STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioner,

v.

DR. D.D. BROWN CHRISTIAN ACADEMY OF HOPE,

Respondent.
_____/

CASE NO. 19-5806
RENDITION NO. DCF-21-25-FO

DR. D.D. BROWN CHRISTIAN ACADEMY OF HOPE,

Petitioner,

v.

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.
_____/

CASE NO. 19-5807

FINAL ORDER

THIS CAUSE is before me for entry of a final order concerning two Department of Children and Families ("Department") actions. The first action concerned a March 18, 2019, Administrative Complaint notifying Dr. D.D. Brown Christian Academy of Hope ("Respondent" or "Academy") that it intended to revoke Respondent's religious exemption for a child care facility based on its failure to comply with required background screenings of child care personnel. The second action involved a May 23, 2019, Notice of Denial of Respondent's intent to operate as a child care facility under the religious exemption provisions. The two cases were consolidated pursuant to a November 13, 2019, Order of Consolidation.

In the Recommended Order issued on September 2, 2020, the Administrative Law Judge ("ALJ") recommended upholding the Department's actions in both cases. However, in case 19-5806, the ALJ found that the Department only proved the violation of background screening requirements in respect to Jeannette Crowell but not Errol Washington.

Both the Department and Respondent filed exceptions to the Recommended Order, and the Respondent filed a response to the Department's exceptions.

EXCEPTIONS

Respondent takes exception to Paragraph 21 of the Findings of Fact and Paragraph 64 of the Conclusions of Law.

> 21. Ms. Brinkley again visited the facility on April 3, 2019, and observed Ms. Crowell interacting with children from the daycare. On that date, Ms. Crowell's employee file again contained no documentation of a required background screening. Footnote 3: The record was insufficient to establish whether Ms. Crowell has subsequently undergone the background screening process and, if so, whether she has been found eligible to work in child care.
>
> 64. By employing Ms. Crowell without the required background screening and allowing her to work in the daycare, Respondent violated section 402.316. The statute provides that failure of a facility to comply with background screening requirements, "shall result in the loss of the facility's exemption from licensure." § 402.316, Fla. Stat. The statute does not afford discretion either to the Department or undersigned. Footnote 8: However, if Ms. Crowell has subsequently undergone the required background screening and has been found eligible to work in child care, the Department may consider that fact with determining how to act on this Recommended Order.

Respondent argued in this exception that "[the] record and filings established that Mrs. Jeanette Crowell had completed a background check. The Respondent argued, and maintains, that Mrs. Jeanette Crowell has completed a background check and was determined eligible as far back as March 25, 2019." Respondent included attachments to its written exceptions and points to "Attachment 1," which appears to be a

clearinghouse background screening person profile of a "Jeannette Crowell." This attachment cannot be considered in this final order as it was not presented as evidence during the hearing before the ALJ.

Exceptions should not attempt to introduce new evidence, as it is error to supplement the record through post-hearing testimony. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 778, 784 (Fla. 1st DCA 1984); See also Lawnwood Medical Center, Inc. v. Agency for Health Care Administration, 678 So.2d. 421, 425 (Fla. 1st DCA 1996). Additionally, the Court in Collier Medical Ctr., Inc. v. Department of HRS held that "[t]o allow a party to produce additional evidence after the conclusion of an administrative hearing below would set in motion a never-ending process of confrontation and cross-examination, rebuttal and surrebuttal evidence, a result not contemplated by [Chapter 120]." 462 So.2d 83, 86 (Fla. 1st DCA 1985).

Respondent next points to its response to the Motion for Summary Judgment and Request for Hearing in which its asserts that Ms. Crowell had completed a Level 2 background screening; neither of which were introduced as evidence at the hearing. Respondent's assertions do not become evidence merely by putting them in a filing that is part of the case record.

Respondent also argues that in its Response to the Requests for Admissions, it states that Ms. Crowell ha been entered in the Clearinghouse. In the Requests for Admissions, paragraph 10 stated, "At the time of the inspection Ms. Crowell did not have a level 2 background screening through the Clearinghouse as required by ss. 402.305(2) and 435.12, Fla. Stat. Respondent responded in "Petitioner's [sic] Response to the Requests for Admissions" paragraph 10: To the Department's

paragraph 10, the Respondent dispute [sic] and deny that Jeanette Crowell was an employee of the childcare facility but that she was eventually placed in the Clearinghouse. There is nothing in Respondent's response to this request for admission that would prove that the ALJ's finding and conclusions in Paragraphs 21 are not supported by competent substantial evidence.

Finally, the ALJ's findings regarding Ms. Brinkley's testimony are supported by competent substantial evidence as found in the hearing transcript. Tr. at 56-58 and 86. As the Finding of Facts in Paragraph 21 and the Conclusions of Law in Paragraph 64 are supported by competent substantial evidence and the relevant law, this exception is denied.

The Department takes exception to Paragraph 25 and Footnote 4 of the Findings of Fact.

> 25. Mr. Washington is the Vice President and a member of the Board of Directors of the Church. He testified that he is an employee of the Church, rather than the Academy. Footnote 4: The record is insufficient to establish the business relationship between the Church and the Academy. Presumably, the Academy is a wholly-owned subsidiary of the Church.

The Department argues in this exception, "[t]here is competent substantial evidence to support findings that the Academy and the Church are the same legal entity and that Mr. Washington's employment with the Church, which included duties specific to the legal obligations and operation of the Academy, is equivalent to employment with the Academy." To support its argument that the Academy and the Church are the same legal entity, the Department points to Mr. Washington's testimony. Mr. Washington testified that the Church and the Academy are not separate and distinct legal entities. Tr. at 113-114 and 116).

Additionally, in 2012, the Church and Mr. Washington took action to ensure that the Church maintained all of the power regarding any legal obligations stemming from the Academy and that the power to sign all of the documents was the responsibility of Mr. Washington. Tr. at 116-119. He testified that it is his responsibility to sign documents that legally obligate the Church which includes signing the Academy's documents. Tr. at 114. In addition to signing documents, Mr. Washington was present during inspections conducted by Department staff during operating hours while children are present. Tr. at 53, 82,

During those inspections, Department staff were referred to speak with Mr. Washington and he assisted with providing documents from files maintained for the Academy's employees and children. Tr. at 55. He is also able to view what is going on in the Academy through video equipment kept in his office. Tr. at 55-56. In addition to being the person Department staff were referred to speak with during inspections, when the Department needed to contact the Academy, they emailed Mr. Washington directly. Tr. at 55. And finally, Mr. Washington testified he was present at inspections to ensure compliance with any violations that were identified. Tr. at 122.

After a careful review of the record, the Department has shown that the footnote to Paragraph 25, Footnote 4, is not supported by competent substantial evidence; this exception is granted.

Paragraph 25 of the Findings of Fact and Footnote 4 are revised as follows:

> 25. Mr. Washington is the Vice President and a member of the Board of Directors of the Church. He testified that he is an employee of the Church, rather than the Academy. Footnote 4: The record is sufficient to establish the business relationship between the Church and the Academy.

The Department takes exception to Paragraphs 54 and 63 of the Conclusions of Law.

> 54. The Department did not prove that Mr. Washington is child care personnel.
>
> 63. The facts do not support a finding that Mr. Washington works in the daycare. Mr. Washington's role with respect to the daycare is limited to authorizing contracts and other instruments obligating the Church financially and otherwise. Mr. Washington is employed by the Church, and in that capacity, has responsibilities for all the entities owned or operated by the Church, whether in Ocala or Texas.

The Department argues in these exceptions that there is competent substantial evidence to support a finding that Mr. Washington is an employee of the Academy which means that he meets the definition of child care personnel. As argued and cited more thoroughly in the exception to Paragraph 25 and Footnote 4, the Department argues that the Academy and the Church are the same legal entity, and Mr. Washington is responsible for conducting business for the Academy in regards to incurring legal liabilities which includes interacting with outside entities on behalf of the Academy, participating and answering Department questions during inspections, ensuring compliance with issues noted during inspections, serving as the Academy contact for the Department, and entering into contracts with the Early Learning Coalition.

The Department further argues that the requirement that the individual work in the child care facility does not limit the amount of work that the individual does, nor does it specifically require contact with children. The definition does allow for an exception for individuals that work in a child care facility after hours when children are not present. The Department argues this exception further supports that an individual that performs and works in the child care facility during operation hours when children are present is subject to background screening.

The Department has demonstrated in these exceptions that the ALJ's findings are not supported by competent substantial evidence and is a misapplication of statutory definitions. This exception is granted.

Paragraphs 54 and 63 of the Conclusions of Law are rewritten as follows, which I find to be as or more reasonable than the rejected paragraphs:

54. The Department did prove that Mr. Washington is child care personnel.

63. The facts do support a finding that Mr. Washington works in the daycare. Mr. Washington's role with respect to the daycare is not limited to authorizing contracts and other instruments obligating the Church financially and otherwise. Mr. Washington is an employee of the Academy.

Accordingly, the Recommended Order is approved and adopted as modified and the Department's March 18, 2019, Administrative Complaint and May 23, 2019, Notice of Denial of Respondent's intent to operate as a child care facility under the religious exemption provision are **UPHELD**.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 11th day of February, 2021.

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]

Stefanie Camfield, Esq.
Assistant General Counsel
Department of Children and Families
Stefanie.Camfield@myflfamilies.com
Counsel for the Department

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

Erroll Washington
Dr. D.D. Brown Christian Academy of Hope
ddbcaoh@gmail.com
Pro Se Respondent

Lacey Kantor, Agency Clerk

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