

FILED

SEP 05 2019

**STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES**

DCF Department Clerk

**DEPARTMENT OF CHILDREN AND
FAMILIES,**

**Petitioner,
v.**

**CASE NOS. 18-6799 and 19-0698
RENDITION NO. DCF-19-152-FO**

**REID'S EDUCATIONAL CHILD CARE
CENTRE, LLC, d/b/a REID'S
EDUCATIONAL CHILD CARE CENTER,**

Respondent.

_____ /

FINAL ORDER

THIS CAUSE is before me for entry of a final order concerning the Department's Administrative Complaints dated November 16, 2018, and January 11, 2019, imposing fines totaling \$3,260 and revocation of their probationary license for committing Class I, II, and III violations of child care facility licensing standards. The Recommended Order, dated June 5, 2019, concluded the Respondent committed the violations as alleged in the Administrative Complaints, upheld the fines totaling \$3,260, and further recommended revocation of the probationary license but only for the January 11, 2019, Administrative Complaint. The Recommended Order held that the revocation of the probationary license was not appropriate as to the November 16, 2018, Administrative Complaint. Neither party filed exceptions to the Recommended Order.

Accordingly, the Recommended Order is approved and adopted, and the Administrative Complaints dated November 16, 2018, and January 11, 2019, are **AFFIRMED** in part.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 5 day of September, 2019.



Chad Poppell, Secretary

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY A PARTY PUSUANT 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

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Lacey Kantor, Agency Clerk

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

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case Nos. 18-6799
19-0698

REID'S EDUCATIONAL CHILD CARE
CENTRE, LLC, d/b/a REID'S
EDUCATIONAL CHILD CARE CENTER,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on April 10, 2019, via video teleconference in Tallahassee and Jacksonville, Florida, before Administrative Law Judge Suzanne Van Wyk of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Roger L.D. Williams, Esquire
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Jacksonville, Florida 32231-0083

For Respondent: Nickesha Reid, pro se
Reid's Educational Child Care Center
10658 Biscayne Boulevard
Jacksonville, Florida 32218

STATEMENT OF THE ISSUES

Whether Respondent committed the child care licensing violations alleged in the Administrative Complaints; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

The Department of Children and Families ("Department") issued an Administrative Complaint dated November 16, 2018, charging Respondent with a Class II violation of child care facility licensing standards, imposing a monetary fine of \$2,925 against Respondent, and seeking revocation of Respondent's child care license. Respondent timely filed a request for formal administrative hearing to contest the Department's decision.

The case was referred to the Division of Administrative Hearings ("the Division") on December 28, 2018, assigned Case No. 18-6799, and scheduled for final hearing on April 10, 2019.

The Department issued a second Administrative Complaint against Respondent on January 11, 2019, charging Respondent with Class I, II, and III violations of child care licensing standards, imposing a monetary fine of \$335 against Respondent, and seeking revocation of Respondent's child care license.

The case was referred to the Division on February 8, 2019, and assigned Case No. 19-0698. The two cases were consolidated on February 25, 2019.

The final hearing commenced as scheduled on April 10, 2019. At the final hearing, the Department offered the testimony of the following witnesses: Carl Smith, Child Care Supervisor; Hannah McGlothlin, Family Services Counselor; Cassandro Virgo, Licensing Counselor; Virginia Ritter; Palecia Crawford-Maddox; and Carrie Gaouette. Petitioner introduced Exhibits P1 through P3, P5, P6, P9 through P11, and P13 through P15, which were admitted in evidence.

Respondent offered the testimony of its Director, Nickesha Reid; Grady Dixon, Jr.; and Child Care Protective Investigator Roberto Garcia. Respondent offered Exhibits R2(a) and (b), R3 through R5, and R11, which were admitted in evidence.

The two-volume Transcript of the hearing was filed with the Division on May 8, 2019.^{1/} The Department timely filed a Proposed Recommended Order on May 13, 2019, which was considered in the preparation of this Recommended Order. On May 30, 2019, Respondent filed a Motion for Extension of Time to file a proposed recommended order, which was denied.

Except as otherwise noted, all references herein to Florida Statutes are to the 2018 codification.

FINDINGS OF FACT

1. The Department is responsible for licensing and monitoring "child care facilities," as that term is defined in section 402.302(2), Florida Statutes.

2. Reid's Educational Child Care Centre, LLC, d/b/a Reid's Educational Child Care Center ("Reid's" or "the facility") is a child care facility licensed by the Department. Reid's is owned and operated by Nickesha Reid and is located at 10658 Biscayne Boulevard in Jacksonville, Florida.

License Violation History

3. Reid's has a dizzying history of violating Department child care licensing standards. At final hearing, Department investigators testified that they had to rely upon the Department's matrix, which documents a facility's history of violations by date and class, as well as the penalties imposed, and whether monetary penalties have been paid. The matrix allows Department staff to cross-reference prior cases to identify repeated violations of the same standard. For purposes of this Recommended Order, the undersigned has included only the violations documented within the two-year period preceding the consolidated administrative complaints at issue in this case.

4. On December 14, 2017, Reid's was cited for lack of a Level II background screening ("background screening") for Ms. Reid.^{2/}

5. During a renewal inspection on July 11, 2018, Petitioner cited Reid's for the following violations of child care licensing standards: (1) the child-to-teacher ratio for mixed age ranges including a child under the age of one,

(2) direct supervision of children in its care, and
(3) background screening for Ms. Reid. Each of these violations is a Class II violation of child care licensing standards.

6. One of the most egregious violations cited during the July 11, 2018 inspection was a 10-year-old child in charge of the infant classroom. Moreover, the infant classroom was out of ratio, with the 10-year-old "teacher" in charge of five infants, rather than the required ratio of 1:4.

7. While Department staff was on-site at the facility, Ms. Reid responded to the Department's calls, appeared at the facility, and attempted to address the ratio violation by personally covering the infant room. However, Ms. Reid still had no background screening documentation, which led to the citation for violation of the background screening requirement.

8. The Department filed an Administrative Complaint against Reid's on July 25, 2018, solely on the background screening violation. In the complaint, the Department imposed a fine of \$50 for this Class II violation, the second violation of the same child care licensing standard within a two-year period.

9. On July 23, 2018, during a complaint investigation,^{3/} Petitioner cited Reid's for the following violations of child care licensing standards: (1) teacher-to-child ratios, (2) inadequate supervision, (3) potentially harmful items accessible to children in care, and (4) background screening for

child care personnel, all of which are Class II violations. In addition, the Department cited Reid's with a Class I violation for serious health hazard conditions.

10. Pursuant to the administrative complaint issued August 20, 2018 (based on the July 23, 2018 complaint inspection), Reid's was placed on a probationary status for six months. The terms of the probation were as follows:

a. The facility shall incur no Class I violations during the probationary period.

b. The facility shall incur no Ratio, Background Screening or Supervision violations during the probationary period.

c. The facility shall incur no Facility Environment violations during the probationary period. The facility must always maintain a safe and clean environment.

d. Non-active individuals listed in the Corporation cannot be involved in the day-to-day operation or present around children at any time.

11. The administrative complaint provided, "**Failure to comply with these conditions may result in revocation of Respondent's license.**"

12. The Department's findings in the administrative complaint became final on October 24, 2018, when Reid's request for hearing on the administrative complaint was dismissed as untimely. The Department's final order was not appealed.

13. Reid's probationary status was effective October 24, 2018, through April 22, 2019, and required monthly Department inspections.

14. In addition, on August 20, 2018, Petitioner issued Reid's a provisional license, effective August 21, 2018, through February 16, 2019, because Reid's then-director, Delaria Blake, did not have the director credentials required by section 402.305(2)(f).

15. Failure to maintain a credentialed director is a Class II violation of the Department's child care licensing standards.

16. The provisional license was resolved shortly after issuance when Reid's hired Tracee Creighton, a properly credentialed director, who served as Reid's interim director through September 2018.

November 16, 2018 Administrative Complaint

17. The November 16, 2018 Administrative Complaint was initiated pursuant to another complaint investigation,^{4/} conducted by Child Care Supervisor, Hannah McGlothlin, on September 13, 2018.

Background Screening

18. When Ms. McGlothlin arrived at Reid's, she was greeted by Grady Dixon, the staff member in charge. Mr. Dixon is also Ms. Reid's husband and Respondent's registered agent.

Ms. McGlothlin observed that Mr. Dixon was supervising two employees on-site.

19. Upon review of the employee files, Ms. McGlothlin determined that Mr. Dixon became employed at Reid's on August 2, 2018, but that his required background screening was not completed until August 3, 2018. When asked by Ms. McGlothlin, Mr. Dixon verified August 2, 2018, as his date of employment.

20. At final hearing, Mr. Dixon maintained there was an error in his personnel file, and that he did not become employed at Reid's until August 3, 2018. Mr. Dixon said he made a mistake in writing August 2, 2018, on his personnel form. Mr. Dixon's testimony was not persuasive.

21. Mr. Dixon became employed by Reid's as "other personnel" on August 2, 2018.

22. Mr. Dixon's required background screening was not complete and on file at the facility until August 3, 2018.

23. On July 25, 2018, Ms. Reid completed a Non-Active Member Affidavit for the Department, in which she swore that she had "a non-active role" at Reid's, meaning she is an "individual who does not interact with the children, does not go on-site of the program operation during operating hours, and whose role does not involve the day-to-day operation of the child care program."

24. Further, the affidavit provided that Ms. Reid understood she must immediately notify the Department at any time in the future her role changed to an active role and "complete a background screening" as provided by statute.

25. During Ms. McGlothlin's field visit on September 13, 2018, she determined that Ms. Reid's role had become that of an active member because she was going on-site during operating hours, had contact with children at Reid's, and was involved in day-to-day business of Reid's.

26. As part of her investigation, Ms. McGlothlin spoke with a parent who stated "it is always [Ms. Reid] and [Mr. Dixon] at the facility" when she picks up her child in the afternoons.

27. Virginia Ritter is the parent of a child formerly enrolled at Reid's. Ms. Ritter testified that she met Ms. Reid at the facility in June 2018 when she first enrolled her son at Reid's. Ms. Ritter further testified that, although she paid her monthly tuition online, she met with Ms. Reid at the facility at least twice between June 2018 and December 2018 to address billing issues--once when she changed the number of days her son was attending, and once when she withdrew him.

28. Ms. Reid denied meeting with Ms. Ritter at the facility.

29. The Department alleged that Ms. Reid was further involved in the day-to-day activities of the facility by corresponding with parents and the Department via electronic mail.

30. Respondent introduced an undated email from reidseducationalchildcare@gmail.com to Ms. Ritter and John Kennedy^{5/} which reads, as follows:

Good morning,

We are contacted Emmett parents because he has not been at school for the last week and no one has advised us of what is going on. [sic] to his mother and no responded. Can we please have an update.

31. Although the email was not signed by Ms. Reid, or any employee of Reid's, Ms. Ritter testified, credibly, that she knew the email was from Ms. Reid because it reads consistently with Ms. Reid's speech patterns.

32. The email reads consistently with Ms. Reid's speech patterns exhibited at final hearing.

33. On Monday, December 31, 2018, Ms. Ritter replied to reidseducationalchildcare@gmail.com, informing Reid's that her son would not be returning to the facility and the reasons therefor.

34. Ms. Ritter further testified that Ms. Reid was often on-site when she picked up her son from the center on Fridays prior to her withdrawal of him in December 2018.

35. Ms. Reid prepares meals at home and delivers them to the facility to be served to the children. She testified that she does not enter the facility to deliver the meals, but rather leaves them at the door outside the facility.

36. Ms. Reid's testimony was contradicted by Carrie Gaouette, a former employee, who testified, credibly, that Ms. Reid delivered meals to the front desk at the facility on a daily basis.

37. In addition to the foregoing evidence of Ms. Reid's involvement in the day-to-day business of the facility, Ms. Reid has entered the facility during operating hours, at times since executing her Non-Active Member Affidavit, to check mail and collect payments.

38. During field visits by Department staff on September 13 and October 17, 2018, Ms. Reid contacted and spoke to Department staff to address the pending citations.

39. Subsequent to signing the Non-Active Owner Affidavit, Ms. Reid has been on-site at the facility during operating hours, and has been actively involved in the day-to-day operation of the center, including meal preparation, interacting with parents for enrollment and changes thereto, addressing billing issues, and intervening in licensing issues.

40. As an active owner, Ms. Reid is required to undergo background screening.

41. During the complaint investigation on September 13, 2019, Ms. McGlothlin placed Reid's on notice of the background screening violation and set a due date for compliance by November 7, 2018.

42. At a subsequent inspection on December 27, 2018, Ms. McGlothlin determined that the background screening violation for Ms. Reid had not been corrected.

43. The Department proved the August 20, 2018 Administrative Complaint allegations of background screening violations with regard to both Mr. Dixon and Ms. Reid.

Penalties

44. The background screening requirement is a Class II child care licensing standard.

45. Reid's was previously cited for failure to meet background screening requirement on December 17, 2017, July 11, 2018, and July 23, 2018.

46. The August 20, 2018 Administrative Complaint is Reid's fourth citation for background screening violations within a two-year period.

47. According to Department rule, the monetary penalty for the fourth violation of the same Class II child care licensing standard is \$75 per day for each such violation. See Fla. Admin. Code R. 65C-22.010.

48. The Department seeks to impose a fine of \$2,925 against the facility for this violation, calculated at \$75 per day for 39 days--from September 13, 2018 (the violation notice date), through November 7, 2018 (the corrective action date).

49. The Department correctly calculated the monetary penalty to be imposed against Reid's for the background screening violations.

50. The Department also seeks revocation of Reid's child care license based on the background screening violation. In the Administrative Complaint, the Department alleges, as follows:

Provider is currently on Probation for Facility Environment of which the terms were not to incur any Background Screening and Non-Active Individuals listed in the Corporation cannot be involved in the day-to-day operation or present around children at any time. Provider has failed to comply with the terms of the Probation therefor their license is being Revoked.

51. The Department's allegation is unfounded. Reid's probationary status was effective October 24, 2018, but the violation was cited on October 20, 2018. This violation of the background screening requirement was not a violation of the terms of the probation.

January 11, 2019 Administrative Complaint

52. Because Reid's was placed on probation, it was required to undergo monthly inspections.

53. Ms. McGlothlin conducted a routine inspection of the facility on December 27, 2018.

Direct Supervision

54. Upon her arrival at the facility, Ms. McGlothlin was greeted at the door by Carrie Gaouette, the only child care personnel on-site. When Ms. Gaouette opened the entry door, she closed the door leading to the classrooms, effectively blocking her view of the children and leaving them with no supervision.

55. Ms. Gaouette explained that she shut the door to the classroom to prevent children from running out the front door while it was open to allow Ms. McGlothlin to enter.

56. Florida Administrative Code Rule 65C-22.001(5)(b) provides, "[d]irect supervision means actively watching and directing children's activities with the same room or outdoor play area . . . and responding to the needs of each child while in care." The rule requires child care personnel to "be present with [their assigned] group of children at all times."

57. For the brief time Ms. Gaouette opened the door to greet and allow Ms. McGlothlin entry to the facility, Ms. Gaouette was not in the same room with, and not directly supervising, the children in her care.

58. The direct supervision requirement is a Class II standard.

59. Reid's was previously cited for violating the direct supervision standard on July 11 and 23, 2018.

60. According to Department rule, the monetary penalty for the third violation of the same Class II child care licensing standard is \$60 per day for each such violation. See Fla. Admin. Code R. 65C-22.010.

61. In the Administrative Complaint, Department seeks to impose a monetary penalty of \$60 for one day.

62. The Department correctly calculated the fine to be imposed for this violation of the direct supervision standard.

Child Health Examination Forms

63. During her inspection, Ms. McGlothlin reviewed the records of all 11 children enrolled at the facility on that date. Ms. McGlothlin found that Reid's did not have a current Student Health Examination form DH 3040 ("health examination form") on file for child M.S.

64. Pursuant to rule 65C-22.001(7)(q), Reid's is responsible for obtaining a complete and properly executed health examination form for each child in its care.

65. Reid's violated the child care licensing standard when it failed to maintain a current health examination form for child M.S.

66. The requirement to maintain child health examination forms is a Class III standard.

67. Reid's was previously cited for violation of this standard on July 11 and November 20, 2018. This violation is the third violation of the same Class III standard within a two-year period.

68. According to Department rule, the monetary penalty for the third violation of the same Class III child care licensing standard is \$25 per day for each such violation. See Fla. Admin. Code R. 65C-22.010.

69. In the Administrative Complaint, the Department seeks to impose a monetary fine of \$25 against Reid's for this violation of child care licensing standards.

70. The Department correctly calculated the fine to be imposed on Respondent for this violation of the child health examination form standard.

False Statement/Information

71. Pursuant to Department rule, Reid's is required to have at least one staff member on-site at all hours of operation with First Aid/CPR training, verified by a current, valid First Aid/CPR card. See Fla. Admin. Code R. 65C-22.001(6).

72. Ms. Gaouette was a new employee, and the only child care provider on-site, during Ms. McGlothlin's inspection on December 27, 2018.

73. When Ms. McGlothlin returned to the office on December 27, 2018, she reviewed her inspection report and

realized that she had not checked the files to ensure that Ms. Gaouette had a valid First Aid/CPR card.

74. Ms. McGlothlin both called and emailed Reid's on the afternoon of December 27, 2018, to obtain a First Aid/CPR card for Ms. Gaouette; however, she was unable to reach anyone at the facility. No one from the facility either returned her calls or responded to her emails on December 27, 2018.

75. On the morning of December 28, 2018, Mr. Dixon, who was the staff member in charge, read Ms. McGlothlin's emails and reviewed her telephone messages requesting a First Aid/CPR certificate for Ms. Gaouette. Mr. Dixon reviewed Ms. Gaouette's personnel file and found no First Aid/CPR certificate.

76. Ms. McGlothlin returned to Reid's on December 28, 2018, and requested Ms. Gaouette's First Aid/CPR card from Mr. Dixon.

77. Mr. Dixon provided Ms. McGlothlin with a First Aid/CPR card purporting to certify that Ms. Gaouette completed the required training on November 6, 2018, from instructor Palecia Crawford.

78. The space on the card for the trainee's name had been "whited out" and Ms. Gaouette's name written in. The spaces for the date of the training and date of expiration were also "whited out" and the date "Nov/6/2018" written in for the date

of training, and "Nov/6/2020" written in for the date of expiration.

79. Ms. Crawford did not train Ms. Gauoette on November 6, 2018, or on any other date prior to December 28, 2018.

80. Ms. Gaouette had not received First Aid/CPR training from any entity prior to December 28, 2018.

81. Mr. Dixon, on behalf of Reid's, presented Ms. McGlothlin with falsified documentation of Ms. Gauoette's First Aid/CPR training.

82. At final hearing, Mr. Dixon denied that the First Aid/CPR certificate provided to Ms. McGlothlin was Ms. Gaouette's certification. Instead, he testified that, on December 28, 2018, he was unable to locate a certificate in Ms. Gaouette's personnel file, so he provided Ms. McGlothlin with a First Aid/CPR card from the facility's "demo file," a file set up as an example of what a complete employee file should contain.

83. Mr. Dixon's testimony was not credible. Mr. Dixon did not represent to Ms. McGlothlin when he provided the certificate to her that it was just an example from a demo file. If it was just an example, there was no reason to change the name and date of the training on the original card. The original, or for that matter, a copy of, the trainee's card would be sufficient for an example in a "demo file."

84. Mr. Dixon had both motive and opportunity to falsify a First Aid/CPR training card for Ms. Gaouette. Mr. Dixon admitted on cross-examination that it would have been easier to just tell Ms. McGlothlin that the facility did not have a valid First Aid/CPR certificate on file for Ms. Gaouette.

85. Child care personnel providing fraudulent information related to the child care facility to a licensing authority, that could result in the death or serious harm to the health, safety, or well-being of a child is a violation of a Class I licensing standard.

Penalties

86. Class I violations of Department rules are described as "the most serious in nature, [which] pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child." Fla. Admin. Code R. 65C-22.010(1)(d)1.

87. Rule 65C-22.010(2)(e) provides appropriate disciplinary sanctions to be imposed for Class I violations, as follows:

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., issue an administrative complaint imposing a fine of not less than \$100 nor more than \$500 per day for each violation, and may impose other disciplinary sanctions in addition to the fine.

88. Section 402.310(1)(b) provides:

In determining the appropriate disciplinary action to be taken for a violation as provided in paragraph (a), the following factors shall be considered:

1. The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of ss. 401.301-402.319 have been violated.
2. Actions taken by the licensee or registrant to correct the violation or remedy complaints.
3. Any previous violations of the licensee or registrant.

89. In the Administrative Complaint, the Department seeks to impose a fine of \$250 and to revoke Reid's child care license.

90. This violation is severe. Significant harm could befall a child left under the care of personnel who have not had basic CPR training.

91. This violation is the facility's second Class I violation within a two-year period.

92. This violation occurred during the facility's probationary period, which commenced on October 24, 2018. The terms of probation prohibited the facility from incurring any Class I violations during the probationary period.

93. The Department has authority to revoke Reid's license based on this violation of its probationary terms.

94. Ms. Gaouette received First Aid/CPR training on January 2, 2019.

95. The facility has a lengthy and dizzying history of violations. Many of the monetary penalties imposed for past violations remain unpaid.

96. Throughout the final hearing, Ms. Reid refused to accept responsibility for the violations documented in the subject, as well as previous, administrative complaints. She attacked the credibility of Department witnesses and demonstrated a complete lack of respect for the Department's authority.

97. Despite Ms. Reid's unwillingness, or inability, to complete the required background screening, she has failed to comply with the non-active owner requirements and place competent, qualified, employees in charge of the day-to-day operations of the facility.

CONCLUSIONS OF LAW

98. The Division of Administrative Hearings has jurisdiction over this matter, pursuant to section 120.57, Florida Statutes.

99. In cases where a state agency alleges that a licensee engaged in wrongdoing, the burden is on the Department to prove

the wrongdoing. Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d 932, 934 (Fla. 1996). Factual findings based on record evidence must be made indicating how the alleged conduct violates the statutes or rules or otherwise justifies the proposed sanctions. Mayes v. Dep't of Child. & Fam. Servs., 801 So. 2d 980, 982 (Fla. 1st DCA 2001).

100. The standard of proof in this case is clear and convincing evidence because the Department is seeking to discipline Reid's and take action detrimental to Reid's license, thus making the matter penal in nature. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

101. The clear and convincing standard has been described as follows:

[C]lear 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.

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

November 16, 2018 Administrative Complaint

102. As to the November 2018 Administrative Complaint, the Department proved, by clear and convincing evidence, the

background screening violations for both Ms. Reid and Mr. Dixon. The Department correctly calculated a monetary fine of \$2,925 to be imposed for these Class II violations, pursuant to the Department's child care licensing standards and rule 65C-22.010.

103. However, the Department did not prove by clear and convincing evidence that revocation was appropriate because Reid's probationary status was not in effect at the time the Class II violations were cited.

January 11, 2019 Administrative Complaint

104. As to the January 11, 2019 Administrative Complaint, Respondent proved by clear and convincing evidence that Respondent violated Class I, II, and III child care licensing standards--providing falsified information related to the child care facility to Department personnel, failing to directly supervise children in Reid's care, and missing student health examination forms, respectively.

105. The Department correctly calculated the monetary penalty of \$335 for the violations, pursuant to rule 65C-22.010.

106. Finally, the Department proved by clear and convincing evidence that revocation of Reid's license is appropriate because Reid's violated the terms of its probationary license by incurring a Class I violation and a direct supervision violation during the probationary period. Further, the fact that this violation was the facility's second

Class I violation of child care licensing standards within a two-year period, coupled with the severity of the Class I violation, is sufficient grounds for revocation of the license, pursuant to rule 65C-22.010(2)(d).

RECOMMENDATION

Upon consideration of the evidence presented at final hearing, and based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by Respondent, Department of Children and Families, finding Reid's Educational Child Care Centre, LLC, d/b/a Reids, Educational Child Care Center, committed Class I, II, and III violations of child care facility licensing standards, imposing a monetary penalty in the amount of \$3,260, and revoking Reid's child care facility license.

DONE AND ENTERED this 5th day of June, 2019, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of June, 2019.

ENDNOTES

^{1/} The Department filed a Notice of Filing Hearing Transcript on May 2, 2019, but the Transcript was not filed with the Division until May 8, 2019. Based on the May 8, 2019 filing date, the parties' proposed recommended orders were due on or before May 20, 2019.

^{2/} Ms. Reid initially completed background screening on July 2, 2013, which would have been valid through July 2018, but a 2017 statutory change required new screening for individuals in her position.

^{3/} A complaint investigation was initiated in response to an anonymous complaint about the facility received by the Department.

^{4/} A complaint investigation was initiated in response to another complaint received by the Department on September 12, 2018.

^{5/} Mr. Kennedy is the father of Ms. Ritter's son, who was previously enrolled at the facility.

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.