

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN
AND FAMILIES,

Petitioner,

vs.

Case No. 13-0482

RICHARDSON'S LEARNING
ENRICHMENT CENTER, INC.,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH), heard this case on May 22, 2013, by video teleconference at locations in Lakeland and Tallahassee, Florida.

APPEARANCES

For Petitioner: Cheryl Dianne Westmoreland, Esquire
Department of Children and Families
1055 U.S. Highway 17 North
Bartow, Florida 33830-7646

For Respondent: Carolyn Richardson
Richardson's Learning Enrichment Center
1426 West Bryant Street
Bartow, Florida 33830-3411

STATEMENT OF THE ISSUE

Should Petitioner, Department of Children and Families (Department), fine Respondent, Richardson's Learning Enrichment Center, Inc. (Richardson's), \$150.00 for failing to maintain

supervision of a child as required by Florida Administrative Code Rule 65C-22.001(5)(a)?

PRELIMINARY STATEMENT

On January 10, 2013, the Department filed an Administrative Complaint charging Richardson's with failure to maintain required supervision of a child. Richardson's disputed the charges and requested a hearing. On February 8, 2013, the Department referred the matter to DOAH to conduct the requested hearing. The undersigned set the hearing for April 26, 2013. On the Department's motion, due to the unavailability of two witnesses, the undersigned continued the hearing to May 22, 2013. The hearing was conducted as scheduled.

The Department presented testimony from Shannah Hotaling and Vicki Richmond. Department's Exhibits A and B were admitted into evidence.

Richardson's presented testimony from Carolyn Richardson and Natasha Richardson. Exhibits 1 through 3 of Richardson's were admitted into evidence.

The parties did not order a transcript. Both parties timely filed proposed recommended orders which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Richardson's holds Department license number C10P0538 to operate a child care facility in Bartow, Florida, as authorized

by sections 402.301 through 402.319, Florida Statutes (2012), and Florida Administrative Code Chapter 65C-22.

2. The statutes and rules governing operation of a child care facility impose minimum supervision requirements for children in the care of the facility.

3. On April 20, 2012, Shannah Hotaling of the Early Learning Coalition of Polk County visited Richardson's to screen three children registered to attend the facility.

4. As she arrived, Ms. Hotaling observed a female toddler about two years of age leave the building and close the door behind her. The toddler walked over to stand beside an orange car parked in front of the facility.

5. Ms. Hotaling did not see any adults in the area. She spoke to the toddler and escorted her into Richardson's.

6. While Ms. Hotaling was asking an employee about the child, the toddler joined one of the classes in progress.

7. The toddler was the grandchild of Richardson's owner and the daughter of Richardson's director. Both of them were present the morning of April 20, 2012.

8. Although the owner's child was a registered student of the facility, she was not signed in as attending that day.

9. Just before Ms. Hotaling arrived, the owner, her grandchild, and her son had arrived at the facility.

10. The owner was bringing breakfast for the staff and students.

11. When the owner entered the facility, she left the toddler outside in the care of her uncle, the owner's son. The uncle had brought trash with him to place in the facility's commercial trash container.

12. He walked down a lightly wooded path beside the facility to the trash container.

13. The toddler did not follow him as her grandmother and uncle intended. She turned back, entered the facility, then left the facility, and returned to the car where Ms. Hotaling spoke to her and brought her inside.

14. During these events, which occurred in a short period of time, the toddler was never checked into the facility or entrusted to its care. She was in the care of her uncle and her grandmother in her capacity as grandmother.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2012).

16. Since the Department seeks to impose sanctions, it has the burden of proving the allegations of the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. The Department charges that Richardson's violated the requirement of rule 65C-22.001(5)(a) to maintain supervision of a child in its care.

18. The determinative question here is: Did the Department prove by clear and convincing evidence that the toddler Ms. Hotaling found by the orange car in the parking lot and brought into Richardson's was a child in the care of Richardson's. The Department did not.

19. In fact, the persuasive evidence proved that the toddler was in the care of her uncle and grandmother.

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 dismissing the Administrative Complaint.

DONE AND ENTERED this 13th day of June, 2013, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of June, 2013.

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.