

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

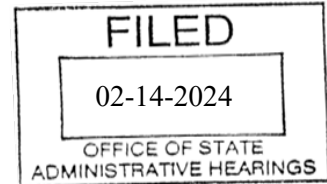
**KAT'S LITTLE ANGELS LLC,  
Petitioner,**

v.

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

**Docket No.: 2411701  
2411701-OSAH-DECAL-CCLC-25-  
Fry**

**Agency Reference No.: 52607**



**FINAL DECISION**

**INTRODUCTION**

Petitioner, Kat’s Little Angels, LLC (“Kat’s” or “Petitioner”), appealed the Georgia Department of Early Care and Learning’s (“DECAL” or “Respondent”) decision to revoke Petitioner’s license. A hearing before the undersigned administrative law judge at Richmond Hill, Georgia Municipal Court was conducted on December 11, 2023. Petitioner was represented by Mark Adelman, Esq., and Laurail Williams, Esq. represented DECAL. For the reasons set forth more fully below in the Findings of Fact and Conclusions of Law, Respondent’s decision to revoke Petitioner’s license is **REVERSED**.

**FINDINGS OF FACT**

1.

Petitioner owns a licensed child care learning center located at 1140 Shannon Ave., Savannah, GA 31406 ("Center"). On July 31, 2023, DECAL served its Notice of Revocation ("Notice") to the Center for violating the DECAL 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 ("Rules"). Specifically, the Center violated Rule 591-1-1-.09(1)(l)(1) which requires that “The Center must immediately require that every Director, Employee and Provisional Employee

submit to the Comprehensive Records Check Determination process at the following times:

1. When the Center knows or reasonably should know that a Director, Employee or Provisional Employee has been arrested or charged for any covered Crime.” The Center was also alleged to have violated Rule 591-1-1-.38(3)(1), which requires DECAL to revoke the license of any Center which knowingly and intentionally violates other provisions relating to criminal records checks. As to these rule violations, the Notice states that “During a Complaint Investigation Follow Up on June 21, 2023, it was determined that based on an investigation that the center was aware that a staff member was arrested on May 24, 2023, and the center did not recheck the staff member’s criminal record history.”

Finally, the Center was alleged to have violated 591-1-1-.29(4) which reads:

Criminal Record. Within twenty-four (24) hours or on the next work day that the Center knows or reasonably should know that there has been an arrest or change in the Comprehensive Records Check Determination of any Director or Employee or the Fingerprint Records Check Determination for any Provisional Employee, the Director or designated person-in-charge shall report or cause to be reported to the Department the incident and the name of any such Director, Employee or Provisional Employee. (Testimony of Greg Brown, DECAL Investigator and Supervisor of Background Checks in the Law Department, Respondents Exhibit R-13, R-15, R-16,

As to this rule violation, the Notice states that “During a Complaint Investigation Follow Up on June 21, 2023, it was determined that based on an investigation that the center was aware that an employee was arrested on May 24, 2023, and failed to report the arrest to the Department as required.”

2.

Respondent called Meagan Cook as a witness. She used to have a child at the Center and recalled that on May 24, 2023 when she went to drop off here child, she observed that there were at least six policemen running through the building with guns drawn. They ultimately left with someone who was wearing a staff shirt. She testified that she asked what had happened, she did

not get a satisfactory answer. Despite not receiving a satisfactory answer, she nevertheless left her child at the facility. She moved her child to another facility approximately three weeks later. On cross-examination she testified that the facility reeked of feces. She also testified that she did not see Ms. Blige at the facility on the morning of May 24, 2023.

3.

Respondent called Kathy Blige as an adverse witness for cross examination. Ms. Blige testified she has been the Director/Owner of Kat's since 2015. They moved to the current facility in 2020. She testified that she is familiar with DECAL's Rules and Regulations, and she has known Stacey Foston, the agency representative, since 2015. She testified that she had reached out to Ms. Foston before when she had questions about criminal background checks. *See* Respondent's Exhibits R-11 and R-12 are examples of these inquiries. She testified that she understood from talking to other employees about the incident that occurred on May 24, 2023, that Mr. Blige (no relation) was simply observed talking to police. No one told her that he had been arrested.

4.

Respondent called Stacey Foston as a witness. She has been a child care consultant for DECAL for nine years and ten months. She testified and the Child Care Services Contact Sheet (Respondent's R-3) that during a complaint follow up call on June 12, 2023 with Ms. Meagan Cook about an intake concerning ratios and another for supervision, Ms. Cook advised her that she observed a police presence at the Center when she went to drop off her daughter and that a man was arrested.<sup>1</sup> Ms. Cook stated to Ms. Foston that she tried to get information about the incident but the staff would not tell her anything. She also stated she had sent an open records request to the police department for the arrest record for the individual who was arrested at the Center on May 24, 2023. At the time of that

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<sup>1</sup> This description is substantially at odds with Ms. Cook's direct testimony that at least six officers were running around the premises with guns drawn. Based on the Court's observation of Ms. Cook, the testimony of Ms. Foston and R-1 and the testimony of Officer Jay Jennifer of the Savannah Police Department, the Court concludes that Ms. Cook's testimony lacked credibility and was motivated by a grudge or bias.

conversation on June 12, 2023, Ms. Cook had not received the arrest report. Based on R-3, on June 13, 2023, Ms. Cook told Ms. Foston that she received the report on June 13, 2024. Ms. Cook sent the arrest report to Ms. Foston on June 14, 2023. Exhibit R-3 shows that the intake was updated on June 14, 2023 to include the criminal record check allegation. Ms. Foston did a follow up complaint visit to the Center on June 21, 2023. She testified that Ms. Blige told her that she was not at the facility when the police were there. Ms. Foston testified that Ms. Blige told her that she learned about the arrest on the afternoon of the arrest. When questioned on cross examination whether she was sure about Ms. Blige's response and whether there was a possibility she misunderstood the response, Ms. Foston stated that there was "no possibility." The notes Ms. Foston entered on June 21, 2023 further read as follows: "[Ms. Blige] stated she didn't know exactly what he was arrested for, but she thought is was threatening someone or something like that." The consultant asked Ms. Blige when Joseph Blige returned to work. Ms. Blige stated he returned the next day. She said, "he came back that next day and that's why I didn't think it was a big deal." (R-3, p 4 of 8). Ms. Foston Testified that the other people at the Center that Ms. Foston interviewed did not have knowledge of the arrest. This is reflected in her Contact Sheet notes from June 21 and 29, 2023. Ms. Foston's notes indicate that although she received the arrest report for Mr. Bilge on June 14, 2023, she did not visit the Center until June 21, 2023 and did not contact her supervisor until that same day to learn that Mr. Bilge needed to leave. The entry on the Contact Sheet for June 13, 2023 states that Ms. Foston spoke with Ms. Cook about reporting the arrest incident to DECAL since she had received the arrest report. Ms. Cook reported that she called DECAL and that the representative "checked Joseph Blige's background status and said that since he had a satisfactory background check, on the day he was hired there was nothing they could do." (R-3, p 2 of 8).

5.

Although Petitioner was able to undermine some of Ms. Foston's testimony such as her conclusion in Exhibit R-8, which states it was based on "statements and observations," when she later

conceded on cross examination that it was not based on any observations. While Ms. Foston used quotes in some places and did not do so in other places, this distinction did little to undermine her testimony. Ms. Foston's demeanor and manner of testifying indicated that she was testifying as well as she could from memory and that she and Ms. Blige had a positive working relationship such that there was no bias on Ms. Foston's part against Ms. Blige or the Center.

6.

Ms. Keisha McNeil, DECAL Regional Coordinator testified that she had no firsthand knowledge of Petitioner's case. She stated that evidence of knowledge can come from many sources and that DECAL is not required to prove actual knowledge, but proof that the person should reasonably have known is sufficient. She stated that if there is a knowing and intentional violation DECAL does revoke. She testified that she was aware of the consent agreements that were tendered for admission (Petitioner's Exhibits P-1 through P-5) and in each case, the infraction was corrected when the facility obtained a satisfactory background check for the subject(s) in question. She stated that if the facility cannot correct the problem, DECAL revokes the license. She offered no written reference for this "policy." Although the underlying facts of each case are different and are not of record in the settlement documents, Exhibits P-1 through P-7 are admitted for the limited purpose of showing that Respondent has the authority under O.C.G.A. § 20-1A-12(e) to settle disputed cases despite the mandatory revocation language in Ga. Comp. R. and Regs. 591-1-1-.38(3)(k) and .38(3)(l) at issue here. That settlement authority extends to cases where DECAL has concluded and alleged that the center in question "knowingly and intentionally violated the criminal record check requirements contained in Rule 591-1-1-.09." (*See, e.g.*, P-2, p 2; P-3, p 2; P-4, p 2; P-5, p 2). There is nothing in the rules that distinguishes a knowing and intentional violation that could be corrected from one that cannot be corrected. In either case the rules require DECAL to revoke the license. *See* Ga. Comp. R. & Regs. 591-1-1-.38(3)(l). Ms.

McNeil's testimony confirms that DECAL exercises its discretion under O.C.G.A. § 20-1A-12(e) to settle cases even though there has been a knowing and intentional violation of the criminal background check.

7.

Petitioner called as a witness Ms. Jay Johnson a police officer with the Savannah Police Department whose four-year-old has been going to Kat's for over a year. Since she works different shifts, the fact that Kat's is a 24-hour center is very important to her. She testified that as a police officer, she would not send her child just anywhere. When she moved to Savannah, she called DECAL and DECAL recommended Kat's. It is the only 24-hour center she is aware of. When questioned concerning the cleanliness of the facility, she said that it never smells bad. It smells of cleaning products and food cooking. She stated on cross that the incident that occurred does not give her a concern. She also was not concerned that Joseph Blige was there for another month. She stated that Ms. Kathy would never put the children at risk.

8.

Petitioner's aunt Maggie Walker Zeigler who works at the Center, testified that she is a retired schoolteacher and principal. She was a special education teacher who focused on children with autism. She stated that she would not be involved with the Center if it didn't provide quality services and was well run. She stated that she did not have knowledge of the arrest at the time. She also testified that she understood that Ms. Blige did not know about the arrest until she was notified by DECAL when they came to do the complaint follow up visit. She testified that when she arrived at work on May 24, 2023, she saw two police cars and two police officers talking with Mr. Blige. She testified that she had no idea of the arrest until Ms. Blige told her of the Notice of Revocation from DECAL and was shocked when Ms. Blige told her. She testified that she did not suspect something based on what she observed of Mr. Blige's interaction with the officers.

9.

On direct examination, Ms. Blige testified that she always wanted to operate a day care center and a 24-hour day-care center in particular. She said that she tries to do everything she is supposed to do. She found out that Mr. Blige had been arrested when the DECAL consultant came to speak with her. She stated that she had no suspicion of Mr. Blige. She testified that she did not think anything of his being questioned by police since he returned the next morning. She stated that she was surprised when she heard Ms. Foston's testimony and what was in the contact sheet concerning her knowledge of the arrest on the day it occurred. She denied that she knew of the arrest on May 24, 2023 and denied stating that to Ms. Foston. She testified that she learned of the arrest when Ms. Foston came to interview her on June 21, 2023. She testified that her statements in R-7 do not imply that she was aware of the arrest on May 24, 2023. She testified that the writeup on the second page of R-7 in paragraph 1 and the statement in paragraph 1 on the first page of R-7 was not an admission of her being aware on May 24, 2023 that Joseph Blige was arrested that same day.<sup>2</sup> Ms. Blige testified that her son has had trouble with the law and has a criminal record. She testified that she has been strict about keeping him off the property.

10.

The parties submitted Petitioner's and Respondent's Joint Stipulations – AMENDED, which read as follows:

- a. Stipulation #1: Based on Petitioner's and DECAL's recent query, Kat's Little Angel's appears to be the Sole provider of 24-hour service in Chatham County. DECAL's public provider search system [<https://families.dec.al.ga.gov>] reflects only three 24-hour care providers in Chatham County (within 50 miles, which encompasses all of the county), which includes KAT'S LITTLE ANGELS, as

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<sup>2</sup> The Court agrees that the statements in R-7 fail to show that Ms. Blige was aware on May 24, 2023, that Joseph Blige had been arrested on that same day. The statement on page 1 of R-7 merely suggests that because of Joseph Blige's interaction with police on May 24, 2023, and his return the following day, she did not believe that she needed to do a background check. The statement that is written on the second page, which was written by the consultant, is written in a form that suggests nothing about Ms. Blige's knowledge of the arrest.

well as TUMBLING TODDLERS LEARNING CENTER and RUDETTE E SANDS (d.b.a. of C AND B LEARNING CENTER). The programs self-report their operating hours to DECAL's system and they have the ability to change their operating hours at any time through their DECAL Koala account. A program might limit their operating hours, but not amend their operating hours in the system.

- b. Stipulation #2: All contents of Police Report titled Threat to Injure Per Savannah Police Department, with incident date of May 24, 2023, location 1140 Shannon Ave Savannah, GA.
- c. Stipulation #3: The Agency rejects any application of O.C.G.A. Sec. 50-13-9.1 in this case (arguendo from Petitioner's perspective) with regards to waiving revocation under Chapter 591-1-1-.38 subsection (3)(1). DECAL's basis for rejecting the petition for hardship is found in Rule 591-1-1-.38(k) states that DECAL shall revoke a License or Permit if a Center knows or should reasonably know that any actual or potential Director, Employee (including Independent Contractors, Students-in-Training, and Volunteers) or Provisional Employee has a Criminal Record, an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination and allows such individual to either reside at the Center or be present at the Center while any Child is present for care AND Rule 591-1-1-.38(l) states that DECAL shall revoke a License or Permit if a Center knowingly or intentionally violates other provisions relating to Criminal Records or Comprehensive Background Checks.
- d. Stipulation #4: Petitioner's Affidavits from the following individuals (Erica McKennie, Tiffany Arkwright, Patrice Clarke, Brenda Weitman, Keziah Green, Tanishia Johnson, Vanessa Vardy) shall be entered into evidence by Petitioner with an acknowledgement that: (1) none of the affiants speak to knowledge of the incident/circumstance that lead to the revocation and (2) none of the affiants speak to having knowledge and understanding of the DECAL rules/regulations for enforcement of adverse actions.

11.

Petitioner submitted Petitioner's Exhibits P-13, through P-19 referenced in Stipulation #4 above. These affidavits, which were admitted subject to the reservations listed, include strong endorsements of the Center and Ms. Blige across many childcare areas. They are all positive and many highlight the need for 24-hour facilities such as Kat's. Exhibit P-13 is an affidavit signed by Brenda Weitman who is currently the Executive Director Georgia Child Care Resources, a non-profit agency which has been approved by [DECAL] to be a Child and Adult Care Food Program



Sponsor. As someone familiar with Ms. Blige, with her qualifications, and with her performance under Georgia's Quality Rating and Improvement System, she stated that Kat's is rated as two stars out of a possible three, which means the facility meets or exceeds standards. The Court takes judicial notice of the vital role that child care services play in the ability of single working parents and dual working parents to work and provide for their families.

12.

There was no evidence presented that shows that prior to Joseph Blige's arrest on May 24, 2023, the Center was not in compliance with the criminal background check requirements. That is, Joseph Blige received a satisfactory background check when he was hired before he was allowed to be around the children; the background check had been completed after January 1, 2019 and was within the last five years, and the Center had not received an unsatisfactory criminal background check and then allowed Mr. Blige to continue to work at the Center. There was no evidence presented that shows or suggests that prior to the arrest, the Center did not have on file and available for inspection a copy of Mr. Blige's employment history and a satisfactory comprehensive records check determination. The evidence of record, however, in fact, shows compliance with these requirements. The Contact Sheet entry on June 13, 2023 shows that DECAL had evidence that a satisfactory background check had been obtained before he became an employee. Notably, the DECAL worker handling Ms. Cook's call said there was nothing DECAL could do with the arrest report. It required an email with the arrest report attached from Ms. Foston the following day to the intake manager with a copy regional manager, coordinator and director asking them to review for a rule violation to get the intake revised to add the criminal record check allegation. (R-3).

The evidence shows that the events occurred in the following sequence:

DATE	EVENT
05/24/2023	Mr. Blige threatened fire department personnel and a police officer with physical violence in the vicinity of Dunwoody Rd. and Edgewater Rd in Savannah, GA. This is approximately 1.5 miles from the Center which is located at 1140 Shannon Ave, Savannah, GA. (Police Report, R-2).
05/24/2023	He was later arrested at the Center. He was charged with a felony for terroristic threats in violation of O.C.G.A.§ 16-11-37. Mr. Blige resisted arrest and fled the scene. He was also charged two misdemeanor counts of obstruction and fleeing in violation of O.C.G.A.§ 16-10-24. (R-2).
05/24/2023	During the hearing, Ms. Zeigler testified that when she arrived for work on 5/24, she observed Mr. Blige being questioned by two police officers. There were two police cars present. (Findings ¶ 8).
05/24/2023	Over the course of several days (6/21/2023 to 6/29/2023 during which time she interviewed Center employees Keona Anderson, Betty Scriven and Stephanie Anderson. Neither Ms. Scriven, nor Stephanie Anderson knew anything about the arrest. The Contact Sheet entry for Keona Anderson states that she was at the facility but did not see him get arrested. The entry is unclear when she learned of the arrest. There is no evidence of the slightest suggestion that any of the three individuals interviewed discussed the arrest with Ms. Blige. (Contact Sheet, R-3).
05/24/2023	Ms. Blige testified at the hearing that she was not at the Center at the time Mr. Blige was arrested. (Findings ¶ 9). This is consistent with the Contact Sheet. (R-3). Ms. Blige testified that none of the employees told her of the arrest. (Findings ¶ 3).
05/24/2023	Ms. Foston testified at the hearing that Ms. Blige learned of the arrest following her return to the Center on May 24, 2023. That testimony is consistent with Ms. Foston’s entry in the Contact Sheet from when she interviewed Ms. Blige on June 21, 2023. Ms. Blige denies this and states she learned of the arrest when Ms. Foston interviewed her on June 21, 2023. (R-3; Findings ¶¶ 4, 9).
05/25/2023	Mr. Blige returns to work on the morning of the next day and there is no evidence that he said anything about the incident or told anyone that he had been arrested. (R-3, Findings ¶¶ 3-4, 9).
06/08/2023	Complaint intake date for complaint by Ms. Megan Cook. (R-3).

06/12/2023	Ms. Foston contacts Ms. Cook and conducts an interview during which Ms. Cook described the events concerning Mr. Blige. Ms. Foston wrote that Ms. Cook said there was a police presence and that a man was arrested. Ms. Cook advised Ms. Foston that she had made an open records request for the arrest report. (R-3).
06/13/2023	Ms. Cook advised Ms. Foston that she had received the arrest report. Ms. Foston told Ms. Cook to call the intake person who received the previous complaint about the report. (R-3).
06/14/2023	Ms. Cook advised Ms. Foston that since Mr. Blige had a satisfactory record check when he started employment, there was nothing DECAL could do. (R-3). Ms. Cook forwards the arrest report to Ms. Foston. (R-3).
06/14/2023	Ms. Foston sends an email with the arrest report attached to the intake manager with a copy to the regional manager, coordinator and director asking them to review for a rule violation. (R-3).
06/15/2023	Ms. Foston received an email from the intake consultant that the intake had been revised to add the criminal record check allegation. (R-3).
06/16/2023	Ms. Foston receives the revised intake. (R-3).
06/21/2023	Ms. Foston visits the Center to conduct a complaint investigation. (R-3, Findings ¶ 4).
06/21/2023	Ms. Foston interviews Ms. Blige about the incident and writes in her Contact Sheet notes that Ms. Blige was not at the Center when the incident occurred, but that she learned about the arrest later that day. She quotes Ms. Blige after that Ms. Blige was required to do background check after Mr. Blige was arrested as saying, "I didn't do that recheck." Ms. Foston also quoted her as saying, "he came back the next day and that's why I didn't think it was a big deal" (R-3)
06/21/2023	Ms. Foston interviewed Keona Anderson who said she was working in another part of the building and did not see Mr. Blige get arrested. (R-3)
06/21/2023	Ms. Foston interviewed Betty Scriven who said she had no knowledge of the allegations. (R-3)
06/21/2023	Ms. Foston calls Regional Manager and gets instructions to have Mr. Blige leave the premises. Mr. Blige left the premises when directed and did not return. (R-3)
06/21/2023	Written statement form submitted by Ms. Blige re allegations and incidents. (R-7; Findings ¶ 9).
06/21/2023	One day letter issued citing Joseph Blige as not having a valid and current satisfactory Comprehensive Records Check Determination based only on the arrest. (R-4) There is no evidence that a valid and current

	Comprehensive Record Check Determination was on file because the regulation cited only in part states in full: (c) A Center must ensure that every Employee has a valid and current satisfactory Comprehensive Records Check Determination on file prior to being present at the Center while any child is present for care or before an individual age 17 or older resides in the Center. <i>The Comprehensive Records Check Determination must have a Records Check Clearance Date that is no older than the preceding 12 months of the hire date; provided, ...</i> Ga. Comp. R. & Regs. 591-1-1-.09(1)(c) (emphasis added). The term valid and current is defined by the clause in italics. There is no evidence that the Comprehensive Records Check Determination did not have a Records Check Clearance Date that is no older than the preceding 12 months of the hire date.
06/23/2023	Pending Records Check determination letter stating that DECAL is unable to make a determination so Mr. Blige cannot be present on the premises. (R-5)
06/29/2023	Ms. Foston interviewed Stephanie Anderson, an employee at the Center who stated that she had no knowledge of the arrest incident. (R-3).
06/30/2023	Complaint closure documents. Documents are dated 6/30/2023 and were signed by Ms. Foston and Ms. Blige on 7/6/23 and 7/7/23, respectively. (R-8). The only allegation that was substantiated was the one relating to Mr. Blige's arrest and the failure to do a background check. DECAL cited Ga. Comp. R. & Regs. 591-1-1-.09(1)(1)(1) and .29(4). The other two allegations were not substantiated. The Compliance and Enforcement Determination Worksheet (also dated 6/30/23 and signed by Ms. Foston and Ms. Blige on 7/6/23 and 7/7/23, respectively) is part of R-8. Ms. Foston scored the violation as a Class A (low harm) Violation Level 1, which placed the violation in enforcement box A1, for a score of zero points.
06/30/2023	History Grid for Time Period 6/30/2022 through 6/30/2023. (R-9). The grid shows the current complaint closure follow up scored in enforcement box A1 for zero points. There is one other enforcement box entry for a licensing study on June 7, 2023. That grid entry was also scored A1 for zero points.
07/31/2023	Notice of Revocation. (R-1)

**CONCLUSIONS OF LAW**

1.

DECAL bears the burden of proof in this matter. Ga. Comp R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of the evidence, Ga. Comp R. & Regs. r. 616-1-2-.21.

2.

Subpart (a) of O.C.G.A. § 20-1A-39 reads in part as follows:<sup>3</sup>

- i. Before a person may become an employee of any early care and education program after that early care and education program has received a license or commission, that early care and education program shall require that person to obtain a comprehensive records check determination that is satisfactory.  
  
... [inapplicable provisions concerning submission of evidence of a satisfactory check within the previous 12 months]
- ii. The licensed or commissioned early care and education program shall maintain documentation in the employee's personnel file, which is available to the department upon request, which reflects that a comprehensive records check determination that is satisfactory was received before the employee is eligible to be present at a facility while children are present for care or to reside in a facility.
- iii. If the comprehensive records check determination for any potential employee reveals a criminal record of any kind, such potential employee shall be ineligible to be present at a facility while children are present for care or to reside in a facility until such potential employee has either obtained a comprehensive records check determination that is satisfactory or has had the unsatisfactory comprehensive records check determination reversed in accordance with Code Section 20-1A-43, notwithstanding Code Section 20-1A-45.
- iv. If the comprehensive records check determination is unsatisfactory, the licensed or commissioned early care and education program shall, after receiving notification of such unsatisfactory determination, take such immediate steps as are necessary so that such person is no longer present at the facility while children are present for care and no longer resides in the facility.
- v. The department shall revoke the license or commission of an early care and education program if the early care and education program fails to comply with the requirements of this Code section. The time frames set forth in this subsection shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33.

Subpart (b) of O.C.G.A. § 20-1A-39 reads in part as follows:

Effective January 1, 2019, every employee and director of any licensed or commissioned early care and education program shall undergo additional comprehensive records check determinations such that the time between such

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<sup>3</sup> Subpart (a) is long, and the Court used the small roman numerals to break it down for ease of reference.

additional comprehensive records check determinations and that employee's or director's previous comprehensive records check determination shall not exceed five years ... The early care and education program shall maintain documentation in the appropriate personnel file, which is available to the department immediately upon request, ... The department shall revoke the license or commission of an early care and education program if the early care and education program fails to comply with the requirements of this Code section.

Subpart (e) of O.C.G.A. § 20-1A-39 reads in part as follows:

No licensed or commissioned early care and education program may allow any person to be present at a facility while children are present for care or to reside in a facility as a director or an employee unless there is on file in the early care and education program an employment history and a satisfactory comprehensive records check determination ... The department shall revoke the license or commission of any early care and education program if the early care and education program fails to comply with the requirements of this Code section.

Respondent only generally cited to the revocation provisions of "O.C.G.A. § 20-1A-1, et seq.," but did not cite to these specific provisions or to any other specific provisions of the Georgia Code as grounds for revocation. These code sections concern specific violations that require revocation.

3.

Subpart (a) concerns (i) obtaining a satisfactory comprehensive records check determination before the person becomes an employee and is allowed to be present at a facility while children are present for care or to reside in a facility, (ii) maintaining documentation in the employee's personnel file, which is available to the department upon request, which reflects that a comprehensive records check determination that is satisfactory was received before the employee is eligible to be present, and (iii) excluding anyone from being present if the comprehensive records check determination reveals a criminal record of any kind or is unsatisfactory. DECAL is required to revoke the license of a facility that violates these provisions. Based on the evidence presented in this case, the Center did not violate any of these provisions. *There was no evidence presented*

*to show that* (i) the Center failed to obtain a satisfactory comprehensive records check determination before Mr. Blige was employed and allowed to be at the Center, (ii) the Center failed to maintain proper documentation of the satisfactory comprehensive records check or that it was unavailable for review upon request, or (iii) the Center obtained a comprehensive records check determination that revealed that Mr. Blige had a criminal record of any kind or had obtained an unsatisfactory comprehensive records check determination, and thereafter did not exclude Mr. Blige from the Center. While O.C.G.A. § 20-1A-39(a) list certain violations for which DECAL is required to revoke a center's license, none of the ones under subpart (a) apply based on the evidence of record in this case.

The distinction in subpart (a) between the clauses “[i]f the comprehensive records check determination for any potential employee reveals a criminal record of any kind, such potential employee shall be ineligible to be present at a facility” and “[i]f the comprehensive records check determination is unsatisfactory, the licensed or commissioned early care and education program shall, after receiving notification,” is significant. In the first instance, evidence of any criminal record (a defined term under O.C.G.A. § 20-1A-30(4)) revealed *by the comprehensive records check* renders the person ineligible to be at the facility. In the second instance, it is the unsatisfactory determination *on the comprehensive records check* that triggers the obligation to take steps to ensure the person is not present.

4.

Subpart (b) of O.C.G.A. § 20-1A-39 concerns a requirement that as of January 1, 2019, Mr. Blige was required to “undergo an additional comprehensive records check determinations such that the time between such additional comprehensive records check determinations and that employee's or director's previous comprehensive records check determination shall not exceed

five years.” *There was no evidence presented to show* that the Center failed to abide by this requirement. Accordingly, the grounds for revocation under subpart (b) do not apply to this case based on the evidence of record.

5.

Subpart (e) of O.C.G.A. § 20-1A-39 concerns the requirement that the Center have on file and available for inspection, Mr. Blige’s employment history and a satisfactory comprehensive records check determination. *There was no evidence presented to show* that these documents were not in his file. Accordingly, the grounds for revocation under subpart (e) do not apply to this case based on the evidence of record.

6.

Notably, there is not a provision that says that based on an arrest report that shows an arrest for a crime (as defined) that if a comprehensive records check determination were to be conducted, it would likely be unsatisfactory, and the person is not excluded from the facility based on the mere possibility of an unsatisfactory finding, the facility’s license shall be revoked. Every one of these revocation provisions requires that a comprehensive records check be conducted before a condition subsequent is triggered. The General Assembly could have drafted these provisions so that the exclusion from premises was triggered by an arrest report for a crime any, enumerated or not. It did not do so. Here, Mr. Blige’s comprehensive records check was still in a pending status on June 23, 2023. Since there had been no comprehensive records check determination made, the revocation requirements under O.C.G.A. § 20-1A-39, which are triggered by the results of a determination, were not yet triggered because the determination had not yet been made. DECAL nevertheless notified Petitioner that due to the *pending* status of his comprehensive records check, Mr. Blige cannot be present on the premises. She was notified of this requirement verbally and in



writing on June 21, 2023. The evidence shows that he left the premises when instructed to do so on June 21, 2023 and did not return.

7.

In addition to the general passing reference to O.C.G.A. § 20-1A-1, et seq., in the July 31, 2023 revocation letter (R-1), DECAL cites the following regulations:

Ga. Comp. R. and Regs. 591-1-1-.09(1)(l), which provides as follows:

Recheck Required. The Center must immediately require that every Director, Employee and Provisional Employee submit to the Comprehensive Records Check Determination process at the following times:

1. When the Center knows or reasonably should know that a Director, Employee or Provisional Employee has been arrested or charged for any covered Crime; ...

and

Ga. Comp. R. and Regs. 591-1-1-.38(3)(l) which provides as follows:

The Department shall revoke a License or Permit if a Center knowingly or intentionally violates other provisions relating to Criminal Records or Comprehensive Background Checks.

The allegation as to the violation of these regulations in the revocation notice reads as follows:

During a Complaint Investigation Follow Up on June 21, 2023, it was determined that the center was aware that a staff member was arrested on May 24, 2023, the center did not recheck the staff member's criminal record history.

To prevail on its claim under these provisions, Respondent first had to show by a preponderance of the evidence that the recheck obligation was triggered because the Center knew or reasonably should have known that an employee (Mr. Blige) was "arrested or charged for *any covered Crime.*" (emphasis added).

Pursuant to Ga. Comp. R. and Regs. 591-1-1-.02(h),<sup>4</sup>

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<sup>4</sup> These definitions come directly from O.C.G.A. § 20-1A-30(3) and 30(4)

"Crime" means:

1. Any felony pursuant to O.C.G.A. § 20-1A-30 and in accordance with 42 U.S.C. § 9858f(c)(1)(E);
2. A violation of O.C.G.A. § 16-5-23, relating to simple battery, where the victim is a minor;
3. A violation of O.C.G.A. § 16-5-23.1, relating to battery, where the victim is a minor;
4. A violation of O.C.G.A. § 16-21-1, relating to contributing to the delinquency of a minor;
5. A violation of O.C.G.A. § 16-6-1et seq. relating to sexual offenses;
6. A violation of O.C.G.A. § 16-5-29, relating to battery of an unborn child;
7. A violation of O.C.G.A. § 16-5-60, relating to reckless conduct causing harm when the victim is a minor;
8. A violation of O.C.G.A. § 16-5-70, relating to cruelty to children;
9. A violation of O.C.G.A. § 16-12-1.1, relating to child care facility operators being prohibited from employing or allowing to reside or be domiciled persons with certain past criminal violations;
10. A violation of O.C.G.A. §§ 16-12-100, 16-12-100.1, 16-12-100.2, 16-12-100.3, relating to obscenity and related offenses where the victim is a minor;
11. A violation of O.C.G.A. § 40-6-391, relating to endangering a child while driving under the influence of alcohol or drugs;
12. A violation of O.C.G.A. § 19-7-5, relating to a failing to report if mandated to do so by law;
13. Child pornography, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
14. Abuse of, endangerment of, or sexual assault against a child by an adult, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
15. Any other violent misdemeanor against a child by an adult, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
16. A violation of O.C.G.A. § 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph;  
or
17. Any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

Pursuant to Ga. Comp. R. and Regs. 591-1-1-.02(i),

"Criminal Record" means:

1. Conviction of a crime; or
2. Arrest, charge, and sentencing for a crime where:
  - i. A plea of nolo contendere was entered to the charge; or
  - ii. First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division

- shall not apply to a violation of O.C.G.A. § 16-13-1et seq., relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of O.C.G.A. § 16-13-1et seq. if such violation or offense constituted only simple possession; or
- iii. Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of O.C.G.A. § 16-13-1et seq. relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or
  3. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to O.C.G.A. § 17-3-1 et. seq.

8.

Ms. Blige and Ms. Foston's testimony and Ms. Foston's notes in the Contact Sheet (R-3) contradict each other as to whether Ms. Blige knew that Mr. Blige had been arrested on May 24, 2023. Both witnesses testified credibly. Ms. Foston's relatively contemporaneous notes in the Contact Sheet lend additional credibility to her testimony. The fact that it is undisputed that Ms. Blige was not at the Center the morning of the arrest and that none of the staff members interviewed by Ms. Foston made a statement that they had knowledge of the arrest on the day of the arrest or that they discussed the day's events with Ms. Blige the day of or after, lends credibility to Ms. Blige's testimony. Finally, recognizing that Ms. Zeigler is Ms. Blige's aunt and the possibility of bias, the Court nevertheless found Ms. Zeigler's testimony credible and persuasive. She testified that she did not learn of the arrest until Ms. Blige told her on the day of the investigation follow up on June 21, 2023 and told her that she just learned of it then as well. Ms. Blige testified that she was aware that Mr. Blige had spoken to police, that he was not at the Center when she returned to the Center on May 24, 2023, but returned to work the next morning, provides additional credible

testimony that she did not think anything serious had occurred. This information is also reflected in the Contact Sheet (R-3).

9.

Accordingly, the Court concludes that considering all the evidence, the evidence of whether Ms. Blige knew of the arrest on the day of the arrest is in static balance with the evidence that she did not know. Respondent, therefore, failed to carry the burden of proof on that point. Respondent's burden, however, did not end with simply showing that the Center knew or reasonably should have known of an arrest. The regulation requires that the center knew or reasonably should have known that the arrest was for a "covered Crime." In this instance, the crimes listed on the arrest report (R-2) do not fall in the category of any of the specifically enumerated crimes listed in Ga. Comp. R. and Regs. 591-1-1-.02(h)(2)-(17). One of the arrest charges on R-2 qualifies under Ga. Comp. R. and Regs. 591-1-1-.02(h)(1) because it is a felony, and the specific nature of the crime does not matter as long as it is a felony. Thus, to prevail on this allegation, DECAL had to present evidence that the Center knew or reasonably should have know that Mr. Blige was arrested for a felony. Respondent presented no evidence to show that the Center knew or reasonably should have known that Mr. Blige was arrested for a felony. Ms. Zeigler saw Mr. Blige talking to police officers when she arrived, and he was not in custody. Mr. Blige returned the next morning leading Ms. Blige to believe it was no big deal. Accordingly, even if the evidence of the Center's knowledge of an arrest tipped slightly in favor Respondent, the allegation fails because there is no evidence to show that the Center knew or reasonably should have known the arrest was based in part on a felony charge.

10.

Had Respondent showed by a preponderance of the evidence that the Center knew or reasonably should have known about the felony arrest, which it failed to do, under Ga. Comp. R. and Regs. 591-1-1-.38(3)(l), Respondent next was required to show that the violation of Ga. Comp. R. and Regs. 591-1-1-.09(1)(l) was done knowingly or intentionally. Respondent failed to show a knowing or intentional violation for the reasons set forth above. Additionally, Petitioner testified that she did not know that a criminal check needed to be done if a person is arrested. This comment is memorialized in R-7. For the reasons set forth above, the recheck requirement is not triggered by any arrest, it is triggered by an arrest for a covered Crime. Additionally, Petitioner could not have knowingly or intentionally failed to require a new background check unless Respondent showed Petitioner knew it was required, i.e., that she knew of the felony arrest and knew that following a felony arrest, the Center was required to perform a new background check. The evidence failed to show that.

11.

DECAL had a copy of the arrest report starting on June 14, 2023. A DECAL representative was noted as saying to Ms. Cook that since Mr. Blige had a satisfactory check when he was hired there was nothing they could do. (R-3). Ms. Foston notified the intake coordinator and various management level personnel at DECAL about the incident and included the arrest report. No one thought to take immediate action to initiate a new background check or to notify the Center that a new background check was required. That did not get started until June 21, 2023, and it required a call from Ms. Foston to the regional manager (Melissa Herndon), for someone at DECAL to make the decision to raise the issue about Mr. Blige's presence at the facility. Despite knowledge of Mr. Blige's felony arrest as evidenced by possession of the arrest report, DECAL waited a week

with that knowledge before initiating any action to conduct a new background investigation or notify the Center that it needed to initiate one. Respondent failed to show by a preponderance of the evidence that the Center knowingly or intentionally failed require a new background check of Mr. Blige.

12.

DECAL also cites Ga. Comp. R. and Regs. 591-1-1-.29(4) in the revocation letter as grounds for revocation. That section reads as follow:

(4) Criminal Record. Within twenty-four (24) hours or on the next work day that the Center knows or reasonably should know that there has been an arrest or change in the Comprehensive Records Check Determination of any Director or Employee or the Fingerprint Records Check Determination for any Provisional Employee, the Director or designated person-in-charge shall report or cause to be reported to the Department the incident and the name of any such Director, Employee or Provisional Employee.

The citation to this section in the revocation letter excludes the subsection title “Criminal Record,” which blurs the definition of Criminal Record and the use of the word “arrest” in this section. Criminal Record is a defined term which includes an arrest (as defined in Ga. Comp. R. and Regs. 591-1-1-.02(i)(3)) for a crime (as defined in Ga. Comp. R. and Regs. 591-1-1-.02(h)). For the reasons set forth above, the evidence failed to show that the Center knew or reasonably should have know of the arrest, or that the Center knew or reasonably should have known that the arrest was for a crime within the meaning of Ga. Comp. R. and Regs. 591-1-1-.02(h) and (i). As a result, Respondent failed to show by a preponderance of the evidence that the Center violated the 24-hour reporting requirement. This provision again highlights DECAL’s failure to make timely use of the information in its possession by waiting seven days to do anything with the actual knowledge that Mr. Blige had been arrested for a felony and that such required that a new background check be completed.

13.

Similarly, Respondent then had to show the violation of Ga. Comp. R. and Regs. 591-1-1-.29(4) was done knowingly or intentionally to establish grounds for revocation under Comp. R. and Regs. 591-1-1-.09(1)(l). Respondent failed to show a knowing or intentional violation for the reasons set forth above. Petitioner could not have knowingly or intentionally failed to report the arrest within 24 hours unless Respondent showed Petitioner knew it was required, i.e., that she knew of the felony arrest and knew that following a felony arrest, she was required to report it within 24 hours. The evidence failed to show that.

14.

Under normal circumstances the failure by DECAL to cite Ga. Comp. R. and Regs. 591-1-1-.38(3)(k) in the revocation letter, absent subsequent amendment, would preclude consideration of that allegation for failure to provide adequate notice. Since it is cited in the Amended Stipulations, the Court concludes that Petitioner had an adequate opportunity to prepare so the allegation may be considered. *See Schaefer v. Clark*, 112 Ga. App. 806, 808 (1965) (citations omitted).

The key to pleading in the administrative process is adequate opportunity to prepare. When an original notice or pleading is inadequate, it is normally supplemented by informal communication, by formal amendment, by a bill of particulars, by prehearing conferences, or by ample continuances at the hearing. And the question on review is not the adequacy of the original notice or pleading, but is the fairness of the whole procedure.

15.

Ga. Comp. R. and Regs. 591-1-1-.38(3)(k) reads as follows:

(k) The Department shall revoke a License or Permit if a Center knows or should reasonably know that any actual or potential Director, Employee (including Independent Contractors, Students-in-Training, and Volunteers) or Provisional Employee has a Criminal Record, an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination

and allows such individual to either reside at the Center or be present at the Center while any Child is present for care.

For reasons that are largely set forth above, Respondent failed to show by a preponderance of the evidence that the Center violated this provision because the Respondent failed to show by a preponderance of the evidence that the Center knew or reasonably should have known that Mr. Blige had a Criminal Record, i.e., that he had been arrested for a felony or for one of the enumerated offenses in Ga. Comp. R. and Regs. 591-1-1-.02(h). Since a Fingerprint Records Check Determination or an Comprehensive Records Check Determination had not been completed, there is no evidence to show that the Center knew or should have known that something that has not occurred was unsatisfactory.

16.

Respondent failed to prove by a preponderance of the evidence that Petitioner was in violation of the criminal background check requirements. The evidence showed, however, that the Center serves a vital function in the region as the only 24-hour Center located in Chatham County and one of only three whose service areas includes Chatham County. The evidence also showed that the Center was well-liked by several parents whose children receive care at the Center. With the exception of Ms. Cook, whose testimony the Court found to be not credible, Respondent introduced nothing to the contrary of any import. While the Center has been cited for violations in the past (*See* R-9), there have been only two between June 30, 2022 and June 30, 2023, including this one. Both were scored in Enforcement Box A1 and given zero points by the DECAL consultant performing the complaint investigations. Enforcement Box A1 is the minor corner of the matrix in the Compliance and Enforcement Chart. (R-8; Ga. Comp. R. and Regs. 591-1-1-.38(2). Under the circumstances, considering all the factors in Ga. Comp. R. and Regs. 591-1-1-



.38(1), the Court finds that having failed to carry the burden of proof, the sanction of revocation is improper and must be reversed.

In light of the Court's decision, Petitioner's request for a variance under O.C.G.A. § 50-13-9.1, appears to be largely unnecessary. However, since Mr. Blige's presence on the premises was promptly cured once the Center was advised by DECAL on May 21, 2023 that he needed to leave, and he has not returned, there is no ongoing violation. In essence, the violation was "fixed." Further, given that DECAL had the arrest record for a week and initially told Ms. Cook that there was nothing DECAL could do, indicates that navigating the requirements for criminal background checks is as difficult for DECAL as it was for the Center. Finally, even after the arrest record was brought to the attention of DECAL management by Ms. Foston on May 14, 2023, DECAL did nothing for a week. It required a call from Ms. Forston to the regional manager for DECAL on May 21, 2023 to take steps to ensure that Mr. Blige left the premises. He left and he hasn't returned. While a variance is not needed here, the Court concludes that facts support the grant of a variance under O.C.G.A. § 50-13-9.1.

### DECISION

As noted above, Respondent failed to meet its burden to prove by a preponderance of the evidence, that Petitioner violated the criminal background check requirements in the Georgia Code and the DECAL's rules and regulations such that Petitioner's license should be revoked. Accordingly, Respondent's decision to revoke Petitioner's license is **REVERSED**.

**SO ORDERED**, this 14th day of February, 2024.

  
**John Fry**  
**Administrative Law Judge**

