

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GEORGE AND ALICIA BARRETT, )  
d/b/a CHILD CARE 2000, INC., )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 06-2462  
 )  
DEPARTMENT OF CHILDREN AND )  
FAMILY SERVICES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was conducted in this case on August 23, 2006, in Tavares, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stella Varona Balandran  
Qualified Representative  
95 South Trowell Avenue  
Umatilla, Florida 32784

For Respondent: Ralph J. McMurphy, Esquire  
Department of Children  
and Family Services  
1601 West Gulf Atlantic Highway  
Wildwood, Florida 34785

STATEMENT OF THE ISSUE

The issue is whether Respondent should renew Petitioner's license to operate a child care facility based on an alleged

Class I violation of Florida Administrative Code Rule 65C-22.001(5)(a) and an alleged history of noncompliance with the Florida Administrative Code rules regulating child care facilities.

PRELIMINARY STATEMENT

In a letter dated May 22, 2006, Respondent Department of Children and Family Services (Respondent) informed Petitioners George and Alicia Barrett d/b/a Child Care 2000, Inc. (Petitioners) that their application to renew their license to operate a child care facility, located at 24534 State Road 44, Sorrento, Florida, was denied. The letter stated that the denial was based on a recent Class I violation of Florida Administrative Code Rule 65C-22.001(5)(a) and a history of repeated noncompliance with other Florida Administrative Code rules.

On June 23, 2006, Petitioners filed a request for an administrative hearing. On July 14, 2006, Respondent referred Petitioners' request to the Division of Administrative Hearings.

On August 1, 2006, the undersigned issued a Notice of Hearing, scheduling the hearing for August 23, 2006.

On August 10, 2006, Petitioners filed a request for Stella Varona Balandran to act as their qualified representative. On August 16, 2006, the undersigned issued an Order Accepting Qualified Representative.

On August 10, 2006, Petitioners filed an untitled pleading containing facts and legal argument. However, neither party offered the pleading as evidence during the hearing and it has not been considered as such.

During the hearing, Petitioners testified on their own behalf and presented the testimony of five witnesses. Petitioners offered 12 exhibits that were admitted as evidence.

Respondent presented the testimony of two witnesses. Respondent offered four exhibits that were accepted as evidence.

At the close of the proceeding, Petitioners indicated that they intended to file a copy of the hearing transcript. The next day, the undersigned's office was informed that a copy of the transcript would not be filed with the Division of Administrative Hearings. On August 28, 2006, the undersigned issued an Order to inform the parties that they had an opportunity to file proposed recommended orders on September 5, 2006.

On August 31, 2006, Petitioners filed Proposed Findings of Fact and Conclusions of Law. As of the time that this Recommended Order was issued, Respondent had not filed a proposed order.

#### FINDINGS OF FACT

1. At all times material here, Petitioners owned and operated Child Care 2000, #1 (the facility), located on State

Road 44, Sorrento, Florida. Petitioner George Barrett was the licensed child care director of the facility, which had been a child care center for 14 years.

2. The facility had an employee's manual that addresses its policies. The manual contained policies regarding regular staff meetings, parent/teacher conferences, and mandatory initial/in-service training requirements. The manual also included a section on safety, which stated as follows:

Do not leave your classroom unsupervised at anytime, indoors or out. All electrical outlets must be covered at all times. Any broken or damaged equipment must be removed or brought to the Director's attention. Remember to count your children every hour. All of these things must be done daily. DO NOT leave children unattended. There will be tolerance for this action.

3. The facility had a time clock, which the employees used to record their time at work. The information from the time clock transferred electronically to the facility's computer, which captured the information for use in a software program that generated payroll. If a teacher's time card was incorrect for any reason, the bookkeeper could manually override the system to correct any error.

4. The facility also used the time clock to log the time that children attended the facility. The attendance records transferred electronically to the facility's computer, which

captured the data for use in a software program that generated billing statements.

5. The children's parents used a password to activate the time clock when they dropped off or picked up their children. There is no evidence that anyone at the facility knew how to manually override the children's electronic attendance log.

6. Respondent alleges that its inspector, Glenda McDonald, performed an inspection of the facility on October 27, 2005. The inspection checklist contains allegations that the facility was noncompliant in the following areas: (a) Outdoor Play Area, Florida Administrative Code Rule 65C-22.002(4)(c)(g); (b) Fencing, Florida Administrative Code Rule 65C-22.002(4)(d)(e); (c) Outdoor Equipment/Suitable, Safe, Maintained, Florida Administrative Code Rule 65C-22.002(9)(b); (d) 10-hour In-service, Florida Administrative Code Rule 65C-22.003(6)(a)-(c); (e) Bottles Sanitary and Labeled, Florida Administrative Code Rule 65C-22.005(3)(b)(c); (f) Children's Health/Immunization Records, Florida Administrative Code Rule 65C-22.006(2)(a)-(c); (g) Personnel Records, Florida Administrative Code Rule 65C-22.006(5)(a)-(c), (e), (f), (6)(e); and (h) Form 5131/Screening Documents, Florida Administrative Code Rule 65C-22.006(5)(d).

7. Respondent did not present Ms. McDonald as a witness at the hearing. Without Ms. McDonald's testimony or an admission

by Petitioners, there is no competent evidence by Respondent to show the facility's noncompliance on October 27, 2005.

8. During the hearing, Petitioners did admit that the facility failed to comply with the rules on October 27, 2005, in the following respects: (a) the need to remove or replace a broken swing as required by Florida Administrative Code Rule 65C-22.002(9)(b); and (b) the need to update children's shot records and physicals as required by Florida Administrative Code Rule 65C-22.006(2)(a)-(c).

9. Petitioners presented testimony that the broken swing was repaired immediately after the October 27, 2005, inspection. Additionally, Petitioners admitted that they found it impossible to keep the children's shot records and physicals updated, but that they corrected the problem in a timely manner after the October 27, 2005, inspection.

10. On January 30, 2006, one of Respondent's inspectors, Debbi Mitchell, performed an inspection of the facility. Ms. Mitchell observed that the facility was noncompliant in the following ways: (a) failure to update children's shot records as required by Administrative Code Rule 65C-22.006(2)(a)-(c); and (b) failure to update personnel screening documents as required by Florida Administrative Code Rule 65C-22.006(5)(d) and Section 435.04, Florida Statutes. There is no evidence to dispute Ms. Mitchell's testimony regarding the January 30, 2006,

inspection. The failure to keep the children's shot records updated was a repeated offense.

11. On or about March 31, 2006, Petitioner filed an application with Respondent to renew their license.

12. Petitioners' daughter-in-law was the facility's office manager. When Petitioners were unable to be present at the facility, the daughter-in-law was the person in charge of the child care center.

13. If the Petitioners were absent and the daughter-in-law had to leave the premises, Linda Race, a senior pre-kindergarten teacher was in charge of the facility. Ms. Race would take over as the person in charge when Petitioner's daughter-in-law handed her the facility's telephone.

14. A.B. was the son of the daughter-in-law/office manager and the grandson of Petitioners. In the spring of 2006, A.B. was two-years-old. He attended one of the pre-kindergarten classes at the facility.

15. It was not unusual for A.B. to see his mother during the school day. Sometimes A.B. would become upset and cry if he was not allowed to leave his class and go to his mother in the office.

16. On April 25, 2006, Petitioners were not at the facility. Petitioner Alicia Barrett was taking care of

Petitioner George Barrett, who was recovering from a serious illness.

17. On April 25, 2006, Petitioner's daughter-in-law clocked into work at the facility at 8:10 a.m. A.B. arrived with his mother then joined his class. Later that morning, A.B. began crying for his mother. Ms. Race attempted to refocus A.B.'s attention before letting him go to his mother. From that time on, Ms. Race believed that A.B. was no longer participating in her class because he was with his mother. Ms. Race understood that A.B.'s mother was planning to leave the facility in the early part of the morning.

18. On April 25, 2006, Petitioner's daughter-in-law clocked out of the facility at 9:59 a.m. She had been at the facility for one hour and 49 minutes before she clocked out. A.B.'s electronic attendance log for that day indicates that he was in attendance for one hour and 49 minutes. A.B.'s mother did not testify at the hearing.

19. Sometime after 10:00 a.m. on April 25, 2006, Ms. Race and her assistant, another teacher identified as Brittany Russell, were with the children on the facility's porch. As the children prepared to move from the porch to their classroom, Ms. Race and Ms. Russell, began taking a head count. About that time, A.B.'s mother approached Ms. Race and handed the facility's telephone to her. Accepting the telephone with a



call on the line, Ms. Race realized that A.B. was not with his mother and that he was at the Circle K, a convenience store and gas station located next to the facility. Apparently, employees of the Circle K had called the facility to see if a child was missing. Ms. Race immediately ran from the facility to the Circle K to retrieve A.B.

20. The totality of the circumstances indicates that A.B. was with his mother when he left the facility. The facility's teachers had no reason to believe otherwise.

21. No one at the facility prepared an incident report relative to the events that occurred on April 25, 2006. However, under the circumstances of this case, it is clear that A.B.'s mother was aware of the emergency that was created when A.B. left his mother and went to the Circle K.

22. On May 12, 2006, Ms. Mitchell investigated a complaint against the facility involving the events of April 25, 2006. The investigation of the complaint resulted in Respondent's issuance of an Intent to Impose Administrative Action for the following alleged violations: (a) inadequate supervision as required by Florida Administrative Code Rule 65C-22.001(5)(a), (b), (d)1.-3.; and (b) failure to document the incident involving A.B. as required by Florida Administrative Code Rule 65C-22.004(2)(d)2.

23. There is no clear and convincing evidence to support these allegations. The facility did not provide inadequate supervision for A.B. because he was with his mother and not under the supervision of the facility when he went to the Circle K. Accordingly, there was no need for the facility to document the incident.

24. On May 12, 2006, Ms. Mitchell also performed an inspection of the facility. During the inspection, Ms. Mitchell observed the following alleged noncompliance: (a) Planned Activities Posted and Followed as required by Florida Administrative Code Rule 65C-22.001(7)(a); (b) Outdoor Equipment/Suitable, Safe, Maintained as required by Florida Administrative Code Rule 65C-22.002(9)(b); (c) First Aid Staff/Supplies as required by Florida Administrative Code Rule 65C-22.004(2)(a)-(c); (d) Accident/Incident Documented as required by Florida Administrative Code Rule 65C-22.004(2)(d)2.-4.; and (e) Children's Health/Immunization Records as required by Florida Administrative Code Rule 65C-22.006(2)(a)-(c).

25. On May 12, 2006, the plan of classroom activities/schedule for each age group was posted in entrance to the facility near the office. That area was an appropriate place for all parents entering or leaving the facility to access the plan.

26. On May 12, 2006, the facility's playhouse, which was located on its playground, had broken boards. After Ms. Mitchell's inspection, Petitioner immediately repaired the broken boards. The failure to keep the playground equipment properly maintained was a repeated violation.

27. On May 12, 2006, Ms. Mitchell inspected the facility's first aid kit, finding it extremely incomplete. Petitioners immediately corrected this noncompliance.

28. On May 12, 2006, Ms. Mitchell determined that Petitioner did not prepared an incident report relative to A.B. leaving the facility on April 25, 2006. However, such documentation was not required because A.B. was with his mother, who had clocked him out of the facility.

29. On May 12, 2006, Ms. Mitchell found that the facility had outdated shot records and/or physicals for four students. This was the third consecutive instance of this type of noncompliance. After the inspection, Petitioner corrected the problem in a timely manner.

30. At the time of the hearing, the facility was closed.

#### CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. See §§ 120.569, 120.57(1), and 402.310, Fla. Stat. (2005).

32. Respondent has the burden of presenting clear and convincing evidence that Petitioner's application to renew their license to operate the facility should be denied. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 933 (Fla. 1996).

33. Section 402.310, Florida Statutes (2005), states as follows in pertinent part:

(1)(a) The department of local licensing agency may deny, suspend, or revoke a license or impose an administrative fine not to exceed \$100 per violation, per day, for the violation of any provision of ss. 402.301-402.319 or rules adopted thereunder. However, where the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day.

(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 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.

Class I Violation

34. Florida Administrative Code Rule 65C-22.001(5) states as follows in relevant part:

(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. 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. . . .

35. In this case, the evidence is not clear and convincing that A.B. was still under the care and control of the facility when he went to the Circle K. Ms. Race believed that she had relinquished supervision of A.B. to his mother. A.B. was logged out of the facility before Ms. Race learned that A.B. was at the Circle K. The evidence is not clear and convincing that Petitioners are guilty of a Class I violation on April 25, 2006.

History of Noncompliance

36. Florida Administrative Code Rule 65C-22.001(7)(a) states as follows:

(7) Planned Activities.

(a) Each age group or class must have a written and followed plan of scheduled activities posted in a place accessible to the parents. The written plan must meet the needs of the children being served . . . .

37. The most persuasive evidence indicates that Petitioners posted the class schedules for all classes in the entrance to the facility, an area that was most accessible to

parents as they dropped off or picked up their children. The evidence is not clear and convincing that Petitioners violated this requirement.

38. Florida Administrative Code Rule 65C-22.002(9)(b) states as follows in pertinent part:

1. A child care facility shall provide an [sic] maintain equipments and play activities suitable to each child's age and development.

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 the ground, all connectors and moving parts.

\* \* \*

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 (1) area.

39. Petitioners admitted that they repaired/replaced a broken swing after the October 27, 2005, inspection and repaired the broken boards on the playhouse after the May 12, 2006, inspection. Clear and convincing evidence indicates that Petitioner's failed to properly maintain their outdoor play equipment on two occasions.

40. Florida Administrative Code Rule 65C-22.004(2) provides as follows in pertinent part:

(c) At least one (1) first aid kit containing material to administer first aid must be maintained on the premises of all child care facilities at all times. A first aid kit must also accompany child care staff when children are participating on field trips. Each kit shall be accessible to the child care staff at all times and kept out of the reach of children. 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.

41. These is clear and convincing evidence that Petitioners violated the requirement to maintain first aid supplies on May 12, 2006. Their first aid kit was extremely incomplete.

42. Florida Administrative Code Rule 65C-22.004(2)(d) states as follows in relevant part:

(d) Emergency Procedures and Notification.

\* \* \*

2. Custodial parents or legal guardians shall be notified immediately in the event of any serious illness, accident, injury or emergency to their child and their specific instruction regarding action to be taken under such circumstance shall be obtain and followed. . . .

3. 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.

4. After a fire or natural disaster, the operator must notify the licensing agency within twenty-four (24) hours, in order for the licensing authority to ensure health standards are being met for continued operation.

43. There was no need for Petitioner to document the incident where A.B. went to the Circle K on April 25, 2006. The evidence is not clear and convincing that the facility was responsible for A.B. when he left the facility. A.B.'s mother, as a parent, was aware of the emergency that morning. The incident did not involve a fire or natural disaster.

44. Florida Administrative Code Rule 65C-22.006(2)(a)-(c) states as follows in relevant part:

(a) The child care facility is responsible for obtaining a current and completed DH Form 3040, June 2002, Student Health Examination for each child in care, within thirty (30) days of enrollment and maintaining a current copy of file while the child is enrolled at the facility. . . .

(b) The Student Health Examination is valid for two (2) years for the date the physical was performed.

(c) The child care facility if [sic] responsible for obtaining a current and completed DH Form 680, Florida Certification of Immunization Part A-1, B, or C (July 2001), or DH Form 681, Religious Exemption from Immunization (May 1999), for each child in care, within thirty (30) days of enrollment, and maintaining a current copy on file while the child is enrolled at the facility.



45. Petitioners admitted that they found it almost impossible to keep the children's shot records and physical examination updated. Clear and convincing evidence indicated that Petitioners violated this requirement on October 27, 2005, January 30, 2006, and May 12, 2006.

46. Florida Administrative Code Rule 65C-22.006(5) states as follows in pertinent part:

(5) Personnel Records. Records shall be maintained and kept current on all child care personnel, as defined by Section 402.302(3), F.S. . . . These shall include:

\* \* \*

(d) Level 2 screening information documented on CF-FSP Form 5131, Feb. 04, Background Screening and Personnel File Requirements.

47. On January 30, 2006, Petitioner did not have the proper screening documents for one employee. Clear and convincing evidence indicates that Petitioner's violated this requirement.

48. Petitioners are guilty of three Class II violations and four Class III violations. They corrected all instances of noncompliance in a timely manner. Additionally, there is no evidence that any child was harmed as a result of Petitioners' failure to comply. This history of noncompliance must be considered in light of the 14 years that Petitioner's operated the facility.

RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Respondent enter a final order granting Petitioners' application to renew their license to operate the facility, subject to terms and conditions that Respondent deems appropriate.

DONE AND ENTERED this 13th day of September, 2006, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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this 13th day of September, 2006.

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.