

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND	)	
FAMILY SERVICES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 99-2204
	)	
CLEVELAND AND HAROLEAN ROBERTS,	)	
	)	
Respondents.	)	
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RECOMMENDED ORDER

Pursuant to notice, a hearing was held in this case in accordance with Section 120.57(1), Florida Statutes, on September 21 and 28, 1999, by video teleconference at sites in Miami and Tallahassee, Florida, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner:	Rosemarie Rinaldi, Esquire Department of Children and Family Services 401 Northwest Second Avenue, N-1014 Miami, Florida 33128
For Respondents:	Cleveland and Harolean Roberts, <u>pro se</u> 1540 Northwest 203rd Street Miami, Florida 33169

STATEMENT OF THE ISSUE

Whether Respondents' family foster home license should be revoked for the reasons set forth in the March 24, 1999, letter

that Respondents received from the Department of Children and Family Services (Department).

PRELIMINARY STATEMENT

By letter dated March 24, 1999, the Department advised Respondents of its intention to revoke Respondents' family foster care license. The letter read as follows:

This letter will serve to inform you that your foster care license will be revoked effective today for failure to meet minimum standards for a foster home found in Florida Administrative Code 65C-13.

Specifically, you have violated the department's discipline policy. Your foster children routinely were beaten [o]n the hands with instruments. The four girls in the home, when interviewed, consistently confirmed the allegations.

These allegations were reported to the abuse hotline and when the PI went out to investigate, you demanded that he take the children immediately. He pleaded with you to keep the children until the next day, but you insisted on an immediate removal.

The children had to be removed during the night with only the clothes they were wearing.

As your license is not being renewed, you have the right to request an administrative hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes. You have the right to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoena[s] and subpoena[s] duces tecum issued on your behalf if a hearing is requested. A hearing request must be submitted to the Legal Department at 401 N.W. 2nd Avenue, Suite N-1014, Miami, Florida 33128, within thirty (30) days after

receipt of this letter and must conform to the requirements of Section 28-107.004, Florida Administrative Code. . . .

By letter dated April 22, 1999, Respondents requested an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. The Department, on May 14, 1999, referred the matter to the Division of Administrative Hearings (Division) for the assignment of a Division Administrative Law Judge to conduct the hearing Respondents had requested.

As noted above, the hearing was held on September 21 and 28, 1999. Victor Onweazuekwu, Rodly St-Villien, C. P., T. R., Jodi Forbes, and Ray Gonzalez testified on behalf of the Department. In addition to presenting the testimony of these witnesses, the Department offered two exhibits (Petitioner's Exhibits 1 and 2), both of which were received into evidence. Respondents testified in their own defense. They also presented the testimony of Dianatha Regina Dobard Roberts, William Brazil, Cleveland Earl Roberts III, Dr. Arthur Woodard, Anna Burns, Lucy Toombs, Jean Soloman Brown, and Bishop Joseph Watson. They presented no further evidence.

At the close of the evidentiary portion of the hearing on September 28, 1999, the undersigned, on the record, advised that proposed recommended orders had to be filed with the Division no later than 21 days from the date of the filing of the transcript of the hearing. The hearing Transcript was filed on November 17, 1999.

The Department and Respondents filed their Proposed Recommended Orders on December 8, 1999, and October 29, 1999, respectively. These post-hearing submittals have been carefully considered by the undersigned.

#### FINDINGS OF FACT

Based upon the evidence adduced at hearing and the record as a whole, the following findings of fact are made:

1. Respondents are husband and wife. They live in a comfortable home in a "very nice neighborhood" located in the Country Club of Miami area in Miami-Dade County and are well respected members of their community.

2. Mr. Roberts, who, like his wife, is college educated, worked as a teacher, administrator, and coach in the Miami-Dade County public school system. He retired in 1992 after 32 years of exemplary service.

3. The Roberts have four natural children (all of whom are adults and live outside of their home) and 12 grandchildren.

4. Approximately four years after Mr. Roberts' retirement, he and his wife decided that they wanted to become family foster parents. Their decision was motivated, not by monetary considerations, but by a desire to help children who needed foster care.

5. The Roberts subsequently applied for, and were granted, a license to operate a family foster home at their residence.

6. Following the issuance of this license, foster children C. P., her sister L. P., T. R., and her sister S. R. were placed in the Roberts' home.

7. The Roberts were loving and caring family foster parents who treated their foster children like they were their own children or grandchildren, and provided them with a reasonably safe and nurturing environment.

8. When the foster children in the Roberts' home misbehaved, they were disciplined. On occasion, when she believed circumstances warranted, Mrs. Roberts disciplined the children (just as she would her own grandchildren under similar circumstances) by hitting them on their hand with a wooden switch. There was no intention on her part to physically harm or injure the children, nor is there any persuasive evidence that she inflicted any such harm or injury. Mrs. Roberts merely wanted to get the children's attention and make them realize that what they did was wrong and must not be repeated.

9. Notwithstanding her good intentions, Mrs. Roberts acted in a manner that was contrary to the Department's written policy (of which she was aware and with which she had agreed to comply) prohibiting family foster parents from using corporal punishment to discipline the foster children in their family foster home.

10. Being hit on the hand with a wooden switch by Mrs. Roberts was the only corporal punishment to which C. P., L. P., T. R., and S. R. were subjected while in the Roberts' care.

At no time did Mrs. Roberts "punch [C. P.] in [the] arm, scratch[] her on [the] neck, [or] push[] her head into [the] wall," as was reported on the Department's abuse hotline on October 15, 1998.

11. Victor Onweazuekwu, a child protective investigator with the Department, was assigned the task of investigating this report of alleged abuse (which was reduced to writing by the Department employee who received the report).

12. He began his investigation by visiting the Roberts' home at approximately 9:00 p.m. on Sunday, October 18, 1999, three days after the report was made. Jodi Forbes, C. P.'s and L. P.'s adoption counselor, joined Mr. Onweazuekwu later that evening during his visit to the home.

13. After introducing himself to the Roberts and explaining the purpose of his visit, Mr. Onweazuekwu asked, and was permitted, to speak with C. P. and her sister L. P.

14. Following his interview of the girls, Mr. Onweazuekwu "read [to the Roberts] the allegations" that had been made against Mrs. Roberts. He then asked Mrs. Roberts if these allegations were true. Mrs. Roberts candidly admitted that she had disciplined the foster children in her home by hitting them on the palm of their hands with a "switch that f[ell] from [one of] the trees in [the Roberts'] back yard," but she (truthfully) denied punching or scratching C. P. or pushing C. P.'s head against the wall.

15. The Roberts were upset that Mrs. Roberts had been falsely accused of having engaged in such abusive conduct, and they were understandably concerned that, if C. P. (who they reasonably believed to be deceitful and manipulative) and her sister L. P. (who they viewed as being easily influenced by C. P.) remained in their home, they [the Roberts] might be subjected to additional false accusations by the girls, perhaps even more serious than those that had already been made against Mrs. Roberts. Therefore, despite the pleas of Mr. Onweazuekwu and Ms. Forbes that C. P. and L. P. be allowed to remain in the Roberts' home overnight, the Roberts insisted that the two girls be removed that evening.

16. When Ms. Forbes left the Roberts home that evening, she took C. P. and L. P. with her and subsequently placed them in another family foster home.

17. The girls departed the Roberts' home with only the clothes that they were wearing that evening. The following day, Ms. Forbes telephoned Mrs. Roberts and made arrangements to pick up the remainder of the girls' belongings. Later that day, Ms. Forbes paid a visit to the Roberts' home and asked Mrs. Roberts for the girls' clothes. Mrs. Roberts initially declined, stating that she thought that Ms. Forbes would be picking up the clothes the following day. Ms. Forbes then asked Mrs. Roberts for at least "one outfit so that [Ms. Forbes] could send the

girls to school the next day." Mrs. Roberts responded to this request by giving Ms. Forbes "most of [the girls'] clothes."

18. Two days later, C. P. and her new family foster parent came to the Roberts' home and picked up the rest of C. P.'s and L. P.'s belongings.

19. Mr. Onweazuekwu, following his visit to the Roberts' home on October 18, 1998, requested the University of Miami, School of Medicine's Child Protection Team (CPT) to conduct psychological evaluations of C. P., L. P., T. R., and S. R. The CPT conducted these psychological evaluations as requested and, on or about January 14, 1999, submitted a report to Mr. Onweazuekwu detailing the findings that were made. The report contained the following recommendation:

CPT believes that DCF [the Department] should revoke the Roberts' foster parents license since they are clearly using not only corporal punishment with instruments to discipline children placed in their care, but also fear and intimidation to control the children. Alternative placements should be immediately sought for [T. R.] and [S. R.].

20. Thereafter, the Department removed T. R. and S. R. from the Roberts' home and, subsequently, initiated proceedings to revoke the Roberts' family foster home license.

#### CONCLUSIONS OF LAW

21. With certain exceptions not applicable to the instant case, "a person, family foster home, or residential child-caring agency shall not receive a child for continuing full-time care or custody unless such person, home, or agency has first procured a



license from the [D]epartment to provide such care." Section 409.175(3)(a), Florida Statutes.

22. The nature of such license is described in Section 409.175(2)(f), Florida Statutes, as follows:

"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.

23. A license to operate a family foster home, once issued, may be suspended or revoked by the Department for, among other reasons, "[a] violation of the provisions of [Section 409.175, Florida Statutes] or of licensing rules promulgated pursuant to this section." Section 409.175(8)(b)2, Florida Statutes.

24. The specific authority to promulgate these "licensing rules" referenced in Section 409.175(8)(b)2, Florida Statutes, is set forth in subsection (4) of Section 409.175, Florida Statutes, which provides as follows:

The department shall adopt and amend licensing rules for family foster homes, residential child-caring agencies, and child-placing agencies. The department may also adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps. The requirements for licensure and operation of family foster homes, residential child-caring agencies, and child placing agencies shall include:

1. The operation, conduct, and maintenance of these homes and agencies and the responsibility which they assume for children served and the evidence of need for that service.
2. The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served.
3. The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served.
4. The ratio of staff to children required to provide adequate care and supervision of the children served and, in the case of foster homes, the maximum number of children in the home.
5. The good moral character based upon screening, education, training, and experience requirements for personnel.
6. The department may grant exemptions from disqualification from working with children or the developmentally disabled as provided in s. 435.07.
7. The provision of preservice and inservice training for all foster parents and agency staff.
8. Satisfactory evidence of financial ability to provide care for the children in compliance with licensing requirements.
9. The maintenance by the agency of records pertaining to admission, progress, health, and discharge of children served, including written case plans and reports to the department.

10. The provision for parental involvement to encourage preservation and strengthening of a child's relationship with the family.

11. The transportation safety of children served.

12. The provisions for safeguarding the cultural, religious, and ethnic values of a child.

13. Provisions to safeguard the legal rights of children served.

(b) In promulgating licensing rules pursuant to this section, the department may make distinctions among types of care; numbers of children served; and the physical, mental, emotional, and educational needs of the children to be served by a home or agency.

(c) The department shall not adopt rules which interfere with the free exercise of religion or which regulate religious instruction or teachings in any child-caring or child-placing home or agency; however, nothing herein shall be construed to allow religious instruction or teachings that are inconsistent with the health, safety, or well-being of any child; with public morality; or with the religious freedom of children, parents, or legal guardians who place their children in such homes or agencies.

25. Among the "licensing rules" that the Department has adopted pursuant to this legislative grant of authority is Rule 65C-13.010, Florida Administrative Code, which provides as follows with respect to the subject of "discipline":

(1)(a)5. Discipline.

a. The substitute care parents must discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibility with self-control.

b. The substitute care parents must help each child learn that he is responsible for his behavior by teaching him the natural and learned consequences of his behaviors.

c. Substitute care parents should use positive methods of discipline, including the following:

(I) Reinforcing acceptable behavior.

(II) Verbal disappointment of the child's behavior.

(III) Loss of privileges.

(IV) Grounding, restricting the child to the house or yard, or sending the child out of the room and away from the family activity; and

(V) Redirecting the child's activity, for example, if a child is playing with a sharp object take the object away, and replace it with a safe toy.

d. The substitute care parents must not allow children in care to be subjected to verbal abuse, derogatory remarks about themselves and family members or threats of removal from the home.

e. The substitute care parents must not subject children to cruel, severe, humiliating or unusual punishment, for example, to use soap to wash out the mouth, eating hot sauces or pepper, placing in hot water, kneeling on stones, etc.

f. The substitute care parents must not use corporal punishment of any kind.

g. The substitute care parent must not delegate discipline or permit punishment of a child by another child or by an adult not known to the child.

h. The substitute care parents must not withhold meals, clothing, or shelter as a form of punishment.

i. The substitute care parents must not punish children for bed wetting or errors which occur during the toilet training process.

j. The substitute care parents must not resist implementation of the performance agreement or permanent placement plan as punishment for misdeeds of a child.

k. The substitute care parents must not deny a child contact or visits with his family as punishment.

l. Substitute care parents may assign chores as the consequence of misbehavior, although these chores must not involve physical exercise so excessive as to endanger the child's health, or so extensive as to impinge on time set aside for school work, sleeping, or eating.

m. The substitute must not threaten a child with removal or with a report to authorities as punishment for behavior. Threatening the child with removal plays into the child's conviction that they are doomed to a series of placements and rejections. The counselor's first task is to identify the child's specific behaviors which are causing the substitute parent to request the child's removal. Once problems are identified the counselor along with the substitute parents and child assess ways to correct the problem. If problems are not corrected and the substitute family continues to request removal, a conference should be held by the counselor with the substitute family and child to discuss the possibility of removal and replacement. Involving the child in the planning may help him feel he has some control of his life.

26. In the instant case, the Department has given Respondents notice (by letter dated March 24, 1999) of its intent to revoke Respondents' family foster care license on the ground that Respondents "have violated the [D]epartment's discipline

policy" by hitting the foster children in their care on the hand as a disciplinary measure.

27. It is undisputed that Mrs. Roberts disciplined C. P., L. P., T. R., and S. R. by hitting them on the palm of their hands with a wooden switch. In so doing, Mrs. Roberts violated Rule 65C-13.010(1)(a)5f, Florida Administrative Code, which prohibits family foster parents from "us[ing] "corporal punishment of any kind."

28. While Mrs. Roberts did not intend to, nor cause, any harm or injury to the children, she did act in blatant disregard of the Department's policy, codified in Rule 65C-13.010(1)(a)5f, Florida Administrative Code, prohibiting the use of corporal punishment. Her conduct raises serious questions concerning her willingness to comply with licensing requirements with which she disagrees and therefore warrants the revocation (rather than the mere suspension) of Respondents' family foster home license pursuant to Section 409.175(8)(b)2, Florida Statutes.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department enter a final order revoking Respondents' family foster care license pursuant Section 409.175(8)(b)2, Florida Statutes, based on Mrs. Roberts' use of corporal punishment in violation of Rule 65C-13.010(1)(a)5f, Florida Administrative Code.

DONE AND ENTERED this 28th day of December, 1999, in  
Tallahassee, Leon County, Florida.

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STUART M. LERNER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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this 28th day of December, 1999

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.