

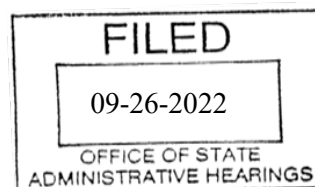
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**HOLDHEIDE EDUCATION, INC., d/b/a  
HOLDHEIDE ACADEMY,  
Petitioner,**

v.

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

**Docket Nos.: 2218761, 2226246, 2305199  
2218761-OSAH-DECAL-CCLC-28-Teate  
2226246-OSAH-DECAL-CCLC-28-Teate  
2305199-OSAH-DECAL-CCLC-28-Teate**



**FINAL DECISION**

**I. Introduction**

Petitioner, Holdheide Education Inc., d/b/a Holdheide Academy (hereinafter “the Center”), appeals three separate revocation actions issued by Respondent, the Department of Early Care and Learning (“DECAL”). The parties filed cross motions for summary determination in the first case (Docket No 2218761), which concerned the first Notice of Revocation issued December 21, 2021. In a Memorandum Opinion and Order issued June 1, 2022, the Court reversed DECAL’s findings of comprehensive background check violations cited during a June 3, 2021 monitoring visit, affirmed comprehensive background check violations found during an October 26, 2021 monitoring visit, and left the determination of the appropriateness of DECAL’s proposed sanction for an evidentiary hearing.

In the interim, DECAL issued a second notice of revocation on May 5, 2022 based on findings of repeated rule violations, and a third notice of revocation on May 12, 2022 after determining that the Center allowed a therapist to be present for care despite not having a satisfactory comprehensive background check on file at the Center. The Center timely appealed

both notices and they were docketed separately as Docket Nos. 2226246 and 2305199,<sup>1</sup> respectively. An evidentiary hearing was held before the undersigned administrative law judge on July 25, 2022 at the Office of State Administrative Hearings (OSAH). Deborah Ausburn, Esq. represented the Center and Kori Woodward-Dickens, Esq. represented DECAL. The parties filed written closing arguments and proposed findings of fact and conclusions of law on September 2, 2022, whereupon the record closed.

Based on the Court's review of the evidentiary record and applicable law, DECAL's findings of violations are **AFFIRMED IN PART** and **REVERSED IN PART** and its proposed sanction is **MODIFIED** as provided below.

## **II. Findings of Fact**

### *The Center*

1. The Center has operated in Woodstock, Georgia, since 2007. (Testimony of Tammy Dorsten).
2. Tammy Dorsten is the owner and director of the Center. (Id.).

### *Prior Adverse Actions*

3. On November 30, 2017, the Center and DECAL entered into a settlement agreement to resolve alleged violations of rules regarding comprehensive background checks for employees of child care learning centers. Pursuant to the settlement agreement, the Center paid a \$2,000.00 fine

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<sup>1</sup> DECAL also issued a Notice of Intent to Impose Enforcement Fine against the Center on May 11, 2022, which the Center appealed on May 23, 2022. The Center's hearing request was referred to the Office of State Administrative Hearings and docketed as 2227361-OSAH-DECAL-CCLC-28-Teate. In an order issued July 22, 2022, the Court consolidated that case with those concerning the notices of revocation issued on December 21, 2021 and May 5, 2022. The case concerning the Notice of Revocation issued May 12, 2022, Docket No. 2305199-OSAH-DECAL-CCLC-28-Teate, was not consolidated. However, at the hearing, the parties introduced evidence concerning the three revocation actions, and the proposed enforcement fine was not adjudicated. Accordingly, the orders issued July 22, 2022 and September 23, 2022 are vacated, and the Court hereby consolidates the cases concerning the three revocation actions: Docket Nos. 2218761-DECAL-CCLC-28-Teate, 2226246-OSAH-DECAL-CCLC-28-Teate, 2305199-OSAH-DECAL-CCLC-28-Teate. This Decision effects disposition of the three revocation actions. The case concerning the enforcement fine, Docket No. 2227361-DECAL-CCLC-28-Teate, remains pending.

and agreed that for the next two years it would have no violations of rules related to criminal records checks.

4. On December 14, 2018, DECAL issued a notice of revocation to the Center, based on violation of the settlement agreement and Rule 38(3)(1), which requires revocation of a license if a center knowingly or intentionally violates provisions relating to criminal records or comprehensive background checks. The Center appealed the 2018 notice of revocation, and a hearing was held at OSAH. In a decision issued August 21, 2019, the administrative law judge found insufficient evidence in the record to prove that the Center had “knowingly and intentionally” violated the rules, and it modified the revocation by reducing it to a monetary penalty of \$1,000.00, representing \$500.00 for each employee whose satisfactory criminal records check was not on file.

*The December 21, 2021 Proposed Revocation*

5. On June 3, 2021, DECAL cited the Center for having a staff member on site without proper criminal records checks. The citation pertained to J [REDACTED] J [REDACTED], a parent, who was teaching a lesson to her child’s class. Ms. Dorsten was present and observing Ms. J [REDACTED]’ interaction with the children. Ms. Dorsten was considering hiring Ms. J [REDACTED], and she characterized the lesson as a “working interview.” Ultimately, Ms. Dorsten did not hire Ms. J [REDACTED]. (Memorandum Opinion and Order on Motion for Summary Determination (hereinafter “MSD Order”)).

6. In connection with the citation of June 3, 2021, Ms. Dorsten was required to view a ten-video series regarding the comprehensive background check rules. She signed an affidavit on July 22, 2021, verifying her completion of the video series. (Testimony of Greg Brown; Respondent’s Exh. 7).

7. The series of ten videos viewed by Ms. Dorsten covers topics including, but not limited to,

why comprehensive background checks are required, who needs a criminal record check, portability, and revocation. (Testimony of Greg Brown).

8. In Unit 2 of the video series, titled “Who is Required to Undergo a Background Check,” the trainer explains that any director, owner, employee, provisional employee, individual with unsupervised access to children, volunteer (if more than once in 90-day period), independent contractor and student in training needs a comprehensive background check. (Respondent’s Exh. 22; Hearing Audio at 17:32). The video emphasized that people with unsupervised access to children must have a comprehensive background check. Examples of people with unsupervised access to children included volunteers, student teachers, consultants and independent contractors, absentee owners, maintenance workers, therapists, community partners and other specialists. (Respondent’s Exh. 22; Hearing Audio at 19:16).

9. Unit 6 of the CBC video training series covered portability requirements and explained that paper backcheck letters were no longer accepted for employees who already have a current satisfactory background check. The trainer explained how to port an individual electronically in the KOALA system and what to do if there were any issues. (Testimony of Greg Brown; Hearing Audio at 35:48; Respondent’s Exh. 22; Hearing Audio at 32:00).

10. On October 26, 2021, DECAL cited the Center for failing to ensure that every employee had a valid and current satisfactory criminal records check on file. This citation concerned Donna Kay Bapst, an independent dance enrichment teacher affiliated with Prodigy Performing Arts. Ms. Bapst began providing enrichment activities to the Center in or around 2019. On or about August 13, 2021, Ms. Bapst completed an employment application for the Center for the position of “floater.” In the blank marked “date available,” she filled in “8-17-21.” She began working in this capacity on an unpaid, as-needed basis. A DECAL consultant, Mr. Twantaye Compton,

observed Ms. Bapst exiting the infant classroom, supervising children on the playground, and teaching afterschool activities. (MSD Order).

11. Ms. Bapst was issued a satisfactory criminal records check in or around January 2019. It was completed for a Kindercare child care location and ported electronically to another Kindercare location. Ms. Dorsten had a hard copy of the satisfactory criminal records check on file; she did not electronically port the information to the Center's account. (Testimony of Tammy Dorsten; MSD Order).

12. Ms. Dorsten watched the series of ten instructional videos again on October 30, 2021. (Testimony of Tammy Dorsten).

13. On December 21, 2021, DECAL issued a Notice of Revocation to the Center for violating DECAL's Rules and Regulations for Child Care Learning Centers, Chapter 591-1-1 of the Official Compilation of Rules and Regulations for the State of Georgia.<sup>2</sup>

14. In the Memorandum Opinion and Order for Summary Determination issued on June 1, 2022, the Court granted the Center's motion for summary determination in part, finding that Ms. J [REDACTED]' presence and activity at the Center on June 3, 2021 was not a violation of DECAL Rules 9(1)(a) and (c). However, the Court concluded that the Center violated Rules 9(1)(a) and (c) for failing to electronically port a copy of Ms. Bapst's comprehensive background check to its account, leaving the determination of whether such violation was knowing or intentional for the evidentiary hearing.

15. At the hearing, Ms. Dorsten testified that Ms. Bapst offered to provide movement classes and assist teachers at the Center during the pandemic, when help was difficult to find. She explained that she thought Rule 9 did not apply to Ms. Bapst because she did not consider her an

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<sup>2</sup> In this Decision, the Rules and Regulations for Child Care Learning Centers shall be cited to as "Rule [number]."

employee; Ms. Bapst received no compensation for her services and worked for a different company. (Testimony of Tammy Dorsten).

*The May 5, 2022 Proposed Revocation*

**A. The November 2021 Site Visit**

16. On November 22, 2021, Rachel Brown, a DECAL Consultant, conducted an in-person Licensing Study and Plan of Improvement Follow-up visit at the Center to follow-up on previous rule violations. Ms. Brown had been the Center's consultant since July 2020. (Testimony of Rachel Brown).

17. During the November 22, 2021 visit, DECAL cited the center for violating Rules 15(3), 14(2), 26(8), and 33(5). (Respondent's Exhibit 4, p. 77). Ms. Dorsten was present during this regulatory visit. (Testimony of Rachel Brown).

18. Ms. Brown determined based on observations and staff statements that the center staff mixed bottles for infants using powdered formula provided by the parents. (Testimony of Rachel Brown; Respondent's Exh. 4, p. 251). While in the infant room, Ms. Brown observed powdered formula and the staff explained that they mixed the bottles when the children needed to eat. (Testimony of Rachel Brown).

19. For the Plan of Improvement, Ms. Dorsten was to train the staff and speak to her new staff about not mixing the bottles on site and inform the parents to either make the bottles when arriving on site or prior to bringing their children to the program. (Testimony of Rachel Brown; Respondent's Exh., p. 85).

20. Based on a review of the Center's records, Ms. Brown determined that one of five staff members did not have certification in first aid and CPR. (Testimony of Rachel Brown; Respondent's Exh. 4, p. 88). When discussing the rule citation and lack of training, Ms. Dorsten

claimed that she was working to complete the training but her preferred vendor for First Aid and CPR was not offering classes due to the pandemic. (Testimony of Rachel Brown).

21. For the Plan of Improvement, the Center was to complete the CPR training for all staff by December 22, 2021 and ensure that there was always a person on staff with current CPR training. (Testimony of Rachel Brown; Respondent's Exh. 4, p. 88).

22. Upon inspecting the Center's playgrounds, Ms. Brown determined that there was 0-1 inches of resilient surface (such as mulch, gravel, or sand) in "fall zones" beneath equipment over five feet in height, specifically swings and climbing walls. This was well below the six inches of resilient surface DECAL rules require for such equipment. (Testimony of Rachel Brown). Ms. Brown measured the depth of resilient surface on the playground with a ruler. Id. She also took photographs documenting the lack of resilient surfaces and the inadequately maintained fall zones. Mats placed under the slides and swings were not flush with the other loose material and pine straw, posing a potential tripping hazard. (Testimony of Rachel Brown; Respondent's Exh. 10, p. 176-79).

23. For the Plan of Improvement, the center was required to add additional resilient surface to the fall zones where needed and check daily, adding resilient surfacing as needed to the maintain adequate resiliency. (Testimony of Rachel Brown; Respondent's Exh. 4, p. 84). Ms. Dorsten alleged that she had been unable to secure mulch from her vendor. (Testimony of Rachel Brown; Testimony of Tammy Dorsten).

24. The Center was previously cited for violating the rule governing resilient surface on June 3, 2021, and October 26, 2021, due to the lack of mulch and it was part of the enforcement fine issued on December 21, 2021. (Respondent's Exh. 17). The Center appealed the enforcement fine, but later dismissed their appeal during summary determination.

25. Based on a review of the Center's records, Ms. Brown determined that two of two applicable staff members did not have ten hours of annual training for 2020. (Testimony of Rachel Brown; Respondent's Exh. 4, p. 88).

26. At the conclusion of the visit, Ms. Brown discussed the citations with Ms. Dorsten. The Center was required to correct the violations and submit a plan of improvement to correct the violations and maintain the corrections. For the Plan of Improvement, the Center was to complete the 10 hours of annual training for staff by December 22, 2021. (Testimony of Rachel Brown; Respondent's Exh. 4, p. 88).

**B. The March 9, 2022 Site Visit**

27. On March 9, 2022, Ms. Brown conducted a Monitoring Visit at the Center to check for continued compliance and correction of the prior rule violations. (Testimony of Rachel Brown; Respondent's Exh. 5, p. 104). Ms. Dorsten was present during the visit and another DECAL Consultant, Chasity Baugh, was also present.

28. During this visit, DECAL cited the center for violating CCLC Rules 15(3), 14(2), 26(8), 26(9), 30(2), and 33(5). (Respondent's Exh. 5, p. 104).

29. Ms. Brown again cited the Center for failing to meet Rule 15(3) based on staff statements that they mixed bottles for infants using powdered formula and filtered water provided by the Center. (Testimony of Rachel Brown; Respondent's Exh. 5, p. 111). Ms. Brown took photographs of the cartons of powdered formula that the staff mixed on site. (Respondent's Exh. 9, p. 174).

30. Based on a review of the Center's records, Ms. Brown found that the Center violated CCLC Rule 14(2) because five of eight staff members did not have certification in first aid and CPR. (Testimony of Rachel Brown; Respondent's Exh. 5, p. 116). Ms. Dorsten again asserted that she had been unable to schedule a CPR/First Aid training with her preferred vendor and she had a



difficult time rescheduling the training.

31. Ms. Brown also cited the Center for violating CCLC Rule 33(5) because a review of staff records indicated that three of three staff members did not have ten hours of annual training for 2021. She explained to Ms. Dorsten that Georgia Fire Safety training does not count towards annual training. (Testimony of Rachel Brown; Respondent's Exh. 5, p. 116).

32. Ms. Brown again cited the Center for violating CCLC Rule 26(8). Upon inspecting the Center's playgrounds, she found there was only 0-1 inches of resilient surface in fall zones beneath the slide, climbing wall, swings, and stairs. (Testimony of Rachel Brown; Respondent's Exh. 5, p. 111).

33. Ms. Brown also observed hazards on the playgrounds, specifically, exposed rocks beneath the slide and steps of the climbing structure, an exposed water sprinkler line in front of the swings, exposed plastic lining between the swings and the climbing structure, and exposed tree roots near the climbing equipment. (Testimony of Rachel Brown, Audio 2:22; Respondent's Exh. 5, p. 111; Respondent's Exh. 9, p. 175).

34. Ms. Brown discussed the citation with Ms. Dorsten, who averred that she had been unable to obtain mulch and that recent storms had prevented her from maintaining the playgrounds. (Testimony of Rachel Brown; Respondent's Exh. 5, page 111).

35. The Center was previously cited for violating CCLC Rule 26(9) on June 3, 2021 and October 26, 2021, and these citations were part of the enforcement fine issued on December 21, 2021. (Respondent's Exh. 17).

36. Ms. Brown inspected the Center's infant cribs, whereupon she discovered mattress pads under the crib sheets. The mattress pads were loose – i.e., not fitted or secured to the cribs – and Ms. Brown opined they could potentially be folded, twisted, or bunched, and thereby pose a

suffocation hazard. Ms. Dorsten explained that they were magnetic mattress pads, which, she claimed, had health benefits for the children. Ms. Brown explained that no items were allowed in the cribs, including the magnetic mattress pads. Reluctantly, Ms. Dorsten agreed to remove them. (Testimony of Rachel Brown).

37. On prior visits, Ms. Brown had discussed the importance of safe sleep with Ms. Dorsten and that there should be tight-fitting crib sheets with no other items in the crib. The Center was previously cited for violating Rule 30(2) on June 3, 2021 and October 26, 2021 and these citations were part of the enforcement fine issued on December 21, 2021. (Respondent's Exh. 17).

### **C. Calculation of the Penalty**

38. On May 5, 2022, DECAL issued a second revocation of the Center's license, this time based on the violation observed by Ms. Brown; namely, the Center's staff's mixing formula on site in violation of Rule 15(3), not having sufficient staff trained in CPR/First Aid in violation of Rule 14(2), having exposed hazards on the playground and failing to have enough resilient surface beneath playground equipment in violation of Rule 26(8), having objects in children's cribs in violation of Rule 30(2), and not having sufficient training for staff in violation of Rule 33(5). Respondent's Exh. 16, pp. 233-36.

39. DECAL calculated the foregoing rule violations pursuant to its enforcement matrix in Rule 38(2). (Testimony of Rachel Brown).

40. Rule 30(2), concerning safe sleeping environments, is a core rule; therefore, its violation ranks as medium severity on the enforcement chart. (Testimony of Rachel Brown; DECAL Indicator Manual, Respondent's Exh. 18, p. 255; Respondent's Exh. 5, pp. 125-27).

41. Rule 26(8), concerning playground surfacing, is also a core rule; the two violations of that rule are each of low severity. (Respondent's Exh. 5, p. 125; Respondent's Exh. 18, p. 254).

42. The number of repeat rule violations that DECAL found, combined with the severity levels, placed Petitioner in category B-IV in the enforcement chart. (Respondent’s Exh. 5, p. 126). Category B-IV authorizes enforcement penalties ranging from fines to license revocation. (Id. at p. 127).

43. After reviewing a letter of refutation and supporting document submitted by the Center, DECAL upheld Ms. Brown’s findings, and issued a notice of revocation to the Center. (Testimony of Marsha Ruiz-Crosby; Respondent’s Exh. 16, p. 231). At the hearing, Marsha Ruiz-Crosby, Northwest Regional Manager, DECAL, explained that because DECAL had already issued a fine and revocation, the progression of the chart required the more serious action of closure due to repeated non-compliance. (Id.).

*The May 12, 2022 Proposed Revocation*

44. On March 31, 2022, Ms. Ruiz-Crosby conducted a complaint investigation follow-up visit at the Center. Ms. Dorsten was present at the Center during this visit. (Testimony of Marsha Ruiz-Crosby; Respondent’s Exh. 6, p. 134).

45. During the visit, Ms. Ruiz-Crosby observed a woman, later identified as April West, working with a one-year-old child in the hallway of the building. Ms. West is a therapist with Babies Can’t Wait, a program administered by the Georgia Department of Public Health. When Ms. Ruiz-Crosby asked Ms. Dorsten whether Ms. West’s comprehensive background check had been ported to the Center, Ms. Dorsten replied, “you got to be kidding me,” and stated that she assumed Ms. West didn’t need a background check because she worked with the state. (Testimony of Marsha Ruiz-Crosby, Respondent’s Exh. 6, p. 134).

46. Because the Center permitted Ms. West to be present at the Center without having first ported her background check to the Center’s account, Ms. Ruiz-Crosby issued a “one-day letter”

to the Center regarding the violation. (Testimony of Marsha Ruiz-Crosby; Respondent's Exh. 13, p. 211).

47. Ms. West is a special instructor/early interventionist with Babies Can't Wait. She coaches families and works directly with children on developmental goals. At the Center, she provided services to one child. She began providing those services in August 2021. From August 2021 to April 2022, she visited the Center 28 times. (Testimony of April West).

48. According to Ms. West, the Center had an open external door and an internal door that was kept locked. The first few times she arrived at the Center, a staff member would greet her at the internal door. Later, she was shown how to open the locked door and she would walk to the classroom unescorted. Initially, she provided services to the child in the classroom, where a teacher was present. Eventually, she began providing services to the child in the hallway outside the classroom. (Testimony of April West).

49. Ms. West undergoes two comprehensive background checks per year; one for DPH and another for DECAL. Child care learning centers are responsible for porting her background check to their individual programs using DECAL's KOALA system. (Testimony of April West; Respondent's Exh. 13, p. 215).

50. Ms. Dorsten ported Ms. West's comprehensive background check to the Center's account during Ms. Ruiz-Crosby's site visit. The porting process was completed in a matter of minutes. (Testimony of April West; Testimony of Tammy Dorsten; Testimony of Marsha Ruiz-Crosby).

51. The Center was cited for violating Rule 9(1)(j) which requires that "only the most recently issued determination letter is eligible for portability and must be ported electronically." (Respondent's Exh. 6, p. 143).

52. As a result of the March 31, 2022 visit, DECAL determined that the Center knowingly or

intentionally allowed an employee to work at the Center without the appropriate comprehensive background check. (Testimony of Marsha Ruiz Crosby; Respondent’s Exh. 16, p. 238).

53. On May 12, 2022, DECAL issued its third Notice of Revocation to the Center. (Testimony of Marsha Ruiz-Crosby; Respondent’s Exh. 16, p. 238).

54. The videos viewed by Ms. Dorsten do not expressly indicate that Babies Can’t Wait personnel must have their background checks ported to a Center’s account. (See Testimony of Greg Brown; Respondent’s Exh. 22).

### **III. Conclusions of Law**

1. DECAL bears the burden of proof in this matter. 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.

2. DECAL is the state agency responsible for regulating licensed child care learning centers in Georgia and promulgating rules that govern such centers. O.C.G.A. §§ 20-1A-3(d)(2), -4, -9, -10.

3. Pursuant to Code Section 20-1A-12, upon violations of the laws, rules, regulations, or formal orders related to the licensing of a program, the Department is authorized to take certain actions against the holder of the license. O.C.G.A. §20-1A-12(c). These actions include everything from public reprimand to suspension, fines, restrictions, and revocation of the license. O.C.G.A. § 20-1A-12(c)(1)-(8).

#### *Comprehensive Background Check Violations*

4. In the present case, DECAL asserts that the Center’s license must be revoked because the Center knowingly or intentionally violated provisions relating to criminal records or comprehensive background checks. Ga. Comp. R. & Regs. 591-1-1-.38(3)(1). (DECAL “shall revoke a License or Permit if a Center knowingly or intentionally violates other provisions relating

to Criminal Records or Comprehensive Background Checks.”). DECAL is also authorized, but not required, to revoke a license if a center “displays a multi-year pattern of failure to correct a Correctable Abuse, Dereliction or Deficiency in the operation or management of a Center within a reasonable time after having received notice from the Department.” Ga. Comp. R. & Regs. 591-1-1-.38(3)(h).

5. As provided in the Memorandum Order, the Center violated Rules 9(1)(a) and (c) by failing to electronically port a copy of Ms. Bapst’s satisfactory comprehensive background check.

6. The Court also concludes that the Center violated Rules 9(1)(j) with respect to Ms. West. Ms. West met the definition of “employee” provided in DECAL’s rules. Ga. Comp. R. & Regs. 591-1-1-.02 (“Employee” means any person . . . who has submitted a Records Check Application and has received a satisfactory Comprehensive Records Check Determination and who . . . cares for, supervises or has unsupervised access to children at the Center [ ]or . . . performs duties for or services that benefit the Center, with or without compensation, which involve personal contact between that person and any child being cared for the by Center . . .”). Therefore, the Center was required to port her background check to its account, which it did not do. See Ga. Comp. R. & Regs. 591-1-1-.09(1)(j).

7. However, from the evidence presented, the Court does not conclude that the Center’s background check rule violations concerning Ms. Bapst and Ms. West background checks were knowing or intentional. Rather, the failures are more readily attributable to Ms. Dorsten’s misapprehension of the rules.

8. With regard to Ms. Bapst, Ms. Dorsten credibly testified that she did not port her background check or ensure that the clearance date of said background check was within the previous 12 months based on her conclusion that Ms. Bapst did not meet the definition of employee

under the rules. This was erroneous, and her misunderstanding of the rules does not excuse her from penalty. But the Court finds insufficient evidence to conclude that Ms. Dorsten *knew* she was required to port Ms. Bapst's current background check to the Center's account and failed to do so, or that she intentionally declined to do so.

9. With regard to Ms. West, the Court concludes that the Center's failure to port her background check was not knowing or intentional. Rather, this lapse was caused by Ms. Dorsten's confusion regarding what the rule required. Her confusion is plausible, though it does not excuse the violation. Though, as discussed above, Ms. West met the regulatory definition of "employee," government employees or contractors do not comport with the common definition of such term. The Center did not retain, employ, direct, or pay Ms. West.

10. The fact that Ms. Dorsten's failed to adhere to DECAL's background checks after having viewed instructional videos does not demand an alternative conclusion. Such evidence may show that Ms. Dorsten *should have known* to port the background checks for Ms. Bapst and Ms. West, but it does not show a knowing or intentional disregard of the background check rule; i.e., that Ms. Dorsten *knew* Ms. Bapst's and Ms. West's background checks needed to be ported to the Center, yet failed or intentionally declined to do so. Further, as is relevant with regard to Ms. West, the videos did not expressly mention Babies Can't Wait service providers or the fact that it was necessary to port their background checks.

11. The Court does not find in these violations a "multi-year pattern of failure to correct a Correctable Abuse, Dereliction or Deficiency in the operation or management of a Center within a reasonable time after having received notice from the Department." See Ga. Comp. R. & Regs. 591-1-1-.38(3)(h). These violations were distinct from one another, involving different circumstances and individuals, and each was corrected within a reasonable amount of time.

12. Accordingly, DECAL is not authorized to revoke the Center’s license as provided in the notices issued on December 21, 2021 and May 12, 2022. But the violations may factor into calculation of the appropriate sanction, as explained in further detail below.

*Violations Observed During the Nov. 22, 2021 and March 9, 2022 Site Visits*

**A. Rule 15(3) – mixing formula on site**

13. Rule 15(3) provides, in pertinent part, “[i]f formula must be provided by the Center, only commercially prepared, ready-to-feed formula shall be used.” Ga. Comp. R. & Regs. 591-1-1-.15(3). The Court concludes that the Center violated this rule, as found by Ms. Brown during her site visits on November 22, 2021 and March 9, 2022. On both occasions, Ms. Brown observed powdered formula at the Center, and staff members reported that they mixed the powdered formula with the Center’s filtered water.

**B. Rule 14(2) – CPR/First Aid Training**

14. Per Rule 14(2), “All Staff who provide direct care to children must obtain certification in first aid and cardiopulmonary resuscitation within the first 90 days of employment.” Ga. Comp. R. & Regs. 591-1-1-.14(2). The Court concludes that the Center violated this rule, as Ms. Brown determined during her site visits on November 22, 2021 and March 9, 2022. It is of no moment that the staff members certifications were merely expired; the rule clearly requires active certifications. Further, the fact that providers of CPR and/or First Aid certification were in short supply has no bearing on whether this rule was, in fact, violated.

**C. Rule 26(8) – Lack of Resilient Surface on Playgrounds**

15. Rule 26(8) requires climbing and swinging equipment to “have a resilient surface beneath the equipment and the fall zone from such equipment must be adequately maintained by the Center to assure continuing resiliency.” Ga. Comp. R. & Regs. 591-1-1-.26(8). The Court concludes that



the Center violated this rule, as determined during site visits on November 22, 2021 and March 9, 2022. It is undisputed that the Center maintained less than six inches of resilient surface beneath equipment and fall zones. Even if the Court accepts the Center's argument that no resilient surface was available, the rule makes no allowance for a Center's alleged inability to obtain resilient surface materials.

**D. Rule 26(9) – Safety and Upkeep of Playgrounds**

16. Rule 26(9) requires playgrounds to “be kept clean [and] free from . . . hazards, such as but not limited to rocks, exposed tree roots and exposed sharp edges of concrete.” Ga. Comp. R. & Regs. 591-1-1-.26(9). The Court concludes that the Center violated this rule as observed by Ms. Brown on March 9, 2022. During the site visit, Ms. Brown observed exposed rocks beneath the slide and steps of the climbing structure, an exposed water sprinkler line in front of the swings, exposed plastic lining between the swings and the climbing structure, and exposed tree roots near the climbing equipment.

**E. Rule 30(2) – Sleeping and Resting Environments for Infants**

17. Rule 30(2) provides, in pertinent part, “Staff shall not place objects or allow objects to be placed in or on the crib with an infant such as but not limited to toys, pillows, quilts, comforters, bumper pads, sheepskins, stuffed toys, or other soft items.” The Court concludes that the Center violated this rule. Ms. Brown observed a magnetic mattress pad in a crib, and Ms. Dorsten admitted to using magnetic mattress pads in the infant's cribs for health-related purposes. The Court finds persuasive Ms. Brown's testimony to the effect that the mattress pads were pliable. Consequently, the object is analogous to those expressly prohibited by the rule.

**F. Rule 33(5) – Annual Training**

18. Rule 33(5) requires supervisory and caregiver personnel to attend ten (10) clock hours of

diverse training. It is undisputed that staff members to whom this rule applied did not have the requisite training as of the dates of Ms. Brown's site visits. Therefore, the Court concludes that the Center was in violation of this rule.

#### *Calculation of the Appropriate Penalty*

19. In the majority of cases, DECAL calculates the appropriate penalty for rule violations in accordance with a Compliance and Enforcement Chart. Ga. Comp. R. & Regs. 591-1-1-.38(2). Centers receive points based on the frequency and severity of citations. Id.

#### **A. The December 21, 2021 Proposed Revocation**

20. The revocation described in the notice issued December 21, 2021 is predicated on the cited background check violations concerning Ms. Jenkins and Ms. Bapst. As provided in the Court's Memorandum Order, the Center violated Rule 9 only with respect to Ms. Bapst. Further, as discussed *supra*, the violation was not knowing or intentional. Accordingly, the proposed sanction is **MODIFIED**. As the violation regarding Ms. Jenkins was not upheld, the Court considers it to be the first of its kind in the span of twelve months. Based on the Compliance and Enforcement Chart, the appropriate penalty is a Formal Notice Letter or Office Conference.

#### **B. The May 5, 2022 Proposed Revocation**

Having reviewed documentation of site visits to the Center, as well as DECAL's Indicator Manual, the Court concludes that revocation was not the appropriate penalty in response to the violations observed during the November 22, 2021 and March 9, 2022 site visits. Accordingly, the proposed sanction is **MODIFIED** to a fine. The appropriate penalty was a fine for each rule violation observed. Based on the severity of each violation, the Court calculates the appropriate fine to be \$1,650.00.<sup>3</sup> See Ga. Comp. R. & Regs. 591-1-1-.38(1)(f).

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<sup>3</sup> The Court concludes the Center violated Rules 14(2) and 33(5) for each staff member found to be deficient in training.

**C. The May 12, 2022 Proposed Revocation**

The Court also concludes that revocation was not the appropriate penalty to address the background check violation concerning Ms. West. Rather, considering the facility's violation history, the severity of the violation, and other mitigating factors, the appropriate penalty was a fine for each violation. The Court considers each day Ms. West was at the Center without an appropriate background check on file to be a separate violation. DECAL demonstrated that Ms. West was at the facility 28 times. Accordingly, the Court calculates the fine at \$2,800.00. DECAL's proposed sanction is so **MODIFIED**.

**IV. Decision**

In accordance with the foregoing Findings of Fact and Conclusions of Law, DECAL's action is **AFFIRMED IN PART** and **REVERSED IN PART**. As provided above, DECAL's proposed sanction is **MODIFIED**; it is authorized to (1) Commence an Office Visit and/or issue a Formal Notice Letter regarding the Center's failure obtain a current background check for Ms. Bapst; (2) Institute a fine of \$1,650.00 based on the violations observed during the November 22, 2021 and March 9, 2022 site visits; and (3) Institute a fine of \$2,800.00 for the facility's failure to port the background check of Ms. West.

**SO ORDERED**, this 26th day of September, 2022.

  
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**Steven W. Teate**  
**Administrative Law Judge**

