

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TUSKAWILLA MONTESSORI SCHOOL,        )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 04-2769  
  )  
DEPARTMENT OF CHILDREN AND         )  
FAMILY SERVICES,                        )  
  )  
      Respondent.                         )  
\_\_\_\_\_                                    )

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the administrative hearing of this case on September 29, 2004, in Orlando, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Terry DeLong, pro se  
Tuskawilla Montessori School  
1625 Montessori Point  
Oviedo, Florida 32765

For Respondent: Beryl Thompson-McClary, Esquire  
Department of Children and  
Family Services  
400 West Robinson Street, Suite S-1106  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue is whether Respondent should revoke Petitioner's license to operate a child care facility for failure to comply with the Director Credential requirements in

Subsection 402.305(2)(f), Florida Statutes (2003), and Florida Administrative Code Rule 65C-22.003(7).

PRELIMINARY STATEMENT

By letter dated January 15, 2004, Respondent notified Petitioner that Respondent intended to revoke Petitioner's license to operate a child care facility on the grounds that Petitioner failed to document its compliance with the relevant Director Credential requirements. Petitioner timely requested an administrative hearing.

At the hearing, Petitioner testified and submitted three exhibits for admission into evidence. Respondent presented the testimony of two witnesses and submitted 11 exhibits for admission into evidence. The identity of the witnesses and exhibits and the rulings regarding each, are set forth in the record of the hearing. Neither party requested a transcript of the hearing. Petitioner filed a Proposed Recommended Order on October 12, 2004. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. Respondent is the state agency responsible for registering family day care homes in Florida. Petitioner is licensed as a child care facility and has operated as a child care facility since October 4, 1990.

2. It is undisputed that Petitioner has satisfied all of the Director Credential requirements, except one. Respondent alleges that Petitioner has not provided Respondent with written verification that Petitioner successfully completed 20 hours of courses required to be certified as a Child Development Associate (CDA).

3. Petitioner completed the courses required to be a CDA in September 1988, but the record of completion is no longer available from the former state agency responsible for administering the program and maintaining those records. Respondent admits that routine licensing inspection reports by Respondent document that Petitioner completed the courses necessary for the CDA certificate in September 1988, and subsequent inspections never cited Petitioner for failure to comply with the CDA requirement. The testimony of Ms. Terry DeLong, Petitioner's director, was credible and persuasive.

4. Petitioner has satisfied all of the Director Credential requirements. Respondent should not revoke Petitioner's license because another state agency failed to maintain its records. It would be unreasonable to require Ms. DeLong to repeat the courses she has already completed in order to keep operating the child care facility.

5. The statutory requirement for a CDA certificate is intended to ensure minimal standards of competence. The

legislature did not intend to put competent child care facilities out of business because state agencies are unable to maintain records of completion.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the parties and subject matter of this case. §§ 120.569 and 120.57(1), Fla. Stat. (2003). The parties received adequate notice of the administrative hearing.

7. Respondent has the burden of proof in this proceeding. Respondent must show by clear and convincing evidence that Ms. DeLong did not satisfy the CDA requirements. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

8. For the reasons stated in the findings of fact, Respondent failed to satisfy its burden of proof. Rather, the evidence is clear and convincing that Ms. DeLong satisfied the CDA requirements, but was unable to provide a certificate because another state agency failed to maintain the record of completion. Respondent's own records adequately document Ms. DeLong's successful completion of the CDA requirements.

RECOMMENDATION

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

RECOMMENDED that Respondent enter a final order finding that Petitioner has satisfied the statutory Director Credential requirements.

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



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DANIEL MANRY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of November, 2004.

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.