



## **'Approved Provider' and NSW Department of Education and Communities [2013] ACECQARRPstr0001 (26 March 2013)**

**Applicant:** 'Approved Provider'  
**Regulatory Authority:** NSW Department of Education and Communities  
**Decision date:** 26 March 2013  
**Application reference:** STR0001

### **Decision:**

The Ratings Review Panel (the Panel) by consensus decided under section 151 of the *Education and Care Services National Law* (the National Law) to amend the rating level for standard 2.1 of the approved provider's approved service (the approved service) to 'Meeting NQS'.

As a result, the Panel amended the rating of the approved service for Quality Area 2 to 'Meeting National Quality Standard (NQS)' and the overall rating for the approved service to 'Meeting NQS'.

### **Issues under review:**

1. The approved provider sought a second tier review of Quality Area 2, standard 2.1, element 2.1.2 under section 144 of the National Law on the grounds that the regulatory authority failed to take into account or give sufficient weight to facts existing at the time of the rating assessment.
2. Element 2.1.2 has two components:
  - (i) each child's comfort is provided for, and
  - (ii) there are appropriate opportunities to meet each child's needs for sleep, rest and relaxation.
3. After the initial assessment, the service was rated as meeting standard 2.1. The approved provider applied for first tier review on the basis that the service had evidence to support a rating of exceeding for Quality Area 2.
4. At first tier review, the regulatory authority determined that element 2.1.2 was 'not met' and amended the rating for standard 2.1 to 'Working towards NQS'.
5. The amendment changed the service's rating for Quality Area 2 (Children's Health and Safety) and its overall rating to 'Working towards NQS'.

### *Regulatory authority's view*

6. The regulatory authority submitted that the service's practices were not appropriate for meeting the children's individual needs because the service's sleep and rest practices were structured and required all children, including non-

sleeping children, to rest for approximately 25 minutes during a daily, scheduled rest routine.

7. In its first tier review decision, the regulatory authority stated that the non-sleeping children wait with no further opportunities for engagement in activities, and therefore the service's sleep and rest practices do not satisfy the second component of element 2.1.2.

#### *Applicant's view*

8. The approved provider claimed the regulatory authority took into account an old policy and staff reflections to form this view, and failed to take into account a number of other pieces of evidence to show there were appropriate opportunities to meet each child's needs for sleep, rest and relaxation.

#### **Evidence before the panel**

9. The panel considered all the evidence provided by the applicant and the regulatory authority. This included:
  - the application for second tier review and its attachments, including the service's Quality Improvement Plan (QIP)
  - the assessment and rating instrument
  - the draft Assessment and Rating Report and feedback on the report
  - the application for first tier review and the notice of first tier review decision.
10. The panel was also provided with advice from ACECQA on element 2.1.2 and information on contemporary views on sleep and practice.

#### **The Law**

11. Element 2.1.2 states 'each child's comfort is provided for and there are appropriate opportunities to meet each child's need for sleep, rest and relaxation.'
12. Regulation 81 of the Education and Care Services National Regulations sets out the minimum requirements for sleep and rest. It states 'the approved provider must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, development stages and individual needs of the children.'
13. Section 151 of the *Education and Care Services National Law* states: 'Following a review, the Ratings Review Panel may:
  - (a) confirm the rating levels determined by the Regulatory Authority; or
  - (b) amend the rating levels.'
14. There is also information on element 2.1.2 in the *Guide to the National Law and Regulations* and the *Operational Policy Manual for Regulatory Authorities* available on the ACECQA website.

#### **The Facts**

##### *Context*

15. The assessment and rating visit took place on 17 and 18 July 2012.

16. The provider received the decision on the assessment and rating on 12 October 2012 and applied for first tier review on 19 October 2012.
17. The regulatory authority provided a decision on the first tier review on 21 January 2013.
18. [The approved service] is a centre-based long day care service split across four rooms:
  - Nursery (0 – 2 years)
  - Room 1 (2 years)
  - Room 2 (3 years)
  - Room 3 (4 years)
19. The final Assessment and Rating Report states that the rooms are fitted with reverse cycle air-conditioning and have quiet areas with soft furnishings and rugs available for children to relax on throughout the day. The applicant provided the Panel with a 'Sleep and Rest Routine' form that shows that the service asks parents to specify in writing their preferences for their child's rest and/or sleep routine.
20. The applicant also provided observations on sleep routines and forms for 'baby sleep checks' and 'individual child sleep chart'. The Panel considered that these demonstrate that staff at the service record observations of individual children during rest routines. They also show that in the nursery, staff use baby monitors and complete sleep check charts for babies. Additionally, the authorised officer observed children wearing age appropriate clothing during the rest routine.
21. As part of its Quality Improvement Plan (QIP), the service set itself a goal of reviewing its sleep practices. It pursued this goal by surveying parents, having staff reflect on the service's current sleep practices, changing policies and advising parents and staff of the changes.

#### *Sleep and rest practices*

22. The details of the rest routine vary across the documents in the evidence.
23. The evidence indicated that there is an embedded rest routine after lunch. At the beginning of this routine, sleeping children ('sleepers') are given the opportunity to sleep while non-sleeping children ('resters') are encouraged to rest quietly on mats.
24. The applicant provided the Panel with staff reflections. The date of these reflections range between February 2012 and 25 July 2012. They often relate to different rooms and are written by different staff members. The approved provider asserts that the rest routine evolved over the year as the service implemented the review in its QIP and developed a new sleep and rest policy (effective 11 July 2012).
25. The most current sleep and rest policy, (effective 11 July 2012) states that 'children who do not sleep will be offered quiet activities to do after a short rest period'. This is in contrast with the previous policy, which does not provide specific instruction on rest practices.
26. A staff reflection dated 25 July 2012 (after the assessment and rating visit) mentions that in Room 2, resters have 20 minutes resting on their mats followed

by 10 minutes talking to other resters. After the total rest time of 30 minutes, resters may engage in quiet activities until the sleepers wake.

27. At first tier review, the regulatory authority submitted that resters are required to rest on their mat 'for at least 25 minutes with no further opportunities to engage in activities'. The first tier review decision-maker appears to have relied on the superseded policy and staff reflections to form this view.
28. There are no specific observations about the rest routine in Room 2 or 3 in the Assessment and Rating Report or the instrument. In Room 1, the authorised officer observed children allowed to have a 'comforter' with them and listening to soothing music during rest time. This is similar to the latest reflection which indicates that resters in Room 2 may cuddle a teddy or a 'blankie', and sing, hum or chat quietly to their choice of rest time comforter for the 20 minutes.
29. The basic facts relating to the sleep and rest practices were not contested by either the approved provider or the regulatory authority. The service appears to have a routine rest period where non-sleepers rest for up to 30 minutes before engaging in quiet activities until sleepers wake.
30. The question for the Panel was whether the routine of having non-sleepers rest for a period of time meets element 2.1.2.

### **Element 2.1.2**

31. The *Guide to the National Quality Standard* advises in relation to element 2.1.2 that 'assessors may observe sleep and rest practices that are consistent with contemporary views about children's health, safety and welfare and that meet children's individual needs'.

#### *Contemporary views*

32. The Panel was referred to several publications that reflect contemporary views about sleep and rest practices. These included:
  - Community Child Care Co-operative (NSW) sample policy on sleep and rest
  - *Childcare and Children's Health, Vol 14, No 2, June 2011 (Sleep and oral health)*
  - *National Network for Child Care – Rest Time: The Key to Effective Rest Time is Flexibility*
33. The Panel noted that the publications generally recognise that many services have timed sleep and rest routines, and that routines may be appropriate, provided they are flexible enough to accommodate children who do not sleep and those who seek rest and relaxation throughout the day.
34. The Panel concluded that contemporary practice suggests that during routine rest times, children should be encouraged to sleep, rest or engage in quiet experiences (e.g. drawing, reading, puzzles). Children should not be forced to sleep or lie down during these rest times. Children should also not be left with nothing to do for more than 30 minutes.
35. The Panel also considered that a key contemporary concept in the Early Years Learning Framework (EYLF) is children's agency. In practice, educators must

balance providing opportunities for children's agency with their responsibility to ensure children's safety, health and wellbeing. A routine rest time is not necessarily incompatible with children's agency, particularly if a service is sensitive to whether the children at the service benefit from resting their bodies, and if children are given opportunities to rest at other times throughout the day, for example by taking advantage of quiet areas and soft furnishings in each room.

#### *Individual needs*

36. As well as aligning with contemporary views, the sleep and rest practices should meet the children's individual needs. The Panel considered that the service sought families' knowledge and input when developing the revised policy. The service also informed families about the sleep and rest routine and sought information about their individual child's needs and the family's preferences.
37. The Panel noted the revised policy does not set a standard duration for the rest routine. Instead, it refers to a 'short rest period after which children will be offered quiet activities'. Other evidence also implied that staff may exercise discretion about the length of the rest period.

#### *Other considerations*

38. The Panel noted that the Assessment and Rating Report contains only positive comments about the service's sleep and rest practice. These comments are inconsistent with the regulatory authority's rationale for its decision at first tier review. This inconsistency is not addressed in the regulatory authority's notes at first tier review, its notice to the approved provider or in any other evidence provided to the second tier review.
39. The Panel noted that the service had made a commitment to review its sleep and rest practices as part of its QIP and provided the reflections to the regulatory authority to demonstrate continuous improvement at the service. The Panel noted that just because a service has identified an area for improvement does not mean the Panel should see that practice in a negative light.

#### **Conclusion:**

40. The Panel considered that in its first tier review, the regulatory authority gave too much weight to a superseded policy and staff reflections from February and March 2012.
41. The Panel also considered that the regulatory authority gave insufficient weight to the authorised officer's original report.
42. In determining whether element 2.1.2 was met, the Panel agreed that while routines need to be flexible to meet each child's individual needs, having a routine rest period of short duration is not inconsistent with contemporary views on sleep and rest.
43. In particular, the Panel emphasised that there was no evidence that children were forced to sleep or lie down. Furthermore, there is no evidence to indicate that the routine is not meeting the children's needs.
44. The Panel agreed on balance that there was sufficient evidence for it to assess element 2.1.2 as 'met'. This means that the rating for Quality Area 2 changes to 'Meeting NQS' and the service will be rated 'Meeting NQS' overall.

45. Brief consideration was given to whether there was evidence to support a rating of exceeding for standard 2.1. However, the Panel agreed that there was insufficient evidence to support a rating of 'exceeding'.