

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 10-4441
)
HECTOR DIAZ AND ROSA VAZQUEZ,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on September 17, 2010, in Bartow, Florida, before Elizabeth W. McArthur, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stacy N. Robinson, Esquire
Department of Children and
Family Services
1055 Highway 17, North
Bartow, Florida 33830

For Respondents: Jeff Holmes, Esquire
470 West Davidson Street
Post Office Box 34
Bartow, Florida 33831

STATEMENT OF THE ISSUE

The issue in this case is whether Respondents' foster home license should be revoked pursuant to Section 409.175, Florida

Statutes (2009),¹ based on alleged violations of Florida Administrative Code Chapter 65C-13.

PRELIMINARY STATEMENT

By certified letter dated May 24, 2010, the Department of Children and Family Services (Department or Petitioner) advised Hector Diaz and Rosa Vazquez (Respondents) of the Department's intent to revoke Respondents' foster home license, based on several alleged violations of foster home licensing rules in Florida Administrative Code Chapter 65C-13.

Respondents timely requested an administrative hearing involving disputed issues of material fact to contest the proposed revocation. The matter was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the hearing requested by Respondents.

The final hearing was held in Bartow, Florida, on September 17, 2010. Petitioner presented the testimony of Donna Renna, Susan Ripley, Cynthia Lanning, Tamelia Thomas-Dickerson, Luzeneida Vigo, Kim Daugherty, and Maria Nistri. Petitioner's Exhibits A through J were received into evidence. Respondents testified on their own behalf with the assistance of Spanish-English Interpreter Lissette Corsa, who also provided translation assistance to Respondents throughout the hearing. In addition, Respondents presented the testimony of Rose Castillo. Respondents' Exhibit 10 was received into evidence.

The Transcript of the final hearing was filed on October 4, 2010. At the conclusion of the final hearing, the parties requested 15 days from the filing of the Transcript in which to file their proposed recommended orders, which was allowed by the undersigned. On October 19, 2010, Petitioner requested an extension of time until October 25, 2010, in which to file proposed recommended orders. Respondents did not object to the requested extension, which was granted. Petitioner timely filed its Proposed Recommended Order (incorrectly denominated Respondent's Proposed Recommended Order) and that submission has been considered in the preparation of this Recommended Order. Respondents did not file a proposed recommended order.

FINDINGS OF FACT

1. Respondents obtained a foster home license issued by Petitioner in 2008. This license authorized Respondents to receive and care for one or more foster children who would live in their home.

2. Petitioner is the state agency responsible for licensure of foster homes. Petitioner carries out its foster home licensing responsibilities working through local third-party providers called supervising agencies. In Respondents' area, Heartland for Children (Heartland) was the supervising agency that provided foster home licensing services, such as

training and inspecting for compliance with licensing requirements.

3. Petitioner is also responsible for foster children placed in its charge. Petitioner carries out its responsibilities related to foster children care, supervision, placement, and oversight working through third-party providers, including supervising agencies that are licensed as child placing agencies, like Heartland, and entities that contract with Heartland to provide certain services. In Respondents' area, Devereax is one of four providers contracting with Heartland to provide foster child case management services.

4. From early 2008 through November 2009, Cynthia Lanning, a re-licensing specialist working for Heartland, counseled Respondents and worked with them regarding licensing requirements for their foster home. During this time, Ms. Lanning was able to effectively communicate in English with Ms. Vazquez; Mr. Diaz did not speak English as well and was mostly absent when Ms. Lanning was at Respondents' home to work with Ms. Vazquez.

5. In approximately April or May 2008, Ms. Tamelia Thomas-Dickerson, a foster child case manager working for Devereax, began working with Respondents with regard to the placement of a foster child, J.G., in their custody. Ms. Thomas-Dickerson was in regular contact with Respondents

from the time of J.G.'s placement, when he was just a few months old, through June 2010, when J.G. was removed from Respondents' home by a circuit court order. Throughout this time, Ms. Thomas-Dickerson was able to effectively communicate with Ms. Vazquez in English; Mr. Diaz was mostly not present.

6. In June 2008, Respondents signed a bilateral service agreement required by the Department to identify the expectations for both foster parents and the Department (and its third-party providers) on behalf of the children in the foster care program. This bilateral service agreement is a Department form adopted as a rule, and it is in English. Respondents confirmed that they both read, understood, and signed this agreement, as is required by Department rule.

7. Foster home licenses are issued for one year at a time and must be renewed on an annual basis. Respondents' application for renewal of their license in 2009 was initially denied by the Department and lapsed on September 27, 2009. Respondents requested an administrative hearing to contest the denial of their renewal application, and by settlement agreement dated March 17, 2010, the Department agreed to issue a foster home license to Respondents, retroactively effective back to September 2009 and expiring on September 27, 2010. A condition imposed in the settlement agreement for renewal of Respondents'

license was that within 60 days of the agreement, Mr. Diaz was required to complete eight hours of training.

8. Before agreeing to renew Respondents' license pursuant to the settlement agreement, Maria Nistri, the Department's program administrator for the Central Florida region, visited Respondents' home to address concerns she had regarding confusion about the facts in the license application and apparent inconsistent responses given by Respondents to Heartland. Based on that meeting, Ms. Nistri decided to give Respondents another opportunity to renew their license.

9. One area of confusion was with respect to the household composition, including whether Mr. Diaz was living in the home or not, who was actually living in the home, what their employment status was, and other areas that were not clear. Ms. Nistri emphasized to Respondents at their March 2010 meeting that it was important to have an accurate understanding of the household composition and be able to address background screening issues.

10. The issue of household composition is important, because it dictates the potential scope of background screening requirements. Licensed caregivers like Respondents are required to notify the supervising agency (Heartland) of changes in the household composition, including not only new household members living there, but also "any individual expected to have

unsupervised contact with the foster child[.]" Fla. Admin. Code R. 65C-13.027(3)(c). That is because the supervising agency or the Department can require background screening for any individual reasonably believed to be a household member; any individual whose presence in the foster home may adversely affect the health, safety and welfare of children in the house; or any individual who has or may have unsupervised contact with the foster child. Fla. Admin. Code R. 65C-13.023(1).

11. Notwithstanding Ms. Nistri's willingness in March 2010 to give Respondents another chance by renewing their license, several issues came to the Department's attention over the next few months that led to the Department's issuance on May 24, 2010, of a Notice of Intent to revoke Respondents' foster home license. The Department's Notice of Intent to revoke Respondents' foster home license was based on a determination that Respondents violated licensing rules in three specific ways. First, the Department alleged that Respondents violated Florida Administrative Code Rule 65C-13.025(5)(d)2., because Ms. Vazquez altered the dates on the home's fire extinguisher inspection certificate, and upon verification with the fire extinguisher inspection company, it was determined that Respondents failed to renew the fire extinguisher inspection certificate. Second, the Department alleged that during a home visit on April 30, 2010, it was discovered that one of

Ms. Vazquez's adult children was either residing in Respondents' home or may have had unsupervised contact with children in the home without undergoing the required background screening, in violation of Florida Administrative Code Rule 65C-13.023(1)(c) and (2). Third, the Department alleged that Mr. Diaz did not satisfy the required annual training hours for re-licensure and imposed as an obligation of the recent settlement agreement with the Department to renew Respondents' license, in violation of Florida Administrative Code Rule 65C-13.028(4)(f).

Fire Extinguisher Certificate

12. As part of the license renewal documentation process, on January 27, 2010, Ms. Vazquez sent a fire extinguisher certification report to the Department. This document was dated "02/05/010," and upon close examination, the date appears to be altered. The evidence established that Ms. Vazquez altered the date on an old fire extinguisher certificate dated February 5, 2007, to make the certificate appear to be dated February 5, 2010. She provided this altered certificate to the Department, intending that the altered certificate be accepted to show compliance with the renewal requirement. This was a misrepresentation, and a falsification of a document.

13. Although Petitioner alleged in its May 24, 2010, letter that the fire extinguisher certificate was not timely renewed, the evidence showed that it was timely renewed, but the

updated certificate was lost. Thus, most significant in terms of the safety of the foster child under Respondents' care at the time, Respondents established the underlying facts intended to be evidenced by the certificate--that the fire extinguisher had been timely checked and was operational at all times.

14. Ms. Vazquez admitted that she should not have altered the date on the fire extinguisher certificate, but, instead, should have explained honestly to the Department that she, in fact, had the fire extinguisher checked, but was unable to locate the certificate. She acknowledged that she should have requested additional time to obtain a replacement certificate and/or obtain verification from the company that performed the inspection and issued the updated certificate that it had, in fact, done so.

15. Ms. Vazquez explained her bad judgment as a lapse because of her panic when pressed for documentation that she could not find and/or because of her inability to communicate well enough in English. Although Ms. Vazquez acknowledged altering the date on the fire extinguisher certificate and submitting the document to the Department for the purpose of misrepresenting the document as the current certificate, Ms. Vazquez refused to acknowledge that she had falsified the document and would only say that she made a mistake.

16. Ms. Vazquez testified that she understood her obligations under the bilateral service agreement, including the requirement that she must not falsify any document that is submitted to the Department for the Department to rely on.

Violation of Background Screening Requirements

17. On April 30, 2010, Ms. Thomas-Dickerson, the case manager, visited Respondents' home in the early morning, at 7:45 a.m., to conduct a home visit and check on J.G. Ms. Vazquez was there, but Mr. Diaz was not, having left early to go to work. Home visits are intended to assess a wide variety of compliance issues and requirements, such as who is present, the physical appearance of the foster child and whether the child is dressed appropriately, the quantity and condition of furnishings and play equipment inside and outside, maintenance of areas inside and outside of the home, the presence of any safety hazards, such as exposed wires or chemicals, the presence of age-appropriate toys, the sufficiency of food, and whether alcohol is present or accessible in the refrigerator, among other considerations. The case manager prepares a "chronological notes report" during these home visits, taking detailed notes of what is observed. For example, Ms. Thomas-Dickerson's notes from the April 30, 2010, visit include this observation: "The yard was properly maintained, but the grass could be mowed" The notes are then

reviewed with the foster parents before leaving to ensure they agree with what transpired. Those notes are entered into an electronic database, usually later that same day.

18. Because it had been awhile since Ms. Thomas-Dickerson had inspected Respondents' garage, at the April 30, 2010, home visit, she asked Ms. Vazquez to let her inside. Ms. Vazquez was reluctant at first, but opened the door and turned on the light. Ms. Thomas-Dickerson first saw an older model car that she knew occupied part of the garage because she had talked to Ms. Vazquez about it before. Ms. Thomas-Dickerson commented that she saw Ms. Vazquez still had her car, and Ms. Vazquez said, "Yes" and turned the light out. Ms. Thomas-Dickerson told Ms. Vazquez to turn the light back on because she (Ms. Thomas-Dickerson) needed to look inside.

19. Ms. Thomas-Dickerson started walking into the garage and heard a fan. She walked down and around to the other side of the car and saw the fan that she had heard. She also saw food sitting on top of a deep freezer and a television next to a full-size bed made up with maroon sheets and a multi-color comforter. She was startled then, because the comforter moved. She yelled out to Ms. Vazquez, "Someone's in here." Ms. Vazquez said, "No." Ms. Thomas-Dickerson said again, "No, somebody's in here." Ms. Vazquez said, "No," again. Then Ms. Thomas-Dickerson went back to where Ms. Vazquez stood in the doorway,

grabbed her hand, walked her over to the bed and pointed, "Somebody is under there." Ms. Vazquez then said that it may be her son, who sometimes comes there when he and his wife "get into it."

20. Ms. Vazquez then started yelling at her son, who did not respond until Ms. Vazquez pulled the cover from over his head; he then said, "What, Ma?" Ms. Vazquez said to him, "You're not supposed to be here, you know you're not supposed to be here, you need to leave now."

21. Ms. Thomas-Dickerson and Ms. Vazquez went back into the house where Ms. Thomas-Dickerson told Ms. Vazquez that it looked like a living arrangement set up in the garage and that her son was living there. Ms. Vazquez responded, "No, no, no, he don't live here, I don't want to get in trouble with the homeowner's association, he don't live here." Ms. Thomas-Dickerson told her that he could live there as long as went through background screening first and was approved.

22. Ms. Thomas-Dickerson followed the procedure of documenting everything she observed during this home visit, including the surprise garage encounter, and before leaving, she read her contemporaneous notes to Ms. Vazquez, who agreed they were accurate.

23. Ms. Thomas-Dickerson also followed procedure to notify her supervisor and the program director of the surprise garage

encounter.² The next day, Ms. Thomas-Dickerson's supervisor showed her photos from which she was able to identify Ms. Vazquez's son who she saw in the garage.

24. Ms. Vazquez has two sons and a daughter. When the Department program administrator, Ms. Nistri, met with Respondents in March 2010, one issue she sought to clarify was the location of Ms. Vazquez's children. Ms. Vazquez could only say where her daughter was. She did not know where her son Johnny was, and her other son Felix either was incarcerated for a felony cannabis possession conviction or had just been released.

25. From Ms. Thomas-Dickerson's photo identification of the son she saw in Respondents' garage, Ms. Nistri thought that the son in the garage was Felix. Ms. Vazquez admitted at the final hearing that she may have told someone that Felix was the son found in the garage, but that she was just nervous.

26. Ms. Thomas-Dickerson returned two more times to Respondents' home. The first time was on May 7, 2010, to conduct another home visit. She checked the garage again and found that no one was there, and it had been cleaned out. In particular, the items indicating a living arrangement were all removed, including the bed, television, and fan. Ms. Thomas-Dickerson described this home visit as different; previously, she thought she had always had a good rapport with

Ms. Vazquez, but this time, Ms. Vazquez was not receptive. When Ms. Thomas-Dickerson asked Ms. Vazquez what was wrong, Ms. Vazquez responded that her attorney told her that if the Department is coming in looking for things, look at the social worker, as if to suggest Ms. Thomas-Dickerson was causing problems.

27. Ms. Thomas-Dickerson went to Respondents' home again on May 20, 2010, on her day off, because she had received a notice about a hearing in circuit court scheduled for June 1, 2010, on the Department's motion to modify the custody order on J.G. to remove him from Respondents' home. Ms. Thomas-Dickerson had asked her supervisor about whether the Respondents knew of the hearing and was told that their attorney was supposed to notify them. But since she was not too far from Respondents' home, she went there as a courtesy to make sure that Respondents were aware of the hearing.

28. Ms. Thomas-Dickerson testified that Ms. Vazquez was home and did not know about the hearing, because she got very upset, asking what was the purpose of the hearing. Ms. Thomas-Dickerson told her that she thought it was because Ms. Vazquez had been inconsistent with her stories, apparently telling someone at Heartland that her son Johnny was the one in the garage on April 30, 2010, because he was doing yard work. Ms. Thomas-Dickerson reminded Ms. Vazquez that that is not what

Ms. Vazquez had told her that day; she had said nothing about yard work, and, in fact, her yard had not even been cut that morning.

29. Ms. Vazquez started getting very emotional, holding her chest and saying that Ms. Thomas-Dickerson was going to kill her. Ms. Thomas-Dickerson asked if she needed her to call an ambulance, and she said, "No." But then for the first time since Ms. Thomas-Dickerson had been the case manager (since 2008), Ms. Vazquez said that she needed an interpreter. Ms. Thomas-Dickerson was surprised, but agreed and contacted a co-worker, Luz, who had translated before in the office. Luz got on the phone, and Ms. Vazquez also called Mr. Diaz on another phone; they went over everything again about the hearing with Luz translating to Ms. Vazquez and, then, Ms. Vazquez translating it to Mr. Diaz. Ms. Vazquez told Ms. Thomas-Dickerson that she could "fix it" if she just changed her story to say that Ms. Vazquez did tell her on April 30, 2010, that her son was there for yard work.

30. After they all hung up, Ms. Vazquez apologized to Ms. Thomas-Dickerson, but then said she never told Ms. Thomas-Dickerson that her son was in the garage because of his wife--that Ms. Vazquez's son told Ms. Thomas-Dickerson that. But Ms. Thomas-Dickerson never talked to Ms. Vazquez's son.

31. Both Ms. Vazquez and her daughter testified at the final hearing that, in fact, the son found in the garage on April 30, 2010, was Johnny, and not Felix. According to their testimony, Johnny is unmarried and lives with Ms. Vazquez's daughter. On April 30, 2010, Ms. Vazquez's daughter brought Ms. Vazquez's son Johnny to her house, along with two children that Ms. Vazquez babysits. Johnny came over that day to mow the lawn. Johnny had cleaned up the front part of the yard, then he went into the garage. However, Ms. Vazquez testified that the fact that Johnny went into the garage did not mean he was living there because there was no place in the garage to sleep, just a lot of items accumulated for yard sales.

32. Ms. Vazquez testified Johnny "always" comes to her house to mow the grass and help out with other chores. He has access to the garage, and he has access to the rest of the house as well. While Ms. Vazquez acknowledged that Johnny is a very frequent visitor, she said that he does not spend the night because she did not have a bedroom for him. If she had a bedroom for him, she would let him stay because he is her son.

33. When asked how her son got in and out of her home, Ms. Vazquez responded that she opened the door for him in the back. When asked how he got in the garage, Ms. Vazquez said that she opened the door. When asked to explain why she said no one was in the garage, Ms. Vazquez said that she did not know he

was in the garage, even though she had opened the door to let him in the garage. When asked to explain why she yelled at her son that he was not supposed to be there on April 30, 2010, Ms. Vazquez explained that it was because Ms. Thomas-Dickerson frightened her.

34. Ms. Vazquez did not testify about her son Felix's whereabouts. However, her daughter testified that Felix lives up north in Worcester, Massachusetts, with his live-in girlfriend and daughter. Before his incarceration in Polk County, he lived with his girlfriend in an apartment nearby, but went up north after his release.

35. The testimony of Ms. Vazquez and her daughter on the subject of the surprise garage encounter was not credible. Ms. Thomas-Dickerson's account was credible and corroborated by her contemporaneous notes that she said were read to Ms. Vazquez who agreed at the time that they were accurate. Ms. Vazquez acted suspiciously and evasively when asked to inspect the garage, as if she knew there was something to hide in there. And the inconsistencies in her stories since that time confirm that she is trying to hide something.

36. Regardless of whether it was Ms. Vazquez's son Felix in the garage on April 30, 2010, as Ms. Vazquez "may" have told someone because she was nervous, or whether it was her son Johnny, neither one of her sons have undergone background

screening. The greater weight of the more credible evidence is that someone who has not undergone background screening was permitted to sleep in the garage, in a bed that someone had made up with sheets and a comforter, with most of the comforts of home--fan, television, and food--right at hand.

37. The greater weight of the more credible evidence provided the Department and its supervising agency with a reasonable belief that someone may have become a member of the household or that someone has or may have unsupervised contact with the foster child, such that the Department or its supervising agency could insist on background screening.

Mr. Diaz's Failure to Complete Required Training

38. A condition of the settlement agreement between Petitioner and Respondents for the renewal of Respondents' foster home license was as follows: "Within sixty (60) days from the date the last party signs this agreement, Hector Diaz shall complete eight (8) hours of training." The settlement agreement was last signed on March 17, 2010, making May 16, 2010, the deadline for Mr. Diaz to complete the required training.

39. A certificate of completion confirmed that Hector Diaz and Rosa Vazquez received one hour of training in a Department-sponsored course called "Foundations of Practice: Introduction to Case Management for Children Receiving Psychotropic

Medications Training" on June 8, 2010. However, that training was completed after the deadline required by the settlement agreement.

40. At the final hearing, Respondents offered into evidence a printed page from a foster care online training program, appearing to indicate that someone signing on as Hector Diaz took 11 different training segments and successfully completed eight of them, for a total of 11 credit hours, on March 21, 2010. The timing of this apparent training was within the 60 days required by the settlement agreement.

41. However, Mr. Diaz testified at the final hearing that he completed these training programs with someone else's help, "because of the language." Mr. Diaz did not specify whether he received "help" only in translation or whether he received substantive aid.

42. The document offered into evidence was altered, with the street number in the address shown for Mr. Diaz whited-out and a different number handwritten over the white-out. Mr. Diaz admitted that he altered the document to white-out and hand-write in the street address because he put in the wrong address when he signed up. However, he also testified that he took this online test at someone else's house, presumably the person who helped him with the training programs.

43. These anomalies raise questions concerning whether Mr. Diaz himself actually completed the indicated training courses or whether someone else may have completed the training courses or provided substantive aid to Mr. Diaz such that he should not be credited with having completed the courses. Based on these anomalies, the Department's representative reasonably testified that additional verification was in order before Mr. Diaz could be given credit for having personally completed at least eight hours of training as required by the settlement agreement.

CONCLUSIONS OF LAW

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

45. Pursuant to Subsection 409.175(2)(f), Florida Statutes, a family foster home license is a "license" as defined in the Administrative Procedure Act. But the statute goes on to describe unique attributes of this particular kind of license:

A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any

administrative proceeding or court action initiated by the department.

§ 409.175(2)(f), Fla. Stat.

46. In this license revocation proceeding, the general procedures in the Administrative Procedure Act pertaining to revocation of licenses are applicable and were followed. A letter, which serves as the administrative complaint for purposes of this proceeding,³ was sent by certified mail to Respondents advising of the Department's intent to revoke their license. The letter set forth the statutes and rules alleged to have been violated and the facts or conduct relied on to establish the violation.

47. While in proceedings to revoke a professional license that constitutes a property right, the licensing agency would be held to a higher burden of proving the allegations by "clear and convincing evidence"; the unique attributes of a family foster home license as a public trust and a privilege means that a correspondingly lower burden of proof applies in this license revocation proceeding. Haines v. Department of Children and Families, 983 So. 2d 602, 603 (Fla. 5th DCA 2008). In accordance with this authority, the Department has the burden of proving the allegations set forth in its May 24, 2010, letter by a preponderance of the evidence. Id.

48. The Department failed to meet its burden of proving the charged violation with respect to the fire extinguisher certificate. The May 24, 2010, letter charged Respondents with a violation of Florida Administrative Code Rule 65C-13.025(5)(d)2., which requires for the initial licensing home study that there be verification of operating fire extinguishers with current tags. The initial licensing home study was not at issue, but at the final hearing, Respondents submitted verification that the fire extinguisher was operational at all times and the certificate was, in fact, current.

49. Although the May 24, 2010, letter also alleges that the fire extinguisher certificate was altered, the Department failed to charge Respondents with any statutory or rule violation based on that factual allegation. The Department met its burden of proving factually that Respondents submitted an altered fire extinguisher certificate, that Ms. Vazquez falsified the document with the purpose and intent of having the Department rely on the falsified document, and that this act violated the bilateral agreement. But the Department did not set forth in its charging document the corresponding statutory or rule provisions that were violated by these facts.

50. The Department met its burden of proving by a preponderance of the more credible evidence the charge that

Respondents violated Florida Administrative Code Rule 65C-13.023(1)(c) and (2), setting forth background screening requirements. The circumstances surrounding the surprise garage encounter provided the Department with the reasonable belief that the son awakened in the garage on April 30, 2010, if not an actual household member, at least may have unsupervised contact with the foster child. As such, under the charged rule, the Department could reasonably require background screening of that person to show that that person has "good moral character" as defined in the background screening law and would not be disqualified from being present in the home where unsupervised contact with the foster child may occur.

51. As stated in the charged rule, "Failure to comply with any requirement for good moral character and background screening as described in this rule may be grounds for denial, suspension or revocation of an application or license." Thus, this charged and proven violation is sufficient grounds to revoke Respondents' foster home license.

52. While there is no clear, direct evidence that the garage dweller was, in fact, Ms. Vazquez's son Felix, who was a convicted felon and who would not have been approved if he had undergone background screening, the circumstantial evidence is extremely suspicious. It is particularly troubling that holders of a license designated by law to be a "privilege" and a "public

trust" would breach that public trust by being less than forthright and candid with the case managers and other Department representatives trying to work as a partnership with foster parents.

53. As to the third charged violation, the Department met its burden of proving that Mr. Diaz failed to satisfy one of the terms of Respondents' settlement agreement with the Department that resulted in the renewal of their foster home license. Mr. Diaz did not provide sufficient credible evidence that he, personally, completed eight hours of training. However, the May 24, 2010, letter relies on this factual predicate to charge a violation of Florida Administrative Code Rule 65C-13.028(4)(f), which requires verification of eight hours of training as a prerequisite to renewal of a license. Respondents' license has already been renewed. While arguably the settlement agreement's condition operated as an extension or grace period afforded to Mr. Diaz to catch up his training hours after-the fact, the settlement agreement fails to provide that the Department may revoke the renewed license if that condition is not fulfilled.

54. Respondents did not serve themselves well by not being open and candid, by the inconsistent stories they offered, by Ms. Vazquez invoking the language barrier only after the inconsistencies in her stories became apparent, and by now

raising clear doubt in the Department regarding whether Respondents should have ever been qualified as foster parents without one of them being able to read and understand English well enough to understand the forms they are required to read and sign, such as the bilateral service agreement. See Fla. Admin. Code R. 65C-13.025(3)(b) (requiring prospective foster caregivers to have read, completed, and signed all documentation required for licensing, including among many other documents, the bilateral services agreement).

55. It is apparent that at least for the time period detailed in this proceeding, Respondents did not act as if they understood that the license they held was a privilege and a public trust. For example, Ms. Vazquez attempted to excuse her inappropriate act of falsifying the fire extinguisher certificate by explaining that she panicked because she was being pressed for documentation. This explanation gives no comfort or assurance that she will not view future requests for needed documentation as similar threats and react the same way. It is very troubling that Ms. Vazquez still does not realize how wrong it was and how troubling it is that her reaction was to alter the document and turn it in to the Department. This is not the reaction of someone carrying out the public trust and working in partnership with the Department representatives. She should not be panicking when pressed for documentation; she

should candidly explain why she cannot provide what is requested. This is not just a mistake, it is an acknowledgment that Ms. Vazquez does not accept her obligation to always be candid with Department representatives.

56. Similarly, this same impression is left by the circumstances surrounding the charged and proven violation. Ms. Vazquez tried to explain why she yelled at her son that he was not supposed to be sleeping in the garage, saying that Ms. Thomas-Dickerson scared her. Ms. Vazquez told Ms. Thomas-Dickerson that her son came to the garage to sleep sometimes when he and his wife "got into it," and yet it seems from the evidence that neither of her sons had a wife. Further, Ms. Vazquez admitted that she may have told someone that the son in the garage was Felix, the convicted felon, out of nervousness. Even if Ms. Vazquez honestly felt scared and nervous, that does not excuse her lying to the foster child case manager and/or lying to others by telling them different stories.

57. Respondents' actions make clear that they do not understand or accept the depth of their responsibilities as the caregivers of a licensed foster home or the depth of the Department's oversight responsibilities. As just one final example of how Respondents did not act as if they were holders of a license that is a privilege and a public trust, Ms. Vazquez

testified that she came to believe that her case manager, Ms. Thomas-Dickerson, was causing problems and acting inappropriately while conducting her home visits. As an example of what Ms. Vazquez believed was inappropriate conduct, Ms. Vazquez described how Ms. Thomas-Dickerson asked for permission to look into Ms. Vazquez's refrigerator every time she did a home visit. Ms. Vazquez did not think that was necessary or appropriate, even after it was suggested to her that it was part of the case manager's responsibility to ensure that there was adequate and appropriate food for the foster child and that there were no inappropriate items accessible to the child (such as beer). In fact, this is precisely the sort of finding summarized in Ms. Thomas-Dickerson's home visit notes. As foster parents, Respondents were allocated public monies to be used to properly feed, clothe, and care for the foster child while he was in their custody. It is inexplicable that foster parents would consider a home visit to be intrusive and improper simply because the case manager always checks for signs that the foster parents are carrying out their responsibilities and properly using the public funds allocated to them.

58. While these circumstances are not an independent basis for finding a charged violation, they are considered as bearing on the appropriate penalty to recommend for the charged and

proven violation. Under these circumstances, the Department should exercise its discretion to revoke Respondents' foster home license for violating Florida Administrative Code Rule 65C-13.023(1)(c) and (2).

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Department of Children and Family Services, finding that Respondents, Hector Diaz and Rosa Vazquez, violated Florida Administrative Code Rule 65C-13.023(1)(c) and (2); and revoking Respondents' foster home license as the penalty for such violation.

DONE AND ENTERED this 30th day of November, 2010, in Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of November, 2010.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2009 version.

^{2/} See Florida Administrative Code Rule 65C-13.027(1)(d), addressing changes during the licensed year, and providing as follows: "All . . . case managers . . . who frequent the household are responsible for immediately notifying the supervising agency . . . of . . . a change in household composition[.] The supervising agency shall notify the lead agency and licensing authority [the Department] within 24 hours of learning of . . . a change in household composition[.]"

^{3/} See Fla. Admin. Code R. 28-106.2015(1) ("Prior to the entry of a final order to suspend, revoke, or withdraw a license, to impose administrative fines, or to take other enforcement or disciplinary action against a licensee . . ., the agency shall serve upon the licensee an administrative complaint. For purposes of this rule, an agency pleading or communication that seeks to exercise an agency's enforcement authority and to take any kind of disciplinary action against a licensee or other person shall be deemed an administrative complaint.").

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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.