

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

In the Matter of the Contested Case
Hearing of Kaleidoscope Learning Center

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on Tuesday, May 6, 2003, at the Anoka City Hall Conference Room in Anoka, Minnesota. The record closed on May 7, 2003, with the Licensee's filing of policy forms and checklists.

Michael E. Burns, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of the Minnesota Department of Human Services. Jeanne Engelsmeier, owner of Kaleidoscope Learning Center, Inc., and Stacy Cooper, Assistant Director, appeared on behalf of Kaleidoscope Learning Center, which is located at 6013 167th Avenue, Ramsey, Minnesota 55303.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

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. 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 the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Whether the Department properly ordered the Kaleidoscope Learning Center to pay fines totaling \$800 for failing to comply fully with applicable laws and rules governing its license to operate a child care program.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Jeanne Engelsmeier is the owner of Kaleidoscope Learning Center (“the Center”). The Center is located in Ramsey, Minnesota and is licensed to operate a child care program. In 2002, the Center was providing child care services to approximately 20 children.^[1]

2. On May 4, 2001, the Department notified Ms. Engelsmeier that it was ordering the Center to pay a \$200 fine and placing the Center’s license to provide child care services on conditional status for a period of six months. The Department based its order on the Center’s failure to submit a completed background study for a staff person before that person began working at the Center, and on various other rule violations noted during an inspection of the Center on November 21, 2000. Based on that inspection, the Department found that the Center failed to meet basic health and safety requirements including, not providing supervision of the children at all times, not maintaining a clean environment for children, not maintaining equipment, not following emergency procedures, not maintaining fire/tornado drill logs, and not having current physical exam and immunization documentation. In addition, the Department cited the Center for failing to comply with staff distribution requirements, failing to maintain required documentation in personnel files, failing to provide training for staff persons on child abuse and neglect reporting requirements, and failing to operate within the terms of its license by enrolling a 14-year old child with special needs.^[2]

3. The Department directed Ms. Engelsmeier to submit monthly staffing schedules, weekly maintenance checks, and other documentation within 30 days of receipt of the May 4, 2001 Order to demonstrate compliance with the rules cited. The Department also notified Ms. Engelsmeier of her right to request reconsideration of the Order.^[3]

4. Ms. Engelsmeier did not seek reconsideration of the May 4, 2001 Order to Forfeit Fine and Order of Conditional License.

5. By August 13, 2001, Ms. Engelsmeier had not submitted a response to the Department documenting the Center’s compliance with the terms of the conditional license.^[4]

6. On August 14, 2001, a licensor with the Department conducted a follow-up inspection at the Center to determine if the Center was complying with the rules governing its license and the terms of its conditional license. The licensor determined that the Center had a number of repeat violations and that it had failed to comply with the terms of its conditional license.^[5]

7. On November 6, 2001, the Department notified Ms. Engelsmeier that it was suspending the Center’s license for three days and placing the Center’s license on conditional status for one year (through November 5, 2002). The Department explained that the order was based on uncorrected violations found during the August 14, 2001 re-inspection that had been previously cited in the Department’s May 4, 2001 Order and the Center’s failure to comply with the terms of the May 4, 2001 Conditional License Order. The Department directed Ms. Engelsmeier to correct all violations cited and to submit written documentation within 30 days of receipt of the Order describing how

compliance has been achieved. The Department also notified Ms. Engelsmeier of her right to request reconsideration of the Order.^[6]

8. On February 12, 2002, George Riedl, a Licenser with the Department's Division of Licensing, conducted an inspection of the Center to determine the Center's compliance with the rules and statutes governing its license. During his inspection, Mr. Riedl noted several violations of rule and statute. On February 27, 2002, Mr. Riedl sent Ms. Engelsmeier a Correction Order, which listed each violation observed and directed her to correct the violation within a prescribed period of time. Four of the 18 violations cited had been previously cited in prior orders and remained uncorrected.^[7]

9. The violations cited in the February 27, 2002 Correction Order included, failing to have the Center's license posted in conspicuous place; failing to have smooth nonabsorbent floor covering in diaper changing area; failing to have available written procedures regarding the handling of infant food and milk; failing to have documentation on staff trainings; failing to have a shatterproof mirror in the infant changing room; failing to have emergency contact numbers in each child's file; failing to have current physical exam and immunization documentation for each child; failing to use age appropriate table and chairs for toddlers; failing to have available written health policies for serving catered food; failing to have written emergency and accident policies; and failing to have the required number of toilets and hand sinks for the licensed capacity. The Department directed Ms. Engelsmeier to correct all violations cited and to submit written documentation within 30 days of receipt of the Order describing how compliance has been achieved. The Department also notified Ms. Engelsmeier of her right to request reconsideration of the Order.^[8]

10. On June 20, 2002, the Department received a response from Ms. Engelsmeier regarding the Center's compliance with the rules cited in the February 27, 2002 Correction Order.^[9]

11. On July 10, 2002, Licenser George Riedl returned to the Center and conducted another inspection. Mr. Riedl found several violations of rules that were previously cited in the Correction Order of February 27, 2002. Specifically, Mr. Riedl found that: one out of ten children's files reviewed did not contain emergency contact information;^[10] five out of ten children's files reviewed did not have current immunization documentation; the Center did not have written health policies for serving catered food; and the Center lacked certain emergency and accident policies and procedures.^[11]

12. Although the Center did not have emergency contact information in each child's file, it did have emergency contact information for each child enrolled on cards by the Center's telephone and in the classroom.^[12]

13. On November 1, 2002, the Department issued an Order to Forfeit a Fine and Order of Conditional License to Kaleidoscope Learning Center. The Orders were sent by certified mail to Ms. Engelsmeier. The Department informed Ms. Engelsmeier that it was ordering the Center to pay a \$800 fine and that it was placing the Center's license on conditional status for an additional year (through November 5, 2003). The Department explained that these orders represented the Department's "final effort to elicit compliance" with the governing licensing standards. The Department cited the

four violations of rules observed by Mr. Riedl during his July 10, 2002 inspection and imposed a \$200 fine for each violation. The Department ordered the Center to pay the \$800 fine within five business days. The Department also notified Ms. Engelsmeier of her right to request a contested case hearing.^[13]

14. Ms. Engelsmeier requested a contested case hearing.

15. On December 16, 2002, Mr. Riedl met with Ms. Engelsmeier at the Center and reviewed the citations listed in the Department's November 1, 2002 Order. Mr. Riedl explained to Ms. Engelsmeier what information was required to be contained in the Center's emergency and accident policies.^[14]

16. After Ms. Engelsmeier's meeting with Mr. Riedl on December 16, 2002, the Center hired a health consultant to review the Center's health policies and practices.^[15]

17. On February 7, 2003, the Department served and filed a Notice of and Order for Hearing.

18. As of February 27, 2003, the Center had complied with all of the rules cited in the Department's November 1, 2002 Order.^[16]

19. Any Conclusions that are more accurately described as Findings are hereby adopted as such.

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

CONCLUSIONS OF LAW

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

2. Proper notice of the hearing was timely given and all relevant substantive and procedural requirements of statutes and rules have been fulfilled.

3. Minnesota Rule 9503.0125, item F, requires the license holder to maintain a record on each child containing "the names, addresses, and telephone numbers of two persons to be contacted if a parent cannot be reached in an emergency or when there is an injury requiring medical attention."

4. Minnesota Rule 9503.0125, item G, requires the license holder to maintain a record on each child containing the health form and immunization information required by part 9503.0140.

5. Minnesota Rule 9503.0140, subp. 5, requires the license holder to obtain documentation of current immunization, a signed notarized statement of parental objection, or a medical exemption for each child enrolled in the center.

6. Minnesota Rule 9503.0140, subpart 2, provides as follows:

Health consultation. The center must have a health consultant who must review the center's health policies and practices specified in items A to C and certify that they are adequate to protect the health of children in care.

The review must be done before initial licensure, submitted with the application for initial licensure and repeated every year after the date of

initial licensure. For programs serving infants, this review must be done initially and monthly thereafter. Additionally, the license holder must request a review by the health consultant of the center's health policies and practices if there is a proposed change in the center's health policies and practices or an outbreak of contagious reportable illness as specified in part 4605.7040. A copy of the consultant's findings must be placed in the center's administrative record.

The consultant must review:

...

C. The sanitation procedures and practices for food not prepared by or provided by the license holder as specified in part 9503.0145, subpart 3, and for infants as specified in part 9503.0145, subpart 7.

7. Minnesota Rule 9503.0110, subpart 3, requires that the license holder maintain written emergency and accident policies that contain:

- A. Procedures for administering first aid.
- B. Safety rules to follow in avoiding injuries, burns, poisoning, choking, suffocation, and traffic and pedestrian accidents.
- C. Procedures for the daily inspection of potential hazards.
- D. Procedures for fire prevention and procedures to follow in the event of a fire. Fire procedures must:
 - (1) mandate monthly fire drills and a log of drill times and dates;
 - (2) identify primary and secondary exits, building evacuation routes, the phone number of the fire department, persons responsible for the evacuation of children, and areas for which they are responsible;
 - (3) contain instruction on how to use a fire extinguisher and how to close off the fire area; and
 - (4) provide for the training of staff persons to carry out the fire procedures.
- E. Procedures to follow in the event of a blizzard, tornado, or other natural disaster that include the location of emergency shelter, procedures for monthly tornado drills from April to September, and a log of times and dates showing that the drills were held.
- F. Procedures to follow when a child is missing.
- G. Procedures to follow if an unauthorized person or a person who is incapacitated or suspected of abuse attempts to pick up a child or if no one comes to pick up a child.
- H. Sources of emergency medical care.

I. Procedures for recording accidents, injuries, and incidents involving a child enrolled in the center. The written record must contain the name and age of the persons involved; date and place of the accident, injury, or incident; type of injury; action taken by staff; and to whom the accident, injury or incident was reported

J. Procedures mandating an annual analysis of the record in item I and any modification of the center's policies based on the analysis.

8. Minn. Stat. § 245A.07, subd. 3, authorizes the Commissioner to “suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules ...” The statute further provides that, “[w]hen 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.” Minn. Stat. § 245A.07, subd. 1 (2002).

9. Pursuant to Minn. Stat. § 245A.07, subd. 3(4), the Commissioner of Human Services may fine license holders \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study.

10. Pursuant to Minn. Stat. § 245A.06, subdivision 1, the Commissioner may make conditional a license if a license holder fails to comply with applicable laws or rules.

11. Pursuant to Minn. Stat. § 245A.08, subd. 3, the Commissioner has the burden of proof to demonstrate that reasonable cause existed for ordering the Center to pay \$800 in fines. The Commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the Center failed to comply fully with applicable law or rule. When such a showing is made, the burden of proof shifts to the Center to demonstrate by a preponderance of the evidence that it was in full compliance with the laws and rules that the Commissioner alleges were violated at the time the alleged violations occurred.

12. The Department has advanced evidence establishing reasonable cause to believe that the Center engaged in violations of the rules governing its license to provide child care services.

13. The Department established reasonable cause to believe that the Center violated Minnesota Rule 9503.0125, item F, by failing to have emergency contact information in all of the children's files.

14. The Center demonstrated by a preponderance of the evidence that it did comply with Minnesota Rule 9503.0125, item F by maintaining emergency contact information for each child on cards by the Center's telephone and in the Center's classroom.^[17]

15. The Department established reasonable cause to believe that the Center violated Minnesota Rule 9503.0140, subp. 5 and 9503.0125, item G by failing to maintain current immunization information on each child enrolled.

16. The Center failed to establish by a preponderance of the evidence that it was in full compliance with Minnesota Rule 9503.0140, subp. 5 and 9503.0125, item G. The Center was missing current immunization information on at least two children at the time of the Department's July 2002 inspection.^[18]

17. The Department established reasonable cause to believe that the Center violated Minnesota Rule 9503.0140, subpart 2, item C, by failing to maintain written health policies for serving catered food available on site.

18. The Center failed to establish by a preponderance of the evidence that it was in full compliance with Minnesota Rule 9503.0140, subpart 2, item C.

19. The Department established reasonable cause to believe that the Center violated Minnesota Rule 9503.0110, subpart 3, items B to F, I and J by failing to maintain certain emergency and accident policies on site.

20. The Center failed to establish by a preponderance of the evidence that it was in full compliance with Minnesota Rule 9503.0110, subpart 3, items B to F, and J. The Center did not have written policies containing procedures to follow in the event of certain emergencies (e.g. blizzard, tornado, missing child), or written fire prevention procedures.

21. The Center demonstrated by a preponderance of the evidence that it fully complied with Minnesota Rule 9503.0110, subp. 3, item I, by having written policies containing procedures for recording accidents and injuries involving children enrolled at the Center.^[19]

22. Any Findings that are more accurately described as Conclusions are hereby adopted as such.

23. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is hereby incorporated in these Conclusions by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

That the Commissioner order the Center to Forfeit a Fine of \$600, reflecting the Center's compliance with Minnesota Rule 9503.0125, item F.

Dated: June 4, 2003

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped (1 tape); no transcript prepared.

NOTICE

Pursuant to 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

The Department has established that the Center engaged in violations of the rules governing its license to provide child care services. Specifically, the Department established reasonable cause to believe that: (1) the Center violated Minnesota Rule 9503.0140, subp. 5, and 9503.0125, item G by failing to maintain current immunization information on each child enrolled; (2) the Center violated Minnesota Rule 9503.0140, subp. 2, item C, for failing to maintain written health policies for serving catered food on-site; and (3) the Center violated Minnesota Rule 9503.0110, subp. 3, items B to F, and J for failing to maintain written policies on emergency and safety procedures.

At the hearing, Ms. Engelsmeier conceded that the Center did not have current immunization information on two or three children when Mr. Riedl inspected the Center on July 10, 2002. Ms. Engelsmeier also admitted that, while the Center had general policies regarding what procedures to follow in the event of a fire, tornado, blizzard, or other emergency, it lacked the detailed written policies required by Minnesota Rule 9503.0110, subp. 3. And Ms. Engelsmeier admitted that the Center did not have written health policies for serving catered food as required by Minnesota Rule 9503.0140, subp. 2. Based on these admissions and the testimony of Mr. Riedl, the Department established that the Center violated three of the four rule provisions cited in its order. Under Minnesota Statute § 245A.07, subd. 3(4), the Commissioner has the authority to assess a \$200 fine for each rule violation.

The Center did, however, establish that it was in full compliance with the rule requiring it to maintain emergency contact information for all enrolled children. The Department's allegation that the Center had failed to maintain such information was based on Mr. Riedl's finding during his July 10, 2002 inspection that one out of ten children's files lacked an emergency contact sheet. Ms. Engelsmeier testified credibly, however, that the Center maintained emergency contact information on each child by the Center's telephone and in the classroom. There is no requirement under the rules that the emergency contact information be maintained in each child's file. Because the Center was in compliance with Minnesota Rule 9503.0125, item F, the Commissioner should reduce the Center's total fine by \$200. The Administrative Law Judge also finds that the Center's written procedures for recording accidents and injuries complied with Minnesota Rule 9503.0110, subp. 3, item I. But as the Center failed to comply with other items of Minnesota Rule 9503.0110, subp. 3, the \$200 fine assessed for violating this rule provision is appropriate.

The Department has established reasonable cause to believe that the Center engaged in violations of the rules and statutes governing its child care license. The Center failed to show that it was in full compliance with all of the laws and rules cited.

Accordingly, it is appropriate for the Commissioner to order the Center to pay a \$600 fine and to place the Center's license on conditional status through November 2003.

S.M.M.

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- [\[1\]](#) Ex. 1; Testimony of Ms. Engelsmeier.
 - [\[2\]](#) Ex. 4.
 - [\[3\]](#) Ex. 4.
 - [\[4\]](#) Ex. 3.
 - [\[5\]](#) Ex. 3.
 - [\[6\]](#) Ex. 3.
 - [\[7\]](#) Ex. 2.
 - [\[8\]](#) Ex. 2.
 - [\[9\]](#) Testimony of G. Riedl.
 - [\[10\]](#) The Center had approximately 20 children's files.
 - [\[11\]](#) Ex. 1.
 - [\[12\]](#) Testimony of Engelsmeier.
 - [\[13\]](#) Ex. 1.
 - [\[14\]](#) Testimony of Riedl and Engelsmeier.
 - [\[15\]](#) Testimony of Engelsmeier. See, Minnesota Rule 9503.0140, subp.2.
 - [\[16\]](#) Testimony of Riedl.
 - [\[17\]](#) Ex. 5.
 - [\[18\]](#) Ex. 6; Testimony of Engelsmeier.
 - [\[19\]](#) Testimony of Engelsmeier and forms submitted on May 7, 2003.