

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CLARA BINGHAM,)
)
 Petitioner,)
)
 vs.) Case No. 98-5590
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 1, 1999, at Miami, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Clara Bingham, pro se
40 Northeast 207th Street
Miami, Florida 33179

For Respondent: Rosemarie Rinaldi, Esquire
Department of Children and Family Services
401 Northwest Second Avenue, Suite N-1014
Miami, Florida 33128

STATEMENT OF THE ISSUE

Whether Respondent has grounds to deny the renewal of Petitioner's foster home license.

PRELIMINARY STATEMENT

By letter dated October 30, 1998, the Respondent, Department of Children and Family Services (Department), advised Petitioner

that her foster home license would not be renewed on the following grounds:

1. Your family composition changed in the year since you and your husband, Marvin Bingham, were licensed. You separated from your husband and a permanent injunction for protection against domestic violence was issued by the court. Despite the injunction, you continued to initiate contact with Mr. Bingham.

2. The level of care provided for the children in your home has diminished since you separated from your husband. You asked to have Mr. Bingham's name removed from your foster home license when he moved out, nonetheless, you subsequently transported your 17 year old foster daughter to Mr. Bingham's new home and left her there. Additionally, you stopped giving prescribed medication to the other dependent children in your home, failed to participate in the children's therapy, failed to keep important appointments regarding the children, and caused one child to miss her tutoring sessions. You changed your phone number without informing the Department and did not provide the children's caseworker access to your home in order for her to see them once a month as required.

Petitioner timely challenged the Department's decision not to renew her foster license, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

At the formal hearing, the parties agreed that the Respondent should present its case first. Respondent called the following witnesses: Shana Donovan, Helen Cuadra, Agnetta Delancy, Georgie Lapanne, Marvin Bingham, Clara Bingham, and Ray Gonzalez. At times pertinent to this proceeding, Ms. Donovan was

in the foster care of the Petitioner. Ms. Cuadra, Ms. Delancy, Ms. Lapanne, and Mr. Gonzalez are employees of the Department. Mr. Bingham is the estranged husband of the Petitioner. Ms. Bingham is the Petitioner. Respondent presented sixteen exhibits, each of which was admitted into evidence. Petitioner testified on her own behalf, but she presented no other witnesses and no exhibits.

A transcript of the proceedings has been filed. The Respondent filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order. Petitioner did not file a post-hearing submittal.

FINDINGS OF FACT

1. Petitioner was first licensed as a foster parent in Dade County, Florida, in 1993. Her foster parent license was renewed each year until she was notified on October 30, 1998, that her license would not be renewed. Petitioner had received the requisite training as a foster parent and she knew, or should have known, her responsibilities and the minimum qualifications for licensure.

2. At all times pertinent to this proceeding, Petitioner has been married to Marvin Bingham.

3. Petitioner and Mr. Bingham separated in late 1994, and were not reunited until December 1995.

4. In December 1996, Shana Donovan, a teenage girl, 1/ was placed in the foster care of the Petitioner.

5. On April 30, 1997, four young siblings were placed in Petitioner's foster care after Petitioner applied to adopt the children. The Department recommended that the adoption be postponed until after January 1, 1998, because of changes in the Florida college tuition program.

6. Petitioner required Shana Donovan to leave her sixth period academic class early so Shana could baby-sit the four young siblings. Petitioner failed to comply with the teacher's request for a conference to discuss Shana's absences from class. Shana failed her sixth period class. Petitioner expected Shana to do most of the housework or to supervise the younger children while they did housework.

7. One of the younger children was scheduled for tutoring sessions. These sessions were scheduled for Saturdays to accommodate Petitioner. Petitioner repeatedly failed to transport the child to the tutoring sessions. As a consequence, the tutoring sessions were cancelled.

8. Petitioner failed to ensure that the younger children took medication that had been prescribed to improve their behavior at school. The children's behavior became a problem in school because they did not consistently take their medicine.

9. Petitioner failed to attend a scheduled family services planning team meeting at which plans for the four siblings were

to be developed. Petitioner had been specifically requested to attend this meeting.

10. Petitioner failed to attend a citizen review panel of the juvenile court. The four siblings were removed from Petitioner's home after the citizen review panel recommended that action.

11. Petitioner and Mr. Bingham continued to experience marital difficulties. They engaged in heated arguments in front of the foster children in their care, which resulted in law enforcement officers being called to the house.

12. Helen Cuadra, an adoption specialist employed by Respondent, referred Petitioner and her husband to a marriage counselor.

13. In the Spring of 1998, Petitioner and Mr. Bingham separated. In March of 1998, Petitioner obtained an injunction for protection against domestic violence against Mr. Bingham. This injunction, commonly referred to as a restraining order, was entered by a circuit judge in the domestic violence division.

14. After they separated in the Spring of 1998, Petitioner changed her home telephone number without notifying the Department. Petitioner was uncooperative when Department caseworkers attempted to schedule inspections of the home.

15. On April 3, 1988, Petitioner had Mr. Bingham's name removed from her foster home license.

16. In June 1998, Petitioner ordered Shana to leave her house and, in the middle of the night, transported her, along with her belongings, to the residence of Mr. Bingham. This action was caused, in part, because of Shana's interest in Petitioner's boyfriend. Shana was seventeen years old at this time and still in Petitioner's foster care.

17. After Shana left her house, Petitioner began to harass Shana by telephone and by mail. Shana's caseworker aptly described Petitioner's behavior as stalking.

18. In August 1998, Petitioner was arrested for aggravated assault against Mr. Bingham after she rammed his truck following a high-speed chase. Those charges were pending at the time of the formal hearing.

19. Petitioner suffered financially after she and Mr. Bingham separated. Petitioner was in bankruptcy at the time of the formal hearing.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

21. Section 409.175, Florida Statutes, provides for the licensure of foster homes. The legislative intent is stated in Section 409.175(1)(a), as follows:

(1)(a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-

caring agencies, and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

22. Respondent is the agency of the State of Florida charged with the responsibility of licensing foster homes, setting the minimum qualifications for licensure, and providing procedures to determine adherence to those minimum qualifications.

23. Section 409.175(2)(f), Florida Statutes, provides the following definition of the term "license":

(f) "License" means "license" as defined in s. 120.52(9). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

24. Pursuant to its rule-making authority, Respondent has enacted Chapter 65C-13, Florida Administrative Code, which provides minimum standards for the licensure and re-licensure of family foster homes. Those standards and the expected duties and responsibilities of a foster parent are clearly and explicitly set forth in the training given foster parents. The evidence in this proceeding established without doubt that Petitioner does not meet the minimum qualifications to serve as a foster parent. Specifically, Petitioner violated Respondent's policies against

domestic violence in the house; she placed Shana in the custody of a non-licensed person; she forced Shana to leave school early; she failed to transport the children to therapy and tutoring sessions; she failed to ensure that the children took prescribed medication; she failed to attend meetings pertaining to the children; she changed her telephone number without notifying the Department; and she failed to maintain financial responsibility.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent enter a final order denying the renewal of Petitioner's foster care license.

DONE AND ENTERED this 20th day of May, 1999, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of May, 1999.

ENDNOTE

1/ The date of birth for Ms. Donovan was not given. She testified that she was eighteen at the time of the formal hearing.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.