

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

SMYRNA CHILDCARE CENTERS, LLC
D/B/A WOODBRIDGE ACADEMY
Petitioner,

v.

**GEORGIA DEPARTMENT OF EARLY
CARE AND LEARNING, BRIGHT FROM
THE START,**
Respondent.

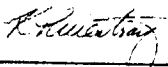
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: **Docket No.:**
: OSAH-DECAL-CCLC-1440876-33-Woodard
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AUG 29 2014

INITIAL DECISION

I. Introduction



Kevin Westray, Legal Assistant

Respondent appeals from a Notice of Intent to Impose Enforcement Fine and Transportation Restriction to Petitioner, Smyrna Childcare Centers, LLC d/b/a/ Woodbridge Academy (hereinafter "Petitioner") on February 20, 2014.

Petitioner appealed, and a fair hearing was scheduled and held before the undersigned Administrative Law Judge at the Office of State Administrative Hearings in Atlanta, Georgia on August 7, 2014.¹ Petitioner was represented by Mr. Michael J. Anderson, Attorney at Law, Lawrenceville, Georgia. Respondent was represented by Ms. Kimberly Alexander, Attorney at Law and Legal Services Officer, Georgia DECAL, Atlanta, Georgia. For the reasons stated, Respondent's decision to impose a civil monetary penalty of \$299.00 and a transportation restriction on Petitioner is **AFFIRMED**.

II. Findings of Fact

Woodbridge Academy

1.

Petitioner is licensed by Respondent to operate a child care learning center, Woodbridge Academy, located at 790 Clay Road in Mableton, Georgia. Ms. Lisa Abernathy-Taylor is the Owner and Director of Woodbridge Academy. *Testimony of Lisa Abernathy-Taylor; Respondent Exhibits 2, 3, 5.*

2.

Woodbridge Academy provides transportation services as part of its daily operations as a child care learning center. Woodbridge Academy's drivers routinely transport children to and from its facility

¹ Petitioner also appealed Respondent's imposition of an enforcement fine. However, the appeal of the enforcement fine was settled prior to the presentation of evidence in the above-docketed matter.

to local elementary schools. During the period relevant to this Decision, Ms. Michelle Tamayo was Woodbridge Academy's driver. *Testimony of Wakisha Carswell; Testimony of Michelle Tamayo.*

Transportation Rules Governing Child Care Learning Centers

3.

Regulations for child care learning centers require that a passenger checklist be kept inside each vehicle used to transport children. These checklists must be maintained by the driver, who is required to immediately document when a child enters or exits the vehicle by placing a check mark or other symbol next to that child's name. The purpose of this rule is to maintain an adequate accounting of the whereabouts of the children under the facility's care. *Testimony of Laura Davis; Respondent Exhibit 3.*

4.

Child care learning centers are also required to conduct physical investigations of the vehicles after unloading children by walking through the vehicle to ensure that all children have exited. Upon completing this inspection, the staff member must sign the passenger checklist to confirm that no children remain in the vehicle. *Testimony of Laura Davis.*

5.

For vehicles that are not equipped with an alarm, a second staff member who was not on the vehicle during transportation must conduct a second walkthrough of the vehicle to ensure that all children have been unloaded. The second staff member must also sign the passenger checklist after they have conducted the second check and ascertained that all children have exited the vehicle. *Testimony of Laura Davis.*

6.

The aforementioned transportation rules are categorized by Respondent as "trigger rules." There are approximately thirty transportation trigger rules, violations of which, in Respondent's judgment, are more serious and "trigger" Respondent's immediate attention. Because of the importance Respondent places on trigger rules, facilities are subject to penalties that increase in severity for each violation. Although the terms "trigger rule" or "trigger violation" appear nowhere in a statute or Respondent's regulations, facilities are repeatedly apprised of their existence via trainings, webinars, and e-mails. *Testimony of Laura Davis; Respondent Exhibit 3.*

July 2013 Inspection and Initial Enforcement Action

7.

On July 25, 2013, Respondent dispatched its employee, Ms. Carley Geren, to Woodbridge Academy to conduct a Complaint Investigation and Monitoring Visit. Ms. Geren discovered that

Petitioner provided transportation to children enrolled at Woodbridge Academy throughout the 2012-2013 school year without maintaining the above-described documentation. After conducting interviews with Woodbridge Academy's staff members, Ms. Geren determined that they were unaware of the requirement that the center maintain transportation forms. The center kept no passenger checklists on file. Ms. Abernathy-Taylor could not provide Ms. Geren with any documentation of routine transportation to and from schools or for field trips. Ms. Abernathy-Taylor cited Petitioner for several transportation rule violations, including failure to maintain passenger checklists and failure to conduct a first and second check of the vehicle after transporting children. *Respondent Exhibit 1.*

8.

Based upon the transportation rule violations discovered during the July 25, 2013 site visit, Respondent assessed an enforcement fine of \$299.00 against Petitioner. Respondent notified Petitioner of its intent to impose said enforcement fine in a letter dated September 3, 2013. Petitioner paid this enforcement fine on or about September 17, 2013. *Respondent Exhibits 1 and 2.*

Respondent's February 3, 2014 Investigation of Woodbridge Academy

9.

Respondent received reports of possible violations of non-transportation rules at Petitioner's facility. Respondent dispatched Wakisha Carswell, Childcare Consultant, to Woodbridge Academy on Monday, February 3, 2014 to conduct another Complaint Investigation and Monitoring Visit. Upon arriving at Woodbridge Academy, Ms. Carswell made contact with the center's staff members and commenced her investigation, which included a walkthrough of the facility and a review of the facility's records. Ms. Abernathy-Taylor was not present at the facility when Ms. Carswell arrived and began her investigation. *Testimony of Wakisha Carswell.*

10.

The vehicle that the center used to transport children, a Nissan Pathfinder, was not on the premises at the time Ms. Carswell arrived. Ms. Carswell recalled the passenger vehicle returning to the facility at approximately 10:15 a.m., when she observed Ms. Tamayo, Woodbridge Academy's driver, enter the facility carrying an infant. At Ms. Carswell's request, Ms. Tamayo provided the facility's transportation records, including documentation of that morning's transportation routes. *Testimony of Wakisha Carswell; Respondent Exhibit 4.*

11.

The transportation records provided to Ms. Carswell during the Complaint Investigation and Monitoring Visit of February 3, 2014 included a passenger checklist documenting the morning transportation route to Sanders Elementary School (hereinafter "Sanders Checklist 1"). Ms. Tamayo

indicated on Sanders Checklist 1 that, at 7:20 a.m. on the morning of February 3, she transported four children from Woodbridge Academy to Sanders Elementary School, arriving at 7:26 a.m. and returning to Woodbridge Academy at 7:31 a.m. *Respondent Exhibit 4.*

12.

Ms. Carswell was also provided with a passenger checklist documenting morning transportation to and from Mableton Elementary School (“Mableton Checklist 1”). This checklist indicated that Ms. Tamayo transported four children to Mableton Elementary School, departing Woodbridge Academy at 7:32 a.m. and arriving at the school at 7:35 a.m. Ms. Tamayo indicated on Mableton Checklist 1 that she returned to Woodbridge Academy at 7:45 a.m. *Respondent Exhibit 4.*

13.

Ms. Tamayo properly marked both Sanders Checklist 1 and Mableton Checklist 1 with a checkmark each time passengers were loaded onto the vehicle and unloaded at their destination. Ms. Tamayo also signed each passenger checklist indicating that she had performed a first check of the vehicle after completing the morning transportation routes. However, neither passenger checklist included the signature of a second staff member to verify that a second check of the vehicle had been performed after the transportation routes were completed. *Testimony of Wakisha Carswell; Respondent Exhibit 4.*

14.

Upon completing her review of Petitioner’s transportation records, Ms. Carswell held an exit conference with Ms. Abernathy-Taylor, who had recently arrived at the center. Ms. Carswell conveyed the findings of her investigation, including her observation that the center failed to conduct a second check of the vehicle in violation of transportation rules. Neither Ms. Abernathy-Taylor nor any of Petitioner’s staff members provided documentation of a second check of the vehicle performed after morning transportation. Accordingly, Ms. Carswell issued a citation for the transportation rule violation and concluded her investigation. *Testimony of Wakisha Carswell.*

*Respondent’s Action to Impose Enforcement Fine and Transportation Restriction
Following February 2014 Investigation*

15.

Based upon the transportation violation cited during the February 3, 2014 investigation and violations found during prior investigations, Respondent issued an adverse action letter to Petitioner on or about February 20, 2014. Respondent notified Petitioner of its intent to impose an enforcement fine in the amount of \$299.00 and restrict the center’s ability to transport children for a period of three months. The

transportation restriction would “prohibit the center and the center’s employees and affiliates from transporting any child in care for or on behalf of the center for three months.” *Respondent Exhibit 3.*

16.

On or about March 4, 2014, Ms. Abernathy-Taylor requested a hearing to dispute Respondent’s proposed adverse action. In her written hearing request, Ms. Abernathy-Taylor averred that the passenger checklist reviewed by Ms. Carswell during the February 3 Complaint Investigation and Monitoring Visits was missing the signature of a second staff member because the checklist evidenced only the “first leg” of a continuous morning transportation route. Ms. Abernathy-Taylor explained in the letter that the second check of the vehicle was completed after it returned from the trip to Sanders Elementary, whereupon the second staff member signed the Sanders Elementary passenger checklist.² *Respondent Exhibit 5.*

17.

On March 4, 2014, Respondent held an office conference to discuss Petitioner’s non-compliance with the Rules and Regulations for Child Care Learning Centers. In attendance were Ms. Abernathy-Taylor, Ms. Carswell, and Ms. Laura Davis, Respondent’s Director for the Southeast Region. During this conference, Ms. Abernathy-Taylor claimed for the first time that the Sanders and Mableton checklists evidenced the first and second leg of a *three*-leg transportation route on February 3, 2014 and asserted that the second check of the vehicle was performed after completion of the third leg. Ms. Abernathy-Taylor offered no documentation to support her claims that the vehicle made a third trip during morning transportation on February 3, 2014 or that a second check of the vehicle was thereafter performed. *Testimony of Wakisha Carswell; Testimony of Laura Davis.*

18.

At the evidentiary hearing on August 7, 2014, Petitioner contended that Sanders Checklist 1 and Mableton Checklist 1 showed only the first and second legs of a three-leg transportation route completed on the morning of February 3, 2014. Petitioner tendered into evidence a passenger checklist documenting trips to Mableton Elementary during the week of February 3, 2014 (hereinafter “Mableton Checklist 2”) and a passenger checklist documenting trips to Sanders Elementary during the same week (hereinafter “Sanders Checklist 2”). Both Sanders Checklist 2 and Mableton Checklist 2 are populated with notations for trips made to each elementary school from February 3 to February 7 and include signatures for first and second checks of the vehicle. Both Mableton Checklist 2 and Sanders Checklist 2 include Ms.

² *Respondent’s Exhibit 5* (“The missing signature was for Mableton Elementary and Sanders Elementary was transported afterwards. The second check signature was completed on the transportation log for Sanders Elementary upon return and check of the vehicle when it returned to our facility.”).

Abernathy-Taylor's signature for the second check of the vehicle on the morning of February 3, 2014.³
Petitioner Exhibits 1 and 2.

19.

Approximately one week before the August 7 evidentiary hearing, Petitioner provided Respondent a two-page Home Transportation Form dated February 3, 2014, which was later admitted into evidence. The first page of the Home Transportation Form indicates that, at 7:47 a.m. on the morning of February 3, Ms. Tamayo drove the vehicle to an address on Johnson Ferry Road in Atlanta to pick up two children. Ms. Tamayo noted on the form that she arrived at the Johnson Ferry address at 8:56 a.m. and thereafter returned to Woodbridge Academy, arriving at 10:38 a.m. The second page of the Home Transportation form includes the signature of Ms. Tamayo and Ms. Camilia Clay, a staff member at Woodbridge Academy, indicating that Ms. Tamayo and Ms. Clay performed the first and second checks of the vehicle respectively upon the vehicle's return to the facility at 10:38 a.m. Ms. Davis and Ms. Carswell testified that they had never seen the Home Transportation Form before Petitioner submitted it to Respondent shortly before the hearing. *Petitioner Exhibits 1 and 2.*

20.

According to Ms. Tamayo, she was continuously driving the center's vehicle from 7:20 a.m. to 10:38 a.m. Ms. Tamayo testified that while she was on the way back to the center after making the scheduled drop-off at Mableton Elementary School, she received a call on her cell phone from Ms. Abernathy-Taylor and immediately pulled the vehicle over. During this phone conversation, Ms. Abernathy-Taylor instructed Ms. Tamayo to pick up her children from a doctor's office in Atlanta, Georgia. Ms. Tamayo complied, and departed at approximately 7:47 a.m.⁴ She further testified that, as she indicated on the Home Transportation Form, she returned to the center at 10:38 a.m., whereupon she took the two children inside the facility. According to Ms. Tamayo, upon entering the facility, she gave that morning's transportation forms, which were compiled in a tabbed binder, to Ms. Clay, who then proceeded to conduct a second check of the vehicle and sign the second page of the Home Transportation Form. After Ms. Clay conducted the second check, Ms. Tamayo testified, the binder was placed on a shelf in the facility and thereafter given in its entirety to Ms. Carswell. Ms. Tamayo testified that she did not bring the Home Transportation Form to Ms. Carswell's attention after handing the binder to her. However, she recalled that she notified Ms. Abernathy-Taylor of the Home Transportation Form after Ms.

³ Ms. Abernathy-Taylor testified at the hearing on this matter that she signed both checklists at the direction of Ms. Carswell. Ms. Carswell denied so instructing Ms. Abernathy-Taylor. *Testimony of Lisa Abernathy-Taylor; Testimony of Wakisha Carswell.*

⁴ It is unclear from the evidentiary record whether Ms. Tamayo returned to the center after receiving the phone call from Ms. Abernathy-Taylor. Mableton Checklist 1 indicates that Ms. Tamayo returned to the center at 7:45 a.m. after dropping children off at Mableton Elementary. *Respondent Exhibit 4; Petitioner Exhibit 2.*

Abernathy-Taylor informed her that the center had been cited for a transportation rule violation.
Testimony of Michelle Tamayo.

21.

Ms. Clay testified that she is the employee at Woodbridge Academy designated to perform second checks of the center's vehicle. She further testified that she completed the second check of the vehicle and signed the Home Transportation Form on February 3, 2014 after Ms. Tamayo returned from picking up Ms. Abernathy-Taylor's two children from the doctor's office. *Testimony of Camilia Clay.*

22.

Ms. Abernathy-Taylor testified that she had been at the doctor's office with her children on the morning of February 3, 2014 and had asked Ms. Tamayo to pick up her children after it became apparent that the visit would take longer than expected. She testified that she returned to the center from the doctor's office to find Ms. Carswell in the middle of the Complaint Investigation and Monitoring Visit. She did not bring the Home Transportation Form to Ms. Carswell's attention after she was notified of the transportation rule violation during the exit conference or at any time thereafter, though she asserted that she made several unsuccessful attempts to contact Respondent's office. Although Ms. Abernathy-Taylor recalled bringing the above-mentioned transportation binder to the March 4 office conference, she did not testify that she specifically brought the Home Transportation Form to Ms. Davis's or Ms. Carswell's attention. *Testimony of Lisa Abernathy-Taylor.*

23.

Ms. Abernathy-Taylor explained in her testimony that she and her staff members experienced confusion over Respondent's transportation rules because the explanation of transportation rule requirements varied between different childcare consultants. According to Ms. Abernathy-Taylor, she and her staff members were uncertain as to whether the second check and signature was required every time children were unloaded from the vehicle, regardless of whether the driver remained on the vehicle, or only after all trips had been completed and the driver left the vehicle. Respondent explained at the hearing that the second check of the vehicle was required in the latter instance; after all trips had been completed and the driver left the vehicle. *Testimony of Lisa Abernathy-Taylor.*

24.

Petitioner cited the fact that Ms. Carswell observed Ms. Tamayo return to the facility with Ms. Abernathy-Taylor's children as evidence that February 3rd morning transportation included a third trip.

III. Conclusions of Law

1.

This appeal concerns adverse action taken by Respondent against Petitioner's license. Accordingly, the burden of proof rests on Respondent to prove that its proposed action is correct. GA.

COMP. R. & REGS. 616-1-2-.07(a). The standard of proof is by a preponderance of the evidence. GA. COMP. R. & REGS. 616-1-2-.21(4).

2.

Respondent, the Georgia Department of Early Care and Learning (DECAL), is the state agency responsible for administering the early care and education needs of young children in Georgia. *See* O.C.G.A. § 20-1A-1 *et seq.* Its responsibilities include promulgating regulations that govern Georgia center-based child care facilities. O.C.G.A. § 20-1A-4(5) (2014). Georgia law also grants DECAL a myriad of enforcement powers designed to ensure that such facilities adhere to its regulations O.C.G.A. § 20-1A-12 (2014).

3.

Respondent is authorized to impose a fine of up to \$500.00 for each violation of its regulations. O.C.G.A. § 20-1A-12(c)(6). Respondent is also authorized 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” if a licensee fails to comply with DECAL regulations. O.C.G.A. § 20-1A-12(c)(8) (2014); GA. COMP. R. & REGS. 591-1-1-.38(e) (“The Department may restrict or limit the holder of a regular . . . license from providing certain kinds of care or services to children . . . if the Department determines that the holder of the license either cannot comply with these rules or has not complied with these rules.”).

4.

Regulations governing childcare learning centers provide that, immediately upon unloading the last child at any location, a staff person who was present on the vehicle during the trip is required to thoroughly check the transportation vehicle to ensure that all children have been unloaded from the vehicle. GA. COMP. R. & REGS. 591-1-1-.36(6)(d)1.⁵ This check includes physically walking through the

⁵ The pertinent regulation specifically reads as follows:

Immediately upon unloading the last child at any location including, but not limited to, a field trip destination, arrival at the center, and the last stop during transportation to home or school, the responsible person on the vehicle shall:

- a. Physically walk through the vehicle;
- b. Visually inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;
- c. Sign the passenger transportation checklist with their full name, indicating all of the children have exited the vehicle; and
- d. Give the checklist to the director or designated staff person at the center, who will also check the vehicle as stated in 591-1-1-.36(6)(d)1.a. through c. above.

vehicle, visually inspecting all seat surfaces, and looking under all seats and in all compartments or recesses of the vehicle's interior. *Id.* After completing this walkthrough, the staff member must sign the passenger checklist, which indicates that all of the children have exited the vehicle. *Id.* A second designated staff member, who was not on the vehicle during transportation must then conduct a second check of the vehicle and thereafter sign the passenger checklist. *Id.*

5.

As Respondent explained at the hearing on this matter, the first and second checks of the vehicle are required after the transportation routes are completed and the driver exits the vehicle. As long as the driver remains on the vehicle and transportation operations are in progress, the second check does not have to be completed. In the present case, Petitioner contends that it committed no transportation rule violation, as Ms. Clay performed the second check of the vehicle after Ms. Tamayo returned from picking up Ms. Abernathy-Taylor's children from the Atlanta doctor's office and thereby completed the final leg of a three-leg morning transportation route.

6.

Respondent introduced credible evidence that Petitioner did not conduct a second check of the vehicle after transportation operations were completed on the morning of February 3, 2014. Ms. Carswell testified that she reviewed Petitioner's transportation records, which included only Sanders Checklist 1 and Mableton Checklist 1. Both checklists tendered into evidence by Respondent appear as they would have after morning transportation was completed on February 3, 2014. Neither checklist bears the requisite signature of a second staff member indicating that a second check of the vehicle had been performed.

7.

Petitioner presented no credible evidence to support its assertion that a second check of the vehicle was performed. Petitioner produced at the hearing a Home Transportation Form purportedly showing that a second check of the vehicle was performed after transportation operations had concluded on the morning of February 3, 2014. However, although such evidence, if authentic, would clearly serve to refute Respondent's charge that Petitioner never performed or documented a second check of the vehicle, Petitioner failed to submit the Home Transportation Form to Respondent until approximately one week before the hearing. Ms. Abernathy-Taylor never mentioned the Home Transportation Form to Ms. Carswell during the exit interview when she was apprised of the transportation rule violation. Moreover, she did not submit the Home Transportation Form to Ms. Davis or Ms. Carswell during the March 4 office conference. Neither Ms. Abernathy-Taylor nor any of Woodbridge Academy's staff members adequately accounted for the failure to submit this document to Respondent. Under these circumstances,

the authenticity of the Home Transportation Form is highly suspect and the undersigned attributes to it little to no evidentiary value. Accordingly, the Home Transportation Form is insufficient to establish that a second check of the vehicle was performed and documented. See *Inwood Labs. v. Ives Labs.*, 456 U.S. 844, 856 (1982) (“Determining the weight and credibility of the evidence is the special province of the trier of fact.”).

8.

The undersigned concludes that testimony introduced by Petitioner to the effect that a second check of the vehicle was performed and documented on the Home Transportation Form is not credible. See *United States v. Peters*, 403 F.3d 1263, 1270 (11th Cir. 2005) (“assessing witness credibility is uniquely the function of the trier of fact”); *State v. Criswell*, No. A14A0527, 2014 Ga. App. LEXIS 342, at *10 (May 29, 2014) (“trier of fact is not obligated to believe a witness even if the testimony is uncontradicted and may accept or reject any portion of their testimony”). Ms. Abernathy-Taylor first advanced the argument that the second check of the vehicle was performed after the completion of the final leg of a three-leg morning transportation route at the March 4 office conference. Indeed, Ms. Abernathy-Taylor did not mention a “third leg” in her request for a hearing, but rather claimed that the second check was performed and documented after completion of the Sanders and Mableton trips.

9.

Accordingly, Respondent established by a preponderance of the evidence that Petitioner committed a transportation rule violation and that its imposition of a fine and three-month transportation restriction on Petitioner was therefore proper.

IV. Decision

IT IS ORDERED that Respondent’s decision to impose an enforcement fine against Petitioner in the amount of \$299.00 and impose a three-month transportation restriction on Petitioner is hereby **AFFIRMED**.

SO ORDERED, this 26th day of August, 2014.



M. PATRICK WOODARD, JR.
Administrative Law Judge