

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

CASE NO. 10-5049
RENDITION NO. DCF-11-~~23~~-FO

v.

EDUCATIONAL CHILD CARE
CENTER, INC.,

Respondent.

FILED
SEP - 2 2011

DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me for entry of a final order. The recommended order finds the Department established that respondent violated minimum standards applicable to child care facilities provided in section 402.305, Florida Statutes, and chapter 65C-22, Florida Administrative Code. The administrative law judge (ALJ), however, found the Department did not prove all of the allegations in the administrative complaint, and recommended that, rather than license revocation, the Department impose a period of suspension¹ and fines, and require respondent's owner/director to complete remedial training. The Department filed exceptions to the recommended order.

The Department's first three exceptions relate to the ALJ's consideration of testimony from certain Department witnesses, primarily presented in rebuttal. The recommended order indicates the ALJ admitted all of the testimony, although she may

¹ Although the ALJ's penalty recommendation uses the term "probation", it is clear from the context that the recommendation was for a license suspension.


have considered some portion of the rebuttal witness testimony only for impeachment purposes. The cases the Department cites do not establish that the ALJ's handling of these witnesses constituted an abuse of discretion. The ALJ, moreover, was the finder of fact in this proceeding. Nothing in the contested witnesses' testimony changes the fact that all of the ALJ's findings are supported by competent substantial evidence. The ALJ has exclusive authority to assess witness credibility and weigh conflicting testimony. *Stinson v. Winn*, 938 So. 2d 554 (Fla. 1st DCA 2006). While the witnesses' testimony would certainly support alternative findings, and the Department may believe the ALJ's credibility determinations were flawed, I cannot reject the ALJ's findings on this record.

The Department's fourth exception challenges the ALJ's "finding of fact" in recommended order paragraph 58 that "it would be ill-advised" for the Department to continue to utilize the same licensing counselor for the respondent facility in the future. The Department correctly points out that, if considered as a "finding of fact" somehow binding on the Department, this statement would be beyond both the ALJ's authority and the scope of the proceeding. The contested statement, however, appears to have been intended more as an observation and suggestion, and is accepted as such. The Department's assignment of licensing counselors is made by the licensing supervisor based upon a variety of considerations, but the Department anticipates that its counselors will conduct themselves professionally regardless of the reception they receive from facility staff.

The recommended order is approved and adopted with the foregoing clarification.

Accordingly, respondent's license is suspended effective November 29, 2010. The suspension will be lifted when respondent's owner/director's training transcript reflects completion of the Child Care Facility Rules and Regulations (six hours) training/certification course. This may be done through an instructor-led course or on-line. A total of \$740 in fines is imposed for the minimum standards violations documented in the recommended order.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 26 day of September, 2011.



David E. Wilkins, Secretary

RIGHT TO APPEAL

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

Copies furnished to:

Lucy Goddard-Teel
Assistant Regional Counsel
Department of Children and Families
1000 NE 16th Ave., Bldg. J#3
Gainesville, FL 32601


Matthew Wells
304 South Albany Ave.
Tampa, FL 33606

Claudia Llado, Clerk
Division of Administrative Hearing
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

J. D. Packwood, Jr.
P.O. Box 140504
Gainesville, FL 32614

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Final Order was provided to the above-named individuals at the listed addresses, by U.S. Mail, this 6 day of September, 2011.



Gregory D. Venz, Agency Clerk
Department of Children and Families
1317 Winewood Blvd.
Bldg. 2, Rm. 204
Tallahassee, FL 32399-0700
Ph: (850) 488-2381