



## **'Approved provider' and NSW Department of Education and Communities [2013] ACECQARRPstr0002 (24 July 2013)**

<b>Applicant:</b>	'Approved provider'
<b>Regulatory authority:</b>	NSW Department of Education and Communities
<b>Decision date:</b>	24 July 2013
<b>Application reference:</b>	STR0002

### **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 assessment of element 2.1.3 from 'not met' to 'met'; to confirm that elements 1.1.1, 1.1.2, 1.2.3, 2.1.2, 3.2.1, 3.3.1, 3.3.2 and 4.2.1 are assessed as 'not met'; and to confirm that the rating levels for standards 1.1, 1.2, 2.1, 3.2, 3.3 and 4.2 are 'Working Towards National Quality Standard (NQS)'.

As a result, the Panel has confirmed that the rating levels for Quality Areas 1, 2, 3 and 4 are 'Working Towards NQS' and the overall rating for the service is 'Working Towards NQS'.

### **Issues under review**

1. The approved provider sought a review of the following, 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:
  - Quality Area 1, standards 1.1 and 1.2, (elements 1.1.1, 1.1.2 and 1.2.3)
  - Quality Area 2, standard 2.1 (elements 2.1.2 and 2.1.3)
  - Quality Area 3, standards 3.2 and 3.3 (elements 3.2.1, 3.3.1 and 3.3.2)
  - Quality Area 4, standard 4.2 (element 4.2.1).
2. After the initial assessment, the service was rated as 'Working Towards NQS' for standards 1.1, 1.2, 2.1, 3.2, 3.3 and 4.2. The approved provider applied for first tier review on the basis that the regulatory authority did not consider evidence, available on the day, in its assessment.

### **First tier review**

3. At first tier review, the regulatory authority amended its assessment of element 1.2.1 from 'not met' to 'met' and element 2.1.3 from 'met' to 'not met'.

4. The rating for standards 1.2 and 2.1 remained unchanged at 'Working Towards NQS' and all other standards and elements remained unchanged. Consequently, the amendments did not change the service's rating for any Quality Area or its overall rating of 'Working Towards NQS'.

### **Applicant's view**

5. The approved provider submitted in its application for second tier review that it believed the assessing officer was biased against the resources purchased and implemented by the approved service.
6. The approved provider claimed documentary evidence, available on the day of the assessment and rating visit, supporting a rating of 'Meeting NQS', was not reviewed by the authorised officer.
7. The approved provider submitted that the outcome of the first tier review was negatively influenced by the fact it had made a complaint to the regulatory authority about the authorised officer who conducted the assessment and rating visit.

### **Evidence before the panel**

8. 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 feedback on the draft assessment and rating report
  - the assessment and rating instrument and final assessment and rating report
  - photographic evidence collected on the day of the assessment and rating visit
  - the NSW Regulatory Authority's findings on first tier review
  - the response from the approved provider to the Regulatory Authority's information
  - findings from Ratings Review Panel 1/2013 (STR0001).
9. The panel was also provided with advice from ACECQA on the elements, standards and Quality Areas under review as well as advice on the assessing inconsistent quality policy.

### **The law**

10. Section 151 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'.
11. Information on the application of the National Quality Standard is available in the *Guide to the National Law and Regulations* and the *Guide to the National Quality Standard* published on ACECQA's website.

## **The facts**

12. A compliance 'spot check' took place at the service on 1 May 2012 prior to the assessment and rating visit.
13. The assessment and rating visit took place on 27 August 2012.
14. The provider received the assessment and rating decision on 4 February 2013.
15. The provider applied for first tier review on 18 February 2013 and received a decision on 17 May 2013.
16. ACECQA received the application for second tier review on 29 May 2013.
17. The service is a centre-based long day care service.

## **Review of rating levels**

18. The Panel considered each standard and elements under review in turn.

### **Standard 1.1**

19. Standard 1.1 is that:

'An approved learning framework informs the development of a curriculum that enhances each child's learning and development'.
20. It is made up of six separate elements. Two elements were under review.

#### *Element 1.1.1*

21. Element 1.1.1 requires:

'Curriculum decision making contributes to each child's learning and development outcomes in relation to their identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators'.
22. In the assessment and rating instrument there is a note drawn from a conversation between the authorised officer and an educator. The note suggests that the educator did not demonstrate an understanding of the connection between curriculum decision-making and outcomes for children.
23. This conversation was reflected as the main consideration for the regulatory authority's finding that element 1.1.1 was 'not met'. The conversation was used as evidence of inconsistent practice to support a conclusion that not every educator is able to describe how curriculum decision making supports learning outcomes for children. The final assessment and rating report states that some educators were not able to describe what role learning outcomes play within curriculum decision-making.

24. The approved provider claimed that the conversation was given too much weight and was taken out of context. The approved provider stated that if the authorised officer had viewed programming documentation, learning stories and portfolios correctly, the authorised officer would have seen evidence that the service was meeting this element.
25. The approved provider mentioned many practices in support of its view that the service was meeting this element.
26. The Panel recognised the approved provider's concern that too much weight had been given to the conversation with the educator. The Panel agreed that on its own this would not be enough to make a finding of not meeting an element.
27. In considering this element, the Panel noted the overall lack of evidence. The assessment and rating report provided little information to support a finding of either 'met' or 'not met'. Further, the Panel also noted that the approved provider had missed an opportunity to provide positive evidence to support its claims.
28. Overall the Panel considered that the evidence was inconclusive. To make a finding that an element has been 'met' the Panel needs evidence to support this finding.
29. Consequently, as there was a lack of positive evidence from either the approved provider or the Regulatory Authority to demonstrate that an approved learning framework informs the development of a curriculum that enhances each child's learning and development, the Panel concluded that the element was 'not met'.

#### *Element 1.1.2*

30. Element 1.1.2 requires:

'Each child's current knowledge, ideas, culture, abilities and interests are the foundation of the program'.
31. The final assessment and rating report included some examples of cultural information about children, which was gathered at enrolment. However, the report stated that while the interests of groups of children were documented, 'documentation of children's individual interests and ideas was not evident'.
32. The Regulatory Authority stated at first tier review that inconsistencies across the service demonstrate that each child's knowledge, ideas, culture, abilities and interests are not consistently the foundation of the program.
33. The approved provider stated that the authorised officer failed to view correctly the programming documentation and portfolios used to document individual children's learning.
34. In its submission, the approved provider mentioned many practices in support of its view that the service was meeting this element.
35. The Panel noted that the approved provider did not provide examples or evidence to support its statements.

36. The Panel considered that documentation provided by the approved provider in support of its claim provided some evidence of how the service was applying this element to groups. However, the evidence did not demonstrate, in enough depth, how the current knowledge, ideas, culture, abilities and interests of 'each child' are the foundation of the program.
37. As the intent of this element is specific to individual children and not groups, the Panel concluded that it could not find that the service had met element 1.1.2 as there was a lack of positive evidence from the approved provider to demonstrate that each child's knowledge, ideas, culture, abilities and interests are the foundation of the program.

## **Standard 1.2**

38. Standard 1.2 is that:
  - 'Educators and co-ordinators are focused, active and reflective in designing and delivering the program for each child'.
39. It is made up of three separate elements. One element was under review.

### *Element 1.2.3*

40. Element 1.2.3 requires:
  - 'Critical reflection on children's learning and development, both as individuals and in groups, is regularly used to implement the program'.
41. The authorised officer indicated in the assessment and rating instrument that the service evaluates its program on both a daily and weekly basis through daily learning stories. The authorised officer noted that critical reflection takes place using a rating system and pre-planned broad questions, but that this was a recent introduction and some educators were unable to answer questions about it.
42. The final assessment and rating report concluded that 'educators critically reflect upon pre-formulated and arbitrary questions that are not linked to children's experiences'. The report refers to the authorised officer's note that the educational leader had suggested that sometimes questions used in reflections are not relevant.
43. The approved provider refuted the authorised officer's assertion that questions used in the service's critical reflection were arbitrary.
44. The approved provider mentioned many practices in support of its view that the service was meeting this element. However, the approved provider did not provide examples or evidence.
45. As for other elements under review, the Panel noted the general lack of evidence to support a finding.
46. The Panel agreed that pre-formulated critical reflections could be an acceptable practice. However, the Panel needed more information on how the pre-

formulated questions were used within the particular service, to suit the particular circumstances of the service.

47. The Panel concluded that there was insufficient evidence to make a positive finding that this element was met and so this element would therefore remain at 'not met'.

### **Standard 2.1**

48. Standard 2.1 is that:

'Each child's health is promoted'.

49. It is made up of four separate elements. Two elements were under review.

### *Element 2.1.2*

50. Element 2.1.2 requires:

'Each child's comfort is provided for and there are appropriate opportunities to meet each child's need for sleep, rest and relaxation'.

51. The authorised officer indicated in the assessment and rating instrument that children were left to rest on beds for an hour with only a few children who were awake during this time occupied with books. The instrument also contains a quote which is used to suggest that service staff force children to rest so that paperwork can be completed.
52. The final assessment and rating report concluded that routines are not flexible enough to meet individual's needs, that 'all children are required to rest on their beds for 30 minutes' and that 'children were restless and unsettled'. The regulatory authority's findings on first tier review concluded that this element was 'not met' on that basis.
53. The approved provider asserted that children were not forced to remain on their beds for 60 minutes, but that 60 minutes was allocated for rest time. The approved provider stated that children are able to access books of their own accord during this time.
54. The approved provider raised questions about the conclusion in the final report, drawn from the notes and the quote in the instrument, claiming that the notes in the instrument are not clear enough to support the authorised officer's conclusion. The approved provider stated that programming and planning is not completed during rest time.
55. The approved provider mentioned many practices, including the following, in support of its view that the service was meeting this element:
  - flexible sleep routines during which children are provided with quiet experiences or books if they do not wish to sleep with quiet play occurring after 60 minutes of rest, or less if required

- the provision of two hours off the floor each week for service staff to complete programming and planning tasks.
56. The Panel stated that it would like to have been provided with a copy of the service's sleep policy, noting that the approved provider had missed an opportunity to provide conclusive evidence to support its claims.
57. The Panel agreed that, while the conversation appears to have been given some weight, the authorised officer's observation that children were unsettled indicates that sleep practices are not flexible enough to meet the needs of each child. The Panel further agreed that although sleep routines may be flexible, 60 minutes is a long time for rest if children are restless. The Panel noted that contemporary views on sleep and rest indicate that children should not be required to rest with nothing to do for more than 30 minutes and referred to the previous decision on review STR0001, which dealt with this issue.
58. The Panel concluded that the service's sleep practices were not consistent with contemporary practice and that each child's need for sleep, rest and relaxation was not met. The Panel confirmed this element at 'not met'.

#### *Element 2.1.3*

59. Element 2.1.3 requires:
- 'Effective hygiene practices are promoted and implemented'.
60. The authorised officer's notes in the assessment and rating instrument indicated that the approved service had implemented effective hand washing and nappy cleaning practices. Photographic evidence of the service on the day of the assessment and rating visit supports this. However, the instrument also contains notes on a single observation of non-compliance in which an educator was observed watching children wash their hands without soap.
61. The final assessment and rating report noted the single observation of non-compliance, but rated the service at meeting this element despite the observation. The report also made mention of two buckets and mops being accessible in the 2 to 3 year olds' bathroom, but this was not taken into account when rating this element.
62. In its findings on first tier review, the Regulatory Authority cited the buckets and mops as a harm and hazard. The Regulatory Authority also cited the observation of non-compliance as a hygiene issue. The Regulatory Authority used these pieces of evidence to change the rating of the service for element 2.1.3 from 'met' to 'not met' at first tier review.
63. In its application for second tier review, the approved provider claimed that it was informed prior to the introduction of the NQF that it was acceptable to store the buckets and mops in the 2-3s bathroom 'as long as there was a clear sign above them stating that mops are stored there'.

64. The Panel agreed that the issue of the accessibility regarding the buckets and mops is more appropriately addressed under element 2.3.2. This could have been dealt with under the minor adjustments policy.
65. The Panel noted the single observation of non-compliance. The Panel concluded that too much weight was given to the single observation and that all other evidence indicated that the service had implemented and promoted effective hygiene practices.
66. The Panel decided to amend the rating for this element from 'not met' to 'met'.

### **Standard 3.2**

67. Standard 3.2 is that:  
    'The environment is inclusive, promotes competence, independent exploration and learning through play'.
68. It is made up of two separate elements. One element was under review.

#### *Element 3.2.1*

69. Element 3.2.1 requires:  
    'Outdoor and indoor spaces are designed and organised to engage every child in quality experiences in both built and natural environments'.
70. The final assessment and rating report recognises that some natural elements are available to some children at the service but states that 'no natural resources are available for children at all times'. This is supported by the authorised officer's notes in the assessment and rating instrument.
71. The final assessment and rating report also refers to the obstruction of traffic flow in some areas due to artworks being hung at low levels.
72. The regulatory authority states in its findings on first tier review that the low hanging artwork and lack of natural resources were the sole considerations in finding this element at 'not met'.
73. The approved provider rejected the regulatory authority's view that low hanging artworks impede traffic flow, as the level of the artwork is consistent with OH&S policies and appropriate to the height of the children.
74. The approved provider also stated that the service has 'two large square vegetable patches, numerous gardens, a tree, a worm farm, numerous bird baths, sand pit and water troughs'.
75. The Panel noted the low-hanging artwork and agreed that the photographic evidence did not show evidence of the artwork impeding access for children or educators. The Panel agreed that if the height of the artwork was truly an issue, this could have been dealt with under the minor adjustment policy without it impacting on the service's rating.
76. As to the natural environment, the Panel considered that the photographic evidence of the service on the day of the assessment and rating visit did not



support the approved provider's claims that the natural environment was sufficient to engage every child in quality experiences.

77. The Panel concluded that due to the minimal natural elements available in both the indoor and outdoor environments, this element would remain at 'not met'.

### **Standard 3.3**

78. Standard 3.3 is that:

'The service takes an active role in caring for its environment and contributes to a sustainable future'.

79. It is made up of two separate elements. Both elements were under review.

#### *Element 3.3.1*

80. Element 3.3.1 requires:

'Sustainable practices are embedded in service operations'.

81. The authorised officer notes that the service has a recycling bin in the 3-5s area, dual flush toilets, a worm farm and a vegie patch. Notes in the assessment and rating instrument also indicate that junk materials are reused and that there is evidence of a recycling exercise in children's portfolios.
82. The final assessment and rating report acknowledged the sustainable practices mentioned in the instrument but made reference to a conversation with an educator in which the educator advised the authorised officer that 'children did not participate in regular planned experiences that engaged them in appropriate sustainability practices'. There is no evidence of this conversation in the assessment and rating instrument or any other notes.
83. In its application for second tier review, the approved provider reiterated the evidence contained in both the final assessment and rating report and the assessment and rating instrument emphasising the approved provider's opinion that this evidence demonstrates that the service is in fact meeting this element.
84. The Panel considered the notion of 'embedded practice'. It agreed that the threshold is high and that services must be able to demonstrate children's understanding to satisfy the element.
85. The Panel agreed that on the photographic evidence of the service's outdoor environment it is difficult to see how the service could demonstrate that sustainability practices are embedded.
86. The Panel concluded that this element would remain at 'not met' as, while there was evidence that some consideration is given to sustainable practices, there was no evidence to indicate that sustainable practices were embedded in the service's operations.

### *Element 3.3.2*

87. Element 3.3.2 requires:  
    'Children are supported to become environmentally responsible and show respect for the environment'.
88. The authorised officer notes in the assessment and rating instrument that discussion occurs between educators and children regarding the seasons, that the children have participated in the 'hatch and grow' program where children observe ducks hatching and that children have an opportunity to experience gardening.
89. The final assessment and rating report acknowledged the sustainable practices mentioned in the Instrument that the service has implemented. However, it noted that 'ongoing and sustained exploration of environmental responsibility was not evident'.
90. The approved provider did not provide any further evidence on application for second tier review.
91. As for element 3.3.1, the Panel formed the view that the available evidence was not conclusive enough, or of sufficient depth, for the Panel to conclude that this element was met.
92. The Panel concluded that this element would remain at 'not met'.

### **Standard 4.2**

93. Standard 4.2 is that:  
    'Educators, co-ordinators and staff members are respectful and ethical'.
94. It is made up of three separate elements. One element was under review.

### *Element 4.2.1*

95. Element 4.2.1 requires:  
    'Professional standards guide practice, interactions and relationships'.
96. The authorised officer indicated in the assessment and rating instrument that educators can access a code of ethics and that grievance information is on display in the staff room.
97. The final assessment and rating report concluded that despite the fact that educators are able to access appropriate professional standards guidance, evidence that educators are familiar with the materials was not apparent. The report noted a conversation in which 'Educators said they do not refer to the EYLF support documents'. However, this conversation did not appear in the assessment and rating instrument.
98. In its findings on first tier review, the Regulatory Authority stated that the shorthand in the instrument beside the terms NQF and EYLF represented

discussions with educators in which they indicated that the NQF and EYLF were not used to guide practice.

99. In its application for second tier review, the approved provider disputed the Regulatory Authority's conclusion, stating that all of the relationships at the service are guided by professional standards
100. The approved provider claimed that the authorised officer was biased against resources it purchased from a generic source and that this weighed heavily against the Regulatory Authority's assessment of the service.
101. The Panel noted that providing access to professional standards is not enough to satisfy this element. The approved provider must be able to show evidence of professional standards in practice.
102. The Panel noted that whether the resources were purchased or not, professional practice needs to be evident across the services practice. Staff needed to have a comprehensive understanding of the practice. If the practice is embedded, then this could have been drawn out by the authorised officer in discussions with educators.
103. The Panel considered that there was not enough evidence to demonstrate how the service's professional standards documents were being translated into practice
104. The Panel concluded, based on the lack of positive evidence, that this element would remain at 'not met'.