

Stuart Lerner

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner,

CASE NO. 07-1082

RENDITION NO. DCF-08- 025-FO

v.

ST. MICHAEL'S ACADEMY,

FILED

FEB 14 2008

Respondent.

_____ /

DCF Department Clerk

FINAL ORDER

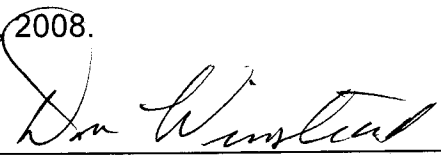
THIS CAUSE is before me for entry of a Final Order. The Recommended Order concludes that the Department did not present clear and convincing evidence that respondent violated rule 65C-20.001(5), Florida Administrative Code, by providing inadequate supervision to children in care such that a child was bitten by another child. The administrative law judge (ALJ) recommended that the Department dismiss the administrative complaint. The Recommended Order is approved and adopted with one modification explained below.

The Department filed exceptions to the Recommended Order, but only one of the exceptions is well-taken. In footnote 19, the ALJ concluded that, even if the Department had established that the child's injury was the result of a bite, the Department would not have proven inadequate supervision on the facts of this case. This conclusion is contrary to the holding in Coke v. Department of Children and Family Services, 704 So. 2d 726 (Fla. 5th DCA 1998). Although the Coke court incorrectly applied the clear and convincing evidence standard to a

license denial proceeding, the court expressly held, under that standard, that “[t]he combination of the child's injury and the lack of explanation on the part of the care giver as to how it occurred, constitute sufficient grounds to conclude Coke did not provide adequate care and supervision for the child entrusted to her care”. The Coke court upheld the Department’s rejection of the ALJ’s contrary conclusion in that case. In the instant case, the ALJ found that the child suffered the injury at respondent’s facility. If the Department had established biting as the cause of injury, then respondent’s explanation of the injury would clearly have been, at best, mistaken. The nature of the injury, together with respondent’s misrepresentation of how it occurred (or even simple inability to explain it) would have provided an adequate evidentiary foundation to support the allegation of inadequate supervision. The first sentence of footnote 19 is rejected. This modification does not affect the result in this case.

Accordingly, the Department’s December 15, 2006, administrative complaint is DISMISSED.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 13 day of February 2008.



Don Winstead, Deputy Secretary
Department of Children and Family Services

RIGHT TO APPEAL

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILIES, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, IN THE FIRST DISTRICT COURT OF APPEAL OR IN THE DISTRICT COURT OF APPEAL WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA RULES OF APPELLATE PROCEDURE. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Kimberly Coward
Child Care Licensing Attorney
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401 Northwest Second Ave., N-1014
Miami, FL 33128

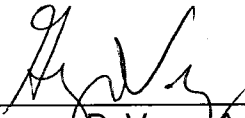
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401 Northwest Second Ave., N-221
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Claudia Llado, Clerk
Division of Administrative Hearing
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Final Order was provided to the above-named individuals at the listed addresses, by U.S. Mail, this 14 day of February, 2008.



Gregory D. Venz, Agency Clerk
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Tallahassee, FL 32399-0700
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