

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 01-2246
)
CENTRAL AVENUE CHILD CARE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On July 26, 2001, a formal administrative hearing in this case was held by videoconference in Tallahassee and Orlando, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Craig A. McCarthy, Esquire
Department of Children
and Family Services
400 West Robinson Street, Suite 1106
Orlando, Florida 32801

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue in the case is whether the allegations of the Administrative Complaint filed by the Petitioner against the Respondent are correct and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint filed on May 3, 2001, the Department of Children and Family Services (Petitioner) alleged that Central Avenue Child Care (Respondent) had violated various provisions of Florida Statutes and the Florida Administrative Code. Carol Wiggins, the owner of the child care facility, requested a hearing to address the allegations. The Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of two witnesses and had Exhibits numbered 1-4 admitted into evidence. The Respondent did not attend the hearing and presented no testimony or exhibits.

No transcript of the hearing was filed. The Petitioner filed a Proposed Recommended Order that was considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is the state agency responsible for licensure and regulation of child care facilities operating in the State of Florida.

2. The Respondent is a licensed child care facility, Florida license number 400-9, located at 1221 South Washington Avenue in Apopka, Florida.

3. On March 1, 2001, the Petitioner received a complaint related to alleged poor conditions at the Respondent facility, including unclean bathrooms, and unsupervised children.

4. An investigator employed by the Petitioner was assigned to inspect the facility. He visited the child care center on the afternoon of March 1, 2001, and recorded his observations on an "inspection checklist."

5. On March 1, 2001, the facility was observed to be "dirty and cluttered." One of the restrooms was unclean and apparently not functional.

6. Additionally, three infants were left alone in a room without adult supervision. The closest adult to the infant room was conducting business with a customer and was not within sight of the children.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

8. The Petitioner has the burden of establishing by a preponderance of the evidence, entitlement to the relief sought. Florida Department of Transportation v. JWC Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981), Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this case, the burden has been met.

9. Rule 65C-22.001(5), Florida Administrative Code, sets forth the requirements for supervision of children at licensed child care facilities and provides as follows:

(5) Supervision

(a) Direct supervision means watching and directing children's activities within the same playroom or designated outdoor play area and responding to each child's need. Child personnel at a facility must be assigned to provide direct supervision to a specific group of children and be present with that group of children at all times. . . .

(b) During nap time, supervision means sufficient staff in close proximity, within sight and hearing of all the children. . . .

10. The evidence establishes that the Respondent failed to comply with the requirements set forth at Rule 65C-22.001(5), Florida Administrative Code.

11. Section 402.310(1)(a), Florida Statutes, provides as follows:

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. 4-2.301-402.319 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.

12. In this case, the Petitioner seeks to impose a fine of \$100 for the failure to supervise the infants. The agency is not seeking to impose a penalty against the Respondent for the

non-functioning restroom. There is no evidence that the Petitioner's proposed penalty is inappropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Children and Family Services enter a Final Order imposing a fine of one hundred dollars (\$100) against the Respondent.

DONE AND ENTERED this 29th day of August, 2001, in Tallahassee, Leon County, Florida.

WILLIAM F. QUATTLEBAUM
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 29th day of August, 2001.

COPIES FURNISHED:

Craig A. McCarthy, Esquire
Department of Children and Family Services
400 West Robinson Street, Suite 1106
Orlando, Florida 32801

Carol Wiggins
Central Avenue Child Care
1221 South Washington Avenue
Apopka, Florida 32703

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