STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioner,

CASE NO. 12-1059
RENDITION NO. DCF-12-587-FO

v.

JUMPSTART ENRICHMENT PROGRAM, INC.,

Respondent.
_____/

FINAL ORDER

THIS CAUSE is before me for entry of a final order. The recommended order finds the Department presented clear and convincing evidence establishing respondent violated the staff-child ratio requirements in section 402.305(4), Florida Statutes, and rule 65C-22.001(4), Florida Administrative Code, on four occasions within a two-year period. The administrative law judge (ALJ) concluded the Department appropriately sought to impose a $75 fine and to place respondent's license in probationary status for six months as a result of the most recent violation in January 2012. Respondent filed several exceptions to the recommended order, which are addressed below.

Respondent's first two exceptions challenge factual findings or statements in the recommended order, and are rejected. Respondent has not provided a transcript of the final hearing, which precludes consideration of these exceptions. *Department of Corrections v. Bradley*, 510 So. 2d 1122 (Fla. 1st DCA 1987)(party objecting to findings of fact must present record of the hearing and the arguments against the findings of fact prior to entry of a final order).

Respondent's third, fourth, seventh, eighth, and ninth exceptions appear to contend the ALJ erred in recommended order paragraph 19, when he concluded the evidence sufficiently established three of the pertinent violations, despite the fact the administrative complaint misstated the dates of the violations by two days in each case. The ALJ explained the administrative complaint clearly and specifically alleged each violation such that respondent was not confused or prejudiced in his defense. The ALJ concluded, therefore, the administrative complaint was sufficiently supported by the evidence, and the technical errors were legally insignificant. Nothing in the record or pertinent case law suggests the ALJ's conclusion in paragraph 19 is error. *See generally, Cottril v. Dep't of Insurance*, 685 So. 2d 1371 (Fla. 1st DCA 1996)(administrative complaint must afford affected individual notice of the specific facts or conduct on which a sanction is predicated); Lusskin v. AHCA, 731 So. 2d 67 (Fla. 4th DCA 1999)(administrative complaint must afford respondent a reasonable degree of certainty of the nature of any alleged violation). Respondent does not contend the violations did not occur on the dates determined by the ALJ. Respondent's third, fourth, seventh, eighth, and ninth exceptions are rejected.

Respondent's fifth exception appears to challenge the finding in recommended order paragraph 13 to the effect the Early Learning Coalition (ELC) withheld payment of school readiness funds for January 4, 2012, because of the staffing violation which occurred on that date. Respondent contends the ELC did just withhold payment of funds, but actually sanctioned respondent under "the same statute and code provisions" utilized by the Department in the administrative complaint. To the extent respondent seeks an alternative fact finding, the exception

is rejected because respondent has not provided a transcript of the final hearing. *Department of Corrections v. Bradley*, 510 So. 2d 1122 (Fla. 1st DCA 1987). To the extent respondent contends the Department lacks authority to issue the administrative complaint, the exception is also rejected. The administrative complaint initiated the proceeding under section 402.310, Florida Statutes. The Department, not the ELC, licenses respondent and has the statutory authority to sanction respondent for licensing violations. Whatever action the ELC took under its school readiness program authority is separate and distinct from this proceeding.

Respondent's sixth exception challenges the Department's reliance on the August 20, 2010, staff ratio violation as the first of four violations of the applicable statute and rule. Respondent contends the first violation is too remote in time to defend, and that respondent was already penalized for the violation. Respondent's arguments are not well-taken. The Department administers sanctions for licensing violations under a system of "progressive discipline" which is codified in rule 65C-22.010, Florida Administrative Code. This sanctioning scheme is required by statute to provide "a progressively increasing level of penalties" beginning with "predisciplinary actions". Under progressive discipline, the fact respondent had three instances of staff-child ratio violations prior to January 4, 2012, does produce a greater sanction, but the sanction is still for only the January 4, 2012, event. Progressive discipline does not constitute administrative "double jeopardy."

The August 2010 violation was not too remote in time. Rule 65C-22.010 provides for a progressive discipline system which looks back two years. The August 2010 violation was within two years of the January 2012 violation. The

recommended order finds, moreover, the Department issued an administrative complaint in May 2011 which included the August 2010 violation and provided a point of entry into an administrative proceeding. Respondent elected to resolve that administrative complaint with a settlement which expressly acknowledged the Department's ability to consider the August 2010 occurrence in future sanctions actions. Respondent, therefore, voluntarily relinquished a prior opportunity to require the Department to prove the August 2010 violation in an administrative proceeding much closer in time to the occurrence. Finally, the Department bears the burden of proof by clear and convincing evidence in a sanctioning action; respondent was not required to prove anything. *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987). Respondent's sixth exception is rejected.

The recommended order is approved and adopted.

Accordingly, respondent is fined $75 and its license is placed in probationary status for six months for the violation of section 402.305, Florida Statutes, and rule 65C-22.001, Florida Administrative Code, described in the recommended order.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 19th day of December, 2012.

M. Drew Parker for
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:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this final order was provided to the above-named individuals electronically or by U.S. Mail, this 20 day of December, 2012.

Gregory D. Venz, Agency Clerk
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