



Mr [REDACTED]
Person with Management or Control
Young Men's Christian Association of Canberra Inc
Re: YMCA Weetangera After School Care

Email: [REDACTED]@ymca.org.au
[REDACTED]@ymca.org.au

Dear Mr [REDACTED]

Decision to issue Administrative Action RE NOT-40502375

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 conducted an assessment of a Notification of Incident (NOT-40502375) relating to the operation of YMCA Weetangera After School Care SE-00009732 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider).
2. The Notification related to a child, [REDACTED] (aged 6 years and 8 months), who was missing and unaccounted for during a period of under ten minutes.
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 letter.

Facts

4. On 14 January 2021, the Authority received NOT-40502375 (the Notification) from the Provider. Refer Notification and relevant documentation at Attachment A.
5. The incident report submitted with the Notification advised of an incident, occurring that on 14 January 2021, [REDACTED] had been witnessed in a distressed state, left the hall unnoticed and entered the outdoor space unnoticed by educators. Refer Incident Report at Attachment B.
6. Additional documentation was requested on 15 January 2021 with a response received 19 January 2021. Refer email correspondence at Attachment C.
7. Enquiries indicated [REDACTED] had been given permission by an educator ([REDACTED]) to go to the toilet but was not accompanied as required by the toileting procedure, and went outside to sit on a bench instead, where she was approached by a parent. [REDACTED] was located by a staff member within minutes.
8. The Notification advised that the risk mitigation steps performed by the Provider included:

- a. Conversation with the relevant staff member regarding supervision requirements around bathrooms (which had been communicated verbally at commencement of each shift on each day of vacation care) and necessity of active supervision;
- b. Memo regarding bathroom supervision was distributed to all staff;
- c. Verbal reminder was provided to all staff on shift;
- d. Supervision plans are to be updated to reflect toileting procedures;
- e. Service coordinator was to ensure all staff have signed the memo about bathrooms, service routine, supervision plans and active supervision policy

Law

9. The facts as outlined in the Notification support contravention of the following:

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.

Decision

10. The Authority has considered all the information supplied by the Provider and is satisfied that the failure to notice [REDACTED] leaving the hall on 14 January 2021 constituted a failure to adequately supervise all children being educated and cared for by the Service, in contravention of section 165(1) of the *Law*.
11. However, in mitigation, the Authority notes that [REDACTED] was not missing for more than a few minutes, and steps have been taken to address the failure to adequately supervise, including failure to follow the toileting procedures. The Provider appears to have managed the incident appropriately, meeting the expectations of the Authority.
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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision.
13. Although no further action is being taken by the Authority, this decision is a reminder to the Provider of its obligations to ensure that all educators are aware of the need for continual and active supervision of all children being educated and cared for by the Service.
14. This is of particular importance during the beginning of the year with transitioning children who may not be familiar with routines and processes and may be distressed or anxious due to changes.

15. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in any future applications for approvals, amendments or waivers. They may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be substantiated.

Legislation

16. 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>.
17. 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>
18. Should you have any questions about this Decision please contact me at
Janine.fairburn@act.gov.au.

Yours Sincerely,



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

4 February 2021