

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Petitioner,

vs.

Case No. 22-1669

EARLY IMPRESSIONS AT MIDTOWN, INC.,  
D/B/A EARLY IMPRESSIONS AT MIDTOWN,  
INC.,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on July 22, 2022, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David Gregory Tucker, Esquire  
Department of Children and Families  
5920 Arlington Expressway  
Jacksonville, Florida 32211

For Respondent: Karen Boney, Owner  
Early Impressions at Midtown, Inc.  
463159 State Road 200, #4  
Yulee, Florida 32097

STATEMENT OF THE ISSUES

At issue is whether Respondent committed the Class III violation alleged in the Administrative Complaint and, if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

On April 18, 2022, the Department of Children and Families (the “Department”) filed a one-count Administrative Complaint (the “Complaint”) against Early Impressions at Midtown, Inc., d/b/a Early Impressions at Midtown, Inc. (“Early Impressions”). The Complaint stated that during a routine inspection on August 4, 2021, Department Licensing Counselor LaTonjia Jones determined that:

Child(ren) did not have a Florida Certification of Immunization (DH Form 680) or a Religious Exemption from Immunization (DH Form 681), on file within 30 days of enrollment. Counselor observed two (2) children R.M. and A.M. with expired DH 680 Florida Immunizations on file. Both children [sic] immunizations expired on August 1, 2021.

The Complaint stated that this was a Class III violation of child care licensing standards. It was the facility’s third Class III violation within a two-year period. The Complaint stated that the fine imposed for this violation would be \$25.00.

Early Impressions timely filed with the Department a letter that challenged the Complaint and requested a formal administrative hearing. On June 7, 2022, the Department forwarded Early Impressions’ request to the Division of Administrative Hearings for the scheduling and conduct of a formal hearing. The case was set for hearing on July 22, 2022, on which date it was convened and completed.

At the hearing, the Department presented the testimony of: Family Services Licensing Counselor LaTonjia Jones; Prince Danso-Odei, M.D., Administrator of the Nassau County Health Department; and, in rebuttal, Family Services Licensing Counselor Supervisor Cassandra Virgo. Dr. Danso-Odei was accepted as an expert in epidemiology, immunology, and childhood

immunizations. The Department offered no exhibits. Early Impressions presented the testimony of its owner, Karen Boney. Early Impressions offered no exhibits.

No Transcript of the hearing was ordered. The Department timely filed its Proposed Recommended Order on July 27, 2022. Early Impressions did not submit a proposed recommended order.

All references to the Florida Statutes are to the 2021 edition, unless otherwise noted.

#### FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. The Department is authorized to regulate child care facilities pursuant to sections 402.301 through 402.319, Florida Statutes. Section 402.310 authorizes the Department to take disciplinary action against child care facilities for violations of sections 402.301 through 402.319.

2. Early Impressions is licensed to operate the child care facility at 463159 State Road 200, #4, Yulee, Florida, pursuant to License Number C04NA0037.

3. LaTonjia Jones works for the Department as a Family Services Licensing Counselor. She inspects child care facilities within certain Duval and Nassau County zip codes to ensure they are not operating in violation of Department standards. Early Impressions is within one of the zip codes assigned to Ms. Jones.

4. On August 4, 2021, Ms. Jones went to Early Impressions to perform a routine inspection.

5. The Department's rules require child care facilities to obtain for each child in care a current, complete, and properly executed Florida Certification

of Immunization or a Religious Exemption from Immunization form from the custodial parent or legal guardian.

6. Ms. Jones's inspection found that two of the children in the care of Early Impressions did not have either a current Florida Certification of Immunization or a current Religious Exemption from Immunization on file. Ms. Jones wrote a citation to Early Impressions for the violation.

7. Ms. Jones testified that Early Impressions corrected the violation and obtained the required forms within a week of the citation.

8. Because this was Early Impressions' third Class III violation within a two-year period, the Department issued an Administrative Complaint proposing that a \$25.00 fine be imposed on the facility.

9. Karen Boney, the owner of Early Impressions, testified at the final hearing. Ms. Boney conceded that the Department had previously cited Early Impressions for the same immunization recordkeeping violation on November 1, 2019, and on November 9, 2020. Neither of the citations was challenged. Ms. Boney also conceded that Ms. Jones found the described violation on August 4, 2021.

10. Ms. Boney argued that the November 9, 2020, violation should not be counted because it occurred during the initial outbreak of COVID-19. She stated that every physician's office used by her clients was closed, making it impossible for them to obtain immunizations for their children.

11. Prince Danso-Odei, M.D., is the Administrator of the Nassau County Health Department. Dr. Danso-Odei is a licensed physician who has worked extensively in immunology. Prior to taking his position in Nassau County, he directed the vaccination program in Clay County. Dr. Danso-Odei was accepted as an expert in epidemiology, immunology, and childhood immunizations.

12. Dr. Danso-Odei testified that immunizations were available at the Nassau County Health Department throughout the COVID-19 lockdown.

13. Ms. Boney countered that her clients tend not to trust the Health Department. However, Dr. Danso-Odei also credibly testified that physicians in private practice continued to administer vaccinations in Nassau County throughout the pandemic. The Department of Health monitors county vaccination rates. If a significant number of physicians were to stop administering vaccinations, then the vaccination rate would go down. If the vaccination rate goes below a certain level, the Department of Health issues a warning to the county Health Department.

14. Dr. Danso-Odei testified that at all relevant times, vaccination rates in Nassau County were within acceptable levels and did not show a significant decline, thus making it highly unlikely that every private physician's office used by Ms. Boney's clients was closed during the COVID-19 lockdown.

15. The undersigned also takes notice of the fact that well before November 2020, the State of Florida had lifted all mandatory COVID-19 restrictions. *See, e.g., Fla. Exec. Order No. 20-244 (Sept. 25, 2020)(eliminating restrictions of prior Executive Orders)*. Ms. Boney's excuse for the November 9, 2020, violation is not persuasive.

16. Ms. Boney also complained about the lag time between the August 4, 2021, citation and the April 18, 2022, issuance of the Complaint. She testified that the Department would "throw the book" at her facility if it took seven or eight months to come into compliance after a violation but that the Department thought nothing of taking a similar length of time to charge her with a violation.

17. Cassandra Virgo, Family Services Licensing Counselor Supervisor, testified that the Department had recently upgraded its software program, which could have accounted for the lengthy time between the citation and the Complaint.

18. The undersigned is sympathetic to Ms. Boney's complaint, but she pointed to no statutory requirement that a Complaint be brought within a certain time after the issuance of a citation. Ms. Boney also provided no

evidence that she or her business suffered any injury attributable to the delay.

19. Clear and convincing evidence was presented that Early Impressions committed the Class III violation alleged by the Department.

#### CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

21. The Department has the burden of establishing the grounds for discipline against Respondent's license by clear and convincing evidence. *Dep't of Banking and Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987); *Coke v. Dep't of Child. & Fam. Servs.*, 704 So. 2d 726 (Fla. 5th DCA 1998).

22. In *Evans Packing Company v. Department of Agriculture and Consumer Services*, 550 So. 2d 112, 116 n.5 (Fla. 1st DCA 1989), the court defined clear and convincing evidence 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 evidence must be precise and explicit and the witnesses must be 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 the firm belief of conviction, without hesitancy, as to the truth of the allegations sought to be established. *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

23. Judge Sharp, in her dissenting opinion in *Walker v. Department of Business and Professional Regulation*, 705 So. 2d 652, 655 (Fla. 5th DCA 1998) (Sharp, J., dissenting), reviewed recent pronouncements on clear and convincing evidence:

[C]lear and convincing evidence requires more proof than preponderance of evidence, but less than beyond a reasonable doubt. *In re Inquiry Concerning a Judge in re Graziano*, 696 So. 2d 744 (Fla. 1997). It is an intermediate level of proof that entails both qualitative and quantitative [sic] elements. *In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 967 (Fla. 1995), cert. denied, 516 U.S. 1051, 116 S. Ct. 719, 133 L. Ed. 2d 672 (1996). The sum total of evidence must be sufficient to convince the trier of fact without any hesitancy. *Id.* It must produce in the mind of the factfinder a firm belief or conviction as to the truth of the allegations sought to be established. *Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994).

24. At all times material to this case, Respondent was a provider of child care, pursuant to section 402.302, which provides the following relevant definition:

(1) “Child care” means the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.

(2) “Child care facility” includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit . . . .

25. Section 402.305(1) directs the Department to “establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.”

26. Section 402.310(1) provides, in relevant part:

(c) The department shall adopt rules to:

1. Establish the grounds under which the department may deny, suspend, or revoke a license or registration or place a licensee or registrant on probation status for violations of ss. 402.301-402.319.

2. Establish a uniform system of procedures to impose disciplinary sanctions for violations of ss. 402.301-402.319. The uniform system of procedures must provide for the consistent application of disciplinary actions across districts and a progressively increasing level of penalties from predisciplinary actions, such as efforts to assist licensees or registrants to correct the statutory or regulatory violations, and to severe disciplinary sanctions for actions that jeopardize the health and safety of children, such as for the deliberate misuse of medications . . .

27. To implement these statutory directives, the Department has adopted Florida Administrative Code Chapter 65C-22, “Child Care Standards.” Rule 65C-22.001(6) specifies that licensed childcare facilities must follow the standards specified in the “Child Care Facility Handbook,” October 2021 (“Handbook”),<sup>1</sup> which is adopted by reference in the rule.

28. Rule 65C-22.010 “establishes the grounds under which the Department shall issue an administrative fine, deny, suspend, revoke a license or registration or place a licensee or registrant on probation status as well as uniform system of procedures to impose disciplinary sanctions.” Rule 65C-22.010(1)(e)2. defines violations of licensing standards in terms of their relative severity, as follows:

(e) “Violation” means noncompliance with a licensing standard as described in an inspection

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<sup>1</sup> While the current version of the Handbook was adopted after the occurrence of the violation at issue in this proceeding, the relevant standard, 7.1, has been unchanged since at least the 2017 version of the Handbook.



report resulting from an inspection under Section 402.311, F.S., as follows with regard to Class I, Class II, and Class III Violations.

1. “Class I Violation” is an incident of noncompliance with a Class I standard as described on CF-FSP Form 5316, May 2019 Child Care Facility Standards Classification Summary and CF-FSP Form 5427, May 2019, School-Age Child Care Facility Standards Classification Summary, which are incorporated by reference. Copies of the CF-FSP Form 5316 and CF-FSP Form 5427 may be obtained from the Department’s website at [www.myflfamilies.com/childcare](http://www.myflfamilies.com/childcare) or from the following links: <http://www.flrules.org/Gateway/reference.asp?No=Ref-10471> and <http://www.flrules.org/Gateway/reference.asp?No=Ref-10473>. However, any violation of a Class II standard that results in death or serious harm to a child shall escalate to a Class I violation. The effective date of a termination of a provider’s Gold Seal Quality Care designation is the date of the Department’s written notification to the provider. However, any violation of a Class II standard that results in death or serious harm to a child shall escalate to a Class I violation. Class I violations are the most serious in nature.

2. “Class II Violation” is an incident of noncompliance with an individual Class II standard as described on CF-FSP Form 5316. Class II violations are less serious in nature than Class I violations.

3. “Class III Violation” is an incident of noncompliance with an individual Class III standard as described on CF-FSP Form 5316. Class III violations are less serious in nature than either Class I or Class II violations.

29. The allegation made in the Complaint is that Early Impressions violated section 7.1.B of the Handbook by failing to obtain for each child in its care a current, complete, and properly executed Florida Certification of

Immunization or a Religious Exemption from Immunization form from the custodial parent or legal guardian. Section 7.1.B of the Handbook requires that these documents “be at the facility for review by the licensing authority” during all hours of operation.

30. Section 41.1 of the Department’s Form CF-FSP 5316, “Child Care Facility Standards Classification Summary,” provides that a violation of section 7.1.B constitutes a Class III violation.

31. Rule 65C-22.010(2)(b) provides a grace period wherein a violation of a standard that has occurred more than two years prior to a subsequent violation of the same standard will not be counted for purposes of progressive discipline. However, the facts in this case established that Early Impressions committed three violations of section 7.1.B within a two-year period.

32. Rule 65C-22.010(2)(d)3.a. provides that the Department will impose an administrative fine of \$25.00 for the third violation of the same Class III standard.

33. The Department proved by clear and convincing evidence that Early Impressions committed a violation of section 7.1.B of the Handbook and that it should be fined \$25.00 under the cited rule.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order imposing an administrative fine of \$25.00 on Early Impressions for its third violation of section 7.1.B of the Handbook within a two-year period.

DONE AND ENTERED this 5th day of August, 2022, in Tallahassee, Leon County, Florida.



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LAWRENCE P. STEVENSON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of August, 2022.

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.