



'Approved provider' and NSW Department of Education and Communities [2013] ACECQARRPstr0006 (10 December 2013)

Applicant:	'Approved provider'
Regulatory authority:	NSW Department of Education and Communities
Decision date:	10 December 2013
Application reference:	STR0006

Decision

The Ratings Review Panel (the Panel) by consensus decided to confirm the rating level for standards 2.1, 2.2, 2.3, 3.1 and 3.2 as 'Meeting NQS'. As a result, the Panel by consensus confirmed the rating level for Quality Areas 2 and 3 remain as 'Meeting NQS'.

The Panel confirmed the overall rating for the service remains as 'Exceeding NQS'.

Issues under review

1. The approved provider (the provider) sought a review on the grounds that the regulatory authority in making its determination, failed to take into account or give sufficient weight to special circumstances and facts existing at the time of the rating assessment (section 144(3)(b) Education and Care Services National Law (National Law)).
2. The provider sought a review of the following:
 - Quality Area 2, standards 2.1, 2.2 and 2.3
 - Quality Area 3, standards 3.1 and 3.2.
3. After the initial assessment, the service was rated as 'Exceeding NQS' for Quality Areas 1 and 4, and 'Meeting NQS' for Quality Areas 2, 3, 5, 6 and 7. As a result, the overall rating for the service was 'Meeting NQS'. The provider applied for first tier review.

Regulatory authority's view

4. At first tier review, the regulatory authority amended the rating level for standards 3.3, 5.1, 5.2, 6.2, 7.1 and 7.2 to 'Exceeding NQS'. The rating level for standards 2.1, 2.2, 2.3, 3.1, 3.2, 6.1 and 7.3 remained unchanged as 'Meeting NQS'. The rating level for standard 6.3 also remained unchanged as

‘Exceeding NQS’. As a result, the overall rating for the service was amended to ‘Exceeding NQS’.

Applicant’s view

5. The provider claimed in its application for second tier review that the assessing authorised officer (the assessor) did not consider all evidence available on the day of the assessment and rating visit. Specifically, that the assessor did not review relevant documents or ask sufficient questions of educators, a trainee staff member and parents to gather enough evidence to be able to determine an accurate rating.

Evidence before the panel

6. The Panel considered all the evidence submitted by the provider 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 the final Assessment and Rating Report
 - the regulatory authority’s findings at first tier review
 - the response from the provider to the regulatory authority’s submissions for second tier review, including the additional evidence submitted.
7. The Panel was also provided with advice from ACECQA on the elements, standards and Quality Areas under review.

The law

8. Section 151 of the 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.’
9. 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

10. The service is a stand-alone, centre-based preschool caring for children from 36 months to preschool age.
11. The assessment and rating visit at the service took place on 18 June 2013.
12. The provider received the assessment and rating decision on 5 August 2013.
13. The provider applied for first tier review on 20 August 2013 after being granted an extension by the regulatory authority. The regulatory authority made a decision on the review on 18 October 2013.

Review of rating levels

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

Standard 2.1

15. Standard 2.1 is that:
Each child's health is promoted.
16. The Panel noted that to achieve a rating of exceeding under this standard, it may expect to see evidence of the following:
 - each child's health needs are consistently supported, monitored and promoted
 - each child's comfort is provided for and there is a range of opportunities for both individuals and groups that effectively meet each child's need for sleep, rest and relaxation
 - effective hygiene practices are actively and consistently promoted and embedded in the everyday program
 - preventative steps are evident in controlling the incidence and spread of infectious diseases. In addition, the management of injuries and illness accords with recognised guidelines, and best practice regarding these issues is embedded in the everyday program.

17. The regulatory authority stated in its first tier review findings that the service demonstrates good practice in relation to standard 2.1. However, the regulatory authority concluded that it was unable to find sufficient evidence in the documents presented to support a rating of 'Exceeding NQS' for this standard. In particular, it stated that it was unable to identify preventative steps that are taken by the service such as monitoring outbreaks of infectious diseases and modifying service procedures accordingly.
18. In response to the regulatory authority's comments, the provider noted that there has never been an outbreak at the service. The provider also claimed that the regulatory authority did not consider evidence that demonstrates that the service is exceeding the standard. For example, the provider submitted a copy of a ministerial letter that illustrates that the service was concerned about an outbreak of whooping cough in its area. While the service was not directly affected, the provider wrote to members of parliament who in turn noted her concerns. The provider also claimed that the assessor failed to ask questions about the service's arrival procedure of placing a thermometer with a staff member at the foyer to assess that the child being signed in is fit and healthy.
19. The provider also claimed that her communications with a Member of Parliament in relation to concerns regarding immunisation of children demonstrates that the service is exceeding the standard.
20. The provider also claimed that on the day of the assessment and rating visit, the assessor was absent during the service's 'quiet time' because she was at lunch. The provider claimed that the assessor failed to ask questions about rest, sleep or relaxation and how the service views that it can occur at any time of the day. The provider states that the assessor failed to observe a number of different strategies that the service uses, both intentional and spontaneous, that demonstrate the service is exceeding the standard. For example, the provider claimed that relaxation on the day included spontaneous tai chi poses and a relaxation experience. The provider also claimed that toys, a soft lounge area and iPad experiences for a child with additional needs were also implemented but were not observed by the assessor.
21. The provider explained that it views caring for the environment and sustainability as rest and relaxation experiences. The provider submitted examples of its eco-experiences such as gardening and caring for living things as evidence that rest and relaxation can occur at any time of the day, and does not always include sleep. The provider claimed that children at the service

aged 3 to 5 years, would consider these experiences relaxing as opposed to being forced to sleep.

Panel's considerations

22. The Panel noted that for a service to demonstrate exceeding practice it would expect to see that 'each child's health needs are consistently supported, monitored and promoted'. The Panel agreed that while there was some evidence of the service supporting and promoting health needs, it was not satisfied that the provider adequately demonstrated that each child's health needs are monitored.
23. The Panel agreed with the regulatory authority's comments at first tier review that it was unable to identify preventative steps that are taken by the service such as monitoring outbreaks of infectious diseases and modifying service procedures accordingly.
24. The Panel also considered that while the provider's advocacy work with members of parliament was commendable, it did not establish that preventative steps are evident in controlling the incidence and spread of infectious diseases at the service. The Panel also noted that it was not necessary for the regulatory authority to refer to the ministerial letters submitted by the provider in the Assessment and Rating Report as it was not evidence of the service meeting or exceeding the standard.
25. The Panel acknowledged the provider's claim that there has not been an outbreak of an infectious disease at the service. However, it noted that irrespective of this, it would still expect to see systems / processes in place to control an incident and spread of an infectious disease if one was to affect the service.
26. Further, the Panel noted that the service's arrival procedure of taking a child's temperature as they are signed in appears to be an invasive practice and does not support a finding that the service has a policy in place to control incidences of infectious diseases.
27. The Panel discussed the approved provider's claim that the assessor was absent during particular times of the day, and noted that it was unreasonable to expect the assessor to observe, site or discuss every aspect of the service's operations. The Panel noted that the Assessment and Rating Report did

provide evidence of the authorised officer asking questions during the visit and sighting information relevant to rest and relaxation.

28. The Panel questioned whether gardening could appropriately be considered 'rest and relaxation'. The Panel noted that while the sustainable experiences offered by the service are commendable, it did not believe that gardening and caring for living things constitutes either 'rest and relaxation' or the provision of comfort.
29. The Panel noted that it was clear that the service was meeting standard 2.1. However, the Panel agreed that the information provided did not support a rating of 'Exceeding NQS' for standard 2.1.

Standard 2.2

30. Standard 2.2 is that:
Healthy eating and physical activity are embedded in the program for children.
31. The Panel noted that to achieve a rating of exceeding under this standard, it may expect to see evidence of the following:
 - food and drinks provided by the service are nutritious and appropriate for each child. Healthy eating is consistently and actively promoted and embedded in the everyday program
 - physical activity that builds on children's interests and development is embedded in all aspects of the program.
32. The regulatory authority stated in its first tier review findings that the service demonstrates good practice in relation to standard 2.2. However, the regulatory authority concluded that it was unable to find sufficient evidence in the documents presented to support a rating of 'Exceeding NQS' for this standard. For example, it notes that both the officer's instrument and the feedback submitted by the provider do not include examples of educators supporting spontaneous physical activity initiated by children.
33. The regulatory authority noted that healthy eating is promoted through the growing of vegetables at the service and food tasting experiences, and experiences such as visits from Healthy Harold and newsletter articles for families highlight the importance of healthy eating.

34. The regulatory authority further noted that a healthy eating and physical activity program is implemented at the service and children engage in a range of planned physical activities both indoors and outdoors such as dance and movement, obstacles courses, stomps and skipping.
35. In regards to the program, the provider submitted feedback to the regulatory authority on the draft Assessment and Rating Report that the assessor failed to mention that staff wear lanyards that encourage children to participate in spontaneous activity. In response to this comment, the assessor noted that she did not refer to this in the Report as she did not observe educators using the lanyards.
36. The provider claims that photos on the service's program board and in its photo album, available on the day of the assessment and rating visit, demonstrate spontaneous physical activity of children at the service. The provider cites the skipping rope experience being changed by children into a 'limbo'/raise the rope activity.
37. The provider claims that the assessor spent less than half an hour outdoors, and as a result was unable to observe children requesting and participating in experiences, such as spontaneous race activities initiated by children.
38. The provider submitted a copy of the service's January/February 2013 Newsletter, attaching a healthy lunchboxes fact sheet and extracts of its 'Nut Free Food' policy.

Panel's considerations

39. The Panel noted that, for the service to demonstrate exceeding practice, it is a requirement that physical activity is embedded in all aspects of the program.
40. The Panel was concerned at the regulatory authority's comments at first tier review that there was a lack of spontaneous activity at the service. The Panel also noted that the Assessment and Rating Instrument suggests that the assessor only observed adult led experiences as opposed to child initiated activities.
41. The Panel noted that the information submitted by the provider suggests that it has a strong focus on physical activity occurring outdoors, and has not

provided any information regarding physical activity that occurs indoors. The Panel agreed that gross and fine motor skill development can occur indoors as well as outdoors, and this was not addressed by the provider in her submissions.

42. The Panel noted that it was unclear how the lanyards referred to by the provider relate to spontaneous activities occurring at the service. The Panel also noted that the assessor's comment that she did not observe the lanyards being used would suggest that this is not embedded in the service's program.
43. The Panel questioned whether there was sufficient evidence in the information submitted by the regulatory authority and the provider to demonstrate that the service is meeting element 2.2.2. The Panel noted that the information reviewed suggests that the service does not necessarily have a flexible and adaptive approach, which is required to meet the standard.
44. The Panel noted that it was open to it to determine that element 2.2.2 was not met, and if it was to make such a finding the rating for the service would be amended to 'Working Towards NQS'. The Panel agreed that while it had concerns as to whether the service was meeting element 2.2.2, it was willing to accept the assessor's statement and the regulatory authority's findings at first tier review that the service was meeting the element.
45. The Panel agreed that the information provided did not support a rating of 'Exceeding NQS' for standard 2.2 and confirmed the rating is 'Meeting NQS'.

Standard 2.3

46. Standard 2.3 is that:
Each child is protected.
47. The Panel noted that to achieve a rating of exceeding under this standard, it may expect to see evidence of the following:
 - children are effectively supervised at all times and educators are attuned to the needs of all children to ensure each child's safety and wellbeing.
 - effective steps are taken to identify and manage risks and the precautions taken to protect children from hazards and harm reflect best practice.
 - plans to effectively manage incidents and emergencies are developed and reviewed in consultation with relevant authorities. Strategies are regularly practised and implemented effectively.

- educators, co-ordinators and staff members understand their roles and responsibilities in accordance with relevant child protection legislation and they actively raise family and community awareness of child protection issues.
48. The regulatory authority stated in its first tier review findings that the service demonstrates good practice in relation to standard 2.3. However, the regulatory authority concluded that it was unable to find sufficient evidence in the documents presented to support a rating of 'Exceeding NQS' for this standard.
49. The regulatory authority claims that the provider did not submit information that indicates that supervision practices are regularly reviewed and adapted in response to the needs of individual children, or the activities planned in the program.
50. The regulatory authority stated that it was unable to determine whether analysis of incidents and risk assessments occur to determine the effectiveness of procedures, and whether any adaptations to practice result from these reviews. The regulatory authority also stated that it was unable to determine whether each rehearsal of emergency procedures is evaluated and whether any adaptations to practice are made to improve effectiveness.
51. While recognising that educators are trained and well prepared to respond to every child at risk of abuse and neglect, the regulatory authority noted that the service did not demonstrate that it actively raises family and community awareness of child protection issues. The regulatory authority acknowledged that the provider actively advocates for the safety and wellbeing of children. However, it states that it was not evident that strategies are in place to promote awareness in the community about child protection and preventative measures.
52. In response to the regulatory authority's comment that the service did not demonstrate that it actively raises family and community awareness of child protection issues, the provider submitted that the service engages in both family and community awareness. In regard to family awareness, the provider stated that mandatory reporting is raised with parents firstly on the enrolment form, and then periodically in Parent Newsletters. The provider submitted an extract of the service's enrolment form and Newsletter in support of this claim. In regards to community awareness, the provider advised that this occurs as

the need arises. The provider gives the example of another Childcare Centre going into receivership and subsequent correspondence that was written to members of parliament raising concerns regarding the conditions at the service.

53. In relation to emergency drills conducted at the service, the provider submitted that it is its procedure to conduct drills on different days with different staff taking the lead so that all stakeholders are up to date on the drill/procedure. The provider claims that if an issue arises from the evaluation of the drill, these issues will be added to the staff meeting/discussions. The provider also claims that all staff recently (before the assessment and rating visit), received fire drill training by a registered provider. The provider submitted copies of completed evaluation procedure checklists in support of its claims.
54. In response to the comments made by the regulatory authority regarding the absence of information around regular review of supervision practices, the provider claims that the regulatory authority failed to record that 'supervision issues' are accounted for and analysed during weekly program, staff and mentoring meetings. The provider submitted meeting minutes and a copy of the service's weekly program sheet and evaluation sheet, and contents of the relevant notice board as displayed on the day of the assessment and rating visit. The provider claims that the high teacher to child ratio and qualifications of staff contribute to the service's exceeding commitment to supervision.

Panel's considerations

55. The Panel noted that to demonstrate exceeding practice it would expect to see a range of ways that the service communicates child protection issues to families that go beyond the enrolment form and periodic Parent Newsletters. That is, it would expect a service keep families informed on a regular basis and actively create awareness. In regards to community awareness, the Panel noted that for a service to demonstrate exceeding practice it would expect a proactive approach to raising community awareness, as opposed to a reactive approach.
56. The Panel noted the provider's advocacy work for children at another Childcare Centre, and agreed that it was not relevant to whether each child is protected at the service. In particular, it did not demonstrate that the service actively creates awareness amongst its own families. The Panel noted that advocacy, while commendable, is not the same as community awareness.

57. The Panel noted the provider ensured that staff received adequate training around the service's fire evacuation plan. However, the Panel noted the absence of any information regarding the development of the service's plan and how it was endorsed by relevant authorities. The Panel also noted that while practising the plan was important, it was also necessary to ensure that feedback was received regarding the effectiveness of the plan and that risks were appropriately evaluated.
58. The Panel discussed that to demonstrate exceeding practice supervision must be effective at all times. The Panel also noted that high staff to child ratios do not indicate that the service has exceeding supervision practices. Effective supervision is about planning for supervision and evaluating that planning. The Panel noted that while it was good practice to identify supervision issues on the program evaluation sheet, the information submitted by the approved provider did not reflect supervision practices. In particular, the Panel noted that supervision techniques such as 'positioning', 'scanning' and 'listening' were not referred to in the documentation.
59. The Panel also noted that there was no reference to whether the service uses a supervision plan or whether the service engages in a regular review of supervision practices.
60. The Panel agreed that the information provided did not support a rating of 'Exceeding NQS' for standard 2.3 and confirmed the rating is 'Meeting NQS'.

Standard 3.1

61. Standard 3.1 is that:

The design and location of the premises is appropriate for the operation of a service.
62. The Panel noted that to achieve a rating of exceeding under this standard, it may expect to see evidence of the following:
 - all outdoor and indoor spaces, buildings, furniture, equipment, facilities and resources provide a stimulating learning and care environment for children
 - all premises, furniture and equipment are safe, clean and well maintained and enhance the learning environment for children
 - facilities are designed or adapted to ensure active participation by every child in the service and promote flexible use and interaction between indoor and outdoor space at all times.

63. The regulatory authority stated in its first tier review findings that the service demonstrates good practice in relation to standard 3.1. However, the regulatory authority concluded that it was unable to find sufficient evidence in the documents presented to support a rating of 'Exceeding NQS' for this standard.
64. The regulatory authority noted that photographs taken by the officer during the visit show that the environment is arranged in an inviting manner, although there is limited opportunity for challenging physical activity for older children.
65. The regulatory authority notes that processes are in place to ensure the premises, furniture and equipment are safe, clean and well maintained. In addition, the provider states that there are schedules for cleaning tasks and spot checks are performed regularly and then followed up with a discussion at staff meeting to guide improvement in practice.
66. The regulatory authority noted that strategies are needed to promote interactions between indoor and outdoor spaces at all times. While it acknowledged that the service has made some attempts to bring the outdoors inside, it states that children are not physically able to move freely between these areas.
67. The provider claims that the regulatory authority failed to take into account photographs that were available on the day of the assessment and rating visit. The provider also claims that the regulatory authority failed to consider that, as there had not been any accidents at the service, the premises must be exceedingly well maintained.
68. The provider stated that the service's current staffing arrangements make it difficult to provide a simultaneous indoor and outdoor program. As a result, the service has indoor time and outdoor time allocated separately. The provider stated that it has times of intentional, spontaneous, individual, small and large group experiences, mealtimes, routines, toileting, quiet/rest/relaxation and others.
69. The provider claims that the regulatory authority failed to give sufficient weight to the fact that the service operates in a small context. The provider also stated that the regulatory authority failed to consider its staff arrangements, in particular, its policy that trainees do not take the responsibility of taking a group on their own without a supervising staff member in attendance whether indoors

or outdoors. The provider claims that this is a consequence of operating in a small licensed setting. The provider further stated that unless the service was to hire an additional staff member it is not feasible to allow indoor and outdoor activities to occur at the same time. The provider noted that they were rated as 'Exceeding NQS' for Quality Area 4 demonstrating the service's already high staff to child ratio.

70. The provider stated that the service has a natural outdoor creative environment permanently indoors. The provider submitted photographs of this area.

Panel's considerations

71. The Panel noted the regulatory authority's comments at first tier review that children are not able to move freely between indoor and outdoor spaces. The Panel noted the approved provider's claims that the service's staffing arrangements and its small size were the rationale behind this limitation. However, the Panel agreed that this should not be a reason to restrict flexible use and interaction between indoor and outdoor space. The Panel noted that the provider's attempt to bring the outdoors indoors by creating a natural creative environment permanently indoors and agreed that this was not an adequate substitute for outdoor play.
72. The Panel noted that element 3.1.3 requires that 'facilities are designed or adapted to ensure access and participation by every child in the service and to allow flexible use, and interaction between indoor and outdoor space'.
73. The Panel agreed that the information submitted by the provider would suggest that the service has a restrictive, rather than flexible approach to indoor and outdoor play.
74. The Panel disagreed with the provider's claim that the absence of any accidents at the service demonstrates that the premises must be exceedingly well maintained. The Panel agreed that this was not evidence of the service's design and environment, and noted that a number of other conclusions could be drawn from the absence of accidents, such as possible lack of challenging physical activity.
75. The Panel noted the provider's claims that the small number of children and staff at the service prevented it from providing a simultaneous indoor and outdoor program. The Panel disagreed and confirmed that achieving a flexible

use and interaction between indoor and outdoor space is a requirement for a high rating.

76. The Panel discussed whether the information submitted by the provider and the regulatory authority demonstrates that the service has met element 3.1.3. The Panel noted that it was open to it to determine that this element was not met, and if it was to make such a finding the rating for the service would be amended to 'Working Towards NQS'. The Panel agreed that while it had concerns as to whether the service was meeting element 3.1.3, it was willing to accept the assessor's statement and the regulatory authority's findings at first tier review that the service is meeting the element.
77. The Panel agreed that the information provided did not support a rating of 'Exceeding NQS' for standard 3.1 and confirmed the rating is 'Meeting NQS'.

Standard 3.2

78. Standard 3.2 is that:

The environment is inclusive, promotes competence, independent exploration and learning through play.

79. The Panel noted that to achieve a rating of exceeding under this standard, it may expect to see evidence of the following:
- outdoor and indoor spaces are designed and effectively organised to engage every child in quality experiences involving the built and natural environments. The spaces provide the flexibility to respond to children's individual needs, development, self-initiated play and exploration
 - resources, materials and equipment are sufficient in number, organised in ways that extend every child's participation in the program and are consistently used in numerous ways.
80. The regulatory authority stated in its first tier review findings that the service demonstrates good practice in relation to standard 3.2. However, the regulatory authority concluded that it was unable to find sufficient evidence in the documents presented to support a rating of 'Exceeding NQS' for this standard. For example, the regulatory authority noted that evidence is required to demonstrate that the environment is effectively organised and adapted to respond to children's individual needs, development, self-initiated play and exploration.

81. The regulatory authority also noted that while the officer has stated in the final report that there is some flexibility and adjustments are made to cater for children's varying interests, the statement was not supported by information recorded within the Assessment and Rating Instrument, or in the provider's feedback.
82. The provider claims that the service's extensive range of resources, materials and equipment exceeds most centres.
83. The provider submitted copies of program sheets used on the day of the assessment and rating visit, which it claims demonstrates that children's interests are considered as part of the service's planning cycle. The provider also submitted individual and group experiences / observation sheets.
84. The provider claims each child is observed and evaluated fortnightly based on the interests, family, friends, culture, abilities and developing competencies, as submitted on the observation sheets. The provider claims that each week the room is organised according to the child's varying interests, development, self-initiated play and exploration with both intentional and spontaneous experiences. The provider cites the example of children being interested in stick/leaf creatures and asking about whether they are born with segments. To respond, the educator used an iPad to 'Google' information about the insects. The provider claims that based on such learnings, the room is organised e.g. books, puzzle area, writing centre, home/lifestyle corner, dough table, cognitive table, art/craft experience, which are self-directed or group exploration. The provider claims that the assessor did not question the room set up.
85. The provider states that the room and environment is also enhanced for visitors to tell Indigenous stories to the children at the service, by changing the set-up of the room to accommodate a yarnning circle and gum tree branches. The provider claims that these intentional teaching experiences enhance and exceed the usual built and natural environments by bringing in extra important indigenous experiences into the services designed for children's learning and prove that the service's 'fixed' environment can be changed anytime to enhance and answer children's exploratory, inquisitive and natural learning imagination.
86. The provider further claims that a number of its short term and long term projects and daily emails should also form part of the consideration for element 3.2.1, as they teach children kindness and empathy.

Panel's considerations

87. The Panel noted the regulatory authority concerns at first tier review that there was a lack of evidence to support the statement that some flexibility and adjustments are made to cater for children's varying interests.
88. The Panel agreed that projects that teach children kindness and empathy were not relevant to determining the rating level for element 3.2.1, and were more appropriately considered under Quality Area 1.
89. The Panel considered the examples provided by the regulatory authority in the Assessment and Rating Report, and concluded that the information did not demonstrate flexibility to respond to children's individual needs, development, self-initiated play and exploration. The Panel was also unable to find that resources, materials and equipment are consistently used in numerous ways. The Panel noted that regulatory authority's comments at first tier review demonstrate some flexibility, but that the statements do not appear to be supported by the Assessment and Rating Instrument.
90. The Panel noted the requirement under this standard to again allow flexibility in the use of space and suggested that the provider needs to respond to the service's current challenges regarding its outdoor/indoor arrangement to achieve a higher rating.
91. The Panel agreed that the information provided did not support a rating of 'Exceeding NQS' for standard 3.2 and confirmed the rating is 'Meeting NQS'.

Other considerations

92. The Panel considered the provider's claim that it operates in a small context. The Panel agreed that regardless of the small size of the service, the focus must be on the education and care program implemented at the service.