

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MELVIN AND TAMMY GIEGER,                    )  
  )  
                  Petitioners,                    )  
  )  
vs.    )     Case No. 07-0085  
  )  
DEPARTMENT OF CHILDREN AND                )  
FAMILY SERVICES,                            )  
  )  
                  Respondent.                 )  
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  )

RECOMMENDED ORDER

This cause came on for formal proceeding and hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings. The formal hearing was conducted in Tavares, Florida, on May 2, 2007. The appearances were as follows:

APPEARANCES

For Petitioners: Jerri A. Blair, Esquire  
Lockett & Blair  
Post Office Box 130  
Tavares, Florida 32778

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 to be resolved in this proceeding concerns whether the Petitioners have been guilty of violation of

pertinent statutes and rules governing qualification and capability to hold a foster home license and to operate a foster home, in this case a "therapeutic foster home" and, if so, whether their application for renewal of licensure should be denied.

#### PRELIMINARY STATEMENT

The cause arose when the Petitioners, the Giegers, sought renewal of their therapeutic foster care license on August 10, 2006. They had previously been licensed as therapeutic foster parents but voluntarily relinquished that license on February 6, 2006. They did so because the Department of Children and Family Services (Department) had conducted an investigation of an allegation of abuse concerning their foster home and concluded that that abuse report should be determined "founded." The Giegers apparently believed that they would be entitled to an immediate administrative hearing to contest whether the abuse had occurred and therefore whether they should retain their license. When they sought the administrative hearing the Department refused to grant them a hearing. They then appealed the matter to the First District Court of Appeal, which upheld the Order of the Department.

When the Department received the August 10, 2006, license renewal application, it conducted an evaluation and issued a denial of the application. The Giegers thereupon timely filed a

Petition for Administrative proceeding concerning the denial of the license application. The denial was predicated upon the Department's position that the Giegers had inappropriately punished children in their home in the past and that they had some sort of business interest or income dependency on their being foster licensed parents and that such was a violation of rules concerning foster parenting.

Later, after this proceeding was being prosecuted before the Administrative Law Judge, the Department apparently took the position, by a supplemental denial letter, that the Giegers were also in violation of relevant law because they had a child placed in their home through a voluntary guardianship agreement that had not been approved by a court and that therefore they were acting as an unlicensed foster home. This supplemental denial document was not filed with the Administrative Law Judge until the day of the hearing. Apparently the Petitioners were aware of it before the hearing at some point, because they responded to it.

The cause came on for hearing as noticed. At the hearing the Petitioners presented 14 witnesses and had four exhibits admitted into evidence. The Respondent presented two witnesses and had Exhibits 1 and (1a) admitted into evidence and 2, 3, and 4 admitted, but not for the truth of factual matters depicted therein. Upon concluding the proceeding the parties chose to

submit Proposed Recommended Orders which were timely filed and have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The above-named Petitioners were licensed as operators of a therapeutic foster home and as therapeutic foster parents. Due to an alleged abuse report, they became involved in a revocation proceeding with the Department concerning their previously-held license. Upon advice by personnel with Camelot, Inc. (Camelot), a private provider which provides services to the Department for therapeutic foster care, by contract, they voluntarily relinquished their previous license on February 6, 2006, in the belief that they would still be entitled to a formal proceeding to contest that the alleged abuse occurred, and their licensure entitlement. The Department declined to afford them a hearing on the issue, and they appealed to the District Court of Appeal for the First District. The Department was upheld.

2. They then applied for a renewal of their therapeutic foster care license on August 10, 2006, for Lake County, Florida. An evaluation of the application was launched by the Department and ultimately the Department issued a denial of the license application. A timely request for an administrative proceeding to contest denial of that license was filed by the Giegers.

3. The license denial was based initially upon the Department's determination that the Giegers had allegedly inappropriately punished children in their home and that they had some sort of business interest or income interest in being licensed foster parents, purportedly a violation of foster parenting rules. Sometime thereafter a supplemental basis for denial was served upon them by the Department wherein the Department alleged that the Petitioners had also violated Section 409.175(4) and (12)(a), Florida Statutes (2006), because they had a child placed in their home through a guardianship agreement that had not been approved by a court and were therefore acting as an unlicensed foster home. A response to that supplemental denial notice was made by the Petitioners.

4. Therapeutic foster parents are trained to provide for children with difficult behavioral problems. The Giegers received this training and remained in compliance with the training updates and continued education necessary in order to continue their licensure in good standing. In addition to this, Mrs. Geiger is a trained mental health specialist, with a master's degree, who works for Lifestreams, a mental health provider, providing services to disturbed children.

5. The Giegers were previously affiliated, as therapeutic foster parents, with the private provider, Camelot, which provides services to the Department for therapeutic foster care.

They were licensed as therapeutic foster parents at that time, and accepted a number of severely disturbed children into their home over the years while they were affiliated with Camelot.

6. When a foster parent has a child placed in their home, Camelot has a therapeutic system whereby a therapist is assigned to that child and is available for consultation at any time of day. If the primary therapist is unavailable, the supervisor of that therapist is available for consultation. Camelot's therapeutic personnel and various mental health professionals have been frequently in the Giegers' home to consult, monitor, and assist with the care and therapy of foster children placed there. A number of those therapeutic personnel testified. They established that the Giegers are excellent parents who have provided exemplary care to the foster children placed in their home. These people have training in mental health and related fields. Some hold master's degrees and have been trained to recognize abuse or evidence of it. Some are psychologists, specifically assigned as the mental health professional working with particular children placed in the Giegers' home.

7. In 2005, a child, J.D., was placed in the Giegers' home by the Department. In addition to J.D., there were other children in the home, including Tyler, a non-foster care child placed privately by Camelot with the Giegers, as well as the

Giegers' own adopted son. All of the children in the home had been abused prior to their placement with the Giegers.

8. J.D.'s previous situation before coming to the Giegers' home was particularly egregious. He had been starved, locked in a closet, had his fingernails removed by his parents and otherwise was the victim of severe parental abuse before coming into foster care. His was a case of high public notoriety and appears to have been thus treated with a heightened level of attention by the Department, as compared to the case of other children.

9. When J.D. arrived at the Giegers' home after his initial rescue from his earlier situation, he purportedly weighed 58 pounds and was only 4 feet 8 inches tall, at the age of 17 years. During the time he resided with the Giegers, he grew several inches and gained almost 80 pounds due to the care given him by the Giegers. He was placed on special vitamins and formula, in addition to his regular meals, in order to restore him to appropriate physical condition. Because of his physical condition, extra efforts were made by the Petitioners to assure his safety. They even placed him in a private school because they felt he would be at risk attending a large public high school, which he would otherwise have been required to attend.

10. J.D. did well at the Giegers' home initially and it was planned for him to remain in their home after he reached 18

years of age, if he continued to adjust favorably to being a member of their family. He began "acting out" more severely, however, with problematic behaviors. Ultimately it was determined by both the Giegers and Camelot that he should not remain in their home after he turned 18 because of the adverse impact he was having on other children residing in the home.

11. Before the determination was made that J.D. would not remain in the Giegers' home after he reached 18 years of age, the Department had praised the Petitioners' care of J.D. After that decision was made, an attorney for the Department suggested to Mrs. Gieger that she be hired by the Department to provide special services to J.D. Apparently there was a funding problem with regard to continuing J.D. in private school, and this was suggested as a means of funding the private school. Mrs. Gieger, however, did not feel this funding was appropriate because she was already being paid by Camelot for these services, and expressed this to the attorney, she therefore declined that offer.

12. In December 2005 the Department decided to have J.D. re-evaluated by his original evaluator, a psychologist, Dr. Dykel. During his meeting with Dr. Dykel, J.D. apparently told Dr. Dykel that the Giegers had cursed in his presence and in the presence of other children, used racially derogatory language concerning Black children in the foster childrens'



presence and that Mrs. Gieger had sat on him as a means of restraint or punishment. He also stated that he was being deprived of food. This meeting occurred on a Friday afternoon. After the meeting J.D. returned to the Giegers' home and made statements about what he had said to Dr. Dykel. Initially the Petitioners thought nothing about the statements, but on the following Tuesday an abuse report was called in indicating that the Giegers had inappropriately punished J.D. in the manner he had related to Dr. Dykel.

13. The child Tyler, who had been placed in the Giegers' home was a child who suffered from severe mental health issues. He had been placed privately with Camelot by his father. He had set his father's and step-mother's bed on fire the previous Christmas because he did not receive a toy, a "PS2," that he asked to be given him for Christmas. There was testimony that he was told by J.D. that if he would make a statement against the Giegers to the Department that he would get the PS2 toy that he wanted. He was taken by Erica Summerfield, an investigator assigned by the Department to the case concerning the abuse report, to the "Child Advocacy Center," for a statement. He apparently made such a statement, of the above import, but then recanted it. Nonetheless, based only on the statement made by J.D. and by Tyler, Erica Summerfield made a determination that the abuse report should be determined to be "founded." As a

result of her report (and apparently a past history of abuse reports concerning the Giegers' foster care facility, none of which had been proven to be "founded"), Camelot apparently suggested to the Giegers that they voluntarily relinquish their license, purportedly telling them that they would still have the ability to challenge the abuse report through a Chapter 120 hearing. They sought to obtain a Chapter 120 hearing and the Department denied their request. An appeal ensued and the denial by the Department was affirmed by the District Court of Appeal.

14. During the pendency of that appeal, the Giegers filed an application to renew their license, which was denied. This proceeding ensued after that denial, when the Giegers requested a formal proceeding.

15. The Department offered the testimony of Erica Summerfield who was a child protective investigator assigned to the investigation. She was the supervisor of the person who interviewed J.D. and Tyler, apparently the only sources of investigative information leading to her finding that abuse had occurred. Ms. Summerfield testified that her concerns about the Giegers led her to make a report finding that abuse had occurred because alarms had been placed on the bedroom doors of childrens' bedrooms in the Giegers home; that the Giegers had used excessive restraint against J.D. (allegedly held him on the

floor and lay on him or sat on him); and that J.D. had been mentally injured by the Giegers and not provided with sufficient food. She also opined that Mrs. Gieger had made inappropriate statements to J.D.

16. None of these purported findings are supported by credible evidence. Initially it is found that J.D.'s and Tyler statements to the interviewer, who then apparently related them to Ms. Summerfield, constitute, at best, "second-hand" hearsay. Neither the interviewer nor J.D., nor Tyler testified at the hearing, and Tyler later recanted his statements made to the interviewer. The Respondent's exhibits two, three, and four, the interview reports, were offered into evidence and were only admitted regarding a basis for the Department's course of conduct in the matter, but not for the truth of any facts depicted on the face of those exhibits.

17. Concerning the alleged complaint, related to the interviewer, regarding lack of food, the credible persuasive evidence shows that J.D. actually grew several inches after being placed with the Giegers, even though doctors had opined that he would not grow much, if at all, because of the starvation that had occurred early in his life. He also gained substantial weight while being cared for by the Giegers, so that he essentially looked like a normal child by the time he left their care. He had been emaciated when he came to the Giegers'

care and had been described as looking like a "concentration camp victim." He was described as being far smaller than a child of his age when he came to the Giegers' care, but seven months later appeared to be essentially a normal child in physical appearance. The evidence, in fact, clearly supports the determination that the Giegers did provide J.D. with appropriate nutrition during their care of him. The basis for the alleged abuse regarding his not being properly fed is simply not credible.

18. The Giegers had also been accused by J.D. or Tyler, or both, with using inappropriate language, racial slurs and cursing in J.D.'s presence, purportedly causing him mental harm. However, mental health experts present in the Giegers' home on a weekly and almost daily basis had never heard any inappropriate language, including any inappropriate racial language or inappropriate cursing in the childrens' presence during their visits to the Giegers' home. Many of these visits were unannounced.

19. Two of the counselors or mental health professionals often present in the home were African-American. They found no evidence of racial tension or racially derogatory language being used by the Giegers or in the Giegers' home. It was their belief that the Giegers did not exhibit any behavior which suggested racism. Further, there were no Black children placed

in the Giegers' home during the time that J.D. was there. There is simply no credible evidence to support any finding that inappropriate language was used by Mr. or Mrs. Gieger in J.D.'s or other childrens' presence, of a racially derogatory nature or otherwise.

20. Part of the basis for the abuse finding (and the reason for license denial) was excess restraint or "sitting on" J.D. as punishment. This position was based on the statements of the two children, J.D. and Tyler. One of them, Tyler, tearfully recanted his story shortly after he made the statement.

21. Erica Summerfield testifying for the Department, admitted in her testimony that she was aware of his recantation. She also admitted that Tyler's parents had asked her more than once to allow him to be placed back in the Giegers' home. They also had disclosed to her that he had a habit of making inappropriate statements and lying. There is evidence that J.D. had told him that he would receive a toy he wanted very much if he would make a statement to the Department that J.D. had been abused by the Giegers. Most importantly, J.D. had identified the point in time when Ms. Gieger was supposed to have sat on him as during an occasion when he broke a window at the house.

22. Other mental health providers who were in the home around that time reported never seeing any bruise marks or other

evidence of injury to J.D. or at any other time. They also reported that Mrs. Gieger was especially careful of his safety because of the seriously debilitated condition of his body. Most importantly, however, during the time that the window was broken by J.D. and he was severely acting out, Mrs. Gieger was on the phone with a professional from Camelot who was helping her to calm or "de-escalate" J.D. and who remained on the phone with Mrs. Gieger during the entire incident. That expert heard nothing which indicated that Mrs. Gieger had sat on the child or in anyway inappropriately restrained him.

23. Mrs. Gieger denied using physical restraints on the foster children at the hearing. The Department maintains, however, that in two prior reports discussed in Camelot's letter, report 1999-127436 and 2002-007021, the Giegers had admitted restraining foster children. In the 1999 incident the child purportedly sustained rug burns on the face while being restrained on the floor by Mr. Gieger. These reports are at best second-hand hearsay. Moreover, they are not reasons of which the Petitioners were provided notice, as part of the basis for the denial of their licensure application which triggered this proceeding. Moreover, both of those incidents were immediately reported by the Giegers themselves to the Department and, ironically, the Department did not see fit to make any determination at the time, or since, that those incidents

amounted to abuse. No finding was made that those alleged incidents were "founded" abuse episodes.

24. Moreover, the Department relies upon an incident where Mrs. Gieger purportedly stated that she used force against J.D. when he tried to grab her neck. She purportedly told Ms. Summerfield in an interview that she gave J.D. a "therapeutic bear hug" by grabbing his arm and turning him around. He fell to the floor as a result. Parenthetically, not even the Department claims that she forced him to the floor. Mrs. Gieger's testimony at hearing concerning this event was to the effect that she grabbed J.D.'s wrist in order to prevent him from striking her or grabbing her neck and that he just collapsed to the floor. The Department then maintains that foster parents are not permitted to use such "force" on foster children, such as grabbing J.D.'s wrist, because it equates this to the use of corporal punishment and that grabbing a child's arm or wrist could "traumatize" an already vulnerable foster child.

25. Mrs. Gieger's testimony, however, indicates that the use of "therapeutic bear hug," even if it occurred, is part of an approved method of training which she had, which is designed to safely manage children who are acting out in a potentially dangerous way, until they can calm down. She testified that Camelot, the Department's contracting agent, had approved this

training for her. Moreover, when a foster parent is in danger of attack by a 17-year-old, even a somewhat debilitated child, who threatened striking or grabbing the foster parent by neck or throat, to grab his arm or wrist to prevent such conduct is reasonable and does not constitute unreasonable restraint. Assuming this event occurred, to characterize the grabbing of a child's wrist, to prevent injury or potential injury to a foster parent or another, as excessive force or "corporal punishment" is nonsensical. There is no credible, persuasive evidence that either Mr. or Mrs. Gieger engaged in any excessive force or restraint amounting to abuse.

26. A concern was raised by Dr. Dykle, the psychologist, who was fearful of the fact that alarms had been placed on childrens' rooms in the foster home. Ms. Summerfield based her finding that abuse had occurred, in part, on the report that the alarms had been placed on the doors of some of the childrens' rooms. Ms. Summerfield, however, admitted in her testimony that alarms are often and routinely placed on childrens' rooms in therapeutic foster care homes. The mental health experts who testified clearly established that in every therapeutic foster home such alarms must be placed on bedroom doors because of a safety concern for other children. Children who are placed in this type of home are often serious safety risks for themselves or for other children. They have often been found themselves to



be perpetrators of inappropriate or violent conduct. Many times they are children who have been sexually abused and have themselves become sexual perpetrators. In fact, there was a child in the Giegers' home at the time J.D. was there who had set his parents' bed on fire because he did not get a desired toy for Christmas. Dr. Dykle's apparent grave concern about alarms being placed on the childrens' bedroom doors is surprising since it appears to be completely contrary to generally accepted, safe practice for therapeutic foster homes, something that he should have been aware of if he is indeed an expert in child abuse issues. Ms. Summerfield admitted that she was aware that this was a virtually universal safety practice in therapeutic foster homes and yet, paradoxically, used it as a factor in support of her finding that abuse had occurred, as a basis of denial of re-licensure.

27. Ms. Summerfield also admitted that she had spoken with Camelot professionals who assured her that the Giegers had been exemplary foster care parents. She acknowledged that J.D. had made untrue statements in the past about other foster placements. She admitted that the only evidence of improper restraint, or any kind of abuse or neglect in the home, was essentially predicated on the statements of the two children who did not testify in this proceeding. She conceded that one of them had recanted and she knew of this well before the hearing.

28. Mental health experts from Camelot who testified, established that it is a very frequent event for foster children placed in therapeutic foster homes to act out and to make false statements and accusations concerning their care-givers. They also indicated that J.D. had made such false allegations in the past against other caregivers. This was all information that a thorough investigation would have made known to the Department, at the time it was making the determination that there was a basis for a finding of abuse.

29. The only witness other than Ms. Summerfield, presented by the Department, was Amy Hammett, the licensing official who actually signed the letter denying the license application. She testified that she did not review all of the documents that made up the Giegers' license application. Some other department employee had been assigned to the case and it had been later transferred to Ms. Hammett before the final decision was made. She had reviewed five relevant forms, but nothing else.

30. She had no evidence to support the Department's position that the Giegers had relied upon the foster care services they provided for income to support their own family, other than the fact that they had taken a legal position in the appeal from the previous attempt at a Chapter 120 proceeding, to the effect that they had something in the nature of a property interest in their foster care license. This may have been a

necessary position to take in an attempt to establish jurisdiction or standing in that proceeding, but other than that, and one statement attributable to Mr. Gieger that there was an adverse financial effect on the Giegers related to that proceeding, it was not established that the Giegers were relying on the income from foster care services to support their family. Rather, in the context of that statement and the Giegers legal position during the course of their appeal, the reference was most likely made in the context that the hiring of an attorney, with related expense, in prosecuting the first case, including an appellate proceeding, caused an adverse financial effect, which is understandable. That does not constitute credible, persuasive evidence that the Giegers were relying upon foster care services as income to support their own family and themselves in violation of any Department rule. Mrs. Gieger, indeed, testified under oath that they did not rely upon foster care income to support their family. Her testimony and that of others showing that they have successfully operated a well-managed, licensed home for a substantial period of time, shows that the Petitioners are financially capable of operating safely and successfully under a new license. There is no persuasive evidence to the contrary.

31. The greater weight of the credible evidence is persuasive in establishing that the Giegers provide quality

therapeutic foster care and have not engaged in the abuse with which they are charged. Even J.D. expressed the desire to come back and live with the Giegers and, after he reached 18 years of age, he did so. This certainly does not support the existence of abuse. Moreover, Earnest Thomas, J.D.'s guardian ad litem established that the Giegers provided J.D. with excellent care. He was a frequent visitor in their home and paid close attention to J.D.'s well-being during times pertinent to this case.

32. Further, the caseworker, Sheila Donato, was the person who took J.D. from the Giegers' home when he was removed by the Department. On this occasion she stated that he was tearful and crying when he left the Giegers' home and asked if he would be able to come back to their home for Christmas. There were no bruises or other evidence that he had been harmed in any way. She established that the fact that he returned to the Giegers home after he turned 18 years of age is evidence that he had never been abused while there.

33. After the Giegers' foster care license had been relinquished voluntarily by them under the above-referenced circumstances, Tyler's parents executed "guardianship papers" placing Tyler in the custody or guardianship of the Giegers and they continue to allow Tyler to reside in their home. The Department maintains that this was an illegal placement because the Giegers were not a licensed foster care facility at that

time and had not secured a court order allowing Tyler to be in their guardianship. The circumstances were, however, that Ms. Giegers' mother was the attorney who prepared the guardianship papers for the Giegers and for Tyler's parents to execute. She rendered an opinion to them that that was sufficient to justify allowing Tyler to remain in the Giegers' home. Ms. Gieger testified that she knew of other teachers and other individuals who had used similar documents to establish a basis to take custody of a child in their home. She believed that what she was doing was legal. There was no intent by her, or Mr. Gieger, to engage in any kind illegal custody, guardianship or circumvention of the foster care licensure requirements, or any other illegal act. There is no evidence that Tyler had been adjudicated dependent and subject to the custody of the Department.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2006).

35. Section 409.175(6)(h), Florida Statutes (2006), provides in part:

Upon determination that the applicant meets the state minimum licensing requirements, the Department shall issue a license without charge to a specific person or agency at a specific location.

36. In essence the Department initially denied the application for licensure based upon its view: (1) that the Petitioners failed to use appropriate discipline, as outlined in Florida Administrative Code rule 65C-13.010(1)(b)(5); (2) that the Petitioners were operating a foster home for profit which was a violation of Florida Administrative Code Rule 65C-13.010 by placing their "own profit above the best interest of any children placed in" their home; and (3) that they breached the public trust by violating rules adopted for the safety and welfare of children in their care, in violation of Section 409.175(2)(f), Florida Statutes (2006). There is no credible, persuasive evidence that any of these bases relied upon for licensure denial are in fact true of the Petitioners.

37. The evidence presented does not support that the Petitioners improperly disciplined children in violation of Florida Administrative Code Rule 65C-13.010(1)(b)(5)(a) and (b). The rule provides that foster parents should "discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibility and self control." The evidence shows that the children placed in the Petitioners' therapeutic foster home were treated with understanding and consistency. The Giegers had been specifically trained to deal with children with disciplinary or

behavioral problems. The evidence shows that they attempted to help J.D. and all the other children in their home develop responsibility and self control. The rule provides that foster care parents must help each child "learn that he is responsible for his behavior by teaching him the natural and learned consequences of his behavior."

38. The evidence is clear that the Petitioners provided guidance directed at teaching children responsible behavior through learned consequences. There was persuasive, substantial evidence that a reward system was used in the home to provide rewards to be earned for good behavior. In accordance with the rules the Giegers employed "positive methods of discipline." Their disciplinary methods included loss of privileges, reinforcing acceptable behavior, expressing verbal disappointment with a child's behavior, restricting a child's activities and re-directing the child's activity. These are all behavioral adaptations specifically listed in the above-cited rule. The preponderant, persuasive evidence shows that these types of procedures were followed by the Giegers in their foster home.

39. Testimony of professional people actually appointed or assigned to the children's cases clearly shows that the Giegers were following the scope of these rules. The statement of Tyler at the Child Advocacy Center and the statement of J.D. to

Dr. Dykle is the only attempted indication that the Giegers engaged in any type of conduct or action outside the scope of these rules. These statements were shown to be untrue. Tyler recanted after returning home to his biological parents. His biological father made it clear that Tyler had frequently made false allegations in the past. Indeed, he showed his continuing respect for the Giegers' abilities at parenting and caring for children by placing Tyler back in their home under a custody or guardianship agreement with the Giegers. Experts in child care and mental health, with training and experience with children with disciplinary problems, established that the Giegers used appropriate methods.

40. These witnesses were frequently present in the home in the course of their duties, in overseeing the care of these children. Several of them testified that untrue allegations are frequently made by children in the foster care system, especially children who have in the past been seriously abused. There was testimony from J.D.'s therapist that he had made false allegations against foster parents in the past. J.D.'s allegation concerning improper punishment of him by the Giegers was described in his statement as being on the occasion when he broke a window in their home. This occurred when the Camelot mental health therapist assigned to his case was present on the phone, at Mrs. Giegers' behest, listening as he was de-escalated



during his misbehavior episode. The therapist heard nothing to indicate any improper discipline occurring.

41. Moreover, there was no evidence that J.D. had not been properly fed in the Giegers' home. The evidence was overwhelming that he had been properly fed since he experienced significant growth and weight gain, so that he was at an appropriate weight for his age at the time he was removed from the home.

42. There was no evidence to indicate that the Giegers had made any kind of racially inappropriate statements or engaged in cursing in the children's presence. Witnesses who were mental health specialists assigned to the cases of the children placed in the Giegers' home, and present in that home unannounced on frequent occasions, observed multiple times that appropriate discipline of the children was used and that appropriate language was used in the children's presence. There is no credible evidence to support any finding that inappropriate punishment or language was engaged in by the Petitioners in the home.

43. Secondly, the allegation that the Petitioners had placed their own profit interest over the best interests of the children placed in their home, and were engaged in foster care in their home for profit, was not supported by the evidence. The person who wrote the letter denying the application

testified that she had not even reviewed any financial information contained in the Giegers' application. The sole basis for the Department's position in this regard was the Giegers' position that they had taken in their first attempt to obtain a Chapter 120 hearing concerning the abuse report, and the original denial of their foster license, to the effect that they had an interest tantamount to a property interest in their license. Even though Section 409.175(2)(f), Florida Statutes (2006), states in effect, that there is no property interest in such a license, but that rather it is a privilege, does not mean the Giegers' attempt to exercise their Chapter 120 rights and contend that they have such a property interest should be a basis for denial of their licensure application. The preponderant evidence does not establish any improper motive of generating income as the paramount interest in seeking licensure. Their position in this regard was not an admission that they are basing their family's financial well-being or income on the operation of their foster care home or facility. Mr. Gieger's statement concerning adverse financial impact involved in pursuing the licensure-related proceeding appears to have been more related to the legal expense involved, rather than decrying the potential loss of a substantial portion of the family's income.

44. The abuse-related bases for licensure denial, as found and referenced-above, clearly have not been established by credible, persuasive evidence. There is no preponderant evidence to show that the Giegers engaged in any sort of abusive conduct or behavior. There is no showing that they breached the public trust by violating rules adopted for the safety and welfare of children in their care.

45. There was a subsequent basis for denial alleged after this proceeding had commenced, to the effect that the Petitioners illegally allowed Tyler to be placed in their home. Tyler's father signed "guardianship" or "custody" documents making the Giegers custodians or guardians of Tyler. The Department takes the position that there should have either been a court order making them the legal guardians or they should have a foster care license. This is because they, in the Department's view, allowed an "unrelated child" to be placed in their home for greater than 90 days without a foster care license. See § 409.175(4)(a)(b) and (d), Fla. Stat. (2006).

46. Parenthetically, there is a substantial likelihood that a court would enter an order approving the arrangement since all parties, including the proposed "guardian" and the biological parent, agreed that the child should be placed with the Giegers. Moreover, and more pointedly, the preponderant, credible evidence indicated that the Giegers had no intention of

violating the law with this arrangement. They were aware that their foster care licensure was not in effect and, not wanting to engage in an illegal act, they believed that entering into the guardianship or custodial agreement received from the child's parent was sufficient to establish a legal basis for their allowing the child Tyler to reside in their home. They obtained an opinion from an attorney that such a placement was appropriate under those circumstances. Indeed, the private guardianship or custodial arrangement may be entirely legal. There is no evidence or legal authority offered to prove that it is not. If either Petitioner is thus a guardian, the above statute is not violated. Moreover, if sub-paragraphs (a) and (b) are considered, in pari materia, it would appear that such a placement by a legal parent should be lawful. There was no proof that the child had been adjudicated dependent, so a private guardianship may be lawful. In any event, they had no intention of engaging in conduct in illegal circumvention of the relevant foster care licensure requirements.

47. Section 409.175(9), Florida Statutes (2006), grants the Department discretion to deny a licensure for an intentional act that materially affects the safety of any child in the home or for a violation of the provisions of Section 409.175 or the regulations promulgated pursuant to that section, as contained in Florida Administrative Code Chapter 65C-13. The use of the

word "may" in that section indicates that the Department is given discretion in denying or granting licensure based upon any evidence of a violation. See Heburn v. Department of Children and Families, 772 So. 2d 561, 563 (Fla. 1st DCA 2000). Even if the placement of Tyler in the Petitioners' home is a violation because they were not then currently licensed, that placement would only be thus illegal if the attempted guardianship or custody arrangement did not comply with law. That circumstance has not been established in the record in this proceeding.

48. In any event, if Tyler's placement in the home at the request of Tyler's father is a violation, because licensure was not current at the time, this is not a substantial or intentional failure to comply with licensure requirements. It was done under the belief that the arrangement was legal (as indeed it may be). The Giegers were attempting to continue to provide the quality of care for Tyler that they and Tyler's father desired in their facility in a legal manner; otherwise, they would not have engaged in attempting to establish a guardianship or legal custodial arrangement as they did. Thus, even if the arrangement concerning Tyler were a technical violation, which was not proven, the discretion of the Department should be exercised in favor of granting licensure under these circumstances.

49. In summary, there has been no preponderant persuasive

evidence to show that any abuse or other basis for denial of licensure was engaged in or committed in by the Petitioners.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Children and Family Services granting a foster home license to the Petitioners, authorizing their operation as a therapeutic foster home.

DONE AND ENTERED this 9th day of August, 2007, in Tallahassee, Leon County, Florida.



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P. MICHAEL RUFF  
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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.