

Ms [REDACTED]
Person with Management or Control
YWCA Canberra
RE: YWCA Richardson School Age Care

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 Incident (NOT-00047396) relating to YWCA Richardson School Age Care SE-40009747 (the Service) operated by YWCA Canberra PR-00005876 (the Provider).
2. The notification of incident advised that on 20 June 2024, [REDACTED] (6 years, 2 months) was able to leave the Service, unnoticed and unattended for a period of 55 minutes.
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) in this instance. Web addresses to the Law and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 21 June 2024, a notification of incident (NOT-00047396) was submitted to the Authority by the Provider advising that on 20 June 2024, [REDACTED] was able to leave the Service unnoticed and unattended allegedly via a hole in the perimeter fence. Around 55 minutes later, [REDACTED] was located by a bus driver at a nearby bus stop. The bus driver subsequently contacted police. Police collected the child from the bus stop and returned him home at 5.30pm.
Refer copy of the NOT-00047396 at Attachment A.

5. Additional information submitted with NOT-00047396 included the following:
 - Incident Report Form.

Refer Attachment B.

6. On 18 June 2024, the Provider submitted additional documents in response to a request for further information from the Authority, including:
 - Unaccounted for Child Procedure - Draft;
 - Fence Hole – Photo one;
 - Fence Hole – Photo two;

- Fence Hole Repaired - Photo;
- Mud Map;
- Internal Communication;
- Work Roster;
- Individual Support plan.

Refer Attachment C.

7. NOT-00047396 further advised that steps taken by the Provider to prevent or minimise a similar incident included:
- The school took immediate action with the gap being filled with concrete.
 - A safety discussion was conducted with the children on the 21/06/24 regarding safety in the spaces and the importance of remaining with educators in school grounds and possible risks and consequences.
 - An email has been sent to the school to request a time to discuss communicating and reporting of hazards and maintenance concerns.
 - A review of process and procedures to include guidelines regarding steps and timeframes of when to contact emergency services and families.

Law

8. The Notification engaged the following provisions of the *Law*:

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: \$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.

Decision

9. 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 165 and 167 of the *Law* in this instance.

10. In relation to section 165 and 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were adequately supervised at all times. As per ██████ Behavioural Support Plan (provided), he was known to have a tendency to abscond or hide. Failing to ensure that he was adequately supervised could have resulted in a catastrophe. Further, the Authority is satisfied that the very nature of the matter notified, engages an offence under section 167 of the *Law*, in that reasonable steps were not taken to ensure that ██████ was safe from any hazard or any harm on the 20 June 2024.
11. The information submitted by the Provider supports, on balance of probabilities, the offences being substantiated.
12. 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.
13. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance action to address the non-compliance.
14. This decision services to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.
15. To assist in reviewing these obligations, the Authority have attached the ACECQA factsheet on Inclusion support. [Refer to Attachment D.](#)
16. The Service needs to ensure that support is provided to each child based on their interests, developmental needs, and experiences. Additionally, the support should take into account the individual differences of each child.
17. 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

18. 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>.

19. Should you have any questions about this Decision please contact me at nicole.withers@act.gov.au.

Yours Sincerely,



Nicole Withers
Team Leader Investigations
Regulation and Compliance
Education Directorate

07 August 2024