

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 18-1351

NAPLES PRESCHOOL ACADEMY,

Respondent.

_____ /

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018),^{1/} before Lynne A. Quimby-Pennock, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on July 9, 2018, in Fort Myers, Florida.

APPEARANCES

For Petitioner: George Gardner, Esquire
Department of Children and Families
Post Office Box 60085
Fort Myers, Florida 33906

For Respondent: Sue Rihani, pro se
Naples Preschool Academy
12657 New Brittany Boulevard
Fort Myers, Florida 33907

STATEMENT OF THE ISSUE

Should the Gold Seal Quality Care designation of Respondent, Naples Preschool Academy, LLC (Academy), be terminated under the authority of section 402.281(4)(a), Florida Statutes?

PRELIMINARY STATEMENT

On February 12, 2018, Petitioner, Department of Children and Families (DCF), issued an Administrative Complaint alleging the Academy violated sections 402.26-.319 (inclusive of 402.305(2)), Florida Statutes, "Chapter 65C-22.003(2) Florida Administrative Code"^[2/] section 4 of the Child Care Facility Handbook, incorporated by reference in Florida Administrative Code Rule 65C-22.001(6), and section 8.2.B of the Child Care Facility Handbook, incorporated by reference in Florida Administrative Code Rule 65C-22.001(6). Additionally, pursuant to section 402.281(4)(a), DCF terminated the Academy's Gold Seal Quality Care designation and imposed a \$525.00 fine. On March 2, 2018, the Academy filed a request for administrative hearing.

On March 14, 2018, DCF referred this matter to DOAH to conduct an administrative hearing. The final hearing was set for May 23, 2018, but pursuant to Petitioner's unopposed request for a continuance, the hearing was rescheduled.

The final hearing was held on July 9, 2018. Petitioner presented the testimony of Shannon Fracek, Tod Mathews, Sue Rihani, Mary Beth Wehnes, and Carol Wortzman. Petitioner's

Exhibits 2 through 16^{3/} were admitted into evidence. Respondent presented the testimony of Ms. Rihani and Christina J. Rea (formerly known as Christina Stevens). Respondent did not offer any exhibits.

The Transcript was filed with DOAH on July 30, 2018. The parties were required to file their proposed recommended orders ten days after the transcript was filed. DCF filed its Proposed Recommended Order on August 7, 2018, and it has been considered in the preparation of this Order. To date, the Academy has not filed a proposed recommended order.

FINDINGS OF FACT

The Parties

1. DCF is the state agency charged with the responsibility of regulating child care facilities operating in the State of Florida.

2. At all times material to the allegations of this case, the Academy operated a child care facility under Certificate No. C20200107. The Academy's facility is located at 1275 Airport Road South, Naples, Florida. The Academy operates as a Gold Seal Quality Care Provider.

3. Ms. Rihani is the Academy's owner. Ms. Rea was the Academy's director at the time of the incident. Samantha McClain is the current director of the Academy.

Events Giving Rise to this Proceeding

4. In this case, DCF alleged the Academy failed to timely report an incident of possible child abuse as required by Florida law. On November 29, 2017, D.M., a minor child, was dropped off at the Academy by his father. At some time that morning, D.M. was observed to have a dark area under one eye and injuries on his backside. D.M.'s teacher saw the injuries and took D.M. to the director's office. The Academy's staff took photos of D.M., showing both his face with the dark area under one eye and multiple bruises and injuries to his backside. On November 29, 2017, at the end of the day, D.M. was allowed to go home with his father.

5. Ms. Rea called the Abuse Hotline shortly after the Academy opened on November 30, 2017, to report the suspected abuse of D.M. DCF sent Ms. Fracek, a Child Protective Investigator, to the Academy on November 30, 2017. Ms. Fracek observed significant bruising to multiple parts of D.M.'s body.

6. Ms. Fracek sheltered D.M. from his father on November 30, 2017.

7. Ms. Rea maintained that she called the abuse hotline on November 29, 2017, but there is no record of the call.

8. The Academy failed two routine inspections (December 21, 2016 and December 8, 2017), and a renewal inspection (April 3, 2017). All three inspections found the Academy to be out of

compliance with licensing standards, and guilty of either Class II or Class III violations. The Academy admitted the violations and agreed to pay the financial penalty of \$25.00 for the Class II and III violations.

9. As a Gold Seal Quality Care provider, the Academy is subject to licensing inspections to ensure compliance with all DCF regulations. After investigating the abuse allegation, the DCF counselor determined that the Academy failed to timely report the incident of suspected child abuse. According to Florida Administrative Code Rule 65C-22.010, suspected child abuse is to be reported to the hotline without delay. The failure to do so constitutes a Class I violation of child care licensing standards.

CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018).

11. In this case, DCF bears the burden of proof to establish by clear and convincing evidence that the Academy committed the violation alleged. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Pou v. Dep't of Ins. & Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

12. "Clear and convincing" evidence was described by the court in Evans Packing Company v. Department of Agriculture and

Consumer Services, 550 So. 2d 112, 116 n.5 (Fla. 1st DCA 1989),

as follows:

[C]lear and convincing requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

13. Section 402.281 provides in pertinent part:

Gold Seal Quality Care program.

(1) (a) There is established within the department the Gold Seal Quality Care Program.

(b) A child care facility, large family child care home, or family day care home that is accredited by an accrediting association approved by the department under subsection (3) and meets all other requirements shall, upon application to the department, receive a separate "Gold Seal Quality Care" designation.

(2) The department shall adopt rules establishing Gold Seal Quality Care accreditation standards based on the applicable accrediting standards of the National Association for the Education of Young Children (NAEYC), the National Association of Family Child Care, and the National Early Childhood Program Accreditation Commission.

(3) (a) In order to be approved by the department for participation in the Gold Seal Quality Care program, an accrediting association must apply to the department and demonstrate that it:

1. Is a recognized accrediting association.
2. Has accrediting standards that substantially meet or exceed the Gold Seal Quality Care standards adopted by the department under subsection (2).

(b) In approving accrediting associations, the department shall consult with the Department of Education, the Florida Head Start Directors Association, the Florida Association of Child Care Management, the Florida Family Child Care Home Association, the Florida Children's Forum, the Florida Association for the Education of the Young, the Child Development Education Alliance, the Florida Association of Academic Nonpublic Schools, the Association of Early Learning Coalitions, providers receiving exemptions under s. 402.316, and parents.

(4) In order to obtain and maintain a designation as a Gold Seal Quality Care provider, a child care facility, large family child care home, or family day care home must meet the following additional criteria:

(a) The child care provider must not have had any class I violations, as defined by rule, within the 2 years preceding its application for designation as a Gold Seal Quality Care provider. Commission of a class I violation shall be grounds for termination of the designation as a Gold Seal Quality Care provider until the provider has no class I violations for a period of 2 years.

14. Section 39.201, Florida Statutes, provides:

Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax, web-based chat, or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter. Any call received from a parent or legal custodian seeking assistance for himself or herself which does not meet the criteria for being a report of child abuse, abandonment, or neglect may be accepted by the hotline for response to ameliorate a potential future risk of harm to

a child. If it is determined by a child welfare professional that a need for community services exists, the department shall refer the parent or legal custodian for appropriate voluntary community services.

(b) Each report of known or suspected child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax, web-based chat, or web-based report. Such reports or calls shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

15. Rule 65C-22.010 provides, in part:

Enforcement.

This rule establishes the grounds under which the Department shall issue an administrative fine, deny, suspend, revoke a license or registration or place a licensee or registrant on probation status as well as uniform system of procedures to impose disciplinary sanctions.

(1) Definitions.

* * *

(a) "Standards" are requirements for the operation of a licensed facility provided in statute or in rule.

(b) "Technical Assistance" means a Department offer of assistance to a licensee or registrant to correct the statutory or regulatory violations.

(c) "Violation" means noncompliance with a licensing standard as described in an inspection report resulting from an inspection under Section 402.311, F.S., as follows with regard to Class I, Class II, and Class III Violations.

1. "Class I Violation" is an incident of noncompliance with a Class I standard as described on CF-FSP Form 5316, October 2017. Child Care Facility Standards Classification Summary, which is incorporated by reference. A copy of the CF-FSP Form 5316 may be obtained from the Department's website at www.myflfamilies.com/childcare or from the following link: <http://www.flrules.org/Gateway/reference.asp?No=Ref-08739>. However, any violation of a Class II standard that results in death or serious harm to a child shall escalate to a Class I violation. The effective date of a termination of a provider's Gold Seal Quality Care designation is the date of the Department's written notification to the provider. However, any violation of a Class II standard that results in death or serious harm to a child shall escalate to a Class I violation. Class I violations are the most serious in nature.

2. "Class II Violation" is an incident of noncompliance with an individual Class II standard as described on CF-FSP Form 5316. Class II violations are less serious in nature than Class I violations.

3. "Class III Violation" is an incident of noncompliance with an individual Class III standard as described on CF-FSP Form 5316. Class III violations are less serious in nature than either Class I or Class II violations.

(2) Disciplinary Sanctions.

(a) Enforcement of disciplinary sanctions for all Class I violations and for repeated Class II and Class III violations shall be

applied progressively for each standard violation. The document entitled, Reconciliation of 2012 and 2017 Child Care Facility Classification Summaries, CF-FSP Form 5420, October 2017, which is incorporated into this rule, provides an alignment of the 2012 and 2017 Child Care Facility Classification Summaries for purposes of progressive enforcement. A copy of the CF-FSP Form 5420 may be obtained from the Department's website or from the following link: <http://www.flrules.org/Gateway/reference.asp?No=Ref-08741>. In addition, providers will be offered technical assistance in conjunction with all violations. The classification of standard violations within the Child Care Facility Standards Classification Summary and the progressive disciplinary actions prescribed for each class by this rule are based on the provisions of Section 402.310(1)(b), FS.

* * *

(d) Disciplinary sanctions for licensing violations shall be progressively enforced as follows:

1. Class I Violations.

a. For the first and second violation of a Class I standard, the Department shall, upon applying the factors in Section 402.310(1), F.S., impose a fine not less than \$100.00 nor more than \$500.00 per day for each violation, and may impose other disciplinary sanctions in addition to the fine.

* * *

2. Class II Violations.

a. For the second violation of the same Class II standard, the Department shall impose an administrative fine of \$50.00 for each such violation.

* * *

3. Class III Violations.

a. For the third violation of the same Class III standard, the Department shall impose an administrative fine of \$25.00 for each such violation.

16. Class I violations are the most serious. A facility that receives the Gold Seal Quality Care designation is held to the highest standard. In this case, the Academy failed to meet the Gold Seal Quality Care standard. In addition, the Academy had other repeat violations by failing to meet or maintain licensure standards.

17. In this case, DCF has established by clear and convincing evidence that the Academy's personnel failed to timely report the injuries sustained by D.M. as required by Florida law, a Class I violation. This matter should have been immediately referred to the hotline for investigation and resolution. The injuries and bruises found on D.M. were consistent with abuse. Upon seeing the photographs of them, the Academy's director (and the teacher who first observed the injuries) should have immediately notified the hotline of suspected abuse regarding D.M. The Academy is no longer qualified for a Gold Seal Quality Care designation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Children and Families, enter a final order revoking Respondent, the Naples

Preschool Academy, LLC's Gold Seal Quality Care designation, and imposing a fine of \$525.00.

DONE AND ENTERED this 23rd day of August, 2018, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of August, 2018.

ENDNOTES

- ^{1/} All references are to 2017 Florida Statutes, unless otherwise noted.
- ^{2/} Rule 65C-22.003(2) was effective August 1, 2013, and repealed October 25, 2017.
- ^{3/} Prior to the hearing, Petitioner filed a Motion for Official Recognition of its Exhibits 9 through 15. No objection was offered at hearing, and these six exhibits were admitted.

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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.