

Management of complaints, incidents and non-compliance in family day care and Respite Care program procedure

This is a mandated procedure under the operational policy framework. Any edits to this procedure must follow the process outlined on the [creating, updating and deleting operational policies](#) page.

Overview

This procedure is for Department for Education staff and educators registered with a department family day care scheme and approved carer providers with the department's Respite Care program. This procedure documents the management of complaints, incidents and non-compliance within the Department for Education (the department) family day care (FDC), Respite Care program (RCP) and guardianship family day care (GFDC). This procedure outlines the department's processes whilst reflecting the role of the Education Standards Board of South Australia in regulating FDC and the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission in regulating the RCP.

Scope

The procedure applies to the investigation of complaints, incidents and non-compliance of educators and care providers (collectively referred to as educators throughout this document) registered or approved with the department's FDC, RCP and GFDC programs, and educator assistants approved under a department FDC scheme. The department's 'complaint management procedure' does not apply in these instances.

This procedure relates to the management of complaints, incidents and non-compliance that:

- are notifiable to the Education Standards Board under the *Education and Early Childhood Services (Registration and Standards) Act 2011* (which incorporates the Education and Care Services National Law) and Education and Care Services National Regulations 2011
- are notifiable to the NDIS Quality and Safeguards Commission under the *NDIS Act 2013* and National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018
- allege an educator has contravened the department's educator registration conditions or other relevant department policies, procedures, guidelines and standards relating to the operation of FDC, RCP or GFDC
- meet the definition of an incident of extreme seriousness as outlined in the [incident coordination: managing incidents of extreme severity procedure](#).

This procedure does not relate to instances where a FDC educator makes a complaint about department staff or policy. This is covered under the Service Management in family day care standard.



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Detail

Complaints, incidents and non-compliance

Complaints about an educator may come from a range of sources including parents, members of the community, other early childhood/family support agencies, NDIS Quality and Safeguards Commission (NDIS Commission) for the RCP, and the Education Standards Board of South Australia (ESB) for FDC.

The nature and severity of complaints vary considerably. Complaints may relate to one or more of the following aspects of an educator's service:

- risks to children's health, safety or wellbeing
- care placements or availability of educator
- misinterpretation of policy, regulations or registration conditions
- fees or child care subsidy – eligibility and claims
- relationships with children or parents and families
- guiding children's behaviour
- educational program and practice
- relationships and communication with families, staff or community members
- the physical care environment or ability to meet and maintain standards
- if an educator is a fit and proper person and whether they can maintain their educator registration conditions/conditions of approval
- business management, administrative practices and organisation
- miscommunication.

A critical incident is any significant unusual or threatening event that may cause disruption to a site or service, which could be contentious, create significant danger or risk, or attract media attention, and includes those matters notifiable to the ESB under the National Law and Regulations.

The incident may cause a person (including educators, children, parents/caregivers) to experience unusually strong emotional reactions, to feel unsafe, vulnerable and under stress.

Families have an expectation that the department will actively promote, monitor and immediately address matters of educator non-compliance with relevant legislation, department policies, procedures, guidelines, standards and registration conditions, to ensure the health, safety and wellbeing of children attending FDC, RCP or GFDC.

The department manages educator non-compliance through a range of internal processes including:

- induction
- annual reviews of performance and compliance

- information and training programs
- robust policy framework linked to regulatory requirements
- support from staff to provide practical and constructive advice on how to comply with the law, interpret quality standards and, where necessary, how to remedy non-compliance
- regular review of children in care reports
- educator assessment matrix
- biannual pool compliance assessment and annual premises assessment
- implementation of work plans
- monitoring compliance through scheduled and unscheduled visits
- seeking regular feedback from families
- professional development.

Documenting and assessment

All complaints, including anonymous complaints, will be recorded by staff using the 'complaint intake form'. This form is to be used to record details of complaints or concerns about an educator. It is important that the text included in the intake form regarding confidentiality is clearly stated to the complainant by the person receiving the complaint. The form is also used by the Program Manager to record progress and next steps. The 'complaint intake form' is then provided to the Program Manager immediately for review.

Each FDC educator and RCP care provider must notify the department, as the approved provider of the service, of:

- incidents or injuries that occur while a child is being educated and cared for as part of the service
- any complaints alleging that a serious incident has occurred or is occurring while a child was or is being educated and cared for
- any contraventions of the National Law.

Educators are required to report these matters using the 'incident, injury, trauma or illness record'.

This form is to be completed by educators to record incidents, injuries and illness or where a child has experienced trauma in care. This form must be faxed, emailed or delivered to the relevant FDC scheme office or RCP Manager within 12 hours from the time of the incident. If the parent or guardian is unable to sign the form at the time of the incident, the form can be submitted without the parent signature initially and followed up with a signed copy as soon as possible.

These records provide a chronological record of educator contact via phone, home visit, training, meetings and office visits. The notes summarise the key interactions (observations, advice, issues and support) between educators and program staff.

Non-compliance with relevant legislation, department policies, guidelines, standards and FDC educator registration conditions will be recorded on the home visit record or educator contact record by program staff.

Notification of matters

Complaints, incidents and non-compliance that meet the criteria outlined below are to be immediately emailed to the Manager, Family Day Care Programs and FDC case manager and entered on the department's Incident and Response Management System (IRMS) by the Program Manager within 12 hours. A severity rating of an incident is automatically applied to an incident report in the IRMS system dependent upon the categories and site actions selected by the person completing the report.

FDC matters notifiable to the ESB in line with the National Law and Regulations are:

- the death of a child while being educated and cared for by the service or following an incident while being cared for by the service
- any incident involving serious injury or trauma to a child which a reasonable person would consider required urgent medical attention from a registered medical practitioner, or for which the child attended, or ought reasonably to have attended, a hospital
- any incident involving serious illness of a child for which the child attended, or should reasonably have attended, a hospital
- attendance of emergency services at the education and care services premises was sought as a result of an emergency
- a child was missing from the service or was not able to be accounted for
- a child was taken or removed from the service by a person not authorised by a parent to collect the child from the service
- a child was mistakenly locked in or locked out of the service premises or any part of the premises
- incident that requires/required the approved provider to close, or reduce the number of children attending the service for a period
- any circumstance that poses a risk to the health, safety or wellbeing of a child attending the service
- any incident where it is reasonably believed that physical and/or sexual abuse of a child has occurred or is occurring while the child is being educated and cared for by the service
- any allegation that sexual or physical abuse of a child has occurred or is occurring while the child is being educated and cared for by the service
- any complaint alleging that a serious incident has occurred while the child is educated and cared for or alleging that the law has been contravened.

Under [A New Tax System \(Family Assistance\) \(Administration\) Act 1999](#), Child Care Subsidy Minister's Rules 2017 (Minister's Rules) and Child Care Subsidy Secretary's Rules 2017 (Secretary's Rules), the department is required to notify the Australian Government Department of Education, Skills and Employment of the following matters:

- a serious conviction or finding of guilt of a FDC educator
- unexpected closure of any of the provider's approved child care services due to unforeseen circumstances

- an event or circumstance in relation to a person with management or control of the provider (including a person responsible for the day-to-day operation of any of the provider's approved child care services) that reasonably indicates that the person is not likely to be a fit and proper person to be involved in the administration of child care subsidy
- information gathered about an educator following a screening and suitability check where it has been identified that the educator has a serious conviction or finding of guilt for any of the following offences under a law of Australia or of a foreign country:
 - an indictable offence punishable by a maximum of two years imprisonment
 - an offence involving violence
 - a sexual offence
 - an offence involving fraud, stealing or dishonesty
 - is an undischarged bankrupt
 - was a director or secretary of a corporation when the corporation went into administration, receivership or liquidation.

RCP matters reportable to the NDIS Quality and Safeguards Commission in line with the *National Disability Insurance Scheme Act 2013* and associated Rules include:

- the death of a person with disability
- serious injury of a person with disability
- abuse or neglect of a person with disability
- unlawful sexual or physical contact with, or assault of, a person with disability
- sexual misconduct committed against, or in the presence of, a person with disability, including grooming of a person with disability for sexual activity
- the unauthorised use of restrictive practice in relation to a person with disability.

In addition, the following are considered incidents for the purposes of this procedure:

- an incident involving a child/young person under the guardianship of the Chief Executive, Department for Child Protection, occurring in, or related to, FDC, RCP or GFDC
- allegations of sexual abuse/assault between children and young people occurring at a FDC, RCP or GFDC service or care setting
- criminal or security incidents or threats to the safety– environmental or human (for example, serious lock down circumstances, fire, serious infectious disease, weapons or firearms)
- attempted or completed suicide at a service
- criminal charges against an educator or person residing in the educator's home
- alleged contravention of the department's educator registration conditions
- alleged contravention of relevant department policies, procedures, guidelines and standards relating to the operation of FDC, RCP or GFDC.

Where the complaint, incident or non-compliance relates to an incident that is categorised as a matter of extreme seriousness or severity in line with the department's [incident coordination: managing incidents of extreme severity procedure](#), the Manager, Family Day Care Programs will notify the Incident Management Directorate (IMD) immediately to coordinate activities, responses, communication and information flow for the management of the incident.

An anonymous complaint will be assessed for veracity and the extent of investigation required or possible, noting that anonymity may limit the scope of the investigation, as well as issues regarding natural justice for those who have a complaint made about them.

Some complaints relate to issues that do not meet the above criteria and can be resolved promptly and do not require a detailed investigation. These types of complaints pose a low or no risk to children and will be managed by the Program Manager.

Notifications to other agencies

Notifications are made to other agencies by the Office for the Early Years Regulation and Compliance Team using the information submitted on IRMS as indicated above.

Notification timeframes to the ESB are outlined [here](#).

Notification timeframes to the NDIS Commission are outlined [here](#).

Dependent on the circumstances, the department may also be required to notify the following agencies:

- Department for Child Protection
- Department of Human Services
- Australian Skills Quality Authority
- South Australia Police (SAPOL).

In addition, the department can receive reports from SAPOL and the Department for Child Protection.

Determination of immediate temporary removal

The Executive Director, Support and Inclusion (or delegate) may temporarily remove an educator from the department's educator register, where it is alleged or considered that:

- there is an immediate risk to the health, safety and wellbeing of children in care, or the health, safety and wellbeing of children has been significantly compromised
- an educator has failed to comply with the department educator registration conditions/approval conditions
- an incident of extreme seriousness has occurred as outlined in the department's [incident coordination: managing incidents of extreme severity procedure](#)
- an educator has contravened the department's [FDC Educator Code of Conduct](#).

Where an educator is registered with FDC and approved with RCP, the removal from both FDC and RCP will apply.

FDC scheme managers will inform educators immediately, by telephone, of their removal including the reason for temporary removal and the nature of the complaint or allegation of non-compliance. This will be based on a script approved by the Manager Family Day Care Programs and/or IMD. Educators will receive a letter from the Executive Director, Support and Inclusion confirming this information within two weeks. Temporary removal will remain in place until the investigation has been completed, all findings and outcomes have been determined and notice of re-registration is provided in writing. Families using the service will be informed immediately of the educator's temporary removal by telephone, and then in writing within two weeks.

The purpose of a letter is to inform families of the educator's removal, so as they do not enter into a private care arrangement, and broadly outline the allegation or concern that led to the temporary removal. The letter, which may be checked by Legal Services, must make clear that allegations have been made only, that there is no presumption of wrongdoing on behalf of the educator and that an investigation is being undertaken by the department. Where allegations relate to sexual misconduct, the department's [managing allegations of sexual misconduct in SA education and care settings guidelines](#) will be used as a basis for communication. In some instances, a letter may be followed up with a parent survey seeking feedback on educator practice.

Where immediate removal of educator is required and children are still in care, FDC staff, where possible, will attend the educator's home to supervise children whilst families collect their children.

Families will be supported to access alternative care where available until the investigation is complete.

During this time educators must ensure confidentiality at all times and if required, should consider seeking appropriate support through a relevant health service or FDC Australia.

Where an educator is temporarily removed from the department educator register:

- the FDC Manager is responsible for informing the Business and Customer Support Centre (BCSC) Manager so no more referrals for care will be made to the educator
- the RCP Manager is responsible for informing RCP coordinators so no more referrals for care will be made to the care provider
- Family Day Care Programs staff within Support and Inclusion will prepare a brief and investigation letter for the educator which will include the reasons for temporary removal
- Family Day Care Programs staff within Support and Inclusion will prepare a letter to families confirming the educator's temporary removal.

Investigation

Responsibility

The IMD is responsible for reviewing all complaints, incidents and allegations of non-compliance recorded on IRMS, reviewing the risk rating applied by IRMS, and releasing the report to the Family Day Care Programs staff for review.

Dependent on the risk rating assigned on IRMS and a determination made by the department's IMD Assessment Panel, investigations may be managed by the:

- relevant program manager or delegate (low to moderate IRMS severity rating)
- FDC Corporate Team, which will also manage RCP investigations (high to very high IRMS severity rating)
- IMD (incidents or allegations that meet the criteria for incident of extreme seriousness or constitute serious misconduct as determined by assessment panel).

Investigation process

Depending on the seriousness of the complaint, incident or instance of non-compliance, an investigation may be undertaken by program staff, central office staff or by staff within the department's IMD as outlined in the 'management of complaints/incidents and non-compliance flow chart'.

An investigation is a means of gathering evidence to explore the nature of the incident or allegation of non-compliance and may include an interview, a survey of current and past families registered for care with the educator, a review of the educator's history, and discussions with staff and/or the complainant.

If an educator is subject to a criminal investigation by SAPOL or another law enforcement authority, the educator is obligated to advise the relevant manager. These matters will be considered by the Executive Director, Support and Inclusion, and an investigation may occur following the conclusion of the criminal investigation regardless of the outcome.

The investigation process will be conducted in accordance with the principles of natural justice and procedural fairness. The focus of activities will be to:

- define and scope the parameters of the investigation
- collect evidence
- establish and document the facts
- determine if there is sufficient evidence to suspect improper conduct such as behaviour by an educator that:
 - is inconsistent with the department's educator registration conditions, relevant legislation, department policy, procedures or standards
 - has caused a serious and imminent risk to the health, safety or wellbeing of a child
 - demonstrates the educator does not have adequate knowledge and understanding to provide education and care services to children.

Educators, where possible, will have their privacy protected, but also have the responsibility to respect the same right in relation to the other person(s) involved.

Educators will be informed of the nature of allegations against them in writing with as much detail as can be provided whilst not disclosing any confidential information. Information about the investigation process will also be provided to the educator.

During any interview the educator may have a support person present. This person can be a friend, relative, colleague, association representative or legal representative; however, this person cannot speak or act on behalf of the educator or be involved or be conflicted by the matter. An interpreter will be arranged where required.

The investigation will take into account all evidence gathered including responses from the educator, complainant, witnesses and families. It will also consider any remedy already implemented by the educator, educator history, and any extenuating circumstances impacting on or contributing to the matter to determine the appropriate outcome(s).

Once the investigation has concluded, the matter will be referred to the Manager, Family Day Care Programs (or delegate within Family Day Care Programs) or the IMD adjudicator to review the evidence and determine if, on reasonable grounds, there is sufficient evidence to suspect improper conduct and make recommendations on possible outcomes.

Notification and right to reply

Where there is sufficient evidence to suspect improper conduct, a letter of allegation will be sent to the educator outlining allegations and recommendations for intended outcomes or actions signed by the Executive Director, Support and Inclusion. The educator will have 28 days to respond to the letter. Proposed actions identified will be proportionate and appropriate to the severity of the conduct and could include:

- a return to or continued registration/approval with the department, with additional conditions such as a limit to the number of children in care or increased monitoring by department staff
- a return to or continued registration/approval with the department, with a requirement to complete a work plan which could include the requirement to undertake training and development, review service policies, procedures, standards and educator registration/approval conditions or make changes to the home environment – the educator will be required to complete the work plan within 3 months and progression will be monitored by program staff
- permanent removal from the department’s educator register.

Educator responses to the letter of allegation will be considered by either an IMD adjudicator or the Manager Family Day Care Programs (or delegate). A ‘finding of fact’ briefing and second educator letter outlining the findings and intended actions or outcomes will be prepared for the Executive Director, Support and Inclusion. The educator will have a further 28 days to respond to the letter.

Notification of investigation outcome

A final investigation outcome letter will be sent to the educator outlining the department’s final decision, including if the allegations have been unsubstantiated, and confirming the intended outcomes or actions.

Complainants and all others initially notified of the matter will also be informed of the outcome by the department, including the ESB.

In the event of permanent removal from the department’s educator register, the following agencies will also be notified:

- Department of Human Services

- Australian Government Department of Education, Skills and Employment
- People and Culture division within the Department for Education (Education:HR Confidential).

Right of appeal

If the educator or complainant is dissatisfied with the investigation process or a decision made by the department, they are able to contact the Ombudsman South Australia by telephone (8226 8699) or email (ombudsman@ombudsman.sa.gov.au).

Timelines

Investigation timelines vary, depending on the level of risk and complexity of the investigation, the number of concerns that need to be investigated and collaboration with other agencies, however every effort will be made to complete the inquiry within 90 days. Where this is not possible, the educator will be updated regarding the expected timeline.

For more information, refer to the management of complaints/incidents and non-compliance flowchart at appendix 1.

Expectations during the process

Educators must:

- comply with any lawful instructions made of them by department staff or authorised officers from the ESB or NDIS Quality and Safeguards Commission (commission)
- provide department staff or authorised officers from the ESB with unrestricted access to their approved premises and records at any time, and allow them to inspect and copy FDC records
- work cooperatively with department staff and focus on ensuring the health, safety and wellbeing of children in care rather than on the source of any complaint.

The department supports the educator's right to be heard fairly, the right to an unbiased decision made by an objective decision maker and the right to have the decision based on facts and relevant evidence. This ensures all persons are provided with procedural fairness in relation to an investigation:

- Educators affected will have a right to be heard before a decision is made.
- The educator will be informed what the relevant issues are and informed of the nature and content of material which is being considered.
- Decision-making will be fair and reasonable, free from bias and follow a fair and proper procedure.
- Evidence will support all decisions and will not be based on suspicion, hearsay, gossip or rumour. There must be facts or information to support all adverse findings.

Private care

The educator may be in breach of the *Education and Early Childhood Services (Registration and Standards) Act 2011* if they provide private care whilst being temporarily removed from the department's educator register. The educator should contact the ESB on 1800 882 413 for further information.

The educator is not to provide care if they are also registered to provide care in the RCP.

It is also advised the educator contact their public liability insurance company.

Where department staff become aware of a person providing care in a private capacity, outside of a FDC scheme, this information will be provided to the ESB.

Freedom of Information

The *Freedom of Information Act 1991* enables the educator to access documents held by the department, subject to some restrictions. An educator can seek information about accessing documents by contacting the department's Accredited Freedom of Information Officer, Freedom of Information, by email (education.FOI@sa.gov.au) or on (08) 8226 3231.

Investigations undertaken by the Education Standards Board (ESB)

For FDC, the ESB reserves the right to undertake an independent investigation of an educator where the matter relates to non-compliance with the National Law or the health, safety or wellbeing of any child attending a FDC service. This is determined by the ESB following assessment of the notification of the complaint or incident submitted by the department or after conclusion of the department's investigation.

The department will provide copies of all investigation materials to the ESB on request.

Investigations undertaken by the NDIS Quality and Safeguards Commission (NDIS Commission)

The NDIS Quality and Safeguards Commission (NDIS Commission) will investigate complaints and reports of non-compliance with the NDIS Practice Standards, NDIS Code of Conduct and other quality and safeguards requirements that apply to all providers delivering supports and services to people with disability participating in the NDIS.

The department will provide copies of all investigation materials to the NDIS Commission on request.

Information sharing

The following organisations will be informed of allegations, temporary removal and investigation outcomes:

- Various government agencies and departments as circumstances require, such as the Australian Government Department of Education, Skills and Employment, Department for Child Protection,

Child Abuse Report Line, SAPOL, NDIS Quality and Safeguards Commission, Department of Human Services Screening Unit.

- In instances where there is concern about an educator's suitability to work or volunteer with, or provide services to children and young people, the department's People and Culture division will be notified. Additionally, the Association of Independent Schools of South Australia and Catholic Education South Australia as outlined in the 'Intersectoral Information Sharing Protocol'.

Roles and responsibilities

FDC, RCP and GFDC educators

Educators are required to report incidents using the 'incident, injury, trauma or illness record' and provide to the relevant manager within 12 hours of the event and cooperate with any investigation process.

FDC, RCP and GFDC staff

Appropriately record complaints, incidents and matters of non-compliance on relevant recording tools and provide the information to the relevant manager.

FDC scheme Manager, RCP Manager, BCSC Manager

Review all complaints, incidents and allegations of non-compliance and as appropriate record these on IRMS within 12 hours.

Plan and conduct investigations of matters assessed as having low to moderate risk rating.

Regulation and compliance intake officer

Review IRMS reports.

Ensure all relevant and required information is included on IRMS.

Complete notifications to the ESB and Australian Government.

Update IRMS with relevant updates and documents.

Maintain records in Objective.

FDC Case Manager

Plan and support the conduct of inquiries and investigations of matters assessed as having high to very high risk rating in cooperation with the Manager, Family Day Care Programs.

Support the FDC scheme managers with inquiries into matters assessed as having low to medium risk rating.

Oversee the management of care concerns, inquiries, investigations and complaints.

Report on patterns and trend analysis.

Support the implementation of this procedure.

Prepare briefings and correspondence for the Executive Director Support and Inclusion.

Manager, Family Day Care Programs (or delegate)

Support staff to plan and conduct investigations of matters assessed as having high to very high risk rating.

Oversee the management of care concerns, inquiries, investigations and complaints.

Support FDC staff to prepare briefings and correspondence.

Liaise with IMD regarding assessment of incidents and complaints and present information to the IMD Assessment Panel as required.

Incident Management Directorate

IMD is responsible for reviewing all incidents and allegations of non-compliance recorded on IRMS, reviewing the risk rating applied by IRMS and releasing the report to the ECS and FDC programs staff for review.

Undertake investigations where incidents and allegations meet the criteria for incident of extreme seriousness or constitute serious misconduct.

Prepare briefings and correspondence for the Executive Director, Support and Inclusion.

Executive Director, Support and Inclusion

Approve recommendations and correspondence relating to the investigation of complaints, incidents and matters of non-compliance.

Decide upon intended actions following substantiation of allegations.

Approve temporary removal of educators.

Definitions

approved provider

An individual or organisation that holds a provider approval under the *Education and Early Childhood (Registration and Standards) Act 2011*, enabling them to apply for one or more service approvals. In this procedure, the department is the approved provider.

Education Standards Board (ESB)

The state government authority that regulates early childhood services, including FDC and schools.

NDIS Quality and Safeguards Commission (NDIS Commission)

An independent authority which regulates NDIS providers, provides national consistency, promotes safety and quality services, resolves problems and identifies areas for improvement.

program manager

FDC scheme Manager, business manager, RCP Manager.

program staff

Staff employed in department-operated FDC, GFDC and RCP.

RCP (Respite Care program)

A disability service operated by the department providing home and community based supports to children with disability and their family.

Supporting information

Intersectoral information sharing protocol

Management of complaints/incidents and non-compliance flowchart (appendix 1)

[Family day care operations policy and associated standards](#)

[Information sharing guidelines for promoting safety and wellbeing](#)

[Education Standards Board](#)

Notification types and timeframes are set out on [the Australian Children's Education & Care Quality Authority website](#)

[NDIS Commission Compliance and Enforcement Policy](#)

Related legislation

[Education and Early Childhood Services \(Registration and Standards\) Act 2011](#)

[Education and Care Services \(Registration and Standards\) Regulations 2011](#)

[Children and Young People Safety Act 2017](#)

Family assistance legislation:

- [A New Tax System \(Family Assistance\) Act 1999](#)
- [A New Tax System \(Family Assistance\) \(Administration\) Act 1999](#)

- [Family Assistance Legislation Amendment \(Jobs for Families Child Care Package\) Act 2017](#)
- [Child Care Subsidy Minister's Rules 2017](#)
- [National Disability Insurance Scheme Act 2013](#)
- [National Disability Insurance Scheme \(Provider Registration and Practice Standards\) Rules 2018](#)
- [National Disability Insurance Scheme \(Incident Management and Reportable Incidents\) Rules 2018](#)
- [National Disability Insurance Scheme \(Complaints Management and Resolution\) Rules 2018](#)

Related policies

[Managing allegations of sexual misconduct in SA education and care settings guideline](#)

[Incident coordination: managing incidents of extreme severity procedure](#)

[Safeguarding children and young people policy](#)

[Screening and suitability child safety policy](#)

Record history

Published date: October 2022

Approvals

OP number: 271

File number: 18/44160

Status: approved

Version: 1.2

Policy Officer: Family Day Care Case Manager

Policy sponsor: Director, Family Day Care Programs

Responsible Executive Director: Executive Director, Support and Inclusion

Approved by: Director, Family Day Care Programs

Approved date: 5 October 2022

Next review date: 5 October 2025

Revision record

Version: 1.2

Approved by: Director, Family Day Care Programs

Approved date: 5 October 2022

Review date: 5 October 2025

Amendment(s): Updated to reflect child protection policy name change and link.

Version: 1.1

Approved by: Chief Operating Officer

Approved date: 22 February 2022

Review date: 22 February 2025

Amendment(s): Changes to officer responsibilities given the creation of the Office for the Early Years.

Version: 1.0

Approved by: Chief Operating Officer

Approved date: 3 November 2020

Review date: 3 November 2023

Amendment(s): New procedure.

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