

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
OSAH
AUG 29 2012

CHILDREN FIRST LEARNING)
CENTER, INC.,)
Petitioner,)

v.)

GEORGIA DEPARTMENT OF)
EARLY CARE & LEARNING,)
Respondent.)

OSAH Docket No.:
DECAL-CCLC-1236197-60-Baxter

K. Westray
Kevin Westray, Legal Assistant

FINAL DECISION

Petitioner Children First Learning Center, Inc. (“Children First”) appeals the revocation of Children First’s license to operate a child care learning center, located at 551 John Wesley Dobbs Avenue, Atlanta, Georgia 30312 (the “Facility”). For the reasons that follow, Respondent’s decision to revoke Children First’s license is **AFFIRMED**.

STATEMENT OF FACTS

1.

On March 19, 2012, Respondent received a complaint regarding Children First, alleging numerous incidents of non-compliance (the “Complaint”). Of significance, the Complaint alleged that a child had been injured at the Facility without proper parental and Respondent notification. (Testimony of Holland; Ex. R-3.)

2.

On March 22, 2012, Respondent conducted an on-site investigation at the Facility based on the Complaint. Many of the initial Complaint’s allegations were not substantiated by the Respondent’s investigation. The onsite visit, however, did result in a finding of sixteen rule violations at the Facility. (Testimony of Holland; Ex. R-11.)

1. Allegations Related to Employee Winston Scott Douglas

3.

In February 2012, Children First’s Director, Cynthia Stewart, hired Winston Scott Douglas to transport children from school to the Facility and from the Facility to the

child's home. Based on an interview and a third-party criminal records check, Stewart was aware that Douglas had multiple felonies, including a conviction for aggravated assault in 2002. (Testimony of Stewart & Douglas; Exs. R-4, R-5, R-6, 7a, 7b, 7c, 7d.)

4.

Stewart never contacted the Respondent regarding hiring Douglas. She believed that because his convictions did not involve crimes against children that it was acceptable to hire him. Further, Stewart found Respondent's Rules vague regarding criminal records and convictions and chose to interpret the Rules in favor of hiring Douglas. In 2008, Respondent had provided Stewart training on employee criminal records check requirements. (Testimony of Stewart; Ex. R-2.)

5.

During the March 22 onsite investigation, Respondent's representative, Elizabeth Holland, notified Stewart that staff members with felony convictions were prohibited from remaining on the premise. Holland also notified Petitioner that a third-party records check was not acceptable documentation and requested that Petitioner provide the appropriate criminal records check for Douglas. On March 27, Petitioner provided a Respondent-approved criminal records check for Douglas. Based on Douglas' multiple felonies, Holland immediately notified Petitioner that Douglas could not remain on the premise. (Testimony of Holland; Ex. R-16.)

6.

On March 28, Stewart contacted Holland to request that Douglas stay on as the driver until she had found a replacement. Holland repeated her directive that Douglas was not allowed on the premise. (Testimony of Holland.)

7.

Stewart testified that she prohibited Douglas from entering the Facility "immediately" upon Respondent's prohibition. CBS News, however, filmed Douglas on the premise on March 28, a day after Holland specifically told Stewart that Douglas could not remain on the premise. (Testimony of Stewart & Holland; Ex. R-1.)

2. Allegations Related to Employee Brenda Hicks

8.

Brenda Hicks worked as a cook for Children First for five years. After the March 22 onsite investigation, Children First accidentally faxed the Respondent a copy of Hicks' criminal record. At that time, Holland realized that Hicks' background check was not the correct one for childcare workers and that the records indicated that Hicks had been arrested in 1990 for drug possession. (Testimony of Hicks & Holland.)

9.

On April 3, 2012, Respondent demanded that Stewart provide the correct records check and a police report regarding the 1990 drug possession charge within two days. Eight days later, on April 10, 2012, Hicks or Stewart requested the documentation from the City of Atlanta. (Exs. R-8, R-9.)

10.

During the investigation, Children First notified Respondent that Hicks was going through the First Offenders Program. When pressed for documentation indicating Hicks' progress in that program, Children First could not provide the documentation. (Testimony of Holland.)

11.

At the hearing, Hicks and Stewart testified that the charges had been dismissed years ago and that Hicks obtained an expungement of her record of the arrest. Neither provided documentation of this resolution of the arrest or explained why Petitioner had initially notified Respondent that Hicks was completing the First Offenders Program. (Testimony of Hicks & Stewart.)

12.

In May 2012, Children First fired Hicks because of her criminal record. (Testimony of Hicks.)

3. Allegation Related to Employee Shanika Woods

13.

In a follow-up onsite investigation on March 30, Children First could not provide a criminal records check for staff member Shanika Woods to Respondent's investigator. (Testimony of Jessica Grant; Ex. R-15.)

4. Allegations Related to Transportation

14.

During the March 22 onsite investigation, Holland observed seven children and one adult driver exit the Children First station wagon. The wagon has a seating capacity of seven which means each child did not have his/her own seat belt. (Testimony of Holland & Douglas.)

15.

The investigation also revealed that Children First exceeded the vehicle seating capacity on other occasions as well. (Testimony of Holland & Douglas; Exs. R-4, R-11.)

16.

Holland reviewed Children First's transportation documentation and found the following violations: (a) second final checks of vehicles were not documented during after school transportation the weeks of March 12 and 19, 2012; (b) first and second final checks of the vehicles were not documented during home transportation provided on March 19 and 21, 2012; (c) first and second final checks of the vehicle were not documented for one child transported from his school to the Facility on March 22, 2012; (d) current information for one child was not maintained in the vehicle during afterschool transportation on March 22, 2012; (e) drop-off location for one child was not on the checklist for March 19 and 21, 2012; (f) no emergency medical information was maintained in the vehicle for one child on March 22, 2012; (g) no passenger checklist was maintained in the vehicle during afterschool transportation on March 22, 2012; (h) no annual vehicle inspections were on file for a red passenger van, a blue station wagon, and a grey sedan that were used for transporting children; (i) no designee for completing checklists was listed on the passenger checklists for afterschool transportation during the weeks of March 12 and 19, 2012, or for home transportation on March 19 and 21, 2012;

(j) the name of the person to whom the checklist was submitted at the completion of every trip was not listed on the passenger checklists for afterschool transportation during the weeks of March 12 and 19, 2012, or home transportation on March 19, and 21, 2012; (k) during afterschool transportation for the weeks of March 12 and 19, 2012, the arrival times at the school and return times to the Facility were not properly documented; (l) during home transportation conducted on March 19 and 21, 2012, the times the vehicle returned to the center were not documented. (Testimony of Holland; Exs. R-10, R-11.)

17.

During the onsite investigation, Respondent also determined that no fire extinguisher was present on two vehicles used to transport children. (Testimony of Holland; Ex. R-11.)

18.

The March 22 onsite investigation revealed twenty separate violations of eleven transportation rules. Of those eleven rules, seven of the rules had been violated by the Facility in the recent past and five of the rules had been violated by the Facility on at least two separate inspections in the recent past. (Exs. R-11, R-12, R-13, R-14.)

19.

At the hearing, Stewart blamed the different drivers for the repeated transportation-related violations. Further, she appeared dismissive of the Respondent's requirements and annoyed at Respondent's repeated investigations and visits to the Facility. (Testimony of Stewart.)

5. Allegation Related to Supervision of Children

20.

During the March 22, 2012 onsite investigation, Holland observed one staff person standing between the one and two-year old classrooms and supervising both groups of children (a total of nine children) for a very short period of time. (Testimony of Holland.)

6. Allegation Related to Reporting Requirements

21.

Children First did not report to Respondent that a one-year-old child sustained a bruise to her forehead on March 9, 2012. The child's mother sought professional care for the child. No evidence was presented at the hearing regarding the necessity of the professional care or the seriousness of the injury. Rather, Holland testified that Petitioner's staff did not believe the injury was serious or that it required any professional care. (Testimony of Holland.)

CONCLUSION OF LAW

1.

Children First is governed by the Education Reform Act of 1996, O.C.G.A. Title 20 Chapter 1A (2012), and the Georgia Rules for Child Care Learning Centers, Ga. Comp. R. & Regs. r. 591-1-1 (the "Rules").

2.

Respondent has the authority to revoke Petitioner's license for any number of reasons including failure to comply with licensing requirements and failure to comply with any provisions of the law. O.C.G.A. § 20-1A-12(b)(3). Here, Respondent alleges multiple violations of Respondent's Rules.

1. Violations of Criminal Records Check Requirements

3.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.09 for three staff members. This Rule requires center employees to have a satisfactory criminal records check. The Rules also require a center to maintain onsite a "verification of satisfactory criminal records check determination" for all employees. Ga. Comp. R. & Regs. r. 591-1-1-.24.

4.

First, the evidence demonstrates that Children First had no criminal background check on file for staff member Shanika Woods when Respondent visited the Facility on March 30,

2012. As such, Respondent has met its burden in demonstrating that Petitioner violated Ga. Comp. R. & Regs. r. 591-1-1-.24 with respect to Woods.

5.

Second, the evidence demonstrates that Children First knowingly employed a driver, Winston Scott Douglas, who had an unsatisfactory criminal record. Douglas provided Children First with a third party record check that indicated he had multiple felonies. O.C.G.A. § 20-1A-33 provides that if a staff member has a “criminal record of any kind,” he/she may “not be allowed to work in the center until he or she either has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed....”¹ Accordingly, Petitioner clearly violated the Rule by not obtaining the Respondent-required criminal record check for Douglas and for hiring a driver with multiple felonies.

6.

Third, Respondent alleges that Children First employed a cook, Brenda Hicks, with an unsatisfactory criminal record check. The evidence demonstrates that Children First maintained a record check for Hicks that did not comply with Respondent’s Rules. That record check indicated that Hicks had a felony arrest, but provided no outcome of the arrest. The only evidence presented at the hearing indicates that the felony charge was dismissed, but Petitioner still ignored the Respondent’s Rules to provide a complete and satisfactory criminal record check for Hicks. During its onsite investigations, Respondent’s investigators had no basis for determining whether Hicks was allowed to work at the Facility. As such, Respondent met its burden in demonstrating that Petitioner violated the Rules with respect to Hicks.

7.

In addition, Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.31(11), which requires staff to comply with all applicable laws and regulations. The evidence demonstrates that Petitioner repeatedly failed to comply with Respondent’s

¹ Criminal record “means: (A) Conviction of a crime; (B) Arrest, charge, and sentencing for a crime where: (i) A plea of nolo contendere was entered to the charge; (ii) First offender treatment without adjudication of guilt pursuant to the charge was granted...; or (iii) Adjudication or sentence was otherwise withheld or not entered on the charge...; or (C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired....” O.C.G.A. § 49-5-60(4).

Rules regarding criminal background checks. In fact, the director of Children First demonstrated a disregard for Respondent's requirements, even ignoring Respondent's prohibition against Douglas remaining on the premise. Thus, Respondent has met its burden in demonstrating that staff failed to comply with the applicable laws and regulations.

2. **Violations of Child Transportation Requirements**

8.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(f)(1), which requires that all children be secured in a child passenger restraining system or seat safety belt when being transported in accordance with state and federal laws and regulations. The evidence, including Douglas' testimony and Holland's own observations at the March 22 onsite investigation, demonstrates that Petitioner violated this Rule on multiple occasions.

9.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(f)(2), which prohibits a center from exceeding the manufacturer's rated seating capacity for the vehicle. Again, the evidence demonstrates that Petitioner violated this Rule on multiple occasions.

10.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(d)(1), which requires that at the completion of every trip, two final checks must be made to assure that no child remains on the vehicle. The evidence demonstrates that Petitioner failed to document these checks on multiple occasions. Without documentation or testimony demonstrating that these checks occurred, the Court finds that Respondent has met its burden in demonstrating that Children First violated this Rule on multiple occasions.

11.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(a), which requires a center to maintain current transportation information for each

child on the vehicle. The evidence demonstrates that Petitioner violated this Rule on two occasions.

12.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(b), which requires a center to maintain emergency medical information on the vehicle for each child. The evidence demonstrates that Petitioner violated this Rule.

13.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(c), which requires a center to maintain a passenger checklist on the vehicle. The evidence demonstrates that Petitioner violated this Rule.

14.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(a), which requires an annual vehicle inspection for all vehicles used for transporting children. The evidence demonstrates that Petitioner failed to conduct these inspections for all three vehicles Petitioner used to transport children. Accordingly, Respondent has met its burden in demonstrating that Children First violated this Rule.

15.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(c), which requires that vehicles be equipped with a fire extinguisher. The evidence demonstrates that Petitioner committed two violations (one for each vehicle) of this Rule.

16.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(c)(2), which requires the director to designate either the vehicle driver or an additional person on the vehicle as the person responsible for completing the checklist. The evidence demonstrates that Petitioner violated this Rule on multiple occasions.

17.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(c)(4), which requires the responsible person on the vehicle to submit the passenger checklist to the director or designated staff person at the completion of every trip. The evidence demonstrates that Petitioner violated this Rule on multiple occasions.

18.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(c)(3)(a), which requires the driver or other designated person document in writing the time of departure, arrival, and return. The evidence demonstrates that Petitioner violated this Rule on multiple occasions.

3. Violations of Child Supervision Requirements

19.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.32(6), which requires children to be supervised at all times. Supervision means “that the appropriate numbers of staff members are physically present in the area where children are being cared for...” *Id.* The evidence demonstrates that for a very short time on March 22, 2012, Petitioner violated this Rule by having one staff member supervising nine children. Because the age of the children required more than one staff member, Respondent has met its burden in establishing this violation.

20.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.32(2), which allows the combining of children in mixed-age groups, but requires that the staff-to-child ratio be based on the ages of the youngest children if more than twenty percent of the children in the group belong to the younger age grouping(s). During the March 22 onsite investigation, the correct ratio at the Facility should have been a 1-to-6 or 1-to-8 child-to-staff ratio, but instead, for a brief period, Petitioner staffed the one- and two-year-old rooms with a 1-to-9 staff-to-child ratio. Specifically, one staff member stood in the hallway between the two rooms and supervised both sets of children. As such, Respondent has met its burden in establishing this violation.

4. Violation of Reporting Requirements

21.

Respondent alleges that Children First violated Ga. Comp. R. & Regs. r. 591-1-1-.29(1)(c), which requires a center to report to Respondent within twenty-four hours or the new work day any child’s serious illness/injury requiring professional medical attention. The evidence indicates that a child was injured and the mother sought professional

medical attention, but no evidence was presented that the child suffered a serious injury that actually required professional medical attention. The fact that the mother took it upon herself to see a doctor does not, on its own, elevate a minor, typical toddler injury to a serious one. As such, Respondent failed to meet its burden in proving this violation.

5. Proposed Sanction for Violations

22.

Once a violation has been established, Respondent has a variety of statutorily authorized options for sanctioning a licensee, including revoking the license. O.C.G.A. § 20-1A-12(c). Here, Petitioner has repeatedly and consistently violated Respondent's Rules. While some of these violations may be minor or mere record-keeping in nature, they are designed to protect children from potentially life-threatening situations and cannot be repeatedly ignored. Other violations, such as the hiring of a driver with multiple felony convictions, are of a much more serious nature. Petitioner provided no evidence indicating that it has any concern regarding these repeated violations, whether the violations are minor or not. More importantly, Petitioner has demonstrated a disregard for Respondent's Rules, for complying with Respondent's directives, or for the significance and importance of these violations. The Court observed no contrition for or acknowledgement by Stewart, Petitioner's director, that these violations, taken with the Petitioner's history of similar violations, constitute a grave lack of appreciation for the safety of the children in Petitioner's care. As such, Respondent's decision to revoke Petitioner's license is appropriate and warranted.

DECISION

Respondent's decision to revoke Petitioner's license to operate a child care learning center is **AFFIRMED**.

SO ORDERED THIS 29th of August, 2012.



AMANDA C. BAXTER
Administrative Law Judge

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

CHILDREN FIRST LEARNING CENTER, INC,
Petitioner,

v.

GEORGIA DEPARTMENT OF EARLY CARE AND
LEARNING,
Respondent.

Docket No.: OSAH-DECAL-CCLC-1236197-60-Baxter

Agency Reference No.: 1236197

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Kevin Westray, kwestray@osah.ga.gov
230 Peachtree Street, NW, Suite 850
Atlanta, Georgia 30303-1534

APPLICATION FOR AGENCY REVIEW

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Bright from the Start: Georgia Department of Early Care and Learning
Legal Services
2 Martin Luther King Jr. Dr., SE
754 East Tower
Atlanta, Georgia 30334

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G. A. § 50-13-19(b).

RE: CHILDREN FIRST LEARNING CENTER, INC, Petitioner

DOCKET NO.: OSAH-DECAL-CCLC-1236197-60-Baxter

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