

Ratings Review Decision Notice

Panel members

[REDACTED]
[REDACTED]
[REDACTED]

Panel date

[REDACTED] 2023

Applicant

[REDACTED] on
behalf [REDACTED]

Regulatory Authority ACT Education Directorate

Decision

The Ratings Review Panel (the panel), by consensus, decided to confirm the ratings under review as follows:

- Standard 1.2 was confirmed as Meeting NQS (Exceeding theme 1 was not identified)
- Quality Area 1 was confirmed as Meeting NQS (the requirements of Regulation 62(2) were not met)

The service's overall rating remains as Exceeding NQS.

Issues

1. The approved provider (the provider) sought a review of the ratings for the above standard and quality area on the grounds that the regulatory authority:
 - a) did not appropriately apply the prescribed processes for determining a rating level, and
 - 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 the initial assessment, the draft assessment and rating report recorded the service's overall rating as Exceeding NQS. The service was rated as Exceeding NQS in all quality areas except for Quality Area 1, which was rated as Meeting NQS. Standards 1.1 and 1.2 were rated as Meeting NQS and Standard 1.3 was rated as Exceeding NQS.
3. In the final assessment and rating report, the rating for Standard 1.1 was amended to Exceeding NQS after the regulatory authority determined that Exceeding theme 1 was demonstrated at the required level to support a higher rating.
4. Also in the final report, the rating for Standard 1.2 remained as Meeting NQS, with Exceeding themes 2 and 3 found to be demonstrated, but not Exceeding theme 1.
5. The regulatory authority also noted in the final report, that the requirement for Regulation 62(2) was not met. Quality Area 1 remained as Meeting NQS and all other quality areas as Exceeding NQS. The service's overall rating remained as Exceeding NQS.
6. The provider sought a first tier review of Standard 1.2 and Quality Area 1. The regulatory authority considered the submissions provided and confirmed the rating for Standard 1.2 and Quality Area 1 as Meeting NQS.
7. Following first tier review, the service's ratings remained as Exceeding NQS in all quality areas except for Quality Area 1, which was rated as Meeting NQS. The service's overall rating remained as Exceeding NQS.
8. The provider sought a (second tier) ratings review of Standard 1.2, seeking to have the standard amended from Meeting NQS to Exceeding NQS.
9. [If Standard 1.2 is amended to Exceeding NQS], the provider also sought to have Quality Area 1 amended from Meeting NQS to Exceeding NQS, specific to the requirements for Regulation 62(2).

Evidence before the panel

10. 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 instruments and the final assessment and rating report
 - the service's feedback to the draft report
 - 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, and
 - the provider's response to viewing submissions supplied by the regulatory authority.
11. The panel also considered Exceeding theme guidance from the *Guide to the National Quality Framework*. This included Exceeding guidance specific to the standard under review, as well as questions used by authorised officers and regulatory authorities to establish Exceeding NQS practice.
12. Further, the panel considered the *Education and Care Services National Regulations* (the Regulations) and the *Education and Care Services National Law* (the National Law).

The law

13. Section 151(1) of 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

14. [REDACTED] is a long day care service with [REDACTED] approved places. The service is located on the lands of [REDACTED]. [REDACTED] is a suburb in the [REDACTED] located within the Australian Capital Territory.
15. The service's previous assessment and rating [REDACTED] took place in [REDACTED] 2017. The service's overall rating was [REDACTED].
16. The service's most recent assessment and rating [REDACTED] took place from [REDACTED] 2022 by [REDACTED].
17. The authorised officer attended the service on [REDACTED] 2022. Discussions with educators and leadership were held online on [REDACTED] 2022. Evidence was also supplied by the provider to the regulatory authority as part of the assessment and rating process.

18. The draft assessment and rating report was sent to the provider on [REDACTED] 2022, with feedback submitted to the regulatory authority on [REDACTED] 2022.
19. The final assessment and rating report was sent to the provider on [REDACTED] 2022. The service's overall rating was Exceeding NQS.
20. The provider applied for first tier review by the regulatory authority on [REDACTED] 2022, seeking a review of Standard 1.2 and Quality Area 1 (in particular, the provider sought review of whether it was meeting Regulation 62(2)), which were rated as Meeting NQS.
21. The regulatory authority decided on the provider's first tier review application on [REDACTED] [REDACTED] 2023. The decision notice was sent to the provider on [REDACTED] 2023.
22. Following first tier review, all ratings under review were confirmed at Meeting NQS. The service's overall rating remained as Exceeding NQS.
23. The provider applied for second tier review on [REDACTED] 2023, seeking to have Standard 1.2 and Quality Area 1 amended from Meeting NQS to Exceeding NQS.

Review of ratings

Quality Area 1: Educational program and practice

Standard 1.2

24. Standard 1.2 is:
Educators facilitate and extend each child's learning and development.
25. Exceeding theme 1 is:
Practice is embedded in service operations.

Panel deliberations

26. In deliberating on whether the service demonstrated Exceeding theme 1 for Standard 1.2, the panel remarked that they were unable to see clear, relevant and substantive evidence of embedded high quality practice.
27. The panel noted that embedded practice in service operations requires that high quality practice is demonstrated consistently and frequently across the service, regardless of the staffing or situation on any given day, and that educators have a shared understanding of the service's approach to high quality practice for the standard.
28. Specific to Standard 1.2, the panel added that exceeding practice requires all educators, across all rooms, to consistently, deliberately and intentionally take every opportunity to facilitate and extend each child's learning and development. This includes considering and promoting children's agency.
29. The panel commented on the progressive mealtimes observed by the authorised officer in most rooms across the service at assessment and rating, enabling children to make choices and decisions to influence events and their world. However, they remarked on an

observation of the morning tea routine in the [REDACTED], which in their view, did not demonstrate embedded practice specific to Standard 1.2.

30. The panel considered the provider's submission that this was an isolated incident involving [REDACTED]. The panel also noted observations by the authorised officer that there was more than one educator involved in this routine.
31. The panel formed the view that this observation did not demonstrate a shared understanding amongst all educators about what is expected regarding high quality practice for Standard 1.2. A shared understanding would be demonstrated by all educators being thoughtful and responsive in their decisions and actions and working consistently to provide flexible and unhurried routines that promote children's agency and allow them to make choices and decisions that influence their world.
32. The panel noted commentary and critical reflections provided by the nominated supervisor [REDACTED] of the morning tea routine in the [REDACTED] described it as not consistent with usual practice and noted that there was still work to be done in this space. The panel agreed that identifying areas for quality improvement does not mean that high quality practice is not occurring. However, on this occasion, the panel was of the view that this was evidence that practice promoting children's agency was not embedded in service operations, by all educators and across all rooms.
33. The panel discussed the regulatory authority's comments that there was limited opportunities for mark making in the [REDACTED]. They noted the provider's commentary about the provision of a range of mediums to ensure there were ample opportunities for mark making for all children across the service. They also noted evidence supplied by the provider of a child in [REDACTED] engaging in mark making in [REDACTED] submitted in response to receiving the draft assessment and rating report.
34. The panel reiterated, however, that drawing on all available submissions, there was insufficient evidence to determine that Exceeding theme 1 should be amended to Yes to support an overall higher rating for Standard 1.2.
35. In deliberating on whether the service was meeting the requirements of Regulation 62(2) (which is required to receive a rating of Exceeding NQS for Quality Area 1), the panel noted that a service must first be rated Exceeding NQS in all three standards for this quality area before applying Regulation 62(2). That said, the panel reviewed the available evidence to determine whether the service was, in their view, meeting the requirements of Regulation 62(2).
36. The panel commented on the timeline supplied by the provider detailing the provision of early childhood teachers (ECTs) in the [REDACTED] room, noting there were no ECTs working in the room at the time of the assessment and rating.
37. The panel also noted the service's decision to transition a [REDACTED] educator into the [REDACTED] room, rather than move an ECT from another room into the [REDACTED] room, to support continuity of educators. According to the evidence provided, this educator [REDACTED] had lodged an application in an early childhood teaching program The panel noted, however, that they were unable to

confirm, from the available evidence, whether the educator was enrolled and progressing in the teacher training program.

38. The panel noted the provider's submission that the delivery of the preschool program can occur in a range of ways. They also noted the provider's reference to their [REDACTED], which was described as an interim measure to address the requirement for the early childhood educational program to be delivered by a qualified early childhood teacher. The panel added, however, that they were unable to see clear, relevant and substantive evidence to support the provider's submission or to demonstrate exactly how the preschool program was being delivered.
39. The panel also noted the provider's engagement of a consultant as a key strategy in the delivery of the educational program [REDACTED] which the provider noted comprised of [REDACTED] ECTs who worked in other rooms. The panel commented on the positive aspects of engaging a consultant to support the professional learning and development of educators. They added, however, that this did not, in their view, meet the requirements of delivering a preschool program to children in the year that is two years before grade 1 of school, as required in Regulation 62(2).
40. The panel noted the reference to Regulations 129 – 135 (Division 5 National Regulations) by the regulatory authority and the provider in the evidence submitted. This included the effect of Regulation 386(1) (an ACT specific regulation) on Regulation 135, such that if an ECT in an ACT service is absent because of resignation, a diploma or primary teacher educated person may be taken to be an ECT during that absence for a maximum of 60 days in any 12 month period. The panel remarked, however, that it was not clear from the available evidence that the service was relying on this arrangement.
41. The panel noted there was no evidence of the service being non-compliant or of there being a temporary waiver in place specific to the requirements for educators who are early childhood teachers. The panel also noted the decision under Regulation 62(2) is separate to whether there are ECTs in attendance at the service and focuses on whether an ECT is delivering a preschool program.
42. The panel remarked that, in their view, the service had options available to them and could have deployed their ECTs in different ways across the service to meet the requirement of Regulation 62(2).
43. The panel noted they had previously confirmed the rating for Standard 1.2 as Meeting NQS. Therefore, a decision on Regulation 62(2) did not impact on the rating for Quality Area 1. They reiterated, however, that drawing on all available submissions, they were unable to see clear, relevant and substantive evidence to determine that the service was meeting the requirements of Regulation 62(2).

Panel decisions

44. The panel decided, by consensus, to confirm the rating for Standard 1.2 as Meeting NQS.
45. The panel decided, by consensus, to confirm the rating for Quality Area 1 as Meeting NQS.
46. The service's overall rating remains as Exceeding NQS.