the matters raised in the Notice include the following:

Section 166(1) of the *Law* - Offence to use inappropriate discipline

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected to-

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

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

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

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

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

Obligations upon Regulatory Authority

13. 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*".
14. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
 - (a) *that the rights and best interests of the child are paramount; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
15. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) *to monitor and enforce compliance with this law;*
 - (d) *to receive and investigate complaints arising under this law.*
16. 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*.
17. 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.
18. 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.

Reasons and Decision

19. The Authority has considered all evidence gathered via the investigation process, inclusive of the Provider's response to the Notice, and is satisfied on the balance of probabilities, all allegations are proven, therefore substantiating contraventions of sections 166(1) and 167(1) of the *Law*.
20. Discipline is defined as any strategy employed by an educator with the intention of changing a child's behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include smacking, yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.
21. This finding is supported by the evidence gathered via witness accounts describing [REDACTED] being subjected to inappropriate discipline by educator [REDACTED] whilst enrolled at the Service, thus supporting the allegations as detailed.

22. Within the Response, the Provider refutes allegation two and does not address allegation one, outlining the following:
 - (a) Circle of safety training;
 - (b) Self-paced online training;
 - (c) 2IC attended the room to support educators;
 - (d) Strategies were in place for [REDACTED];
 - (e) Nominated Supervisor attended and conducted care meetings;
 - (f) Professional development opportunities offered to staff.
23. The Provider's response does not articulate, or link to accompanying supportive documents, in how self-paced learnings and informal strategies, regarding children with needs, are embedded, mentored, and monitored to support quality educator practice.
24. However, the Authority acknowledges statements and supportive documents submitted by the Provider to further support strategies in mitigating risk to children from a reoccurrence of a similar incident.
25. A Provider's obligation under section 166 of the *Law* is positively and strongly framed– the provider must ensure that all children being educated and cared for by the Service are not subjected to inappropriate conduct amounting to discipline.
26. Ensuring that no child is subjected to corporal punishment, or discipline unreasonable in the circumstances, via regular monitoring and mentoring of educator practice, and understanding and awareness of expectations set out in policy and procedure is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury in compliance with s167 of the *Law*.
27. People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
28. Considering the information submitted by the Provider, the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, the Authority has decided that issuing a Compliance Notice is appropriate and in the best interests of children.
29. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– 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: \$6 800, in the case of an individual
\$34 400, in any other case.

30. The Compliance Notice is provided at Attachment C to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment C.**

Review Rights

31. 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).

32. 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

33. The *Law* applies to you as an approved 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>.

34. The *National Law* is made up of an Act and Regulations which can be viewed at:

- <http://www.acecqa.gov.au/national-law>, and
- <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

35. Should you have any questions about this Decision or Compliance Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
4 April 2024