STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRIGHTER BEGINNINGS LEARNING CENTER,

Petitioner,

vs. Case No. 16-3965

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.
_____/

RECOMMENDED ORDER

On September 19, 2016, D. R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a hearing in this case by video teleconferencing at sites in Lakeland and Tallahassee, Florida.

APPEARANCES

For Petitioner: Trina Gaines, pro se
Post Office Box 4024
Lake Wales, Florida 33859-4024

For Respondent: Cheryl D. Westmoreland, Esquire
Department of Children and Families
1055 U.S. Highway 17 North
Bartow, Florida 33830-7646

STATEMENT OF THE ISSUE

The issue is whether Petitioner's application for a license to operate a child care facility should be approved.

PRELIMINARY STATEMENT

By letter dated June 30, 2016, the Department of Children and Families (Department) informed Trina Gaines that her application to operate a child care facility under the name of Brighter Beginnings Learning Center had been denied. The denial was based upon a search of the Central Abuse Hotline, which revealed "a history of a verified and not substantiated reports, naming you as the caretaker responsible and alleged perpetrator." Petitioner timely requested a hearing to contest the intended agency action, and the matter was referred to DOAH to conduct a formal hearing.

At the hearing, Trina Gaines testified on her own behalf and presented the testimony of two witnesses. Petitioner's Exhibits 1 through 5 were accepted in evidence. The Department presented the testimony of six witnesses. Department Exhibits A through C were accepted in evidence.

A transcript of the hearing was not prepared. Proposed findings of fact and conclusions of law were filed by the parties, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency responsible for licensing child care facilities.

2. On June 17, 2016, Ms. Gaines filed an application for a license to operate a child care facility in Babson Park, Polk County (County). She previously worked as a caregiver for two child care facilities in the County and desires to operate a new facility known as Brighter Beginnings Learning Center.

3. To qualify for licensure, an applicant must meet the licensing standards in section 402.305(1), Florida Statutes. Also, section 402.305(2) requires that child care personnel meet minimum requirements as to good moral character based upon a level 2 screening as provided for in chapter 435. That screening includes a check to determine if the applicant has a report on the Central Abuse Hotline.

4. The background screening revealed that Ms. Gaines has three reports on the Central Abuse Hotline. The incidents occurred in 2010, 2014, and 2015. Based on this information, and the underlying facts surrounding those reports, the Department informed Petitioner by letter dated June 30, 2016, that her application was denied. Petitioner timely requested a hearing.

5. On July 12, 2010, the Department received a report that Ms. Gaines (then known as Ms. Hamilton) had grabbed and pinched several children at Hope Child Development Center in Frostproof, where she was working as a caregiver. The incident was investigated by Deanna McCain, then a child protective

investigator (CPI), who testified at hearing. However, the report was not verified because there were no visible injuries on the children. The facility terminated Petitioner as an employee after the incident.

6. Ms. Gaines began working as a caregiver at Our Children's Academy in Lake Wales around October 2013. On October 12, 2014, the Department received a report that a 13-year-old child under Ms. Gaines' supervision was left unattended in a sandbox in the playground while Ms. Gaines was on a personal cell phone call in a classroom. The child suffers from autism and epilepsy and is prone to having seizures. The child suffered a seizure during Petitioner's absence.

7. Brandy Queen, a CPI who testified at hearing, was assigned the task of investigating the incident. Her investigation revealed the child suffered a severe seizure that lasted four minutes and caused her to vomit and defecate on herself. Based on interviews with Petitioner, a teacher who witnessed the incident, and the school principal, Ms. Queen classified the incident as verified.

8. The child was found face down in the sandbox by a teacher, Mr. Swindell, who immediately contacted the school nurse to check the child. Mr. Swindell, who testified at hearing, established that the child was alone outside for around ten to 15 minutes and that Petitioner did not go back outside to

check on the child until after she had awoken from the seizure. Throughout the episode, Ms. Gaines was making a personal call on her cell phone.

9. The facility has a policy of no cell phone usage during student contact time. Prior to the incident, the principal had spoken to Petitioner around nine or ten times about inappropriate cell phone usage. After the incident, a Letter of Concern regarding cell phone usage was placed in Petitioner's file.

10. The mother of the student testified at hearing and stated she had no concerns about the incident and described it as "overblown." She said her daughter suffers seizures two or three times a week without warning, but they are not life-threatening. She does not blame Petitioner for the incident. The mother was under the impression, however, that her child was left alone for only a very short period of time and Petitioner immediately went back to the playground to retrieve her. The mother admitted she would be concerned had she known that her daughter had been allowed to remain alone for ten to 15 minutes and that asphyxiation could be a potential result if the child was face down in the sand.

11. On February 25, 2015, the Department received another report of possible abuse by Petitioner, who was still employed as a caregiver at Our Children's Academy. The report indicated

that Petitioner had inappropriately dragged a non-verbal child with Down Syndrome from the classroom to the playground.

12. Two school therapists were present during the incident and testified at hearing. They confirmed that Petitioner was working with the child in an effort to get him from the classroom to the playground swings. The child was frightened by the swings and resisted her efforts. Petitioner first grabbed the child by one arm, and when he dropped to the floor, she grabbed both arms and dragged the child on his stomach out of the classroom and into the hallway. She then dragged him down a set of wooden stairs and to the playground where she forced him to sit in the swings against his will. One of the therapists observed that the child was very upset and urged Petitioner to let him calm down, but Petitioner continued dragging the child to the playground. The frightened child urinated on himself.

13. The incident was investigated by CPI Queen, who interviewed the Petitioner, principal, and two therapists. She observed minor bruising on the child's arms but could not say definitively that the bruising was caused during the incident. She also could not establish that the child would suffer long-term emotional trauma due to the incident. Because of this, she classified the report as unsubstantiated. This meant that something happened to the child, but she could not verify that

the bruising was caused by Petitioner's actions. The facility terminated Petitioner as an employee after the incident.

14. Petitioner downplayed her conduct and generally contended that she never harmed or failed to supervise the children assigned to her care. Petitioner has five children of her own, she has a passion for children, and she wants to put that passion to good use by operating a child care center.

15. The Department based its decision to deny the application on the facts that underlie the reports, and not the reports themselves. This includes consideration of who was interviewed by the CPI, what the statements were, whether there were any inconsistencies, how the cases were closed, the applicant's employment history, and whether there appears to be a pattern of concerning behavior. Based on this information, a Department licensing official observed a pattern of concerning behavior on the part of Petitioner as well as inconsistencies between Petitioner's statements and those of persons who witnessed the incidents. The Department considers Petitioner to be a potential risk to children unless she is supervised.

CONCLUSIONS OF LAW

16. The applicant has the ultimate burden of persuasion to establish entitlement to the license by a preponderance of the evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996). If the Department proposes to deny

the license because the applicant is unfit, it has the burden to provide a legitimate reason for denying the license and to produce competent substantial evidence to support that reason. Id.

17. Section 402.312(1) prohibits operation of a child care facility without a license. The Department shall issue a license only "upon being satisfied that all standards required by ss.402.301-402.319 have been met." § 402.308(3)(d), Fla. Stat.

18. The Department asserts that, based upon the screening, Petitioner is unfit for licensure. See § 402.305(2)(a), Fla. Stat. The proposed denial is based on facts arising out of three reports on the Central Abuse Hotline, two unsubstantiated and one verified.

19. When the child care licensing official reviews the abuse reports pertaining to an applicant, the ultimate determination by the CPI that abuse did or did not occur is important, but it is not dispositive as to whether the Department will grant or deny the license application. See M.B. v. Dep't of Child. & Fams., Case No. 09-3515 (Fla. DOAH Feb. 9, 2010; DCF June 9, 2010). In other words, the abuse reports are a source of information for the child care licensing official, but the existence of a report, whether verified or not, does not control the licensing decision.

20. If the Department produces competent substantial evidence to support its contention that Petitioner abused or neglected children, this is indicative of a failure of judgment or supervision by Petitioner and is a legitimate reason for denying her application.

21. Based upon the entire record, it is concluded that Petitioner has failed to establish by a preponderance of the evidence that she is entitled to a child care facility license. Conversely, the Department has produced a legitimate reason to deny the application. Because the evidence shows that Petitioner is unfit, the application should be denied.

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 denying Petitioner's application for a license to operate a child care facility.

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

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2016.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.