

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 19-4666

GLOBAL LEARNING OF PORT
SAINT LUCIE, INC.,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge Robert L. Kilbride for final hearing by video teleconference, on November 5, 2019, at sites in Tallahassee and Fort Pierce, Florida.

APPEARANCES

For Petitioner: Brian Christopher Meola, Esquire
Department of Children and Families
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Orlando, Florida 32801

For Respondent: Eric Benjamin Epstein, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent, a licensed childcare facility, committed a Class I violation related to inadequate supervision

of a child as alleged in the Petitioner's Amended Complaint; and, if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

On July 31, 2019, Petitioner, Department of Children and Families ("DCF"), issued an Administrative Complaint ("Complaint") alleging that Respondent, Global Learning of Port Saint Lucie, Inc. ("Global Learning"), was in violation of section 2.4.1(B) of the Child Care Facility Handbook. It further alleged a violation of standard 4.2 found in the Child Care Facility Standards Classification Summary. Resp. Ex. 16. This stemmed from an incident which occurred at its facility on April 26, 2019.

Respondent requested a formal administrative hearing. On September 3, 2019, DCF referred the matter to the Division of Administrative Hearings, and the case was assigned to the undersigned Administrative Law Judge.

DCF subsequently filed a Motion to Amend, which was accompanied by its Amended Administrative Complaint ("Amended Complaint"). The Amended Complaint alleged again that Global Learning was in violation of section 2.4.1(B) of the Child Care Facility Handbook, but alleged, instead, a violation of standard 4.3.^{1/} The motion was granted, and the hearing subsequently proceeded under the allegations and violations outlined in the Amended Complaint.

The final hearing was held on November 5, 2019. DCF called the following witnesses: Temina Jefferson, family service counselor; Linda Halpin, child care regular supervisor; Deanna Lynn Trainor ("Trainor"), child protective investigator; Jeanette Plesnick ("Plesnick"), a passing motorist who found the child; and Kent Kummerfeldt, the young boy's father. Petitioner's Exhibits A through G were received in evidence without objection.

Respondent called the following witness: Janet Higgins ("Higgins"), General Manager of Global Learning. Respondent's Exhibits 1 through 22 were received in evidence without objection.

Petitioner ordered a Transcript of the proceeding, which was filed on December 3, 2019. Both parties submitted proposed recommended orders, which were reviewed and given due consideration in the preparation of this Recommended Order.

Unless otherwise indicated, citations to the Florida Statutes and rules are to the versions that were in effect at the time of the alleged wrongful act(s).

FINDINGS OF FACT

Based upon the evidence presented and the record as a whole, the following Findings of Fact are made:

The parties stipulated to the following facts in their Joint Pre-Hearing Stipulation (paragraphs 1 through 10 below):

1. DCF is an administrative agency of the state of Florida, charged with the duty to enforce and administer the provisions of chapter 402, Florida Statutes, and Florida Administrative Code Rules 65C-22.010 and 65C-20.012.

2. Global Learning operates a licensed childcare facility known as Global Learning of Port Saint Lucie, Inc., located at 4333 Southwest Darwin Boulevard, Port Saint Lucie, Florida 34953. The facility operates under license/ID No. C19SL0139 issued by DCF with a licensed capacity of 132.

3. At all relevant times, Global Learning was regulated by DCF according to, inter alia, the following documents:

(i) DCF Child Care Facility Handbook, incorporated by reference in rule 65C-22.001; (ii) CF-FSP Form 5316, Child Care Standards Classification Summary, October 2017, rule 65C22.010(1)(e)1.; (iii) Florida Department of Children and Families Desk Reference Guide, updated July 2018; (iv) section 402.281; (v) section 402.305; (vi) section 402.310; (vii) section 402.310; (viii) rules 65C-22.001 through 65C-22.010.

4. As referenced in the Complaint, DCF cited Respondent with a violation of standard 4.2, which states "Class 1 violation; [o]ne or more children were not adequately supervised in that a child was unsupervised, 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."

5. As referenced in the Amended Complaint, DCF cited Respondent with a violation of standard 4.3, "Class I violation; [a] child was not adequately supervised and left the facility premises without child care personnel supervision."

6. As referenced in the Complaints, DCF imposed a fine upon Global Learning in the amount of \$500.00.

7. As referenced in the Complaints, DCF seeks to revoke Global Learning's Gold Seal Quality Care designation.

8. At all relevant times, Global Learning held a valid child care license to provide child care services.

9. At all relevant times, Global Learning possessed a Gold Seal Quality Care designation.

10. At no time prior to the violation referenced in this matter did Global Learning ever receive a Class I violation.

Case History and Investigation

11. The case began when DCF conducted an investigation into an alleged violation of the Child Care Licensing Standards, which occurred on April 26, 2019, at Global Learning Center in Port Saint Lucie, Florida.

12. The investigation was prompted after DCF received a complaint that a young child had left his classroom at the Global Learning day care facility, wandered in the neighborhood

without supervision for some period of time, and was eventually found by a passing motorist walking on a sidewalk alongside the road.

13. The assigned DCF investigator visited and inspected the facility, reviewed documentation, and conducted interviews of staff members and other witnesses.

Discovery by a Good Samaritan

14. The evidence disclosed that a local resident, Jeanette Plesnick, was driving down Kester Street in Port Saint Lucie, Florida, on the afternoon of April 26, 2019. While driving she spotted a five-year-old child, B.K., walking alone on the sidewalk with his blanket. The sidewalk ran alongside a public road.^{2/}

15. Out of concern, Plesnick stopped her car and questioned the child. He was unharmed and in good shape. Nonetheless, she secured the child and immediately reported the matter to local law enforcement.

16. Plesnick waited with the boy for law enforcement to respond. A police officer arrived roughly 30 minutes later.

17. Plesnick was familiar with the location of the Global Learning facility. She estimated that it was a block to a block-and-a-half away from the location where she found the young boy.

18. Plesnick also estimated that it would take her about ten minutes to walk to the day care facility directly from the location where she found B.K.

19. The boy's father, Kent Kummerfeldt, was notified by law enforcement that his son had left the day care facility. Kummerfeldt immediately left his job in Palm Beach County and drove to the day care facility in Port Saint Lucie. His son was safely back at the day care when he arrived.

20. Naturally, Kummerfeldt had expected his son to be educated in a safe environment at Global Learning, and was surprised that his son was allowed to leave the facility unsupervised.

Classroom Incident on April 26, 2019

21. The essential facts surrounding how, when, and why the boy departed from his classroom at Global Learning were largely undisputed.

22. B.K. told his father that he left the classroom alone through an exit door, went outside to the children's playground, and then climbed over the playground fence.

23. DCF's investigator, Deanna Trainor, interviewed several of Respondent's employees, including the classroom teacher, LaJane James ("James").

24. As the facts developed, it was revealed that James was the only adult teacher in the classroom when the boy left. It

was clear that for some period of time, James was solely responsible for the supervision of B.K. and the other 21 children who were napping in the classroom.

25. More specifically, another teacher assisting James in the supervision of the classroom had left to eat lunch. This left James alone to watch the napping students. There was also evidence, which the undersigned credited, that the number of children in the classroom exceeded the allowable one to 20 ratio of students-to-teacher, while James was alone in the classroom.

26. James told the investigator that she started cleaning up the room after she laid the children down for naps. James admitted that it must have been during that period of time that B.K. got up off his sleeping cot and went out the door without her seeing him.^{3/}

27. In the investigator's opinion, the class room had loud acoustics and the exit door B.K. used to go out to the playground was also very loud.

28. From the evidence and pictures submitted, the classroom was large, open, and the view to the exit door was unobstructed. In fact, the pictures revealed that the teachers' desk area was immediately next to the exit door used by B.K.

29. Based on Trainor's investigation and inspection of the exit door and surrounding area, she concluded that it would have been "hard to miss" if a child opened the classroom door and

went outside. This conclusion by Trainor is credited and accepted.

30. Janet Higgins, was the general manager of Global Learning on the day of the incident. She offered a good deal of testimony regarding the operations, accreditation, training, licensing, and credentials of Global Learning.^{4/}

31. Higgins acknowledged that B.K. was supposed to be supervised in the classroom at all times. Higgins was not present in the classroom when the incident occurred, but related that at approximately 12:30 p.m., as was the normal practice, the children would have been laid on their mats or cots for daily naptime.

32. Higgins acknowledged that the child made his way outside the facility she managed and was eventually found by a Good Samaritan down the street.

33. After the incident, Global Learning took remedial action and made some physical changes to the exit doors, installing bells and higher doorknobs.

34. Not surprisingly, James was terminated by Higgins shortly after the incident.

35. After concluding its investigation, DCF ultimately determined that the allegations were verified. This determination was followed up by the issuance of an

administrative complaint seeking sanctions against Global Learning.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

37. A proceeding to impose discipline upon a licensee like Global Learning is penal in nature. As a result, DCF must prove the violation against Global Learning by clear and convincing evidence. See generally Dep't of Banking & Fin., Div. of Sec. & Inv'r Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996) and Reich v. Dep't of Health, Bd. of Med., 973 So. 2d 1233(Fla. 4th DCA 2008).

38. It is also worth noting that a proceeding of this nature is "de novo," and the undersigned is not bound by the preliminary decision made by the agency. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981) and Boca Raton Artificial Kidney Ctr., Inc. v. Fla. Dep't of HRS, 475 So. 2d 260 (Fla. 1st DCA 1985).

Applicable Childcare Statutes, Rules, and Other Standards

39. A connected and interrelated series of regulatory statutes, rules, and standards come into play and must be read and considered collectively in this case. These are outlined below.

40. First, section 402.310(1)(a) authorizes DCF to impose discipline against licensed childcare facilities. This statute provides, in pertinent part, as follows:

[DCF] or [a] local licensing agency may administer any of the following disciplinary sanctions for a violation of any provision of ss. 402.301-402.319, or the rules adopted thereunder:

1. Impose an administrative fine not to exceed \$100 per violation, per day. However, if the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day in addition to or in lieu of any other disciplinary action imposed under this section.

41. Likewise, a related day care statute, section 402.281(4)(a), requires that a licensee's Gold Seal Quality Care designation be terminated upon commission of a Class I violation. This sanction remains in place until the provider has cleared a period of two years of having no other Class I violations.

42. Several administrative rules are also involved in this case. For instance, a violation of the Child Care Standards found in Florida Administrative Code Chapter 65C-22, was alleged by DCF. That rule provides, in pertinent part:

(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.

(b) 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. Child care personnel at a facility must be assigned to provide direct supervision to a specific group of children, and be present with that group of children at all times.

(6) Child Care Standards.

Child care programs must follow the standards found in the "Child Care Facility Handbook," October 2017, incorporated herein by reference. The handbook may be obtained from the Department's website at www.myflfamilies.com/childcare or from the following link: <http://www.flrules.org/Gateway/reference.asp?No=Ref-08747>.

43. DCF alleged in its Amended Complaint that Global Learning "violate[d] section 2.4.1(B) of the Child Care Facility Handbook."

44. Section 2.4.1(B) of that Handbook provides:

Child care personnel must be assigned to provide direct supervision to a specific group of children and be with that group of children at all times. Children must never

be left inside or outside the facility, in a vehicle, or at a field trip location by themselves. (emphasis added).

45. Finally, and as the gravamen of this charge, the supervision standards found at section 4.3 of the "Standards Classification Summary," General Requirements, outline that a Class I violation occurs when:

4.3 A child was not adequately supervised and left the facility premises without staff supervision.

Child Care Facility Handbook, section 2.4.1(B).

Other Applicable Case Law

46. The penal statutes and rules must be strictly construed, in favor of the licensee, Global Learning. Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136 (Fla. 1st DCA 1992); see also Camejo v. Dep't of Bus. & Prof'l Reg., 812 So. 2d 583 (Fla. 3d DCA 2002).

47. In its Amended Complaint, DCF alleged a violation of standard 4.3. by Global Learning. This standard prohibits conduct where "[a] child was not adequately supervised and left the facility premises without staff supervision." Child Care Facility Handbook, section 2.4.1(B).

48. The allegations of fact set forth in the Amended Complaint are the grounds upon which this proceeding is predicated. Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109

(Fla. 1st DCA 2005); see also Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Thus, the scope of this proceeding is properly restricted to those matters reasonably framed by DCF in the Amended Complaint. M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 763 (Fla. 2d DCA 2008).

49. Disciplinary statutes and rules must also be construed using their literal meaning and the language used may not be expanded to broaden their application. Beckett v. Dep't of Fin. Servs., 982 So. 2d 94, 99-100 (Fla. 1st DCA 2008); Dyer v. Dep't of Ins. & Treas., 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

50. Equally true is that conduct by a licensee is not considered a violation of a penal statute unless it is reasonably proscribed by the language of the statute. Any ambiguities should be construed in favor of the licensee. McClung v. Crim. Just. Stds. & Training Comm'n, 458 So. 2d 887, 888 (Fla. 5th DCA 1984); Lester v. Dep't of Prof'l & Occupational Reg., 348 So. 2d 923 (Fla. 1st DCA 1977).

51. Having carefully reviewed the record, DCF's Amended Complaint is properly drafted and provides Respondent with reasonable notice of the allegations.

52. "Adequately supervised" is a phrase not necessarily defined by statute, DCF rule, or in DCF's childcare publications.

53. However, the phrases found in standard 4.3--"not adequately supervised" and "left the premises without staff

supervision"--are simple, straightforward, and not ambiguous. They should be ascribed their normal and plain meanings.

54. The undersigned concludes, that even under a strict construction of the applicable statutes and rules, there is clear and convincing evidence to reasonably conclude that the child involved in the incident on April 26, 2019, was not "adequately supervised" and "left the premises without staff supervision."

55. Other court cases reinforce this determination. It is well settled that Global Learning is responsible for the actions or omissions of its employees.

56. For instance, in All Saints Early Learning & Community Care Center, Inc. v. Department of Children & Families, 145 So. 3d 974 (Fla. 1st DCA 2014), the court aptly noted:

[A] licensed child care facility is responsible not only for administration of the facilities in compliance with the standards set out by the statute and administrative rule, but is ultimately responsible for the care, protection, and supervision of the children entrusted to it. It follows that as licensees, they are subject to administrative sanctions for employees' lapses in supervision at the licensed facility which endanger a child.

Id. at 977. This is exactly what happened in this case.

57. It is worth pointing out that the facts surrounding B.K.'s roadside discovery by the Good Samaritan, while significant, are not the most relevant. The case does not turn on those facts.

58. This is primarily because this case does not involve a violation related to the level of imminent harm to B.K. Nor does it involve whether death or serious injury to the young boy was likely after he left the facility and wandered along a public roadway.

59. Rather, the most relevant, compelling, and essential facts involved how, why, and under what circumstances the child was able to leave the classroom; the adequacy of the supervision in the classroom; and whether he left the facility without staff supervision. These ultimate facts form the crux of determining whether a Class I violation occurred.

60. Among other compelling facts found herein, a young child who slips out of a day care's closed classroom, literally and figuratively--"under the nose" of his teacher--is not being adequately supervised. This is particularly true where the staff is charged by law to oversee and protect the children under their care. All Saints, 145 So. 3d at 974.

61. Having carefully considered the facts, the undersigned concludes that Global Learning committed the alleged Class I violation outlined in the Amended Complaint by not adequately supervising a child in its care and by allowing B.K. to leave the facility without staff supervision.

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: (1) Finding that Global Learning violated Handbook Rule 2.4.1(B) and, by reference, standard 4.3.; (2) Imposing a fine in the amount of \$500.00; and (3) Revoking Global Learning's Gold Seal Quality Care Designation, as required by law.

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



ROBERT L. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of January, 2020.

ENDNOTES

^{1/} Both standards are found in the Child Care Facility Standards Classification Summary issued by DCF. Resp. Ex. 17.

^{2/} There were no other adults or staff members with B.K.

^{3/} James told the police officer a different story and said she was working at her desk doing planning for the next week when the boy left the classroom.

^{4/} Counsel solicited, without objection, a great deal of evidence regarding these topics and they were given the weight they deserved. However, as noted *infra*, the crux of the issue, and of particular importance to the undersigned, was whether the clear and convincing evidence proved that Global Learning had adequately supervised B.K. on the day in question.

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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.