

STATE OF FLORIDA
AGENCY FOR PERSONS WITH DISABILITIES

Agency for Persons with
Disabilities,

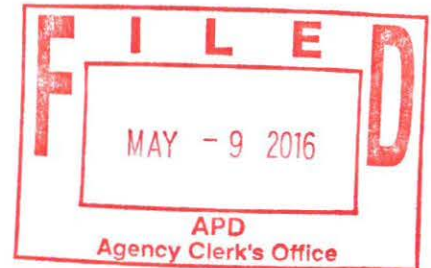
Petitioner,

v.

BES Support Services, Inc.
Owner and Operator of,
BES 8th Street Group Home,

Respondent.

¹⁵
DOAH Case No. 16-6794FL
RENDITION No. APD-15-16-040-FO



FINAL ORDER APPROVING SETTLEMENT

THIS CAUSE is before the Agency for Persons with Disabilities for the purpose of final agency action addressing the Settlement entered into between the parties in this cause (attached at Exhibit A).

Upon consideration of the Settlement Stipulation, approved by the Agency on May 4, 2016, and being fully advised in the premises, **IT IS HEREBY ORDERED AND**

ADJUDGED:

1. The Settlement is hereby adopted and incorporated by reference;
2. The parties shall adhere to and abide by all the terms and conditions of the Settlement; and
3. This Final Order shall take effect upon filing with the Clerk of the Agency for Persons with Disabilities.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 6th day of

May, 2016.



Tom Rankin, Deputy Director of Operations
Agency for Persons with Disabilities

Copies furnished to:

Andrew Langenbach, Esq.
Agency for Persons with Disabilities
Andrew.Langebach@apdcares.org

Brian F. McGrail, Esq.
Deputy General Counsel
Agency for Persons with Disabilities
Brian.Mcgrail@apdcares.org

Larry D. Hardaway, Esq.
Hardaway and Associates Law Firm
1022 Lakeland Hills Blvd.
Lakeland, FL 33802

Claudia Llado, Clerk
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(Filed via e-ALJ)

Charlann Jackson Sanders, Esq.
Charlann Jackson Sanders, P. A.
Post Office Box 7752
Lakeland, FL 33807

APD Central Region Office

Copies of this Final Order were provided to the above-named individuals at the listed addresses, by U.S. Mail or electronic mail.



David De La Paz, Esq., Agency Clerk
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0700

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR PERSONS WITH
DISABILITIES,

Petitioner,

vs.

Case No. 15-6794FL

BES SUPPORT SERVICES, INC.,
OWNER AND OPERATOR OF, BES 8TH
STREET GROUP HOME,

Respondent.

ORDER CLOSING FILE AND RELINQUISHING JURISDICTION

This cause having come before the undersigned on Petitioner's Unopposed Motion to Relinquish Jurisdiction, filed March 25, 2016, and the undersigned being fully advised, it is, therefore,

ORDERED that:

1. The final hearing scheduled for March 29, 2016, is canceled.
2. The file of the Division of Administrative Hearings is closed. Jurisdiction is relinquished to the Agency for Persons with Disabilities.

DONE AND ORDERED this 28th day of March, 2016, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
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 28th day of March, 2016.

COPIES FURNISHED:

David Martin De La Paz, Agency Clerk
Agency for Person with Disabilities
Suite 380
4030 Esplanade Way
Tallahassee, Florida 32399
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Agency for Persons with Disabilities
Suite S430
400 West Robinson Street
Orlando, Florida 32801
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR PERSONS WITH DISABILITIES
Petitioner,

vs.

DOAH CASE NO.: 15-006794FL

BES SUPPORT SERVICES, INC,
OWNER AND OPERATOR OF,
BES 8th STREET GROUP HOME,
Respondent.

PETITIONER'S UNOPPOSED MOTION TO RELINQUISH JURISDICTION

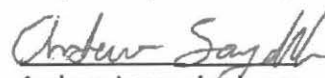
COMES NOW, the Agency for Persons with Disabilities, and requests a cancellation of the March 29, 2016 hearing in this case and that DOAH relinquish jurisdiction of this case to APD for a final order accepting settlement. In support, APD states:

1. This case is currently scheduled for hearing on March 29, 2016, at 9:00 AM.
2. The parties have engaged in negotiation regarding this case.
3. The parties have reached settlement, with signatures pending on the settlement agreement.
4. There are no longer material issues at dispute in this case.
5. Counsel for Petitioner has spoken to counsel for Respondent and there is no objection to this motion.

WHEREFORE, The Petitioner respectfully requests a cancellation of the March 29, 2016 hearing and that DOAH relinquish jurisdiction of this case to APD for a final order accepting settlement.

Dated: March 25, 2016

Respectfully Submitted,



Andrew Langenbach, esq.
Attorney for Petitioner
400 West Robinson St, Ste. S4300
Orlando, FL 32801
Tel: 407-245-0440 ext. 606

**SETTLEMENT AGREEMENT
BETWEEN
THE AGENCY FOR PERSONS WITH DISABILITIES
AND
BES SUPPORT SERVICES, INC**

This Settlement Agreement is made this 27th day of April, 2016, and is between the State of Florida, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399-0950 ("Agency" or "APD") and BES Support Services, Inc. ("Respondent").

WHEREAS, the Agency and Respondent are litigants in the case of Agency For Persons With Disabilities vs. BES Support Services, Inc., Owner and Operator of, BES 8th Street Group Home, Division of Administrative Hearings ("DOAH"), Case Number 15-006794FL ("Case").

WHEREAS, the Agency and Respondent have determined that it is in their best interest to settle the case in order to avoid the uncertainty of continued litigation and additional costs related thereto; and both parties have consulted with counsel before signing this agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Respondent will terminate staff named in the July 2014 DCF investigation identified in Count I of the Administrative Complaint if they are not already terminated. Specifically Bonnie Coleman, Princess Neal, and Joseph Moran.
2. Hardie Sykes will not go to BES 8th Street Group Home unless for maintenance purposes. While at BES 8th Street Group Home for maintenance purposes, Hardie Sykes will have no unsupervised interaction with the residents.
3. Barbara Sykes, as administrator of BES 8th Street Group Home, will:
 - a) With the exception of vacation time and holiday observances, which will be planned for in advance and appropriately noticed, Ms. Sykes will be present at the BES 8th Street Group Home for a minimum of 25 hours each week.
 - b) Complete a self-assessment (CMS Residential Survey) within 30 days of the execution of this agreement and submit the assessment to APD.
 - c) Document both the in-house training, and the training listed in section 4 of this agreement, for all staff at BES 8th Street Group Home.
 - d) Maintain records onsite of her presence in the home, specifically noting times.
 - e) Within two years of execution of this agreement, identify and hire suitably qualified persons to be trained on operations, management and administrative duties at BES 8th Street Group Home.
 - f) Fulfill the training requirements in section 4 of this agreement for new and current staff, including re-training of the 8th Street Group Home staff on how to conduct body checks of residents. The body check training must occur within 30 days of the execution of this agreement and within 30 days of hiring any new staff.
 - g) Ensure that regular body checks are completed by staff.

- h) Review communications logs.
 - i) Hold monthly staff meetings that will include, but are not limited to, quizzes given to the staff covering zero tolerance as well as choice and rights policies based on situations that arise at BES 8th Street Group Home between meetings.
 - j) Document the monthly meetings including staff attendance, training discussions, and the meeting agenda outlining in detail the topics covered.
 - k) Assess the need for meetings more regularly than a monthly basis and implement meetings as necessary.
 - l) By the end of 2018, have a full-time member of the BES 8th Street Group Home staff that is comparably trained to Ms. Sykes and capable of performing all duties of Administrator over the 8th Street Group Home.
 - m) Create progress reports on the completion of subsections a-l and present them to APD at quarterly meetings between APD and the administrator of BES 8th Street Group Home at the APD Lakeland Office until December 31, 2018.
4. All staff at BES 8th Street Group Home must undergo the following training in the 6 month period following the execution of this agreement:
- a) Reactive Strategy Training
 - b) Zero Tolerance Training
 - c) Choices and Rights Training
 - d) Person Centered Training
5. Respondent will maintain staffing that provides the appropriate physical care and supervision for the residents of the BES 8th Street Group Home.
6. Within 30 days of the execution of this settlement agreement, Respondent will meet with The Agency's Quality Assurance and Quality Improvement Manager to review the new procedures and checklists.
7. If either party identifies a breach of sections 1-6 of this agreement, Respondent will have 30 days to cure the breach or will relinquish their license to BES 8th Street Group Home on the 31st day.
8. This Settlement Agreement is the final expression of the parties' agreement with respect to the matters specified herein and is the exclusive statement of the terms of their agreement to resolve the pending case.
9. This Settlement Agreement supersedes and replaces any prior oral or written agreements between the parties. All terms and conditions of this settlement are fully set forth in this document and no other material terms of settlement exist outside this document.
10. The parties have participated in the drafting of this Settlement Agreement and have had the opportunity to consult with one another and their legal representatives concerning its terms. This Settlement Agreement shall not be interpreted strictly against any one party on the ground that the party drafted the Settlement Agreement or any part of it.
11. To expedite the signing of this Settlement Agreement, the parties stipulate and agree that facsimile or electronic transmission shall bind the transmitting party to the same extent as

12. Each signatory to this Settlement Agreement will furnish the original signature page to counsel for the Agency, Andrew Langenbach, who will distribute copies to all parties once all signature pages are received.

13. This Settlement Agreement does not constitute an admission of wrongdoing or error by either party with respect to this case or any other matter.

14. To the extent that any provision of this Settlement Agreement is prohibited by law for any reason, such provision shall be effective to the extent not so prohibited, and such prohibition shall not affect any other provision of this Settlement Agreement.

15. Except as otherwise provided in this Settlement Agreement, each party waives any and all claims, demands, rights, title, or interest that either party may have, or hereafter acquires against the other party that may have arisen out of the pending case. This waiver is binding on the executors, administrators, personal representatives, heirs, assigns, officers, directors, shareholders, agents, apparent agents, servants, employees, employers, and insurers of each party as applicable.

16. Venue for any action brought to interpret, challenge or enforce the terms of this Settlement Agreement shall lie solely in the Second Judicial Circuit in and for Leon County, Florida.

17. The parties agree that each party shall bear its own costs and attorney's fees, unless legal action is required to enforce the terms of this Settlement Agreement, in which case the prevailing party will be entitled to recover reasonable attorneys' fees and costs incurred in the enforcement action from the non-prevailing party.

18. To the extent that any provision of this Settlement Agreement is prohibited by law for any reason, such provision shall be effective to the extent not so prohibited, and such prohibition shall not affect any other provision of this Settlement Agreement.

19. This Settlement Agreement shall inure to the benefit of and be binding on each party's successors, assigns, heirs, administrators, representatives and trustees.

20. Respondent acknowledges that this proposed Settlement Agreement is subject to approval of the Director of the Agency for Persons with Disabilities, and that this Settlement Agreement will have no force and effect until signed by the Director or her designee. After approval by the Director, and upon execution of this Settlement Agreement, Petitioner will file a Voluntary Dismissal of the pending DOAH action. Upon DOAH issuing an Order of Dismissal, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the Administrative Complaint filed on December 3, 2015.

RESPONDENT

Barbara E Sykes
Barbara Sykes, Owner, BES

Barbara E Sykes
Printed Name

4/27/16
Date

AGENCY

Tom Rankin
Agency for Persons with Disabilities

Tom Rankin
Printed Name and Title

5/4/16
Date