



Ms [REDACTED]
Person with Management or Control
The Young Women's Christian Association of Canberra
RE: YWCA Majura SAC

Email: [REDACTED]@ywca-canberra.org.au

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-40750264

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Complaint (NOT-40750264) relating to the operation of YWCA Majura School Age Care, SE-00009691 (the Service), operated by The Young Women's Christian Association of Canberra, PR-00005876 (the Provider).
2. The Notification related to a disclosure by a child, known to be [REDACTED] (aged 7 years) attending the school oval with a peer unsupervised and playing with a stranger and their dog on 26 July 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 27 July 2022, the Authority received a Notification of Complaint (NOT-40750264) from the Provider regarding a parent complaint advising of an enrolled child's disclosure regarding playing with a peer, a stranger and a dog on the oval in the morning, unsupervised on 26 July 2022. The notification further advised that the incident was being investigated by the Provider. Refer Attachment A.
5. On 28 February 2022, the Authority requested additional information from the Provider to conduct an assessment of the notification. The Provider responded to request on 4 August 2022. Information submitted included:
 - a) Children's attendance records and educator working directly with children records for 26 July 2022.
 - b) Photographs of supervision maps for the Services hall, courtyard, kindergarten, play scape and Irvine playground areas.
 - c) Copies of Supervision Policy and ACECQA fact sheet for QA2.

- d) Secondary complaint raised by parent of peer, known to be [REDACTED] [REDACTED] also involved with incident.
- e) Internal email correspondence regarding Provider's internal investigation.

Attachment B for relevant documents

Law

6. The following provisions of the *Law* were relevant to the assessment:

Section 165(1) of the *Law* - Offence to inadequately supervision 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.

Reasons and Decision

- 7. Having considered all documents submitted by the Provider the Authority is satisfied, on the balance of probabilities, that the Provider has failed to comply with the *Law*.
- 8. The Authority is satisfied that sections 165(1) and 167(1) of the *Law* were contravened on 26 July 2022. Sections 165(1) and 167(1) of the *Law* were engaged by documentation obtained from the Provider.
- 9. Information gathered supports that the Provider did not ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, specifically [REDACTED] and [REDACTED] on 26 July 2022, in contravention of section 165(1) of the *Law*.
- 10. Information gathered supports that the Provider, by not ensuring adequate supervision of children on 26 July 2022, has not ensured that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167(1) of the *Law*.

11. The fact that [REDACTED] and [REDACTED] were able to access the oval unnoticed by educators, engage with a stranger and play with a strangers dog for an undetermined length of time, further supports the contraventions of sections 165 and 167 of the *Law*.
12. The Authority acknowledges that the oval relevant to this incident is able to be accessed by members of the public. The Authority notes that on the morning of 26 July 2022, should the motives of the stranger been different from exercising their animal, the consequences for this failure of supervision could have been catastrophic for the children involved.
13. 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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
14. In determining this action, the Authority took into consideration the following:
 - a. The Service's compliance history; and
 - b. Actions already undertaken by the Provider to mitigate risk of a similar incident.
15. This Decision is issued to remind the Provider that, at all times, staffing, and supervision levels must meet the emotional, developmental, and physiological needs of all children being educated and cared for. In addition, staffing and supervision levels need to meet the risks associated with the environment that children are being educated and cared for in, and any accessible surrounds.
16. Staffing levels may need to be above minimum regulated ratio levels to ensure adequate supervision and to ensure every reasonable precaution is taken to protect children from harm and hazard likely to cause injury – both physically and psychologically.
17. Regarding substantiated offences under sections 165(1) and 167(1) of the *Law*, the Provider is requested to submit the following information and documentation to demonstrate compliance with the *Law*:
 - a) Reviewed and updated (if required) supervision plans, procedures and risk assessments to support adequate supervision and that reasonable precautions are being undertaken to protect children from risk across all areas of the Service and surrounds.
 - b) Evidence to support educators are aware of, and understand, the Provider's expectations of adequate and active supervision.
 - c) Evidence to support children are aware of, and understand, boundaries and expectations in relation to areas utilised by the Service for education and care.
18. The Provider is requested to submit requested information within 14 days of receipt of this letter to me at Janine.fairburn@act.gov.au.

19. Alternatively, requested information can be forwarded via post to –
Children’s Education and Care Assurance
Attention: Janine Fairburn
ACT Education Directorate
GPO Box 158 Canberra ACT 2601

20. This Decision will be recorded on the Service’s file and may be considered in determining any future regulatory action, should there be future similar breaches of the *Law* or *Regulations*.

Legislation

21. 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>.

22. 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>.

23. Should you have any questions about this Decision please contact me on janine.fairburn@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children’s Education and Care Assurance
Education Care Regulation and Support
ACT Education Directorate

25 August 2022