



Mr [REDACTED]
Person with Management and Control
The Canberra Montessori School Incorporated
RE: Canberra Montessori School

Email: [REDACTED]
Cc: [REDACTED]

Dear Mr [REDACTED]

Decision to Issue Compliance Notice

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted enquiries into an allegation regarding the safety, health and wellbeing of children at Canberra Montessori School SE-00009761 (the Service), operated by The Canberra Montessori School Incorporated, PR-00005872 (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 during an Assessment and Rating visit by Authorised Officers between 27 October 2020 and 29 October 2020.
3. I am satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulation) in respect to operating and education and care service.
4. Web addresses to the Law and Regulations are provided for your convenience at the end of this Decision.

Facts

5. On 27 October 2020, Authorised Officers attended the Service for the purpose of conducting a quality assessment and rating visit.
6. On 28 October 2020, the Provider submitted to the Authority a Notification of Incident (NOT-40482691). The Notification advised that at approximately 11:16am on 28 October 2020, a two-year-old child was located outside of the Service premises, on a pathway along Mulley Street.

7. It was further reported that the Service did not observe the child exiting the school grounds and only became aware of the child's absence as a result of a parent telephoning the Service to advise of the child's location. Refer Notification at [Attachment A](#).
8. Subsequent enquiries by the Authority on 28 October 2020, with a response received 2 November 2020. The response advised that additional risk mitigation measures had been implemented in regard to maintenance of gates and clearer signage for parents to ensure gates were closed properly. Refer response at [Attachment B](#).
9. Observations from the Assessment and Rating visit were obtained from the Authorised Officers attending between 27 October 2020 and 29 October 2020. Observations in relation to supervision and protecting children from harm and hazard likely to cause injury are as follows:

Standard 2.2 Safety – Each child is protected.

Some strategies were in place to support supervision and protect children from harm and hazard. Each room had adequate staffing and during indoor play, educators monitored children's play, supporting them as needed. However, supervision was not adequate at all times and this could put children at risk of harm and hazard. For example:

- At times children were observed using the outdoor veranda area for play during the morning with the door to the indoor space closed and no educator outside to supervise them;
- At times educators were observed standing together in groups communicating with each other and not actively supervising the whole outdoor area;
- At times, replacement educators did not arrive before educators went on breaks, leaving one educator alone with a group of children;
- Records showing educators working directly with children (WDWC) comprised of a roster emailed around each day. These records did not accurately show which educators were always WDWC. Refer WDWC records viewed at [Attachment C](#).
- On several occasions throughout the visit, educators were observed engaging in other tasks such as food preparation and cleaning dishes when they were designated to be WDWC and this impacted on supervision.
- On two occasions children were observed going outside and were not directly supervised – it was difficult to know if these children are preschool aged or older as Cycle 1 classes are mixed age grouped from 3 years to 6 years old.

27/10/2020 – Authorised Officer observed one child going out onto the veranda to draw with chalk and educators did not seem to be aware of this.

29/10/2020 – One child asked an educator if she can go outside to use the hopper (rubber toy that you sit on and jump along veranda). Educator agreed, child goes out and door to room is closed so educators are not directly supervising child. A bit later the educators gather the children on the mat to get ready to go to the Gym. Authorised Officer leaves room to go to office for discussion and child who was supposed to be using hopper is playing in puddles and has been outside unsupervised for some time. Authorised Officer stays outside to supervise and after a few minutes an educator comes out to tell child that they are getting ready to go to the gym.

10. The Authorised Officer's viewed these incidents as a concern as the outdoor area is a shared space for all children from 18 months up to 12 years old. The Authorised Officers stated that many parents are coming and going to drop of children throughout the morning and there are five gates around the outdoor area. Older children were observed during the visit using this outdoor area unsupervised and were able to open gates, so this increases the risk of gates being left open.
11. The serious incident that was reported happened during the Assessment and Rating visit, but the Authorised Officer did not witness this as they were in discussions in the office at the time. ██████████, nominated supervisor, informed the Authorised Officer of the incident in the afternoon. During the visit, maintenance workers attended to check the gates and install self-closing hinges. ██████ did discuss with the Authorised Officer locking three gates so families can only enter and exit from two gates.

Standard 7.1 Governance – Governance supports the operation of a quality service.

A minor adjustment was offered to the service to update the authorisation form to include all information outlined in regulation 102 and communicate this change to all staff to ensure they use the updated template for future excursions. Evidence was provided to demonstrate that this minor adjustment had been completed prior to the draft report being sent. **However**, some systems were not consistently in place to support the effective operation of a quality service. For example:

- The enrolment process did not include the school working collaboratively with families to complete all medical management forms prior to children with medical conditions commencing; and
 - Processes around rostering and duty timetables did not adequately ensure that effective supervision was consistently maintained;
 - It was not evident that regular schedules for updating key documents are in place. For example, one of the staff handbooks had a review date of June 2018 and had not been updated since June 2015.
12. During the Assessment and Rating visit, medical action plans were available, and Mr ██████ explained that a template for a risk minimisation and communication form had been emailed to families and the families had not returned them. The Authorised Officer explained to Mr ██████ that it was the Provider's responsibility to complete these forms in collaboration with families and that they need to develop one for each child and then consult with families to add information and get them signed.
 13. On 30 October 2020, a minor adjustment was offered for Mr ██████ to rectify non-complete risk minimisation and communication forms and provide evidence to demonstrate that these forms had been completed by 6 November 2020. On 9 November 2020, a secondary email was sent to Mr ██████ as no response to the minor adjustment request had been received. Refer email correspondence at [Attachment D](#).
 14. On 11 November 2020, Mr ██████ responded, via email, with evidence attached consisting of a blank template for the risk minimisation and communication form and a spreadsheet showing all the children with medical conditions, but no completed risk minimisation and communication forms were submitted.

15. On 12 November 2020, Mr [REDACTED] was advised that the evidence provided as response to the minor adjustment was not sufficient to satisfy compliance requirements, and the matter would be passed on to the Authority's Audit and Risk team for follow-up. Refer email correspondence and records in response relevant to risk minimisation and communication forms at [Attachment E](#).

Law

16. Provisions of the *Law* and Regulations relevant to the Notification of Incident and Assessment and Rating observations engaged the following:

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

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

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

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

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

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Section 175 of the *Law* – Offence relating to requirement to keep enrolment and other records

- (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.

Documents referred to in subsection (1) –

- a) Must, to the extent practicable, be kept at the education and care service premises if they relate to-
 - i. The operation of the service; or
 - ii. Any staff member employed or engaged by the service; or
 - iii. Any child cared for, or educated at, those premises- In the previous 12 months; or
- b) In any other case, must be kept at a place, and in a manner, that they are readily accessible by an authorised officer.

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 relation 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.

Regulation 13 – Meaning of *working directly with children*

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Regulation 151 –Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information -

- a) The name of each educator who works directly with children being educated and cared for by the service;
- b) The hours that each educator works directly with children being educated and cared for by the service.

Regulation 90 – Medical conditions policy

(1) The medical conditions policy of the education and care service must set out practices in relation to the following—

- a) the management of medical conditions, including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis;
- b) informing nominated supervisors and staff members of, and volunteers at, the service of practices in relation to managing those medical conditions;
- c) the requirements arising if a child enrolled at the education and care service has a specific health care need, allergy or relevant medical condition, including—
 - i. requiring a parent of the child to provide a medical management plan for the child; and
 - ii. requiring the medical management plan to be followed in the event of an incident relating to the child’s specific health care need, allergy or relevant medical condition; and
 - iii. requiring the development of a risk-minimisation plan in consultation with the parents of a child—
 - A. to ensure that the risks relating to the child’s specific health care need, allergy or relevant medical condition are assessed and minimised; and
 - B. if relevant, to ensure that practices and procedures in relation to the safe handling, preparation, consumption and service of food are developed and implemented; and
 - C. if relevant, to ensure that practices and procedures to ensure that the parents are notified of any known allergens that pose a risk to a child and strategies for minimising the risk are developed and implemented; and
 - D. to ensure that practices and procedures ensuring that all staff members and volunteers can identify the child, the child’s medical management plan and the location of the child’s medication are developed and implemented; and

- E. if relevant, to ensure that practices and procedures ensuring that the child does not attend the service without medication prescribed by the child’s medical practitioner in relation to the child’s specific health care need, allergy or relevant medical condition are developed and implemented; and
- iv. requiring the development of a communications plan to ensure that—
 - A. relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child; and
 - B. a child’s parent can communicate any changes to the medical management plan and risk minimisation plan for the child, setting out how that communication can occur.

Regulation 168 – Education and care service must have policies and procedures

- (1) The approved provider of an education and care service must ensure that the service has in place policies and procedures in relation to the matters set out in subregulation (2)
Penalty: \$1000
- (2) Policies and procedures are required in relation to the following –
 - d) Dealing with medical conditions in children, including the matters set out in regulation 90.

Regulation 170(1) – Policies and procedures to be followed

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.

Reasons

- 17. In consideration of all evidence obtained via the Notification of Incident, observations of Authorised Officers during the Assessment and Rating process, and responses received from Mr [REDACTED] I am satisfied that the Provider is not complying with the *Law* and *Regulations*.
- 18. In relation to matters relating to supervision of children, I am satisfied that the Provider has not ensured 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, in contravention of section 165(1) of the *Law*, and engaging a further contravention of section 167(1) of the *Law*.
- 19. The fact that a two year old child was able to leave the Service, unnoticed by educators on 28 October 2020, and that they Service was unaware that the child was missing until a parent rang the Service to advise of the child’s location further, and that Authorised Officer’s, during the Assessment and Rating visit observed inadequate supervision in practice, further supports the contraventions of *Law*.
- 20. In relation to matters relating to medical risk assessments and communication plans for enrolled children at the Service, I am satisfied that the Provider has not ensured that 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, in contravention of section 167(1) of the *Law*.

21. The fact that the development of a risk-minimisation plans in consultation with the parents of children known to have medical conditions had not been completed as required under *Regulation 90* supports the contravention. In addition, I note that this same issue has been raised previously via a compliance audits in both June 2017 and 2019.
22. *Regulation 168* requires the approved provider to ensure that policies and procedures are in place for dealing with medical conditions in children, including the matters set out in *Regulation 90*. *Regulation 170* requires the approved provider 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.
23. I am satisfied, on the balance of probabilities, that the Provider has not taken reasonable steps to ensure that *Regulation 90* has been followed, a breached *Regulation 170*, further contravening section 167(1) of the *Law*.
24. In relation to matters relating to the keeping and accuracy of prescribed records, I am satisfied that the Provider has not accurately kept a record of educators working directly with children that complies with the requirements of *Regulation 151* and *Regulation 177*, therefore engaging a contravention of section 175 of the *Law*.
25. The fact that Authorised Officers, during the Assessment and Rating visit, noted that records showing educators WDWC (comprised of a roster emailed around each day) did not accurately show which educators were WDWC at all times, and WDWC records submitted within the Provider's response to records requested at Attachment B also did not identify when educators were actually physically present with the children; and when educators were directly engaged in providing education and care to the children or when they were not i.e. when educators were taking breaks, supports the contravention of *Law*.
26. Furthermore, Authorised Officers observed on several occasions throughout the visit, that educators were engaging in other tasks such as food preparation and cleaning dishes when they were designated to be WDWC and this impacted on supervision. These observations do not demonstrate that practice within the Service correlates with how WDWC records are required to be maintained, taking into account the definition of WDWC under *Regulation 13*.
27. I note that this same issue's, regarding prescribed records required under *Regulation 151*, has been raised previously via a compliance audits in both June 2017 and 2019.

Obligations upon Regulatory Authority, Providers and Services

28. 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".

29. 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; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
30. 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.*
31. 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*.
32. 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.
33. 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.

Decision

34. Considering the evidence obtained, and reasons outlined in paragraphs 15 through 22 of this Decision, I have determined that issuing a Compliance Notice would be appropriate and in the best interests of children.
35. 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: \$6 000, in the case of an individual
\$30 000, in any other case.
36. The Compliance Notice is Attachment F to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions.
37. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment F.**

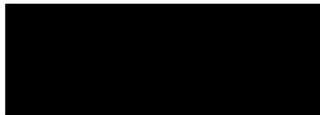
Appeal Rights

38. 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).
39. 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

40. 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>.
41. 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>
42. Should you have any questions about this Decision or Compliance Notice please contact Assistant Director, Janine Fairburn via email janine.fairburn@act.gov.au.

Yours Sincerely



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

23 November 2020