

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-10/14-988  
 )  
Appeal of )

INTRODUCTION

Petitioner appeals several Early Childhood Program licensing violations determined by the Child Development Division of the Department for Children and Families ("Department"). The following facts are adduced from a hearing held January 27, 2015.

FINDINGS OF FACT

1. Petitioner owns and runs a child care program licensed by the state and subject to Vermont's Early Childhood Program regulations.
2. On July 15, 2014, two Department staff - a licensing field specialist and licensing field supervisor - made an unannounced compliance visit to petitioner's program.
3. At the commencement of the visit, the licensing field specialist observed a group of 11 children playing outside on a playground. The youngest child in the group was age five.

4. Two other groups of children were in a fenced-off area with several wading pools. A group of eight children between the ages of three and five years old were supervised by one teacher. A group of four children which included infants were supervised by a second teacher.

5. The licensing field specialist observed the second teacher leave the pool area with two children from her group, leaving the other two children - including an infant - with the first teacher. The group remaining with the first teacher at that point had 10 children, including the infant.

6. The licensing field specialist requested to inspect the program's log of emergency evacuation drills. Petitioner could not produce the log, stating it was in her files at home.

7. The licensing field specialist requested to inspect the program's written aquatic plan. Petitioner could not produce an aquatic plan, providing that she relies on a plan developed by the Red Cross instructor at the pool where the children are taken to swim twice per week.

8. All the children were inside before being served lunch outside. Prior to going outside for lunch, the children washed their hands with soap and water. The children were outside for a short period of time before

actually sitting down and eating lunch. During this time the children had some opportunity for play. They did not wash their hands again prior to eating, but were given sanitary wipes.

9. The licensing field supervisor testified at hearing and confirmed the observations of the licensing field specialist.

10. Based on the compliance visit, petitioner's program was found to be in violation of the following licensing rules:

- a. The requirement of a 1-10 teacher to student ratio for groups including at least one child aged three years old to kindergarten.<sup>1</sup>
- b. The requirement of a 1-4 teacher to student ratio and maximum of eight children for groups including at least one child aged six weeks to 23 months old (classified by the Department as a "serious" violation);<sup>2</sup>
- c. Record-keeping requirements for evacuation drills;

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<sup>1</sup>This was the inclusion of a five-year-old in the group of 11 children on the playground.

<sup>2</sup> This was the inclusion of an infant in the group of 10 children in the wading pool area.

- d. Aquatic plan requirements; and
- e. Hand-washing requirements.<sup>3</sup>

11. Petitioner does not dispute that the group of 11 children, as described above in paragraph three, included one child five years of age.

12. Petitioner disputes the remaining violations. She presented testimony that a child in the age three to kindergarten group was 35 months old and transitioning into that group, and therefore a higher student to teacher ratio should have been applicable. However, this testimony is not relevant to any remaining violation, and appears directed at an allegation withdrawn at hearing.<sup>4</sup>

13. Petitioner disputes that an infant was allowed to be among a group of 10 children, as described above in paragraph five.

14. The licensing field specialist and supervisor emphasize that they counted the children in the group and one

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<sup>3</sup> Some alleged violations, not listed here, were voluntarily reversed by the Department during the "Commissioner's Review" internal appeal process. There was one alleged violation of a teacher to student ratio - that of 1-5 for children aged 24 to 35 months - which the Department agreed to withdraw at hearing, as it was not properly noticed in the determination. These other violations are therefore not at issue here and need not be addressed.

<sup>4</sup> See note 1, *supra*.

of the younger children left behind with the larger group was crawling and clearly an infant.

15. By both the Department's and petitioner's account, petitioner was not present when the compliance visit started and the groups of children were initially observed. She did arrive on site about 30 minutes into the visit.

16. The observations and testimony of the Department's licensing field specialist and supervising field specialist are deemed credible.

ORDER

The Department's decision is affirmed consistent with this recommendation.

REASONS

Petitioner is subject to Early Childhood Program regulations promulgated by the Department. See Early Childhood Program Regulations ([http://dcf.vermont.gov/sites/dcf/files/pdf/cdd/care/Early Childhood Program.pdf](http://dcf.vermont.gov/sites/dcf/files/pdf/cdd/care/Early%20Childhood%20Program.pdf)). Board precedent gives deference to the Department's

interpretation of its early childhood program licensing regulations. See Fair Hearing No. B-02/11-64.<sup>5</sup>

The applicable regulations are:

4. The following group sizes and staff ratios apply to all programs:

Children's Ages	Maximum in Group	Staff:Child
6 weeks-23 months	8	1:4
24-35 months	10	1:5
3 years - kindergarten	20	1:10
1 <sup>st</sup> Grade - 15 years	No Maximum	1:13

5. A group may consist of mixed ages. The age of the youngest child in the group is used to determine the maximum number of children in the group and the proper staff to child ratio for mixed age groups as listed in subsection 4 above.

See Early Childhood Program regulations § I.E.

7. In each room there shall be a posted emergency evacuation plan that clearly shows evacuation routes.

a. A system shall be in place to assure that when an evacuation is complete all children are accounted for at a predetermined safe place.

b. The evacuation plan, including a system to account for all children at a safe place, shall be practiced and recorded at least once a month. Practice drills may be pre-announced.

See Early Childhood Program regulations § V.E.

10. The licensee or the licensee's designee must develop a written aquatic plan addressing supervision and safety of all swimming activities. This plan shall

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<sup>5</sup> This case involves a licensing violation, not a revocation of petitioner's license. A licensing violation is publicly listed by the Department and associated with the offending program.

have a table of contents and plot plan for any swimming facility in use by the program indicating where first aid is to be practiced and where emergency equipment is to be placed at each site. This plan shall be:

- a. reviewed annually;
- b. updated as needed;
- c. known by all staff persons present at the swimming facility;
- d. kept on file at the facility with a copy available where swimming occurs; and
- e. in the case of off-site swimming locations the plan is to be formulated in conjunction with off-site aquatics personnel.

See Early Childhood Program regulations § V.U.

The regulations also require that children wash their hands with soap and warm water before eating. See Early Childhood Program regulations § V.G.4.

The Department established by a preponderance of evidence that petitioner's program was in violation of the above staffing maximums and ratios, evacuation and aquatic plan requirements, and hand-washing requirements during the July 15, 2014 compliance visit. Specifically, the program included a five-year-old in a group of 11 children, exceeding the maximum group size of 10 under the rules; an infant was included in a group of 10 children with one teacher, exceeding the maximum group size and student-teacher ratio under the rules; there was no emergency evacuation log and

aquatic plan on-site as required by the rules; and the program in effect did not comply with hand-washing requirements when the children were served lunch outside. While petitioner disputes these violations, she presented no relevant or credible evidence rebutting the Department's case.

The Department's decision is therefore consistent with the applicable regulations and must be affirmed by the Board.<sup>6</sup> 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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<sup>6</sup> It is reiterated, per notes 3 and 4, *supra*, that the Department's finding of a violation of the 1-5 ratio for children aged 24 to 35 months old is not affirmed and treated as withdrawn by the Department. As such, it should not be listed as a violation by petitioner's program.