

**Reprint  
as at 1 July 2015**



## **Education (Early Childhood Services) Regulations 2008** (SR 2008/204)

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 7th day of July 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 317 of the Education Act 1989, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Ministry of Education.**

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## Regulations

### 1 Title

These regulations are the Education (Early Childhood Services) Regulations 2008.

### 2 Commencement

- (1) Regulation 41 comes into force on the day after the date on which the making of these regulations is notified in the *Gazette*.
- (2) The rest of these regulations come into force on 1 December 2008.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**Act** means the Education Act 1989

**all-day licence** means a licence to operate a service that allows a child attending the service to attend for more than 4 hours (in total) on each day the service operates

**centre** means an early childhood education and care centre within the meaning of section 310 of the Act

**children**, in relation to an early childhood service, means the children attending or participating in the service; and **child** has a corresponding meaning

**contact person** means a person, nominated by a service provider to represent its management, who—

- (a) is able to respond to the Secretary as soon as practicable on any issue relating to licensing; and
- (b) has authority to act on behalf of the service provider when dealing with the Secretary; and
- (c) resides locally

**early childhood service** has the same meaning as in section 309 of the Act

**educator**, in relation to a licensed home-based education and care service, means the person who—

- (a) provides education and care and comfort directly to children in his or her care; and
- (b) attends to the health and safety of those children

**existing service** means an early childhood service in respect of which a licence is deemed to have been issued under section 319K(1) or 319L(1) of the Act

**licence** means a licence granted under these regulations

**licensed early childhood service** has the same meaning as in section 309 of the Act

**licensed home-based education and care service** has the same meaning as in section 309 of the Act

**licensed hospital-based education and care service** has the same meaning as in section 309 of the Act

**licensed service provider** means the holder of a licence; and, in relation to a licensed early childhood service, means the holder of a licence in relation to that service

**mixed licence** means a licence to operate a service—

- (a) that allows a child attending the service to attend—
  - (i) for more than 4 hours (in total) on those days the service operates in accordance with the requirements of an all-day licence; and
  - (ii) for 4 hours or less (in total) on those days the service operates in accordance with the requirements of a sessional licence; and
- (b) requires the service to comply with the requirements of—
  - (i) an all-day licence, on days when a child may attend for more than 4 hours (in total); and
  - (ii) a sessional licence, on days when a child may attend for 4 hours or less (in total)

**new service** means an early childhood service that is not an existing service

**person responsible** means,—

- (a) in relation to a licensed centre, 1 or more persons nominated for the purpose by the service provider; being persons who are directly involved in, and primarily responsible for, the day-to-day education and care, comfort, and health and safety of the children; and
- (b) in relation to a licensed hospital-based education and care service, the person or persons who—
  - (i) have primary responsibility for—
    - (A) the education of children participating in the service; and
    - (B) ensuring supervision of children in the activity room used as part of the service; and
  - (ii) support the health and safety and care of the children; and
- (c) in relation to a licensed home-based education and care service, the co-ordinator who has primary responsibility for—
  - (i) overseeing the education and care, comfort, and health and safety of the children; and
  - (ii) without limiting subparagraph (i), providing professional leadership and support to educators within the service

**recognised qualification** means,—

- (a) in relation to a licensed service that is teacher led, an early childhood teaching qualification recognised by the Education Council of Aotearoa New Zealand for registration purposes:
- (b) in relation to any other licensed service or any other licensed service of a kind specified by the Secretary, a qualification held by an adult providing education and care as part of that service which is recognised by the Secretary as a qualification for this purpose by notice in the *Gazette*

**Secretary** has the same meaning as in section 309 of the Act

**service provider** has the same meaning as in section 309 of the Act

**sessional licence** means a licence to operate a service that limits the hours during which every child attending the service can attend to no more than 4 hours (in total) on each day the service operates

Regulation 3 **limited attendance centre**: revoked, on 1 February 2009, by regulation 4(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 3 **limited attendance conditions**: revoked, on 1 February 2009, by regulation 4(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 3 **limited attendance conditions licence**: revoked, on 1 February 2009, by regulation 4(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 3 **person responsible** paragraph (a): amended, on 1 February 2009, by regulation 4(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 3 **person responsible** paragraph (b): amended, on 1 July 2011, by regulation 4(1) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Regulation 3 **person responsible** paragraph (b)(i): amended, on 1 July 2011, by regulation 4(2) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Regulation 3 **person responsible** paragraph (b)(ii): amended, on 1 July 2011, by regulation 4(3) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Regulation 3 **recognised qualification** paragraph (a): amended, on 1 July 2015, by section 48(2) of the Education Amendment Act 2015 (2015 No 1).

Regulation 3 **supervisor**: revoked, on 1 February 2009, by regulation 4(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

#### 4 Application of these regulations to existing early childhood services

These regulations do not apply in respect of any early childhood service deemed to be licensed under section 319K or 319L of the Act while it is deemed to be licensed under either of those provisions, except—

- (a) in respect of an application for a licence to operate such a service that is required to be made under these regulations; and
- (b) otherwise to the extent provided in the Act.

### Part 1 Licensing

#### 5 Applications for licences

Every application for a licence must be made, on a form provided by the Secretary for the purpose,—

- (a) by the service provider, where the service provider is 1 individual person; and
- (b) by 1 individual person on behalf of the service provider, where the service provider is a body corporate or body of persons.

#### 6 What details must be included in applications

- (1) Every application for a licence must indicate whether a licence is sought—
  - (a) to operate an early childhood education and care centre (**centre**); or
  - (b) to provide a home-based education and care service; or
  - (c) to provide a hospital-based education and care service.
- (2) Every application for a licence must nominate a contact person.
- (3) Every application for a licence must be accompanied by evidence satisfactory to the Secretary that—
  - (a) the service is likely to comply with the relevant provisions of Part 2; and
  - (b) the individual who is the applicant and every other person described in regulation 5(b) (ie, every other person who comes within the definition of service provider) is a fit and proper person to be involved in the management of the service.

**7 Applicant must make statutory declaration**

Every application must be accompanied by a declaration made by the applicant setting out, in the manner provided in the Oaths and Declarations Act 1957, in relation to the applicant and every other person described in regulation 5(b),—

- (a) any previous conviction for any offence involving harm to children, violence, or fraud:
- (b) any history of health problems that may affect the service provider's ability to comply with—
  - (i) any conditions of a licence that is issued; or
  - (ii) any obligations under these regulations:
- (c) any sum of money (other than a student loan, as defined in section 4(1) of the Student Loan Scheme Act 2011) owed, or previously owed, to the Crown by—
  - (i) each of those persons, in connection with the provision or receipt of educational services; or
  - (ii) any body corporate in which any of those persons were involved in the management, in connection with the provision or receipt of educational services:
- (d) any adjudication of bankruptcy under the Insolvency Act 2006:
- (e) any prohibition issued under any enactment on acting as a company director:
- (f) any previous involvement in the provision of education and care services in respect of which—
  - (i) an application for a licence under these regulations or any of the regulations referred to in section 319N of the Act has been refused; or
  - (ii) a licence issued under any of those regulations has been suspended or cancelled:
- (g) any other matter the Secretary considers relevant and in respect of which the Secretary requires a declaration.

Regulation 7(c): amended, on 1 April 2012, by section 224 of the Student Loan Scheme Act 2011 (2011 No 62).

**8 Fit and proper persons**

For the purpose of determining whether the individual who is the applicant and every other person described in regulation 5(b) is a fit and proper person to be involved in the management of the service provider, the Secretary may have regard, in relation to all those persons, to all or any of the following matters:

- (a) any previous conviction for any offence involving harm to children, violence, or fraud:



- (b) any history of health problems that may affect the service provider's ability to comply with—
  - (i) any conditions of a licence that is issued; or
  - (ii) any obligations under these regulations:
- (c) any sum of money (other than a student loan, as defined in section 4(1) of the Student Loan Scheme Act 2011) owed, or previously owed, to the Crown by—
  - (i) each of those persons, in connection with the provision or receipt of educational services; or
  - (ii) any body corporate in which any of those persons were involved in the management, in connection with the provision or receipt of educational services:
- (d) any adjudication of bankruptcy under the Insolvency Act 2006:
- (e) any prohibition issued under any enactment on acting as a company director:
- (f) any previous involvement in the provision of education and care services in respect of which—
  - (i) an application for a licence under these regulations or any of the regulations referred to in section 319N of the Act has been refused; or
  - (ii) a licence issued under any of these regulations has been suspended or cancelled:
- (g) any other matter that the Secretary considers relevant.

Regulation 8(c) amended, on 1 April 2012, by section 224 of the Student Loan Scheme Act 2011 (2011 No 62).

*Additional requirements where application relates to certain kinds of licence*

**9 Additional requirements where application relates to centre**

- (1) Every application for a licence to operate a centre must also be accompanied by—
  - (a) a floor plan of the buildings concerned and a site plan of the premises concerned, showing dimensions and clearly indicating the uses to which each part of the buildings and the entire premises (whether indoor or outdoor) will be put; and
  - (b) evidence satisfactory to the Secretary that the centre complies with the premises and facilities standard set out in regulation 45, and the requirements of regulation 20A (which relates to premises), and is suitable for use as a centre; and

- (c) a copy of an operative evacuation scheme for public safety that meets the requirements of section 21B of the Fire Service Act 1975 and Part 2 of the Fire Safety and Evacuation of Buildings Regulations 2006; and
  - (d) evidence that the premises comply with the Resource Management Act 1991 in respect of their use as a centre; and
  - (e) if the Building Act 2004 applies, evidence that the premises comply with that Act in respect of their use as a centre and, if applicable, a copy of—
    - (i) a compliance schedule required under section 100 of the Building Act 2004; and
    - (ii) a current building warrant of fitness issued under section 108 of that Act (if required).
  - (f) *[Revoked]*
- (2) Every application for a licence in relation to a new centre must be accompanied by a report from the Director-General of Health or a person nominated by the Director-General of Health for that purpose, assessing whether—
- (a) relevant aspects of the premises and facilities standard set out in regulation 45 and relevant aspects of the health and safety practices standard set out in regulation 46 are, or are likely to be, complied with; and
  - (b) the premises and facilities to be used by the centre are suitable for use as a centre.

Regulation 9(1)(b): amended, on 1 July 2011, by regulation 5 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Regulation 9(1)(b): amended, on 1 February 2009, by regulation 5(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 9(1)(e): substituted, on 1 February 2009, by regulation 5(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 9(1)(f): revoked, on 1 February 2009, by regulation 5(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 9(2)(a): amended, on 1 February 2009, by regulation 5(3) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

## **9A Additional requirement where application relates to hospital-based education and care service**

Every application for a licence to operate a hospital-based education and care service must be accompanied by evidence satisfactory to the Secretary that the hospital-based education and care service complies with the requirements of regulation 20A (which relates to premises).

Regulation 9A: inserted, on 1 July 2011, by regulation 6 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

**10 Additional requirements where application relates to home-based service**

Every application for a licence to operate a home-based education and care service must be accompanied by the full address of each of the premises to be used for the provision of the service.

*Probationary licences*

**11 Grant of probationary licence**

- (1) Subject to regulations 12 and 15, the Secretary must grant a probationary licence for any early childhood service that is not a licensed early childhood service if, and only if, satisfied on reasonable grounds that—
  - (a) the service complies with the qualifications, ratios, and service-size standard set out in regulation 44 and the premises and facilities standard set out in regulation 45, and if the service is a centre, that the premises and facilities to be used are suitable for use as a centre; and
  - (b) having regard to the information provided by the applicant, the service is likely to comply with the curriculum standard set out in regulation 43, the health and safety practices standard set out in regulation 46, and the governance, management, and administration standard set out in regulation 47; and
  - (c) the applicant and every other person described in regulation 5(b) is a fit and proper person to be involved in the management of the service provider; and
  - (d) if regulation 9 or 10 applies, the application complies with it.
- (2) If satisfied that the information contained in the application is complete, the Secretary must take all reasonably practicable steps to ensure that the decision to grant or refuse to grant a probationary licence in respect of the early childhood service is made within 30 working days.
- (3) Unless earlier cancelled or suspended, every probationary licence remains in force for a period specified in the licence (not exceeding 12 months from the date of issue), and then expires.
- (4) At any time before the probationary licence expires, the Secretary may, on the application of the licensed service provider, grant a full licence.

Regulation 11(1)(a): amended, on 1 February 2009, by regulation 6(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 11(1)(b): amended, on 1 February 2009, by regulation 6(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**12 Probationary licence not to follow transitional licence or full licence**

The Secretary must not grant a probationary licence to an early childhood service if—

- (a) a transitional licence or full licence for that service is still in force; or

- (b) the licence most recently in force in respect of that service was a transitional licence or full licence.

### *Full licence*

## **13 Grant of full licence**

Subject to regulation 14, the Secretary must grant a full licence for an early childhood service if, and only if, satisfied on reasonable grounds that—

- (a) the service provider complies with the curriculum standard set out in regulation 43, the qualifications, ratios, and service-size standard set out in regulation 44, the health and safety practices standard set out in regulation 46, and the governance, management, and administration standard set out in regulation 47; and
- (b) the premises and facilities provided by the service provider—
  - (i) comply with the premises and facilities standard set out in regulation 45; and
  - (ii) are suitable for use; and
- (c) the applicant and every other person described in regulation 5(b) is a fit and proper person to be involved in the management of the service.

Regulation 13(a): amended, on 1 February 2009, by regulation 7(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 13(b)(i): amended, on 1 February 2009, by regulation 7(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

## **14 Duration of full licence**

*[Revoked]*

Regulation 14: revoked, on 1 February 2009, by regulation 8(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

### *Provisional licences*

## **15 Secretary may reclassify licence as provisional licence**

- (1) The Secretary may, by written notice to the service provider for a licensed service, reclassify a probationary licence or a full licence as a provisional licence, if satisfied that—
  - (a) the early childhood service for which the licence was issued does not comply with these regulations; or
  - (b) the early childhood service for which the licence was issued does not comply with all the conditions subject to which its licence was issued; or
  - (c) a complaint has been lodged against the service provider alleging non-compliance with these regulations, and the Secretary considers that the complaint warrants investigation; or

- (d) within a reasonable time after getting a written direction from the Secretary under these regulations, the service provider for a licensed early childhood service has not complied with it.
- (2) If the Secretary reclassifies a licence under subclause (1),—
  - (a) the service provider must give the Secretary the licence immediately on receipt of the notice from the Secretary under subclause (1) (except where the reclassification is in respect of a suspended licence); and
  - (b) the Secretary must immediately forward to the service provider a provisional licence.
- (3) A written notice of reclassification may be given under subclause (1) at any time until the licence being reclassified has expired (including during any period while the licence remains in force after an application for renewing that licence has been made under regulation 37).
- (4) This regulation and regulations 16 and 17 do not apply in respect of any transitional licence referred to in section 319K(5) or 319L(5) of the Act.

#### **16 Conditions of provisional licence**

- (1) A provisional licence must—
  - (a) specify the conditions that must be complied with for the revocation of the provisional licence and the return of the probationary licence or full licence, as the case may be; and
  - (b) specify for each condition the date by which the condition must be complied with.
- (2) A date specified under subclause (1)(b) will usually be a date not more than 3 months after the day on which the notice under regulation 15(1) was given to the service provider.
- (3) The Secretary may, at any time until the last permitted date for extension, extend a date specified under subclause (1)(b) by specifying a later date.
- (4) A date specified under subclause (1)(b) or (3) may not be later than 12 months after the date on which the notice under regulation 15(1) was given to the service provider.
- (5) This regulation does not limit the powers of the Secretary to suspend a licence under regulation 30(1).

#### **17 Duration of provisional licence**

- (1) A provisional licence remains in force until the Secretary either—
  - (a) revokes the provisional licence and returns the service's full or probationary licence, or issues a full licence, under subclause (2); or
  - (b) cancels the service's provisional licence under subclause (4).

- (2) The Secretary must revoke a provisional licence and, subject to subclause (3), return a full or probationary licence, or instead issue a full licence, if—
  - (a) he or she is satisfied that every condition specified under regulation 16(1)(a) has either—
    - (i) been complied with by the date specified for compliance; or
    - (ii) no longer needs to be complied with; and
  - (b) the provisional licence has not been cancelled.
- (3) For the purposes of subclause (2), if a full or probationary licence expires before a provisional licence is revoked under that subclause, the Secretary must issue a new full licence, which is deemed to have taken effect on the day after the date of expiry of the previous licence.
- (4) The Secretary must cancel a provisional licence by written notice to the service provider if he or she is satisfied that—
  - (a) any condition specified under regulation 16(1)(a) has not been complied with by the date specified for compliance; and
  - (b) compliance with the condition is still required.

Regulation 17(1)(a): amended, on 1 February 2009, by regulation 9(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 17(1)(b): amended, on 1 February 2009, by regulation 9(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

### *Temporary relocation licence*

#### **18 Grant of temporary relocation licence**

- (1) The Secretary may grant a temporary relocation licence for any licensed early childhood service (other than a home-based education and care service) if, and only if,—
  - (a) the service provider needs to temporarily relocate the service to other premises (whether because of renovations to the premises usually occupied or otherwise); and
  - (b) the new premises either—
    - (i) comply with the premises and facilities standard set out in regulation 45; or
    - (ii) do not comply with that standard but are likely to comply with any condition imposed by the Secretary under subclause (2).
- (2) The Secretary may impose any condition he or she considers appropriate in respect of a temporary relocation licence (including conditions of varying duration in relation to different conditions).
- (3) Unless earlier cancelled or suspended, every temporary relocation licence remains in force for the period specified in the licence (being a date no later than 10 months from the date of issue of that licence).

- (4) While any temporary relocation licence remains in force, any other licence held by the service provider in respect of that service is not in force.

Regulation 18(1)(b)(i): amended, on 1 February 2009, by regulation 10 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

### *Transitional licence*

## **19 Grant of transitional licence**

A transitional licence referred to in section 319K or 319L of the Act must be in the form set out in these regulations and regulations 21 to 36 apply accordingly.

### *General*

## **20 Consents under Resource Management Act 1991**

The Secretary must not grant any licence for an early childhood education and care centre unless satisfied that the use of the premises in respect of their use as a centre complies with the Resource Management Act 1991.

## **20A Requirements for premises of centre and hospital-based education and care service**

- (1) Before granting any licence for a centre or hospital-based education and care service, the Secretary must be satisfied that the premises comply with this regulation.
- (2) The premises must—
- (a) be situated on a single site; and
  - (b) be for the exclusive use of the centre or the hospital-based education and care service.
- (3) If the premises comprise 2 or more components,—
- (a) each component must be immediately adjacent and connected to at least 1 other component; and
  - (b) children must have safe access to each component.
- (4) In this regulation,—

**component** means any land or building that forms part of the premises

**premises** means the premises from which the centre will operate, or from which the hospital-based education and care service will be provided.

Regulation 20A: inserted, on 1 July 2011, by regulation 7 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

## **21 Kinds of licence**

Every licence must be—

- (a) a licence to operate a centre; or
- (b) a licence to provide a home-based education and care service; or

- (c) a licence to provide a hospital-based education and care service.

## **22 Classes of licence, conditions, and other matters**

- (1) Every licence must be—
  - (a) a probationary licence granted under regulation 11; or
  - (b) a full licence granted under regulation 13; or
  - (c) a full or probationary licence that has been reclassified as a provisional licence under regulation 15; or
  - (d) a transitional licence referred to in section 319K(5) or 319L(5) of the Act; or
  - (e) a temporary relocation licence granted under regulation 18.
- (2) Every licence for a centre or a hospital-based education and care service must be—
  - (a) an all-day licence; or
  - (b) a sessional licence; or
  - (c) a mixed licence; or
  - (d) *[Revoked]*
- (3) Every licence for a centre must authorise the provision of education and care that is—
  - (a) teacher led; or
  - (b) parent led; or
  - (c) both teacher led and parent led during any week but only 1 kind on any 1 day.
- (4) A licence for a home-based education and care service or a hospital-based education and care service may only authorise the provision of teacher led education and care.
- (5) Every licence may be subject to any special conditions imposed by the Secretary—
  - (a) that are designed to ensure that the service provider complies with any relevant requirements or conditions imposed by or under any other enactment;
  - (b) limiting the numbers of children, or of children of particular ages, that may attend or participate in the service during all or any specified times;
  - (c) imposing additional requirements about the supervision to be provided to children attending or participating in the service;
  - (d) limiting the use of a defined activity space to a specified number of children while maintaining the minimum space requirements set out in Schedule 4 for each child.



Regulation 22(2)(d): revoked, on 1 February 2009, by regulation 11(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 22(3): amended, on 1 February 2009, by regulation 11(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 22(5)(d): added, on 1 July 2011, by regulation 8 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

**22A Limitations for centres and hospital-based services providing services for children under 2 years**

- (1) This regulation applies in respect of—
  - (a) early childhood education and care centres; and
  - (b) hospital-based education and care services.
- (2) No more than 25 children under 2 years may attend any centre or hospital-based education and care service at the same time without the Secretary's approval (which may be given under subclause (3)).
- (3) The Secretary may approve up to 75 children under 2 years to attend any centre or hospital-based education and care service at the same time if—
  - (a) the centre or hospital-based education and care service is providing or intends to provide its services exclusively for children under 2 years; and
  - (b) the Secretary is satisfied that all the children will be adequately cared for; and
  - (c) the Secretary is satisfied that the centre or hospital-based education and care service is able to maintain a ratio of 1 adult to every 5 children (as indicated in Schedule 2) with the increased number of children.

Regulation 22A: inserted, on 1 July 2011, by regulation 9 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

**23 Limitation on mixed ages in centres and hospital-based services**

- (1) This regulation applies in respect of—
  - (a) early childhood education and care centres; and
  - (b) hospital-based education and care services.
- (2) If children aged under 2 years and 2 years or over attend the same centre or participate in the same hospital-based education and care service, no more than 50 children may attend at the same time without the Secretary's approval.
- (3) The Secretary may approve, for any centre or hospital-based education and care service intending to have a mixture of children aged under 2 years and 2 years or over, a maximum roll of 150 if—
  - (a) the number of children under 2 years who will be attending does not exceed 75; and
  - (b) the Secretary is satisfied that the service will be organised in a way that—

- (i) ensures all the children will be adequately cared for; and
  - (ii) reflects the different needs of the children attending.
- (4) The Secretary may at any time, by notice in writing to the service provider, withdraw or amend an approval given under subclause (3) if satisfied that it is necessary to do so to ensure that all children will be adequately cared for.
- (5) A notice issued under subclause (4) comes into force on a date specified in the notice (being a date that is at least 21 days after the notice is given).

Regulation 23(1)(a): amended, on 1 February 2009, by regulation 12 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 23(2): amended, on 1 July 2011, by regulation 10(1) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Regulation 23(3): substituted, on 1 July 2011, by regulation 10(2) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Regulation 23(4): amended, on 1 July 2011, by regulation 10(3) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

## **24 Issue of licences**

- (1) Subject to subclause (2) and regulations 26, 27, and 28, licences may be in any form the Secretary thinks fit.
- (2) Every licence must state—
  - (a) the full name of the service provider operating the early childhood service for which the licence is issued and the name of the service;
  - (b) the full name of the contact person;
  - (c) if it is a probationary licence, the fact that it is a probationary licence and its expiry date;
  - (d) if it is a provisional licence, the fact that it is a provisional licence, and the conditions that must be satisfied, and the dates by which they must be satisfied, before a full licence or probationary licence, as the case requires, may be returned;
  - (e) if it is a full licence, the fact that it is a full licence;
  - (f) if it is a transitional licence, the fact that it is a transitional licence, the conditions of the licence, and the date of its expiry;
  - (g) if it is a temporary relocation licence, the fact that it is a temporary relocation licence, the conditions of the licence, and the date of its expiry;
  - (h) whether the licence has been granted for a centre, home-based education and care service, or hospital-based education and care service;
  - (i) the maximum numbers of children in respect of which the service is to operate;
  - (j) the date of issue of the licence;
  - (k) any special conditions of the licence.

Regulation 24(2)(e): amended, on 1 February 2009, by regulation 13 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

## **25 Licensing fee**

- (1) The Secretary must not issue a licence unless the service provider has paid the Secretary a fee of \$2,756.25.
- (2) The fee is inclusive of goods and services tax.
- (3) Subclause (1) does not apply to the issue of a licence in respect of a service at a time when it has (by virtue of section 319K or 319L of the Act) continuously been deemed to be licensed as an early childhood service since immediately before the commencement of these regulations.

Regulation 25: substituted, on 24 September 2009, by regulation 4(1) of the Education (Early Childhood Services) Amendment Regulations (No 2) 2009 (SR 2009/231).

## **26 Additional requirements relating to licences for centre**

- (1) Every licence for a centre must state—
  - (a) whether the licence authorises the provision of education and care that is teacher led or parent led or a mixture of both:
  - (b) whether it is an all-day licence, sessional licence, or mixed licence:
  - (c) the premises for which the licence is granted:
  - (d) the maximum number of children who may attend the centre at any one time, which may not exceed—
    - (i) 150, if all the children who may attend the centre at any one time are 2 years or over:
    - (ii) 25, if all the children who may attend the centre at any one time are under 2 years, unless a higher maximum number (not exceeding 75) is authorised by the Secretary under regulation 22A(3):
    - (iii) 50, if children of mixed ages may attend the centre at any one time, unless a higher maximum number (not exceeding 150) is authorised by the Secretary under regulation 23(3):
  - (e) that—
    - (i) no children under 2 years may attend the centre; or
    - (ii) no children 2 years or over may attend the centre; or
    - (iii) children of mixed ages may attend the centre:
  - (f) the hours and days the service is authorised to be provided.
- (2) Every licence for a centre relates only to the licensed service provider named in the licence and to the premises for which it has been issued.
- (3) Nothing in subclause (1)(d) and (e) limits or affects the power of the Secretary to attach to a licence (under regulation 22(5)) conditions relating to the maxi-

mum numbers of children or of children of particular ages who may attend a centre at any one time.

- (4) The service provider for a centre must ensure that at all times the numbers and ages of children comply with—
- (a) the maximum numbers stated in the centre's licence under subclause (1)(d) and (e); and
  - (b) any relevant special conditions attached to the licence under regulation 22(5).

Regulation 26(1)(a): amended, on 1 February 2009, by regulation 14(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 26(1)(b): amended, on 1 February 2009, by regulation 14(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 26(1)(d): substituted, on 1 July 2011, by regulation 11 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

## **27 Additional requirements relating to licences for hospital-based education and care service**

- (1) Every licence for a hospital-based education and care service must state—
- (a) the hospital for which the licence is granted;
  - (b) the hours and days of intended operation;
  - (c) whether it is an all-day, sessional, or mixed licence;
  - (d) the maximum number of children who may attend the service at any one time, which may not exceed—
    - (i) 150, if all the children who may attend the service at any one time are 2 years or over;
    - (ii) 25, if all the children who may attend the service at any one time are under 2 years, unless a higher maximum number (not exceeding 75) is authorised by the Secretary under regulation 22A(3);
    - (iii) 50, if children of mixed ages may attend the service at any one time, unless a higher maximum number (not exceeding 150) is authorised by the Secretary under regulation 23(3);
  - (e) that—
    - (i) no children under 2 years may attend the service; or
    - (ii) no children 2 years or over may attend the service; or
    - (iii) children of mixed ages may attend the service.
- (2) Every licence for a hospital-based education and care service relates only to the licensed service provider named in the licence and to the hospital for which it has been issued.
- (3) Nothing in subclause (1)(d) and (e) limits or affects the power of the Secretary to attach to a licence (under regulation 22(5)) conditions relating to the maxi-

mum numbers of children or of children of particular ages who may participate in the service at any one time.

- (4) The service provider for a licensed hospital-based education and care service must ensure that at all times the numbers and ages of children comply with—
- (a) the maximum numbers stated in the services's licence under subclause (1)(d) and (e); and
  - (b) any relevant special conditions attached to the licence under regulation 22(5).

Regulation 26(1)(d): substituted, on 1 July 2011, by regulation 12 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

## **28 Additional requirements for licensed home-based education and care service**

- (1) A service provider who operates a licensed home-based education and care service must—
- (a) maintain a list of the homes used in connection with the service and make it available on request to the Secretary; and
  - (b) ensure that the requirements of these regulations are being complied with in respect of each home used in connection with the service; and
  - (c) ensure that he, she, or it can cease to provide the service at any home in respect of which the requirements of these regulations are not being satisfied; and
  - (d) ensure that he, she, or it has access to all premises while children are participating in the service at those premises.
- (2) The person responsible for a licensed home-based education and care service must—
- (a) contact each educator engaged in the service at least once per fortnight; and
  - (b) visit each educator engaged in the service at least once per month; and
  - (c) take all reasonable steps each month to observe each child participating in the service while that child is receiving education and care.
- (3) Subclause (2) does not apply in respect of a home-based education and care service during any period when the service is closed for a fortnight or longer.

## **29 Effect of licence**

- (1) The holder of a licence issued under these regulations is the service provider (whether or not the application is made by the service provider in person or another person or persons on behalf of the service provider).
- (2) A licence to operate a centre or to provide hospital-based education and care is a licence that applies in respect of the premises or hospital identified in the licence.

- (3) A licence to provide home-based education and care—
  - (a) must authorise the provision of education and care at 1 or more premises; but
  - (b) need not identify any particular premises at which the education and care is to be provided.

### *Suspension of licences*

#### **30 Suspension of licences**

- (1) The Secretary may, by written notice to the licensed service provider, suspend the service's licence, if satisfied on reasonable grounds that—
  - (a) it is not in the interests of the children attending or participating in the service for the service to continue to operate; or
  - (b) the service provider has—
    - (i) physically ill-treated a child; or
    - (ii) in guiding or controlling a child, subjected the child to solitary confinement or deprived the child of food, drink, warmth, shelter, mobility, or protection or failed to ensure that the child is not ill-treated; or
    - (iii) failed to prevent a person reasonably suspected of doing anything referred to in subparagraph (i) or (ii) from having contact with the children or, if necessary, to exclude that person from the service; or
  - (c) the service provider has failed to take all reasonable steps to ensure that children participating in the service do not come into contact with any member of staff or any other person involved in the provision of the service who is suffering from a disease or condition—
    - (i) capable of being passed on to children; and
    - (ii) likely to have a detrimental effect on children if passed on to them.
- (2) If satisfied that a licensed early childhood service is no longer under the control of its licensed service provider, the Secretary may, by written notice to the licensed service provider, suspend the service's licence.
- (3) If satisfied that the service provider for a licensed early childhood service has not given the service's licence to the Secretary after it has been reclassified as a provisional licence (as required by regulation 15(2)(a)), the Secretary may, by written notice to the service provider, suspend the service's licence.

#### **31 Effect and consequences of suspension**

- (1) A suspension under regulation 30(1) takes effect on a day specified in the notice effecting it, and may be immediate.

- (2) A suspension under regulation 30(2) or (3) takes effect on a day (at least 21 days after the day on which the notice effecting it is given) specified in that notice.
- (3) A notice suspending a licence must specify the conditions under which the suspension will be revoked.
- (4) A person who has custody of a licence and becomes aware that it has been suspended under regulation 30 must give it to the Secretary.
- (5) If the Secretary is satisfied that the conditions specified in the notice suspending a licence have been complied with, or no longer need to be complied with, and the licence has not been cancelled, the Secretary must either—
  - (a) revoke the suspension and (if the Secretary has custody of the licence) return the licence to the service provider; or
  - (b) revoke the suspension and reclassify the licence as a provisional licence under regulation 15.

### *Cancellation*

## **32 Cancellation of licences**

- (1) Subject to subclause (2), the Secretary must, by notice in the *Gazette*, cancel the licence for an early childhood service if the Secretary is satisfied that—
  - (a) in the case of a centre, children have attended the centre while its licence is suspended; or
  - (b) a reasonable time has passed since the suspension of the service's licence, and the conditions specified in the notice effecting the suspension have not been complied with; or
  - (c) the service provider operating the service has been convicted of an offence against these regulations or an offence involving harm to children, violence, or fraud; or
  - (d) the service—
    - (i) has permanently ceased to operate; or
    - (ii) has ceased to be an early childhood service; or
    - (iii) if applicable, has ceased to operate in the premises specified in the licence and has not been issued with a temporary relocation licence.
- (2) The Secretary may not cancel a licence under subclause (1) unless—
  - (a) the Secretary has taken all reasonable steps to give the licensed service provider for the licensed early childhood service concerned notice of the Secretary's intention to do so; and
  - (b) either—
    - (i) the Secretary has not been able to do so; or

- (ii) the Secretary has taken into account all representations received from the service provider within a reasonable time of the service provider being given notice.
- (3) A person who has custody of a licence and becomes aware that it has been cancelled under this regulation must give it to the Secretary.
- (4) This regulation and regulations 30 and 31 do not apply in respect of any transitional licence referred to in section 319K(5) or 319L(5) of the Act.

### **33 Amendment of licences**

- (1) The service provider for a licensed early childhood service must apply to the Secretary for an amendment to the licence if—
  - (a) the service provider wants to make any alterations to the service that would affect the conditions of the licence; or
  - (b) the service provider wants to make any changes to the operation of the service that would make any matter specified in the licence incorrect; or
  - (c) there is a change in the identity of the service provider operating the licensed early childhood service.
- (2) If subclause (1) applies, the Secretary must review the licence and, as seems appropriate, confirm it, suspend or cancel it, or amend any of the particulars specified in it.
- (3) The service provider who operates a licensed early childhood service must apply to the Secretary for an amendment to the licence if—
  - (a) the person named in the licence as the contact person ceases to represent the service provider in relation to the service; or
  - (b) the licensed service provider wants any new person to become the contact person.
- (4) If subclause (1)(c) applies, and the Secretary is satisfied that any proposed person is a fit and proper person (within the meaning of regulation 8) to hold a licence, the Secretary must review the licence and, as seems appropriate, confirm the licence, suspend or cancel it under these regulations, or amend any of the particulars specified in it.
- (5) A licence may not—
  - (a) be amended under this regulation to authorise the service provider to move to new premises; or
  - (b) *[Revoked]*
  - (c) *[Revoked]*
  - (d) in the case of a transitional licence, be cancelled under this regulation.

Regulation 33(5)(b): revoked, on 1 February 2009, by regulation 15 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).



Regulation 33(5)(c): revoked, on 1 February 2009, by regulation 15 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**34 Changes to centre status requires new licence**

*[Revoked]*

Regulation 34: revoked, on 1 February 2009, by regulation 16 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**35 Continuing duty to advise of change of circumstances**

- (1) A service provider who has applied for a licence or who is the holder of a licence currently in force must, as soon as practicable, advise the Secretary of any change of circumstances of the kind referred to in regulation 7.
- (2) If subclause (1) applies, the Secretary must review the licence, and, as seems appropriate, confirm it, suspend it, or cancel it, or amend particulars specified in it.

**36 Replacement licences**

If satisfied that a licence is lost, stolen, defaced, or destroyed, or that it contains an error, the Secretary may grant a replacement licence.

**37 Renewal of full licences**

*[Revoked]*

Regulation 37: revoked, on 1 February 2009, by regulation 17 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**38 Offences**

Every person commits an offence and is liable on conviction to a fine not exceeding \$500 who—

- (a) knowingly makes any false statement in an application under these regulations:
- (b) knowingly makes any false statement that any early childhood service that is not licensed is a licensed service.

Regulation 38: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**39 Appeals**

- (1) Any person affected by any decision or direction of the Secretary under these regulations may, within 14 days after getting notice of the decision or direction, or within any further time the court allows, appeal against the decision or direction to a District Court with civil jurisdiction.
- (2) For the purposes of hearing the appeal, the court has all the powers vested in it in its civil jurisdiction, and may make any order it thinks fit.

- (3) Unless the Secretary gives the court notice to the contrary, a decision or direction appealed against remains in full force until the court has reached its decision.

## Part 2 Standards

### Subpart 1—Preliminary

#### 40 Outline and purpose of Part

- (1) Subpart 2 requires each licensed service provider to comply with each of the following minimum standards:
- (a) the curriculum standard: general (*see* regulation 43):
  - (b) the qualifications, ratios, and service-size standard: general (*see* regulation 44):
  - (c) the premises and facilities standard: general (*see* regulation 45):
  - (d) the health and safety practices standard: general (*see* regulation 46):
  - (e) the governance, management, and administration standard: general (*see* regulation 47).
- (2) *[Revoked]*
- (3) The purpose of the minimum standards is to ensure the education, care, health, comfort, and safety of children attending licensed early childhood services.

Regulation 40(1): amended, on 1 February 2009, by regulation 18(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 40(2): revoked, on 1 February 2009, by regulation 18(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

#### 41 Minister may prescribe criteria

- (1) The Minister, after consultation with those organisations that appear to the Minister to be substantially affected by these regulations, may prescribe criteria to be used by the Secretary to assess compliance with the minimum standards imposed by regulations 43 to 47, or any of those standards.
- (2) The Minister may, in the document prescribing the criteria, and in relation to the minimum standard imposed by regulation 45 (premises and facilities standard), provide that during any specified period 1 or more of the prescribed criteria that relate to that standard do not apply to an existing service.
- (3) If the Minister prescribes criteria under subclause (1), the Secretary must publish a notice in the *Gazette*—
- (a) stating that the criteria have been prescribed; and
  - (b) setting out the criteria in full or stating where a copy of the criteria may be obtained by members of the public.

- (4) By way of explanation and elaboration, the purpose of criteria prescribed by the Minister is to enable those criteria to be used by the Secretary to assess whether service providers have complied with the minimum standards prescribed under regulations 43 to 47.
- (5) In this regulation **specified period** means a period specified by the Minister that does not expire after 30 November 2020.

Regulation 41(1): amended, on 1 February 2009, by regulation 19(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 41(4): amended, on 1 February 2009, by regulation 19(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

## Subpart 2—Standards for licensed services

Subpart 2 heading: amended, on 1 February 2009, by regulation 20 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

### 42 Application of subpart: general

This subpart applies to each licensed service provider.

Regulation 42: amended, on 1 February 2009, by regulation 21 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

### 43 Curriculum standard: general

- (1) The curriculum standard: general is the standard that requires every licensed service provider to whom this regulation applies to—
  - (a) plan, implement, and evaluate a curriculum that is designed to enhance children’s learning and development through the provision of learning experiences and that is consistent with any curriculum framework prescribed by the Minister that applies to the service; and that—
    - (i) responds to the learning interests, strengths, and capabilities of enrolled children; and
    - (ii) provides a positive learning environment for those children; and
    - (iii) reflects an understanding of learning and development that is consistent with current research, theory, and practices in early childhood education; and
    - (iv) encourages children to be confident in their own culture and develop an understanding, and respect for, other cultures; and
    - (v) acknowledges and reflects the unique place of Māori as tangata whenua; and
    - (vi) respects and acknowledges the aspirations of parents, family, and whānau; and
  - (b) make all reasonable efforts to ensure that the service provider collaborates with the parents and, where appropriate, the family or whānau of the enrolled children in relation to the learning and development of, and decision making about, those children; and

- (c) obtain information and guidance from agencies with expertise in early childhood learning and development, to the extent necessary, to—
    - (i) support the learning and development of enrolled children; and
    - (ii) work effectively with parents and, where appropriate, family or whānau.
- (2) Each licensed service provider to whom this regulation applies must comply with the curriculum standard: general.

#### **44 Qualifications, ratios, and service-size standard: general**

- (1) The qualifications, ratios, and service-size standard: general is the standard that requires every licensed service provider to whom this regulation applies—
  - (a) to comply with the applicable requirements of Schedule 1 (which relates to qualification requirements for adults); and
  - (b) to comply with the applicable requirements of Schedule 2 (which relates to adult-to-child ratios); and
  - (c) to comply with the applicable requirements of Schedule 3 (which relate to service-sizes); and
  - (d) to ensure that, at all times while children attend the service,—
    - (i) those children, and the adults providing education and care who supervise them, are supervised by a person responsible; and
    - (ii) there is 1 person responsible for every 50 children.
- (2) Each licensed service provider to whom this regulation applies must comply with the qualifications, ratios, and service-size standard: general.
- (3) For the purposes of applying the requirement of Schedule 1, for 50% of the required staff at a teacher led early childhood service to hold a recognised qualification,—
  - (a) 1 member of the required staff of a teacher led early childhood service who is enrolled in a course of study that, if passed, will result in the award of a recognised qualification within 12 months may be counted as holding a recognised qualification:
  - (b) a person who holds a recognised qualification and is rostered to work at more than 1 early childhood service may be counted as a member of the required staff at no more than 2 early childhood services to which the qualification requirements apply:
  - (c) if the application of Schedule 1 results in a number of required staff who must hold a recognised qualification that is less than a whole number, the number must be rounded up to the next whole number.
- (4) In this regulation and in Schedule 1,—  
**excluded service** means,—

- (a) a kōhanga reo affiliated to Te Kōhanga Reo National Trust or a playcentre affiliated to the New Zealand Playcentre Federation (other than a kōhanga reo or playcentre that has been approved by the Secretary, after consultation with Te Kōhanga Reo National Trust or the relevant playcentre association, as a centre that is to comply with the qualification requirements for a teacher led centre); and
- (b) *[Revoked]*
- (c) a home-based education and care service

**required staff** means,—

- (a) in relation to a teacher led early childhood service (other than an early childhood service in respect of which a probationary licence is in force), the total number of adults required to satisfy the minimum adult-to-child ratios in Schedule 2 that apply in respect of the maximum number of children who may attend or participate in the early childhood service at any one time (as specified in the licence for the centre):
- (b) in relation to a teacher led early childhood service in respect of which a probationary licence is in force, the total number of adults necessary to satisfy the minimum adult-to-child ratios in Schedule 2 that apply in respect of the maximum number of children for the time being enrolled to attend or participate in the early childhood service at any one time

**teacher led service** means any early childhood service that is not an excluded service.

Regulation 44(1)(d): substituted, on 1 July 2011, by regulation 13 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Regulation 44(4) **excluded service** paragraph (b): revoked, on 1 February 2009, by regulation 22 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

#### **44A Spare capacity for children under 2 can in certain cases be set off against number of children 2 or over in determination of adult-child ratios**

- (1) In subclause (2),—

**service affected** means a licensed early childhood education and care centre, or licensed hospital-based education and care service, attended by 3 or more children, of whom at least 1 is under 2 years old and at least 1 is 2 years old or older

**spare under-2 capacity**, in relation to a service affected where the number of children under 2 years old attending is not a threshold number, means the difference between the number attending and the nearest higher number that is a threshold number

**threshold number** means 5, 10, 15, 20, or 25.

- (2) For the purposes of regulation 44(1)(b), a licensed service provider to which regulation 44 applies that does not otherwise comply with the applicable min-

imum staffing requirements of Schedule 2 in relation to a service affected must be treated as complying with those requirements in relation to the service if—

- (a) the number of children under 2 years old attending the service is not a threshold number; and
- (b) the staffing is equal to or greater than the sum of—
  - (i) the applicable minimum staffing requirement for the number of children under 2 years old attending the service; and
  - (ii) the applicable minimum staffing requirement for the number of children 2 years old and over who would be attending the service if the number actually attending were reduced by the service's spare under-2 capacity.

Regulation 44A: inserted, on 24 September 2009, by regulation 5 of the Education (Early Childhood Services) Amendment Regulations (No 2) 2009 (SR 2009/231).

#### **45 Premises and facilities standard: general**

- (1) The premises and facilities standard: general is the standard that requires every licensed service provider to whom this regulation applies—
  - (a) to use premises and facilities that, having regard to the number and age range of the children attending the premises, provide sufficient and suitable space for a range of activities, facilities for food preparation, eating, sleeping, storage, toileting, and washing, and sufficient and suitable heating, lighting, noise control, ventilation, and equipment to support—
    - (i) appropriate curriculum implementation by the service provider; and
    - (ii) safe and healthy practices by the service provider; and
  - (b) to comply with the requirements of Schedule 4 (which relates to activity spaces).
- (2) Each licensed service provider to whom this regulation applies must comply with the premises and facilities standard: general.

#### **46 Health and safety practices standard: general**

- (1) The health and safety practices standard: general is the standard that requires every licensed service provider to whom this regulation applies to—
  - (a) take all reasonable steps to promote the good health and safety of children enrolled in the service; and
  - (b) take all reasonable precautions to prevent accidents and the spread of infection among children enrolled in the service; and
  - (c) take all reasonable steps to ensure that the premises, facilities, and other equipment on those premises are—
    - (i) kept in good repair; and
    - (ii) maintained regularly; and

- (iii) used safely and kept free from hazards; and
  - (d) take all reasonable steps to ensure that appropriate procedures are in place to deal with fires, earthquakes, and other emergencies.
- (2) Each licensed service provider to whom this regulation applies must comply with the health and safety practices standard: general.

**47 Governance, management, and administration standard: general**

- (1) The governance, management, and administration standard: general is the standard that requires every licensed service provider to whom this regulation applies to ensure that—
  - (a) the service is effectively governed and is managed in accordance with good management practices; and
  - (b) the service provider regularly collaborates with—
    - (i) parents and family or whānau of children enrolled in the service; and
    - (ii) the adults responsible for providing education and care as part of the service; and
  - (c) appropriate documentation and records are—
    - (i) developed, maintained, and regularly reviewed; and
    - (ii) made available where appropriate—
      - (A) at any reasonable time on request by a parent of a child enrolled in the service; and
      - (B) at any time on request by any person exercising powers or carrying out functions under Part 26 of the Act; and
  - (d) adequate information is made available to parents of enrolled children and, where appropriate, to the families or whānau of those children about the operation of the service; and
  - (e) all reasonable steps are taken to provide staff employed or engaged in the service with adequate professional support, professional development opportunities, and resources.
- (2) Each licensed service provider to whom this regulation applies must comply with the governance, management, and administration standard: general.

**Subpart 3—Standards for limited attendance centres**

*[Revoked]*

Subpart 3: revoked, on 1 February 2009, by regulation 23 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**48 Application of subpart: limited attendance centres***[Revoked]*

Regulation 48: revoked, on 1 February 2009, by regulation 23 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**49 Curriculum standard: limited attendance centres***[Revoked]*

Regulation 49: revoked, on 1 February 2009, by regulation 23 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**50 Ratios, supervision, and service-size standard: limited attendance centres***[Revoked]*

Regulation 50: revoked, on 1 February 2009, by regulation 23 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**51 Premises and facilities standard: limited attendance centres***[Revoked]*

Regulation 51: revoked, on 1 February 2009, by regulation 23 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**52 Health and safety practices standard: limited attendance centres***[Revoked]*

Regulation 52: revoked, on 1 February 2009, by regulation 23 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**53 Management and administration standard: limited attendance centres***[Revoked]*

Regulation 53: revoked, on 1 February 2009, by regulation 23 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

**Subpart 4—Miscellaneous****54 Miscellaneous variations to operation of minimum standards**

- (1) A licensed hospital-based education and care service is,—
- (a) in relation to any matter covered by requirements in the Health and Disability Services (Safety) Act 2001 (the **HDSS Act**) or standards made under or referred to in that Act that are also covered by the requirements of standards imposed by these regulations, deemed to comply with the standards imposed by these regulations if the service complies with—
    - (i) the requirements of the HDSS Act; and
    - (ii) any standards made under or referred to in that Act; but
  - (b) required to comply with standards imposed by these regulations to the extent that they deal with matters not covered in the HDSS Act and any standards made under or referred to in that Act.



- (2) The Secretary may direct a service provider to staff a service otherwise than in accordance with regulation 44(1)(b) and Schedule 2 by increasing the level or kind of staffing required beyond that required by Schedule 2 if the Secretary considers it necessary to do so, having regard to—
  - (a) the needs and ages of the children; and
  - (b) the design and construction of the premises where the service operates.
- (3) The Secretary may direct that the outdoor area requirements that apply to a centre under regulation 45(1)(b) and Schedule 4 be relaxed in a manner and to an extent specified by the Secretary, or dispensed with, if no child attends the centre for more than 2 hours on any one day.
- (4) The service provider of a licensed home-based education and care service must ensure that—
  - (a) no more than 2 children aged under 2 years receive education and care, as part of the service, in the same home at the same time, unless they are siblings; and
  - (b) if more than 3 siblings aged under 2 years are receiving education and care, in the same home at the same time, there are 2 educators present.
- (5) If there is any inconsistency between this regulation and any of regulations 41 to 47, this regulation prevails.

Regulation 54(2): amended, on 1 February 2009, by regulation 24(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Regulation 54(5): amended, on 1 February 2009, by regulation 24(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

## **55 Secretary may request health reports**

In determining whether the premises and facilities standard set out in regulation 45 or the health and safety practices standard set out in regulation 46 has been or is likely to be complied with, the Secretary may direct the service provider of a licensed service to obtain a report from the Director-General of Health or a person nominated by the Director-General of Health for that purpose.

Regulation 55: amended, on 1 February 2009, by regulation 25 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

## **56 Ill-treatment of children**

- (1) In order to ensure that the standards set out in this Part are complied with, the service provider of a licensed service and any educator who provides education and care for a licensed home-based education and care service must comply with subclause (2) if the service provider or educator has reasonable grounds to believe that a person employed or engaged in the service, or any other person,—
  - (a) has physically ill-treated or abused a child or committed a crime against children; or

- (b) in guiding or controlling a child, has subjected the child to solitary confinement, immobilisation, or deprivation of food, drink, warmth, shelter, or protection.
- (2) The service provider and the educator must ensure that—
  - (a) the person is excluded from coming into contact with the children participating in the service or, as the case requires, the children being educated by the educator; and
  - (b) if satisfied that it is necessary to do so to ensure that no child is ill-treated, ensure that the person is excluded from the service and does not enter or remain in any premises where the service is provided while it is being provided, or as the case requires, is excluded from the home and does not enter it or remain in it while the educator is providing education and care.

## **57 Health and safety of children**

- (1) In order to ensure that the standards set out in this Part are complied with, the service provider of a licensed service and any educator who provides education and care for a licensed home-based education and care service must comply with subclause (2), if the service provider or educator has reasonable grounds to believe that a person employed or engaged in the service, or any other person,—
  - (a) is in a state of physical or mental health that presents any risk of danger to children; or
  - (b) has an infectious or contagious disease or condition.
- (2) The service provider and the educator must ensure that—
  - (a) the person is excluded from coming into contact with the children participating in the service or, as the case requires, the children being educated by the educator; and
  - (b) if satisfied that it is necessary to do so to ensure that no child becomes ill, ensure that the person is excluded from the service and does not enter or remain in any premises where the service is provided while it is being provided or, as the case requires, is excluded from the home and does not enter it or remain in it while the educator is providing education and care.
- (3) This regulation does not apply in respect of a licensed hospital-based education and care service to which the Health and Disability Services (Safety) Act 2001 applies.

## **58 Collection of children from centres and home-based education and care services**

- (1) The service provider of a centre must ensure that no child leaves the centre with any person, unless the person—

- (a) has the role of providing day-to-day care for the child; or
  - (b) is authorised in writing to take the child by a person who has the role of providing day-to-day care for the child.
- (2) The service provider of a home-based education and care service must ensure that no child leaves the care of the educator with any person, unless the person—
  - (a) has the role of providing day-to-day care for the child; or
  - (b) is authorised in writing to take the child by a person who has the role of providing day-to-day care for the child.

#### **59 Further obligations in relation to hospital-based education and care**

The service provider for a licensed hospital-based education and care service must ensure that all children receiving education and care as part of the service remain under the care of the hospital.

### **Schedule 1**

#### **Qualification requirements**

r 44(1)(a)

<b>Service</b>	<b>Requirement</b>
All services	Person responsible must hold recognised qualification
All services recognised as a teacher led service (as defined in regulation 44(4))	50% of required staff (including person responsible) must hold recognised qualification

Schedule 1: amended, on 1 February 2009, by regulation 26 of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

### **Schedule 2**

#### **Adult-to-child ratios (minimum)**

r 44(1)(b)

Schedule 2: substituted, on 1 July 2011, by regulation 14 of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

#### **Early childhood education and care centres and hospital-based education and care services**

	<b>Age of children attending</b>	<b>Number of children attending</b>	<b>Minimum staffing</b>
All-day	Under 2 years old	1–5	1
		6–10	2
		11–15	3
		16–20	4
		21–25	5
	2 years old and over	1–6	1

**Early childhood education  
and care centres and hos-  
pital-based education and  
care services**

	Age of children attending	Number of chil-	Minimum staff-
		dren attending	ing
		7–20	2
		21–30	3
		31–40	4
		41–50	5
		51–60	6
		61–70	7
		71–80	8
		81–90	9
		91–100	10
		101–110	11
		111–120	12
		121–130	13
		131–140	14
		141–150	15
Sessional	Under 2 years old	1–5	1
		6–10	2
		11–15	3
		16–20	4
		21–25	5
	2 years old and older	1–8	1
		9–30	2
		31–45	3
		46–60	4
		61–75	5
		76–90	6
		91–105	7
		106–120	8
		121–135	9
		136–150	10
	Both age groups	Up to 3 children of mixed ages	1
	All-day or sessional	Both age groups	Up to 3 children of mixed ages

**Early childhood education and care centres and hospital-based education and care services**

	Age of children attending	Number of children attending	Minimum staffing
		More than 3 children of mixed ages	Sum of minimum staffing requirement for relevant number of children under 2 years old ( <i>as set out above</i> ) and minimum staffing requirement for relevant number of children of or over 2 years old ( <i>as set out above</i> )
Service type	Ages of children attending	Number of children attending	Number of adults required (minimum)
Home-based education and care service	Under 2 years old	1–2	1
	2 years old or over	1–4	1
	Mixed	1–4	1

**Who counts as adult or child when applying ratios**

- 1 For every service, a person must be 17 years or older and involved in duties other than food preparation and serving, administrative duties, and maintenance to count as an adult.
- 2 However, in every service (except a home-based education and care service), a person does not count as an adult while at lunch, or while having a break, or during non-contact times.
- 3 For every service (except a home-based education and care service), a person present aged under 6 years counts as a child.
- 4 For a home-based education and care service, a person present aged under 6 years counts as a child unless the person is enrolled at school and is the child of an educator providing education and care at the home.
- 5 In the case of a centre or hospital-based education and care service, every child present (including the child of the service provider or person responsible or supervisor or staff member) of any age also counts as a child.

**Adult-to-child ratios are subject to exceptions**

The adult-to-child ratios described in this schedule are subject to—

- (a) special rules about siblings set out in regulation 54(4); and
- (b) any increase authorised by the Secretary under regulation 22A(3) or 23(3) relating to the maximum number of children who may attend.

**Spare capacity for children under 2 can be set off against number of children 2 or over in some circumstances**

Regulation 44A allows some mixed-age early childhood education and care centres and hospital-based education and care services to take spare capacity for children under 2 into account in determining the staffing required for children aged 2 or over.

### Schedule 3

#### Service-size (maximum)

r 44(1)(c)

<b>Service</b>	<b>Number of children attending</b>
Early childhood education and care centre and hospital-based education and care service	No more than 150 children aged 2 years and over attending at any one time No more than 25 children under 2 years attending at any one time unless otherwise approved by the Secretary under regulation 22A(3) No more than 50 children attending at any one time if children are a mixture of those under 2 years and those 2 years and over, unless otherwise approved by the Secretary under regulation 23(3)
Early childhood education and care centre	No more than 16 children attending overnight
Home-based education and care service	No more than 80 children attending at any one time

#### Who counts as child when applying schedule

- 1 For every service (except a home-based education and care service), a person present aged under 6 years counts as a child.
- 2 For a home-based education and care service, a person present aged under 6 years counts as a child unless the person is enrolled at school and is the child of an educator providing education and care at the home.
- 3 In the case of a centre, every child present (including the child of the service provider or person responsible or supervisor or staff member) of any age also counts as a child.

#### Schedule to be read in conjunction with other requirements

The service-size rules in this schedule must be read in conjunction with the more detailed rules set out in—

- regulation 22A (which deals with centres and hospital-based education and care services that provide services for children under 2 years); and
- regulation 23 (which deals with children of mixed ages in the same centre or hospital-based education and care service); and
- regulations 26(1)(d) and (e) and 27(1)(d) and (e) (which deal with licensing requirements for centres and hospital-based education and care services in relation to children under 2 years and children 2 years and over).

Schedule 3 heading: amended, on 1 February 2009, by regulation 28(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Schedule 3: amended, on 1 July 2011, by regulation 15(1) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Schedule 3: amended, on 1 July 2011, by regulation 15(2) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Schedule 3: amended, on 1 July 2011, by regulation 15(3) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Schedule 3: amended, on 1 July 2011, by regulation 15(4) of the Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198).

Schedule 3: amended, on 1 February 2009, by regulation 28(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Schedule 3: amended, on 1 February 2009, by regulation 28(3) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Schedule 3: amended, on 1 February 2009, by regulation 28(4) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

## Schedule 4

### Activity spaces (minimum)

r 45(1)(b)

<b>Service</b>	<b>Activity space required</b>
Early childhood education and care centre	Indoor—2.5 sq m per child Outdoor—5 sq m per child or a minimum number of sq m per child determined under regulation 54(3)
Home-based education and care service	Indoor—10 sq m in one area Outdoor—must have some outdoor space
Hospital-based education and care service	Indoor space requirement for activity rooms—1 space of at least 20 sq m of usable space that is readily accessible by the children participating in the service that is large enough for 40% of the maximum number of children stated on the service's licence and that gives each child at least 2.5 sq m of space Outdoor—outdoor space is not required

#### **What is indoor activity space**

Indoor space for all services is calculated by excluding the space occupied by all fittings, fixed equipment, and stored goods and excludes passage ways, toilet facilities, staff rooms, specific sleeping areas for children under 2 years of age, and other areas not available for play.

Schedule 4 heading: amended, on 1 February 2009, by regulation 29(1) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Schedule 4: amended, on 1 February 2009, by regulation 29(2) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Schedule 4: amended, on 1 February 2009, by regulation 29(3) of the Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5).

Rebecca Kitteridge,  
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 10 July 2008.



# **Education (Early Childhood Services) Amendment Regulations 2009**

(SR 2009/5)

Anand Satyanand, Governor-General

## **Order in Council**

At Wellington this 26th day of January 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 317 of the Education Act 1989, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

## **Regulations**

### **1 Title**

These regulations are the Education (Early Childhood Services) Amendment Regulations 2009.

### **2 Commencement**

These regulations come into force on 1 February 2009.

### **3 Principal regulations amended**

These regulations amend the Education (Early Childhood Services) Regulations 2008.

### **8 Regulation 14 revoked**

- (1) *Amendment(s) incorporated in the regulations.*
- (2) The specification of a date of expiry in any full licence granted before the commencement of these regulations is of no effect.

Rebecca Kitteridge,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 29 January 2009.

## Reprints notes

### **1     *General***

This is a reprint of the Education (Early Childhood Services) Regulations 2008 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### **2     *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3     *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4     *Amendments incorporated in this reprint***

Education Amendment Act 2015 (2015 No 1): section 48

Criminal Procedure Act 2011 (2011 No 81): section 413

Student Loan Scheme Act 2011 (2011 No 62): section 224

Education (Early Childhood Services) Amendment Regulations 2011 (SR 2011/198)

Education (Early Childhood Services) Amendment Regulations (No 2) 2009 (SR 2009/231)

Education (Early Childhood Services) Amendment Regulations 2009 (SR 2009/5)