

## 7.09 BREACH OF CONTRACT

### Purpose Statement

It is the expectation of the Family Day Care (FDC) Co-ordination Unit that educators adhere to their responsibilities under the Educator Agreement, Education and Care Services National Regulations, Education and Care Services Law Act 2010 and FDC policy and procedures at all times. All breaches of the Educator Agreement, Education and Care Services National Regulations and Law Act 2010 and FDC policy and procedures, will be investigated when identified.

### Scope

This policy applies to all educators.

### Definitions

*Educator Agreement:* a signed contract between two parties (educator and Windermere Child & Family Services) that is enforceable by law.

*Breach or Non-Compliance:* an act of breaking or failing to observe a law, agreement, or code of conduct.

*Deregistration:* termination of FDC educator registration.

### Policy Statement

ANY BREACH OF THE EDUCATOR AGREEMENT, EDUCATION AND CARE SERVICES NATIONAL REGULATIONS AND LAW ACT 2010 AND/OR FAMILY DAY CARE POLICIES AND PROCEDURES WILL BE INVESTIGATED WHEN IDENTIFIED IN CONSULTATION WITH THE EDUCATOR AND THE COORDINATION UNIT. THIS INVESTIGATION WILL RESULT IN A COURSE OF ACTION BEING DETERMINED AND IMPLEMENTED.

### Procedures

#### ***Educator Compliance Requirements***

Educators are expected to comply with:

1. Conditions as set out in the Educator Agreement;
2. Requirements of the Education and Care Services National Regulations;
3. Education and Care Services Law Act 2010; and
4. FDC policies and procedures

#### ***Grounds for Termination of Educator Agreement***

Failure to comply with the Educator Agreement, Education and Care Services National Regulations, Education and Care Services Law Act 2010 and FDC policies and procedures, may provide grounds to terminate the Agreement.

Procedures for termination of an Educator Agreement (other than on grounds of immediate termination) are as follows:

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1. Any complaints or issues made by parents, members of the public, staff members should be referred directly to the Team Leader / FDC Support Officer who will investigate the issue with all parties concerned to facilitate a resolution process.
2. If the complaint relates to a breach of Education and Care Services National Regulations, Education and Care Services Law Act 2010, the scheme policies, procedures, standards or registration agreement of the FDC Service, the Coordination Unit will investigate the circumstances and determine a course of action.
3. The course of action will be given to the FDC educator in writing and placed on the educator's file.

*NOTE: should de-registration occur, the Co-ordination Unit will advise parents using care and arrange alternative placements.*

### **Issues of Non-Compliance – Action Taken (but not limited to)**

In the event that educators are found to be non-compliant, several steps will be put into place:

1. A visit will be held within 24 hours of the notification, at this time immediate corrective actions will be set by the Coordination Unit and documented.
2. A letter will be issued outlining the non-compliance and reminding the educator of their obligations and/or compliance requirements.
3. If non-compliance occurs again, within a 12 month period from the initial non-compliance, the first two steps (1 & 2 above) and a first breach notice issued.
4. If there is a third non-compliance, within a 12 month period proceeding a previous non-compliance, the first two steps (1 & 2 above) will be implemented and a final breach notice issued. A final breach notice will result in a formal meeting being conducted with the Coordination Unit. At this meeting a plan of action will be put into place to avoid deregistration.
5. Failure to comply with any action plans developed by the Coordination Unit will result in termination or non-renewal of an Educator Agreement
6. Noncompliance will often result in the Department of Education and Training (DET) being notified by Windermere as required by Law. DET will recommend a course of action. Windermere will support DET in implementing any recommended course of action following a noncompliance.

### **Grounds for Immediate Termination (or Deregistration) of Educator Agreement**

Serious noncompliance may result in the immediate termination of an Educator Agreement. Serious noncompliance will often result in DET recommending a course of action. Windermere will support DET in implementing any recommended course of action following a serious contract breach.

Some examples of grounds for immediate termination of an Educator Agreement include:

1. Children left with a person who is not a registered educator with the service.
2. Educators or other persons on the educator's property being under the influence of drugs / alcohol while FDC children are in care.
3. Children left unattended: at home, in a vehicle, anywhere outside the home.



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4. Physical punishment, humiliation, demeaning of a child enrolled in care.
5. Fraudulent administration procedures.
6. Theft from parents, FDC staff or service.
7. Numerous substantiated parent complaints.
8. Continued noncompliance of the Educator Agreement, Education and Care Services National Regulations, Education and Care Services Law Act 2010 and FDC policy and procedures.
9. Breach of either State or Federal laws as pertains to safety or wellbeing of a child e.g. failure to use an approved safety restraint in a motor vehicle. (*Vehicles* procedure).
10. Any other occasions where a child's life might be endangered.
11. Any conduct which brings Windermere into disrepute.

#### **Relevant Standards/Legislation**

- National Quality Framework for Early Childhood Education and Care Services including:
  - Education and Care Services National Law 2011
  - Education and Care Services National Regulations 2011

#### **Related Policies & Links**

- Educator Agreement
- FDC policies and procedures