

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioner,

vs.

Case No. 19-2954

KAPIL AND KATRINA PURI,

Respondents.

RECOMMENDED ORDER

On December 10 and 11, 2019, Yolonda Y. Green, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (“Division”), conducted a hearing pursuant to section 120.57(1), Florida Statutes (2019), in Destin, Florida.

APPEARANCES

For Petitioner: Kathryn Marie Brown, Esquire
Department of Children and Families
160 Governmental Center
Pensacola, Florida 32502-5734

For Respondent: Dana C. Matthews, II, Esquire
Christa P. Diviney, Esquire
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2930 West County Highway 30A
Santa Rosa Beach, Florida 32459

STATEMENT OF THE ISSUE

The issue in this case is whether Respondents’ foster home license should be revoked or not renewed.

PRELIMINARY STATEMENT

By letter dated April 17, 2019 ("Notice Letter"), the Department of Children and Families ("Petitioner" or "DCF") notified Respondents of DCF's intent to revoke or deny renewal of their foster home license.

The Notice Letter states, in part, the following reasons for revocation of Respondents' foster home license:

In September of 2018 it was reported to the Department that you were restraining a child in your care using a "full nelson" restraint because of the child's actions. You were told that you could not restrain "the foster child and the extreme dangers involved in doing so. After being advised not to restrain the child by a child protective investigator and the FFN unit manager, you continued to say that you were going to use the restraint and restrained the child again. You failed to seek the assistance of the child's case manager or therapist to appropriately handle behavior issues and failed to follow instructions given to you by the FFN unit manager as required.

You instructed a caregiver to withhold food as discipline, if a child misbehaved. There was also an incident in which the child in your care refused to get in the bathtub and you were heard cursing and threatening the child to get into the bathtub.

When a child transitioned from your home to another caregiver's home, you left the child's confidential records in a public location, instead of making certain the new caregiver directly took possession of them. You also provided a bag of dirty clothes, and clothing too small for the child to the new caregiver by showing up at the child's doctor's appointment.

You gave Benadryl, and its generic equivalent, to a child under the age of six to calm the child. The medication given was not to be given to a child under the age of six without a doctor's guidance

and is not a medication that should be used for the purpose of calming a child. You also failed to document the medication and the dosage in the medication log as required.

On May 8, 2019, Respondents timely requested a formal hearing to dispute the facts underlying the Department's intended decision. DCF referred this matter to the Division for assignment of an administrative law judge. This case was initially assigned to Administrative Law Judge ("ALJ") Lisa Shearer Nelson.

ALJ Nelson scheduled this matter for August 27 and 28, 2019. On August 7, 2019, the parties filed a Joint Motion to Continue Trial, which was granted. The hearing was then rescheduled for October 2 and 3, 2019. The parties sought a second continuance and this matter was rescheduled for December 10 and 11, 2019.

On December 5, 2019, this matter was transferred to the undersigned. The parties filed a Pre-hearing Stipulation including stipulated findings of fact, which have been incorporated in the Findings of Fact below to the extent they are relevant.

On December 10, 2019, the hearing commenced as scheduled. At the hearing, the parties' Joint Exhibit 1 was accepted. DCF presented the testimony of 11 witnesses as follows: Elizabeth Britt (DCF child protection investigator ("CPI")); Angela Colon (DCF CPI supervisor); Crystal Daniels (current caregiver); Teresa Gomez (DCF operations program administrator); Jemina Lenox (Families First Network of Lakeview ("FFN") child welfare case manager); Laura Leonard (FFN licensing counselor); Petra Pistorius Maddens (FFN licensing unit manager); Regina Pleas (DCF North West Region family and community services program manager); Deidre Sanders

(FFN permanency specialist); Jacy Smith (FFN adoptions team manager); and Connie Werner (FFN foster home development team manager). Petitioner's Exhibits 1 through 3, 5, 8, and 10 through 13 were admitted. Respondents testified on their own behalf and presented the testimony of Dr. Sharon Streeter, (Respondents' family friend). Respondents' Exhibit 1 was admitted.

The four-volume Transcript of the hearing was filed on January 13, 2020. Both parties timely filed Proposed Recommended Orders, which have been considered in preparation of this Recommended Order.

All references to the Florida Statutes and Florida Administrative Code will be to the 2018 codification, which was the law in effect at the time of the alleged violations. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441 (Fla. 5th DCA 2013).

FINDINGS OF FACT

Based upon the testimony, exhibits, and stipulated facts in the Pre-Hearing Stipulation, the following Findings of Fact are made:

Parties and Background

1. DCF is the state agency responsible for licensing foster care parents and foster homes, pursuant to section 409.175, Florida Statutes. DCF administers foster care licensing by contracting with third-party private entities. In Circuit 1, the geographic area where Respondents were issued a license, DCF has contracted with FFN to be the agency responsible for facilitating foster care licensing. FFN is also referred to as the Community Based Care Provider ("CBC").

2. Respondents, who are husband and wife, are foster care parents in a foster home licensed by DCF. Respondents had been foster parents for approximately six years before their license expired on February 20, 2019.

3. During the period of their licensure, Respondents have fostered more than 20 children in their home in Niceville, Florida.¹

4. Crystal Daniels, the child's current caregiver, worked at the daycare where the child attended. After learning A.R. may be ready for adoption, Ms. Daniels shared her desire to adopt A.R. with Ms. Puri. Thereafter, Ms. Daniels and her husband began the process to qualify for adoption of A.R. At all times material this matter, Ms. Puri was supportive of the child being placed with Ms. Daniels.

Facts Related to A.R.'s² Background

5. A.R. was placed with Respondents from April 8, 2018, through September 26, 2018. She was five years old at the time of her placement. While A.R. received therapy services, there was no evidence offered to indicate she was a therapeutic foster child.

6. Prior to her placement in the Puri home, A.R. had an extensive history of neglect and abuse. She also had a history of violent behavior that caused harm to herself and others.

7. At school, A.R. would engage in outbursts, which would lead to her being removed from the classroom and placed into a safe space until she calmed down. On one occasion, A.R.'s teacher reported that "[A.R.] was slapping herself on the head, which left a red handprint on her forehead." On or about September 20, 2018, she turned over chairs in a classroom.

8. A.R. also exhibited uncontrollable tantrums in the presence of Ms. Daniels. On one occasion, on August 22, 2018, Ms. Daniels advised Ms. Puri that "I had to restrain her, she bit me." During another incident,

¹ Among those children was A.R., who was the child identified in the Notice Letter.

² The minor child involved in this matter will be referred by her initials A.R. or as "the child" to protect her identity.

A.R. threw a container of scissors across the room while other students were in the classroom. She also flipped a chair and a table and bit Ms. Daniels.

9. Two weeks after she was placed with Ms. Daniels, A.R. was prohibited from returning to her school due to her behavior.

10. At the Puri home, A.R. kicked Ms. Puri in the face. On or about September 19, 2018, A.R. spit on the Puris' and tried to fight them.

11. Despite receiving therapy, A.R. continued to exhibit uncontrollable behaviors while residing in the Puris' home.

DCF Investigation

12. Several days after the incident on September 19, 2018, DCF received a call on September 24, 2018, on the abuse hotline alleging A.R. had "10 bruises on her arms that appeared to be finger tips." After receiving the call on the hotline, DCF initiated an investigation regarding the care provided to A.R.

13. Elizabeth Britt was the CPI assigned to investigate the allegations. On September 25, 2018, Ms. Britt first spoke with Ms. Daniels.

14. Ms. Britt then went to the Puri home for a home visit. While at the Puri home, Ms. Britt examined A.R. and did not observe any pattern of bruises, which were described in the hotline allegation. Ms. Puri, Ms. Puri's minor child, and A.R. were present.³ During the visit, Ms. Puri informed Ms. Britt that A.R. would have severe trauma tantrums and Ms. Puri would have to restrain A.R. so that she (A.R.) would not harm herself or Ms. Puri's family. Ms. Puri showed Ms. Britt one of the ways she would restrain the child, which she described as the full nelson. Ms. Britt informed Ms. Puri a full nelson was not a proper way to restrain A.R., and that Ms. Puri could not restrain the child at all. Ms. Puri asked Ms. Britt how she should restrain A.R. and Ms. Britt informed Ms. Puri she could not restrain A.R.

³ The Puris have a minor child that was not involved in the incidents related to the allegations in this case.

15. The description of a full nelson was in dispute. As a result, Ms. Britt described the restraint Ms. Puri demonstrated for her. Ms. Puri would have the child sit on her lap, she would place her arms underneath the armpits of the child; the child's arms were raised and slightly behind her head; and then, Ms. Puri's hands were interwoven between the child's arms and placed behind the child's neck.

16. Ms. Puri sent a photograph to Ms. Daniels, which depicted Ms. Puri restraining A.R. as described by Ms. Britt. The photograph, taken in the Puri home, also showed Ms. Puri with her legs wrapped over the legs of A.R. while sitting on the floor. Ms. Puri testified that in the photograph the child's head is leaned forward because the child was attempting to spit and bite her. She further explained that she only used the maneuver to protect the child and others from harm.

17. Ms. Puri repeatedly asked Ms. Britt for suggestions to manage the behavior of A.R. if she had another tantrum and Ms. Britt responded that she could not restrain A.R. Ms. Britt did not provide additional guidance on methods Ms. Puri could use to manage A.R.'s tantrums.

18. After Ms. Britt completed the home visit, Ms. Britt, Ms. Puri, and the child left the home at the same time. When they walked outside, A.R. became agitated and reluctant to get into the Puri vehicle.

19. Ms. Puri began making comments directed toward the child's behavior as a "show." Ms. Britt, on the other hand, spoke with the child and A.R. ultimately calmed down. After the home visit, Ms. Britt had no concerns for A.R.'s safety and allowed A.R. to remain in the Puri home.

20. On September 25, 2018, the evening after the home visit with Ms. Britt, A.R. experienced another tantrum. Ms. Puri did not use the full nelson maneuver to restrain A.R. Instead, Ms. Puri wrapped the child in a blanket, which protected Ms. Puri and the child from harm.

21. Ms. Puri attempted to contact both DCF and FFN personnel multiple times because A.R. was having a severe trauma tantrum and was destroying

her room and Ms. Puri was concerned for A.R. and her family's safety. Ms. Puri asked both DCF and FFN personnel to assist her with methods to manage A.R.'s behavior because she had been told earlier that day she could not use the restraint she had used in the past. DCF and FFN personnel could not advise Ms. Puri on how to manage A.R.'s behavior. Instead, FFN, without question, told Ms. Puri the child could not to be restrained.

22. Ms. Puri then called law enforcement for assistance on how to manage A.R. By the time law enforcement arrived on scene, A.R. was no longer posing a threat and no action was taken. Ms. Puri repeatedly demanded that DCF and FFN staff prepare a letter telling Ms. Puri how she could restrain A.R to keep A.R., Ms. Puri, and her family safe. Both DCF and FFN told Ms. Puri they would not put anything in writing.

23. Although Ms. Puri believed it was necessary, Respondents did not perform the full nelson maneuver to restrain A.R. after they were instructed to not use it as a restraint method.

24. On September 25, 2018, after several calls and voicemails, between DCF, FFN, and Ms. Puri, FFN staff members discussed whether to remove the child from the Puri home. FFN staff members and Ms. Britt became concerned that Ms. Puri would continue to restrain the child, and determined that the child should be placed in a different home.

25. FFN transitioned A.R. out of Respondents' home on September 26, 2018. While it is disputed whether DCF removed A.R. or Respondents requested that she be placed in another home, A.R. never returned to Respondents' home after September 26, 2018. Rather, she was placed in Ms. Daniels' home as a non-relative placement, pending adoption.

26. When asked about mechanical restraints, Regina Pleas, the Northwest Region Family Safety Program Office Manager, testified that use of a blanket to restrict the child's movement could be considered a mechanical restraint. However, she acknowledged that DCF has no rule or definition defining the term "mechanical restraint."

27. Most important here, however, Ms. Pleas admitted that she was not aware of anyone who indicated that Respondents restrained the child as punishment. There is no dispute that Ms. Puri repeatedly sought assistance with the child's behavior. Ms. Pleas acknowledged that Respondents regularly sought assistance of case managers, therapists, and the guardian ad litem to address A.R.'s behavioral problems.

Withholding Food

28. During the investigation, Ms. Britt received a supplemental report that Respondents instructed a caregiver to withhold food as discipline if A.R. misbehaved.

29. There were no witnesses presented at hearing who observed any withholding of food as disciplinary action. However, Ms. Puri testified about a message she received from A.R.'s teacher regarding an incident where A.R.'s lunch was thrown out because the child was unable to finish eating due to time constraints.⁴

30. Ms. Britt did not interview the teacher or any school personnel about the alleged instruction to withhold food. Furthermore, none of the school personnel testified at the hearing.

31. The evidence presented at hearing did not demonstrate that Respondents instructed a caregiver to withhold food as discipline.

Bathtub Incident

32. There was also a supplemental report alleging that when the child refused to get in the bathtub, Ms. Puri was overheard cursing and threatening the child to get into the bathtub.

⁴ On or about September 20, 2018, the teacher at school sent a text message to Ms. Puri as follows: "Just wanted to let you know that earlier [A.R.] refused to come from pirate ship and ran around the room. The rest of the class went to lunch and I waited with her and told her that if she did not come, she would be late for lunch and she would not have time to eat. She finally agreed to walk to lunch but when it was time to go, I said one more bite, and I threw the rest of her lunch away. I made sure she had plenty to eat, but I was trying to follow up with natural consequences. She started to get angry and I said I was so sorry to had to throw it away but it was time to go "

33. Ms. Daniels testified that she spoke to Ms. Puri on the phone while she was giving A.R. a bath. She heard Ms. Puri tell the child to “get in the f’ing tub.” Based on sounds she heard during the call a short time later, Ms. Daniels believed the child fell in the bathtub. She testified that she then heard Ms. Puri state, “it was an accident, she slipped and fell.”

34. Ms. Britt did not interview Mr. Puri or the child regarding the bathtub incident to verify Ms. Daniels’ assertions. Ms. Britt also did not make any verified findings in her final investigative report regarding the bathtub incident.

35. Ms. Puri denies the incident happened.

36. The evidence offered is not persuasive to demonstrate that Ms. Puri threatened the child, cursed at her, or allowed her to fall while she was in the bathtub.

Misuse of Medication Allegation

37. During the investigation, Ms. Britt also received a supplemental report that Respondents gave Benadryl, or its generic equivalent, to A.R. to calm the child.

38. Ms. Daniels testified that when the child transitioned to her care, she did not have any medication. Ms. Daniels testified that she took the child to the pediatrician and she was told that he had prescribed Cetirizine in May 2018.

39. Ms. Daniels also testified that A.R. refused to take liquid medicine because she said the medicine made her sleepy. Ms. Daniels described A.R. as having difficulty speaking but she often used sign language to communicate.

40. Ms. Britt interviewed the child about the sleepy medicine allegation. Ms. Britt testified that the child said, “I take sleepy med, poppy hold (while crossing her arms) Tia give.” A.R. referred to Ms. Puri as Tia. Ms. Britt later testified that she could not recall whether the child actually said “no med, no ick.” These are two distinct versions of the child’s alleged statement.

41. Ms. Britt asked Ms. Puri about giving the child Benadryl. Ms. Britt testified that Ms. Puri denied that she used Benadryl to make the child sleep. Ms. Britt stated that Ms. Puri acknowledged that A.R.'s pediatrician had prescribed a medication but she purchased a substitute over-the-counter medication based on the pharmacist's recommendation.

42. To supplement the testimony regarding the use of Benadryl, Petitioner referenced a text message Ms. Puri sent to Ms. Daniels. During one of A.R.'s overnight visits with Ms. Daniels, A.R.'s assigned guardian ad litem conducted a home visit. During the visit, Ms. Puri and Ms. Daniel were exchanging text messages. At some point after 8:00 p.m., Ms. Puri sent Ms. Daniel a text message stating "[u] gonna have to give kid 3 cc's of Benadryl to calm her butt down and pass out!" followed by a laughing emoji.

43. Ms. Puri contended that she was joking. She further explained that the only medicine she gave the child was Allegra for children for allergy symptoms.

44. Based on the evidence presented at hearing, there is not sufficient persuasive evidence that Ms. Puri gave or suggested that Ms. Daniels give A.R. Benadryl to calm her. There was not sufficient evidence presented regarding a prescription for allergy medication for A.R. Since Ms. Britt testified that it would be permissible for Respondents to use an over-the-counter age-appropriate medicine to treat A.R.'s allergies, there was not sufficient evidence to demonstrate that medical intervention from a doctor was necessary.

Protection of Confidential Records

45. DCF alleged in the Notice Letter that Respondents left the child's confidential records in a public location.

46. After the child was removed from the home, Ms. Puri returned the child's confidential medical records to Ms. Daniels. The parties dispute how those records were provided to Ms. Daniels.

47. Ms. Daniels testified that Ms. Puri contacted her one day and told her that she would bring the child's records to her then place of employment,

Discovery Learning Center. After work that day, Ms. Daniels found the records unattended on the back of her pick-up truck.

48. DCF presented the testimony of Lisa Leonard, the relicensing counselor for FFN. Ms. Leonard met Ms. Puri at a local fitness center and had a discussion about the book containing A.R.'s confidential records. Ms. Puri told Ms. Leonard that she gave the book to her friend, Heather, who placed the book in the truck of the current caregiver, Ms. Daniels.

49. Ms. Puri denied giving the book to Heather. Ms. Puri stated that she met Ms. Daniels at a Walgreen's and directly gave her the book. To further support her contention, Ms. Puri testified that she has received HIPPA training and fully understands the requirements for protection of personal health information.

50. Based on the testimony of both Ms. Daniels and Ms. Leonard offered at hearing, the undersigned is persuaded that Ms. Puri allowed the child's confidential records to be left with a third party and, ultimately, in a public location.

Outcome of Investigation

51. Based upon her investigation, Ms. Britt made verified findings for threatened harm based on Ms. Puri's continued request to restrain the child; and for substance misuse due to text messages and the child's statements.

52. After the investigation, Connie Werner, who is responsible for FFN licensing, reviewed the reports related to A.R. Ms. Werner testified that her staff prepares the licensing recommendation and supporting documents. Ms. Werner recommended revocation of the Respondents' foster home license. Mr. Werner explained that her recommendation was based on the nature of the verified findings in the DCF child protection report.

53. Regina Pleas, the safety program manager for DCF's Northwest Region, also reviewed the case. Ms. Pleas is ultimately responsible for all decisions and final approval for FFN licensing decisions.

54. Ms. Pleas reviewed Ms. Werner's recommendation of revocation of Respondents' foster home license. She considered the verified findings in Ms. Britt's report; the alleged use of Benadryl to calm the child; and Ms. Puri's interaction with the child. She highlighted that there were concerns for the child's safety.

55. Ms. Pleas agreed with Ms. Werner's recommendation for revocation. She testified that a corrective action plan was not possible, as the Respondents did not acknowledge any wrongdoing. Moreover, Respondents now had a record of verified abuse, in which case, DCF could not place minor children in their home.

56. Ms. Pleas prepared the Notice Letter notifying Respondents of DCF's decision to revoke/not renew their foster home license.

Mitigating Factors

57. The Puris attempted to help the child with her behavior and verbal communication. To assist with the child's frustration related to her limited verbal communication ability, Ms. Puri began to teach A.R. sign language and scheduled A.R. for speech therapy, beginning in August 2018.

58. Ms. Brown, the licensing team manager, works with staff to determine whether a license should be revoked. Ms. Brown testified that if a child's behavior is out of control, a foster parent should ask for help or request that the child be removed from the foster home.

59. However, on September 25, 2018, the tipping point in the tenure of A.R. residing with the Puris, Ms. Puri attempted to seek assistance from the case manager and law enforcement to assist her with the child's behavior. Despite these efforts, Ms. Puri did not receive assistance with the child.

60. Prior to the investigation, there were no complaints Respondents abused or neglected A.R. Ms. Britt testified that she did not observe any harm to the child.

61. Dr. Sharon Streeter testified that she had an opportunity to observe the Puris' interaction with A.R. on occasion. She observed A.R. hit her

caregivers and throw tantrums, and she noted that the child could not verbally communicate her needs. Moreover, Dr. Streeter did not see any interactions with A.R., which would cause her to be concerned about the child's safety in the Puri home. Dr. Streeter also testified that based on her interaction with the family, the Puris had bonded with the child and integrated the child into their family.

CONCLUSIONS OF LAW

62. The Division has jurisdiction over the parties to and subject matter of this proceeding pursuant to section 120.569 and 120.57(1), Florida Statutes (2019).

63. Section 409.175 provides in relevant part:

(2) As used in this section, the term:

* * *

(f) "License" means "license" as defined in s. 120.52(10). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

* * *

(9)(a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.

64. Pursuant to the authority granted by section 409.175, DCF has adopted chapter 65C-13 and 65C-28, which govern licensed out-of-home caregivers. The relevant alleged rules are set forth below.

65. Florida Administrative Code Rule 65C-13.025 provides that the partnership agreement shall be reviewed, discussed, and signed.

66. Rule 65C-13.030, titled “Standards for Licensed Out-of-Home Caregivers,” provides in relevant part:

(2) Food and Nutrition.

(c) Licensed out-of-home caregivers shall not withhold food as a means of discipline or punishment.

* * *

3) Discipline.

(a) Licensed out-of-home caregivers shall discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibility and self-control.

(b) Licensed out-of-home caregivers shall use positive methods of discipline. Acceptable methods of discipline include: reinforcing acceptable behavior, expressing verbal disappointment of the child’s behavior, loss of privileges, grounding, restricting the child to the house or yard, sending the child out of the room and away from the family activity, and redirecting the child’s activity.

(c) Licensed out-of-home caregivers shall not subject children to cruel, severe, or unusual forms of discipline.

* * *

(f) Licensed out-of-home caregivers shall not withhold meals, clothing, allowance or shelter as a form of discipline.

* * *

(h) No child shall be mechanically restrained or locked in any enclosure, room, closet, bathroom or area of the house or premises, for any reason.

(i) Licensed out-of-home caregivers shall not threaten a child with removal, or with a report to authorities or prohibit visitation with family and significant others as consequences for unacceptable behavior.

(j) Licensed out-of-home caregivers will seek the assistance of the child's case manager or therapist for behavior problems.

67. Rule 65C-28.003, titled "Medical Treatment," provides in relevant part:

(1) If a child in out-of-home care appears to be suffering from illness or injury requiring medical intervention, the child welfare professional, upon notification, or the out-of-home caregiver shall take the child to the child's health care provider for a health care screening or treatment. If there is a medical emergency or an urgent need for medical attention, the child shall be taken to the nearest available health care provider or hospital.

* * *

(4) The child welfare professional and licensed caregivers shall receive training in regard to and comply with the federal Health Insurance Portability and Accountability Act which provides procedures regarding the management and protection of personal health information. The child welfare professional shall inform relative and non-relative caregivers regarding the requirements of HIPAA.

68. Rule 65C-13.035(4) provides as follows:

(4) Administrative Action for Existing Family Foster Homes.

(a) If licensing violations are found such that the child's physical, mental, or emotional health is or

has been adversely impacted as a result of the violation or is in danger of being adversely impacted, the licensing counselor shall consult with his or her supervisor and the child's case manager for an immediate review of the safety of any children in the home and a call shall be made to the Abuse Hotline.

(b) If licensing violations are found which do not pose an immediate threat to the health, safety or welfare of the children, the supervising agency shall prepare a written corrective action plan to correct the deficiencies. The plan shall be developed by the supervising agency in conjunction with the licensed out-of-home caregivers and shall be approved by the Regional Licensing Authority.

69. The parties disputed which burden of proof should apply in this matter.

70. Respondents' license expired after the investigation on February 20, 2019. However, the investigation began while Respondents' foster home license was active. Thus, DCF is seeking to revoke/or not renew Respondents' foster care license.

71. As the party asserting the affirmative of an issue before this administrative tribunal, DCF has the burden of proof. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981). In a typical professional licensure case, DCF's burden would be to show by clear and convincing evidence that Respondents' license should be revoked. *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

72. However, in accordance with the definition of "license" contained in section 409.175(2)(f), the licensure status previously granted to Respondents is not a professional license, and does not create a property right. Therefore, DCF must establish facts, which support its position by a preponderance of the evidence, rather than by the clear and convincing standard normally imposed in professional licensure cases. *See Haines v. Dep't of Child. &*

Fams., 983 So. 2d 602, 608 (Fla. 5th DCA 2008). See also *Dep't of Banking and Fin. v. Osborne Stern and Co.*, 670 So. 2d 932 (Fla. 1996).

73. The allegations of fact set forth in the Notice Letter are the grounds upon which this proceeding is predicated. *Trevisani v. Dep't. of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005). Thus, the scope of this proceeding is limited to those matters as framed by Petitioner in the Notice Letter. *M.H. v. Dep't of Child. & Fam. Servs*, 977 So. 2d 755, 763 (Fla. 2d DCA 2008).

74. Here, Petitioner seeks to revoke Respondents' foster home license based on the factual bases identified in the Notice Letter, which constitutes the administrative charging document in this proceeding. Each of the factual allegations are addressed below.

75. To the extent factual allegations were not alleged in the charging document, including not cooperating with the child's healthcare provider; maintaining the child's stability in school of origin; independent living skills for a child age 13 and older; using disparaging remark directed to a child about the child's family; and threats of removal as consequences of unacceptable behavior will not be addressed herein.

76. Petitioner alleged Respondents restrained A.R. using a full nelson maneuver in violation of rule 65C-13.030(2)(h), which prohibits out-of-home caregivers from mechanically restraining the child.

77. Of importance here, the term "mechanically restrained" is not defined in statute or DCF's rules. According to principles of statutory construction, when terms are not defined in a statute, the plain and ordinary meaning of the terms applies. See *Sw. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594, 599 (Fla. 1st DCA 2000). When necessary, the plain and ordinary meaning of words (in a statute) can be ascertained by reference to a dictionary. See *Seagrave v. State*, 802 So. 2d 281, 286 (Fla. 2001).

78. A restraint is commonly defined as any device that restricts freedom of movement. See "Restraint," *Merriam-Webster.com*, <http://www.merriam-webster.com> (last visited February 12, 2020).

79. However, the proscription against using a mechanical restraint is listed under the disciplinary statute and, thus, applies if the restraint was used to discipline the child. Here, there was no testimony presented at hearing to demonstrate that Ms. Puri restrained the child as a form of discipline. Rather, the evidence establishes that Ms. Puri only restrained A.R. to protect the Puri family and the child from harm. The evidence does not establish that any restraint was used to discipline the child as contemplated by the rule 65C-13.030(2)(h).

80. Accordingly, Petitioner failed to prove by a preponderance of the evidence, that Respondents violated rule 65C-13.030(2)(h).

81. Petitioner alleged that Respondents instructed a caregiver to withhold food as discipline if the child misbehaved, in violation of rule 65C-13.030(2). Here, because there was not sufficient evidence to show Respondents withheld or instructed anyone to withhold food from the child, there is no evidentiary basis to conclude that Respondents violated rule 65C-13.030(2).

82. Petitioner also alleged Respondents violated rule 65C-28.003(1) by giving A.R. Benadryl to calm her. Ms. Puri acknowledged that she gave the child Allegra for children. However, as set forth in the Findings of Fact above, there is not sufficient evidence to demonstrate that Ms. Puri gave A.R. Benadryl. Thus, Petitioner did not meet its burden to prove by a preponderance of the evidence that Respondents violated rule 65C-28.003(1).

83. Petitioner alleged Respondents cursed at the child and threatened her while in the bathtub. The evidence offered at hearing did not demonstrate that Respondents threatened the child and cursed at her while she was in the bathtub, in violation of chapter 65C-13 or 65C-28.

84. In the Notice Letter, Petitioner alleged that Respondents violated 65C-28.003(4), by leaving the child's confidential records in a public location. As discussed above, the evidence demonstrates that Ms. Puri gave the binder with A.R.'s confidential records to a third party (her friend Heather), who left the records on Ms. Daniels' truck in a public location. In short, Petitioner

proved by a preponderance of evidence that Respondents failed to protect the personal health information of A.R. and, thus, violated rule 65C-28.003(4).

85. The evidence presented at hearing, established that Ms. Puri left A.R.'s confidential records in a public place. Based on the violation proven, Petitioner did not prove that Respondents' license should be revoked/not renewed.

86. Based on the information available at the time, DCF concluded that Respondents would not be receptive to correcting alleged deficiencies. Based on the violation found, Respondents' actions did not pose an immediate threat to the health, safety, or welfare of the child, and thus, a corrective action plan would be appropriate. Further, the evidence offered at hearing established mitigating circumstances should DCF determine that a lesser penalty would be appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by Department of Children and Families finding the foster home license of Respondents Kapil and Katrina Puri should not be revoked/not renewed.

DONE AND ENTERED this 13th day of February, 2020, in Tallahassee, Leon County, Florida.



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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.