

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 06-3433
)
DELORES WILSON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held on December 6, 2006, before Carolyn S. Holifield, an Administrative Law Judge of the Division of Administrative Hearings, by video teleconferencing at sites in Tallahassee and Tampa, Florida.

APPEARANCES

For Petitioner: Raymond R. Deckert, Esquire
Department of Children and
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Regional Headquarters
9393 North Florida Avenue, Suite 902
Tampa, Florida 33612

For Respondent: Joseph J. Registrato, Esquire
2067 North 15th Street
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STATEMENT OF THE ISSUE

Whether Respondent, Delores Wilson, committed the acts alleged in the Administrative Complaint, and, if so, whether her foster care license should be revoked.

PRELIMINARY STATEMENT

On or about July 13, 2006, Petitioner, Department of Children and Family Services (Department), issued an Administrative Complaint against Respondent, Delores Wilson (Respondent), which advised her that the Department intended to revoke her foster care license. According to the Administrative Complaint, the following statutory and rule violations were the grounds for the proposed actions: (1) Respondent committed an intentional or negligent act that materially affected the health or safety of children in the home as proscribed in Subsection 409.175(9)(b)1, Florida Statutes (2006)^{1/}; (2) Respondent failed to provide sufficient information for the Department to verify her compliance with all rules and regulations in violation of Florida Administrative Code Rule 65C-13.010(4)(b); (3) Respondent failed to communicate effectively in violation of Florida Administrative Rule 65C-13.009(1)(e)2.; and (4) Respondent failed to demonstrate the ability to work with the Department in violation of Florida Administrative Code Rule 65C-13.009(3)(a)13. Finally, the Administrative Complaint charges that the foregoing alleged statutory and rule violations constitute a basis for revocation under Subsection 409.175(9)(b)2., Florida Statutes.

Respondent challenged the allegations in the Administrative Complaint and requested a formal hearing. On or about

September 19, 2006, the Department forwarded the matter to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the final hearing. The case was set for hearing and conducted as noted above.

At the outset of the final hearing, the Department made an ore tenus motion to amend the Administrative Complaint by deleting paragraph (3)(e) and changing the date in the third sentence in paragraph (3)(b) from December 1, 2006, to December 19, 2005. That unopposed motion was granted, and the Administrative Complaint is deemed amended in accordance with the Department's motion.

At hearing, the Department presented the testimony of eight witnesses and had ten exhibits admitted into evidence. Respondent testified on her own behalf and presented the testimony of two witnesses. Respondent did not offer any exhibits into evidence.

The proceeding was recorded, but the transcript was not ordered. Both parties timely filed Proposed Recommended Orders which have been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent was first licensed as a foster parent in Florida, in or about 2003, after she applied for and was granted a foster care license through Camelot Community Care, Inc.

(Camelot), a foster parent licensing agency located in Tampa, Florida.

2. Prior to receiving a foster care license through Camelot, Respondent signed a Letter of Agreement with Camelot. Pursuant to the terms of the Letter of Agreement, Respondent agreed to comply with Camelot's policies. Additionally, the letter advised Respondent that if she violated the policies, foster children would be removed from her home, and the Department would make decisions regarding the revocation of her license.

3. After Respondent was licensed, two foster children, T. and D., were placed in her home. T., a girl, was placed in Respondent's home in November 2003, and D., a boy, was placed there in December 2003.

4. In November 2004, Camelot staff met with Respondent to discuss the foster children who had been placed in her home. At the time of this meeting, D. was 15 or 16 years old and T., who was about 18 years old, was pregnant and due to deliver the baby in a few months.

5. D. had a history of sexually acting out. Because of D.'s history, Camelot's policy was that D. not be placed in a home with younger children. In light of D.'s history and Camelot's policy related thereto, during the November 2004 meeting, Camelot staff told Respondent that when T.'s baby was

born, the baby could not live in the same house with D. Therefore, Camelot staff advised Respondent that she would have to choose whether she wanted to continue to work with D. (have D. remain in her home) or assist T. with her baby. Respondent was also told to notify Camelot when the baby was born.

6. In December 2004, Respondent was informed that it was likely that T.'s baby would be adopted or put in foster care upon birth due to T.'s extensive disabilities. Respondent had also been told that the baby would not be given to the mother while she was in the hospital.

7. On January 29 or 30, 2005, T., who was then 19 years old, gave birth to her baby at a hospital. It is unknown what happened at the hospital to alter the proposed adoption or foster care plan for the baby. However, while T. was in the hospital, the baby was given to her.

8. On or about February 1, 2005, T. and the baby left the hospital. Both T. and her baby then went to Respondent's home and lived with her. The reason Respondent allowed T. and the baby to stay with her was because she wanted to help T.

9. Despite regular communications with Camelot staff during the time period after the baby was born, Respondent never told anyone associated with Camelot or the Department that T. had given birth to the baby. Camelot found out about the birth

of the baby only after being notified "indirectly" by another waiver support coordinator.

10. D's initial placement with Respondent remained unchanged until February 7, 2005, when Camelot first received reports that T.'s baby was living with Respondent. On that day, Camelot removed D. from Respondent's home.

11. On February 16, 2005, Camelot staff, D.'s waiver support coordinator, a Hillsborough Kids, Inc., case manager, and Respondent met to discuss the situation which resulted in D.'s being removed from Respondent's home on February 7, 2005. At this meeting, the subjects of the November 2004 and December 2004 meetings described in paragraphs 4, 5, and 6 above, were also reviewed and discussed.

12. A summary of the February 16, 2005, meeting was reported in a letter dated February 28, 2005, written by Camelot's clinical director, who attended that meeting. A copy of the letter was furnished to several persons who attended the meeting, including Respondent. The letter expressly stated that anyone who had further comments or concerns should contact the clinical director. Respondent never contacted the clinical director or anyone at Camelot regarding the contents of the February 28, 2005, letter.

13. The discussion at the February 16, 2005, meeting focused on D. and the circumstances surrounding his removal from

Respondent's home. Camelot staff specifically discussed Respondent's decision to allow T. and T.'s baby to live with Respondent, after being told that this should not happen and her failure to notify Camelot that the baby had been born and was in her home. During this meeting, Respondent never denied the foregoing facts. Rather, Respondent explained that she allowed T. and her baby to stay with her was so that she (Respondent) could help T.

14. As a result of Respondent's failure to disclose to Camelot staff that T. had given birth to the baby and that both T. and the baby were living with Respondent, Camelot placed Respondent's foster home license on inactive status in or about late February 2005. Camelot advised Respondent of this decision at the February 16, 2005, meeting.

15. In addition to placing Respondent's license on inactive status, Camelot also recommended that Respondent not be re-licensed as a foster parent. Respondent's foster care license was set to expire on July 31, 2005.

16. After Respondent's foster care license issued by Camelot expired, she applied to Florida Mentor, another foster care licensing agency, for licensure as a foster parent.

17. Florida Mentor reviewed Respondent's application for foster care licensure. As part of its review, Florida Mentor conducted a home study, the results of which were summarized in

a report titled, "Annual Re-Licensing Home Study-2005" (Home Study Report or Report), which was completed on or about October 27, 2005.

18. During the review process, Florida Mentor learned that Respondent had been previously licensed by Camelot and that the license had been placed on inactive status and allowed to expire. Based on information obtained from the Department's licensure file on Respondent and/or information provided by Respondent, Florida Mentor also learned about the circumstances discussed in paragraph 13, that caused Camelot to remove a foster child from Respondent's home and to place her foster care license on inactive status.

19. Florida Mentor staff met with Respondent and discussed the situation involving D., T., and T.'s baby that occurred when she was licensed by Camelot. Respondent did not deny that she had violated Camelot's policy and had brought T. and T's baby to her home when D. was still there. Instead, Respondent acknowledged that she realized that her decision to bring T.'s baby home resulted in her clients being removed from her home and Camelot's decision to place her license on inactive status.

20. Notwithstanding Respondent's admitting that she had failed to adhere to Camelot's policy regarding allowing T.'s baby in her home when D. was still there, she expressed to the

Florida Mentor staff her desire to continue to work as a foster parent.

21. Florida Mentor staff acknowledged Respondent's desire to serve as a foster parent. However, in light of her failure to comply with Camelot's policies and procedures, Florida Mentor staff discussed with Respondent the importance of communication and honesty with the foster care agency and the adherence to the policies and decisions of the agency.

22. Florida Mentor considered several factors in its review of Respondent's application for a foster care license. These factors included Respondent's prior foster care experience with Camelot, including her admission that her violation of Camelot's policy was the reason her license was placed on inactive status; Respondent's statement of her desire to be a foster parent; and her apparent understanding that it was important that she comply with the policies of the foster care agency.

23. Based on its review of the application and the findings and conclusions in the home study report, Florida Mentor recommended that Respondent be re-licensed as a therapeutic foster parent.

24. Based on Florida Mentor's recommendation, Respondent was granted a new foster parent license, which was effective on

November 1, 2005. It is that license which is at issue in this proceeding.

25. Prior to issuance of Respondent's November 1, 2005, foster care license, Respondent was required to sign a Bilateral Service Agreement (Bilateral Agreement). That Bilateral Agreement set forth the terms and conditions with which all affected parties, the Department, the foster care agency, and Respondent must comply. The Bilateral Agreement was executed by Respondent and by a Florida Mentor staff person, on behalf of the Department, on October 4, 2005.

26. Pursuant to the Bilateral Agreement, Respondent agreed to "notify the Department immediately of a potential change in . . . living arrangements or family composition (who is in the home), employment, significant health changes or any other condition that may affect the child's well being."

27. In November 2005, after Respondent received her new foster care license, foster children were placed in Respondent's home. One child, M.J., was placed with Respondent on November 15, 2005. Two other children, S.C. and M.C., who were brothers, were placed with Respondent on December 19, 2005.

28. On January 8, 2006, M.J., S.C., and M.C., the three foster children who had been placed with Respondent in November and December 2005, were still living in Respondent's home.

29. On January 8, 2006, a child protective investigator with the Department conducted a home study of Respondent's home. The purpose of the home study was to determine whether Respondent's home was a safe placement for her two grandchildren, and, if so, should the grandchildren be placed with Respondent. A placement for the two children was necessary because they had been taken from their mother, Respondent's daughter, for alleged abuse, neglect, or abandonment.

30. The child protective investigator completed the home study on January 8, 2006, and reported the information she obtained during the home study on a seven-page Department form titled, "Caregiver Home Study." The completed Caregiver Home Study document was signed by Respondent and her son-in-law, Richard Davis, on January 8, 2006.

31. Two categories included on the Caregiver Home Study form required Respondent to provide information regarding members of her household. One of the categories on the form required Respondent to provide the names of adults living or frequently in the prospective caregiver's home. The other category required that Respondent also list or provide the names, sex, and ages of children living in her home.

32. On the Caregiver Home Study form, Richard Davis, Respondent's son-in-law, was listed as an adult who lived in or was frequently in Respondent's home.

33. Based on information Respondent provided to the child protective investigator on January 8, 2006, the child protective investigator recorded on the Caregiver Home Study form that there were two foster children living in Respondent's home, A.C. and his brother, M.C.

34. On January 8, 2006, in addition to A.C. and M.C., there was a third foster child, M.J., also living with Respondent. However, although there were three foster children living with Respondent on January 8, 2006, she never told the child protective investigator that M.J. was living in her home. Therefore, M.J. was not listed on the Caregiver Home Study form as a child living in Respondent's home.

35. The Caregiver Home Study form required that Mr. Davis, the other adult living or frequently in the prospective caregiver's home, and Respondent sign the completed form. Both Respondent and Mr. Davis signed the Caregiver Home Study form on January 8, 2006. By signing the form, both Respondent and Mr. Davis acknowledged that to the best of their knowledge, "I have given the Department truthful information on all questions asked of me."

36. On March 14, 2006, the assigned caseworker for A.C. and his brother M.C., two of the three foster children in Respondent's home, made an unannounced home visit to Respondent's home to check on those two children. During this

visit, the case worker observed A.C. and M.C., as well as two other children there. The other two children the caseworker observed were Respondent's grandchildren who had been placed in Respondent's home after the Caregiver Home Study was completed on January 8, 2006.

37. Respondent's two grandchildren had been placed with her since January 2006 and were still living with her on March 14, 2006. However, during the case worker's unannounced visit on March 14, 2006, Respondent told the caseworker that the two grandchildren did not live with her, but that she was babysitting them until their mother got off from work.

38. After the March 14, 2006, visit to Respondent's home, the caseworker searched HomeSafe Net to determine the status of Respondent's grandchildren. That search revealed that the grandchildren were actually sheltered and living with Respondent.

39. The caseworker also contacted an employee of the Safe Children Coalition, an agency which has a contract with the Department, to obtain information regarding the status of Respondent's grandchildren. An employee with Safe Children Coalition confirmed that the Sheriff's Office had placed Respondent's grandchildren with Respondent on January 8, 2006, and that, as of March 14, 2006, Respondent's grandchildren were still living with her.

40. At the time of the March 14, 2006, 30-day visit, and at no time prior thereto, Florida Mentor was unaware that Respondent's grandchildren were living with Respondent.

41. Respondent never notified Florida Mentor or the Department that her grandchildren had been placed with her and were living in her home. By failing to notify the Department or Florida Mentor of the change in the family composition, the people living in the home, Respondent violated the terms of the Bilateral Agreement.

42. In order to provide for the safety and health of all the children placed in Respondent's care, it is imperative that the agency placing the foster children be immediately advised of any potential or actual change in the family composition, those living in the home.

43. Since being licensed as a foster parent in Florida, Respondent repeatedly disregarded her obligation to advise the foster care agency of important and required changes. In three instances, Respondent failed to inform the appropriate agency of the changes in the composition of persons living in her home. The second and third incidents occurred after and while Respondent was licensed by Florida Mentor, after she had been specifically advised of the importance and need to communicate and be honest with the foster care agency and to adhere to the agency's policies.

44. First, Respondent failed to advise Camelot staff when T.'s baby was born, and Respondent allowed T. to bring her newborn baby to Respondent's home to live. Respondent ignored or disregarded the directive of Camelot staff, who had told her that T.'s baby could not live in Respondent's home because of the sexual history of D., a foster child placed in Respondent's home.

45. Respondent testified that D. was not in her home on February 1, 2005, when T.'s newborn baby was brought home, because Camelot had placed D. in respite care. According to Respondent, D. returned for one day, before he was permanently removed from her home and placed in another foster home.

46. Respondent's testimony, discussed in paragraph 45 above, is not credible and is contrary to the competent evidence which established that D. was removed from Respondent's home on February 7, 2005, and then placed in another home. Even if D. were not physically in Respondent's house when T.'s baby was there, because D. was still a foster child placed in Respondent's home, she was responsible for notifying the Department of the change in the composition of her household. However, Respondent failed to notify Camelot or the Department and, in doing so, violated a Department rule and a specific directive of the foster care agency.

47. In the second incident, Respondent failed to disclose to the child protective investigator that she had three foster children. Respondent testified that she was not untruthful to the child protective investigator about the number of foster children who were living in her home. According to Respondent, she never said how many foster children lived in her home. Instead, Respondent testified that the child protective investigator made that presumption after she (the investigator) saw two "yellow jackets" (files about the foster children) on a table in Respondent's house.

48. Respondent's testimony, discussed in paragraph 47, is not credible and ignores the fact that Respondent signed the Caregiver Home Study form indicating that she had only two foster children living in the home. Moreover, having served as a foster parent for about ten years and in two states, Respondent knew the importance and significance of providing accurate information regarding the composition of the family and how that information might impact additional placements (i.e., the placement of her grandchildren) in Respondent's home.

49. In the third instance, while licensed by Florida Mentor, Respondent failed to notify that agency or the Department of a change in the family composition (i.e., who is in the home) that occurred on January 8, 2006, when Respondent's two grandchildren were placed in her home. The agency first

learned that Respondent's grandchildren lived with her only after a case worker made an unannounced visit to Respondent's home on March 14, 2006, and saw Respondent's grandchildren there, and later verified that the grandchildren were living with Respondent.

50. Respondent does not deny that she failed to notify the Department that her grandchildren were living with her. However, Respondent testified that she never told the case worker that her grandchildren did not live with her and that she was babysitting them while their mother worked. This testimony by Respondent is not credible and is contrary to the credible testimony of the case worker and the supporting documentary evidence.

51. Respondent was aware of the policy that required her to immediately notify the Department or foster care agency of a potential change in family composition. In fact, Respondent signed a Bilateral Agreement in which she agreed to provide such notification to the Department or the Department's representative. Nonetheless, on two occasions, after being licensed by Florida Mentor and having foster children placed in her home, Respondent failed to notify the Department of actual changes in her family's composition.

52. Respondent deliberately violated the terms of the Bilateral Agreement that required her to notify the Department

or the foster care agency of any potential, and certainly any actual, changes in her family composition. This provision is designed to better ensure the health and safety of the foster children placed with foster parents, such as Respondent.

53. There is no indication that the children placed in Respondent's home at the time relevant to this proceeding were harmed or injured. Nonetheless, the harm which the Department's policy is designed to prevent is not only possible, but more likely to occur when the composition of the foster parent changes and the Department is not notified of that change. Without such knowledge, the Department lacks the information it needs to make decisions regarding the placement and/or continued placement of foster children in a particular foster home.

54. As a result of Respondent's failing to provide information relative to her family composition, she also failed to provide information necessary and required to verify her compliance with the Department's rules and regulations.

CONCLUSIONS OF LAW

55. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant Section 120.569 and Subsection 120.57(1), Florida Statutes.

56. Petitioner issued a license to Respondent as referred to in Subsection 409.175(2)(f), Florida Statutes, which states:

"License" means "license" as defined in s. 120.52(9). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

57. Respondent's license relates to a "family foster home" as defined in Subsection 409.175(2)(e), Florida Statutes, which states:

"Family foster home" means a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption is not considered a family foster home.

58. Respondent is the "operator" of the family foster home. The term "operator" is defined at Subsection 409.175(2)(g), Florida Statutes, which states:

"Operator" means any onsite person ultimately responsible for the overall operation of a child-placing agency, family foster home, or residential child-caring

agency, whether or not she or he is the owner or administrator of such an agency or home.

59. The Department is the agency charged with the responsibility of licensing foster homes in the State of Florida. § 409.175, Fla. Stat.

60. Respondent was re-licensed as a foster parent on November 1, 2005. On July 13, 2006, before her license expired, the Department notified Respondent that it intended to revoke her license on the grounds set forth in Subsection 409.175(9)(b)1. and 2., Florida Statutes, and Florida Administrative Code Rules 65C-13.009(1)(e)2., 65C-13.009(3)(a)13., and 65C-13.010(4)(b).

61. Subsection 409.175(9), Florida Statutes, reads, in pertinent part, as follows:

(9)(a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.

2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

62. Florida Administrative Code Rule 65C-13.009 addresses the program prescribed and designed for the preparation and selection of prospective foster parents.

63. Florida Administrative Code Rule 65C-13.009(1)(e)2. provides, in pertinent part, the following:

(1) Philosophy and Rationale.

* * *

(e) The goal of the Group Preparation and Selection Program is to prepare individuals and families to make an informed decision about becoming foster or adoptive families. The decision is made with the department and is based on the capability and willingness to take on the "role" and develop the skills needed to foster or adopt. . . . As successful foster and adoptive parents, you must be able to:

* * *

2. Communicate effectively. Use and develop communication skills needed to foster or adopt.

64. Florida Administrative Code Rule 65C-13.009(3)(a)13. provides, in pertinent part, the following:

(3) Qualities to Discuss with Prospective Substitute Care and Adoptive Families.

* * *

(a) Characteristics of substitute care and adoptive parents:

* * *

13. Ability to work with the department;

65. Florida Administrative Code Rule 65C-13.010(4)(b) reads, in pertinent part:

(4) Responsibilities of the Substitute Care Parents to the Department.

* * *

(b) The substitute care parents are required to participate with the department in relicensing studies and in ongoing monitoring of their home, and must provide sufficient information for the department to verify compliance with all rules and regulations.

66. The Department seeks the revocation of Respondent's foster home license. Accordingly, as the party asserting the affirmative of an issue before this tribunal, the Department has the burden of proof. Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981).

67. In accordance with the definition of "license" contained in Subsection 409.175(2)(f), Florida Statutes, and quoted above, the licensure status previously awarded to Respondent is not a professional license and does not create a property right. Therefore, the Department must establish facts that support its position by a preponderance of the evidence, rather than by the clear and convincing standard normally imposed in professional license cases. Dept. of Banking and Finance v. Osborne, Stern and Co., 670 So. 2d 932 (Fla. 1996).

68. The Department established by a preponderance of the evidence that Respondent failed to provide sufficient information to the Department to verify compliance with all rules and regulations in violation of Florida Administrative Code Rule 65C-13.010(4)(b).

69. The Department established by a preponderance of the evidence that Respondent failed to demonstrate the ability to work with the Department in violation of Florida Administrative Code 65C-13.009(3)(a)13.

70. Respondent's violation of Florida Administrative Code Rules 65C-13.010(4)(b) and 65C-13.009(3)(a)13., constitutes grounds for the Department to revoke her foster parent license, pursuant to Subsection 409.175(9)(b)2., Florida Statutes.

71. The Department failed to prove that the findings of facts established in this case constitute an intentional act that materially affected the health or safety of children in her home and is, thus, grounds for revocation pursuant to Subsection 409.175(9)(b)1., Florida Statutes.

72. The Department failed to prove that the findings of fact constitute a violation of Florida Administrative Code Rule 65C-13.009(1)(e)2., which provides that a successful foster and adoptive parent must be able to "communicate effectively."

RECOMMENDATION

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

RECOMMENDED that Petitioner, Department of Children and Family Services, enter a final order revoking Respondent, Delores Wilson's, foster care license.

DONE AND ENTERED this 23rd day of February, 2007, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of February, 2007.

ENDNOTE

^{1/} References to statutes are to Florida Statutes (2006) unless otherwise noted.

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.