

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DHR 07845

<p>THERESA CURRY, BLESSINGS WITHIN DAYCARE PETITIONER,</p> <p>V.</p> <p>DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES RESPONDENT.</p>	<p>FINAL DECISION AND ORDER GRANTING MOTION FOR DIRECTED VERDICT</p>
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THIS MATTER was heard before the Honorable Selina M. Brooks, Administrative Law Judge, on February 29, 2016 in Charlotte, North Carolina and is before the undersigned on Respondent's Motion for a Directed Verdict at the close of Petitioner's evidence.

APPEARANCES

For Petitioner:

Gael Gilles
Gilles Law PLLC
1300 South Boulevard
Suite K-110
Charlotte, NC 28203

For Respondent:

Alexandra Gruber
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
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FINDINGS OF FACT

1. Petitioner operated a family child care home, Blessings Within Daycare, licensed by Respondent, Division of Child Development and Early Education ("DCDEE").
2. Petitioner transported children in her care without proper safety restraints.
3. Petitioner transported children without written permission.
4. Petitioner transported children without the proper emergency information in the vehicle.

5. Petitioner was the only individual providing care to children pursuant to her family child care home license.
6. Petitioner permitted the children to be cared for at another, unlicensed location, and by individuals who were not properly qualified by DCDEE and who were not screened for criminal history.
7. Petitioner was being paid to care for children by the State of North Carolina's Subsidized Child Care Program.
8. On October 2, 2015, Respondent issued Petitioner a Written Warning administrative action based on violations of child care law and rules ("Written Warning").
9. At the hearing, Respondent agreed to amend its Administrative Action to delete references to allegations regarding supervision of children and a violation it cited on March 5, 2015 in which Respondent alleged that an ashtray with cigarette butts was open and accessible to children.

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. 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. At all times relevant to this matter, Petitioner's facility operated pursuant to a license issued by the Respondent.
5. Even excluding violations regarding supervision of children and access to tobacco products, there is sufficient evidence to support the Respondent's issuance of the Written Warning.
6. Respondent did not exceed its authority or jurisdiction in issuing the Written Warning.
7. Respondent did not act erroneously in issuing the Written Warning.
8. Respondent did not act arbitrarily or capriciously in issuing the Written Warning.

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

FINAL DECISION

Respondent's decision to issue a Written Warning to Petitioner, as amended to conform to the agreement reached by the parties and referenced herein, is AFFIRMED.

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 29th day of March, 2016.

Selina M. Brooks
Administrative Law Judge