



## **'Approved provider' and NSW Department of Education and Communities [2014] ACECQARRPstr0010 (21 May 2014)**

<b>Applicant:</b>	'Approved provider'
<b>Regulatory authority:</b>	NSW Department of Education and Communities
<b>Decision date:</b>	21 May 2014
<b>Application reference:</b>	STR0010

### **Decision**

The Ratings Review Panel (the Panel) by consensus decided to confirm that the assessment of elements 1.1.3, 1.1.6, 1.2.1 and 1.2.3 remain at 'not met'.

As a result, the Panel by consensus confirmed the rating for standards 1.1 and 1.2 remain at 'Working Towards NQS'.

The Panel confirmed that the overall rating for the service remains at 'Working Towards NQS'.

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### **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 existing or 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 1, standard 1.1 (elements 1.1.3 and 1.1.6), standard 1.2 (elements 1.2.1 and 1.2.3).
3. After the initial assessment, the service was rated at 'Working Towards NQS' for standards 1.1 and 1.2. The provider applied for first tier review.

### **First tier review**

4. At first tier review, the regulatory authority amended one element but confirmed the initial ratings for all of the other standards under review. Therefore, elements 1.1.3, 1.1.6, 1.2.1 and 1.2.3 remained at 'not met'.

### **Applicant's view**

5. The provider states in its application for second tier review that it believes the assessing authorised officer did not consider all evidence available on the day



of the assessment and rating visit. In particular, the provider claims that the regulatory authority failed to take into account the electronic planning evidence available on the day of the visit.

### **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 (draft Report)
  - the Assessment and Rating Instrument (the Instrument) and the final Assessment and Rating Report (final Report)
  - the regulatory authority's findings at first tier review
  - the regulatory authority's submissions for second tier review, including the service's compliance history
  - the response from the provider to the regulatory authority's submissions for second tier review.
  
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 centre-based long day care service caring for children from birth to school age. This service is approved for a maximum of 80 places in total.
  
11. The assessment and rating visit at the service took place on 20 and 21 November 2013.
  
12. The final Assessment and Rating Report was sent to the provider on 20 December 2013.
  
13. The provider applied for first tier review on 31 December 2013. The regulatory authority made its decision on the review on 17 March 2014.



## Review of rating levels

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

### Standard 1.1

15. Standard 1.1 is that:  
'An approved learning framework informs the development of a curriculum that enhances each child's learning and development'.
16. It is made up of six separate elements, two of which are under review.

### Element 1.1.3

17. Element 1.1.3 requires that:  
'The program, including routines, is organised in ways that maximise opportunities for each child's learning'.

### Evidence before the Panel

18. The Final Assessment and Rating Report noted that 'routine opportunities were utilised to support relationships'. The authorised officer noted that the program is organised with 'large periods of free play' in some rooms, but other rooms have 'periods of free and structured play'.
19. The authorised officer noted that there were 'large, structured groups in each room'. During the large group music session, children in the 0-2 room were 'taken back to the music group when they tried to leave'. Children in the 2-3 room were required to take part in the group music session. During this session, 'two children refused and distracted the others. The educators persisted with the group'.
20. The Final Assessment and Rating Report states that 'aspects of the program provide opportunities for children's learning'. The Report contains examples such as 'large periods of unstructured free play and individual routines' to support this.
21. However, the report states that 'at times throughout the service routine, the children are required to take part in large structured group experiences'. Examples from the instrument are extended upon in the report, particularly when, in the 2-3 room 'a couple of children became distracted and refused to join the group and began to run around in the book area. Other children became distracted and the educator spent a considerable period of time attempting to regather the children and control their behaviour'.



22. Further, the report also states that 'children were required to line up in two straight lines before entering their classroom, having to wait for all peers to be ready before being able to progress through the routine'.
23. The regulatory authority noted the approved provider's claims that children are aware of routines and are forewarned of changes; and that this provides a sense of security and responsibility for children. The regulatory authority also acknowledged the approved provider's comments that it is normal practice to allow children to move away from large group experiences if they wish. However, the approved provider noted that, on the day of the visit, educators brought children back to the group because 'the educators thought that the assessor needed to see all the children in the group [experience]'. Moreover, the approved provider commented that children are usually interested and engaged in the large group experiences and sometimes play on the perimeter of the group. The regulatory authority's findings concluded that, while there were large periods of unstructured play and children are able to revisit activities, some of the routines and transitional routines and intentional group times did not maximise learning for each child.
24. The approved provider notes that, although the authorised officer commented that children are 'required' to participate in the musical experience in both the 0-2 and 2-3 year old rooms, staff instead believe children should be 'encouraged, guided, assisted and supported' to participate in the planned music program before choosing to disengage if preferred. The approved provider states that 'it is safer to have the majority of children involved [in the musical experience] if possible as the room is tidied'. Further, the approved provider states that children in both age groups are 'regularly exposed to stimulating musical experiences for intentional teaching purposes as well as spontaneous experiences'.
25. The approved provider also states that children in both the 3 and 4 year old rooms are encouraged to 'wait at the door' during transitions from outside to inside. The approved provider claims that this aids supervision of the 3 year old group, and forms part of the service's transition to school routine for the 4 year old group. The approved provider states that the service has 'actually been praised by many of [its] feeder schools in relation to how well prepared [the] 4-5 year olds are for school'.

#### Panel's considerations

26. The Panel discussed the approved provider's claims that it is normal practice to allow children to move away from large group experiences if they wish, but educators brought children back to the group because 'the educators thought the assessor needed to see all the children in the group [experience]'. The Panel agreed that a service should not change its practices on the day of the assessment rating visit to meet perceived ideas about an assessor's



expectations, as this provides an inaccurate portrayal of daily practice at the service.

27. The Panel discussed whether the routines are organised in ways that maximise opportunities for each child's learning. In particular, the Panel discussed whether educators bringing children back to group activities that they had chosen to disengage from maximised opportunities for each child's learning.
28. The Panel noted that element 1.1.3 requires learning opportunities for each child to be maximised throughout the program. The Panel noted that they could not see evidence of this element extending further than the routines.
29. The Panel noted that element 1.1.3 requires learning opportunities to be maximised for each child, and while this was the case for some children, there was evidence to suggest that this was not the case for each child as some children were not engaged in the program, and learning opportunities were missed.
30. The Panel agreed that, based on the evidence provided, it was unable to find that the program, including routines, is organised in ways that maximise opportunities for each child's learning. Subsequently, the panel confirmed that element 1.1.3 remains as 'not met'.

#### *Element 1.1.6*

31. Element 1.1.6 requires that:  
'Each child's agency is promoted, enabling them to make choices and decisions and influence events and their world'

#### Evidence before the Panel

32. The authorised officer noted in the Assessment and Rating Instrument two children from the 2-3 year old room who had left the music group were invited back by an educator. However 'they refused and instead began to run around the room'. In addition, the authorised officer noted that children from three of the rooms in the centre joined together for a prayer and worship time. Educators sat with the children, most of whom participated. However, 'a number of children were engaged in their own conversation, and were gathered by the educator to take part in the experience'.
33. The Final Assessment and Rating Report states that 'children are provided with extended periods of free play across the service', and that 'educators consult children when preparing environments and allow them to select resources directly from the storeroom'.



34. Further evidence in the report indicates that, in the 0-2 room, children enthusiastically participated in the initial stages of the large-group music group. However, 'as the group went on, a number of children became disengaged and attempted to leave the area. An educator intervened, collected the children and took them back to the group'.
35. The authorised officer also recorded evidence in the report that, in one room, children were 'encouraged to pack away resources, leaving them with no options for play' prior to the large group experiences. Furthermore, 'all children were required to join in on group experiences'.
36. In the 4-5 year old room, the authorised officer stated that 'children are transitioned to structured group experiences held in three smaller groups, based on literacy, music and craft'. An educator selected which children would participate in each group, and a child who requested to go with a specific educator was sent to a different educator's group.
37. The authorised officer noted that the routine for children in the 4-5 room, including transitions between these structured group experiences, is in excess of 4 hours, 'providing them with limited opportunities to make choices and decisions about their world and learning environment'.
38. At first tier review, the regulatory authority noted the approved provider's comments on the draft Assessment and Rating Report, which described the three rotating groups within the 4-5 year old room, where individuals are separated 'for the purpose of behaviour management and broadening their social circles'.
39. The regulatory authority noted that 'children are encouraged to select their own resources, children can choose resources from the storeroom [and] they are encouraged to manage their food'.
40. The regulatory authority noted that, as all activities and resources are completely packed away before group time, there are no alternate activities available for any children who may not wish to participate in group time.
41. The regulatory authority concluded in its findings on first tier review that 'children do not have a choice during the large group experiences and have no choice about the group they join... [This] can last for up to four hours per day'.
42. The approved provider comments in her application for second tier review that the authorised officer noted that, in the 4-5 year old room, children had no freedom of choice between 11am and 3pm. However the approved provider states that the authorised officer only observed this room for half an hour, and that the decision to mark this element as not met was therefore a 'generalisation and the outcome was not based on an informed observation'.



43. Further, the approved provider claims that educators discussed the choice of activities with children prior to the start of the 11am session. The approved provider states that these activities were based on children's interests, and children were able to engage in each activity for 20-25mins before being rotated on to the next activity. The approved provider states that, 'each time a group rotates, the activities are left out for the children to return to after group'.
44. The regulatory authority stated within its submission for second tier review that 'each child attending the service is at some point in their routine required to stop what they have chosen to engage in and comply with the directions given by the educators and participate in large group experiences that are educator directed and guided. Children's protests both physically and verbally at having to participate were ignored with educators moving children back to where they would like them and by limiting their opportunity to access resources or materials in other areas'.

#### Panel consideration

45. The Panel discussed the approved provider's claims that the regulatory authority's decision for this element was based on observations captured in one room for half an hour, rather than for the full four hours scheduled for this aspect of the program. The Panel concluded that it is not possible to spend four hours observing one aspect of a service during an assessment and rating visit, and that the approved provider had other opportunities to provide evidence of how children's agency is promoted within this aspect of the program.
46. The Panel noted that element 1.1.6 requires that *each child's agency* is promoted. However, the Panel commented that, while the approved provider stated that children could choose activities before they occur, the children did not appear to be able to go to where they had chosen because the activities were adult-led and controlled.
47. The Panel noted that evidence of children protesting physically and verbally against being forced to participate in aspects of the program indicated that each child's agency was not being promoted.
48. The Panel agreed that, based on the evidence provided, it was unable to find that each child's agency is promoted, enabling them to make choices and decisions and influence events and their world. Therefore, the Panel determined element 1.1.6 remains as 'not met'.

#### Standard 1.2





49. Standard 1.2 is that:  
'Educators and co-ordinators are focused, active and reflective in designing and delivering the program for each child'.
50. It is made up of three separate elements, two of which are under review.

#### *Element 1.2.1*

51. Element 1.2.1 requires that:  
'Each child's learning and development is assessed as part of an ongoing cycle of planning, documenting and evaluation'.

#### Evidence before the Panel

52. In the Final Assessment and Rating Report the authorised officer noted that 'each child is assigned a specific educator who is responsible for observing and documenting children's learning and development'.
53. The report notes that each child has a portfolio which contains anecdotal observations, photos and work samples. The authorised officer reviewed a number of these portfolios during the visit and found that observations link learning to the five learning outcomes of the EYLF and to other linked teaching goals and objectives. However the authorised officer noted that, 'documented observations for some children are group based, with little focus on their individual learning or interests'.
54. The authorised officer comments that 'opportunities and possibilities to further extend learning are often documented and at times followed up by further reflection'. However, the authorised officer states that 'links were not evident on the daily program to indicate that further plans based on children's observations are included and extended upon during future plans'.
55. The report also states that 'the development of goals is often generic, with minimal focus of developing the individual child.' Goals identified were broad and provided 'limited insight into the individual child and the learning and skills the educators are hoping to promote'.
56. At first tier review, the regulatory authority noted that there are focus groups for each educator who observes and documents the learning for those children in individual portfolios. However it was noted that 'there is evidence of group goals, a number of generic goals, but a noticeable lack of planning for individuals', showing limited evaluation and forward planning for individual children.
57. In addition, the regulatory authority noted the approved provider's comments on the draft Assessment and Rating Report that 'the room leader was not





given the opportunity to show the links in the program as the assessor spoke only to the educational leader'.

58. At first tier review, the regulatory authority also considered the service's QIP which describes the use of written observations, work samples and photos to assess and evaluate each child's progress. However, the regulatory authority noted that the approved provider had not provided any further evidence or documentation to support these claims.
59. The approved provider notes in her application for second tier review that 'the assessor and myself did not even begin to discuss the program until the very last half an hour of day two'.
60. In addition, the approved provider states that the authorised officer failed to take into consideration the electronic planning program that the service uses in addition to evidence from the room displays and portfolios. Examples of observations recorded using this program were submitted by the approved provider providing evidence at second tier review.

#### Panel's considerations

61. The Panel discussed the approved provider's claims in its submission to second tier review that the authorised officer failed to take into consideration the electronic planning program used by the service. The Panel noted that the examples contained in the electronic planning program were mainly focused on group outcomes rather than planning for individual children and therefore did not provide evidence that 'each child's learning and development is assessed as part of an ongoing cycle of planning, documenting and evaluation'.
62. The Panel also noted that the service is no longer using the electronic program to support children's learning and development.
63. The Panel noted that there was insufficient evidence of how the service integrates observations into an ongoing cycle of planning, documenting and evaluation.
64. In addition, the Panel agreed that there was insufficient evidence available to demonstrate how *each child's* learning and development is supported.
65. The Panel concluded that it was unable to find sufficient evidence in the documents presented to amend the assessment of element 1.2.1 and that for this reason, the element remains as 'not met'.

#### *Element 1.2.3*



66. Element 1.2.3 requires that:  
'Critical reflection on children's learning and development, both as individuals and in groups, is regularly used to implement the program'.

#### Evidence before the Panel

67. In the Final Assessment and Rating Report the authorised officer notes that 'extensions and reflections on children's individual learning are not consistent' and that 'links to programs are not evident to suggest that the follow up learning is implemented and further assessment of goals is ongoing'.
68. Further, evidence in the report indicates that, although there is some reflection on environments and teaching strategies in staff meetings, no evidence was sighted during the visit to 'indicate that these reflections occur or how they support the program or children's continuing development'.
69. The regulatory authority reasoned in its findings at first tier review that, although educators reflect on the daily program at the end of each day and in meetings, reflections on children's individual learning do not occur consistently.
70. The regulatory authority acknowledged the approved provider's first tier review comments that 'educators use professional judgement to record evaluation and reflection in various ways, and that room meetings occur with a focus on NQF and EYLF'. However, the regulatory authority concluded that reflections focus on improving the service as a whole and groups of children but not for individual children.
71. The approved provider notes in her application for second tier review that 'staff are given many opportunities to formally and informally reflect on intentional teaching moments and spontaneous experiences and how children engaged in these for the benefit of their development – this information is then used to extend the program'.
72. The approved provider states that 'all 20 staff are allocated 1 hour programming time to record information, develop portfolios and critically reflect upon and further develop the program'. The approved provider states that the service 'did not meet this standard due to the lack of time taken to clearly review all evidence available from a variety of sources available'.

#### Panel's considerations

73. The Panel discussed the approved provider's claims that staff have multiple opportunities to reflect on children's learning and development. The Panel noted that the approved provider had not provided sufficient evidence to support this statement.



74. In addition, the Panel noted the approved provider's comments within its submission for second tier review about the 'lack of time taken [during the visit] to review evidence' for this element. The Panel suggested that there had been other opportunities since the visit for the approved provider to submit additional evidence for consideration but this had not occurred.
75. The Panel agreed that there was insufficient evidence available to demonstrate how critical reflection on individual children's learning and development is regularly used to implement the program and as such, the Panel agreed that element 1.2.3 remains as 'not met'.

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### **Decision**

The Ratings Review Panel (the Panel) by consensus decided to confirm that the assessment of elements 1.1.3, 1.1.6, 1.2.1 and 1.2.3 remain at 'not met'.

As a result, the Panel by consensus confirmed the rating for standards 1.1 and 1.2 remain at 'Working Towards NQS'.

The Panel confirmed that the overall rating for the service remains at 'Working Towards NQS'.

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