

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. V-09/17-474
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Appeal of)
)

INTRODUCTION

Petitioners appeal the revocation of their foster home license by the Department for Children and Families ("Department"). The following facts are adduced from an evidentiary hearing held on March 9, 2018, as well as documents submitted by both parties.

FINDINGS OF FACT

1. Petitioners held a foster home license during the events at issue and pursuant to that license were responsible for the care of two foster children. Petitioners have had a foster home license since 2015.

2. On June 22, 2017, the Department - through its Residential Licensing and Special Investigations Unit - initiated what is termed a "regulatory investigation" of the household based on a variety of reported concerns. It should be emphasized that the reports leading to the "regulatory investigation" did not directly lead to the Department's

proposed license revocation, but rather the decision was based in the events following the initiation of the investigation.

3. On July 7, 2017, petitioners were contacted by a Department social worker regarding the concerns that had been reported and to meet with them regarding such.

4. Following this, on the same date, one of the petitioners (the foster mother) contacted several Department staff by email. In her email, she stated that:

I have left 2 phone messages [with two different Department employees] about an investigation into me for some sort of struggle with the [local district] office. I am sure that this has to do with the time [a Department social worker] decided to go off on me because [a third person] left the room. [We] have done nothing wrong and will not subject ourselves to being treated this way. As much as we love the boys and want to keep provide [sic] the love and stability that we have been doing, we cannot be constantly put on the defensive for something we have not don't [sic]. We will need the boys removed today. It's a tragic [sic] that dcf files false claims against good people that want nothing more than to help and love children.

5. The foster mother subsequently spoke with two district office staff by phone, on the same date. Both of these District staff - the Resource Coordinator and the District Director for the office - testified credibly at hearing about this phone call.

6. During the call, the foster mother reiterated her objections to the regulatory investigation and that if the investigation continued - what one witness recalled her characterizing as "the inquisition" - the two foster children (ages 7 and 4) would need to be removed immediately from the petitioners' home.

7. Department staff attempted to convince petitioners not to have the two children removed from their home, and if they were to continue with this plan, that it not be done immediately, to lessen the impact on the children. However, petitioners insisted that children needed to be removed immediately, and so that occurred on the same day, July 7, 2017.

8. Later that day, the foster mother wrote another email to several Department employees involved in the children's services and placement, stating that:

I hope you are happy. . .Because you lied about what really happened the kids are now on to another placement. And because Easter seals went along with your lie, these children are having to suffer the consequences of your actions. I hope you feel justified. I'm sure this will not effect [sic] your life but you just totally have put these children at a higher risk and adding more trauma to children that have already suffered enough trauma to effect [sic] the rest of their lives.

9. Several days later, on July 11, 2017, petitioners contacted the Department (via email from the foster mother), indicating that they would take the children back into their home, "despite the stress this has caused." While it is not clear that this was a specific request made by petitioners or (instead) a response to the hypothetical possibility that they might be asked to take the children back, the Department indicated that the children would not be placed at their home again.

10. Following further review, the Department determined that petitioners' foster home license should be revoked, based on the following violations of the Vermont Foster Home Regulations:

Regulation 301: Foster parents shall meet the physical, emotional, developmental and educational needs of each foster child in accordance with the child's case plan.

Regulation 201.5: Applicants and licensees shall exhibit sound judgment.

Regulation 103.3: Applicants and licensees shall cooperate fully with any licensing investigation.

11. Without dispute, the children's case plan included having a "safe, stable and nurturing environment. . . ." Testimony at hearing also established, to the extent there was or can be any dispute, that immediate and abrupt placement changes were unhealthy and emotionally distressing

for the two children. This is effectively described by petitioners in the foster mother's second July 7, 2017 email (quoted above), although in that email they place blame for the disruption on the Department.

12. While acknowledging the potential distress of immediate removal of the children from their home, petitioners disagree with the characterization of their actions as "leveraging" placement of the children to prevent the regulatory investigation from moving forward or as having been motivated by "spite." They indicate that they were trying to communicate to the Department that maintaining the placement of the children and continuing with the investigation at the same time would place too much stress on them and make the placement bad for the children (it is recognized that one of the petitioners was dealing with a serious health issue, and there were other health issues in their family which was causing additional stress). Petitioners testified that they cared deeply about the two foster children and had expected them to be returned to their home.

13. Petitioners also believe that the Department's decision is based on prior negative history between them and certain district office staff and/or an unfair and negative

perception of them in general which led the Department to initiate the investigation and make a finding against them; however, there is no evidence that any prior history played a material, if any, role in the Department's decision, and certainly no evidence of a hidden agenda to revoke petitioners' license regardless of the allegations.

14. The Department provided credible testimony that it exercises discretion when deciding whether to revoke a license if a violation of the regulations is established, and further that a violation involving a risk of physical or emotional harm to a child, and/or abrupt changes in placement, is a situation generally warranting revocation.¹

ORDER

The Department's decision is affirmed.

REASONS

The Department's decision is reviewed de novo. As this concerns a licensing termination (as opposed to the denial of an application), the Department bears the burden of establishing the grounds for termination. In addition, the

¹ Petitioners introduced letters of reference and a home evaluation into evidence; while there was no objection to the hearing officer's consideration of this information, it is not relevant to the events or decision at issue.

Board has consistently held that the Department, standing *in loco parentis* of the children in its custody, is entitled to a high degree of deference and discretion in matters of foster home licensure. See Fair Hearing No. T-01/08-13.

The Department has adopted regulations governing foster home licenses pursuant to 33 V.S.A. § 306. See Licensing Regulations for Foster Homes in Vermont (Adopted in 1992 and amended from time to time) ("Licensing Regulations"). Under these regulations, "[a] license may be denied or revoked if the applicant or licensee fails to meet any licensing regulations." Licensing Regulations, § 037. The Licensing Regulations include all of those cited by the Department in its decision:

Regulation 301: Foster parents shall meet the physical, emotional, developmental and educational needs of each foster child in accordance with the child's case plan.

Regulation 201.5: Applicants and licensees shall exhibit sound judgment.

Regulation 103.3: Applicants and licensees shall cooperate fully with any licensing investigation.

Licensing Regulations, §§ 301, 201.5, & 103.3.

The evidence establishes that petitioners did not cooperate in the regulatory investigation, as required whether or not they believed that investigation to be fair. Even accepting their explanation for demanding the immediate

removal of the children from their home, the evidence further establishes that this action was inconsistent with the emotional needs of the children and their case plan. Finally, while recognizing that petitioners were experiencing stress themselves in the process, there is no sound explanation for refusing the possibility of transitioning the children out of their home (as opposed to an abrupt removal), which would have at least lessened the potential impact on the children. As such, the evidence establishes that petitioners were in violation of the above foster home regulations and the Department's revocation was warranted.

The Department's decision is therefore consistent with the applicable rules and must be affirmed by the Board. See 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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