

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Petitioner,

vs.

Case No. 18-6498

TERRI HALL, d/b/a CHILDREN OF  
LIBERTY CHILD CARE CENTER,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On March 6, 2019, a formal administrative hearing in this case was held in Jacksonville, Florida, before Lawrence P. Stevenson, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David Gregory Tucker, Esquire  
Department of Children and Families  
5920 Arlington Expressway  
Jacksonville, Florida 32211

For Respondent: Terri Hall, pro se  
Terri Hall, d/b/a Children of Liberty  
Child Care Center  
232 East 19th Street  
Jacksonville, Florida 32206

STATEMENT OF THE ISSUES

At issues are whether Respondent committed the violation alleged in the Administrative Complaint; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On November 13, 2018, the Department of Children and Families (the "Department") filed a one-count Administrative Complaint (the "Complaint") against Terri Hall, d/b/a Children of Liberty Child Care Center ("Children of Liberty"). The Complaint stated that during a complaint investigation on August 28, 2019, Department Licensing Counselor Josephine Walker determined that direct supervision of one or more of the children in care was inadequate, based on the following factual allegations:

[A] four (4) year old child C.R. was dropped off at the wrong school (Andrew Robinson) for at least an hour which posed an imminent threat to a child and could or did result in death or serious harm to the health, safety or well-being of a child. The child C.R. was suppose [sic] to be dropped off at North Shore Elementary. The owner/operator [Ms. Hall] admitted to dropping the child C.R. off at the wrong school (Andrew Robinson). The child C.R. was at the wrong school (Andrew Robinson) for at least an hour before the parent was able to be contacted and child was re-united with parent.

The Complaint stated that this was a Class 1 violation of child care licensing standards. It was the facility's first

Class 1 violation within a two-year period. The Complaint stated that the fine imposed for this violation would be \$500.00.

Ms. Hall timely<sup>1/</sup> filed with the Department a letter that challenged the factual allegations of the Complaint and requested a formal administrative hearing. On December 10, 2019, the Department forwarded Ms. Hall's request to the Division of Administrative Hearings for the scheduling and conduct of a formal hearing. The case was initially set for hearing on February 6, 2019. A continuance was granted and the case was rescheduled for hearing on March 6, 2019, on which date it was convened and completed.

At the hearing, the Department presented the testimony of L.S., the mother of the child C.R.; Roberto Garcia, a Department child protective investigator; and Josephine Walker, a Department child care regulations counselor. Mr. Garcia and Ms. Walker were recalled as rebuttal witnesses. The Department's Exhibits A through E were admitted into evidence. Ms. Hall testified on her own behalf and presented the testimony of Joann Jones, a client of Children of Liberty. Ms. Hall's Exhibits 1 through 3 were admitted into evidence.

The one-volume Transcript of the hearing was filed at the Division of Administrative Hearings on March 28, 2019. At the close of the hearing, the parties agreed that they would file

their proposed recommended orders within 20 days of the filing of the transcript. The Department timely filed its Proposed Recommended Order on April 16, 2019. Ms. Hall timely filed her Proposed Recommended Order on April 17, 2019.

All references to the Florida Statutes are to the 2018 edition, unless otherwise noted.

#### FINDINGS OF FACT

1. The Department is authorized to regulate child care facilities pursuant to sections 402.301-402.319, Florida Statutes. Section 402.310 authorizes the Department to take disciplinary action against child care facilities for violations of sections 402.301-402.319.

2. Ms. Hall owns and operates the child care facility doing business as Children of Liberty pursuant to License Number C04DU0101. The facility is located at 232 East 19th Street, Jacksonville, Florida. Ms. Hall testified that she has operated the facility for 21 years.

3. C.R. was born on October 21, 2013. C.R. was four years old on August 27, 2018, the date of the event that precipitated the investigation in this case.

4. L.S. is the mother of C.R. She enrolled C.R. at Children of Liberty from November 2017 through early August 2018.

5. As of August 9, 2018, L.S. withdrew C.R. from Children of Liberty in order to enroll him in "big boy school," i.e., the voluntary pre-kindergarten ("VPK") program at North Shore Elementary School ("North Shore").

6. Because of his age, C.R. was not yet eligible to attend kindergarten in a Florida public school. See § 1003.21(1)(a)2., Fla. Stat. Therefore, C.R. was not a "school-age child" for purposes of Florida Administrative Code Rule 65C-22.008, or the "School-Age Child Care Licensing Handbook" adopted by reference therein. Supervision of C.R. was governed by the Department's "Child Care Facility Handbook," adopted by reference in rule 65C-22.001(6).

7. L.S. is a full-time nursing student during the week and works at Panera on the weekends. She testified that her only support system in Jacksonville is her grandparents, both of whom are in precarious health. L.S. stated that it would be very difficult for her to take C.R. to VPK given her school schedule. She was hesitant to place C.R. on a school bus at his young age. She had hoped that her grandparents would be able to help her get C.R. back and forth from the North Shore VPK program, but her grandfather told her that he was unsure of their ability to do so.

8. After discussing the situation with Ms. Hall, L.S. re-enrolled C.R. at Children of Liberty because Ms. Hall agreed to

take C.R. to and from his VPK program. L.S. would drop off C.R. at Children of Liberty at 7:30 a.m. C.R. would be given breakfast and then be driven to VPK by 8:00 a.m. Ms. Hall then would pick up C.R. in the afternoon and keep him at Children of Liberty until L.S. could pick him up at 4:30 p.m.

9. North Shore requires its students to wear uniforms. The uniform for North Shore is royal blue, navy blue, or white shirts, and black, khaki, or navy blue pants. Parents sometimes send their children to school out of uniform, but the school sends reminders home to inform the parents of the correct uniform colors. Children are not sent home for being out of uniform.

10. C.R.'s first day of being transported to North Shore by Ms. Hall was August 27, 2018. L.S. brought C.R. to Children of Liberty that morning. C.R. was dressed in the uniform for North Shore.

11. L.S. testified that she had made it clear to Ms. Hall that C.R. was attending North Shore. L.S. was taken aback that morning when Ms. Hall mentioned that C.R. would be attending Andrew Robinson Elementary School ("Andrew Robinson"). L.S. corrected Ms. Hall, reminding her that C.R. was going to North Shore. Ms. Hall said, "That's right, that's right."

12. Ms. Hall denied that any such conversation took place and denied that L.S. ever told her that C.R. was attending North

Shore. Ms. Hall testified that when L.S. first broached the subject of C.R.'s needing school transportation, she told L.S. that she drove only to Andrew Robinson. Ms. Hall believed that L.S. understood that Andrew Robinson was the only option for transportation from Children of Liberty to school.

13. Ms. Hall testified that on two occasions prior to August 27, 2018, L.S. asked her to pick C.R. up from school in the afternoon. On both occasions, Ms. Hall drove to Andrew Robinson and did not find C.R. there. She assumed that C.R.'s grandparents had picked him up. Ms. Hall stated that she had no reason to believe she had driven to the wrong school because she never heard a complaint from L.S. about her failure to pick up C.R.

14. C.R.'s enrollment form at Children of Liberty indicated "Andrew Robinson" as the school attended by the child. However, this form was completed by L.S. well before she enrolled the child in VPK. The "Andrew Robinson" notation was made later, apparently by Ms. Hall, and is therefore at best indicative of Ms. Hall's state of mind on August 27, 2018.<sup>2/</sup>

15. Ms. Hall drove another child, K.A., to Andrew Robinson every morning. K.A. was born on January 12, 2013. She was five years old on August 27, 2018, and eligible to attend kindergarten at a Florida public school. Therefore, K.A. met the Department's definition of a "school-age child."

16. On the morning of August 27, 2018, K.A. was wearing the uniform of Andrew Robinson. The Andrew Robinson uniform varies depending on the day of the week, but the uniform shirts are required to bear the school's logo. However, as with North Shore, children are not sent home or disciplined for failing to wear the correct uniform. On this day, the Andrew Robinson uniform was green or pink shirts with khaki, blue, or black pants.

17. Ms. Hall testified that she generally pays little attention to the uniforms the children are wearing. Her experience is that children often go to school out of uniform.

18. The Children of Liberty transportation log for August 27, 2018, shows that C.R. and K.A. left the child care facility at 8:15 a.m. It is undisputed that Ms. Hall was driving the children in a van.

19. Billing records for Ms. Hall's cell phone show that she phoned or attempted to phone L.S. at 8:15 a.m. on August 27, 2018. The call lasted one minute. Ms. Hall phoned or attempted to phone L.S. again at 8:16 a.m. This call lasted two minutes.

20. Ms. Hall had no explanation for why she phoned L.S. at the precise time she was also driving C.R. to school. She speculated that she must have been returning a call from L.S., but produced no documentation to support her theory.



21. The Children of Liberty transportation log indicates that Ms. Hall dropped off C.R. and K.A. at Andrew Robinson at 8:18 a.m. Ms. Hall testified that she pulled up at the front of the school, made sure that the school patrol and teachers were at the drop-off point, and dropped off the children. Ms. Hall stated that C.R. told her that he knew where to go. She did not personally hand the child off to responsible school personnel at the drop-off point.

22. Ms. Hall's practice of dropping off the students was acceptable under Department standards for K.A., who was a school-age child. See Section 2.5.2, "Driver Requirements," of the School-Age Child Care Licensing Handbook.

23. However, C.R. was not a school-age child. Ms. Hall was required by Department standards to directly place C.R. into the care of an authorized individual from the school. See Section 2.4.1E of the Child Care Facility Handbook.

24. Ms. Hall claimed that Department rules prevented her from leaving the van to ensure that an authorized individual took over supervision of C.R. However, the Department standard referenced by Ms. Hall requires only that the correct staff-to-child ratio be maintained during transportation. See Section 2.5.4.C of the Child Care Facility Handbook. Because Ms. Hall was dropping off both of the children in her van, nothing prevented her from exiting the van to make sure that C.R. was

received by an authorized individual at the school. Had Ms. Hall escorted C.R. onto the Andrew Robinson campus, she likely would have learned the child was not enrolled at that school.

25. The school patrol at Andrew Robinson realized that C.R. was not a student there. They brought C.R. to school staff, who took him to the main office. They looked through the child's backpack and found paperwork indicating C.R. was enrolled at North Shore. They contacted their counterparts at North Shore, who in turn contacted C.R.'s family.

26. L.S. testified that she learned of the situation from her grandmother, who had received the call from North Shore. She was not sure why they called her grandmother first, but shortly thereafter she got a call from the principal of North Shore.

27. L.S. was informed that the school could not undertake the liability of transporting C.R. and that she would have to pick him up at Andrew Robinson and deliver him to North Shore. She drove to Andrew Robinson and picked up C.R., then headed to Children of Liberty to find out why Ms. Hall dropped her child off at the wrong school. C.R. was at the wrong school for at least an hour before his mother picked him up.

28. Ms. Hall testified that L.S. cursed and threatened her bodily harm upon her arrival at Children of Liberty, although no

physical altercation took place. L.S. conceded that she was very angry and used inappropriate language, though she said much of her anger was due to Ms. Hall's refusal to take responsibility for taking C.R. to the wrong school.

29. L.S. never took C.R. back to Children of Liberty after August 27, 2018.

30. Ms. Hall testified that she believed C.R. was enrolled at Andrew Robinson. Her phone calls to L.S. during the drive to the school raise the question of whether she was in doubt about the matter. Her alteration of C.R.'s enrollment form, and her unlikely story about her two attempts to pick up C.R. at Andrew Robinson, also call into question her good faith belief that the child attended Andrew Robinson.

31. As she stated repeatedly, Ms. Hall had no reason to drop off the child at the wrong school. Nonetheless, Ms. Hall took on the responsibility for C.R.'s safe transport to and from his VPK. Even giving full credit to her good intentions does not change the fact that she left C.R. at the wrong school and, in so doing, failed to supervise the child in accordance with the standards set forth in the Department's rules and Child Care Facility Handbook.

CONCLUSIONS OF LAW

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

33. The Department has the burden of establishing the grounds for discipline against Respondent's license by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998).

34. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116 n.5 (Fla. 1st DCA 1989), the Court defined clear and convincing evidence as follows:

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 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 of 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).

35. Judge Sharp, in her dissenting opinion in Walker v. Department of Business and Professional Regulation, 705 So. 2d 652, 655 (Fla. 5th DCA 1998) (Sharp, J., dissenting), reviewed recent pronouncements on clear and convincing evidence:

[C]lear and convincing evidence requires more proof than preponderance of evidence, but less than beyond a reasonable doubt. In re Inquiry Concerning a Judge re Graziano, 696 So. 2d 744 (Fla. 1997). It is an intermediate level of proof that entails both qualitative and quantitative [sic] elements. In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995), cert. denied, 516 U.S. 1051, 116 S. Ct. 719, 133 L. Ed. 2d 672 (1996). The sum total of evidence must be sufficient to convince the trier of fact without any hesitancy. Id. It must produce in the mind of the factfinder a firm belief or conviction as to the truth of the allegations sought to be established. Inquiry Concerning Davey, 645 So. 2d 398, 404 (Fla. 1994).

36. At all times material to this case, Respondent was a provider of child care, pursuant to section 402.302, which provides the following relevant definition:

(1) "Child care" means the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.

(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 . . . .

37. Section 402.305(1) directs the Department to "establish licensing standards that each licensed child care

facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility."

38. Section 402.310(1) provides, in relevant part:

(c) The department shall adopt rules to:

1. Establish the grounds under which the department may deny, suspend, or revoke a license or registration or place a licensee or registrant on probation status for violations of ss. 402.301-402.319.

2. Establish a uniform system of procedures to impose disciplinary sanctions for violations of ss. 402.301-402.319. The uniform system of procedures must provide for the consistent application of disciplinary actions across districts and a progressively increasing level of penalties from pre-disciplinary actions, such as efforts to assist licensees or registrants to correct the statutory or regulatory violations, and to severe disciplinary sanctions for actions that jeopardize the health and safety of children, such as for the deliberate misuse of medications . . . .

39. Pursuant to section 402.310(1)(c), the Department has promulgated chapter 65C-22, "Child Care Standards."

40. Rule 65C-22.001(5)(a) provides:

(5) Supervision.

(a) Children that are delivered to a location offsite from the facility by someone other than the parent or guardian become the responsibility of the child care program at that designated location and time as agreed upon by the provider and the parent/guardian. The provider is responsible for the supervision of the child

upon the child's arrival at the designated point. If a child is not present at the time of pick-up, prior to leaving the

designated location, child care personnel must verify the whereabouts of the child.

41. Rule 65C-22.010(1) (e) provides:

(1) Definitions.

\* \* \*

(e) "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](http://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.

42. Section 1.2 of the School-Age Child Care Licensing Handbook defines "School-Age Child" as "a child who is at least 5 years of age by September 1st of the beginning of the school year and who attends grades kindergarten or above." As of August 27, 2018, C.R. was not five years of age and was attending VPK, not kindergarten. Therefore, the transportation provisions of the Child Care Facility Handbook were applicable to Ms. Hall's transport of C.R.

43. Section 1.2 of the Child Care Facility Handbook includes the following definition:

"Direct supervision" means actively watching and directing children's activities within the same room or designated outdoor play area, during transportation, any activity outside of the facility, and responding to the needs of each child while in care.

44. Section 2.4.1E of the Child Care Facility Handbook provides:

A [child care] program is responsible for the supervision of a child until an authorized individual retrieves the child from the program. A child shall not be released to any person other than the person(s) authorized or in the manner authorized in writing by the custodial



parent or legal guardians. All individuals authorized to pick up a child must be identified in writing prior to release by the custodial parent or legal guardian to the program, and the program must verify the individual picking up the child is authorized by using a picture form of identification. Each child transported must be dropped at the designated location as agreed upon by the provider and the custodial parent/legal guardian and released to an authorized individual.

45. The Department's CF-FSP Form 5316, "Child Care Facility Standards Classification Summary," adopted by reference in rule 65C-22.010(1)(e), provides that the failure of a driver to drop off a child at the appropriate location in accordance with Section 2.4.1E of the Child Care Facility Handbook is a Class 1 violation. There is no question as to the serious potential harm involved in dropping off a four-year-old child to wander the grounds of a strange school without supervision.

46. Ms. Hall dropped off C.R. at the wrong location. Ms. Hall should not have "dropped off" C.R. at all. She was required to release the child to an authorized individual at the school.

47. Ms. Hall's only defense was to attempt to shift the blame onto L.S., the mother of C.R. However, even if L.S. failed to clarify that C.R. was enrolled at North Shore, and even if Ms. Hall were completely justified in believing C.R. was enrolled at Andrew Robinson, the child would in all probability

not have been left at the wrong school if Ms. Hall had gotten out of her van and sought to place C.R. into the care of an authorized individual at Andrew Robinson.

48. The Department has established the allegations of the Complaint by clear and convincing evidence. The inadequate supervision in this matter constituted a Class 1 violation as specified in CF-FSP Form 5316.

49. This is the first violation found against Ms. Hall in the 21 years she has operated Children of Liberty. Rule 65C-22.010(2)(a) provides that enforcement of disciplinary sanctions for all Class 1 violations should be progressive. Rule 65C-22.010(2)(d)1.a. provides that for a first and second violation of a Class 1 standard, the fine imposed should be not less than \$100.00 nor more than \$500.00. Balancing the potential harm of this offense against Ms. Hall's long history of compliance with Department standards, the Department should assess a fine of \$250.00 in this case.

#### 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 finding that Respondent provided inadequate supervision in violation of Section 2.4.1E of the Child Care Facility Handbook, and imposing a fine of \$250.00 upon Terri Hall, d/b/a Children of Liberty Child Care Center.

DONE AND ENTERED this 1st day of May, 2019, in Tallahassee,  
Leon County, Florida.

*Lawrence P. Stevenson*

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LAWRENCE P. STEVENSON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of May, 2019.

ENDNOTES

<sup>1/</sup> Ms. Hall's letter requesting a hearing was undated, but the Department has not contested its timeliness.

<sup>2/</sup> The enrollment date on the form was also clumsily altered from "12/12/17" to "12/12/18." There is no explanation as to why Ms. Hall would attempt to alter C.R.'s enrollment date, but the alteration calls into question whether the "Andrew Robinson" notation was made contemporaneously by Ms. Hall or was added after this controversy erupted.

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.