

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care License of
Melissa Schaefer

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

This matter came on for Hearing before Administrative Law Judge Steve M. Mihalchick on March 30, 2004, at Brown County Family Services, 1117 Center Street, New Ulm, MN. The hearing record closed at the conclusion of the hearing.

James Olson, Brown County Attorney, 519 Center Street, New Ulm, MN 56073, appeared for Brown County Family Services (BCFS) and the Department of Human Services (Department).

Melissa Schaefer (Licensee), 312 South Washington, New Ulm, MN 56073, represented herself.

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. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and 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 this 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 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. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon 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.

Under Minn. Stat. § 14.62, subd. 1, the Department 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.

STATEMENT OF ISSUES

Whether the family child care license of Licensee should be revoked based upon her failure to follow the terms of her conditional license and complete the required number of child care training hours?

The Administrative Law Judge concludes that it should.

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

FINDINGS OF FACT

1. Minn. R. 9502.0385 requires all licensed child care providers to complete six hours of child care/child development training annually.^[1] The six hour requirement can be met, in person, at many different locations throughout the community and surrounding area, as well as through multiple types of media, including video replay and approved readings. The Child Care Resource and Referral (CCRR) program in Mankato, MN provides information and a newsletter regarding daycare training and conducts training sessions on a monthly basis.^[2] CCRR serves providers in the towns of Mankato, New Ulm, Sleepy Eye, and Springfield. In addition, BCFS issues a quarterly newsletter that identifies several other training opportunities.

2. Licensee is a resident of Brown County, licensed as a Family Child Care Provider since 1991. She provides child care at her residence in New Ulm, MN.

3. BCFS child care licensing workers review a licensee's training status at the conclusion of the first year of licensure. Thereafter, relicensing visits to a licensee's home occur every two years. On July 27, 1992, BCFS child care licensing worker Ellen Olson issued a Correction Order to Licensee for, among other things, failing to complete the initial six hours of child care/child development training for her first year of licensure.^[3] Ms. Olson allowed Licensee until December 1, 1992, to complete the requirement. Licensee reported completion of the training three and one half months late, on March 15, 1993.

4. In May, 1996, Ms. Olson paid an early relicensing visit to Licensee due to Licensee's change of residence. Again, Ms. Olson issued a Correction Order to Licensee for, among other things, failing to complete the required six hours of training.^[4] Licensee was given a deadline of September 1, 1996, her original relicensing date, to complete the training, which she did by August, 1996.

5. On March 25, 1998, at the end of Licensee's third two-year licensing period, BCFS licensing worker Deanna Mohr issued yet another Correction Order to Licensee for failing to complete one-half hour of the six hour training requirement, among other things.^[5] Despite the April 25, 1998, deadline for completion set by Ms. Mohr, Licensee never completed the final one-half hour of training.

6. Barbara Dietz, another BCFS licensing worker, visited Licensee on September 13, 1998, and issued an additional Correction Order.^[6] This time, among other violations, Licensee had not completed her six hours of training for the 1997-1998 licensing year. Ms. Dietz imposed a deadline of September 10, 1998, to complete the training. On or about September 21, 1998, Licensee turned in a training verification form and documentation showing that she had completed 5.5 hours of training.^[7]

7. On April 13, 2000, Deanna Mohr visited Licensee at her home and issued a Correction Order.^[8] Licensee had again failed to complete four of the six training hours required for the 1998-1999 licensing year and four of the six hours required for the 1999-2000 licensing year, among other violations. For each of the two licensing periods, Licensee had attended only the mandatory food program training necessary for participation in and reimbursement from the food program for the meals and snacks served to her daycare children.^[9] Licensee missed the imposed deadline to complete her requirement by May 20, 2000, instead returning the Correction Order to BCFS on July 20, 2000, and claiming to have completed the training. Licensee provided no verification.

8. Barbara Dietz visited Licensee on April 25, 2002, again at the end of Licensee's two-year licensing cycle. Ms. Dietz issued a Correction Order because Licensee had not completed any of the required training for the licensing years 2000-2001 and 2001-2002.^[10] Ms. Dietz imposed a 60-day deadline for completing the 12 hours of training. By letter dated July 1, 2002, Ms. Dietz informed Licensee that BCFS had not received any documentation indicating Licensee's compliance with the training requirements. Accordingly, based upon Licensee's history of failure to complete training, Ms. Dietz stated she would make a recommendation to the Department for a negative licensing action if Licensee had not completed the 12 hours of training by August 1, 2002.^[11] When Ms. Dietz received no response from Licensee, she sent another letter, dated August 2, 2002, advising Licensee to contact her as soon as possible.^[12] Ms. Dietz gave Licensee until August 9, 2002, to make contact with her; if no contact was made, Ms. Dietz stated she would send a letter to the Department recommending a conditional license. Licensee completed her training, but did not turn in verification until August 24, 2002.^[13]

9. BCFS completes yearly relicensing visits when BCFS determines that a licensee is having problems maintaining the good standing of her license. Accordingly, on May 6, 2003, BCFS licensing worker Nancy Braam visited Licensee and issued her another Correction Order.^[14] Among other violations, Licensee had not completed any training hours for the 2002-2003 licensing period. Ms. Braam reviewed with Licensee the number of hours required per year and stressed the importance of the training requirement. She made clear that Licensee's inability to meet the deadlines and

complete the training was a “big issue” and a “big problem.”^[15] She gave Licensee the dates and location of several upcoming training sessions, one of which was occurring that night. Ms. Braam allowed Licensee until June 5, 2003, to fulfill the training requirements. The day following the visit, Ms. Braam mailed to Licensee a typed copy of the Correction Order, information that Licensee had requested regarding car seats, and a copy of the BCFS training newsletter.^[16] When Ms. Braam had heard nothing from Licensee by the June 5, 2003, deadline, she re-sent the Correction Order dated May 6, 2003, to Licensee.

10. Prior to re-sending the Correction Order, Denise Kamm recommended to the Department, by letter dated May 23, 2003, that Licensee’s license be made conditional for one year based upon Licensee’s repeated failure to complete, or delay in completing, her training hours.^[17] Ms. Kamm also recommended a fine due to Licensee’s lack of concern over her training requirements. BCFS hoped that a conditional license would be enough to get Licensee caught up on her requirements. Licensee also received a copy of this letter to the Department.

11. On June 6, 2003, Licensee indicated that she had corrected some of the violations, but she had not completed her training hours in full. BCFS received this information on June 9, 2003, and mailed a copy of the CCRR training information to Licensee on June 11, 2003.

12. The Department issued Licensee an Order to Forfeit a Fine and Order of Conditional License on July 29, 2003.^[18] The Commissioner ordered Licensee to pay a fine of \$100 for her past failures to complete appropriate training. In addition, the license was placed in conditional status for a period of six months, due to the training violations as well as two other violations.^[19] The conditional license required, in relevant part, that Licensee follow and comply with all parts of Minnesota Rules, parts 9502.0300 to 9502.0445; complete all outstanding training hours from her 2002-2003 licensing period and submit documentation of completion to BCFS by September 12, 2003; and provide all her daycare parents with a copy of or an opportunity to review the Order for Conditional License, and present verification, via parent signatures, to BCFS by August 1, 2003. The Order further stated, in bold type, “**Failure to comply with the stipulations of your conditional license or any other provisions of Minnesota Rules and Laws may result in revocation of your license.**” The Order also informed Licensee of her right to a contested case hearing on the fine issue and her right to request reconsideration of the conditional license.

13. When Licensee failed to meet the deadline for documenting her training imposed by the conditional license, Ms. Kamm contacted Molly Kelly at the Department, who recommended that Licensee’s license be revoked.^[20] In a letter dated October 10, 2003, BCFS recommended to the Commissioner that the license be revoked based on Licensee’s failure to comply with the terms of the conditional license and her continued noncompliance with correction orders.^[21]

14. On December 11, 2003, the Department issued Licensee an Order of Revocation, citing Licensee’s failure to comply with the requirements of the Conditional

License and Order to Forfeit a Fine and failure to maintain minimum licensing standards.^[22] Licensee had not paid her fine by that point. The Order informed her of her right to appeal and her right to a contested case hearing.

15. The Department attempted service of the Order on Licensee by certified mail on several occasions. On January 7, 2004, Denise Kamm sent a letter to Licensee advising her to sign for receipt of the letter, as it contained important information on her appeal rights.^[23]

16. On January 28, 2004, BCFS received confirmation that Licensee had appealed the revocation.^[24] The Department issued a Notice of and Order for Hearing dated January 27, 2004, setting the hearing to take place on March 30, 2004.^[25]

17. Licensee maintains that she interpreted the Order for Conditional License and Order to Forfeit a Fine to mean that she either had to pay the fine or complete the training, but not both.^[26] She claims to have paid the \$100 fine within the last month prior to the hearing. When questioned as to whether she has ever completed her six hour training requirement in a timely fashion, Licensee responded, "I'm not sure."

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.

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

3. Minn. R. 9502.0385 requires all daycare providers to complete six hours of training per year after the initial year of licensure in one or more of the subject areas specified in subpart 4.^[27]

4. Minn. Stat. § 245A.06, subd. 1 states:

(a) If the commissioner finds that the . . . license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to . . . the license holder. When issuing a conditional license, 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. . . . (b) Nothing in this section prohibits the commissioner from proposing a sanction as specified in section 245A.07, prior to issuing a correction order or conditional license.

5. Failure to comply with a correction order or conditional license allows the Commissioner to impose a fine and order other licensing sanctions pursuant to section 245A.07.^[28]

6. Before suspending, revoking, or making conditional a license, Minn. Stat. § 245A.04, subd. 6, requires the Commissioner to consider the facts, conditions, and circumstances concerning the program's operation and the well-being of persons served by the program. Furthermore, a risk of harm analysis must be performed based upon the results of any statutorily required background studies.

7. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to 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 those persons in a licensee's program before applying sanctions under Minn. Stat. § 245A.07.

8. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

9. The burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the licensee failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden shifts to the licensee to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.^[29]

10. The Commissioner presented the testimony of Denise Kamm and Nancy Braam and the Correction Orders and Conditional License issued to Licensee to show that Licensee did not comply with the rules and laws applicable to the situation. Ms. Braam clearly conveyed the seriousness of the training violation to Licensee, and both licensing workers were proactive about providing Licensee with up-to-date and timely information of future training programs and opportunities. At the hearing, Licensee made no attempt to explain her repeated failure over the years to fulfill the six hour requirement. The Commissioner established that reasonable cause existed to revoke the license.

11. The preponderance of the evidence is that Licensee understood that she had to obtain the necessary training each year. Licensee's statement that she misunderstood the nature of the Order to Forfeit a Fine and Order for Conditional License is not sufficient to show that she was even in partial compliance with the rules, because she did not submit the \$100 fine to the Department by the deadline imposed. Licensee acknowledged that she did not complete her training hours on time, but offered no explanation as to why. The chronic nature of these repeated violations demonstrates that Licensee does not take the requirements imposed on child care providers seriously.

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Order of Revocation be affirmed.

Dated: April 9th , 2004

S/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape recorded (1 tape). No transcript prepared.

^[1] Within one year of or one year prior to licensure, providers must undergo 6-9 hours of training in first aid and CPR, and 6 hours of child care/child development training. Minn. R. 9502.0385, subp. 2.

^[2] Testimony of Denise Kamm.

^[3] Ex. 2, Correction Order dated July 27, 1992.

^[4] Ex. 2, Correction Order dated May 9, 1996.

^[5] Ex. 2, Correction Order dated March 25, 1998.

^[6] Ex. 2, Correction Order dated September 3, 1998.

^[7] Ex. 2, Family/Group Day Care Training Record for 1997-1998, two Special Requests for Training Credits, and Certificate of Training Attendance.

^[8] Ex. 2, Correction Order dated April 13, 2000.

^[9] Testimony of Denise Kamm.

^[10] Ex. 2, Correction Order dated April 25, 2002; Ex. A.

^[11] Ex. A, letter dated July 1, 2002.

^[12] Ex. A, letter dated August 2, 2002.

^[13] Ex. A, Summary of Issues.

^[14] Ex. 2, Correction Order dated May 6, 2003.

^[15] Testimony of Nancy Braam.

^[16] Testimony of Nancy Braam.

^[17] Ex. A, letter dated May 23, 2003.

^[18] Ex. A, Order dated July 29, 2003

^[19] Licensee's other violations were repeated, and related to missing enrollment forms for each daycare child (Minn. R. 9502.0405, subp. 4) and hot water over 120 degrees (Minn. R. 9502.0435, subp. 15A).

^[20] Testimony of Denise Kamm.

^[21] Ex. A, letter dated October 10, 2003.

^[22] Ex. A, Order dated December 11, 2003.

^[23] Ex. A, letter dated January 7, 2004.

[\[24\]](#) Ex. A, Summary of Issues.

[\[25\]](#) Ex. 1.

[\[26\]](#) Testimony of Licensee.

[\[27\]](#) Subpart 4 includes subjects such as child development, child abuse, communicable disease prevention and control, parent and provider relationships, communication skills, community services and resources for children, methods of guiding behavior or discipline, home and fire safety and child injury prevention, learning activities, observation and assessment of children's needs, care of bilingual or non-English-speaking children, care of special needs or gifted children, nutrition and food safety, and business management.

[\[28\]](#) Minn. Stat. § 245A.06, subd. 3.

[\[29\]](#) Minn. Stat. § 245A.08, subd. 3(a).