

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JEAN THOMPSON, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-0820  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was conducted in this case on June 12, 2002, in Ocala, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward L. Scott, Esquire  
Edward L. Scott, P.A.  
409 Southeast Fort King Street  
Ocala, Florida 34471

For Respondent: Ralph J. McMurphy, Esquire  
Department of Children and  
Family Services  
1601 West Gulf Atlantic Highway  
Wildwood, Florida 34785

STATEMENT OF THE ISSUE

The issue is whether Respondent should renew Petitioner's license to operate a large family child care home.

PRELIMINARY STATEMENT

By letter dated February 1, 2002, Respondent Department of Children and Family Services (Respondent) advised Petitioner Jean Thompson (Petitioner) that her license to operate Jeannie's Child Care at 4339 Southeast 138th Lane, Summerfield, Florida, would not be renewed. The letter states that the denial was based on confirmed Florida Abuse Hotline Information System reports.

According to the letter, Petitioner was responsible for the following inappropriate discipline of children in her care:

(a) putting hot sauce in the mouth of children; (b) requiring excessive exercise, such as running laps and doing push ups; (c) threatening children with spanking; (d) spanking children with hand, paddle, and belts; (e) having children stand in time out with hands in the air; and (f) having staff members grab children hard enough to leave bruises.

On February 13, 2002, Petitioner filed a Petition for Administrative Hearing. Respondent referred the petition to the Division of Administrative Hearings on February 25, 2002.

The Division of Administrative Hearings issued an Initial Order on February 26, 2002. Respondent filed a Response to Initial Order on March 18, 2002.

A Notice of Hearing dated March 18, 2002, scheduled the case for hearing on May 1, 2002. However, on April 26, 2002,

Respondent filed an unopposed Motion for Continuance. On May 1, 2002, the undersigned issued an order granting a continuance and re-scheduling the hearing for May 23, 2002.

During the hearing, Petitioner testified on her own behalf and presented the testimony of nine witnesses. Petitioner offered two exhibits that were accepted into evidence. Respondent presented the testimony of five witnesses but offered no exhibits for admission into evidence.

A transcript of the proceeding was not filed with the Division of Administrative Hearings.

On June 12, 2002, Respondent filed an Agreed Upon Motion for Extension of Time. An order granting the parties additional time to file proposed recommended orders was issued on June 20, 2002. Both parties filed Proposed Findings of Fact and Conclusions of Law on June 21, 2002.

#### FINDINGS OF FACT

1. Petitioner has owned and operated Jeannie's Child Care in her home as a licensed 24-hour facility since 1988. Petitioner's license allows her to keep up to 12 children at a time. She also owns another offsite daycare center that is not at issue here.

2. Petitioner's license to operate a large family child care home expired on December 2, 2001. Prior to the expiration

of the license, Respondent designated Petitioner's facility as a Gold Seal Quality Care Program.

3. There is no credible evidence that Petitioner is responsible for any child being spanked with a paddle or a belt. She normally puts children in the corner for time out when they misbehave. However, competent evidence indicates that Petitioner sometimes threatens to spank children that are difficult to control.

4. On at least one occasion, Petitioner spanked third and fourth grade sisters with a rolled up newspaper, telling them that if they behaved like dogs, she would treat them like dogs. On other occasions, Petitioner spanked C.F. and F.D. by hand. Because C.F. was particularly hard to manage, his mother and her boyfriend gave Petitioner permission to spank C.F.

5. The children in Petitioner's care sometimes bite other children. Usually these children are toddlers. To discourage biting, Petitioner told her staff to put a drop of hot sauce on a finger then put the finger in the child's mouth and on the gum. Petitioner used hot sauce in the manner described on F.D. and at least one other toddler.

6. Petitioner's adult son drove the facility's vans. He also played with the children in the yard. At times, he would let the children exercise with him by doing push ups or sit ups and running laps. Occasionally, Petitioner's son or teachers at

the facility would encourage C.F. or other school-aged children to exercise and run laps. The purpose of the exercise was to burn excess energy. To the extent that exercise was used to control the behavior of the children, there is no persuasive evidence that it was excessive.

7. It is acceptable to discipline children by placing them in time-out. It is not acceptable to require the children to hold their hands up in the air or to hold books in their hands during a time-out period. There is no persuasive evidence that Petitioner was responsible for children having to hold their hands in the air or to hold books in their hands while they were in time-out.

8. Petitioner's method of disciplining children varied depending on how difficult it was to control them. In some cases, the parents of the children approved Petitioner's unorthodox discipline. However, there is no evidence that any child in Petitioner's home facility were bruised or physically injured as a result of punishment.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569, 120.57(1), and 402.310(2), Florida Statutes.

10. Respondent has the burden of proving by clear and convincing evidence that Petitioner is not entitled to renewal of her license to operate a family day care home facility. Coke v. Department of Children and Family Services, 704 So. 2d 726 (Fla. 5th DCA 1998).

11. Respondent has authority to issue or renew a license to operate a child care facility "upon receipt of the license fee and upon being satisfied that all standards required by ss. 402.301-402.319 have been met." Section 402.308(3)(d), Florida Statutes.

12. Section 402.305, Florida Statutes, provides as follows in pertinent part:

(2) PERSONNEL.--Minimum standards 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 the level 2 standards for screening set forth in that chapter.

\* \* \*

(12) CHILD DISCIPLINE.--

(a) Minimum standards for child discipline practices shall ensure that age-appropriate, constructive disciplinary practices are used for children in care. Such standards shall include at least the following requirements:

1. Children shall not be subjected to discipline which is severe, humiliating, or frightening.

2. Discipline shall not be associated with food, rest, or toileting.

3. Spanking or any other form of physical punishment is prohibited.

13. Section 435.04, Florida Statutes, sets forth the Level 2 screening standards. This statute does not include having a confirmed Florida Protective Service System (FPSS) abuse report as a disqualifying offense.

14. Section 39.01(2), Florida Statutes, states as follows:

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

15. There is clear and convincing evidence that Petitioner spanked one child with her hand and two children with a rolled-up newspaper. The children were especially difficult to manage, but Petitioner should have sent them home if spanking was the only way she could control their behavior. However, there is no evidence that Petitioner's actions were abusive or done in anger.

16. Clear and convincing evidence indicates that Petitioner occasionally used hot sauce to discourage toddlers from biting other children. This practice is not acceptable, but there is no evidence that Petitioner's actions were abusive.

17. Petitioner has operated a family day care in her home for 14 years. She also owns another offsite child care facility that is not at issue here. At the hearing, many parents testified about their satisfaction with Petitioner's care of their children over the years. These witnesses related instances where Petitioner had a positive impact on the lives of the parents and children.

18. Respondent has never charged Petitioner with violation of any of the provisions of Sections 402.301-402.319, Florida Statutes. In fact, Respondent issued Petitioner a certificate for operating a Gold Seal Quality Care Program that is valid until June 27, 2004.

19. Petitioner violated Section 402.305(12), Florida Statutes, when she spanked the children or used hot sauce to discourage biting. However, based on the above-referenced mitigating factors, Respondent should renew Petitioner's license provided that she retakes the courses in Rule 65C-20.013(5)(a), Florida Administrative Code, as Respondent determines to be appropriate.

RECOMMENDATION

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

RECOMMENDED:



That Respondent enter a final order renewing Petitioner's license to operate a large family day care home subject to appropriate terms and conditions.

DONE AND ENTERED this 18th day of July, 2002, in Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of July, 2002.

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.