

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GWENDOLYN GOBLER, d/b/a)
DISCOVERY LEARNING CENTER,)
)
Petitioner,)
)
vs.) Case No. 02-0834
)
DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this cause came on for administrative proceeding and hearing before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings on July 17, 2002, in St. Augustine, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Gwendolyn Gobler, pro se
Post Office Box 1122
Ponte Vedra, Florida 32004

For Respondent: Roger L. D. Williams, Esquire
Department of Children and
Family Services
Post Office Box 2417
Jacksonville, Florida 32231-0083

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether violations of Sections 402.305 and .310, Florida

Statutes, and Section 65C-22.001, Florida Administrative Code, have been committed with regard to the care of children at the Petitioner's facility, such that its license should be revoked or other penalty imposed.

PRELIMINARY STATEMENT

This cause arose when the Department of Children and Family Services, by letter dated January 22, 2002, advised the Petitioner that it was revoking the Petitioner's license to operate a daycare facility. The proposed revocation involved certain violations of the agency's regulatory authority referenced below involving child safety. The Petitioner elected to contest that initial agency decision and a proceeding before the Division of Administrative Hearings and the undersigned Administrative Law Judge ensued.

The cause came on for hearing as noticed. The Petitioner presented her own testimony and offered two exhibits which were admitted into evidence. The Respondent called three witnesses to testify and offered four exhibits which were admitted into evidence.

Upon concluding the proceeding, a Transcript thereof was obtained and the parties chose to file Proposed Recommended Orders. Those Proposed Recommended Orders have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner Gwendolyn Gobler was licensed to operate a daycare facility called Discovery Christian Learning Center, by the Department of Children and Family Services (Department) from August 13, 2001 through August 12, 2002. The Petitioner has a Bachelor's degree in early childhood education and has had a license for a family daycare home or center since sometime in 1998. Discovery Christian Learning Center, the subject facility, is located in St. Augustine, Florida at Number 260, State Road 16. State Road 16 is a busy four-lane highway in St. Augustine connecting Interstate 95 to downtown St. Augustine.

2. On the day in question, January 17, 2002, an insurance agent Bill Matetzsck and his passenger, Ms. Lee Stec, were traveling on Highway 16 in the outer-left lane when they observed two children playing near the street on the outside of the Petitioner's facility. The children, a boy almost aged two and a girl aged two and one-half were playing on the sidewalk throwing leaves in the gutter. The little boy was observed to step into the highway while chasing leaves. Mr. Matetzsck stopped his car after observing the children and Ms. Stec retrieved them before they could be hit by a car and took them back into the facility. Ms. Stec became somewhat upset about the discovery of the children outside of the facility and

immediately called the police, local television stations, the Florida Times Union Newspaper and waited for the police to arrive.

3. Mr. Matetzck observed that the double gate on the side of the property in the area of the backyard had a chain wrapped around it, but there was no lock on the chain. The Petitioner acknowledged to the law enforcement officer who investigated the incident that, although chained, the gate had not been properly fastened or secured.

4. During that same time period Ms. Stec had also made a call to the Department of Children and Family Services reporting the incident. This triggered an inspection and investigation by the Department.

5. Carmen Baselice is a Family Services Counselor assigned to St. John's County. The territory of her regulation and inspection of child care facilities includes the Discovery Christian Learning Center operated by the Petitioner. Ms. Baselice's duties include regulating and inspecting child care facilities and family daycare homes.

6. Ms. Baselice initiated her investigation into the complaint by visiting the Discovery Christian Learning Center and discussing the complaint with Ms. Gobler. Ms. Gobler had noticed that the children were missing from her playground in the backyard and had just gone inside to see if they had gone

back in the house at the time the children were being brought inside from the front of the house by Ms. Stec.

7. Ms. Baselice observed that the front door of the facility was not properly fastened due to tape being placed around the doorknob locking mechanism. The door could only be locked by use of a deadbolt. Ms. Baselice felt at the time that the children may have exited the facility by that door. Ms. Gobler, however, stated that the only possible way that the children could have gotten out was by the gate which she acknowledged was not properly fastened.

8. On January 17, 2002, Ms. Baselice received another complaint from a parent who was concerned that it was her child who had gotten out of the facility. The parent was concerned because her own child had gotten out of the facility by the front door in December 2001. Ms. Baselice reviewed the complaint with Ms. Gobler who confirmed that the child had gotten out of the facility by way of the front door by turning the deadbolt, but that she had apprehended the child while the child was still on the front porch and returned her to safety inside the house.

9. On January 8, 2002, before the incident with the two children, Ms. Baselice conducted an annual renewal inspection on the facility. She observed an infant in a crib unattended and the facility "out-of-ratio" for more than thirty minutes. Out

of ratio means that there was an insufficient number of staff members for the number of children being kept at the facility. On this occasion there were four children being kept, as well as the infant asleep in the crib in the infant room. Ms. Gobler was the only person present at the time of this inspection, on January 8, 2002. Thirty minutes later the second worker came on duty. The thirty-minute delay in being properly staffed was caused by that worker having a flat tire on her way to work. Ms. Gobler was attending to the toddlers in the larger room and the infant was asleep in the crib in the adjoining infant room, a separate room. However, it is also true that Ms. Gobler had the infant in plain sight from her station in the room with the four other children and could hear the infant through the open or sliding door.

10. Through her testimony, and through Respondent's Exhibit two, in evidence, Ms. Basalice established that Ms. Gobler had a long history of incidents investigated and inspected by the Department and a substantial number of attendant violations. The incidents reported in Respondent's Exhibit two and in Ms. Basalice's testimony began prior to 1998 and there was a history of non-compliance which continued to the present time. During these years Ms. Gobler operated in disregard of the law in a number of instances, either by non-compliance with specific regulatory requirements concerning how

her child care facility operated or was equipped, or without licensure in all instances. When the violations were cited she would often correct the immediate problem but later repeat the same type of violation.

11. Many of the violations in her regulatory history are germane to child safety. The subject violations involving the children escaping from the home obviously are directly and dramatically involved with child safety. The little boy in question was about to get into the street and was barely missed by an oncoming car when Ms. Stec retrieved him. Those repetitive violations in the past are referenced in Respondent's Exhibit two and are incorporated herein by reference.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Sections 120.569 and 120.57(1), Florida Statutes (2001).

13. The Petitioner is attempting to have her license reinstated as a licensed child care facility pursuant to Section 402.305, Florida Statutes.

14. Section 402.305, Florida Statutes, concerning staffing to children ratio states as follows:

(a) minimum standards for the care of children in a licensed care facility as

established by the department must include at least the following requirements.

(1) For children from birth through 1 year of age there must be one child care personnel for every four children.

(2) For children 1 year or older, but under 2 years of age there must be one child care person for every six children.

15. Section 402.310, Florida Statutes, concerning disciplinary actions provides pertinently as follows:

. . .(1)(a) The Department or local licensing agency may deny, suspend, or revoke a license, impose an administrative fine not to exceed \$100.00 per violation, per day for violation of any provision of Subsections 402.301-319, or rules adopted hereunder.

(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 that death or serious harm to the health or 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 Subsections 402.301-402.319 have been violated.

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

16. Rule 65C-22.001(4)(a), Florida Administrative Code, provides:

The staff to children ratio as established by 402.305(4) is based on primary responsibility for direct supervision of

children and applies at all times while children are in care.

(b) Mixed Age Groups.

1. In groups of mixed age ranges, where children under 1 year are included, one staff member shall be responsible for no more than 4 children of any age group.

(5) Supervision

(a) Direct supervision means watching and directing children's activities within the same room or designated outdoor play area and responding to each child's needs. Childcare 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.

17. Preponderant evidence of record has established that Ms. Gobler had two children leave her facility while it was under her supervision and care and that she failed to always have the appropriate staff on site to monitor and supervise children. It was also established that she had another child leave her facility unobserved for a few minutes in December 2001.

18. It has thus been proven by preponderant evidence that Ms. Gobler failed to adequately supervise the two minor children on January 17, 2002, in violation of the statute. She failed to watch and direct their activities while they were in her supervision in the outside play area. Ms. Gobler failed to maintain the appropriate staff ratio in the facility on

January 8, 2002, although it is understood that that was an accidental situation or circumstance whereby the co-worker was delayed reporting for work for one-half hour due to car trouble. Ms. Gobler attended to the four toddlers in the larger area of the facility on that occasion while a child was asleep in the infant room. The statute specifically states that in mixed aged groups that one staff member shall be responsible for no more than four children of any age group.

19. Additionally, the Department has established that in December 2001, a child escaped from the facility by the front door. Ms. Gobler was able to apprehend the child on that occasion before it left the front porch of her home.

20. In considering a sanction to be imposed for the established violations one must consider the severity of the harm that could have resulted by the children leaving the facility. Discovery Christian Learning Center is located on Highway 16, a very busy highway connecting St. Augustine's downtown area to Interstate 95. The two children, one two years of age, and the other a few days from age two, were not of an age to have matured so as to exercise proper care and discretion. They got out of the facility unattended and were playing with leaves on the sidewalk right next to the highway. One of the children even stepped into the highway while chasing leaves. Without the intervention of Ms. Lee Stec and

Mr. Matetzsk, there is a high likelihood that one or both of the children could have been struck by a car. The fact that a similar, although less severe incident occurred in December should have put Ms. Gobler on notice that she needed to be more aware of the safety needs of the children who families have put in her trust. This factor, coupled with Ms. Gobler's failure to follow the appropriate rules for the child supervision ratio, her fairly numerous instances of violations concerning proper equipping, operation and safety requirements for her facility, as well as her prior history, on a number of occasions, of operating an unlicensed facility, indicate that a substantial penalty is warranted.

21. The preponderant evidence has thus established that, because of the severity of these incidents and her past record of either disregarding or not taking seriously the statutes and rules governing operation of her facility, especially with regard to deficiencies that relate to child safety, it has been shown that Ms. Gobler is not an appropriate person to be licensed. Over a period of several years, she has not demonstrated the ability to maintain a safe environment for the children in her care. Consequently, revocation is appropriate.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and

demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Children and Family Services revoking the Petitioner's license.

DONE AND ENTERED this 3rd day of October, 2002, in Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Administrative Law Judge
Division of Administrative Hearings
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Filed with Clerk of the
Division of Administrative Hearings
this 3rd day of October, 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.