

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND )  
FAMILY SERVICES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-1995  
 )  
BEACON HILL PRESCHOOL, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Carolyn S. Holifield, held a final hearing in this case on September 22, 2004, in Lakeland, Florida.

APPEARANCES

For Petitioner: Jack Emory Farley, Esquire  
Department of Children and  
Family Services  
4720 Old Highway 37  
Lakeland, Florida 33813-2030

For Respondent: Jennifer Lamb, Co-Director  
Beacon Hill Preschool  
801 West Beacon Road  
Lakeland, Florida 33803

STATEMENT OF THE ISSUE

The issue is whether the administrative fine levied by  
Petitioner, Department of Children and Family Services

(Department), against Respondent, Beacon Hill Preschool (Respondent, Beacon Hill or facility), is appropriate.

PRELIMINARY STATEMENT

By letter dated May 11, 2004, the Department notified Jennifer Lamb, co-director of Beacon Hill, that it intended to fine Respondent \$300.00 based on the results of Abuse Report No. 2004325209. The letter alleged that due to inadequate supervision at the facility, a child was bitten numerous times and suffered numerous bruises in violation of Florida Administrative Code Rule 65C-22.001(5)(a) and (b), and Section 402.305, Florida Statutes (2003).

By letter dated May 25, 2004, Beacon Hill timely requested a hearing on the Department's decision to impose an administrative fine. On June 7, 2004, the Department referred the matter to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the final hearing. The hearing was originally scheduled for August 13, 2004, but it was rescheduled for September 17, 2004, by Order granting the Department's unopposed motion for continuance. Subsequently, the hearing was rescheduled for and heard on September 22, 2004.

At hearing, the Department presented the testimony of Amy Anderson, a child protection investigator, and Patricia Hamilton, a child care licensing supervisor. The Department's

Exhibits 1 through 3 were received into evidence. Respondent presented the testimony of Julie Larson, a provider consultant, and Patricia Cox, co-director of Beacon Hill. Respondent's Exhibits 1 through 4 were received into evidence. At the Department's request, official recognition was taken of Sections 402.305 and 402.310, Florida Statutes (2003).

No transcript of the hearing was prepared. The time for filing proposed recommended orders was set for ten days from the date of the hearing. Prior to that time, upon motion by the Department to which Respondent did not object, the time for filing proposed recommended orders was extended to October 25, 2004. Both parties timely filed Proposed Recommended Orders, which have been carefully considered in preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent is a licensed child care facility in Lakeland, Florida, and is owned by Sheila Holton and Diane DeSena. The facility's license number is C14P00013.

2. On February 27, 2004, a complaint was made to the Department alleging that B.M., a two-year-old boy, had returned home from Beacon Hill with "bruises to different parts of his body" and that he "also had bite marks that were inflicted by another child" at the facility.

3. Amy Anderson, a child protection investigator, investigated the complaint. As part of her investigation, on the morning of February 28, 2004, Ms. Anderson went to the home where B.M. resided. She was unable to see the child at that time because no one was at home. However, she returned later that day at about 5:43 p.m. and met with B.M.'s relative caregivers, his aunt and uncle. During this visit, Ms. Anderson saw B.M. and observed that he had various bruises on his lower legs, right flank area, elbows, and lower back, but determined that these bruises were "all older in age."

4. During the course of the investigation, Ms. Anderson met with one of the co-directors and some of the teachers at Beacon Hill. Ms. Anderson also reviewed Respondent's incident reports that documented the bruises, scratches, and bites that B.M. sustained at the facility.

5. The incident reports indicate that between September 3, 2003, and February 12, 2004, B.M. was bitten eight times by other children while at the facility. These incidents, described in detail below, were recorded by facility staff at or near the time of each incident.

6. On September 17, 2003, while B.M. was playing with a toy truck, another child bit him on the left side of the face. About one month later, on the morning of November 21, 2003, there were two biting incidents. First, while B.M. was sitting

in a wagon, B.S., a two-year-old boy, was sitting behind him and bit B.M. on his back; less than two hours later, B.S. bit B.M.'s hand. About two weeks later, on December 4, 2003, B.S. bit B.M. on the palm area of his hand, immediately after B.M. bit B.S.

7. In the two-week period between January 29, 2004, and February 12, 2004, the biting incidents involving B.M. continued. On the morning of January 29, 2004, B.M. was bitten on the wrist by another child, D.M.; that afternoon, B.S. bit B.M. again, this time on his upper forearm. On February 3, 2004, B.S. pinched and then tried to bite B.M. The next day, February 4, 2004, B.S. bit B.M. on the right arm/hand because B.M. had a toy that B.S. wanted. The following week, on February 12, 2004, B.S. bit B.M. on the hand.

8. There were eight incidents at the facility in which B.M. was bitten by other students. In seven of the eight biting incidents, B.S. was the child who bit B.M.

9. Some time after the last biting incident, B.S., who was described in one of the facility's incident reports as aggressive, was dismissed from the facility.

10. In the time period between September 3, 2003, and February 20, 2004, B.M. also sustained several bumps, scratches, and bruises at the facility.<sup>1/</sup> These incidents, detailed below, were documented by the facility staff at or near the time the incidents occurred.

11. On September 3, 2003, B.M. was scratched on the left side of his face as he was playing near the toy refrigerator, and another child opened the refrigerator door. On September 5, 2003, B.M. bumped his face into another child, as the two children accidentally ran into each other. On September 11, 2003, a child at the facility grabbed B.M. near the eye, causing a scratch under B.M.'s eye.

12. On October 6 and 20, 2003, B.M. was running outside and fell and bumped his head. The October 6, 2003, incident left a "purplish mark" on B.M.'s forehead. On October 13, 2003, B.M. bumped his mouth on a pole while playing near the monkey bars.

13. In February, four incidents occurred. On February 9, 2004, B.M. was fighting another child, and the child grabbed and scratched B.M.'s face. The next day, February 10, 2004, B.M. was pushed into a shelf by a child from when he was trying to take a toy; there is no indication that the push left any marks. B.M. injured himself on February 13, 2004, after he accidentally pinched his hand on the door of a toy car. Finally, on February 20, 2004, B.M. fell off a play table; no injuries were reported in connection with this incident.<sup>2/</sup>

14. After completing the investigation, Ms. Anderson made the following findings, which are included in the "Summarized

Findings of Maltreatment Findings" of the Investigative Summary and Narrative:

[B] had several bruises all over his body when he was seen on February 27, 2004. [B] was bitten by another child 15 times before the "offending" child was dismissed from the facility; and the "daycare" admitted that a classroom of two-year-olds was left unattended for several minutes while the teacher used the bathroom.

15. Ms. Anderson closed the Department's official investigation, finding some indicators of bruises on the child victim; conditions hazardous to the health of the child due to a much delayed diaper change; and inadequate supervision on the part of Beacon Hill personnel due to leaving a classroom unattended, even if only momentarily.

16. The child protection investigator's findings included in the abuse report and quoted in paragraph 14 above, that B.M. was bitten 15 times, was not established in this proceeding. Moreover, the findings in the abuse report, described in paragraph 15 above relating to conditions hazardous to health and inadequate supervision due to a teacher leaving the classroom unattended, were not established at this proceeding.

17. Given the number of biting incidents in which B.M. was bitten by the same child at the facility, the staff should have taken corrective action to prevent further injury to B.M.

18. Respondent maintained the required ratio of teachers to children. Nonetheless, the fact that B.M. was bitten as frequently as he was by the same student indicates that the staff failed to adequately supervise the children and to take steps to ensure that B.S. would not bite B.M. or to substantially reduce the likelihood of that happening. The failure of the Beacon Hill staff to take such action, even though present, resulted in repeated and predictable injury to B.M.

19. On the other hand, the bumps, bruises, and scratches that B.M. received at the day care were due, in large part, to falls and accidents involving and caused only by B.M. The three incidents that involved deliberate actions by other children were infrequent and were the type of common encounters that occur with a group of two-year-olds, even when adequate staff is present and supervising the children.

#### CONCLUSIONS OF LAW

20. The Division has jurisdiction over the parties to and subject matter of this proceeding pursuant to Section 120.569 and Subsections 120.57(1) and 402.310(2), Florida Statutes (2004).

21. The Department is the state agency responsible for licensing, inspecting, and regulating child care facilities. See §§ 402.301-402.319, Fla. Stat. (2003).



22. Respondent, as a licensed child care facility, is required to comply with the standards established in Sections 402.301 through 402.319, Florida Statutes (2003), and the rules implementing those provisions.

22. Subsection 402.310(1)(a), Florida Statutes (2003), provides that the Department may deny, suspend, revoke a license, or impose an administrative fine "for the violation of ss. 402.301-402.319 or rules adopted thereunder."

23. Here, the Department seeks to impose an administrative fine. As a basis for this action, the Department alleges that there was "inadequate supervision at the facility which resulted in a child being bitten numerous times and suffering bruises due to several falls." The Department further alleges that this constitutes a violation of Florida Administrative Code Rule 65C-22.001(5)(a) and (b), and Section 402.305, Florida Statutes (2003).

24. Section 402.305, Florida Statutes (2003), requires the Department to establish licensing standards for child care facilities, including those that address the health and safety of all children in child care. Pursuant to this mandate, the Department adopted Florida Administrative Code Rule 65C-22.001(5)(a) and (b), which provides:

(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 need. Child care 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. When caring for school age children, child care personnel shall remain responsible for the supervision of the children in care and capable of responding to emergencies, and are accountable for children at all times, which includes when children are separated from their groups.

(b) During nap time, supervision means sufficient staff in close proximity, within sight and hearing of all the children. All other staff to meet the required staff-to-children ratio shall be within the same building on the same floor and be readily accessible and available to be summoned to ensure the safety of the children. Nap time supervision as described in this section, does not include supervision of children up to 24 months of age, who must be directly supervised at all times. . . .

25. The Department has the burden to prove the allegations against Beacon Hill by clear and convincing evidence in order to impose an administrative fine. See Dept. of Banking & Finance v. Osborne, Stern & Co., 670 So. 2d 932, 935 (Fla. 1996).

26. The Department met its burden of proof as to the violation of Florida Administrative Code Rule 65C-22.001(5)(a). The evidence was clear and convincing that Respondent violated that provision by failing to fully and directly supervise the

children present at the facility. The evidence further established that the inadequate supervision by child care personnel at the facility resulted in a child being bitten numerous times.

27. In regard to the violation of Florida Administrative Code Rule 65C-22.001(5)(a), the Department failed to establish that the bruises, observed and described by the child protection investigator as "older in age," resulted from incidents that occurred at the facility.

28. The Department failed to meet its burden as to the allegation that Respondent violated Florida Administrative Code Rule 65C-22.001(5)(b), which relates to nap-time supervision. There was no evidence presented on this charge.

29. In determining whether to impose a fine and what amount is appropriate, the Department must consider several factors, namely, the severity and extent of the violations, including the actual or potential harm to the children; actions taken by the licensee to correct the violations or remedy complaints; and any previous violations by the licensee. See § 402.310(1)(b), Fla. Stat. (2003).

30. Having established that Respondent violated Florida Administrative Code Rule 65C-22.001(5)(a) and considering the factors set forth in Subsection 402.310(1)(b), Florida Statutes

(2003), the administrative fine of \$300.00, recommended by the Department, is appropriate.

RECOMMENDATION

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

RECOMMENDED that Petitioner, Department of Children and Family Services, issue a final order imposing an administrative fine on Respondent, Beacon Hill Preschool, in the amount of \$300.00.

DONE AND ENTERED this 2nd day of December, 2004, in Tallahassee, Leon County, Florida.

*Carolyn S. Holifield*

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CAROLYN S. HOLIFIELD  
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 2nd day of December, 2004.

ENDNOTES

<sup>1/</sup> In addition to the injuries sustained at the facility, Respondent's records state that B.M. arrived at the facility on the morning of October 6, 2003, with a purple mark on his eyelid and that there was no explanation for the mark. On the afternoon of October 6, 2003, records reveal that a staff person

observed "a bruise wrapped around the right thigh [of B.M.]," and "it appeared to be several days old." The facility's records state that four months later, on the morning of February 9, 2004, B.M. arrived at the facility with a "lavender [sic] like bruise" over his right eyelid, and no explanation was offered. It is unknown whether these observations by facility staff were reported to and/or investigated by appropriate authorities.

<sup>2/</sup> The incident report was signed by B.M.'s guardian, with a notation by co-director, Patricia Cox, that "Mom didn't seem concerned, said he always is falling[;] too big and fat."

COPIES FURNISHED:

Jack Emory Farley, Esquire  
Department of Children and  
Family Services  
4720 Old Highway 37  
Lakeland, Florida 33813-2030

Sheila Holton  
Beacon Hill Preschool  
801 West Beacon Street  
Lakeland, Florida 33803

Paul F. Flounlacker, 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.