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DCF Department Clerk

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

MID FLORIDA COMMUNITY SERVICES

Petitioners,

v.

CASE NO. 17-5506
RENDITION NO. DCF-18-205-FO

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.
_______________________________/

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 and therefore were exempt from licensure as childcare facilities. Respondent filed exceptions to the Recommended Order and Petitioner filed a response to the exceptions.

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." The reading of this portion of Paragraph 5

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seems to suggest that the five Head Start programs in question are VCS (Volusia County School) programs and Respondent is correct, this finding of fact is not supported by competent substantial evidence. As Respondent correctly states in its exception, Petitioner provides Head Start programs in the public schools operated by VCS. This is evident throughout the record, including in the Cooperative Agreement for Joint Educational Program which states in the first line of the purpose: The Mid Florida Community Services, Inc. Head Start Program in Volusia (herein referred to as the Agency) and the School Board of Volusia County… (Petitioner's Exhibit 2). This demonstrates that the Head Start Program is part of Mid Florida Community Services, Inc. This distinction is also apparent in the Volusia County Schools/Head Start Blended Program 2017-2018 Implementation Guide. The very title of the document separates the Volusia County Schools from the Head Start Program and throughout the entirety of the document it delineates the role of the VCS and Head Start teachers/staff/students/etc. (Petitioner's Exhibit 4).

Accordingly, Respondent's exception to Paragraph 5 is granted, as the finding of fact that the Heart Start programs as those of VCS is not supported by competent substantial evidence.

Paragraph 5 is rewritten as follows:

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 Head Start programs provided by Petitioner in public schools operated by VCS.

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.

Although Respondent's exception is denied I do take exception to the finding of fact that states, "... another VCS Head Start Blended classroom." As discussed in the exceptions above in Paragraphs 6 and 16, Head Start is a program run by Petitioner, not VCS. Even in title, the implementation guide names the program Volusia County Schools/Head Start Blended Program. (Petitioner's Exhibit 4). This finding of fact will be revised to reflect the accurate program name as the current finding of fact is not supported by competent substantial evidence.

Paragraph 17 is rewritten as follows:

> 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.

Exception is taken to the Finding of Fact in Paragraph 18.

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

I take exception to this paragraph as it is not entirely supported by competent substantial evidence. Although VCS does provide the classroom for the Head Start blended classrooms, per the Cooperative Agreement, Petitioner "will provide any additional furniture, equipment and/or materials needed to serve students enrolled in the Head Start program. (Petitioner's Exhibit 2).

Paragraph 18 is rewritten as follows:

> 18. The facilities, classroom, and playground for Head Start blended classrooms (used by students) are provided by VCS, although Mid Florida will provide any additional furniture, equipment, and/or materials needed to serve students enrolled in the Head Start program.

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 is arguing that Petitioner has ultimate responsibility for the Head Start only children enrolled in the blended classroom and is therefore in direct contrast with the Administrative Law Judge's finding that, "ultimate responsibility for the safety and security of the students resides with the VCS teacher, and ultimately the VCS principal." I do agree that there is not competent substantial evidence to support this finding of fact as the evidence is conflicting. 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. Although the principal might take charge of a missing child, the staff in the classroom, including the teacher and paraprofessional of Head Start are responsible for the safety of the Head Start children. Petitioner's employee Ms. Rand contradicts this testimony but stating they defer all supervisory responsibility to the school district. (Transcript at 80). Further contradicting

the testimony on the subject 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).

In further support of the granting of this exception, Respondent correctly argues that VCS does not provide transportation for Head Start only children. (Deposition Transcript at 14). VCS, is also not responsible for maintaining the attendance of the Head Start only children. By pointing out these additional facts, Respondent is demonstrating that VCS is not primarily responsible for the supervision of the Head Start only children, nor are they ultimately responsible for their security.

Paragraph 21 is rewritten as follows:

> 21. Pursuant to the Cooperative Agreement between Petitioner and VCS, primary responsibility for supervision of students enrolled in the District Pre-kindergarten ESE program shall be with the teacher and paraprofessional employed by the District. Primary responsibility for supervision of students enrolled in the Head Start program shall be with the teacher and teacher assistant employed by the Agency. And for students who are dually enrolled in both the Pre-kindergarten ESE and Head Start programs, the supervisory responsibility rests with the District while education services are being provided. 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. Additionally, for Head Start only students, VCS will not provide transportation. 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. Although security and sign-in procedures must be followed at each site, VCS does not maintain attendance of Head Start only children. 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.

Exception is taken to the Finding of Fact in Paragraph 24.

> 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.

I take exception to the findings of fact in this paragraph as the findings are deceptive and intentionally leave out an important fact in regards to the food plan and administration of meals. This paragraph has left out a main component of the food plan and administration of means: who pays for the meal plan? As stated in the Cooperative Agreement, students who are dually enrolled with the District and the Agency will have meals paid for by the Agency and further the Agency can contract with the District for food services for students enrolled in the Head Start program. (Petitioner's Exhibit 2). A full and complete understanding of the finding of fact in regards to the food plan and administration cannot lack facts in regards to the funding source of said plan.

Paragraph 24 is rewritten as follows:

> 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. Additionally, for those students that are either dually enrolled or Head Start only students, Mid Florida is responsible for the cost of the food plan and administration of meals.

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 blended classroom sites (Blue Lake, Deltona, Horizon, Indian River, and Woodward) are integral programs of the VCS.
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> 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 I agree in part. Petitioner correctly argues in its response to these exceptions that the first two sentences are merely a statement of the purpose of program. However, the statement in regards to the classrooms being an integral program of the VCS and Paragraph 26 are conclusions of law and not appropriate for a finding of fact. The findings of fact in this Recommended Order are being applied to the law in order to make the statements, making these conclusions of law; the same conclusions found later in Paragraphs 36 and 37.

Paragraph 25 is rewritten as follows and Paragraph 26 is removed. The remainder of the paragraphs will be renumbered.

> 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.

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. I agree with Respondent. As Respondent correctly argues, the blended classrooms operated pursuant to the Cooperative Agreement are not operated and staffed directly by VCS. The Head Start only children present in the classrooms rely directly on Petitioner to provide them with food and transportation as well as ensure that their educational needs are assessed and met. VCS does not track their attendance or make any commitments to their educational needs as they would if the Head Start only children were actual, enrolled, students of VCS. Respondent's exception to the Conclusions of Law in Paragraphs 36 and 37 are <u>granted</u>.

<u>Paragraphs 36 and 37 are rewritten as follows:</u>

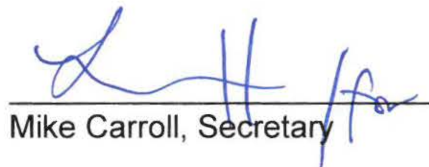
> 36. In this case, Petitioner has not demonstrated that the blended classrooms operated pursuant to the Coop Agreement are integral programs of the VCS. VCS does not directly operate and staff the blended classrooms. Although, Mid Florida uses the VCS curriculum, has a VCS teacher and paraprofessional assigned to the classrooms, follows the VCS instructional discussion, and the health services policies, and the classrooms are located on VCS property, the

five blended classrooms at issue are not integral programs of the VCS due to the following. Mid Florida provides a teacher and paraprofessional that have the primary supervision and program responsibility for Head Start only students. These students also rely directly on Petitioner to provide them with food and transportation as well as ensure their education needs are assessed and met. VCS additionally does not track their attendance as these Head Start only students are not enrolled in VCS.

37. Petitioner is a child care facility subject to the provisions of sections 402.301-402.319, Florida Statutes.

Accordingly, the Recommended Order is approved and adopted as modified and the Determination Letter dated August 22, 2017, is **upheld;** Petitioner's five blended classrooms located at Blue Lake, Deltona Lakes, Horizon, Indian River, and Woodard must be licensed as child care facilities.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 4th day of September, 2018.



Mike Carroll, 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 1317 WINEWOOD BOULEVARD, BUILDING 2, ROOM 204, TALLAHASSEE, FLORIDA 32399-0700, 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.[1]

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

Jane Almy-Loewinger, Esq.
Assistant General Counsel
Department of Children and Families
210 N. Palmetto Ave., Ste. 447
Daytona Beach, FL 32114

Jennifer C. Ray, Esq.
The Hogan Law Firm
20 S. Broad St., Brooksville, FL 34605

Claudia Llado, Clerk
Division of Administrative Hearings
Three DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399

Lacey Kantor, Agency Clerk

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