



'Approved provider' and NSW Department of Education and Communities [2014] ACECQARRP STR0013 (9 September 2014)

Applicant: 'Approved Provider'

Regulatory authority: NSW Department of Education and Communities

Decision date: 9 September 2014

Application reference: STR0013

Decision

The Ratings Review Panel (the Panel) by consensus decided to confirm the assessment of elements 2.1.4 and 2.3.3 remain at 'not met'.

As a result, the Panel by consensus confirmed the rating for standards 2.1 and 2.3 remain at 'Working Towards NQS'.

The Panel confirmed that the overall rating for the service remains at 'Working Towards 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 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 2, standard 2.1 (element 2.1.4) and standard 2.3 (element 2.3.3).
3. After the initial assessment, the service was rated as 'Working Towards NQS' for standards 2.1, 2.3 and 4.1. The provider applied for first tier review.

First tier review

4. At first tier review, the regulatory authority amended the rating for standard 4.1 to 'Meeting NQS', and confirmed the ratings for standards 2.1 and 2.3 as



'Working Towards NQS'. As a result, the service's overall rating remained unchanged as 'Working Towards NQS'.

Applicant's view

5. The provider states in its application for second tier review that it believes the assessing authorised officer (the assessor) should have considered minor adjustments in its assessment of elements 2.1.4 and 2.3.3. The provider claims that there were immediate fixable issues identified for both these elements.

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
 - 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
 - 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 and standards under review.

The law

8. Section 151 of the National Law states that following a first tier 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 long day care caring for children from birth to preschool age. This service is approved for a maximum of 43 places in total.
11. The assessment and rating visit at the service took place on 22 and 23 January 2014.



12. The regulatory authority advised that the final Assessment and Rating Report was sent to the provider on 18 February 2014.
13. The provider applied for first tier review. The regulatory authority made its decision on the review on 8 July 2014, and advised the provider of its decision on 11 July 2014.

Review of rating levels

Standard 2.1

14. Standard 2.1 is that:
'Each child's health is promoted'.
15. It is made up of four separate elements, one of which is under review.

Element 2.1.4

16. Element 2.1.4 requires: Steps are taken to control the spread of infectious diseases and to manage injuries and illness, in accordance with recognised guidelines.
17. In the final Report, the regulatory authority states that it reviewed the service's rosters, which showed that there were times where there were no educators in attendance with an asthma and anaphylaxis qualification. It was noted that this is a breach of Regulation 136(1)(b)(c), which requires that when children are being cared for, at least one educator who has undertaken current approved asthma and anaphylaxis training must be in attendance at all times.
18. In its application for second tier review, the provider acknowledged that there was a half an hour gap at closing, and a one and a half hour gap at the beginning of the day where there were no educators present at the service with current asthma and anaphylaxis qualifications. However, the provider states that this was addressed and resolved immediately after notification from the regulatory authority.
19. The provider advised that a decision has been made, and a policy drafted, that all educators employed by the service must have current and up to date first aid, asthma and anaphylaxis qualifications, and that this will be a permanent and on-going requirement of employment with the service.
20. The Panel noted that the provider submitted information to demonstrate that the rosters have been amended to ensure there is always an educator present who holds asthma and anaphylaxis qualifications. The Panel acknowledged that the provider is not disputing that there was previously a period of non-compliance.



21. The Panel noted that the rating of a service is a point in time assessment. Therefore, in determining a judgment for this element, only evidence that was available at the time of the assessment and rating should be considered. The Panel acknowledged that there may be circumstances when the regulatory authority gives an approved provider the opportunity to make minor adjustments to rectify any matters identified during the rating assessment. The Panel noted that a minor adjustment was not offered by the assessor for this element.
22. The Panel noted that the assessor had recorded that there were no children in attendance with a diagnosis of asthma or anaphylaxis. The Panel agreed that the regulation applied irrespective of whether there was a known diagnosis, and noted that an undiagnosed child could still have an adverse reaction that could be potentially life threatening. The Panel emphasised that the regulation must be complied with 'at all times'.
23. The Panel noted that regulation 136 is listed on the Assessment and Rating Instrument as a regulation relevant to Quality Area 4. Nevertheless, it is reasonable to consider compliance with regulation 136 under element 2.1.4, as is indicated by the Guide to the National Quality Standard. The Panel noted that it would not be appropriate for the regulatory authority to consider compliance with regulation 136 under both Quality Areas 2 and 4. However, as the regulatory authority has not considered non-compliance with regulation 136 under Quality Area 4, it is therefore open to the Panel to consider the issue under element 2.1.4.
24. The Panel noted the provider's claims that it is now compliant with regulation 136. The Panel further noted that the provider may wish to seek a reassessment of this element by the regulatory authority under section 139 of the National Law, noting that during a reassessment, the regulatory authority may take into account changes that have happened at the services since the assessment and rating whereas the Panel is unable to do so.
25. The Panel agreed that the assessment of element 2.1.4 remains at 'not met'.

Standard 2.3

26. Standard 2.3 is that:
Each child is protected.
27. It is made up of four separate elements, one of which is under review.

Element 2.3.3



28. Element 2.3.3 requires: Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.
29. In its first tier review findings, the regulatory authority noted non-compliance in relation to the practice of emergency procedures, as there was no evidence that rehearsals were conducted during the period April to October 2013. Similarly, the regulatory authority noted that although the service has a lockdown procedure, it was not evident that this had been rehearsed.
30. In its application for second tier review, the provider states that educators informed the assessor verbally about evacuation drills that were carried out at the service between May and September, however it was unable to find any completed documentation by the responsible educator. The provider advised that upon investigating this issue, it was established that the educator in charge did not record the rehearsal using the service's dedicated logbook.
31. The Panel noted that the provider advised that the service's documentation process has been revised and improved, with the introduction of checks and auditing tools to maintain consistency and quality of documentation.
32. The Panel again noted that the rating of a service is a point in time assessment. However, the Panel also noted that the provider was offered a minor adjustment on 23 January 2014 in relation to the service's emergency plans. However, the regulatory authority concluded that the further information received from the provider was not sufficient to demonstrate compliance.
33. The Panel concluded that, based on the available information, it did not consider that plans to effectively manage incidents and emergencies at the service were developed in consultation with relevant authorities, and were practised and implemented as required, at the time of the assessment and rating.
34. The Panel agreed that the assessment of element 2.3.3 remains at 'not met'.
35. The Panel made note of the provider's concerns that the assessor's hand writing in the Assessment and Rating Instrument is very difficult to read, which made it challenging for the provider to address the comments made. The Panel noted this was a fair comment and requested that the Regulatory Authority take on this feedback.

Decision

The Panel by consensus decided to confirm the assessment of elements 2.1.4 and 2.3.3 remain at 'not met'.



As a result, the Panel by consensus confirmed the rating for standards 2.1 and 2.3 remain at 'Working Towards NQS'.

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