



'Approved provider' and NSW Department of Education and Communities [2013] ACECQARRPstr0005 (21 November 2013)

Applicant:	'Approved provider'
Regulatory authority:	NSW Department of Education and Communities
Decision date:	21 November 2013
Application reference:	STR0005

Decision

The Ratings Review Panel (the Panel) by consensus has decided to confirm that elements 2.1.4 and 7.2.2 are assessed as 'not met'.

The Panel decided by consensus to confirm that the rating levels for standards 2.1 and 7.2 are 'Working Towards NQS'; As a result, the Panel has confirmed that the rating levels for Quality Areas 2 and 7 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 2, standard 2.1 (element 2.1.4)
 - Quality Area 7, standard 7.2 (element 7.2.2)
2. After the initial assessment, the service was rated as 'Working Towards' for standards 1.2, 2.1, 7.2 and 7.3. The approved provider applied for first tier review on the basis that the regulatory authority's assessment of some elements conflicted with its assessment of other elements.

Regulatory authority's view

3. At first tier review, the regulatory authority amended its assessment of Standards 1.2 and 7.3 from 'Working Towards' to 'Meeting NQS'. However, the ratings for Standards 2.1 and 7.2 remained at 'Working Towards'. All other ratings remained unchanged. Consequently, the amendments did not change the service's overall rating of 'Working Towards'.



Applicant's view

4. The approved provider claimed documentary evidence, available on the day of the assessment and rating visit, supporting a rating of 'Meeting' was not reviewed by the authorised officer.

Evidence before the panel

5. 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
 - evidence available 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.
6. The panel was also provided with advice from ACECQA on the elements, standards and Quality Areas under review.

The law

7. 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'.
8. 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* available on ACECQA's website.

The facts

9. The assessment and rating visit took place on 9 May 2013 .
10. The provider received the assessment and rating decision on 4 July 2013.
11. The provider applied for first tier review on 10 July 2013 and received a decision on 9 October 2013.
12. ACECQA received the application for second tier review on 18 October 2013.
13. The approved service is a centre- based long day care service.



Review of rating levels

14. The Panel considered each standard and element under review in turn.

Standard 2.1

15. Standard 2.1 is that:

Each child's health is promoted.

16. It is made up of four separate elements. One element is under review.

Element 2.1.4

17. Element 2.1.4 requires that:

Steps are taken to control the spread of infectious diseases and to manage injuries and illness, in accordance with recognised guidelines.

18. The authorised officer recorded evidence in the Assessment and Rating Instrument which suggests that the only member of staff with anaphylaxis/asthma management training (first aid) was a casual member of staff who is not in attendance at the service at all times that children are being cared for.

19. The regulatory authority stated in the Final Assessment and Rating Report that the service was in breach of regulation 136(1), because educators with first aid qualifications are not on the premises each day. This was the regulatory authority's main consideration in finding element 2.1.4 at 'not met'. The Regulatory authority did not consider the service's compliance with regulation 136(1) under any other standard.

20. The regulatory authority reasoned in its findings on first tier review that even though the service takes steps to control the spread of infectious diseases and to manage injuries and illness in accordance with recognised guidelines, compliance with regulation 136(1) is necessary for a service to be considered to meet element 2.1.4.

21. The approved provider claimed in its application for second tier review that educators were unable to be trained before the assessment and rating visit as there was a lack of training available in the area in which the service is located.

22. Furthermore, the approved provider stated that it 'had been actively engaged in trying to access places from different providers for more than a year [prior to the assessment and rating visit]'. The approved provider argued that this commitment should have been recognised and considered in the regulatory authority's assessment of the approved service against element 2.1.4.

23. The regulatory authority noted that, although the service had indicated educators would complete the required training by the end of July 2013, it was of the view



that at the time of the assessment and rating visit, the service had not taken appropriate steps to comply with regulation 136(1) 'despite having more than 12 months' notice of the requirements outlined' in the regulations.

24. The Panel noted ACECQA's advice on the consideration of regulation 136 against standard 2.1 concluding that the consideration of regulation 136 was appropriate under element 2.1.4 in light of that fact that it was not considered under Quality Area 4.
25. The Panel considered the approved provider's claim that it 'had been actively engaged in trying to access places from different [first aid training] providers for more than a year' but noted the availability of online anaphylaxis training, and the opportunity for the approved provider to apply for a waiver before the assessment and rating visit to temporarily address the service's compliance with regulation 136.
26. The Panel concluded that the approved provider had had an adequate opportunity to address the service's compliance with regulation 136 prior to the assessment and rating visit and as such, element 2.1.4 would remain at 'not met'.

Standard 7.2

27. Standard 7.2 is that:

There is a commitment to continuous improvement.

28. It is made up of three separate elements. One element is under review.

Element 7.2.2

29. Element 7.2.2 requires that:

The performance of educators, co-ordinators, and staff members is evaluated and individual development plans are in place to support performance improvement.

30. In the Assessment and Rating Instrument, the authorised officer recorded that conversations around areas that educators want to improve on are not documented. The authorised officer's notes also suggest that educators are not given formal appraisals.

31. The Final Assessment and Rating Report concluded that 'the service does not currently conduct a formal performance review of staff' and that 'conversations are held with educators around areas that may need improvement... although these are not documented. The report also states that 'although goals have been set with educators around the completion of their qualifications... goals are not set around professional performance for individual educators within their practice in the service'



32. The regulatory authority states in its findings on first tier review that 'individual plans to support performance improvement are not in place' but that the approved provider contends that objectives are set for the whole team of educators and regular in-services are conducted to update their knowledge.
33. The regulatory authority concluded that 'the absence of a process to regularly evaluate the performance of each educator and staff member means that opportunities to acknowledge personal achievements and to identify goals or areas of interest an individual might wish to pursue are lost'.
34. In its application for Second Tier Review, the approved provider rejected the regulatory authority's finding that the service does not identify special areas of interest, stating that staff are given every opportunity to attend every local in-service. The approved provider concedes that formal documentation does not exist to attest to the appraisal and evaluation of educators but that 'staff are long term employees... also friends and have become part of [the] family, one does not formally document appraisals of family or friends in this way'.
35. The Panel discussed whether there was a need for staff development plans to be formally recorded, concluding that whether this is necessary in an assessment of element 7.2.2 or not, there was no evidence of individual staff development plans, formally documented or otherwise. In reaching this conclusion, the Panel noted the approved provider's admission in its application for Second Tier Review that appraisals and evaluations of staff are not formally documented
36. The Panel concluded that documented staff development plans are required under this element. Subsequently, the Panel concluded that element 7.2.2 would remain at 'not met'.