

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the Family Child Care
License of Cindy Harstad To Provide
Family Day Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on April 25, 2013, at the Office of Administrative Hearings, 600 North Robert Street, Minnesota. The OAH record closed on April 26, 2013, upon the receipt of the post-hearing submission of Exhibit 1C by the Department.

Grace C. Song, Assistant Hennepin County (the County) Attorney, Minneapolis, Minnesota, appeared at the hearing for the Minnesota Department of Human Services (the Department) and the Hennepin County Human Services and Public Health Department (the County). Daniel G. Prokott, Faegre Baker Daniels LLP, Minneapolis, Minnesota, appeared on behalf of Ms. Cindy Harstad (Licensee).

STATEMENT OF THE ISSUE

Whether the Department of Human Services' order of temporary immediate suspension of Licensee's family day care license should be continued.

The Administrative Law Judge concludes that the temporary suspension should not be continued.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Until a Temporary Immediate Suspension (TIS) of Licensee's license to provide family child care services, she provided such services for children in her home in Brooklyn Park, Minnesota (the home) for 25 years.¹

¹Testimony of Kim Leipold, County Quality Assurance Specialist and Family Child Care License Investigator, and Cindy Harstad; Finding 52.

Licensee's Licensing History

2. Licensee has had no incidents, violations or complaints about her or her child care program in the 25 years she has been providing day care, with the exception of the current matter and two correction orders (CO) that were resolved: one CO was issued on February 2, 2002, for the primary provider not being present; and one CO was issued on August 4, 2011, for being overcapacity by four children.²

Program Conditions

3. Licensee currently has approximately 15 children enrolled in her program.³ However, six school age children attend only on certain days and before and after school.⁴

4. Licensee is aware of and understands the supervision requirements of being within sight or hearing of all children of preschool age and younger so that she is capable of intervening to protect the health and safety of those children.⁵ When out of sight of infants, Licensee keeps a baby monitor with or near her at all times.⁶

5. Licensee's property consists of a residence, a garage, a driveway, and yards both in front of and behind the residence. The residence is 60 feet from the street. The garage is approximately 80 feet from the street. The entire rear yard is fenced with both privacy fencing and chain-link fencing. There is one gate to the back yard that is located in the fence between the residence and the garage. That gate separates the back yard from the driveway and is located 15 feet from the kitchen doors. Children cannot exit or enter the back yard without going through the single gate.⁷

6. Except for one section of the back yard that is located behind the garage, the back yard can be seen from the following vantage points: the kitchen window, the toy room window, from the living room through the kitchen window, a bedroom window, and the back door window.⁸ Beginning in the spring, Licensee and her husband install the "summer fence" between the edge of the garage and the back fence. When the summer fence is utilized, there is no access to the area behind the garage.⁹

7. The front door to the house is locked at all times and is not used for ingress or egress to the home. A dog bed is permanently located in front of the front door inside the home. All access to the residence is through the kitchen doors that

² *Id.*; Ex. 3; Test. of Pamela Palmer, County Quality Assurance Specialist and Family Child Care Licensor.

³ Ex. 1B at 7.

⁴ *Id.*; Ex. 1B at 3.

⁵ Test. of C. Harstad.

⁶ *Id.* Test. of Rick Harstad.

⁷ *Id.*; Ex. 17.

⁸ Test. of C. Harstad and Greg Hrnccirik, County Child Protection Investigator.

⁹ *Id.*

open onto the driveway. The route from the residence to the back yard is from the kitchen doors onto the driveway for 15 feet and through the gate to the back yard.¹⁰

8. The kitchen doors consist of both a solid door and a storm/screen door. None of the preschool or younger children can unlock the main kitchen door when it is locked. Licensee does not believe that the preschool or younger children can unlock the screen door, but is not sure.¹¹

9. Until the afternoon of April 2, 2013, the gate to the backyard was secured by utilizing a dog collar to prevent egress by small children. Although the two five-year-old boys (one of whom is Licensee's son) know how to detach the dog collar and exit the back yard, they also know that they are not to do so. Toddlers are unable to reach the dog collar fastener.¹²

10. Licensee lives in the day care residence with her husband, one adult daughter and one minor child who is her five-year-old son. Licensee and her husband also have two other adult children and six grandchildren.¹³

11. Licensee's adult daughter who lives in the home is a qualified substitute. Licensee's husband and their daughter both took on-line training at the same time for shaken baby syndrome and sudden infant death syndrome.¹⁴ After inquiring about certificates for the training, the County Licensor told licensee that there only had to be a certificate in her licensing file for one of the two. Licensee paid for a certificate for her daughter, but not her husband.¹⁵

12. Licensee's husband is permanently disabled from a 1984 back injury and has been unable to work for the past eight years. Although present in the day care home, Licensee's husband does not and has never provided direct care to day care children or supervised them. For example, although he and Licensee have four children and six grandchildren, Licensee's husband has never changed a diaper in his life.¹⁶

13. The closest Licensee's husband has come to direct care of day care children is when Licensee may occasionally ask him to keep his eyes and ears open and inform her if he sees or hears anything unusual, such as a crying infant.¹⁷

¹⁰ *Id.*

¹¹ Test. of C. Harstad.

¹² Test. C. Harstad; Ex. 4.

¹³ Test. of C. Harstad; Ex. 1B at 7.

¹⁴ Test. of R. Harstad and C. Harstad.

¹⁵ Test. of C. Harstad.

¹⁶ Test. of R. Harstad.

¹⁷ *Id.*; Test. of C. Harstad.

Tuesday, April 2, 2013

14. On April 2, 2013, Licensee was caring for eight children: five preschoolers, one toddler and two infants. Of the eight, one was Licensee's five-year-old son, one was a two-year-old boy, G.T., and one was a 19-month-old toddler, J.F.¹⁸

15. The two infants were sleeping in a back bedroom while Licensee provided lunch to the other children between noon and 1:00 p.m. Before taking the six children out into the back yard to play, Licensee asked her husband to "keep an ear open" for the infants. Licensee's husband was lying down, resting his back, in their bedroom, after having cleaned up in the basement and returned tools to the garage during the morning. The day before, Mr. Harstad had repaired an overhead drainpipe in the basement.¹⁹

16. At approximately 1:00 p.m., Licensee took the six children out into the back yard to play. She had the baby monitor with her. While the children were playing in the yard, Licensee would exit the back yard periodically, every five to ten minutes, latch and lock the gate with a clip, and run into the house to check on the infants.²⁰

17. At approximately 1:30 p.m., Licensee told the children that she was going into the house again to check on the infants. Two three-year-old boys went with her into the house after she locked the gate, leaving the four other children to continue playing in the back yard.²¹

18. Once in the house, Licensee looked in on the infants to discover that one was awake and in need of a diaper change. She brought the infant into the toy room so that she could see the other children that were in the back yard.²²

19. As Licensee was changing the infant, the two five-year-old boys (one being her son) came into the house, announcing their arrival by banging the kitchen door against the wall. She then went into the kitchen to check on the back yard gate and G.T. and J.F. by looking out the kitchen door. As she arrived at the door, both G.T. and J.F. were on the steps leading to the kitchen door.²³

20. After all of the children were in the house, Licensee began preparing for naptime by getting out the bed mats and getting Dixie cups for the four older boys to have drinks of water before they napped. G.T. and J.F. drink from "sippie cups" and she planned to get their cups next as is her usual practice.²⁴

21. While getting the Dixie cups for the older boys, G.T. and J.F. went out the kitchen door, walked down a worn path that the mailman utilizes to a residence four

¹⁸ *Id.*; Ex. 1B at 3, 7.

¹⁹ Ex. 1B at 8; Test. of R. Harstad.

²⁰ Test. of C. Harstad.

²¹ *Id.*; Ex. 1B at 8.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

houses down on the same side of the street. They began playing on that neighbor's front deck, running around the deck and up and down the steps.²⁵

22. The neighbors heard G.T.'s and J.F.'s voices at approximately 1:25 p.m., because they estimated that it was 15 minutes before their daughter arrived to pick up their granddaughter. The neighbors went outside and found the boys, then brought out their granddaughter to play with them. The husband went up and down the block once, looking for someone that might be missing the two boys.²⁶

23. The neighbors' daughter arrived between 1:38 and 1:40 p.m. She told her parents to call the police, which they did. A Brooklyn Park police officer was dispatched to the neighbor's house at 1:42 p.m.²⁷

24. Licensee realized that G.T. and J.F. were not present immediately after the four older boys finished drinking their water.²⁸

25. Licensee then searched for the boys in the house, looking first where they like to hide while playing hide and seek. She asked her husband if he had seen G.T. and J.F. and he replied that he had not. Not finding them in the house, Licensee searched the back yard, both sides of the house, and then the front yard. When in the front yard talking to a postal carrier, Licensee saw a woman coming down the street in a "determined" manner. The woman asked, "Are you missing two little boys?" Licensee said she was and ran down to the neighbors' house, spoke briefly with the couple and their daughter.²⁹

26. The neighbors and their daughter told Licensee that the police had been called. Licensee suggested that they call the police again and tell them to cancel the call since she had found the boys. The neighbors did call and cancelled the call. The police officer received the cancellation before arriving at neighbors' house at 2:00 p.m.³⁰

27. Licensee returned home with the boys before 2:00 p.m.³¹ As Licensee returned into the home with G.T. and J.F. in her arms, Mr. Harstad stated, "There goes the police now," having seen the police car on its way to the neighbors' house.³²

28. Law enforcement spoke briefly with Licensee, who told the officer that the two smaller children had walked out of the backyard.³³

29. Licensee called her County Licenser on April 2, 2013, promptly after returning home with G.T. and J.F. and reported the incident. During that conversation

²⁵ Ex. 1B at 5.

²⁶ Test. of G. Hrncirik; Ex. 1B at 6.

²⁷ Test. of G. Hrncirik; Ex. 1B at 5-6; Ex. 5.

²⁸ Ex. 1B at 8-9; Test. of C. Harstad.

²⁹ *Id.*

³⁰ Ex. 5; Test. of G. Hrncirik.

³¹ *Id.*

³² Test. of R. Harstad.

³³ Ex. 5.

and, due to the excitement of the incident, the Licensee initially reported that G.T. and J.F. had departed directly from the back yard, rather than from the kitchen. Upon further reflection after calming down, Licensee remembered that she had seen them come into the kitchen before they disappeared.³⁴

30. During the April 2, 2013 conversation when Licensee reported the incident, the County Licensors neither asked how many children had escaped nor how long they were gone.³⁵

31. The Licensors requested that Licensee submit an incident report. Licensee mailed the April 3, 2013 incident report to the Licensors on April 6, 2013. The address Licensee used was the address listed on Licensors' business card. The incident report was not returned as undelivered.³⁶

32. During a second conversation with the Licensors at approximately 2:15 p.m. on April 2, 2013, Licensee asked for suggestions and the Licensors suggested that Licensee obtain a padlock for the fence gate.³⁷

33. After April 2, 2013, Licensee called the County Licensors several times and left messages.

34. The Licensors called Licensee back on April 15, 2013, inquiring about the incident report. Although asked by Licensee, the Licensors declined to talk to Licensee about remedial measures and the TIS.³⁸

35. Licensee resent the incident report to the same address and another address found in paperwork in Licensee's files. Neither mailing was returned as undelivered and one was received on April 17, 2013.³⁹

Remedial Measures Taken On and After April 2, 2013

36. As suggested by the Licensors, Licensee's husband immediately went out the afternoon of April 2, 2013 and purchased a padlock for the gate. Licensee now wears one key to the lock on a bracelet worn on her wrist. The other key is located above the gate for use in any emergency situation.⁴⁰

37. Use of the padlock is not a substitute for supervision of children located in the yard. It is utilized only to lock the gate when Licensee is required to retrieve a toy from the driveway or go into the house briefly.⁴¹

³⁴ Test. of C. Harstad and P. Palmer; Exs. 4 and 7.

³⁵ Test. of P. Palmer.

³⁶ *Id.*; Test. of C. Harstad; Exs. 4, 7.

³⁷ Test. of C. Harstad.

³⁸ *Id.*; Test. of P. Palmer.

³⁹ *Id.*; Ex. 7.

⁴⁰ Test. of C. Harstad; Ex. 7.

⁴¹ *Id.*

38. Licensee now locks the main kitchen door at all times when the children are present in the home.⁴²

39. Licensee and her husband have talked about and are considering installing both an alarm and a bell on the kitchen doors.⁴³

Child Protection and Licensing Investigations

40. The County Licensor completed a Complaint Form after receiving Licensee's verbal report on April 2, 2013. The Complaint Report states that all eight children were found four houses away.⁴⁴

41. At 1:19 p.m. on April 3, 2013, County Child Protection (CP) received a report of the April 2, 2013 incident.⁴⁵

42. The CP intake worker concluded that on April 3, 2013, no child was in imminent danger.⁴⁶

43. On April 5, 2013, at 3:14 p.m., a CP investigator was assigned to investigate the incident, pursuant to the allegations that all eight children had been neglected by lack of supervision.⁴⁷

44. County Licensing conducted no separate investigation during the CP investigation.⁴⁸

45. The CP investigator conducted interviews with Licensee, the neighbors and their adult daughter, J.F.'s mother, and G.T's father and mother.⁴⁹

46. The CP investigator told the parents of G.T. and J.F. that their boys could have been gone for as long as 40 to 50 minutes.⁵⁰ Notwithstanding having that information, all three parents told the CP investigator that, while they were concerned about the incident, they consider Licensee an exceptional provider and will return their children to Licensee's care. They also inquired of the CP investigator when they could do so.⁵¹

47. On April 15, 2013, the CP investigator, after consulting with his supervisor, concluded that Licensee was responsible for maltreatment of G.T. and J.F. that was neither serious nor recurring, because of neglect caused by inadequate supervision for

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Ex. 4.

⁴⁵ Ex. 1A at 1.

⁴⁶ *Id.*

⁴⁷ Exs. 1A at 11, 1B at 12; Test. of G. Hrncirik.

⁴⁸ Test. of K. Leipold.

⁴⁹ Test. of G. Hrncirik; Exs 1A, 1B.

⁵⁰ Test. of G. Hrncirik.

⁵¹ *Id.*; Ex. 1B at 1-5; Ex. 1C at 3.

a period of 10 minutes. The CP investigator further concluded that the other six children were not maltreated or neglected by any failure of supervision.⁵² The CP investigator further concluded that ongoing CP services were not needed.⁵³

48. On April 17, 2013, the CP investigator informed Licensee by telephone of the maltreatment finding for neglect.⁵⁴

Opinions of All Parents of All the Day Care Children

49. The parents of the two children that escaped on April 2, 2013, as well as two grandparents of G.T., have no concerns about Licensee's continued care of their children/grandchildren and are anxious to return the children to Licensee's care as soon as possible.⁵⁵ The parents of all of the other 13 children, who had their children in Licensee's care up to the date of the TIS, have no concerns about Licensee's continued care of their children.⁵⁶ All of the day care parents know about the April 2, 2013 incident, and are all anxious to return their children to Licensee's care as soon as possible. These parents have complete confidence in Licensee and do not believe that Licensee presents a risk of harm to their children.⁵⁷

Additional Finding

50. Licensee feels terrible about the incident, accepts full responsibility for it, agrees that the incident should never have occurred, has given her word that it will never happen again, has been fully cooperative throughout the investigation and all proceedings, has considered installing both an alarm and a bell on the kitchen doors; and is willing to take any reasonable steps recommended or required by the County and/or the Department.⁵⁸

Procedural Findings

51. On April 4, 2013, after consultation with the Department, Hennepin County Social Services Department recommended that Ms. Harstad's day care license be immediately suspended, because the County licenser believed that all of the day care children had left the day care residence.⁵⁹

52. The Department issued an order of temporary immediate suspension on April 5, 2013.⁶⁰

⁵² Test. of G. Hrnecirik; Ex. 1A at 2, 3.

⁵³ Ex. 1A at 3.

⁵⁴ Ex. 1B at 1.

⁵⁵ Test. of father of G.T. and mother of J.F.; Ex. 1B at 3-5; Exs. 12a, 12b, 12d, 12e, 12m, 12q, and 13.

⁵⁶ Exs. 12c, 12f – 12L, 12n – 12p, and 16.

⁵⁷ *Id.*

⁵⁸ Test. of K. Leipold and C. Harstad.

⁵⁹ Test. of P. Palmer.

⁶⁰ Ex. 8.

53. On April 6, 2013, Licensee filed a timely appeal of the order of temporary immediate suspension and requested an appeal hearing pursuant to Minn. Stat. § 245A.07, subd. 2a.⁶¹

54. On April 15, 2013, the Department's Division of Licensing filed a Notice of and Order for Hearing scheduling a contested case hearing on April 25, 2013.⁶²

55. On April 17, 2013, the Administrative Law Judge issued a Prehearing Order and Protective Order, which was served upon the parties that day.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

Jurisdiction

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subs. 2 and 2a.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

Purpose of Applicable Laws and Rules

4. The purpose of family child care licensure rules is to establish procedures and standards for licensing family day care and group family day care homes to ensure that minimum levels of care and service are given and the protection, proper care, health, safety, and development of the children are assured.⁶³

Standard That the Commissioner Must Consider for All Licensing Sanctions

5. Minn. Stat. § 245A.07, subd. 1, provides in relevant part:

When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

⁶¹ Ex. 9; Notice and Order for Hearing.

⁶² Notice and Order for Hearing.

⁶³ Minn. R. 9502.0325.

Burden of Proof and Standards for Maintaining a TIS

6. Pursuant to Minn. Stat. § 245A.07, subd. 2., in order to sustain a temporary immediate suspension, the Department must show that reasonable cause exists to believe that Licensee's failure to comply with applicable law or rule poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

7. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.⁶⁴

Rule Alleged to Have Been Violated

8. Supervision is defined to mean:

'Supervision' means a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school age child, it means a caregiver being available for assistance and care so that the child's health and safety is protected.⁶⁵

9. Minn. Stat. 245A.50, Subd. 5 (a), regarding sudden infant death syndrome and shaken baby syndrome training, provides:

License holders must document that before staff persons, caregivers, and helpers assist in the care of infants, they are instructed on the standards in section 245A.1435 and receive training on reducing the risk of sudden infant death syndrome. In addition, license holders must document that before staff persons, caregivers, and helpers assist in the care of infants and children under school age, they receive training on reducing the risk of shaken baby syndrome. The training in this subdivision may be provided as initial training under subdivision 1 or ongoing annual training under subdivision 7.

Violation Not Found

10. The Department failed to establish reasonable cause to believe that Licensee's husband was assisting in the direct care of infants in violation of Minn. Stat. § 245A.50.

⁶⁴ Minn. Stat. § 245A.07, subd. 2.

⁶⁵ Minn. R. 9502.0315, subp. 29a.

Violation Found

11. The Department established reasonable cause to believe that Licensee was neither within sight nor hearing of G.T. and J.F. or capable of intervening to protect their safety on April 2, 2012, from the time they left the home at approximately 1:30 p.m. until the time she retrieved them from the neighbors' home between 1:45 and 1:50 p.m. Therefore Licensee was in violation of Minn. R. 9502.0315, subp. 29a, during that time period.

Findings Regarding Reasonable Cause

12. When a temporary immediate suspension is appealed, the scope of the appeal hearing is limited solely to the issue of whether the temporary immediate suspension "should remain in effect" pending a final order issued on a subsequent licensing sanction. Further, the burden of proof is limited to the Commissioner's demonstration that reasonable cause "exists" to believe that the license holder's actions or failure to comply with applicable law or rule "poses" an imminent risk of harm to the health, safety, or rights to those served by the licensee. Thus, the Administrative Law Judge is required to assess the current situation and not only whether the temporary immediate suspension was properly issued at the time and not just whether reasonable cause existed at the time the temporary immediate suspension was issued.

13. When the Order was issued on April 5, 2013, there was reasonable cause to believe that all of the children in Ms. Harstad's care were at imminent risk of harm.

14. At the hearing, Licensee and the testimony of the Hennepin County Licensor demonstrated that Licensee has taken necessary steps and is willing to take further remedial measures to prevent any future similar situations. No reasonable cause now exists to believe that the children in Licensee's care would be at imminent risk of harm.

15. There is a lack of specific articulable facts or circumstances which would provide the Commissioner with a reasonable suspicion to conclude that Licensee presents a current, imminent risk of harm to the children in her program. The Department has failed to demonstrate that "reasonable cause" now exists to continue the immediate suspension of Ms. Harstad's day care license.

16. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

17. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

The temporary immediate suspension of the family day care license of Cindy Harstad be immediately withdrawn and rescinded.

Dated: May 8, 2012

/s/ M. Kevin Snell

M. KEVIN SNELL

Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICES

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue her final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64941, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Burden of Proof

At this stage, the Commissioner of Human Services is not required to prove that actions by individuals or violations actually occurred. Instead, at this stage, the Commissioner must only prove that there is reasonable cause to believe that the health, safety or rights of persons in the Licensees' care are at imminent risk. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying charges.

Permitted Evidence

During an expedited hearing regarding a temporary immediate suspension, the Commissioner must only present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. The Department and the Administrative Law Judge are entitled to rely on hearsay evidence linking the license holder (or any person present during the hours that children are in care) to an act that puts children at risk of imminent harm. The Administrative Law Judge, at this stage of the process, is not required to assess the relative credibility of conflicting testimony or statements, but rather is to determine whether there is enough evidence to maintain the suspension.

In this case, there was little relevant conflicting testimony or statements regarding the material facts. The principal controversy relates to the duration of time that the two children were away from Licensee's home. The Administrative Law Judge's singular task is to determine whether there is enough evidence to maintain the suspension by applying the applicable burden of proof. Whether they were away 15 minutes or 45 minutes is not relevant to the issue in this proceeding. The facts relevant to this proceeding are those present at the time of the hearing, including the remedial measures taken by the Licensee, together with the opinions of the County and the parents of the day care children.

Necessity of Current "Imminent Risk of Harm"

As serious as the Licensee's lapse in supervision was, and even when the evidence offered by the Commissioner is reviewed in light of the modest "reasonable cause" standard of proof, it is concluded that the evidence is not sufficient to establish reasonable cause to continue the temporary immediate suspension. The Department was entitled to make a preliminary determination, relying on interviews and a law enforcement report, to indicate a serious lapse of supervision based on the children being away from the day care home for at least 15 minutes. This lack of supervision might extend into other contexts or children, thereby posing a continuing risk of harm and requiring an immediate temporary suspension of the child care license.

However, the evidence submitted by Ms. Harstad and the licensor regarding the unique situation then, the normal situation now, the lack of any chronicity of licensing violations, rise to the level where the Administrative Law Judge is satisfied that the April 2, 2013 incident was a one-time event, and that a supervision violation is very unlikely to reoccur.

Opinions of Parents of Licensee's Day Care Children

The evidence from every parent of all of the families whose children are in Licensees' care overwhelmingly shows that Licensee provides excellent child care, exceeding the minimum standards of law and rule. The Minnesota Court of Appeals

has determined that the knowledge and opinions of day care parents is relevant and desirable in TIS cases.⁶⁶

Opinion of the County Licensing Investigator

The opinion of the Licensing investigator that the TIS should continue was given little weight by the ALJ for two principal reasons. She testified that the opinions of the parents in a risk of harm determination are not and cannot be factored into the decision. Her understanding is incorrect and contrary to the law as established in *Strecker* by the Minnesota Court of Appeals. Secondly, apparently unlike other counties in the State, Hennepin County neither assists licensees in developing safety plans nor makes any recommendations to eliminate risks of harm during the period between the issuance of the TIS and any appeal hearing.⁶⁷ The County Licensor testified that those issues are all up to the Licensee to figure out. This position appears contrary to the requirements of applicable law and rule.⁶⁸

Conclusion

Based on the foregoing reasons, there is no imminent risk of harm to the health, safety, or rights of the children served by Ms. Harstad at this time. The Administrative Law Judge respectfully suggests to the Commissioner that the Department no longer has reasonable cause to continue the suspension.

M. K. S.

⁶⁶ *In Re Strecker*, 777 N.W.2d 41, 46 (Minn. App. 2010).

⁶⁷ See, e.g., *In Re Brolsma*, OAH docket no. 61-1800-22637-2, at 4-5.

⁶⁸ Conclusions 4 and 5.