



Ms [REDACTED]  
Nominated Supervisor  
GUNG AHLIN MONTESSORI ACADEMY PTY LTD  
RE: Gungahlin Montessori Academy

Email: [REDACTED]

Dear Ms [REDACTED]

### **Decision to issue Administrative Action**

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 assessed a Notification of Complaint (NOT-40712265) relating to the operation of Gungahlin Montessori Academy SE-40020141 (the Service), operated by Gungahlin Montessori Academy Pty Ltd PR-40017814 (the Provider).
2. The Notification related to a circumstance where a nursery child enrolled at the Service was unattended while in the cot room and was later found on their stomach in their cot on 18 May 2022.
3. Web addresses to the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Decision.

### **Facts**

4. On 19 May 2022, the Authority received a Notification of Complaint (NOT-40712265) submitted by the Provider advising on 18 May 2022, a 4-month-old child was unattended in the cot room found on their stomach by their mother on pick up. Refer to copy of Notification of Complaint at [Attachment A](#).
5. Initial enquiries were made by the Authority in relation to the Notification, with the Provider forwarding additional information on 26 May 2022. Refer response at [Attachment B](#). The response submitted by the Provider via email consisted of:
  - a) CCTV Footage timeline.
  - b) [REDACTED] and [REDACTED] Timeframe.
  - c) Incident report.
  - d) Link to CCTV footage.
6. The Authority noted that the Provider advised that they would be undertaking an internal investigation of the incident.

## Law

7. The facts as outlined in the Notification and additional submitted information engaged the following:

### **Section 165(2) of *Law* - Offence to inadequately supervise children**

A nominated supervisor 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

### **Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards**

A nominated supervisor 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.

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

## Decision

8. The Authority has considered the information supplied by the Provider and is satisfied, on balance of probabilities, that there is sufficient evidence to substantiate an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
9. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Nominated Supervisor has not ensured adequate supervision at all times, which resulted in ■■■ being unattended for 27 minutes. The very nature of the incident and management of matter supports the contravention being determined.
10. Furthermore, the Authority is satisfied that the Nominated Supervisor, by not ensuring adequate supervision of all children at all times, has not ensured all reasonable precautions have been taken to protect children. Specifically, ■■■ in this instance as there was knowledge ■■■ was able to roll onto her stomach, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(2) of the *Law*.
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.
13. In relation to substantiated offences engaged by the Nominated Supervisor under sections 165 and 167 of the *Law*, the Authority requests the Nominated Supervisor to submit the following evidence to support risk mitigation actions have been undertaken:
  - a) That you as Nominated Supervisor have completed safe sleep training since the 18/05/2022; and
  - b) Processes are in place to ensure that all staff are following the updated policies and procedures implemented.
14. In addition, the Nominated Supervisor is requested to submit the findings and outcome of the internal investigation undertaken to obtain further information and ascertain timeframes relevant to this incident.
15. Requested information outlined in paragraphs 13 and 14 can be submitted to Authorised Officer, Vittorio Colosimo at [vittorio.colosimo@act.gov.au](mailto:vittorio.colosimo@act.gov.au). The Authority requests this to occur within 14 days of receipt of this decision.
16. This Decision is issued to remind the Nominated Supervisor, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
17. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in determining the action to be taken, should further similar breaches of the *Law* or *Regulations* be substantiated.

### **Legislation**

18. The *Law* applies to you as a nominated supervisor. 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>.
19. 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>
20. Should you have any questions about this Decision please contact Authorised Officer Vittorio Colosimo at [Vittorio.colosimo@act.gov.au](mailto:Vittorio.colosimo@act.gov.au).

Yours Sincerely,



Jo Williams  
Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support  
ACT Education Directorate

18 October 2022