



## **'Approved provider' and NSW Department of Education and Communities [2014] ACECQARRP STR0014 (15 October 2014)**

**Applicant:** 'Approved Provider'

**Regulatory authority:** NSW Department of Education and Communities

**Decision date:** 15 October 2014

**Application reference:** STR0014

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### **Decision**

The Ratings Review Panel (the Panel) by consensus decided to confirm that the assessment of elements 1.1.2, 1.1.3, 1.2.1 and 1.2.2 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:
  - did not appropriately apply the prescribed processes for determining a rating level (section 144(3)(a) Education and Care Services National Law (National Law)), and
  - failed to take into account or give sufficient weight to special circumstances 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 1.1.2 and 1.1.3) and standard 1.2 (elements 1.2.1 and 1.2.3).
3. After the initial assessment, the service was rated as 'Working Towards NQS' for standards 1.1, 1.2, 2.3, 7.1, 7.2 and 7.3. The provider applied for first tier



review of standards 1.1, 1.2 and 2.3.

### **First tier review**

4. At first tier review, the regulatory authority amended elements 1.1.1 and 1.2.2 from 'not met' to 'met'. However, these changes at element level did not impact the ratings at standard level, so ratings for standards 1.1, 1.2 and 2.3 were confirmed at 'Working Towards NQS'. The service's overall rating remained unchanged as 'Working Towards NQS'.
5. The first tier review was not completed within the legislated 30 day timeframe. The regulatory authority issued a letter to the approved provider on 7 May 2014, advising that there would be 'some delay in finalising the rating review'.
6. The regulatory authority did not request further information or seek to extend the timeframe, meaning the prescribed processes for completing a first tier review were not applied.

### **Applicant's view**

7. The provider states in its application for second tier review that it believes the assessing authorised officer (the assessor) failed to take account of special circumstances existing at the time of the visit, and that the assessor failed to give sufficient weight to evidence available at the time of the assessment, particularly in relation to standards 1.1 and 1.2. The provider also claims that the assessor failed to gather available evidence as the assessor did not ask questions or request additional documentation relating to standards 1.1 and 1.2.

### **Evidence before the panel**

8. 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.
9. The Panel was also provided with advice from ACECQA on the elements and standards under review.



## The law

10. 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.
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 available on ACECQA's website.

## The facts

12. The service is a stand-alone, centre-based long day care caring for children from 36 months to preschool age. The service is approved for a maximum of 29 places in total.
13. The assessment and rating visit at the service took place on 2 December 2013.
14. The regulatory authority advised that the final Assessment and Rating Report was sent to the provider on 11 February 2014. The provider applied for first tier review. The regulatory authority made its decision on the review on 6 July 2014, and advised the provider of its decision on 6 August 2014.

## Review of rating levels

### 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. Standard 1.1 is made up of six separate elements, two of which are under review.

#### *Element 1.1.2*

17. Element 1.1.2 requires that: Each child's current knowledge, ideas, culture, abilities and interests are the foundation of the program.
18. The Final Assessment and Rating Report states that educators seek information on children's interests, routine, health needs and cultural background during the enrolment process and through verbal conversations



with families and children. The report also states that there is evidence that some cultural experiences are included in the program, for example there are displays of flags of different countries and words in different languages, children are learning a Japanese song and the service has arranged for an external program to attend the service to teach the children Italian. The report also mentions 'some cultural resources are available'.

19. The report states the program sometimes draws upon children's current knowledge, ideas, culture, abilities and interests, but planning for individual children is mainly focused on their skills and abilities, with minimal evidence that information about the children's family, culture and community is used to inform the program.
20. The regulatory authority stated in its first tier review findings that the provider submitted information describing how on a child's first day, the service gathers information about the child's family, cultural background, celebrations, and religious beliefs to ensure each child's family is respected and catered for within the program. The approved provider's submission also describes the service's connections with the local community.
21. The regulatory authority stated in its first tier review findings that the panel acknowledged the service's connections with the local community, but the information submitted did not support how the service includes each child's current knowledge, ideas, culture and interests in the foundation of the program. The panel also noted that there was limited evidence describing how educators include the information gathered from families to ensure children's current knowledge, ideas, culture and interests are the foundation of each child's program.
22. In its application for second tier review, the provider states that programming for each child and group is different, is designed for individuals, comes from the children, and takes into account each child's individual needs, including those with additional needs. The provider states that each child's current knowledge, ideas, culture, abilities and interests are the foundation of the program.
23. The provider argues that the service's communication with families and children is mostly verbal, and suits families and children well. The provider responds to paragraph 14 of the first tier review findings, by claiming that if the authorised officer had asked questions of educators, she would have found evidence of the inclusion of information about the children's family, culture and community within the children's program.

#### *Panel's considerations*



24. The Panel noted descriptions available in the instrument and evidence provided by the approved provider at second tier review suggested that the service has started to bring the children's experience into the program. However, the Panel was not convinced that 'each' child's experience is used as a foundation of the program.
25. The Panel noted the evidence provided by the approved provider at second tier review did not support the claims that the programming for each child and group is different.
26. The Panel agreed that, based on the evidence provided, it was unable to find that each child's current knowledge, ideas, culture, abilities and interests are the foundation of the program. Therefore, element 1.1.2 remains at 'not met'.

*Element 1.1.3*

27. Element 1.1.3 requires that: The program, including routines, is organised in ways that maximise opportunities for each child's learning.
28. The Final Assessment and Rating Report states routine times are smooth and children know what is expected of them. A pictorial display of the daily routine is available for children, and educators discuss changes to the routine with children and provide appropriate notice to children prior to pack away time.
29. The report states that although there is some opportunity for free play, the documented daily routine includes three group times across the day, and children are required to move from group to group, limiting time and opportunities for sustained play and exploration beyond the educators directed activities for the group time sessions. For example, in one room, children were provided a small container of rice to bury and find items, a small container of stones to do the same, and a magnet activity. In the computer room, children had access to computers, puzzles or magnets.
30. The regulatory authority acknowledged that on the day of the Assessment and Rating visit the service was conducting an orientation morning for new children and families enrolling in 2014 and some changes had been made to the children's daily routine to accommodate this.
31. The regulatory authority's findings concluded that there was limited evidence in the officer's Assessment and Rating instrument and information supplied by the approved provider regarding element 1.1.3. As such, the regulatory authority was unable to find evidence to determine that the element was met.



32. The regulatory authority suggested in its findings that helpful evidence may have included such information as, educators minimising the times during which children are expected to do the same thing at the same time, and evidence that demonstrates that children may participate collaboratively in everyday routines and events.
33. In its application for first tier review, the approved provider refutes the claims made by the authorised officer in the final assessment and rating report, that routines and grouping during morning activities limit opportunities for sustained play and exploration. The approved provider states that the children have many opportunities for free play activities. For example, if a child would like to continue an activity later, the activity can be left, kept on the no touch shelf or the activity can be revisited later. The approved provider also writes that the decision to divide the larger group of 29 children into three was done to address physical constraints (of the environment) and what happens during these small group times depends on the children within the group.
34. The approved provider also responded to comments in the final assessment and rating report that educators provide children with set activities during group time. The approved provider argues that the choice of all of the activities was deliberate, and based on educators deep knowledge of the children in each group. The approved provider asserts that the authorised officer would have understood this if she has asked any questions about the activities or group time arrangements.
35. The provider states that on the day of the visit, the service was hosting an orientation morning for new children and families due to start in 2014, and the last family member did not leave until 11.15am. The provider states that the authorised officer observed practice only until 12.30pm, so had limited opportunity to view the service's typical practice.
36. The provider argues that the regular routine includes play based experiences, planned for individual children and dedicated small groups. The provider states that these planned group sessions typically last one to one and a half hours and are not structured teaching times. The provider states that the activities offered on the day of the visit were based on educators' knowledge of the children but the authorised officer did not ask any questions during the visit about why particular activities were provided.
37. Further, the approved provider states that transition times and routines on a normal day are designed to allow children to have input, to reduce waiting and to maximise opportunities for sustained play and exploration. For example, children might choose a song to sing, or a game to play, during transitions from bathroom to eating instead of all waiting to use the bathroom.



*Panel's considerations*

38. The Panel acknowledged the approved provider's claims that the service's hosting of an orientation morning for children on the day of the assessment did not allow the authorised officer to gain a true insight into the regular operation of the service. The Panel acknowledged that this could result in a service's practice looking slightly different.
39. However, the Panel noted that the evidence collected by the authorised officer of the service's general operations included evidence of structured times for particular activities and children being unable to initiate activities. The Panel considered that this suggests that under usual circumstances the service does not maximise routines to enhance children's learning.
40. The Panel discussed whether it is suitable for any child to have such a heavily structured day. The Panel acknowledged the service's strong routines, and the reasons behind these, however the Panel decided this was no reason to eliminate flexibility. The Panel agreed that it was not developmentally appropriate for children of the observed age group to have inflexible routines.
41. The Panel agreed that, based on the evidence provided, it was unable to find that the service organised routines to maximise opportunities for children's learning. Therefore, element 1.1.3 remains as 'not met'.

**Standard 1.2**

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

*Element 1.2.1*

44. 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.
45. In the Final Assessment and Rating Report, the authorised officer noted that the program consists of notes in each educator's folder that includes activities for individual children. A brief evaluation is included on the program and a separate evaluation jotting is recorded for each child.



46. The authorised officer also noted that the approved provider completes term overviews which identify each child's strengths and what they need to work on. She then records the date when this has been followed up for each child.
47. The authorised officer concluded that consistent and clear links were not evident between observations, planning and evaluation to demonstrate an ongoing cycle and each child's learning and development.
48. At first tier review, the regulatory authority noted the approved provider's comments in its feedback to the draft assessment and rating report that all programs have links between the observations, planning and evaluations to demonstrate an ongoing cycle of planning for each child's learning and development.
49. In addition, the regulatory authority noted that no additional evidence was submitted by the approved provider as part of the first tier review application for element 1.2.1.
50. The regulatory authority noted and agreed with the conclusions in the final assessment and rating report, that consistent and clear links were not evident between observations, planning, and evaluation to demonstrate an ongoing cycle of each child's learning and development.
51. The approved provider notes in her application for second tier review that program documentation, including planning, evaluations and reflections, exist for each child and for groups of children.
52. The approved provider submitted some examples of recorded programs and evaluations for groups and individuals as evidence at second tier review.

*Panel's considerations*

53. The Panel discussed the approved provider's evidence at second tier review.
54. The Panel noted the approved provider documented for children and groups of children but agreed that there was no clear connection to a broader program. The Panel agreed that an ongoing cycle of planning, documentation and evaluation was absent from the service's submission.
55. The Panel also noted the lack of planning or documentation of learning through play and the absence of collaborative, reflective practice. In addition, the Panel agreed that there was no evidence of intentional teaching.
56. The Panel noted the service could seek out resources that support reflective thinking.



57. The Panel concluded that it was unable to find sufficient evidence in the documents presented to amend element 1.2.1. Therefore, the element remains as 'not met'.

*Element 1.2.3*

58. 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.
59. In the Final Assessment and Rating Report the authorised officer wrote that some reflection on children's learning is evident within observation and evaluation jottings, and some reflection on group experiences is recorded, for example a sequencing experience. The authorised officer noted that the approved provider advised that they conduct a group overview of the program to determine where it needs to go to plan for the following term.
60. The regulatory authority reasoned in its findings at first tier review that, although some reflection on children's individual and group experiences is recorded within observations and evaluation jottings, and the service conducts an overall review of the program to determine where it needs to go to plan for the following term, this is not sufficient practice to determine that the element has been met.
61. The approved provider notes in her application for second tier review that critical reflection is evident in the sample of program evaluations from 2013. The approved provider submitted examples of recorded programs and evaluations for groups and individuals as evidence at second tier review.

*Panel's considerations*

62. The Panel noted that the lack of evidence made this element challenging to assess. In particular, there was no evidence about evaluative practice and or critical reflection for either the program or the curriculum.
63. The Panel discussed the service's curriculum and agreed that it appeared similar for all children. The Panel also noted that the examples of evaluation did not extend to whether the service's practice is responsive to children or whether it enhances learning. The Panel agreed that overall there was a lack of evidence about holistic practices.
64. The Panel agreed that there was insufficient evidence available to demonstrate how critical reflection of 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 'not met'.



## Further considerations

65. The Panel discussed the time taken to conduct the first tier review and noted the service's frustrations. The Panel noted that, although it did not seem to be a critical issue for the evidence before it in this review, an evaluation of evidence so far after the fact could prove difficult for a Panel to assess.
66. The Panel noted that it could not instruct the Regulatory Authority as to how it carries out its first tier review functions. However, the panel also noted that, as evidence gets older, it detracts from the rating being an accurate reflection of the service.
67. The Panel discussed the issue raised by the approved provider that not enough questions were asked on the day of the visit. The Panel noted that asking more questions would not necessarily have provided more relevant evidence.

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## Decision

The Ratings Review Panel (the Panel) by consensus decided to confirm that the assessment of elements 1.1.2, 1.1.3, 1.2.1 and 1.2.2 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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