

PHYSICAL ENVIRONMENT LEGAL REQUIREMENT ON CHILD CARE CENTRES: TOO MINUTE TO BE FOCUSED ON?

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Abstract

In regulating child care centres in Malaysia, there are certain legal requirements that need to be fulfilled by child care operators. These legal requirements are the structural quality features which are translated into laws and regulations. One of the requirements that often neglected is the physical environment. This paper examines the question on whether the physical environment feature is an important legal requirement that necessitate improvements in the legislative framework of Malaysian child care. The importance of physical environment is explained by referring to the previous studies and research. Then, the laws and regulations in Malaysia involving Child Care Centre Act 1984 and Child Care Centre Regulation 2012 are evaluated according to the relevant sections and regulations. Recommendations are then made for Malaysia to improve its laws and regulations regarding physical environment based on research and practices from Malaysia itself and other jurisdictions as benchmarks. The legislations from other jurisdiction are also being taken into consideration in finding and improving the legislation in Malaysia

Keywords: child care centres, physical environment, structural quality, child.

INTRODUCTION

The physical environment is one of the structural factors in ensuring that child care centres provide sufficient facilities and space for the children. The goal of having a conducive physical environment is to foster children who are more happy, creative and independent (Community Child Care Co-operative, 2013).

The physical environment includes indoor space, outdoor space, facilities as well as learning and playing equipment. It is suggested that the place should be calm and not overly stimulated so as not to disturb any sleeping child for instance. In addition, there is a need to prepare spaces for the children to explore their abilities at indoor and outdoor activities.

Physical environment also plays a role in maintaining quality child care. It is claimed that the child care settings must always ensure a high quality of health and safety aspects besides other supplementary criteria such as space allocated for each children and the availability of toys and materials which suit the age of the children and so on (Ceglowski & Bacigalupa, 2002).

As far as Malaysia is concerned, it is asserted that the legislations, policies and guidelines on early childhood care and education gives more priority to cognitive, social and emotional development rather than the physical designed environment in child care centres (Azhari, Qamaruzaman, Bajunid, & Hassan, 2015). The existing guidelines on the physical environment of child care centres in Malaysia are inadequate as they are not described in detail. Therefore it is suggested that more research on the physical environment should be conducted.

METHODOLOGY

This research is a qualitative study of the doctrinal approach. In engaging the doctrinal approach, research was done in examining and interpreting the statutory legislations mainly the Child Care Centre Act 1984 and Child Care Centre Regulations 2012.

The literature review was performed through library-based data collection analysing the relevant textual documents. This research makes reference to various sources especially on legislations pertaining to child care. Besides that, the government policies, country reports, as well as reports from non-governmental organizations (NGOs) have also been examined. In addition, conference papers, academic journals, text books and case reports are also referred to. This research involved desk study which collected sources from libraries and also online databases including websites from, namely: government departments; as well as NGOs' and relevant international bodies concerning the rights of children such as United Nations Children's Fund (UNICEF), The Organisation for Economic Co-operation and Development (OECD), and United Nations Educational, Scientific and Cultural Organization (UNESCO).

RESULTS AND DISCUSSION

In regulating the physical environment, this includes regulating the indoor and outdoor spaces of an early childhood educational premise. OECD underlines several features in ensuring that early childhood and education centres set quality standards in preparing physical environment for the children. Amongst the features are the location of the premise must be suitable; the premise must be accessible, safe, and flexible. Besides that, features such as scale and visibility of the premise must also be considered (United Nations Children's Fund (UNICEF), 2011). There are other added

elements such as health, comfort and convenience, child-sized facilities, ensuring movement and provision of good choices (Harkness, 2011).

OECD has conducted a thematic review on several countries on the performance of their early childhood and education sector. Taking Canada as an example, the element of outdoor space has been mentioned where the space is not adequate as compared to other Scandinavian countries such as Finland and Sweden where children have the opportunity to explore outdoor even in winter seasons (Doherty, Friendly, & Beach, 2003). Few suggestions were made inter alia on the space allocation, and more interest-captured toys and equipment. This is to encourage the children to get involve in more physical activities.

Meanwhile, based on the standards highlighted in the Australian regulations on physical environment, there are three main standards that need to be met. These standards can be found in Schedule 1- National Quality Standard in the Australian Education and Care Services National Regulations 2012 which states that:

'The physical environment is safe, suitable and provides a rich and diverse range of experiences which promote children's learning and development. Standard 3.1 The design and location of the premises is appropriate for the operation of a service. Standard 3.2 The environment is inclusive, promotes competence, independent exploration and learning through play. Standard 3.3 The service takes an active role in caring for its environment and contributes to a sustainable future'.

The National Quality Standard that is found in the Regulations is meant to be used as guideline in assessing the premises of child care in particular in determining the rating level of the child care centres. As far as the physical environment is concerned, the first standard that is highlighted concerns the design and location of the premises. The premises must be at a suitable location, safe, clean and well maintained and the facilities in the premises are sufficient for every child to benefit from them. Second is a wide-ranging environment feature which encourages beneficial activities such as learning through play. This involves the indoor and outdoor spaces that are prepared for the children as well as materials and equipment which may facilitate the activities of the children. Third is an interesting standard where the settings of the premises must consider environmental friendly elements.

Requirement of Floor Areas

On the requirement of floor areas, it is interesting to note that Malaysia highlighted the requirement of 2.5 square metres for home based child care and 3.5 square metres for centre based child care centres as can be found in Regulation 27 '*The minimum required floor area for each child at a child care centre shall be as follows;(a) for a*

home based child care centre, at least 2.5 square metres; and(b) for a work place based, community based or institution based child care centre at least 3.5 square metres’.

However, referring to the survey done, most of the child care centres that are involved in the studies were overcrowded especially when they are not well planned in terms of the space allocated for the different ages of children (Azhari et al., 2015). Furthermore, in Singapore in its First Schedule of the Singapore Child Care Centres Regulation 2012, there are additional requirements for a bigger space of 5 square metres for children aged 18 months or younger as compared to 3 square metres for each child aged above 18 months. There is also a requirement for additional space to be prepared when there are children who cannot walk which states that, ‘Every child care centre shall have a minimum of 5 square metres of usable floor space (excluding service areas) as indoor activity area for each child enrolled, who is aged 18 months or younger. Additional space as determined by the Director shall be provided for children who are unable to walk’.

The European Commission Childcare Network recommendation for outdoor space is six square metres per child (Beach & Friendly, 2005). It would also be helpful to take an example from the City of Vancouver where they have design guidelines in easing the child care operators. There are guidelines on minimum indoor space according to age groups, according to share facilities, the categorisation of play space according to age group separating the infants from toddlers and so on.

The harm of not separating the children can be seen as in a case that has occurred in Kuala Terengganu. The infant who was just three months old was hospitalised as her face was claimed to be beaten and bitten by another child aged one year plus (Ramlee, 2015). She suffered bruises on her face. Looking at the severe bruises she suffered, it was suspected that the baby was beaten for quite some time and the child care provider has neglected the baby’s crying thinking that it was the normal cry of infants. Therefore, in preventing harms especially to infants and younger children who are more vulnerable, the separation of children according to age groups should be done.

It is interesting to further note that most of the provincial or territories in Canada require a certain maximum number of children in one group. For example, in Ontario, Canada, the children are separated in their play room according to their age. A maximum of ten children for those under 18 months, and a bigger number for children between 18 to 30 months with 15 children per room, and 24 children for 24 months to five years. This is also known as group size. This is one aspect where Malaysian laws and regulation is lacking and is in need for further research to add this requirement in the laws and regulations in Malaysia.

Meanwhile, Malaysia does not specify any regulation for the requirement on conditions and organisational requirements for the play space except that the floor area does not include kitchen, store room, office, washroom, and others. Therefore, it

is assumed that these floor areas are meant for the children to play and move around. Meanwhile, on furniture and equipment Malaysia does provide general requirements. An initiative may be to look into this matter and provide some details especially on the prohibition of any hazardous equipment such as toxic paints, jolly jumpers or walkers. The requirement for furniture of child-sized shall also be a good point to be considered in the requirement.

Furthermore, on the requirement of eating area for children, most of the territories in Canada with the exception of three have regulations on this. The same goes to requirements on entrances and exits where not many territories are regulated this matter. The same goes for Malaysia where none can be found in the regulation stipulating on the requirement to provide a specific space for eating and for entrances and exits except for fire prevention. With regard to ventilation and light, Malaysia does have regulations on this though it is in a general form, under the regulation on maintenance.

Furthermore, apart from specifying floor area, kitchen pantry and washroom, there is no requirement to provide an office and a staff room in Malaysia's regulations. It has been pointed out that in some child care centres that were observed in the study, due to non-existence of specified space for staff, they have to use the children area for any meeting or discussion (Azhari et al., 2015). With regard to kitchen area, Malaysian regulations have specific regulations on this, for kitchen or pantry to be located in isolated area separating the area from the areas used for children activities. In addition, there is no requirement for storage for the children's belongings and play equipment. This requirement is meant to ensure facilities are accessible to the children and that their personal belongings are not mixed up. This is a measure to avoid child care providers from accidentally exchanging the personal belongings of the children such as diapers or feeding apparatus. This is important especially when dealing with infant who is still drinking expressed breast milk.

Regulating Outdoor Space

Regulating outdoor space is important in realising the aim to include the 'education' element in child care centres just as experiencing outdoor activities will increase the gross motor skills of the children. Provisions on outdoor spaces can be found in Regulation 108 of the Australian Education and Care Services National Regulations 2012. The Regulation states that, *'The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least 7 square metres of unencumbered outdoor space'*.

Thus, the premise must provide at least seven square metres of unencumbered outdoor space. An added value from Australia's regulations is that the space must be environmentally friendly using natural substances such as trees, plants and sand. This is pointed out in Regulation 113 which states that, *'The approved provider of a centre-*

based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment’.

In addition, the outdoor space must provide adequate shade to protect the children from dangerous ultraviolet radiation from the sun as mentioned in Regulation 114 *‘The approved provider of a centre-based service must ensure that outdoor spaces provided at the education and care service premises include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun’.*

Meanwhile, Regulation 28 of the Singapore Child Care Centres Regulations states that every child care centre shall have access to outdoor play space or playground as this is vital for the children’s gross motor skills. Regulation 28 stipulates that *‘Every child care centre shall have access to outdoor play space for gross motor activity’.*

In addition, it is worthwhile for Malaysia to take into consideration the option made by Singapore for child care operators to have indoor space with gross motor activities when child care centres do not have enough space to have an outdoor playground. This would be helpful and provides an alternative especially for child care operators who operate their premise above ground floor. This is clearly stated in Regulation 28 (4) of Singapore Child Care Centres Regulations which states that: *‘Every child care centre without access to outdoor play space shall have additional indoor space which shall be equipped with materials for gross motor activity and which comply with the specifications set out in the First Schedule’.*

As an additional comparison, it is worthwhile to take lessons from a comprehensive research done in Canada which specify on regulations on physical environment by comparing the existing regulations in various territories and provinces (Beach & Friendly, 2005). For outdoor space, the requirements underlined in the research are less than four requirements focusing mainly on minimum space requirement per child, proximity of outdoor space to indoor space, fencing and playground specifics. In Canada, most of the territories require five to seven square metres. Australia has regulated the outdoor space to be seven square metres as stipulated in Regulation 108. Furthermore, there is also the requirement for the outdoor space to be adjacent to the indoor space. Nevertheless it is interesting to note that the regulation in Prince Edward Island where there is a waiver for child care centres which do not have outdoor space to use parks or open spaces near the centres. This may be the alternative to be applied in Malaysia since in achieving high quality child care, the laws and regulations in Malaysia should also encourage adherence amongst child care operators.

Besides that, there is also the requirement on fencing the outdoor playground as can be found in Regulation 28 (2) of Singapore Child Care Centres Regulations 2012. Australia for instance has specific regulation on fencing as can be found in Regulation 104 which states that, *‘The approved provider of an education and care service must ensure*

that any outdoor space used by children at the education and care service premises is enclosed by a fence or barrier that is of a height and design that children of preschool age or under cannot go through, over or under it'.

Enclosed fencing is to ensure the safety of the children from passing through the outdoor space or escaping over or under the fences. Therefore, fencing must be of a suitable height and design for the children. Last but not least is the requirement for the playground specifics. This include the safety of the playground equipment, sufficient space according to the number of children at any one time, availability of areas with grass or sand for gross motor skills, and so on. Singapore's regulation under Regulation 28 (3) ensures that the outdoor space must not have any harmful objects or broken glass that may injure the children. The playground must be physically inspected to be safe for the children as is mentioned in Regulation 28 (3): *'Before the children are allowed the use of any playground, a physical inspection shall be made by the staff to ensure that the playground equipment is in a safe working condition and that the playground is free from broken glass, other sharp or harmful objects and standing water'.*

Should Child Care Centres be Set Up Only on Ground Floor?

In addition, on the requirement of height and level, there is no requirement in Malaysia for operators to operate their child care centres on the ground floor as can be found in Singapore or several territories in Canada. There was a request made by the MWFCDC to loosen the requirement made by the local authority and the Fire Department for child care centres to be set up only on ground floor or first floor. Commenting on this, Datuk Seri Rohani Abdul Karim said that, this flexibility shall invite more operators especially the private work place to open child care centres (Metro, 2014). Bigger numbers of child care centres indirectly may attract more women to return to the labour force. She added that the condition is no more practical as many commercial building and offices nowadays are located at higher floors since the lower floors are meant for parking spaces. However, she stressed that the safety of the children would always be the prime concern though there is flexibility on this condition.

On the issue of ground floor, Singapore's child care centres must be set up on the ground floor as mentioned in the First Schedule of Singapore's Child Care Regulations which states that, *'Every child care centre shall be housed on the ground floor of a building unless otherwise approved by the Director. The site of the child care centre shall be located away from main roads and other traffic hazards wherever possible'.*

Nevertheless, there is proviso for those getting approval not to set up their centres on the ground floor due to merit looking on a case by case basis. This regulation is seen as a good one as it leaves the child care operator with the first option to find a ground floor premise first. They will only resort to a first floor or second floor premise when there is no other option. Therefore, this regulation is somehow encouraging for child care operators to try to find the best physical environment for

the children. However, this regulation is not too rigid to cause more child care centres to avoid registering their centres since they cannot comply with this high demand provision. It is therefore a 'tolerance' regulation with the aim to fulfil what is the best for the children.

Addressing the issue of tolerance, Australia has a good initiative i.e. to include a provision that the child care operator may apply for service waivers from physical requirements spelled in the regulations. The waiver can be permanent or temporary for a specific time. This is under Regulation 41 of the Australian Education and Care Services National Regulations 2012 where it lists down the prescribed elements, they are:

'(a) the standards and elements set out in Quality Areas 3 and 4 of the National Quality Standard; and (b) the following provisions — (i) regulations 104, 107, 108 and 110; and (ii) in the case of a centre-based service, Division 2 of Part 4.3 and regulations 120, 123, 126 and 130 to 134; and (iii) in the case of a family day care service, regulations 117, 124, 127 and 128; and (iv) any provision in Chapter 7 that applies in place of a provision referred to in subparagraph (i), (ii) or (iii)'.

Canada too in certain provinces allow certain requirements to be waived upon approval by the Director (Beach & Friendly, 2005). This is one of the ways that Malaysia can take as an example for now many child care operators are complaining that it is not that they do not want to register, but they could not afford in the first place to fulfil all the requirements on the regulations especially when they are in their early years of setting up the centres. It is claimed that one of the reasons of non-registration amongst child care centres is that they are not able to comply with all the legal requirements (Hamdan, 2011). Therefore, this option may ease their burden but at the same time does not leave the physical environment unregulated.

A development can be seen from the effort that is made by the taskforce on early childhood and education led by Datin Paduka Chew Mei Fun, the former Deputy Ministry of Women, Family and Community (The Star, 2016). She has mentioned that there is a plan to amend the existing regulations of child care centres. One of the issues concerned is to permit child care centres to operate on third to fifth floors as compared to the current rule where only first and second floors are permissible. This is a measure to lessen the cost of the operators who have to pay high rentals for first and second floors premises.

Offences

This brings the discussion to the issues of offences. It appears that, in the Malaysia Child Care Centre Regulations 2012, not all requirements of physical environments are considered to be an offence in the event of any non-compliance. It is

an offence when the operators do renovations on the premise and do not inform the authorities about the works that have been made. This can be seen under Regulation 26 which states:

‘An operator shall inform the Director General in writing if there is – (a) any alteration to the structure of the premises where the child care is located; (b) any alteration or addition to the washroom facilities of a child care centre; (c) any alteration in the ventilation or lighting system of a child care centre; and (d) any partitioning of any existing room or space in the child care centre premises for purposes which are not related to child care activities’.

The offence in Malaysia is punishable by fine not exceeding one thousand ringgit or imprisonment not exceeding six months or both. While it can be seen in Australia, under Regulation 103, the penalty is \$2000 for the requirement on safe, clean and good repair of the premises, furniture, and equipment. This provision is more general to ensure that the premises, furniture and equipment is safe and in good condition not just upon renovations. Furthermore, Australia specifies additional requirements for centre-based child care centres and additional requirements for home-based child care centres due to the different nature of these centres. This may be adopted in Malaysia as not to impose general requirements which may not suit both types of centres.

CONCLUSION

In conclusion, the existing laws and regulations in Malaysia on physical environment are basically satisfactory in terms of the basic elements of indoor environment. There are certain issues that need to be improved though. Malaysia may take into consideration what and how to improve the laws and regulations on the physical environment especially on the part of separating the children according to their age. Infants should always have special treatment as they are more prone to harms and injuries. The space therefore should be well planned to designate various segments such as offices for staff, eating area, playing area, diapering area and so on.

Furthermore, the main loophole is seen with regard to outdoor spaces. Children today are exposed to a lot to screening time through various electronic gadgets, thus they should be given good exposure on physical activities especially on outdoor activities. This may encourage good motor skills. The provision on outdoor is seen as very significant to be immediately considered and to be included in the requirement of the physical environment of the child care centres. In addition, the examples by Australia and Singapore who offer waiver from certain regulations may be considered, as this will encourage more child care operators to register their centres.

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