

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

In the Matter of the Proposed Revocation  
of the Child Foster Care License of Sophia  
Lofton

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

This matter comes before Administrative Law Judge (ALJ) Manuel J. Cervantes following a hearing pursuant to the license holder's appeal from an Order of Revocation revoking the license holder's license to provide child foster care. The hearing in this matter was held on June 20, 2008, at the Hennepin County Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota. The record in this matter closed on June 20, 2008, at the conclusion of the hearing.

Michael Q. Lynch, Assistant Hennepin County Attorney, 525 Portland Avenue South, Minneapolis, Minnesota 55415, appeared on behalf of Hennepin County (County) and the Minnesota Department of Human Services (Department). Sophia Lofton (Licensee) appeared on her own behalf.

**STATEMENT OF ISSUES**

Is it appropriate to revoke the child foster care license of Sophia Lofton based on her failure to comply with the requirements of the applicable licensing rules and laws?

The Administrative Law Judge concludes the revocation order should be **AFFIRMED**.

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

**FINDINGS OF FACT**

1. Licensee was originally licensed in 2004 to provide foster care. Specifically, it was Licensee's hope to provide foster care for her niece from Illinois. In 2007, Licensee was licensed a third time to provide foster care. On about June 16, 2007, Licensee's niece, B.L., was placed in her home by Cook County, Illinois, authorities via the Interstate Compact on the Placement of Children (ICPC).<sup>[1]</sup>

2. Hennepin County supervised B.L.'s placement in Licensee's home and was responsible for providing necessary services to B.L.<sup>[2]</sup>

3. Licensee has three of her own children living with her. Her daughter, S., is 7 years old and her sons, N. and C., are 16 and 21 years old, respectively.<sup>[3]</sup>

4. In June of 2007, B.L. was 12 years old and a ward of the state of Illinois.<sup>[4]</sup> B.L. was taking medication for bipolar disorder and incontinence.<sup>[5]</sup> B.L.'s disabilities required that she be placed in a Level 4 special education setting.<sup>[6]</sup>

5. On July 17, 2007, Licensee met with Suzanne Macek, her Hennepin County licenser, and Andrea Isted, the Child Services Worker (CSW) from Hennepin County who was assigned to coordinate services for B.L. They met at Licensee's home and B.L. was present for some of the meeting.<sup>[7]</sup>

6. During that visit, Licensee told Ms. Macek and Ms. Isted that B.L. had been without her medications for about a week.<sup>[8]</sup>

7. The reason that B.L. did not take medication for about a week is that she arrived at Licensee's home with only about a week or ten days' worth of medications and her Illinois Medical Assistance card was not valid in Minnesota.<sup>[9]</sup>

8. When Licensee realized that B.L. was out of medication and that she could not fill the prescriptions in Minnesota, she contacted Janice Griffin, B.L.'s case worker in Illinois. Ms. Griffin filled the prescriptions in Illinois and mailed them to Licensee.<sup>[10]</sup>

9. After learning of the problem, Ms. Isted also contacted Ms. Griffin, who mailed additional medication overnight.<sup>[11]</sup>

10. Eventually, B.L. was enrolled in Medical Assistance in Minnesota and assigned to an HMO.<sup>[12]</sup>

11. On August 20, 2007, Ms. Macek and Ms. Isted conducted another home visit at Licensee's home.<sup>[13]</sup>

12. During that visit, Licensee expressed concerns about B.L.'s worsening behavior, including screaming, calling 911 and calling family members on the telephone at 2:00 a.m. Licensee agreed to Ms. Isted's recommendation for in-home family therapy. Ms. Isted said she would make arrangements to have a therapist contact Licensee.<sup>[14]</sup>

13. Licensee took B.L. for individual therapy once, in August 2007. B.L. missed her second appointment after Licensee cancelled it due to a death in her family. Although B.L. was supposed to participate in individual therapy once a week, Licensee thought B.L. was supposed to attend individual therapy once a month.<sup>[15]</sup>

14. The therapy agency tried to make contact with Licensee nine times, but Licensee never responded to their calls. Eventually they placed the referral in their “no response” file.<sup>[16]</sup>

15. Ultimately, B.L. was offered in-school individual therapy during a September 20, 2007 intake interview at Hosterman School. Arrangements were made and B.L. began to participate in therapy there.<sup>[17]</sup>

16. Also during the August 20 visit, Licensee told Ms. Isted that, while out on a bike ride with some other children one day in July, B.L. and the others had gone onto a construction site and one of the children broke into some construction equipment. The police caught them, and when none of the children would confess to breaking into the equipment, the police took all of the children to the police station. Licensee did not report this incident to Ms. Isted before because she did not believe that she was required to report it.<sup>[18]</sup>

17. On September 4, 2007, which was the first day of school, Ms. Isted received a voice mail message from B.L. saying that she did not want to live with Licensee any longer. Because she was concerned about B.L., Ms. Isted immediately began trying to reach her. First, she checked with Brooklyn Park Junior High and was told that B.L. was not registered to attend school there. Next, Ms. Isted contacted the Osseo school district but was told that B.L.’s file was incomplete because Licensee had not filed the required address verification. Eventually, Ms. Isted went to Licensee’s home and found B.L. and Licensee there.<sup>[19]</sup>

18. During her September 4, 2007 visit to Licensee’s home, Ms. Isted informed Licensee that she had to provide additional information to complete B.L.’s registration, which Licensee did later that day.<sup>[20]</sup>

19. Approximately two days later, Ms. Isted received a telephone call from a school official stating that B.L. was fully registered but there would be some additional delay because B.L. had to be placed in an appropriate school setting. Ms. Isted had not been made aware earlier that B.L. had to be placed in a Level 4 Special Education setting.<sup>[21]</sup>

20. It took approximately three weeks for the school to process B.L.’s paperwork so that she could start school at Hosterman, a school that had a setting appropriate for B.L.’s needs.<sup>[22]</sup>

21. In early October, B.L. left Licensee’s home late one afternoon and attended a party without permission. B.L. did not return home until 8:00 a.m. the next morning. After B.L. returned home, Licensee took B.L. to the police station and reported that B.L. had run away. The police then spoke to B.L. about her behavior.<sup>[23]</sup>

22. Licensee did not call the police while B.L. was missing, nor did she called Community Based First Response, as foster parents are instructed to do when a foster child fails to return home at curfew time.<sup>[24]</sup>

23. Licensee did not report this incident to Hennepin County officials until a conversation she had with Ms. Macek during her re-licensing visit on November 5, 2007.<sup>[25]</sup>

24. Licensee re-scheduled a re-licensing inspection appointment from September 24 to September 26, 2007, and then missed the September 26 appointment. Licensee then failed to respond to three follow-up contacts from Ms. Macek.<sup>[26]</sup>

25. On October 30, 2007, the County issued a Correction Order to Licensee for her failure to respond to agency and school professionals. Licensee signed and returned the Correction Order on November 5, 2007, promising to keep in touch with the licenser.<sup>[27]</sup>

26. On November 6, 2007, following the re-licensing visit, Licensee was re-licensed to provide foster care for B.L.<sup>[28]</sup>

27. Concerned that B.L. might be sexually active, Licensee took B.L. to the doctor to see whether she could take birth control pills. Before prescribing birth control pills, B.L.'s physician administered a pregnancy test, which was positive. At that time, Licensee scheduled a follow-up vaginal examination for November 15 for the purpose of confirming B.L.'s pregnancy.<sup>[29]</sup>

28. On November 14, 2007, the social worker at Hosterman School contacted Ms. Isted and informed her that B.L. had stated that she was pregnant. Ms. Isted spoke with B.L. at school who confirmed that she was pregnant, as did Licensee when Ms. Isted contacted her. During their conversation on November 14, 2007, Licensee told Ms. Isted that she had already been making inquiries about how to obtain an abortion for B.L.<sup>[30]</sup>

29. On November 15, 2007, Janice Griffin, B.L.'s Illinois caseworker, contacted Licensee and informed her that B.L. was to be removed from Licensee's home and returned to Illinois. Licensee cancelled B.L.'s November 15, 2007 doctor appointment.<sup>[31]</sup>

30. On November 19, 2007, B.L. was removed from Licensee's home and returned to Illinois.<sup>[32]</sup>

31. During the time that B.L. was living in Licensee's home, Licensee repeatedly failed to answer telephone calls and messages from Ms. Isted and from Hosterman School staff.<sup>[33]</sup>

32. On January 10, 2008, the County recommended to the Department that Licensee's foster care license be revoked.<sup>[34]</sup>

33. On March 4, 2008, the Department revoked Licensee's foster care license.<sup>[35]</sup>

34. Licensee's Notice of Appeal of the revocation of her license was received by the Department on or about March 14, 2008.<sup>[36]</sup>

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

### CONCLUSIONS

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. The Notice of Hearing is proper in all respects and the Placing Agency and the Department have complied with all substantive and procedural requirements of law and rule.

3. At all times relevant to these proceedings, Licensee was licensed to provide child foster care.

4. The foster care licensing rules define "Basic services" as:

[S]ervices provided at the foster home to the foster child that meets the foster child's basic need for food, shelter, clothing, medical and dental care, personal cleanliness, privacy, spiritual and religious practice, safety, and adult supervision.<sup>[37]</sup>

5. The foster care licensing rules require that a license holder must:

share responsibility for the foster child's well-being with the foster child's social worker, school, and legal parents;<sup>[38]</sup>

cooperate with the child's case manager and other appropriate parties to develop and implement the child's case plan . . . .<sup>[39]</sup>

identify and share information, if appropriate, with persons who are directly involved in the child's treatment plan . . . ;<sup>[40]</sup>

report the child's behaviors and other important information to the placing agency and others as indicated in the child's case plan;<sup>[41]</sup>

give the placing agency additional significant information about the foster child as it becomes known.<sup>[42]</sup>

work with the child's placing agency . . . to develop a plan to identify and meet a foster child's immediate needs. The license holder must collaborate with the placing agency to provide the basic services to the child.<sup>[43]</sup>

6. The Department demonstrated that it had reasonable cause to take disciplinary action against Licensee's foster care license based on her failure to meet the licensing requirements in Minnesota R. 2960.3010, subp. 5, 2960.3060 and 2960.3080.

7. If the Department shows that it has reasonable cause to sanction a license under Minn. Stat. § 245A.08, subd. 3, the Licensee may show by a preponderance of evidence that she fully complied with the applicable laws or rules she is alleged to have violated.

8. Licensee failed to show by a preponderance of evidence that she fully complied with the applicable licensing rules.

9. When considering whether to impose sanctions against a license holder, the Commissioner of Human Services must "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"<sup>[44]</sup>

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

### **RECOMMENDATION**

The Administrative Law Judge recommends that:

The Commissioner of the Department of Human Services AFFIRM the revocation of Ms. Lofton's license to provide foster care.

Dated: July 22, 2008

s/Manuel J. Cervantes  
MANUEL J. CERVANTES  
Administrative Law Judge

Reported: Digitally recorded: No transcript.

### **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 Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907 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 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.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

### **MEMORANDUM**

The Administrative Law Judge is particularly mindful of the fact that on November 6, 2007, Ms. Macek completed a form re-licensing Licensee to provide foster care for "one child who is a relative, age 12-17."<sup>[45]</sup> Ms. Macek had performed a re-licensing visit the day before and the narrative that is part of the Relicensing Review is filled with discussion of many of the issues to which the Department referred in its Order of Revocation. Licensee's license was renewed on November 6, at a time when the County was aware of the information about the issues relating to the June and July medication difficulties, the incident with the police in July, the delayed start of school, the all-night party, Licensee's failure to communicate about all of these things in a timely fashion and Licensee's failure to provide timely cooperation with the re-licensing process itself. Despite this, the County re-licensed Licensee.

It was only after B.L.'s pregnancy became known to the County that the County recommended revocation. The proper focus of the basis for revocation, then, is what occurred, or what the County learned, after it re-licensed Licensee to provide foster care for B.L. Even focusing on this narrow window of time, there is an adequate basis for the Commissioner to determine that revocation is appropriate.

The County was not aware prior to November 6 that Licensee, suspecting that B.L. was sexually active, decided to take her to the doctor with the aim of getting her a prescription for birth control pills. Licensee's failure to share her concerns about B.L.'s sexual activity and to discuss her approach to dealing with that problem (i.e., getting a prescription for birth control pills) reveals both a lack of good judgment on Licensee's part, and a failure to appreciate and act on the requirements that a foster care provider share responsibility for the child's well being, cooperate with the case manager, report the child's behaviors and other important information, and collaborate with the placing agency to meet the child's needs. A decision to put a 12-year-old girl on birth control

pills begs the question of what to do about her sexual activity. While all of the parties might have determined together that birth control pills were in B.L.'s best interest, the decision was not Licensee's to make alone.

Once Licensee learned that B.L. was pregnant, all of the same requirements that should have led her to discuss her concerns about B.L. with Ms. Isted should have led her to notify Ms. Isted immediately about the pregnancy. Licensee discovered that B.L. was pregnant on November 8. Ms. Isted learned about the pregnancy from B.L.'s school social worker, not from Licensee, on November 14. In addition, it was not appropriate for Licensee to begin discussing an abortion without bringing the County into the discussions. This final failure to communicate occurred just a little more than a week after Licensee signed the licensing correction order acknowledging that she had to improve her communication and cooperation with the licensor and members of B.L.'s service team.<sup>[46]</sup>

Finally, there is the question of the pregnancy itself. While Licensee testified that 12 year olds sometimes get pregnant, B.L.'s pregnancy is evidence of a lack of appropriate supervision on Licensee's part. According to Licensee, B.L. had her period after the early October all-night party, which means that B.L. must have gotten pregnant after that night.<sup>[47]</sup> There was no evidence presented at the hearing about the circumstances under which B.L. got pregnant, or who the father of the child might be. Given the significant behavioral and emotional issues with which B.L. was struggling and Licensee's own suspicion that B.L. was sexually active, Licensee should have supervised B.L. closely or asked the County for more assistance.

What is clear from this record is that Licensee tried to go it alone. Unfortunately, it was to the detriment of her niece.

### **M. J. C.**

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<sup>[1]</sup> Testimony of Suzanne Macek.

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

<sup>[3]</sup> Hearing Exhibits (Ex.) 4 and 10.

<sup>[4]</sup> Ex. 2 at page 3.

<sup>[5]</sup> Ex. 3.

<sup>[6]</sup> Ex. A.

<sup>[7]</sup> Test. of S. Macek and Ex. 3.

<sup>[8]</sup> Ex. 3.

<sup>[9]</sup> Test. of Sophia Lofton.

<sup>[10]</sup> Test. of S. Lofton.

<sup>[11]</sup> Test. of A. Isted.

<sup>[12]</sup> Test. of A. Isted and S. Lofton.

<sup>[13]</sup> Ex. 1, p. 3 and Ex. 4.

<sup>[14]</sup> Test. of A. Isted, S. Lofton, and Ex. 1, p. 3.

<sup>[15]</sup> Test. of S. Lofton and Ex. 9, p. 2.

- [16] Ex. 9, p. 2.
- [17] Test. of A. Isted and Ex. 9, p. 2.
- [18] Test. of A. Isted.
- [19] Test. of A. Isted.
- [20] Test. of A. Isted and S. Lofton.
- [21] *Id.*
- [22] Test. of A. Isted, S. Lofton, and Ex. A.
- [23] Test. of S. Lofton and Ex. 10, p. 4.
- [24] *Id.* and test. of A. Isted.
- [25] Ex. 10, p. 4.
- [26] Ex. 2, p. 4 and Exs. 5,6, 7.
- [27] Ex. 8.
- [28] Ex. 10.
- [29] Test. of S. Lofton and Ex. B.
- [30] Test. of A. Isted and S. Lofton and Ex. 9, p. 2.
- [31] Test. of S. Lofton.
- [32] Test. of A. Isted and S. Lofton.
- [33] Test. of A. Isted, S. Macek, and Ex.
- [34] Ex. 2.
- [35] Ex. 1.
- [36] Notice and Order for Hearing, Ex. A.
- [37] Minn. R. 2960.3010, subp. 5.
- [38] Minn. R. 2960.3060, subp. 4.D.
- [39] Minn. R. 2960.3080, subp. 5.B.
- [40] Minn. R. 2960.3080, subp. 5.B.(1)
- [41] Minn. R. 2960.3080, subp. 5.B.(2).
- [42] Minn. R.2960.3080, subp. 5.B.(4).
- [43] Minn. R.2960.3080, subp. 6.
- [44] Minn. Stat. § 245A.07.
- [45] Ex. 10, p. 5.
- [46] Ex. 8.
- [47] Test. of S. Lofton.