



Education Report: Early Learning Regulatory Review – options for regulating for 80% qualified teachers

To:	Hon Chris Hipkins, Minister of Education		
Cc:	Hon Kelvin Davis, Associate Minister of Education Hon Aupito Williams Sio, Associate Minister of Education		
Date:	29 April 2021	Priority:	Medium
Security Level:	In Confidence	METIS No:	1253466
Drafter:	Chris Jamieson	DDI:	439 6484
Key Contact:	John Brooker	DDI:	9(2)(a)
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

Consultation on tranche two of the Early Learning Regulatory Review is due to start in August 2021. This paper seeks your agreement to options for consultation on how to regulate for 80% qualified teachers in teacher-led centre-based services in line with Objective 3.1 of the Early Learning Action Plan 2019-2029.

Summary

- 1 The Education (Early Childhood Services) Regulations 2008 and the ECE Funding Handbook encourage teacher-led centres and hospital-based services to use a high proportion of qualified staff. The Regulations require services to employ at least 50% ECE qualified teachers. The Funding Handbook encourages services to use 80% or more certificated ECE and/or primary qualified teachers to cover minimum adult:child ratios.
- 2 We have developed the four options below for consultation as part of tranche two of the Early Learning Regulatory Review. The options should lift the quality of provision, as services would need to employ or use a high proportion of qualified teachers. All options partially align the Regulations with the funding rules by allowing both qualified and certificated ECE and primary teachers to count as qualified teachers.
- 3 Options 1 and 1A continue to measure the number of staff employed by a service rather than staff teaching children. This allows some flexibility for staff absences. Option 1A would require at least 50% of those employed to be ECE qualified, maintaining a strong ECE teaching base.
- 4 Option 2 matches the Regulations to the current funding rules. This would measure the proportion of qualified teachers in contact with children, but provides flexibility to use unqualified teachers as qualified for limited hours. It is also an average over four months, which makes it easier to comply with but more difficult to monitor and enforce.

- 5 Option 3 most closely reflects the intent of regulating for 80% qualified – it would require a minimum of 80% qualified teachers to be teaching children at all times. This would be the most difficult of the options for services to comply with.
- 6 We intend to test these ideas with the Sector Advisory Group in late May or early June, and may amend them before providing final advice to you prior to public consultation.

Option	Unit of calculation	Time period of calculation
Option 1: Enhanced status quo	$\frac{\text{Primary or ECE qualified staff employed by the service}}{\text{Total staff required to satisfy ratios (licence maximum)}} = 80\%$	Must be employed while service is open
Option 1A: Retaining a high percentage of ECE qualified teachers	$\frac{\text{ECE Qualified staff employed by the service}}{\text{Total staff required to satisfy ratios (licence maximum)}} = 50\%$	Must be employed while service is open
	$\frac{\text{Primary or ECE qualified staff employed by the service}}{\text{Total staff required to satisfy ratios (licence maximum)}} = 30\%$	
Option 2: Match the Regulations to the funding rules	$\frac{\text{Primary or ECE qualified staff working with children}}{\text{Total staff required to meet ratios for children in attendance}} = 80\%$	Average across four months. Unqualified teachers can count as qualified for up to 40 hours per four months.
Option 3: 80% in ratio at all times	$\frac{\text{Primary or ECE qualified staff working with children}}{\text{Total staff required to meet ratios for children in attendance}} = 80\%$	All times children are in attendance

- 7 While over 96% of services qualify for 80%+ certificated teacher funding rates each funding payment, a small number of services are not achieving these funding rates. Hospital-based services, bilingual and immersion services, isolated services and those in low socio-economic areas are more likely to be in this group. These types of services are more likely struggle to meet a new regulated standard under any of the options above. We therefore recommend seeking specific feedback as part of consultation to understand what barriers these services face, in order to develop options for supporting these services.

Recommended Actions

The Ministry of Education recommends that you:

- a. **agree** to consult on the following options to regulate for 80% qualified teachers during tranche two of the Early Learning Regulatory Review:
- Option 1: Enhanced status quo
 - Option 1A: Retaining a high percentage of ECE qualified teachers

Agree / Disagree

Agree / Disagree

- Option 2: 80% in ratio at all times

Agree / Disagree

- Option 3: Match the Regulations with the funding rules

Agree / Disagree

- b. **agree** to seek feedback as part of consultation on the barriers that may prevent hospital-based services, immersion and bilingual services, isolated services and services in low socio-economic areas from adhering to a new 80% requirement

Agree / Disagree

- c. **proactively release** this paper as part of the information release for tranche two

Release/Not release



John Brooker
Group Manager
Education System Policy

__/__/__

Hon Chris Hipkins
Minister of Education

__/__/__

Background

- 1 Objective 3.1 of the Early Learning Action Plan 2019-2029 recommends regulating for 80% qualified teachers in teacher-led centres¹ before regulating for 100% in the long term. The Plan also notes that issues of consistency between the regulatory requirements and funding conditions would be addressed to ensure the rules align as any changes are introduced.
- 2 Regulating for 80% qualified teachers is being considered as part of tranche two of the Ministry of Education's review of the early learning regulatory system (the Review), which also covers regulating for the person responsible requirement and network planning.
- 3 As network planning needs to be implemented by 1 August 2022, we plan to start consultation on tranche two policy proposals in August 2021. This will be followed by consultation on any draft regulatory changes in early-2021. We are seeking your agreement to the content of tranche two consultation through a series of papers. This is the first of these papers.

Qualification requirements in the Regulations and Funding Handbook

- 4 The qualification requirements set out in the Education (Early Childhood Services) Regulations 2008 and the ECE Funding Handbook aim to ensure teacher-led centres and hospital-based services use a high proportion of qualified teachers.
- 5 The Regulations require these services to employ 50% ECE qualified teachers. For a service with a full licence, this is calculated against the total number of adults needed to satisfy minimum adult:child ratios for the maximum number of children who can attend at any one time.² For a new service on a probationary licence, this is measured against the number of child enrolments.³
- 6 Under the Funding Handbook, services can qualify for higher funding rates if they use 80% or more certificated ECE and primary qualified teachers to cover minimum adult:child ratios over a four-month period. This is calculated on average, which enables services to fluctuate above and below 80% at various points.
- 7 The Regulations and the Funding Handbook use different safety mechanisms to help services comply with the requirements.
 - The Regulations allow one student in their final year of study towards a ECE teaching qualification to count as a qualified teacher.
 - The Funding Handbook allows services to count an unqualified and uncertificated teacher as a certificated teacher for up to 40 hours per funding period. The average over a four month period also provides some flexibility.
- 8 More detail on the qualification requirements is available in Annex 1.

¹ Teacher led centres are licensed as education and care centres, including kindergartens.

² Education (Early Childhood Services) Regulations 2008, s 44(4).

³ Ibid.

Some services will likely find it difficult to meet 80% qualified teachers

- 9 The majority of services are consistently funded at 80% or more certificated teachers. In November 2020, 97% of services qualified for 80%+ certificated teacher funding rates. Data from the 2020 ECE Census also suggests that most services should be able to comply with an 80% requirement over time. The data shows that 71% of staff employed by teacher-led centres held either an ECE or primary teaching qualification. An additional 7% of staff employed in these services were studying towards an ECE teaching qualification.
- 10 Of the 106 services that did not qualify for 80%+ certificated teacher funding rates in November 2020:
- 9 were hospital-based services (45% of hospital-based services)
 - 37 were receiving funding for Equity C – languages and cultures other than English (21% of teacher-led centres receiving Equity C funding)
 - 13 were Māori bilingual or immersion⁴ services (25% of Māori bilingual or immersion Māori teacher-led centres)
 - 13 were Pacific bilingual or immersion services (17% of Pacific bilingual or immersion teacher-led centres)
 - 5 were self-defined as a Pacific service but were neither immersion nor bilingual (22% of these services)
 - 19 were considered isolated under the draft isolation index⁵ (8% of isolated services)
 - 56 operate in a low socio-economic area (5% of low EQI teacher-led centres).
- 11 Many of these services find it difficult to meet the current standard. Therefore, there is a risk that regulating for 80% qualified teachers could affect the ability of these services to stay open.
- 12 This is problematic because we consider many of these services important to maintaining a diverse network of services. Many of these services also serve population groups traditionally underserved by the education system. We consider it important to support these services, as they serve key population groups, enable parental choice, and facilitate parents' labour force participation.
- 13 The Ministry is also aware that current teacher qualification pathways may not be well suited to specific population groups. For example, there is limited focus on Pacific bilingual and immersion provision in initial teacher education, and English language requirements can act as a barrier for Pacific teachers becoming qualified teachers.
- 14 It is also possible that some of these services would be better placed to operate at 80% if they had more funding available to compete for qualified teachers. For example, services operating in low socio-economic areas may charge low fees and may only be able to offer comparatively low salaries to qualified teachers.
- 15 We therefore recommend seeking feedback from these services about what barriers may prevent them from qualifying for 80-99% funding rates and what support would help them comply with a new 80% requirement. Understanding these barriers is important for developing options to effectively support these services, such as a longer implementation timeframe or expanding the use of Limited Authority to Teach to early learning services.

⁴ Immersion services spend 81-100% of their teaching time in a language other than English. Bilingual services spend 51-80% of their teaching time in a language other than English.

⁵ The draft isolation index has been developed to determine the relative isolation of schools.

- 16 There are also general sector concerns about existing teacher supply, which suggests a long lead in time may be necessary before regulating for 80% qualified teachers.

Consultation options for regulating 80% qualified teachers

- 17 When regulating for 80% qualified teachers, we need to strike a balance between improving the quality of provision and ensuring the sustainability of services. We have taken the following into consideration in developing options for regulating for 80% qualified teachers:
- **maintaining or improving the quality of provision and shaping positive outcomes for children.** Teaching qualifications influence the quality of provision and can support positive outcomes for children. If the 80% threshold is set at a low standard, it may not adequately support children's learning and development.
 - **ensuring services' sustainability.** The Regulations need to be achievable so that services can comply and remain open.
 - **supporting diverse provision.** The Regulations need to be achievable for services catering to diverse communities, particularly those serving communities traditionally not well served by the education system.
 - **regulatory standards that can be monitored effectively.** The Regulations need to be clear to enable the Ministry to monitor regulatory compliance.
- 18 The options are designed to highlight different key features. Option 1 and 1A aim to strike more of a balance between lifting quality and enabling services' ongoing sustainability than the other options, with option 1A prioritising ECE qualified teachers. Option 2 aims to ensure a high presence of qualified teachers are in contact with children on average. Option 3 would elevate the quality of provision more than the other options.
- 19 The options all recognise that ECE and primary qualified teachers holding a current practising certificate as qualified teachers. A person in their final year of study towards an ECE teaching qualification would not count towards the requirement. This would match the qualification requirements in the Regulations to those in the Funding Handbook and would help services reach the 80% standard.
- 20 However, we expect a sizable minority of stakeholders would prefer to only count ECE qualified teachers as qualified teachers because they consider teachers with ECE specific training best placed to deliver *Te Whāriki*.
- 21 Under each option, the current funding rules would continue to apply, which encourages services to have a high proportion of qualified teachers in contact with children.
- 22 A summary of the options is in Annex 2.

Option 1: Enhanced status quo

- 23 This option requires services to employ 80% ECE or primary qualified teachers, as measured against the service's licence maximum (full licence) or number of enrolments (probationary licence).

- 24 This approach ensures each service has a strong base of qualified teachers to draw upon, which should lift or maintain quality. Together with the funding incentives, services are likely to use a high proportion of qualified teachers to cover ratio requirements.
- 25 As this option imposes a lighter touch to the 80% requirement, it should also help support services' ongoing sustainability. Services would not be reclassified as provisional due to unexpected staff absences, provided they comply with the person responsible requirement.⁶
- 26 Given most services should be able to comply with this requirement, it should support parental choice. However, we consider Māori and Pacific bilingual and immersion services, and services in isolated and low socio-economic areas less likely to comply with this requirement.
- 27 The Ministry would assess compliance as we do now. This means we would assess compliance when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review.

Option 1A: Retaining a high percentage of ECE qualified teachers

- 28 This option adopts the same 80% requirement as option one but imposes a sub-requirement where services must employ 50% ECE qualified teachers.
- 29 The major advantage of this approach is that it guarantees each service would employ a high number of ECE qualified teachers.
- 30 Like option 1, this approach should help support services' ongoing sustainability. As such, it should continue to enable participation and facilitate parental choice. Yet there is still a risk that without additional support, Māori and Pacific bilingual and immersion services and some services operating in isolated and disadvantaged areas might not comply with the standards and may close over time.
- 31 The Ministry would continue to assess compliance in the same way as for Option 1.

Option 2: Match the Regulations to the funding rules

- 32 This option requires services to use 80% qualified teachers to cover minimum adult:child ratios across a four-month period. It also allows services to use discretionary hours for regulatory and funding purposes.
- 33 This standard is likely to boost quality for some services currently not receiving 80-99% or 100% certificated teacher funding rates.
- 34 This option would help manage services' sustainability because they would be able fluctuate above and below the 80% threshold at various points in time. This is beneficial for services that only operate at or just above 80%, as they can use a higher proportion of qualified teachers on some days to offset days where there are unexpected staff absences.
- 35 Discretionary hours would provide a useful safeguard for services at-risk of falling below 80%. However, it means that some services will comply with the requirement

⁶ At all times while children attend the service, those children, and the adults providing education and care who supervise them, are supervised by a person responsible; and there is 1 person responsible for every 50 children. Education (Early Childhood Services) Regulations 2008, reg 44(1)(d) Qualifications, ratios, and service-size: general.

despite not using 80% qualified teachers on average across a funding period. This dilutes the intention of regulating for 80% qualified teachers.

- 36 The major risk of this approach (compared to options 1 and 1A) is that some services would not be able to comply with the requirement. Over time, this may lead to the premature exit of some services, particularly services operating in disadvantaged areas and Māori and Pacific bilingual and immersion services. Hence, there is a risk that this option could inhibit parents' labour force participation for these population groups or result in families using informal childcare arrangements, which are not subject to the same regulatory standards.
- 37 From a monitoring perspective, the Ministry would only be able to assess compliance with the standard retrospectively, following each four-monthly period using a submitted RS7.⁷ Any breaches of this standard would be flagged with the Ministry's licensing advisors who may then take regulatory action.
- 38 One difficulty with this approach is that identifying non-compliance requires four months of data, and a service breaching this standard would also need four months to remedy the breach and demonstrate compliance with the 80% requirement. This introduces complexity in monitoring and delay in remediation, which does not necessarily support quality.
- 39 While we could align the regulatory and funding rules for this option, removing discretionary hours from the Funding Handbook would make it more difficult for services to access 100% certificated teacher funding rates.
- 40 This option would also be problematic for when the government regulates for 100% qualified teachers. This is because the funding rules are calculated based on minimum adult:child ratios. When regulating for 100%, a service would not be able to operate at 110% on one day and 90% on another.

Option 3: 80% in ratio at all times

- 41 This option is the hardest option to comply with as it requires services to use 80% qualified teachers to cover ratio requirements whenever children are present.
- 42 This approach has the potential to improve the quality of provision in services more than the other options, as it guarantees that a high proportion of qualified teachers are always in contact with children.
- 43 There is a risk that regulating to this standard would be unsustainable for many services without a substantial increase in teacher supply and funding. This is partly because there would be no safety mechanism available to services – they would not be able to count an unqualified student teacher as a qualified teacher or access discretionary hours to help meet the 80% threshold.
- 44 This option is also likely to impact negatively on teachers' working conditions. For example, increased demand for teachers to be in contact with children may result in less non-contact time, which could affect teachers' wellbeing. Poor working conditions could also impact on services' ability to retain qualified teaching staff over an extended period.

⁷ The RS7 is the main funding return for ECE services. It is used to calculate the number of funded child hours that are funded for each service, and the rate at which each funded child hour will be funded.

- 45 This option is more likely to limit choice and affect parents' labour force participation compared to the other options.
- 46 It is also likely to have a disproportionate impact on the sustainability of Māori and Pacific bilingual and immersion services and services operating in isolated and disadvantaged areas. This is important because these population groups may stand to benefit most from high quality services.
- 47 Without additional support, these services would likely breach the requirement. If they are reclassified to provisional and cannot subsequently operate at 80%, eventually their licence may be cancelled.
- 48 As this is an at 'all times' requirement it can be assessed for compliance at a point in time when Ministry staff follow up complaints and referrals from ERO.

Person responsible requirement

- 49 The qualification requirements in regulations 3 and 44 and Schedule 1 also link to the person responsible requirement.
- 50 We will provide you with a separate education report regarding possible changes to the person responsible requirement, including professional leadership, and the definition of teaching position in late-May.

Next steps

- 51 This is the first paper linked to tranche two of the Review. Tranche two proposals also include network planning and the person responsible requirements. As network planning needs to be implemented by 1 August 2022, we plan to start consultation on tranche two policy proposals in August 2021. This will be followed by consultation on any draft regulatory changes in early-2022.
- 52 We intend to test the options discussed in this paper with the Sector Advisory Group. This is an important opportunity to workshop the ideas, consider whether other options should be explored, and identify possible risks with the proposals.
- 53 Before seeking Cabinet agreement for consultation, we will provide you with advice on the scope and options for consultation on the person responsible requirements and network planning in late-May and early-June.

Annex 1: Detail on qualification requirements

- 1 There are different requirements set out in the Education (Early Childhood Services) Regulations 2008 and the ECE Funding Handbook because they serve different purposes.
- 2 Services must adhere to the minimum standards set out in the Regulations to open and receive government funding. The standards set out in the ECE Funding Handbook encourage services to comply with additional requirements to receive higher funding rates.

Regulatory requirements

- 3 The government currently regulates for 50% qualified teachers in teacher-led centres and hospital-based services.
- 4 A teacher can count towards this requirement if they hold an early childhood teaching qualification. A maximum of one unqualified teacher can also count towards the requirement if they are in their final year of study towards an early childhood teaching qualification. A qualified teacher can only count to the 50% requirement for a maximum of two services.⁸
- 5 For services with a full licence, the 50% requirement is calculated against the total number of adults needed to satisfy minimum adult:child ratios for the maximum number of children who can attend at any one time.⁹ For services with a probationary licence, this is measured against the number of child enrolments.¹⁰
- 6 As this is not measured against children attending the service, qualified teachers do not always need to be in contact with children while they are in attendance to count towards the 50% requirement.
- 7 The Ministry assesses compliance with the 50% standard when granting a probationary or full licence, investigating a complaint, or when responding to a poor ERO review.

Funding Handbook requirements

- 8 Teachers holding an ECE or primary teaching qualification and a current practising certificate count as certificated teachers for funding purposes.
- 9 Cabinet agreed to allow primary qualified teachers to count for this purpose in 2010 to help ease pressure on teacher supply for services seeking higher funding rates [Cab 100/200/ 8/1 refers].
- 10 Certificated teacher funding rates are based on the proportion of certificated teachers used to cover minimum adult:child ratios on average over a four-month period.
- 11 As this is calculated on average based on aggregated data from a funding period, services have the flexibility to operate above and below 80% at various times and still qualify for 80-99% funding rates. This provides an element of protection for services at risk of dropping below the 80% threshold due to unexpected staff absences.

⁸ Education (Early Childhood Services) Regulations 2008, s 44(3)(b).

⁹ Education (Early Childhood Services) Regulations 2008, s 44(4).

¹⁰ Ibid.

- 12 Discretionary hours provide another layer of protection. This mechanism allows services to count an unqualified and uncertificated teacher as a certificated teacher for up to 40 hours per funding period. This distorts the proportion of services that qualify for 80-99% and 100% certificated teacher funding rates.
- 13 Services send this data to the Ministry in the RS7 Return, which is then used to determine each service's funding rates and entitlements. This data is verified through the Ministry's funding claim audit programme, which involves looking at approximately 30% of services each year, as resources allow.

Proactively Released

Annex 2: Summary of options to regulate for 80% qualified teachers

	Quality of provision	Sustainability of services	Participation and choice	Effective monitoring
Option 1	<p>Expected to increase the number of qualified teachers employed in teacher-led centres.</p> <p>Funding incentives continue to encourage qualified teachers to be in contact with children.</p>	<p>Easiest standard to meet of the four options. As most services already qualify for 80-99% or 100% certificated teacher funding rates, employing 80% qualified teachers should not be too difficult.</p> <p>It is unclear how many services not qualifying for 80-99% or 100% funding rates will be able to meet this standard. There is likely a higher risk of noncompliance for bilingual and immersion services, services in low socio-economic areas, and services in isolated areas.</p>	<p>Risk that services not qualifying for higher funding rates will be able to meet this standard. Over time, services unable to comply with this requirement may prematurely exit the sector. This would most likely affect participation for children living in isolated or low socio-economic areas, or children attending bilingual and immersion services.</p>	<p>This standard is relatively easy to assess. The Ministry would monitor the 80% requirement in the same manner as the current 50% requirement – at licensing and following complaints and ERO referrals.</p>
Option 1A	<p>Expected to increase the number of qualified teachers employed in teacher-led centres. The majority of these teachers would hold an ECE teaching qualification.</p> <p>Funding incentives continue to encourage qualified teachers to be in contact with children.</p>	<p>Unclear what proportion of services would be able to comply with these standards but expected to be easier to meet than options 2 and 3. It is unclear how many services not qualifying for 80-99% or 100% funding rates will be able to meet this standard.</p> <p>As with the other options, consider bilingual and immersion services, services in low socio-economic areas, and services in isolated areas will be at risk of breaching the standards.</p>	<p>Risk that services not qualifying for higher funding rates will not be able to meet these standards, which could affect participation for children living in isolated or low socio-economic areas, or children attending bilingual and immersion services.</p>	<p>This Ministry would monitor these standards in the accordance with the current 50% requirement – at licensing and following complaints and ERO referrals.</p> <p>Due to resourcing constraints, the requirements would only be measured at licensing or following complaints and ERO referrals.</p>
Option 2	<p>Expected to improve the quality of provision for some services not currently accessing 80-99% and 100% funding rates.</p>	<p>Second hardest standard to meet of the four options.</p> <p>Gives services some flexibility to fluctuate above and below 80% at</p>	<p>Expected to have a disproportionate impact on effect on Māori and Pacific children and families and whānau living in isolated and disadvantaged areas.</p>	<p>The Ministry would be able to assess compliance with the standard retrospectively, using a submitted RS7. Any breaches will be flagged with</p>

	Quality of provision	Sustainability of services	Participation and choice	Effective monitoring
		<p>various points in time, which can be used to offset days where there are unexpected staff absences.</p> <p>Discretionary hours also provide an extra layer of protection.</p> <p>Our funding data suggests that without additional support, pursuing this option may lead to the premature exit of some bilingual and immersion services, services operating in isolated areas and services in low low socio-economic areas.</p>	<p>Without additional support, some bilingual and immersion services will breach the standard and close over time, which inhibits parental choice.</p> <p>Could lead to the use of informal childcare arrangements or inhibit parents' labour force participation for these groups.</p>	<p>licensing advisors who can then take regulatory action.</p>
Option 3	<p>Expected to improve the quality of provision in most services able to comply with this standard, as a high proportion of qualified teachers will cover minimum adult:child ratios while children are in attendance.</p> <p>Demand for qualified teachers to be in contact with children could reduce time spent planning for each session, which may be detrimental to quality.</p>	<p>This is the hardest standard to meet of the four options.</p> <p>As services will not be able to use discretionary hours to reach 80%, many services may not be able to comply with the standard and may be at risk of closing prematurely.</p> <p>Expected to have a disproportionate impact on the sustainability of bilingual and immersion services, services in low socio-economic areas, and services in isolated areas.</p>	<p>Over time, there is a high risk of service closure, which could lead to greater use of unregulated informal childcare arrangements, which could be detrimental to children's outcomes. High risk that bilingual and immersion services will breach the standard and close over time, which inhibits parental choice.</p> <p>Expected to have a disproportionate impact on effect on Māori and Pacific children and families and whānau living in isolated and disadvantaged areas.</p>	<p>The Ministry can only assess this standard at a particular point in time. Due to limited resource, this will only be checked following complaints and ERO referrals.</p>