

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

In the Matter of the Revocation of the  
Family Child Care License of  
Barbara Kiemen

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

This matter came on for Hearing before Administrative Law Judge Kathleen D. Sheehy on June 26, 2003, and July 2, 2003, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, MN. The hearing record closed on July 2, 2003.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue South, 12<sup>th</sup> Floor, Minneapolis, MN 55415, appeared for the Minnesota Department of Human Services (the Department).

Linda F. Close, Attorney at Law, 950 Flour Exchange, 310 Fourth Avenue, Minneapolis, MN 55415, appeared for Barbara Kiemen.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make a final decision after reviewing the administrative record, and may adopt, reject or modify these Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to ascertain 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. 2. The record closes upon the filing of comments, 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 ISSUES**

Did Barbara Kiemen engage in maltreatment of C.S., a daycare child?

The Administrative Law Judge concludes that she did not.

Does the Department's maltreatment finding constitute a disqualification to licensure?

The Administrative Law Judge concludes that since the maltreatment did not occur, a disqualification is not appropriate.

Should the revocation of Barbara Kiemen's family child care license be upheld?

The Administrative Law Judge concludes that Ms. Kiemen's license should be reinstated.

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

### FINDINGS OF FACT

1. Barbara (Bobbi) Kiemen is a resident of Hennepin County, licensed as a Family Child Care Provider for approximately 12 years. She provides child care at her residence in Maple Grove. Ms. Kiemen's family consists of her husband, Joseph Kiemen, and their three children, Holly (age 13), Ray (age 12), and Ashley (age 9).<sup>[1]</sup>

2. Ms. Kiemen cares for approximately eleven children ranging in age from five months to ten years old.<sup>[2]</sup> Ms. Kiemen involves her daycare children in a wide variety of activities both inside and outside the home.<sup>[3]</sup> She is highly involved in community organizations and activities involving children.<sup>[4]</sup>

3. The Kiemens remodeled the walkout level of their home to accommodate her daycare business. It is a large, self-contained area with a bathroom, eating area, and different areas for toys, games, puzzles, books, etc. It has a wall of windows and doors overlooking their back yard. When entering and leaving the day care, parents bring their children from the driveway at the front of the house, around the side, and down some stairs to the door on the walkout level.

4. Joseph Kiemen is an insurance claim adjuster. His office is in the walkout level of their home, adjacent to the day care area. He works there every day for periods of time that vary from two hours to the entire day. Mr. Kiemen is also licensed to provide child care. He is sometimes required to participate actively as a provider, depending on how many children are present on a given day, but on most days he plays a limited role in caring for the children.<sup>[5]</sup>

5. J.B., a five-year-old girl, and her brother C.S., age three, began attending Ms. Kiemen's daycare in February of 2002, when Amy Schultz, their mother, and Laurie Schultz, their maternal grandmother, suspected that their current daycare provider was abusing the children.<sup>[6]</sup> The grandmother approached Ms. Kiemen because she knew her and was familiar with her daycare business.<sup>[7]</sup>

6. C.S. is an active child by all accounts. His speech articulation is poor, and he can become frustrated in trying to express himself.<sup>[8]</sup> During the course of the next year, the Kiemens noticed numerous bumps, scratches, and scrapes on C.S.<sup>[9]</sup> In addition, his sister, J.B., reported to Ms. Kiemen that there are often angry voices, shouting, and cursing at their home. Ms. Kiemen frequently discussed C.S.'s bruises and scrapes with both the mother and grandmother. The mother generally had reasonable explanations for them, attributing the bruises to C.S.'s active nature and his tendency to be careless. As mandated reporters of child abuse, the Kiemens considered reporting these injuries as possible abuse, but ultimately they accepted the explanations given by the mother because they agreed that C.S. was an active child, and they believed they could help the mother improve her parenting skills.<sup>[10]</sup>

7. On the morning of March 24, 2003, C.S. came to Ms. Kiemen's daycare with a bloody elbow. The mother told Ms. Kiemen that J.B. had run over C.S. with her bike.<sup>[11]</sup>

8. On March 25, 2003, Ms. Kiemen and some other area daycare providers took their daycare children to Skateland in Brooklyn Park. Because it was a school release day, Ms. Kiemen's own children went along on the outing. In addition, two mothers of Ms. Kiemen's daycare children went along to help chaperone. One of them, Dr. Naomi Palmer, a pediatrician, followed Ms. Kiemen in her car, with Ms. Kiemen's children, while Ms. Kiemen drove the daycare children in her van.

9. The outing was a successful one. The group arrived at approximately 9:00 a.m. and spent two hours roller-skating. Some of the children had never skated before. The children were well-behaved, and everyone had a good time and was in a good mood. Ms. Kiemen was her normal, calm self and did not seem to be stressed.<sup>[12]</sup> When they were finished skating, Dr. Palmer drove home with her daughter and did not return to Ms. Kiemen's home.

10. On the way home, Ms. Kiemen picked up lunch at a fast food restaurant to bring home. Some of the children were tired and fell asleep. When they arrived home, Ms. Kiemen unbuckled the children and helped them out of the van, after which they waited in the driveway with Ms. Kiemen's daughter. When she unbuckled C.S., Ms. Kiemen noticed that he had wet his pants. This was unusual because C.S. rarely has accidents at daycare. When the children were all unloaded, everyone went down the steps and into the daycare area as a group.<sup>[13]</sup>

11. Joseph Kiemen had been working in his home office and saw the children return. He went out to join them for lunch. He spoke to C.S., who was happy, excited about the outing, and hungry. Ms. Kiemen told C.S. to go into the bathroom to change his pants. He did so, then poked his head out to say that there were no clean clothes in his cubby.<sup>[14]</sup> Ms. Kiemen went into the bathroom and looked to see if there were any suitable clothes in J.B.'s cubby, but there were not. Ms. Kiemen gave him a pull-up diaper to wear, and because he was embarrassed about wearing a diaper, she told him to go to the dress-up area to find some pants that were part of a costume. He did so and returned to the table for lunch.

12. After lunch, the children napped. At approximately 2:30 p.m., C.S.'s mother came to pick up her children. C.S. was eager to tell his mother about the roller-skating outing, but she interrupted him, saying "Shut up, I'm mad at you." The mother was angry to learn that C.S. had wet his pants and had no clean pants to wear. She had plans to go somewhere and was irritated that she had to return home to get pants for him.<sup>[15]</sup> Through his office window, Joe Kiemen observed them leave. The mother was holding C.S. by the arm and berating him, and C.S. was hanging his head.<sup>[16]</sup>

13. Later that afternoon, C.S.'s mother brought him to his grandmother's work place. She was upset about some bruising on C.S.'s neck that she claimed had occurred at Ms. Kiemen's home.

14. The mother called the police to her home later that day to report the injury. Officer Wareham of the Maple Grove Police Department filled out an Incident Report and took photos of a circular, reddish bruise on the left side of C.S.'s neck appearing to be about two inches in diameter.<sup>[17]</sup> Officer Wareham's report provides that the mother told him that after picking C.S. up from daycare she noticed that he had marks on his neck, and C.S. told her that Ms. Kiemen "grabbed his throat and shook him" because he urinated in his pants.<sup>[18]</sup> The report further indicates that C.S. told him "Bobbie grabbed my throat and shook me because I peed."<sup>[19]</sup> Officer Wareham did not testify at the hearing, and there is no record evidence about the circumstances under which these statements were made.

15. The mother removed J.B. and C.S. from Ms. Kiemen's daycare that same week.

16. On or about April 11, 2003, Gail Westcott, a Hennepin County Daycare Licensing Worker, received a completed Parent Satisfaction Survey<sup>[20]</sup> from C.S.'s mother that raised concerns about the care provided to C.S. at Ms. Kiemen's daycare.<sup>[21]</sup> Ms. Westcott followed up by contacting C.S.'s mother, who told her that C.S. "peed in the car seat and [Ms. Kiemen] got mad and choked him." She further stated that:

[C.S.] is [a] child with behavioral issues and has lots of accidents (i.e. wetting his pants). There were marks of fingernails and scars on his neck.<sup>[22]</sup>

17. Based upon the mother's allegations of maltreatment, Ms. Westcott reported the incident to Hennepin County Child Protection.<sup>[23]</sup>

18. On April 14, 2003, Susan Hoffert, the child protection worker assigned to the case, contacted the Maple Grove Police Department to learn what action had been taken on the case. Ms. Hoffert was referred to Officer Dan Barnier, and on April 16 the two discussed the case and agreed to conduct a joint interview of Ms. Kiemen.<sup>[24]</sup> In this conversation they also discussed doing another interview of C.S., but "determined to use the existing statement."<sup>[25]</sup>

19. On the morning of April 16, 2003, Ms. Hoffert visited the Schultz home and interviewed J.B., C.S.'s five-year-old sister. The interview was tape-recorded and later transcribed. Ms. Hoffert questioned J.B. generally and then sought details regarding the allegations against Ms. Kiemen.<sup>[26]</sup> J.B. told her that Ms. Kiemen sometimes choked, pinched, or smacked C.S. and R.H., another four-year-old boy at the daycare, and put them in "time-out" when they wet their pants.<sup>[27]</sup> When questioned directly about what allegedly happened to C.S., J.B. spoke of a scratch on C.S.'s neck from Ms. Kiemen.<sup>[28]</sup> When asked what happened, the following exchange took place:

*Interviewer: But when [C.S.] had an accident what happened to [C.S.]?*

*J.B.: Ah, what happened to C.S.? Um, choke him . . .*

*Interviewer: Choke him?*

*J.B.: . . . and slapped him in the face.*

*Interviewer: Okay. Where were you when that happened?*

*J.B.: Um, I was at Maddie's house.*

*Interviewer: Okay. And he got choked and pinched and smacked?*

*J.B.: And . . .*

*Interviewer: Is that one time . . . one incident? One time she was mad at him or different times she was mad at him?*

*J.B.: A lot of times. [incomprehensible] about 50 times.<sup>[29]</sup>*

Ms. Hoffert did not follow up on the response about being at "Maddie's house" because she was distracted by J.B.'s efforts to see what she was writing in her notebook.<sup>[30]</sup> In further questioning, the following exchange took place:

*Interviewer: Okay. Did you ever get hurt? Did Bobbi ever hurt you or hit you?*

*J.B.: No.*

*Interviewer: Okay. Did Bobbi hit or hurt any other kids?*

*J.B.: They hurt R.H. and C.S. That's all.*

*Interviewer: Okay. What happened to R.H.?*

*J.B.: R.H.? Oh, she just . . . she just smacked him.*

*Interviewer: Okay. And what part of her . . . where did R.H. get smacked?*

J.B.: On his face.

Interviewer: On his face. And what did she smack him with?

J.B.: Her hand.

Interviewer: Okay.

J.B.: She did all that with her hand.

Interviewer: Okay.

J.B.: She choked him with her hand.

Interviewer: Okay. And did R.H. have any owies from getting smacked?

J.B.: Ah, no.

When pressed for further details, the following exchange took place:

Interviewer: Okay. You're doing a good job, [J.B.]. What did [C.S.] do when her [Ms. Kiemen's] hand was around his neck? Did you see that part happen?

J.B.: No, I just heard him crying. That's what.

Interviewer: How do you know he got choked then?

J.B.: I just heard him crying, that's what.

Interviewer: Okay. Did somebody tell you about the choking part or how . . .

J.B.: No.

Interviewer: . . . did you know the choking happened?

J.B.: I just heard him crying.

Interviewer: Did somebody tell you that or did you see it or did you hear it?

J.B.: I hear it.<sup>[31]</sup>

20. Later on April 16, 2003, Ms. Hoffert briefly met with C.S.'s grandmother, who reported that the children had previously said that Ms. Kiemen was mean to C.S. and that he had had bruises on his face in the past as if his face were pinched. The grandmother reported that recently after wetting his pants, C.S. asked his grandmother if she was mad and said "you not hit me like Bobbie?"<sup>[32]</sup> She also reported that when

Ms. Kiemen had called to ask why the children were not coming to daycare, someone told her about the scratch on C.S.'s neck, and Ms. Kiemen denied having done it.<sup>[33]</sup> Neither C.S.'s mother nor his grandmother testified at the hearing.

21. The following day, April 17, 2003, Ms. Hoffert and Officer Barnier interviewed Ms. Kiemen and her husband at the Kiemens' home.<sup>[34]</sup> Ms. Kiemen requested that the interview not be tape recorded so that she could speak freely about her concerns about C.S.'s home life, which she did. Ms. Kiemen also said that C.S. was "an active 'tough' kid" and that he had fallen during the roller-skating outing on March 25, 2003 but had never cried. She had no explanation for the marks on C.S.'s neck, and both she and her husband reported that C.S. had no noticeable injuries when he left the Kiemen house that day. According to Ms. Kiemen, Officer Barnier appeared to sympathize with her during the interview. Officer Barnier did not testify at the hearing.<sup>[35]</sup>

22. Also on April 17, 2003, Ms. Hoffert contacted Diane Hyatt, the mother of R.H., to offer an interview of R.H. and his parents.<sup>[36]</sup> When questioned about the frequency of R.H.'s toileting accidents and the possibility that Ms. Kiemen had maltreated him, Ms. Hyatt reported that her son had never wet his pants at Ms. Kiemen's home and that she did not believe he had been maltreated.<sup>[37]</sup> Ms. Hoffert did not include this information in her case file notes. The next day, Ms. Hyatt declined to have her son interviewed because of his age and because she and her husband had no concerns about Ms. Kiemen's care.<sup>[38]</sup>

23. On April 18, 2003, Ms. Hoffert contacted Dr. Palmer. Dr. Palmer told her that as a pediatrician she is a mandated reporter, that she is aware of the signs of child abuse, and that she has seen no signs of abuse in her daughter. Ms. Hoffert did not identify Dr. Palmer as a pediatrician in her case file notes, indicating only that Naomi Palmer reported no concerns about Ms. Kiemen's care.<sup>[39]</sup> Ms. Hoffert contacted several other daycare parents, none of whom reported any concerns about abuse and none of whom wanted to have their children interviewed.<sup>[40]</sup>

24. By letter dated April 22, 2003, Ms. Hoffert informed Ms. Kiemen that maltreatment had been substantiated.<sup>[41]</sup> That same day, she notified Tim Hennessey, Hennepin County Licensing Unit, of her findings. Mr. Hennessey recommended to the Commissioner a temporary immediate suspension of Ms. Kiemen's license, which the Department issued that day.<sup>[42]</sup>

25. On April 23, 2003, Ms. Hoffert notified Ms. Kiemen that she had substantiated the occurrence of serious maltreatment based upon statements made by "the child and his sibling and police reports."<sup>[43]</sup> Ms. Hoffert informed Ms. Kiemen that serious maltreatment was a disqualification that might result in revocation of her license. The letter further informed Ms. Kiemen of her right to request reconsideration of both the maltreatment determination and the disqualification.

26. The Department issued a Notice of and Order for Hearing on the temporary immediate suspension on May 8, 2003, setting the hearing to take place on May 29, 2003.

27. Ms. Kiemen retained legal counsel, and through her attorney requested reconsideration of both the maltreatment and disqualification determinations on May 9, 2003.<sup>[44]</sup>

28. By letter dated May 15, 2003, the Department affirmed the maltreatment and disqualification determinations, based solely on information gathered in the child protection investigation conducted by Ms. Hoffert.<sup>[45]</sup>

29. Ms. Kiemen submitted a timely appeal of the maltreatment and disqualification determinations on May 22, 2003.<sup>[46]</sup>

30. On May 23, 2003, the Department issued an Order of Revocation based on the disqualification for serious maltreatment.<sup>[47]</sup> Ms. Kiemen filed a timely appeal on June 10, 2003.<sup>[48]</sup>

31. On May 28, 2003, the parties jointly requested a continuance of the hearing to June 25-26, 2003, so that the revocation issue could be addressed along with the maltreatment and disqualification determinations. At the outset of the hearing, the Department moved to amend the caption to reflect the appeal of the revocation order, and the motion was granted.

## CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.<sup>[49]</sup>

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Pursuant to Minn. Stat. § 245A.08, subd. 2a, this is a consolidated contested case hearing regarding revocation of a family child care license based upon a disqualification for serious maltreatment that was not set aside.

4. Pursuant to Minn. Stat. § 626.556, subd. 2(d), maltreatment is defined in relevant part as “any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means. . . .” “Serious maltreatment” is, in relevant part, abuse resulting in serious injury and includes bruises and skin laceration or tissue damage.<sup>[50]</sup>

5. When investigating a report of maltreatment, the Department shall collect available and relevant information as to “the person reporting the alleged maltreatment, including the nature of the reporter’s relationship to the child and to the alleged offender,

and the basis of the reporter's knowledge for the report . . . ; and other collateral sources having relevant information related to the alleged maltreatment."<sup>[51]</sup> All relevant information must be requested and may include "the child's . . . age, prior reports of maltreatment, information relating to developmental functioning, credibility of the child's statement, and whether the information provided . . . is consistent with other information collected during the . . . investigation."<sup>[52]</sup> Whether domestic abuse or violence occurs in the child's home is also relevant information.<sup>[53]</sup>

6. Pursuant to Minn. Stat. § 626.556, subd. 10(j), the question and answer interviewing format used by the Department shall be "as nondirective as possible to elicit spontaneous responses."

7. A person who is culpable of serious maltreatment of a minor shall be disqualified from retaining a family child care license.<sup>[54]</sup>

8. The Department has the burden of proving by a preponderance of the evidence that Ms. Kiemen maltreated C.S.<sup>[55]</sup>

9. The Department has failed to prove by a preponderance of the evidence that Ms. Kiemen maltreated C.S.

10. Because she did not maltreat C.S., there is no basis in the record to disqualify Ms. Kiemen or to revoke Ms. Kiemen's family child care license.

11. The Memorandum attached hereto is incorporated by reference.

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

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner reinstate the Family Child Care License of Barbara L. Kiemen.

Dated: August 1st, 2003

/s/ Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Minnesota Department of Human Services is required to serve its final decision upon each party and the Administrative

Law Judge by first class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.62, subd. 2a, this Report becomes a final decision.

Reported: Tape recorded (six tapes). No transcript prepared.

## MEMORANDUM

The Department does not question that Ms. Kiemen generally provides good quality child care, but instead suggests that Ms. Kiemen must have “snapped” in the heat of a moment and injured C.S. because she was angry that he wet his pants. The evidence as a whole is insufficient to support this theory. In this case, the Department has relied heavily on the hearsay statements contained in the police report, which itself is hearsay. Although the statute allows the Department to rely on hearsay,<sup>[56]</sup> hearsay does not trump other credible evidence, and in this case there is other credible evidence that Ms. Kiemen was not responsible for the injury to C.S. The Administrative Law Judge cannot conclude based on the record that Ms. Kiemen more likely than not maltreated this child.

The Department is the party with the burden of proof. At the hearing, the Department called only Ms. Hoffert and Mr. Hennessey, who took licensing action based entirely on the finding of maltreatment in the child protection investigation. The Department did not call the mother, the grandmother, or the officer who filed the police report on March 25, choosing to rely on the hearsay contained within the police report and the hearsay contained within the case file notes and the child protection intake summary.

The live testimony at the hearing contradicted, substantially impeached, and raised many unanswered questions about the validity of these hearsay statements. Ms. Kiemen and her husband both presented convincing testimony that they had no knowledge of how C.S.’s neck came to be bruised or scratched. Ms. Kiemen testified credibly that she does not discipline children for toileting accidents and that she did not harm C.S. because he wet his pants. A parent who was with her all morning on March 25 testified that Ms. Kiemen was calm, the children were well-behaved, and everyone was in a good mood. Her husband had ample opportunity to observe her that afternoon and noticed nothing out of the ordinary concerning C.S. except that he wasn’t wearing his pants. Mr. Kiemen credibly testified that the only person angry with C.S. for having an accident was his mother, and that Ms. Kiemen has never struck or harmed any of their own children or any daycare children. Other witnesses credibly testified that after observing Ms. Kiemen interact with children over a period of years, they believe she is patient, highly organized, and extremely verbal in dealing with conflict, and that it would be entirely out of character for her to react to a toileting accident in this manner.<sup>[57]</sup>

Furthermore, the child protection investigator failed to demonstrate the objectivity required by the statutory mandate to collect all available and relevant information and to reconcile whether the complaint is consistent with the other information collected during

the investigation. Before even speaking to Ms. Kiemen, Ms. Hoffert at least concurred in the decision not to interview C.S. or his mother again, but to “use the existing statement.” She declined to follow up on information provided by the Kiemens about C.S.’s home life or information provided by the Hyatts, Dr. Palmer, and even J.B., maintaining that her mission was to investigate only the specific allegation that Ms. Kiemen harmed this child on March 25, 2003. She also failed to include information that favored Ms. Kiemen in the case file notes.

In determining that Ms. Kiemen was the party who harmed C.S., the investigator also relied on the interview of J.B., maintaining that J.B. corroborated statements C.S. made to the police. J.B.’s statement, in short, does not corroborate anything. J.B. said that she did not see the incident, saying only that she heard C.S. crying at “Maddie’s house.” There is no evidence in the record to suggest who Maddie may be or when the children may have been at her house. J.B. was very clear that she did not see any choking, and even the child protection investigator thought J.B. made up the allegation that Ms. Kiemen slapped, pinched, and choked C.S. “about 50 times.” Ms. Hoffert viewed J.B.’s statement as corroboration because J.B. repeated the allegations made by C.S. that Ms. Kiemen had choked C.S. for wetting his pants.<sup>[58]</sup> Repetition of allegations that J.B. may have heard about is not corroboration that the event actually happened.

Furthermore, J.B.’s statement is substantially undermined by the testimony of Diane Hyatt. J.B. maintained that C.S. and R.H. frequently received this abusive treatment for wetting their pants. When Diane Hyatt learned of this allegation, she was surprised because, as she told Ms. Hoffert, her son has never wet his pants at Ms. Kiemen’s home.<sup>[59]</sup> Ms. Hoffert had no recollection of this information because it was not in her case file notes.

It is troubling that this accusation was made, and as the Department points out, there is no apparent motive for fabrication. The record does not explain either how this injury occurred or why Ms. Kiemen was blamed for it. The record compels the conclusion, however, that the claimed maltreatment by Ms. Kiemen was not substantiated and that there is no basis for disqualifying her or revoking her license.

K.D.S.

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<sup>[1]</sup> Testimony of Barbara Kiemen. Ms. Kiemen also has two adult children from a previous relationship.

<sup>[2]</sup> *Id.*

<sup>[3]</sup> *Id.* Ms. Kiemen organizes annual field trips for the children to the Children’s Museum, Como Zoo, Minnesota Zoo, events at the Target Center, a farm, a pumpkin patch, etc. She also has outside instructors visit her home on a monthly basis, including a storyteller, fitness instructor, and music teacher.

<sup>[4]</sup> Ms. Kiemen is a member of two daycare associations, for which she has served as area leader, daycare newsletter publisher, and mentor.

<sup>[5]</sup> Testimony of Joseph Kiemen.

<sup>[6]</sup> Amy Schultz is mother to both J.B. and C.S. She and her children live with her parents and her two teenage sisters, Amanda and Brianna.

[7] The Kiemens and the Schultzs first came to know each other when one of Ms. Kiemen's older daughters and Amy Schultz were in a Girl Scout Troop together. At that time Laurie Schultz was providing unlicensed daycare and had consulted with Ms. Kiemen about various issues relating to her daycare business.

[8] Testimony of Barbara Kiemen.

[9] Testimony of Barbara and Joseph Kiemen.

[10] *Id.* This testimony is not disputed.

[11] Testimony of Barbara Kiemen.

[12] Testimony of Naomi Palmer.

[13] Testimony of Barbara Kiemen. Ms. Kiemen also testified that the wet area was confined to the front of C.S.'s pants and that it was not necessary to clean the car seat afterward.

[14] Each child had a "cubby" in the bathroom where parents could leave spare clothing in case of accidents.

[15] Testimony of Barbara Kiemen.

[16] Testimony of Joseph Kiemen.

[17] Ex. 3; Ex. 14 (color copy of photo).

[18] Ex. 3.

[19] *Id.*

[20] Hennepin County's child care licensing unit sends periodic, random, unsolicited satisfaction questionnaires to parents being served by daycare licensees of Hennepin County.

[21] Testimony of Tim Hennessey.

[22] Ex. 1.

[23] Ex. 11. Ms. Westcott classified the allegations under Minn. R. 9502.0395, subp. 2A, use of physical discipline.

[24] Ex. 2 at 6, 7.

[25] Ex. 2 at 6.

[26] Ex. 5.

[27] Ex. 5 at 5.

[28] Ex. 5 at 6.

[29] Ex. 5 at 6.

[30] Testimony of Susan Hoffert.

[31] Ex. 5 at 9-10.

[32] Ex. 2 at 5.

[33] *Id.*

[34] Ex. 2 at 4-5.

[35] Ms. Kiemen has not been charged with any crime by either the City of Maple Grove or Hennepin County.

[36] Ex. 2, p. 4.

[37] Testimony of Diane Hyatt. Ms. Hyatt also testified that the day she received the call from Ms. Hoffert, she asked her son if C.S. got in trouble for wetting his pants, and he said no.

[38] Testimony of Diane Hyatt.

[39] At the hearing, Dr. Palmer also testified that she had asked her daughter what Ms. Kiemen does when children have accidents, and her daughter reported that Ms. Kiemen just cleans it up and helps them change clothes. Her daughter denied to her that Ms. Kiemen has ever hit or struck C.S.

[40] Ex. 2.

[41] Ex. 12.

[42] Exs. 14 & 15.

[43] Ex. 6.

[44] Ex. 7.

[45] Ex. 8. Ms. Kiemen may request a fair hearing of both determinations under Minn. Stat. § 256.045.

[46] Ex. 9.

[47] Ex. 17.

[48] Ex. 18.

[49] All references to Minn. Stat. § 245A will be to 2002. Renumbering occurred in 2003.

[50] Minn. Stat. § 245A.04, subd. 3d(a)(4).

[51] Minn. Stat. § 626.556, subd. 10(h).

[\[52\]](#) *Id.*

[\[53\]](#) *Id.*

[\[54\]](#) Minn. Stat. § 245A.04, subd. 3d(a)(4); Minn. R. 9502.0335, subp. 6, item D.

[\[55\]](#) Minn. Stat. §§ 256.045, subd. 3b; 626.556, subd. 10e.

[\[56\]](#) Minn. Stat. § 245A.08, subd. 3, permits the Department to rely on “statements, reports, or affidavits” to demonstrate reasonable cause for action taken. In addition, Minn. Stat. § 256.045, subd. 4(b), allows the admission of all evidence “commonly accepted by reasonable people in the conduct of their affairs as having probative value” in maltreatment fair hearings.

[\[57\]](#) Testimony of Marie Milcarek, Sgt. Sean Gormley.

[\[58\]](#) Testimony of Susan Hoffert.

[\[59\]](#) Testimony of Diane Hyatt.