

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LATONYA HOLTON, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 12-0480  
 )  
 DEPARTMENT OF CHILDREN )  
 AND FAMILIES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case via video teleconference with sites in Tallahassee and Jacksonville, Florida, on April 5, 2012, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: LaTonya Roshelle Holton, pro se  
136 Perth Road  
Jacksonville, Florida 32221

For Respondent: David G. Tucker, Esquire  
Department of Children  
and Families  
5920 Arlington Expressway  
Jacksonville, Florida 32211

STATEMENT OF THE ISSUE

The issue is whether Petitioner's request for a variance or waiver of Florida Administrative Code Rule 65C-14.055 pursuant

to section 120.542, Florida Statutes, should be granted or denied.

PRELIMINARY STATEMENT

By Order dated December 8, 2011, Respondent, Department of Children and Families (Department), denied the request of Petitioner, LaTonya Holton, for a waiver of Florida Administrative Code Rule 65C-14.055(1). Petitioner disputed the Respondent's decision and requested a hearing.

Respondent referred the case to the Division of Administrative Hearings on or about February 2, 2012.

The undersigned issued a Notice of Hearing by Video Teleconference on February 15, 2012. The notice scheduled the hearing for April 5, 2012, and the case was heard as scheduled.

At hearing, Petitioner testified on her own behalf and did not offer any exhibits into evidence. Respondent presented the testimony of Stacey Cleveland. Respondent's Exhibits lettered A and B were admitted into evidence.

A one-volume Transcript was filed on April 27, 2012. Respondent timely filed a Proposed Recommended Order, and Petitioner filed a post-hearing submission, which have been considered in the preparation of this Recommended Order. All references to the Florida Statutes are to the 2011 codification unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner, LaTonya Holton, is seeking a waiver from Florida Administrative Code Rule 65C-14.055(1) because she desires to open and operate a licensed residential child-caring agency (RCA), which houses dependent youth.

2. Ms. Holton proposes to open a residential facility for foster children called House of Judah, with Ms. Holton serving as executive director. House of Judah would be a "transitional housing program" for up to eight neglected, abandoned, or abused girls ages 12 through 17.

3. Stacey Cleveland is a statewide licensing specialist with the Department. She has been in that position for about seven years and has worked for the Department approximately 23 years, approximately 15 of which have been in licensing.

4. One of Ms. Cleveland's responsibilities is to review all of the waiver and variance requests and make a recommendation to agency leadership as to whether or not the request should be granted or denied.

5. Ms. Cleveland reviewed Petitioner's application for waiver. The application includes a business plan and position descriptions. It also included a description of Ms. Holton's prior experiences pertinent to the position for which the waiver is sought.

6. Ms. Cleveland reviewed the application package in evaluating whether Ms. Holton met the requirements to be the Executive Director. After reviewing the application, Ms. Cleveland concluded that Ms. Holton did not have the required education or the required experience in management or supervision.

7. The application packet included a statement that Ms. Holton was enrolled to complete an associate of science degree by the summer of 2010, and then enter a program to earn a bachelor's degree in business administration. However, Ms. Holton did not complete the associate degree program and currently does not possess a college degree of any kind. She is no longer in a program to earn a degree.

8. Ms. Holton has worked as an administrative assistant with increasing responsibility for major corporations. She was the executive assistant to the president at GE Aviation, and assisted seven vice-presidents. She currently is a quality administrator with GE Aviation. In this position, Ms. Holton has the authority to go into an assembly area and shut down a production line if she determines that the workers are performing a procedure that is not according to the work instruction. She also oversees investigations concerning quality assurance. She has worked closely with the FAA ensuring that when a new guideline comes out, it is "brought to the

forefront of GE" and to ensure that the company's procedures are updated.

9. However, Ms. Holton is not a manager, and does not have the authority to hire or fire employees. She does not have experience with fundraising for private donations, although that is included in the position description for executive director.

10. Ms. Holton has, through volunteering, worked with troubled youth and has a genuine passion for helping troubled children. She has helped numerous youth through her church and in the community. She does not, however, have formal working experience in child welfare.

11. Ms. Cleveland determined that Ms. Holton does not have the required management or supervisory experience to be an Executive Director, and had not demonstrated that the purpose of the underlying statute had been achieved. She based this determination on a review of the application package and on the agency's interpretation of the term "management or supervisory." That is, the agency looks for supervision, knowledge, skills and actual hands-on work in child welfare services, specifically with Department youth housed in a facility. The agency also interprets the term "management or supervision" as including experience supervising employees in areas such as hiring and firing, final budget decisions, and final decision making in matters relating to the management of the facility. The agency

views the purpose of the underlying statute to require final decision-making responsibility in all areas related to the operation of an RCA.

12. Ms. Holton did not present any evidence of any economic, technical, or legal hardship if she did not receive the waiver. Ms. Holton is sincerely disappointed in not receiving the waiver due to her strong convictions and passion to help troubled youth.

13. Ms. Cleveland recommended to the agency that it deny the waiver request. On December 8, 2011, the Department issued an Order on Waiver Request to Ms. Holton, denying her request, which gave rise to this proceeding.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 120.542(8), Florida Statutes.

15. Section 120.542, states in pertinent part as follows:

120.542 Variances and waivers.--

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a

demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person significantly different from the way it affects other similarly situated persons who are subject to the rule.

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(8) . . . The agency's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to a variance or waiver shall be limited to the agency action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter.

16. Section 409.175(2)(j), Florida Statutes, defines RCAs, which are residential facilities that house dependent youth. Section 409.175(1) states that the purpose of the statute is to provide licensing requirements to "protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies, and child-placing agencies."

17. Florida Administrative Code Chapter 65C-14 implements section 409.175.

18. Rule 65C-14.055 states in pertinent part as follows:

65C-14.055 Job Functions and Staff Qualifications.

The facility shall employ staff to perform administrative, supervisory, service, and care functions. These personnel shall have the following qualifications:

(1) Executive directors hired after the date that this rule becomes effective shall have a bachelor's degree from a college or university and at least 3 years of experience in management or supervision.

19. Ms. Holton does not meet the requirements of rule 65C-14.055. That is, she does not have a college degree or at least three years of experience in management or supervision, both of which are required. Despite her excellent intentions, her passion, and her belief in the proposed facility, the evidence does not establish that Ms. Holton has achieved the purpose of the underlying statute by other means. Moreover, the evidence does not establish that the application of the rule would create a substantial hardship as contemplated by section 120.542.

#### RECOMMENDATION

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

RECOMMENDED:

That the Department of Children and Families enter a final order denying Petitioner's request for a waiver from rule 65C-14.055.



DONE AND ENTERED this 16th day of May, 2012, 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 16th day of May, 2012.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.