

Ms [REDACTED]
c/- University of Canberra
Coinda street
Bruce ACT 2617

Email: [REDACTED]@gmail.com

Dear Ms [REDACTED]

Decision to issue a Caution Letter

1. As you are aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, have recently investigated an allegation that you, in capacity of Nominated Supervisor, failed to take all reasonable precaution to protect children from harm and hazard at YWCA Rosary School Age Care SE-00009738 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876 (the Provider), on 31 July 2020..
2. Specifically, it was alleged that on 31 July 2020 a child, enrolled at the Service, was near a fence when an unknown male person asked her to put out her hand. The male person attempted to grab the child's hand resulting in a scratch to her hand/arm. The child reported the incident to educators, of which you were aware, yet you did not perform a lockdown of the Service or inform relevant parties at the time – being the Provider, the associated school principal, the parents or ACT Policing.
3. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulations).

FACTS

4. On 14 October 2020, the Authority issued you with a Show Cause Notice (the Notice) requiring your response within 14 days. Refer a copy of the Notice at Attachment A
5. The Notice advised that the Authority was considering compliance action based on evidence that indicated contraventions of the Law identified during the Authority's investigation. Specifically, the evidence obtained during the investigation suggested grounds that engaged an offence under section 167(2) of the Law.
6. On 28 October 2020, the Authority received your response in relation to the Notice. Refer a copy of your response at Attachment B.

LAW

7. Evidence obtained during the investigation engaged sections 167(2) of the Law, which provides the following:

Section 167 (2) of the Law – Offence relating to the 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.

REASONS

8. The Authority is satisfied, after careful consideration of your response to the Notice and all available evidence, that on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 167(2) of the *Law* namely;
 - I. That on 31 July 2020, as Nominated Supervisor of the Service, you did not ensure that every reasonable precaution was taken to protect children from harm or hazard, in that you did not contact police in relation to a child being grabbed by an unknown person at the rear fence, in contravention of section 167(2) of the *Law*.
9. In its determination, the Authority has considered evidence gathered by the investigation, your submissions relating to inadequate training, and being informed after the incident. It is also noted that at the time of the incident, risk to children was lower due to usual afternoon closure procedures being undertaken.
10. However, the Authority does consider that your conduct did not comply with the requirements of section 167(2) of the *Law*, in that, by failing to notify police, you have not ensured that every reasonable precaution was taken to protect a child being educated and cared for at the Service from harm and from hazard likely to cause injury.
11. In these circumstances, the Authority has determined not to take statutory compliance action, but to issue you with a Caution acknowledging the substantiated offence.
12. This Decision serves to remind you of your obligations, as a Nominated Supervisor, to ensure that at all times your actions –
 - a) in no way compromise the safety, health and wellbeing of children being educated and cared for at an approved service that you are Nominated Supervisor; and
 - b) in no way compromise maintaining compliance with the *Law* and *Regulations*.
13. This Decision will be recorded on our files and may be taken into consideration if any new evidence is received that warrants further investigation into this matter, or if any other matters involving your conduct with children are notified to the Authority in the future.
14. 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>

15. Should you have any questions about this Caution Letter please contact Senior Investigator Brian Cropper on telephone (02) 6207 1104 or email brian.cropper@act.gov.au.

Yours Sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

27 November 2020