

STATE OF NORTH CAROLINA
COUNTY OF CALDWELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 05796

<p>TINA MCNEIL PETITIONER,</p> <p>V.</p> <p>DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION DEP OF HEALTH & HUMAN SERVICES RESPONDENT.</p>	<p>FINAL DECISION ORDER GRANTING SUMMARY JUDGMENT FOR RESPONDENT</p>
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This case comes before the undersigned on Respondent's Motion for Summary Judgment filed August 9, 2016. Having considered the Respondent's Motion and supporting exhibits, and in light of Petitioner's failure to respond, the undersigned hereby grants summary judgment in Respondent's favor and makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioner, Tina McNeil ("Petitioner"), is the licensed operator of Tina's Creative Learning Child Care, a four-star family child care home located in Lenoir, North Carolina.
2. At all times relevant to this matter, Tina's Creative Learning Child Care ("Tina's") operated pursuant to a family child care home license issued to Petitioner by Respondent.
3. Tina's is located in Petitioner's residence at 2720 Kite Drive, Lenoir, NC 28645.
4. The Division of Child Development and Early Education ("Division") is an administrative agency of North Carolina State government, operating under the laws of North Carolina, which administers the licensing program for child care facilities in the State of North Carolina pursuant to N.C.G.S. §§ 110-85, *et seq.*
5. On May 19, 2016, the Division's Criminal Record Check Unit disqualified Tina McNeil from providing child care pursuant to N.C.G.S. § 110-90.2 based upon a pending charge of assault and battery involving her daughter.
6. Although Respondent provided Petitioner with the procedure for appealing her disqualification pursuant to N.C.G.S. § 110-90.2(d), Petitioner did not appeal that action.
7. The order summarily suspending Petitioner's license is based solely upon Tina McNeil's criminal disqualification.

8. Petitioner was given an opportunity to respond to Respondent's Motion for Summary Judgment, but failed to do so.

CONCLUSIONS OF LAW

1. There is no genuine issue of material fact in this case and judgment as a matter of law is appropriate.

2. Respondent properly made and supported its Motion for Summary Judgment.

3. Petitioner did not respond to Respondent's Motion for Summary Judgment, so the undersigned must enter summary judgment in Respondent's favor pursuant to Rule 56 of the North Carolina Rules of Civil Procedure.

4. Since the Division properly disqualified Petitioner under N.C.G.S. § 110-90.2, Petitioner cannot be an owner of a family child care home or a non-licensed home; be employed by a family child care home; or be a member of the household in a family child care home. *See also* 10A NCAC 09 .2704.

5. The Division had authority to issue a summary suspension to Petitioner pursuant to 10A NCAC 09.2703(h), which provides, in relevant part, "Disqualification of a child care provider living in a family child care home shall be grounds for issuance of a summary suspension of the family child care home license in accordance with 10A NCAC 09 .2207."

6. The Division had authority to issue a summary suspension to Petitioner pursuant to 10A NCAC 09.2207, which provides, in relevant part, "Summary suspension of a permit may be ordered in accordance with G.S. 150B-3(c) when, in the Division's determination, emergency action is required to protect the health, safety, or welfare of children in a child care facility regulated by the Division."

7. Respondent properly suspended Petitioner's license to operate Tina's Creative Learning Child Care pursuant to North Carolina Child Care Rules 10A NCAC .2207 and .2703.

DECISION

After considering Respondent's Motion for Summary Judgment and Petitioner's lack of response to that motion, the undersigned finds that there is no genuine issue of material fact and grants summary judgment in favor of Respondent.

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 30th day of August, 2016.

J Randall May
Administrative Law Judge