

## Ff - FAMILY DAY CARE EDUCATORS NON-COMPLIANCE AND DE- REGISTRATION PROCEDURE

Effective from: 5 May 2016  
Contact officer: Coordinator of Children Services  
Next review date: 2 Years  
File Reference: 1825/29.5  
Related Policies/Local Laws/Legislation:  
Children (Education and Care Services National Law Application) Act 2010: Sections 173-174, 178, 192-193  
Education and Care Services National Regulations 2011 Cl 175-176, 228  
National Quality Standard  
Children and Young Persons (Care and Protection) Act 1998  
Child Protection (Working with Children) Act 2012  
Ombudsman Amendment Child Protection and Community Services Act 1998

Related Documents: Children's Services Policy and Procedures  
Family Day Care Educator Agreement  
Children's Service Philosophy  
ACECQA (2011) *Guide to the National Standards*.  
ACECQA (2011) *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations*.  
NSW Ombudsman [www.ombo.nsw.gov.au/](http://www.ombo.nsw.gov.au/)  
Accessed May 2015  
NSW Office of the Children's Guardian  
[www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au) Accessed May 2015

### PURPOSE

Wingecarribee Shire Council as an approved provider of child care services, including the Family Day Care Service (**FDC Service**), is committed to delivering quality education and care and recognises that the safety and wellbeing of Educators, staff, families who use the service is paramount.

Educators registered on the FDC Service Register of Educators (**Register**) are authorised to provide family day care services as an agent of the FDC Service.

Educators are expected to maintain a high level of quality in the provision of their service and strictly in accordance with terms and conditions of the Educator Agreement.



Educators are supervised, monitored and provided with professional support, guidance and improvement recommendations through regular home visits conducted by the FDC Service and ongoing communication via telephone and email.

A failure on the part of an Educator to comply with the Educator Agreement (and/or a Law which governs the provision of child care services in Australia (**Non-Compliance**) may give rise to grounds for the FDC Service to:

1. terminate the Educator Agreement (Clause 5); and
2. remove the Educator's name from the FDC Service Register (**De-Registration**).

**Allegations of abuse by an Educator or a third party while the child was under the care and/or supervision of the Educator are dealt with under the Child Protection Procedure.**

The principles of natural justice will be applied and considered, however the welfare of children will be at the centre of any decision by FDC Service.

## SCOPE

This policy applies to:

Wingecarribee Family Day Care Staff employed by Wingecarribee Shire Council

Wingecarribee Family Day Care Educators as Agents of the Approved Provider – Wingecarribee Shire Council

Adult Household members residing on the premises of a Family Day Care Educator

All children and families accessing care with Wingecarribee Children's Services

All volunteers, students and visitors at the premises of a Family Day Care Educator whilst children are in care.

## PROCEDURE

Where a complaint or allegation is received by the FDC Service against an Educator which the FDC Service, acting reasonably, believes may give rise to a risk to children's health, safety or wellbeing the FDC Service may elect to temporarily remove the Educator from the Register while inquiries take place.

In such an event, Parents/Guardians of children in the care of the Educator will be notified by the FDC Service and supported to find alternative care, where possible, during the course of any inquiries until the matter is resolved.

Issues surrounding the management and response to Non-Compliance and De-Registration will be handled promptly, seriously, sensitively and confidentially.



## NON-COMPLIANCE

In response to concerns or complaints the FDC Service will:

- Consider the consequences and likelihood of risk to the children's safety as paramount.
- Review against the relevant legislation
- Where a serious breach or an accumulation of non-compliance issues occur which are considered by FDC Service as high risk the procedure set out at Level 3 will apply

### Level 1

1. FDC Service to notify the Educator of the issue in writing (**Notice**) and request the matter be rectified within the period of time stipulated in the Notice.
2. The Educator will either rectify the issue and/or will have a right of reply to the Notice which reply is to be provided to FDC Service in writing within the period of time stipulated in the Notice.
3. The FDC Service will consider the reply of the Educator and/or confirm by way of a home visit and written communication that the matter has been rectified at the expiration of the period of time stipulated in the Notice.
4. If the matter is unable to be rectified immediately or within the timeframe stipulated in the Notice the parties agree to enter into a documented risk management plan and strategies to ensure rectification occurs.
5. The FDC Service will record the breach in the Educators personnel file referring to the Law, Regulations, Clause within the Educator Agreement and/or Policy/Procedure that has been breached.

### Level 2

Where the original breach is not rectified or a further breach/s occurs the following procedure will apply at the discretion of the FDC Service:

1. FDC Service to notify the Educator of the issue in writing (**Notice**) and request the Educator attend a formal meeting.
2. The Educator will have a right of reply to the Notice before the meeting which reply is to be provided to FDC Service in writing within the period of time stipulated in the Notice.
3. The Educator will have the option of having a support person present at any formal meeting.
4. Dependent on the Educator's reply and the outcome of the Formal Meeting, where the FDC Service finds the original breach remains unrectified or further breach/s are determined to have occurred, a Formal Warning Notice will be provided to the Educator.
5. The Formal Warning Notice will include:
  - a. The date on which the first breach occurred;



- b. The date on which the further breach/s occurred (where applicable);
  - c. An outline of the strategies agreed to by the Educator to ensure that existing breaches are rectified, and that no further breach will occur and
  - d. The period of time within which any or all actions to be taken must occur.
6. The Formal Warning Notice will be signed by the Coordinator, Children's Services and the Person in Management and Control, Children's Services.

### **Level 3**

Where a serious breach or an accumulation of non compliance issues occurs the FDC Service may, in its absolute discretion, apply either of the following procedures:

1. The FDC Service will issue a Notice of Non-Compliance and De-Registration, which Notice will have effect immediately  
OR
2. The FDC Service may notify the Educator of the issue in writing (**Notice**) and request the Educator attend a formal meeting with the FDC Service .
3. The Educator will have a right of reply to the Notice before the meeting which reply is to be provided to FDC Service in writing within the period of time stipulated in the Notice.
4. The Educator will have the option of having a support person present at any formal meeting.
5. Where a serious breach and/or an accumulation of non-compliance issues is determined to have occurred by the FDC Service warranting de-registration, the FDC Service will issue a Notice of Non-Compliance and De-Registration to the Educator.
6. The FDC Service will:
  - a. remove the Educator's name from the FDC Register;
  - b. notify the parents/guardians of children in the care of the Educator; and
  - c. notify the NSW Department of Education of its decision within seven (7) days after the date shown on that Notice. This may be in addition to any serious incident or non compliance that may have already been reported within the 24hr timeframe as required by the Regulations.

### **APPEAL AGAINST DE-REGISTRATION**

An Educator who feels that their name has been unreasonably removed from the Register may appeal to the FDC Service within fourteen (14) days of receiving the Notice for an internal review of the decision.

The FDC Service will arrange for an internal review of its decision by a person who was not involved in the decision the subject of the appeal (as determined by the Person in Management and Control, Children's Services).



# Children's Services Procedures

If an Educator is dissatisfied with the outcome of the Internal review, they may appeal to the NSW Civil & Administrative Tribunal (NCAT) within thirty (30) days of receiving the outcome from the internal review by the FDC Service.

Information in relation to the appeals process and contact details of NCAT can be obtained from [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

**Approved By:**



**Nick O'Connor**  
**GROUP MANAGER CORPORATE AND COMMUNITY**

**05.05.2016**

