

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

OAKCREST EARLY EDUCATION  
CENTER, INC.,

Petitioner,

CASE NO. 05-2616

RENDITION NO. DCF-06-105 -FO

v.

DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

FILED

JUL 07 2006

Respondent.

\_\_\_\_\_/ DCF Department Clerk

**FINAL ORDER**

THIS CAUSE is before me for entry of a Final Order. The Recommended Order recommends that the Department deny petitioner's application to renew its child care facility license. The administrative law judge (ALJ) also recommended that the denial be "without prejudice" to petitioner to reapply "in conjunction with an appropriate monitoring program by [the Department]" to ensure compliance with applicable statutes and rules. The Department filed exceptions to the Recommended Order that are addressed below. The Recommended Order is approved and adopted except as modified below.

The Department first excepts to the ALJ's characterization, in Recommended Order paragraph two, of petitioner's prior history of child care facility standards violations as "relatively minor". The Department's exception to paragraph two is well-taken. Although presented as a finding of fact, the assigning of relative severity of a violation, or pattern of violations, of child care facility standards in chapter 402, Florida Statutes, or chapter 65C-22, Florida

Administrative Code, is a legal conclusion soundly within the Department's discretion. See e.g., §402.310(1), Fla. Stat. Among the prior violations found by the ALJ were failure to properly screen facility personnel, failure to document background screening for facility personnel, and maintenance of child health/immunization records. The fact that the ALJ found that petitioner's past infractions were generally problems with documentation does not require a conclusion that the violations were not serious – a point that is dramatically underscored by the incident that led to the license denial in this case.

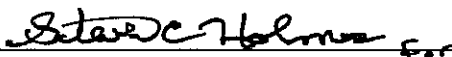
Prior to the June 2005 incident involving the child N. B., petitioner had twice been cited for operational and documentation deficiencies related to the transportation of children in petitioner's vans. Both operational and documentation failures contributed to N.B. nearly dying after being left in a van following a field trip. The ALJ found that at least two of petitioner's employees failed to account for, and document, the children returning from the field trip, and another employee apparently documented N. B.'s presence inside the facility without actually verifying N. B.'s presence. The prior transportation head count violation and other documentation issues were a factor in the Department's decision to issue an emergency suspension order in this case, because they contributed to the Department's concern over the continuing safety of the children served by the facility.

The Department also took exception to the ALJ's recommendation implying that the Department should relicense petitioner in 2006 with appropriate compliance monitoring in place. This exception, too, is well-founded. The action

that precipitated this administrative proceeding was a license denial, not a suspension. Petitioner is, of course, able to apply for a new child care facility license at any time. The Department would certainly consider the application. If it were denied, the Department would provide the specific reasons for the denial, and petitioner would have the ability to request a hearing to contest that denial. See generally Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). I will not pre-determine a prospective license application decision in this proceeding.

Accordingly, upon consideration of the entire record from the final hearing, including the hearing transcript, petitioner's application for a license to operate a child care facility pursuant to chapter 402, Florida Statutes, is DENIED.

**DONE AND ORDERED** at Tallahassee, Leon County, Florida, this 6 day of July, 2006.

  
\_\_\_\_\_  
Don Winstead, Deputy Secretary  
Department of Children and Family Services

**RIGHT TO APPEAL**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILIES, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, IN THE FIRST DISTRICT COURT OF APPEAL OR IN THE DISTRICT COURT OF APPEAL WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA RULES OF APPELLATE PROCEDURE. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**

Copies furnished to:

Ralph McMurphy  
District 13 Assistant Legal Counsel  
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Wildwood, FL 34785

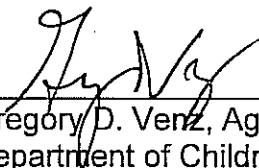
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Ann Cole, Clerk  
Division of Administrative Hearing  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Final Order was provided to the above-named individuals at the listed addresses, by U.S. Mail, this 7 day of July, 2006.

  
\_\_\_\_\_  
Gregory D. Venz, Agency Clerk  
Department of Children and Families  
1317 Winewood Blvd.  
Bldg. 2, Rm. 204-X  
Tallahassee, FL 32399-0700