

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN
AND FAMILIES,

Petitioner,

vs.

Case Nos. 13-2051
13-2798

MINI MIRACLES CHILDREN'S
WORLD DAYCARE CENTER,

Respondent.

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RECOMMENDED ORDER

On October 22, 2013, a formal administrative hearing for these cases was held by video teleconference in Lakeland and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Arthur C. Fulmer, Esquire
Fulmer and Fulmer, P.A.
1960 East Edgewood Drive
Lakeland, Florida 33803-3471

STATEMENT OF THE ISSUES

The issue presented in DOAH Case No. 13-2051 is whether the allegations of the Administrative Complaint filed by the Department of Children and Families (Petitioner) against Wanda

Williams, owner and operator of Mini Miracles Children's World Daycare Center (Respondent), are correct, and, if so, what penalty should be imposed.

The issue presented in DOAH Case No. 13-2798 is whether the Petitioner should approve the Respondent's application to renew the license to operate a child care facility.

PRELIMINARY STATEMENT

By an Administrative Complaint dated March 21, 2013, the Petitioner notified the Respondent that the Petitioner intended to impose an administrative fine and revoke the Respondent's license to operate a child care facility based on the allegations set forth therein. The Respondent disputed the allegations and requested a formal hearing. The Petitioner forwarded the request for hearing to the Division of Administrative Hearings, where it was designated DOAH Case No. 13-2051, and a hearing was scheduled.

By an Administrative Complaint dated June 27, 2013, the Petitioner notified the Respondent that because of the alleged violations set forth therein, the Petitioner intended to impose an administrative fine and deny the Respondent's application to renew the child care facility license at issue in this proceeding. The Respondent disputed the allegations and requested a formal hearing. The Petitioner forwarded the request

for hearing to the Division of Administrative Hearings, where it was designated DOAH Case No. 13-2798.

On August 15, 2013, the cases were consolidated based on the request of the parties. The hearing was scheduled to commence on September 23, 2013, and then, at the request of the parties, was continued to October 22, 2013.

At the hearing, the Petitioner presented the testimony of seven witnesses and had exhibits B, D, E, I, K, N, O, and S through U admitted into evidence. The Respondent testified on her own behalf.

The Transcript of the hearing was filed on December 4, 2013. On December 6, 2013, the parties filed a Joint Stipulation to Request Extension of Time seeking to establish a deadline of December 27, 2013, for filing proposed recommended orders. The request was granted in an Order dated December 10, 2013. On December 27, 2013, the Respondent filed a proposed recommended order that has been considered in the preparation of this Order. The Petitioner has not filed a proposed recommended order.

FINDINGS OF FACT

1. At all times material to these cases, Wanda Williams operated Mini Miracles Children's World Daycare Center located at 1712 West Chase Street, in Lakeland, Florida, under Florida license no. C10P00769. At the time of the hearing, the status of the license was "provisional."

Improper Transportation of Children

2. The Administrative Complaint filed in DOAH Case No. 13-2051 alleges that the Respondent has transported children attending the child care facility in an unsafe manner and in violation of a written commitment from the Respondent to refrain from providing transportation under the license.

3. Section 402.305(10), Florida Statutes (2012), and Florida Administrative Code Rule 65C-22.001(6)(d) limit the number of individuals being transported in a vehicle on behalf of a child care facility to the number of seat belts present in the transportation vehicle.

4. The Respondent was previously cited for such transportation issues in an Administrative Complaint dated October 21, 2011, related to the Respondent's operation of another licensed child care facility. The Respondent did not contest the allegations and paid an administrative fine. The Respondent also executed a written commitment dated June 27, 2012, wherein she committed to refrain from providing transportation to children attending the facility.

5. Based on the previous litigation, the Respondent was aware that transporting children in a number exceeding the appropriate capacity of a vehicle based on the number of seat belts or child safety restraints in the vehicle was not

acceptable. Nonetheless, on more than one occasion while operating the child care facility under the license at issue in this proceeding, the Respondent transported children in an unsafe manner, or directed an employee to transport children in an unsafe manner, by placing more than one child into a seat belt and exceeding the seating capacity of vehicles.

6. An employee of the Respondent who worked at the facility testified at the hearing that Ms. Williams had directed her to transport more children than were seat-belted positions in a vehicle by placing more than one child into a single seat belt. Although the employee knew the practice was unsafe, she complied with the Respondent's direction. Her testimony has been fully credited.

7. During the Petitioner's investigation of the transportation issue, the Respondent initially denied the allegation, but subsequently acknowledged that children had been transported in the manner described.

Failure to Employ a Credentialed Director

8. Section 402.305(3) and rule 65C-22.003(8) require that a licensed child care facility employ an appropriately credentialed director.

9. During an inspection conducted by the Petitioner on August 29, 2012, the Respondent was operating without having a credentialed director. Although the Respondent suggested a

credentialed director had been employed until the day prior to the inspection, the evidence failed to support the assertion.

10. Although the Respondent asserted that attempts were made to employ a credentialed director, the evidence established that the Respondent failed to employ a credentialed director and routinely operated without a credentialed director.

Failure to Maintain Screening Documentation

11. Section 402.305(2)(a) and rule 65C-22.006(4)(d) require that the staff of a child care facility be subjected to "Level 2" background screening prior to employment and that the facility retain documentation that such screening has occurred.

12. During an inspection on October 9, 2012, the Respondent was unable to document that one of the staff members had passed the appropriate background screening process. During an inspection on October 22, 2012, the Respondent was still unable to document that the staff member had passed the appropriate background screening process.

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Failure to Maintain Documentation of Staff Training

13. Section 402.305(2)(d) and rule 65C-22.003(2)(a)1. require that all child care personnel must complete a specified introductory training course within 90 days of commencing employment at a child care facility and that the Respondent retain documentation that such training has occurred.

14. During an inspection on October 22, 2012, the Respondent was unable to document that two of the staff members had completed the required training. During inspections on April 23 and June 12, 2013, the Respondent was still unable to document that staff members had completed the training.

Failure to Maintain Screening Documentation

15. As stated previously, the staff of a child care facility is required to undergo "Level 2" background screening prior to employment, and the facility is required to retain documentation that such screening has occurred.

16. During inspections on April 23, May 21, and June 12, 2013, the Respondent was unable to document that all staff members involved in providing child care had passed the appropriate background screening process, a deficiency that had existed since inspections conducted in October 2012.

Failure to Comply With Staffing Ratios

17. Section 402.305(4) and rule 65C-22.001(4) establish minimal child care facility staffing requirements based on the number and age of children who are attending a child care facility.

18. During inspections on May 21 and June 12, 2013, the Respondent did not have sufficient staff present to meet the requirements based on the number and age of children present at

the facility during the inspection. This deficiency had been identified during an inspection on August 29, 2012.

Child Sleeping in "Bouncer Seat"

19. Rule 65C-22.002(5) establishes specific requirements related to the equipment that must be provided by a child care facility to permit children to nap or sleep. The rule requires that children up to one year of age be placed in individual cribs, portacribs, or sided-playpens.

20. During an inspection conducted on May 21, 2013, an infant was observed sleeping in a "bouncer" seat, contrary to the specific provisions of the rule. This deficiency had been identified during an inspection on October 9, 2012.

Failure to Post Menus

21. Rule 65C-22.005 establishes specific requirements related to the provision of food by a child care facility. Such requirements state that at the beginning of each week, a child care facility must post menus of meals and snacks available to the children during the week.

22. During inspections on June 12 and June 14, 2013, the required menus were not posted by the Respondent. This deficiency was identified during two inspections conducted in October 2012.

Providing Fraudulent Information to DCF

23. The Administrative Complaint alleged that the Respondent twice provided fraudulent information to the Petitioner related to the identification of the credentialed facility director. The allegation was not supported by competent evidence.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2013).

25. In DOAH Case No. 13-2051, the Petitioner has the burden of proving, by clear and convincing evidence, the allegations set forth in the Administrative Complaint against the Respondent. In DOAH Case No. 13-2798, the Petitioner has the burden of establishing that sufficient cause is present to deny the license renewal applications filed by the Respondent. Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998).

26. The Petitioner has met the burden in both cases. The continuing violations of statutes and rules set forth herein are sufficient to warrant revocation of the Respondent's license and denial of the renewal application.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent enter a final order revoking the license at issue in this proceeding and denying the Petitioner's application to renew the referenced license.

DONE AND ENTERED this 4th day of February, 2014, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 4th day of February, 2014.

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.