

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

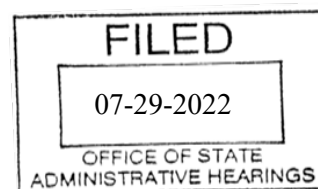
**FLC TUCKER, LLC,
Petitioner,**

v.

**GEORGIA DEPARTMENT OF EARLY
CARE AND LEARNING,
Respondent.**

**Docket No.: 2227046
2227046-OSAH-DECAL-CCLC-67-Teate**

Agency Reference No.: 2227046



FINAL DECISION

I. Introduction

Mr. Don McDaniel (“Mr. McDaniel”), director of FLC Tucker, LLC, d/b/a Friendship Learning Center of Tucker (“the facility”), appeals the decision of the Georgia Department of Early Care and Learning (“DECAL”) to impose a civil penalty for an incident that occurred on October 15, 2021. A hearing was held on July 19, 2022, at the Office of State Administrative Hearings. Mr. McDaniel represented the facility. Kori Woodward-Dickens, Esq. represented DECAL.

For the reasons stated below, DECAL’s decision on March 24, 2022, to impose a civil penalty based on the October 15, 2021, occurrence is **REVERSED**.

II. Findings of Fact

1. On October 15, 2021, Ms. Jeanette Perry, a lead pre-K teacher, and Ms. Celita Ochiva, a pre-K assistant teacher, supervised 19 children as they were playing approximately between 8:45 a.m. and 9:45 a.m., first on the upper playground between 8:45 a.m. and 9:30 a.m. and then on the smaller lower playground between 9:30 a.m. and 9:45 a.m.¹ Ms. Perry and Ms.

¹ No video footage was available due to unresolved technical issues. (Testimony of Dan McDaniel; Respondent Exhibits 1 and 3). Both Ms. Perry and Ms. Ochiva have multiple years of training and experience with pre-K students and environments and neither has ever had involvement in any disciplinary action. (Testimony of Ms Perry;

Ochiva walked back and forth as she continuously observed the children. They were strategically positioned near a breezeway between an upper playground where the children had been playing and the lower playground where the children were playing just before returning inside the building. Their position allowed them full view of all the children in the lower playground. At no time did they observe any incident of concern. (Testimony of Ms. Perry and Ms. Ochiva).

2. At 9:45 a.m., the children, including R.P., a 4-year-old child, went inside to wash up before returning to their next indoor activity. As RP removed his face mask that he had worn while playing, Ms. Ochiva noted that he was washing blood from his chin where she observed a small cut under his chin. She took him over to Ms Perry who asked him what had happened. Somewhat incoherently, RP replied something about falling on the slide and pointed to it. Ms Perry asked him if he was running up the slide and fell. He responded affirmatively. All the slides appear age-appropriate for pre-K children. (Testimony of Ms. Perry; Testimony of Ms. Ochiva; Respondent Exhibits 4 and 5).

3. Ms. Perry and Ms. Ochiva took RP to the officer where a bandage was applied and RP's parents were notified. The facility followed appropriate notification procedure including self-reporting the matter to DECAL. RP's parents later took RP to a physician who closed the laceration with adhesive rather than stitches as reported in some of the exhibits. The only indication of the size of the laceration is testimony from Ms. Perry and Ms. Ochiva. Ms. Perry estimate about an inch; whereas, Ms. Ochiva estimated about one-half inch. (Respondent Exhibits 1 and 2; Testimony of Mr. McDaniel; Testimony of Tasha McDonald; Respondent Exhibits 1, 2, 3, 4, 5 and 6).

Testimony of Ms. Ochiva; and Testimony of Dan McDaniel).

4. On October 21, 2021, DECAL assigned its investigation to Ms. Tasha McDaniel who routinely investigates such matters and is qualified to do so. Ms. McDonald began her investigation on the same date utilizing telephone calls and virtual interviews. She completed her investigation on December 10, 2021. She concluded that the child was going up the wrong way and fell causing injury to the chin at a time when the staff was not aware that an injury had occurred in violation of DECAL Rule 591-1-1-.32(7) regarding Supervision and Watchful Oversight. (Testimony of Tasha McDonald; Respondent Exhibit 7).

5. Mr. McDaniel request an office conference that was held on January 5, 2022, to discuss the December 10, 2021, findings as well as prior adverse actions. Zara Handsford, Complaint Unit Manage was present along with other parties identified. Mr. McDaniel presented two refutations: (1) Discipline DECAL Rule 591-1-1.11 and (2) Supervision and Watchful Oversight DECAL Rule 591-1-1-.32. The refutation regarding Discipline was accepted and the citation was deleted. DECAL declined the refutation regarding Supervision in part because DECAL opined that the two staff members were not circulating the playground such that all playground equipment and the children could be observed. DECAL does not dispute that the ratio of two employees to 19 students exceeded the requisite numerical quota. (Testimony of Zara Handsford; Respondent Exhibits 5, 8 and 9; Testimony of Mr. Dan McDaniel).

6. On March 24, 2022, DECAL issued a Notice of Intent to Impose Enforcement Fines that Mr. McDaniel timely appealed. DECAL seeks \$499.00 for the current alleged high harm violation that is increased by \$299.00 due to a prior rule violation and \$299.00 for multiple high harm violations to a total of \$1,097.00. Appeal time for the two prior violations that affect

the fine sought for the current allegation expired prior to this appeal. (Testimony of Zara Handsford; Respondent Exhibit 11, 12, 13, 14, and 15).

III. Conclusions of Law

1. Subsection (c) of Code Section 20-1A-12 authorizes a number of disciplinary actions against licensees who violate the laws pertaining to child care centers, including public reprimand, suspension, revocation and fines. O.C.G.A. § 20-1A-12(c). The facility is subject to such disciplinary action.

2. Per DECAL Rule 591-1-1-.32 (7), supervision denotes in relevant part the following:

Children shall be supervised at all times appropriate to the individual age, needs and capabilities of each child. . . . “Supervision” means that the appropriate number of Staff members are physically present in the area in the area where the children are being cared for and are providing watchful oversight to the children, volunteers and Students-in-Training. The persons supervising in the child care area must be alert, positioned to maximize their ability to hear and see the children at all times and able to respond promptly to the needs and actions of the children being supervised. . . .


Ga. Comp. R. & Regs. 591-1-1-.32 (7).

3. For the imposition of a civil penalty, DECAL bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21. Petitioner effectively rebutted DECAL’s allegation of a lack of supervision with credible testimony from the two teachers involved that indicated that the two teachers were not stationary and that they were circulating in an optimal position for viewing the last play area and the entirety of the children under their care. What occurred appears to be more of a minor accident that could occur under even the best of such circumstances.

IV. Decision

For the foregoing reasons, DECAL's March 24, 2022, decision to impose a civil penalty on the facility is **REVERSED**.

SO ORDERED, this 29th day of July 2022.



Steven W. Teate
Administrative Law Judge

