

Intereach Children's Services

Issues of Non-compliance in Family Day Care Procedure



Applies to	Intereach Family Day Care (FDC)				
Policy	NQS Seven: Leadership, Service Management and Effective Administration of Children's Services Policy				
Version	2.0	Date approved	08/12/2022	Next review date	08/12/2025

1. Objective

Intereach, as the Approved Provider, is required by law to ensure staff and educators abide by the following:

- Education and Care Services National Law Act 2010 and the Education and Care Services National Regulations consolidated 2017;
- Workplace Health and Safety Act 2011 (NSW) and Workplace Health and Safety Regulations 2017 (NSW);
- Occupational Health and Safety Act 2004 (Vic) and Occupational Health and Safety Regulations 2017 (Vic);
- National Early Years Learning Framework 2010;
- My Time Our Place 2011;
- Intereach Policies and Procedures;
- the Intereach Code of Conduct;
- Educator's Agreement;
- Early Childhood Australia Code of Ethics; and,
- Child Safe Standard NSW and Vic.

Intereach is committed to ensuring:

- as far as practicable that regulations are met at all times;
- as far as practicable to maintain the safety and well-being of children, families, staff, and educators; and,
- approval to operate a children's service is maintained.

2. Responsibilities

It is the responsibility of the Nominated Supervisor to:

- ensure staff and educators are informed and understand their responsibilities in relation to:
 - relevant legislation;
 - frameworks; and,
 - Intereach policies and procedures.
- provide training to inform and support educators;
- implement a system to monitor current practices and identify areas for continued improvement;
- identify issues of non-compliance and bring these to educator's attention; and,

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- notify the Regulatory Authority of any serious incidents or complaints which allege that a serious incident has occurred or is occurring at the service or the National Law has been contravened.

It is the responsibility of the FDC Child Development Coordinator (CDC) to:

- document any suspected issues of noncompliance in the appropriate area on the CDC visit record;
- document issues relating to noncompliance, continue to document discussions or take notes from meetings around these issues and maintain an ongoing log of an individual educator's noncompliance in any areas of their service delivery;
- follow up with any necessary action that is identified as being proportionate to the issues which arise;
- inform the Nominated Supervisor of any issues with noncompliance that could not be rectified at the time they were brought to the educator's attention. The Nominated Supervisor may contact the educator to discuss any noncompliance issues of a more serious nature;
- set a time frame to address noncompliance issues in negotiation with the educator and Nominated Supervisor; and,
- where there is noncompliance in multiple areas, serious breaches or continued breaches by an educator, put an action plan in place for the educator after meeting with the Nominated Supervisor.

In relation to an allegation of a serious non-compliance or series of non-compliance, it is the responsibility of the Nominated Supervisor to:

- communicate with the General Manager or representative of the approved provider where an educator may be suspended; and,
- complete a Risk Assessment of any noncompliance issues to ascertain the severity of the situation and to guide their actions.

In relation to determining that an Educator will be suspended, Intereach will:

- notify the Regulatory Authority of the suspension of the educator;
- following an educator's suspension, hold a meeting at a mutually appropriate time between the educator, the Nominated Supervisor and the General Manager or representative of the approved provider to:
 - address the issues;
 - identify an appropriate course of action, such as an action plan which identifies the noncompliance issues, the services' expectations and appropriate strategies to reach an outcome; and,
 - specify the time frames to review and finalise the action plan.
- use discretion in deciding if families enrolled with the educator are notified of noncompliance issues. This will be dependent on the nature and severity of the breach or breaches; and,
- organise subsequent meetings with the educator if required and ensure a timely outcome is sought.

It is the responsibility of staff and educators to:

- understand and maintain compliance with the following:
 - National Regulations;

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- National Quality Framework;
- National Quality Standards;
- Child Safe Standard NSW and Vic
- Policies and procedures; and,
- work within the requirements of the Educator's Agreement.
- to seek clarification on any areas that they are unsure of;
- understand the monitoring and enforcement actions that are prescribed under:
 - the National Law;
 - National Regulations; and,
 - carried out by the Regulatory Authority.
- understand that noncompliance in any areas of their service delivery could jeopardise their future as an educator with Intereach FDC;
- address any noncompliance issues immediately or fulfil requirements of an action plan in the specified time frame; and,
- work cooperatively with the coordination unit staff or representatives of the Approved Provider to come to a satisfactory outcome.

3. Procedure

3.1. Guidelines

- An educator, depending on the nature of the breach, may be required to rectify the situation as soon as it is brought to their attention.
- An action plan, outlining expectations, strategies and a time frame may be put in place.
- An educator, with the Nominated Supervisor, will review and finalise any action plans put in place.
- An educator, depending on the nature and severity of the breach, may be suspended until evidence has been provided to the Nominated Supervisor that any identified breaches have been rectified.
- If an educator continues to have breaches of the National Law or National Regulations, a meeting will be called with the Nominated Supervisor and General Manager or representative of the Approved Provider of Children's Services to develop strategies to support the educator in meeting the requirements of Intereach FDC.
- If an educator continues to receive notifications of noncompliance from the coordination unit, deregistration may occur.
- The Regulatory Authority will be notified of any serious incidents or complaints which allege a serious or notifiable breach to the legislation.
- An educator may wish to have a support person attend meetings between themselves. The role of a support person is to provide the Educator with emotional support during the meeting, take notes and adjourn the meeting for a break if required. The Educator will be required to do most of the speaking as the support person cannot represent the Educator and is not able to advocate on their behalf. The support person acts as an observer, takes notes, and can ask questions about the process if the meeting does not adhere to its scope.

3.2. Discussion of Noncompliance and Risk Assessment

The CDC will document the alleged noncompliance and discuss the noncompliance with the Nominated Supervisor. The CDC and Nominated Supervisor will determine whether it is a child protection issue. In the case of a child protection issue, the matter will be dealt in accordance with the *Intereach Child Protection Procedure*.

The CDC and/or the Nominated Supervisor will complete a risk assessment of the alleged noncompliance using the risk assessment tool. If the rating is less than high, the Nominated Supervisor may request the educator develop strategies on how they will become compliant. The Nominated Supervisor may determine that an action plan is required.

If the rating is high – very high, then the educator will be suspended until an investigation is concluded. Refer to following steps.

3.3. Investigation into serious noncompliance with regulations

Step One – Appointment of Investigator

Intereach will appoint an investigator and contact person for the investigation. If the rating is high – very high, Intereach may appoint an external investigator.

Step Two – Communication with the Family

If a noncompliance issue involves a child, the child's parents may be informed and interviewed. This will be at the discretion of the investigation team and will be in conjunction with legal advice.

If the noncompliance issue only involves the educator, then under the principles of confidentiality families will not be informed about the investigation. Intereach will inform families that the educator is unavailable to care for children and offer to place the children with another educator.

Step Three – Communication to the Educator

Intereach will formally advise the educator in writing that an investigator has been appointed to undertake an investigation into the alleged noncompliance. Intereach will offer a support person to be present at the interview.

Step Four – External Organisations – Notice of Commencement of Investigation

Intereach will lodge a Notice of Complaint with NSW Department of Education or the Department of Education and Training Victoria depending on which state the FDC service operates. Intereach will call the NSW or Victorian Ombudsman to gauge whether the conduct is reportable conduct – If it is reportable conduct then follow the flow chart from NSW or Victorian Ombudsman – If not continue with this procedure.

Step Five – Investigation and Report

Intereach will determine whether the allegation of noncompliance is found to be substantiated, partially substantiated or unsubstantiated. This will be determined based on a range of evidence, including interviews with the educator, any witnesses, the educator's CDC or any other relevant parties. The investigator will maintain written records of all interviews/discussions that will form part of the investigation report.

Step Six – Outcomes

Based on the findings in the investigation report, the Nominated Supervisor, General Manager or representative of the Approved Provider will determine any subsequent action that may include professional development, performance improvement plan and deregulation as an educator with Intereach.

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Findings from the investigation will be documented in a formal letter to the educator. The Nominated Supervisor, General Manager or representative of the Approved Provider will arrange a meeting with the educator and support person to deliver findings.

Step Seven – External Organisations – Notice of Findings of Investigation

The Nominated Supervisor will:

- inform the NSW Department of Education or the Department of Education and Training Victoria of the outcome of the complaint and investigation; and,
- provide any necessary documentation to the NSW or Victorian Ombudsman if applicable.

3.4. Appeal by an educator

An educator may appeal a decision, refer to *Intereach Complaint Handling Policy*.

3.5. Contacts

Department of Education and Communities Albury office 60411755

NSW State Ombudsman's Office Level 24, 580 George Street, Sydney, NSW Toll free 1800 451 524 or 02 9286 1000

Department of Education and Training GPO Box 4367, Melbourne Victoria 03 9637 2000

VIC State Ombudsman's Office Level 2 570 Bourke St, Melbourne VIC 3000 Toll free 1800 806 314 or 03 96136222

The contact number for questions on rights to appeal in FDC:

Administrative Decisions Tribunal (NSW) 1300 00 NCAT or 1300 006 228 and follow the prompts www.adt.lawlink.nsw.gov.au

Administrative Decisions Tribunal (Victoria) 1300 01 8228 and follow the prompts www.vcat.vic.gov.au

4. National Quality Framework

Element	Concept	Description
7.1	Governance	Governance supports the operation of a quality service.
7.1.2	Management Systems	Systems are in place to manage risk and enable the effective management and operation of a quality service
7.1.3	Roles and responsibilities	Roles and responsibilities are clearly defined, and understood, and support effective decision making and operation of the service.
7.2	Leadership	Effective leadership builds and promotes a positive organisational culture and professional learning community.
7.2.3	Development of professionals	Educators, co-ordinators and staff members' performance is regularly evaluated and individual plans are in place to support learning and development.

5. Context	
4.1 Standards or other external requirements	<p>Australian Children's Education and Care Quality Authority (2017). National Quality Standards</p> <p>Australian Children's Education and Care Quality Authority (2017). Guide to the National Quality Framework</p> <p>Victorian Ombudsman, Complaint Handling Guide for the Victorian Public Sector (2016)</p> <p>NSW Ombudsman's guidelines, NSW Ombudsman Child protection in the workplace (2004) p.97</p>
4.2 Legislation or other requirements	<p>Education and Care Services National Regulations consolidated 2017</p> <p>Education and Care Services National Law Act 2010</p>
4.3 Internal Documentation	<p>Intereach Child Protection Procedure</p> <p>Intereach Complaint Policy</p> <p>FDC Home Safety Risk Assessment Audit</p> <p>Educators' Agreements</p> <p>Action Plan</p> <p>Benefit Risk Assessment</p>

6. Document control			
Version	Date approved	Approved by	Next review date
1.0	7/8/2020	R. Phillips - Acting Senior Manager, Children and Family Services	7/8/2023
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