

Ms [REDACTED]
Person with Management or Control
The Young Women's Christian Association of Canberra
RE: YWCA Kingsford Smith School Age Care

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action RE: NOT-40505394

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 an assessment of Notification of Complaint (NOT-40505394) and related to the operation of YWCA Kingsford Smith School Age Care SE-00009735 (the Service), operated by The Young Women's Christian Association of Canberra PR-00005876 (the Provider).
2. The complaint related to an allegation by a parent that on 25 January 2021, she witnessed an educator restraining her child, known to be [REDACTED] (aged ten years), at the Service when he refused to put on sunscreen before going outside.
3. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
4. Web addresses to 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

5. On 27 January 2021, the Authority received a Notification of Complaint (NOT-40505394) and accompanying documents, advising of a parent complaint to the Service relating to a witnessed restraint of their child on 25 January 2021. Refer Attachment A.
6. Included in that Notification was a Children's Service's Incident Report in relation to the alleged incident. Refer Attachment B.
7. On 28 January 2021, the Authority sought further information from the Provider, which was provided on 1 February 2021. Included in that additional information, was a Behaviour Support Plan (BSP) for the child in question. This BSP noted, amongst other things, "[REDACTED] has been diagnosed with Autism Spectrum Disorder (ASD) Level 3, Attention Deficit Disorder (ADD)...". Refer Attachment C.
8. On 5 February 2021, the Provider advised the Authority it had conducted an internal investigation into the alleged incident and determined it not to be Reportable Conduct. The Provider further advised that the parent of [REDACTED] was involved in that process and that

there would be recommendations for improvement because of their findings. Refer Attachment D for correspondence and Attachment E for Providers Final Report.

9. Upon request of the Authority, on 18 February 2021, the Provider furnished a copy of their internal investigation report in relation to the incident. This report states, in part

“█████ attended the YWCA School Holiday Program but does not attend Kingsford Smith School (KSS) during term time which meant he was not well known to the educators. █████ has Autism and ADHD, and he has Positive Behaviour Support Plan signed by MacGregor Primary School and After School Program (his usual school), Marymead (OSHC) and Doctors. This Plan was sent to YWCA Canberra in July 2020 as part of an application sent to the Senior Practitioner. In November, a consent form was emailed to KSS OSHC as it needed to be signed by the Program Manager for █████ to receive medication while at the KSS School Holiday Program. At the time of the incident, all Educators were aware of the medication plan but not the behaviour support plan”.

Law

10. Provisions of the *Law* and *Regulations* relevant to the assessment engaged the following:

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.

Regulation 155 of the Regulations – Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Reasons

11. Having considered the evidence furnished by the Provider with the Notification and additional information, I am satisfied that the Provider has failed to comply with the *Law*.
12. In relation to the Notification, the restraint used on the young person on 25 January 2021 does not afford a reasonable suspicion that the educator/s involved used inappropriate discipline.
13. However, the Authority is satisfied that the circumstances and facts as set out in the Provider's internal investigation report support that the lack of communication by the Program Manager to educators in relation to the child's BSP contributed to the interaction involving restraint which did not maintain at all times the dignity and rights of the child or the child's specific needs in relation to possible sensory triggers.
14. The Authority is satisfied that if the Provider had ensured that the BSP was communicated effectively to all staff, then this incident, specifically the restraint could have been prevented. As such, the Authority is satisfied that a breach of Regulation 155 is supported, engaging a contravention of s167(1) of the *Law*.

Decision

15. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance, for example fines or compliance notices through to suspension of your service approval and/or prosecution. Many of these options allow the Authority to publish details of your non-compliance.
16. 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 action.
17. In coming to this determination, the Authority considered the following:
 - a) The Provider has advised of recommendations for improvement resulting from their findings into the matter;
 - b) The risk associated with the interaction between the educator and [REDACTED] and
 - c) The compliance history of the Service.
18. In addition, and regarding the substantiated breach of the Regulations, the Authority requires you, **within 14 days of the date of this letter**, to:
 - a) Provide evidence demonstrating that educators at the Service have been properly informed of all children that have a BSP and their specific needs; and
 - b) Submit evidence to demonstrate recommendations/strategies to mitigate risk of a similar incident occurring in the future.

19. This Decision will also be recorded on your Service 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, including suspension of your service approval or prosecution, should further breaches of the *Law* or *Regulations* be found.

Legislation

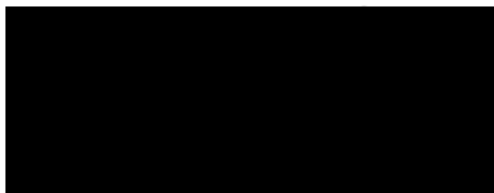
20. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>.

21. 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>

22. If you have any questions in relation to this letter, please contact Authorised Officer Jeff Beaver on (02) 6207 3917 or by email at jeffrey.beaver@act.gov.au.

Yours sincerely



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

5 March 2021