

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RAISING FLORIDA EARLY LEARNING
ACCREDITATION PROGRAM,

Petitioner,

Case No. 20-3755

vs.

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge Mary Li Creasy by Zoom conference on October 1, 2020.

APPEARANCES

For Petitioner: Mark J. Stempler, Esquire
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For Respondent: Stefanie Beach Camfield, Esquire
Department of Children and Families
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STATEMENT OF THE ISSUE

Whether Petitioner's application for approval as a Gold Seal Quality Care Accrediting Association was properly denied.

PRELIMINARY STATEMENT

Respondent, Department of Children and Families ("DCF"), by correspondence dated June 30, 2020, notified Petitioner that it was denying Petitioner's Gold Seal Quality Care Accrediting Association Application. Petitioner, Raising Florida Early Learning Accreditation Program ("Raising Florida"), timely requested an administrative hearing challenging DCF's denial. DCF referred the matter to the Division of Administrative Hearings ("DOAH") to conduct a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes.

The final hearing was conducted as scheduled on October 1, 2020. Petitioner presented the testimony of Daniel Osborne, Ellyn Bogdanoff, and Diana Layton. Petitioner submitted Exhibits 1 through 13, which were admitted into evidence. DCF presented the testimony of Tripp Crouch, Felicia Bonner, and Dinah Davis. DCF submitted Exhibits 1 through 5, 7, and 8, which were admitted into evidence.

The two-volume Transcript was filed on October 26, 2020. Both parties timely filed proposed recommended orders, which were taken into consideration in the drafting of this Recommended Order. Unless otherwise indicated, citations to the Florida Statutes refer to the version in effect at the time of the application denial.

FINDINGS OF FACT

Gold Seal Accreditation

1. This case involves the State of Florida's Gold Seal Quality Care designation ("Gold Seal designation") provided to qualified child care facilities pursuant to section 402.281, Florida Statutes.

2. The Gold Seal designation signifies a child care facility's successful completion of an application and audit process to determine its adherence to

heightened standards. It entitles the bearer to numerous potential benefits, including tax exemptions, higher reimbursement rates for School Readiness, eligibility to participate in the Voluntary Pre-Kindergarten program, and it can be an important marketing tool for child care providers.

3. To be eligible for Gold Seal designation, a child care facility must meet a defined set of qualifications and standards. Whether those standards are met is based upon the assessment provided to DCF by an approved accrediting association.

4. An entity does not need to be approved by DCF to accredit child care providers. However, an entity must be approved by DCF as a Gold Seal Quality Care Accrediting Association to provide the verification to DCF for the purpose of Gold Seal designations.

5. An accrediting association attests that a child care facility receiving its certification meets the Gold Seal standards. Only the State of Florida approves and "issues" the actual Gold Seal certification.

The Parties

6. DCF is authorized to approve Gold Seal Accrediting Associations. The Children's Forum is contracted by DCF to manage the Gold Seal Program.

7. Enterprising Business Solutions, Inc. ("EBS"), is the accrediting association applicant at issue in this case. EBS has been a registered corporation in Florida since 1997. It is a business consulting and management firm. Its President, former Florida State Representative and Senator Ellyn Bogdanoff, was significantly involved in passing legislation and rules governing child care facilities and accreditation. Petitioner, Raising Florida, is the name of EBS's accreditation product and is registered as a fictitious name of EBS.

8. On January 30, 2020, EBS filed an initial Gold Seal Quality Care Accrediting Association Application (the "Application") with the Children's Forum. The application was reviewed by DCF and the Florida Children's Forum.

9. On June 30, 2020, DCF issued a Notice of Denial letter denying the Application. The Department's stated reason for denying the application was because EBS "failed to provide supporting documentation to demonstrate that the accrediting association has been established in issuing accreditation in Florida for at least five years, Rule 65C-22.009(4)(a)1, Florida Administrative Code." In addition, DCF stated that an accrediting association "must demonstrate that it is a recognized accrediting association, s. 402.281(3)(a)1, Florida Statutes."

EBS' Role with FACCM

10. The Florida Association for Child Care Management ("FACCM") is an organization made up of, and representing, child care providers in Florida. It advocates on behalf of child care facilities, and it also created the APPLE child care accreditation program.

11. APPLE is the FACCM accreditation product issued to its child care member facilities, which qualify for the accreditation. To qualify, child care facilities are required to meet a defined set of qualifications and standards, determined by the APPLE program. APPLE is a recognized Gold Seal accrediting tool. If a child care facility is certified by APPLE, it becomes eligible to receive the Gold Seal designation, pursuant to section 402.281.

12. In May 2012, Ms. Bogdanoff and her management company, EBS, were retained by FACCM to oversee its growing membership of child care facilities, oversee its lobbying efforts, and to manage the APPLE accreditation program. Ms. Bogdanoff was appointed Executive Director on a part-time basis and reported to FACCM's Board. Dan Osborne, the then-Board President of FACCM, explained that retaining Ms. Bogdanoff and EBS was an effort to get the Board out of FACCM's day-to-day operations. Ms. Bogdanoff worked for FACCM through EBS until May 2018.

13. As FACCM's Executive Director, Ms. Bogdanoff rewrote APPLE's existing standards for accreditation. She also developed a training program for child care centers to help them achieve accreditation, visited the centers

to administer that training program to educate centers regarding accreditation benchmarks, oversaw a FACCM staff to manage the accreditation process, including an APPLE Director (Ms. Layton), and several other directors of marketing, operations, and CORE, who all reported directly to Ms. Bogdanoff and EBS, not the FACCM Board.

14. From May 2012 through May 2018, Ms. Bogdanoff and FACCM staff determined which programs passed the APPLE accreditation process, and which did not.

15. During this time period, child care facilities accredited under APPLE received a certification or notification from APPLE--not from FACCM or EBS. However, as a minimum requirement for Gold Seal consideration using the APPLE criteria, the child care facilities were required to be members of FACCM. APPLE accreditation accounts for nearly all of FACCM's generated revenues, and the availability of Gold Seal accreditation certification is a primary incentive for membership in FACCM.

16. There is no written contract detailing the relationship between Ms. Bogdanoff, EBS, and FACCM. Nothing was sent to child care facilities from FACCM referencing EBS. The child care centers, which were Gold Seal qualified through APPLE, had a relationship with FACCM, not EBS. EBS was the means to contract with, and pay, Ms. Bogdanoff for her expertise.

17. In support of the Application, Ms. Bogdanoff attached a letter of support from Mr. Osborne that indicated that he looked "forward to becoming [EBS's] first Provider client." EBS was the management company that oversaw the APPLE accrediting process, however, EBS did not hold itself out to be an accrediting agency nor did it issue certifications of meeting Gold Seal standards other than through FACCM.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.569 and 120.57(1).

19. DCF is the state agency charged with regulating providers that are licensed to provide child care in the State in Florida, pursuant to sections 402.301-402.319, and Florida Administrative Code Chapter 65C-22.

20. As such, DCF is authorized to regulate the Gold Seal designation program pursuant to section 402.281. In order to be approved as an accrediting association for the purpose of Gold Seal qualification, the association must demonstrate to DCF that it is a "recognized" accrediting association. § 402.281(3)(a)1., Fla. Stat.

21. DCF is further authorized to promulgate rules to provide criteria and procedures for reviewing and approving accrediting associations for participation in the Gold Seal Quality Care program pursuant to section 402.281(5).

22. Rule 65C-22.009 sets forth the criteria to be authorized by DCF as a Gold Seal Quality Care Accrediting Association as follows:

(4) Gold Seal Quality Care Accrediting Association Requirements.

(a) An accrediting association seeking recognition as a Gold Seal Quality Care Accrediting Association must:

1. Have been active and accrediting child care facilities in Florida for a period of five years prior to submission of an application to the Department.

2. Hold an active corporation registration with the Florida Department of State to do business in Florida.

3. Submit and meet all requirements outlined on the CF-FSP Form 5315, Gold Seal Quality Care

Accrediting Association Application, May 2019, which is incorporated by reference. CF-FSP Form 5315 may be obtained from the Department's website at www.myflfamilies.com/childcare or from the following link:

<http://www.flrules.org/Gateway/reference.asp?No=Ref-10508>.

4. Submit a crosswalk of the Accrediting Association's standards with the Department's Gold Seal Quality Standards.

23. There is no dispute that EBS met the requirements of subsections 2 and 4. DCF asserts that EBS is not a recognized accrediting association. DCF argues that EBS was not "accrediting" child care facilities in Florida for the five years immediately preceding its application.

24. Further DCF asserts that EBS does not meet the requirements of subsection 3 because the Gold Seal Quality Care Accrediting Association Application includes the requirement that the accrediting association be "*established and issuing accreditation in Florida for five years*" (emphasis added), and that EBS was neither established nor issuing accreditation.

25. Although section 402.281(3)(a)1. requires an association seeking accreditation status to demonstrate that it "is a recognized accrediting association," the term "recognized" is not defined in the statute. It does not specify whether "recognized" is, in terms of public recognition, recognized in the child care facility industry, recognized by the State of Florida Division of Corporations, or otherwise.

26. DCF, by and through the Children's Forum, improperly inserted its own interpretation of the term "recognized" to mean that it must be recognized by DCF or the Children's Forum, or maintain a website for five years.

27. However, this is a de novo review. When confronted with a statutory term that is subject to multiple possible interpretations, the rules of statutory construction mandate that the "plain meaning" of the term be applied.

28. According to the Oxford Learner's Dictionary, the verb "recognize" is "to know who someone is or what something is when you see or hear them, because you have seen or heard them or it before."

29. In this case, it does not matter whether "recognized" means recognized by DCF, the Children's Forum, child care facilities, or the general public because there was no evidence of any kind that EBS was "recognized" or known to anyone as an accrediting association, either in the five years immediately preceding its application, or during *any* five year period. Although EBS was registered with the Florida Division of Corporations since 1998, there was no evidence presented that anyone had seen or heard of it as a child care accrediting association.

30. EBS argues that names should not be determinative and that it essentially stepped in the shoes of FACCM to do the work of accrediting child care facilities for Gold Seal approval. Notably, while Ms. Bogdanoff managed the APPLE accrediting tool for FACCM in her role as Executive Director, she at no time held herself, or EBS, out as an accrediting association. Further, the rule governing the Gold Seal Quality Care Program, rule 65C-22.099(4)(1) provides:

An Accrediting Association approved by the Department as a Gold Seal Quality Care Accrediting Association may not contract with or otherwise authorize any other entity or parties, including affiliated groups and membership groups or subgroups, to issue accreditations to Florida child care providers for the purposes of Gold Seal designation.

31. Accordingly, Ms. Bogdanoff and EBS could not legally have been contracted to issue accreditations¹ to FACCM's members.

32. Similarly, EBS was not an association "established and issuing accreditation in Florida for five years" as set forth in the application form incorporated into rule 65C-22.099(4)(1).

33. According to Ms. Bogdanoff, EBS is a management company, which provides services to non-profits. She explained that non-profit boards do not like to get involved in hiring employees so they utilize a non-profit management firm. EBS also provided services to the South Florida Business Association and the Women's Chamber of Commerce. No evidence was presented that EBS was providing accreditation in any capacity other than incidental to its management services for FACCM.

34. While Ms. Bogdanoff's role in developing the highest standards for Florida's child care facilities, as a legislator, advocate, and as former Executive Director of FACCM, is commendable, EBS failed to demonstrate by a preponderance of the evidence that it meets the requirements of the statute or rule to be certified as a Gold Seal Quality Care accrediting association.²

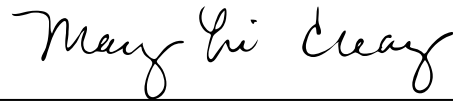
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner's application for approval as a Gold Seal Quality Care Accrediting Association be denied.

¹ As indicated in paragraph 5 herein, only the state of Florida actually "issues" accreditation. However, as used by both parties throughout these proceedings, when referring to associations "issuing" accreditation, it is understood that this means issuing the certification upon which DCF relies that the child care facility meets the applicable Gold Seal standards.

² EBS presented evidence that DCF recently approved the application of another entity, Cognia, which EBS alleges did not exist as an accrediting association for five years preceding its application. Insufficient evidence was presented from which the undersigned could discern the circumstances of the DCF approval of that application, and, therefore, it was not considered in this determination.

DONE AND ENTERED this 15th day of December, 2020, in Tallahassee,
Leon County, Florida.



MARY LI CREASY
Administrative Law Judge
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Filed with the Clerk of the
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this 15th day of December, 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.