

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 15-4169

JOSEPH ITURRIAGA AND CHERIE
ITURRIAGA,

Respondents.

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015), before Cathy M. Sellers, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), on November 10, 2015, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Carlos Alberto Garcia, Esquire
Department of Children and Families
401 Northwest Second Avenue, Suite N-1014
Miami, Florida 33128

For Respondents: Joseph Iturriaga, pro se
19711 Northeast Miami Court
North Miami Beach, Florida 33179

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner should revoke Respondents' foster home license based on violations of section 409.175(9), Florida Statutes (2014), and provisions of Florida Administrative Code Chapter 65C-13 alleged in the Notice of Intent to Revoke Foster Home License dated April 16, 2015.

PRELIMINARY STATEMENT

On April 16, 2015, Petitioner, Department of Children and Families, issued a Notice of Intent to Revoke Foster Home License ("Notice of Intent"), proposing to revoke the foster home license issued to Respondents, Joseph and Cherie Iturriaga, based on Petitioner's determination that Respondents had violated specified statutes, rules, and foster home agreements. Respondents timely requested an administrative hearing on Petitioner's proposed action, and the matter was referred to DOAH to conduct a hearing pursuant to sections 120.569 and 120.57(1).

The final hearing originally was scheduled for September 28, 2015. However, on September 24, 2015, Petitioner requested a continuance due to a medical emergency involving one of its witnesses. The hearing was continued and the parties were directed to provide suggested dates for the hearing.

Pursuant to the parties' response, the final hearing was held on November 10, 2015. Petitioner presented the testimony of Respondent Cherie Iturriaga, Dulce Pulpo, Marietta Enriquez, and Sonia De Escobar, and Petitioner's Exhibits 1 through 4 and 6 through 8 were admitted into evidence without objection. Respondent Joseph Iturriaga testified on behalf of Respondents and also presented the testimony of Eric Sami. Respondents' Exhibits 3 and 11 were admitted into evidence without objection. A CD containing three calls made to 911 on the afternoon of September 4, 2014, regarding the incident at issue in this proceeding, was admitted into evidence as Joint Exhibit A.^{1/}

The two-volume Transcript was filed on December 2, 2015. The Notice of Filing Transcript issued on December 3, 2015, notified the parties that they had until December 14, 2015, to submit their proposed recommended orders. Petitioner did not submit a proposed recommended order. Respondents' Proposed Recommended Order was submitted on November 23, 2015, and was duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the state agency responsible for licensing foster care parents and foster homes pursuant to section 409.175.^{2/}

2. Respondents are foster care parents in a foster care home licensed as Provider FSN ID #100032652, the therapeutic foster home at issue in this proceeding.^{3/}

3. A.A., an eight-year-old child, was placed into Respondent's foster home in April 2014.^{4/}

4. On the afternoon of September 4, 2014, Respondent Cherie Iturriaga took A.A. and her two grandchildren to a shopping center. When they were ready to leave, A.A. refused to get into the family van.

5. Mrs. Iturriaga testified that she tried, for approximately ten to 15 minutes, to persuade A.A. to get into the vehicle, but he refused. She became very frustrated, yelled at A.A. to get into the van, and began to back the van out of the parking space while A.A. was standing next to the van's open door.^{5/}

6. A passerby called 911 to report that Mrs. Iturriaga—who the passerby characterized as A.A.'s "grandmother"—was attempting to make A.A. get into the vehicle against his will. The passerby told A.A. "you don't have to get in the van if you don't want to."

7. Mrs. Iturriaga also called 911 to report that A.A. would not get into her vehicle. She told the 911 dispatcher that she was not staying for him, and that she was "going home." The dispatcher told her that because the child was supposed to

be in her care, she had to stay with him, and that officers already were on the way to that location.

8. Nonetheless, Mrs. Iturriaga drove away and left A.A. in the parking lot with the passerby, who Mrs. Iturriaga characterized, in testimony at the hearing, as a "random person."

9. The evidence does not clearly establish whether Mrs. Iturriaga left A.A. in the parking lot for "five to ten minutes," as she claimed, or for as much as 20 to 30 minutes, as indicated by other evidence in the record. Regardless, it is undisputed that she drove away from the parking lot and left A.A. in the company of a stranger.

10. At some point, Mrs. Iturriaga returned to the parking lot to pick up A.A., but he was not there. She called 911, and the dispatcher confirmed that A.A. had been taken to the Pembroke Pines Police Department.

11. Mrs. Iturriaga went to the police department to pick up A.A. There, she was arrested and charged with child neglect without great bodily harm, a third-degree felony; this charge ultimately was dropped.

12. A.A. was not physically harmed as a result of being left in the parking lot.

13. The evidence establishes that approximately 45 days before the September 4, 2014, incident, Mrs. Iturriaga requested

that Citrus remove A.A. from Respondents' foster home within 30 days; however, he was not timely removed.

14. When the incident giving rise to this proceeding occurred, A.A. was immediately removed from Respondents' foster home.

15. Another child, J.O., who was approximately 14 years old at the time of the incident, was placed in Respondents' foster home approximately two and one-half years before the incident. Since then, J.O. has formed very close bonds with both Respondents, particularly Mr. Iturriaga. At the time of the hearing, J.O. had not been removed from Respondents' home and continued to reside with them. J.O. does not wish to be removed from Respondents' home.

16. Eric Sami serves as the guardian ad litem for J.O., and has done so for the past three and one-half years. Mr. Sami testified, persuasively, that when he was assigned to J.O.'s case, J.O. was a very withdrawn, depressed, socially unstable child who had been moved through several different foster homes, and who was academically struggling. Since being placed in Respondents' home, J.O. has flourished. He has made friends, his academic performance has dramatically improved, and he is no longer depressed and socially unstable. According to Mr. Sami, Respondents have treated J.O. as if he were their own child, including taking him on family vacations and involving him in

all holiday celebrations. Mr. Iturriaga participates in parent-teacher conferences for J.O. and has taken an interest in J.O.'s school work and in helping him improve his academic performance.

17. Sami also testified, credibly, that in the short amount of time in which A.A. lived in Respondents' home, he was an extremely disruptive force, bullying J.O. and Respondents' grandchildren and killing ducks in front of Respondents' granddaughter—an event that was extremely traumatic for her to witness.

18. Sami observed, and the undersigned agrees, that it is fundamentally unfair for J.O. to suffer the consequences of Respondents' license revocation due to an event that was precipitated by A.A.'s extreme, ongoing misbehavior before he was removed from the home.

19. Because Sami and J.O.'s therapist, Fred Leon, believed so strongly that removing J.O. from Respondents' home would have very substantial negative consequences for J.O., they advocated to Petitioner and Citrus to allow Respondents to keep their foster home license and to keep J.O. in their home. However, that did not dissuade Citrus from recommending that Petitioner revoke Respondents' license.

20. In October 2014, J.O.'s placement was changed from foster care in Respondents' home to non-relative placement in Respondents' home. Because revocation of Respondents' license

would require J.O. to be removed from Respondents' foster home, this placement change was necessary in order for J.O. to remain in the home.

21. However, this placement change is not without negative consequences. J.O. remains in Respondents' home but they do not receive any monetary allowance for his care,^{6/} so they are placed in the position of supporting him without receiving any financial assistance through the foster care system.

22. Thus, the consequence of revoking Respondents' license is that if J.O. remained in the foster care system, he would have to be moved to a licensed foster home. If he were to stay in Respondents' home in a non-relative placement, Respondents would not receive any monetary assistance through the foster care system to help with his support.

23. Respondents' fervently wish to keep J.O. in their home, even without financial assistance through the foster care system, due to the strong emotional bond they have with him and because of the remarkable social and academic strides he has made while in their care. However, Mr. Iturriaga testified, persuasively, that this situation imposes a financial hardship on them, which, in turn, penalizes J.O.

24. That Respondents wish to continue to provide a nurturing home for J.O., despite the financial hardship, is strong evidence that they have J.O.'s best interests at heart

and that they would continue to provide the same stable, nurturing environment for him that they have provided for more than two and one-half years.

25. As noted above, the criminal charges against Mrs. Iturriaga were dropped. Nonetheless, employees of Citrus testified that because there was an open child abuse investigation with verified findings, they could not recommend that Respondents' foster home continue to be licensed.

26. Petitioner presented the testimony of Sonia De Escobar, licensing manager of Petitioner's Circuit II foster care program. Ms. De Escobar testified that Petitioner is seeking to revoke Respondents' license in part due to concern for the safety of children who may be placed in Respondents' foster home in the future. De Escobar noted that it is not uncommon for children in the dependency system to "misbehave,"^{7/} and Petitioner is concerned about Respondents' ability to deal with child misbehavior in the future.

27. However, the evidence establishes that Respondents successfully cared for eight foster children over a six-year period and never had any problems dealing with child misbehavior until the incident involving A.A. As discussed above, the evidence establishes that A.A. was extremely aggressive and engaged in behavior that seriously disrupted Respondents' home environment. Because of A.A.'s extreme behavior, Respondents

previously had given Citrus the required 30-day notice. However, Citrus did not timely remove A.A. from Respondents' home and the incident giving rise to this proceeding thereafter ensued.

28. As noted above, there is no dispute that Mrs. Iturriaga intentionally left A.A. with a complete stranger for some period of time. In doing so, she endangered his health and safety, in violation of section 409.175(9)(a)1.

29. However, the undersigned finds that mitigating circumstances in this case militate against revoking Respondents' foster home license. Specifically, Respondents enjoyed a spotless record as foster parents before the incident involving A.A. Further—and very importantly—they have fostered a very successful, nurturing, long-term parental relationship with J.O. that will be jeopardized if their foster home license is revoked. Finally, it is undisputed that A.A.'s behavior was extremely aggressive, disrespectful, and disruptive throughout the time he was placed in Respondents' home. On September 4, 2014, his behavior finally caused Mrs. Iturriaga to "snap."^{8/} Although her actions unquestionably were inappropriate and affected A.A.'s health and safety, the evidence indisputably shows that this was a one-time incident that occurred while Mrs. Iturriaga was under significant duress, and that, under any circumstances, A.A. was not injured.

30. The undersigned further notes Citrus' role in this incident. As the child placing agency, Citrus is charged with placing foster children in foster homes, and with removing them when circumstances warrant. As discussed above, in July 2014, Respondents gave Citrus the required 30-day notice for transitioning A.A. out of their home. However, Citrus failed to timely meet its obligation to remove A.A. from Respondents' home and this incident subsequently occurred. Had Citrus met its obligation to timely remove A.A. from Respondents' home, this incident would not have occurred. Thus, Citrus is not without blame in this matter.

31. The undersigned further notes that if Respondents were allowed to keep their license, Citrus, as the child placing agency, is obligated under the Bilateral Agreement to consult with Respondent before placing children in their home. This consultation process presumably would help ensure that children having extreme behavioral problems are not placed in Respondents' home in the future.

32. For these reasons, the undersigned finds that allowing Respondents to keep their foster home license would enable them to continue their close, nurturing relationship with J.O., and, further, likely would not result in any danger or other adverse effect on the health and safety of foster children who may be placed in their home in the future.^{9/}

CONCLUSIONS OF LAW

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

34. This is a penal disciplinary proceeding in which Petitioner seeks to sanction Respondents' foster home license. Petitioner bears the ultimate burden of proof in this proceeding by a preponderance of the evidence. § 409.175(2)(f), Fla. Stat. (2014) ("[r]eceipt of this license shall not create a property right in the recipient"). See Haines v. Dep't of Child. & Fams., 983 So. 2d 602, 608 (Fla. 5th DCA 2008).

35. Here, Petitioner seeks to revoke Respondents' foster home license on the following bases, cited in the Notice of Intent dated April 16, 2015, which constitutes the administrative charging document in this proceeding: violation of rule 65C-13.029(1)(b); violation of rule 65C-13.023(2); violation of rule 65C-13.030(1); and violation of section 409.175(9). Each of these grounds is addressed below. Rule 65C-13.029(1)(b)

36. Rule 65C-13.029(1)(b) provides in pertinent part: "(1) Responsibilities of the Licensed Out-of-Home Caregiver to the Child. . . . (b) All children in the home shall be protected from abandonment, exploitation, neglect, and abuse. Suspected child abuse or neglect including incidents of child-

on-child sexual abuse shall be reported immediately to the Florida Abuse Hotline."

37. Here, the undisputed evidence establishes that Mrs. Iturriaga engaged in conduct that could be considered to constitute neglect of A.A. when she left him with a stranger in the shopping center parking lot. To that end, she was charged with child neglect without bodily harm. As discussed above, those charges ultimately were dropped.

38. Accordingly, Petitioner proved, by a preponderance of the evidence, that Respondent violated rule 65C-13.029(1)(b).
Rule 65C-13.023(2)

39. The Notice of Intent states in pertinent part:
"[a]dditionally, all reports in which the person seeking licensure or re-licensure was named as the "caregiver responsible" must be considered for licensing purposes.
65C-13.023(2), Florida Administrative Code."

40. Rule 65C-13.023 is titled "Background Screening Requirements.

41. Rule 65C-13.023(1) states:

(1) The department shall conduct background screenings for all persons considered by the department for initial licensure or re-licensure as an out-of-home caregiver and all adult household members pursuant to Section 409.175, F.S. The five year re-screens for the relicensing process must include fingerprints. The supervising agency or the department has the discretion

to request background screening for other individuals if there is reasonable belief that:

- (a) The person is a household member; or
- (b) His or her presence in the family foster home adversely affects the health, safety and welfare of the children in the home; or
- (c) The person has or potential exists for unsupervised contact with the children.

42. Rule 65C-13.023(2) states:

These screenings shall, at a minimum, include fingerprinting; statewide criminal and juvenile records checks through the Florida Department of Law Enforcement; federal criminal records checks through the Federal Bureau of Investigation; local criminal record checks through local law enforcement agencies, and may include records of any responses to the home by law enforcement that did not result in criminal charges. Records checks through the department's Statewide Automated Child Welfare Information System (SACWIS) regarding child abuse and neglect investigations and civil court records checks regarding domestic violence complaints and orders of protection must also be included. If the applicant or any other adult household member has resided in any other state during the past five years, requests for abuse and neglect histories must be made of those states, and the results of such requests included with the application packet. Only abuse and neglect reports in which the person being considered for licensure was named as the "caregiver responsible" for the abuse or neglect may be used for initial licensing decisions. If the person applying is or was a licensee of the department and was named in any capacity in three or more reports during a five year

period, regardless of classification, those reports may be reviewed by the department for their relevancy as it relates to the licensing decision. All reports in which the person seeking licensure or re-licensure was named as the "caregiver responsible" must be considered for licensing purposes. For homes being considered for licensure for longer than one year under Section 409.175(6)(j), F.S., all abuse reports with any findings shall be considered.

43. It is clear from the language of rule 65C-13.023(2) that it applies only to applications for initial licensure and re-licensure. However, this proceeding does not involve initial licensure or re-licensure of Respondents' foster home license; it is a license revocation proceeding. Thus, rule 65C-13.023(2)—which is cited as a basis for the proposed revocation of Respondents' license—does not apply to this proceeding.^{10/}

Rule 65C-13.030(1)

44. In the Notice of Intent, Petitioner states: "[f]urthermore, this incident and verified report are a violation of your signed Partnership Plan Agreement required by 65C-13.030(1)(d), which states [sic] excellent parenting is a reasonable expectation of caregivers."

45. However, the Partnership Plan Agreement ("PPA") referenced in rule 65C-13.030(1)(d) was not entered into evidence in this proceeding.^{11/}

46. Because there is no evidence regarding the terms of the PPA, there is no basis on which to determine or conclude that Respondents breached its terms. Thus, there is no evidentiary basis on which to conclude that Respondents violated rule 65C-13.030(1)(d).

Section 409.175(9)

47. Section 409.175(9) provides:

(a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.
2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

§ 409.175(9), Fla. Stat. (emphasis added).

48. As discussed above, it is undisputed that Mrs. Iturriaga left A.A. in a parking lot with a stranger. Although, fortunately, A.A. was not physically injured, her action materially affected A.A.'s health and safety. Further, as discussed above, this action violate rules 65C-13.029(1)(b).

49. Accordingly, Petitioner has shown, by the preponderance of the evidence, that grounds exist, under

section 409.175 and rule 65C-13.023, on which Petitioner may revoke Respondents' foster home license.

50. However, section 409.175(9) grants Petitioner discretion in taking disciplinary action against a license. To that point, the statute does not mandate revocation of a license when grounds set forth in subsection (b) are shown.

51. As discussed above, the undersigned finds that in this case, mitigating circumstances exist that justify imposing a penalty less than revocation^{12/} of Respondents' license.

52. As discussed above, Respondents had an exemplary foster care record, successfully fostering eight children over a period of six years, until the extremely unfortunate incident involving A.A. occurred. Given this nearly uniform history of successful fostering, and considering the extreme circumstances that led to the incident involving A.A., it is highly unlikely that allowing Respondents to retain their license would result in harm or danger to foster children who may be placed in their home in the future—particularly if Citrus adequately performs its child-placing duties.^{13/}

53. Here, revoking Respondents' foster license would significantly adversely affect J.O.—effectively making him a victim of A.A.'s behavior yet again. This would be manifestly unfair to J.O. and unnecessarily punitive to both Respondents and J.O.

54. There is precedent for Petitioner exercising its discretion to consider mitigating circumstances in child care licensure decisions, including those involving proposed revocation or denial of renewal.

55. Department of Children and Family Services v. Pearl Wright, Case No. 07-0436 (Fla. DOAH May 14, 2007) (modified as to amount of monetary penalty imposed), Case No. DCF-07-185 (Fla. DCF Aug. 10, 2007), which arose in the day care facility licensing context, entailed circumstances similar to those in this proceeding. In that case, the facility owner left five young children, including a hearing-impaired child with substantial behavioral problems, in the sole care of a 13-year-old child while she left the facility to pick up her car from being repaired. Although the children were not injured during the period of time the owner was absent, DCF sought to revoke the day care facility license because of the potential danger to the children while they were left unattended. The ALJ recommended a monetary fine, rather than revocation, based on the fact that although the children could have been injured by being left unsupervised by a qualified person, none actually were injured. Furthermore, the day care facility enjoyed an excellent reputation and the incident was a one-time occurrence. In its final order, DCF increased the monetary penalty but

otherwise materially agreed with the administrative law judge's recommendation and did not revoke the day care license.^{14/}

56. In L.K. v. Department of Children and Family Services, Case No. 08-2837 (Fla. DOAH Jan. 27, 2009; Fla. DCF May 4, 2009), in the foster home license renewal context, a substitute foster care provider left a two-year-old child, A.R., overnight in the care of two persons—one of whom had not undergone background screening—who were not authorized to care for foster children. As a result, at some point the following day, A.R. was left completely unattended and wandered into a road wearing only a t-shirt and underwear. On this basis, DCF proposed to deny the renewal of L.K.'s substitute care provider license. The ALJ found that DCF had shown, by a preponderance of the evidence, that L.K. had committed a negligent act that materially affected the health and safety of A.R., in violation of section 409.175(9). Nonetheless, the ALJ recommended that DCF exercise its discretion and provisionally renew L.K.'s license, on the basis that the evidence showed that L.K. was a caring person who generally provided a warm and loving environment for the children in her home, despite having made a substantial error in judgment which resulted in A.R. being placed in circumstances that posed a serious danger to his health and safety. In its final order, DCF accepted the ALJ's recommendation in toto and stated that if L.K. reapplied for her

license, it would not be denied on the basis of her action that had endangered A.R.

57. The circumstances in this case are comparable to those in Wright and L.K. Here, the undisputed evidence establishes that Respondents have been successful foster parents for a period of years, and, most relevant now, have provided a loving, nurturing, supportive home for J.O., who had serious social, psychological, and academic problems before coming to live with them, and who has flourished for over two and one-half years under their care. As discussed above, revoking Respondents' foster home license would have the primary effect of punishing J.O. for events in which he had no part. Mrs. Iturriaga's actions in leaving A.A. in the parking lot constituted a very serious lapse of judgment, but the undisputed evidence shows that it was an isolated incident that occurred under extremely stressful circumstances.^{15/} For the reasons discussed above, it is concluded that it is unlikely Respondents would again engage in actions that would materially affect the health or safety of the children in their home.

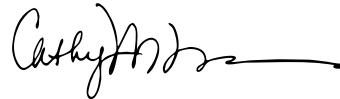
58. Under the circumstances present in this case, it is appropriate for Petitioner to take disciplinary action short of revoking or suspending Respondents' license. To the extent Petitioner believes that some penalty should be imposed on Respondents, it is noted that rule 65C-13.035(4) (b) provides for

imposition of a corrective action plan to ensure that violations are not repeated; that may be an appropriate penalty in this case.^{16/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order dismissing the Notice of Intent to Revoke Foster Home License issued on April 16, 2015, and imposing a corrective action plan on Respondents' foster home license to the extent deemed appropriate.

DONE AND ENTERED this 17th day of February, 2016, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of February, 2016.

ENDNOTES

^{1/} Petitioner's Exhibit 6 consists of two audio recordings of calls to 911 regarding the incident that gave rise to this proceeding. Petitioner played the audio recordings of these calls at the final hearing and proposed to submit the CD after the final hearing as an exhibit. Respondent requested that the third call to 911 also be admitted into the record and the undersigned granted that request. After the hearing, Respondent submitted the CD containing all three calls to 911. This CD, which contains the three calls to 911 made on September 4, 2014, has been admitted into evidence as Joint Exhibit A.

^{2/} Petitioner administers foster care programs by contracting with third-party managing entities, child placing agencies, and direct service providers. Here, Citrus Health Network is the child placing agency, direct therapeutic service provider, and is involved in administering Respondents' foster home license. Citrus evaluates the home for compliance with applicable standards and issues a recommendation to Petitioner regarding whether the home should be licensed and whether disciplinary action should be taken against an existing license. Petitioner takes agency action to license foster homes and impose discipline on existing licenses. See § 409.175(6)(b), Fla. Stat.

^{3/} A therapeutic foster home is a foster home that provides mental health services for children with emotional and behavioral disturbances living in a family foster home. Each home is managed by foster parents who provide specialized care for children needing a therapeutic setting. Fla. Admin. Code R. 65C-30.001(144).

^{4/} In 2010, A.A. was taken from the custody of his biological parents, whose parental rights were terminated. A.A. was placed in a foster home for some time, then was admitted as an in-patient at a mental health and behavioral treatment facility for approximately one year. Thereafter, he was placed in Respondents' foster home. The evidence shows that A.A. was extremely aggressive and that he bullied the other child, J.O., who lived in Respondents' home.

^{5/} There is no competent evidence in the record showing that Mrs. Iturriaga nearly struck A.A. with the van. In the first 911 call, the caller stated that Mrs. Iturriaga began backing out of the parking space while A.A. was standing next to the open door. The only evidence in the record to the effect that

Mrs. Iturriaga nearly hit A.A. was a narrative in an Intake Report prepared by a person who had no personal knowledge of the matters addressed in the statement and who did not testify at the final hearing. This statement is hearsay, does not fall within any exception to the hearsay rule, and is the sole evidence offered to prove Mrs. Iturriaga nearly struck A.A. Accordingly, this statement is not given any weight. See § 120.57(1)(c), Fla. Stat.

^{6/} See Fla. Admin. Code R. 65C-30.001(87).

^{7/} To characterize A.A.'s behavior over the course of his placement with Respondents as mere "misbehavior" inaccurately minimizes its seriousness. The competent, persuasive evidence establishes that A.A. had a history of engaging in extremely aggressive behavior to the point that he was institutionalized in an in-patient mental health facility for approximately one year before being placed in Respondents' foster home, and that he continued such behavior after being placed in their home—including bullying the other foster child placed in the home and killing ducks in the presence of Respondents' granddaughter. This behavior goes far beyond typical "misbehavior" by a child, and clearly contributed to Mrs. Iturriaga's extreme frustration in dealing with A.A.

^{8/} Mrs. Iturriaga's obvious frustration with A.A. was not an excuse for leaving him in the parking lot that day, but it does explain her action in doing so.

^{9/} It is further noted that Mr. Iturriaga testified that Respondents' only wish is to finish their care of J.O. under the foster care system, and do not intend to foster other children in the future.

^{10/} Rule 65C-13.023(7) deals with background screening in the license revocation process. That rule states:

(7) All records obtained, as a part of the background screening, shall be considered in the process of determining whether to issue a foster care license or if there is a current license, whether the license should be revoked. Such records shall include findings of delinquency; any misdemeanor or felony criminal arrests resulting in a plea of nolo contendere or conviction; any criminal traffic offenses resulting in a

plea of nolo contendere or conviction, and any civil cases of domestic violence and orders for protection. Crimes perpetrated in other states that are misdemeanors in that state but would be felonies listed under Section 435.04, F.S., if committed in Florida shall be considered as disqualifying offenses by the department for licensing decisions.

Petitioner has not alleged, and, therefore, cannot rely on, this rule as a basis for its proposed revocation of Respondents' license. See Marcelin v. Dep't of Bus. & Prof'l. Reg., 753 So. 2d 745, 746-47 (Fla. 3d DCA 2000). Furthermore, under any circumstances, this rule plainly provides that the only circumstances under which background screening records of felony or misdemeanor criminal arrests can serve as the basis for revoking a foster home license are those resulting in a plea of nolo contendere or a conviction. Here, the criminal charges against Mrs. Iturriaga were dropped. For these reasons, rule 65C-13.023(7) does not constitute a basis for revoking Respondents' license.

^{11/} Petitioner entered the Bilateral Service Agreement between Citrus and Respondents, dated July 17, 2012, into evidence. This is a different document from the PPA, which is referred to in rule 65C-13.030(1)(d) as CF-FSP 5226, February 2013, and is available at <https://www.flrules.org/gateway/reference.asp?NO=Ref-03565>

^{12/} The undersigned also recommends against suspending Respondents' license, since suspension also would require J.O. to be removed from Respondents' home.

^{13/} See rule 65C-15.022, describing the placement services the child placing agency is required by law to provide to the child and foster home into which he or she is placed.

^{14/} See Scurry v. Dep't of Child. & Fam. Servs., Case No. 04-0713 (Fla. DOAH Sept. 14, 2004; Fla. DCF Jan. 12, 2005) (final order imposed only fine, rather than revocation, for leaving young children in the unsupervised care of an unqualified 15-year-old).

^{15/} Again, it is noted that had Citrus timely removed A.A. from Respondents' home—as the circumstances certainly warranted—the September 4, 2014, incident would not have occurred.

^{16/} This rule states in pertinent part: "[i]f licensing violations are found which do not impose an immediate threat to the health, safety, or welfare of the children, the agency shall prepare a corrective action plan to correct the deficiencies. Although leaving A.A. in the parking lot presented a threat to his health and safety, A.A. has been removed from Respondents' home, and J.O. clearly is not in any danger. To the extent Petitioner believes it is advisable to help ensure the safety of a foster child who may be placed in Respondents' home in the future, a corrective action plan containing appropriate strategies and responses could be developed to provide Respondents clear guidance on what actions to take if circumstances similar to those on September 4, 2014, were to arise again in the future.

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Department of Children and Families
Building 1, Room 202
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700
(eServed)

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.