

**FILED**

FEB 12 2021

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

**DCF Department Clerk**

**DEPARTMENT OF CHILDREN AND  
FAMILIES,**

**Petitioner,  
v.**

**CASE NO. 20-2100  
RENDITION NO. DCF-21-28-FO**

**KIDDIE ISLAND ACADEMY, LLC.,**

**Respondent.**

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**FINAL ORDER**

THIS CAUSE is before me for entry of a final order concerning the Department's Administrative Complaint, filed on March 17, 2020, notifying Respondent of one Class I violation each of Sections 8.2(A) and 8.2(B), of the Child Care Facility Handbook, incorporated by reference in Rule 65C-22.001(6), Florida Administrative Code. The Department assessed administrative fines totaling \$1,000.00.

The Recommended Order issued on October 26, 2020, concluded that the Department did not prove the violations in the Administrative Complaint by clear and convincing evidence and recommended that the Administrative Complaint be dismissed. The Department filed exceptions to the Recommended Order.

**EXCEPTIONS**

The Department takes exception to Paragraphs 25 and 27 of the Conclusions of Law.

25. The Department also charges Kiddie Island with violating Handbook section 8.2(B). It provides that, "failure to perform the duties of a mandatory reporter pursuant to Section 39.201, F.S., constitutes a violation of the standards in Section 402.301-.319, F.S." That charge rests wholly on the Department's assertion that Diana Varela abused K.H. Since the Department did not prove the alleged abuse, it did not prove the alleged failure to report. Footnote 5: The

Department's complaint does not refer to Handbook section 2.8(F)(1) prohibiting "rough or harsh handling of children" or section 8.2(C) prohibiting "aggressive, demeaning, or intimidating" interactions with children, both of which seem like they may have been more appropriate charges."

27. An agency may not impose punishment based on matters (either factual or legal) not specifically alleged in its administrative complaint. *Klein v. Dep't of Bus. & Prof's Reg.*, 625 So.2d 1237 (Fla. 2d DCA 1993). See also *Trevisani v. Dep't of Health*, 908 So.2d 1108, 1109 (Fla. 1st DCA 2005) ("A physician may not be disciplined for an offense not charged in the complaint."); *Marcelin v. Dep't of Bus. & Prof'l Reg.*, 753 So.2d 745, 746-747 (Fla. 3d DCA 2000) ("Marcelin first contends that the administrative law judge found that he had committed three violations which were not alleged in the administrative complaint. This point is well taken... We strike these violations because they are outside the administrative complaint."); and *Delk v. Dep't of Prof'l Reg.*, 595 So.2d 966, 967 (Fla. 5th DCA 1992) ("[T]he conduct proved must legally fall within the statute or rule claimed [in the administrative complaint] to have been violated."). The Department did not prove the charges of the Administrative Complaint by clear and convincing evidence.

The Department argues in this exception that the Administrative Law Judge ("ALJ") departed from the plain meaning of section 39.201(1)(a), Florida Statutes, when he concluded that because an action is later determined to not be child abuse, an individual cannot be found to have violated his/her mandatory reporting requirements.

It's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute." *New Prime Inc., v. Oliveira*, 139 S.Ct. 532, 529 (2019). Furthermore, "[a] court looks to the plain meaning of the statute, and if the language is clear and unambiguous the inquiry stops there." *Systemax, Inc. v. Fiorentino*, 283 So.3d 415, 420 (Fla. 3d DCA 2019).

Section 39.201(1)(a), Florida Statutes, requires that "[a]ny person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's

welfare... shall report such knowledge or suspicion to the department (emphasis added).” The Department argues that Respondent had “reasonable cause to suspect,” thus triggering the mandatory reporting requirement.

The Merriam-Webster Dictionary’s defines “reasonable cause” as “a reason that would motivate a person of ordinary intelligence under the circumstances.” Although Maria Varela, owner and director of Respondent child care facility, “did not believe that it was abuse,” a “person of ordinary intelligence” viewing a video of an adult pushing a 21-month-old child onto bedding, and when the child would not remain flat on her stomach, grasping the child’s arm pulling her to her feet and around a corner, beyond view of the video camera, would trigger the mandatory reporting requirement due to a reasonable cause to suspect abuse had occurred. R.O. at 4 and 5.

Additionally, although Ms. Varela testified that she “did not believe that it was abuse,” the incident was so alarming to her that she placed the employee on a corrective action plan. The employee was suspended for two weeks without pay, placed on a three-month probation during which time she was not permitted to be in a classroom alone and was not assigned to any classroom. The plan also required the employee to conduct research and take trainings. R.O. at 5. A “person of ordinary intelligence” who believed such drastic actions had to be taken to keep children safe from an employee, would have the motivation and understanding that the mandatory reporting requirement was triggered due to a reasonable cause to suspect child abuse. The Department’s exception is granted.

Paragraphs 25 and 27 of the Conclusions of Law are rewritten as followed, as I find to be as or more reasonable than the rejected paragraphs:

25. The Department also charges Kiddie Island with violating Handbook section 8.2(B). It provides that, "failure to perform the duties of a mandatory reporter pursuant to Section 39.201, F.S., constitutes a violation of the standards in Section 402.301-.319, F.S." That charge rests wholly on the Department's assertion that Diana Varela abused K.H. Even though the Department did not prove the alleged abuse, it did prove the alleged failure to report. Footnote 5: The Department's complaint does not refer to Handbook section 2.8(F)(1) prohibiting "rough or harsh handling of children" or section 8.2(C) prohibiting "aggressive, demeaning, or intimidating" interactions with children, both of which seem like they may have been more appropriate charges."

27. An agency may not impose punishment based on matters (either factual or legal) not specifically alleged in its administrative complaint. *Klein v. Dep't of Bus. & Prof's Reg.*, 625 So.2d 1237 (Fla. 2d DCA 1993). See also *Trevisani v. Dep't of Health*, 908 So.2d 1108, 1109 (Fla. 1st DCA 2005) ("A physician may not be disciplined for an offense not charged in the complaint."); *Marcelin v. Dep't of Bus. & Prof'l Reg.*, 753 So.2d 745, 746-747 (Fla. 3d DCA 2000) ("Marcelin first contends that the administrative law judge found that he had committed three violations which were not alleged in the administrative complaint. This point is well taken... We strike these violations because they are outside the administrative complaint."); and *Delk v. Dep't of Prof'l Reg.*, 595 So.2d 966, 967 (Fla. 5th DCA 1992) ("[T]he conduct proved must legally fall within the statute or rule claimed [in the administrative complaint] to have been violated."). The Department did not prove the charge of child abuse as alleged in the Administrative Complaint by clear and convincing evidence, however, it did prove the charge of failing to perform the duties of a mandatory reporter as alleged in the Administrative Complaint.

As the Department's exception is granted as detailed above, the

Recommendation contained in the Recommended Order must also be revised as follows:

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 violation of section 8.2(A), upholding the violation of section 8.2(B), and assess an administrative fine in the amount of \$500.00.

Accordingly, the Recommended Order is approved and adopted as modified and the Department's March 17, 2020, Administrative Complaint is **UPHELD** in part and **DISMISSED** part.

**DONE AND ORDERED** in Tallahassee, Leon County, Florida, this 12<sup>th</sup> day of February, 2021.

  
Chad Poppell, Secretary

**NOTICE OF RIGHT TO APPEAL**

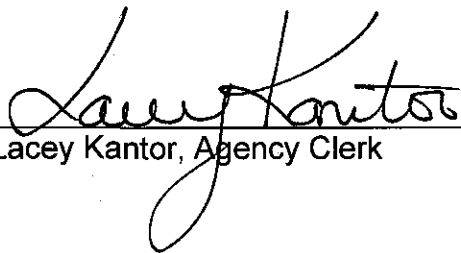
THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY A PARTY PUSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE. SUCH APPEAL IS INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN 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.<sup>1</sup>

Copies furnished to the following via Electronic Mail on date of Rendition of this Order.<sup>1</sup>

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Lacey Kantor, Agency Clerk

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