

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN
AND FAMILIES,

Petitioner,

vs.

Case No. 14-0945

MY FIRST SCHOOL, INC.

Respondent.
_____ /

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2013),^{1/} before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on July 9, 2014, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Karen A. Milia, Esquire
Department of Children and Families
Suite N-1014
401 Northwest Second Avenue
Miami, Florida 33138

For Respondent: Leonardo A. Canton, Esquire
Suite 203
201 Sevilla Avenue
Coral Gables, Florida 33134

STATEMENT OF THE ISSUES

The issues in this case are: (1) whether Respondent misrepresented or fraudulently provided information to

Petitioner regarding compliance of its child care facility with the annual physical examination and annual vehicle inspection requirements in Florida Administrative Code Rule 65C-22.001(6) (a) and (c), in violation of section 402.319(1) (a), Florida Statutes, and Child Care Facility Standard No. 63, incorporated by reference into rule 65C-22.010(1) (d)1.; and (2) if Respondent committed the alleged violations, the penalty that should be imposed.

PRELIMINARY STATEMENT

On or about December 20, 2013, Petitioner, Department of Children and Families, served Respondent, My First School, Inc., with an Administrative Complaint alleging that Respondent violated section 402.319(1) (a), rules 65C-22.001(11) and 65C-22.001(6) (c), and Standard 63 of Petitioner's Child Care Facility Standards Classification. Pursuant to section 402.310 and rules 65C-20.012^{2/} and 65C-22.010, Petitioner proposed to impose a \$200.00 fine, convert Respondent's child care facility license to probationary status, and terminate Respondent's Gold Seal designation. On January 13, 2014, Respondent filed a request for administrative hearing.

On or about February 18, 2014, Petitioner issued an Amended Administrative Complaint, which superseded the Administrative Complaint and alleged additional facts supporting the misrepresentation charges and fraudulent information provision

charges. The Amended Administrative Complaint charged Respondent with violating the same statutes and rules as were charged in the Administrative Complaint, and sought to impose the same penalties.^{3/}

On March 3, 2014, Petitioner referred this proceeding to DOAH to conduct an administrative hearing pursuant to sections 120.569 and 120.57(1). On March 17, 2014, Respondent filed a response to the Amended Administrative Complaint, disputing the allegations and requesting a hearing.

The final hearing initially was set for May 15, 2014, but pursuant to Respondent's request for a continuance, was rescheduled for July 9, 2014.

The final hearing was held on July 9, 2014. Petitioner presented the testimony of Pauline Kinsey and Gloria Johnson, and Petitioner's Exhibits 3, 4, 5, 8, 9, 10, 11, 12, and 13 were admitted into evidence. Respondent presented the testimony of Lyan Barrus, Soraya Sanabria, and Francisco Perez, and Respondent's Exhibits 1 through 15 were admitted into evidence.^{4/}

A final hearing transcript was not filed with DOAH. The parties were given until July 21, 2014, to file their proposed recommended orders. Both parties timely filed proposed recommended orders, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties

1. Petitioner is the state agency responsible for licensing, inspecting, and monitoring child care facilities pursuant to chapter 402, Florida Statutes.

2. Respondent is a child care facility licensed by Petitioner, operating under License No. C11MD1476. Respondent's facility is located at 968 Southwest 82nd Avenue, Miami, Florida. Soraya Sanabria and Lyan Barrus are the Respondent's owners, and Sanabria is its Director.

3. At the time of the alleged conduct giving rise to this proceeding, Respondent was designated a Gold Seal Quality Care provider pursuant to section 402.281(1)(b) and was participating in the Gold Seal Quality Care program.

II. Events Giving Rise to this Proceeding

A. License Renewal Process

4. Pursuant to section 402.308(1), Respondent applied for the annual renewal of its child care facility license in mid- to late 2013.

5. On November 20, 2013, Pauline Kinsey, Family Service Counselor, conducted a license renewal inspection of Respondent's facility. During the inspection, Kinsey identified a few minor noncompliance issues, which Respondent expeditiously addressed and are not at issue in this proceeding.

6. As part of the annual license renewal application review process, Petitioner's auditors carefully review each application to ensure compliance with the statutes and rules governing child care facility licensure.

7. Gloria Johnson, an auditor with Petitioner's child care facility regulation program, reviewed Respondent's 2013 license renewal application.^{5/}

B. The Vehicle Inspection and Health Examination Forms

8. In the course of her review of Respondent's 2013 application, Johnson discovered that Respondent had submitted a vehicle inspection form for its facility's child transportation vehicle dated June 14, 2011, that previously had been submitted as part of Respondent's 2011 license renewal application.

9. Johnson notified Kinsey, who contacted Sanabria on December 17, 2013. Kinsey requested that Respondent submit a current vehicle inspection form for inclusion in its 2013 license renewal application.

10. That same day, Sanabria faxed a vehicle inspection form, dated June 14, 2013, to Petitioner.

11. Johnson reviewed this vehicle inspection form and determined that it was a copy of the June 14, 2011, form that had been altered. Specifically, the date in the top left space on the form had been altered by writing a "3" over the last "1" in "2011." In every other respect—including handwriting,

vehicle mileage, name of inspector and business (Goodyear),^{6/} and date of inspection written in the lower right-hand corner—the two forms were identical.

12. This spurred Johnson to take a closer look at Respondent's facility licensing files. In doing so, she discovered that the June 14, 2011, vehicle inspection form also had been submitted to Petitioner as part of Respondent's 2012 license renewal application.^{7/}

13. Johnson notified Kinsey that the vehicle inspection form Respondent submitted on December 17, 2013, was an altered version of the form dated June 14, 2011. Kinsey immediately contacted Respondent regarding the altered form.

14. On December 18, 2013, Respondent submitted a vehicle inspection form indicating that the vehicle had been inspected at Tires Plus that same day.

15. Petitioner refused to accept the December 18, 2013, form. Kinsey informed Respondent that Petitioner had determined that the vehicle inspection form Respondent had submitted on December 17, 2013, was altered, so the matter was being referred to Petitioner's legal department to determine appropriate action.

16. In the course of reviewing Respondent's license renewal application files, Johnson also discovered that a "Health Examination" form that Respondent had submitted in its

2012 license renewal application^{8/} also was altered. Respondent submitted a copy of the Health Examination form dated "6/10/2011" as part of its 2011 application, and then again submitted the same form in its 2012 application; however, the date on the form submitted in the 2012 application had been changed from "6/10/2011" to "6/10/2012" by whiting out the last "1" in "2011" and replacing it with a "2." In every other respect, including handwriting and other marks, the forms were identical.^{9/}

C. Complaint Inspection and Administrative Complaints

17. As a result of Johnson's discovery of the altered vehicle inspection and health examination forms in Respondent's application files, Kinsey conducted a complaint inspection of Respondent's facility on December 20, 2013.

18. At that time, Petitioner issued an Administrative Complaint citing Respondent for violating section 402.319(1)(a), rules 65C-22.001(11) and 65C-22.001(6)(c), and Petitioner's Child Care Facility Standard No. 63, by having misrepresented information and fraudulently provided information to Petitioner related to Respondent's child care facility.

19. On January 13, 2014, Respondent filed a request for administrative hearing challenging the Administrative Complaint. Attached to the request for hearing was a vehicle inspection form dated June 14, 2013. The information on the form stated

that the vehicle had been inspected on that date by Francisco Perez, a mechanic employed at Albert of Miami. This document had not previously been submitted to Petitioner and was not part of Respondent's 2013 license renewal application.

20. On February 18, 2014, Petitioner issued an Amended Administrative Complaint, alleging in greater detail the facts giving rise to its charges that Respondent misrepresented information and fraudulently provided information to Petitioner related to the child care facility. The Amended Administrative Complaint charged Respondent with the same statutory and rule violations as had been charged in the Administrative Complaint, and imposed the same penalties.

D. Respondent's Defenses

21. At the final hearing, Barrus and Sanabria testified that Respondent inadvertently had submitted a copy of the June 14, 2011, vehicle inspection form in its 2013 license renewal application. When contacted by Kinsey, Sanabria had accidentally faxed a draft copy of the vehicle inspection form with the date changed to June 14, 2013. Barrus and Sanabria testified that this draft had been prepared for the purpose of demonstrating to the mechanic how to complete the form. They claimed that Perez did, in fact, inspect the vehicle on June 14, 2013, as evidenced by the vehicle inspection form showing his name that was submitted as an exhibit to the request for

administrative hearing filed on January 13, 2014.^{10/} They claimed that the vehicle actually had been inspected twice in 2013, so that Respondent was in compliance with the rule requirement regarding annual vehicle inspection.^{11/}

22. Barrus testified that the June 14, 2011, vehicle inspection form mistakenly had been included in the 2012 license renewal application. Barrus and Sanabria both testified that Respondent did not transport children in its facility vehicle in 2012, so that in any event, Respondent was not required to submit a vehicle inspection form showing current inspection status for that year.

23. Neither Barrus nor Sanabria disputed that the Health Examination form discovered in its 2012 license renewal application file had been altered by the date having been changed from "6/10/2011" to "6/10/2012." Barrus testified that she did not know how the altered form came to be part of Respondent's 2012 license renewal application. She reiterated that Respondent did not transport children in its facility vehicle in 2012, so that under any circumstances, Sanabria was not required to have a physical examination that year.^{12/}

III. Findings of Ultimate Fact

24. The undersigned finds the testimony of Barrus and Sanabria regarding the vehicle inspection form issue incredible and unpersuasive.

25. The evidence establishes that Respondent submitted the June 14, 2011, inspection form as part of its 2013 license renewal application. The credible, persuasive evidence in the record gives rise to the inference that when Petitioner discovered the outdated form and contacted Respondent, on December 17, 2013, Respondent intentionally submitted the altered inspection form with the date changed from June 14, 2011, to June 14, 2013. Petitioner discovered this alteration and contacted Respondent. Thereafter, in an attempt to comply with the annual inspection requirement, Respondent had the vehicle inspected by Tires Plus on December 18, 2013, and submitted the vehicle inspection form to Petitioner that day. The credible, persuasive evidence further gives rise to the inference that when Petitioner refused to accept the December 18, 2013, form, Respondent created another vehicle inspection form that it dated June 14, 2013, obtained Perez' handwritten name on the form, and submitted the form to Petitioner as an exhibit to the request for hearing that it filed on January 13, 2014.^{13/}

26. In committing this conduct, Respondent misrepresented information and fraudulently provided information to Petitioner related to the child care facility, in violation of section 402.319(1) (a) and Standard 63 of Petitioner's Child Care Facility Standards.

27. The undersigned also finds the testimony of Barrus and Sanabria regarding the "Health Examination" form in the 2012 application incredible and unpersuasive.^{14/}

28. The credible, persuasive evidence gives rise to the inference that Respondent altered the Health Examination form by changing the date from "6/10/2011" to "6/10/2012" and intentionally submitted the altered form to Petitioner as part of its 2012 renewal application.

29. In committing this conduct, Respondent misrepresented information and fraudulently provided information to Petitioner related to the child care facility, in violation of section 402.319(1)(a) and Standard 63 of Petitioner's Child Care Facility Standards.

30. In sum, Petitioner has proved, by clear and convincing evidence, that Respondent committed the violations alleged in the Amended Administrative Complaint.

CONCLUSIONS OF LAW

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

32. This is a disciplinary proceeding against Respondent's child care facility license, pursuant to section 402.310(1), Florida Statutes. Petitioner bears the burden, by clear and convincing evidence, to establish the grounds for discipline

against Respondent's license. Dep't of Banking & 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).

33. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA 1989), the Court defined clear and convincing evidence as follows:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of conviction, without hesitancy, as to the truth of the allegations sought to be established.

Id. at 116 n.5, citing Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

34. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. See McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Goin v. Comm'n on Ethics, 658 So. 2d 1131, 1138 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

A. Applicable Statutes

35. Respondent is a child care facility as defined in section 402.302(2), which states in pertinent part:

"Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.

36. Section 402.308(1) requires a child care facility license to be renewed annually.

37. Pursuant to sections 402.305(2)(e) and (10), Petitioner has adopted rules establishing child care facility licensure requirements. Among these are that drivers of child care facility vehicles used to transport children must undergo periodic health examinations, and that such vehicles must be inspected on an annual basis.

38. Section 402.319(1) authorizes Petitioner to take disciplinary action and impose penalties against child care facility licenses for specified violations of child care facility statutes and rules. The statute provides in pertinent part:

(1) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person knowingly to:

(a) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment or licensure regulated under ss. 402.301-402.318 all information required under those sections or a material fact used in making a determination as to such person's

qualifications to be child care personnel,
as defined in s. 402.302, in a child care
facility

39. Section 402.310 also authorizes Petitioner to take disciplinary action and impose penalties against child care facility licenses for violation of applicable statutes and rules. This statute states in pertinent part:

(1)(a) The department or local licensing agency may administer any of the following disciplinary sanctions for a violation of any provision of ss. 402.301-402.319, or the rules adopted thereunder:

1. Impose an administrative fine not to exceed \$100 per violation, per day. However, if the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day in addition to or in lieu of any other disciplinary action imposed under this section.

2. Convert a license or registration to probation status and require the licensee or registrant to comply with the terms of probation. A probation-status license or registration may not be issued for a period that exceeds 6 months and the probation-status license or registration may not be renewed.

3. Deny, suspend, or revoke a license or registration.

40. Section 402.281 establishes the Gold Seal Quality Care Program. Under this program, child care facilities may apply for and receive a "Gold Seal Quality Care" designation.

Pursuant to section 402.281(4), commission of a Class I violation of child care facility statutes and rules constitutes grounds for termination of the Gold Seal Quality Care designation, and the facility is not again eligible for such designation until it has had no Class I violations for a two-year period.

B. Applicable Rules

41. Florida Administrative Code Rule 65C-22.001(6)

provides in pertinent part:

(6) Transportation. For the purpose of this section, vehicles refer to those that are owned, operated or regularly used by the child care facility and vehicles that provide transportation through a contract or agreement with an outside entity.

* * *

(a) When any vehicle is regularly used by a child care facility to provide transportation, the driver shall have the following:

* * *

2. An annual physical examination which grants medical approval to drive

* * *

(c) All vehicles regularly used to transport children shall be inspected annually by a mechanic to ensure proper working order. Documentation by the mechanic shall be maintained in the vehicle.

42. Rule 65C-22.010(1) specifies conduct that constitutes a particular class of violation of child care facility statutes and rules. The rule provides in pertinent part:

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

1. "Class I Violation" is an incident of noncompliance with a Class I standard as described on CF-FSP Form 5316, July 2012. Child Care Facility Standards Classification Summary, which is incorporated by reference. A copy of the CF-FSP Form 5316 may be obtained from the department's website at www.myflorida.com/childcare or from the following link <http://www.flrules.org/Gateway/reference.asp?No=Ref-03034>. The effective date of a termination of a provider's Gold Seal Quality Care designation is the date of the department's written notification to the provider. Class I violations are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child.

43. Pursuant to rule 65C-22.010, Petitioner has adopted its Child Care Facility Standards by rule, and these Standards are incorporated by reference into rule 65C-22.010(1)(d). Standard No. 63 of the Child Care Facility Standards is titled "Access/Child Abuse or Neglect/Misrepresentation ss. 402.311, 402.319, F.S. & rule 65C-22.001(9), (11), F.A.C." This Standard makes misrepresentation and the fraudulent provision of

information related to the child care facility, by child care facility personnel^{15/} to the licensing authority, a Class I violation.

C. Respondent Guilty of the Alleged Violations

44. For the reasons addressed above, it is concluded that Petitioner has proved, by clear and convincing evidence, that Respondent committed the violations alleged in the Amended Administrative Complaint.

45. Specifically, Petitioner proved that Respondent intentionally submitted an altered vehicle inspection form as part of its 2013 license renewal application. This act constituted misrepresentation and the fraudulent provision of information regarding the licensure of Respondent's child care facility, in violation of section 402.319(1) (a) and Standard 63 of Petitioner's Child Care Facility Standards.

46. Petitioner also proved that Respondent intentionally submitted an altered Health Examination form as part of its 2012 license renewal application. This act constituted misrepresentation and fraudulent provision of information regarding the licensure of Respondent's child care facility and regarding Sanabria's qualification to serve as driver of the facility's child transportation vehicle. These acts violated section 402.319(1) (a) and Standard 63 of Petitioner's Child Care Facility Standards.

47. Respondent asserts that in any event, it should not be subject to discipline because it has complied with the requirements in rule 65C-22.001(6)(a) and (c), in that Sanabria recently has undergone a physical examination and Respondent has had the facility vehicle inspected within the past year. However, Respondent's position misses the point. Petitioner has not charged Respondent with failing to meet those substantive rule requirements; rather, it has charged Respondent with misrepresentation and fraudulent provision of information in attempting to show that it met those requirements.

48. In sum, the clear and convincing evidence establishes that Respondent intentionally submitted altered forms regarding these licensure requirements in its 2012 and 2013 license renewal applications, and in doing so, committed misrepresentation and fraudulently provided information to Petitioner regarding its license, in violation of section 402.319(1)(a) and Standard 63 of Petitioner's Child Care Facility Standards.

D. Penalties

49. As discussed above, section 402.310(1) authorizes Petitioner to impose disciplinary sanctions for violations of applicable child care facility statutes and rules. Among the sanctions authorized are imposition of an administrative fine

not to exceed \$100.00 per day per violation, and conversion of a child care facility license to probation-status.

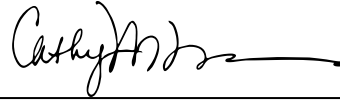
50. Here, the evidence supports imposition of a \$200.00 administrative fine against Respondent and conversion of its child care facility license to probation-status for a six-month period.

51. As discussed above, Petitioner proved, by clear and convincing evidence, that Respondent misrepresented information and fraudulently provided information to Petitioner regarding its child care facility license and child care personnel. Pursuant to Standard 63, this conduct constitutes a Class I violation. Section 402.281(4) requires termination of a child care facility's Gold Seal Quality Care designation for commission of a Class I violation. Accordingly, Respondent's Gold Seal Quality Care designation must be terminated.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Children and Families, enter a final order imposing a \$200.00 administrative fine on Respondent, My First School, Inc.; converting Respondent's child care facility license, License No. C11MD1476, to probation-status for a six-month period; and terminating Respondent's Gold Seal Quality Care designation.

DONE AND ENTERED this 6th day of August, 2014, in
Tallahassee, Leon County, Florida.



CATHY M. SELLERS
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of August, 2014.

ENDNOTES

^{1/} All references are to 2013 Florida Statutes.

^{2/} This rule has been superseded by the version of rule 65C-22.010 that went into effect on August 1, 2013.

^{3/} The Amended Administrative Complaint does not specifically cite to rule 65C-22.001(6)(a), which imposes the requirement that the driver of a child care facility vehicle have an annual physical examination that grants medical approval to drive. However, the Amended Administrative Complaint alleges, in great factual detail, that Respondent intentionally submitted falsified information regarding its compliance with rules 65C-22.001(6)(a) and (c), in violation of Standard No. 63 of Petitioner's Child Care Facility Standards. This standard makes misrepresentation and fraudulent provision of information related to a child care facility a violation of rule 65C-22.010, which is specifically cited in the Amended Administrative Complaint. The Amended Administrative Complaint more than adequately places Respondent on notice regarding the factual allegations and legal charges against which it must defend. See Seminole Cnty. Bd. of Cnty. Comm'rs v. Long, 422 So. 2d 938 (Fla. 5th DCA 1982) (administrative complaint must be specific

enough to inform the accused with reasonable certainty of the nature of the charge).

^{4/} Respondent's Exhibit 16 was not formally proffered or admitted into evidence.

^{5/} References to years in connection with an annual license renewal application refers to the year in which the application was submitted to Petitioner for renewal of the license.

^{6/} Kinsey confirmed that this particular Goodyear dealer no longer conducted vehicle inspections.

^{7/} Petitioner apparently failed to catch the outdated form in its license renewal audit conducted in 2012.

^{8/} This form was submitted to document compliance with the rule requirement that the person driving the child care facility transport vehicle have an annual physical examination.

^{9/} Petitioner apparently failed to catch the altered health examination form in its license renewal audit conducted in 2012.

^{10/} Francisco Perez testified that he filled out an invoice dated June 14, 2013, and signed a vehicle inspection form containing that same date. The undersigned did not find Perez' testimony sufficiently persuasive to support a finding that Respondent did, in fact, have the vehicle inspected on June 14, 2013.

^{11/} Respondent offered no credible explanation why, if it had the vehicle inspected on June 14, 2013, and thus would have had the vehicle inspection form signed by Perez in its possession when Petitioner conducted the inspections in late 2013, it did not provide the form to Petitioner at that time.

^{12/} Nonetheless, Sanabria apparently did have a physical examination in February 2012 to satisfy that requirement for her Florida Department of Transportation chauffer's license, as evidenced by the Medical Examination Report for Commercial Driver Fitness Determination dated February 17, 2012, which was admitted into evidence. For reasons not explained in the record, Respondent did not submit this document to Petitioner as part of its 2012 license renewal application.

^{13/} The undersigned notes that on the form dated June 14, 2013, with Perez' name written on it, all of the information on the

form, other than Perez' name and the business entity information, was handwritten by someone other than Perez. This undercuts the credibility of Barrus' and Sanabria's testimony that they had prepared a "draft" of the June 14, 2013, form to give to the mechanic to show him how to fill out the form.

^{14/} The Medical Examination Report for Commercial Driver Fitness Determination dated February 17, 2012, showing that Sanabria obtained a medical examination on that date, undercuts the credibility of Barrus' and Sanabria's testimony that Respondent did not transport children in its facility vehicle in 2012. Had that been the case, Sanabria would not have needed to undergo a medical examination for purposes of maintaining a current chauffeur's driver license.

^{15/} "Child care personnel" means all owners, operators, employees, and volunteers working in a child care facility.

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.