



Education (Early Childhood Services) Amendment Regulations (No 2) 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 24th day of August 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.

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Regulations

- 1 Title**
These regulations are the Education (Early Childhood Services) Amendment Regulations (No 2) 2009.
- 2 Commencement**
These regulations come into force on the 28th day after the date of their notification in the *Gazette*.
- 3 Principal regulations amended**
These regulations amend the Education (Early Childhood Services) Regulations 2008.
- 4 New regulation 25 substituted**
 - (1) Regulation 25 is revoked and the following regulation substituted:
“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.”
 - (2) The Education (Early Childhood Centres) Fees Regulations 1990 (SR 1990/262) are revoked.
- 5 New regulation 44A inserted**
The following regulation is inserted after regulation 44:

“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 minimum 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.”

6 Schedule 2 amended

(1) Schedule 2 is amended by revoking items 1 and 1A after the heading “**Who counts as adult or child when applying ratios**” and substituting the item set out in Schedule 1 of these regulations.

- (2) Schedule 2 is amended by adding the note set out in Schedule 2 of these regulations.

Schedule 1 r 6(1)
Substituted note item in Schedule 2

- 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.

Schedule 2 r 6(2)
New note in Schedule 2

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 services to take spare capacity for children under 2 into account in determining the staffing required for children aged 2 or over.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force 28 days after notification in the *Gazette*, amend the Education (Early Childhood Services) Regulations 2008 so as to—

- require early childhood service providers applying to be licensed to pay a fee of \$2,756.25; and
- modify the way in which compliance with minimum staffing requirements of those regulations is determined in relation to

mixed-age early childhood education and care centres and hospital-based services; and

- lower from 20 to 17 the age at which a person is counted as an adult for the purposes of the requirements for home-based services.

The requirement to pay the new fee does not apply to existing early childhood services.

The minimum staffing required for a mixed-age early childhood education and care centre or hospital-based service is in part determined by reference to the number of children under 2 attending. For example, if 1–5 children under 2 attend, 1 staff member is required for them, and if 6–10 children under 2 attend, 2 staff members are required, and so on.

The modification of the way in which compliance with minimum staffing requirements is determined has the effect that where the number of children under 2 attending a service is not exactly divisible by 5,—

- the appropriate number of staff members is still required for them; but
- the number of additional children under 2 who could attend the service without requiring an additional staff member is treated as spare capacity, and can be set off against the number of children over 2 attending the service when the number of staff members required for them is calculated.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 27 August 2009.

These regulations are administered by the Ministry of Education.
