

Ratings Review Decision Notice

Panel members

[REDACTED]
[REDACTED]
[REDACTED]

Panel date

[REDACTED] 2022

Applicant

[REDACTED] on behalf of [REDACTED]
[REDACTED]

Regulatory Authority

NSW Department of Education

Decision: The Ratings Review Panel (the panel) confirmed by consensus the ratings under review as follows:

- Standard 2.2 – Working Towards NQS
 - Element 2.2.1: Not met
- Standard 3.1 – Meeting NQS
 - Exceeding themes 1 and 2 were not identified
- Standard 4.1 – Working Towards NQS
 - Element 4.1.1: Not met

The overall rating remains as Working Towards NQS.

Issues

1. The approved provider (the provider) sought a review of the ratings for the above standards on the grounds that the regulatory authority:
 - (a) did not appropriately apply the prescribed process for determining a rating level; and
 - (b) failed to take into account or give sufficient weight to special circumstances or facts existing at the time of the assessment and rating.

Overview

2. After initial assessment, the draft assessment and rating report recorded the service's overall rating as Working Towards NQS, as Elements 2.2.1 and 4.1.1 were assessed as not met. Two standards were rated Working Towards NQS, two standards rated as Meeting NQS, with the remaining 11 standards rated Exceeding NQS.
3. The regulatory authority considered the service's feedback on the draft outcome rating summary and amended Standard 7.1 to Exceeding NQS with the confirmation of 'Yes' for Exceeding theme 1.
4. At first tier review, the provider sought to have two Elements amended from not met to met, and Standards 2.2, 3.1 and 4.1 assessed for a rating of Exceeding NQS. The regulatory authority considered the submissions provided however no changes were made to the service's rating.
5. At second tier review, the provider sought to have two Elements amended from not met to met, and Standards 2.2, 3.1 and 4.1 assessed for a rating of Exceeding NQS.

Evidence before the panel

6. The panel considered all the evidence submitted by the approved provider and the regulatory authority. This included:
 - the application for second tier review and its attachments
 - the service's response to the regulatory authorities' submissions to second tier review
 - the assessment and rating instruments and the final assessment and rating report
 - the service's feedback to the draft report and officer's comments
 - the 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.
7. The panel also considered Exceeding theme guidance from the *Guide to the National Quality Framework*. This included Exceeding guidance specific to the standards under review, as well as questions used by authorised officers and regulatory authorities to establish Exceeding NQS practice.

The law

8. 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

9. [REDACTED] is a long day care service with [REDACTED] approved places. The service is located on the lands of [REDACTED] in [REDACTED] New South Wales.
10. The service was last assessed and rated as Meeting NQS in [REDACTED] 2020.
11. The service's assessment and rating [REDACTED] took place from [REDACTED] 2022 to [REDACTED] 2022 by [REDACTED].
12. The draft assessment and rating report was sent to the provider on [REDACTED] 2022, with feedback submitted to the regulatory authority on [REDACTED] 2022.
13. The final assessment and rating report was sent to the provider on [REDACTED] 2022. The service's overall rating was Working Towards NQS.
14. The provider applied for first tier review by the regulatory authority on [REDACTED] 2022.
15. The provider received the decision notice on [REDACTED] 2022. Following first tier review, the service's overall rating remained as Working Towards NQS.
16. The provider applied for second tier review on [REDACTED] 2022, seeking to have two elements amended to met and three standards amended to Exceeding NQS.
17. A summary of the service's ratings, is detailed below, with standards under review at second tier review highlighted:

National Quality Standard	Final Rating Outcome Summary	First Tier Review Decision Notice
Standard 1.1	Exceeding NQS	Not reviewed
Standard 1.2	Exceeding NQS	Not reviewed
Standard 1.3	Exceeding NQS	Not reviewed
Standard 2.1	Exceeding NQS	Not reviewed
Standard 2.2	Working Towards NQS	Working Towards NQS
Standard 3.1	Meeting NQS	Meeting NQS
Standard 3.2	Exceeding NQS	Not reviewed
Standard 4.1	Working Towards NQS	Working Towards NQS
Standard 4.2	Exceeding NQS	Not reviewed
Standard 5.1	Exceeding NQS	Not reviewed
Standard 5.2	Exceeding NQS	Not reviewed

Standard 6.1	Exceeding NQS	Not reviewed
Standard 6.2	Exceeding NQS	Not reviewed
Standard 7.1	Exceeding NQS	Not reviewed
Standard 7.2	Exceeding NQS	Not reviewed

Review of ratings

Standard 2.2

18. Standard 2.2 is:

Each child is protected.

19. Element 2.2.1 is:

At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.

20. Exceeding theme 1 is:

Practice is embedded in service operations

21. Exceeding theme 2 is:

Practice is informed by critical reflection

22. Exceeding theme 3 is:

Practice is shaped by meaningful engagement with families and/or the community

Panel deliberations

23. In deliberating on Element 2.2.1, the panel commented that, in their view, the evidence provided did not demonstrate practice sufficient to amend the rating to met.
24. The panel recognised the service's innovation and commitment when creating a challenging outdoor environment for children and advocating for risky play, as well as [REDACTED] advocating for risky play for children submitted alongside the service's application. The panel considered how the [REDACTED] discussed how design can be hindered when discussing safety. The panel shared their own advocacy for risky play, as well as the aim of Element 2.2.1 and the National Quality Standard to support educators in creating learning environments that encourage children to explore, problem solve and create and construct in challenging and safe ways.
25. The panel acknowledged the National Law and Regulations take a non-prescriptive approach, however, by consensus agreed on the need to refer to relevant recognised authorities when considering the health and safety of children. The panel considered guidance available in the Guide to the NQF referring to climbing equipment, swings and other large pieces of equipment being located over areas with soft fall surfaces that meet the requirements under the Australian Standards for Playgrounds.
26. The panel considered Section 167 of the *National Law* and the need to take every reasonable precaution to protect children being educated and cared for by the service from harm and

from any hazard likely to cause injury. When deliberating on precautions the services may take, the panel considered how equipment meets the Australian Standards – for example, cots, playground equipment and surfacing, and safety plugs in unused electrical outlets. The panel agreed that with higher risk comes the need for a higher attention to safety, and the Australian Standards are considered as a minimum and reasonable precaution, which the service has already complied with in other parts of their outdoor environment. The panel acknowledged the risk assessment and strategies in place regarding the [REDACTED], such as involving children in the decision making and ensuring a staff member is always present. The panel, however, considered that adequate supervision would not prevent or minimise injury if a child were to fall from the [REDACTED] and must, at all times, be in combination with reasonable precautions to protect children from harm and hazard. The panel were unable to determine, from the evidence provided, how the service had taken every reasonable precaution to protect children from harm and hazard likely to cause injury.

27. The panel concluded there was insufficient evidence to amend the rating of Element 2.2.1 to met.

Panel decision

28. The panel decided, by consensus, to confirm the rating of Element 2.2.1 as not met, and therefore the overall rating of Standard 2.2 as Working Towards NQS.

Standard 3.1

29. Standard 3.1 is:

The design of the facilities is appropriate for the operation of a service.

30. Exceeding theme 1 is:

Practice is embedded in service operations

31. Exceeding theme 2 is:

Practice is informed by critical reflection

Panel deliberations

32. The panel deliberated on whether the service demonstrated Exceeding themes 1 and 2 for Standard 3.1. The panel noted that, in their view, the available evidence did not demonstrate the Exceeding themes and therefore aligned more strongly with the requirements of Meeting NQS for this standard.
33. The panel deliberated on the Exceeding Guidance for Standard 3.1, Exceeding theme 1, and how the observed and discussed approach to the design and maintenance of the physical environment consistently aligned with the design and delivery of the educational program and service philosophy. The panel acknowledged the intentionality behind the design of the physical environment and celebration of risky play, which in their view was consistent with high quality practice. The panel, however, also considered how the service philosophy committed to the safety of children and the environment, as well as reducing identified risk. The panel were not able to determine, from the evidence available, how the service's approach to risk and the safety of children in the design of the outdoor space was considered

and reasonable, and therefore were unable to see clear and relevant evidence of the service philosophy embedded in service operations.

34. The panel also deliberated on how all educators are able to explain how the design of the physical environment, including selection of furniture, equipment and resources, supports safe and inclusive access by all children, promotes each child's full engagement with the program, and supports the service's broader vision for quality. The panel considered the discussions with educators on the design and building of the physical environment. This included the service's submission [REDACTED], where the service highlighted educator's perceived fear of the potential risks and how the building of the physical environment was halted without the presence of the [REDACTED]. The panel acknowledged the passing of time since [REDACTED] may have provided for a change in perception and understanding, however, in their view the available evidence did not demonstrate how all educators have a shared sense of understanding and consistency of intent and approach to practice specific to the design of the physical environment.
35. The panel concluded there was insufficient evidence to determine that Exceeding theme 1 should be amended to Yes for Standard 3.1.
36. The panel deliberated on the Exceeding Guidance for Standard 3.1, Exceeding theme 2, and how the service's approach to the design and maintenance of the physical environment is reflective of robust debate and discussion, opportunities for input by all educators, and informed by critical reflection and past incidents. The panel commended the service for responding to the needs of the children and the change of practice to engage all children. The panel, however, noted much of the design of the physical environment was driven by the [REDACTED] and were unable to see clear and relevant evidence of critical reflection involving all educators, and how all educators are able to articulate what they are doing and why.
37. The panel considered the evidence available, including [REDACTED] which showcased the involvement of children in decision making and the analysis and influence of theorists and current research. The panel, however, noted much of the reflection was from the perspective of the [REDACTED], and did not, in their view, include robust discussion and debate with the involvement of all educators. The panel were unable to see clear and relevant evidence, in the submissions provided, of all educators reflecting, individually and together, on the design of the physical environment. The panel were also unable to see evidence of all educators considering opportunities to make changes to strengthen inclusion and participation, and to enhance children's safety, learning and development outcomes.
38. The panel concluded there was insufficient evidence to determine that Exceeding theme 2 should be amended to Yes for Standard 3.1.

Panel decision

39. The panel decided, by consensus, to confirm the rating for Standard 3.1 as Meeting NQS.

Standard 4.1

40. Standard 4.1 is:

Staffing arrangements enhance children's learning and development

41. Element 4.1.1 is:

The organisation of educators across the service supports children's learning and development.

42. Exceeding theme 1 is:

Practice is embedded in service operations

43. Exceeding theme 2 is:

Practice is informed by critical reflection

44. Exceeding theme 3 is:

Practice is shaped by meaningful engagement with families and/or the community

Panel deliberations

45. In deliberating on Element 4.1.1, the panel commented that, in their view, the evidence provided did not demonstrate practice sufficient to amend the rating to met.

46. The panel considered guidance from the Guide to the NQF, and how the National Regulations set educator-to-child ratios to ensure the safety, welfare and wellbeing of children while attending the service, including during excursions and incursions. The presence of adequate numbers of qualified and experienced educators has been consistently linked with quality interactions and positive learning experiences for children. The panel were unable to determine, from the evidence provided, how the service was complying with the National Regulation, specifically Regulation 272, at the time of the assessment and rating visit on [REDACTED] 2022.

47. The panel considered the time period between [REDACTED] 2022 and [REDACTED] 2022, during which the initial application for Temporary Waiver from early childhood teacher (ECT) requirements (regulation 272) was [REDACTED]. The panel noted the service's communications with [REDACTED] concerning the qualifications of potential teachers from overseas. However, in the panel's view, the evidence provided did not demonstrate the qualifications or experience of those staff occupying the early childhood teacher positions in the interim, or the ongoing momentum of the provider attempting to obtain more than one qualified early childhood teacher or the presence of more than one qualified early childhood teacher. The panel acknowledged the current sector workforce challenges, however, concluded the requirements of the National Regulations were not optional and noted the use of staffing waivers as support for the sector. As the service operates with [REDACTED] children and did not have [REDACTED] early childhood teachers in attendance, the service was in breach of Regulation 272.

48. The panel deliberated on the NSW Department of Education Waiver Policy, which clearly states the consideration of evidence of nominated educators' current enrolment or staff progression towards approved qualifications, as well as the guidance from the Guide to the NQF for regulatory authorities to consider evidence of progress towards relevant qualifications in their assessment of a staffing waiver. In the panel's view, the expectations for an application of a staffing waiver and the requirements of Element 4.1.1 are clearly documented and accessible to providers.

49. The panel concluded there was insufficient evidence to amend the rating of Element 4.1.1 to met.
50. The panel noted that, as the provider sought a review of Element 4.1.1 and overall, for Standard 4.1 to be amended to Exceeding NQS, a standard must first be rated as Meeting NQS for Exceeding NQS to be considered and cannot be rated as Exceeding NQS if an element within the standard is not met.

Panel decision

51. The panel decided, by consensus, to confirm the rating of Element 4.1.1 as not met, and therefore the overall rating for Standard 4.1 as Working Towards NQS.