

OCT 21 2020

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

DCF Department Clerk

**DEPARTMENT OF CHILDREN AND
FAMILIES,**

Petitioner,
v.

**CASE NO. 19-4666
RENDITION NO. DCF-20-192-FO**

**GLOBAL LEARNING OF PORT
SAINT LUCIE, INC.,**

Respondent.

FINAL ORDER

THIS CAUSE is before me for entry of a final order concerning the Department's Amended Administrative Complaint, filed on October 7, 2019, notifying Respondent of a Class I violation of section 2.4.1 of the Child Care Facility Handbook, incorporated by reference in Rule 65C-22.001(6), Florida Administrative Code. The Department assessed an administrative fine of \$500.00 and revoked Respondent's Gold Seal Quality Care designation.

The Recommended Order, dated January 13, 2020, concluded Respondent committed the Class I violation as alleged by not adequately supervising a child in its care and by allowing B.K. to leave the facility without staff supervision. Additionally, the Recommended Order recommended that the Department enter a final order finding that Respondent committed the Class I violation, imposing a fine of \$500, and revoking its Gold Seal Quality Care designation. The Respondent filed exceptions to the Recommended Order and the Department filed a Response to the exceptions.

Exceptions

Respondent takes exception to paragraph 25 of the Findings of Fact.

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.

Respondent argues that the finding that the number of children in the classroom exceeded the allowable ratio is not supported by competent substantial evidence; in its response to Respondent's exception, Petitioner agrees.

Temina Jefferson, of the Department of Children and Families childcare regulation, testified that the classroom was in ratio. Tr. at 114:14-16. She further testified as follows:

Q: How did you determine that they were within ratio?

A: Because originally it was stated that they think that they were out of ratio when the report came in because it was – they thought all of the children were four-year-olds. And with four-year-olds it's 1 to 20. However, it was a mixed group. And when you have a mixed group, you have to go by the age of – they had 12 five-year-olds and ten four-year-olds. So we have to go by the highest age, which would be the five-year-olds. So they were compliant with that.

Q: Since you characterized it as a classroom of five-year-olds, what was the ratio then?

A: 1 to 25.

Q: The number of 22 is accurate. Is that right?

A: Yes. Tr. at 114:17-115:9.

This finding of fact is not supported by competent substantial evidence; Petitioner's exception is granted.

Paragraph 25 of the Findings of Fact is revised as follows:

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.

Respondent takes exception to paragraph 26 of the Findings of Fact.

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.

Respondent takes exception to the finding that “[i]t must have been during that period of time that B.K. got up off his sleeping cot and went out the door without seeing him.” Respondent argues that this finding is not supported by competent substantial evidence because Ms. James did not testify at the hearing, nor was any sworn testimony by her offered into evidence.

Deanna Trainor, child protective investigator with the Department of Children and Families, testified that she spoke to Ms. James during her investigation:

Ms. James reported that she had put them down to naptime around 12:30. And at that time she started cleaning up the room itself, getting ready for Monday, because they get the rooms ready for the following Monday. She said she had all the children lay down for naps. And she said it must have been during that time period that B had gotten up and went out the door without her seeing him. Tr. at 75: 5-12.

This testimony was objected to by Respondent but the administrative law judge (ALJ) overruled the objection; “I think it’s in the nature of admission by a party, so I’m going to allow it.” Tr. at 75:2-4. The Department does not have substantive jurisdiction over evidentiary rulings made by the ALJ. It lacks the ability to disturb the ruling on hearsay. As this finding of fact is supported by competent substantial evidence, this exception is denied.

Respondent takes exception to paragraph 61 of the Conclusions of Law.

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.

Respondent argues in this exception that Respondent did not “specifically allege a violation of licensing Standard 4.3. At most, it makes an indirect reference to Standard 4.3.” In the Recommended Order, the ALJ determined in the Statement of the Issue, that the issue before him was “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...” R.O. at 1-2. This is consistent with what was agreed upon in the Joint Pre-Hearing Stipulation. The Recommended Order further stated in the Preliminary Statement that “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.” R.O. at 2.

Finally, the ALJ found in paragraph 5 of the Findings of Fact, “As referenced in the Amended Complaint, DCF cited Respondent with a violation of standard 4.3, ‘Class I violations; [a] child was not adequately supervised and left the facility premises without child care personnel supervision.’ Any argument that the administrative complaint did not sufficiently allege, or put Petitioner’s on notice of, a violation of licensing Standard 4.3, is outside the substantive jurisdiction of the Department. The Department thereby lacks the authority to rule on this exception. This portion of the exception is denied.

Respondent’s exceptions numbered 4 and 5 will not be ruled upon by the Department.

Section 120.57(1)(k), Florida Statutes, states, “an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number and paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. See N.S. v. Department of Children and Families, 45 Fla. L Weekly D 1989 (Fla. 3d DCA 2020). Rule 28-106.217(1), Florida Administrative Code, further states that exceptions “shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record.” In Respondent’s exceptions numbered 4 and 5, Respondent fails to clearly identify the disputed portion of the recommended order by page number or paragraph. As such, these exceptions will not be ruled on by the Department.

Respondent takes exception to the 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 Licensing’s Gold Seal Quality Care Designation, as required by law.

Respondent’s argument in this exception is that based upon its prior exceptions being granted, the Recommendation must be rejected. However, the only exception that is granted is the exception to the finding of fact in paragraph 25 and that does not require a rejection of the ALJ’s recommendation. This exception is denied.

Accordingly, the Recommended Order is approved and adopted as modified and the October 7, 2020, Amended Administrative Complaint is **UPHELD**.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 20th day of October, 2020.


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 Electronic Mail on date of Rendition of this Order.¹

Brian Meola, Esq.
Assistant General Counsel
Department of Children and Families
Brian.Meola@myflfamilies.com

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

Eric Benjamin Epstein, Esq.
Law Office of Eric B. Epstein, P.A.
eric@ericepsteinlaw.com


Lacey Kantor, Agency Clerk

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