

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DADDY'S DAYCARE EARLY LEARNING
ACADEMY, INC.,

Petitioner,

vs.

Case No. 15-3737

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.

_____ /

RECOMMENDED ORDER

John D.C. Newton, II, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing in this matter on November 15, 2015, and January 19, 2016, by video teleconference in Tallahassee and Lakeland, Florida.

APPEARANCES

For Petitioner: Charlann Jackson Sanders, Esquire
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For Respondent: Cheryl D. Westmoreland, Esquire
Department of Children and Families
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STATEMENT OF THE ISSUE

May Respondent, Department of Children and Families (the Department), deny the application for a renewal license of the

Petitioner, Daddy's Daycare Early Learning Academy, Inc. (Daddy's Daycare)?

PRELIMINARY STATEMENT

By letter dated May 1, 2015, the Department issued a Denial of Daddy's Daycare's Application to Operate Licensed Child Care Facility. Daddy's Daycare disputed the facts and requested a hearing. The Department referred the matter to DOAH. Before assignment of an Administrative Law Judge, the Department issued an Amended Denial of Application to Operate Licensed Child Care Facility on June 8, 2015. After two continuances due to counsel's scheduling conflicts and the unanticipated unavailability of a witness, the hearing convened on November 5, 2015. The parties had not filed a pre-hearing stipulation. Daddy's Daycare had not pre-filed its proposed exhibits. After repeated failed attempts to transmit the exhibits by facsimile, the undersigned recessed the hearing providing Daddy's Daycare another opportunity to pre-file proposed exhibits. The hearing reconvened on January 19, 2016.

Daddy's Daycare's owner, Lonnie Caldwell, testified. Daddy's Daycare also presented the testimony of Curlena Dukes. Daddy Daycare's Exhibits 8 and 12 were admitted into evidence.

The Board presented testimony of Cheryl Dishong, Nancy Ebrahimi, Nikki Marie Ernst, Kenneth Franklin, Kimberly Dawn Helmick, Kendra Kincade, Demetria Nail, Vicki Richmond, and Ida

Williams. Department's Exhibits A through J and L were accepted into evidence.

The undersigned took official recognition of the Department's Emergency Verified Motion to Modify Custody of Children into Foster Care dated April 2, 2015, and filed in Case No. 53-2014-DP-000192-XX (redacted); Order Modifying Custody of Children, dated April 2, 2015, and filed in Case No. 53-2014-DP-000192-XX (redacted); and Memo of Court Hearing, in Case No. 2014DP000192000000, dated April 17, 2015 (redacted).

The parties obtained a transcript of the hearing. They timely filed proposed recommended orders. The proposed recommended orders have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Daddy's Daycare is a child daycare facility licensed by the Department. Lonnie Caldwell is the owner, operator, and director of Daddy's Daycare.

2. On March 25, 2015, D.T., a three-year-old child, was a student at Daddy's Daycare, along with two siblings. She and her siblings were also foster children of Mr. Caldwell and his wife.

3. On March 25, 2015, Mr. Caldwell and his wife were leaving the facility to take D.T. and other children to lunch. They were in the driveway of Daddy's Daycare. D.T. did not want to go and threw herself down in a tantrum of resistance.

4. Mr. Caldwell dragged D.T. down the driveway to the car, spanked her, and forcibly pushed her into the car.

5. Mr. Caldwell's rough treatment of D.T. abraded both her knees and bruised her legs.

6. Photographs and testimony about direct observations establish the damage to D.T.'s knees and legs described in finding five. D.T. had other injuries. But the nature and cause of them were not established by persuasive evidence.

7. Hearsay reports from observers lunching across the street from Daddy's Daycare described the facts found in findings three and four.

8. Mr. Caldwell's statements, consistent and inconsistent, corroborate the observers' hearsay. In a March 26, 2015, interview, Mr. Caldwell agreed that he and his wife were leaving to take children to lunch on March 25, 2015, at about the same time the observers reported seeing him drag D.T. across the driveway. He also agreed that D.T. threw herself to the ground. Mr. Caldwell denied dragging D.T. across the driveway. He did not mention anyone other than himself, his wife, and the children being in the driveway. Given the opportunity, Mr. Caldwell did not offer an explanation for D.T.'s injuries, although she spent the majority of her time with him either as a daycare student or as his foster child.

9. His testimony at the hearing differed significantly. Mr. Caldwell was also evasive and made repeated references to knowing people were watching. This leads to a conclusion that he was trying to conceal information. At the hearing, Mr. Caldwell said that D.T. ran outside to the play area when she learned they were leaving for lunch. He says his son carried her to the car. This is one example of Mr. Caldwell's testimony:

I said, come on D. So when I told her that, D. immediately got off the swing but she dropped on the -- we have mulch on the field. So she just dropped to the ground and she was having one of her tantrums. I have an 11 year old son which was about to approach her. I said stop, Tim. I said stop right there. And I told my 15 year old because I knew that he wasn't strong enough and my back was bothering so I just told my 15 year old, walk over there and pick D. up. I said because we are very visible. We don't know who's watching the center. And I don't want any misconstrues. So I said, do not pull on her, pick her up and walk with her. So he did. He picked her up. I already went outside. You have to go through a gate. The vehicles are right up against the gate and on the grass area. Once he exit the - the gate with D., she's still wailing and crying. I said give her to me. So he gave her to me. And when he gave her to me, she had mulch all over her - her pants and stuff so I had her face and back and I was just dusting the mulch off because I didn't want her to sit on it because some of it is pretty prickly. So I made sure that all the mulch was off of her. And then I placed her in her car seat. She was still wailing because she does not like to be confined. But when D. sees that she has to get in her car seat, you don't have to get a block away, she calms down completely. A totally different baby.

She's all calm. I said, see, that wasn't bad at all. Was it?

(Tr. pp.196-197)

10. Mr. Caldwell's March statements differ significantly from his testimony at the hearing in January 2016. The differences are not little "passage of time" sorts of discrepancies. In March he did not mention his two sons being present; he did not claim that D.T. was in the play area; he did not claim anyone else had touched D.T. Mr. Caldwell's claim that at the time he expressed concern that someone may be watching and nobody should do anything that would be "misconstrued" persuasively indicates that he was trying to defensively adapt his testimony to fit other evidence.

11. Altogether, the hearsay reports, Mr. Caldwell's testimony, photographs of D.T.'s knees and legs, and Mr. Caldwell's conflicting March statements are persuasive, clear, and convincing evidence that he dragged D.T. across the driveway, spanked her, and threw her in the car and has been trying to conceal those facts. These facts also resulted in an investigation concluding with a verification of physical abuse of D.T. by Mr. Caldwell.

12. Visits by Department employees during the course of the investigation of the March 25 incident revealed several other licensing violations including: insufficient staff, inadequate

supervision, roaches crawling on a table, peeling paint, an unplugged electrical outlet, hazardous materials (including cleaning supplies and a knife) available to the children, improper assembly of playpens (making them a danger to the children), failure to conduct a March fire drill, an improperly anchored swing set, bolts protruding from playground equipment, broken equipment, unsecured medication menu not posted, unlabeled bottles and "sippy cups", incomplete personnel records, and failure to properly record attendance.

13. The Department also asserted that employees used physical discipline or the threat of it. The Department did not prove this by non-hearsay evidence. The evidence is insufficient to prove the claims. § 120.57(1)(c), Fla. Stat. (2015).¹

14. On July 25, 2014, Daddy's Daycare was in violation of many licensing requirements. Its staffing was insufficient, and it was not providing the children sufficient supervision. Daddy's Daycare also had not properly recorded children's attendance, had not documented level 2 background screening for some employees, had not documented required staff training, and had not documented the employment history for some employees. In addition, on July 25, 2014, Daddy's Daycare did not have the required records of all the children's immunizations.

15. Other violations on July 25, 2014, were not properly sanitizing the diapering surface, rinsing a bottle in the

handwashing sink, failure to properly document a volunteer, failure to label the children's bottles and "sippy cups", feeding a child using a propped up bottle, and incomplete enrollment information for some children.

16. On August 26 and 27, 2014, Ms. Ebrahimi and Ms. Dukes inspected Daddy's Daycare. On those days Daddy's Daycare was again not in compliance with several licensing requirements. Mr. Caldwell and two employees had not completed required in-service training. On the 27th, two infants did not have proper supervision. Toxic substances including bleach, cleaning supplies, and paint were available to the children. So were plastic bags and a knife. The posted emergency contact information was incomplete. Substitutions to the posted menu were not posted.

17. On December 29, 2014, Ms. Dishong inspected Daddy's Daycare for the Department. Daddy's Daycare was again in violation of several licensing requirements. The staffing was insufficient. The kitchen was not securely separated from the classroom area. The infant room was not properly secured. Playground equipment was not properly anchored.

18. On April 21, 2015, Daddy's Daycare did not have the lighting required for a daycare facility.

CONCLUSIONS OF LAW

19. Sections 120.569 and 120.57(1) grant DOAH jurisdiction over the parties to and the subject matter of this proceeding.

20. The Department seeks to deny Daddy's Daycare renewal of its license for alleged acts of wrongdoing. The Department must prove its charges by clear and convincing evidence. Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998); Dep't of Child. & Fam. Servs. v. Mini Miracles Children's World Daycare Ctr., Case No. 13-2798 (Fla. DOAH Feb. 4, 2014; DCF Feb. 21, 2014).

21. The Department met its burden. It proved Mr. Caldwell physically injured a child entrusted to his care. It also proved that Daddy's Daycare had a multi-year history of violating licensing requirements of section 402.305, Florida Statutes, and Florida Administrative Code Rules 65C-22.002, 65C-22.003, 65C-22.004, 65C-22.005, and 65C-22.006.

22. The Department also argues that because the facility at the licensed location is not in operation, this provides a separate ground for denying renewal. The proposed Denial of Application to Operate Licensed Child Care Facility did not assert this claim. Consequently, it may not be considered. See, Klein v. Dep't of Bus. & Prof'l Reg., 625 So. 2d 1237 (Fla. 2d DCA 1993).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Department of Children and Families, enter a final order denying renewal of the daycare license of Petitioner, Daddy's Daycare Early Learning Academy, Inc.

DONE AND ENTERED this 25th day of March, 2016, 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 25th day of March, 2016.

ENDNOTE

^{1/} All citations to the Florida Statutes are to the 2015 codification unless otherwise noted.

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.