

[REDACTED]
Person with Management or Control
Young Men's Christian Association of Canberra Inc
T/A YMCA Gowrie After School Care

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Letter RE NOT-40464591

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 assessed a Notification of Incident (NOT-40464591) relating to the operation of YMCA Gowrie After School Care SE-00009717 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider).
2. The Notification related to a child exiting the Service unnotified by staff during the after-school program.
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 18 August 2020, the Authority received NOT-40464591 (the Notification) from the Provider that, on 17 August 2020, a child [REDACTED] (aged seven), exited the school hall unnotified by educators. When educators realised he was missing at about 3:10pm, two educators attempted to find him but were unsuccessful. The coordinator was then informed and, during the search, she was advised by a teacher that [REDACTED] was in the front office. Front office staff advised the coordinator that [REDACTED] had been with her for about 7.5-8 minutes.
5. The Authority sought documentation from the Provider, including working directly with children record and children's attendance record, which were provided on 20 August 2020.

Refer Attachment A for Notification and relevant documentation.

6. The child attendance documents provided did not include all prescribed information, as outlined below.

Law and Regulations

7. The following provisions of the *Law* and *Regulations* are relevant to the facts as outlined:

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.

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.

Section 175(1) of the Law – Offence relating to requirement to keep enrolment and other documents

An approved provider of an education and care service must keep the prescribed documents available for inspection by the authorised office in accordance with this section.

Penalty: \$4000, in the case of an individual
\$20 000, in any other case.

Regulation 158(1) – Children’s attendance record to be kept by approved provider

The approved provider of an education and care service must ensure that a record of attendance is kept for the service that-

- (a) records the full name of each child attending the service; and
- (b) records the date and time each child arrives and departs;
- (c) is signed by one of the following persons at the time that the child arrives and departs-
 - (i) the person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
 - (ii) a nominated supervisor or an educator.

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-
 - (k) a children’s attendance record as set out in regulation 158.
- (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.

Decision

- 8. The Authority has considered all the information supplied by the Provider and is satisfied that:

- a. the unnoticed exit of a child from the Service 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*. A contravention of section 165(1) engages a further contravention of section 167(1) of the *Law*;
 - b. the failure to maintain arrival and departure times and identities of those signing for arrival and collection of children attending the Service constitutes a failure to keep a prescribed record (being a children's attendance record required by Regulation 158(1)) in contravention of section 175(1) of the *Law*. The only details noted were the names of children attending for the afternoon program on 17 August 2020, and those identified as absent.
9. However, in mitigation, the Authority notes that [REDACTED] absence was noticed quickly, he was only missing for a short period, and although he had left the Service, remained supervised by school staff. It is further noted that conversations have been held with [REDACTED] regarding supervision.
 10. 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 Letter.
 11. In addition, the Authority requires the Provider to:
 - a. Advise of steps taken to ensure that child attendance records are compliant with Regulation 158; and
 - b. Provide a copy of one week's worth of compliant child attendance records.
 12. The required information and documentation should be submitted within fourteen (14) days of receipt of this letter to Assistant Director Janine Fairburn on Janine.Fairburn@act.gov.au.
 13. The contraventions have been recorded on the Service file and may be considered in the instance of any future similar incidents.

Legislation

14. 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>.
15. 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>

16. Should you have any questions about this Decision please contact Assistant Director Janine Fairburn at Janine.Fairburn@act.gov.au.

Yours Sincerely, /



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

7 September 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 Gowrie After School Care
Service Approval Number	SE-00009717
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	17/08/2020
Incident Time	03:10 PM
Missing Type	Child not seen exiting by staff - found by staff
Duration Missing	Less than 10 mins
Did Emergency Services attend	No
Further Details of the Incident	The educators noticed that [redacted] was not in the school hall. Two of the educators went looking for him. After several minutes and unable to locate him, they informed the Coordinator. The Coordinator then went to have a look and when she spoke to one of the teachers, they informed her that [redacted] was sitting at the front office. The Coordinator then found [redacted] with a front office staff. The front office administrator informed the coordinator that [redacted] had been with her for about seven or eight minutes.
Child's Name	[redacted]
Child's Date of Birth	[redacted]
Child's Gender	Male

Submitted By: [redacted]



Details of Action Taken (e.g. First Aid)	Both school staff and service educators have spoken to [redacted] about staying where staff can supervise him. Parents notified when he was collected from the Service Copy of incident report sent to the School to notify the Principal of what happened.
Please detail what steps were taken to ensure parents were notified as soon as practicable, including time, date and nature of notification	Parent informed when [redacted] was collected from the service- 4.55pm
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	Educators will closely monitor [redacted] movements Service will talk to all the children and remind them about rules to stay in areas where they can be supervised An educator will be stationed in front of the exit door (door leading to the front of the school) to ensure that children are not wandering in and out of the hall at will Talk to the school about the steps they can take when they notice children are out of bounds and not being supervised.
Photos and Evidentiary Documents	
Gowrie Incident 20200817.pdf	Gowrie OSHC Incident- Bailey Taylor

Contact Details

Name	[redacted]
Phone Number	[redacted]
Email Address	[redacted]