

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

CASE NO. 13-1686
RENDITION NO. DCF-14-197-FO

v.

AGAPE INVESTMENT GROUP, INC., d/b/a
AGAPE CHILDCARE AND FAMILY SERVICES,

Respondent.

FILED
JUN 17 2014
DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me for entry of a final order. The recommended order finds the Department proved two violations of child care facility licensing standards, and recommends the Department place respondent's child care facility license on probation and impose a fine. The Department filed exceptions to the administrative law judge's (ALJ) penalty recommendation and certain conclusions of law related to it.

The administrative complaint in this proceeding alleged three licensing violations:

1. Failure to maintain required staff-to-children ratio;
2. Failure to maintain current and complete immunization records; and,
3. Failure to maintain required background screening documentation.

The ALJ found the Department proved the ratio and immunization record violations by clear and convincing evidence, but did not establish the alleged screening violation.

The ALJ recommended the Department place respondent's license in probationary status, and impose a \$340 fine. I believe the Department's exceptions to the penalty recommendation are well-taken.

The ALJ found as fact the ratio violation occurred when the Department's licensing counselor observed a single teacher supervising seven children in the toddler classroom, where the maximum permissible ratio was 1:6. The ALJ also found the violation was inadvertent, and most likely occurred when a child who was assigned to another classroom went to the toddler room after coming into the facility from the playground. The ALJ found as fact the immunization record violation occurred when the facility failed to provide current records for children enrolled in the facility, but not currently in attendance.

Although the instant violations are not particularly egregious transgressions of the applicable licensing standards, the record clearly demonstrates they are just the latest in a distinct pattern of non-compliance by this facility. The ratio violation, which led to the proposed revocation, was the sixth such infraction within a two-year period. Ratio violations are serious. Staff-children ratios are established by the Legislature in section 402.305, Florida Statutes, because a firm upper limit on the number of children child care personnel supervise is critical to ensuring the safety of the children in care. Rule 65C-22.010(2)(e), Florida Administrative Code, directs the Department to deny, suspend, or revoke a license for the fifth class II violation of a given licensing standard within a two-year period. In November 2012, the Department issued an administrative complaint to revoke respondent's license following the fifth ratio violation. See Department Exhibit A. In March 2013, the parties executed a settlement agreement wherein respondent admitted several violations and the Department reduced the sanction from revocation to a fine and probation. *Id.* For the sixth (i.e. the current) ratio violation, rule 65C-22.010(2)(e) again directs the Department to suspend or revoke the

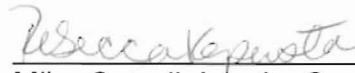
license. Because the Department has already afforded respondent "a second chance" by reducing a revocation to probation and a fine, I do not believe it is in the best interests of the children served by the facility to do so again. Therefore, I reject the ALJ's penalty recommendation and reinstate the sanction noticed in the administrative complaint. In so doing, I also reject recommended order paragraph 38, where the ALJ appears to conclude respondent's pro se status at the final hearing in this case is an appropriate basis on which to mitigate the revocation prescribed by rule 65C-22.010.

The recommended order, as modified above, is approved and adopted.

Accordingly, respondent's child care facility license is revoked.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 17 day of

June, 2014.



Mike Carroll, Interim 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:

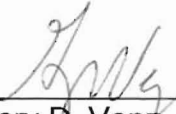
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of this final order was provided to the above-named individuals electronically or by U.S. Mail this 17 day of June, 2014.



Gregory D. Venz, Agency Clerk
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