

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FUNHOUSE LEARNING ACADEMY, LLC,

Petitioner,

vs.

Case No. 20-3311

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Respondent.

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RECOMMENDED ORDER

On September 21, 2020, Administrative Law Judge (ALJ) Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted a final hearing pursuant to section 120.57(1), Florida Statutes (2019), in Tallahassee and Daytona Beach, Florida, by video teleconference.

APPEARANCES

For Petitioner: Steven R. Robinson, Esquire  
Steven R. Robinson, P.A.  
533 Seabreeze Boulevard, Suite 300  
Daytona Beach, Florida 32118

For Respondents: Jane Almy-Loewinger, Esquire  
Department of Children and Families  
210 North Palmetto Avenue, Suite 412  
Daytona Beach, Florida 32114

STATEMENT OF THE ISSUE

Whether Respondent, Department of Children and Families (Department), should grant the application filed by Cynthia McGuire-Moore to obtain a license to operate a child care facility through an entity known as

Funhouse Learning Academy, LLC (Funhouse), contrary to the Department's Notice of Intent to Deny Application, dated March 17, 2020.

PRELIMINARY STATEMENT

On March 13, 2020, Ms. McGuire-Moore filed an application with the Department to obtain a child care facility license for Funhouse. On March 17, 2020, the Department issued a Notice of Intent to Deny Application, based upon its assertion that Ms. McGuire-Moore had a history of multiple violations while operating a previous child care facility known as A Step Above Christian Academy between 2015 and 2018, which resulted in a revocation of her license to operate that child care facility.

The undersigned conducted a final hearing on September 21, 2020. Funhouse presented the testimony of Ms. McGuire-Moore. The undersigned admitted into evidence Petitioner's Exhibit P1. The Department presented the testimony of Jennifer Overly, the Department's Supervisor for Child Care Regulation. The undersigned admitted into evidence Respondent's Exhibits R1 through R4.

The one-volume Transcript was filed with the Division on October 5, 2020. The Department timely filed a Proposed Recommended Order, which the undersigned has considered in the preparation of this Recommended Order. Funhouse did not file a proposed recommended order or any post-hearing submittal.

The law in effect at the time the Department takes final agency action on the statutes and rules are to their current versions, unless otherwise noticed. *Lavernia v. Dep't of Prof'l Reg.*, 616 So. 2d 53 (Fla 1st DCA 1993).

## FINDINGS OF FACT

1. The Department is the state agency charged with regulating licensed child care providers in the State of Florida.

2. On March 13, 2020, Ms. McGuire-Moore submitted an “Application for a License to Operate a Child Care Facility” (Application) with the Department. The Application identified Funhouse as the name of the facility to appear on the license.

3. In the Application, Ms. McGuire-Moore disclosed that she had previously owned, and served as director of, a licensed child care facility named “First Steps Learning Academy.” The Application does not reflect Ms. McGuire-Moore’s ownership of another licensed child care facility named “A Step Above Christian Academy.” However, the testimony and evidence presented established that Ms. McGuire-Moore previously owned another licensed child care facility named “A Step Above Christian Academy.”

4. On March 17, 2020, the Department issued a “Notice of Intent to Deny Application,” which denied the Application, and stated:

The denial is based on the following:

**As Owner/Director of A Step Above Christian Academy**

**April 16, 2018** the license to operate A Step Above Christian Academy was revoked following the sixth Class II Violation for standard #3 Sufficient Ratio, in a two-year period.

**April 3, 2018 (Complaint Investigation)** It was reported to the licensing office that Ms. McGuire-Moore had been providing childcare in her home but had asked parents to take their children back to the facility located at 1122 Dr. Mary McLeod Bethune Blvd this week as she would be on vacation. Upon responding to the facility address counselor did not find children in care. They were being cared for by an unscreened individual.

Parents were contacted and children were sent home.

**December 22, 2017** A Cease and Desist letter was provided to Ms. McGuire-Moore while awaiting the final hearing as the facility was again found out of ratio for the sixth time on **December 15, 2017 (Routine Inspection)**. The facility was [sic] also received a fine levied in the amount of \$100.00.

**September 21, 2017 (Routine Inspection)** They [sic] facility was found out of ratio for the fifth time and the revocation proceedings were initiated.

**July 21, 2016 (Complaint Investigation)** The facility was found out of ratio for the fourth time and placed on a six-month probationary license and was fined \$150.00 (two days out of ratio at \$75.00 per day).

**June 16, 2016 (Complaint Investigation)** The facility was found out of ratio for the third time and fined \$60.00. Technical Assistance was provided.

**March 30, 2016 (Routine Inspection)** The facility was found out of ratio for the second time and fined \$50.00. Technical assistance was provided.

**December 17, 2015 (Routine Inspection)** The facility was found out of ratio for the first time and counselor provided technical assistance.

Due to the circumstances noted above we are unable to approve your application to obtain a Child Care Facility license.

5. In *Department of Children and Families v. A Step Above Christian Academy, LLC, d/b/a A Step Above Christian Academy, LLC*, Case No. 17-6871 (Fla. DOAH Mar. 21, 2018; Fla. DCF Apr. 16, 2018), ALJ Lawrence P. Stevenson recommended, after conducting a final hearing, that the Department revoke the license for A Step Above Christian Academy, LLC,

based on the incidents (*i.e.*, numerous ratio violations) referred to in the Department’s “Notice of Intent to Deny Application” and paragraph 4 above.<sup>1</sup> The Department approved ALJ Stevenson’s recommendation in its Final Order.

6. Ms. McGuire-Moore testified that A Step Above Christian Academy had been open for approximately three years before the revocation. She provided child care for infants through kindergarten.

7. Prior to owning and operating A Step Above Christian Academy, she provided home daycare for eight years, and was also the interim director of and VPK teacher at Friendship Academy; another child care facility.

8. Ms. McGuire-Moore testified that she made a “mistake” when operating A Step Above Christian Academy, and took responsibility for the ratio violations detailed in DOAH Case No. 17-6871 and the Notice of Intent to Deny Application.

9. In the approximately two-and-a-half years since the revocation of the license of A Step Above Christian Academy, LLC, Ms. McGuire-Moore has worked for the Daytona Beach News Journal, delivering newspapers.

10. Ms. McGuire-Moore testified that if granted another license, she would maintain the required ratio of children to staff by “do[ing] a better screening of my teachers that I hire ... Also, if teachers can’t be on time, then, I would just have to let them go and hire someone that can be on time.”

11. Ms. Overly was the Department counselor assigned to investigate A Step Above Christian Academy from 2016-2017, and, in her current position as supervisor, reviewed the Application.

12. Ms. Overly confirmed that the basis for the Notice of Intent to Deny Application was the numerous ratio violations involving A Step Above Christian Academy that led to its revocation. She also stated that, when assigned to investigate A Step Above Christian Academy, she found 52 total

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<sup>1</sup> A ratio violation occurs when the prescribed ratio of staff to children has not been met. Fla. Admin. Code R. 65C-22.001(4).

violations—21 of which were Class II violations that included the ratio violations.<sup>2</sup>

13. Ms. Overly testified about various violations—other than ratio violations—that she found when investigating A Step Above Christian Academy, which included:

a. Employing individuals who had not completed required background screening;

b. Failing to maintain a clean environment, noting that during the final inspection before revocation, she discovered that five of the six toilets at A Step Above Christian Academy were backed up and not functioning, that a sink was backed up and had mold, that the ceiling was in disrepair, and that a fence in the back of the yard was “down” several months after a previous inspection; and

c. Receiving a complaint from a parent with a child attending A Step Above Christian Academy who was informed by Ms. McGuire-Moore that she was going on vacation, but that a person named Ms. Lex would fill in for her; when Ms. Overly investigated the day after receiving this complaint, she learned that Ms. Lex had not completed required background screening or the required training to care for children.

14. Ms. Overly also testified that she reviewed the history of another child care facility Ms. McGuire-Moore previously owned—Moore’s Christian Academy—and found that between 2006 through 2008, the Department conducted eight inspections and found five ratio violations.

15. Ms. Overly stated that Ms. McGuire-Moore’s history of owning and operating child care facilities indicates a long and consistent pattern of ratio violations.

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<sup>2</sup> A Class II violation “is an incident of noncompliance with an individual Class II standard as described on CF-FSP Form 5316.” Fla. Admin. Code R. 65C-22.010(1)(e)2. “For the fifth and subsequent violation of the same Class II standard, the Department shall suspend, deny, or revoke the license, and shall also impose an administrative fine of \$100.00 per day for each such violation.” Fla. Admin. Code R. 65C-22.010(2)(d)2.d.

16. The undersigned finds that the Department established that Ms. McGuire-Moore's history of owning and operating child care facilities includes repeated ratio violations, which culminated in the revocation of the license for A Step Above Christian Academy, as indicated in the Notice of Intent to Deny Application.

#### CONCLUSIONS OF LAW

17. The Division has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569 and 120.57(1), Florida Statutes.

18. Funhouse has the ultimate burden of persuasion to prove entitlement to the license applied for by a preponderance of the evidence. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

19. However, as the Department has alleged that the license should be denied based on past violations that resulted in a previous revocation, the Department must prove unfitness for the license by a preponderance of the evidence. *See Dep't of Child. & Fams. v. Davis Fam. Day Care Home*, 160 So. 3d 854, 857 (Fla. 2015); *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996).<sup>3</sup>

20. Florida Administrative Code Rule 65C-22.010(3)(c) provides:

When the Department has reasonable cause to believe that grounds exist for the denial, suspension, or revocation of a license or registration, the conversion of a license or registration to probation status, or the imposition of an administrative fine, it shall determine the matter in accordance with procedures prescribed in chapter 120, F.S. Imposition of an administrative

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<sup>3</sup> In its Proposed Recommended Order, the Department contends that the clear and convincing evidence standard applies in this matter, because the Department is seeking to deny Funhouse a license. However, the Florida Supreme Court, in *Davis Family Day Care Home*, definitively held, in accord with *Osborne Stern*, that in license application proceedings, such as this, the preponderance of the evidence standard applies. *See Davis Fam. Day Care Home*, 160 So. 3d at 857-58.

fine shall be accomplished through an administrative complaint. Denial of a license or registration or conversion to probationary status pursuant to section 402.310, F.S., may be accomplished through an administrative complaint or a notice of intent to deny a pending renewal application.

21. Section 402.310(1)(a)3., Florida Statutes, provides that the Department “may administer any of the following disciplinary sanctions for a violation of any provision of ss. 402.301-391, or the rules thereunder ... Deny, suspend, or revoke a license or registration.”

22. Section 402.310(1)(b)3., provides that the Department, when assessing whether to grant or deny an application for a child care facility license pursuant to section 402.310(1)(a)3., may consider any history of previous violations of the licensee or registrant pursuant to section 402.310(1)(b)3.

23. Based on the Findings of Fact and Conclusions of Law in *Department of Children and Families v. A Step Above Christian Academy, LLC, d/b/a A Step Above Christian Academy, LLC*, Case No. 17-6871 (Fla. DOAH Mar. 21, 2018; Fla. DCF Apr. 16, 2018), which found numerous ratio violations that resulted in revocation of Ms. McGuire-Moore’s previous license—which Ms. McGuire-Moore does not contest—as well as the testimony of Ms. Overly concerning similar violations concerning Moore’s Christian Academy, the Department has established, by a preponderance of the evidence, that Ms. McGuire-Moore is unfit because of the history of multiple violations Ms. McGuire-Moore committed as a previously-licensed owner and operator of child care facilities.

24. The undersigned further concludes that Funhouse, through Ms. McGuire-Moore, did not meet its ultimate burden of persuasion to prove entitlement to a license to own and operate a child care facility.



RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Department of Children and Families enter a final order denying the application for a child care facility license that Ms. McGuire-Moore submitted for Funhouse Learning Academy, LLC.

DONE AND ENTERED this 28th day of October, 2020, in Tallahassee, Leon County, Florida.



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ROBERT J. TELFER III  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of October, 2020.

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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.