

FILED

JUN 04 2020

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES DCF Department Clerk

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,
v.

CASE NO. 19-6727
RENDITION NO. DCF-20-112-FO
DCF-20-112-FO

SPELLMAN PREP SCHOOL,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE is before me for entry of a final order concerning the Department's Administrative Complaint served on November 13, 2019, imposing a fine in the total amount of \$325.00 for a Class I violation of Section 2.8.A of the Child Care Facility Handbook, a Class II violation of Section 3.12.D of the Child Care Facility Handbook, and a Class III violation of Section 7.4.C of the Child Care Facility Handbook. The Recommended Order, dated March 2, 2020, concluded the Respondent failed to prove Petitioner committed the Class I and III violations, Respondent withdrew the Class II violation at the hearing, and recommended that the Department enter a final order dismissing the administrative complaint. Neither party filed exceptions to the Recommended Order.

Accordingly, the Recommended Order is approved and adopted, and the Administrative Complaint served on November 13, 2019, is **DISMISSED**.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 4th day of

June, 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 U.S. Mail on date of Rendition of this Order.¹

Brian Christopher Meola, Esq.
Assistant General Counsel
Department of Children and Families
400 W. Robinson St., Ste. S-1129
Orlando, FL 32801

Claudio Llado, Clerk
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Pkwy.
Tallahassee, FL 32399

Sharon Swann
Spellman Prep School
6844 Silver Star Rd.
Orlando, FL 32818



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. 19-6727

SPELLMAN PREP SCHOOL,

Respondent.

RECOMMENDED ORDER

On January 31, 2020, Hetal Desai, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a hearing by video teleconference with sites in Altamonte Springs and Tallahassee, Florida.

APPEARANCES

For Petitioner: Brian Christopher Meola, Assistant General Counsel
Department of Children and Families
Suite S-1129
400 West Robinson Street
Orlando, Florida 32801-1707

For Respondent: Sharon Swann, pro se
Spellman Prep School
6844 Silver Star Road
Orlando, Florida 32818

STATEMENT OF THE ISSUES

Whether Respondent committed (1) a Class I violation when staff allegedly pulled the hair of a child as a method of discipline; and (2) a Class III violation when it failed to have a signed CF-FSP 5337 Child Abuse and Neglect Reporting Requirements Form (Form) in an employee's personnel file

on three occasions; and if so, what sanction should be assessed against Respondent.

PRELIMINARY STATEMENT

On November 13, 2019, Petitioner, the Department of Children and Families (the Department), served Respondent, Spellman Prep School (School), with an Administrative Complaint (Complaint). The Complaint sought to impose fines for three alleged violations as summarized below.

(1) A violation of Florida Administrative Code Rule 65C-22.001 (2019)¹ and section 2.8 of the Child Care Facility Handbook (Handbook), when a method of discipline was used at the School that was severe, humiliating, or frightening to children. (\$250 fine).

(2) A violation of rule 65C-22.001 and section 3.12.D of the Handbook, for failing to provide a resilient surface beneath and within the fall zone for playground equipment. (\$50 fine).²

(3) A violation of section 402.305(1), Florida Statutes, rule 65C-22.006, and section 7.4.C of the Handbook, for failing to maintain a Form during Department inspections on October 9, 2019, July 6, 2018, and June 1, 2018. (\$25 fine).

The School contested the Complaint and submitted an undated letter requesting a formal administrative hearing. The Department referred the matter to DOAH on December 19, 2019, and it was assigned to an Administrative Law Judge for hearing.

¹ All references to the Florida Statutes and Florida Administrative Code are to the 2019 versions which were in effect on the date of the alleged violations. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441 (Fla. 5th DCA 2013).

² The Department withdrew the second alleged violation related to the surfacing under and around the playground equipment at the close of its case at the final hearing. As such, no findings of facts or conclusions of law are made regarding this alleged violation.

A prehearing telephone conference was duly noticed and held on January 24, 2020. No representative from the School called into the telephone conference, and nothing substantive was discussed.³

At the final hearing, the Department presented the testimony of three witnesses: Willette Tisdale (a Department licensing counselor), Allen Young (a Department child protective investigator), and Christopher Vereen (a Department licensing counselor). Petitioner's Exhibits A through C were admitted into evidence without objection. Respondent presented the testimony of its owner and director, Sharon Swann. Respondent's exhibit was not admitted into evidence.⁴

The hearing was recorded by a court reporter. At the conclusion of the hearing, the parties were instructed they must file proposed recommended orders with DOAH within ten days, unless the transcript of the proceedings was ordered and neither party indicated it was ordering a copy of the transcript. Therefore, the proposed recommended orders were due on or before February 11, 2020. The Department submitted an untimely proposed recommended order on February 20, 2020, and the School did not file a proposed recommended order. For the sake of thoroughness, the Department's proposed recommended order has been reviewed.

³ The notice for the January 24, 2020, prehearing telephone conference was sent to the School's address of record and was not returned to DOAH as undeliverable. Moreover, at the time and date of the prehearing telephone conference, DOAH staff attempted to reach the School at the phone number of record to determine if it would be participating, but was unable to reach anyone.

⁴ Respondent offered one document, to which the Department objected. The document was not admitted into evidence because it was not disclosed to the Department prior to the hearing, was not provided to the undersigned, and was deemed irrelevant.

FINDINGS OF FACT

1. The Department is responsible for licensing and enforcing regulations to maintain health, safety, and sanitary conditions at child care facilities. *See* § 402.305, Fla. Stat. and Fla. Adm. Code. R. 65C-22.010.

2. The School is licensed by the Department to operate as a child care facility (License ID number C09OR0879) at 6844 Silver Star Road in Orlando, Florida. The School offers day and evening child care services. Sharon Swann has been the director and owner of the School since 1983.

3. S.P.W. was an eight-year-old male who attended the School in the summer of 2019.⁵

Complaint and Investigation

4. On July 31, 2019, S.P.W.'s mother contacted the Department to report that S.P.W. was upset because Ms. Swann pulled his hair, screamed at him, and called him stupid.

5. As a result of the complaint, the next day the Department initiated a visit to the School by a child protective investigator, Alan Young, and a licensing counselor, Willette Tisdale. Mr. Young interviewed S.P.W., Ms. Swann, another facility worker (Whitney Lawrence), and another child who attended the School. Ms. Tisdale observed the interviews.

6. As a result of the interviews, the Department prepared a "Investigative Summary Child Institutional Investigation (without Reporter Information)" (Summary). The unsigned and undated copy of the Summary offered into evidence indicates the investigation into the July 31 incident involving S.P.W. was closed on September 4, 2019.

⁵ Minors shall be referred to by their initials to protect their identities.

Incident on July 31, 2019

7. On July 31, 2019, Ms. Swann was watching over the children during naptime. She noticed S.P.W. had his cellphone out on the mat and was distracting other children from napping.

8. Ms. Swann had previously allowed S.P.W. to use his phone when he could not sleep but had warned him about distracting the other kids during naptime. On this occasion, she took the cellphone away from him.

9. When Ms. Swann attempted to talk to him, S.P.W. turned around on his mat, and would not look at her. The Department alleges Ms. Swann then pulled S.P.W.'s hair as punishment. Ms. Swann admitted she tugged S.P.W.'s ponytail and demonstrated her actions at the hearing. She denied, however, that the tugging was done in anger or as a form of discipline. Rather, she claimed she was trying to get his attention to get him to turn around and face her.

10. At this point, S.P.W. became angry, "puffed up," and acted as if he was going to stand up and fight. Ms. Swann told S.P.W. something to the effect of "don't think about fighting me, because I'll put you down like Mike Tyson." S.P.W. calmed down and remained on his mat. Ms. Swann admitted she made the statement regarding Mike Tyson but stated she was not serious and did not intend to hit S.P.W. Based on Ms. Swann's appearance and demeanor at the hearing, the undersigned finds her testimony credible.

11. The Department alleges another School staff member suggested to Ms. Swann that S.P.W. read a book since he was having trouble napping, and Ms. Swann allegedly replied that he was too stupid to read. The Department also alleges S.P.W. was crying after the encounter with Ms. Swann. Ms. Swann denied that she called S.P.W. stupid, or that he was upset after this encounter.

12. The other School staff member who was interviewed by Mr. Young also did not corroborate the Department's allegations that Ms. Swann called the child stupid or that he was crying. These allegations were not proven at

the hearing and were based entirely on hearsay testimony and statements in the Summary.

13. Even if the Summary was the type of document generally admissible under a hearsay exception, this particular Summary is unreliable. For example, the "Complaint Form" notes the complaint was filed by a parent on July 31, 2019, for an incident that occurred on July 30, 2019, but the Summary states the incident occurred the same day S.P.W.'s mother made the complaint (July 31, 2019). There are also inconsistencies between the Department witnesses' testimony regarding the interviews and what was in the Summary. For instance, Ms. Tisdale referred to the other child interviewed by Mr. Young as "J." in her hearing testimony, but this child is referred to as "K." in the Summary. Moreover, in the Summary, there is no reference that S.P.W. cried as a result of Ms. Swann's actions.

14. The Department failed to offer credible evidence establishing the allegations that Ms. Swann was imposing discipline or that she called S.P.W. stupid or dumb. The undersigned also finds the Department had no non-hearsay evidence rebutting Ms. Swann's credible version of events.

Incident on October 9, 2019

15. On or about October 9, 2019, Ms. Tisdale returned to the School to conduct a follow-up inspection unrelated to the July 31 incident. During that inspection, Ms. Tisdale discovered the School did not have a signed Form for one of its employees in that employee's personnel file. Ms. Tisdale inquired about the missing Form, but Ms. Swann was unable to immediately locate it. Before Ms. Tisdale left the School, however, Ms. Swann produced a signed copy of the Form.

16. Ms. Swann admitted the signed Form was not in the employee's personnel file but testified she found it in a pile of papers on her desk. There is no dispute the signed Form was provided to Ms. Tisdale on the same day of the inspection.

17. Ms. Tisdale testified she did not accept the Form on October 9 during the inspection because she suspected at the time that Ms. Swann forged the signature of the employee on the Form. At the hearing, however, Ms. Tisdale refused to state Ms. Swann had committed fraud or that the documentation was false. Instead, she stated she did not accept the signed Form because she had already reported the violation when Ms. Swann produced the document and she believed it was a violation of the record-keeping standards if the Form was not in the personnel file.

18. According to the unrefuted testimony of Christopher Vereen, the School had previously been cited on June 1, 2018, and July 6, 2018, for not having signed Forms for all of its employees.

ULTIMATE FACTUAL DETERMINATION

19. The School is not guilty of violating section 2.8.A. of the Handbook because the evidence failed to establish Ms. Swann's actions could be considered severe, humiliating, or frightening, which is an essential element of the disciplinable offense.

20. The School is not guilty of violating section 7.4.C. of the Handbook because the evidence established it maintained the signed Form on-site as required.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction. *See* §§ 120.569, 120.57(1), and 402.310 (4), Fla. Stat.; and Fla. Admin. Code R. 65C-22.010(3).

22. This proceeding, in which the Department seeks to impose discipline upon a license, is penal in nature. Therefore, the burden of proof is on the Department to prove the material allegations by clear and convincing evidence. *See* § 120.57(1)(j); *Coke v. Dept. of Child. & Fam. Servs.*, 704 So. 2d 726 (Fla 5th DCA 1998).

23. The "clear and convincing" standard as stated by the Florida Supreme Court is as follows:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

24. Florida Administrative Code Rule 65C-22.001 incorporates the Handbook by reference. Relevant to these proceedings, the Handbook provides the following standards:

Section 2.8.

A. The child care facility shall adopt a discipline policy consistent with Section 402.305(12), F.S., including standards that prohibit children from being subjected to discipline which is severe, humiliating, frightening, or associated with food, rest, or toileting. Spanking or any other form of physical punishment is prohibited.

* * *

Section 7.4 Personnel Records

Records must be maintained and kept current on all child care personnel, as defined by Section 402.302(3), F.S. These records shall be on-site, available for review by the licensing authority and must include:

A. A complete employment application with the required statement pursuant to Section 402.3055(1)(b), F.S.

B. Documentation of position and date of employment.

C. CF-FSP Form 5337, Child Abuse & Neglect Reporting Requirements [Form], which is incorporated by reference in 65C-22.001(7)(l), F.A.C., must be signed on or before hire date and annually thereafter by all child care personnel.

(emphasis added).

25. The foregoing regulatory provisions "must be construed strictly, in favor of the one against whom the penalty would be imposed." *Munch v. Dep't of Prof'l Reg., Div. of Real Estate*, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); see also, e.g., *Griffis v. Fish & Wildlife Conserv. Comm'n*, 57 So. 3d 929, 931 (Fla. 1st DCA 2011)(noting statutes imposing a penalty cannot be extended by construction).

26. In its late-filed proposed recommended order, the Department argues the hearsay in the Summary and witness testimony may serve as a basis for finding a violation of section 2.8. of the Handbook. See Pet'r's Proposed Recommended Order (PRO) at p.6-7. The Department argues hearsay can be used to support, supplement, or explain other evidence, citing Florida Administrative Code Rule 28-106.213.

27. Although "[h]earsay is admissible for limited purposes in an administrative action [and] it may be admitted to supplement or explain other evidence, [it] is not sufficient in itself to support a finding unless it would be admissible in a civil action over objection." *Wark v. Home Shopping Club*, 715 So. 2d 323, 324 (Fla. 2d DCA 1998) (citing section 120.57(1)(c), Fla. Stat.). Here, it is unclear what non-hearsay evidence the Department claims the hearsay evidence is supporting. Although the evidence established Ms. Swann tugged on S.P.W.'s ponytail, there is no non-hearsay evidence establishing that this action was done as a punishment or that it was "severe, humiliating, or frightening" as required.

28. The Department argues the Summary and its witnesses' testimony regarding the interviews with S.P.W. and the other child is admissible pursuant to a hearsay exception for child victim statements, pursuant to section 90.803(23), Florida Statutes, which provides:

(23) Hearsay exception; statement of child victim.

(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and

2. The child either:

a. Testifies; or

b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial

or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).

29. This exception is inapplicable for numerous reasons. First, the Department made no attempts to invoke this hearsay exception at the hearing. Even if it had, it has not alleged that S.P.W. was a victim of "child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration" as referenced in the exception. *See* § 90.803(23)(a), Fla. Stat. On the contrary, the Department found no signs of abuse.

30. Second, even if the exception applied, the Department did not attempt to establish the predicate for admission of hearsay statements that is required by section 90.803(23)(a)1. There was no evidence of the maturity level of S.P.W. or the other child interviewed. The duration of the offense (mere seconds) was short and did not rise to the level of corporal punishment or abuse. There was no evidence about the relationship between Ms. Swann and S.P.W., but he and his sibling remained at the School after the incident. There was also no other evidence of similar behavior between Ms. Swann and S.P.W. or any other child at the School. The Department also put on no evidence of the reliability of the statements made by S.P.W. or the other child. Because the Department failed to satisfy the predicate necessary for the application of the child victim hearsay exception, neither the Department's witnesses' testimony as to what S.P.W. and other child stated or the Summary containing what the children told the Department's investigator can be the basis of any finding of fact.

31. Finally, the Department argues the Summary and hearsay testimony can be considered because "no objection to the hearsay testimony was raised by the Respondent." PRO at p. 7. Regardless of whether there was an objection, because Section 90.803(23) is inapplicable and no proper predicate

was established for this exception, this hearsay evidence cannot alone support a finding of fact. *See* § 120.57(1)(c), Fla. Stat. and Fla. Admin. Code R. 28-106.213(3).

32. Although Ms. Swann's actions in pulling S.P.W.'s ponytail and making the Mike Tyson comment were not professional, the Department failed to establish Ms. Swann's conduct was discipline that was "severe, humiliating, or frightening," nor could Ms. Swann's conduct be considered equivalent to "[s]panking or any other form of physical punishment." *See* Handbook at § 2.8. Ms. Swann's testimony established she gently pulled on S.P.W.'s ponytail to get him to turn his head, and there is no clear and convincing evidence this harmed, humiliated, or frightened him. As such, the Department failed to prove Count I of the Administrative Complaint. *See generally Dep't of Child. & Fam. v. My First Steps of Bradenton, Inc.*, Case No. 18-5147 (Fla. DOAH May 8, 2019; Fla. DCF Aug. 9, 2019) (finding no violation of section 2.8.A. of the Handbook where although child "began crying when she first touched him, no unusual force or pressure was used, and there were no marks or bruises on the child . . . and within a few seconds after the contact the child became calm, stopped crying, and placed his head on the table.").


33. Regarding the third alleged violation of Respondent's failure to maintain a signed Form, section 7.4.C. of the Handbook does not require such Form be located in the employee's personnel file. Rather, it clearly states that this Form must be located "on-site." *See* Handbook at § 7.4; *compare* Handbook at § 7.4.1. C. (requiring that for a child care facility waiting for an out of state background check "the Department's email informing of the individual's eligibility for a provisional hire status must be in the personnel file." (emphasis added)). The Department failed to prove by clear and convincing evidence that Respondent did not maintain the Form in question "on-site." *See McClung v. Crim. Just. Stds. & Training Comm'n*, 458 So. 2d 887, 888 (Fla. 5th DCA 1984) ("No conduct is to be regarded as included

within a penal statute that is not reasonably proscribed by it; if there are any ambiguities included, they must be construed in favor of the licensee.").

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 dismissing the Administrative Complaint as amended at the final hearing.

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



HETAL DESAI
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of March, 2020.

COPIES FURNISHED:

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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.



**State of Florida
Department of Children and Families**

**Ron DeSantis
Governor**

**Chad Poppell
Secretary**

**Sharon Washington
Regional Managing Director**

Certified Mail No. 7019 0140 0000 4076 1828

To: Spellman Prep School C09OR0879
6844 Silver Star Rd, Orlando FL, 32818



ADMINISTRATIVE COMPLAINT

YOU ARE HEREBY NOTIFIED the Department has imposed a Civil Penalty in the amount of **\$325**. The Department's authority and grounds to impose these sanctions are explained below.

1. The Department of Children and Families is authorized by section 402.310, Florida Statutes, to sanction Spellman Prep School C09OR0879 for violations of child care licensing standards in sections 402.301 – 402.319, Florida Statutes, and chapter 65C-22, Florida Administrative Code.
2. Spellman Prep School C09OR0879 is licensed under chapter 402, Florida Statutes, and chapter 65C-22, Florida Administrative Code, to operate a child care facility located at 6844 Silver Star Rd, Orlando FL, 32818. The facility license is currently on an annual license.
3. Respondent committed a violation of F.S., 65C-22.001 F.A.C. and Child Care Facility Handbook 2.8.A with respect to General Requirements Rule Inappropriate Method Used. During the inspections on 10/10/19, A method of discipline was used at the facility that was severe, humiliating or frightening to children in that [staff pulled child by the hair]. CCF Handbook, Section 2.8, A (Section 9, number 2) [SR]. For this Class I violation of General Requirements Rule Inappropriate Method Used, the Child Care Regulations Department imposes a \$250. fine which is imposed in accordance with Section 402.310(1)(a), Florida Statutes. The inspection for 10/10/19 is attached as Exhibit "A".
4. The foregoing facts violate 65C-22.001 F.A.C and Child Care Facility Handbook 2.8. A
5. The violation described above is a violation of child care licensing standards. It is the facility's first violation of General Requirements Rule Child Discipline within a two-year period. The fine imposed for this violation is \$250.00

Central Region: 400 W, Robinson Street, Suite 912, Orlando, FL 32801

Mission: Work in Partnership with Local Communities to Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

6. Respondent committed a violation of F.S., 65C-22.001 F.A.C. and Child Care Facility Handbook 3.12.D with respect to Sanitation and Equipment: Fall Zone-No Resilient Surface. During the inspections on 10/28/19 and 10/9/19, A resilient surface was not provided beneath and within the fall zone for [slide, climbing and merry go round equipment]. For this Class II violation of Sanitation and Equipment: Fall Zone-No Resilient Surface, the Child Care Regulations Department imposes a \$50.00 fine which is imposed in accordance with Section 402.310(1)(a), Florida Statutes. The inspections for 10/28/19 and 10/9/19 are attached as Exhibit "C".

7. The foregoing facts violate 65C-22.001 F.A.C and Child Care Facility Handbook 3.12.D

8. The violation described above is a violation of child care licensing standards. It is the facility's second violation of Sanitation and Equipment: Fall Zone-No Resilient Surface within a two-year period. The fine imposed for this violation is \$50.00

9. Respondent committed a violation of 402.305(1) F.S., 65C-22.006 F.A.C. and Child Care Facility Handbook 7.4.C, with respect to Record Keeping Child Abuse Reporting Form Missing. During the inspections on 10/9/2019, 7/6/2018, and 6/1/2018 the personnel record did not include a signed CF-FSP 5337 Child Abuse and Neglect Reporting Requirements form. For this Class III violation of Record Keeping Rule, the Child Care Regulations Department imposes a \$25.00 fine which is imposed in accordance with Section 402.310(1)(a), Florida Statutes. The inspections for 10/9/2019, 7/6/2018, and 6/1/2018 are attached as Exhibit "C".

10. The foregoing facts violate 402.3055(1), F.S., 65C-22.006 F.A.C. and Child Care Facility Handbook 7.4.C,

11. The violation described above is a violation of child care licensing standards. It is the facility's third violation of Record Keeping Rule Child Abuse Reporting Form Missing within a two-year period. The fine imposed for this violation is \$25.00.

Total due: \$325

If you do not wish to contest the findings of this administrative complaint, payment of the fine amount may be made directly to the Florida Department of Children and Families, Child Care Regulation Office by money order or cashier's check. The mailing address is:

Department of Children and Families
Attention: Child Care Regulation
400 West Robinson Street S-912
Orlando, Florida 32801

If you wish to contest the findings of this administrative complaint, the sanctions imposed, you may do so as provided in the notification of rights.

RIGHT TO ADMINISTRATIVE PROCEEDING

IF YOU BELIEVE THE PROPOSED ACTION DESCRIBED IN THIS ADMINISTRATIVE COMPLAINT IS IN ERROR, YOU MAY REQUEST AN ADMINISTRATIVE HEARING IN ACCORDANCE WITH THE ENCLOSED "NOTIFICATION OF RIGHTS UNDER CHAPTER 120, FLORIDA STATUTES"

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail return receipt to Spellman Prep School C09OR0879 located at 6844 Silver Star Rd, Orlando FL, 32818 on this 13 day of November 2019.

Avida Iris Rosa

Avida Iris Rosa
Family Service Supervisor



Birth to SA Child Care Facility

Name: Spellman Prep School
ID Number: C09OR0879
Address: 6844 Silver Star Rd, Orlando FL, 32818-3193
Phone Number: (407) 969-0700 Capacity: 22
Owner/Director/Staff Responsible: Sharon Swann

DCF Standards
DCF & SR Standards
SR Standards

Inspection Information

Type: Complaint Date: 10/10/2019 Arrival/Departure Time: 12:25 PM to 12:30 PM
Staff Present: 2 Children Present: 17 Onsite Visit: Yes



INSPECTION CHECKLIST

GENERAL REQUIREMENTS

- 01. License Displayed/Citation Posted/Advertising s.402.3125(1)(a), F.S. Compliance
- 02. Minimum Age Requirements CCF Handbook, Section 2.2 Compliance
- 03. Ratio Sufficient CCF Handbook, Section 2.3 Compliance
Compliance Comments
 2:17 Mix one-nine year olds
- 04. Supervision CCF Handbook, Section 2.4 Compliance
- 05. Transportation CCF Handbook, Section 2.5 Not Monitored
- 06. Driver's License, Physician Certification & First Aid/CPR Training CCF Handbook, Section 2.5 and CCF Handbook, Section 7.4 Not Monitored
- 07. Vehicle Insurance and Inspection CCF Handbook, Section 2.5.4 Not Monitored
- 08. Seat Belts/Child Restraints CCF Handbook, Section 2.5.4 and CCF Handbook, Section 2.5.5 Not Monitored
- 09. Planned Activities CCF Handbook, Section 2.6 Not Monitored
- 10. Field Trip Permission CCF Handbook, Section 2.7 Not Monitored
- 11. Child Discipline CCF Handbook, Section 2.8 Noncompliance
Non-Compliance Description
 11-04 A method of discipline was used at the facility that was severe, humiliating or frightening to children in that [staff pulled child by the hair]. CCF Handbook, Section 2.8, A (Section 9, number 2) [SR]
Comments
Due Date Completed at time of inspection Violation Level Class 1

PHYSICAL ENVIRONMENT

- 12. Facility Environment CCF Handbook, Section 3.1 Not Monitored
- 13. Toxic Substances, Hazardous Materials and Weapons CCF Handbook, Section 3.2 Not Monitored



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|---|----------------------|
| 14. Lighting, Temperature, and Ventilation CCF Handbook, Section 3.3 | Not Monitored |
| 15. Licensed Capacity CCF Handbook , Section 3.4 | Not Monitored |
| 16. Indoor Floor Space CCF Handbook, Section 3.4 | Not Monitored |
| 17. Outdoor Play Area/Fencing CCF Handbook, Section 3.5 | Not Monitored |
| 18. Bedding and Linens CCF Handbook, Section 3.6 | Not Monitored |
| 19. Nap/Sleep Space Requirements CCF Handbook, Section 3.6.2 | Not Monitored |
| 20. Crib Requirements CCF Handbook, Section 3.6 | Not Monitored |
| 21. Restrooms and Bath Facilities CCF Handbook, Section 3.7 | Not Monitored |
| 22. Operable Phone CCF Handbook, Section 3.8.1 | Not Monitored |
| 23. Fire Drills & Emergency Preparedness CCF Handbook, Section 3.8 | Not Monitored |

FOOD AND NUTRITION

- | | |
|--|----------------------|
| 24. Food Preparation Area CCF Handbook, Section 3.9 | Not Monitored |
| 25. Meals and Snacks CCF Handbook, Section 3.9 | Not Monitored |
| 26. Meal and Snack Menus CCF Handbook, Section 3.9.3 & Section 7 | Not Monitored |
| 27. Catered Food and Food Provided by Outside Sources CCF Handbook, Section 7 & Section 3.9.3 | Not Monitored |
| 28. Bottles, Breastmilk, Formula and Infant Food CCF Handbook, Section 3.9 | Not Monitored |

SANITATION AND EQUIPMENT

- | | |
|---|----------------------|
| 29. Health and Sanitation CCF Handbook, Section 3.6, 3.9, and 3.10 | Not Monitored |
| 30. Diapering CCF Handbook, Section 3.10 | Not Monitored |
| 31. Indoor Equipment CCF Handbook, Section 3.11 | Not Monitored |
| 32. Outdoor Equipment CCF Handbook, Section 3.12 | Not Monitored |

TRAINING

- | | |
|---|----------------------|
| 33. Training Requirements CCF Handbook, Section 4 | Not Monitored |
| 34. Credentialed Staff CCF Handbook, Section 4.6 & 4.7 | Not Monitored |



HEALTH REQUIREMENTS

- | | |
|---|---------------|
| 35. Communicable Disease Control CCF Handbook, Section 6.1 | Not Monitored |
| 36. CPR Requirements CCF Handbook, Section 4.2.4 | Not Monitored |
| 37. First Aid Requirements CCF Handbook, Section 4.2.4 and 6.2 | Not Monitored |
| 38. Emergency Telephone Numbers CCF Handbook, Section 6.3 | Not Monitored |
| 39. Accident/ Incident Notification and Documentation CCF Handbook, Section 6.3 & 6.4 | Not Monitored |
| 40. Medication CCF Handbook, Section 6.5 | Not Monitored |

RECORD KEEPING

- | | |
|---|---------------|
| 41. Immunization Records CCF Handbook, Section 7.1 | Not Monitored |
| 42. Student Health and Records CCF Handbook, Section 7.2 | Not Monitored |
| 43. Enrollment Information CCF Handbook, Section 7.3 & s. 402.3054(2), F.S. | Not Monitored |
| 44. Personnel Records CCF Handbook, Section 7.4 | Not Monitored |
| 45. Background Screening Documents CCF Handbook, Section 7.4.1 | Not Monitored |
| 46. Daily Attendance CCF Handbook, Section 7.5 | Not Monitored |

ENFORCEMENT

- | | |
|---|------------|
| 47. Access/Child Safety CCF Handbook, Section 8 | Compliance |
|---|------------|

Received by: Sharon Swann
Date: 10/10/2019

Inspected by: Willette Tisdale
Date: 10/10/2019



Name: Spellman Prep School License #: C09OR0879
Address: 6844 Silver Star Rd, Orlando FL, 32818-3193
Type: Complaint **Date:** 10/10/2019

SUPPLEMENTAL INSPECTION SHEET

Comments:

Ratio

2:17 Mix one-nine year olds Whitney Lawrence and Sharon Swann

Staff 1 Sharon Swann

Staff 2 Whitney Lawrence

Child 1 Sincere Prince Williams

Child 2 Klani

Received by: Sharon Swann
Date: 10/10/2019

Inspected by: Willette Tisdale
Date: 10/10/2019



COMPLAINT FORM

Complaint:

2:17 Mix one-nine year olds

Complaint:

Allegations As Received on 07/31/2019

When did the incident happen? 07/31/2019

What happened? Sincere attends day and evening care at Spellman Prep School while mom is at work. Today, 07/31/2019, Ms. Swan, one of the daycare workers, got upset with Sincere because she thought he was playing on his phone. Ms. Swan grabbed Sincere by his hair and screamed at him and called him stupid and told him that he didn't know how to read. Late into the evening, Sincere's hair was still visibly messed up and looked like it had been grabbed, and he was still upset about what happened. This is the first time that something like this has happened since Sincere and his brother started attending daycare there a few months ago, and it is unknown what normal discipline is like at the daycare.

Summary:

07/31/2019 An unannounced visit was made at the facility. The facility was observed to be compliant for ratio, supervision and capacity at the time of the unannounced visit.

Contact was made with child care personnel 1: stated that a complaint by the parent was made on 07/31/2019, alleging that the incident occurred on 07/30/2019. Parent/Guardian suggestion concerns with allegations that teacher pulled child hair because he was playing with his cell phone and not taking a nap. Staff stated that she did pull child hair but does not consider that as a problem. Staff stated that she made a threat to the child. Staff stated that she told child, "I would knock you out like Tyson!".

Contact was made with child care personnel 2: staff stated that child care personnel did not pull child's hair. Staff denies allegations.

Contact was made with child 1: He stated that child care personnel pulled his hair and he went back to his mat and he was crying

Contact was made with child 2: She stated that she saw child care personnel pull child 1 hair and he was crying. Child 2 ask child 1 was he ok because he was crying and child 1 is her friend.

07/31/2019. Counselor and another agent of the Department also investigating this matter spoke with child care personnel 1 and she admitted to allegations.

Noncompliance:

Standard 11 Child Discipline CCF Handbook, Section 2.8 Noncompliance

Non-Compliance Description

11-04 A method of discipline was used at the facility that was severe, humiliating or frightening to children in that [staff pulled child by the hair]. CCF Handbook, Section 2.8, A (Section 9, number 2) [SR]

09/04/2019 Closed

Another agent of the Department also investigating this matter closed his case with not substantiated findings of physical injury.

Staffing with DCF legal. DCF legal counsel advised that is a noncompliance of Standard 11-04 Inappropriate Method Used.

Received by: Sharon Swann
Date: 10/10/2019

Inspected by: Willette Tisdale
Date: 10/10/2019



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**INVESTIGATIVE SUMMARY (IS)
Child Institutional Investigation
(without Reporter Information)**



Case Name Spellman Prep School	Intake Number 2019-241574-01	Investigative Sub-Type Institutional	County Orange
Date/Time Intake Received 07/31/2019 11:31 PM		Protective Investigator YOUNG, ALAN X	
Date/Time Investigation Closed 09/04/2019 5:15 PM		Protective Investigator Supervisor PAGAN, JUAN J	

I. Allegation Narrative(s)

Sequence Type Initial	Date/Time Received 07/31/2019 11:31 PM	Response Priority 24 Hours
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Narrative

Sincere attends day and evening care at Spellman Prep School while mom is at work. Today, 07/31/2019, Ms. Swan, one of the daycare workers, got upset with Sincere because she thought he was playing on his phone. Ms. Swan grabbed Sincere by his hair and screamed at him and called him stupid and told him that he didn't know how to read. Late into the evening, Sincere's hair was still visibly messed up and looked like it had been grabbed, and he was still upset about what happened. This is the first time that something like this has happened since Sincere and his brother started attending daycare there a few months ago, and it is unknown what normal discipline is like at the daycare.

Field Narrative

II. Provider Information

Name Spellman Prep School			
Street 6840 Silver Star RD		Unit Designator	Building
City Orlando	State FL	Zip Code 32818-3129	Phone Number

III. Victim(s)

Name Williams, Sincere Prince	DOB 01/20/2010	Age 9	Gender Male	Race Black/African American	Disabilities No
Maltreatment Physical Injury	Findings Not Substantiated		Incident Date	Caregiver Responsible	Fatality No
Intervention Services are Needed No	Placement Outside the Home is Required No			Judicial Action Required No	

IV. Other Participant(s)

Name Swan, Sharon	DOB 02/07/1955	Age 64	Gender Female	Race Black/African American	Role Non Household Member
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A person who knowingly or willfully makes public or discloses to any unauthorized person any confidential information contained in the Florida Safe Families Network is subject to the penalty provisions of s. [39.202](#).



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**INVESTIGATIVE SUMMARY (IS)
Child Institutional Investigation
(without Reporter Information)**

V. Implications for Child Safety

A. Child Factors Implications

THE CV IS 9 YEARS OLD AND IS OBSERVED FREE OF ANY MARKS OR BRUISES. THE CV PRESENTS NO MEDICAL CONDITIONS AND NEEDS NO MEDICAL ATTENTION. THE CV IS NOT BEING TARGETED BY ANY PERSONS FOR PHYSICAL OR SEXUAL ASSAULT. THE CV ADJUSTS WELL TO HIS SCHOOL AND IS NOT IN THE CUSTODY OF THE DEPT. THE CV HAS A 2010 AND 2015 IN HOME PRIOR REPORTS UNFOUNDED FOR ANY ABUSE OR NEGLECT AND A 2016 COC REPORT.

B. Facility Factors Implications

REGULAR SAFETY MEASURES ARE IN PLACE TO ENSURE A CHILD IS NOT HARMED. A CAREGIVER HAS NOT HARMED THE CV OR CHILD AT THE FACILITY. DISCIPLINE POLICY IS VERBAL REDIRECTION ONLY. THE PHYSICAL CONDITION POSES NO THREAT TO CV OR CHILD. PARENTS AND SOCIAL WORKERS HAVE FREE ACCESS TO VISIT THE FACILITY AND CHX. THE FACILITY HAS PRIORS AND THE AP ALSO HAS A PRIOR REPORT WITH THE DEPT.

VI. Overall Safety Assessment

RISK TO THE NONE YEAR OLD CV IS LOW AS HE IS OBSERVED FREE FROM ANY MARKS OR BRUISES. THE CV DISCLOSES THAT THE AP MS SWAN TOOK HIS PHONE AWAY AS SHE WAS NOT SUPPOSED TO BE USING IT AT THE DAYCARE. THE CV DISCLOSES THAT THE AP PULLED HIS HAIR THAT IS IN A PONYTAIL AND CALLED HIM A "DUMMY" AND THAT HE COULD NOT READ. A SIX YEAR OLD CHILD WITNESS NAMED KLANI WAS ABLE TO STATE THAT SHE DID WITNESS THE AP PULL THE HAIR IF THE CV. THE CV STD THAT AP DID NOT PULL HIS HAIR HARD BUT WAS UPSET ABOUT IT AND TOLD HIS MX UPON PICK UP. CPI COMPLETED A JOINT RESPONSE AND MET THE AP MS SWAN WHO IS THE OWNER OF THE FACILITY. SHE ADMITS THAT SHE DID OULL THE CV'S HAIR T GET HIS ATTENTION IN DICIPLINING HIM ABOUT USING HIS PHONE IN THE DAYCARE. THE AP ALSO ADMITTED THAT IF HWANTED TO FIGHT SHE WOULD "KNOCK HIM OUT LIKE TYSON". CPI AND CCR GAVE AP TECHNICAL ADVISE AND CCR ADVISED MS SWAN THAT THE FACILITY MAY BE RECEIVEING NON COMPLIANCES TO THE DISCIPLINE POLICY FOR THESE ADMITTED ACTIONS. THE AP FELT SHE WAS IN HER RIGHT TO DO WHAT SHE DID BECAUSE IT IS FINE IN THE JAMAICAN CULTURE BUT CPI AND CCR ADVISED HER THAT THIS WAS NOT AN EXCUSE TO DO SO. A CCR STAFFING WILL BE COMPLETED TO DISCUSS WHAT ACTIONS ARE TAKEN TO THE FACILITY AT THIS TIME. FDLE AND LOCAL CHECKS ARE PENDING AT THIS TIME.

VI. Summary/Findings Implications

THE REPORT IS CLOSED WITH NOT SUBSTANTIATED FINDINGS OF PHYSICAL INJURY AS THE AP MS SWAN OWNER OF THE DAYCARE ADMITS TO PULLING THE HAIR OR PONYTAIL OF THE CV TO GET HIS ATTENTION WHEN SPEAKING TO HIM IN A DISCILINARY SITUATION. THE AP ALSO DISCLOSES THAT IN THE PROCESS OF DOING THIS THE CV GOT UP LIKE HE WANTED TO FIGHT THE AP AND AP STATED TO THE CV'OU BETTER SIT DOWN OR I WILL KNOCK YOU OUT LIKE MIKE TYSON". CCR AND CPI DISCUSSED WITH THE AP THAT THESE ACTIONS WERE A VIOLATION OF THE DISCIPLINE POLICY AT HER FACILITY AND CCR CITED HER BOTH ACTIONS. THE CV ALSO CONFIRMED THAT THE AP DID INDEED PULL HIS PONYTAIL IN THE INCIDENT AND DID ADMIT THAT HE WAS NOT LISTENING TO THE AP ABOUT PUTTING HIS PHONE AWAY DURING NAPTIME. THE CV IS OBSERVED FREE FROM ANY MARKS OR BRUISES. A CCR STAFFING IS COMPLETED ON THE REPORT.

VII. Recommended Disposition

THE MX REFUSES ANY SERVICES FROM THE DEPT.

IX. Signatures



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**INVESTIGATIVE SUMMARY (IS)
Child Institutional Investigation
(without Reporter Information)**

SIGNATURE – Protective Investigator

Date Signed

SIGNATURE - Protective Investigator Supervisor

Date Signed