

FILED

JUL 06 2018

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DCF Department Clerk

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,
v.

CASE NO. 17-6741
RENDITION NO. DCF-18-156-FO

EDU EXPRESS, LLC, d/b/a THE
LITTLE ENGINE ACADEMY

Respondent.

_____ /

FINAL ORDER

THIS CAUSE is before me for entry of a final order concerning the Department's Administrative Complaint signed November 14, 2017, imposing a fine of \$500 and revocation of the child care lesson for the second Class I violation of Child Care Facility Standards Classifications Summary #63-02 Access/Child Abuse or Neglect/Misrepresentation. This was the fifth Class I violation within a two-year period. The Recommended Order, dated April 11, 2018, concluded that the Department did not satisfy its burden of proof and recommended that the administrative complaint be dismissed. Neither party filed exceptions to the Recommended Order but I do find error in the following conclusions of law:

31. Therefore, the Department had to prove the following elements by clear and convincing evidence: (a) that the EDU employee committed a willful act; (b) that the willful act resulted in physical or mental harm; and that (c) the physical or mental harm significantly impaired the child's physical, mental, or emotional health.

I reject the conclusion of law above in (c) because section 39.01(2), Florida Statutes in its definition of abuse does not require that the child's physical, mental, or

emotional health be actually harmed. It allows for the injury or harm to likely cause the child's physical, mental, or emotional health.

Paragraph 31 is revised as follows, which I find to be as or more reasonable than the rejected paragraph:

31. Therefore, the Department had to prove the following elements by clear and convincing evidence: (a) that the EDU employee committed a willful act; (b) that the willful act resulted in physical or mental harm; and that (c) the physical or mental harm significantly impaired the child's physical, mental, or emotional health, or was likely to do so.

Accordingly, the Recommended Order is approved and adopted as modified and the Administrative Complaint signed November 14, 2017, is **DISMISSED**.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 6th
day of July, 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.²

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Lacey Kantor, Agency Clerk
Department of Children and Families

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

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