

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DHR 00003

<p>Sophia L. Griffin Petitioner,</p> <p>v.</p> <p>Division of Child Development Education Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER comes on for consideration of Respondent's Motion for Summary Judgment ("Motion") which was filed on September 16, 2022. A Request for Response to the Motion was sent to Petitioner indicating that the Motion would be decided without oral argument and that, if Petitioner wished objections to be heard before a ruling on the Motion, her objections had to be submitted on or before September 23, 2022. That deadline has passed with no submission from Petitioner. This case is now ripe for adjudication. Based on the following, Respondent's Motion for Summary Judgment is **GRANTED**.

APPEARANCES

For Petitioner: Sophia L Griffin, *pro se* (no response)
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For Respondent: Sarah Nicole Tackett
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ISSUE

Whether Respondent is entitled to summary judgment as a matter of law because there are no material questions of fact that Respondent properly summarily suspended Petitioner's one-star license to operate Children of Faith Childcare based primarily on Petitioner's disqualification as a childcare provider?

STANDARD OF REVIEW

Summary judgment is appropriate when the record shows “that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c). All evidence must be viewed in the light most favorable to the party against whom summary judgment is proposed, taking its asserted facts as true, and drawing all reasonable inferences in its favor. *Kennedy v. Guilford Tech. Community College*, 115 N.C. App. 581, 583, 448 S.E.2d 280, 281 (1994). The party seeking summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “According to well-established North Carolina law, when a moving party has met his burden of showing that he is entitled to an award of summary judgment in his favor, the non-moving party cannot rely on the allegations or denials set forth in her pleading, *Ind-Com Elec. Co. v. First Union Nat. Bank*, 58 N.C. App. 215, 217, 293 S.E.2d 215, 216–17 (1982), and must, instead, forecast sufficient evidence to show the existence of a genuine issue of material fact in order to preclude an award of summary judgment.” *Steele v. Bowden*, 238 N.C. App. 566, 577, 768 S.E.2d 47, 57 (2014). “An Administrative Law Judge may grant . . . summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case.” N.C. Gen. Stat. § 150B-34(e).

“A genuine issue of material fact is one that can be maintained by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and means more than a scintilla or a permissible inference.” *Ussery v. Branch Banking and Trust Co.*, 368 N.C. 325, 335, 777 S.E.2d 272, 278-79 (2015) (citations omitted). “Factual disputes that are irrelevant or unnecessary will not be counted[.] . . . A fact is material only if it might affect the outcome of the suit under governing law.” *Anderson v. Liberty Lobby*, 477 US 242, 247-48 (1986).

STATUTORY AUTHORITY

N.C. Gen. Stat. § 56; N.C. Gen. Stat. §§ 110-85 *et seq.*; N.C. Gen. Stat. § 110-86
N.C. Gen. Stat. § 110-90.2; N.C. Gen. Stat. § 110-99; N.C. Gen. Stat. § 1A-1, Rule 56
N.C. Gen. Stat. § 150B-33(b)(10); 26 NCAC 03 .0105 and 26 NCAC 03 .0115
10A NCAC 09 .0100 *et seq.*; 10A NCAC 09 .0102(18)
10A NCAC 09 .2213; 10A NCAC 09 .2703(k)

FINDINGS OF FACT

Parties

1. North Carolina Department of Health and Human Services, Division of Child Development and Early Education (“the Division” or “Respondent”) is an administrative agency of the North Carolina State Government, which operates under the laws of North Carolina to administer the licensing program for child care facilities in the State.

2. Petitioner, Sophia L. Griffin (“Petitioner”), is the owner and operator of Children of Faith Childcare, a licensed family child care home, located at 1213 Blarney Court, Raleigh, NC 27610 (ID# 92003698) (“Petitioner’s licensed facility”).

3. Petitioner is also the owner and director of Faith’s Little Disciples Christian Learning World located at 305 Technical Court, Garner, NC 27529, a facility that was providing child care, as defined by N.C. Gen. Stat. § 110-86, without a license (“Petitioner’s unlicensed facility”).

Material Facts Not in Dispute

5. Along with its Motion, Respondent filed a supporting affidavit of Terry McCauley with exhibits. Although Petitioner was given extra time to respond to this Motion, Petitioner filed no opposing affidavits or objections to McCauley’s affidavit and exhibits. In defense of this Motion, Petitioner cannot rest upon the mere allegations or denials in her pleading. Instead, Petitioner must set forth specific facts showing there is a genuine issue for trial. N.C. Gen. Stat. § 1A-1, Rule 56(e). Because Petitioner has not done so, these facts are considered undisputed.

6. On December 2, 2021, Petitioner was criminally charged with providing child care without a license, a Class I Felony pursuant to N.C. Gen. Stat. § 110-99(a) (Wake County Case No. 21 CRS 219216). *See* Aff. of Terry McCauley, Ex. 2.

7. The next day, on December 3, 2021, the Division issued a Notice of Disqualification to Petitioner notifying her that she was disqualified from providing child care pursuant to 42 U.S.C.S. § 9858(f) and N.C. Gen. Stat. § 110-90.2 based on her pending criminal charge. *See* Aff. Terry McCauley, Ex. 1.

8. The Notice of Disqualification informed Petitioner that, as a result of her disqualification, she cannot own or operate a child care center, a religious sponsored child care facility, or a family child care home; she cannot be employed by a child care center, a religious sponsored child care facility, or a family child care home; she cannot be a member of the household in a family child care home or child care center located in a residence; she cannot be present in a child care facility when children are in care; and she cannot be a participating provider in the North Carolina Subsidized Child Care Assistance Program. *Id.*

9. The Notice of Disqualification also informed Petitioner of her right to appeal the disqualification pursuant to N.C. Gen. Stat. § 110-90.2(d) by filing a civil lawsuit in the county district court where she resides within sixty (60) days of receiving the notice. *Id.*

10. Because of the pending felony indictment, on December 6, 2021, the Division hand-delivered a Notice of Administrative Action to Petitioner summarily suspending her one-star license to operate Children of Faith Childcare. The Notice of Administrative Action was based primarily on Petitioner’s disqualification as a childcare provider. Ex. B.

11. Petitioner received the Notice of Disqualification on December 8, 2021. *See* Aff. Terry McCauley, Ex. 3.

12. Petitioner had until February 7, 2022¹ to file a civil action in district court challenging the Division's decision to disqualify her from being a child care provider.

13. As of the date of this Motion, Petitioner has not appealed the Notice of Disqualification and any such appeal taken now would be untimely. *See* Aff. Terry McCauley.

14. Later, on January 3, 2022, Petitioner filed a Petition for a Contested Case Hearing in the above-captioned matter, appealing the Division's decision to summarily suspend the one-star license issued to Petitioner Sophia L. Griffin to operate Children of Faith Childcare ("Petition"). *See* Ex. C, Petition.

15. On June 13, 2022, Petitioner was charged with a second count of felony providing child care without a license pursuant to North Carolina General Statute § 110-99(a) (Wake County Case No. 22 CRS 000805). *Aff.* Terry McCauley, Ex. 4.

16. Petitioner's criminal charges are currently pending. *Id.*

17. Because these criminal charges have not been adjudicated, Petitioner contends that her license or her qualifying letter "should not have changed based upon a pending matter." According to criminal law, Petitioner asserts she is "presumed innocent until proven guilty" and has "not had her opportunity to present her defense in [criminal] court." Pet. pp. 1 and 2.

18. Assuming *arguendo*, that Petitioner is innocent, this defense does not avail Petitioner any relief in this Tribunal because Petitioner did not file a civil action in district court appealing the Notice of Disqualification. Her undisputed failure to appeal the disqualification is the primary, and a proper, reason for Respondent's summarily suspension her licenses. Despite what ultimately may prove unfair, there are no questions of material fact that Petitioner's licenses had to, by law, be suspended.

BASED UPON the foregoing undisputed findings of fact, sworn affidavit of Terry McCauley, relevant laws, legal precedent and upon the standard of review for summary judgment, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. To the extent that the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011); *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. den.*, 366 N.C. 408, 735 S.E.2d 175 (2012); *Watlinton v. Rockingham Co. Dep't of Social Servs.*, 261 N.C. App. 760, 767, 822 S.E.2d 43, 48-49 (2018).

¹ Sixty (60) days from December 8, 2021, is Sunday, February 6, 2022.

2. This contested case is subject to dismissal pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 of the Rules of Civil Procedure, N.C. Gen. Stat. § 150B-33(b)(10); 26 NCAC 03 .0105; and 26 NCAC 03 .0115.

The Disqualification Process and Appeal to District Court

3. The Division has a duty to protect the safety and well-being of children in licensed child care facilities throughout the State of North Carolina pursuant to the North Carolina General Statutes and the Child Care Rules. *See* N.C. Gen. Stat. § 110-85, *et seq.*; *see also* 10A NCAC 09 .0100, *et seq.*

4. Pursuant to that duty, the Division conducts criminal background checks to review the criminal history of all child care providers to determine if an individual is “qualified” to provide child care. *See* N.C.G.S. § 110-90.2. An individual who owns or operates a family child care home is a child care provider. *See* N.C. Gen. Stat. § 110-90.2(a)(2). A child care provider’s “criminal history” includes any pending criminal charge(s) including felonies and misdemeanors that bear on the individual’s fitness to provide care for children. *See* N.C. Gen. Stat. § 110-90.2(f).

Summary Suspension Process and Appeal to OAH

5. When an individual is disqualified as a result of a criminal background check, he or she may appeal the basis of that disqualification in district court in his or her county of residence within sixty (60) days of receiving written notification of the disqualification. *See* N.C. Gen. Stat. § 110.90.2(d). Accordingly, the only proper venue in which to challenge a disqualification based upon N.C. Gen. Stat. § 110-90.2 is in State district court, not the Office of Administrative Hearings. *See* N.C. Gen. Stat. § 110-90.2; *see also Long v. State Dep’t of Human Res., Div. of Child Dev.*, 145 N.C. App. 186, 189, 548 S.E.2d 832, 835 (2001) (holding that “the district court is the legislature’s choice of forum” to hear challenges under N.C. Gen. Stat. § 110-90.2).

6. The Division has authority to issue a summary suspension of a child care license when “the agency finds that the public health, safety, or welfare requires emergency action.” 10A NCAC 09. 2213. “Disqualification of a child care provider living in a family child care home or a center located in a residence shall be grounds for issuance of a summary suspension of the license in accordance with 10A NCAC 09 .2213.” 10A NCAC 09 .2703(k).

7. To appeal an administrative action summary suspension, a child care provider must file a petition for contested case hearing with the Office of Administrative Hearings within thirty (30) days from the date the notice of action is mailed to the provider. N.C. Gen. Stat. §§ 150B-23; 110-94.

8. In this case, Petitioner was charged on December 2, 2021 pursuant to N.C. Gen. Stat. § 110-99(a) with providing child care without a license resulting from the operation of Petitioner’s unlicensed facility.

9. Upon determining that Petitioner had been charged and had a criminal history that

disqualified her from providing child care, the Division's Criminal Background Check Unit notified Petitioner of her disqualification and informed her of her appeal rights as required by N.C. Gen. Stat. § 110-90.2.

10. The Division subsequently issued a Notice of Administrative Action on December 6, 2021 summarily suspending Petitioner's license to operate her licensed facility, Children of Faith Childcare, based on her pending criminal charges in accordance with Child Care Rule 10A NCAC 09 .2207(j).

11. On June 13, 2022, Petitioner was subsequently charged with a second felony count of providing child care without a license resulting from Petitioner's continued attempts to provide child care at Petitioner's licensed facility after Petitioner's license to operate Children of Faith Childcare had been suspended by the Division.

12. Petitioner timely filed her Petition with the Office of Administrative Hearings appealing the Notice of Administrative Action and alleging that the Division substantially prejudiced her rights when it summarily suspended her family child care home license to operate Children of Faith Childcare. However, Petitioner failed to challenge the Notice of Disqualification that was issued on December 2, 2021 and received by Petitioner on December 8, 2021. By failing to challenge this disqualification, Petitioner has effectively waived any right to raise the issue of whether the disqualification was proper and thus, Petitioner is disqualified from being a child care provider, as defined by N.C. Gen. Stat. § 110-90.2, in the State of North Carolina. As a result, Petitioner cannot own or operate a family child care home nor can she legally provide child care in licensed care within the State. *See* N.C. Gen. Stat. § 110-90.2.

13. As indicated above, the Office of Administrative Hearings does not have subject matter jurisdiction over the facts of the underlying disqualification since jurisdiction over appeals contesting a disqualification must be heard in district court. *See* N.C. Gen. Stat. § 110-90.2(d). Therefore, there is no dispute of material fact as to her disqualification status and this matter is ripe for summary judgment.

14. As the Division followed applicable laws and rules in summarily suspending Petitioner's license to operate Children of Faith Childcare based on Petitioner's criminal disqualification, which was not timely appealed, the Division has not substantially prejudiced Petitioner's rights and no genuine issue of material fact exists. Where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law, a court may grant a motion for summary judgment. *See Cooper*, 135 N.C. App. at 204, 519 S.E.2d at 539.

15. In this case, based upon the undisputed facts, the Division acted within its authority and jurisdiction in summarily suspending Petitioner's license to operate Children of Faith Childcare as Petitioner is criminally disqualified from owning or operating a family child care home or providing licensed child care in accordance with North Carolina law.

Final Decision

BASED ON THE FOREGOING, Respondent's Motion for Summary Judgment is **GRANTED** and this contested case is **DISMISSED WITH PREJUDICE**.

NOTICE OF APPEAL

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 as indicated by 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.

IT IS SO ORDERED.

This the 27th day of September, 2022.



Stacey Bice Bawtinheimer
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 27th day of September, 2022.



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