

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 18-1837

CAPC HEAD START - GIBSON CENTER,

Respondent.
_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on July 17, 2018, via video teleconference at sites in Tallahassee and Pensacola, Florida, before Garnett W. Chisenhall, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Katie George, Esquire
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Pensacola, Florida 32502

For Respondent: Joseph L. Hammons, Esquire
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STATEMENT OF THE ISSUE

Whether CAP Head Start - Gibson Center ("Respondent") committed the violations alleged in the Administrative Complaint

issued by the Department of Children and Families ("the Department") on February 12, 2018.

PRELIMINARY STATEMENT

The Department issued an Administrative Complaint on February 12, 2018, alleging that Respondent committed two violations of section 402.302, Florida Statutes (2017),^{1/} and Florida Administrative Code Rule 65C-22.001(5) and (6)^{2/} by failing to properly supervise the unloading of school buses on September 20 and 28, 2017. The Department further alleged that the aforementioned incidents resulted in two more violations because they amounted to child abuse or neglect as defined in chapter 39, Florida Statutes. The Department also alleged that Respondent committed two additional violations by failing to report the aforementioned incidents to the Department as required by section 39.201. In sum, the incidents on September 20 and 28, 2017, led to Respondent being charged with six different statutory and/or rule violations. Finally, the Department alleged that Respondent violated section 402.305(5), and rule 65C-22.001(6) after an inspection conducted by the Department on December 13, 2017, found a hole in the floor of Respondent's facility.

In support of its intent to impose a \$2,525.00 fine and revoke Respondent's license to operate a child care facility, the Department alleged that:

[t]he above-referenced violations constitute grounds to levy this civil penalty and revoke [Respondent]'s license pursuant to section 402.310, Florida Statutes, in that the conduct of Respondent constitutes continuing and severe violations of the minimum standards, rules, and regulations for operation of a child care facility. Respondent cannot be trusted to adequately provide care and supervise children in a safe manner.

Respondent timely requested an administrative hearing on February 28, 2018, and filed an amended request for hearing on March 9, 2018.

The Department referred the instant case to DOAH on April 9, 2018.

The undersigned initially set the final hearing to occur on June 26, 2018. However, the final hearing was continued to July 17, 2018, in order for Respondent to depose two additional witnesses.

During the final hearing, the Department presented the testimony of Roger Thompson, the Department's Supervisor of Child Care Regulation; Casey Gulley, a family services counselor; Shacondra Primm, a family services counselor; Shenevia Jones, a former employee of Respondent; K.N., the mother of J.H.; and D.J., the mother of M.J. The Department's Exhibits 1 through 12, 14A, 14B, and 15 were accepted into evidence.

Respondent presented the testimony of Deborah Nagle, Respondent's Director of Compliance, Governance, and Head Start; Constance Parker, Respondent's Director of Housing, Safety, and Facilities; Judy Dickinson, Respondent's Director of Education; and Douglas Brown, Respondent's Executive Director. Respondent's Exhibits 1 through 3, 5, 6, and 10 were accepted into evidence.

The two-volume Transcript from the final hearing was filed on August 2, 2018. Both parties filed timely Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The following Findings of Fact are based on the oral and documentary evidence adduced at the final hearing, matters subject to official recognition, and the entire record in this proceeding:

The Parties and Relevant Provisions of Law

1. The Department is the state agency responsible for licensing child care facilities in Florida and ensuring that those facilities comply with requirements imposed through the Florida Statutes and the Florida Administrative Code.

2. In order to fulfill that duty, the Department conducts routine and complaint inspections. Every facility receives three routine inspections a year.

3. If the Department learns that a facility may have committed a violation, then the Department conducts a complaint inspection within 48 hours of receiving the information.

4. The Department classifies violations as Class I, Class II, or Class III.

5. Rule 65C-22.010(1)(d)1., defines Class I violations as those that "are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or [do] result in death or serious harm to the health, safety or well-being of a child."

6. Rule 65C-22.010(1)(d)2., states that Class II violations "are less serious in nature than Class I violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent."

7. Rule 65C-22.010(1)(d)3. provides that Class III violations "are less serious in nature than either Class I or Class II violations, and pose a low potential for harm to children."

8. If a facility commits three or more Class I violations within a two-year period, Rule 65C-22.010(2)(e)1.b., mandates that the Department shall suspend, deny or revoke the facility's license.

9. Section 39.201(1)(a), Florida Statutes, requires that

[a]ny 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 provided in subsection (2).

10. Section 39.201(2)(a), requires that

[e]ach 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.

11. Rule 65C-22.001(11)(b) specifies that "[f]ailure to perform the duties of a mandatory reporter pursuant to Section 39.201, F.S., constitutes a violation of the standards in Sections 402.301-.319, F.S."

12. Respondent is a federally funded, nonprofit agency with its corporate headquarters in Pensacola, Florida.

13. Respondent has 190 employees and four core programs, the largest of which is a Head Start program serving 935 children in Escambia County.

14. The Gibson Center in Pensacola is a Florida-licensed childcare facility and part of Respondent's Head Start program. The Gibson Center cares for 190 children every school day and transports 160 children to and from its facility on buses.

The September 20, 2017 Incident

15. On September 20, 2017, a bus dropped off children at the Gibson Center, but the bus driver and her aide failed to conduct a complete visual sweep^{3/} to ensure that all the children had left the bus. As a result, no one realized that a five-year-old child, J.H., was still on the bus until the children arrived at their classroom.

16. The bus driver briefly left the bus to retrieve a stapler from her car, drove to the "bus pen," and began completing paperwork. After the aide called the driver to inquire if J.H. was still on the bus, the driver found J.H. asleep on a seat and unbuckled.

17. J.H. was unattended on the bus for approximately five minutes.

18. The bus driver and aide disclosed the incident to their supervisors.

The September 28, 2017 Incident

19. On September 28, 2017, Shenevia Jones, a bus driver's aide, conducted a visual sweep to ensure that all of the children were off a bus but failed to notice that a four-year-old child, M.J., was hiding under a seat.

20. M.J. remained on the bus while it took 20 minutes to complete an additional route. Upon the bus's return to the Gibson Center, Ms. Jones discovered the child after he sprang from under a seat and said "ta dah."

Respondent's Actions Following the Incidents

21. Respondent's upper management met on September 21, 2017, to discuss the September 20th incident and decided that a review of the loading and unloading procedures would be conducted with drivers and aides on September 22, 2017. In addition, the Executive Director would discuss the incident with all employees on September 23, 2017.

22. After the September 28th incident, Respondent's management decided that a more robust response was necessary. As a result, Ms. Jones was suspended for three days without pay, and Respondent rewrote its procedures for loading and unloading buses.^{4/} According to Respondent, these new procedures were "site specific" in that larger facilities such as the Gibson Center had different procedures than smaller ones.^{5/}

23. Deborah Nagle, Respondent's Director of Compliance, Governance, and Head Start, reported both incidents to the regional Health and Human Services ("HHS") Office in Atlanta, Georgia via an October 6, 2017, e-mail. As a federally-funded, non-profit agency, Respondent receives funding from HHS.

24. HHS issued a report on February 15, 2018, finding that Respondent violated a federal regulation prohibiting a child care program from leaving a child behind in a classroom or on a vehicle.

25. Ms. Nagle and Doug Brown, Respondent's Executive Director, discussed whether the incidents amounted to "neglect" within the meaning of Chapter 39 and determined they were not reportable events.

26. In October of 2017, the Department issued a new handbook to child care facilities, and this handbook contained a section about reporting neglect. After reviewing the aforementioned section, Ms. Nagle sent an e-mail to Roger Thompson, the Department's Supervisor of Child Care Regulation in Escambia, Santa Rosa, Okaloosa and Walton Counties, on Friday, December 8, 2017,^{6/} describing the incidents:

I have attached 2 incidents we had with children on the bus along with the revised procedure. We had reported this to our Regional office and have worked with our Training and Technical Assistance to complete a corrective action plan and put enhanced monitoring in place. All staff

will be trained on Jan. 2 when we return from the Christmas break on the revised procedures.

I felt it necessary to send this information to you after reading the new Field manual which lists items we must have in policy on reporting on page 27.

I will be out of the office until Dec 15th, but will be able to retrieve e-mail while traveling.

27. Mr. Thompson responded on Monday, December 11, 2017, with the following message:

Was the Hotline called on the incident? Also, that needs to be addressed in the [corrective action plan]. Anything like this needs to be reported immediately to the Hotline. Not reporting can resort in an additional Class I violation.

28. Ms. Nagle responded 13 minutes later by stating the incidents were not reported.

29. Just over an hour later, Ms. Nagle transmitted the following inquiry:

I have a question. Is what happened considered an abuse report? To my knowledge there has not been any specifics on what is reported other [than] injury to a child or a report from a parent or other staff member that there was abuse []. We did not consider these as reportable, but due to the new field guide thought it necessary to inform you. So far every call we have made to the hotline when it was deemed an abuse situation was only taken as information.

30. Mr. Thompson responded five minutes later with the following:

Remember . . . it isn't always ABUSE. It is anything that possibly fits Abuse and/or Neglect. This was NEGLECT. If you contact Paula Doty at the Gulf Coast Kids House, she will do a great training for free at your location. She goes into the details. It would be great for your staff, in-service training credit, and it may head some of this stuff off at the pass.

The Department's Investigation

31. Mr. Thompson initiated a complaint investigation, and two Department employees, Casey Gully and Shacondra Primm, inspected the Gibson Center on December 13, 2017. During that inspection, one of Respondent's teachers showed Ms. Primm a hole in the floor of a modular classroom unit. Approximately one week prior to the inspection, the teacher's foot had fallen through the floor, resulting in a 6 inch by 12 inch hole about 3 to 4 feet from the classroom's entrance. At the time of the inspection, a trashcan and caution tape covered the hole.

32. Respondent was in the process of collecting bids to have the hole fixed over the Christmas break.

CONCLUSIONS OF LAW

33. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

34. Disciplinary proceedings, such as the instant case, are penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Accordingly, the

Department must prove the allegations against Respondent by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996) (citing Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987)); Nair v. Dep't of Bus. & Prof'l Reg., Bd. of Med., 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

35. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), stated that:

clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony 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 a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Id.

36. The Florida Supreme Court later adopted the Slomowitz court's description of clear and convincing evidence. See In re Davey, 645 So. 2d 398, 404 (Fla. 1994). The First District Court of Appeal has also followed the Slomowitz test, adding the interpretive comment that "[a]lthough this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous." Westinghouse

Elec. Corp. v. Shuler Bros., Inc., 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

37. Section 402.310 authorizes the Department to impose discipline against licensed childcare facilities. This statute provides, in pertinent part, that the Department "may administer . . . disciplinary sanctions for a violation of any provision of ss. 402.301-402.319, or the rules adopted thereunder."

§ 402.310(1)(a), Fla. Stat.

The Alleged Class I Violations

38. The Department alleges that Respondent violated section 402.302 and rules 65C-22.001(5) and (6) on September 20 and 28, 2017, and that the aforementioned violations were Class I violations.

39. Respondent does not dispute that the incidents on September 20 and 28, 2017, amount to two Class I violations and that a fine is appropriate.

40. Respondent takes issue with the Department charging two additional Class I violations by alleging that the incidents were "child abuse or neglect" as defined in chapter 39.

41. Respondent also takes issue with the Department charging two more Class I violations by alleging that section 39.201(1)(a) required that the September 20 and 28, 2017, incidents be reported to the Department.

42. In sum, the Department is charging Respondent with six Class I violations based on the September 20 and 28, 2017, incidents, and Respondent argues that the incidents can only support two Class I violations.

43. Whether Respondent committed two or six Class I violations has significant consequences because rule 65C-22.010(2)(e)1.b. mandates that the Department shall suspend, deny, or revoke a facility's license if that facility commits three or more Class I violations within a two-year period.

44. Turning to whether Respondent committed the alleged violations at issue, rule 65C-22.001(11)(a) specifies that "[a]cts or omissions that meet the definition of child abuse or neglect provided in Chapter 39, F.S., constitute a violation of the standards in Sections 402.301-.319, F.S., and shall support imposition of a sanction, as provided in Section 402.310, F.S."

45. The version of section 39.01(2) in effect when the alleged violations occurred defined "abuse" as

any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes act or omissions.

46. The instant case does not involve any allegations of physical, mental, or sexual abuse and/or injury. Therefore, in order to demonstrate that the incidents on September 20 and 28,

2017, amount to "abuse" within the meaning of section 39.01(2), the Department must prove by clear and convincing evidence that:

- (a) there was an act or omission that resulted in harm; and that
- (b) the harm caused or was likely to cause the child's physical, mental, or emotional health to be significantly impaired.

47. The version of section 39.01(30) in effect when the alleged violations occurred provided, in pertinent part, that "harm" to a child's health or welfare can occur when any person

- (a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

- 1. Willful acts that produce the following specific injuries:

- a. Sprains, dislocations, or cartilage damage.

- b. Bone or skull fractures.

- c. Brain or spinal cord damage.

- d. Intracranial hemorrhage or injury to other internal organs.

- e. Asphyxiation, suffocation, or drowning.

- f. Injury resulting from the use of a deadly weapon.

- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function. As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

* * *

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

48. It is not difficult to conclude that a four-year-old child's physical, mental, or emotional health could be significantly impaired if that child was left alone on a bus for anything other than a brief amount of time. That is especially true given the high temperatures present in Florida for much of the year.

49. However, the statutory definition of "abuse" requires that there be harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired.

50. Section 39.01(30) defines "harm" as occurring when one "[i]nfllicts or allows to be inflicted upon the child physical, mental, or emotional injury."

51. In the instant case, no one inflicted any injury on the children left on the buses.

52. "Harm" within the meaning of section 39.01(30) (a) (3) can also occur by "[l]eaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition"

53. The only time either child was alone on a bus occurred on September 20, 2017, when the driver left the bus to retrieve a stapler from her car.

54. Because disciplinary statutes must be strictly construed against the agency seeking to impose discipline, that fact cannot support a finding that there was "harm" within the meaning of section 39.01(30) (a) (3). See Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992). As a result, the incidents on September 20 and 28, 2017, do not amount to "abuse" within the meaning of section 39.01(2).

55. The analysis now turns to whether the incidents amount to "neglect" within the meaning of section 39.01(45). That statute provided that "neglect"

occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided when the health of the child so requires:

(a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or

(b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Neglect of a child includes acts or omissions.

56. The facts associated with the instant case do not fall within the definition of "neglect" set forth in section 39.01(45). That is particularly true given that the statute must be strictly construed in Respondent's favor.

57. Because the incidents on September 20 and 28, 2017, do not amount to "abuse" or "neglect" as defined in section 39.01, the mandatory reporting duty in 39.201(1)(a) was not triggered.

58. In sum, the Department only proved that Respondent committed two Class I violations.

The Alleged Class III Violation

59. The Department alleges that the hole found by its inspectors during the December 13, 2017, inspection amounts to a violation of section 402.305(5), Florida Statutes, and rule 65C-22.001(6).

60. The version of section 402.305(5) in effect during the inspection pertained to "physical facilities" and provided that:

[m]inimum standards shall include requirements for building conditions, indoor play space, outdoor play space, napping space, bathroom facilities, food preparation facilities, outdoor equipment, and indoor equipment. Because of the nature and duration of drop-in child care, outdoor play space and outdoor equipment shall not be required for licensure; however, if such play space and equipment are provided, then the minimum standards shall apply to drop-in child care. With respect to minimum standards for physical facilities of a child care program for school-age children which is operated in a public school facility, the department shall adopt the State Uniform Building Code for Public Educational Facilities Construction as the minimum standards, regardless of the operator of the program. The Legislature intends that if a child care program for school-age children is operated in a public school, the program need not conform to standards for physical

facilities other than the standards adopted by the Commissioner of Education. (emphasis added).

61. The version of rule 65C-22.001(6) in effect during the inspection of the Gibson Center pertains to "child care standards" and mandates that "[c]hild care programs must follow the standards found in the 'Child Care Facility Handbook,' October 2017, incorporated herein by reference."

62. The Department proved by clear and convincing evidence that there was a 6 inch by 12 inch hole in the floor of a classroom in the Gibson Center. However, the Department did not move the standards referenced in section 402.305(5) and rule 65C-22.001(6) into evidence. As a result, the Department has not proven by clear and convincing evidence that Respondent violated section 402.305(5) or rule 65C-22.001(6).

Recommended Penalty

63. Rule 65C-22.010(1)(e)1.a. provided that

[f]or the first and second violation of a Class I standard, [the Department] shall, upon applying the factors in Section 402.310(1), F.S., issue an administrative complaint imposing a fine not less than \$100 nor more than \$500 per day for each violation, and may impose other disciplinary sanctions in addition to the fine.

64. Section 402.310(1)(b) provided that the following factors "shall be considered" in determining the appropriate disciplinary action: (a) the severity of the violation;

(b) corrective measures taken by the licensee; and (c) any previous violations by the licensee.

65. Although Respondent implemented significant and effective corrective actions, given the severity of the violations at issue in the instant case, a \$500.00 fine for each violation and any other disciplinary sanction the Department deems necessary to ensure safety at the Gibson Center (short of licensure revocation or suspension) would be appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families issue a Final Order imposing a \$1,000.00 fine on Respondent.

DONE AND ENTERED this 10th day of September, 2018, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of September, 2018.

ENDNOTES

^{1/} Unless stated otherwise, all statutory references will be to the 2017 version of the Florida Statutes.

^{2/} The provisions of the Florida Administrative Code relevant to the instant case were amended following the incidents of September 20 and 28, 2017. With regard to those incidents, the undersigned will rely on the versions in effect on September 20 and 28, 2017. See generally Anglicklis v. Dep't of Prof'l Reg., 593 So. 2d 298, 300 (Fla. 2d DCA 1992) (holding that the applicants could not be found to have violated a rule that was not in effect at the time of the audit.).

^{3/} Rule 65C-22.001 contained provisions governing the transportation of children, and pertinent provisions of subsection (6) stated the following:

(e) Each child, when transported, must be in an individual factory installed seat belt or federally approved child safety restraint, unless the vehicle is excluded from this requirement by Florida Statute.

(f) When transporting children, staff-to-child ratios must be maintained at all times. The driver may be included in the staff-to-child ratio. Prior to transporting children and upon the vehicle(s) arrival at its destination, the following shall be conducted by the driver(s) of the vehicle(s) used to transport the children:

1. Driver's Log. A log shall be maintained for all children being transported in the vehicle. The log shall be retained for a minimum of four months. The log shall include each child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle.

2. Upon arrival at the destination, the driver of the vehicle shall:

- a. Mark each child off the log as the children depart the vehicle,
 - b. Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and,
 - c. Sign, date and record the driver's log immediately, verifying that all children were accounted for, and that the visual sweep was conducted.
3. Upon arrival at the destination, a second staff member shall:
- a. Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and,
 - b. Sign, date and record the driver's log immediately, verifying that all children were accounted for and that the log is complete.

^{4/} Ms. Jones worked as a teacher's assistant at the Gibson Center. Prior to September 28, 2017, Ms. Jones had not received any training as a bus assistant. There had been training on transportation procedures at the Gibson Center, but Ms. Jones had been unable to attend.

^{5/} On December 14, 2017, Respondent's Board of Directors revised the procedure governing the "loading and unloading of children riding Head Start buses." The following describes the new morning procedure for unloading children at the Gibson Center:

Bus Driver

- Upon unloading at the center, the Bus Driver will call each child by name, placing a 'P' in the bottom half of the AM box on the trip ticket by the child's name as the child exits the bus. An 'A' will be placed in the bottom half of the box for children not picked up.

- The Driver will count the number of children who exited the bus ensuring it is the same number as on the trip ticket.
- The Driver will confirm with the Escort and the ground aide that the number of children on their count matches with the count they also have.
- If there is a discrepancy in the count among the driver and aides, the bus may not move until rectified.
- If discrepancy occurs, driver will do another face-to-face check off and head count.
- Once all children have cleared the bus, the driver will perform a physical inspection and visual sweep of the entire vehicle from the front of the bus to the back, checking all seats, under seats and rows.
- The Driver will sign, date and put the time of return to the center attesting that the bus has had a physical inspection and visual sweep after EACH load on both their trip ticket and the Escort's trip ticket.

Bus Escort

- Once the bus is parked, the Escort will unbuckle each child.
- Children will remain seated until they are called by name according to the order of the Trip Ticket.
- When the child's name is called the child will proceed to the front of the bus to exit.
- As the children exit the bus, escort will place a 'P' on the bottom half of the AM box on the trip ticket by the child's name.

- The Escort will verify on their trip ticket that every child that was marked as they entered the bus and as they exited the bus matches.
- The Escort will count the number of children who exited the bus ensuring it is the same number as on the trip ticket.
- The Escort will confirm with the Driver and the ground aide that the number of children on their count matches with the count they also have.
- If there is a discrepancy in the count among the Escort, Driver and ground aides, the bus may not move until rectified.
- If discrepancy occurs, Escort will do another face-to-face check off and head count.
- Once all children have cleared the bus, and have been passed to the ground aide, the Escort will perform a physical inspection and visual sweep of the entire vehicle from the front of the bus to the back, checking all seats, under seats and rows.
- For the second load when there is no ground aide, the Escort must return to the bus once children are delivered to classrooms to make the sweep of the bus.
- The Escort will sign, date and put the time of return to the center attesting that the bus has had a physical inspection and visual sweep after EACH load on both their copy of the trip ticket and the Driver's copy of the trip ticket.

Ground Aide

- As the children exit the bus, the ground aide will mark off the child with a 'P' in the 'Bus' column of the student checklist.

^{6/} Mr. Thompson testified that he initially learned of the incidents in late November or early December of 2017, during a conversation with one of Respondent's staff members. The staff member had been under the impression that Mr. Thompson was already aware of the incidents.

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.