

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 Kathleen Brownell	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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The above matter came on for hearing before Administrative Law Judge Linda F. Close on January 10, 2008. The OAH record closed upon conclusion of the hearing that day.

Michael Q. Lynch, Assistant Hennepin County Attorney, 525 Portland Ave., 12<sup>th</sup> Floor, Minneapolis, MN 55415, appeared on behalf of the Department of Human Services (the Department) and the Hennepin County Human Services and Public Health Department (the County). Laura K. Valentine, Attorney at Law, 350 West Burnsville Parkway, #500, Burnsville, MN 55337, appeared on behalf of Kathleen Brownell (Respondent).

**STATEMENT OF THE ISSUE**

Should the Respondent's family child care license be revoked because she failed to comply with statutes and rules governing crib safety inspections; provider training; provider record keeping; and physical environment during the time she was operating under a conditional license?

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

**FINDINGS OF FACT**

1. Respondent is licensed by the Department to provide family child care in her Minneapolis, Minnesota home. She has provided child care for sixteen years. Prior to her opening her own daycare, she worked at daycare centers and served as a nanny. Her education includes the study of child psychology at the University of Minnesota.

2. On February 23, 2006, the Department placed Respondent's license on conditional status for one year. The conditional status related to a

variety of violations including lack of supervision,<sup>1</sup> failure to protect children from hazardous substances, and the untidy condition of Respondent's home.<sup>2</sup> The Order of Conditional License required Respondent to obtain additional training in the areas of safety and supervision and to submit two written plans: one for keeping her home clean and free of hazards and the other for supervising children.<sup>3</sup> Respondent requested reconsideration. On May 25, 2006, the Department issued a final order conditioning Respondent's license for one year from that date.<sup>4</sup>

3. Normally, a Quality Assurance Specialist (QAS) visits a home on conditional license once a month. On July 17, 2006, a QAS made an unannounced visit to Respondent's home at 2:30 in the afternoon.<sup>5</sup> The QAS found Respondent outside, readying the children to go in for their afternoon naps. The QAS observed dishes piled in the sink and discussed this with Respondent. Respondent explained that she takes the children outside to play immediately after lunch. When they come in, they take a nap. At this time, Respondent cleans up after lunch.<sup>6</sup> The QAS also observed that a fan in the living room was connected to an extension cord. The QAS told Respondent that she could not use an extension cord, although a surge protector could be used instead.<sup>7</sup> The QAS issued a Correction Order as to the extension cord.<sup>8</sup> Respondent understood the rule against extension cords to mean that she could not substitute an extension cord for permanent wiring, which was not her intention for the temporary use of the fan. She nevertheless did not contest the Correction Order. Instead, she removed the extension cord and substituted for it a surge protector.<sup>9</sup>

4. In August, September, and December 2006, the QAS made her monthly visits and did not issue any correction orders. At the October 19, 2006, visit, the QAS noted that older children were playing with small objects on the floor. She thought this was a safety issue for the younger children who might have access to the objects, so she issued a Correction Order.<sup>10</sup> A barrette fell

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<sup>1</sup> The supervision issue, as explained by the Respondent, related to an incident in which two children whom were playing in the backyard crawled under an inverted, inflatable swimming pool. At the time of the incident, Respondent was inside the house with a licensing worker. When the two walked into the yard from the house, they saw the children had gotten under the pool. The licensing worker then reported the incident as a lack of supervision. When the incident occurred, the two children were in full sight of the licensing worker and Respondent, who immediately resolved the situation by removing the pool and admonishing the children about getting under it. Ex. 5; Testimony of Respondent; Ex. 32.

<sup>2</sup> Ex. 2; Testimony of Barbara Clifton.

<sup>3</sup> Ex. 3.

<sup>4</sup> The Commissioner, on reconsideration, affirmed the Order of Conditional License, and it became final. Ex. 6.

<sup>5</sup> Testimony of Linda Meneely.

<sup>6</sup> Ex. 7; Test. of L. Meneely.

<sup>7</sup> Ex. 7; Test. of L. Meneely.

<sup>8</sup> Ex. 9.

<sup>9</sup> Ex. 9.

<sup>10</sup> Ex. 7.

out of one child's hair, and a younger child put it in her mouth. Respondent and the QAS saw this happen. Respondent immediately removed it from the child's mouth.<sup>11</sup> Respondent was missing paperwork for Child I, and the Correction Order also referenced the need to provide that paperwork. Since Child I was not a regular daycare child, Respondent told the County she would ask Child I's mother to sign forms the next time Child I was in Respondent's care.<sup>12</sup>

5. On November 20, 2006, the QAS visited Respondent's home. Respondent had a new child, N, in her care. Respondent had given N's mother the paperwork to fill out and return to Respondent, but the mother had not yet done that.<sup>13</sup> The QAS issued a Correction Order as to the missing paperwork for N. Respondent subsequently notified the County that the parent had returned the forms to Respondent.<sup>14</sup>

6. At the January 16, 2007 monthly visit, the QAS again found small objects on the floor.<sup>15</sup> Respondent's dog had bitten a hole in a bean bag, and some of the contents had spilled on the floor of the basement. The dog had also spilled the contents of a recycling container in the backyard. The children were not playing in the backyard or the basement when the spilled items were there.<sup>16</sup> The QAS also found dry cereal on the upstairs floor, where Respondent and the children were playing. The QAS issued a Correction Order as to the spilled items. On January 31, 2007, the County received Respondent's response that all items had been taken care of on the day of the QAS's visit.<sup>17</sup>

7. The QAS visited in February and noted that Respondent was doing all she could to comfort a crying infant, who had had shots the day before. The QAS found the home and yard clean and did not issue any correction orders.<sup>18</sup>

8. The QAS did not visit in March. On April 2, 2007, when the QAS visited, Respondent could not find the paperwork for a one-year-old child (Child #1) who was in her care. While the QAS was at the home, two children, 8 and 4 years, (Child #2 and Child #3) came to visit. These two had been in Respondent's care in the past, but they now lived in Hawaii.<sup>19</sup> The QAS asked Respondent to provide paperwork for the two, but Respondent told her that she had thrown it away when the children moved to Hawaii. The QAS issued a Correction Order as to the missing paperwork for the three children. The QAS also admonished Respondent that repeated violations might result in revocation of her license.<sup>20</sup> Respondent responded to the Correction Order with the

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<sup>11</sup> Test. of Respondent.

<sup>12</sup> Test. of L. Meneely; Ex. 7; Ex. 10.

<sup>13</sup> Ex. 12.

<sup>14</sup> Test. of L. Meneely; Ex. 7; Ex. 12.

<sup>15</sup> Test. of L. Meneely; Ex. 7.

<sup>16</sup> Test. of Respondent; Test. of L. Meneely; Ex. 7.

<sup>17</sup> Test. of L. Meneely; Ex. 14.

<sup>18</sup> Test. of L. Meneely; Ex. 7.

<sup>19</sup> Ex. 7.

<sup>20</sup> Ex. 16.

information that the parent had completed the paperwork for Child #1, but she did not have paperwork for the Children #2 and #3, who live in Hawaii.<sup>21</sup>

9. In addition to visits by the QAS, Respondent was visited by a licensing worker, Barb Clifton. The QAS introduced Respondent to the licensing worker at the June 6, 2006 visit. On April 24, 2007, the licensing worker made a drop-in visit to Respondent's home. She found Respondent to be affectionate and attentive to the children's needs. The licensing worker found a number of violations that day and issued a Correction Order regarding the following:

- Loose living room and kitchen door knobs
- No light bulb in socket of upstairs closet
- 3 tape dispensers with metal edges inside a kitchen drawer
- Plastic bags in living room and bedroom closets
- Plastic bag on bedroom floor
- Coins on low dresser in bedroom
- Inadequate exterior barrier for basement egress window well
- Peony plants accessible to children
- No separate sheet for child napping on top of Respondent's bed
- No second exit for large, doorless, windowless, upstairs closet
- Toys sitting on basement egress window sill and doll house on floor blocking exit path
- Missing enrollment forms for child N.E.
- Missing grievance policies for all children enrolled
- Missing emergency forms for children J.W., L.W., B.E., S.D., W.S. and J.B.
- Missing pool permission for children B.E., C.M., N.M., and H.P.
- Missing fire and storm drill records for 2005 and 2006
- Fire extinguisher not serviced during 2006

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<sup>21</sup> Ex. 15.

- Missing crib inspection documents for February, March, and April of 2007
- Training hours short by 2.5 hours
- No “in-person” SIDS/shaken baby syndrome class completed<sup>22</sup>

10. On May 11, 2007, the County received Respondent’s response to the April 24, 2007, Correction Order. Respondent had replaced the loose front doorknob and tightened the backdoor one; replaced the missing closet light bulb; moved the plastic bags, coins, and tape dispensers; removed the toys blocking the egress window; blocked the window well and peony plants with fencing; gated the large, upstairs closet; had the fire extinguisher serviced; and arranged for additional training, including the required “in-person” training. Respondent had located or obtained new wading pool, emergency and other missing forms. But she could not find the drill logs for 2005 and 2006, and she had no crib inspection forms for the missing months.<sup>23</sup> The cribs were in safe, working order on the day of the visit, but the inspection documentation had not been filled out for the months of February, March, and April.<sup>24</sup>

11. The upstairs closet, window well, basement egress access, and outdoor plantings had all been inspected at prior visits by a previous licensing worker and had not been subjects of correction orders. Respondent believed that the plastic bags and tape dispensers were not accessible to the children because they were put away in closets or drawers. Respondent had not obtained wading pool permission in April of 2007, because the pool was not being used at that time.<sup>25</sup> Although Respondent did not have 2005 and 2006 fire and storm drill logs, she did have them for 2007 at the time of the April visit. Respondent had taken SIDS/shaken baby syndrome training in 2006, but it was an on-line course, not an in-person course.<sup>26</sup> Respondent arranged to take an in-person SIDS/shaken baby syndrome class on June 21, 2007.<sup>27</sup> By July 25, 2007, the County had received documentation that Respondent had completed all additional training by June 25, 2007.<sup>28</sup>

12. Following the April 24, 2007 visit, the QAS recommended to the County Attorney that Respondent’s license be revoked.<sup>29</sup> By a letter dated

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<sup>22</sup> Test. of B. Clifton; Ex. 17; Ex. 18.

<sup>23</sup> Ex. 18; Test. of Respondent.

<sup>24</sup> Test. of B. Clifton; Test. of Respondent.

<sup>25</sup> Test. of Respondent.

<sup>26</sup> Test. of B. Clifton; Ex. 17. As a result of a medical condition, Respondent had previously had permission to complete training on-line. For this purpose, she had submitted physician letters about the condition. See Ex. 34, 35. The new workers determined that Respondent must take the SIDS/shaken baby syndrome class in-person.

<sup>27</sup> Ex. 18.

<sup>28</sup> Ex. 24.

<sup>29</sup> See Ex. 25.

June 11, 2007, the QAS asked the Department to issue an order of revocation. The QAS's factual basis for the recommendation included the following:

- On April 19, 2006, Respondent had a car parked in her backyard.<sup>30</sup> Respondent testified, and the ALJ finds as the credible evidence, that the car was parked at the back edge of the yard on the drive, but with two wheels touching in the yard area. The car was separated from the play area by a retractable gate.<sup>31</sup>
- On April 19, 2006, Respondent had in her care a 13-year-old for whom no background study had been completed.<sup>32</sup> Respondent told the worker, and the ALJ finds as the credible evidence, that the child, who was a former daycare child, was in Respondent's home that day only to visit Respondent.<sup>33</sup>
- On May 15, 2006, the backyard fence was not in place so as to limit access to the alley.<sup>34</sup> Respondent testified, and the ALJ finds as the credible evidence, that the retractable fence was put in place whenever the children were in the yard, a system approved by a prior worker.<sup>35</sup>
- On July 17, 2006, there was a Correction Order regarding the extension cord being used for a fan.<sup>36</sup> Respondent testified, and the ALJ finds as the credible evidence, that the extension cord use was not a substitute for permanent wiring.<sup>37</sup>
- On October 19, 2006, paperwork was missing as to Child I.<sup>38</sup> Respondent told the worker, and the ALJ finds as the credible evidence, that the child's mother would bring the paperwork the next time Child I was in care, since Child I was not a regular daycare child.<sup>39</sup>
- On November 14, 2006, Respondent lacked paperwork as to Child N.<sup>40</sup> Respondent told the worker, and the ALJ finds as the credible

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<sup>30</sup> Ex. 2.

<sup>31</sup> Test. of Respondent.

<sup>32</sup> Ex. 2.

<sup>33</sup> Ex. 7. Apparently, no correction order ever issued as to the 13-year-old who was in the home that day.

<sup>34</sup> Ex. 2.

<sup>35</sup> Ex. 8; Test. of Respondent. Fence issues were recurring, and Respondent had new fencing put in place at a cost of \$2,600.00. Test. of Respondent.

<sup>36</sup> Ex. 2.

<sup>37</sup> Test. of Respondent.

<sup>38</sup> Ex. 2.

<sup>39</sup> Ex.

<sup>40</sup> Ex. 2.

evidence, that N was new in care, and that Child N's mother subsequently completed and returned to Respondent the paperwork.<sup>41</sup>

- On January 11, 2007, there were toxics/hazards and dried food on Respondent's floors.<sup>42</sup> Respondent testified, and the ALJ finds as the credible evidence, that the "toxics/hazards" were beads from a bean bag on the basement floor where the children were not playing.<sup>43</sup>
- On April 2, 2007, Respondent did not have paperwork for Children #1, 2 and 3.<sup>44</sup> Respondent testified, and the ALJ finds as the credible evidence, that Children #2 and 3 dropped in for a visit while the licensing worker was at Respondent's home and were not enrolled for daycare.<sup>45</sup>

13. The letter recommending revocation included no reference to Parent Satisfaction Surveys. Respondent submitted into evidence three July 2007 Parent Satisfaction Surveys and a July 2007 parent letter. The surveys rate Respondent's daycare in all but one area as 4 or 5 on a scale where 5 is the best. On two surveys, the parents rated Respondent as a 3 in the area of "rooms are clean and toys are safe." The written comment of one of these parents states: "It's daycare. Can't be perfect. I'd rather my kids are safe and enjoy daycare than ignoring them to keep clean." The other comment noted that Respondent's dog is messy.

14. The child of one of the parents who returned a survey has Down syndrome. The parent noted Respondent's exceptional ability to care for this special needs child and commented that the child's teachers, who visited the child in Respondent's home, have also remarked favorably on Respondent's care of the child.<sup>46</sup> These surveys and the letter were not submitted to the Department as part of the revocation recommendation.

15. On October 16, 2007, the Department issued an Order of Revocation.<sup>47</sup> From this Order, the Respondent appealed, resulting in this hearing.

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

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<sup>41</sup> Ex. 12.

<sup>42</sup> Ex. 2.

<sup>43</sup> Test. of Respondent.

<sup>44</sup> Ex. 2.

<sup>45</sup> Test. of Respondent.

<sup>46</sup> Ex. 30.

<sup>47</sup> Ex. 1.

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have authority to consider and rule on the issues in this contested case proceeding pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Notice of and Order for Hearing was proper in all respects, and the County and DHS have complied with all procedural requirements.

3. Minn. Stat. § 245.07, 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.”

4. In applying a sanction, the Commissioner is 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 persons served by the program.”<sup>48</sup>

5. Before revoking a license, the Commissioner must

[c]onsider facts, conditions, or circumstances concerning the program’s operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the . . . license holder.<sup>49</sup>

Grounds for revocation include the occurrence of violations while a license holder’s license is probationary or suspended.<sup>50</sup>

6. At a hearing regarding a licensing sanction, the Department has the burden of proof to demonstrate that reasonable cause existed for the adverse action taken against the family child care license. When such a showing is made, the burden of proof shifts to the licensee to demonstrate by a preponderance of the evidence that the licensee is in full compliance with the laws and rules that the Commissioner alleges were violated.<sup>51</sup>

7. Minn. Stat. § 245A.146 requires license holders to inspect cribs monthly and document the inspection. The Department has met the burden of proving that Respondent failed to document her inspection of the cribs in her home. Respondent has shown by a preponderance of the evidence that the cribs met all statutory safety standards.

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<sup>48</sup> Minn. Stat. § 245A.07, subd. 1.

<sup>49</sup> Minn. Stat. § 245A.04, subd. 6.

<sup>50</sup> Minn. R. 9546.0100, subp. 3G.

<sup>51</sup> Minn. Stat. § 245A.08, subd. 3.

8. Minn. Stat. § 245A.50 requires license holders to undergo SIDS/shaken baby syndrome. The Department has not met its burden of proving that Respondent failed to complete her required training during the time allotted by the County.

9. Respondent's license required her to undergo training in addition to the statutorily required number of hours. The Department has met its burden of showing reasonable cause to believe Respondent had failed to complete required training by May 14, 2007.<sup>52</sup> Respondent has shown by a preponderance of the evidence that she had completed all required training by June 25, 2007.<sup>53</sup>

10. Minn. R. 9502.0405 requires license holders to maintain up-to-date records for each child. The Department has met its burden of showing reasonable cause to believe that Respondent violated the rule by failing to have records as to Child I; grievance policy records as to all enrolled children in April 2007; emergency forms for children J.W., L.W., B.E., S.D., W.S. and J.B.; and enrollment forms for child N.E. The Department has not met its burden of showing reasonable cause as to missing wading pool permission forms for D.E., C.M., N.M., and H.P. Respondent has shown by a preponderance of the evidence that she was in compliance with record keeping requirements not later than June 19, 2007.

11. Minn. R. 9502.0425, subp. 18, prohibits extension cords from being used "as a substitute for permanent wiring." The Department has not met its burden of showing reasonable cause to believe Respondent violated the rule.

12. Minn. R. 9502.0425, subp. 4, requires each room of the licensed residence to provide two means of egress. The Department has not met its burden of showing reasonable cause to believe Respondent violated the rule.

13. Minn. R. 9502.0425, subp. 16, requires operable fire extinguishers in the kitchen and cooking areas of the residence. The Department has not met its burden of showing reasonable cause to believe Respondent violated the rule.

14. Minn. R. 9502.0435, subp. 3, requires rubbish to be inaccessible to infants and toddlers. The Department has not met its burden of showing reasonable cause to believe Respondent violated the rule.

15. Minn. R. 9502.0435, subp. 4, requires that "...poisonous plants" must be inaccessible to children. The Department has met its burden of showing reasonable cause to believe Respondent violated the rule. Respondent has shown by a preponderance of the evidence that she remedied a potential hazard of a peony plant so as to be in compliance with the rule.

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<sup>52</sup> See Ex. 20.

<sup>53</sup> See Ex. 24.

16. Minn. R. 9502.0435, subp. 6, prohibits “knives, matches, plastic bags and other potential hazards” from being within reach of children. The Department has not met its burden of showing reasonable cause to believe Respondent violated the rule as to tape dispensers and plastic bags put away in closets and drawers. The Department has met its burden of showing reasonable cause to believe Respondent violated the rule as to coins and a plastic bag left on her bedroom floor. The Department has met its burden of showing reasonable cause to believe Respondent violated the rule as to small toys being within reach of infants and toddlers. Respondent has not shown by a preponderance of the evidence that she did not violate the rule.

17. Minn. R. 9502.0435, subp. 8, requires the license holder to maintain a log of monthly fire and storm drills. The Department has not met its burden of showing reasonable cause to believe Respondent violated the rule.

18. Minn. R. 9502.0435, subp. 11, requires that separate bedding be provided for each child. The Department has met its burden of showing reasonable cause to believe Respondent violated the rule.

19. The Memorandum that follows explains the reasons for these Conclusions, and that Memorandum is incorporated into these Conclusions.

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

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that the Order of Revocation be rescinded and that a lesser penalty be imposed.

Dated: February 1, 2008

s/Linda F. Close  

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LINDA F. CLOSE  
Administrative Law Judge

Reported: Digitally recorded  
No transcript prepared

## 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 the Appeals and Regulations Division, P.O. Box 64941, St. Paul, MN 55164-0941, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final decision of the agency under Minn. Stat. § 14.62, subd. 2a.

## MEMORANDUM

County workers have cited Respondent for many violations of the daycare licensing rules. The ALJ has recommended against license revocation for two reasons. First, the ALJ is persuaded that the County has exaggerated the importance of rule violations respecting the condition of Respondent's home. Second, the Department has failed to justify the revocation using the required statutory analysis.

Examples of overstating violations abound. The County worker faulted Respondent's use of an extension cord for a fan when the home air conditioning was temporarily out of order. The County cited the following rule: "Extension cords shall not be used as a substitute for permanent wiring . . ." <sup>54</sup> The Respondent reasonably believed that the extension cord was not being substituted for permanent wiring, given the emergency reason for its use. Moreover, if such a violation is to be a basis for depriving a license holder of her livelihood, the application of the rule to the facts need be far clearer than it is in this situation.

When one County worker took over Respondent's case from another, the new worker cited Respondent for failing to provide a second egress for a closet. That had never been of concern to the prior worker. Naturally, Respondent did not consider the closet a "room" that required two means of egress. <sup>55</sup> Nor, apparently, did the prior worker. Once the County apprised Respondent of its new view, Respondent made arrangements to have a permanent gate put over the doorway to the closet so that it could not be used as a play area. <sup>56</sup>

The County's demand for pool permission paperwork in April is another example of over-zealous enforcement. No one was using the pool in April, and it was unlikely that such would happen for several weeks.

Similarly, a prior worker had seen the arrangement for the basement window egress. Some items sat on a shelf below the window. The prior worker did not cite Respondent for this. The new one did, saying that the window was "not 100%" accessible. <sup>57</sup>

The rule about fire extinguishers requires that they be operational and of a certain type. The rule does not specify annual servicing. <sup>58</sup> Respondent's license should not be revoked over something the rule does not explicitly require.

Workers also repeatedly faulted Respondent for messy conditions that existed in parts of the home not being used for daycare. When the dog tipped

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<sup>54</sup> Minn. R. 9502.0425, subp. 18.

<sup>55</sup> See Minn. R. 9502.0425, subp. 4; Test. of Respondent.

<sup>56</sup> Test. of Respondent.

<sup>57</sup> Test. of B. Clifton.

<sup>58</sup> See Minn. R. 9502.0425, subp. 16.

over a recycling bin in the backyard, Respondent did not immediately clean it up, because there were no children there at the time. When the dog made a hole in a bean bag, the children were not in the basement where the bag was located. Workers did have a legitimate concern about preventing younger children from playing with small toys being used by older children. While this is bona fide concern, the sanction of revocation seems all out of proportion to the offense, particularly given the close attention Respondent pays to the children in her care.<sup>59</sup>

Of additional concern to the ALJ is the Department's failure to analyze all of the factors that need be considered before initiating revocation. Minn. Stat. § 245A.07, subd. 1, mandates the consideration of several factors before the Commissioner may impose any sanction against a licensee. These factors include "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." In addition, the Commissioner is to

[c]onsider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the ... license holder.<sup>60</sup>

The two County workers who testified focused their attention and concern on the factor of chronicity almost exclusively. And because of the microscope under which they examined Respondent's home, it was inevitable they should conclude that Respondent was in frequent violation of the rules. They did not stop to ask, for example, whether Respondent's temporary use of an extension cord was a serious violation or question why it was all right to use a surge protector rather than an extension cord. While paperwork is also a legitimate concern, Respondent's lapses do not have the high importance alleged by the County. A measure of Respondent's success as a care provider is the fact that children come back to see her. The 13-year-old was one of these, as were Child #2, Child #3 and Child I. Although they returned to visit Respondent, the worker cited Respondent for not having paperwork for them.

Respondent cares for many children, one of whom has Down syndrome. That child's teachers and parent give high praise to Respondent's care for this special needs child. Other parents similarly give glowing reports about Respondent's loving care of their children. Respondent provides many activities for the children. She takes them on walks, to the parks and zoo; she provides healthy food and snacks; she has arts and crafts and computer games for the children. She is engaged with them, and she loves them, a feeling reciprocated

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<sup>59</sup> Respondent credibly testified that she "watches the kids like a hawk."

<sup>60</sup> Minn. Stat. § 245A.04, subd. 6.

by the children.<sup>61</sup> These are important facts for the Commissioner to consider before revoking a license. None of this evidence was before the Department when it issued the revocation order.

While Respondent's home is likely not as neat during daycare hours as the County wishes, the reason is that the Respondent spends her time with the children, rather than constantly cleaning up after them.<sup>62</sup> When parents arrive in the morning, the home is clean. As the day progresses, it deteriorates. Respondent provides the minute-to-minute care that parents want (and deserve) for their children.

Revocation is not a wise remedy in this case. Respondent is willing to hire an assistant to help with the cleaning and paperwork.<sup>63</sup> This is a sensible remedy that will address the County's concerns about the cleanliness of the home. A license conditioned on Respondent's employing a helper is a far more desirable sanction than depriving parents and children of Respondent's affectionate care.

**L. F. C.**

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<sup>61</sup> Ex. 30; Test. of Respondent.

<sup>62</sup> Test. of Respondent.

<sup>63</sup> Test. of Respondent.