

Ratings Review Decision Notice

Panel members: [REDACTED] (Chair)

[REDACTED]

[REDACTED]

Panel date: [REDACTED] 2021

Applicant:

[REDACTED]

[REDACTED] on behalf of [REDACTED]

[REDACTED]

Regulatory Authority: Education Standards Board SA

Decision:

The Ratings Review Panel, by consensus, decided to confirm the rating for Element 4.1.2 as Not Met. The overall quality ratings for the service remains at Working Towards National Quality Standard.

Issues

1. The Approved Provider (the provider) sought a review of the ratings for the above Element on the grounds that the Regulatory Authority:

145(3)(a): did not appropriately apply the prescribed process for determining a rating level; or

145(3)(b): failed to take into account or give sufficient weight to special circumstances existing or facts existing at the time of the rating assessment

Overview

2. After initial assessment, the draft report recorded the service's rating as Working Towards NQS, as Element 4.1.2 and 6.2.2 were not met. Following the service's feedback on the draft report, Element 6.2.2 was amended to met, but Element 4.1.2 remained not met. The overall rating of the service remained Working Towards NQS.
3. No further changes were made at first tier review.
4. At second tier review, the provider sought to have the outstanding Element 4.1.2 amended to met, which would result in the overall rating for the service being amended from Working Towards NQS to Meeting NQS. The service's current ratings are set out below, with areas under review in red text:

Quality Area 1: Meeting NQS

Quality Area 2: Meeting NQS

Quality Area 3: Meeting NQS

Quality Area 4: Working Towards NQS

Standard 4.1: Working Towards NQS

Element 4.1.2 not met

Standard 4.2: Meeting NQS

Quality Area 5: Meeting NQS

Quality Area 6: Meeting NQS

Quality Area 7: Meeting NQS

Evidence before the panel

5. The panel considered all the evidence submitted by the provider and the regulatory authority. This included the:
 - application for second tier review, its attachments and further submissions from the provider

- assessment and rating instruments and the final assessment and rating report
- service's feedback to the draft report
- application for first tier review and its attachments
- the regulatory authority's findings at first tier review
- the regulatory authority's submission to second tier review.

The law

6. Section 151(1) of the *Education and Care Services National Law Act 2020* (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'

The facts

7. [REDACTED] is a long day care service with [REDACTED] approved places. The service is based in [REDACTED] SA.
8. The assessment and rating visit took place on [REDACTED] [REDACTED] 2020.
9. The provider received the draft report on [REDACTED] 2020, with a draft rating of Working Towards NQS. The provider supplied feedback on [REDACTED] 2020.
10. The provider received the final report on [REDACTED] 2021. Element 6.2.2 was amended to met, however the overall rating remained Working Towards NQS as Element 4.1.2 was assessed as not met.
11. The provider applied for first tier review by the regulatory authority on [REDACTED] 2021. The regulatory authority declined to make any changes to ratings. The rating following first tier review remained Working Towards NQS. The provider received the first tier review decision on [REDACTED] 2021.
12. The provider applied for second tier review on [REDACTED] 2021.

General submissions by the provider at second tier review

13. The provider's submissions at second tier review raised the following issues:
 - (a) The provider accepts that the first tier review was not conducted by any person who was involved in the assessment and rating, however a person involved in the first tier review had been involved in a licencing issue in relation to the service in 2019. The service alleges that tensions that arose around the licensing issue resulted in bias.
 - (b) The provider believed that the first tier review panel did not consider all the evidence and alleges that evidence was omitted.

- (c) The provider believed that evidence of a [REDACTED], about which the provider claims they were not informed, was part of the justification for the not met rating for Element 4.1.2. However, the provider also submits that the service summary shows that the [REDACTED] was considered low priority and the matter was closed by the regulatory authority. The provider argued that they never had an opportunity to respond [REDACTED], and that if it was resolved and considered low priority by the regulatory authority, it should not have been the basis for a not met rating for Element 4.1.2.

Items for review by Ratings Review Panel at second tier review

Standard 4.1

14. Standard 4.1 is:

Staffing arrangements enhance children's learning and development

15. Element 4.1.2 is:

Every effort is made for children to experience continuity of educators at the service

Standard 4.1: Assessment and rating

16. The regulatory authority initially assessed the service as Working Towards NQS in relation to Standard 4.1, as Element 4.1.2 was not met.
17. In evidence collected by the authorised officer on the day of the assessment and rating visit, the following is set out in relation to Element 4.1.2:

"When asked if staff are interviewed (is exit data collected?), [REDACTED] said - When educators leave, not fitting in with philosophy. If have positive attitude to work we'll work with them. Hasn't been level of commitment. Have had to performance manage people out. Notify families. Consistent routine, program maintaining.

Agency staff where need to but have a pool of relief of educators.

COVID challenges for staffing.

[REDACTED] - Recruitment strategy – tracking process, induction process. Probation ends at 6 months, alert at 3 months change need to see. Have reflected on staff leaving to track staff journey tree. See 7.1.3

We meet together as functional leaders, have discussions around various issues, weekly meetings. If identify ongoing movement with staff, covid ed wanting to isolating, what doing for job security, continued to have staff paid during covid, Confirmed that 1 educator has been consistent since the service opened 14 months ago. She has had a performance appraisal (see 7.2.3). All other educators are on 6 month probation.

[REDACTED] ([REDACTED] room leader) is certificate 3.

When our educators leave they generally are due to poor performance and they need to work within our philosophy and are committed and have been performance managed out. We use our [REDACTED] services if possible.

In last fortnight. We had good induction and track them from induction. Orientation. Induction to initial appraisal, they get a mentor educator. Two weeks discussion as to where they want assistance and access mentor sessions or one on one then at 3 months we ask 'what are you willing to work on for next 3 months til end of probation. EL – [REDACTED] gave her an individual mentor session via zoom.

State manager and functional leaders have these difficult discussions and concerns which is documented on those agendas. Weekly forums happen via zoom sessions. How will we manage it and each leader has a responsibility. Keeps continuous practices.

Want to track them more closely so can see if they are suitable quicker. 6 months end of probation journey. They can see their own progress.

[REDACTED] – for recognition of good work. One educator nominated by the director each month from each service.

Director and Assist director got [REDACTED] for all the work they have done.”

In the draft report, the authorised officer included the following in relation to Standard 4.1:

“During the visit, educators were organised across the service to support children’s learning and development. For example, the roster demonstrates that educators are allocated to work in a specific room and each room has a lead educator. The roster also demonstrates that the same educators are rostered on open and close shifts. Service leaders said educators are rostered time off the floor to document children’s learning and development. Regular relief educators and the director, are available to cover educator’s lunch breaks and programming time. Information about educators is displayed outside each room, to support families in getting to know and be familiar with educators.

Service leaders were not able to demonstrate that every effort is made for children to experience continuity of educators on an ongoing basis. Since commencement of operation, one educator remains from the original educator team and the regulatory authority is aware that there have been at least three directors. All educators, except one, are on the six month probation period. At the time of the visit, the director and [REDACTED] lead educators had been working at the service for [REDACTED] [REDACTED] [REDACTED] weeks. It was further evident in reviewing the staff list that a high proportion of educators are employed on a casual basis. The service have kept families informed of staffing changes and the AP stated they have maintained a consistent routine and program. The AP also explained they have known why educators have left the service and have reflected on their recruitment strategy and tracking of educators through the induction and probation period, and as a result [REDACTED] (the [REDACTED]) have developed the [REDACTED] [REDACTED]. This involves a six month probation period and if relevant, educators are alerted of any concerns after three months. The AP said educators have left the service because they ‘are not fitting in with our philosophy’, or haven’t had the ‘level of commitment’ required and they have ‘performance managed people out’.

The service has a waiver in place for an Early Childhood Teacher (ECT) based on attendance of [REDACTED]. Based on discussions, it was evident there was not a system in place to ensure compliance with ECT regulatory requirements. For example, on the week of the visit, enrolments were [REDACTED] or more children, two days per week, requiring a second ECT if all children were in attendance (many were absent). Although the service has [REDACTED] educators studying towards their ECT qualification and one educator was in the process of applying for a 'special authority to teach' through the Teachers Registration Board, documentation was not sufficient for them to be taken to fill this role.

Educators have a current Working With Children Check (WWCC), first aid certificate, early childhood qualification, child protection training, infection control COVID, food handling certificate and fire safety certificate; although there is not a system in place to monitor expiry dates of certificates and training.

Quality Improvement Plan notes for Standard 4.1

It is recommended:

- The AP reflect on their processes for educators exiting employment, to identify areas of improvement for maintaining continuity of educators
- The service implement a system for ensuring compliance with ECT regulatory requirements
- The service implement a system for monitoring expiry dates of educators certificates and training requirements"

Standard 4.1: Provider's feedback on the draft report

18. The provider submitted the following response to the draft report in relation to Standard 4.1:

"The National Quality Standard clearly states, "Every effort is made for children to experience continuity of Educators at the Service". The National Quality Standard does NOT state that the Approved Provider MUST ensure that the exact same Educators from the commencement of the service are maintained indefinitely.

As is well documented across the sector, presently there are severe staffing shortages (see snippet from Article below, full Article embedded in Attachment 1, as well as ABC Link). Despite these challenges, [REDACTED] have gone above and beyond to maintain continuity, all the while gripping with the Coronavirus Pandemic which has seen Educators resign from positions to either look after their loved ones or isolate in fear of contracting the virus.

October 22, 2020

"Childcare staff shortages are so chronic that one in every five long day care centres in South Australia has been granted a Waiver to operate without the mandated number of workers. It is the worst rate in the nation"

"Australian Childcare Alliance South Australia Kerry Mahony said there 'was a drastic shortage of workers'"

By Natasha Bitá, The Courier Mail

South Australia and the Northern Territory are the hardest hit, with one in five short-staffed centres granted a waiver, compared to one in nine in NSW and Queensland.

The authorised officer responded to the provider's feedback on the draft report by way of handwritten notes on excerpts of the draft report.

Standard 4.1: Final report

19. The regulatory authority considered the provider's feedback on the draft report but declined to amend the rating for Standard 4.1. The rating for Standard 4.1 remained Working Towards NQS as Element 4.1.2 was not met. The overall rating remained Working Towards NQS.

Standard 4.1: First tier review

20. The provider applied for first tier review, seeking to have Element 4.1.2 amended to met.
21. At first tier review, the panel considered evidence gathered by the authorised officer at the assessment and rating visit, and submissions made by the provider.
22. The first tier review decision notice sets out the evidence consulted by the first tier review panel. The first tier review panel then set out their decision in relation to Element 4.1.2:

"The panel acknowledges that evidence submitted to support the application for first tier review and the QIP, indicates that the AP has implemented some strategies to support the continuity of staff. These include recruiting experienced educators, considering educator strengths when making decisions about which room they are best suited to, having lead educators work five days a week where possible, and revising rosters with the aim to maintain staff consistency. Progress notes also indicate there has been involvement by the AP and ██████████ in the operation of the service. However, the above mentioned actions have not proven effective and the high turnover of staff since the service commenced operations cannot be overlooked. Of particular concern was the staffing in the under two room from ██████████ to ██████████. There were short periods of consistent educators for children to experience continuity, however all educators rostered on the week beginning ██████████ 2020 differed to those rostered on the week beginning ██████████ 2020. The intent of Element 4.1.2 is that the continuity of staff over time contributes to educators building secure relationships with children and plays a significant role in promoting children's learning and development. It is important to note that the panel considered the impact of the Covid-19 pandemic when looking at the staff arrangements and the dates above, and note that restrictions in South Australia began easing from May 2020 and assessment and rating visits resumed in South Australia from mid July 2020.

No evidence has been provided to demonstrate that exit data is collected to inform changes to practice to retain staff and promote continuity of educators for children.

However, the AP has implemented a ██████████ with a focus on a probation period and educators are alerted to any concerns with their performance.

In conclusion, although some effort is being made to retain consistent staff at the service, this has not resulted in children experiencing continuity of educators. Therefore, the panel decided to confirm the assessment of Element 4.1.2 as Not Met.

23. Following first tier review, the rating for Standard 4.1 remained Working Towards NQS.

Standard 4.1: Second tier review

24. At second tier review, the provider again sought to have Element 4.1.2 amended to met. The provider submitted a document outlining their submissions at second tier review, and another document addressing the panel, written after the provider viewed submissions made by the regulatory authority at second tier review.

25. The provider submitted some evidence with their second tier review application. After viewing the regulatory authority's submissions, the provider submitted further evidence in response.

26. In a document submitted by the provider after viewing submissions made by the regulatory authority, they set out their main argument around the effort the service has put in to attempting to resolve staffing problems.

27. The provider's main argument is that Element 4.1.2 requires that "every effort" is made to provide continuity of staff, not that continuity is actually achieved. The service's main submission is that they have made every possible effort and that problems of staff continuity have persisted due to factors outside of the service's control.

Panel considerations

28. The panel noted claims from the provider that every possible effort had been made in relation to staffing arrangements to support children to experience continuity. The panel also noted evidence of staff continuity issues, the factors for which the provider stated included more general sector workforce issues, which had been exacerbated by the impact of the COVID-19 pandemic.

29. The panel considered all evidence offered by the provider of meeting this element, including:

- advertising and other recruitment efforts
- the introduction of [REDACTED]
- the service's approach to staffing arrangements, including rostering and capturing daily reflections.

30. The panel could not identify processes and practices within evidence provided to substantiate the meeting of this element. For example, the panel:

- identified evidence in the form of staff rostering information that did not promote educator continuity on a day-to-day basis, most notably for the cohort of children attending the service aged under two

- could not see clear evidence of educators having been provided targeted feedback through individual performance development processes, in a way that supports continuity. For example, the [REDACTED] detailed required induction and probationary processes for new educators, but the panel did not consider this offered clear evidence of efforts to increase staff continuity, including through individual performance and learning goal development to enhance staffing capability, cohesion and capacity across the service
- noted the providers' reference to performance reasons or other individual personal circumstances as a cause for non-retention of numerous staff, but was not offered any exit data and / or other documentation that demonstrated reasons for educators leaving the service, and which the service then acted on to improve continuity of educators.

31. The panel highlighted resources available to the sector that may assist the provider and this service as they relate to the requirements of Element 4.1.2. This includes resources on the [ACECQA website](#) that consider strategies to promote educator continuity.

Panel decision

32. The Ratings Review Panel, by consensus, decided to confirm the rating for Element 4.1.2 as Not Met. The overall quality ratings for the service remains at Working Towards National Quality Standard.
33. The panel also noted the provider's concerns around perceived biases of regulatory authority staff, as well as a potential negative impact on the service's rating based on a referenced 'complaint' and 'investigation' of a complaint. The panel affirmed that its decision was informed solely by evidence that the approved provider and regulatory authority submitted as part of the second tier review process, all of which has been shared with the approved provider.