

Mr [REDACTED]
Person with Management or Control
Young Men's Christian Association of Canberra Inc
RE: YMCA Latham After School 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 received a two Notifications Of Incident in relation to the supervision of children whilst being educated and cared for by YMCA Latham After School Care SE-00009720 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider).
2. I am satisfied that the Service contravened the provisions of the *Education and Care Services National Law Act (ACT) (the Law)*.
3. 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 notice.

Facts

4. On 12 November 2020, the Authority received two Notifications of Incident (NOT-40487024 and NOT-40487050) from the Provider.
5. The Notifications advised that on 11 November 2020, two young persons ([REDACTED] and [REDACTED] who are siblings) enrolled at the Service, had left the Service unnoticed by educators for a period of between 10 minutes and 30 minutes. Refer Notifications at [Attachment A](#) and [Attachment B](#).
6. The Authority noted that the distance between the Service and the children's father's home would take approximately 10 to 15 minutes to walk, dependent on the route taken by the children.
7. The Authority noted that the children left the Service and attended the home of their father, and the father subsequently returned the children to the Service. It appeared that the Service was unaware of the children's non-attendance until the children's father returned them back to the Service.

Law

Section 165 of the *Law* - Offence to inadequately supervise children

- (1) 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.

- (2) The nominated supervisor 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 of the Law - Offence relating to protection of children from harm and hazard

- (1) 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 any hazard likely to cause injury.
- (2) The nominated supervisor 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 any hazard likely to cause injury.

Reasons

8. Having considered the evidence within the Notifications the Authority is satisfied that the Provider and the Nominated Supervisor failed to comply with the *Law*.
9. Information gathered does substantiate that the Provider and the Nominated Supervisor 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 on 11 November 2020, in contravention of section 165 of the *Law*.
10. Information gathered does substantiate that the Provider and the Nominated Supervisor, by not ensuring adequate accountability of children, did not ensure 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 on 11 November 2020, in contravention of section 167 of the *Law*.
11. The fact that the two children were able to leave the Service premises unnoticed by educators and were not noticed as being absent until the father of the children returned them back to the Service supports the contraventions of *Law*.
12. In deciding if compliance action should be taken, I have considered the following:
 - a. Provision of Notifications with supportive information attached making admissions to the children absconding and the circumstances surrounding that absence.
 - b. The Service does not have a compliance history of similar incidents occurring.
 - c. The parents were engaged appropriately, and strategies advised of to mitigate risk of a similar incident occurring.

Decision

13. The Authority has determined that in this particular set of circumstances, and in consideration of all information provided to the Authority, that no statutory compliance action is warranted in this instance to address the non-compliances identified.
14. This Decision, however, is intended to bring to your attention the need to ensure that all children are adequately supervised and accounted for at all times that the Service operates. Furthermore, this decision is intended to bring to your attention the need to ensure that clear processes are in

place, and effectively communicated, to ensure that children enrolled in the Service are protected from harm and hazards likely to cause injury.

Legislation

15. The *Law* applies to you as a Provider engaged within the early education and care sector. 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>.
16. 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>
17. 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.
18. If you have any queries regarding this Decision or if you require any information in order to understand your obligations under *the Law* and *Regulations*, please contact Senior Investigator, Jeff Beaver, on 02 6205 2012 or at jeffrey.beaver@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

26 November 2020