

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DHR 12064

Brenda Brewer,
Petitioner,

vs.

North Carolina Department of Health and
Human Services, Division of Child
Development,
Respondent.

)
)
)
)
)
)
)
)
)
)

DECISION

This matter was heard before Beecher R. Gray, Administrative Law Judge, on June 14, 2012 in Bolivia, North Carolina.

APPEARANCES

Andrew T. Nettleman, Esq.
The Nettleman Law Firm, PLLC
219 N. 2nd St.
Wilmington, NC 28401

Letitia C. Echols, Esq.
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

ATTORNEY FOR PETITIONER

ATTORNEY FOR RESPONDENT

APPLICABLE STATUTES AND RULES

N.C.G.S. §§ 110-90(5), 110-90(9), §110-91(14) § 110-98, 110-102.2(5), 10 NCAC 09 .0707, 09 .0705, 09 .2206, and 09 .2211

ISSUES

Whether Respondent acted erroneously in revoking the Special Provisional License issued to Church of God of Prophecy to operate King's Memorial Christian Academy.

EXHIBITS

Petitioner's Exhibits ("Exs.") 1, 2, and 4-10 were admitted into evidence.

Respondent's Exhibits ("Exs.") 1-3 and 5-15 were admitted into evidence.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (“ALJ”) makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witnesses; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case.

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Respondent, Division of Child Development (the “Division”) is an administrative agency of the North Carolina State Government operating under the laws of North Carolina and administering the licensing program for child care facilities in the State of North Carolina under The North Carolina Child Care Act, N.C.G.S. § 110-85, *et seq.*
3. Under N.C.G.S. § 110-85, the Division has a mandate to ensure that children in child care facilities are cared for in physically safe and healthy environments where their developmental needs are met.
4. Between approximately 1998 and early 2009, Candace Artis was a child care nurse employed by the New Hanover County Department of Health and Human Services. Nurse Artis provided training and technical assistance to child care workers in the areas of ITS- SIDS, Child Health and Safety, and hygiene, among others.
5. Lynette Brammer is a child care consultant with the Division. Consultant Brammer holds a bachelor’s degree in family and child development and a master’s degree in instruction and curriculum. Her job duties include investigation of complaints and compliance monitoring of facilities in southern New Hanover County and eastern Brunswick County.
6. Lisa Lyons is the Licensing Enforcement Program Supervisor with the Division. Supervisor Lyons holds a bachelor’s degree in psychology with a minor in child development and family relations. She has held her current position for two years and previously worked in the Abuse and Neglect Unit of the Division for the prior two years. Among other duties, Supervisor Lyons oversees the administrative actions process of the Division.
7. Beverly Moore is the Regional Manager for the Division for the eastern district of North Carolina. Regional Manager Moore holds both a bachelor’s and master’s degree in child development and family relations. She has been a supervisor with the Division for approximately 15 years and an employee of the Division for approximately 30 years.

Regional Manager Moore's responsibilities include oversight of consultant supervisors in eastern North Carolina.

8. Petitioner Brenda Brewer is the administrator of King's Memorial Christian Academy ("King's Memorial"), a child care facility located at 1380 North College Road in Wilmington, North Carolina. Petitioner has a bachelor's degree in church ministries. She has been the administrator of King's Memorial for nine years.
9. At all times relevant to this action, King's Memorial was operating a child care center under a Special Provisional License granted to Church of God of Prophecy.
10. The Division maintains an 18-month compliance history of licensed child care centers. In the previous two years, King's Memorial's compliance history has been approximately 90 percent or greater, significantly better than the average compliance history.
11. In her capacity with the Division, Consultant Brammer conducted compliance audits at King's Memorial and completed a Visit Summary for each visit that generally was reviewed and signed by Petitioner prior to Consultant Brammer's departure from the center.
12. On April 25, 2011, Consultant Brammer and a co-worker, Alison Johnson, conducted an unannounced compliance visit at King's Memorial to monitor compliance with applicable child care requirements. (R. Ex. 2)
13. While Ms. Johnson completed a Staff and Training Worksheet to audit employee file compliance, Consultant Brammer conducted her observation of the center. (P. Ex. 3, R. Ex. 2)
14. Ms. Johnson noted on the Staff and Training Worksheet and Consultant Brammer noted in the April 25, 2011, Visit Summary that Petitioner's IT-SIDS certification had expired in January 2011 and that this was a violation of a requirement in 10A NCAC 09 .0705(f). (P. Ex. 3, R. Ex. 2)
15. During the April 25, 2011, visit, Petitioner stated that she had completed the training but could not find the certificate. (R. Ex. 2)
16. Petitioner mailed a letter of compliance dated May 2, 2011, to the Division and included a copy of the certificate for her ITS-SIDS certification. (R. Ex. 3)
17. The date of April 9, 2009, and Petitioner's name were handwritten on the ITS-SIDS certificate provided with Petitioner's letter of compliance. Consultant Brammer's initials were written under the date on the certificate. (R. Ex. 3)
18. Consultant Brammer believed that the certificate was suspect because of the handwritten date and name and because the certificate was not reflected in a previous Staff and Training Worksheet completed on April 29, 2010. (P. Ex. 1, R. Ex. 5)

19. The Staff and Training Worksheet completed on April 29, 2010, reflected that two employees of King's Memorial, Kara Parish and Aletha Williams, had certificates for an ITS-SIDS certification with a date of April 9, 2009. Consultant Brammer did not identify either of these certificates as suspect at the time the worksheet was completed. (R. Ex. 5)
20. Consultant Brammer contacted Candace Artis in an attempt to verify whether Petitioner attended an ITS-SIDS certification on April 9, 2009, taught by Ms. Artis. Consultant Brammer alleged that Petitioner had "whited out" the information contained in either Kara Parish's or Aletha Williams' certificate and inserted her own information. (P. Ex. 1)
21. Ms. Artis told Consultant Brammer that she no longer taught the ITS-SIDS course and that it was taught by Smart Start which had all of Ms. Artis' official records relating to ITS-SIDS certification courses that she had taught, but that she still had some documents which she could check. (R. Ex. 7)
22. On May 18, 2011, Consultant Brammer conducted a follow-up visit to review the ITS-SIDS certification provided by Petitioner in her May 2, 2011, letter of compliance. Petitioner provided Consultant Brammer with the certificate in her file which was a copy of an original certificate. Petitioner provided Kara Parish's and Aletha Williams' certificates contained in her files, also copies of originals. (R. Ex. 6, 7)
23. On May 26, 2011, Consultant Brammer emailed Regional Manager Moore and stated that Ms. Artis had informed her that she had not taught an ITS-SIDS class on April 9, 2009, and that she thought the certificate provided by Consultant Brammer was from either 2006 or 2008. Ms. Artis also provided an attendance list for ITS-SIDS certifications that she taught from February to May 2011, including the date of March 25, 2009. This list was generated from the sign-in sheets at the ITS-SIDS classes. Consultant Brammer stated that she would not have accepted a copy of a certificate in the audit conducted in 2010. (R. Ex. 7)
24. Ms. Artis testified that the policy related to providing blank certificates had changed by 2009 and that all certificates provided to attendees now had their names filled in via computer.
25. On May 27, 2011, a Visit Summary was completed by the Division that cited a violation for falsification of the ITS-SIDS certificate under G.S. 110-01(14). (R. Ex. 8)
26. In response to the allegation of fraud, Petitioner responded to the Division stating that she had taken the ITS-SIDS class and was current on that certification. Petitioner stated that she did not write the April 9, 2009, date on the certificate, that she had told Consultant Brammer that she did not write it, that she had spoken with Ms. Artis the evening that she attended the class, that she had attended the class on a standby basis, and that she did not sign in that evening. Petitioner remembered that a woman attending the class had a baby with her in the room.
27. Prior to the allegation of fraud, it previously had been the policy of King's Memorial to

keep a copy of certificates from training classes in employee files and to return the original to the employee. (R. Ex. 10)

28. Petitioner attached copies of her calendar from February and March 2009 to this response. The month of February reflects a note in the margin that reads, "March Sids Class full Waiting list." The March 25th contains an entry that reads, "SIDS 6:30". (R. Ex. 10)
29. No one from the Division could remember having provided Petitioner with the dates that Ms. Artis stated that she had taught ITS-SIDS courses prior to this response.
30. It never has been the policy of the Division to require that original certificates be kept by employers.
31. On February 24, 2010, Consultant Brammer sent an email to her supervisor, Christine Carroll, stating that she was "fed up" with Petitioner and needed a more objective opinion. This email was sent prior to Consultant Brammer's allegation that Petitioner had falsified her ITS-SIDS certification. (P. Ex. 4)
32. On July 26, 2011, Consultant Brammer emailed a draft memo to Supervisor Carroll for her review. The last paragraph reads, "It does not appear that Ms. Brewer has accepted responsibility for the falsification of the ITS-SIDS certificates for herself and her staff, but has focused on excuses, placing blame on otherss, (sic) and fantastical tales." (P. Ex. 5)
33. In an email dated July 25, 2011, to which the July 6, 2011, memo was attached, Consultant Brammer indicates to Supervisor Carroll that she "won't like my last paragraph under recommendation, but it felt good writing it". (P. Ex. 5)
34. Regional Manager Moore removed the final lines from the draft memo to which Consultant Brammer had made reference in her July 25, 2011, email because they were highly subjective and inappropriate.
35. On August 16, 2011, Petitioner received an ITS-SIDS Certificate of Completion after Petitioner retook the class in an attempt to prevent the license revocation. This certificate contains a hand-written name and date and the authenticity of this certificate has remained unchallenged by the Division. (P. Ex. 10)
36. North Carolina General Statute §110-90(5) provides that the Division shall have the power to revoke the license of any child care facility that ceases to meet the standards established by this Article and rules on these standards adopted by the Commission.
37. 10A NCAC 09 .2206 provides that revocation of a permit may be ordered when violation of any section of the statutes or rules has been willful, continual, or hazardous to health safety, or the operator has not made reasonable efforts to conform to standards or is unable to comply.

38. 10A NCAC 09 .0705 states that in centers that are licensed to care for infants ages 12 months and younger, the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training.
39. North Carolina General Statute §110-91(14) provides that any effort to falsify information provided to the Department shall be considered by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child care facility and shall constitute a cause for revoking or denying a license to such child care facility.
40. On September 12, 2011, the Division issued a Notice of Revocation of License for King's Memorial based on the alleged willful falsification of Petitioner's ITS-SIDS certification. (R. Ex. 12)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case under Chapters 110 and 150B of the North Carolina General Statutes.
2. All parties correctly have been designated and there is no question as to misjoinder or nonjoinder. There is insufficient evidence to find that Petitioner made an effort to falsify information under N.C. Gen. Stat. §110-91(14) regarding ITS-SIDS training.
3. There is insufficient evidence to find that Petitioner willfully or continually violated any statutes or rules that would be grounds for license revocation under 10A NCAC 09 .2206.
4. Respondent acted erroneously by revoking the license of King's Memorial Christian Academy.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

Respondent's decision to revoke Petitioner's Special Provisional License is not supported by the evidence and is **REVERSED**.

NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department North Carolina Department of Health and Human Services, Division of Child Development.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. The Agency is required to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

The Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 3rd day of August, 2012.

Beecher R. Gray
Administrative Law Judge