

STATE OF NORTH CAROLINA
COUNTY OF STANLY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 03580

<p>Cassandra Swaringen Christian Petitioner,</p> <p>v.</p> <p>Department Of Health And Human Services Respondent.</p>	<p>FINAL DECISION</p>
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BACKGROUND

This matter was heard before the Honorable Selina Malherbe Brooks, Administrative Law Judge, on August 1, 2016, in Charlotte, North Carolina.

APPEARANCES

Cassandra Swaringen Christian
1300 Long Street
Albemarle, North Carolina 28001
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. Gen. Stat. §§ 110-90(5), 110-91, 110-98 & 110-102.2(5)
Child Care Rules, 10A NCAC 09 .1701, .1705, .1716, .1719, .1720 & .2206.

ISSUES

Whether the Respondent otherwise substantially prejudiced Petitioner's rights or acted erroneously when it revoked the four-star license issued to Cassandra S. Christian to operate Christian Care.

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner presented no exhibits.

Respondent's Exhibits ("R. Ex.") 1-5, 8-10, 12-14, and 16 were admitted.

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. In the absence of a transcript, the Undersigned has reviewed her notes to refresh her recollection.

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. Gen. Stat. § 110-85, et seq.
2. Pursuant to N.C. Gen. Stat. § 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.
3. Child care is highly regulated in North Carolina.
4. Respondent has the power to revoke a child care license when violation of any section of the statutes and rules has been willful, continual, or hazardous to health or safety, or the operator has not made reasonable efforts to conform to standards or is unable to comply. 10A NCAC 09.2206.
5. Respondent's consultants and supervisors determine when to recommend taking administrative action against a facility or proposed facility. The field staff then submits the proposed action to Respondent's Raleigh office and this information is considered by an internal review committee ("IR").
6. Carolyn Conley is a licensing consultant for the Division. Ms. Conley has worked with the Division for six (6) years. Previously, Ms. Conley worked as a manager at More at Four with the Partnership for Children in Cabarrus County. Ms. Conley earned a Bachelor of Arts degree in

Elementary Education with a minor in Psychology from Rutgers University. Ms. Conley's responsibilities as a licensing consultant for the Division include monitoring compliance with child care requirements, investigation of complaints arising at child care centers involving abuse, neglect or violations of child care rules in Stanly County.

7. Melissa Stevenson is the Licensing Enforcement Program Manager for the Division. Ms. Stevenson has worked with the Division for eleven (11) years. Previously, Ms. Stevenson worked as a child care center director at a corporate facility in Wake County. Ms. Stevenson holds a Bachelor of Science degree in Psychology with a Minor in Social Work from Meredith College. Ms. Stevenson's responsibilities as Licensing Enforcement Program Manager for the Division include overseeing the Licensing Enforcement Unit, processing administrative actions, facilitating informal meetings, and ensuring consistency of actions statewide.

Petitioner

8. Cassandra Swaringen Christian received an initial license to operate Christian Care, a family child care home, located at 1300 Long Street, Albemarle, NC 28001 on May 19, 1999. She has a Four Star Child Care License, effective August 30, 2012. (R. Ex. 16)

Violations of Child Care Requirements

9. Consultant Conley conducted four (4) visits at Christian Care between January 22, 2015, and September 23, 2015, to monitor for compliance with child care requirements. Thirty-three (33) violations of child care requirements were cited during these visits. Of these violations, seven (7) were repeated. (R. Ex. 14)

10. During a visit on January 22, 2015, the caregiver present, LaToya Baldwin, did not have documentation of CPR/First Aide certification, health questionnaire, proof of a negative tuberculosis test, or Criminal Records Certification in violation of 10A NCAC 09.1701(b). (R. Ex. 1)

11. Petitioner sent a letter to Consultant Conley, dated February 3, 2015, explaining how she addressed each of the violations. (R. Ex. 2)

12. During an unannounced visit on August 5, 2015, Consultant Conley observed the following violations: number of children exceeded allowable number; excessive number of preschool children; hazardous cleaning supplies and other items were left out in the reach of children; no record of a monthly hazard check for outdoor play area; no record of monthly fire drill; and the operator had not completed ITS-SIDS training. (R. Ex. 3)

13. Consultant Conley went to Christian Care for an annual compliance follow-up visit on September 4, 2015. Petitioner told Consultant Conley that two (2) children were present but Conley heard another child crying. When asked about the number of children present, Petitioner told Consultant Conley that no other children were present so Conley must be hearing the television. Ms. Conley found five (5) unattended children under age four (4) in the basement of the home in unlicensed space with a dog that did not have a record of up-to-date shots, in violation

of 10A NCAC 09 .0714 and .1718(a)(4)(A). Petitioner only had some of the required paperwork for these children. (Testimony of Conley; R. Ex. 4)

14. Petitioner told Consultant Conley that the other caregiver must be outside taking out the trash, but the children stated that no other caregiver was present. In addition, Conley saw Ms. Baldwin arrive at the home in a white car after the children were removed from the basement. Petitioner falsified information to the Division, in violation of N.C.G.S. 110-91(14), by asserting that no additional children were present then stating an additional caregiver was present and caring for children. (Testimony; R. Ex. 4)

15. Consultant Conley observed hazardous cleaning materials, including insecticide, Armor-All Cleaner, and laundry detergent in the basement where five (5) children were left unattended in violation of 10A NCAC 09. 1720(a)(4). She cited seventeen (17) violations in her Visit Summary. (Testimony; R. Ex. 4)

16. An unannounced Visit Follow-up was conducted on September 23, 2015, and two violations remained uncorrected. (R. Ex. 5)

17. A routine unannounced Visit was conducted on December 1, 2015, and two violations were cited. (R. Ex. 8)

18. During a routine unannounced Visit on February 19, 2016, Consultant Conley cited violations for failure to have records showing provider has received required training for first aid and CPR, proof of criminal records checks, and proof of negative TB test result. (R. Ex. 12)

19. Petitioner sent a letter, dated December 23, 2015, admitting that “there were lots of mistakes I made”, and that she had knowingly exceeded the licensed capacity of children. (R. Ex. 13)

20. After review of Petitioner’s letter and the record of violations, Respondent determined that revocation of Petitioner’s license was appropriate. (R. Ex. 13) A Notice of Administrative Action for the Revocation of License was issued on March 23, 2016. (R. Ex. 14)

21. Petitioner filed a Petition for Contested Case Hearing with the Office of Administrative Hearings on April 8, 2016.

22. At the contested case hearing, Petitioner presented no evidence to contradict the Division’s evidence. Instead, she asked for a second chance to make things right.

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. Respondent has a duty to protect children in child care pursuant to N.C.G.S. § 110-85.
4. 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 (2016).
5. The primary purpose of child care regulation in this 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 (2016).
6. 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.
7. At all times relevant to this matter, Petitioner's facility operated pursuant to a license issued by the Respondent.
8. 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.
9. Respondent made a sufficient showing of a basis for revoking Petitioner's license.
10. Respondent acted properly when it revoked Petitioner's four-star child care license because Petitioner willfully violated child care statutes and rules, falsified information to the Division, and knowingly left children unattended in an unsafe environment.
11. Respondent did not otherwise substantially prejudice Petitioner's rights by revoking her license to provide child care.
12. Respondent did not act erroneously by revoking Petitioner's license.
13. Petitioner submitted no evidence challenging the evidence Respondent presented.

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 four-star child care license is **AFFIRMED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision 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 a Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision.**

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. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. 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 30th day of August, 2016.

Selina Malherbe Brooks
Administrative Law Judge