

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 16-6249

THE EARLY YEARS CHILD
DEVELOPMENT CENTER,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016),^{1/} on January 31, 2017, by video teleconference sites in Tallahassee and Lakeland, Florida.

APPEARANCES

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

For Respondent: Gregg S. Kamp, Esquire
Gregg S. Kamp, P.A.
Post Office Box 6235
Lakeland, Florida 33807

STATEMENT OF THE ISSUE

The issue in this matter is whether the Department of Children and Families should impose an administrative fine on Respondent.

PRELIMINARY STATEMENT

On June 23, 2016, Petitioner, Department of Children and Families (the "Department"), issued an Administrative Complaint notifying Respondent, The Early Years Child Development Center ("Respondent"), that the Department intended to impose on it an administrative fine in the amount of \$250. The Department seeks to sanction Respondent for violating child care licensing standards found in section 402.301-402.319, Florida Statutes, and Florida Administrative Code Chapter 65C-22.

Respondent timely requested an administrative hearing challenging the Department's action. On October 26, 2016, the Department referred the matter to the Division of Administrative Hearings ("DOAH") and requested assignment to an Administrative Law Judge ("ALJ") to conduct a chapter 120 evidentiary hearing.

The final hearing was held on January 31, 2017. The Department presented the testimony of A.O. (a minor child), Shana Nicholes, and Brandy Queen. Department Exhibits 1 through 3 were admitted into evidence. Respondent presented the testimony of Antuan Bunkley, Joseph Jackson, Sr., and Elizabeth Jackson. Respondent Exhibits 1 and 2 were admitted into evidence.^{2/}

A one-volume Transcript of the final hearing was filed with DOAH on March 1, 2017. At the close of the hearing, the parties were advised of a ten-day timeframe following receipt of the hearing transcript at DOAH to file post-hearing submittals. Both parties filed Proposed Recommended Orders which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with regulating licensed or registered child care facilities in Florida.

2. Respondent is licensed to operate a child care facility in Lakeland, Florida.

3. The Department seeks to sanction Respondent based on an incident that occurred on November 2, 2015. The Department's Administrative Complaint specifically alleges that:

The facility driver, Antuan Bunkley was looking at his phone while transporting children in the facility's vehicle. Two witnesses observed Antuan Bunkley texting and/or scrolling while driving. . . . The witnesses observed a phone in Antuan's hands and him looking down several times while driving with children in the van. Several children on the van told the Department that Antuan text [sic] while he drives, plays games on his phone, and receives calls while driving.

The Department asserts that Mr. Bunkley must "be able to respond to the needs of the children" and "be alert and avoid any and all distractions in order to effectively respond to those needs."

4. The Department categorized Respondent's (i.e., Mr. Bunkley's) actions as a Class I violation of a child care licensing standard. The Department desires to fine Respondent in the amount of \$250 because Mr. Bunkley's "inadequate supervision posed an imminent threat to the child, or could or did result in death or serious harm to the health, safety or well-being of a child."

5. The Department issued the Administrative Complaint following a complaint received from Shana Nicholes, who had observed Mr. Bunkley driving Respondent's van.

6. At the final hearing, Ms. Nicholes testified that on November 2, 2015, at approximately 3:30 p.m., she was driving her sports utility vehicle on Highway 98 North in Lakeland. Her brother was riding with her in the passenger seat. As she drove, her brother called her attention to Respondent's van which was driving in front of them. He commented that the van was full of children who were not wearing seat belts. As her vehicle drew closer to the van, Ms. Nicholes observed that not only were the children not wearing seat belts, but she believed that she saw the driver (Mr. Bunkley) looking down at his cell phone while driving.

7. Ms. Nicholes explained that Highway 98 North has four lanes through Lakeland. Over a stretch of about three to four miles, Ms. Nicholes drove in the left side lane roughly parallel to Mr. Bunkley. Ms. Nicholes testified that during that drive, she saw Mr. Bunkley holding a phone. She further stated that he looked down at the phone in his lap several times as he drove. Ms. Nicholes guessed that Mr. Bunkley lowered his eyes for approximately 10 to 20 seconds each time he glanced down. She stressed that "he wasn't paying attention to the road." Ms. Nicholes expressed that the two vehicles drove as fast as 45 mph.

8. Ms. Nicholes was quite alarmed by Mr. Bunkley's actions. As she drove next to him, she took several photographs of him with her cell phone. Copies of Ms. Nicholes' photographs were introduced at the final hearing. The photographs show Mr. Bunkley looking down as he is sitting in the driver's seat. However, neither Mr. Bunkley's right hand nor a cell phone are visible in the pictures. (Respondent disputes that the van was moving at the time Ms. Nicholes took the pictures.)

9. Ms. Nicholes was shocked by the incident. She was worried for the safety of the children in the van. She commented that if her child were riding in the van, and the driver was distracted like Mr. Bunkley was, she would be furious.

10. Later that day, Ms. Nicholes posted her photographs of Mr. Bunkley driving Respondent's van on her Facebook page. She added the caption, "Well, this is safe, we're doing about 45 down 98 and this guy is texting with a van full of children. Not cool, dude."

11. The next morning, Ms. Nicholes was still distressed by what she had witnessed. Therefore, she decided to visit Respondent's place of business to discuss the incident. Ms. Nicholes had no knowledge of Respondent prior to November 2, 2015. She identified Respondent from the name on the side of the van. Ms. Nicholes maintained that her only interest in approaching Respondent was to alert Respondent of the risk to the children in the van because of a distracted driver.

12. When Ms. Nicholes arrived at Respondent's facility, she spoke to Elizabeth Jackson. Ms. Nicholes advised Ms. Jackson that she had observed her van driver using his cell phone while driving, and she showed Ms. Jackson her photographs. Ms. Jackson informed Ms. Nicholes that the driver was her son, Antuan Bunkley. Ms. Jackson told Ms. Nicholes that she would be taking him off driving until the matter was resolved.

13. After her meeting with Ms. Jackson, Ms. Nicholes drove to Subway for lunch. While standing in line, she was approached by a woman who identified herself as an employee of Respondent. The employee asked Ms. Nicholes if she was the one who had posted

the photos of the van driver on Facebook. At that point, Mr. Bunkley entered Subway. Ms. Nicholes took a picture of Mr. Bunkley while he was standing in line behind her.

14. The next day, Ms. Nicholes reported the incident to the Department.

15. Upon receiving Ms. Nicholes' complaint, the Department initiated an investigation. The case was assigned to Brandy Queen, a Child Protective Investigator. Cheryl Dishong, a Child Care Regulations Counselor, assisted her.

16. Ms. Queen testified that she started her investigation by visiting Respondent's facility. She was accompanied by Ms. Dishong. There, she met Ms. Jackson. During their conversation, Ms. Jackson acknowledged that her facility owned the van and that the driver was Mr. Bunkley. Ms. Jackson told Ms. Queen that Mr. Bunkley had picked up six children on the afternoon of November 2, 2015. She provided the children's names to Ms. Queen.

17. Ms. Jackson also allowed Ms. Queen and Ms. Dishong to examine the van. Ms. Queen and Ms. Dishong spent some time climbing through the van. The van has two bucket seats in the front row and three rows of back seats. Ms. Queen and Ms. Dishong sat in different seats to determine the vantage point of the driver by the children riding in the van. They wanted to

see if the children could have observed Mr. Bunkley texting while he drove.

18. Ms. Dishong climbed into the back rear seat. Taking into account that she is taller than the children who rode in the van, Ms. Dishong slouched down to simulate a child passenger. Ms. Queen stated that Ms. Dishong believed that a child could adequately see the driver from the back, rear seat. However, Ms. Queen conceded that during their inspection of the van, no one was sitting between the rear back seat and the drivers' seat. Neither did a driver sit in the front seat to determine whether Mr. Bunkley's body would prevent a clear view of his hand while he was driving (particularly, a driver as large as Mr. Bunkley as discussed below).

19. Next, Ms. Queen interviewed the six children who had been riding with Mr. Bunkley on the afternoon of November 2, 2015. At the final hearing, Ms. Queen explained that, before she asked the children about Mr. Bunkley's driving, she presented several preliminary questions to ascertain whether the children understood the difference between telling the truth and telling a lie. Ms. Queen testified that she believed the children were telling her the truth during her interview. However, the children's statements were not given under oath.^{3/}

20. Ms. Queen stated that, based on the evidence she gathered, which included the children's statements, Ms. Nicholes'

pictures,^{4/} and her own observations of the van, she "verified" that Mr. Bunkley's conduct constituted inadequate supervision. Ms. Queen further stated that Mr. Bunkley's driving while distracted caused concern since he ran "the risk of getting into a wreck." She believed that he had placed himself and the children in his care "at risk of harm, of dying."

21. Of the six children, the Department presented A.O. at the final hearing to tell her story.^{5/}

22. A.O. was seven years old at the time of the incident. (She was eight years old on the date of the final hearing.) A.O. testified that she had attended Respondent's child care facility for about a year. A.O. was familiar with Mr. Bunkley and identified him in Ms. Nicholes' photographs. A.O. relayed that three to four different people had driven her in Respondent's van, including Mr. Bunkley. A.O. stated that on the afternoon in question, Mr. Bunkley picked her up after school in Respondent's van.

23. At the final hearing, A.O. demonstrated proficient knowledge of the functions of a cell phone. A.O. described various uses of a cell phone including talking, texting, playing games, and looking at Facebook.

24. A.O. testified that Mr. Bunkley used his cell phone when he drove the van. A.O. stated that Mr. Bunkley texts while driving. By "texting," A.O. recounted that she observed

Mr. Bunkley moving his fingers on the phone at the same time he was driving. A.O. also described seeing Mr. Bunkley looking at Facebook on his cell phone while he was driving the van. A.O. added that sometimes when she was riding with Mr. Bunkley, he swerved off the road while he was using his phone. She also described how the van would sometimes get near other cars on the road. She commented that Mr. Bunkley occasionally drives the van with his knees. She imparted that the way he drove scared her sometimes.

25. A.O. expressed that when she rode in the van, she sat in the very back seat on the right side. A.O. conveyed that, despite sitting in the very back row, she could still see Mr. Bunkley hold and use a cell phone.

26. At the final hearing, Mr. Bunkley acknowledged that he was driving Respondent's van on November 2, 2015, and was the individual seen in Ms. Nicholes' photographs. Mr. Bunkley also confirmed that he was transporting children in the van at that time.

27. Mr. Bunkley firmly denied that he was texting while driving Respondent's van. He denied ever using his phone while driving the van. Mr. Bunkley admitted that he does carry his cell phone when he drives. However, he claimed that he routinely keeps his phone in his pocket. Mr. Bunkley asserted that he would only use his cell phone in the case of an emergency.

28. Mr. Bunkley expressed that Ms. Nicholes must have seen him looking down at his transportation log when she observed him on November 2, 2015. Mr. Bunkley explained that his log sheet registers when and where he is to pick up and drop off children. Mr. Bunkley relayed that he periodically reviews the log sheet as he transports children. However, he only checks the transportation log when the van is stopped. He remarked that Ms. Nicholes must have taken her pictures of him on Highway 98 North when they were stopped at a stoplight.

29. Mr. Bunkley stated that he is 5'11" tall and weighs 330 pounds. Because of his large size, he did not believe that it was possible for A.O. to see anything he held in his lap from her seat in the right rear of the van.

30. Mr. Bunkley offered his cell phone records to support his assertion that he was not texting on the afternoon of November 2, 2015. However, the phone records do not confirm whether Mr. Bunkley was accessing or reading text messages as he was driving. Nor do they provide any information regarding his alleged "scrolling" or using Facebook.

31. Respondent is owned and operated by Ms. Jackson. She is also Mr. Bunkley's mother. Ms. Jackson did not believe that Mr. Bunkley was texting on his cell phone while he was driving the van. Instead, she posited that the van was stationary when

Ms. Nicholes took her pictures, and that Mr. Bunkley was looking down at his transportation log.

32. Based on the competent substantial evidence presented at the final hearing, the clear and convincing evidence in the record does not establish that Mr. Bunkley was scrolling and/or texting on his cell phone while driving Respondent's van on November 2, 2015. Accordingly, the Department failed to meet its burden of proving that Respondent committed "inadequate supervision" which would support an administrative fine under section 402.310.

CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1).

34. To operate in Florida, a child care facility must be licensed or registered with the Department. § 402.312(1), Fla. Stat.

35. The Department alleges that Respondent committed "inadequate supervision" in violation of section 402.305(10) and rule 65C-22.001(5).^{6/} The Department seeks to impose an administrative fine against Respondent for the alleged violation.

36. Section 402.310 authorizes the Department to administer an administrative fine against a licensed or registered child care facility as a disciplinary sanction. Section 402.310 states, in pertinent part:

(1) (a) The department . . . may administer any of the following disciplinary sanctions for a violation of any provision of ss. 402.301-402.319, or the rules adopted thereunder:

1. Impose an administrative fine not to exceed \$100 per violation, per day. However, if the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day in addition to or in lieu of any other disciplinary action imposed under this section.

* * *

(b) In determining the appropriate disciplinary action to be taken for a violation as provided in paragraph (a), the following factors shall be considered:

1. The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of ss. 402.301-402.319 have been violated.

2. Actions taken by the licensee or registrant to correct the violation or to remedy complaints.

3. Any previous violations of the licensee or registrant.

(c) The department shall adopt rules to:

* * *

2. Establish a uniform system of procedures to impose disciplinary sanctions for violations of ss. 402.301-402.319. The uniform system of procedures must provide for the consistent application of disciplinary

actions across districts and a progressively increasing level of penalties from predisciplinary actions, such as efforts to assist licensees or registrants to correct the statutory or regulatory violations, and to severe disciplinary sanctions for actions that jeopardize the health and safety of children, such as for the deliberate misuse of medications. The department shall implement this subparagraph on January 1, 2007, and the implementation is not contingent upon a specific appropriation.

(d) The disciplinary sanctions set forth in this section apply to licensed child care facilities, licensed large family child care homes, and licensed or registered family day care homes.

(2) When the department has reasonable cause to believe that grounds exist for the denial, suspension, or revocation of a license or registration; the conversion of a license or registration to probation status; or the imposition of an administrative fine, it shall determine the matter in accordance with procedures prescribed in chapter 120.

37. Section 402.305(10) states:

TRANSPORTATION SAFETY.—Minimum standards shall include requirements for child restraints or seat belts in vehicles used by child care facilities and large family child care homes to transport children, requirements for annual inspections of the vehicles, limitations on the number of children in the vehicles, and accountability for children being transported.

38. Chapter 65C-22.001(5) (a) provides:

Direct supervision means actively watching and directing children's activities within the same room or designated outdoor play area, and responding to the needs of each child. Child care personnel at a facility must be assigned to provide direct supervision to a specific

group of children, and be present with that group of children at all times. When caring for school-age children, child care personnel shall remain responsible for the supervision of the children in care, shall be capable of responding to emergencies, and are accountable for children at all times, including when children are separated from their groups.

39. The Department's action to discipline Respondent is penal in nature. Accordingly, the Department bears the burden of proving the grounds for disciplinary action by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); see also Fla. Dep't of Child. & Fams. v. Davis Fam. Day Care Home, 160 So. 3d 854, 856 (Fla. 2015).

40. Clear and convincing evidence is a heightened standard that "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" Clear and convincing evidence is defined as an intermediate burden of proof that:

[R]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872-73 (Fla. 2014) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla.

4th DCA 1983)). "Although this standard of proof may be met where the evidence is in conflict . . . it seems to preclude evidence that is ambiguous." Westinghouse Electric Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1991).

41. The competent substantial evidence in the record does not establish, by clear and convincing evidence, that Respondent committed "inadequate supervision" due to Mr. Bunkley's alleged unsafe driving practices. The Department's case rests primarily on the testimony of two witnesses. The undersigned finds areas of indefiniteness in both accounts which create some "hesitancy" in concluding that Respondent violated section 402.305(10) and rule 65C-22.001(5) (a).

42. Ms. Nicholes testified with conviction. However, the evidence and testimony she presented at the final hearing was not sufficiently persuasive to reach the level of clear and convincing. First, while the photographs Ms. Nicholes produced do show Mr. Bunkley looking down towards his lap while driving the van, they do not show his right hand. Nor do they reveal a cell phone. In addition, while Ms. Nicholes firmly asserted that she saw Mr. Bunkley holding a phone, she did not actually see him "texting and/or scrolling" as he drove. Further, at the time Ms. Nicholes observed Mr. Bunkley, her concentration was divided between driving her own vehicle, keeping tabs on Mr. Bunkley, and manipulating her cell phone to take his picture. Finally,

Ms. Nicholes did not witness Mr. Bunkley operate the van in a careless or unsafe manner such as swerving in traffic, failing to stop at stoplights, or inadequately accounting for other vehicles on the road. Consequently, Ms. Nicholes' testimony did not establish, by clear and convincing evidence, that Mr. Bunkley inadequately supervised the children in his care, was incapable of responding to emergencies, or failed to remain accountable for children riding in his van.

43. Similarly, despite the fact that A.O. claimed that she saw Mr. Bunkley using a cell phone while driving the van, her testimony was not sufficiently persuasive to reach the clear and convincing threshold. Initially, A.O. did not have a favorable vantage point from which to observe Mr. Bunkley's activities while he drove. Mr. Bunkley is a large man. The undersigned feels some "hesitancy" in concluding that A.O. could effectively peer over the passengers sitting in front of her and around Mr. Bunkley's bulk to see him actively texting and/or scrolling on a cell phone in his lap. Further, the undersigned was not confident that A.O. was describing the events she observed on November 2, 2015. Her testimony appeared to pull from actions and events from other times she rode in the van with Mr. Bunkley.

44. Consequently, the testimony and evidence presented at the final hearing does not establish, by clear and convincing evidence, that Mr. Bunkley was "texting and/or scrolling while

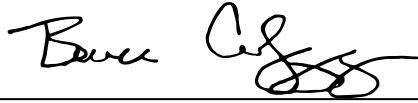
driving" on November 2, 2015. Therefore, the Department did not meet its burden of proving that Mr. Bunkley failed to meet minimum standards of accountability for the children he transported in Respondent's van. Neither did the Department sufficiently prove that Mr. Bunkley inadequately met his responsibility to supervise the children in his care or was incapable of responding to their needs in case of an emergency.

45. In sum, the competent substantial evidence in the record does not establish, by clear and convincing evidence, that Respondent violated section 402.305(10) or rule 65C-22.001(5)(a). According, the Department did not meet its burden of proof in order to sanction Respondent under section 402.310.

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 Administrative Complaint against Respondent, The Early Years Child Development Center.

DONE AND ENTERED this 30th day of March, 2017, in
Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of March, 2017.

ENDNOTES

^{1/} Unless otherwise stated, all statutory references are to the 2016 codification of the Florida Statutes.

^{2/} Respondent's Exhibit 2 was admitted over the Department's objection.

^{3/} The out-of-court statements Ms. Queen obtained from the five children, other than A.O. who testified at the final hearing, are clearly hearsay. See § 90.801(1)(c), Fla. Stat. Under the Administrative Procedure Act, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." § 120.57(1)(c), Fla. Stat. The Department did not offer any exception to the hearsay rule which would allow findings of fact based on the children's out-of-court statements. Consequently, although hearsay is admissible in administrative proceedings, the undersigned makes no findings of fact based solely on the children's unsworn, hearsay statements.

Even so, the undersigned does not find that the children's statements help the Department meet its burden of proving, by clear and convincing evidence, that Mr. Bunkley's actions

constitute "inadequate supervision due to unsafe driving conditions." Of the six children, only three provided substantive support for Ms. Queen's "verified" conclusion that Mr. Bunkley drove Respondent's van while texting. In addition to A.O., who testified at the final hearing, Ms. Queen's notes include the following information:

a. Child T.B.: T.B. was interviewed at the same time as A.O. T.B. did not offer an independent statement regarding Mr. Bunkley's phone use. At the final hearing, Ms. Queen explained that T.B. simply did not disagree with A.O.'s statement.

b. Child K.H.: K.H. was seven years old in November 2015. K.H. told Ms. Queen that Mr. Bunkley uses his phone to text and call while driving the van. However, K.H. commented that Mr. Bunkley's driving was "perfect."

Ms. Queen's Investigative Summary records that the remaining three children did not corroborate the complaint:

a. Child C.F.: Ms. Queen reported that C.F. was "somewhat" able to test for truth and lie. C.F. stated that Mr. Bunkley did answer phone calls in the van, but when "he is stopped." C.F. stated that Mr. Bunkley played games on his phone, but did not confirm whether he drives at the same time.

b. Child A.B.: A.B. was five years old in November 2015. Ms. Queen recorded that he was "somewhat" able to test for truth and lie. Ms. Queen also noted that A.B. had "very limited verbal skills, was unable to answer many questions." A.B. could not tell Ms. Queen what Mr. Bunkley did with his cell phone.

c. Child K.L.: K.L. told Ms. Queen that he had not seen Mr. Bunkley use his phone in the van.

^{4/} Ms. Queen's Investigative Summary records that Ms. Nicholes was "unable to get a photo that shows the phone in [Mr. Bunkley's] hand."

^{5/} In its Proposed Recommended Order, the Department characterized A.O.'s testimony as "undisputed." The undersigned notes that, "The finder of fact is not required to believe the testimony of any witness, even if unrebutted." City of Orlando Police Dep't v. Rose, 974 So. 2d 554, 555 (Fla. 5th DCA 2008); see also Fox v. Dep't of Health, 994 So. 2d 416, 418 (Fla. 1st DCA 2008). ("It is well-established that the ALJ was not required to believe Appellant's testimony, even if unrebutted.")

^{6/} Neither section 402.305(10) nor rule 65C-22.001(5)(a) contains language specifically addressing unsafe driving. However, the conduct the Department seeks to sanction does appear to fit within these provisions. Section 402.305(10) states that the minimum standard a licensed child care facility shall meet regarding transportation safety includes "accountability for children being transported." Rule 65C-22.001(5)(a) provides that direct supervision means "responding to the needs of each child" and that child care personnel "shall remain responsible for the supervision of the children in care, shall be capable of responding to emergencies, and are accountable for children at all times." Accordingly, the undersigned evaluated Respondent's alleged misconduct in the context of the language of section 402.305(10) and rule 65C-22.001(5)(a) in determining whether to recommend the Department impose an administrative fine pursuant to section 402.310(1)(a).

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.