STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NIKKI HENDERSON, d/b/a HENDERSON
FAMILY DAY CARE HOME,

Petitioner,

vs. Case No. 15-5820

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.
_____/

RECOMMENDED ORDER

John D.C. Newton, II, Administrative Law Judge, of the Division of Administrative Hearings, conducted the final hearing in this matter on December 21, 2015, by video teleconference at Lakeland and Tallahassee, Florida.

APPEARANCES

For Petitioner: Nikki Henderson, pro se
Henderson Family Day Care Home
8433 Split Creek Circle
Lakeland, Florida 33809

For Respondent: Cheryl D. Westmoreland, Esquire
Department of Children and Families
1055 U.S. Highway 17 North
Bartow, Florida 33830

STATEMENT OF THE ISSUE

Should the Petitioner, Nikki Henderson, d/b/a Henderson Family Day Care Home, be granted a license to operate a family day care home pursuant to section 402.313(3), Florida Statutes

(2015)[1/] because she does not satisfy the screening provisions of sections 402.305(2) and 402.3055?

PRELIMINARY STATEMENT

By letter dated September 2, 2015, the Respondent, Department of Children and Families (Department), proposed denying Ms. Henderson's application to operate a family day care home. The letter does not identify a requirement imposed by statute or rule that Ms. Henderson failed to meet. The letter of denial identifies five "Intake Reports" as reasons for the denial. Ms. Henderson timely requested a hearing.

At the final hearing, Ms. Henderson testified on her own behalf and presented the testimony of Sharon Key Stanley. Ms. Henderson's Exhibits 4, 5, and 7 were admitted into evidence. The Department presented testimony of Nancy Ebrahimi. The Department Exhibits A and C through G were admitted into evidence. No one requested a transcript of the hearing. The period for filing Proposed Recommended Orders was extended until January 8, 2016.

The Department timely filed a Proposed Recommended Order. Ms. Henderson filed a document titled "Notice of Proposal." It is accepted as a proposed recommended order. Ms. Henderson's notice contends that the Department relied solely upon hearsay evidence and proposes that the Department issue her a provisional license. Subsequently the undersigned issued an

Order directing the parties to file memoranda of law addressing four legal issues. The parties filed them. The proposed recommended orders and supplemental memoranda have been considered.

FINDINGS OF FACT

1. Ms. Henderson is the mother of four children. She has been a good parent, seeing to their education. She volunteers as the minister of music in a church. She has also taken college courses. Ms. Henderson wants to start a family day care center.

2. On September 12, 2014, the Department granted Ms. Henderson an exemption from disqualification from working with children and other vulnerable populations due to a criminal conviction. This means that just over a year before the hearing, the Department determined that Ms. Henderson proved by clear and convincing evidence that she was rehabilitated and should not be disqualified from employment. § 435.07, Fla. Stat. In the exemption process, the Department could consider the person's history since the disqualifying criminal offense and "any other evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed." § 435.07(3)(a) Fla. Stat.

3. A family day care home is an occupied residence, in which child care is regularly provided for payment. The

children served under the age of 13 and from at least two unrelated families. § 402.302(8), Fla. Stat.

4. The Department is the licensing authority for family day care homes. It considers an applicant's criminal history, as well as any reports concerning abuse or neglect maintained in the Department's statewide database, Florida Safe Families Network (FSFN), formerly known as HomeSafeNet, in licensing decisions.

5. The Department received Ms. Henderson's completed application to operate a family day care home on June 25, 2015. By letter dated September 2, 2015, and served September 4, 2015, the Department announced its intent to deny the application based upon two verified reports of inadequate supervision of her children and three reports of complaints all closed with "no indicators" or "not substantiated" conclusions. The reports named Ms. Henderson as the caregiver responsible for the children involved.

6. When using either HomeSafeNet or FSN, investigators input information as they collect it. But they do not input all of the information immediately. The information is much more than what the investigators have observed. Most of the information is recitations of statements of others about what the others observed.

7. The FSFN and HomeSafeNet databases contain records of the following reports involving Ms. Henderson: 1999-089863-01 (Ex. C), 2002-136612-01 (Ex. D), 2004-420815-01 (Ex. E), 2005-323618-01 (Ex. F), and 2012-126218-01 (Ex. G). These are the reports that the Department relies upon to support denying Ms. Henderson a license.

8. The reports set forth activities of the agency's investigators, stating what they did. What the investigators did was interview people and report what those people said or what they said someone else said. The reports contain very little directly observed by the reporters.

9. The information contained in the reports that the Department relies upon is largely hearsay or hearsay reports of hearsay. The reports consist mostly of summaries of records reviewed by the reporter or summaries of statements by other individuals. They are not reports of information about which the reporter has direct knowledge. The reports do not identify who the investigator obtained the information from. In short all of the statements in Respondent's Exhibits C through G about anything Ms. Henderson did or did not do are hearsay recitations of statements made to and summarized by the reporters or summaries of documents reviewed. §§ 90.801 & 90.802, Fla. Stat. Hearsay alone cannot support a finding of fact.
§ 120.57(1)(c), Fla. Stat.

10. The reports also are not competent or persuasive evidence that the assertions in them are accurate. Ms. Henderson disputes the reports. Her live testimony, subject to cross examination, is more persuasive than the words of the reports.

11. The reports do not satisfy the requirements for the business record hearsay exception of section 90.803(6), or the public record exception of section 90.803(8). See, e.g., Lee v. Dep't of HRS, 698 So. 2d 1194, 1200 (Fla. 1997) (investigative report of pregnancy of woman with a disability residing in a state facility not subject to the public record exception). See also, Brooks v. State, 918 So. 2d 181, 193 (Fla. 2005), cert. den., Brooks v. Fla., 547 U.S. 1151, 126 S. Ct. 2294, 164 L. Ed. 2d 820 (2006); M.S. v. Dep't Child. and Fams., 6 So. 3d 102 (Fla. 4th DCA 2009).

12. Application of the hearsay rule is no mere legal technicality. The hearsay rule is one of the oldest and most effective means of ensuring decisions that determine people's lives and fortunes are based on reliable information. Florida's Fifth District Court of Appeal described the importance of the rule as follows:

> Rules governing the admissibility of hearsay may cause inconvenience and complication in the presentment of evidence[,] but the essence of the hearsay rule is the requirement that testimonial assertions shall be subjected to the test of cross examination. 5 Wigmore on Evidence, § 1362 (Chadbourne Rev. 1974). As stated by Professor Wigmore, the hearsay rule is "that most characteristic rule of the Anglo-American law of evidence -- a rule which may be esteemed, next to jury trial, the greatest contribution of that eminently practical legal system to the world's methods of procedure." 5 Wigmore on Evidence, at § 1364.

Dollar v. State, 685 So. 2d 901, 903 (Fla. 5th DCA 1996).

13. A complaint on July 18, 1999, triggered the investigation resulting in Report 1999-089863-01 (update date November 16, 2000). (Dept. Ex. C). The report summarizes the investigation of an allegation that Ms. Henderson (then Nikki Stanley) "left [her child] Deuteronomy in his carrier sear [sic] on the steps of the alleged Dad's home," knocked on the door and drove away. The allegations continue that the adults were inside and that the alleged father's mother found the child on the steps.

14. Ms. Stanley, who testified and was cross-examined at the hearing, went with Ms. Henderson to leave the child at the father's home. Ms. Stanley personally placed the child in the hands of an adult at the house. Ms. Stanley and Ms. Henderson also delivered Pampers and milk. Ms. Henderson's credible and consistent position has always been that she did not leave the

child unattended at the house where the child's father lived. The testimony of Ms. Stanley and Ms. Henderson is consistent with some statements in the report and more credible and persuasive than the allegations recited in the report.

15. The Department closed the investigation with verified findings of inadequate supervision and no indicators of physical injury. The Department did not provide Ms. Henderson an opportunity for a hearing to contest the findings.

16. The Department filed a dependency petition against Ms. Henderson because of the report. It gave her a case plan, requiring the provision of protective services supervision by the Department. The Department did not remove the child from Ms. Henderson's care.

17. The Department did not prove by the preponderance of the evidence that Ms. Henderson left Deuteronomy alone on the steps on July 18, 1995. She did not.

18. Report number 2002-136612-01 chronicles the investigation of allegations received on August 23, 2002, described as "Physical Injury," Substance Exposed Child," "Inadequate Supervision," and "Environmental Hazards." (Dept. Ex. D). The report is a confusing document and contains no information about environmental hazards or a child being exposed to a substance. It is not a credible report of anything involving alleged harmful conduct by Ms. Henderson or conduct

endangering a child. In fact although the case started as an investigation of her, it ended with the suspected father of the child identified as the possible perpetrator, not Ms. Henderson.

19. Representative paragraphs are reproduced here.

01 ALLEGATION NARRATIVE:

ON A RECENT NIGHT, THE MOTHER BROKE WINDOWS AND CAUSED PROBLEMS AT THE HOME OF THE ALLEGED PATERNAL GRANDMOTHER, BARBARA BROWN, WHERE GEORGE [the child apparently involved] WAS AT THE TIME. THIS OCCURRED ABOUT 3:00 A.M. MOTHER HAD CALLED THE ALLEGED FATHER, ALVIN WALLACE (MS. BROWN'S SON/NO DNA TEST DONE YET TO DETERMINE PATERNITY), EARLIER IN THE EVENING. SHE TOLD HIM SHE WAS GOING TO JAIL, AND SHE TOLD HIM TO GET GEORGE, WHICH HE DID AT 3:00 A.M., MOTHER SHOWED UP WANTING GEORGE. LAW ENFORCEMENT WERE CALLED. THEY ADVISED THE MATERNAL GRANDMOTHER, SHARON STANLEY, TO LET MR WALLCE AND MS. BROWN KEEP GEORGE. MOTHER AND GEORGE LIVE AT ADDRESS A WITH THE MATERNAL GRANDMOTHER, ABOUT WHOM CONCERN WAS EXPRESSED BECAUSE SHE HAS SEIZURES. PATERNAL GRANDMOTHER HAS NOW GOTTEN AN INJUNCTION AGAINST MOTHER. MOTHER DID NOT HAVE TO GO TO JAIL. ITS UNKNOWN WHY SHE THOUGHT SHE HAD TO GO. MOTHER'S LIFESTYLE AND BEHAVIOR ARE SAID TO BE ""QUESTIONABLE."" MS. BROWN AND MR. WALLACE LIVE AT ADDRESS B.
24 HOUR.

02 ALLEGATION NARRATIVE:

RIGHT NOW, GEORGE IS AT THE HOME OF THE ALLEGED PATERNAL GRANDMOTHER, BARBARA BROWN, ADDRESS B. NO DNA TEST HAS BEEN DONE. SO IT HAS NOT BEEN DETERMINED TH[A]T MS. BROWN'S SON IS GEORGE'S FATHER. GEORGE SPENT THE WEEKEND AT MS. BROWN'S HOME, AND MS. BROWN NOW REFUSES TO GIVE GEORGE BACK TO THE MATERNAL GRANDMOTHER.

03 ALLEGATION NARRATIVE:

MR. WALLACE SHOOK GEORGE TODAY AROUND 7 PM. MR. WALLACE WAS OUTSIDE WITH GEORGE. GEORGE WAS CRYING. MR. WALLACE THREW GEORGE INO THE HAIR [SIC] AND SHOOK HIM. IT IS UNKNOWN IF GEORGE SUFFERED ANY INJURIES AFTER BEING SHOOK. MR. WALLACE HAS A HISTORY OF SELLING AND USING COCAINE AND MARIJUANA. HE WILL SELL THE DRUGS FROM HIS HOME AND ON THE STREETS.

IMMEDIATE.

INVESTIGATIVE DECISION SUMMARY:

BACKGROUND INFORMATI0N: THE FAMILY HAS ONE PRIOR FROM 1999 WHERE PROTECTIVE SERVICES WERE INVOLVED DUE TO VERIFIED INADEQUATE SUPERVISION. ADJUDICATION WAS WITHELD [sic]. THE MOTHER AND HER TWO CHILDREN INVOLVED IN THE PRIOR LIVE WITH THE GRANDPARENTS AND THE NEW BABY IN LAKELAND. PS CLOSED IN 2001. THE MOTHER HAS A CRIMINAL HISTORY THAT INCLUDES A BATTERY CHARGE FROM 2002. CONCERNS OVER THE ALLEGED FATHER ALVIN WALLACE. DUALING [sic] INJUNCTIONS

SUBJECT INFORMATION: THE CASE APPEARS TO BE CUSTODY RELATED. THERE WERE CONCERNS OVER THE ALLEGED FATHER ALVIN WALLACE. DUALING [sic] INJUNCTIONS BETWEEN MOM AND PROSPECTIVE FATHER WERE FILED AND BOTH DISPUTED OVER THE CUSTODY OF THE CHILD. JUDGE SMITH GRANTED AN INJUNCTION AGAINST THE ALLEGED FATHER AND GAVE CUSTODY TO THE MOTHER. LATER, THE RESULTS OF THE DNA SCREEN SHOWED THAT MR. WALLACE WAS NOT THE FATHER. HE IS NO LONGER A THREAT AND DOES NOT HAVE CONTACT WITH THE BABY. SHAKING OF CHILD ALLEGATION WAS BOGUS. LEGAL CONTACT: JUDGE SMITH OF D/V COURT GAVE CUSTODY TO MOM AND GRANTED INJUNCTION AGAINT MR. WALLACE WHO TURNED OUT NOT TO BE THE FATHER AFTER A DNA TEST.

> FAMILY AND COMMUNITY SUPPORT: MOM HAS DV INJUNCTION AND FAMILY SUPPORTS. SERVICES AND REFERRALS: I.E NOTIFIED. CASE APPEARS TO HAVE BEEN CUSTODY RELATED. MR. WALLACE WAS LATER PROVED NOT TO BE THE FATHER AND NO LONGER HAS ANY CONTACT OR RIGHTS TO THE CHILD WHO LIVES WITH THE MOTHER, GP'S AND OTHER SIBLINGS. HE IS NO LONGER A POSSIBLE THREAT TO THE CHILD. CLOSE CASE AS BACKLOG. CONVERTED ICSA SAFETY ASSESSMENT 06/15/2006 *ICSA INITIAL OVERALL SAFETY ASSESSMENT* RISK IS LOW. ALLEGED PERP [Mr. Wallace] WAS DETERMINED NOT TO BE THE DAD AND IS NO LONGER HAVING CONTACT WITH CHLD. *ICSA UPDATED OVERALL SAFETY ASSESSMENT* RISK IS LOW: ALLEGED PERP WAS DETERMINED NOT TO BE THE DAD AND IS NO LONGER HAVING CONTACT WITH CHILD.

20. The Department closed the investigation with no indicators for any of the alleged mistreatment. The report did not conclude that Ms. Henderson acted improperly or did not act when she should have.

21. The Department initiated case number 2004-420815-01 on September 29, 2004, in response to an allegation that Ms. Henderson was leaving her four children at home alone at night. (Dept. Ex. E). At the conclusion of the investigation, the Department determined that there were no indicators of inadequate supervision. The summary concluded: "The Mother has made adequate arrangements for the children while she works thus not causing a concern for safety and/or permanency."

22. On February 8, 2005, the Department received a complaint alleging that Ms. Henderson was leaving the children at home alone and coaching them to tell people that she was

home, but asleep. The Department started an investigation resulting in report number 2005-323618-01 (Dept. Ex. F).

23. The Department closed this investigation with verified findings of inadequate supervision. It filed another dependency petition to obtain court-ordered protective services supervision.

24. The court ordered a case plan that included a requirement to complete a parenting program. During this open case, Ms. Henderson demonstrated some lack of responsiveness to the Department's preferred eight-week in-home parenting program. She took a one-day program at the Polk County Courthouse instead. The court, whose order Ms. Henderson was to comply with, accepted this class as satisfying the parenting program, over the Department's objection. Basically the Department is second-guessing the court's ruling and treating Ms. Henderson as if she had not met the court's requirements when she did.

25. On May 31, 2012, Ms. Henderson reported to the Department that a school intern inappropriately touched the breasts of Ms. Henderson's 14-year old daughter. This initiated report number 2012-126218-01. (Dept. Ex. G). Ms. Henderson was not the subject of the investigation. The intern was. Ms. Ebrahimi was the child protective investigator supervisor at the time of this report. She has personal knowledge of some of the facts in that report and testified about them.

26. Ms. Henderson was very upset about the incident. She acted vigorously and promptly to protect her daughter. Ms. Henderson immediately picked up her daughter and reported the incident to the Department and the school. She insisted that the school remove her daughter from the intern's class. She also arranged for her daughter to attend a different school the next year. Only one week was left in the current school year. She obtained a temporary injunction against the intern. Ms. Henderson also sought to obtain a permanent injunction to protect her daughter. Ms. Henderson did everything lawful that a loving protective parent could do for her child.

27. The day after the incident Ms. Henderson spoke to Detective Rose. He told Ms. Henderson that the authorities did not perceive sufficient evidence to take actions to protect her daughter, including obtaining an injunction.

28. Even Ms. Ebrahimi concedes that Ms. Henderson was very cooperative with the Department and protective of her child.

29. Ms. Ebrahimi faults Ms. Henderson for, in Ms. Ebrahimi's view, not following through on the permanent injunction and failing to return phone calls from the Department's investigator. Ms. Henderson did not receive calls or messages from the investigator. Ms. Ebrahimi does not have personal knowledge of whether the investigator called Ms. Henderson. Ms. Henderson's testimony about not receiving

calls from the investigator is more credible and persuasive than the cryptic notes in the report.

30. Ms. Henderson's actions were entirely reasonable and protective of her daughter. A person in authority told her that she could not obtain an injunction. So she took no further actions on that front. Ms. Henderson acted immediately to have the offender removed from contact with her child. She arranged for her child to be transferred to a different school.

31. The Department's investigative summary itself shows the reasonableness of Ms. Henderson's actions and the difficult circumstances she faced, including a lack of support from responsible authorities, when her 14-year-old daughter reported an intern fondling her breasts at school. The report says:

> The child states that the intern touched her breast. She disclosed that she told the teacher who did nothing about it. Stated she also told her mother who made a report to law enforcement. The intern is no longer in the child's classroom but is still at the school per the mother. CPI to update as more information is received.
> UPDATE: Risk low.

32. Several statements in the report substantiate Ms. Henderson's recall of events and buttress the determination that she is more persuasive than the document. It also demonstrates that the alleged calls were for the bureaucratic process of closing the case, not furthering the investigation to protect Ms. Henderson's daughter.

33. In addition, it is difficult to imagine what additional information the DCF investigator could obtain from Ms. Henderson. She had already told DCF all she knew about the assault.

34. The summary also supports Ms. Henderson's testimony that a police officer told her the police would not pursue the case. It states: "Other children reportedly also reported witnessing, then recanted to Lakeland Police Detective. Lakeland Police not pursuing further, did not find alleged victim credible."

CONCLUSIONS OF LAW

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

36. Ms. Henderson has the ultimate burden of proving that she is entitled to the license being sought. Dep't of Banking and Fin., Div. of Sec. and Investor Prot. v. Osborne Stern and Co., 670 So. 2d 932, 934 (Fla. 1996). See also Mayes v. Dep't of Child. & Fam. Servs., 801 So. 2d 980 (Fla. 1st DCA 2001).

37. Section 402.312(1) requires a family day care home to be licensed. In addition, all household members over the age of 12 are required to undergo a screening process, which includes a criminal history check and a review of the Department's abuse records.

38. The Department argues that since section 39.202(2)(a)5., Florida Statutes, makes the abuse and neglect reports available to the Department's licensing staff, it somehow creates a hearsay exception for them. The Department relies upon the statutory construction principle that the Legislature does not enact meaningless statutes. It extrapolates from there that the only explanation is that the Legislature intended to create a hearsay exception. Williams v. Dep't Child. & Fam. Servs., Case No. 06-3030 (Fla. DOAH Feb. 2, 2007; Fla. DCF May 18, 2017). The Recommended Order in Williams recites the theory that the Department relies upon.

39. That theory is incorrect for two reasons. The first is that treating the reports as creating a hearsay exception is not the only or the most rational explanation for adoption of the statute. It is irrational for the Legislature, which codifies hearsay exceptions in the evidence code, to create an implied exception in a different chapter of the statutes.

40. Second, implying an exception puts the constitutionality of the statute at risk because the verification process, if it determined things such as licensure, would deny the fundamental elements of due process – notice and a meaningful opportunity to be heard. GE Capital Corp. v. Shattuck, 132 So. 3d 908 (Fla. 2d DCA 2014). It could also mean that the Department made a decision substantially affecting

Ms. Henderson without providing a clear point of entry to a formal hearing under Florida's Administrative Procedure Act. See Henry v. Fla. Dep't of Admin., Div. of Ret., 431 So. 2d 677, 679 (Fla. 1st DCA 1983).

41. Whenever possible, statutes should be construed to avoid making them unconstitutional. Walker v. Bentley, 660 So. 2d 313, 320 (Fla. 2d DCA 1995).

42. The more rational interpretation of the statute is that the Legislature intended for the Department to use the information in the reports to identify witnesses to contact and documents to review. This, the Department did not do.[2/]

43. The issue at this point is moot since Ms. Henderson proved by the preponderance of competent and substantial evidence that the reports, submitted as Department Exhibits C through G are not correct or else cannot be considered.

44. Exhibit E concluded that the complaint was not supported and that Ms. Henderson made appropriate arrangements for her children when she was working. It contains no verified finding.

45. Exhibit F., although unrebutted is, however, hearsay which cannot alone be the basis for a finding of fact.[3/]

46. Also, this isolated incident eleven years ago does not make Ms. Henderson a person who lacks moral character.

47. Section 402.312(1) prohibits operation of a family day care home without a license. "Child care personnel in family day care homes shall be subject to the applicable screening provisions contained in ss. 402.305(2) and 402.3055." § 402.313(3), Fla. Stat. This screening requirement is what the Department relies upon to deny Ms. Henderson a license.

48. As the owner and operator of a family day care center, Ms. Henderson will unavoidably be in her home providing care to the children. This means she must meet the screening standards of sections 402.305(2) and 402.3055. Section 402.305(1) requires the Department to adopt rules establishing licensing standards for family day care centers.

49. Section 402.305(1)(c) directs the Department to include specific standards in the rules. The standards include good moral character based upon the screening. The section says the screening should be level two screening as set forth in chapter 435, Florida Statutes.

50. Section 402.305(2)(a) requires the Department to adopt minimum standards by rule. It too says that the determination of good moral character shall be based upon the level two screening standards of chapter 435.

51. The Department does not assert that Ms. Henderson should be denied a license on account of failing to satisfy a rule. The Department relies solely upon statutes. The

Department maintains that Ms. Henderson did not demonstrate "good moral character based upon screening." More specifically the Department asserts that the two verified reports and three unverified reports prove that Ms. Henderson does not have good moral character.

52. The level two standards relied upon by the Department are to determine if a person has:

> been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following listed criminal offenses or similar law of another jurisdiction: [list of 48 criminal laws].

§ 435.04, Fla. Stat.

53. At some point in her life, Ms. Henderson was convicted of, pled guilty, or pled no contest to one or more of the listed offenses. But the Department granted her an exemption from disqualifications flowing from failure to pass the level two screening.

54. Section 402.312(15) creates a broader concept of screening. It says screening includes, but is not limited to, considering employment history and criminal records. The Department relies on the "but not limited to" language. The Department has not stated what good moral character is.

55. The Department gave great weight in its decision and its position in this proceeding to an alleged history or pattern of inadequate supervision. The evidence and the facts do not present a pattern of inadequate supervision. The evidence showed that three of the reports were inaccurate. Report 1999-089863-01 saying Ms. Henderson left her child on the Father's door step is not accurate. Report 2002-136612-01 did not even involve inadequate supervision. Report 2004-420815-01 was not even a verified report. The factual claims of report 2005-323618-01 were not proven. Report 2012-126218 also is not an inadequate supervision case. Ms. Henderson was not even the subject of it. DCF adds it to the reasons for denying the license because it feels like she did not cooperate in investigating the intern who touched her young daughter's breast. The fact is that Ms. Henderson did everything a reasonable person would do in her situation.

56. A pattern is "something that happens in a regular and repeated way." "Pattern." Merriam-Webster.com, Merriam-Webster (27 Apr. 2016). The facts recited in the recommended order in Department of Children a Families v. Vestal, Case No. 99-1969 (Fla. DOAH Nov. 2, 1999; Fla. DCF February 7, 2000), which denied issuance of a commercial day care facility license, are good examples of facts that show a pattern of behavior amounting to a sign that an applicant did not have good moral character.

Over the course of several years, the husband who would be participating in the facility, held and used two different social security cards and driver's licenses. This made conducting a background check very difficult. The wife who applied for the license never told DCF about the two sets of identifying documents. This case is not like that case. This case is more like Department of Health and Rehabilitative Services v. A.S., 648 So. 2d 128 (Fla. 1995). There, the Florida Supreme Court held that A.S.'s leaving his six-year-old son alone on at least six occasions for an hour or hour and one-half at a time, and once for six hours, was not abuse or neglect.

57. Ms. Henderson proved by a preponderance of the evidence that she did not have a historical pattern of inadequate supervision of children. Ms. Henderson proved by a preponderance of the evidence that she was of good moral character.

58. Ms. Henderson proposed that the Department issue her a provisional license. The Department cannot do that. Florida Administrative Code Rule 65C-20.008(4) prohibits issuing a provisional license as an initial license.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent, Department of

Children and Families, enter a final order granting the application of Petitioner, Niki Henderson d/b/a Henderson Family Day Care Home, to operate a family day care home.

DONE AND ENTERED this 2nd day of May, 2016, in Tallahassee, Leon County, Florida.

JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of May, 2016.

ENDNOTES

[1/] All references to the Florida Statutes are to the 2015 codification unless otherwise noted.

[2/] This contrasts markedly with the Department's presentation in Daddy's Daycare Early Learning Academy, Inc. v. Department of Children and Family Services, Case No. 15-3737 (Fla. DOAH March 25, 2016; Fla. DCF Apr. 27, 2016). In that proceeding, the investigators who wrote the reports testified.

[3/] § 120.57(1)(c), Fla. Stat.

COPIES FURNISHED:

Cheryl D. Westmoreland, Esquire
Department of Children and Families
1055 U.S. Highway 17 North
Bartow, Florida 33830
(eServed)

Paul Sexton, Agency Clerk
Department of Children and Families
Building 2, Room 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700
(eServed)

Nikki Henderson
Henderson Family Day Care Home
8433 Split Creek Circle
Lakeland, Florida 33809

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

Rebecca Kapusta, General Counsel
Department of Children and Families
Building 2, Room 204
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.