

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12DHR04944

Daycare for all the Nations,  
Abura B. Jackson,

Petitioner,

v.

North Carolina Division of Health and Human  
Services, Division of Child Development,

Respondent.

**FINAL DECISION**

**BACKGROUND**

This matter was heard before Beecher R. Gray, Administrative Law Judge, on November 2, 2012 in Raleigh, North Carolina.

**APPEARANCES**

Abura B. Jackson  
919 Berkeley Street  
Durham, NC 27705  
**PETITIONER**

Letitia C. Echols  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
**ATTORNEY FOR RESPONDENT**

**APPLICABLE STATUTES AND RULES**

N.C.G.S. §§ 110-85, 110-90, 110-90.2, 110-91 and Child Care Rules 10A NCAC 09 .1701 and .2207.

**ISSUES**

Whether Respondent otherwise substantially prejudiced Petitioner's rights and acted erroneously when it summarily suspended Abura B. Jackson's license to operate Daycare for All the Nations.

## **EXHIBITS ADMITTED INTO EVIDENCE**

Respondent's Exhibits ("R. Exs.") 1-12, 14, 15, and 18. Official notice was taken of the relevant statutes and rules contained in Respondent's Exhibit ("R. Ex") 16.

## **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 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.

### **Parties/Witnesses**

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 and Early Education<sup>1</sup> (the "Division" or "DCDEE"), is an administrative agency of 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. *See* 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 in physically safe and healthy environments where the developmental needs of the children are met.
4. Child care is highly regulated in North Carolina.
5. Sheronda Harris is an investigations consultant for the Division and has worked with the Division for nine (9) years. Consultant Harris previously worked at Guilford County Child Protective Services. Consultant Harris earned a Bachelor of Science degree in Social Work from The University of North Carolina at Greensboro. Consultant Harris' responsibilities as an investigations consultant for the Division include investigation of complaints arising at child care centers involving abuse, neglect, or serious violations of child care rules.

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<sup>1</sup> In July of 2011, the Division of Child Development became "The Division of Child Development and Early Education."

6. Deanna Hoxworth is an investigations program manager for the Division. Program Manager Hoxworth has worked with the Division for eleven (11) years. Program Manager Hoxworth previously worked at a child abuse prevention center in the capacities of investigator and case manager. Program Manager Hoxworth holds a Bachelor of Arts degree in Family and Child Development from The University of North Carolina at Charlotte. Program Manager Hoxworth's responsibilities as an investigations program manager for the Division include managing three (3) supervisors, each of whom supervises a team of four (4) investigators.
7. Sherrie Koonce is a criminal records check supervisor for the Division. Supervisor Koonce has worked with the Division for five and one half (5 ½) years. She worked as a child care center director before coming to work at the Division. Supervisor Koonce holds an Associate of Arts degree in Information Systems. Her responsibilities as a criminal records check supervisor for the Division include supervising a Criminal Record Check team of three (3) who process about fifty thousand (50,000) criminal background checks per year. The team reviews the criminal backgrounds of applicants for employment at the Department of Health and Human Services ("DHHS"), Emergency Management Service ("EMS"), long term care facilities, and prospective foster parents and adoptive parents across the state.
8. Investigator Kristy Roberts has worked as an investigator for the domestic violence unit of the Durham Police Department for two and one half (2½) years. Investigator Roberts has worked for the Durham Police Department for a total of thirteen (13) years. Investigator Roberts attended criminal justice school for two (2) years and earned multiple certifications in various methods of investigation and criminology. Investigator Roberts' responsibilities in the domestic violence unit include following up patrol officer calls concerning domestic violence between intimate partners. In her capacity as investigator, she contacts the alleged victim, asks questions, and provides the alleged victim with information on support for domestic violence victims in their community.
9. Petitioner Abura Jackson is the licensed operator of "Daycare for All the Nations," a Family Child Care Home. (R. Ex. 2) Petitioner operated Daycare for All the Nations out of her home located at 919 Berkley Street in Durham, North Carolina. Petitioner's facility was permitted to operate on all three shifts, caring for no more than eight (8) children from age zero (0) to twelve (12) at a time, of which no more than five (5) preschool children and two (2) infants under age one at any time were permitted. *Id.*
10. Petitioner operated Daycare for All the Nations under a four-star license issued by the Division on September 12, 2011. *Id.*

### **Violations of Child Care Requirements**

11. On May 14, 2012, the Division received a report that there had been two incidents of domestic violence between Petitioner and her new husband, Joseph Toler, within a month and that children were present during one of the incidents. (R. Ex. 1)

12. On May 15, 2012, Consultant Sheronda Harris visited Daycare for All the Nations to investigate the May 14, 2012 complaint and deliver an Order summarily suspending Petitioner's license to operate Daycare for All the Nations because one of the incidents of domestic violence resulted in both Petitioner and her husband being arrested and charged with criminal assault (R. Ex. 14, 15) and disqualified from providing child care under N.C.G.S. § 110-90.2. (R. Ex. 11) Respondent determined that Petitioner's facility at that point was not a safe and healthy environment for children and the conditions at the family child care home represented imminent threat of harm to children under 10A NCAC 09 .1719. (R. Ex. 5)
13. Petitioner filed her Petition for a Contested Case Hearing in the Office of Administrative Hearings on May 23, 2012, contesting the summary suspension of her license.
14. During a July 27, 2012 follow up visit to Petitioners' facility, Petitioner told Consultant Harris that she last saw Joseph Toler at a neighbor's home. After Petitioner's granddaughter stated that Joseph Toler stayed at Petitioner's home the night before, however, Petitioner admitted that he had spent the night there. (R. Ex. 4, 8)
15. Consultant Harris learned later that on July 24, 2012, Joseph Toler had been arrested and charged with assault on a female (R. Ex. 4, 10) for punching Petitioner about the face several times with a closed fist, pulling her hair, grabbing Petitioner by her arms, and throwing her onto a chair. (R. Ex. 10)
16. Investigator Roberts testified that upon interviewing Petitioner, she was concerned for Petitioner's safety because of the increase in the severity of attacks by Joseph Toler, the fact that the July 24, 2012 attack was not provoked, and that Petitioner had not reported all the incidents of abuse to law enforcement.
17. Although Investigator Roberts encouraged Petitioner to file a Complaint & Motion for a Domestic Violence Protective Order ("DVPO") pursuant to N.C.G.S. § 50B-1 et seq., Investigator Roberts did not find any filing in Durham County for a DVPO by Petitioner as of November 1, 2012. Investigator Roberts did find an active DVPO entered on Joseph Toler's behalf against Petitioner, however. (R. Ex. 18)

### **Statutory Authority**

18. The Division has a mandate to protect children in child care by ensuring that children are kept in physically safe and healthy environments where their developmental needs are met and where they are "cared for by qualified persons of good moral character." N.C.G.S. § 110-85 (2012)
19. The Division has authority to summarily suspend a license to operate child care where it determines that a facility does not provide a safe and healthy environment or where conditions represent imminent danger of harm to children. 10A N.C.A.C. 09 .2207 and .1719

20. Individuals who are disqualified from providing child care based on their criminal record under N.C.G.S. §110-90.2 may not own, operate, be employed by, work in, provide transportation for a child care facility, or be present when children are in care. N.C.G.S. §110-90.2 (2012)
21. At all times relevant to this matter, Petitioner's facility operated under a license issued by Respondent.

### **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 and the notice of hearing was proper.
3. At all times relevant to this matter, Petitioner's facility was subject to the child care licensure laws and rules of the State of North Carolina.
4. Respondent acted properly when it summarily suspended Petitioner's child care license because it determined that emergency action was necessary to protect the health, safety, and welfare of the children enrolled at Daycare for All the Nations. 10A NCAC 09.2207; *See* N.C.G.S. § 110-90(9) 2012.
5. Respondent did not otherwise substantially prejudice Petitioner's rights.
6. Respondent did not act erroneously.

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

### **FINAL DECISION**

Respondent's decision to summarily suspend Petitioner's four star child care license is supported by a preponderance of the evidence and is **AFFIRMED**.

### **NOTICE**

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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, 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 3rd day of May, 2013.

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Beecher R. Gray  
Administrative Law Judge