



Mr [REDACTED]

Person with Management or Control  
Young Men's Christian Association of Canberra Inc  
RE: YMCA North Ainslie School Age Care

Email: [REDACTED]

Dear Mr [REDACTED]

**Decision to issue Administrative Action**

1. As you are aware, Authorised Officers from Children's Education and Care Assurance, also known as the ACT Regulatory Authority (the Authority), recently conducted an investigation, as a result of a complaint, in regards to the operation of YMCA North Ainslie School Age Care SE-00009723 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider).
2. The complaint received by the Authority alleged that on various dates during May and June 2020 children were at risk of harm and hazard at the Service due to the Provider failing to ensure adequate supervision and staffing arrangements to meet the needs of children with additional needs
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)* are provided for your convenience at the end of this Decision.

**Facts**

4. On 21 July 2020, the Authority received a complaint alleging that on 6, 7 and 18 May 2020 and 8 July 2020, the Provider failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times which resulted in those children being put at risk of harm and of hazards. The complaint also alleged Inclusion Support Funding (ISF) for two young persons at the Service was not being used to provide an additional educator, and, there were times when the Service was operating without a Responsible Person being present.
5. Due to the risk associated to children if inadequately supervised, and if a Service is maintaining inadequate staffing arrangements, the Authority determined to investigate suspected offences under sections 165, 167 and 169 of the *Law*.
6. On 6 August 2020, the Authority received a Notification of Incident (NOT-40461856) from the Provider advising that, on 5 August 2020, a child enrolled at the Service's ASC program, known to be [REDACTED] had left the Service unwitnessed by educators for a period of between 10 minutes and 30 minutes.
7. The Authority determined that further enquiries into the Notification of Incident would be managed under the investigation. Refer copy of NOT-40461856 at Attachment A.
8. On 19 August 2020, the Authority issued upon the Provider a Notice allowable under s215 of the *Law* to furnish documents. On 31 August 2020, the Provider furnished the requested documents within the required timeframe. Due to the volume of the material supplied, it has not been annexed to this letter, however, can be furnished if requested.

9. As part of the investigation, statements were also obtained from persons identified as possible witnesses.

### Law

10. Relevant sections of the *Law* and *Regulations* engaged by the investigation were as follows:

#### **Section 165(1) of the *Law* – Offence relating to inadequate supervision**

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..

#### **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 cared for by the service from harm and from hazard likely to cause injury.

#### **Section 169(1) of the *Law* - Offence relating to staffing arrangements**

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

#### **Section 169(2) of the *Law* – Offence relating to staffing arrangements**

An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

#### **Regulation 123 – Educator to child ratios – centre-based services**

- (1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios-
- (a) for children from birth to 24 months of age – 1 educator to 4 children;
  - (b) for children over 24 months and less than 36 months of age – 1 educator to 5 children;
  - (c) for children aged 36 months of age or over (not including children over preschool age) – 1 educator to 11 children;
  - (d) for children over preschool age, 1 educator to 15 children.
- (2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

#### **Regulation 260 - Educator to child ratio—children over preschool age—centre-based services**

- (1) This regulation applies in place of regulation 123(1)(d).
- (2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children.

**Regulation 151 – Record of educators working directly with children**

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information:

- (a) The name of each educator who works directly with children being educated and cared for by the service;
- (b) The hours that each educator works directly with children being educated and cared for by the service.

**Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider**

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
  - (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151.
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

**Assessment of Evidence**

- 11. In relation to allegations raised within the complaint received by the Authority on 26 July 2020, witness statements and prescribed records did not corroborate that on 6, 7 and 18 May 2020 and 8 July 2020, the Provider failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times which resulted in those children being put at risk of harm and of hazards.
- 12. The Authority was also satisfied that allegations relating to Inclusion Support Funding (ISF) for two young persons at the Service was not being used to provide an additional educator, and, there were times when the Service was operating without a Responsible Person being present were also unsupported.
- 13. In relation to the Notification of Incident received from the Provider on 6 August 2020, evidence did support that on 5 August 2020 inadequate supervision did contribute to a child, known to be [REDACTED] being able to leave the service premises unwitnessed by educators.
- 14. Relevant excerpts of witness statements corroborating the incident are as follows:
- 15. Witness A:

[REDACTED]

- 16. Witness B:

[REDACTED]



17. Witness C:



18. Witness D:





19. Witness E:





20. Witness F:



21. In addition, the Authority noted that the Working Directly with Children (WDWC) records for 5 August 2020 did not indicate a Ms [REDACTED] as working directly with children at the Service, on that day. However, the Authority also noted that attached to Provider's Notification of the incident, was a 'mud map' suggesting Ms [REDACTED] was present at 3.10pm that day. Refer relevant evidence at Attachment B.

**Reasons**


- 22. Upon consideration of all evidence gathered through the investigation, the Authority is satisfied that on 5 August 2020, the Provider failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times which resulted in [REDACTED] being able to leave the Service premises unwitnessed, in contravention of section 165(1) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.
- 23. The Notification of Incident submitted to the Authority on 6 August 2020, effectively standing as a full and frank admission from the Provider that offences were engaged by the incident, and corroborating witness accounts support substantiation of the contraventions of *Law*.
- 24. The Authority is further satisfied that the Provider failed to ensure that prescribed WDWC records were accurate for 5 August 2020, in breach of *Regulation 177(2)*.

25. In deciding if compliance action should be taken, I have considered the following:
- a. Submission of the Notification of Incident, making admissions to the child absconding, the circumstances surrounding that absence and strategies being implemented to mitigate risk of a similar incident occurring; and
  - b. The Service has no previous compliance actions taken for similar circumstances.

### Decision

26. 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.
27. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
28. This Decision is also intended to bring to your attention to the need to ensure prescribed records of educators working directly with children are maintained accurately at all times to be compliant with the *Law* and *Regulations*.
29. The *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>.
30. 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>
31. This letter will 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, should further breaches of the *Law* or *Regulations* be found.
32. If you have any queries regarding this Decision please contact Authorised Officer Jeff Beaver via email at [jeffrey.beaver@act.gov.au](mailto:jeffrey.beaver@act.gov.au).

Yours sincerely,

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

4 December 2020





**ACT**  
Government  
Education

Notification Number: **NOT-40461856**  
Date generated: 06/08/2020

## I01 Notification of Incident

Thank you for submitting your notification. Below is a copy of the information provided in your notification. If there are any issues, please contact your Regulatory Authority for assistance.

### Notification of Incident

#### Provider

Provider Name	Young Mens Christian Association of Canberra Inc
Provider Number	PR-00005888
Provider Approval Status	Approved

#### Service

Service Legal Entity Name	
Service Trading Name	YMCA North Ainslie School Age Care
Service Approval Number	SE-00009723
Service Approval Status	Approved

#### Incident Details

Incident Type	Reg 12-Any circumstance where a child being educated and cared for by an education and care service appears to be missing or cannot be accounted for
Incident Date	5/08/2020
Incident Time	03:15 PM
Missing Type	Child not seen exiting by staff - found by non-staff member
Duration Missing	More than 10 mins but less than 30 mins
Did Emergency Services attend	No
Further Details of the Incident	See attached document.
Child's Name	[REDACTED]
Child's Date of Birth	[REDACTED]
Child's Gender	Male
Details of Action Taken (e.g. First Aid)	
Please detail what steps were taken to ensure parents were notified as soon as practicable, including time, date and nature of notification	[REDACTED] (dad) was informed of the incident at collection at 5:22pm [REDACTED] was receptive of the incident that had happened and did not appear to be unhappy.

Submitted By [REDACTED]



Name of parent or guardian notified	[REDACTED]
Email of parent or guardian notified	[REDACTED]
Phone number of parent or guardian notified	[REDACTED]
Name of Witness to the incident	[REDACTED]
Please detail what steps were taken or will be taken to prevent or minimise this type of incident in the future	<p>August 6th: [REDACTED] Area Manager held mandatory staff meeting with North Ainslie staff to review supervision plans and incident that happened day before.</p> <p>-Supervision plans reviewed during admin times and changes made based on incident.</p> <p>-Time set to issue staff member written warning.</p>
Photos and Evidentiary Documents	
C3325126-D8A0-48B9-9480-2D908BB31A62.jpeg	Notes from staff meeting regarding incident 3
C44E0442-DF1B-459C-A35D-4CF11F9BD83E (1).jpeg	Notes from staff meeting regarding incident 1
CD5F0976-C816-4040-A80B-94B242D41776 (1).jpeg	Notes from staff meeting regarding incident 2
Incident Map 8.5.2020. 1510pm.docx	Mud Map 3:10pm
Incident Map 8.5.2020. 1515pm.docx	Mud Map 3:15pm
Incident Map 8.5.2020. 1525pm.docx	Mud Map 3:25pm
[REDACTED].docx	[REDACTED] Incident
thumbnail_[REDACTED].jpg	Account from [REDACTED] Staff Member
thumbnail_image.jpg	Supervision Plan
thumbnail_[REDACTED].jpg	Account from [REDACTED]
thumbnail_[REDACTED].jpg	Account from [REDACTED] Staff Member

### Contact Details

Name	[REDACTED]
Phone Number	[REDACTED]
Email Address	[REDACTED]

Submitted By: [REDACTED]