

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TARA GRIZZELL,)
d/b/a/ KOALA KUTIES,)
)
Petitioner,)
)
vs.) Case No. 06-2961
)
DEPARTMENT OF CHILDREN)
AND FAMILY SERVICES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 30, 2006, in Brooksville, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Michael H. Hopkins, Esquire
Department of Children
and Family Services
1601 West Gulf Atlantic Highway
Wildwood, Florida 34785-8158

For Respondent: Tara Grizzell, pro se
Koala Kuties
13804 Linden Drive
Spring Hill, Florida 34609

STATEMENT OF THE ISSUE

The issue in this proceeding is whether the Department of Children and Family Services should renew the daycare license of Petitioner.

PRELIMINARY STATEMENT

On July 3, 2006, the Department of Children and Family Services (Department) issued a notice of denial to Petitioner, Tara Grizzell, d/b/a Koala Kuties. The notice of denial (notice) alleged that Petitioner failed to comply with Sections 402.301-402.319, Florida Statutes. Specifically, the notice alleged that Petitioner was cited on numerous occasions from October 2003 through May 2006, for non-compliance with several Florida Administrative Code Rules regarding lack of screening and other personnel documentation on employees, failure to maintain children's health and immunization records, failure to maintain the facility in clean and good repair, and failure to hold monthly fire drills. The notice informed Petitioner that her application to renew her license to operate the daycare center was denied.

Petitioner disputed the allegations of the notice and requested an administrative hearing. The Department forwarded the request for a hearing to the Division of Administrative Hearings on or about August 17, 2006. A formal hearing was scheduled for October 30, 2006.

At hearing, Petitioner testified on her own behalf. Petitioner's Exhibits numbered 1 and 2 were admitted into evidence. Respondent presented the testimony of Glenda McDonald and Diana McKenzie. Respondent's Exhibits numbered 1 and 2 were admitted into evidence.

The hearing was not transcribed. The Department timely filed a Proposed Recommended Order, which has been considered in the preparation of this Recommended Order. Petitioner did not file a written post-hearing submission.

All references to statutes are to Florida Statutes (2006) unless otherwise noted.

FINDINGS OF FACT

1. Tara Grizzell owned and operated Koala Kuties (the Center) which was located in Brooksville, Florida. At the time of the notice of denial, Petitioner's annual license was scheduled to expire on July 9, 2006.

2. Glenda McDonald is a daycare licensing agent with the Department. She conducted an inspection of the Center on October 30, 2003.

3. During the course of the inspection, Ms. McDonald completed a 63-item checklist of the facility. On this checklist, Ms. McDonald noted that the Center was not in compliance with applicable statutes and rules in some areas.

The areas of non-compliance noted were that the Center was not in compliance in posting a log of monthly fire drills, medication was not locked or properly stored, and the required record keeping for the children's health and immunization records was disorganized.

4. The checklist shows a required compliance date of the close of business on the date of inspection for the violations regarding records of fire drills and improperly stored medications. Regarding record keeping of health and immunization records, Ms. McDonald noted that there would be a re-check in four months.

5. Approximately four months later, Ms. McDonald conducted another inspection of the Center on February 23, 2004. Again, Ms. McDonald noted on the inspection checklist that the Center was not in compliance with the requirements regarding record keeping of the children's health and immunization records. In addition, Ms. McDonald found that the Center was not in compliance regarding proper storage of toxic and hazardous materials because bleach, cleaner, and fingernail polish were accessible to children; the Center had failed to complete a required form regarding mandatory training for its employees; and required personnel and screening documents for the Center's employees were not complete.

6. Ms. McDonald next inspected the Center on June 7, 2004. During that inspection, she again found that the monthly fire drill log had not been posted and employees' screening documents were still not completed.

7. Ms. McDonald returned to the Center on October 28, 2004, to conduct another inspection. Ms. McDonald found the Center very disorganized with toys, dishes, and other items in places where people could trip over them. She noted on her inspection checklist that the Center was in violation for failure to keep the Center in clean and good repair.

8. Additionally, Ms. McDonald again found the facility to be in non-compliance in the area of record keeping for the children's health and immunization records, personnel records, and personnel screening records. She also found the Center to be out of compliance regarding crib requirements because an infant was asleep on its tummy, and found the Center to be out of compliance for failure to maintain safe and adequate fencing because the playground fence was unlocked.

9. On November 18, 2004, Ms. McDonald conducted a reinspection of the facility to determine whether Ms. Grizzell brought the facility into compliance. She again found it to be in non-compliance for failure to maintain the children's health and immunization records and failure to maintain the required employee screening documents.

10. Ms. McDonald next made an inspection of the Center on February 7, 2005. She again found the Center to be in non-compliance in the areas of failure to post fire drill logs, failure to maintain required personnel documents, and the Center's lack of required documentation on two of the children. Additionally, Ms. McDonald found the Center to be cluttered and out of compliance with the requirement that the facility be clean and in good repair, and that substitutions to the planned menu were not recorded on the posted menu as required.

11. Ms. McDonald made a reinspection of the facility on April 21, 2005, during which she again found the Center to be in non-compliance in the areas of the children's health and immunization records and required personnel and background screening records.

12. On June 2, 2005, Ms. McDonald made another inspection of the Center and found everything to be in compliance except the children's immunization records, as they needed to be updated to reflect current immunizations.

13. On October 6, 2005, Ms. McDonald made another inspection of the Center and again found it to be in non-compliance for failure to update the children's immunization and medical records, and failure to have complete personnel and background screening records on file.

14. On January 24, 2006, Ms. McDonald inspected the Center and again found it to be in non-compliance, in that there was no report posted to show that a fire drill had been conducted in December 2005; there was evidence of smoking near the entrance of the facility and in the outdoor play area, and, therefore, not in compliance with requirements that all areas be free of toxic substances and hazardous materials; the immunization records of two of the children were not up-to-date; and the facility still did not have a complete record on file for all of the child care personnel nor required background screening documents. Additionally, Ms. McDonald found the Center to be in non-compliance for not posting their plan of scheduled activities as required and failing to store medicine properly.

15. On May 25, 2006, Ms. McDonald again made an inspection of the facility and found it to be in non-compliance for incomplete files documenting required training of personnel, failure to have sufficient credentialed staff on the premises, failure to post a menu, and failure to maintain employee records and employee background screening requirements.

16. Petitioner previously paid a civil penalty in the amount of \$500 when a child wandered away from the Center and was found walking down a busy road in 2005.^{1/}

17. Ms. Grizzell acknowledged at hearing that she had trouble with record keeping because there was a lot of turnover

of employees. Further, she noted that on the January 24, 2006, inspection checklist, she was later found to be in compliance regarding the alleged violation of toxic and hazardous materials being present. Regarding the child who wandered away, Ms. Grizzell noted that the incident happened on the second day of care for the child.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat.

19. The Department of Children and Family Services is the agency charged with the responsibility of licensing child care facilities in the state of Florida. Chapter 402, Fla. Stat.

20. In response to the application to renew her license, the Department notified Petitioner that the license would not be renewed. The basis for the denial to renew the license was that Petitioner failed to comply with Sections 402.301-402.319, et seq., Florida Statutes. Specifically, the notice of denial alleges in pertinent part as follows:

Your facility has demonstrated a history of noncompliance. This denial action is being taken for the following reasons:

Screening Documents 65C-22.006(5)(a-c)(e)(f) & 402.302(3): Since October 2003 some employees were not properly screened in that records lacked one or more of the following required screening documents: FBI, FDLE,

Local law records check or other screening documents. Also employee fingerprints were not submitted within 10 working days of being hired.

Children's Health/Immunization Records 65C-22.006(2)(A-C): Since October 2003 several children's immunization and physical records had expired or were missing.

Clean/Good Repair 65C-22.002(1)(c) Since October 2003 the facility has been cluttered and disorganized jeopardizing the health and safety of children.

Monthly Fire Drill 65C-22.002(7)(c): On 10-30-03, 6-7-04, 2-7-05, 4-21-05 and 1-24-06 fire drills were not completed for that month.

Direct Supervision 65C-22.001(5)(a)(b)(d)1,2 & 3: On 4-5-05 a 4 year old child walked away from your center unnoticed. An unknown female found the child and called the sheriff.

No Toxic/Hazardous Materials 65C-22.002(1)(b)(c)(e)(g): On 1-24-06 the facility was cited for employees smoking on the premises.

21. Section 402.310, Florida Statutes, authorizes the Department to take adverse action regarding the license of the child care facility, and reads in pertinent part as follows:

Disciplinary actions; hearings upon denial, suspension, or revocation of license; administrative fines.--

(1)(a) The department or 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.

(emphasis supplied)

22. Florida Administrative Code Rule 65C-22.001(5) requires direct supervision of each child in child care facilities and places the responsibility on child care personnel to appropriately supervise the children in their care.

23. Regarding record keeping, Florida Administrative Code Rule 65C-22.006(5) requires the operator of a child care facility to maintain certain employment and screening information regarding its employees. Subsection (6) requires documentation demonstrating that each child has received required immunizations and health examinations.

24. Florida Administrative Code Rule 65C-22.002(1) requires that all child care facilities be in good repair and free from health and safety hazards and that all potentially hazardous items be stored in locations inaccessible to children.

25. Florida Administrative Code Rule 65C-22.002(7) requires child care facilities to conduct monthly fire drills while children are there.

26. In this case, Petitioner was advised on 11 occasions from October 2003 through May 2006 of various violations in her child care facility. Many violations were repeated on numerous occasions.

27. Based upon the numerous, repetitive violations and Petitioner's failure to correct many of these violations, Petitioner is not entitled to a renewal of the child care center license.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Children and Family Services enter a final order denying Petitioner's application for relicensure.

DONE AND ENTERED this 4th day of December, 2006, in
Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of December, 2006

ENDNOTE

1/ Additionally, an Administrative Complaint seeking to impose a civil penalty in the amount of \$700, is in evidence. The Administrative Complaint appears to attempt to impose this penalty based upon the same records violations during 2004-2006 (incomplete immunization and health records for the children and incomplete personnel records for the employees) cited in the instant case by Ms. McDonald. The date of and disposition of this Administrative Complaint is unclear in the record.

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.