

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN )  
AND FAMILY SERVICES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-5049  
 )  
EDUCATIONAL CHILD )  
CARE CENTER, INC., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 11 and 12, February 3, and March 3, 2011, in Gainesville, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Lucy Goddard-Teel, Esquire  
Department of Children  
and Family Services  
Post Office Box 390, Mail Sort 3  
Gainesville, Florida 32602-0390

For Respondent: Matthew Wells, Esquire  
304 South Albany Avenue  
Tampa, Florida 33606

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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Respondent committed the violations as alleged in the Second Amended Administrative Complaint and, if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

On June 2, 2010, the Department of Children and Family Services (Department) issued an Administrative Complaint to Respondent, Educational Child Care Center (hereinafter ECCC or the Center) seeking to impose an administrative fine for alleged violations of section 402.305(4)(a), Florida Statutes (2010), and Florida Administrative Code Rule 65C-22.001(4), for failure to maintain proper staff-to-children ratio. ECCC disputed the allegations of the Administrative Complaint and requested an administrative hearing. The Department forwarded the request for a hearing to the Division of Administrative Hearings on or about July 12, 2010, and the case was assigned to Administrative Law Judge Charles Stampelos. The final hearing was set for October 15, 2010.

The Department filed a Motion for Leave to File Amended Administrative Complaint, which was granted. The Amended Administrative Complaint, in addition to seeking to impose multiple administrative fines, sought to revoke Respondent's license for multiple violations of failure to maintain proper

staff to child ratio, and other violations including violations of Florida Administrative Code Rules 65C-22.001(5), (6) (d) and (11) (a) regarding failure to adequately supervise a child in its care; transporting more than the maximum allowed individuals in the Center's van; unauthorized administration of medication; and two additional staff-to-children ratio violations.

On November 4, 2010, the case was transferred to the undersigned. On November 29, 2010, the Department issued an Emergency Suspension Order and filed a Motion for Leave to File Second Amended Administrative Complaint. The motion to amend was granted and the Second Amended Administrative Complaint alleged several additional violations: improper child discipline; inadequate staff-to-children ratio; and violations of personnel requirements. Due to the multiple amendments to the Administrative Complaint, motions for continuance were granted, and the case proceeded on the Second Amended Administrative Complaint, which sought to impose an administrative fine of \$3,045.00 and the revocation of ECCC's license.

At hearing, the Department presented the testimony of 16, including rebuttal, witnesses. The Department's Exhibits numbered 1 through 7 were admitted into evidence. A ruling was reserved on Exhibits numbered 8 and 9. Upon consideration, Exhibits 8 and 9 are rejected. Respondent presented the

testimony of nine witnesses. Respondent's Exhibit numbered 1 was admitted into evidence.

At the conclusion of the presentation of evidence, the Department made an ore tenus motion to conform the pleadings to the evidence, asserting that the evidence presented established that additional violations were committed. The motion was denied. See Pilla v. The School Board of Dade County, 655 So. 2d 1312 (Fla. 3d DCA 1995).

A four-volume Transcript was filed on April 19, 2011. The parties requested and were allowed 30 days following the filing of the transcript to file proposed recommended orders. A motion for Extension of Time was filed and granted. Subsequently, Respondent filed another unopposed Motion for Leave to File Out of Time, due to computer problems. The motion was granted. The parties filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

All references to statutes are to Florida Statutes (2010) unless otherwise noted.

#### FINDINGS OF FACT

1. The Department of Children and Family Services is the agency charged with the responsibility of licensing child care facilities in the State of Florida. § 402.305, Fla. Stat.

2. Respondent was licensed by the Department to operate a child care facility located in Gainesville, Florida.

3. Joyce Vinson is the owner/director of ECCC, and has been since it opened in 2001. Ms. Vinson operated a home daycare for approximately five years prior to opening ECCC.

Inadequate supervision--W.G. left behind<sup>1/</sup>

4. The Second Amended Administrative Complaint charged Respondent with inadequate supervision of a child in violation of Florida Administrative Code Rule 65C-22.2011(5).

Specifically, the complaint alleges as follows:

On July 22, 2010, staff members, F.S. and V.L., left a 7 year old disabled child, W.G., behind on a field trip to Duval Elementary. Staff with another provider found the child-who was unable to speak and identify himself-in a field behind the school. Law enforcement was called and the child was later picked up by his parents.

5. Andi Lybrand is the training and curriculum coordinator for the Early Learning Coalition of Alachua County. Ms. Lybrand visited ECCC to observe curriculum and helped coordinate events.

6. Ms. Lybrand organized an event (a play) that was held at Duval Elementary (Duval), to which children from day care centers were invited.

7. Following the performance, a teacher from another facility brought a boy, W.G., into the cafeteria. The boy was found alone in a grassy area behind the cafeteria. He appeared to be upset. W.G. is a child with a disability. Ms. Lybrand placed a 911 call.

8. While this was happening, the van carrying some of the ECCC children began the trip back to the center. Shortly after the van left Duval Elementary, an employee of ECCC, Felita Sallet, performed a head count, and realized that one of the Center's children, W.G., was not on the van. The van then immediately returned to Duval Elementary. A young woman who was an ECCC volunteer was sent into the building to retrieve W.G.

9. Shortly thereafter, an ECCC employee, Vanessa Latson, appeared and advised that she was there to pick up W.G. However, the law enforcement officer who responded to the 911 call would not release W.G. to the volunteer or to Ms. Latson, but would only release the child to a parent.

10. Ms. Vinson then received a call from the school principal, and returned to the school.

11. W.G.'s mother, who did not testify, was notified of the situation and went to Duval to pick up her child. Ms. Vinson and W.G.'s mother left Duval together with W.G. in the mother's car. W.G.'s mother returned W.G. to ECCC for the rest of the day. Up until such time as ECCC was closed due to the Emergency Suspension Order, W.G. remained enrolled at ECCC. The Department's family services licensing counselor, Neshma Cruz-Gil, was advised by W.G.'s mother that she had no concerns for W.G.'s safety while in the care of ECCC.

12. Alice Engram-Hammed, a child protection investigator, investigated this incident and verified findings of inadequate supervision.

Transportation violation

13. Ms. Cruz-Gil went to ECCC on July 22, 2010, to further investigate the inadequate supervision allegation set forth above. While there, she cited ECCC with additional violations, including that of transporting more passengers on the ECCC van than the designed capacity. Specifically, the Second Amended Administrative Complaint alleged that on July 22, 2010, two ECCC employees transported 18 individuals (2 adults and 16 children) in a van with a maximum capacity of 15 passengers.

14. This allegation was based upon a determination made by Ms. Cruz-Gil when she arrived at ECCC following the Duval incident. As a family services counselor, Ms. Cruz-Gil is responsible for inspecting child care facilities and family child care homes. ECCC was one of the child care facilities that she inspected.

15. Ms. Cruz-Gil examined a field trip log and interviewed ECCC staff in making her determination that too many people were on the van. The field trip log lists 15 children's names. As there were two staff members and a volunteer on the trip, Ms. Cruz-Gil concluded that there were 18 persons on a van with only 15 seat belts.

16. However, according to Ms. Vinson, the field trip log was not a list of those riding on the van, but of those who attended the play. Three children were transported by car. This was verified by Ms. Sallet, who was on the van for the Duval fieldtrip, and who is "one hundred percent sure" that all of the children riding in the van were properly restrained and secured with seat belts. Ms. Sallet's testimony in this regard is credible and is accepted as fact.

Inadequate supervision- May 17, July 22, and July 30, 2010

17. The Second Amended Administrative Complaint alleges that on July 30, 2010, the Department's licensing counselor observed W.G. in a classroom alone without adult supervision, using a computer; that the same violation occurred on July 22, 2010 (W.G. alone using a computer in classroom unsupervised); and that on May 17, 2010, O.K. was observed alone and unsupervised in a classroom.

18. On May 17, 2010, Sabrina Roper, a speech language pathologist employed by Fundamental Therapy Solutions, Inc. (FTS), was at ECCC along with a speech assistant from FTS. Ms. Roper described Ms. Vinson as very receptive to FTS coming to ECCC to provide speech therapy to those children attending ECCC who were in need of that service, and as an advocate for the children.



19. Ms. Cruz-Gil made a routine inspection of ECCC while Ms. Roper and the speech assistant were there. Ms. Cruz-Gil observed the speech assistant get up and leave the room, leaving the child who was receiving speech services in the room alone. Ms. Roper observed the speech assistant enter the room where Ms. Roper was working to collect materials to use while providing therapy to the child. Ms. Roper described the time the other therapist was in the room with her as "not long."

20. On July 22, 2010, when arriving at ECCC to investigate the Duval incident, Ms. Cruz-Gil observed W.G. alone in a room working on the computer (the "computer room"). She saw the same student alone working on the computer again on July 30, 2010, resulting in citations for this violation on those two dates.

21. Ms. Vinson, however, maintains that she was supervising W.G. in the computer room, that she got up to answer the door when Ms. Cruz-Gil knocked to enter; that the computer room is five feet away from the front door; and that W.G. was only alone in the computer room during the short time it took for her to open the door for Ms. Cruz-Gil. Ms. Vinson added that she did not have a floater that day.

Unauthorized administration of medication

22. The Second Amended Administrative Complaint charged Respondent with the following:

On or about late June through early July 2010, without parental consent, Respondent's owner and director, J.V., deliberately administered Ex-Lax to a four-year-old child, J.P., making him sick. . . . On or about March through June 2010, the Respondent's owner and director, J.V., deliberately administered Benadryl to infants.

23. These charges were based on allegations made by two former employees of ECCC, Angela Holmes and Caroline Rossman.

24. Angela Holmes works as a teacher's aide at Alachua Academy Juvenile Detention Center. She was previously employed at ECCC from March 1 to June 4, 2010. Ms. Holmes accused Ms. Vinson of a litany of inappropriate actions including giving babies Benadryl to make them sleep. Ms. Holmes alleged that Ms. Vinson sent her to the store with money to purchase liquid Benadryl; that Ms. Vinson kept the Benadryl in her drawer; that she saw Ms. Vinson gave it to infants in the baby room to make them sleep on at least five occasions; and that no one else was in the room when this happened. Ms. Holmes' recollection as to when this happened during her short tenure with ECCC was uncertain and imprecise. Ms. Holmes did not report this to anyone until about two months after she left employment at ECCC.

25. Another of the many inappropriate actions alleged by Ms. Holmes to have been committed by Ms. Vinson involved the unauthorized administration of Ex-Lax to a child. According to Ms. Holmes, Ms. Vinson sent Carolyn Rossman, another former

employee of ECCC, to purchase Ex-Lax; that Ms. Vinson asked Ms. Holmes to give Ex-Lax to the child; that Ms. Holmes refused; and that she observed Ms. Vinson give the child Ex-Lax.

26. Caroline Rossman worked at ECCC for a few months, primarily in the infant room. Ms. Rossman was uncertain as to when her employment started and ended. Ms. Rossman testified that Ms. Vinson gave her money to purchase Ex-Lax at the store, and that afterwards, she witnessed Ms. Vinson give the Ex-Lax to a child, JoP. Ms. Rossman was uncertain as to where in the daycare facility this occurred, but described it as "up front." Ms. Rossman was also uncertain as to when this happened during her employment. Generally, Ms. Rossman's testimony was confused as to the facts, imprecise, and not distinctly remembered.

27. Raellen Hale is the mother of JoP and JaP, who attended ECCC for a few months in 2010. According to Ms. Hale, JoP has been diagnosed with global disability disorder, which affects his motor skills, including his bowel and bladder continence. JoP was four years old during the time he attended ECCC.

28. During the last month JoP attended ECCC (May 2010), JoP complained to his mother that his "bottom" and his stomach were hurting, to a point that Ms. Hale took JoP to the doctor. During this period of time, Ms. Hale recalls that Ms. Vinson would call her "where it seemed like every Friday at exactly

12:00" telling her to pick up JoP because he had diarrhea. According to Ms. Hale, JoP's frequent bouts with diarrhea stopped when he stopped attending ECCC.

29. The attendance records, however, reflect no attendance on two consecutive Fridays in May for Ms. Hale's two children. On the other two Fridays in May, Ms. Hale signed JoP out once, and JoP's uncle or father signed him out the other Friday. The attendance records for May 2010 reflect that on the Fridays in May on which her children attended, they were signed out mid-to-late afternoon. According to Ms. Hale, she was not always able to pick up her children right after being called. The records reflect, however, that she only signed her children out of ECCC one Friday in May.

30. Several employees of ECCC who testified describe ECCC in an entirely different light than these, and other related, alleged events.

31. Frewoini Ghevrghergish (referred to by all as "Ms. Frewoini") is employed by ECCC and has been so employed for 10 years, primarily in the toddler room.<sup>2/</sup> In addition to working there for 10 years, all four of her children attended ECCC at various ages. Ms. Frewoini never witnessed Ex-Lax or Benadryl administered by Ms. Vinson or by any other staff member. On the contrary, Ms. Frewoini described a procedure that was followed before a child received medication. That is,

a parent was required to sign a medication authorization form containing information as to when and how much of a medicine was to be administered. "If they don't sign, we don't give them."

32. Felita Sallet was employed by ECCC from 2008 until it closed in November 2010. Her daughter, who was one-year old in 2008, attended ECCC during that time. Ms. Sallet never had concerns regarding her daughter's care while at ECCC.

33. Ms. Sallet never saw an employee, including Ms. Vinson, give any medication to any child without proper authorization; never heard Ms. Vinson discuss improperly medicating children with Benadryl or Ex-Lax; and noted that giving a child Ex-Lax was counter-productive since the staff is responsible for changing a child that soiled his or her clothes.

34. Irma Hall is a 23-year retired Alachua County School Board employee, who was a Head Start teacher for the school district. She was a volunteer pre-kindergarten (VPK) teacher at ECCC in 2010. Ms. Hall was never asked by Ms. Vinson to give a child medication, nor did she hear of anyone else being asked to do so.

35. Tameka Williams worked at ECCC from June 2010 until the fall of 2010. She was never asked, nor did Ms. Williams hear Ms. Vinson ask anyone else, to improperly medicate any child at ECCC. Ms. Williams never saw any ECCC employee improperly administer any medication to any child at ECCC.

36. Ms. Elise Stewart was employed at ECCC at various times. However, she was not employed at ECCC in the spring of 2010. During the times she was employed there, she never witnessed any employee of ECCC, including Ms. Vinson, give any child Benadryl or any other medication without authorization from the child's parents.

37. Joyce Vinson described the procedure used at ECCC to administer medication to children. The center has medication forms which must be signed by the parent before medication will be administered to any child. Ms. Vinson denied that she ever asked an employee to go to the store to purchase medication; denied ever giving any child any medication without having written parental authorization, including Ex-Lax or Benadryl; and denied calling Ms. Hale every Friday in May 2010 requesting that she pick up JoP because he soiled his clothes.

Improper Discipline of a Child

38. The Second Amended Administrative Complaint charged Respondent with the following:

On or about May 2010, the Respondent's owner and director, Joyce Vinson, took a disabled four-year-old child, J.P., outside, and in front of other children in care, removed all of his clothing, and hosed him down after he defecated in his pants. J.P. is not toilet trained due to his disability.

\* \* \*

During the period May through June 2010, the Respondent's owner and director, Joyce Vinson, directed staff not to change J. P. when he defecated in his pull-ups, and repeatedly shut J. P. alone in a bathroom for extended periods of time.

39. This allegation was based primarily on the testimony of Ms. Holmes, who asserts that in May 2010, Ms. Vinson instructed Ms. Holmes to move the children from the playground around the side of the building so they could not see; then Ms. Vinson and Vanessa Latson took JoP outside to the playground, removed his clothes and washed him off with a garden hose after JoP soiled his clothes. Ms. Holmes claims that she and Ms. Sallet witnessed this incident.

40. Ms. Sallet denies ever seeing Ms. Vinson or any other ECCC employee hose down any child who had soiled his clothes. Ms. Sallet further denies ever observing a child disciplined, punished, or shut in a bathroom for soiling his or her clothes. Ms. Sallet described the process used at ECCC by her and other employees for cleaning up children who had soiled their clothes. This process involved using a basin in the bathroom, putting on sanitary gloves, and using wipes as one would use cleaning a baby.

41. The other ECCC employee and volunteer who testified, Ms. Hall and Ms. Williams, also deny ever observing any child

being hosed down, or otherwise purposefully embarrassed or humiliated for soiling his or her clothes, at ECCC.

42. Finally, Ms. Vinson denied hosing JoP down to clean him up after he soiled his clothing; denied shutting JoP in the bathroom, or instructing any employee not to change him, or any other child, if he had soiled his clothes.

43. Ms. Hale, JoP's mother, provided pull-ups to ECCC for her son. She typically picked up JoP around 5:00 in the afternoon. On several occasions, he had dried feces on him. In other instances, his pull-up was soaking wet and the diaper would be "full."

44. Tameka Williams was employed by ECCC from June 2010 until sometime in the fall of 2010. When older children soiled their clothes, she would be sent to find clothes. If extra clothes had not been sent from home, ECCC had extra clothes available. Ms. Williams would often be the person who changed the clothing of the children who had soiled their clothes. First, she would clean them with a rag and body soap, wipe them, and put clean clothes on them. She would then put the soiled clothes in a bag, seal it, and let the parents know there were soiled clothes in the bag. Sometimes the clothes needed to be rinsed. Ms. Williams would rinse the soiled clothes, and hang them up. If they were not dry, she would put them in a plastic bag, tie it up, and send it home to the parents. She never



witnessed any children being disciplined, with a hose, locked in a bathroom, or by any other method, for soiling their clothes.

45. This was the same procedure described by Elise Stewart, who was employed by ECCC for six years off-and-on. When a child soiled his clothes, she would take the child to the bathroom, clean him or her, rinse the soiled clothes and place them in a plastic bag to go home to the parents.

Out of Ratio/Improper Supervision

46. The Second Amended Administrative Complaint charged Respondent with the following:

On September 1, 2010 (5th violation), the Department's licensing counselor observed 18 children, including infants, on the playground being supervised by only one teacher and one volunteer; other staff were inside the facility. On August 10, 2010 (4th violation), the Department's licensing counselor observed 8 infants being supervised by only one teacher. During the period of March through June 2010 (3rd violation), the Respondent's staff repeatedly left the infant room unsupervised after the infants went to sleep, so that staff could supervise children or perform tasks in other parts of the facility. On March 24, 2010 (2nd violation), the Department's licensing counselor observed only two teachers supervising a nature walk with four infants and seven two year olds. The Respondent was previously cited and provided technical assistance for this type of violation on February 9, 2009 (twelve children including infants out in the playground with only two staff members).

\* \* \*

From March through June 2010, the Respondent's owner and director, Joyce Vinson, routinely directed employees to mix age groups in the facility, on the playground and on trips; and to supervise more children than allowed by statute and rule.

47. On March 24, 2010, Ms. Cruz-Gil went to ECCC to investigate a complaint received by phone made by staff of another facility regarding a nature walk that took place on March 12, 2010. After interviewing the staff person who reported this incident, and ECCC staff, Ms. Cruz-Gil determined that the group of children on the nature walk was comprised of a mixed group of three and four-year-olds on the field trip with four infants. Ms. Cruz-Gil determined that ECCC was out of ratio of required staff to children. The testimony regarding the actual number and composition of children on this field trip was confusing and unclear. But, in any event, she did not personally see the composition of staff to children on the field trip, and the field trip did not involve seven two-year olds, or take place on March 24, 2010, as charged.

48. The allegation that during March through June 2010, Respondent's staff repeatedly left the infant room unsupervised when the infants were asleep, so that staff could supervise other children or perform other tasks, was based largely on allegations from Ms. Holmes and Ms. Rossman. According to

Ms. Holmes, she was instructed by Ms. Vinson, on a daily basis, to leave the children she was supervising to clean another part of the facility, or to leave the infants alone in their cribs and supervise other children.

49. According to Ms. Rossman, Ms. Vinson instructed her to leave the infants unattended once they were asleep, and when a baby was not asleep, to take the baby outside to the playground.<sup>3/</sup>

50. In the three years that Ms. Sallet worked at ECCC, she was never instructed or told that she could leave sleeping children unattended, and never heard Ms. Vinson tell any other employees to do so. According to Ms. Sallet, when ECCC employees took breaks, even to go to the bathroom, they were relieved by another employee. According to Ms. Sallet, ECCC employed a "floater," who would float from room to room to offer minimal relief for bathroom breaks and the like.

51. Ms. Williams was not be assigned to a particular room, but would float from room to room as necessary. Ms. Williams never observed infants unsupervised, and described Ms. Vinson as being very strict about that.

52. Ms. Hall, while volunteering at ECCC, never saw children left unattended and thought that ECCC was overstaffed.

53. Ms. Vinson denies ever instructing any staff member to leave children unattended. Rather, she instructs them to remain

with the children they supervise at all times. Ms. Vinson denies instructing staff to leave children in one classroom so that they can perform other facility business.

54. On August 10, 2010, Ms. Cruz-Gil went to ECCC and observed eight infants in the infant room with only one staff member present.

55. Ms. Vinson, however, maintains that on that day, Department inspectors came to the facility with law enforcement. She was with the one-year-old class, a staff member, Marisol, was with the infants, and Ms. Frewoini was with the two-year-olds. Ms. Vinson opened to the door and was informed that she had to deal with certain allegations immediately or she would be shut down. She instructed Marisol to watch the one-year-old class while she dealt with the inspectors and law enforcement. She did not have a floater working that day. Consequently, Marisol ended up watching a combination of infants and one-year-olds. At that point, Ms. Cruz-Gil observed eight children in the infants' room with one staff person, and cited this as a ratio violation.

56. On September 1, 2010, Ms. Cruz-Gil went to ECCC to hand deliver a disqualifying letter to Ms. Vinson regarding an employee of ECCC. When she arrived, she observed 18 children on the playground, including infants, with only one staff member and one volunteer being present. According to Ms. Cruz-Gil,

volunteers cannot be counted when calculating the staff-to-child ratio.

57. Ms. Vinson denies that there were 18 children on the playground. Ms. Vinson was away from the center and received a call from staff that Ms. Cruz-Gil was there stating that the center was out of ratio. Ms. Vinson then returned to the center. According to Ms. Vinson, the sign-in sheet for that day reflects that only 15 children were present and three ECCC staff present.

58. As with most encounters between Ms. Vinson and Ms. Cruz-Gil, each describes the other as "screaming" at the other, not cooperative, and confrontational. The professional relationship between Ms. Vinson and Ms. Cruz-Gil is poisoned. In light of this history between them, it would be ill-advised for Ms. Cruz-Gil to be involved in any further compliance issues between the Department and Ms. Vinson.

59. The final allegation under this category is that Ms. Vinson routinely directed employees to mix age groups in the facility, on the playground, and on field trips. Again, these allegations are primarily based on representations made by Ms. Holmes and Ms. Rossman. Ms. Holmes testified that she took children in the van "half the time" she was there (later "clarifying" this to "it was like kind of often"), away from the center for the purpose of maintaining proper ratio; that the van is a 15 passenger and that we "never had the kids in seat belts

or car seats." She further testified that Ms. Vinson directed her to mix infants and toddlers "maybe two to three times a week;" and that Ms. Vinson would yell at employees to hurry up, that a DCF inspector might come by and that they already had a case against her.

60. Ms. Rossman testified that three or four times, she and Vanessa would take children in the large stroller to the park. The stroller held six children and the older children would walk. It is not clear from this allegation, however, how old the children were who were in the stroller.

61. Ms. Sallet described going on nature walks using the stroller, but that proper ratio was maintained during those walks. According to Ms. Sallet, the only instance in which Ms. Vinson directed staff to mix age groups is when Early Learning Coalition came to ECCC for some kind of activity in which all of the children participated. At those times, everyone would all gather in the common area, teachers as well and students.

62. Ms. Williams described the nature walks as walk around the property on a little path, with six kids in the "bye-bye buggy." Ms. Williams never heard Ms. Vinson instruct employees to mix different age groups of children together so that ratios were maintained.

63. Ms. Stewart, who worked there for six years, described Ms. Vinson as "adamant" about maintaining ratio.

64. Ms. Vinson denies ever instructing any ECCC staff member to take mixed age groups of children away from ECCC to manipulate staff to child ratio.

Personnel Violations

65. The Second Amended Administrative Complaint charged Respondent with the following:

During June and/or July 2010 the Respondent paid an 11-year-old-girl child, T.E., (who also attended the facility with her siblings) \$10 per week for two or three weeks to watch the infants in the infant room by herself. . . . Respondent's owner and director, Joyce Vinson, has repeatedly allowed her fiancé, Kevin Wright, who has a disqualifying offense and has not been subjected to background screening, to transport children to and from the facility with no other child care personnel present. . . . The facility's director, Joyce Vinson, hired V.L., even though Vinson knew that V.L. was not eligible to work in a child care facility because of her criminal record for child abuse that occurred at another child care facility. . . . Respondent's owner and director, Joyce Vinson, knowingly falsified training records for employees. The failure to complete the training requirements is a continuing Class III violation with regard to each affected employee.

66. T.E. is an 11-year-old female child who attended ECCC in the summer of 2010. T.E. testified that while she attended ECCC, she helped watch the babies some times. T.E.'s testimony

regarding whether she was ever alone in the room with the babies without an adult was inconsistent. On one occasion, Ms. Vinson gave her \$10, which T.E. assumed was payment for watching the babies.

67. Cassie Tillman is T.E.'s mother and the daughter of Ms. Rossman. All five of her children attended ECCC for a period of months in 2010. She recalled that her daughter received \$10 on two occasions, and that her daughter told her it was for watching the babies.

68. Ms. Stewart, who worked at ECCC for six years, has seen Ms. Vinson give children money or other gifts for their birthdays. Ms. Vinson gave Ms. Stewart's grandchildren \$5 for their birthdays.

69. Ms. Vinson confirmed that she gave \$10 to T.E. for her birthday in the summer of 2010, but denies that it was for watching babies.

70. Kevin Wright is the fiancé of Ms. Vinson and has known her since 2006. He holds a degree from Bethune Cookman University and recently became a contract vendor for the School Board of Alachua County to be a substitute teacher.

71. In 1995, Mr. Wright pled nolo contendere to the charge of possession of cocaine, a third-degree felony. Adjudication of guilt was withheld and Mr. Wright was placed on probation for six months, and was required to participate in the Life Skills



Program at the Alachua County Adult Detention Center and to seek gainful employment.

72. On the date of the Duval incident, a parent had driven a child to Duval Elementary to see the play. Mr. Wright rode with the parent. This parent was not properly dressed and requested Mr. Wright to escort the child from her car into the school. He did so. He was not on the van. This is supported by Ms. Sallet's testimony regarding who was on the van the day of the incident. Similarly, Mr. Wright has escorted ECCC children from the van into the public library.

73. Mr. Wright denies that Ms. Vinson has ever asked him to transport children who attend ECCC and that he has never done so. Ms. Vinson denies that she ever asked him to do so.<sup>4/</sup>

74. Ms. Vinson hired Vanessa Latson when the daycare center where Ms. Latson worked was closing. Ms. Vinson inquired as to whether or not they would rehire Ms. Latson and was told that they would. Ms. Latson had been subject to background screening prior to her employment at the other daycare center.

75. At the time Ms. Latson came to work for Ms. Vinson, the background screening was required every five years, and Ms. Latson had been screened within that time. However, the requirements have changed and now every new hire must be rescreened.

76. Ms. Vinson became aware that Ms. Latson had a criminal record in her past. Ms. Vinson then inquired about this and, when she learned that this was the case, she fired Ms. Latson. On September 1, 2010, Ms. Cruz-Gil went to ECCC with the letter regarding Ms. Latson's disqualifying offense. However, by that time, Ms. Vinson had learned of it and already fired Ms. Latson.

77. In 2007, Ms. Latson entered a plea of nolo contendere to the offense of cruelty toward a child; abuse without great harm, a third-degree felony. Adjudication of guilt was withheld, and she was placed on two-year's probation.

78. There is no credible evidence that establishes that Ms. Vinson knew about Ms. Latson's criminal record prior to hiring her.

79. The final allegation regarding personnel violations is that Ms. Vinson knowingly falsified training records for employees. This allegation was based primarily on Ms. Holmes's representations. Ms. Holmes alleged that she observed Ms. Vinson take her (Ms. Holmes') training certificates and cut-and-paste the names of other employees; that she observed Ms. Vinson make copies of CPR cards for other individuals who did not attend the CPR class and asked Ms. Holmes to laminate them; and that Ms. Vinson changed an employee's employment start date on-line so there would be more time to complete training. Additionally, Ms. Rossman, in confusing and unclear testimony,

asserted that Ms. Vinson asked Ms. Holmes to take a test for her (Ms. Rossman). It is unclear why Ms. Vinson would ask Ms. Holmes to take the test for Ms. Rossman when Ms. Rossman was able to take the test.

80. Ms. Vinson denies falsifying employees' records. Ms. Vinson explained that the person takes the class on-line, then goes to a test center to take the test. Ms. Vinson can then check on-line to see if a person has successfully passed the course, and she can then print the certificate. Regarding the allegation that Ms. Vinson told Ms. Holmes to take a test for Ms. Rossman, Ms. Vinson asserts that it was Ms. Rossman who stated that she (Ms. Rossman) was going to ask Ms. Holmes to take the test for her. According to Ms. Vinson, both Ms. Holmes and Ms. Rossman were supposed to take a test on a Saturday in early June, but did not show up to take the test. When Ms. Rossman came back to work the following Monday, Ms. Vinson informed her she could not work because she had not taken the test. Ms. Vinson asserts that at that point, Ms. Rossman threatened to close her down. Ms. Holmes did not return to work.

81. Several witnesses who had been employees of ECCC prior to its closure denied ever seeing Ms. Vinson do this. As with many of the other allegations made by Ms. Holmes and Ms. Rossman, in order to find these the allegations are true,

Ms. Vinson would have done all of these things in front of only these two employees, but never in front of any other employee, regardless of how long they worked for Ms. Vinson.<sup>5/</sup>

82. Pamela Buckham is the Regional Safety Program Manager for the Department, and is in charge of child care licensing for the northeast region. Ms. Buckham signed the Second Amended Administrative Complaint.

83. It was primarily Ms. Buckham's decision to seek revocation of ECCC's child care license. Ms. Buckham decided to seek revocation rather than impose lesser sanctions because she believed that the children who attend ECCC are in danger. Ms. Buckham based this conclusion on the numerous class I violations alleged that involved child safety, the seriousness of some of the violations, and that the other violations were repeat violations. Further, Ms. Buckham described dealings with ECCC as being met with "a lack of cooperation."

#### CONCLUSIONS OF LAW

84. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. This proceeding is § 120.57(1)(k).

85. The Department of Children and Families is the agency charged with the responsibility of licensing child care facilities in the state of Florida. § 402.305, Fla. Stat.

86. Section 402.310 authorizes the Department to take adverse action regarding the license of the child care facility, and reads in pertinent part as follows:

Disciplinary actions; hearings upon denial, suspension, or revocation of license; administrative fines.--

(1) (a) The department or local licensing agency may impose any of the following disciplinary sanctions for a violation of any provision of ss. 402.301-402.319 or rules adopted thereunder:

1. Impose an administrative fine not to exceed \$100 per violation, per day. However, if the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day in addition to or in lieu of any other disciplinary action imposed under this section.

2. Convert a license or registration to probation status and require the licensee or registrant to comply with the terms of probation. . . . A probation-status license or registration may be suspended or revoked if periodic inspection by the department or local licensing agency finds that the probation-status licensee or registrant is not in compliance with the terms of probation. . . .

3. Deny, suspend, or revoke a license or registration.

(b) 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 to correct the violation or to remedy complaints.

3. Any previous violations of the licensee. (emphasis added).

87. Section 402.305(2) reads in pertinent part as follows:

402.305 Licensing standards; child care facilities.--

\* \* \*

(2) PERSONNEL.--Minimum standards for child care personnel shall include minimum requirements as to:

(a) Good moral character based upon screening. This screening shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.

\* \* \*

(c) Minimum age requirements. Such minimum standards shall prohibit a person under the age of 21 from being the operator of a child care facility and a person under the age of 16 from being employed at such facility unless such person is under direct supervision and is not counted for the purposes of computing the personnel-to-child ratio.

88. Florida Administrative Code Rule 65C-22.006(4) sets forth the required content of personnel records, including Level

2 screening information and copies of training information and credentials.

89. Florida Administrative Code Rule 65C-22.003 specifies training requirements for child care personnel.

90. Florida Administrative Code Rule 65C-22.001 reads in pertinent part as follows:

65C-22.001 General Information.

(4) Ratios.

(a) The staff-to-child ratio, as established in Section 402.305(4), F.S., is based on primary responsibility for the direct care of children, and applies at all times while children are in care.

(b) Mixed age groups.

1. In groups of mixed age ranges, where children under one year of age are included, one staff member shall be responsible for no more than four children of any age group, at all times.

2. In groups of mixed age ranges, where children one year of age but under two years of age are included, one staff member shall be responsible for no more than six children of any age group, at all times.

(5) Supervision.

(a) Direct supervision means watching and directing children's activities within the same room or designated outdoor play area, and responding to the needs of each child. Child care personnel at a facility must be assigned to provide direct supervision to a specific group of children, and be present with that group of children at all times. When caring for school-age children, child care personnel shall remain responsible for the supervision of the children in care, shall be capable of responding to emergencies, and are accountable for

children at all times, including when children are separated from their groups.

(b) During nap time, supervision requires that staff be in close proximity, within sight and hearing of all the children. All other staff required to meet the staff-to-child ratio shall be within the same building on the same floor, and must be readily accessible and available to be summoned to ensure the safety of the children. Nap time supervision, as described in this section, does not include supervision of children up to 24 months of age, who must be directly supervised at all times.

\* \* \*

(d) Additional Supervision Requirements.

1. In addition to the number of staff required to meet the staff-to-child ratio, for the purpose of safety, one additional adult must be present on all field trips away from the child care facility to assist in providing direct supervision.

\* \* \*

(6) Transportation. For the purpose of this section, vehicles refer to those that are owned, operated or regularly used by the child care facility and vehicles that provide transportation through a contract or agreement with an outside entity. Parents' personal vehicles used during field trips are excluded from meeting the requirements in paragraphs 65C-22.001(6)(a)2., (b) and (c), F.A.C.

\* \* \*

(d) The maximum number of individuals transported in a vehicle may not exceed the manufacturer's designated seating capacity or the number of factory installed seat belts.



(e) Each child, when transported, must be in an individual factory installed seat belt or federally approved child safety restraint, unless the vehicle is excluded from this requirement by Florida Statutes.

(f) When transporting children, staff-to-child ratios must be maintained at all times. The driver may be included in the staff-to-child ratio. Prior to transporting children and upon the vehicle(s) arrival at its destination, the following shall be conducted by the driver(s) of the vehicle(s) used to transport the children:

1. Driver's log. A log shall be maintained for all children being transported in the vehicle. The log shall be retained for a minimum of four months. The log shall include each child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle.

2. Upon arrival at the destination, the driver of the vehicle shall:

- a. Mark each child off the log as the children depart the vehicle;
- b. Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and
- c. Sign, date and record the driver's log immediately, verifying that all children were accounted for, and that the visual sweep was conducted.

3. Upon arrival at the destination, a second staff member shall:

- a. Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and
- b. Sign, date and record the driver's log immediately, verifying that all children were accounted for and that the log is complete.

\* \* \*

(8) Child Discipline.

\* \* \*

(b) All child care personnel must comply with the facility's written disciplinary policy. Such policies shall include standards that prohibit children from being subjected to discipline which is severe, humiliating, frightening, or associated with food, rest, or toileting. Spanking or any other form of physical punishment is prohibited for all child care personnel.

\* \* \*

(11) Child Safety.

(a) Acts or omissions that meet the definition of child abuse or neglect provided in Chapter 39, F.S., constitute a violation of the standards in Sections 402-301-402.319, F.S., and shall support imposition of a sanction, as provided in Section 402.310, F.S.

91. The Department has the burden to prove by clear and convincing evidence the grounds for revocation or denial of an application to renew an existing daycare license. Coke v. Dep't of Child. and Fam. Svcs., 704 So. 2d 726 (Fla. 5th DCA 1998); Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

92. For proof to be considered "'clear and convincing' . . . the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier

of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.” In re Davey, 645 So. 2d 398, 404 (Fla. 1994).

93. The Department met its burden in proving that Respondent violated Florida Administrative Code Rule 65C-22.001(5), in that on July 22, 2010, ECCC staff left a seven-year-old child with a disability, W.G., behind on a field trip to Duval Elementary. This constitutes a Class I violation for which a fine of not less than \$100 nor more than \$500 per day for each violation may be imposed pursuant to Florida Administrative Code Rule 65C-22.010. Because of the seriousness of the violation, a \$500 fine is appropriate.

94. The Department did not meet its burden in proving that on July 22, 2010, Respondent transported 18 individuals in a van with a maximum capacity of 15 passengers.

95. The Department did meet its burden that on July 30, 2010, Respondent left W.G. alone in a classroom using a computer, albeit briefly. W.G. is a child with a disability and staff must be sufficient to cover staffing contingencies, even for brief periods of time.

96. As this was a third class II violation within a two-year period, the Department may impose \$50 for the second violation and \$60 for the third violation, pursuant to Florida Administrative Code Rule 65C-22.010(2)(e).

97. The Department did not meet its burden in proving two alleged violations of rule 65C-22.001(11)(a), regarding child safety (allegations of deliberate administration of medicines by staff). The testimony in this regard was not credible as to one witness and was not distinctly remembered, precise, or lacking in confusion as to others. The evidence in this regard was not of such weight that it resulted in a firm belief, without hesitancy, as to the truth of the allegations asserted.

98. The Department did not meet its burden in proving a violation of rule 65C-22.001(8)(b), regarding inappropriate discipline (hosing down a child outside, shutting the child in a bathroom for extended periods of time, and directing staff not to change the child). Upon consideration of the evidence presented, including the credibility and demeanor of the witnesses, the testimony in this regard was not of such weight that it produced a firm belief, without hesitancy, as to the truth of the allegations asserted.

99. As to the multiple allegations in paragraph 17 of the Second Administrative Complaint, the Department met its burden regarding the allegations that occurred on September 1, 2010 and August 10, 2010; but did not meet its burden regarding the alleged violation that occurred on March 24, 2010, or the general allegation concerning the time period of March through June 2010 (regarding repeatedly leaving infants unsupervised).

As these are second and third Class II violations, the Department may impose fines of \$50 and \$60 pursuant to rule 66C-22.010(2)(e).

100. The Department did not meet its burden in proving the allegations in paragraph 18 regarding Respondent's owner and director routinely directing employees to mix age groups in an effort to meet staff-to-child ratios, and to supervise more children than allowed by statute and rule.

101. The Department did not meet its burden of proving that Respondent paid an 11-year-old girl \$10 per week for two or three weeks to watch infants in the infant room by herself.

102. Section 435.02(2)(rr) provides that no person subject to level 2 screening requirements can have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, an offense prohibited under chapter 893, relating to drug abuse prevention and control, if the offense was a felony. Mr. Wright's 1995 plea of nolo contendere to possession of cocaine constitutes a disqualifying offense.

103. However, the Department failed to meet its burden of proving that Respondent's owner and director repeatedly allowed her fiancé, Mr. Wright, to transport children to and from the facility with no other child care personnel present.

104. Section 435.02(2)(hh) provides that no person subject to level 2 screening requirements can have been found guilty of,

regardless of adjudication, or entered a plea of nolo contendere or guilty to, an offense prohibited under section 827.03, Florida Statutes, relating to child abuse. Ms. Latson's 2007 plea of nolo contendere to an offense under that statute dealing with child abuse constitutes a disqualifying offense.

105. However, the Department failed to prove the allegation in paragraph 25 that Respondent's owner and director hired Ms. Latson knowing that Ms. Latson had a disqualifying offense.

106. The Department has not met its burden regarding the allegation in paragraph 26 that Respondent's owner and director knowingly falsified training records for employees constituting a failure to complete training requirements.

#### RECOMMENDATION

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

#### RECOMMENDED:

That the Department of Children and Family Services enter a final order placing the license on probation for the length of time the facility has been closed due to the Emergency Suspension Order; imposing fines in the amount of \$740; requiring Respondent to attend further training regarding the requirements of section 402.305(4) and Florida Administrative

Code Rule 65C-20.001(4); and requiring successful completion of such training prior to reopening the child care facility.

DONE AND ENTERED this 25th day of July, 2011, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of July, 2011.

ENDNOTES

- 1/ This Recommended Order will address the allegations in the order that they appear in the Second Amended Administrative Complaint.
- 2/ There was a period of time in the spring of 2010 in which Ms. Frewoini was absent from work due to her husband's illness.
- 3/ It is noted that with the exception of Ms. Cruz-Gil, the rebuttal witnesses were not previously disclosed, and their testimony concerned the heart of the Department's case-in-chief regarding this allegation. Any testimony offered on rebuttal which is cumulative of evidence introduced during the case in chief has not been considered except for impeachment purposes.
- 4/ There was considerable testimony as to whether and when Mr. Wright was at ECCC during operating hours. However, the charge in the Second Amended Administrative Complaint regarding Mr. Wright deals exclusively with transportation of children.

Therefore, this order will be limited to that issue in regards to Mr. Wright.

5/ It is impossible to believe that all of these things happened on such a frequent basis, when employees and volunteer consistently testified that these things never happened, were not the policy of ECCC, and were never witnessed by any of them on any occasion over several years. Accordingly, as it is impossible to determine any truth from untruth or exaggeration, Ms. Holmes' testimony is deemed to be not credible.

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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.