

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 00-1421
)
COOL SCHOOL, INC., d/b/a)
ANTOINETTE GARRITY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Following notice to all parties, Don W. Davis,
Administrative Law Judge for the Division of Administrative
Hearings, held a final hearing in the above-styled case on
Thursday, January 11, 2001, in Jacksonville, Duval County,
Florida.

APPEARANCES

For Petitioner: Robin Whipple-Hunter, Esquire
Department of Children and
Family Services
5920 Arlington Expressway
Jacksonville, Florida 32231-0083

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding is whether
Respondent, as a child day-care facility operator, committed
the violations of Florida Statutes and Florida Administrative

Code, as alleged in the Administrative Complaint, of failing to submit background screening documents within ten days of employment of seven staff employees.

PRELIMINARY STATEMENT

Respondent, a child day-care facility operator licensed by the Department of Children and Family Services (Department), was the subject of an Administrative Complaint filed by the Department on March 9, 2000. The Administrative Complaint alleged that Respondent's facility was in violation of certain provisions of Chapter 435, Florida Statutes, and Chapter 65-C, Florida Administrative Code, by failing to submit employee background screening information within ten days of employment.

Respondent timely sought an administrative proceeding to contest the violations, pursuant to Section 120.57, Florida Statutes, and the dispute was transferred to the Division of Administrative Hearings.

At the final hearing, the Department presented one witness and three exhibits. Respondent failed to appear at the final hearing and no evidence was presented on her behalf. Official recognition was taken of Sections 402.305(2), 402.310, 435.04, and 435.05, Florida Statutes; Rule 22.006 (5)(e), Florida Administrative Code; and Respondent's response to the undersigned's Order of Pre-hearing Instructions.

No transcript was provided. The Department's counsel submitted a Proposed Recommended Order which has been reviewed and utilized in preparation of this recommended order. Respondent did not submit a recommended order.

FINDINGS OF FACT

1. Cool School is a licensed day care facility licensed by the Department of Children and Family Services.

2. On or about March 1, 2000, the Department received a complaint, inter alia, that required background screening documents had not been submitted on some employees.

3. Pursuant to this complaint, Susan Kipen, Family Services Counselor, Day Care Licensure, of the Department, investigated the matter and further conducted a routine inspection of the facility. The investigation and inspection took place on March 1, 2000.

4. During the March 1, 2000, investigation/inspection, Kipen discovered that the facility was out of compliance in the areas of Personnel and Record Keeping.

5. After review of personnel files, Kipen discovered that background screening documents had not been submitted on seven staff persons within ten days of their employment with the facility, as required by the Department.

6. Further, Kipen discovered that none of the files for the seven staff persons included form CF/FSP 5131, Background

Screening and Personnel File Requirements; a form required by the Department to be used by day care operators and kept in employee files. The files were incomplete and in a state of disarray.

7. In her response to the undersigned's Order of Pre-hearing Instructions, Respondent admitted that she had failed to send all background screening within the ten day period for three employees: Merry Howard, Christie Sosa, and Michelle Williams.

CONCLUSIONS OF LAW

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

9. The Department alleges that Respondent should be subjected to an administrative fine of \$350 for violations of section 402.305, Florida Statutes, and Rule Chapter 65C-22, Florida Administrative Code.

10. Section 402.305(2), Florida Statutes, states:

PERSONNEL. -minimum standard for child care personnel shall include minimum requirements as to:

(a) Good moral character based upon screening. This screening shall be conducted as provided in Chapter 435, using level 2 standards for screening set forth in that chapter.

11. With regard to Level 2 screening standards, Section 435.04(1), Florida Statutes, states:

All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For purposes of this subsection, security background investigations shall include, but not be limited to, employment history checks, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies

12. Section 435.05, Florida Statutes states, in part:

Except as otherwise provided by law, the following requirements shall apply to covered employees:

(1)(a) Every person employed in a position for which employment screening is required must, within 5 working days after starting to work, submit to the employer a complete set of information necessary to conduct a screening under this section.

(b) For level 1 screening, the employer must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement will conduct a search of its records and will respond to the employer agency. The employer will inform the employee whether screening has revealed any disqualifying information.

(c) For level 2 screening, the employer or licensing agency must submit the information necessary for screening to the Florida Department of Law Enforcement

within 5 working days after receiving it. The Florida Department of Law Enforcement will conduct a search of its criminal and juvenile records and will request that the Federal Bureau of Investigation conduct a search of its records for each employee for whom the request is made. The Florida Department of Law Enforcement will respond to the employer or licensing agency, and the employer or licensing agency will inform the employee whether screening has revealed disqualifying information.

(d) The person whose background is being checked must supply any missing criminal or other necessary information to the employer within 30 days after the employer makes a request for the information or be subject to automatic disqualification.

13. Rule Section 65C-22.006(5), Florida Administrative Code, states in part:

Personnel Records. Records shall be maintained and kept current on all child care personnel, as defined by s. 402.302(8), F.S.. . . These shall include:

(a) Position and date of employment
(e) Level 2 screening information documented on CF-FSP Form 5131, Apr. 97, background Screening and Personnel File Requirements.

14. Section 402.310, Florida Statutes, states in part:

(1)(a) The department or local licensing agency may deny, suspend or revoke a license or impose an administrative fine not to exceed \$100 per violation, per day, for the violation of any provision of ss. 402.301-402.319 or rules adopted thereunder. However, where the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day.

(b) In determining the appropriate disciplinary action to be taken for a violation as provided in paragraph (a), the following factors shall be considered:

1. The severity of the violation, including the probability of death or serious harm to the health and safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of ss. 402.301-402.319 have been violated.

2. Actions taken by the licensee to correct the violation or to remedy complaints.

3. Any previous violations of the licensee.

15. Respondent admitted to not submitting background screening on three of seven named staff persons. The purpose of background screening employees is to eliminate from employment in areas of trust those persons found guilty, or who have pled guilty, or pled nolo contendere to any offense, as delineated in Section 435.03(2), Florida Statutes.

16. The failure to either submit or timely submit background screening information, while not posing an immediate threat to the health, safety, and well being of a child in this case, posed potential harm. Respondent's unlawful practice, if undisciplined, could result in eventual harm to a child through Respondent's permitting of employment of inappropriate persons in the facility.

17. Further, the failure to document the submission of background screening information necessarily hinders the licensing agency from being able to determine the progress, if any, a facility has made in screening its employees. Under the circumstances, the administrative fine of \$350 is reasonable.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, and the candor and demeanor of the witness, it is recommended that a Final Order be entered confirming the imposition of an administrative fine against Respondent in the amount of \$350.

DONE AND ENTERED this 23rd day of January, 2001, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of January, 2001.

COPIES FURNISHED:

Robin Whipple-Hunter, Esquire
Department of Children and
Family Services
5920 Arlington Expressway
Jacksonville, Florida 32231-0083

Antoinette Garrity
c/o Cool School, Inc.
57 College Drive
Orange Park, Florida 32065

Virginia A. Daire, Agency Clerk
Department of Children and
Family Services
Building 2, Room 204B
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Josie Tomayo, General Counsel
Department of Children and
Family Services
1317 Winewood Boulevard
Building 2, Room 204
Tallahassee, Florida 32399-0700

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.