

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VISION YOUTH SERVICES OF
FLORIDA, INC.,

Petitioner,

vs.

Case No. 16-7557

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.

_____ /

RECOMMENDED ORDER

A final hearing was held in this case on February 8, 2017, via video teleconference between sites in Orlando and Tallahassee, Florida, before Suzanne Van Wyk, Administrative Law Judge for the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Angela Christian, pro se
Vision Youth Services of Florida, Inc.
1401 Riverplace Boulevard
Jacksonville, Florida 32207

For Respondent: Roger L.D. Williams, Esquire
Department of Children and Families
5920 Arlington Expressway
Jacksonville, Florida 32231-0083

STATEMENT OF THE ISSUE

Whether the Department of Children and Families' (the "Department") intended decision to revoke the provisional child-

caring agency licenses of Vision Youth Services of Florida, Inc. ("Vision Youth"), is correct.

PRELIMINARY STATEMENT

By letter dated November 4, 2016 (revocation letter), the Department informed Vision Youth that its three provisional child-caring agency licenses would be revoked, pursuant to section 409.175(9)(a), Florida Statutes (2016).^{1/} According to the revocation letter, the proposed revocation was based upon Vision Youth's failure to substantially comply with specified provisions of the Florida Administrative Code, failure to implement a Corrective Action Plan ("CAP") dated February 27, 2016, and failure to provide an environment that promotes the well-being of children in need of out-of-home care.

On November 15, 2016, Vision Youth timely filed a formal request for a hearing to dispute the facts underlying the Department's decision. The Department forwarded the hearing request to the Division of Administrative Hearings on December 22, 2016, for assignment of an administrative law judge.

The final hearing was scheduled for, and commenced on, February 8, 2017.

The Department presented the testimony of Kendra Bradley, Family Services Specialist in its foster care licensing unit; and Paul D. Kellam, the Department's Northeast Regional Program

Manager. The Department's Exhibits 1 through 6 were admitted into evidence.

Vision Youth presented the testimony of Angela Christian, its owner; Davaris Pilcher, its Executive Director; and Monique Walker, its lead staff person. Vision Youth's Exhibits 20, 21, and 37 through 39 were admitted into evidence.

The one-volume Transcript of the hearing was filed on February 23, 2017. Both parties timely filed Proposed Recommended Orders which have been considered by the undersigned in preparing this Recommended Order.

FINDINGS OF FACT

1. The Department is the agency charged with the responsibility of licensing foster homes and residential child-caring agencies for children in the state of Florida dependency system. See § 409.175, Fla. Stat.

2. Vision Youth is a licensed child-caring agency that provides group home care for children who are in the state dependency system.

3. Vision Youth began operation in Florida when the Department licensed a six-bed male group home in west Duval County on February 27, 2015 (the Cheryl Ann home).

4. The Department licensed two additional homes (the Hamden and Rutland homes) for Vision Youth on June 8, 2015.

5. Angela Christian is the owner and registered agent for Vision Youth. Ms. Christian started working in the foster care industry in the year 2000.

6. The early administration of Vision Youth was disorganized and disjointed.

7. Tierika Terry was the original Executive Director of Vision Youth, but resided in Atlanta during her brief tenure.

8. Ms. Terry was eventually relieved of her duties, and someone identified in the record only as Ms. Bahiyya replaced her for a "couple of months," sometime between March 2015 and November 2015.

9. Vision Youth was also briefly under the direction of Shoshana Ellis, sometime between November 2015 and February 2016.

10. An initial license issued for the operation of a group home expires one year from the date of issuance, unless earlier suspended, revoked, or voluntarily returned. See § 409.175(6)(i), Fla. Stat.

11. Accordingly, Vision Youth's license for the Cheryl Ann home was set to expire on February 26, 2016. The licenses for the Hamden and Rutledge homes were set to expire on June 7, 2016.

12. On January 12, 2016, Department Licensing Specialist, Angela Bradley, conducted an initial on-site visit for the purpose of Vision Youth's re-licensure.

13. Ms. Bradley noted "many areas of non-compliance, lack of documentation in all areas reviewed, and no communication from the Executive Director." In light of Ms. Bradley's findings, the Department issued a no-placement hold for all three Vision Youth group homes.

14. On February 2, 2016, Vision Youth hired Davaris Pilcher as its Executive Director.

15. On February 15, 2016, Ms. Bradley made her first follow-up visit to Vision Youth. Ms. Bradley noted that Vision Youth had hired Mr. Pilcher as the Executive Director and additional staff to meet the administrative needs of the program. As a result of Ms. Bradley's follow-up visit, the Department extended the "no placement" holds until "such time [Vision Youth] has demonstrated sufficient compliance with all areas of Florida Administrative Code 65C-14."

16. Ms. Bradley, along with Paul D. Kellam, the Department's Program Manager, created a Re-licensing Review Document (the "Report") on February 23, 2016. The Report included findings noted during the review of Vision Youth's compliance with sections of Florida Administrative Code Rule 65C-14, expressed in a percentage of compliance.^{2/}

17. The Report rated Vision Youth 78 percent compliant with the "Administrative Review" requirements of the rule. Notably, Vision Youth failed to submit documentation of a financial audit for fiscal year 2015, a current operating budget, and an annual meeting of its governing body (along with minutes thereof), as required by rule 65C-14.026(3), (4), (5) and (6)(e). Further, the agency failed to notify the Department in writing within 30 days of the change of Executive Director and failed to provide an updated list of Vision Youth's advisory board members, as required by rules 65C-14.026(7) and 65C-14.006(3)(b) and (6), respectively.

18. The Report rated Vision Youth 50 percent compliant with the "Food and Nutrition" requirements of rule 65C-14.051 for failing to provide documentation that a registered dietician consulted with Vision Youth for menu planning on a quarterly basis. In fact, the Report noted no documentation of any reviews by a registered dietician since initial licensure in February 2015.

19. The Report rated Vision Youth 49 percent compliant with the "Employee, Personnel File Review" requirements of the rule. Of note, the employee files for the two employees who would be employed for a full year by March 2016 contained no documentation of any ongoing in-service training.

20. In sum, the Report noted 42 different areas of non-compliance by Vision Youth and placed Vision Youth's overall compliance with rule requirements at 65 percent.

21. The 65 percent overall compliance rating given to Vision Youth after the initial re-licensure visit was well below the Department's expectation. Mr. Kellam testified, credibly, that he had never before encountered a licensee with such a low compliance percentage.

22. The Department's regional policy defines substantial compliance as a minimum of 90 percent compliance. Vision Youth was expected to be, at minimum, 90 percent compliant for each area reviewed during their next re-licensing review.

23. The Department may issue a provisional license to an agency which fails to meet licensing requirements at the time of the study, but which the Department believes is able to meet the licensing requirements within the time allowed by the provisional license. See § 409.175(7)(a), Fla. Stat.

24. The Report recommended that all three group homes be issued a provisional license for an annual period effective February 28, 2016.

25. On February 27, 2016, the Department issued three provisional licenses to Vision Youth: No. 100054140 for Vision Youth^{3/}; No. 100054141 for the Rutland home; and No. 100054139 for the Hamden home. The provisional licenses were effective

until February 26, 2017, unless renewed, withdrawn, or revoked for cause.^{4/}

26. Issuance of a provisional license is contingent upon the submission to the Department of an acceptable written plan to overcome the deficiencies by the expiration date of the provisional license. § 409.175(7)(a), Fla. Stat. This plan is commonly referred to as the CAP.

27. On February 29, 2016, Ms. Bradley forwarded to Mr. Pilcher and Ms. Christian a formal CAP for Vision Youth. The CAP was executed by both Vision Youth and the Department on March 15, 2016.

28. The CAP consolidated the 42 deficiencies noted in the Report to 26 corrective action items. For each action item, the CAP identified the party responsible for taking that action, and set forth a target date for completion of the corrective action. The deadline for completion of all CAP requirements was October 21, 2016.

29. In the subsequent months, Vision Youth made significant progress toward addressing the 42 areas of deficiency noted in the Report and substantial progress in implementing the CAP.

30. On April 4, 2016, Ms. Bradley made her second follow-up visit to Vision Youth. Based upon the progress made toward

satisfying the CAP requirements, Ms. Bradley lifted the placement hold on one of the three homes.^{5/}

31. On May 4, 2016, Ms. Bradley made her third follow-up visit to Vision Youth. Based upon the progress noted by Ms. Bradley, she lifted the placement hold on a second home.

Non-renewal of Hamden Home Lease

32. On June 24, 2016, Holly Anderson, the property manager for the Hamden home, sent a Notice of Non-Renewal (Notice) to the Hamden home address via certified mail.

33. The Notice was addressed to Lestine Lewis. Ms. Lewis is Ms. Christian's sister, but is neither a Vision Youth employee nor a resident of the Hamden home. Ms. Lewis is the lessee of the Hamden home property.

34. The notice advised that the Hamden home lease would not be renewed, and that the premises must be vacated no later than August 31, 2016.

35. The certified letter return receipt card was not introduced in evidence. The record does not establish the date on which, and by whom, the Notice was received on behalf of Vision Youth.

36. Ms. Christian did not become aware of the Notice until July 31, 2016, when it was brought to her attention by a Vision Youth employee.

37. Ms. Christian first attempted to address the non-renewal issue by working with the property manager to identify another suitable facility to which to relocate the children. After reviewing available properties with Ms. Anderson, however, Ms. Christian rejected those properties as unsuitable.

38. Neither Ms. Christian nor Mr. Pilcher notified the Department of the Notice.

39. Eventually, the Department received information from a third party that the homeowners' association of the neighborhood in which the Hamden home was located was beginning an "eviction process" against Vision Youth. The record does not support a finding of the exact date the Department received this information. The record supports a finding that the Department was informed of "eviction proceedings" against Vision Youth in mid- to late-August.

40. Upon receipt of this information, Ms. Bradley immediately scheduled a meeting with Ms. Christian and Mr. Pilcher to discuss this issue and ascertain Vision Youth's plan for relocating the children in the event of an eviction. The meeting was held on August 24, 2016, a mere seven days before the Hamden home was to be vacated pursuant to the Notice.

41. At that meeting, Ms. Christian explained to Ms. Bradley and Mr. Kellam that there was no eviction proceeding underway, but that the Hamden home lease would not be renewed.

This was the first time the Department received notice that the Hamden home must be vacated by August 31, 2016. At the meeting, Ms. Christian advised that she was exploring with the leasing agent the possibility of relocating the children to a larger home under the leasing agency's control.

42. Following the meeting with Vision Youth, Ms. Bradley contacted Ms. Anderson for information regarding the pending plans to relocate the children to another property. Ms. Anderson informed Ms. Bradley that all available properties had been previously rejected by Ms. Christian.

43. In reaction to this news, as well as the failure of Vision Youth to timely inform the Department of the significant pending change affecting Vision Youth's program, the Department issued another "placement hold" on all three Vision Youth homes.

44. On August 26, 2016, Vision Youth notified the Department that they would be moving all of the children from the Hamden Home to the Cheryl Ann Home, which was vacant at the time due to placement holds.

45. On August 30, 2016, Ms. Bradley was informed by Ms. Anderson that the Notice was actually delivered to Vision Youth on June 24, 2016.

Revocation

46. According to the CAP, Vision Youth had until October 21, 2016, to complete all corrective actions.

47. On October 4, 2016, the Department sent an email to Ms. Christian and Mr. Pilcher noting that three items from the CAP were still outstanding: documentation of board information, including official minutes of board meetings; documentation of quarterly menu consultations by a registered dietician; and a completed financial audit for fiscal year ending 2015.

48. On November 4, 2016, the Department notified Vision Youth by letter that it intended to revoke Vision Youth's licenses for the following three reasons: Noncompliance with rule 65C-14, failure to complete the CAP, and actions materially affecting the health or safety of children in the care of Vision Youth.

Noncompliance with Rule

49. In the revocation letter, the Department alleged that Vision Youth had not substantially complied with the following provisions of the Florida Administrative Code:

65C-14.006, Administration and Organization

(2) Incorporation

* * *

(5) The Governing body shall meet no less than once per year.

(6) The governing body responsibilities are to:

* * *

(b) evaluate in writing the director's performance annually

* * *

(e) maintain written minutes of all meetings, which shall be open to inspection by the department.

65C-14.026, Organization

(4) Audit: The agency shall have financial records audited annually.

65C-14.051, Food Service

The facility shall assign a staff member to the overall management of the food service. If this person is not a professionally registered dietitian, consultation on menu planning shall be obtained at least quarterly from a professionally registered dietitian or the local health department.

65C-14.056, Staff Development

(2) The facility shall ensure that staff members working directly with children receive at least 40 hours of training activities during each full year of employment. Activities related to supervision of the staff member's routine tasks shall not be considered training activities for the purposes of this requirement.

(3) The facility shall document that appropriate training received by direct child care staff includes, but is not limited to the following areas:

(a) Administrative procedures and overall program goals;

(b) Understanding of children's emotional needs and problems which affect and inhibit their growth;

- (c) Family relationships and the impact of separation;
- (d) Substance abuse: recognition and prevention;
- (e) Identification of and reporting responsibilities in regard to child abuse and neglect;
- (f) Principles and practices of child care;
- (g) Behavior management techniques, including crisis management and passive physical restraint;
- (h) Emergency and safety procedures; and
- (i) The screening supervision and use of volunteers.

50. The second reason for revocation was Vision Youth's failure to complete the CAP requirements. The first two reasons are closely connected because the CAP was designed to bring Vision Youth into substantial compliance with the cited rule requirements.

Governance

51. Regarding the governing body issue, the CAP required the Vision Youth Services Board of Directors or Advisory Board to meet no less than once per year, maintain written minutes of all meetings, and ensure that those minutes are readily available to the Department for inspection. These tasks had a target date of March 28, 2016.

52. Ms. Christian testified that the Vision Youth Board of Directors met once prior to opening the first home in 2015, and openly admitted that the Board did not record minutes from the meeting.

53. Vision Youth did not, and could not, comply with the CAP requirement to produce minutes from the 2015 Board meeting.

54. Vision Youth did not produce a record of a Board meeting for 2016 or any minutes thereof.

55. As to the 2016 Board meeting, Ms. Christian explained only that the Board was not due to meet again at the time Vision Youth was cited for failure to comply. She offered no evidence of plans for a 2016 Board meeting or internal procedures to ensure that minutes would be recorded and maintained.

Food Service

56. Regarding the menu issue, the CAP required Vision Youth to provide menu consultation by a registered dietician on a quarterly basis and to maintain documentation of the quarterly reviews. This task had target dates of March 28, 2016; June 28, 2016; September 28, 2016; and December 28, 2016.

57. Vision Youth introduced no evidence at the final hearing to satisfy the quarterly menu consultation requirement.

58. Mr. Kellum testified that the only documentation Vision Youth provided to the Department during the CAP compliance period was an email from a dietician in October 2016.

He testified that the documentation would have satisfied only the September quarterly target date.

Financial Audit

59. Regarding the financial audit, the CAP required Vision Youth to engage the services of a CPA by March 28, 2016, to ensure that a financial audit for the 2015 fiscal year is completed to assess the program's financial standing. The CAP required Vision Youth to provide a copy of the 2015 financial audit to the Department by July 1, 2016.

60. The purpose of a financial audit is to ascertain whether the child-caring agency is financially secure and stable enough to provide ongoing care for the children placed in the agency's care.

61. At hearing, Ms. Christian did not dispute the fact that Vision Youth failed to submit a 2015 financial audit. Ms. Christian openly admitted that the program's recordkeeping was poor during its first year of operation.

62. Vision Youth could not comply with the requirement to produce a 2015 financial audit no matter how much time the Department allowed in the CAP.

Staff Development

63. Regarding Staff Development, the Department rule requires every direct-care staff person to complete a minimum of 40 hours of inservice training per year. The CAP required

Vision Youth to (1) ensure that all employees were aware of the training requirements; (2) develop a training log to record the dates, type of training, and training facilitator for each training completed; (3) maintain documentation (certificates, etc.) of all completed staff training; and (4) ensure that staff completes at least 10 hours of training each quarter. This action had a target date of "March 28, 2016 and ongoing."

64. The evidence conflicted as to how many staff Vision Youth employed, and for what length of time, on the date the Report was issued. Ms. Bradley testified that Vision Youth had two employees on staff for a full year on or about the date of the re-licensure inspection. Ms. Christian testified that, at the time of the re-licensure review, only one employee had been with Vision Youth for a year, and that the employee had completed 31 of the required 40 training hours at that time.

65. All employees of Vision Youth were required to have 10 hours of training per quarter. During the CAP compliance period, Vision Youth did not provide the Department with any documentation of employee training.

66. Vision Youth introduced no documentation at the final hearing of quarterly staff training for any of its employees. The only evidence was Ms. Christian's testimony that the single employee who was employed for a full year on the date of Ms. Bradley's inspection had received 31 hours, and that all

employees had received at least 40 hours of ongoing training for 2016 as required by the CAP.

67. Notably, both the rule and the CAP required Vision Youth not only to provide the training, but also to maintain documentation of the training via a training log in employee files and applicable training certificates.

68. Even if Ms. Christian's testimony that the training was provided, was accepted as credible and persuasive, it would not establish compliance with the requirement to document the training.

Percentage of Compliance

69. Ms. Bradley established early in the hearing that 90 percent compliance with Department rules was "substantial compliance" for purposes of licensure. Rating Vision Youth by percentage of compliance with each rule section was a critical component of the Department's Report.

70. By the time the CAP compliance period ended, Vision Youth had completed 22 out of 26 required corrective actions.

71. Ms. Bradley testified repeatedly that Vision Youth was "right at 90 percent" compliance in November 2016 when the Department issued the revocation letter. She later testified that her "best guess" would put Vision Youth at an "89 to 90 percent" compliance rate.

72. The Department's revocation letter was issued despite Vision Youth's substantial compliance with the applicable rule requirements.

Children's Well-Being

73. The last reason for revocation given by the Department in the revocation letter was the Department's concern with Vision Youth's inability to provide an environment that promotes the well-being of children in need of out-of-home care. The Department specifically cited Vision Youth's failure to notify the Department and the child care agencies responsible for the children placed with Vision Youth of the impending relocation from the Hamden Home. The Department was also concerned that Vision Youth failed to develop a proper plan to re-locate the children when Vision Youth knew that their lease for the Hamden Home would not be renewed. These two concerns hindered the Department's responsibility for safety of the children homed with Vision Youth.

74. Ms. Christian attempted to justify her decision to handle the matter without involving the Department by introducing Vision Youth's Internal Location Change Policy ("Location Policy"), which reads as follows, in relevant part:

A location change may be necessary when one or more of the following is true:

The child presents the potential to harm another resident that resides in the current location.

The child feels physically, psychologically or emotionally uncomfortable because of the personalities, ages or backgrounds of one or more residents in the current location.

Vision Youth Services placement team feels the child would be a better fit at another location.

The placing agency and or case manager requests that the child not share a home with a specific child in care for the safety of one or more residents.

75. The Location Policy does not address the situation at hand--complete closure of a group home. Instead, the Location Policy authorizes movement of individual children from one placement to another in order to address a child's specific behavioral or emotional needs.

76. Vision Youth's failure to disclose the pending non-renewal to either the Department or the child-placing agencies, and its utter failure to secure a plan for relocating the children even seven days prior to the impending vacancy date, especially at a time when it was under strict scrutiny by the Department, suggests Vision Youth was more concerned with its reputation than the well-being of the children placed in its care.

CONCLUSIONS OF LAW

77. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat.

78. Section 409.175, Florida Statutes, provides as follows, in relevant part:

(1) (a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies, and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

* * *

(2) As used in this section, the term:

(a) "Agency" means a residential child-caring agency or a child-placing agency.

* * *

(f) "License" means "license" as defined in s. 120.52(10). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

* * *

(i) "Personnel" means all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency who may be employed by or do volunteer work for a person, corporation, or agency that holds a license as a child-placing agency or a residential child-caring agency, but the term does not include those who do not work on the premises where child care is furnished and have no direct contact with a child or have no contact with a child outside of the presence of the child's parent or guardian. For purposes of screening, the term includes any member, over the age of 12 years, of the family of the owner or operator or any person other than a client, over the age of 12 years, residing with the owner or operator if the agency or family foster home is located in or adjacent to the home of the owner or operator or if the family member of, or person residing with, the owner or operator has any direct contact with the children. Members of the family of the owner or operator, or persons residing with the owner or operator, who are between the ages of 12 years and 18 years are not required to be fingerprinted, but must be screened for delinquency records.

(j) "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or

facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under section 393.067 or s. 394.875 or chapter 397.

* * *

(5) (a) The department shall adopt and amend licensing rules for family foster homes, residential child-caring agencies, and child-placing agencies. The department may also adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps. The requirements for licensure and operation of family foster homes, residential child-caring agencies, and child-placing agencies shall include:

1. The operation, conduct, and maintenance of these homes and agencies and the responsibility which they assume for children served and the evidence of need for that service.
2. The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served.
3. The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served.

* * *

(9) (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.

79. In this proceeding, Vision Youth seeks review of the Department's intended revocation of its three provisional residential child-caring agency licenses.^{6/}

80. The undersigned's role in this proceeding is to resolve disputed issues of material fact. The minimum standard of proof for resolving disputed issues of material fact is a preponderance of the evidence. Haines v. Dep't of Child. & Fams., 983 So. 2d 602, 606 (Fla. 5th DCA 2008).

81. A penal or licensure disciplinary proceeding shall not be based upon a preponderance of evidence. § 120.57(1)(j), Fla. Stat.

82. Because the Department seeks revocation of Vision Youth's licenses, this proceeding is penal in nature. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); Bowling v. Dep't of Ins., 394 So. 2d 165, 172 (Fla. 1st DCA 1981); Haines, 983 So. 2d at 604.

83. Because this proceeding is penal in nature, allegations made against the licensee must be proven by clear and convincing evidence. Osborne Stern, 670 So. at 933; Pick N' Save, Inc. v. Dep't of Bus. & Prof'l Reg., 601 So. 2d 245, 249

(Fla. 1st DCA 1992); Ag. for Pers. with Disab. v. Help is On The Way, Inc., Case No. 11-1620 (Fla. DOAH Feb. 3, 2012; Fla. APD Apr. 16, 2012); Ag. for Pers. with Disab. v. Amanda and Co., Case No. 08-1812 (Fla. DOAH Oct. 29, 2008; Fla. APD Feb. 2, 2009).

84. The Department gave the following three reasons for revoking Vision Youth's licenses. Vision Youth failed to substantially comply with rule 65C-14; failed to complete the CAP requirements; and failed to provide an environment that promotes the well-being of children in need of out-of-home care. Each reason is addressed in turn.

Compliance with Applicable Rules

85. The Department failed to prove by clear and convincing evidence that Vision Youth did not substantially comply with the applicable rules. The record established that the Department deems 90 percent compliance with the administrative code requirements to be substantial compliance. Ms. Bradley's testimony with regard to Vision Youth's percentage of compliance at the time of revocation alternated between "right at 90 percent" and a "best guess of 89 or 90 percent." The Department did not introduce the internal tool Ms. Bradley used to track Vision Youth's progress toward addressing the 42 deficiencies noted in the Report. The evidence was far from clear that Vision Youth did not attain substantial compliance with the

applicable rule requirements before the revocation letter was issued.

Completion of the CAP

86. Rule 65C-14.116(3)(c)3. provides that failure of a child-caring agency to timely comply with a corrective action plan "shall result in suspension, denial of re-licensure, or revocation of the license."

87. The Department established by clear and convincing evidence that Vision Youth failed to satisfy the CAP requirements. Specifically, Vision Youth did not produce written minutes of a Board of Directors meeting for 2015, a financial audit for the 2015 fiscal year, and documentation of 10 hours of quarterly training of its employees, as well as quarterly consultation on its menus by a registered dietician.

Children's Well-Being

88. The final reason the Department gave for revoking Vision Youth's license was its actions in regard to the Hamden home property.

89. Vision Youth neglected to notify either the Department or the child-placing agencies upon learning that its Hamden home lease would not be renewed. The Department gained knowledge through third parties, well after the Notice had been issued. It was only after the Department reached out to Vision Youth,

that Vision Youth finally informed the Department of the requirement to vacate the Hamden home by August 31, 2016.

90. Moreover, upon meeting with the Department, Vision Youth was not forthcoming with its plan to relocate the children. Ms. Christian's explanation that she was working with Ms. Anderson to relocate the children to another property under the property managers' control was false. When Ms. Christian gave that explanation, she knew she had rejected all available properties as unsuitable.

91. Vision Youth's inaction in failing to notify the Department of the Notice may have been negligent, but her subsequent actions regarding movement of the children to the Cheryl Ann home were intentional and designed to protect her reputation and conceal problems from the Department, when she should have been securing the children's well-being.

92. Further, Vision Youth's initial plan to move the children to another property under the control of the property manager would have resulted in placement of the children in an unlicensed facility. Rule 65C-14.003(5) provides that a license is only valid for the facility located at the address documented on the license. Vision Youth could not, on its own, move the children from Hamden home to another facility and effectively "transfer" its license to another physical address. Vision Youth would have to apply for a license to operate a new

facility, which would have to undergo the same initial license review and inspection as for any of its other group homes. The only responsible course of action would have been to notify the Department upon receipt of the Notice and move quickly to extend the notice of non-renewal while working with the Department to identify a new facility and begin the licensing application process.

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 revoking Vision Youth's provisional child-caring agency licenses numbered 100054140, 100054141, and 100054139.

DONE AND ENTERED this 31st day of March, 2017, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2017.

ENDNOTES

^{1/} References to the Florida Statutes are to the 2016 version, unless otherwise indicated.

^{2/} Ms. Bradley testified that she calculated the percentage of compliance with each rule requirement using an internal tool at the Department. The internal tool was not introduced in evidence.

^{3/} Although license number 100054140 does not specify the name of the Vision Youth facility to which it applies, this provisional license corresponds with the Cheryl Ann home.

^{4/} The provisional licenses at issue in this proceeding expired by operation of law on February 26, 2017. The revocation issue is technically moot. However, neither party has filed a suggestion of mootness or otherwise moved to dismiss the proceeding. The undersigned enters this Recommended Order in an abundance of caution.

^{5/} The Hamden and the Rutland homes were the first two homes to have their placement holds lifted by Ms. Bradley, but it is not possible to determine from the record which home had the placement hold lifted first.

^{6/} Although the provisional licenses, which are the subject of this proceeding, were issued during the re-licensure inspections of Vision Youth facilities, the Department's intended action is not a denial of an agency's renewal application. The agency action letter specifically addresses revocation of Vision Youth's three provisional licenses, not denial of its renewal application. Had the action related to denial of Vision Youth's renewal application, the Department would have had the lesser burden to establish facts supporting its position by a preponderance of the evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); M.H. & A.H. v. Dep't of Child. and Fams., 977 So. 2d 755, 762 (Fla. 2d DCA 2008); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

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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.