OAH 5-1800-40011

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Lee and Maia Obernolte of the Order of License Revocation License No. 1078755 (Child Foster Care)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Jim Mortenson for a hearing on September 12 and 13, 2024. The Judge convened the hearing in the courtroom at 201 Lake Avenue, Fairmont, Minnesota. The record closed on October 21, 2024, the deadline for filing reply closing briefs.

Amanda Heinrichs, Assistant Martin County Attorney, appeared on behalf of the Department of Human Services (Department). Jennifer L. Thompson, JLT Law & Mediation, appeared on behalf of Lee and Maia Obernolte (Appellants).

The Judge received testimony from: Savannah Longton, Child Protection Case Manager for Faribault and Martin Counties; Debra Mosloski, Child Protection Investigations Supervisor for Faribault and Martin Counties; Jen Nelson, Foster-Care Licensor for Faribault and Martin Counties; Lee Obernolte, Foster Parent; Vern Sprague, Neighbor to foster home; Hailey Obernolte, daughter of Appellants; and Maia Obernolte, Foster Parent. At the hearing, the Department offered eight exhibits.[1] All offered exhibits were received into evidence. Appellants did not offer any exhibits.

STATEMENT OF THE ISSUES

1. Did the Department correctly determine that Appellants committed the three licensing violations set forth in the Order of License Revocation dated April 10, 2024?

2. Did the Department properly revoke Appellant's child foster care license based on the licensing violations?

SUMMARY OF CONCLUSIONS AND RECOMMENDATION

The Department correctly determined that Appellants violated licensing requirements regarding discipline. Appellants did not prove that they complied with discipline requirements. The Department did not substantiate that Appellants did not provide for foster children's basic needs and that age-appropriate activities, exercise, and recreation for the foster children was not provided. Given, however, the serious nature of

[1] Exhibits (Ex.) 1 - 8.

the discipline violations, and because it is reasonably inferred that improper discipline was long-standing and routine, and because Appellants demonstrated they do not appreciate the nature of the improper discipline, the Department demonstrated reasonable cause for revocation of Appellants' child foster care license. Therefore, the Judge recommends the Commissioner **AFFIRM** the revocation.

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

FINDINGS OF FACT

1. Appellants are licensed to provide child foster care services in Fairmont, Minnesota, under license number 1078755.[2] They have been licensed since July 1, 2015.[3]

2. Appellants have three children who came to their partnership with Lee, one who came with Maia, one child they adopted, and one biological child together. All of their children are now adults and the youngest, their biological daughter, currently lives with them.[4] They have fostered many children over the years—they estimate between 20 and 40 children.[5]

3. In December 2018, one of Appellants' adult offspring, who lived with Appellants, pleaded guilty to misdemeanor domestic assault and so was convicted and placed on probation for a year with a stay of adjudication.[6] The offspring violated the terms of probation and on April 9, 2019, was sentenced to a year of supervised probation.[7] Offspring violated terms of probation again in May 2019 (offspring was arrested in Iowa with marijuana and methamphetamine) and the Minnesota court revoked the stay of adjudication on May 21, 2019.[8]

4. The Commissioner had disqualified the offspring but granted a variance on April 15, 2019.[9] The variance was terminated on August 15, 2019, because the offspring did not comply with the variance.[10]

5. The Department and Appellants had a dispute about Appellants' reporting of the adult child's arrest in Iowa and the Department sought to revoke their child foster care license.[11] On November 8, 2019, the Department and Appellants reached a

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[2] Ex. 3; Ex. 6.
[3] Ex. 6 at Order of License Revocation (Aug. 15, 2019).
[4] Testimony (Test.) of Lee Obernolte; Test. of Maia Obernolte; Test. of Hailey Obernolte.
[5] Test. of L. Obernolte; Test. of M. Obernolte. Lee guessed they fostered between 20 and 30 children, Maia guessed it was between 30 and 40. Hailey testified that she had no idea how many foster siblings, but that it was "quite a few."
[6] Ex. 6 at Administrative Supervision Violation Order – Adult (Mar. 18, 2019); Order 46-CR-18-1048 (Dec. 18, 2018); Amended Order 46-CR-18-1048 (Apr. 9, 2019); Recommendation for Revocation (June 26, 2019).
[7] Ex. 6 at Amended Order 46-CR-18-1048; Recommendation for Revocation.
[8] Ex. 6 at Violation Order 46-CR-18-1048 (May 21, 2019).
[9] Ex. 6 at Settlement Agreement (Nov. 8, 2019).
[10] *Id.*
[11] Ex. 6.

settlement of the dispute, which allowed Appellants to keep their license in exchange for specific compliance requirements for the following two years.[12]

6. In late January 2022, three siblings (JK, PK, and MK) were placed with Appellants.[13] As of October 2023, JK was eight years old, PK was seven, and MK was six.[14]

7. The Appellants found the siblings (JK, PK, and MK) more behaviorally challenging than other children Appellants had cared for.[15] The siblings used unusually crude language for children their ages, and would be rough with each other.[16]

8. In June 2022, a toddler, LA, was placed with Appellants.[17] LA was five years old as of September 2024.[18]

9. LA was a favorite foster child of Appellants, who were in the process of adopting LA when LA was removed from their care in October 2023[19]

10. JK, PK, MK, LA, and Appellant's adult daughter, Hailey, lived with Appellants in 2023, until the foster children were removed October 6, 2023.[20]

11. There is no evidence of any of the foster children having a case plan.[21] Appellants nevertheless provided structure for the foster children.[22] The children had schedules appropriate for their ages, which included getting up in the morning, breakfast, school, play, homework, and bedtimes.[23]

12. The foster children could play in their rooms which were located on the upper floor of the home. The also played in the yard. When in the home, they were not permitted out of their rooms without permission from Maia or Lee. When they were

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[12] Ex. 6 at Settlement Agreement at 2-3.
[13] Test. of M. Obernolte.
[14] Test. of Savannah Longton; Ex. 2.
[15] Test. of M. Obernolte; Test. of L. Obernolte; Test. of H. Obernolte; Test. of Vern Sprague. Hailey's and Vern's testimony indicated the siblings behaved like children of their ages. Maia and Lee testified that they were challenging, possibly due to how they were treated by their parents before the siblings were placed with Appellants and when they saw their parents during foster care. The evidence does not support a finding that the siblings' behavior was generally unusual.
[16] Test. of M. Obernolte; Test. of L. Obernolte; Test. of H. Obernolte; Test of V. Sprauge.
[17] Ex. 7; Test. of M. Obernolte. It appears LA had also been placed with Appellants before this time and then removed. The details of that period of placement are not clear, but they are not material to the conclusions in this matter.
[18] Test. of S. Longton.
[19] Test. of S. Longton; Test. of M. Obernolte; Test. of L. Obernolte; Ex. 2; Ex. 4.
[20] Test. of H. Obernotle; Test. of M. Obernolte; Ex. 2.
[21] In late 2021, Maia advised Jen Nelson, foster-care licensor, that no case plans were provided to Maia for any of her foster children. Nelson noted that it is a problem if case plans are not being done for foster children. Ex. 7. Because no case plans for the foster children involved in the present matter were offered into evidence, it is inferred, based on Nelson's notes from 2021, that case plans for the four children did not exist.
[22] Test. of H. Obernotle; Test. of M. Obernolte.
[23] Test. of M. Obernolte.

permitted in the lower-level living area, they were not permitted to bring toys with small pieces because Appellant's grandchild, who was an infant and toddler during that time, was often in the home on the main level.[24]

13. MK would have toileting accidents, so Maia had MK wear pull-ups.[25]

14. The foster children were engaged in sports appropriate for their ages, religious activities, and other family activities, including walking the dogs.[26]

15. The foster children would go camping and fishing with foster family members during the summer.[27]

16. During the time the sibling foster children were with Appellants, Lee would gesture and threaten striking them and call them names, including "fuckers," "bitches," "little shits," "stupid-o," and "bad kids," and yell at them when he was upset with them.[28] Maia did not condone this behavior toward the children or behave in such manner.[29]

17. One of Maia's discipline techniques was to have a misbehaving foster child stand in the corner as a timeout.[30]

18. On September 29, 2023, someone made a child protection report to the county about Lee's behavior toward the siblings.[31] The report was screened out by Child Protection and referred to Licensing.[32]

19. On October 5, 2023, JK, PK, and MK were each interviewed separately at their school by Jen Nelson, Megan Schwab (their case manager), and Allison Keck Hennager (their guardian ad litem).[33] During the interviews, two of the children stated that Lee yells at them and says bad things to them.[34] All three children stated Lee called them specific swear words and other names.[35] Two of the children stated Lee called them bad kids.[36] Two of the children stated they were required to stand in the corner as punishment.[37] All three stated that they needed permission to come downstairs from their bedrooms.[38] All three siblings stated that Lee would tell them that LA was a better child

[24] Test. of H. Obernotle; Test. of M. Obernolte; Test. of V. Sprauge; Ex. 2; Ex. 4.
[25] Test. of M. Obernolte.
[26] Test. of L. Obernolte; Test. of H. Obernotle; Test. of M. Obernolte; Ex. 4.
[27] Test. of H. Obernotle; Test. of L. Obernolte.
[28] Ex. 2; Ex. 4. This evidence is credible because it was separately reported by each of the siblings.
[29] Ex. 2; Ex. 4; Test. of M. Obernolte.
[30] Ex. 2; Ex. 4; Test. of L. Obernolte; Test. of M. Obernolte. Maia testified that a child was only required to face the corner. This was qualified by her statement that a child was never made to stand if it sat down. The Judge finds such oblique wording supports the finding.
[31] Ex. 1; Ex. 4.
[32] Test. of D. Mosloski; Test. of J. Nelson; Ex. 1; Ex. 2; Ex. 4.
[33] Test. of J. Nelson; Ex. 4.
[34] Ex. 2; Test. of J. Nelson.
[35] Ex. 2; Test. of J. Nelson.
[36] Ex. 2; Test. of J. Nelson.
[37] Ex. 2; Test. of J. Nelson.
[38] Ex. 2; Test. of J. Nelson.

than they were.[39] Two of the children stated Lee would threaten hitting them when angry by pounding his fist into his hand.[40]

20. One child stated that Lee grabbed him by his lifejacket while on a boat dock with the others, and that when on the lower-level of the home, they were only permitted to sit at the table and were not permitted to watch television.[41]

21. The Department did not conduct forensic interviews with any of the children.[42]

22. Following consultation between county staff and state department staff, the Department determined to remove all four foster children from Appellants' home.[43] State department staff advised county staff, on October 5, 2023, that there were grounds for revocation of Appellants' license based on what the siblings said during the aforementioned interviews.[44] On October 6, 2023, the four children were picked up from school by county staff and taken to new placements.[45] Appellants have not seen the children since they went to school that day.[46]

23. Nelson and Debra Mosloski (Nelson's supervisor) met with Maia on October 6, 2023, to inform her that all four foster children were being removed from Appellants' care immediately. They discussed the claims the children made with Maia, who denied most of them.[47] Maia admitted she used standing in the corner as punishment for the children, and that the children could be on the main level of the home at the table for doing homework, coloring, and eating.[48]

24. Lee was at work and the county staff did not want to wait for him to be available to meet.[49] In Nelson's five years working with Appellants, she never met with Lee.[50]

25. On October 23, 2023, the County sent the state department a Recommendation of Licensing Action concerning Appellants' child foster care license. The recommendation was revocation.[51]

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[39] Ex. 2; Test. of J. Nelson.
[40] Ex. 2; Test. of J. Nelson.
[41] Ex. 2; Test. of J. Nelson. Because the statements from only one child were not corroborated in anyway, the Judge makes no finding of fact that they occurred, unlike the other statements reflected above.
[42] Test. of D. Mosloski.
[43] Ex. 2; Ex. 4; Test. of S. Longton; Test. of J. Nelson.
[44] Ex. 2; Test. of J. Nelson.
[45] Ex. 2; Ex. 4; Test. of J. Nelson.
[46] Test. M. Obernolte; Test. L. Obernolte; Test. H. Obernolte.
[47] Test. of J. Nelson; Test. of D. Mosloski; Test. of M. Obernolte; Ex. 2; Ex. 4.
[48] Test. of J. Nelson; Test. M. Obernolte.
[49] Test. of L. Obernolte; Test. of M. Obernolte; Test. of J. Nelson; Ex. 2.
[50] Test. of J. Nelson.
[51] Ex. 4.

26. On April 10, 2024, the Department issued the Order of License Revocation.[52]

27. Appellants timely appealed the Order of License Revocation by correspondence dated April 15, 2024, and received by the Department on April 19, 2024.[53]

28. Any finding of fact more appropriately considered a conclusion of law is hereby found as such. Any conclusion of law more properly considered a finding of fact is hereby found as such. Any material fact in the memorandum below, not specifically reflected in these findings of fact, is hereby adopted as a finding of fact.

Based on these findings of fact, the Judge makes the following:

CONCLUSIONS OF LAW

1. The Judge and the Commissioner of Human Services (Commissioner) have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.08 (2024).

2. Appellants received proper and timely notice of the hearing and the Department complied with all procedural requirements of statute and rule.

3. The Commissioner's burden of proof in a contested case appeal of a license revocation is to demonstrate reasonable cause for the revocation.[54] Reasonable cause is demonstrated through the submission of statements, reports, or affidavits to substantiate the allegations that a license holder failed to fully comply with applicable law.[55]

The Three Alleged Licensing Violations

4. Minn. R. 2960.3080, subp. 5(A) (2023) requires license holders to "cooperate with the child's placing agency," including with development and implementation of the child's case plans, and "provide basic services to the child."[56] Pursuant to the regulatory definitions, "basic services" means:

> services provided at the foster home to the foster child that meets the foster child's basic need for food, shelter, clothing, medical and dental care, personal cleanliness, privacy, spiritual and religious practice, safety, and adult supervision.[57]

5. Appellants provided their foster children basic services.

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[52] Order of License Revocation (Apr. 10, 2024).
[53] Notice and Order for Prehearing Conference and Hearing at 3 (May 6, 2024).
[54] Minn. Stat. § 245A.08, subd. 3(a).
[55] *Id.*
[56] Minn. R. 2960.3080, subp. 5 (2023).
[57] Minn. R. 2960.3010, subp. 5 (2023).

6. Minn. R. 2960.3080, subp. 6(B) requires license holders to "encourage age-appropriate activities, exercise, and recreation for the foster child."[58]

7. Appellants encouraged age-appropriate activities, exercise, and recreation for their foster children.

8. Discipline of foster children is regulated through Minn. R. 2960.3080, subp. 8 (2023). That rule provides that children must not be subject to the following forms of discipline:

> (1) corporal punishment, including, but not limited to: rough handling, shoving, ear or hair pulling, shaking, slapping, kicking, biting, pinching, hitting, throwing objects at the child, or spanking;
>
> (2) verbal abuse, including, but not limited to: name calling; derogatory statements about the child or child's family, race, gender, disability, sexual orientation, religion, or culture; or statements intended to shame, threaten, humiliate, or frighten the child;
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> (3) punishment for lapses in toilet habits, including bed wetting or soiling;
>
> (4) withholding of basic needs, including, but not limited to: a nutritious diet, drinking water, clothing, hygiene facilities, normal sleeping conditions, proper lighting, educational services, exercise activities, ventilation and proper temperature, mail, family visits, positive reinforcement, nurturing, or medical care. However, a child who destroys bedding or clothing, or uses these or other items to hurt the child's self or others, may be deprived of such articles according to the child's case plan;
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> (5) assigning work that is dangerous or not consistent with the child's case plan;
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> (6) disciplining one child for the unrelated behavior or action of another, except for the imposition of restrictions on the child's peer group as part of a recognized treatment program;
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> (7) restrictions on a child's communications beyond the restrictions specified in the child's treatment plan or case plan, unless the restriction is approved by the child's case manager; and
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> (8) requirements to assume uncomfortable or fixed positions for an extended length of time, or to march, stand, or kneel as punishment.[59]

[58] Minn. R. 2960.3080, subp. 6(B) (2023).
[59] Minn. R. 2960.3080, subp. 8(A) (2023).

9. Appellants violated Minn. R. 2960.3080, subp. 8, when the foster children in their care were subjected to verbal abuse, name calling, derogatory statements about the children, and statements intended to shame, threaten, humiliate, or frighten them; and the use of standing as punishment. Other claims of discipline violations were not substantiated.

Revocation of License

10. The Commissioner may revoke a license if a license holder fails to comply fully with applicable laws and rules.[60]

11. When applying sanctions, including revocation, under Minn. Stat. § 245A.07, "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] The severity of the sanction must reflect the seriousness of the violation.[62]

12. Before revoking a license for foster care, the Commissioner must evaluate the situation.[63] The Commissioner must consider the applicable requirements of statutes and rules for child foster care and evaluate facts, conditions, or circumstances concerning:

> (1) the program's operation;
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> (2) the well-being of persons served by the program;
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> (3) available evaluations of the program by persons receiving services;
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> (4) information about the qualifications of the personnel employed by the applicant or license holder; and
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> (5) the applicant's or license holder's ability to demonstrate competent knowledge of the applicable requirements of statutes and rules, including this chapter and chapter 245C, for which the applicant seeks a license or the license holder is licensed.[64]

13. Appellants failed to comply fully with Minn. R. 2960.3080. The actions underlying this failure demonstrate Appellants operation of their program is flawed and that they do not have competent knowledge of the applicable legal requirements of providing foster care to children. The children Appellants served were harmed in that the children demonstrated unreasonable fear of punishment in their placement following their

[60] Minn. Stat. § 245A.07, subd. 3(a)(1).
[61] Minn. Stat. § 245A.07, subd. 1.
[62] *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. Ct. App. 2003).
[63] Minn. Stat. § 245A.04, subd. 6(a) (2024).
[64] Minn. Stat. § 245A.04, subd. 6(a).

time with Appellants. Moreover, this was not the first time Appellants have violated foster care laws.

14. The Department's conclusion that the nature of the discipline violations is serious (verbal abuse, name calling, derogatory statements about the children, and statements intended to shame, threaten, humiliate, or frighten them; and the use of standing as punishment) is reasonable.

15. The Department demonstrated reasonable cause for the revocation.

16. If the Commissioner demonstrates reasonable cause for the revocation, the burden shifts to the appellant,

> to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.[65]

17. A "preponderance of the evidence" means that the evidence "must be of a greater or more convincing effect and . . . lead you to believe that it is more likely that the claim . . . is true than . . . not true."[66]

18. Appellants did not demonstrate they were in full compliance with the law.

Based upon these conclusions of law, and for the reasons explained in the accompanying memorandum, the Judge makes the following:

RECOMMENDATION

The Judge respectfully recommends that the Commissioner determine reasonable cause exists for revocation of the Appellants' child foster care license and **AFFIRM** the revocation of Appellants' child foster care license based on the substantiated licensing violations concerning discipline.

Dated: December 13, 2024

JIM MORTENSON
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

[65] *Id.*
[66] *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2024), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Administrative Law Office staff at DHS_AdminLaw@state.mn.us to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. (2024) To comply with this statute, the Commissioner must then return the record to the Judge within ten working days to allow the Judge to determine the discipline to be imposed.

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

MEMORANDUM

I. Introduction

In sanctioning a child foster care license for violations of applicable law, the Commissioner must consider the nature, chronicity, or severity of the violation and its effect on the health, safety, or rights of the foster children.[67] If the sanction includes a conditional license, or a suspension or revocation of a license the Commissioner must evaluate and consider the applicable requirements of statutes and rules for providing child foster care, and the facts, conditions, or circumstances concerning: (1) the program's operation; (2) the well-being of persons served by the program; (3) available evaluations of the program by persons receiving services; (4) information about the qualifications of the personnel employed by the applicant or license holder; and (5) the applicant's or license holder's ability to demonstrate competent knowledge of the applicable requirements of statutes and rules.[68] Importantly, the severity of a licensing sanction must be commensurate with the severity of the violation it is designed to address.[69] The Commissioner may elect not to revoke a child foster care license if the Commissioner determines that (1) the license holder is operating the program in substantial compliance

[67] Minn. Stat. § 245A.07, subd. 1(a) (2024).
[68] *Id*.
[69] *Burke*, 666 N.W.2d at 728.

with applicable laws and rules and (2) the program's continued operation is in the best interests of the community being served.[70]

In this case, the Department substantiated several serious licensing violations, but not all of the claimed licensing violations. Below are the Judge's rationales for these determinations.

II. Violations the Department Established

The Department bases its revocation of Appellants' license on alleged violations of Minn. R. 2960.3080, subp. 5(A) for withholding basic needs from foster children. It also claims Appellants' violated Minn. R. 2960.3080, subp. 6(B) by not providing age-appropriate activities, exercise, and recreation for the children. And lastly, the Department claims Appellants violated the discipline requirements under Minn. R. 2960.3080, subp. 8(A)(1), (2), (3), (4), and (8) when:

- Foster children were subjected to corporal punishment;
- Foster children were subjected to verbal abuse;
- Foster children were required to stand as punishment;
- Foster children were punished for toileting accidents; and
- Foster children were not permitted to leave their bedrooms to use the bathroom at night, play in other parts of the home, and had to ask permission to leave their bedrooms.

The rule provides that discipline cannot include "requirements to assume uncomfortable or fixed positions for an extended length of time, or to march, stand, or kneel as punishment."[71] Requiring a child to stand, for any length of time, is not permissible.

The Department presented sufficient evidence to substantiate that foster children were required to stand as punishment. Maia Obernolte's admission that she would require children to stand in the corner as punishment is sufficient proof alone. But it is not the only evidence. Two of the siblings independently informed county staff about the requirement to stand in the corner for punishment. Additionally, based on Maia's admission, including her discussions with county staff, she does not appreciate that her conduct is improper under the law. This also leads to a reasonable inference that such conduct has been used by Maia for some time.

[70] Minn. Stat. § 245A.04, subd. 7(e).
[71] Minn. R. 2960.3080, subp. 8(A)(8).

The rule also proscribes verbal abuse.[72] Verbal abuse includes, but is not limited to:

> name calling; derogatory statements about the child or child's family, race, gender, disability, sexual orientation, religion, or culture; or statements intended to shame, threaten, humiliate, or frighten the child.[73]

The Department also presented sufficient evidence to substantiate that foster children were subject to verbal abuse. The evidence here is a closed call, with no testimony from anyone who admitted they observed or heard the verbal abuse. In fact, Appellants denied it occurred. In addition, there was no forensic interviews of the children subject to or present when the verbal abuse occurred. The Judge finds, however, that the detail and consistency of the described name-calling and derogatory statements reported independently by the children carries more weight than the Appellant's denial. Moreover, Appellant's attribution of verbal abuse from the children towards the Appellants is highly questionable. These were elementary-age school children, and Appellants' testimony appears self-serving. Maia did, at times, attempt to justify Lee's behavior by stating to staff that the children upset Lee. Finally, the evidence shows the verbal abuse of the children by Appellants also occurred over time and was not a single incident.

III. Alleged Violations not Established

The Department did not present sufficient evidence to substantiate that Appellants failed to provide basic services to foster children. Nor did the Department substantiate that foster children were denied or not encouraged to engage in age-appropriate activities. Finally, regarding discipline, the Department did not substantiate that Appellants used corporal punishment, punishment for lapses in toileting habits, or the withholding of basic needs from foster children.

Foster care parents must provide basic services to foster children.[74] Basic services means meeting the foster child's needs for "food, shelter, clothing, medical and dental care, personal cleanliness, privacy, spiritual and religious practice, safety, and adult supervision."[75] The Department alleged supervision and safety were not provided.

There is no evidence that Appellants denied foster children's needs for supervision, safety, or any other basic service. The violations of the disciplinary rule, as described above, are not so severe as to warrant a conclusion that the children were not safe or supervised. Moreover, the Department does not explain how supervision or safety were not provided. There is no evidence of injury of any of the children, or of them being inappropriately left alone. The Department does make any argument about how, specifically, supervision and safety were denied. Nor does the Judge's review of the record reveal any denial of any basic services, as defined by the Department's rule. Even the verbal abuse of the children, as violative as that was, was not shown to have a

[72] Minn. R. 2960.3080, subp. 8(2).
[73] *Id.*
[74] Minn. R. 2960.3080, subp. 5(A).
[75] Minn. R. 2960.0020, subp. 6.

significant impact on the health of the children. We cannot simply speculate that it did. This claim is not supported.

Foster care parents must also "encourage age-appropriate activities, exercise, and recreation for the foster child."[76] The Department alleged that Appellant's foster children were not permitted to play outdoors, in certain areas of the home other than their bedrooms, and had few opportunities to be out in the community.[77]

The evidence shows the children were permitted to play outdoors. The next-door neighbor provided credible testimony on this fact. Also, there was weekend fishing with Lee, camping trips, and dog-walking. Comments made by any of the children about not being permitted to play outside were not meaningfully corroborated and carry no weight.

The evidence does show that Appellants required foster children to have permission to be out of their bedrooms to play in other parts of the house. But this fact does not establish Appellants failed to encourage age-appropriate activities, exercise, and recreation. Parents have inherent authority to determine where and when children are permitted to play in a home. Without a case plan requiring something alternative and specific, Appellant's rules for the children do not show a violation.[78] There is no evidence of a case plan for any of the foster children and, therefore, no evidence it was not followed. The opinions another adult may have about parenting, and whether children should have free run of the house, are not a basis to conclude there was a violation of law.

The evidence also shows the children were regularly out in the community. In addition to the recreation they enjoyed, they were engaged in sports activities and church activities. The Department's only evidence to the contrary were unsubstantiated reportedly made by one or more of the children to one of their new foster parents, after they had been removed from Appellants' care.[79] This, on its face, does not demonstrate anything other than the new foster parent commented about their perceptions of things they heard one or more of the children say. Thus, the claim the Appellants violated Minn. R. 2960.3080, subp. 6(B) is not substantiated.

Finally, there were three aspects of the discipline rule the Department alleged Appellants violated which were not substantiated. The three prohibited disciplinary measures are:

> (1) corporal punishment, including, but not limited to: rough handling, shoving, ear or hair pulling, shaking, slapping, kicking, biting, pinching, hitting, throwing objects at the child, or spanking;
> . . .

[76] Minn. R. 2960.3080, subp. 6(B).
[77] Notice and Order for Prehearing Conference and Hearing at 2.
[78] Minn. R. 2960.3080, subp. 5(B), 6(A). A case plan is "a plan of care for a foster child that is developed by the supervising agency with the child's parents and license holder and monitored by the placing agency." Minn. R. 2960.3010, subp. 8.
[79] Ex. 2; Ex. 4.

> (3) punishment for lapses in toilet habits, including bed wetting or soiling;
>
> (4) withholding of basic needs, including, but not limited to: a nutritious diet, drinking water, clothing, hygiene facilities, normal sleeping conditions, proper lighting, educational services, exercise activities, ventilation and proper temperature, mail, family visits, positive reinforcement, nurturing, or medical care. However, a child who destroys bedding or clothing, or uses these or other items to hurt the child's self or others, may be deprived of such articles according to the child's case plan.[80]

The Department claimed one of the sibling children experienced rough handling when Lee shook the child by the lifejacket while on a dock, and that the same child was spanked. The only evidence of these alleged incidents was a report made by the third grader.[81] There was no corroboration of the statements the third grader made. Nor were the statements made during a careful, recorded, forensic interview. This claim was not substantiated by the evidence.

The Department also claimed the first grader was punished for lapses in toileting habits and that Appellants withheld basic needs from the children by not letting them use the bathroom at night, not allowing the children to play in the home except for their rooms, and requiring them to ask permission to leave their rooms. The first grader had an interaction with the new foster parent in which the child allegedly said they were not permitted to leave their bedrooms at night, including to use the bathroom.[82] The new foster parent reported this to county staff. This claim was never corroborated with any meaningful evidence. In fact, the children had a bathroom just outside their bedrooms at Appellants' home.[83] Moreover, even if it were true that the children were restricted to their room for the night, this would not be a violation of the disciplinary rule, but of another rule.

The claim that Appellants failed to let the children play anywhere in the home but their bedrooms is not substantiated. It is true permission was required for the children to come play downstairs in the main area, and that their play was restricted as to what and where in the main area, but this is not a disciplinary violation. Nor is the requirement to obtain permission to leave their rooms. Such parenting techniques could be managed by the children's case plans. But there is no evidence there were case plans. Moreover, these techniques are not a violation in and of themselves. This claim was not substantiated by the evidence.

IV. Conclusion

Despite lacking evidence to substantiate some of the licensing violations claimed by the Department, the Department did demonstrate reasonable cause for revocation of

[80] Minn. R. 2960.3080, subp. 8.
[81] Ex. 2; Ex. 4.
[82] Ex. 2; Ex. 4.
[83] Test. of H. Obernolte.

Appellants' child foster care license. The verbal abuse toward the children by Lee, Maia's use of standing in a corner as discipline, coupled with Appellants' lack of understanding of how these discipline techniques do not serve the children and run afoul of the law, combined with a prior dispute about Appellant's compliance with applicable laws, are reasonable bases to revoke their child foster care license. The Judge respectfully recommends the Commissioner **AFFIRM** the revocation for the reasons explained herein.

J. R. M.