

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 09-0993
)
CHC PRIVATE SCHOOLS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 19, 2009, in Titusville, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jason M. Hand, Esquire
Department of Education
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For Respondent: Lisa L. Hogreve, Esquire
Lisa L. Hogreve, L.C.
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent's participation in the John M. McKay Scholarships for Students with Disabilities Program (McKay Scholarships) and the Corporate

Income Tax Credit Scholarship Program (CTC Scholarships) should have been suspended, and whether Respondent's eligibility to participate in the programs should be revoked.

PRELIMINARY STATEMENT

On December 17, 2008, Petitioner, Dr. Eric J. Smith, as Commissioner of Education (Agency), issued an Administrative Complaint against Respondent, CHC Private Schools (CHC), suspending CHC's participation in the McKay Scholarships and CTC Scholarships programs for failure to comply with Subsection 1002.421(2)(g)1., Florida Statutes.¹ CHC came into compliance with Subsection 1002.421(2)(g)1., Florida Statutes, on or after December 23, 2008.

On January 23, 2009, the Agency amended the Administrative Complaint, withdrawing the violation of Subsection 1002.421(2)(g)1., Florida Statutes, and immediately suspending scholarship payments to CHC and revoking CHC's eligibility to participate in the McKay Scholarships and CTC Scholarships programs for alleged fraudulent activity. By letter dated January 27, 2009, CHC requested an administrative hearing.

By letter dated February 19, 2009, the Agency forwarded the case to the Division of Administrative Hearings for assignment to an Administrative Law Judge. The case was originally assigned to Administrative Law Judge Lawrence P. Stevenson, but

was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

On March 4, 2009, the Agency filed a Motion for Leave to Amend Administrative Complaint. The motion was granted by Order dated March 12, 2009.

At the final hearing, CHC moved for a rehearing on Petitioner's Motion for Leave to Amend Administrative Complaint. The Motion for Rehearing was denied. At the final hearing, CHC's Motion to Dismiss Complaint as Amended was heard and denied.

At the final hearing, the Agency called the following witnesses: Laura Harrison, Doug Carter, William Scott Morissette, Riley Hyle, Rebecca Hendricks, and Joanna Ostrom. Petitioner's Exhibits 1 through 5, 7 through 11, and 13 through 18 were admitted in evidence.

At the final hearing, CHC called the following witnesses: Doug Carter, William Scott Morissette, Rebecca Hendricks, Dorothy Maudra, Jacqueline Maglashan, Jade Quinif, Lara Nichilo, Riley Hyle, and Laura Harrison. Respondent's Exhibits 1 through 6 and 8 through 16 were admitted in evidence.

The Transcript was filed on April 3, 2009. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The parties timely filed their

Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. CHC is a private school located in Merritt Island, Florida. Lara Nichilo is the owner and head administrator of CHC. Ms. Nichilo was also the owner and head administrator of another private school located in Cocoa, Florida. For the purposes of this proceeding, the school located in Cocoa, Florida, will be referred to as CHC 2.²

2. CHC and CHC 2 had participated in the McKay Scholarships and CTC Scholarships programs.

3. Section 1002.39, Florida Statutes, authorizes the McKay Scholarships program, which affords a disabled student an opportunity to receive a scholarship to defray the cost of attending a private school of choice. Section 220.187, Florida Statutes, authorizes the CTC Scholarships program, which enables taxpayers to make private, voluntary contributions so that students who qualify for free or reduced-price school lunches under the National School Lunch Act may receive a scholarship to defray the cost of attending a private school of choice. The Department of Education has the responsibility to annually verify the eligibility of a private school to participate in these scholarship programs.

4. Private schools participating in the McKay Scholarships and CTC Scholarships programs are required to comply with Section 1002.421, Florida Statutes, and must meet applicable state and local health, safety, and welfare laws, codes, and rules, including laws, codes, and rules relating to firesafety and building safety.

5. If a private school participating in the McKay Scholarships and CTC Scholarships programs desires to renew its participation in the programs, the school must file a signed, notarized Form IEPC SCF-1 affidavit with the Department of Education by March 1 of each year for participation in the subsequent school year. The Form IEPC SCF-1 affidavit contains a list of requirements to which the private school must certify that it meets or does not meet. If the school certifies that it does not meet a requirement, such certification constitutes an outstanding compliance issue, which must be resolved by the school prior to May 1 of each year for the school to remain eligible to participate in the scholarship programs.

6. Specifically, the signature page of the Form IEPC SCF-1 affidavit states in part: "I understand that in answering 'No' to any requirement in Section 9: School Facility, the provision of a reason for answering 'No' shall not make the school compliant with the reporting requirement and will be considered an outstanding compliance issue for resolution as described in

State Board of Education Rules 6A-6.03315, 6A-6.0960, and 6A-6.0970, Florida Administrative Code."

7. Florida Administrative Code Rule 6A-6.03315(2) requires that every third year a school applies for renewal of eligibility for the scholarship programs there must be a review of compliance documentation. This means that the school must submit documentation to support its eligibility along with the affidavit. For the renewal of eligibility for the 2009-2010 school year, CHC had to submit compliance documentation for review.

8. On November 6, 2008, Ms. Nichilo executed and mailed the Form IEPC SCF-1 affidavit for CHC for renewal of CHC's eligibility to participate in the McKay Scholarships and CTC Scholarships programs for the 2009-2010 school year. Subsection 1 of Section 9 of the Form IEPC SCF-1 affidavit requires the school to answer the following question:

Does the school facility possess a current, violation free or satisfactory Fire Code Inspection and compliance report in accordance with Section 1002.421(2)(g)1., Florida Statutes, State Finance Services Rule 69A-58.004, Florida Administrative Code, and county and/or municipal ordinance?

Ms. Nichilo answered "Yes" to the question. CHC submitted a fire inspection certificate for CHC with a date of February 22, 2008.

9. At the time Ms. Nichilo executed and submitted the Form IEPC SCF-1 affidavit in November 2008, CHC did not have a current Fire Code Inspection and compliance report. The last fire inspection certificate was dated February 22, 2006, and had expired on February 22, 2007.

10. Ms. Nichilo executed and submitted a Form IEPC SCF-1 affidavit for the 2007-2008 school year, certifying that CHC had a current, violation-free fire inspection report. The certificate affidavit which Ms. Nichilo signed stated:

I have read the applicable scholarship program rules and understand that by signing this form I am certifying that the school is currently in compliance and agrees [sic] to remain in compliance with all scholarship program rules and reporting requirements. If at any point, the school is not in compliance with scholarship rules, or if there is a change in the status of any reporting requirement, the school will have 15 days to notify the Department of Education and will provide all information necessary to document its continued compliance with program rules and requirements.

At the time the certification was submitted on January 11, 2007, CHC did have a current, violation-free fire inspection report; however, CHC did not have a current, violation-free fire inspection report that was valid for the entire 2007-2008 school year. CHC did not notify the Department of Education that it was not in compliance with the fire safety inspections during the 2007-2008 school year.

11. On December 5, 2007, Ms. Nichilo executed and submitted a Form IEPC SCF-1 affidavit for the 2008-2009 school year, certifying that CHC had a current, violation-free fire inspection report. At the time of submission of the affidavit, CHC did not have a current, violation-free fire inspection report, and, from the beginning of the 2008-2009 school year until December 23, 2008, CHC did not maintain a current, violation-free fire inspection report nor did CHC notify the Department of Education as late as December 11, 2008, that CHC was not in compliance with the fire inspection requirement.

12. On November 19, 2008, Assistant Fire Marshall Doug Carter of Brevard County Fire Rescue (BCFR) received a complaint concerning CHC and CHC 2 from an anonymous caller. It is the policy of BCFR to follow up on all complaints. On November 20, 2008, Lead Fire Inspector William Morissette, following up on the anonymous complaint, went to CHC for the purpose of performing a fire inspection.

13. On November 20, 2008, Mr. Morissette performed a fire inspection on CHC and noted some violations. During the inspection on November 20, 2008, Mr. Morissette noticed that the fire inspection certificate that was posted at CHC was partially obscured, and he could not see the school's address.

14. On November 20, 2008, Mr. Morissette performed a fire inspection of CHC 2 and noted some violations. He observed the

posted fire certificate at CHC 2 during his inspection. The fire certificate had an account number 23832 and was dated February 22, 2008. The font used in the printing of the certificate did not appear to be the same type as used by BCFR. While at CHC 2, Mr. Morrissette called Assistant Fire Marshall Carter and learned that account number 23832 was for CHC and not CHC 2 and that no fire certificate had been issued to CHC 2 on February 22, 2008. The last fire certificate that had been issued to CHC 2 was on December 15, 2005, and had expired on December 16, 2006.

15. On November 6, 2008, CHC sent a copy of the fire inspection certificate dated February 22, 2008, to the Department of Education as part of the documentation supplied to verify CHC's eligibility for renewal. The fire inspection certificate was a forgery. Ms. Nichilo testified that she did not send the forged certificate to the Department of Education and that some disgruntled former employee who had access to CHC's files must have sent the certificate to the Department of Education or must have put the forged certificate in the envelope containing the renewal information that was sent to the Department of Education. Ms. Nichilo's testimony is not credible. The certificate came in the same envelope as the other material which CHC submitted in November 2008. Ms. Nichilo signed and mailed the renewal information on

November 6, 2008. Her testimony that the envelope must have been in the mail room a couple of days before it was mailed, thereby allowing the disgruntled employee an opportunity to slip the forged certificate in the envelope, is not credible.

16. After the renewal package was sent to the Department of Education, Ms. Nichilo asked her secretary to contact BCFR to schedule a fire inspection. Ms. Nichilo knew that she needed a fire inspection because she knew that she did not have a current fire inspection certificate when she sent the renewal submittal to the Department of Education. Based on the clear and convincing evidence presented, it can only be concluded that Ms. Nichilo knew the fire inspection certificates, which she included with the renewal submittals, were forgeries.

17. On or about December 5, 2008, Mr. Carter contacted the Department of Education and informed the Department of Education that he had concerns about CHC's and CHC 2's fire inspection certificates. Mr. Carter sent a memorandum dated December 9, 2008, to Riley Hyle with the Department of Education, explaining BCFR's observations and concerns relating to the fire inspection certificates. After learning from Mr. Carter that CHC's and CHC 2's fire inspection certificates were in question, Mr. Hyle checked the Department of Education's renewal files on CHC and CHC 2. Mr. Hyle found forged fire inspection certificates in both files.

18. When CHC's and CHC 2's submittals arrived on November 10, 2008, in the same envelope, Mr. Hyle reviewed the submittals and verified that both submittals contained fire inspection certificates. He received no further documentation from CHC or CHC 2 from November 10, 2008, and the time he talked to Mr. Carter on December 5, 2008.

19. On December 8, 2008, Mr. Morrissette returned to CHC 2 to do a follow-up inspection. CHC 2 had not corrected all its violations. Mr. Morrissette was advised by the principal at CHC 2 that CHC also had not corrected all of its violations. One of the violations CHC had was a broken lockbox. On December 7, 2008, CHC had called BCFR and requested an application for a lockbox. Thus, on December 8, 2008, CHC would still have not corrected its lockbox violation.

20. On December 11, 2008, Ms. Nichilo signed a revised version of the Form IEPC SCF-1 affidavit³ for CHC for the 2009-2010 school year. The question posed in the affidavit submitted in November 2008 concerning whether the facility had a current, violation-free fire code inspection remained the same in the revised affidavit. Again, CHC stated that it did have a current, violation-free Fire Code Inspection and compliance report. The revised affidavit also contained the same language as the November 2008 affidavit that answering a question in the negative in Section 9 would result in an out-of-compliance

issue. Both the November affidavit and the revised affidavit contained the following language:

I have read the applicable scholarship program rules and understand that by signing the form I am certifying that the school is currently in compliance and agrees [sic] to remain in compliance with all scholarship program rules and reporting requirements. If at any point, the school is not in compliance with the scholarship rules, or if there is a change in the status of any reporting requirement, the school shall have 15 days to notify the Department of Education and will provide all information necessary to document its continued compliance with program rules and requirements.

21. The revised affidavit was submitted to the Department of Education, which received the affidavit on December 16, 2008. At the time CHC submitted the affidavit, it did not have a current, violation-free Fire Code Inspection and compliance report. On December 23, 2008, the BCFR re-inspected CHC and found that the violations had been corrected. After its inspection on December 23, 2008, BCFR issued a fire inspection certificate backdated to November 20, 2008, which was the date of the original inspection.

22. On December 17, 2008, the Agency issued an Administrative Complaint, suspending CHC's eligibility for the McKay Scholarships and CTC Scholarships programs for failure to have a current fire inspection report. By letter dated December 23, 2008, and received by the Department of Education

on December 29, 2008, CHC advised that the school had been re-inspected and now had a current fire code inspection certificate.

23. On January 2, 2009, CHC sent a 12-page facsimile transmission to the Department of Education. One of the pages of the transmission was a copy of a facsimile transmission coversheet dated December 31, 2008, with the BCFR letterhead concerning inspection reports. The comments section of the coversheet read "Please read letter." The second page of the transmission was an unsigned to-whom-it-may-concern letter dated December 30, 2008. At the top of the letter, printed in large, bold type was the following: "Brevard County Fire Rescue." The letter stated:

To whom it may concern,

In reviewing and trying to figure out what happen with the 2007 inspection reports this is the conclusion we have come to.

If you review the two reports on both CHC-1 and CHC-2 the visiting inspection times overlap each other making it seem like a 2007 inspection was done when in reality it was not.

CHC-1 inspection has a date on it
February 22, 2006 to February 2007.
CHC-2 inspection shows January 12, 2006
(re-inspection) January 2007.

I believe that this was just an over site on both our parts due to the fact that the fire department does come in regularly every year even without an appointment.

Lara Nichilo did notify us to come in ASAP when the reports could not be found. But as of November 20, 2008 all her inspections were done and her follow up correction reports have been completed putting her in good standing with the fire and inspections department. CHC-1 and CHC-2 (inspection reports provided to you with this letter)

For more information you may contact us at 321-455-6383

Thank you for your time,

24. The telephone number given in the letter was the telephone number for CHC. The original letter submitted at the final hearing by CHC was written on stationary bearing the CHC watermark. The letter received by the Department of Education had no visible watermark.

25. The facsimile transmission coversheet that accompanied the letter was a coversheet which BCFR had sent to CHC on December 31, 2008. The statements in the comments section that BCFR sent had been deleted and replaced with "Please read letter." The following are the comments which BCFR had written:

There are no reports or certificates for 690 Range Road for 2006 or 2007.
There are no inspection reports or certificates for 55 McLeod for 2007.
Certificates will be issued upon receipt of payment.

26. Laura Harrison, the director of the McKay Scholarships and CTC Scholarships programs at the Department of Education, transmitted a copy of the letter to BCFR and asked if the letter

had originated from BCFR. Mr. Carter advised Ms. Harrison that the letter did not come from BCFR.

27. Ms. Nichilo wrote the letter. A person reading the letter would be led to believe that the letter came from BCFR. The letter was accompanied by a facsimile transmission coversheet bearing the BCFR letterhead and the coversheet comments said "Please read letter." The letter refers to Ms. Nichilo in the third person and uses first person plural pronouns to refer to BCFR. The letter purports to bear the letterhead of BCFR. It must be concluded that Ms. Nichilo intended the Department of Education to rely on the letter as a letter transmitted by BCFR to Ms. Nichilo to explain the situation. If Ms. Nichilo had intended the Department of Education to treat the letter as a letter written by her, she would have written the letter using CHC letterhead, signed the letter, not referred to herself in the third person, not referred to BCFR in the first person, and not used a transmission coversheet from BCFR in which the comments section had been altered.

28. In a conversation on December 30, 2008, Ms. Nichilo advised Mr. Hyle that she was sending him a letter that would explain everything and would resolve the situation concerning the fire inspections. Ms. Nichilo testified that she told Mr. Hyle that she was writing the letter. Mr. Hyle did not

recall whether Ms. Nichilo said that she was writing a letter. Jade Quinif, who was Ms. Nichilo's administrative assistant on December 30, 2008, listened to the conversation between Mr. Hyle and Ms. Nichilo on speakerphone. She recalls Ms. Nichilo asking Mr. Hyle if he would like her to write a letter regarding Ms. Nichilo's conversations with BCFR. Mr. Hyle said that would be fine.

29. Ms. Nichilo typed a letter and asked Ms. Quinif to send it to the Department of Education. Ms. Quinif sent a letter to the Department of Education dated December 30, 2008. Based on the evidence presented, the letter that Ms. Quinif sent was a letter dated December 30, 2008, written on CHC letterhead and signed by Ms. Nichilo.⁴ It was not the letter dated December 30, 2008, which appeared to be from BCFR (purported BCFR letter).

30. The only evidence of receipt of the purported BCFR letter by the Department of Education is in a 12-page facsimile transmittal, which was transmitted twice on January 2, 2009. Ms. Quinif credibly testified that she did not send a 12-page transmission and that she did not send the doctored transmission coversheet from BCFR. She also credibly testified that the letter that she sent was a few days after Christmas and was not more than a week after Christmas. Ms. Nichilo testified that Ms. Quinif did send the transmittal coversheet from the BCFR on

December 30, 2008; however, Ms. Nichilo's testimony is not credible given that the transmittal coversheet from BCFR was dated December 31, 2008, and showed a transmission date of December 31, 2008, to CHC. The clear and convincing evidence is that Ms. Nichilo wrote and sent the purported letter from BCFR and the doctored transmittal coversheet from BCFR in an attempt to make it appear that BCFR was taking some of the blame for CHC not having maintained current fire inspection certificates. BCFR does not automatically do an annual inspection of schools. If a school desires to have a fire inspection, the school must notify BCFR and arrange for a fire inspection. The failure to have current, violation-free fire inspection reports rests with CHC and not with BCFR. The bogus letter was an effort by CHC to seek mitigation for its failure to adhere to the requirements for eligibility for the scholarships programs.

31. After learning that the letter transmitted on January 2, 2009, was not from BCFR, the Agency issued an Amended Administrative Complaint on January 23, 2009, which superseded the December 17, 2008, Administrative Complaint. The Amended Administrative Complaint deleted the allegations concerning the failure to have a current, violation-free fire inspection report and added allegations involving fraud and failure to maintain current, violation-free fire inspection reports.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

33. Subsection 1002.39(7), Florida Statutes, provides that the "Commissioner of Education shall deny, suspend, or revoke a private school's program, if it is determined that the private school has failed to comply with the provisions of this section" regarding the McKay Scholarships program. The Commissioner of Education may immediately suspend payments of scholarship funds, if it is determined there is probable cause to believe there is "[a]n imminent threat to the health, safety, or welfare of the students" or there is "[f]raudulent activity on the part of the private school." The Commissioner of Education has the same authority as it relates to private schools eligible for CTC Scholarships funds pursuant to Subsection 220.187(10), Florida Statutes.

34. The Second Amended Administrative Complaint immediately suspends and seeks to revoke CHC's eligibility for failure to have a current, violation-free Fire Code Inspection and compliance report for the entire 2007-2008 school year and from the start of the 2008-2009 school year through December 23, 2008; for falsifying the Form IEPC SCF-1 affidavits for the 2007-2008, 2008-2009, and 2009-2010 school years; for submitting

a forged fire inspection certificate for CHC on November 10, 2008, as supporting compliance documentation; for submitting a forged fire inspection certificate for CHC 2 on November 10, 2008, as supporting compliance documentation; and for submitting a letter to the Department of Education purporting to be from BCFR when the letter was not from BCFR.

35. The Agency argues that the burden to establish the allegations in the Second Amended Administrative Complaint is a preponderance of the evidence. CHC argues that the burden of proof is clear and convincing evidence. The burden is a preponderance of the evidence. See Winn v. Muskateers Academy, Case No. 06-5074 (DOAH April 2, 2007), adopted in Department of Education Final Order dated May 4, 2007. However, in the instant case, the Agency has established the allegations by clear and convincing evidence with the exception which is noted below.

36. Subsection 1002.421(2)(g), Florida Statutes, provides:

(2) A private school participating in a scholarship program must be a Florida private school as defined in s. 1002.01(2), must be registered in accordance with s. 1002.42, and must:

* * *

(g) Meet applicable state and local health, safety, and welfare laws, codes, and rules, including:

1. Firesafety.
2. Building safety.

These statutory provisions apply to both the McKay Scholarships and CTC Scholarships programs. See §§ 1002.39(8) and 220.187(8), Fla. Stat.

37. Florida Administrative Code Rule 6A-6.03315 incorporates by reference the Form IEPC SCF-1 affidavit, which requires each private school participating in the scholarship programs to certify it has a current, violation-free fire inspection report. Further, the Form IEPC SCF-1 affidavit provides that the school must agree to maintain its compliance with all requirements for the program. Further, if the school becomes non-complaint, the school is to notify the Department within 15 days.

38. The Agency has established by clear and convincing evidence that CHC did not have current, violation-free fire inspection reports or certificates for the entire 2007-2008 school year. CHC did not advise the Department of Education within 15 days of the expiration of its fire inspection certificate on February 22, 2007, that it was not in compliance with the fire inspection requirement.

39. The Agency has established by clear and convincing evidence that at the time CHC submitted its renewal for the 2008-2009 school year that it did not have a current, violation-

free fire inspection report as it certified and that CHC was not in compliance with having a current, violation-free fire inspection report from the beginning of the 2008-2009 school year until December 23, 2008.

40. The Agency has established by clear and convincing evidence that CHC did not have a current, violation-free fire inspection report when it certified that it did in the submittals received by the Department of Education on November 10, 2008, and December 16, 2008.

41. The Agency has alleged that CHC committed fraud when it submitted a forged fire certificate for CHC in its November 2008 renewal submittal to the Department of Education and when it submitted to the Department of Education on January 2, 2009, a letter and facsimile transmission coversheet purporting to be from BCFR.

42. The essential elements of a claim of fraud are: (1) a false statement concerning a material fact, (2) made with knowledge that the representation is false and with the intention of inducing another's reliance thereon, and (3) consequent injury to the other party acting in reliance on the false representation. See Cohen v. Kravit Estate Buyers, Inc., 843 So. 2d 989, 991 (Fla. 4th DCA 2003).

43. "[F]raudulent intent usually must be proved by circumstantial evidence and such circumstances may, by their

number and joint consideration, be sufficient to constitute proof." Nally v. Olsson, 134 So. 2d 265, 267 (Fla. 2d DCA 1961). Therefore, as proof of fraud, "one may show 'a series of distinct acts, each of which may be a badge of fraud and when taken together as a whole, constitute fraud.'" Department of Revenue v. Rudd, 545 So. 2d 369, 372 (Fla. 1st DCA 1989), quoting Allen v. Tatham, 56 So. 2d 337, 339 (Fla. 1952). Further, "[s]cienter, or guilty knowledge, [which] is an element of intentional misconduct [such as fraud], . . . can be established by showing actual knowledge, or that the defendant was reckless or careless as to the truth of the matter asserted." Ocean Bank of Miami v. INV-UNI Inv. Corp., 599 So. 2d 694, 697 (Fla. 3d DCA 1992).

44. The Agency has established by clear and convincing evidence that CHC submitted forged fire inspection certificates with its November 2008 renewal submittal. The forged fire inspection certificates were submitted with the renewal package. Ms. Nichilo was responsible for submitting the renewal package, including the fire inspection certificate for CHC. Her claim that some disgruntled employee slipped the forgeries into the submittal package is incredulous. She knew that she did not have current, violation-free fire inspection reports as evidenced by her attempt to get her assistant to schedule an inspection with BCFR shortly after the renewal package was

submitted. CHC is guilty of fraud. It submitted a forged fire inspection certificate with the intent that the Department of Education would rely upon the certificate to renew CHC's eligibility for the scholarships programs. Had not BCFR alerted the Department of Education to the bogus certificate, the Department of Education would have relied on the forged certificate to approve CHC's eligibility for the 2009-2010 school year, and the Department of Education would not have known that CHC had not been in compliance with the fire inspection requirement for some time.

45. The Agency has established by clear and convincing evidence that CHC is guilty of fraudulent activity when it submitted the purported letter from BCFR along with the altered BCFR transmission coversheet. The letter was written to appear that it came from BCFR and was written to place some of the blame for CHC's failure to maintain current, violation-free fire inspection report status on BCFR. The BCFR transmission coversheet was altered so that it appeared that the purported BCFR letter was sent from BCFR to CHC. The letter was written by the owner of CHC and not BCFR. It was intended that the Department of Education would rely on the letter in mitigation of the violations committed by CHC relating to the failure of CHC to have current fire inspection reports.

46. The Agency has alleged that CHC is guilty of fraudulent activity as it relates to the submittal of a forged fire inspection certificate on behalf of CHC 2. The Agency has failed to establish that it was CHC and not CHC 2 who was responsible for submitting the forged certificate on behalf of CHC 2. No evidence was presented to establish that Ms. Nichilo was not acting in her capacity as the owner of CHC 2 when the forged certificate was submitted with the renewal package.

47. The evidence establishes that the Agency had grounds to immediately suspend CHC's eligibility for the McKay Scholarships and CTC Scholarships programs. The evidence establishes that the actions of CHC were so egregious as to warrant revocation of CHC's eligibility for the McKay Scholarships and CTC Scholarships programs.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered sustaining the suspension of CHC's eligibility for the McKay Scholarships and CTC Scholarships programs and revoking CHC's eligibility for the McKay Scholarships and CTC Scholarships programs.

DONE AND ENTERED this 4th day of May, 2009, in Tallahassee,
Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of May, 2009.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2008 version.

^{2/} An Administrative Complaint and Amended Administrative Complaint had also been filed against CHC 2. CHC 2 had requested an administrative hearing regarding the Administrative Complaint and Amended Administrative Complaint, but later dismissed its request for a hearing. CHC 2 has been sold.

^{3/} The Department of Education had revised its Form IEPC SCF-1 affidavits for use in renewals for the 2009-2010 school year. At the time CHC submitted the affidavit in November, CHC had not been given the revised form.

^{4/} Respondent's Exhibit 10.

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.