

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



APR 10 2014

Kevin Westray, Legal Assistant

ADVANCE PREPARATORY)
ACADEMY, INC. d/b/a ADVANCE)
PREPARATORY ACADEMY II,)
)
Petitioner,)
)
vs.)
)
BRIGHT FROM THE START:)
GEORGIA DEPARTMENT OF)
EARLY CARE AND LEARNING,)
)
Respondent.)

Docket No:
OSAH-DECAL-CCLC- [REDACTED]
44-KENNEDY

INITIAL DECISION

Petitioner appealed Respondent's October 30, 2013 notice of intent to impose an enforcement fine and to restrict transportation for 12 months. The Court conducted an evidentiary hearing in this matter on February 24, 2014. Both parties were represented by counsel. For the reasons set forth below, Respondent's decision to impose an enforcement fine and to restrict transportation for 12 months is **AFFIRMED**.

II. FINDINGS OF FACT

General Business

1.

Petitioner is licensed by Respondent to operate a child care learning facility at 431 Allgood Road, Stone Mountain, Georgia 30083. (*Respondent's Exhibit 6.*)

2.

The facility is operated and co-owned by Olivia Dejournette and Tanneshia Ruth. Ms. Ruth, Ms. Dejournette's daughter, has served as the Director of the facility for 14 years. Combined they have 55 years of experience in the childcare industry, 30 years for Ms. Dejournette and 25 years for Ms. Ruth. (*Testimony of Tanneshia Ruth.*)

3.

Petitioner is typically responsible for transporting 57 children to and from its before and after school programs. (*Testimony of Ruth.*)

4.

Although Petitioner has not always strictly adhered to applicable transportation rules and regulations, the facility has not had any serious issues arise in transporting children until the one at issue in this case. (*Testimony of Ruth; Testimony of Dejournette.*)

Incident Leading to Complaint

5.

T.G., a 4-year old child, was enrolled in Petitioner's facility by his mother for Summer Camp on or about May 22, 2013. (*Testimony of [REDACTED], T.G.'s mother; Respondent's Exhibit 1.*)

6.

The Summer Camp enrollment application includes a form entitled "Parental Agreements with Child Care Facility." One provision within this form provides

that Petitioner "agrees to obtain written authorization from me before my child participates in routine transportation" (*Respondent's Exhibit 1.*)

7.

T.G.'s mother also signed a generic form entitled "Transportation Agreement." This form states that T.G.'s mother gives Petitioner permission to transport her child. However, the section indicating where the child will be transported to and from is blank. (*Testimony of ██████; Testimony of Handsford; Testimony of Ruth; Petitioner's Exhibit 3; Respondent's Exhibit 1.*)

8.

At the conclusion of the summer season, on August 5, 2013, T.G.'s mother completed a Pre-K Registration Form for T.G. to attend Pre-K at Petitioner's facility beginning August 12, 2013.¹ (*Testimony of ██████; Respondent's Exhibit 2.*)

9.

The Pre-K registration form does not include any transportation authorization forms. (*Testimony of ██████; Respondent's Exhibit 2.*)

10.

On the first day of school, August 12, 2013, T.G.'s mother dropped T.G. off at Petitioner's facility between 6:15 and 6:30 that morning.² At that time she did not interact with Petitioner's staff. She did not greet the receptionist, Jacqueline Walker, and did not indicate to the staff why T.G. was there. (*Testimony of*

¹ The Pre-K registration form indicates that T.G. suffers from asthma. It also lists the medications that T.G. takes for his condition. (*Respondent's Exhibit 2.*)

² During the summer T.G. usually arrived later. He typically would arrive at the facility at 8:00 a.m. (*Testimony of ██████*)

██████; *Testimony of Handsford; Testimony of Jacqueline Walker; Petitioner's Exhibits 1, 5, 6.*)

11.

Later that morning, at approximately 7:00 a.m., T.G. was allowed to board the facility's vehicle and was transported to and dropped off at Stone Mountain Elementary School even though he was not enrolled at that school. (*Petitioner's Exhibit 4; Respondent's Exhibit 3.*)

12.

According to Ms. Dejournette, Petitioner typically does not have an accurate list of the children who will require transportation to school on the first day because some parents choose to drive their child on that particular day without notifying the facility of their intentions. To address the uncertainty of the first day of school, Petitioner has chosen to handle that particular day differently than the rest of the school year. Instead of preparing transportation logs that list the students enrolled in Petitioner's facility that require transportation to various local schools prior to the first day of school, Petitioner's staff calls out the name of each local school after breakfast time and expects the children to line up for the school where they need to be transported. Petitioner's staff then handwrites transportation logs based on the information provided by the children. By the start of the second week of school Petitioner typically has pre-printed forms that list all the children to be transported and the location to where they are to be transported. (*Testimony of Handsford; Testimony of Ruth; Testimony of Walker;*

Testimony of Olivia Dejournette; Petitioner's Exhibits 1, 4, 5, 6; Respondent's Exhibits 3, 4.)

13.

On August 12, 2013, when Petitioner's staff called out the school name of Stone Mountain Elementary School, T.G. apparently stood up, indicating to Petitioner's staff that he attends Stone Mountain Elementary School. It is unknown why he did so. However, it may be because he lives in Stone Mountain and correlated the elementary school with where he lives. (*Testimony of Handsford; Testimony of Ruth; Testimony of Walker; Testimony of Olivia Dejournette; Petitioner's Exhibits 1, 4, 5, 6; Respondent's Exhibits 3, 4.*)

14.

When T.G. stood up, the staff asked him for his name. T.G., for unknown reasons, did not provide his name. The staff assumed he did not know his own name. They then checked his backpack and found his name written on there. The staff then added T.G.'s name to the transportation log for Stone Mountain Elementary school and transported him to the school. (*Testimony of Handsford; Testimony of Walker; Petitioner's Exhibits 1, 4, 5, 6; Respondent's Exhibit 3.*)

15.

Respondent considers it inappropriate for a facility to rely on a child to provide the name of the location where they are to be transported. (*Testimony of Elizabeth Holland.*)

16.

Petitioner's transportation logs for the day in question show that T.G. was loaded at 7:00 a.m., dropped off at the school at 7:20 a.m. and that the facility's van returned to the facility at 7:51 a.m. It further shows that two checks of the vehicle were completed in accordance with Respondent's regulations. However, T.G. should never have been listed on the form, in part, because Petitioner did not have authorization to transport T.G. to Stone Mountain Elementary School. *(Testimony of Handsford; Petitioner's Exhibit 4; Respondent's Exhibit 3.)*

17.

Petitioner's staff was unaware that T.G. had inadvertently been taken to Stone Mountain Elementary School and was not in his Pre-K class at the facility until later that morning when T.G.'s mother called the facility to inform them that she had been contacted by the elementary school regarding her child.³ Although Petitioner offered to pick up T.G. from Stone Mountain Elementary School and return him to the facility, T.G.'s mother declined the offer. She received permission from her employer to take time off work and she picked up T.G. from the school. Petitioner's mother understands how chaotic the first day of school can be. However, she was disappointed and frustrated that Petitioner did not have an appropriate checks and balance system in place to ensure children in their care were either delivered to the right location or kept at the facility. Once the facility obtained T.G.'s name from his backpack, the staff should have checked his enrollment file to determine where he should be since it was obvious

³ At approximately 10:30 a.m. T.G.'s mother was contacted by Stone Mountain Elementary School, T.G.'s former day care facility, and T.G.'s grandmother regarding the situation. *(Testimony of ██████████)*

how young he was and especially in light of the fact that the staff assumed he did not know his name yet they trusted that he knew where he needed to be. (*Testimony of [REDACTED]; Testimony of Holland; Respondent's Exhibit 4.*)

18.

Petitioner was not concerned that T.G. was not present in his Pre-K class because it is not unusual for a child to not show up for the first day of school. Ms. Ruth and Ms. Dejournette explained that it is difficult to account for the children who enroll in the Pre-K program during the first week of school. Petitioner typically accepts up to 35 applications for the Pre-K program. They then select the 22 children who will be enrolled into the program and notify the parents. However, on the first day of school it is possible that only 15 children will show up because parents sometimes choose to take their child to another program without notifying Petitioner, or simply do not show up for other reasons. Petitioner believes that Respondent should be more involved in assisting child care learning facilities by checking for situations where a child is enrolled in two or more Pre-K programs and notifying the facilities so they can seek clarification from the parent about their intentions prior to the first day of school. If Respondent did so, according to Petitioner, then the facility may have realized that there was a situation when T.G. was not present for roll call. (*Testimony of Ruth; Testimony of Dejournette.*)

19.

According to Elizabeth Holland, Respondent's Acting Director of Enforcement Unit, Petitioner should have checked T.G.'s enrollment file if they were uncertain

where he belonged or what school he attended. Additionally, Petitioner should have contacted T.G.'s mother if he refused to speak.⁴ Given that Petitioner was able to locate the child's name on his backpack, the staff could have easily checked his enrollment file and obtained his parent's contact information. *(Testimony of Elizabeth Holland.)*

***Previous Notice of Intent to Impose Fine
Regarding Separate Allegations From Spring 2013***

20.

Prior to the incident at issue, Respondent issued a separate Notice of Intent to Impose Enforcement Fine on July 1, 2013 addressing transportation violations found during a licensing study conducted on March 7, 2013. Specifically, Respondent found that Petitioner had failed to properly account for loading and unloading children, failed to conduct two physical checks of the facility's vehicle, and failed to sign the passenger checklist. Respondent imposed a fine of \$299 at that time, which the facility paid and did not appeal. *(Testimony of Elizabeth Holland, Respondent's Acting Director of Enforcement Unit; Respondent's Exhibit 5.)*

21.

The July 1, 2013 notice advised Petitioner, among other things, that "failure to correct and maintain compliance with this and other transportation rules will result in further adverse action which could include the revocation of the license to operate Advance Preparatory Academy, the imposition of daily fines for each

⁴ The Pre-K Registration form completed by Ms. [REDACTED] listed her current employer and contact information. Thus, if the facility had wanted to contact her they could have. *(Respondent's Exhibit 2.)*

day the violations continue, the imposing of enforcement fines for each transportation rule violation, the placement of emergency monitors, the restriction of transportation services, and the order of emergency closure.” (*Testimony of Holland; Respondent’s Exhibit 5.*)

**Complaint Investigation
and
Adverse Action**

22.

On August 13, 2013, Respondent received a complaint regarding Petitioner’s facility transporting T.G. to Stone Mountain Elementary School even though he was not enrolled at that school. On August 15 Respondent’s consultant visited the facility to conduct an investigation of the complaint. (*Testimony of Zara Handsford; Respondent’s Exhibits 4, 6.*)

23.

At the conclusion of Respondent’s investigation it was determined that serious rule violations, which jeopardized the health and safety of a child, had been substantiated. Respondent notified Petitioner that a plan of improvement should be filed with Respondent by September 25, 2013.⁵ (*Testimony of Handsford; Petitioner’s Exhibit 2; Respondent’s Exhibits 4, 6.*)

⁵ Petitioner submitted a plan of improvement as requested. In the plan, Petitioner stated that it will ensure that all students to be transported have a signed parental authorization form, that all children names will be placed on the checklist prior to transporting the children, and that the staff will make sure that teachers complete a roll call and notify front office when a student is missing. The plan indicated that Petitioner implemented each of these corrective actions on August 15, 2013. Respondent determined that Petitioner had filed an acceptable plan for correcting the rule violations and for maintaining compliance. (*Petitioner’s Exhibit 2.*)

24.

Additionally, Respondent notified Petitioner of its intent to impose an enforcement fine in the amount of \$299 per rule violation for a total of \$897. Respondent further notified Petitioner of its intent to restrict Petitioner's right to transport children for a period of 12 months. (*Respondent Exhibit 6.*)

25.

Respondent determined that imposition of a transportation restriction, in addition to a fine, was appropriate based on Petitioner's failure to strictly adhere to all transportation rules and regulations following a prior notice of violations and imposition of only a fine. Respondent found that the July 1, 2013 adverse action was not effective since another violation of rules occurred the following month in August 2013. Although Petitioner corrected the specific violations cited in the July 1, 2013 notice, Petitioner admittedly violated other transportation rules and regulations by preparing transportation logs based on information received from children as a way of dealing with the chaos and uncertainty of the first day of school. Accordingly, a more stringent adverse action was needed for this subsequent violation to ensure, in part, the safety of all the children entrusted to Petitioner's care and to ensure that Petitioner understands the necessity to strictly adhere to all transportation rules and regulations. (*Testimony of Holland.*)

26.

Petitioner feels that one error in 14 years does not warrant a severe penalty of 12 month transportation restriction. (*Testimony of Ruth.*)

III. CONCLUSIONS OF LAW

DECAL Bears the Burden of Proof

1.

This appeal concerns adverse action taken by Respondent against Petitioner's license. Accordingly, the burden of proof rests on Respondent to prove the basis of the proposed adverse action is authorized and the appropriate course of action. Ga. Comp. R. & Regs. 616-1-2-.07(a). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

Respondent's Role

2.

Respondent is the state agency responsible for regulating licensed child care facilities and promulgating rules that govern Georgia facility-based child care facilities. O.C.G.A. §§ 20-1A-3(d), 4(5) (2013). Pursuant to that responsibility, Respondent is given certain enforcement powers to ensure that facilities adhere to promulgated regulations. O.C.G.A. § 20-1A-12 (2013).

3.

Georgia law authorizes Respondent to "[l]imit or restrict any license as [it] deems necessary for the protection of the public, including, but not limited to, restricting some or all services of . . . a program for a time certain." O.C.G.A. § 20-1A-12(c)(8) (2013). Pursuant to this authority, Respondent's rules specify that it may "restrict or limit the holder of a regular, restricted or temporary license from providing certain kinds of care or services to children or limiting the number and/or age of the children who may be served if [it] determines that the holder of

the license either cannot comply with these rules or has not complied with these rules. Ga. Comp. R. & Regs. 591-1-1-.38(e).

4.

When exercising its enforcement powers, State law requires Respondent to choose the appropriate sanction after considering “the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public.” O.C.G.A. § 20-1A-12(c).

Imposition of Enforcement Fine and Transportation Restriction Authorized

5.

Petitioner failed to provide adequate supervision and watchful oversight over a child entrusted to their care and which could have resulted in placing the child at risk. Ga. Comp. R. & Regs. 591-1-1-.32(6). Petitioner argued that the child was under the supervision of an adult at all times and was kept safe since the facility delivered him to an elementary school. However, the parent who enrolled the child at the facility provided authorization for only the facility and its staff to care for and supervise the child. Moreover, if T.G. had suffered an asthma attack the school would have no knowledge of the medications he takes, whether he suffers from any other conditions, or immediate contact information for his mother.

6.

Petitioner transported a child without parental authorization to do so, which could have placed the child at risk of harm. Ga. Comp. R. & Regs. 591-1-1-.36(5).

7.

Petitioner failed to list all of the children's full names on the checklist for children transported by the facility, which could have placed the children at risk of harm.

Ga. Comp. R. & Regs 591-1-1-.36(6)(c). Instead of having transportation checklists prepared beforehand listing the children who would be transported and to what location, Petitioner chose to ask the children what school they attended and then completed the forms by hand the morning of school based on what information the children provided. Although Petitioner may encounter difficulties planning for the first week of school when some parents choose to enroll their child and then fail to appear, instead of relying on the children to know where they are to be transported, a better practice would be to have a list of all students who are expected to be transported and then marking the child absent if they fail to appear. By doing so, Petitioner would be accepting the responsibility placed on it as a facility to maintain appropriate documentation and safety of children without shifting that responsibility to the children themselves.

***Imposition of Enforcement Fine and Transportation Restriction
Are Appropriate Sanctions***

8.

Respondent is authorized to impose sanctions against a facility where the violations amount to a reckless and serious disregard for the physical or mental health of a child. Ga. Comp. R. & Regs. 591-1-1-.38(f)(5)(iii).

9.

Petitioner's actions on the first day of school constituted a reckless disregard for the physical or mental health of a child. Although this matter involves one

isolated incident that occurred on the first day of school, it has brought to light serious deficiencies in how Petitioner chooses to operate. Specifically, Petitioner relied on children to know where they needed to go rather than taking the responsibility itself to ensure that the transportation logs were properly prepared prior to the first day of school with the full name of each child authorized to be transported and the location where the parent authorized them to be transported. Based on a totality of the circumstances, Respondent has met its burden to show not only that it was authorized to impose an enforcement fine and transportation restriction, but also that such action was appropriate under the circumstances.

IV. DECISION

Respondent's decision to impose an enforcement fine of \$897 and to restrict transportation for 12 months is **AFFIRMED**.

SO ORDERED, this 10th day of April, 2014.



Ana Kennedy
Administrative Law Judge