

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

In re: THE C.H.I.L.D. CENTER, INC.

Case No.: 2010-OSSE-00003

FINAL ORDER

I. Introduction

This matter arises under the Child Development Facilities Regulation Act of 1998, D.C. Official Code §§ 7-2031-2050 (the “Act”), and Title 29, Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”). In accordance with 29 DCMR 314.6, The C.H.I.L.D. Center, Inc. (the “Center”), by its Director Tasha Carroll-Seals (the “Center Director”), filed a request for a hearing on June 3, 2010, in connection with the Notice of the Summary Suspension of License which was served on the Center on June 3, 2010 (the “Notice”). The Notice informed the Center that pursuant to 29 DCMR 314, Larry Carr, Director of Compliance and Integrity (the “Director”), Office of the State Superintendent of Education (OSSE), summarily suspended the Center’s license for up to forty five (45) days for specified violations of the DCMR which presented an imminent danger to the health, safety, and welfare of children under the care of the Center.

A Case Management Order was issued on June 4, 2010, scheduling a hearing for June 10, 2010, within five (5) business days of the request, as required by 29 DCMR 314.6. At the hearing, K. Shiek Pal, Esquire, Office of the General Counsel, represented OSSE. The Director, Felicia DeHaney, Director of Program Quality, and Jessica Parker, Child Care Licensing Specialist, testified for OSSE. H. Jeffrey Ziegler, Esquire, represented the Center, and the Center Director testified on its behalf. In addition, the parties stipulated on the record that the proffered testimony of two employees of the Center, Ms. Marcia Green, a teacher's aide, and Ms. Jacqueline Oliver, Program Coordinator, was admissible and could be considered as if the witnesses had testified in person at the hearing. The exhibits admitted into evidence consisted of three exhibits of OSSE, Exhibits 100, 101, and 102.

As explained below, I find that the decision of the Director to summarily suspend the Center's license was warranted. The Director found that the Center violated the regulations specified in the Notice which presented an imminent danger to the health, safety, and welfare of children under the care of the Center. These findings are supported by the preponderance of the evidence.

This decision is being issued within five (5) business days after the conclusion of the hearing, in accordance with 29 DCMR 314.6.

Based on the testimony at the hearing, my evaluation of the credibility of the witnesses, the documents admitted into evidence, and the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

The Center is licensed as a child development center, and has been in operation since 1996.¹ It participates in the Child Care Subsidy Program, and currently cares for 160 children, and has 25 employees. The Center has a history of noncompliance with the applicable regulations, including numerous deficiencies for the failure to maintain the required adult/child ratios for groups of children. As a result of its history of noncompliance with the regulations, at the present time the Center has a provisional license.²

On June 3, 2010, the Director was notified by the father of a five year old child that while at the Center another four year old child performed oral sex on the five year old. No report had been made of the incident by the Center to OSSE. Later that same day, Ms. DeHaney contacted Ms. Oliver, the Center's Program Coordinator. Ms. DeHaney ascertained from Ms. Oliver that the incident had occurred on June 1, 2010, and that an Unusual Incident Report had not been made to OSSE, nor had the incident been reported to the Child Protective Services Division of the Child and Family Services Agency ("CFSA"). In explaining the details of the incident to Ms. DeHaney, Ms. Oliver admitted that the incident occurred in a group of twelve (12) children, with only one (1) adult, a teacher's aide, in charge of the group. The failure to make the Unusual Incident Report to OSSE and to CFSA was based on the Center's desire to first speak with the parents of the children involved. Ms. DeHaney reported the incident to CFSA, and the Center

¹ The Center's Child Development License is No. CDC-909186. Exhibit 100. A "child development facility" includes a center that "provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis . . ." See D.C. Official Code § 7-2031(3); 29 DCMR 399.

² A "provisional license" is issued "[a]s an alternative to denial, suspension or revocation of a license, when a Facility has one or more deficiencies that jeopardize the health, safety or welfare of children, staff or the general public . . ." See 29 DCMR 315.1.

submitted a completed Unusual Incident Report Form to OSSE and also reported the incident to CFS on June 3rd. Petitioner's Exhibit ("PX") 102.

The Notice was served on the Center on June 3, 2010, by Ms. Parker, Child Care Licensing Specialist. PX 100. The basis for the suspension of the Center's license was that the Director had determined that the Center had violated four (4) regulations in such a manner to indicate that there was imminent danger to the health, safety, or welfare of the children under the care of the Center. *Id.* The four regulations allegedly violated were: 29 DCMR 322 (failure to report an unusual incident);³ 29 DCMR 333 (failure of Center's Director to perform duties and

³ 29 DCMR 322 provides, in pertinent part:

322.1 Each Facility shall immediately report, to the Director, to the Department of Human Services for those providers that participate in the Child Care Subsidy Program, and to the parent(s)/guardian(s) of each affected child, any unusual incident that may adversely affect the health, safety or well-being of any child or children in the Facility.

322.2 The Facility shall also submit to the Director, on a form approved by him or her, and to the Department of Human Services for those providers that participate in the Child Care Subsidy Program, a written report of the unusual incident, within twenty-four (24) hours of the incident. . . .

322.4 Any Facility staff member who knows or has reasonable cause to suspect that an enrolled child is, has been, or is in immediate danger of being an abused or neglected child shall, as required by the District of Columbia Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22, D.C. Official Code §§ 4-1321.01 et seq.), make or cause to be made an immediate oral report to:

- (a) The Child Protective Services Division of the Child and Family Services Agency, via the CFSA twenty-four (24) hour Child Abuse and Neglect Hotline (202-671-SAFE); or
- (b) The Metropolitan Police Department.

responsibilities);⁴ 29 DCMR 335 (failure of teachers to perform duties and responsibilities);⁵ and 29 DCMR 343 (failure to adhere to group size and child/adult ratios).⁶

⁴ 29 DCMR 333 provides, in pertinent part:

333.2 The Center Director shall be responsible for the supervision, program planning and administration of the Child Development Center and its staff, consistent with the written operational policies and philosophy, and shall assume the following responsibilities:

- (a) Ensuring compliance with the requirements of this Chapter, and with all applicable federal and District of Columbia laws;
- (b) Selecting and supervising qualified staff;
- (c) Providing orientation and training to each staff member as required;
- (d) Designating a teacher or group leader to assume responsibility for the Facility's operation in the absence of the Center Director;
- (e) Ensuring that adult/child ratios are maintained in compliance with section 343 of this Chapter;
- (f) Ensuring parent involvement in the program and in the activities of the Center;
- (g) Reporting unusual incidents as defined in section 399 and in accordance with section 322 of this Chapter;
- (h) Ensuring that at least one (1) staff member with a current CPR and First Aid certification for children is present on the Facility premises at all times; (i) Attending in-service training programs and completing continuing education requirements as specified; and
- (j) Reporting evidence of child abuse and neglect that comes to the Facility staff's attention, in accordance with section 322 of this Chapter.

⁵ 29 DCMR 335 provides, in pertinent part:

335.1 The duties of each teacher in a Child Development Center shall include the following:

- (a) Assisting the Center Director in ensuring compliance with this Chapter,
- (b) Providing, and/or overseeing the provision of, adequate supervision and appropriate care for all of the children in his or her class or group at all times;
- (c) Planning and initiating daily activities based on the assessed strengths, interests and needs of all of the children in his or her class or group;
- (d) Assisting the Center Director in implementing the Facility's policies and procedures;

OSSE proved by the preponderance of the evidence that all four (4) regulations had been violated. The undisputed evidence was that the incident in question was an “unusual incident” that may adversely affect the health, safety or well-being of the children involved and other children in the Center and, accordingly, the Center, the Center Director and the teacher responsible for the group were all required to make a report of the incident to the appropriate officials in the appropriate manner within twenty-four (24) hours, and to otherwise perform their duties provided for in the regulations to prevent such an occurrence. *See* 29 DCMR §§ 322, 333, and 335. In fact, the Center’s attorney stipulated and agreed that the Center violated these three regulations. Regarding the remaining alleged violation of 29 DCMR 343, the Center did not dispute that at the time of the incident there was only one adult staff person, a teacher’s aide,

(e) Supervising subordinate staff;

(f) Attending in-service training programs and completing continuing education requirements, as required;

(g) Communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their children;

(h) Assuming responsibility for the program of the Facility in the absence of the Center Director, if and when so designated; and

(i) Performing other appropriate duties as requested by the Center Director.

⁶ 29 DCMR 343 provides, in pertinent part:

343.1 Each Child Development Center shall have at least two (2) staff persons caring for each group at all times. In Centers serving infants, toddlers, and/or preschoolers, there shall be a teacher, who may also be the Center Director, and an assistant teacher or aide for each group at all times, except as further specified herein.

Ms. Parker also observed deficiencies or violations of the regulations while she was at the Center on June 3, 2010, serving the Notice. Ms. Parker’s testimony, and the Statement of Deficiencies she prepared, were not objected to. PX 101 The alleged violations concern the failure to maintain the required adult/child ratios (29 DCMR 343.5), plus failing to ensure that children were allowed to safely and comfortably sit, crawl, etc. and to implement a program of activities suitable to the ages and abilities of all children (29 DCMR §§ 365.13 and 344). *Id.*

present with a group of twelve (12) children, and that this was a violation of 29 DCMR 343.⁷ That regulation mandates that there must be “*at least two (2) staff persons* caring for each group at all times. . . .” (Emphasis added). The Center argued, however, that due to staff shift changes the group of children did not have a teacher with the aide, for the requisite ratio of adults to children (two (2) adults at all times), for only a short period of time. Assuming this to be the case, the Center is nevertheless guilty of violating this regulation, since the excuse offered does not constitute a legal defense, nor does it otherwise excuse the violation.

As noted, the Center admitted violating 29 DCMR 322 by not reporting the incident which “may adversely affect the health, safety, or well-being of any child or children in the (Center).” In addition, I credit the Director’s testimony that the violations in question presented an immediate threat to the health, safety and welfare of the children involved in the incident, as well as the other children in the Center. In the Director’s opinion, if the proper adult/child ratios had been maintained and there had been proper supervision, the incident in question could have been prevented. The Director also determined that the violations should not be viewed in isolation. Considered in the context of the Center’s history of noncompliance, he determined that they evidenced the inability of the Center, generally, to properly protect the children in its care.⁸

⁷ Additionally, the regulations provide that a teacher’s aide must work under the direct supervision of a teacher, assistant teacher, group leader, assistant group leader, or Center Director at all times. 29 DCMR §§ 339.1. Also, an aide may not have the sole responsibility for a group or classroom at any time. 29 DCMR 339.3.

⁸ The Center’s “provisional license,” meant that previously it was determined that the Center had one or more deficiencies that jeopardize the health, safety or welfare of children, staff or the general public. *See* 29 DCMR 315.1.

The Director determined that the suspension of the Center's license was necessary until a complete and comprehensive investigation of the Center had been conducted. According to the Director, parents have a right to expect that those to whom they entrust the care of their children will act in accordance with the highest standards of professionalism, as measured by the regulations, and that the Center's violations constituted a clear failure to meet those standards.⁹

III. Conclusions of Law

Pursuant to 29 DCMR 313.1(a), the Director may suspend a child development facility's license for violating the Act or the regulations under 29 DCMR, Chapter 3.¹⁰ If the Director finds that facility violated the Act or regulations in such a manner as to present an immediate danger to the health, safety or welfare of children, he may summarily suspend the license for up to forty-five (45) days.¹¹

There is absolutely no dispute that the Center violated the regulations specified in the Notice, namely, 29 DCMR §§ 322, 333, 335, and 343. In addition to the Center's *concessum*

⁹ Ms. DeHaney also testified that in her opinion the Center's noncompliance with Adult/Child ratios and its failure to consistently comply with the regulations in other respects warranted the summary suspension of its license. Ms. DeHaney stated the Center's history of deficiencies or violations was a cause of serious concern for the health and welfare of the children.

¹⁰ 29 DCMR 313.1(a) provides, in pertinent part:

The Director may deny, refuse to renew, revoke, or suspend a license on the basis of . . . [a] [f]ailure to comply with the Act or with this Chapter.

See also, D.C. Official Code § 7-2040(1) and (2).

¹¹ 29 DCMR 314.1 provides:

The Director may summarily and immediately suspend a license, for a period of not more than forty-five (45) calendar days, upon finding that the health, safety, or welfare of children, adults, or of the general public is in immediate danger.

See also 7 D.C. Official Code § 7-2041(a).

with respect to violating 29 DCMR 322, the Director found that these violations presented an immediate danger to the health, safety or welfare of children at the Center. The failure of a child development facility to adhere to these regulations clearly is a serious matter. Adherence to staffing and adult/child ratio requirements helps ensure that some of our most vulnerable citizens, children, receive adequate supervision and development programs when placed in the care of a District of Columbia licensed child development facility. *See* 29 DCMR 300.1 (noting the purpose of child development facilities regulations is to “protect the health, safety and well-being of children in licensed Child Development Facilities and to ensure the provision of developmentally appropriate programs to those children.”). In addition, the requirement to timely report unusual incidents to the proper authorities helps ensure that investigations involving vulnerable children are conducted in a competent and professional manner. The Director’s finding that the Center’s violations presented an immediate or imminent danger to the health, safety or welfare of the children was within his discretion. The Director’s determination on this element was not an abuse of his discretion, but was supported by substantial evidence.

I find that OSSE has proved by the preponderance of the evidence that the Center violated the specific regulations referred to in the Notice, which presented an imminent danger to the health, safety, and welfare of children under the care of the Center. Accordingly, I find that the summary suspension of the Center’s license was warranted. The suspension shall continue for a period not to exceed forty-five (45) days from the date of this decision, and at or before the end of the suspension period, the Director shall either reinstate the Center’s license or initiate procedures for the revocation of the license. 29 DCMR §§ 314.7 and 314.8.

IV. ORDER

Based on the above findings of fact and conclusions of law, and the entire record in this matter, it is this _____ day of June 2010:

ORDERED, that the June 3, 2010, Summary Suspension of The C.H.I.L.D. Center, Inc.'s License No. CDC-909186 was **WARRANTED**; and it is further

ORDERED, that the suspension shall continue for a period not to exceed forty-five (45) days from the date of this decision; and it is further

ORDERED, that at or before the end of the suspension period, the Director shall either reinstate the Center's license or initiate procedures for the revocation of the license; and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

Robert E. Sharkey
Administrative Law Judge