STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

MID FLORIDA COMMUNITY SERVICES

Petitioner,

v.

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.
_____/

CASE NO. 17-5506
RENDITION NO. DCF-21-077-FO

FINAL ORDER

THIS CAUSE is before me for entry of a final order concerning Petitioner's request for exemption from licensure as a childcare facility. The Recommended Order, dated June 4, 2018, concluded the five blended classroom sites at issue were an integral program of the Volusia County Schools (VCS) and therefore were exempt from licensure as childcare facilities. The Department in its final order rendered on September 4, 2018, modified the Recommended Order and held that the five blended classroom sites must be licensed as child care facilities. Petitioner took an appeal to the First District Court of Appeals who held that the Department "erred in denying Petitioner's exemption from the child care facility licensing requirements for the five Head Start ESE Blended Classrooms subject to the VCS cooperative agreement." The final order was reversed and remanded to the Department.

Respondent's Exceptions

Respondent takes exception to the finding of facts in Paragraph 5.

> 5. In response to the childcare license questionnaire for Westside, the Department issued a determination letter, dated August 22, 2017. Rather than limiting its determination to Westside, the Department stated that 18 of Mid

> Florida's Head Start classrooms, located in three different counties, were subject to licensure. Those 18 sites include five VCS Head Start programs operated in partnership with Mid Florida.

Respondent takes exception to the language, "... five VCS Head Start programs operated in partnership with Mid Florida," arguing that the administrative law judge (ALJ) has a fundamental misunderstanding of how Head Start is operated. The Department argues that although Petitioner provides Head Start programs in schools operated by VCS, Petitioner and VCS are completely separate entities. Pursuant to the appellate ruling, Petitioner and VCS operate in partnership; consequently this exception must be denied. Mid Florida Community Services, Inc. v. Department of Children and Families, 280 So. 3d 1129 (Fla. 1st DCA 2019).

Respondent takes exception to the findings of fact in Paragraph 6.

> 6. The five VCS sites at which Petitioner provides Head Start program services are commonly known as Head Start "blended classrooms." The term "blended classrooms" refers to the inclusion of students that are typically developing peers that are not otherwise students of VCS into Volusia County School classrooms with students with disabilities. The blended classrooms include Blue Lake Head Start blended classroom, Deltona Lakes Head Start blended classroom, Horizon Head Start blended classrooms, Indian River Head Start blended classroom, and Woodard Head Start blended classroom.

Respondent argues that the typically developing peers or Head Start only children present in the blended classrooms that are not ESE students are not VCS students in any way. Paragraph 6 says in pertinent part, "... typically developing peers that are not otherwise students of VCS..." The use of the word "otherwise" seems to suggest that due to the blended classrooms these typically developing peers are now students of VCS and that is not supported by competent substantial evidence. During the hearing, Kimberly Ann Gillilland, Director of ESE and Student Services for the Volusia County School District, testified:

"The students with disabilities are Volusia County school students. The additional ten students are not registered Volusia County school students, but they are – in operations they are treated as if they are Volusia County School students. They are just not registered because they are not eligible." (Transcript at 51-52).

Additionally, in the Volusia County Schools/Head Start Program 2017-2018 Implementation Guide, there is a clear distinction between VCS students and Head Start students. (Petitioner's Exhibit 4). It is clear that although VCS might operationally treat the typically developing students as their own students, by their own testimony at hearing and in their agreements with Petitioner these are not VCS students as they are not eligible to be enrolled.

For the reasons stated above, the exception to Paragraph 6 is granted

Paragraph 6 is rewritten as follows:

6. The five VCS sites at which Petitioner provides Head Start program services are commonly known as Head Start "blended classrooms." The term "blended classrooms" refers to the inclusion of students that are typically developing peers that are not students of VCS into Volusia County School classrooms with students with disabilities. The blended classrooms include Blue Lake Head Start blended classroom, Deltona Lakes Head Start blended classroom, Horizon Head Start blended classrooms, Indian River Head Start blended classroom, and Woodard Head Start blended classroom.

Respondent takes exception to the findings of fact in Paragraph 16.

16. There are four types of VCS blended pre-K VE programs: employee blended, Head Start blended, community blended, and the Easter Seals Charter School. The employee-blended classrooms pair eight ESE VCS students, and 10 non-ESE students that are children of VCS employees, but not otherwise VCS students. The Head Start blended classrooms pair eight ESE VCS students, and 10 non-ESE students that are not otherwise VCS students, but are eligible to enroll in a Head Start program. The community-blended classroom pairs eight ESE VCS students and 12 non-ESE voluntary pre-k students from the community who are not otherwise VCS students. The East Seals Charter School is a private, not-for-profit charter school operated by Easter Seals, and pairs eight ESE students with 10 non-ESE students (identified and enrolled by Easter

Seals). Overall, the blended classrooms are required to meet Department of Education standards.

Respondent argues the 10 non-ESE typically developing peer children are not VCS students in any way and they are solely enrolled in Petitioner's Head Start program. Petitioner agrees in its response to this exception that the 10 non-ESE typically developing peer children are not VCS students. This is the same argument/exception as to the prior exception of Paragraph 6 and for the reasons articulated in the prior exception this exception is granted.

Paragraph 16 is rewritten as follows:

16. There are four types of VCS blended pre-K VE programs: employee blended, Head Start blended, community blended, and the Easter Seals Charter School. The employee-blended classrooms pair eight ESE VCS students, and 10 non-ESE students that are children of VCS employees, but not otherwise VCS students. The Head Start blended classrooms pair eight ESE VCS students, and 10 non-ESE students that are not VCS students, but are eligible to enroll in a Head Start program. The community-blended classroom pairs eight ESE VCS students and 12 non-ESE voluntary pre-k students from the community who are not otherwise VCS students. The East Seals Charter School is a private, not-for-profit charter school operated by Easter Seals, and pairs eight ESE students with 10 non-ESE students (identified and enrolled by Easter Seals). Overall, the blended classrooms are required to meet Department of Education standards.

Respondent takes exception to the Finding of Fact in Paragraph 17.

17. VCS determines each year whether there is a need or not for a Head Start blended classroom at each of its locations. VCS monitors a feeder pattern of students to identify VCS students aged three to five that are in need of pre-K ESE services, and then determines at what locations and how many Head Start blended classrooms will be needed in any given school year. If VCS determines that a Head Start blended classroom is not needed, then Mid Florida would not provide services under the Coop Agreement for that classroom, and the non-ESE typically developing peer/students would be relocated to either another VCS Head Start blended classroom, or to a Head Start site not associated with VCS, such as Westside.

Respondent argues in its exception, "VCS may identify children that are possibly eligible for the Head Start services but they have no control over whether children are deemed eligible for Head Start services. That determination is made by Petitioner." Although I agree with Respondent's statement in its exceptions I do not believe that is what the finding of fact is stating. Ms. Gilliland testified to these facts at hearing and Ms. Rand further testified, "the School District makes the decision as to which classrooms they will operate, so each year we wait to hear from Volusia County Schools as to whether we will be participating in any of their blended sites" (Transcript at 24-25 and 81). Respondent's exception is denied.

Respondent takes exception to the Finding of Fact in Paragraph 20.

> 20. The blended pre-K/Head Start program is staffed with one VCS teacher, one VCS paraprofessional, one Mid Florida Head Start teacher, and one Mid Florida Head Start assistant. The VCS teacher and paraprofessional have primary responsibility for ensuring that the ESE students with IEPs obtain the level of instruction and other services required under the IEP, and that age-appropriate standards are being taught. The Head Start teacher has primary responsibility for ensuring that all students enrolled in the Head Start program receive Head Start services, and the Head Start assistant aids the Head Start teacher in carrying out Head Start services.

Respondent argues in its exception that Petitioner is responsible for selecting and hiring its staff for the blended classrooms as well as paying them. Respondent further argues that Petitioner is ultimately responsible for the termination of staff and for the Head Start only children enrolled in the blended classroom. Respondent's exception is well taken but the findings of fact in Paragraph 20 are supported by competent substantial evidence. (Petitioner's Exhibit 4). This exception is denied.

Respondent takes exception to the Finding of Fact in Paragraph 21.

> 21. Supervision of all students in the classroom is the responsibility of all instructional, and other staff, in the classroom. However, ultimate responsibility for the safety and security of the students resides with the VCS teacher, and ultimately the VCS principal. Therefore, it is the particular school sites' policy on parent pick-up and drop-off that must be adhered to by all parents of students participating in a Head Start blended classroom. Any parent or other volunteer visiting or working in the Head Start blended classrooms must meet VCS screening standards, must adhere to VCS policies applicable to school classrooms, and must adhere to the security and sign-in procedures in place at each school site. For all students in the blended pre-K/Head Start program, both ESE and non-ESE students, the school principal/administrator has the final authority about whether or not a student may be sent home due to a students' behavior or conduct.

Respondent argues in this exception that Petitioner's staff are ultimately responsible for the Head Start only children enrolled in the blended classroom. Further arguing that VCS does not provide transportation, food service, maintain attendance, or do IEPs for any of the Head Start only children. Respondent might be correct in that VCS does not have the ultimate responsibility in all regards to the Head Start only children, but this finding of fact only pertains to VCS having the ultimate responsibility for the "safety and security of the students."

The record contains contradictory testimony and evidence regarding the responsibility for safety and security. Ms. Gilliland initially testified for VCS that if a child were to go missing from a classroom, the school staff would follow the District procedures as they would for any other student who would go missing from a classroom; with the principal in charge of the process. (Transcript at 52-53). But later in her testimony she stated in response to the question of who is responsible for child supervision and safety, "Both teachers and both paras are. All adults in the classroom

are responsible for the safety and the learning of each individual student." (Transcript 54-55). This testimony conflicts with her prior statement.

Petitioner's employee Ms. Rand contradicts this testimony but stating they defer all supervisory responsibility to the school district. (Transcript at 80). Also in evidence, is the Cooperative Agreement between Petitioner and VCS which states, "Primary responsibility for supervision of students enrolled in the Head Start program shall be with the teacher and teacher assistant employed by the Agency." (Petitioner's Exhibit 2).

Because there is conflict in the evidence, it was the function of the ALJ to resolve this conflict. In ruling on exceptions, I must remain mindful that it is the ALJ's function to consider all evidence, resolve conflicts, judge the credibility of witnesses, draw permissible inferences from the evidence, reach ultimate findings of fact, and draw conclusions of law based on those findings.[1] An agency may not reweigh the evidence.[2] This exception is denied.

Respondent takes exception to the findings of fact in Paragraphs 25 and 26.

> 25. The evidence offered at hearing demonstrates that one purpose of the partnership between Mid Florida and VCS is for Mid Florida to provide services to VCS pursuant to the Coop Agreement necessary for VCS pre-K children with disabilities to achieve academic success and high quality of life. Another purpose is to ensure compliance with the Head Start Act of 2007. Based on the totality of the circumstances, the evidence demonstrated that the five Head Start

[1] See Belleua v. Dep't of Environmental Regulation, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997). The weighing of evidence and judging of the credibility of witnesses by the Administrate Law Judge are solely the prerogative of the Administrative Law Judge as finder of fact. See Strickland v. Fla. A & M Univ., 799 So.2d 276 (Fla. 1st DCA 2001).
[2] When determining whether to reject or modify findings of fact in a recommended order, the agency is not permitted to weigh the evidence, judge the credibility of the witnesses, or interpret the evidence to fit its ultimate conclusions. See N.W. v. Dep't of Children & Family Servs., 981 So.2d 599 (Fla 3d DCA 2008); Rogers v. Dep't of Health, 920 So.2d 27, 30 (Fla. 1st DCA 2005); Aldrete v. Dep't of Health, Board of Medicine, 879 So.2d 1244, 1246 (Fla. 1st DCA 2004); Gross v. Dep't of Health, 819 So.2d 997, 1001 (Fla. 5th DCA 2002).

blended classroom sites (Blue Lake, Deltona, Horizon, Indian River, and Woodward) are integral programs of the VCS.

26. Therefore, given these facts, Petitioner is not required to license the five sites as childcare facilities.

Respondent argues that both Paragraphs 25 and 26 are conclusions of law. Petitioner argues in its response to these exceptions that the first two sentences are merely a statement of the purpose of program. However, it argues that the statement regarding the classrooms being an integral program of the VCS and Paragraph 26 are conclusions of law and not appropriate for a finding of fact. Whether these paragraphs are findings of fact, ultimate findings of fact, or conclusions of law, the nature of Petitioner's argument is not appropriate for an exception. This exception is denied.

Respondent takes exception to the Conclusions of Law in Paragraphs 36 and 37.

36. In this case, Petitioner has demonstrated that the blended classrooms operated pursuant to the Coop Agreement are integral programs of the VCS. VCS directly operated and staffed the blended classrooms, and required Mid Florida to use the curriculum. The blended classrooms have both VCS and Mid Florida teachers assigned to the classrooms. However, the Mid Florida teachers were required to be approved by VCS. The VCS principals were the final authority and ultimately responsible for supervision of the students. The VCS followed the calendar, instructional discussion, and the health services policies. The classrooms are also located on VCS' property. Based on the foregoing, the Head Start blended program is an essential component for VCS to meet the goals to provide services for disabled children. The roles of Mid Florida and VCS are so intertwined that if Mid Florida were separated from the partnership, VCS could not meet its goal to provide necessary services to children with disabilities. Thus, the five blended classroom sites at issue here are an integral program of the VCS. As a result, Petitioner demonstrated that the five sites are entitled to an exemption from licensure as childcare facilities.

37. Since Petitioner is excluded from the definition of childcare provider, Petitioner is not subject to section 402.3025 with regard to the blended classrooms. Thus, it is not necessary to address that analysis in this Order.

Respondent argues in its exception to these conclusions of law that the five programs in question are child care facilities and subject to the licensing under sections 402.301-102.319, Florida Statutes. Pursuant to the appellate ruling, the blended

classes are integral to VCS; therefore, they are not required be licensed as child care facilities. Mid Florida at 1131-1132. This exception is denied.

Accordingly, the Recommended Order is approved and adopted and the Determination Letter dated August 22, 2017, is **DISMISSED;** Petitioner's five blended classrooms located at Blue Lake, Deltona Lakes, Horizon, Indian River, and Woodard are exempt from the child care facility licensing requirements.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 9th day of April, 2021.

Shevaun L. Harris, Secretary

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY A PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE. SUCH APPEAL IS INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILIES AT 2415 NORTH MONROE STREET, SUITE 100, TALLAHASSEE, FL 32303, AND A SECOND COPY ALONG WITH THE FILING FEE AS PRESCRIBED BY LAW, IN THE DISTRICT COURT OF APPEAL WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED (RECEIVED) WITHIN 30 DAYS OF RENDITION OF THIS ORDER.[3]

Copies furnished to the following via U.S. Mail on date of Rendition of this Order.[1]

Jane Almy-Loewinger, Esq.
Assistant General Counsel
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Lacey Kantor, Agency Clerk

[3] The date of the "rendition" of this Order is the date that is stamped on its first page.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MID FLORIDA COMMUNITY SERVICES, INC.,

Petitioner,

vs. Case No. 17-5506

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, on March 2, 2018, Administrative Law Judge Yolonda Y. Green, of the Division of Administrative Hearings ("Division"), conducted a final hearing by video teleconference in Daytona Beach and Tallahassee, Florida, pursuant to section 120.57(1), Florida Statutes (2017).

APPEARANCES

For Petitioner: Jennifer C. Rey, Esquire
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Brooksville, Florida 34605

For Respondent: Jane Almy-Loewinger, Esquire
Department of Children and Families
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Daytona Beach, Florida 32114

STATEMENT OF THE ISSUE

Whether Petitioner's five Head Start/pre-K Exceptional Student Education ("ESE") blended classrooms involving the Volusia County School District's Joint Educational Program are entitled to an exemption from childcare licensure.

PRELIMINARY STATEMENT

By letter dated August 22, 2017, the Department of Children and Families ("Department," "DCF," or "Respondent") notified Petitioner, Mid Florida Community Services, Inc. ("Mid Florida" or "Petitioner"), that its request for an exemption from licensure as a childcare facility was denied. In response to the denial, Petitioner timely requested a formal administrative hearing. On October 3, 2017, this matter was referred to the Division for final hearing.

On January 24, 2018, the undersigned issued a Notice of Hearing scheduling the final hearing for March 2, 2018. On February 20, 2018, the parties filed their Joint Prehearing Stipulation. The stipulated facts, to the extent relevant, have been incorporated in this Recommended Order.

On March 2, 2018, the hearing convened as scheduled. At the final hearing, Petitioner presented the testimony of four witnesses, including: Heidi Rand, director of Early Learning Programs for Mid Florida; Jeffrey Heyne, quality assurance manager for Mid Florida; Kimberly Gilliland, director of ESE for

Volusia County School District ("VCS"); and Jennifer Kelly, coordinator of ESE for VCS (by deposition). Petitioner's Exhibits 1 through 12 were admitted into evidence. Respondent presented the testimony of Samantha Wass De Czege, family services counselor supervisor of the Office of Child Care Regulation for DCF; and Shelley Tinney, Operations and Management Consultant II of the Office of Child Care Regulation for DCF. Respondent's Exhibits 5, 9, and 10 were admitted into evidence.

The Transcript of the hearing was filed with the Division on March 13, 2018. The parties timely filed Proposed Recommended Orders, which have been carefully considered in preparing this Recommended Order.

Unless otherwise indicated, all statutory references are to Florida Statutes (2017).

FINDINGS OF FACT

The following Findings of Fact are based on exhibits admitted into evidence, the testimony offered by witnesses, and admitted facts set forth in the Prehearing Stipulation.

1. Respondent, DCF, is the state agency responsible for regulating childcare facilities in Florida.

2. Petitioner, Mid Florida, is a private, not-for-profit 501(c)3 Florida corporation operating various social service and early education programs. Petitioner operates 20 different Head

Start classrooms in three counties, including Hernando, Sumter, and Volusia Counties.

3. Petitioner initiated a relocation of Westside Head Start Classroom ("Westside"), one of its existing Head Start classrooms, from a portable located on the real property of Westside Elementary School, which is part of the VCS, to a classroom located directly inside Westside Elementary School.

4. As Westside was licensed by DCF as a childcare facility prior to the relocation, Mid Florida completed and submitted a childcare license questionnaire to DCF for a determination as to whether Westside, now located within the Westside Elementary School, still needed to be licensed.

5. In response to the childcare license questionnaire for Westside, the Department issued a determination letter, dated August 22, 2017. Rather than limiting its determination to Westside, the Department stated that 18 of Mid Florida's Head Start classrooms, located in three different counties, were subject to licensure. Those 18 sites included five VCS Head Start programs operated in partnership with Mid Florida.

6. The five VCS sites at which Petitioner provides Head Start program services are commonly known as Head Start "blended classrooms." The term "blended classrooms" refers to the inclusion of students that are typically developing peers that are not otherwise students of VCS into Volusia County School

classrooms with students with disabilities. The blended classrooms include Blue Lake Head Start blended classroom, Deltona Lakes Head Start blended classroom, Horizon Head Start blended classroom, Indian River Head Start blended classroom, and Woodard Head Start blended classroom.

7. The five blended classrooms are not currently, and have never been, licensed as childcare facilities.

8. VCS provides K-12 public education in Volusia County, and provides certain pre-kindergarten (pre-K) ESE programs in accordance with the Individuals with Disabilities Education Act (IDEA). The IDEA requires public schools to provide services for students with disabilities aged three to 21, including a free and appropriate public education.

9. In 2008, Head Start programs, among others, were identified by the Florida Department of Education's Bureau of Exceptional Student Education and Student Services as one of the potential partners for schools to expand opportunities for schools to provide services to pre-K children with disabilities.

10. In 2009, VCS implemented pre-K ESE programs for students aged three and four with various levels of disabilities. VCS implemented the program, which was designed to place students with disabilities in a learning environment with typically developing peers. Typically developing peers are

students without disabilities who acquire specific skills and behaviors according to a predictable rate and sequence.

11. In 2010, VCS contacted Mid Florida to explore the possibility of Mid Florida collaborating with VCS to expand blended pre-K ESE programs to include a Head Start blended classroom.

12. As the need to serve more students with disabilities increased, VCS expanded its pre-K ESE Programs to include different types of blended classrooms.

13. As a result, VCS entered into a Cooperative Agreement ("Coop Agreement") with Mid Florida for Referral, Evaluation, Placement, and Transition Head Start; Florida Diagnostic Learning Resource System ("FDLRS") Child Find; and pre-K ESE programs. The Coop Agreement served as the basis to establish the blended pre-K/Head Start program provided by VCS as part of Mid Florida's services offered to serve students with disabilities.

14. VCS pre-K ESE programs include partial-day, full-day, and blended pre-K classroom options (at issue in this matter). Students in partial-day programs receive two and a half hours of instruction in a separate class setting. Students in full-day programs receive a full day of instruction in a separate class setting.

15. All ESE students participating in any of the VCS pre-K ESE programs, including blended pre-K programs, have individualized education plans (IEP) subject to age-appropriate standards established by the State Board of Education.

16. There are four types of VCS blended pre-K VE programs: employee blended, Head Start blended, community blended, and the Easter Seals Charter School. The employee-blended classrooms pair eight ESE VCS students, and 10 non-ESE students that are children of VCS employees, but not otherwise VCS students. The Head Start blended classrooms pair eight ESE VCS students, and 10 non-ESE students that are not otherwise VCS students, but are eligible to enroll in a Head Start program. The community-blended classroom pairs eight ESE VCS students and 12 non-ESE voluntary pre-k students from the community who are not otherwise VCS students. The Easter Seals Charter School is a private, not-for-profit charter school operated by Easter Seals, and pairs eight ESE students with 10 non-ESE students (identified and enrolled by Easter Seals). Overall, the blended classrooms are required to meet Department of Education standards.

17. VCS determines each year whether there is a need or not for a Head Start blended classroom at each of its locations. VCS monitors a feeder pattern of students to identify VCS students aged three to five that are in need of pre-K ESE

services, and then determines at what locations and how many Head Start blended classrooms will be needed in any given school year. If VCS determines that a Head Start blended classroom is not needed, then Mid Florida would not provide services under the Coop Agreement for that classroom, and the non-ESE typically developing peer/students would be relocated to either another VCS Head Start blended classroom, or to a Head Start site not associated with VCS, such as Westside.

18. The facilities, classroom, and playground for Head Start blended classrooms (used by students) are provided by VCS.

19. The curriculum used in the VCS Head Start blended classrooms are selected and approved by VCS, and then Mid Florida must adapt its Head Start services to that curriculum. At all of its other non-blended classroom Head Start locations, Mid Florida has used a different curriculum than what was adopted by VCS for the Head Start blended classroom. The curriculum is implemented using a co-teaching model in which instructional, and other staff, in the Head Start blended classrooms work collaboratively to implement the curriculum.

20. The blended pre-K/Head Start program is staffed with one VCS teacher, one VCS paraprofessional, one Mid Florida Head Start teacher, and one Mid Florida Head Start assistant. The VCS teacher and paraprofessional have primary responsibility for ensuring that the ESE students with IEPs obtain the level of

instruction and other services required under the IEP, and that age-appropriate standards are being taught. The Head Start teacher has primary responsibility for ensuring that all students enrolled in the Head Start program receive Head Start services, and the Head Start assistant aids the Head Start teacher in carrying out Head Start services.

21. Supervision of all students in the classroom is the responsibility of all instructional, and other staff, in the classroom. However, ultimate responsibility for the safety and security of the students resides with the VCS teacher, and ultimately the VCS principal. Therefore, it is the particular school sites' policy on parent pick-up and drop-off that must be adhered to by all parents of students participating in a Head Start blended classroom. Any parent or other volunteer visiting or working in the Head Start blended classrooms must meet VCS screening standards, must adhere to VCS policies applicable to school classrooms, and must adhere to the security and sign-in procedures in place at each school site. For all students in the blended pre-K/Head Start program, both ESE and non-ESE students, the school principal/administrator has the final authority about whether or not a student may be sent home due to a students' behavior or conduct.

22. The Head Start blended classrooms follow the VCS instructional schedule and calendar, including dismissal days and hurricane closure make-up days.

23. The VCS' policies on health services and communicable diseases take priority in Head Start blended classrooms over any similar policies in place for Mid Florida Head Start programs.

24. The VCS principals have input regarding food plan and administration of meals. Generally, the Head Start program emphasizes meals being served family style. While Head Start may encourage family-style eating, the principal of the respective blended classroom facility determines the method of meal services. For instance, a principal may permit meals to be delivered to the classroom. On the other hand, a principal may require that the Head Start students eat in a cafeteria. In short, VCS and the Mid Florida work together to determine the method of delivery of meal services for blended classrooms.

25. The evidence offered at hearing demonstrates that one purpose of the partnership between Mid Florida and VCS is for Mid Florida to provide services to VCS pursuant to the Coop Agreement necessary for VCS pre-K children with disabilities to achieve academic success and high quality of life. Another purpose is to ensure compliance with the Head Start Act of 2007. Based on the totality of the circumstances, the evidence demonstrated that the five Head Start blended classroom sites

(Blue Lake, Deltona, Horizon, Indian River, and Woodward) are integral programs of the VCS.

26. Therefore, given these facts, Petitioner is not required to license the five sites as childcare facilities.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2017).

28. Chapter 402, Florida Statutes, requires the Department to administer a program for licensure of childcare facilities. As part of its program, the Department is also responsible for determining whether a facility caring for children qualifies for exemption from licensure or if licensure or registration as a childcare facility is required. § 402.302(2)(a), Fla. Stat.

29. Section 402.302 broadly defines the term childcare facility. The section states in relevant part:

> (2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:
>
> (a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025.

30. Section 402.3025(1) provides an exemption from licensure as a childcare facility. The section states in relevant part:

> (a) The following programs for children shall not be deemed to be child care and shall not be subject to the provisions of ss. 402.301-402.319:
>
> * * *
>
> 2. Programs for children who are at least 3 years of age, but who are under 5 years of age, provided the programs are operated and staffed directly by the schools and provided the programs meet age-appropriate standards as adopted by the State Board of Education.
>
> * * *
>
> (b) The following programs for children shall be deemed to be child care and shall be subject to the provisions of ss. 402.301-402.319:
>
> 1. Programs for children who are under 5 years of age when the programs are not operated and staffed directly by the schools.

31. At issue in this matter, is whether the five VCS blended classroom sites operated pursuant to the Coop Agreement must be licensed as childcare facilities. Petitioner asserts that the programs are integral programs of VCS. On the other hand, Respondent asserts that the programs are not exempt as they are not operated and staffed directly by the schools.

32. Section 402.302 does not define the term "integral program," and section 402.3025 does not define "operated and staffed directly by the schools."

33. The Department's interpretation of the statutes it administers and over which it has jurisdiction is afforded wide discretion. Cone v. State, Dep't of Health, 886 So. 2d 1007, 1009 (Fla. 1st DCA 2004). As the court stated in Republic Media, Inc. v. Department of Transportation, 714 So. 2d 1203, 105 (Fla. 5th DCA 1998):

> [A]n agency is afforded wide discretion in the interpretation of a statute which it is given the power and duty to administer. Its construction of the statute will not be overturned on appeal unless its clearly erroneous.

34. Although the Department is afforded wide discretion in its interpretation of statutes related to its jurisdiction, it is bound by the actual language of the statute and, where such language is plain and unambiguous, there is no occasion for the Department's interpretation. Ocampo v. Dep't of Health, 806 So. 2d 633, 634 (Fla. 1st DCA 2002); Fla. Dep't of Ins. & Treasurer v. Bankers Ins. Co., 694 So. 2d 70 (Fla. 1st DCA 1997); Cone v. State, Dep't of Health, 886 So. 2d at 1009; Larimore v. State, 2 So. 3d 101, 106 (Fla. 2008); Forsythe v.

Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 454 (Fla. 1992); and Daniels v. Fla. Dep't of Health, 898 So. 2d 61, 64 (Fla. 2005).

35. As the party seeking the exemption, Petitioner must establish by a preponderance of the evidence that it is entitled to the exemption. See Fla. Dep't of Transp. v. J.W.C. Co., 778 (Fla. 1st DCA 1981).

36. In this case, Petitioner has demonstrated that the blended classrooms operated pursuant to the Coop Agreement are integral programs of the VCS. VCS directly operated and staffed the blended classrooms, selected and approved the curriculum used in the blended classrooms, and required Mid Florida to use the curriculum. The blended classrooms have both VCS and Mid Florida teachers assigned to the classroom. However, the Mid Florida teachers were required to be approved by VCS. The VCS principals were the final authority and ultimately responsible for supervision of the students. The VCS followed the calendar, instructional discussion, and the health services policies. The classrooms are also located on VCS' property. Based on the foregoing, the Head Start blended program is an essential component for VCS to meet the goals to provide services for disabled children. The roles of Mid Florida and VCS are so intertwined that if Mid Florida was separated from the partnership, VCS could not meet its goal to provide necessary

services to children with disabilities. Thus, the five blended classroom sites at issue here are an integral program of the VCS. As a result, Petitioner demonstrated that the five sites are entitled to an exemption from licensure as childcare facilities.

37. Since Petitioner is excluded from the definition of childcare provider, Petitioner is not subject to section 402.3025 with regard to the blended classrooms. Thus, it is not necessary to address that analysis in this Order.

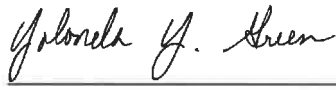
RECOMMENDATION

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 as follows:

1. Finding Petitioner's five Head Start/pre-K blended classrooms are exempt from licensure as childcare facilities, pursuant to section 402.302(2)(a); and

2. Reversing the decision requiring Petitioner to license the five Head Start/pre-K blended classrooms as childcare facilities.

DONE AND ENTERED this 4th day of June, 2018, in Tallahassee, Leon County, Florida.



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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.