



FILED
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BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS 19 2013
STATE OF GEORGIA

PAULA DEAN, d/b/a)
THE DEAN'S LIST LEARNING)
ACADEMY,)
)
Petitioner,)
)
v.)
)
GEORGIA DEPARTMENT OF)
EARLY CARE AND LEARNING,)
)
Respondent.)

Kevin Westray, Legal Assistant

DOCKET N. OSAH-DECAL-
GDCH-1409608-76-OAKLEY

FINAL DECISION

This matter is an appeal by the Petitioner of an Order for Intended Emergency Closure which was issued by the Respondent on September 12, 2013, and served upon the Petitioner on September 13, 2013. The Petitioner's appeal was filed, as required, in writing and within forty-eight (48) hours from the time of service of the Order. O.C.G.A. 20-1A-13(f).

The hearing was held, in accordance with statutory timelines, on September 18, 2013, at a site chosen for its proximity to the Petitioner and any potential witnesses on behalf of the Petitioner. O.C. G. A 20-1A-13(g). Ms. Dean was present and proceeded *pro se*. The Respondent was represented by Clare Michaud, Legal Services Officer.

Findings of Fact

1.

The Petitioner holds a license from the Respondent to operate as a group day care home in Perry, Georgia, which is operated as The Dean's List Academy at 411 MLK Jr. Drive. Exhibit R-5.

2.

The Petitioner's license limits the number of children receiving care to twelve (12). Testimony of Ms. Wilson.

3.

In addition to the license at issue in this matter, the Petitioner is licensed to operate a child care learning center in Perry, Georgia which was operated as The Dean's List Academy II (the "Center") at 611 MLK Jr. Drive. Testimony of Ms. Wilson and the Petitioner. The term of the Petitioner's lease for the 611 MLK Drive facility ended on August 31, 2013. The Petitioner vacated the 611 MLK Drive facility on September 1, 2013. Testimony of Ms. Thomas.

4.

The loss of the Petitioner's right to occupy the 611 MLK Drive facility was foreseeable. Testimony of Ms. Thomas.

5.

Of significance, the Petitioner's actions immediately preceding and immediately following the end of the lease term for the 611 MLK Drive facility did not include planning for the transition of the children for whom it provided care to an alternative facility. See Testimony of Mr. Dean; Ms. Wood, Ms. Brown.

6.

On September 5, 2013, the Respondent received two (2) complaints regarding the Petitioner and included information that the Petitioner may be caring for children at her residence, an unlicensed location. In response to these complaints, the Respondent initiated an immediate investigation. Testimony of Ms. Rogers and Ms. Wilson.

7.

The Respondent's investigator observed nine (9) children receiving care in the front room of the Dean's residence. The front room contained equipment and toys similar to what is typically found in a day care center. The front room of the Dean's residence did not include the required thirty-five (35) square feet for each child. Testimony of Ms. Wilson. The children were being supervised by an employee of the Center. Testimony of Ms. Wilson; see Testimony of Ms. Brown.

8.

The Petitioner's spouse who serves as a staff member of the Center was questioned by the Respondent's investigator upon his arrival at the Dean's residence. He provided inconsistent information and confusing answers to questions posed by the Respondent's investigator. The Petitioner's spouse was unable to identify each of the children and denied that the residence was being used for the provision of child care to these children. Testimony of Ms. Wilson.

9.

The Petitioner's records reflect that thirteen (13) children received child care at the Petitioner's residence on several days following the vacation of the 611 MLK Drive facility. Exhibit R-1; Testimony of Mr. Dean.

10.

The Childcare and Parent Services ("CAPS") Program provides funding to CCLC for the care of several of the children who were identified as present in the Dean's residence at the time of the Respondent's investigator's inspection. The CAPS Program was not informed of the closure of the 611 MLK Drive facility and the consequent termination of the Petitioner's provision of child care services to these children. Testimony of Ms. Evans; Exhibit R-3.

11.

The enrollment files for only three (3) of the children being provided care by the Petitioner were made available for inspection and review by the Respondent's investigator. Testimony of Ms. Wilson.

12.

As part of the investigation, the Respondent's investigator observed the provision of child care services to children at the Center. During this observation, the Respondent's investigator observed the provision of child care services in an unlicensed area. Significantly, the Respondent's investigator observed a child to whom child care services were being provided exit the unlicensed area into an area which was next to the street. Testimony of Ms. Wilson. The child slipped through a large gap in the fence bordering the unlicensed area. Testimony of Ms. Wilson; Exhibit R-4.

13.

The complete personnel files, including satisfactory criminal record determinations, were not made available for inspection and review by the Respondent's investigator upon her request. Testimony of Ms. Wilson.

Conclusions of Law

1.

The hearing in this matter complied with the requirements of O.C.G.A. 20-1A-13(a), (h) and (i).

2.

The Respondent is vested with the authority to regulate the Petitioner, and has the power to conduct periodic inspections of the Petitioner to ensure its adherence to applicable statutory and regulatory provisions. O.C.G.A. 20-1A-9 and -10(a) and (p); Ga. Comp. R. & Regs. r. 290-2-1-.07.

3.

The Respondent is required to immediately investigate reports of flagrant abuses, derelictions and deficiencies by the Petitioner. O.C.G.A. 20-1A-10(q); Ga. Comp. R. & Regs. r. 290-2-1-.07(c)(2)-(3).

4.

The credible evidence supports a conclusion that Petitioner's staff responded to the Respondent's investigation with confusing and misleading statements and provided false information to the Respondent during its September, 2013 investigation in violation of the requirements of licensees. Ga. Comp. R. & Regs. r. 290-2-1-.07(e). The Petitioner's reckless and flagrant disregard for the truth constitutes deception.

5.

The credible evidence supports a conclusion that the Petitioner failed to apply to the Respondent for an amended license for the use of additional areas of the Center prior to the use of an additional area of the facility in the provision of child care services in violation of the requirements of licensees. Ga. Comp. R. & Regs. r. 290-2-1-.06(e). The Petitioner's inaction placed the safety and welfare of the children in its care in imminent danger.

6.

The credible evidence supports a conclusion that the Petitioner failed to provide thirty-five (35) square feet of useable space for each child in its care on September 5, 2013 which created a situation in which the safety and welfare of the children in its care could have been in imminent danger. O.C.G.A. 20-1A-10(i); Ga. Comp. R. & Regs. r. 290-2-1-.12(i).

7.

The credible evidence supports a conclusion that the Petitioner failed to maintain a personnel record for each administrator and employee containing verification of a satisfactory criminal records check determination which failure caused the safety and welfare of the children in its care to be placed in imminent danger. Ga. Comp. R. & Regs. r. 290-1-.10(a)(5).

8.

The credible evidence supports a conclusion that the Petitioner failed to maintain required records on each of the children in its care which failure caused the safety and welfare of the children in its care to be placed in imminent danger. Ga. Comp. R. & Regs. r. 290-1-.10(b).

9.

The credible evidence supports a conclusion that the Petitioner failed to maintain the requisite staff: child ratio on September 9, 2013 which failure caused the safety and welfare of the children in its care to be placed in imminent danger. Ga. Comp. R. & Regs. r. 290-1-.09(f)(3).

10.

The credible evidence supports a conclusion that the Petitioner failed to supervise the children in its care at all times which placed the safety and welfare of the children in its care in imminent danger. Ga. Comp. R. & Regs. r. 290-1-2-.09(f)(2).

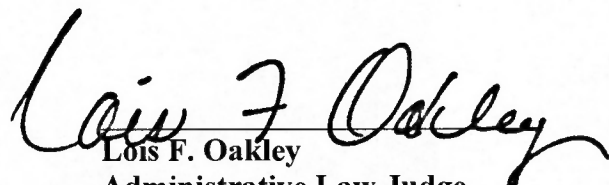
11.

The Respondent is vested with the authority to close the Petitioner's facility for a period of twenty-one (21) days on the basis of the Petitioner's blatant disregard of applicable licensing requirements, the Petitioner's actions and inactions which placed the safety and welfare of the children in its care in imminent danger and the Petitioner's untruthful and deceptive statements to the Respondent during its investigation. O.C.G.A. 20-1A-12(b)(3) and 20-1A-13(c)(1)(B).

Decision

For all the above and foregoing reasons, the Order for Intended Emergency Closure is warranted and is hereby **AFFIRMED effective as of the close of business at 6:00 pm on September 18, 2013.**

As announced on the record on September 18, 2013, and as issued in writing on September 19, 2013.


Lois F. Oakley
Administrative Law Judge