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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioner,

vs. Case No. 19-5806

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

Respondent.
_____/

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

Petitioner,

vs. Case No. 19-5807

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.
_____/

RECOMMENDED ORDER

A duly-noticed final hearing was conducted in these cases by Administrative Law Judge Suzanne Van Wyk of the Division of Administrative Hearings on March 12, 2020, via telephonic conference, and June 11, 2020, via Zoom Conference.

APPEARANCES

For the Department of Children and Families:

Stefanie Beach Camfield, Esquire
Department of Children and Families
Building 2, Suite 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

For Dr. D.D. Brown Christian Academy of Hope:

Erroll Washington, pro se
Dr. D.D. Brown Christian Academy of Hope
907 Southwest 3rd Street
Ocala, Florida 34471

STATEMENT OF THE ISSUE

Whether Respondent's[1] religious exemption from licensure as a child care facility, pursuant to section 402.316, Florida Statutes, should be revoked as alleged in the Administrative Complaint dated March 18, 2019.

PRELIMINARY STATEMENT

On March 18, 2019, the Department of Children and Families ("Petitioner" or "Department"), issued an Administrative Complaint ("Complaint") notifying the Dr. D.D. Brown Christian Academy of Hope ("Respondent" or "the Academy"), it intended to revoke Respondent's religious exemption for a child care facility based on Respondent's failure to comply with required background screenings of child care personnel. Respondent timely requested an administrative hearing to contest the revocation.

Respondent subsequently notified the Department that it intended to operate as a child care facility under the religious exemption provision; and,

[1] References herein to Petitioner are to the Department of Children and Families, and references to Respondent are to Dr. D.D. Brown Christian Academy of Hope.

on May 23, 2019, the Department issued to Respondent a Notice of Denial of said notification, based on the pending prior Complaint. On June 14, 2019, Respondent requested an administrative hearing to contest the denial.

On October 30, 2019, the Department referred both cases to the Division of Administrative Hearings ("Division") to conduct an administrative hearing. The cases were assigned to the undersigned, who entered an Order of Consolidation of the two cases on November 13, 2019. The final hearing was scheduled for March 12, 2020, but was subsequently rescheduled to April 14, 2020, at the request of Respondent. The final hearing was heard, in part, on April 14, 2020, and was continued to, and concluded on, June 11, 2020, via Zoom Conference.

At the final hearing, the Department presented the testimony of Shelley Tinney and Barbara Brinkley. Department Exhibits A through D and G were admitted into evidence. Respondent presented the testimony of Erroll Washington. The undersigned held the record of the proceeding open for submittal of Respondent's Composite Exhibit 1, which was timely received, and the record was closed on June 18, 2020.

The final hearing was recorded and the Department ordered the Transcript. A Notice of Filing Transcript was filed on June 30, 2020. On July 10, 2020, the Department filed an Unopposed Motion for Extension of time for the parties to file proposed recommended orders ("PROs"), which was granted and the filing date for PROs was set for July 30, 2020. On July 30, 2020, the Department filed a second Unopposed Motion for Extension of Time to file PROs, which was granted.[2]

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[2] In the Motion, the Department represented that Respondent had not received the Transcript, which was filed on June 30, 2020, until July 29, 2020. The Motion did not contain a reason for the delay.

Petitioner timely filed a PRO on August 20, 2020, which has been considered by the undersigned in preparation of this Recommended Order. Respondent did not timely file a PRO.

Except as otherwise noted, all statutory references are to the 2018 codification of the Florida Statutes, which was in effect when the Complaint was filed.

FINDINGS OF FACT

1. The Department is the state agency responsible for licensing and disciplining "child care facilities," as that term is defined in section 402.302, Florida Statutes (2020).

2. Respondent is an entity which operates both a Pre-K through 12th grade private school ("the school") and a child care facility, Dr. D.D. Brown Christian Academy of Hope Early Learning Center ("the daycare"), in Ocala, Florida.

3. The daycare is a "child care facility" as defined by section 402.302.

4. The daycare is exempt from licensure by the Department as a facility "which is an integral part of a church," pursuant to section 402.316. The Department has issued to the Academy child care license exemption number X05MA0214 for the daycare.

5. All child care facilities with a religious exemption are subject to the background screening requirements, set forth in sections 402.305 and 402.3055, for all child care personnel. "Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure." § 402.316, Fla. Stat.

6. Exempt facilities are also subject to "school readiness inspections" performed by the Department for child care facilities which receive public school readiness funding.

7. On March 18, 2019, the Department issued the Complaint against the Academy for failure to comply with the background screening requirements

for Erroll Washington and Jeanette Crowell. In the Complaint, the Department alleged that Mr. Washington was screened on March 8, 2019, and was determined to be ineligible to work in the facility. The Complaint alleged that Ms. Crowell "has not yet been screened."

The Campus

8. The Academy is owned and operated by the Greater Apostolic Outreach Holy Church of God, Inc. ("the Church"), a non-profit corporation organized under Florida law in September 1991. Dr. Deborah Brown-Washington is the Church President and Registered Agent.

9. The daycare and the school are located on the same grounds as the physical church building. The property will be hereinafter referred to as "the campus."

10. The daycare and school are connected by a sidewalk. Entry to the daycare and the school can be obtained from the sidewalk, independent of the other buildings.

11. A cafeteria is located on the campus between, and connected to both, the daycare and the school.

12. From the daycare, one can access the cafeteria via a covered breezeway connecting the two buildings.

13. Access to the school from the cafeteria can be obtained either through double doors at the back of the cafeteria (which open into the administrative offices of the school) or via the sidewalk.

14. The cafeteria is integral to both the daycare and the school because it is the location in which the students are served meals on a daily basis.

15. The church is freestanding and located across the parking lot from the daycare and school.

16. In addition to the Academy, the Church also operates other churches, at least one of which is located in Texas, and another in Atlanta, as well as some small businesses. These operations are not located on the campus and are not the subject of the Complaint.

Ms. Crowell

17. Jeanette Crowell is a cook employed by the Academy to prepare meals served to the children enrolled at both the daycare and the school.

18. Barbara Brinkley is employed by the Department as a family services counselor in the child-regulation unit in Marion County. Ms. Brinkley conducts annual inspections, school readiness inspections, and complaint inspections of exempt child care facilities.

19. On or about March 1, 2019, Ms. Brinkley conducted a school readiness inspection of the daycare, including the cafeteria. Ms. Brinkley observed Ms. Crowell in the kitchen along with several children from the daycare. One of the children was Ms. Crowell's granddaughter, who is enrolled at the daycare.

20. On the date of Ms. Brinkley's inspection, Ms. Crowell did not have background screening documentation in her employee file.

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.[3]

22. Ms. Crowell is an employee of the Academy who prepares and serves meals to children enrolled at the daycare. Because the cafeteria is integral to the daycare, Ms. Crowell "works in the daycare."

Mr. Washington

23. During Ms. Brinkley's March 1, 2019 school readiness inspection of the daycare, she noted that there was no employee file for Mr. Washington, and she inquired whether he had been screened for employment in child care.

24. Despite the fact that Mr. Washington does not agree that he is required to undergo background screening, on March 8, 2019,

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[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.

Mr. Washington completed the background screening process and was determined to be ineligible to work in child care.

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.[4]

26. Mr. Washington maintains an office in the administrative offices of the school.

27. Prior to 2012, the daycare director had unfettered discretion in all decisions regarding daycare operations.

28. In 2012, following an incident in which a prior daycare director contracted for services to be provided to the daycare, without the knowledge of the Church, and which resulted in a lawsuit against the Church, the Church authorized Mr. Washington, rather than the daycare director, to sign all legal documents obligating the Church in any capacity.

29. To that end, Mr. Washington has taken it upon himself to be present, when possible, for inspections of the daycare by government officials (i.e., the Early Learning Coalition, the Fire Marshal, and the Department). The stated purpose of his presence is to keep the Church's Board of Directors informed of issues associated with the daycare.

30. In that capacity, Mr. Washington is familiar with the employees of the daycare and the children enrolled therein. Mr. Washington has knowledge of the location of employee files at the daycare.

31. Mr. Washington is the signatory on the documents attesting that child care personnel employed by the daycare have been background screened and found eligible to work in child care.

32. Ms. Brinkley conducted inspections of the daycare in February, March, April, May, and June 2019. Each time she arrived at the daycare, she met first with then-director, Joyce Johnson. After her arrival at the daycare,

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[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.

Ms. Johnson contacted Mr. Washington and requested him to come to the daycare to meet with Ms. Brinkley. Mr. Washington provided some of the information sought by Ms. Brinkley during her inspections, accompanied her on at least one walk through of the daycare, and showed her the location of employee and student files at the daycare.

33. During one of her inspections, Ms. Brinkley met with Mr. Washington to review security camera footage. That technical equipment is housed in the administrative offices of the school, which is located in the building next to the cafeteria.

34. Ms. Brinkley testified, several times, that a determination whether an individual is child care personnel at a child care facility depends on their interaction with children in the child care facility. Ms. Brinkley explained that "[t]hose persons who were in contact with children who are in care at a facility" are required to be background screened.[5] She was emphatic that employees "have to be interacting with the children to be considered child care personnel.[6]" She confirmed that "[i]f they were not with the children, they are not required to be background screened.[7]"

35. Further, Ms. Brinkley relies upon her personal observations of persons in the child care facility to make the determination that someone is child care personnel.

36. Ms. Brinkley testified that she observed Mr. Washington in contact with the children the day she requested to look at employee files at the daycare. Those files are kept in a small office just off the infant room; thus, both Ms. Brinkley and Mr. Washington had to enter the infant room of the daycare. To the extent this constitutes "contact with the children," it is incidental.

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[5] T.50:22-25.
[6] T.106:5-7.
[7] T.101:23-24.

37. Ms. Brinkley did not testify to any other observation of Mr. Washington interacting with children at the daycare.

38. Instead, Ms. Brinkley testified that her conclusion that Mr. Washington needed to be background screened was based on her observations of his role at the daycare, which she characterized as operational. For example, she noted that he signed the paperwork attesting to the required background screening of child care personnel employed at the daycare, that daycare staff frequently referred her to Mr. Washington to answer her questions, and that he reviewed employee files with her and accompanied her on inspection tours.

39. In her paperwork concerning the daycare, Ms. Brinkley listed Mr. Washington as the director. However, on all of her visits to the facility, she met with Ms. Johnson, the now-former director, as well as Mr. Washington.

40. Following the discovery that Mr. Washington had not passed the background screening process, the Department prepared a safety plan for consideration by Respondent. The safety plan would allow Respondent to continue operating the daycare as a religious exempt facility under certain conditions.

41. Ms. Brinkley visited the campus on either the 29th or 30th of May 2019, to present the safety plan. At that time, she met with Ms. Johnson, as well as Dr. Brown and Mr. Washington.

42. Ms. Brinkley again met with Dr. Brown, Ms. Johnson, and Mr. Washington on the campus regarding the safety plan in June 2019.

43. It is Ms. Brinkley's understanding that Ms. Johnson left the facility as director in June 2019, presumably after the last meeting relating to the safety plan.

44. Mr. Washington is not, nor has he ever been, a director of the facility. Nor does he instruct, supervise, or otherwise care for, children enrolled at the facility.

45. No evidence was introduced to suggest that Mr. Washington managed the day-to-day operations of the daycare, such as processing enrollment applications, meeting with parents (prospective or otherwise), billing, supervising student drop-off and pickup, hiring or disciplining daycare workers, or scheduling staff days.

CONCLUSIONS OF LAW

46. The Division has jurisdiction over the parties to and the subject matter of this proceeding. *See* §§ 120.569 and 120.57(1), Fla. Stat.

47. Petitioner, as the party seeking to remove Respondent's exemption from licensure, has the burden to prove the allegations in the Complaint by a preponderance of the evidence. *See* § 120.57(1)(j), Fla. Stat.

48. Section 402.316 provides that child care licensing requirements "except for the requirements regarding screening of child care personnel," do not apply to a child care facility "which is an integral part of church." § 402.316(1). Fla. Stat. However, exempt facilities "shall meet the screening requirements pursuant to sections 402.305 and 402.3055." The statute concludes that "[f]ailure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure." *Id.*

49. Section 402.305 provides that child care personnel must meet minimum standards, including "good moral character" established by a level II background screening process that includes employment history checks and searches of criminal history records, sexual predator and sexual offender registries, and child abuse and neglect registries.

50. Section 402.302 defines "child care personnel" as "all owners, operators, employees, and volunteers working in a child care facility." § 402.302(3), Fla. Stat.

51. Contrary to Ms. Brinkley's belief, the term is not limited to persons with direct contact with children. *See Dep't of Child. & Fams. v., GC*

Academy, Inc., Case No. 19-0975 (Fla. DOAH June 4, 2019; Fla. DCF Sept. 13, 2019); *Dep't of Child. & Fams. v. Royal Academy Preschool*, Case No. 19-0158 (Fla. DOAH Apr. 8, 2019; Fla. DCF Aug. 12, 2019) *appeal pending, Royal Academy Preschool v. Dep't of Child. & Fams.*, Fla. 5th DCA Case No. 19-2721. A person employed to perform maintenance at a daycare facility while children are present meets the statutory definition of "child care personnel," and is required to undergo background screening. *See GC Academy*, R.O. at ¶ 37.

52. The Department proved that Ms. Crowell is child care personnel: she is an employee of the Academy who works in the daycare. Thus, Ms. Crowell is subject to the background screening requirements of section 402.305.

53. Whether Mr. Washington is child care personnel depends, not on whether he has contact with children enrolled at the daycare, but rather on whether he is (1) an owner, operator, or employee of the daycare; and, if so, (2) whether he works in the daycare. The determination requires a two-part analysis.

54. The Department did not prove that Mr. Washington is child care personnel.

55. Section 402.302(13) defines the "[o]wner" as the person "licensed to operate the child care facility."

56. In this case, the daycare is not licensed, but the Department has issued the religious exemption certificate to the Academy.

57. Mr. Washington is not the owner of the daycare. According to the statutory definition, the Academy—in the name of which the exemption is held—is the owner of the daycare.

58. The statute defines "operator" as "any onsite person ultimately responsible for the overall operation of a child care facility, whether or not he or she is the owner or administrator of such facility." § 402.302(13)

59. The Department did not prove that Mr. Washington is the onsite person ultimately responsible for the operation of the daycare.

Mr. Washington has many other responsibilities on the campus, as well as off-campus at other businesses run by the Church. The Academy employs a daycare director to manage the operation of the daycare. The preponderance of the evidence demonstrated that the daycare director is responsible for day-to-day operation of the daycare.

60. The evidence demonstrated that Ms. Johnson was the onsite director of the facility at the time Ms. Brinkley conducted her inspections of the daycare and when the Complaint was issued. Further, it was Ms. Johnson, not Mr. Washington, who initially met with Ms. Brinkley when she appeared for inspections of the daycare.

61. The Department did not establish by a preponderance of the evidence that Mr. Washington is onsite at the daycare managing operations thereof with any regularity.

62. Assuming, arguendo, Mr. Washington is the operator of the daycare, that fact is insufficient to determine he is child care personnel. The statutory definition requires a second finding—that Mr. Washington "work[s] in the daycare."

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.

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 the undersigned.[8]

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Children and Families, enter a final order revoking the religious exemption for the daycare operated by the Academy, and not recognize the Academy's Notice of Child Care Facility Operation as Religious Exemption.

DONE AND ENTERED this 2nd day of September, 2020, in Tallahassee, Leon County, Florida.

Suzanne Van Wyk

SUZANNE VAN WYK
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of September, 2020.

[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 when determining how to act on this Recommended Order.