

STATE OF NORTH CAROLINA  
COUNTY OF LEE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DHR 07711

Yolanda McKinnon,

Petitioner,

v.

NC Department of Health and Human  
Services,

Respondent.

**FINAL DECISION**

**BACKGROUND**

This matter was heard before the Honorable Donald W. Overby, Administrative Law Judge, on December 13, 2012 in Raleigh, North Carolina.

**APPEARANCES**

Yolanda McKinnon  
504 North Avenue  
Sanford, NC 27330  
**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, 110-90.2, 110-91 and Child Care Rules 10A NCAC 09 .0601, .1003, .2206 and .2702.

**ISSUE**

Whether the Respondent otherwise substantially prejudiced Petitioner's rights or acted erroneously when it summarily revoked Yolanda McKinnon's license to operate Play, Laugh, Grow Learning Center.

### **EXHIBITS ADMITTED INTO EVIDENCE**

Petitioner's Exhibits 1-9, 13, 18 and 19. The Court took official notice of the relevant statutes and rules contained in Respondent's Exhibit 18.

### **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 the evidence presented 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.

#### **Parties/Witnesses**

1. Respondent, Division of Child Development and Early Education (the "Division" or "DCDEE"), is a Division of the North Carolina Department of Health and Human Services and 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.

2. Pursuant to 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. N.C.G.S. § 110-85 (2012)

3. Child care is highly regulated in North Carolina.

4. Melissa Loehr is an investigations consultant for the Division. Consultant Loehr has worked with the Division for five (5) years. Consultant Loehr has worked previously at Child Care Services Association for which she provided technical assistance to providers. Consultant Loehr was a researcher at Frank Porter Graham Child Development Institute at the University of North Carolina at Chapel Hill. Consultant Loehr earned a BA degree in Psychology at The University of North Carolina at Charlotte. Consultant Loehr's responsibilities as an investigations consultant for the Division include investigation of complaints arising at child care centers involving abuse, neglect or violations of child care rules.

5. Debra Fields is a lead licensing consultant for the Division. Consultant Fields has worked at the Division for nineteen (19) years. Prior to coming to the Division, she worked at Robeson County Department of Social Services for sixteen (16) years and Cumberland County Department of Social Services for three (3) years. Consultant Fields earned a BA in Sociology from the University of North Carolina at Pembroke. As a lead childcare consultant, Ms. Fields meets with prospective providers to help them prepare for temporary licensing. She leads a pre-licensing workshop, leads a review of the childcare rules, assures that required inspections are completed and visits proposed facilities to assure all requirements are met prior to licensure.

6. Deanna Hoxworth is an investigations program manager for the Division. Manager Hoxworth has worked with the Division for eleven (11) years. Previously, Manager

Hoxworth worked at a child abuse prevention center in the capacities of investigator and case manager. Manager Hoxworth holds a Bachelor of Arts degree in Family and Child Development from The University of North Carolina at Charlotte. 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. Petitioner Yolanda McKinnon is the licensee of "Play, Laugh, Grow Learning Center, located at 504 North Avenue, Sanford, North Carolina 27330. (R. Ex. 1). The facility was permitted to operate on all three shifts caring for no more than twenty five (25) children from age zero (0) to twelve (12). (R. Ex. 1)

8. The Division issued a one-star license to Yolanda McKinnon on May 8, 2012, with the restriction that neither Petitioner nor Edward Patterson be on the premises while children are in care. (R. Ex. 1, 3, 13). Both Petitioner and Edward Patterson were precluded because of criminal convictions. Petitioner had been charged with a criminal offense when the investigation began for various non-compliance issues.

9. Petitioner was ultimately convicted of the criminal offense, which would preclude her from owning or operating in any regard this facility. While the matter was pending, the Division gave Petitioner some latitude by allowing her the ability to hire a "director" to oversee the day to day operations of the facility. The Petitioner is still ultimately responsible because she is the only person who is licensed to operate the facility.

10. Petitioner obtained the services of Mrs. Brenda Patterson to act as the director. Mrs. Patterson is married to Edward Patterson and is the mother of the Petitioner.

### **Background**

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

11. On June 1, 2012, the Division received a report that Mrs. Brenda Patterson— the facility’s administrator and caregiver— had taken two enrolled children, J. Jackson and J. Baylor, to her home to care for them on May 31, 2012. (R. Ex. 2) Mrs. Patterson’s home is not licensed nor approved in any regard for the care of these children.

12. Mrs. Patterson informed the children’s mother, Ms. J. Jackson, via text message that Mrs. Patterson could meet Ms. Jackson with the children at their grandmother’s house. (R. Ex. 5 p. 8) Subsequently, Mrs. Patterson sent Ms. Jackson another text message telling her to pick the children up at Mrs. Patterson’s home. (*Id.*)

13. During the June 8, 2012 Complaint Visit to Play, Laugh, Grow, Mrs. Patterson denied that she had taken the children to her personal residence until Consultant Loehr informed Mrs. Patterson that she had received copies of the text messages between Mrs. Patterson and Ms. Jackson. (R. Ex. 4) Mrs. Patterson admitted to taking the children to her home but claimed that the children were supposed to be picked up at 11:45 pm but the mother had to work until 3:30 am. Mrs. Patterson further stated that her husband, Edward Patterson and her daughters, ages nineteen and eleven, were in the home while she cared for the enrolled children. (R. Ex. 4)

14. At 11:46 pm on May 31, 2012, Mrs. Patterson sent a text message to Ms. Jackson stating that she was “[g]oing to sleep [,] long day.” (R. Ex. 5) Mrs. Patterson sent her next text message at 3:22 am, informing Ms. Jackson that they were awake and waiting for her. (*Id.*)

15. After reviewing the investigation and recommendations of field staff, the Division decided to revoke Petitioner’s license due to violations of child care statutes and requirements, including transportation of the children without the required permission or emergency information, failure to care for children in licensed space, failure to appropriately supervise the

children in care and creating an unsafe environment for children by knowingly allowing Mr. Patterson to be in the presence of enrolled children. (R. Ex. 13)

16. Respondent presented evidence from Consultant Debra Fields, Consultant Melissa Loehr and Manager Deanna Hoxworth, at which point, Petitioner decided not to proceed with the hearing.

17. This presiding ALJ entered into a rather lengthy discussion with Petitioner which seemed to reveal some misunderstandings by Petitioner. Petitioner seemed to understand the explanations which corrected her misperceptions of what caused the summary suspension of her license.

18. Petitioner was reminded by this Tribunal that she had the burden of proving that the Division's decision to revoke her license was erroneous. While she may not have liked the decision to summarily suspend the license she at least understood the legal and factual basis for that decision. Petitioner chose to not present any evidence.

19. At the time Petitioner decided not to proceed, sufficient competent and credible evidence to support the allegations cited in the Division's action to revoke Petitioner's license had been received by the Tribunal.

#### **Statutory Authority**

20. 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).

21. Individuals who are disqualified from providing child care based on their criminal record pursuant to N.C.G.S. §110-90.2 may not own, operate, be employed by, work in or

provide transportation for a child care facility, reside at a family child care home or be present when children are in care. N.C.G.S. §110-90.2(a) (2012).

22. The Division may prohibit a person from providing child care if the Division “determines that the provider is unfit to have responsibility for the safety and well-being of children based on the criminal history in accordance with G.S. 110-91(8).” N.C.G.S. §110-90.2(b) (2012).

23. Children must be cared for in space authorized by the Division. N.C.G.S. §110-91 (1), (4-5) (2012).

24. The Division has authority to revoke a license to operate a child care facility where it determines that a provider’s violations of any section of the statutes or rules are willful or continual or hazardous to health or safety, or the operator has not made reasonable efforts to conform to child care requirements. 10A NCAC 09 .2206 (2012).

25. Failure to provide a safe environment for children in care violates child care requirements. 10A NCAC 09 .0601(a)(2012).

26. Written permission from a parent must be obtained prior to transporting an enrolled child. 10A NCAC 09 .1003(i)(2012).

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 110 and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder and the notice of hearing was proper.

3. The primary purpose of child care regulation in the state is defined as providing for the health, safety and developmental well-being of children in child care facilities. N.C.G.S. § 110-85 (2012).

4. 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.

5. At all times relevant to this matter, Petitioner's facility operated pursuant to a license issued by the Respondent.

6. Petitioner did not meet her burden of proof of showing that the Division's action otherwise substantially prejudiced her or that the Division acted erroneously in revoking her license.

7. Respondent made a sufficient showing of a basis for revoking Petitioner's license.

8. Respondent acted properly when it revoked Petitioner's child care license because Petitioner's staff willfully violated child care statutes and rules and knowingly cared for children in an unsafe environment.

9. Respondent did not otherwise substantially prejudice Petitioner's rights.

10. Respondent did not act erroneously.

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

### **DECISION**

The Respondent's decision to revoke Petitioner's one-star child care license 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 11th day of January, 2013.

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Donald W. Overby  
Administrative Law Judge

