

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Docket No. 13-015638-DHS

Esther Tran – New Creation Thien
Lap Learning Center,

Agency No. DC 500333026

Petitioner,

Agency: Department of
Human Services

v

Bureau of Children and Adult
Licensing,

Case Type: DHS BCAL

Respondent.

Filing Type: Sanction

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JAN 21 2015

BUREAU OF CHILDREN
AND ADULT LICENSING

Issued and entered
this 15 day of January, 2015
by
Nick Lyon, Interim Director
Department of Human Services

FINAL DECISION AND ORDER

This matter began with Respondent's December 3, 2013 Order of Summary Suspension and the Amended Notice of Intent to Revoke (notice of intent) regarding Petitioner's license to operate a child care center under the Child Care Organizations Act (Act), 1973 PA 116, as amended, MCL 722.111 *et seq.* A properly noticed hearing regarding the matter at issue was held by Administrative Law Judge David M. Cohen (ALJ) on April 10, 2014 and April 11, 2014. Attorney James Thomas and Attorney Regina Triplett represented Petitioner. Assistant Attorney General Kelley McLean represented Respondent.

Respondent sought to revoke Petitioner's license based on allegations in the amended notice of intent that Petitioner violated the Act, as well as administrative rules

promulgated under the Act. In Count I of the amended notice of intent, Respondent alleged that Petitioner violated R 400.5107, which states in relevant part:

The following means of punishment shall be prohibited:

Hitting, spanking, shaking, biting, pinching, or inflicting other forms of corporal punishment.

Inflicting mental or emotional punishment, such as humiliating, shaming, or threatening a child. [Rule 400.5107 (2)(a), (c)]

The record clearly identified Petitioner implementing corporal punishment by using a paint stick to strike children in an attempt to deter bad behavior. On or about October 24, 2013, Petitioner Esther Tran admitted to her use of physical punishment towards the children in care at her day care center (Respondent's Exhibit K, pages 14-15). In addition, Petitioner placed adhesive tape over the mouths of children as a form of discipline; so as to discourage a child from talking excessively. The acts conducted by Petitioner were done in the presence of a child's peers, therefore, permitting a child to feel humiliated when disciplined. Petitioner did not dispute the allegations as stated in Count I of the amended notice of intent. Therefore, the ALJ properly determined Petitioner willfully and substantially violated of Rule 400.5107 (2) (a), (c).

In Count II of the amended notice of intent, Respondent alleged that Petitioner violated R 400.5105, which states in pertinent part:

The center shall provide appropriate care and supervision of children at all times. [Rule 400.5105 (1)]

On October 24, 2013, Licensing Consultant Latonya Kegler conducted an onsite inspection and observed seven children in a room without proper supervision. Mr. Lee Tran admitted that the center was short-staffed and this in fact contributed to the lack of

supervision during times when children were being transported from school to the child care center (Respondent's Exhibit K, pages 30-31). Accordingly, the hearing record established that Petitioner failed to provide appropriate care and supervision of children. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.5105 (1).

In Count III of the amended notice of intent, Respondent alleged that Petitioner violated R 400.5107, which states in pertinent part:

The staff shall use positive methods of discipline that encourage self-control, self-esteem, and cooperation. [Rule 400.5107 (1)]

There is no dispute that Petitioner implemented physical punishment as form of discipline in the presence of a child's peer. Petitioner's disciplining methods did not encourage self-control, self-esteem, or cooperation. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.5107 (1).

In Count IV of the amended notice of intent, Respondent alleged that Petitioner violated R 400.5607, which states in pertinent part:

Each child transported shall remain seated and properly restrained by a passenger restraint device as defined by 1949 PA 300, MCL 257.710d (1), MCL 257.710e (3), (4), and the manufacturer's rated seating capacity while the motor vehicle is in motion. [Rule 400.5607 (1)]

On October 21, 2013, Petitioner's employee was observed picking up children from school in violation of Rule 400.5607. Licensing Consultant Kegler observed Petitioner's child care center's seven-passenger minivan with four children in the third row, three children in the middle row, and one child in the front passenger seat for a total of nine people in the seven passenger minivan. Licensing Consultant Kegler and

[REDACTED] Lindsay Green credibly testified to observing Petitioner's childcare center in non-compliance of the required seating capacity (Respondent's Exhibit K, pages 25-26). Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.5607 (1).

In Count V of the amended notice of intent, Respondent alleged that Petitioner violated R 400.5102, which states in pertinent part:

The licensee shall have the following administrative responsibilities regarding staff:

Perform criminal background history check using the Michigan department of state police's internet criminal history access tool (ICHAT) before making an offer of employment to a person. [Rule 400.5102 (2) (b)]

Petitioner failed to perform the required criminal history check on all staff members so as to ensure that staff is not named in Michigan's Central Registry. On October 24, 2013, Respondent observed two adult individuals at the childcare center, who Mr. Tran identified as "caregivers in training" (Respondent's Exhibit K, page 32). Petitioner acknowledged that employee files did not exist for either of those two adults. Respondent obtained the employee records of Mr. Alexander Witan and Mr. Vanto who were both hired with ICHAT clearances dated after the date of hire (Respondent's Exhibit K, page 33).

The hearing record established Petitioner allowed staff to be employed and to have contact with children at the childcare center without proper criminal history clearances prior to their employment. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.5102 (2) (b).

In Count VI of the amended notice of intent, Respondent alleged that Petitioner

violated R 400.5104, which states in pertinent part:

A staff member shall provide the child care center with documentation from the Department of Human Services that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect before having contact with a child in care. [Rule 400.5104 (3)]

The hearing record established that Petitioner's staff members failed to provide the child care center with the required documentation that evidences he or she has not been named in Michigan's Central Registry before having contact with a child. As identified in Count VI, Petitioner allowed individuals to assist in the care and supervision of the children at the childcare center without the required clearances. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.5104 (3).

In Count VII of the amended notice of intent, Respondent alleged that Petitioner violated R 400.5940, which states in pertinent part:

The premises shall be maintained in a clean and safe condition. [Rule 400.5940 (1)]

On October 21, 2013 during on onsite inspection, the childcare center's fire door in the teaching room was observed blocked by stacked chairs and plastic tote containers. A hallway at the center was observed with clutter. The ALJ determined that this violation does not meet the legal criteria to demonstrate that Petitioner's actions were not willful or substantial in nature. I disagree with the ALJ's conclusion, Petitioner purposefully and deliberately placed those items in a manner that would block and restrict access to the fire door in the event of a fire. Therefore, I reverse the ALJ's conclusion in Count VII and it is determined that Petitioner willfully and substantially violated Rule 400.5940 (1).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On November 7, 2014, the ALJ issued and entered a Proposal for Decision (PFD) that concluded Petitioner had willfully and substantially violated Rule 400.5107 (2)(a); Rule 400.5105 (1); Rule 400.5107 (1); Rule 400.5607 (1); Rule 400.5102 (2)(b); Rule 400.5104 (3); and that the Order for Summary Suspension was proper.

The ALJ concluded that Petitioner did not willfully and substantially violate Rule 400.5940 (1) or Rule 400.5820 (6). I reverse the ALJ's findings in Count VII and Count VIII and conclude Petitioner willfully and substantially violated Rule 400.5940 (1) and Rule 400.5820 (6). Parties had 14 days to file exceptions and 14 days to file responses to any exceptions. No exceptions were filed.

Upon review and to the extent not inconsistent with this Order, I agree with the ALJ's findings of fact and conclusions of law in this case.

ORDER

NOW THEREFORE, IT IS ORDERED that:

1. To the extent not inconsistent with this Order, the ALJ's Proposal for Decision (PFD) is adopted and is incorporated by reference, and made a part of this Final Decision and Order (see attached PFD).
2. The actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.

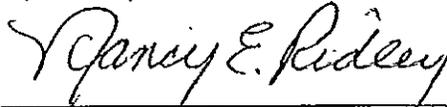
3. Petitioner's license is REVOKED effective on the date this Final Decision and Order is issued and entered.



Nick Lyon, Interim Director
Department of Human Services

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 16th day of January, 2015.



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