

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JACQUELINE RITCHIE AND ROYAL)
FAMILY CHILD CARE AND CHRISTIAN)
ACADEMY,)
)
Petitioners,)
)
vs.) Case No. 09-4310
)
DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On October 8, 2009, a formal administrative hearing in this case was held by video teleconference in Orlando and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioners: Jacqueline Ritchie, pro se
Royal Family Child Care
and Christian Academy
1440 Pine Hills Road
Orlando, Florida 32808

For Respondent: Tesha S. Ballou, Esquire
Department of Children and
Family Services
400 West Robinson Street, Suite S-1114
Orlando, Florida 32801

STATEMENT OF THE ISSUES

The issues in the case are whether the suspension of the Petitioner's child care facility license should be terminated, and whether the Petitioner's application for license renewal should be approved.

PRELIMINARY STATEMENT

By certified letter dated June 25, 2009, the Department of Children and Family Services (Respondent) notified Ms. Jacqueline Ritchie (Petitioner) that her application to operate the Royal Family Child Care and Christian Academy was denied. The Petitioner filed a request for hearing with the Respondent. The request was referred to the Division of Administrative Hearings, which scheduled and conducted the hearing.

At the hearing, the Petitioner testified on her own behalf. The Respondent presented the testimony of two witnesses and had Exhibits identified as A through N admitted into evidence.

A Transcript of the hearing was filed on October 26, 2009. The Respondent filed a Proposed Recommended Order that has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. In June 2008, the Petitioner received a license to operate the Royal Family Child Care and Christian Academy. The Petitioner was the sole owner and operator of the facility.

2. Soon after becoming licensed, inspections of the facility revealed operational deficiencies that were revealed during seven inspections, dated October 15, 2008; February 9, 2009; February 25, 2009; March 4, 2009; March 23, 2009; March 27, 2009; and April 3, 2009.

3. The specific deficiencies were set forth on inspection reports provided to the Petitioner at the time of each inspection.

4. During the April 3, 2009, inspection, the Petitioner voluntarily relinquished the license for the facility. Shortly thereafter, the parties apparently entered negotiations regarding the continued operation of the facility.

5. By a settlement agreement (agreement) dated April 7, 2009, the Petitioner admitted the deficiencies noted in the seven inspection reports, and the Respondent returned the license to the Petitioner.

6. The agreement imposed a "30 day suspension" of operations and required the Petitioner to fully comply with relevant requirements of the Florida Administrative Code rules governing operation of child care facilities, to hire a credentialed director to operate the facility, to perform background screening on employees, and to ensure that the employees were properly trained and certified in first-aid/cpr techniques. The agreement also provided for a six-month

probationary period to commence upon the expiration of the suspension.

7. Because the agreement provided that the 30-day suspension period could be reduced or enlarged based upon whether or not the Petitioner complied with the requirements in the agreement, the suspension was essentially indefinite, at least until the license expired.

8. The agreement further provided that the Respondent could revoke the license and deny an application for a new license based upon any failure of the Petitioner to comply with the agreement.

9. On April 17, 2009, the Petitioner submitted a request to the Respondent to resume operation of the facility and renew the license and provided various documents to the Petitioner. The Respondent did not submit a current and completed application form.

10. By two separate letters dated April 27, 2009, the Respondent advised the Petitioner that the submission was incomplete. One letter addressed the request to resume operation, and a second letter addressed the renewal request, but there were issues common to both.

11. The letters specifically identified the information to be submitted, including: information related to background screening and central abuse registry records searches;

employment histories, training documentation, credentials, and fingerprint cards for specified staff members; corporate documentation; fire, food, and health inspection documentation; documentation that the deficiencies referenced in the April 7, 2009, agreement had been corrected; and a completed application on a current form. Both letters advised that assistance was available and provided a telephone number for a child care licensing counselor to respond to questions.

12. By letter dated May 15, 2009, the Respondent advised the Petitioner that the deficiencies referenced in the agreement had not been corrected and that the suspension of the facility's license remained in effect. The letter explicitly noted the remaining deficiencies in staff documentation and the facility itself and advised that technical assistance was available to assist in "understanding the rules and regulations" relevant to the facility.

13. On May 26, 2009, the Petitioner submitted additional information to the Respondent.

14. By two separate letters dated June 3, 2009, the Respondent advised the Petitioner that the submission remained incomplete. The letters identified the information to be submitted, including: information related to background screening, employment histories, and training documentation for specified staff members; corporate documentation; and a

completed application form. The Respondent also noted that vehicle inspection and registration information was required, as well as payment of current and delinquent licensure fees. Both letters again advised that assistance was available and provided the telephone number for the child care licensing counselor.

15. On June 11, 2009, the Petitioner submitted another renewal application and information in response to the deficiencies identified in the April 7, 2009, agreement.

16. On June 16, 2009, the Respondent conducted an inspection to determine compliance with the agreement and for the purposes of the license renewal application.

17. The inspection revealed that employee documentation, including employment applications, hire dates, histories, and background screening, was not available. Such documentation was specifically required by the terms of the agreement as well as for renewal of the license.

18. In addition to the lack of background information on employees, the inspection revealed other problems at the facility.

19. There was no shade available in the outdoor play area. The swing set s-hooks were open, and the plastic coating on the chains was missing, presenting the possibility of injury to children.

20. A "Little-Tykes" play-set was located against a fence, providing the possibility of escape by a child climbing over the fence from atop the play-set.

21. The water fountain was not securely attached to the wall and, despite an attempt to correct the deficiency during the inspection, could not be repaired. A child could have pulled the water fountain away from the wall and caused injury.

22. Some floor mats provided for napping were torn, and the interior foam was exposed, preventing adequate sanitation and presenting a health hazard to children sleeping on the mats.

23. The First-Aid kit located in the facility was incomplete and was missing various items, including a thermometer.

24. Medical supplies, including various creams and ointments, were stored in an open area under a changing table less than one foot above the floor. A child could access and ingest the supplies.

25. The inspection also noted the absence of daily attendance sheets used to account for children present at the facility; however, because the license had been suspended, the facility had not been in operation, and no children had been present.

26. At the hearing, the Petitioner testified that there had been attempts to comply with the Respondent's requirements,

but that the requirements were unclear. She opined that she should have been provided assistance to understand what was necessary to re-open the facility and renew the license.

27. At all times material to this case, the Respondent provided assistance to licensees and applicants through personal contacts and various workshops, and such assistance was available to the Petitioner.

28. The Petitioner registered for, but did not attend, several workshops related to licensure and operation of child care facilities. Additionally, the Petitioner was specifically advised as to the documentation necessary to comply with the agreement and failed to submit the materials.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

30. The Respondent is the state agency charged with licensure of child care facilities. The Respondent is authorized to issue such licenses when specified requirements are met. § 402.308(3)(d), Fla. Stat. (2009).

31. The Petitioner has the burden of establishing entitlement to the licensure sought in this proceeding by a preponderance of the evidence. See Department of Banking & Finance, Division of Securities & Investor Protection v. Osborne

Stern & Company, 670 So. 2d 932, 934 (Fla. 1966); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). In this case, the burden has not been met.

32. Section 402.310, Florida Statutes (2009), provides for denial, suspension, or revocation of a license based upon a violation of relevant statute. Subsection 402.310(1)(b), Florida Statutes (2009), provides as follows:

In determining the appropriate disciplinary action to be taken for a violation as provided in paragraph (a), the following factors shall be considered:

1. The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of ss. 402.301-402.319 have been violated.
2. Actions taken by the licensee or registrant to correct the violation or to remedy complaints.
3. Any previous violations of the licensee or registrant.

33. The evidence establishes that the Petitioner failed to comply with the terms of the settlement agreement under which the license had been initially suspended. The evidence further establishes that there were deficiencies revealed during an inspection conducted on June 16, 2009, that were sufficient to warrant denial of the Petitioner's application for renewal of the license.

34. Sections 435.04 and 435.05, Florida Statutes (2009), require specified employers to screen employees for criminal history. Florida Administrative Code Rule 65C-22.006 requires that the Petitioner make such information available to the Respondent. The purpose of the requirement is to protect the children attending the child care facility from potential harm by unsuitable employees. The Petitioner failed to comply with these requirements.

35. Florida Administrative Code Rule 65C-22.002 sets forth detailed requirements related to the physical environment of a child care facility. The rule specifically requires: that outdoor play areas include shade from the sun; that children be provided safe and sanitary bedding for naps and that floor mats be covered with an impermeable surface; and that all equipment in the facility be maintained in a safe condition. Florida Administrative Code Rule 65C-22.004 requires that a First-Aid kit, including a thermometer and other specified items, be maintained at the facility and further requires that medical supplies be located out of the reach of children. The general purpose of the requirements is to protect the health and safety of the children in the facility. The Petitioner failed to comply with these requirements.

36. At the hearing, the Petitioner admitted the deficiencies set forth herein, but opined that assistance should

have been provided so that she could operate the facility. The evidence established that such assistance was made available to the Petitioner, but that the deficiencies remained uncorrected.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petitioner's request to terminate the suspension of the child care facility license and for renewal of the license be denied.

DONE AND ENTERED this 1st day of December, 2009, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of December, 2009.

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.