



'Approved provider' and NSW Department of Education and Communities, [2015] ACECQARRPstr0019 (8 December 2015)

APPLICANT: 'Approved provider'

REGULATORY AUTHORITY: NSW Department of Education and Communities

Date of Decision: 8 December 2015

Application reference: STR0019

Decision

The Ratings Review Panel (the Panel) by consensus decided to confirm the rating level for element 7.2.2 as not met. As a result, the Panel confirmed the rating level for standard 7.2 is Working Towards NQS. The Panel confirmed the rating level for Quality Area 7 is Working Towards NQS, and the service's overall rating remains 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 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 element 7.2.2.
3. After the initial assessment, the service was rated Meeting NQS for Quality Areas 2, 3, 4, 5 and 6, and Working Towards NQS for Quality Areas 1 and 7.
4. The provider applied for first tier review of Quality Areas 1 and 7.

Regulatory authority's view

5. At first tier review, the regulatory authority amended element 1.1.4 from not met to met, changing its original rating of standard 1.1 to Meeting NQS. Therefore, the service's rating for Quality Area 1 was amended to Meeting NQS. However, it confirmed its original decision that element 7.2.2 was not met and so standard 7.2 remained Working Towards NQS. Quality Area 7 remained unchanged at Working Towards NQS. The service's overall rating remained unchanged at Working Towards NQS.
6. In its response to the second tier review submission, the regulatory authority notes that it complied with requirements set out in the Children (Education and



Care Services National Law Application) Act 2010 and regulations 63 and 64 of the Education and Care Services National Regulations for what a regulatory authority needs to consider when assessing approved education and care services and determining a rating. The regulatory authority notes that submissions made by the provider to the draft Assessment and Rating report outlining circumstances and facts existing at the time of the rating assessment were considered by the authorised officers in determining a final rating.

Applicant's view

7. The provider states in its application for second tier review that it believes there were special circumstances existing at the time of the assessment and rating visit that meant the service was not able to demonstrate its regular level of quality. In particular, the performance review of a key staff member had not occurred as required by the service's policy because the staff member had been having health problems. The approved provider also claims that the authorised officer did not consider all evidence offered by the service and available on the day of the assessment and rating visit. For example, the service's director, who is responsible for conducting performance reviews, was not present at the service during the Assessment and Rating visit, and the authorised officer declined to contact her. The provider also suggested during the visit that the nominated supervisor perform an appraisal of another staff member, but the authorised officer rejected the idea.

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, including statements for each standard and evidence provided by educators
 - the Assessment and Rating Instrument and the final Assessment and Rating Report
 - the application for first tier review and its attachments
 - the regulatory authority's findings at first tier review
 - the provider's response to the regulatory authority's submissions.
9. The Panel was also provided with advice from ACECQA on the element under review.

The law

10. Section 151 of the National Law states that following a review, the Ratings Review Panel may:
 - (a) confirm the rating levels determined by the Regulatory Authority; or
 - (b) amend the rating levels.



Timeframes

11. Approved providers must apply for second tier review within 14 days of receiving their first tier review decision notice (section 145 of the National Law). The approved provider in this case applied just after 1am on day 15, meaning they applied one hour after the legislated 14 day application period.
12. The Panel noted the application was received just after 1am on day 15, meaning the service applied one hour after the legislated 14 day application period. The Panel accepted the application as valid on the basis that the provider clearly intended to make an application within the application period and the legislation would not intend to deny the service access to a review.

Review of rating levels

13. The Panel considered standard 7.2.

Standard 7.2

14. Standard 7.2:
There is a commitment to continuous improvement
15. Standard 7.2 is made up of three elements, one of which is under review.

Element 7.2.2

16. Element 7.2.2 is that:
The performance of educators, co-ordinators and staff members is evaluated and individual development plans are in place to support performance improvement
17. The Panel noted that for this element to be met, it may expect to see evidence of the following:
 - how the service's performance review cycle contributes to planning for learning and further development
 - how the effort, contribution and achievement of educators, co-ordinators and staff members is acknowledged and celebrated
 - processes to ensure each educator, co-ordinator and staff member receives ongoing feedback about their performance
 - how performance processes identify strengths and areas for development, and how these are addressed
 - The authorised officer may sight:
 - documented position descriptions for educators, co-ordinators and staff members that:
 - clearly outline the responsibilities of the position
 - clearly explain the approved provider's expectations



- are used as the basis for monitoring and reviewing educators', co-ordinators' and staff members' performance
- evidence of participation by educators, co-ordinators and staff members in professional development activities to update their knowledge and skills
- evidence that performance reviews for all educators, co-ordinators and staff members are conducted regularly and include a process for reviewing and updating professional development plans based on an evaluation of their professional strengths, interests and goals.

Regulatory authority's view

18. The final Assessment and Rating Report provides a number of examples of the service's practice against element 7.2.2 including:
 - The performance of educators, co-ordinators and staff members is sometimes evaluated.
 - Permanent educators complete a yearly 'preparation for appraisal' form that asks them what did they perform best in, what part of your job have you performed less well and what can be done to improve your performance?
 - The approved provider organises some professional development and encourages educators at the service to participate. For example, a child protection course has been promoted at the service.
19. The Final Report notes that the service did not meet this element because:
 - While the approved provider has developed an operations manual that describes a staff review and appraisal process, educators at the service have not participated in this process.
 - While the employee handbook promotes a staff appraisal scheme, there is no evidence of individual appraisals being conducted for educators at the service.
 - A process of assessing educators' 'preparation for appraisal' form is not followed by a documented performance review or to develop individual goals for educators at the service.
 - Plans have not been developed and reviewed for individual educators based on their professional strengths, interests and goals.
20. The Final Report notes that the approved provider submitted additional information after receiving the draft report, that the additional information had been assessed and added into the report but did not contribute to a higher rating for the standard.
21. In its decision at first tier review, the regulatory authority noted that information submitted by the provider and in the Final Report did not identify how



educators at the service participate in the review and appraisals process or how performance review or individual goal development is documented.

Further, the regulatory authority noted that no evidence was submitted of appraisals or reviews for any educators at the service.

22. The regulatory authority notes in its submission that the provider applied for first tier review on the grounds that it had received a rating of Meeting NQS for standard 7.2 for another service that had the same information for Quality Area 7 as this service.

Applicant's view

23. In its application at first tier review, the provider noted that 'we only currently have one permanent staff member [nominated supervisor] at the service. Her review is due next February as her first appraisal was on the 16th February this year'.
24. The provider noted that staff meet with management each fortnight to discuss service, staff or individual needs and about how the service and staff are performing, and minutes of these meetings are taken.
25. The provider advises that its policy is to review staff performance initially after 3 months, and then on a yearly basis.
26. The provider notes that the nominated supervisor and co-ordinator for the service has been employed since the start of term 1 2015 and her 3 month review was to be in May 2015, as per the service's policy. However, there were special circumstances that meant the nominated supervisor/co-ordinator's review had been delayed because of health issues she had been having.
27. A co-ordinator from another of the provider's services attends the service one day a week to gain experience running a smaller service. The provider submitted this staff member's appraisal.
28. The provider submitted templates it uses for staff appraisals, supervisor meeting minutes, policies and its staff handbook as feedback to the assessment and rating report.
29. In response to the regulatory authority's submission that the service 'could not provide evidence of any past appraisals for previous staff members', the provider notes that it was only asked to provide review and appraisal documents for her current nominated supervisor. She also notes that she was



not aware of being asked to provide past appraisals, which she could have provided.

30. The provider provided evidence of a previous nominated supervisor's performance appraisal.
31. The service has one permanent staff member, the nominated supervisor, as well as another staff member who works regularly. Other staff members are casually employed. The current nominated supervisor's performance meeting minutes were provided. The provider notes these show evaluation of the current nominated supervisor's performance.
32. Meeting minutes held between the provider and the supervisor were provided. The provider notes these include information to support staff performance improvement.

Panel's consideration

33. The Panel noted the information and evidence provided by the regulatory authority and the provider to the second tier review.
34. The Panel discussed the provider's contention at first tier review that the same information was provided under element 7.2.2 at another of its services which contributed to a determination of met. The Panel noted that this did not necessarily mean the element would be met in the service in question, as the policies and procedures were not necessarily implemented in the same way. The Panel noted its role was to determine the rating level for the service under review.
35. The Panel discussed that in the staff review and appraisal policy provided there was no differentiation between review and appraisal for casual and permanent staff and questioned whether the service was following its policy for all staff members.
36. The Panel noted that the service should review and appraise all staff to ensure its practice was consistent with its policy.
37. The Panel noted that the submissions indicate that performance is sometimes being evaluated. The Panel noted that there are not performance appraisals for all staff.
38. The Panel noted that while it accepted that there were special circumstances which resulted in the service's permanent staff member's review not being completed in May, the assessment and rating visit occurred in late July. The Panel noted that there was time to either complete the review, or to have evidence of having reviewed the performance of other staff.



39. The Panel discussed that regardless of whether there were special circumstances, the submissions from the provider did not demonstrate practice that would be meeting the element.
40. The Panel noted that a staff appraisal of a staff member who works at the service once a week was included. The Panel noted that this review was completed in July 2014 but no new review or evidence of lead up to the next annual review was submitted by the provider.
41. The Panel noted the provider's concerns it was not asked for certain documents at the assessment and rating visit. The Panel noted the provider had the opportunity to supply these documents at second tier review and that ACECQA had requested all relevant documents from the provider for the Panel to consider. The Panel noted that it can only deliberate on documents that are available.
42. The Panel noted that element 7.2.2 requires performance evaluation and individual development plans being in place to support performance improvement. The Panel noted that submissions from the provider for its current supervisor did not show evidence of individual development plans to support development or improve performance, which are required to meet this element.
43. The Panel noted that some submissions provided as evidence of performance evaluation, including meeting minutes and disciplinary meeting minutes, were either directive or included functional information, such as cleaning duties, and did not support performance improvement. The Panel noted that supporting performance improvement is a requirement to meet this element.
44. The Panel discussed that, while the majority of educators are casual, it would expect to see all educators taking part in some level of appraisal. The Panel noted there should be performance improvement discussions with educators which could be documented to show evidence of evaluation and support for individual development. The Panel noted that it is beneficial for both the individual staff member and the service to have professional development plans in place to encourage continuous improvement.
45. The Panel noted that performance reviews for all staff is an essential part of continuous growth and improvement.
46. The Panel by consensus confirmed the rating level for 7.2.2, that the element is not met.

Decision

The Ratings Review Panel (the Panel) by consensus decided to confirm the rating level for element 7.2.2 as not met. As a result, the Panel confirmed the rating level for standard 7.2 is Working Towards NQS. The Panel confirmed the rating level for



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Quality Area 7 is Working Towards NQS, and the service's overall rating remains Working Towards NQS.