

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 13-1622

OAK GROVE CHURCH DAYCARE,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 15, 2013, in Port St. Joe, Florida, before Barbara J. Staros, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Paul A. Rowell, Esquire
Department of Children and Families
2383 Phillips Road
Tallahassee, Florida 32308

For Respondent: James E. Wiley, pro se
Oak Grove Church Daycare, Inc.
Post Office Box 967
Port St. Joe, Florida 32457

STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

On April 3, 2013, the Department of Children and Families (Department) issued an Administrative Complaint to Respondent, Oak Grove Church Daycare (Oak Grove), seeking to impose an administrative fine for alleged violations of Florida Administrative Code Rule 65C-22.004(2) and (4), for failure to have at least one staff member present at all times with a current and valid certification in first aid and for failure to have at least one staff member present at all times with a current and valid certification in infant/child cardiopulmonary resuscitation (CPR). Oak Grove 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 May 1, 2013. A Notice of Hearing was issued on May 15, 2013, scheduling the final hearing for July 19, 2013. The Department filed a Consented Motion for Continuance based upon the unavailability of a witness. The Consented Motion for Continuance was granted and the case was rescheduled for July 15, 2013. The case was heard as scheduled.

At hearing, the Department presented the testimony of one witness, Yvonne Goss. The Department's Exhibits numbered 1 through 6 were admitted into evidence. Respondent presented the

testimony of one witness, Kristy Raffield. Respondent's Exhibits numbered 1 through 3 were admitted into evidence.

The hearing was not transcribed. Petitioner filed a Proposed Recommended Order, which has been considered in the preparation of this Recommended Order. Respondent did not file a post-hearing written submission.

All references to statutes are to Florida Statutes (2012) unless otherwise noted.

FINDINGS OF FACT

1. Respondent is licensed by the Department to operate a child-care facility located in Port St. Joe, Florida.

2. James Wiley is the president/CEO of Oak Grove.

3. Yvonne Goss is a child licensing counselor for the Department. She is assigned to regularly inspect Oak Grove and other facilities.

4. The Administrative Complaint charged Respondent with being out of compliance with the first aid CPR requirements in violation of Florida Administrative Code Rule 65C-22.2004(2). Specifically, the complaint alleges as follows:

On the child care inspections dated March 14, 2013 and November 13, 2012, your facility was out of compliance in that the facility did not have at least one staff member present at all times with a current and valid certification in First Aid (Class II violation). A fine of \$50.00 is imposed.

5. On November 13, 2012, Ms. Goss conducted a regular inspection of Oak Grove. As part of her inspection, Ms. Goss inspected the files of the facility to determine whether it was in compliance with the governing statutes and rules.

6. After reviewing the facility's files, Ms. Goss determined that no staff member on premises during the inspection had a current and valid certification in first aid. In addition to reviewing the files, Ms. Goss inquired of staff members who were on the premises during the inspection whether they had current and valid certification in first aid. She received negative responses from the staff who were present.

7. The Administrative Complaint further charged Respondent with the following:

On the child care inspections dated March 14, 2013 and November 13, 2012, your facility was out of compliance in that the facility did not have at least one staff member present at all times with a current and valid certification in Infant/Child cardiopulmonary resuscitation (CPR) (Class II violation). A fine of \$50.00 is imposed.

8. During the November 13, 2012, inspection, Ms. Goss' review of the facility's files revealed that no staff member on premises during the inspection had current and valid certification in infant/child CPR.

9. Ms. Goss also inquired of Oak Grove staff members who were present whether any of them had current and valid

certification in infant/child CPR. She received negative responses from the staff.

10. Ms. Goss then issued an Administrative Warning to Respondent, which set forth the rule requirements regarding first aid and CPR and which found that Respondent was not in compliance with rule 65C-22.004(2)(a) and (b).

11. Kristy Raffield is an administrative assistant at Respondent's facility. When questioned by Ms. Goss as to whether she had on file documentation showing the required certifications, she answered no. Following Ms. Goss' inspection visit, Ms. Raffield went on-line and completed the requirements for adult, child, and infant CPR, and has a card reflecting that she completed the requirements on November 13, 2012, the date of the first inspection.

12. On March 14, 2013, Ms. Goss conducted another regular inspection of Oak Grove. She again reviewed the facility's files to determine whether it was in compliance with the governing statutes and rules. Based upon her review of the files, she determined that no staff member on premises during the inspection had current and valid certification in infant and child CPR.

13. She also inquired of staff members who were present as to whether any of them had current and valid certification in

infant and child CPR. The staff present responded to her in the negative.

14. Based on the same file review, Ms. Goss determined that no staff member on premises during the inspection had current and valid certification in first aid. She inquired of staff members who were present if they had such certification and they responded in the negative.

15. Based upon these findings, Ms. Goss issued a Notice of Administrative Action to Respondent.

16. According to Ms. Raffield, one staff member who had the appropriate certifications on file was out sick on March 14, 2013, because she had strep throat.

17. A staff member, Debbie Croft, went on-line and received certification that day (March 14, 2013). Her card reflecting completion of the first aid requirements is in evidence.

18. Ms. Raffield acknowledged that while there were employees who possessed the required certifications, there were no employees who possessed these certifications on premises at the times of the inspections.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this

proceeding. § 120.57(1), Fla. Stat. (2013). This proceeding is de novo. § 120.57(1)(k), Fla. Stat.

20. The Department is the agency charged with the responsibility of licensing child-care facilities in the State of Florida. § 402.301-402.319, Fla. Stat.

21. Section 402.310 authorizes the Department to take adverse action regarding the license of a child-care facility for violations of the above-referenced statutes or the rules adopted thereunder, including the imposition of fines.

22. Florida Administrative Code Rule 65C-22.010 reads in pertinent part as follows:

(1) Definitions

* * *

(d) 'Violation' means a finding of noncompliance by the department or local licensing authority of a licensing standard.

* * *

2. 'Class II Violation' is the second or subsequent incident of noncompliance with an individual Class II standard as described on CF-FSP Form 5316. Class II violations are less serious in nature than Class I violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent.

* * *

(2) Disciplinary Sanctions.

* * *

(e) Disciplinary sanctions for licensing violations that occur within a two year period shall be progressively enforced as follows:

2. Class II violations

a. For the first violation of a Class II standard, the department shall issue a formal warning letter stating the department's intent to take administrative action if further violations of the standard occur. The violation will be classified as 'Technical Support.'

b. For the second violation of the same Class II standard, the department shall issue an administrative complaint imposing a fine of \$50 for each violation. This violation, and subsequent violations, of the same standard within a two year period will be classified as 'Class II.'

23. Rule 65C-22.004 reads in pertinent part as follows:

65C-22.004 Health Related Requirements

(2) First Aid, Cardiopulmonary Resuscitation and Emergency Procedures.

(a) Each child care facility must have at least one staff member with current and valid certificate(s) of course completion for first aid training and infant cardiopulmonary resuscitation (CPR) procedures. One staff member satisfying these training requirements shall be present at all times that children are in care at the facility, on field trips, and during all transportation activities.

(b) Certificate(s) of course completion are valid based on the time frames established by each first aid and CPR training program, not to exceed three years. . . .

Documentation that identifies staff members who have met the first aid and infant and child cardiopulmonary resuscitation (CPR) training requirement shall be kept on file at the child care facility.

24. The Department has the burden to prove by clear and convincing evidence the grounds for discipline against Respondent's license. Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998); Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

25. The Department met its burden in proving that Respondent violated rule 65C-22.004(2), in that on November 13, 2012, and again on March 14, 2013, Oak Grove did not have at least one employee with current first aid certification or current and valid infant/child CPR certification on premises. While Respondent presented evidence that staff made the effort to take and complete necessary course requirements following the inspections, the facility's staffing must be sufficient to cover staffing contingencies, even for brief periods of time. These incidents constitute class II violations.

26. As this was the second class II violation of the same standards within a two-year period, the Department shall impose an administrative fine of \$50 for each second violation pursuant to rule 65C-22.010(2)(e)2.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Children and Families enter a final order imposing a total administrative fine of \$100.

DONE AND ENTERED this 15th day of August, 2013, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of August, 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.