

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12DHR03718

Talia Boston,  
Petitioner,  
v.  
North Carolina Department of Health and  
Human Services, Division of Health Service  
Regulation, Respondent.

**FINAL DECISION**

THIS MATTER came on for hearing before Beecher R. Gray, Administrative Law Judge, on June 10, 2013, presiding in Bolivia, North Carolina. Petitioner filed a proposed decision on November 13, 2013.

**APPEARANCES**

For Petitioner: Michael C. Allen  
Cranfill Sumner & Hartzog, LLP  
5420 Wade Park Blvd., Suite 300  
Raleigh, NC 27607

For Respondent: Josephine N. Tetteh  
Assistant Attorney General  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001

**ISSUE**

Whether Respondent substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated an allegation of neglect and entered the finding of neglect by Petitioner's name in the Health Care Personnel Registry (hereinafter referred to as "HCPR").

## **APPLICABLE STATUTES AND RULES**

North Carolina General Statute §131E-255  
North Carolina General Statute §131E-256  
North Carolina General Statute §150B-23  
10A N.C.A.C. 130.0101

## **EXHIBITS**

Petitioner's Exhibits ("P. Exs.") 1 through 6 were admitted, with the exception of Page 35 and Page 36, Lines 1-11, of Petitioner's Exhibit No. 6, which were not admitted.

Respondent's Exhibits ("R. Exs.") 1, 2, 3, and 5 through 25 were admitted, with the exception that any discussion of, or reference to, alleged prior discussions of lap belt use not involving Petitioner were excluded from Respondent's exhibits.

## **WITNESSES**

1. Talia Boston (Petitioner)
2. Jill Wheeler (For Petitioner)
3. Ashley Carper (via videotape testimony) (For Petitioner)
4. Rhonda Daughtry (For Petitioner)
5. Detective Melisande Manning (For Respondent)
6. Stephanie Mathews (For Respondent)
7. Melanie Lenk (For Respondent)
8. Ken Nance (For Respondent)
9. Margaret Martin (For Respondent)
10. Amber Duggins (For Petitioner)
11. Pat Chapman (For Petitioner)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making the Findings of Fact, the undersigned has weighed all the evidence and has assessed the credibility of witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness; any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrence 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. From the admitted documents and sworn testimony of witnesses, the Undersigned makes the following:

## **FINDINGS OF FACT**

1. The parties received Notice of Hearing by certified mail more than fifteen (15) days prior to the hearing, and each stipulated on the record that notice was proper.
2. Respondent notified Petitioner that it had substantiated an allegation of neglect related to her care of a resident at Cape Fear Respite Home and consequently was listing her name on the HCPR under N.C. Gen. Stat. § 131 E-256.
3. On or about May 10, 2012, Petitioner filed a timely Petition for a Contested Case regarding this listing of her name in the HCPR.
4. Respondent conducted an investigation into the allegation of possible neglect.
5. At all times relevant to this matter, Petitioner Talia Boston was a healthcare personnel at Cape Fear Respite Home in Wilmington, North Carolina. Cape Fear Respite Home is a healthcare facility subject to the provisions of North Carolina General Statutes §131E-255 and §131E-256.
6. Petitioner was trained regarding client's rights, including neglect. Petitioner also received appropriate training on the proper use of wheelchairs, appropriate methods to secure an individual in a wheelchair, and specific training concerning Student JB's wheelchair.
7. Student JB was born on November 30, 2003.
8. Student JB's medical diagnosis prior to February 29, 2012 included a mental disorder because of cerebral palsy; severe developmental delays in speech, motor skills, and cognition; severe to profound mental retardation; cerebral palsy; seizure disorder; and asthma.
9. Student JB was placed in the Cape Fear Respite Care facility on October 10, 2011, by New Hanover County DSS after being removed from living in her home with her mother. JB resided in the respite care facility until her death on February 29, 2012.
10. Student JB was transported from the Cape Fear Respite Home to Rachel Freeman Elementary School on the morning of February 29, 2012, on a school bus operated by New Hanover County Schools.
11. Petitioner Talia Boston was a direct support staff member at the Cape Fear Respite Home on the morning of February 29, 2012. She assisted Student JB with various morning activities on February 29, 2012, including bathing, medication administration, feeding, and clothing prior to the arrival of the school bus at approximately 6:45 a.m. to transport Student JB to Rachel Freeman Elementary School.

12. Petitioner placed Student JB in her wheelchair on the morning of February 29, 2012, prior to transition of care to bus driver Rhonda Daughtry (“Bus Driver Daughtry”) of the New Hanover County Schools.
13. When Student JB was placed on the school bus on the morning of February 29, 2012, she was secured by Petitioner in JB’s wheelchair utilizing a wheelchair-mounted “seatbelt” or lap belt, as well as a wheelchair-mounted shoulder harness.
14. Student JB’s physical condition, in combination with the recent removal of a pommel from Student JB’s wheelchair, made it physically impossible to transport Student JB from the Cape Fear Respite Home to the school bus on the morning of February 29, 2012, without the use of a wheelchair-mounted lap belt or “seatbelt”, as well as a shoulder harness.
15. After placement on the school bus on the morning of February 29, 2012, bus driver Bus Driver Daughtry further secured Student JB using floor-mounted security straps, as well as a bus-mounted seatbelt placed over Student JB’s chest and waist.
16. Transport time between Cape Fear Respite Home and Rachel Freeman School exceeded one hour on the morning of February 29, 2012. Bus Driver Daughtry was the only adult on the bus during Student JB’s transport.
17. Student JB was the first student placed on driver Bus Driver Daughtry’s bus on the morning of February 29, 2012. During the transport to Rachel Freeman Elementary School, eight to ten other students were picked up for transport on the bus. The remaining students varied in level of function and independence, with some students able to board the bus independently, secure themselves independently in child safety seating, and unsecure themselves independently and leave the bus.
18. Approximately five minutes prior to her arrival at Rachel Freeman School on the morning of February 29, 2012, Bus Driver Daughtry noted that Student JB appeared to be sleeping. At the time of this assessment, Bus Driver Daughtry visually observed that Student JB appeared appropriately positioned in her wheelchair and did not appear to have “slipped down” in her wheelchair. Bus Driver Daughtry remained in her driver’s seat following this assessment.
19. Upon arrival at Rachel Freeman School on the morning of February 29, 2012, Student JB was noted by Bus Driver Daughtry as unresponsive. Bus Driver Daughtry immediately informed teacher assistant Ashley Carper, who was present at the bus stop, of the change in Student JB’s condition. Resuscitation efforts were initiated by Teacher Assistant Carper and other individuals, but were not successful.
20. Petitioner cooperated fully with law enforcement personnel during their investigation of this incident. During an interview with Detective Manning on February 29, 2012, Petitioner informed Detective Manning that she secured Student JB prior to placement on

the school bus on February 29, 2012 utilizing a wheelchair-mounted “seatbelt,” as well as a wheelchair-mounted shoulder harness.

21. An autopsy was performed on Student JB and the cause of death was noted as “undetermined.” On April 13, 2012, major findings in the autopsy revealed no hemorrhages within the lingual mucosa, a separated layer interior neck dissection revealed no hemorrhages within the strap muscle of the anterolateral neck and no fractures of the cartilage of the hyoid or larynx. There was no external evidence of injury to the neck.
22. “Neglect” is the “failure to provide goods and services necessary to prevent physical harm, mental anguish and mental illness.”

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction of the parties and the subject matter under Chapters 131E 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.
3. As a healthcare professional working in a healthcare facility, Petitioner is a healthcare personnel and is subject to the provisions of North Carolina General Statute §131E-225 and §131E-226.
4. There is insufficient evidence in this case to find that Petitioner failed to provide the care necessary to avoid physical harm, mental anguish, or mental illness. Petitioner has demonstrated by the preponderance of the evidence that she appropriately secured Student JB to her wheelchair on the morning of February 29, 2012, prior to transitioning care to Bus Driver Daughtry. The preponderance of the evidence further indicates that Petitioner appropriately secured Student JB on February 29, 2012, utilizing a wheelchair-mounted lap belt or “seatbelt,” in combination with a wheelchair-mounted shoulder harness.
5. The greater weight of the evidence produced in this contested case hearing does not support the decision made by Respondent to substantiate neglect of Student JB by Petitioner on February 29, 2012.

## **FINAL DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, I find that Respondent's substantiation of neglect against Petitioner, regarding her care of Student JB on February 29, 2012, is not supported by sufficient evidence and is REVERSED.

## **NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 9th day of December, 2013.

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Beecher R. Gray  
Administrative Law Judge