

FEB 17 2021

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

DCF Department Clerk

**DEPARTMENT OF CHILDREN AND  
FAMILIES,**

**Petitioner,**  
v.

**CASE NO. 19-2954  
RENDITION NO. DCF-21-29-FO**

**KAPIL AND KATRINA PURI,**

**Respondent.**

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**FINAL ORDER**

THIS CAUSE is before me for entry of a final order concerning the Department's April 17, 2019, notice of the Department's intent to revoke or deny renewal of Respondent's foster home license. The Recommended Order, dated February 20, 2020, concluded the Department did not prove by a preponderance of the evidence that Respondent's license should be revoked or not renewed. The Recommended Order further concluded that a corrective action plan for Respondents would be appropriate. The Department filed exceptions to the Recommended Order and the Respondent filed a response to the Department's exceptions.

**Exceptions**

**The Department takes exception to Paragraphs 79 and 80 of the Conclusions of**

**Law:**

79. However, the prescription 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)[sic].

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

The Department argues in this exception that the Administrative Law Judge (ALJ) erred in misinterpreting Rule 65C-13.030(3)(h), Florida Administrative Code, and concluding that it did not apply to Respondent's actions of restraining the child as they did not do so as "discipline." As the ALJ concluded in Paragraph 77 of the Recommended Order:

According to principles of statutory construction, when terms are not defined in a statute, the plain and ordinary meaning of the term applies. See *Sw. v. 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).

As the ALJ did in Paragraph 78 to determine the plain and ordinary meaning of "restraint," I look to Merriam-Webster to define "discipline," the subsection heading in Rule 65C-13.030(3), Florida Administrative Code. The first definition of the noun "discipline" is "control gained by enforcing obedience or order." <http://www.Merriam-Webster.com/dictionary/discipline> (accessed February 16, 2021). In Paragraph 14 of the Recommended Order, the ALJ found that "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's conduct fits the definition of "discipline" as she restrained A.R. to gain control by "enforcing obedience or order;" to stop the tantrum.

The action taken by Ms. Puri, to restrain A.C., was described as she 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 on the child's neck. R.O. ¶¶ 15-16. And as observed in photographic evidence, while doing the previously described restraint, Ms. Puri would also use "her legs to wrap over the legs of A.R., while sitting on the floor." R.O. ¶ 16. Ms. Puri's actions violate Rule 65C-13.030(3)(h), Florida Administrative Code, which states, "No child shall be mechanically restrained or locked in any enclosure, room, closet, bathroom or area of the house or premises, for any reason."

The Respondent argues in their response to this exception, that the Department's argument relies on modifications of the ALJ's findings of fact. This is not correct as the ALJ found in the findings of fact that Ms. Puri restrained the child as described above and she also restrained her by wrapping the child in a blanket. R.O. ¶ 20. In this exception, the Department is asking the Secretary to reject or modify conclusions of law over which the Department of Children and Families has substantive jurisdiction and interpretation of rules over which it has substantive jurisdiction, as provided for in section 120.57(1)(h), Florida Statutes. As such, this exception is granted.

In addition to the above granted exception, it is noted that there is a scrivener's error in the rule citation in the above paragraphs. The rule number should read 65C-13.030(3)(h).

Paragraphs 79 and 80 of the Conclusions of Law are rewritten as follows, as I

find them to be as or more reasonable than the rejected paragraphs:

79. Testimony was presented at hearing to demonstrate that Ms. Puri restrained the child as a form of discipline. The evidence does establish that the restraint was used to discipline the child as contemplated by the rule 65C-13.030(3)(h).

80. Accordingly, Petitioner proved by a preponderance of the evidence, that Respondents violated rule 65C-13.030(3)(h).

The Department takes exception to Paragraph 81 of the Conclusions of Law.

81. Petitioner also 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).

In this exception, the Department argues that although Ms. Puri did not instruct a caregiver to withhold food as discipline, she was aware that the child's teacher threw out the portions of her lunch that she was unable to eat in the time allotted because she refused to come to lunch on time. R.O. ¶ 29. The Department further argues that not only was Ms. Puri aware of the teacher's action, but she also encouraged and condoned it when she responded, "Awesome!!! She hates to miss a meal & knows u mean business," in a later incident when the teacher texted Ms. Puri to let her know that when the child would not immediately come when called to lunch, she (the teacher) threatened to throw away the child's food like last time. Jt. Ex. 1, page 139.

The issue with the Department's argument is that in the April 17, 2019, Notice at issue in this case, the Department alleged that Respondents instructed a caregiver to withhold food as discipline, if a child misbehaved. As the ALJ concluded in Paragraph 73 of the Recommended Order:

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).

Encouraging or condoning the teacher's behavior is not equivalent to instructing the teacher to withhold food as discipline, as alleged in the Notice. Therefore, this exception is denied.

The Department takes exception to Paragraph 82 of the Conclusions of Law.

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).

In this exception, the Department points to the findings of fact in Paragraphs 41 and 44 that Ms. Puri acknowledged to Ms. Britt that A.R.'s pediatrician had prescribed a medication, but she instead purchased a substitute over-the-counter medication based on the pharmacist's recommendation and that Ms. Puri admitted to giving the child Allegra for allergy symptoms without medical approval to prove a violation of rule 65C-28.003(1), Florida Administrative Code. To additionally prove the violation, the Department argues that the foster father, Dr. Kapil Puri, who is not the child's medical provider, wrote orders to have the child A.R. tested for sexually transmitted diseases. Tr. at 539-540 and Pet. Ex. 12.

Although the above listed facts might certainly violate rule 65C-28.003(1), Florida Administrative Code, the Department in the April 17, 2019, Notice, alleged that Respondents gave "Benadryl, and its generic equivalent, to a child under the age of 6 to calm the child." As detailed above, the Department is bound by the allegations detailed

in the Notice and the ALJ found in Paragraph 44 that “[b]ased 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.” The Department does not argue that this finding is not supported by competent substantial evidence. As such, this exception is denied.

The Department takes exception to Paragraph 86 of the Conclusions of Law.

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.

The Department points to Rule 65C-13.035(4)(d), Florida Administrative Code, which states that corrective action plans are created for licensed caregivers who have the ability to understand and correct the infraction. The Department argues that the Respondents, despite being instructed several times to cease and desist all restraining of the child, were convinced that restraint was the only way to deal with the child’s behavior. They repeatedly requested that the Department and Families First Network of Lakeland put in writing what type of restraint was permitted, even after being told no restraint of the child was permitted. R.O. ¶ 22. Also, even after being told no restraint was permitted, Ms. Puri admitted to restraining the child in a blanket. R.O. ¶ 22. It is apparent that Respondent does not have the ability to understand and correct the infraction of restraining the child; an infraction that poses an immediate threat to the health, safety, or welfare of the child.

Finally, the Department argues that pursuant to section 409.175(2)(f), Florida Statutes, "a foster care license is a public trust and a privilege. To force the Department to enter into a corrective action plan with persons they do not trust with our children's safety, and who clearly do not believe their actions need any correcting, is contrary to the intent of both Chapter 39 and Chapter 409, Florida Statutes." This portion of the exception is granted.

The Department also takes exception as a matter of law to the conclusion that mitigating circumstances exist to offset Respondent's actions. The ALJ labeled the section of the Recommended Order containing Paragraphs 57-61, "Mitigating Factors." In these paragraphs the ALJ finds facts detailing the child's behavior and Respondent's attempts to seek guidance in dealing with these behaviors. Due to these "mitigating factors," the ALJ concludes that the Respondents should receive a lesser penalty for their violations. However, as the Department argues in its exception, there are no references to mitigating factors, or justifications for violating rules, found in Florida Statutes, Administrative Code, or any other authority pertaining to abusive treatment of Florida's dependent children. This portion of the exception is granted.

Paragraph 86 of the Conclusions of Law is rewritten as follows, as I find it to be as or more reasonable than the rejected paragraph:

86. Based on the information available at the time, DCF concluded that Respondents would not be receptive to correcting alleged deficiencies. Based on the violations found, Respondents' actions pose an immediate threat to the health, safety, or welfare of the child, and thus, a corrective action plan would not be appropriate.

Exception is taken to Paragraph 85 of the Conclusions of Law.

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 Respondent's license should be revoked/not renewed.

As detailed in the exceptions to Paragraphs 79 and 80 above, Respondents also violated the prohibition against restraining the child. And not only did they violate that prohibition, but they also continued to violate it after being specifically told it was not permitted, and repeatedly requested that the Department and Families First Network of Lakeland put in writing what type of restraint was permitted. Through these two violations, the Department did prove that Respondent's license should be revoked/not renewed. This exception is granted.

Paragraph 85 of the Conclusions of Law is rewritten as follows, which I find to be as or more reasonable than the rejected paragraph:

85. The evidence presented at hearing, established that Ms. Puri left A.R.'s confidential records in a public place and that she also violated the prohibition against restraining A.R. Based on the violations proven, Petitioner did prove that Respondent's license should be revoked/not renewed.

Due to the exceptions being granted as detailed above, the Recommendation must also be rewritten:

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



Accordingly, the Recommended Order is approved and adopted as modified and the April 17, 2019, Notice is **AFFIRMED** in part and **DENIED** in part. Respondent's foster home license is revoked/not renewed.

**DONE AND ORDERED** in Tallahassee, Leon County, Florida, this 17<sup>th</sup> day of February, 2021.

  
Chad Poppel, Secretary

**NOTICE OF RIGHT TO APPEAL**

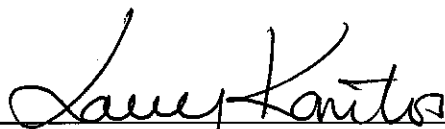
THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY A PARTY PUSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE. SUCH APPEAL IS INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN 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.<sup>1</sup>

Copies furnished to the following via Electronic Mail on date of Rendition of this Order.<sup>1</sup>

Kathryn Brown, Esq.  
Assistant General Counsel  
Department of Children and Families  
Kathryn.Brown@myflfamilies.com  
*Counsel for the Department*

Claudio Llado, Clerk  
Division of Administrative Hearings  
Three DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32301

Dana C. Matthews, II, Esq.  
Christa P. Diviney, Esq.  
Matthews & Jones, LLP  
2930 W. County Hwy. 30A  
Santa Rosa Beach, FL 34259

  
Lacey Kantor, Agency Clerk

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