

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 06-2272
)
YOUTH IN ACTION, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 3 and November 16, 2006, in Panama City, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Walter A. Otto, Esquire
Department of Children and
Family Services
2639 North Monroe Street
Building A, Suite 140
Tallahassee, Florida 32399

For Respondent: Cecile M. Scoon, Esquire
Peters & Scoon
25 East Eighth Street
Panama City, Florida 32401

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent's license to operate a child care facility should be revoked for alleged

violations of Chapter 402, Florida Statutes (2002 through 2005),¹ and Florida Administrative Code Chapter 65C-22 as set forth in the Administrative Complaint.

PRELIMINARY STATEMENT

On May 25, 2006, Petitioner, Department of Children and Family Services (Department), filed an Administrative Complaint against Respondent, Youth In Action Incubator Center for Excellence (Youth in Action), seeking to revoke Youth in Action's license to operate a childcare facility for numerous violations of Chapter 402, Florida Statutes, and Florida Administrative Code Chapter 65C-22. Youth in Action requested an administrative hearing, and, on June 26, 2006, the case was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge. The case was originally assigned to Administrative Law Judge Ella Jane P. Davis, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

The final hearing was scheduled for August 7, 2006. Youth in Action filed a motion for continuance, which was granted by order rescheduling the final hearing for September 1, 2006. Youth in Action filed a second motion for continuance, which was granted. The final hearing was commenced on October 3, 2006, but was not completed on that date. The final hearing was reconvened on November 16, 2006.

At the final hearing, the Department called the following witnesses: Lee Anne Case, Jason Kesterman, Dia Green, Sherrie Gainer, Joseph Alexander, and Shirley McCleary. Petitioner's Exhibits A through Y, AAA, and BBB were admitted in evidence. At the final hearing, Youth in Action called Shirley McCleary, Cynthia Mitchell, and Linda Faye Baker as its witnesses. Youth in Action did not submit any exhibits for admission in evidence.

No transcript of the final hearing was filed. The parties timely submitted their Proposed Recommended Orders, which have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency responsible for licensing and disciplining child care facilities. In carrying out its responsibilities, the Department conducts routine inspections of child care facilities, as well as inspections based on any complaints concerning a child care facility.

2. Youth in Action is a child care facility located in Panama City, Florida.

3. On February 5, 2003, Dia Green, who at that time was employed by the Department, conducted an inspection of Youth in Action based on a complaint. Ms. Green observed children in the two, three, and four-year-old age groups going to the restroom without direct supervision. A child at Youth in Action scratched his nose while going down the slide. Staff at Youth

in Action did not document the incident on the day that it occurred. The facility did not have a staff person trained in first aid present during all operating hours.

4. On March 10, 2003, Ms. Green made a routine inspection of Youth in Action. She found that Youth in Action had no documentation to show that monthly fire drills had been completed.

5. On January 6, 2004, Ms. Green conducted a routine inspection of Youth in Action. Again, she found that Youth in Action lacked documentation to show that monthly fire drills had been completed. There were broken furniture and toys that needed to be removed from the facility. The immunization records for some of the children being cared for at the facility were incomplete.

6. By letter dated January 22, 2004, the Department advised the owner/operator of Youth in Action, Sherlene McClary, that Youth in Action's license was being changed to provisional for failure to have a director meeting the credentialing requirements of Subsection 402.305(2)(f), Florida Statutes (2003). The provisional license was effective January 2, 2004, through June 1, 2004.

7. On April 28, 2004, Lee Anne Case, a child licensing counselor employed by the Department, inspected Youth in Action. She found the staff-to-child ratio was not sufficient for

different age groups. There was one staff person for seven children in the 0 to 12-month-old group. There was one staff person for seven children in the one-year-old group. There was one staff person for nine children in another one-year-old group. There was one staff person for 16 children in the two-year-old group. Ms. Case observed that, when the children were coming in from the playground, Youth in Action staff were leaving a child on the playground. The cook for the facility noticed the child and brought it to the attention of staff. Ms. Case found that areas in the facility were not in good repair. The carpet was dirty, had holes, and was fraying on the edges, creating tripping hazards. The thermostat was hanging by wires from the wall, and, when the thermostat was touched, the lights would flicker. There was a five-inch hole in the wall leading directly to the outside. The floor mats on which the children napped were torn. The bathrooms lacked supplies such as paper towels, soap, and toilet paper.

8. During the April 28, 2004, inspection, Ms. Case found that diaper changing in the infant room was being done on a surface that was not impermeable. The container for soiled diapers was not covered and was accessible to children. Ms. Case also observed indoor and outdoor equipment which was not safe. Inside the facility, a changing table was broken, the power cord to a portable radio was accessible to children, and

the air conditioning unit was not properly mounted, leaving sharp corners exposed. On the playground, there were exposed roots, which created a tripping hazard; broken toys were left in the area; and a picnic table was pushed up to the fence negating the required four-foot height requirement for the fence.

9. Additionally, during the April 28, 2004, inspection, Ms. Case found that there was a lack of documentation to show that some of the staff members had completed the required 40-Hour Introductory Child Care Training. Personnel records for some of the staff were missing.

10. The Department gave Youth in Action until May 5, 2004, to correct the deficiencies in the torn and dirty carpet, the thermostat, the hole in the wall, the debris and broken toys on the playground, the picnic table pushed against the fence, the air conditioning unit, the power cord to the radio, the personnel records, and the training requirements. On May 7, 2004, Youth in Action was re-inspected to determine if the deficiencies had been corrected. The carpet had not been repaired or cleaned. The hole in the wall had been filled loosely with paper towels. The playground still contained debris and leaves were piled next to the fence, eliminating the four-foot fence requirement. Sleeping mats were torn. The diaper changing in the infant room was being done on an impermeable surface. The deficiencies related to the changing

table and the air conditioning unit had not been corrected. The deficiencies in the training documentation and the personnel records also remained uncorrected. Youth in Action was given until May 10, 2004, to make the necessary corrections.

11. It was also noted during the May 7, 2004, inspection that the facility had a staff-to-children ratio deficiency. One staff person was observed with seven infants. One staff person was with seven children in the room for one-year-old children. In a second room with one and two-year-old children, there was one staff person for seven children. In one group of three and four-year-old children there were 17 children and one staff person.

12. On May 13, 2004, another inspection was made of Youth in Action to determine if the deficiencies found on May 5, 2004, had been corrected. On May 13, 2004, sleeping mats in the one-year-old room were torn and needed to be replaced; the diaper changing pad was still torn; and the sharp corners of the air conditioner had not been eliminated.

13. On August 11, 2004, Jason Kesterman, an employee of the Department, inspected Youth in Action. He found that the facility's plan of scheduled events was not posted in a place accessible to parents. Paper towels or air dryers were not available and within reach of the children in the bathroom next to the one-year-olds' room. Some of the staff of the facility

had not completed the 40-hour mandatory training course within the allotted time frame, and some lacked the ten-hour training course. One of the staff did not have documentation of the initiation of training within the allotted time. The first aid kit for the facility lacked moist wipes and rubber gloves.

14. On November 12, 2004, Ms. Case inspected Youth in Action. Numerous deficiencies were noted. There was an insufficient ratio of staff to children. There was one staff person for 16 children when there should have been two staff members. During nap time, there was insufficient staff accessible for the one-year-olds. Ms. Case observed a heavy-duty bathroom cleaner that was accessible to children. The floor mats for napping were torn. Staff did not clean and disinfect the diaper changing surface after each use. The pad on the diaper changing table was torn. The ground cover within the fall zone of the swings was not maintained. A rocking fish toy had sharp and jagged handles. One of the staff did not have documentation of one of the required ten-hour training courses. The director of the facility was not onsite a majority of the hours of operation. The first aid kit for the facility did not contain a thermometer, moistened wipes, and a guide on first aid. The facility did not have a staff member trained in current infant and child cardiopulmonary resuscitation present during all hours of operation. Diaper ointment was dispensed

without written authorization from the parent. Some of the children did not have documentation of a student health examination. Personnel records for some of the staff were incomplete.

15. On December 2, 2004, the Department issued an Administrative Complaint assessing a \$500 fine against Youth in Action for failure to supervise a 19-month-old child who walked away from the facility. Youth in Action paid the \$500 fine.

16. On January 27, 2005, the Department notified Youth in Action that its license was being placed on provisional status effective December 1, 2004, for repeated violations of Florida Administrative Code Chapter 65C-22. The provisional license was to remain in effect until June 1, 2005. The Department advised the facility that inspections in addition to the routine inspections would be made of the facility to monitor the facility's compliance with Florida Statutes and the Florida Administrative Code. The facility was notified that "failure to immediately correct documented violations during your facility's inspections will leave the [D]epartment no alternative but to seek revocation of your license."

17. Sherrie Gainer, an employee of the Department, inspected Youth in Action on January 19, 2005. She found cleaning supplies that were accessible to children as well as knives in a lower kitchen cabinet that was accessible to

children. This deficiency was corrected at the time of the inspection. Ms. Gainer found that the director's file was not located at the facility. Some of the children's files were incomplete. Some of the personnel files for staff were incomplete. Youth in Action was given until January 31, 2005, to correct the deficiencies.

18. On March 2, 2005, Ms. Gainer inspected Youth in Action. She found that there was a deficiency in the staff-to-child ratio. One group of children had seven three and four-year-old children and one one-year-old child. Such a mix required the supervision of two staff and only one staff was supervising.

19. Ms. Gainer inspected Youth in Action on March 22, 2005. She found that the facility did not have complete records for some of the child care personnel.

20. In response to a complaint, Ms. Gainer inspected Youth in Action on May 4, 2005. She found a staff-to-child ratio deficiency. There should have been two staff persons for eight children, but there was only one staff person supervising the children. She observed that there was an uncovered vent in the ceiling of the bathroom that allowed rain to enter the facility and that the toilet seats were loose.

21. Ms. Gainer inspected Youth in Action on October 11, 2005. She found that the facility did not have documentation to show completion of a five-hour literacy training course by June 30, 2005, for staff hired on or before December 31, 2004. Additionally, records or copies of records were not being maintained at the facility for review by the Department. Files were being maintained across the street from the facility.

22. On November 14, 2005, Ms. Gainer again inspected Youth in Action. A bathroom light did not work. Cleaning supplies in the kitchen were accessible to the children. Bedding did not fit against the crib, leaving a big gap. The bedding was dirty and brown in color. Several sheets found on the infant beds were badly stained.

23. On November 29, 2005, Ms. Gainer re-inspected Youth in Action. Cleaning supplies in the kitchen were accessible to the children. A radio cord was hanging within reach of the children in the toddlers' room.

24. Ms. Gainer inspected Youth in Action on December 20, 2005. There was a deficiency in the staff-to-children ratio. Two staff were needed for five children in the infant group, and only one staff person was supervising the five children. Ms. Gainer observed that the white lattice by the walkway was coming undone.

25. On February 23, 2006, Ms. Gainer inspected Youth in Action and noted a staff-to-children ratio deficiency. There was one staff person supervising seven children, consisting of four one-year-olds and three two-year-olds. Two persons were required to supervise that particular age group.

26. Based on a complaint, Ms Gainer made an inspection of Youth in Action on March 1, 2006, and she observed another staff-to-children ratio violation. One staff person was present with 18 children, three of whom were one-year-old and 15 of whom were two and three-year-old.

27. Based on another complaint, Ms. Gainer made an inspection of Youth in Action on March 13, 2006. She found there were 13 children in one room watching television with one staff person. There were seven one-year-old children in with a group of two, three, and four-year-old children.

28. On April 12, 2006, Ms. Gainer was advised by an employee of Youth in Action that the director of the facility was employed full time by the local school district and was not at the facility a majority of the operating hours.

29. On April 13, 2006, Ms. Gainer inspected Youth in Action and found that the emergency plan was not posted. She observed a volunteer left alone supervising three one-year-old children in a classroom.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2006).

31. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

32. Subsection 402.305(4), Florida Statutes, requires the Department to adopt minimum staff-to-child ratios for the care of children in licensed child care facilities and provides:

(a) Minimum standards for the care of children in a licensed child care facility as established by rule of the department must include:

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 of age or older, but under 2 years of age, there must be one child care personnel for every six children.
3. For children 2 years of age or older, but under 3 years of age, there must be one child care personnel for every 11 children.
4. For children 3 years of age or older, but under 4 years of age, there must be one child care personnel for every 15 children.
5. For children 4 years of age or older, but under 5 years of age, there must be one child care personnel for every 20 children.
6. For children 5 years of age or older, there must be one child care personnel for every 25 children.
7. When children 2 years of age and older are in care, the staff-to-children

ration shall be based on the age group with the largest number of children within the group.

33. The Department has adopted Florida Administrative Code Rule 65C-22.001 (4) and (5) dealing with staff-to-children ratios and supervision. The rule provides:

(4) Ratios

(a) The staff-to-children ratio, as established in Section 402.305(4), F.S., is based on primary responsibility for the 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 of age are included, one staff member shall be responsible for no more than 4 children of any age group.

2. In groups of mixed age ranges, where children 1 year of age but under 2 years of age are included, one staff member shall be responsible for no more than 6 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 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. . . .

(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.

34. On numerous inspections, Department employees found Youth in Action to be in violation of the required staff-to-children ratios. On February 5, 2003, the facility had insufficient staff to supervise a group of two-year-old children and a group of three-year-old children. Additionally, two, three, and four-year-old children were allowed to go to the restroom without direct supervision. On April 28, 2004, there was insufficient staff to supervise a group of infants, two groups of one-year-old children, and a mixed group of children consisting mainly of two-year-old children. On May 7, 2004, Youth in Action failed to have sufficient staff to supervise a group of infants, a group of one-year-old children, a mixed group of one and two-year-old children, and a group of three and four-year-old children, with the majority being three years of age. On November 12, 2004, Youth in Action had one staff person supervising a group of 16 children, and two staff members were required for adequate supervision. Additionally, on November 12, 2004, there was insufficient staff to supervise a group of one-year-old children along with a group of three and

four-year-old children. On March 2, 2005, Youth in Action had one person supervising a group of seven three and four-year-old children and one one-year-old child, and two persons were required to supervise that mixed age group. On May 4, 2005, Youth in Action had one staff person supervising eight children, when two persons were required for that age group. On December 20, 2005, there was one staff person to supervise five infants. On February 23, 2006, one staff person was supervising seven children, and two persons were required to supervise that number of children. On March 1, 2006, one staff person was supervising 18 children, consisting of three one-year-olds, and 15 two and three-year-olds. On March 13, 2006, one staff person was supervising a group of 13 children, consisting of seven one-year-olds and other children from two to four years of age.

35. Subsection 402.305(5), Florida Statutes, requires the Department to adopt rules setting forth standards for the physical facilities of child care centers. The Department has adopted Florida Administrative Code Rule 65C-22.002, which sets forth the standards for the physical environment for a child care facility and provides:

(1) General Requirements.

(a) All child care facilities must be in good repair, free from health and safety hazards, clean, and free from vermin infestation. . . .

(b) All areas and surfaces accessible to children shall be free of toxic substances and hazardous materials.

* * *

(d) All potentially harmful items including cleaning supplies, flammable products, poisonous, toxic, and hazardous material must be labeled. These items as well as knives and sharp tools shall be stored in locations inaccessible to the children in care.

* * *

(4) Outdoor Play Area.

* * *

(c) The outdoor play area shall be clean, free of litter, nails, glass and other hazards.

* * *

(e) The outdoor play area shall have and maintain safe and adequate fencing or walls a minimum of four (4) feet in height. Fencing, including gates, must be continuous and shall not have gaps that would allow children to exit the outdoor play area. The base of the fence must remain at ground level, free from erosion or build-up, to prevent inside or outside access by children or animals.

* * *

(5) Napping and sleeping space. For the purposes of these standards, sleeping refers to the normal overnight sleep cycle while napping refers to a brief period of rest during daylight or early evening hours.

* * *

(b) Each child in care must be provided safe and sanitary bedding to be used when napping or sleeping. Bedding means a cot, bed, crib, playpen, mattress (excluding an air mattress or a foam mattress) or a floor mat. Floor mats must be at least one inch thick and covered with an impermeable surface. . . .

(c) Linens, if used, must be laundered at least once each week and more often if soiled or dirty.

* * *

(6) Toilet and Bath Facilities.

* * *

(d) Children must receive supervision and care in accordance with their age and required needs and be accounted for at all times while bathing or toileting.

* * *

(f) Running water, toilet paper, disposable towels or hand drying machines that are properly installed and maintained, soap and trash receptacles shall be available and within reach of children using the toileting facility.

(g) Each basin and toilet must be maintained in good operating condition and sanitized as needed, at least once per day.

(7) Fire Safety.

* * *

(c) Fire drills shall be conducted monthly and shall be conducted when children are in care.

* * *

(8) Health and Sanitation.

* * *

(b) Diapering Requirements.

* * *

2. When children in diapers are in care, there shall be a diaper changing area with an impermeable surface which is cleaned with a sanitizing solution after each use.

* * *

5. Soiled disposable diapers shall be disposed of in a plastic lined, securely covered container, which is not accessible to children. The container shall be emptied and sanitized at least daily.

6. Soiled cloth diapers shall be emptied of feces in the toilet and placed in a securely covered container which is not accessible to children. The container shall be emptied and sanitized daily.

* * *

(9) Equipment and Furnishings.

(a) Indoor Equipment.

* * *

2. Toys, equipment and furnishings must be safe and maintained in a sanitary condition.

(b) Outdoor Equipment.

* * *

2. All play equipment shall be securely anchored, unless portable by design, in good repair, maintained in safe condition, and placed to ensure safe usage by the children. Maintenance shall include checks at least every other month, of all supports, above

and below ground, all connectors, and moving parts.

3. Permanent playground equipment must have a ground cover or other protective surface under the equipment which provides resilience and is maintained to reduce the incidence of injuries to children in the event of falls.

4. All equipment, fences, and objects on the facility's premises shall be free of sharp, broken and jagged edges and properly placed to prevent overcrowding or safety hazards in any one area.

36. Youth in Action violated Florida Administrative Code Rule 65C-22.002 on numerous occasions. On March 10, 2003, and January 6, 2004, Youth in Action had no documentation to establish that monthly fire drills had been conducted in violation of Florida Administrative Code Rule 65C-22.002(7)(c). Youth in Action violated Florida Administrative Code Rule 65C-22.002 by failing to keep areas in good repair as demonstrated during the inspections on January 6, 2004; April 28, 2004; May 7, 2004; May 4, 2005; November 14, 2005; and December 20, 2005. Violations of Florida Administrative Code Rule 65C-22.002(8), regarding diapering areas, were established during the inspections on April 28, 2004; May 7, 2004; May 13, 2004; August 11, 2004; and November 12, 2004. Violations of Florida Administrative Code Rule 65C-22.002(1), regarding the accessibility of cleaning supplies and knives to children, were present during the inspections on November 12, 2004; January 19, 2005; November 14, 2005; and November 29, 2005. Youth in Action

violated Florida Administrative Code Rule 65C-22.002(5), concerning napping and sleeping space, on April 28, 2004; May 7, 2004; May 13, 2004; November 12, 2004; and November 14, 2005. Violations of Florida Administrative Code Rule 65C-22.002(6), concerning toilet facilities, were present during the inspections on April 28, 2004; August 11, 2004; and May 4, 2005. The Department established violations of Florida Administrative Code Rule 65C-22.002(9), regarding equipment and furnishing, on April 28, 2004; May 7, 2004; May 13, 2004; November 12, 2004; and November 29, 2005.

37. Subsection 402.305(2), Florida Statutes, requires the Department to establish minimum training requirements for child care personnel. The training requirements are to include a 40-clock-hour introductory course in child care, which child care personnel must begin within 90 days after employment and complete such training within one year after the date on which the training began. The Department promulgated Florida Administrative Code Rule 65C-22.003 to address the minimum training requirements. The Department established that Youth in Action was in violation of the minimum training requirements on April 28, 2004; May 7, 2004; August 11, 2004; November 12, 2004; and October 11, 2005.

38. Florida Administrative Code Rule 65C-22.006(5) requires child care facilities to maintain current personnel

records on all child care personnel. Youth in Action failed to maintain current personnel records on April 28, 2004; May 7, 2004; November 12, 2004; January 19, 2005; and March 22, 2005.

39. Florida Administrative Code Rule 65C-22.003(8)(a)(3) requires each child care facility to have a director on site a majority of hours that the facility is in operation. Youth in Action was in violation of this rule on November 12, 2004, and April 12, 2006.

40. Subsection 402.305, Florida Statutes, requires the Department to establish standards for recordkeeping by child care facilities. The minimum records shall include immunizations and health examinations. Florida Administrative Code Rule 65C-22.006 requires that such records must be maintained at the facility and be available for review by the Department during the operating hours of the facility. Youth in Action was in violation of these record keeping requirements on January 6, 2004; November 12, 2004; January 19, 2005; and October 11, 2005.

41. Florida Administrative Code Rule 65C-20.002(5)(d) requires child care facilities to maintain personnel records on child care personnel, which include background screenings from local law enforcement agencies and the Florida Department of Law Enforcement. Youth in Action violated this rule on February 20, 2004; January 19, 2005; and March 22, 2005.

42. Subsection 402.305(7)(a), Florida Statutes, requires the Department to establish minimum standards for the following:

[S]anitary and safety conditions, first aid treatment, emergency procedures, and pediatric cardiopulmonary resuscitation. The minimum standards shall require that at least one staff person trained in cardiopulmonary resuscitation, as evidenced by current documentation of course completion, must be present at all times that children are present.

43. The Department promulgated Florida Administrative Code Rule 65C-22.004 to address the standards for first aid and cardiopulmonary resuscitation. The rule provides:

(2) First Aid, Cardiopulmonary Resuscitation and Emergency Procedures.

(a) Each child care facility must have at least one staff member with a valid certificate of course completion for first aid training and infant and child cardiopulmonary resuscitation procedures. One staff member satisfying these training requirements shall be present at all times that children are in the care of the facility, both on-site and on field trips.

* * *

(c) At least one first aid kit containing materials to administer first aid must be maintained on the premises of all child care facilities at all times. . . . Each kit must at a minimum include:

1. Soap,
2. Band-aids or equivalent,
3. Disposable latex gloves,
4. Cotton balls or applicators,
5. Sterile gauze pads and rolls,
6. Adhesive tape,

7. Thermometer,
8. Tweezers,
9. Pre-moistened wipes,
10. Scissors, and
11. A current resource guide on first aid and CPR procedures.

44. Youth in Action was in violation of Florida Administrative Code Rule 65C-22.004(2) on February 5, 2003; August 11, 2004; and November 12, 2004.

45. Florida Administrative Code Rule 65C-22.004(2)(d)3. requires that "all accidents and incidents which occur at a facility must be documented and shared with the custodial parent or legal guardian on the day they occur." Youth in Action violated this rule on February 5, 2003, by failing to document that a child scratched his nose while going down a slide.

46. Florida Administrative Code Rule 65C-22.001(7)(a) requires that "[e]ach age group or class must have a written and followed plan of scheduled activities posted in a place accessible to parents." Youth in Action failed to meet this requirement during the inspection on August 11, 2004.

47. Florida Administrative Code Rule 65C-22.004(3) requires that a child care facility must have written authorization from a parent or legal guardian prior to dispensing medication to a child. Youth in Action violated this rule during the inspection on November 12, 2004.

48. Subsection 402.302(3), Florida Statutes (2005), provides that a volunteer who assists at a child care facility on an intermittent basis for less than 40 hours per month is not included in the definition of child care personnel for the purposes of training and screening as long as the volunteer is under the direct and constant supervision of persons who meet the personnel requirements of Subsection 402.305(2), Florida Statutes (2005). On April 13, 2006, Youth in Action violated Subsection 402.305(3), Florida Statutes (2005), by utilizing a volunteer to care for children, when the volunteer was not under the direct and constant supervision of child care personnel meeting the necessary training and screening requirements.

49. Florida Administrative Code Rule 65C-22.006(6)(c) requires a child care facility to have an emergency evacuation plan posted in each room of the facility. Youth in Action failed to meet this requirement during the inspection on April 13, 2006.

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

(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 actual or potential harm, and the extent to which the provisions of ss. 402.301-402.319 have been violated.

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

3. Any previous violations of the licensee.

51. Youth in Action is guilty of violating numerous rules and statutes governing child care facilities from 2003 through 2006. Many of the violations are serious in nature such as the staff-to-children ratios, the failure to have background screening on child care personnel, the failure to have staff who are trained in first aid and cardiopulmonary resuscitation present at the facility when children are in the facility. These violations have the probability of resulting in serious harm to the health and safety of the children in the facility. The failure to keep adequate staff to supervise the children is very troubling, especially in light of a 19-month-old child wandering away from the facility on November 9, 2004, due to a lack of supervision. Although Youth in Action had been cited many times for inadequate staff-to-children ratios, the facility continued as late as April 13, 2006, to have inadequate supervision for the children in its care.

52. In 2004 and in 2005, Youth in Action's license was placed on provisional status. The provisional license effective from January 10, 2005, through June 1, 2005, resulted from repeated violations of the Florida Statutes and Florida Administrative Code. On December 2, 2004, Youth in Action was issued an Administrative Complaint and fined \$500 for inadequate supervision.

53. Based on the severity of the violations and the previous actions taken against Youth in Action's license, the appropriate disciplinary action is revocation of its license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Youth in Action violated Section 402.305, Florida Statutes, and Florida Administrative Code Rules 65C-20.001, 65C-20.002, 65C-20.003, 65C-20.004, and 65C-20.006, and revoking its license to operate a child care facility.

DONE AND ENTERED this 29th day of January, 2007, in
Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
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 29th day of January, 2007.

ENDNOTE

1/ All references to the Florida Statutes are to the version in effect from 2002 through 2005, unless otherwise indicated.

COPIES FURNISHED:

Walter A. Otto, Esquire
Department of Children and Families
2639 North Monroe Street
Building A, Suite 140
Tallahassee, Florida 32399

Cecile M. Scoon, Esquire
Peters & Scoon
25 East Eighth Street
Panama City, Florida 32401

Gregory Venz, Agency Clerk
Department of Children and
Family Services
Building 2, Room 204B
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

John Copelan, General Counsel
Department of Children and
Family Services
Building 2, Room 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Robert Butterworth, Secretary
Department of Children and
Family Services
Building 1, Room 202
1317 Winewood Boulevard
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.