

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Petitioner,

vs.

Case No. 17-3844

FAMILY LEARNING CENTER,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division) heard this case by video teleconference at locations in Tallahassee and Lakeland, Florida, on January 4, 2018.

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 ISSUES

A. Did Respondent, Family Learning Center (Family Learning), violate Florida Administrative Code Rule 65C-22.006(4)(e)1. and 4. by not having documentation of level 2

background screening as alleged in the Administrative Complaint (Complaint)?

B. If so, what penalty should be imposed?

PRELIMINARY STATEMENT

The Administrative Complaint of Petitioner, Department of Children and Families (Department), alleged that on April 5, 2017, Family Learning did not have documentation that Armentha Edwards and Tamarra Morse had the required level 2 background screening because there was a 90-day break in their employment in childcare. This the Complaint alleged violated rule 65C-22.006(4)(e)1. and 4. The Complaint further alleged that the violations were a second occurrence. The first violation allegedly was that on December 13, 2016, Family Learning did not have documentation that DeAndria Harris had a valid level 2 background screening.

Family Learning disputed the Complaint's allegations and requested an administrative hearing. The Department referred the matter to the Division to conduct the hearing. The hearing was set for September 8, 2017. Pursuant to an Executive Order of the Governor directing that all state offices be closed to allow preparation for Hurricane Irma, the hearing was canceled. The hearing was re-scheduled for January 4, 2018, and conducted as scheduled.

Toinette Ash and Patricia Step testified on behalf of the Department. Department Exhibits A and B were entered into evidence. Deloris Franklin testified on behalf of Family Learning. Family Learning entered Exhibits 1, 3, and 4 into evidence.

The day after proposed recommended orders were due Family Learning filed a document titled "Statement to the Honorable John D. C. Newton, II," stating that it wished to obtain a transcript of the hearing. This was treated as a motion and granted by Order Extending Proposed Recommended Order Deadline. The Order extended the deadline for filing proposed recommended orders to 10 days after filing of the transcript. Because the Department had already filed its Proposed Recommended Order, the Order granted the Department leave to file a rebuttal to Family Learning's Proposed Recommended Order.

Subsequently, the Department asked for clarification of the Order because Family Learning had not ordered the transcript. The motion was granted by order imposing a deadline for filing a transcript or a proposed recommended order. Family Learning did not file a transcript. It filed a Proposed Recommended Order. The Department did not file a rebuttal. The proposed recommended orders have been considered in preparation of this Recommended Order.

## FINDINGS OF FACT

1. Family Learning is a childcare facility licensed by the Department. Ms. Franklin owns and operates Family Learning.

2. On October 2, 2015, Patricia Step, a Department childcare licensing specialist, visited the Family Learning facility before it opened for business. She inspected the facility and provided education and training for the owner and operator, Ms. Franklin. The training included education about file organization, record keeping, and background screening requirements for employees and volunteers working at a child day care facility.

3. Ms. Step performed her first post-opening review of the Family Learning facility on December 13, 2016. The review included a review of the file of employee DeAndria Harris. Ms. Harris lived in Georgia before working with Family Learning.

4. When a person has been out-of-state, performing a background check takes longer. For this reason at that time, the Department issued provisional letters to permit people to work in a childcare facility while their background screening was being completed. Ms. Harris's file included a 45-day provisional letter dated October 18, 2016. It expired December 2, 2016. The October 18 letter plainly advised Family Learning of the 45-day limit upon provisional status. The file did not include proof of a successful background check of Ms. Harris from Georgia.

5. Nothing in Ms. Harris's file indicated that she was no longer employed at Family Learning. Ms. Franklin testified that at the time of the December inspection Ms. Harris had given notice. If that is accurate, it does not mean that she was no longer employed.

6. On December 13, 2016, Ms. Step again told Ms. Franklin about the background screening requirements. Their conversation included reminding Ms. Franklin that if a person with a successful background screening had a break of 90 days or more in childcare employment the person had to be re-screened if she returned to childcare employment. Ms. Step also reminded Ms. Franklin that provisional letters only permitted employment for 45 days while an out-of-state check is being conducted.

7. Ms. Step gave Ms. Franklin a copy of the inspection form that indicated the Family Learning personnel records did not comply with the Department requirements. Ms. Franklin received and signed the form. Ms. Franklin also signed a Supplemental Inspection Sheet that described the background screening process and the 45 day limit on provisional hiring status. Finally, Ms. Franklin received and signed a Notice of Administrative Warning for Ms. Harris not having a documented, completed background check.

8. Ms. Step conducted another routine inspection of Family Learning on April 5, 2017. She reviewed the employee files of

Armentha Edwards and Tamarra Morse. Their files contained documentation of background screening clearance, work histories, and applications for employment, among other documents.

9. Ms. Edwards' background clearance document, also called an eligibility letter, was dated August 30, 2016. Her employment with Family Learning started March 6, 2017. Because more than 90 days separated those dates, Ms. Step reviewed Ms. Edwards' work history in the file to see if Ms. Edwards had been employed in other positions that required a background check and the dates of that employment. She had not been.

10. Ms. Step also reviewed the employee file for Tamarra Morse. The Background Screening Result printout for Ms. Morse indicated that she cleared screening on November 2, 2015. Ms. Morse's employment with Family Learning started on November 3, 2016. Because more than 90 days separated those dates, Ms. Step reviewed Ms. Morse's file to see if it established that she had been employed in other positions that required a background check and if the dates of that employment were during the 90-day period.

11. The "Date of Employment, Start Date" field, of Ms. Morse's application identified period of employment at a facility named Journey to Excellence as "4 to 5 years." Notes of an employment verification check with Journey to Excellence indicated employment from "8/09 - present." November 2, 2016,

was the date of the employment verification. Ms. Step sought additional information from Journey to Excellence.

12. The information Journey to Excellence provided included an Affidavit of Good Moral Character dated May 6, 2016; a Child Abuse & Neglect Reporting Requirements acknowledgement signed by Ms. Morse on November 5, 2015; and a Journey to Excellence volunteer sign-in sheet indicating that Ms. Morse had last signed in on July 29, 2016.

#### CONCLUSIONS OF LAW

13. Section 402.305, Florida Statutes (2017)<sup>1/</sup>, directs the Department to establish licensing standards for childcare facilities. Section 402.310(1), authorizes the department to impose a fine not to exceed \$100 per violation per day for a violation of sections 402.301 through 402.319 or rules adopted by authority of those statutes.

14. In December of 2016 and April of 2017, rule 65C-22.06(4)(d)1. required a childcare facility to maintain records that included proof of a level 2 background screening as defined in section 435.04, Florida Statutes, including at a minimum Federal Bureau of Investigation, Florida Department of Law Enforcement, and local law enforcement records checks. Rule 65C-22.06(4)(e)1. provided that a screening was valid for five years and required a state-wide re-screen after five years for all childcare personnel.

15. Rule 65C-22.06(4)(e) required that the "[r]e-screening information for all child care personnel must be documented on CF-FSP Form 5131 March 2009, Background screening and Personnel File Requirements."

16. The re-screening requirements of rule 65C-22.06(4)(e)6. provided that "[c]hild care personnel must be re-screened as outlined in paragraph (4)(d) above following a break in employment in the child care industry that exceeds 90 days." Section 435.04 establishes the level 2 screening standards.

17. As the Department acknowledges, it must prove its charges by clear and convincing evidence. Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998).

18. The clear and convincing evidence proved that Family Learning Center did not maintain the required background screening documentation for Ms. Edwards. The clear and convincing evidence also proved that this was a second violation.

19. The Department did not prove by clear and convincing evidence that Family Learning did not maintain the required background screening documentation for Ms. Morse.

20. Rule 65C-22.010(2)(e)2.b. (as in effect at the time) states the following: "For the second violation of the same Class II standard, the Department shall issue an administrative complaint imposing a fine of \$50.00 for each violation." The clear and convincing evidence established a second violation of



the background screening documentation requirement. For this violation, the Department should impose a fine of \$50.00 on Family Learning.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Children and Families, impose a fine of \$50.00 on Respondent, Family Learning Center.

DONE AND ENTERED this 24th day of March, 2018, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this this 24th day of March, 2018.

ENDNOTE

<sup>1/</sup> All citations to Florida Statutes are to the 2017 compilation.

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.