



early childhood to
senior schooling
Education and Early Childhood Services
Registration and Standards Board of SA

November
2017



Government
of South Australia

Education Standards Board Policy

Policy: Approach to Regulatory Practice

1. Legislative Context

The ESB administers the following legislation:

Education and Early Childhood Services (Registration and Standards) Act 2011 (the Act)

- Education and Early Childhood Services (Registration and Standards) Regulations 2011 (the State Regulations)
- Education and Care Services National Law (South Australia) (the National Law)
- Education and Care Services National Law Regulations 2011 (the National Regulations)
- *Education Services for Overseas Students {ESOS} Act 2000*.

Early Childhood Services

The Act and State Regulations refer to early childhood services.

The Act also applies the National Law to South Australia. The National Law applies in full to certain service types: long day care; preschool; family day care and outside school hours care. These services are referred to as education and care services in the National Law. Services regulated under the National Law are referred to in the National Law as education and care services. In this policy, the term early childhood includes both residual and education and care services.

Education Services

The Act refers to education services to mean schools. The terms education service and school are used interchangeably in this policy.

Residual Services

A modified version of the National Law applies to in-home care; individual family day care educators, mobile and occasional care services. These service types are referred to in the Act as residual services. In this policy, the term early childhood includes both residual and education and care services.

2. Purpose

This document outlines the approach to regulation adopted by the Education and Early Childhood Services Registration and Standards Board of South Australia (the Board) and its supporting administrative body (the ESB) in acting to promote compliance with the legislation it administers.

It should be understood that policy cannot, and is not intended to, override the law.

This policy document outlines the activities and approaches designed to improve education and early childhood services and to ensure compliance with legislated requirements. It also discusses factors considered in deciding to take regulatory action.

The ESB has adopted a contemporary approach to regulation using risk/benefit, educative and proportionate means to achieve the dual goals of maximizing outcomes for children and reducing regulatory burden and 'red tape' for the sector.

The ESB will use discretion and appropriate risk management in choosing a course of action appropriate to particular conduct or issue.

3. Functions and Principles of the Board

The functions of the Board under section 29 the Act specific to its role as a regulatory authority include to:

- regulate the provision of school education and early childhood services;
- approve the requirements for endorsement of registration;

The Act (s.9(3)) also lists principles that should be adopted in carrying out these functions, specifically:

- providers of education and early childhood services should not be burdened by regulation more than is reasonably necessary;
- the actions of the Board in relation to minimizing or responding to a particular risk should be proportionate to the potential harm posed by the risk and
- the Board should have regard to all the circumstances of a particular provider of education or early childhood services (including the provider's history of compliance with this or any other relevant Act and any risk that the provider may not comply with this Act in the future).

4. Best Practice Regulatory Principles

The ESB will ensure that any regulatory activity is guided by these principles:

Outcomes focused: Regulatory actions should promote quality outcomes for children and further the objectives of the laws being administered.

Proportionality and efficiency: The design and application of regulation should be proportionate to the problem or issue it is seeking to address and focused where it will generate the greatest benefit from the resources employed.

Responsiveness and flexibility: The ESB will consider the available options and tailor their approach with regard to the specific case with a focus on outcomes for children.

Transparency and accountability: Regulatory actions should be open and transparent, fair and consistent to encourage public confidence.

Independence: When exercising a power, this should be done in the absence of actual or perceived conflicts of interest or influences that may impinge on objectivity.

Communication and engagement: Engaging with a broad range of stakeholder groups makes regulatory activities more efficient and effective.

Mutual responsibility: Providers, managers and staff of education and care services have the primary responsibility for ensuring the safety, health, wellbeing and educational outcomes of children in their care.

Consistency and cooperation across jurisdictions: Cooperation and coordination across jurisdictions can reduce duplication of effort and improve efficiency and effectiveness.

Awareness of the broader regulatory environment: The ESB will be aware of inter-related regulatory schemes, cooperating and sharing information to reduce duplication of regulatory effort and burden.

In deciding on the appropriate regulatory action, the ESB uses a regulatory risk differentiation approach, treating those who are regulated differently based on an assessment of the risks of non-compliance. This assessment includes an assessment of the provider's or educator's position on a compliance continuum as well as an assessment of the risk to children.

The compliance continuum is a means of describing a person's ability and willingness to comply with the law. At one end of the continuum are those who are more than willing and very able to comply or exceed the requirements of the law. Next are those who are able and agreeable to compliance. At the far end of the continuum are a small minority who deliberately engage in unlawful activity.

This approach recognises that the majority of people are willing to comply with the law, but that there are a number of different reasons why non-compliance may occur. It follows that the response to non-compliance should differ according to the reason. For example, if a provider does not understand how to meet their reporting requirements, the most effective and efficient response may be to provide that information. However if there is an ongoing risk to children, a more directive response may be required.

5. Strategies

Fostering voluntary compliance with standards will always have high priority with the ESB. When the providers of education and early childhood services comply with standards, a culture of compliance and improvement within the sector grows, and inappropriate conduct within services is minimised.

There are a variety of strategies, including recognition and sanctions, available to support the objectives of the legislation and standards administered by the Board. As a general rule, the ESB will attempt to secure compliance with the relevant and appropriate standards by way of:

- education
- monitoring
- encouraging self-regulation measures
- co-operating with other agencies
- addressing non-compliance through compliance or administrative action.

The ESB will endeavor to use the least intrusive strategy necessary to achieve effective compliance, taking into consideration the matters highlighted in this policy document.

6. Consideration of strategies

Education (relating to rights and responsibilities)

It is important that South Australians broadly, and education and early childhood service providers, should be aware of their rights and regulatory obligations in their dealings with children and their families. Providing information and delivering effective regulatory services are central to the ESB's work and a crucial element

of our regulatory approach.

The ESB has an increasingly important guidance and information role to play in helping all parts of the sector, particularly new entrants, to understand their requirements. Co-operative action with sector associations is a priority to ensure that education and early childhood services are aware of, and comply with, their legal obligations. A compliance culture, that is, a commitment by these organisations to comply with their obligations, is essential.

Monitoring

Checking compliance with the law and regulations is another important part of our regulatory practices. Monitoring means initiating proactive checks and visits in addition to responding to information received from external sources such as parents and educators or notifications from service providers. Monitoring can also promote relationship building with stakeholders and provide opportunities for educative approaches.

The ESB will continue to apply their priorities to the scheduling of monitoring using a risk based approach based on the information available to the ESB. Consistent with the risk based approach, in selecting services for monitoring visits the ESB uses an evidence based approach informed by the available data including a service's current rating, information relating to notifications, incidents and complaints and the length of time since the last interaction with the service to prioritize services. If there is evidence of a systemic risk associated with a specific group of services, a targeted approach to that group of services may be adopted.

Self-regulation measures

The ESB is committed to co-operative working relations with representative organisations and individuals aimed at improving the education sector standards and overall compliance.

Individual provider and sector-wide engagement programs are important parts of self-regulation which are encouraged by the ESB. The ESB also works with the sector to encourage practices that establish high standards and peer support.

Co-operation with other agencies

Under s87 of the Act and s271 and 272 of the National Law, the Board and ESB have a specific legislative mandate to co-operate with other public and private bodies and agencies in the interests of their carrying out their functions in the law.

The ESB will support the Government information sharing protocols and work cooperatively with agencies such as the Teachers Registration Board, SAPOL, the Department for Child Protection, the Australian Skills Quality Authority and relevant Australian Government departments. The ESB also engages with stakeholders, including a range of peak bodies, as a key strategy.

Compliance and Administrative Action

The Act sets out a range of measures the ESB may adopt in response to non-compliance with the Act, the National Law and National Quality Standard. The ESB may also make use of less formal measures such as warnings and advice to achieve its purposes.

7. Differentiating between Schools and Early Childhood Services

The Act sets out overarching principles for the regulation of education and early childhood services and provides for a range of compliance tools, from education to formal enforcement action, with a view to achieving these overarching objectives.

However, some of the Act only applies to either schools, or early childhood services. One fundamental difference is that a complaint about a school is referred back to the school, unless of such seriousness that it would, if proven, be a proper cause for disciplinary action (See Part 7 of the Act).

In relation to school education services the Board is responsible for:

- the review of complaints;
- compliance with conditions and endorsements; and
- compliance with ESOS Act as the designated State authority.

Fulfilment of these statutory obligations is crucial to the Board's role in achieving quality education and early childhood services in this State, maintaining high standards of compliance and conduct by providers and minimizing regulatory burden.

DOCUMENT CONTROL

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