



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

JUL 3 2013

STATE OF GEORGIA

K. Westray

Kevin Westray, Legal Assistant

FIRST START, INC., d/b/a,)	
LITTLE PEOPLES LEARNING CENTER,)	Docket No.: OSAH-DECAL-CCLC-1346077-60-Brown
Petitioner,)	
v.)	
)	
BRIGHT FROM THE START:)	
GEORGIA DEPARTMENT OF EARLY CARE AND)	
LEARNING,)	
Respondent.)	

FINAL DECISION

ORDER AFFIRMING EMERGENCY CLOSURE

I. INTRODUCTION

This matter is an appeal by the Petitioner, First Start, Inc., d/b/a, Little Peoples Learning Center, ("Center"), of the Order for Intended Emergency Closure of its child care facility issued by the Commissioner for the Georgia Department of Early Care and Learning ("Department") on June 26, 2013. A preliminary hearing pursuant to O.C.G.A. § 20-1A-13 was held on July 1, 2013, before the undersigned Administrative Law Judge of the Office of State Administrative Hearings.

The Petitioner's Director/Owner is Mr. Kuwan Tyehimba, who was present and represented himself. The Department was represented by Ms. Clare Michaud. After careful consideration of the evidence and the arguments of the parties, and for the reasons set forth below, the Order for intended Emergency Closure is hereby AFFIRMED.

II. FINDINGS OF FACT

1.

Petitioner Little Peoples Learning Center is a licensed child care learning center located at 2755 Flat Shoals Road, College Park, Georgia 30349, in accordance with O.C.G.A. § 20-1A-13(c)(1)(B). The Center, which is owned and operated by Kuwan Tyehimba, offers day care for children as young as infants. An after school program for school age children is also offered. (Testimony of Mr. Tyehimba; Ex. R-1)

2.

A Complaint Investigation & Monitoring Visit was made to the Center on April 19, 2013, by Ms. Earlene Huston, Child Care Consultant, in which it was determined, among other things, that the playground was unsafe for children, as a broken drainage pipe was on the ground; a large, active ant hill was observed on the toddler playground; and the playground was littered with pine cones, gum balls and broken toys, all in violation of Rule 591-1-1-.26(8).¹ The netting on the left fence of the playground was not secured to the fence, in violation of Rule 591-1-1-.26(4). The wood had rotted on a yellow bench that was in the front left of the playground, and in the center of it was a hole with splintered wood, in violation of Rule 591-1-1-.26(6). (Testimony of Ms. Earlene Huston; Ex. R-1)

3.

On the inside of the Center, the Child Care Consultant observed that one of the toilets in the girls' bathroom was inoperable, but the children had used the toilet, which resulted in a bad smell in the bathroom, in violation of Rule 591-1-1-.25(3). (Testimony of Ms. Earlene Huston; Ex. R-1)

4.

The Rule violation that drew the greatest concern, however, was in the area of Transportation of Children. While the Center is required to maintain a passenger transportation checklist in a format approved by the Department if it transports children (Rule 591-1-1-.36(6)(c)), the Center's transportation checklist for the week of April 15 through April 19, 2013 revealed that the Center's staff did not use a transportation checklist to account for each child during transportation conducted on the morning of April 19, 2013. (Testimony of Ms. Earlene Huston; Ex. R-1 and Ex. R-2)

5.

In addition, there was no documentation that the Center's staff was checking children on and off the facility's vehicle. It also appeared that the passenger transportation checklist was completed before the transportation took place, in violation of Rule 591-1-1-.36(6)(c)(3). Indeed, when the Department's investigator reviewed the transportation checklist for April 19, 2013, at 7:00 AM in the morning, the "blocks" were already completed for the afternoon route as if it had occurred already, and the Director's name was signed already for a route not scheduled to take place until later in the afternoon. (Testimony of Ms. Earlene Huston; Exhibit R-1 and Ex. R-2)

6.

Lastly, the responsible person on the vehicle for the April 19, 2013 morning transportation route did not sign the transportation checklist, and no staff conducted the required first check of the vehicle after the driver returned from the morning drop-off route, in violation of Rule 591-1-1-.36(6)(d). (Testimony of Ms. Earlene Huston; Ex. R-1 and Ex. R-2)

¹ While several other Rule violations were observed and found, only the ones pertinent to the Department's recommended request for emergency closure are discussed herein.

7.

Again on May 14, 2013, Ms. Huston returned to the Center to complete the monitoring visit/complaint investigation, and determined that the playground remained unsafe, as there were ant hills, a bench of rotten wood, non-secure fencing, a drainage pipe laying in the yard, an inoperable toilet, and, once again problems with the transportation procedures. On the morning of May 14, 2013, the responsible person on the Center vehicle failed to use a transportation checklist to document that the vehicle had been thoroughly checked to indicate all children had exited the vehicle upon return to the Center after the morning transportation route. Due to the Rule violations, the Center presented a Plan of Improvement to Ms. Huston in order to address these major issues concerning transportation and child care. (Testimony of Ms. Earlene Huston; Ex. R-3)

8.

On May 23, 2013, Ms. Huston was at the Center for a follow-up visit concerning the transportation issues, the playground's condition, and to determine whether or not the Plan of Improvement had been put into place. She observed that the netting on the fence was not secured to the fence, making it hazardous. The outdoor playground was not free of hazards, either, as the yellow bench was still present, with its rotten wood seat and splinters. A large active ant hill was apparent on the toddler playground, and the pine cones and sweet gumballs were still on the playground for the older children, and had not been raked. The broken drainage pipe that had been observed previously was discarded in the left side of the playground. (Testimony of Ms. Huston; Ex. R-5)

9.

Also on May 23, 2013, the same transportation issues that existed previously were observed to still exist, in that the driver or other designated person on the Center vehicle who must document by marking a checklist each time a child gets on and off the vehicle, had not done so. Neither the first or second checks had been performed, either, because those vehicle checks were not documented. It also must be documented when the vehicle departs from the Center; arrives at the school, and when the vehicle returns to the Center. If a field trip is part of the schedule, the driver of the Center vehicle, or another designated person, must document when the vehicle leaves the Center; arrives at the field trip destination, leaves the field trip destination; and when the vehicle returns to the Center. Although a field trip was not on the schedule for May 23, the passenger checklist for the Center that day did not contain such designations as required by the Department's Rules. The Center had not implemented the Plan of Improvement and was not following any of its provisions. (Testimony of Ms. Huston; Ex. R-5)

10.

The transportation checklist did not contain the initials of the driver or other designated person to verify arrival and departure times. There was no indication of a first or second check conducted by the director or the director's designee to verify that the Center vehicle had been checked to indicate all children had exited the vehicle upon return to the Center. A vehicle must be thoroughly checked by a staff person who was present on the vehicle during the trip and then a second check must be conducted by the

director or the director's designee who was not on the trip. There was no indication that any of these safeguards had been met by Petitioner. Before she left, Ms. Huston brought all these matters to the attention of the Director, Mr. Tyehimba. (Testimony of Ms. Huston; Ex. R-5)

11.

Based on the Center's prior history of Rule violations, and the present non-compliance with Department Rules, the decision was made to revoke Petitioner's permit to operate the Center. However, before the revocation notice could be served, on June 21, 2013, the Complaint Unit of the Department received another complaint about the Center, concerning a 6-year old child who was injured on a field trip for which his parent(s) had not given permission, and who was not given emergency medical treatment when the injury occurred. (Testimony of Ms. Shenetta McNair, Complaint Unit Lead Consultant)

12.

After the complaint was received, Ms. Shenetta McNair, the Lead Consultant, planned a visit to the Center. She arrived at the Center on June 24 at 10:20 AM to conduct her investigation. She entered the facility and introduced herself to "Ms. Harvey," but the Director, Mr. Tyehimba, was not present. According to Ms. McNair, Ms. Harvey telephoned Mr. Tyehimba to notify him of Ms. McNair's arrival. (Testimony of Ms. Shenetta McNair)

13.

When Ms. McNair indicated the reason for her visit/investigation, she asked to review the permission slips for the children who went on the field trip on June 20, 2013 to the D.H. Stanton Waterpark. The permission slips were all entitled FIELD TRIP PERMISSION FORM, and indicated the date, the location of the field trip, the address, and the time the Center vehicle would leave the Center (9:30 AM) and the time it would return that day (5:00 PM). There was a line for the signature of the parent or guardian and the date. (Testimony of Ms. Shenetta McNair; Ex. R-7)

14.

In the course of her investigation, Ms. McNair spoke to the teacher, Ms. Carey Henderson, and Ms. Harvey. She interviewed several children, as well. Eighteen (18) children went on the field trip, but only 15 had signed permission slips. However, according to Ms. McNair's investigation, Ms. Harvey was the staff person who gave "indirect" permission for those without permission slips to go. (Testimony of Ms. Shenetta McNair; Ex. R-7)

15.

Although eighteen (18) children, the driver, and two adults were on the Center vehicle, there are only eighteen (18) child restraints on the Center's vehicle, which means that two children, or adults, were not wearing seat belts. Ms. McNair interviewed several children about the accident concerning a 6 year old child, Stephen, who fell and cut his head at the waterpark. Although the children indicated that the accident happened about mid-day, as they were "about to eat," and although they told the teacher

about the accident, they did not leave the park and return to the Center, but stayed for the day, and returned sometime between 5:00 and 5:30 pm. (Testimony of Ms. Shenetta McNair; Ex. R-6)

16.

The Department has a Field Trip Form specifically for the occasional field trip sponsored by a day care facility. However, on June 20 during the field trip, the Center used a Roll Call Form it had used previously to check kids on and off the vehicle. The first page of the two-page form was a routine transportation checklist, and was not completed properly by Ms. Henderson, the driver, and "teacher" for purposes of the field trip. For instance, it appeared from the document (Roll Call list), that there was a failure to conduct the required first check of the vehicle. (Testimony of Ms. Shenetta McNair; Ex. R-8)

17.

Later, when the vehicle returned to the Center after the field trip, the driver/teacher again failed to indicate on the transportation checklist that each child had exited the vehicle and failed to conduct the required first check of the vehicle. From her review of the transportation checklist provided to her by the Center for June 20, Ms. McNair observed that neither the first nor the second check of the Center vehicle had occurred that day before or after the field trip. (Testimony of Ms. Shenetta McNair; Ex. R-8)

18.

From her investigation, Ms. McNair concluded that there was a lack of supervision when the incident occurred at the waterpark on the field trip on June 20. The Center's designated staff member, a teacher, did not react appropriately, and did not have a clear view of the play area on which the children were playing. The teacher did not return the children to the Center immediately after the accident occurred, nor did she telephone anyone at the Center about the accident, nor did she telephone the parent(s) to let them know an accident had occurred. There was no proof that medical treatment had been provided, other than some ice placed on the deep incision on the child's head, after the teacher learned of the incident from the children. (Testimony of Ms. Shenetta McNair)

19.

Based on her investigation, the Department determined that the health, safety and welfare of the children at the Center are in imminent danger, due to Petitioner's failure to abide by the Department's transportation safety rules, as well as the Department's rules concerning the health and safety of children in day care, and that an Emergency Closure Order is necessary to close the Center, while the revocation action is ongoing. Consequently, the ORDER FOR INTENDED EMERGENCY CLOSURE was issued by the Department on June 26, 2013.

20.

Ms. Chantelle McFarland is the mother of the 6 year old child, Stephen, who was injured on the field trip sponsored by the Center on June 20, 2013. Ms. McFarland testified that she did not give her son permission to go on the field trip, and that she did not know that her son had been injured until the

Center vehicle returned from the field trip, and her son had blood on his clothes, and an obvious wound on his head, that was also bloody. She took her son to the emergency room immediately, where he received four sutures to the back of his head. Ms. McFarland also indicated that this was the third time her son had been taken on a field trip by the Center without her permission. (Testimony of Ms. Chantelle McFarland)

21.

Petitioner's Director/Owner/Operator, Mr. Kuwan Tyehimba, testified that he has been in business since July, 1999, and that his day care facility enjoys an "excellent reputation in the community," as he teaches and educates the children at the Center. Petitioner was originally licensed for 244 kids, but that changed recently, and the current license is for 132 children. On any given day, Mr. Tyehimba indicated that about 55 children are in attendance at his day care facility. (Testimony of Mr. Kuwan Tyehimba)

22.

According to Mr. Tyehimba, he has repaired the fence, and that chicken wire is secured to the "main" fence. The drainage pipe is clogged with dirt and debris, caused for the most part by heavy rains. He has purchased "Ortho" for the ant hills problem, but as soon as he gets rid of one ant hill, another arises. He has been "watching it." There are 14 toilets in his building, and he may have a plumbing issue somewhere at any time. BUT, with respect to the toilet for which he was cited by Ms. Huston, the handle was broken, and he repaired it. (Testimony of Mr. Kuwan Tyehimba)

23.

Mr. Tyehimba testified that there is "no excuse" for taking a child on a field trip without a signed permission slip from the parent or guardian, and that the child "should never have left the building." He believes that Ms. McFarland is friendly with his staff personnel, so that is the reason, possibly, that the child was allowed to go on the field trip without permission. While he was very sorry about the accident when the 6 year old child fell and cut his head, Mr. Tyehimba indicated that, "kids do have accidents," and that in his fourteen (14) years in business, there was only one other child who had been injured on Center property. (Testimony of Mr. Kuwan Tyehimba)

24.

He admitted that the Center does have transportation issues, and he thought those issues had been resolved, but the woman who was in charge of transportation at the Center is no longer working there, and he had to place someone else in charge of it. Sometimes a teacher uses her own car to transport some of the children, but on those days, no transportation checklist is used. Mr. Tyehimba admitted that although the Center has the appropriate "paperwork," they have had problems completing the paperwork properly. Mr. Tyehimba denied that there was ever any fraud in his paperwork. (Testimony of Mr. Kuwan Tyehimba)

III. CONCLUSIONS OF LAW

1.

The Department bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

In July 2011, the General Assembly gave the Department's Commissioner the authority to close an early care and education program on an emergency basis for up to 21 days. Under O.C.G.A. § 20-1A-13(c)(1), the Commissioner may order an emergency closure under the following circumstances:

- (A) Upon the death of a minor at such program, unless such death was medically anticipated or no serious rule violations related to the death by the program were determined by the department; or
- (B) Where a child's safety or welfare is in imminent danger.

3.

First Start, Inc., d/b/a, Little Peoples Learning Center, has failed to comply with the Department's Rules, as follows:

- (A) The Center failed to ensure on multiple occasions that the driver or other designated person documented on a transportation checklist each child's entrance to, and exit from, the Center's vehicle to ensure each child was accounted for, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(c)(3);
- (B) The Center failed to ensure on multiple occasions that thorough vehicle checks by the driver and other designated staff members occurred after children were unloaded from the vehicle by conducting a physical walk-through to inspect all seat surfaces and under all seats, to confirm all children have exited, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(d)(1);
- (C) The Center failed to ensure that the driver report by phone to the director or designated staff person that the check had been completed and that no children remained on the vehicle, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(d)(2);
- (D) The Center exceeded the vehicle's seating capacity while transporting children, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(f)(1);
- (E) The Center failed to properly restrain children during transport, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(f)(1).

- (F) The Center failed on June 20, 2013, to obtain written parental permission for a child to attend a field trip, in that the Center was aware that only 16 of the 18 children had permission to attend the field trip, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.13(2);
- (G) The Center failed to adequately supervise children, as children must be supervised at all times, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.32(6);
- (H) The Center failed to notify parents when a child needed medical attention, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.07(2); and
- (I) The Center failed to seek prompt emergency medical treatment for an injured child, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.07(4);

4.

The Department proved, by a preponderance of the evidence, that the health, safety and welfare of children at Little Peoples Learning Center are in imminent danger within the meaning of O.C.G.A. § 20-1A-13(c)(1)(B). The ALJ's determination is based on the following considerations:


- (A) The Department's prior decision to revoke the Center's license for Rule violations;
- (B) The Center's lack of child supervision resulting in serious injury to a child;
- (C) The Center's failure to obtain adequate medical treatment and inform the appropriate individuals in response to a child's injury;
- (D) The Center's continuous failure to properly perform adequate vehicle safety checks even after the Department conducted three inspections of the Center's transportation procedures; and
- (E) The serious and numerous Rule violations stemming from the Center's failure to abide by the Department's transportation and supervision rules.

Accordingly, the Commissioner is authorized to order the emergency closure of First Start, Inc. d/b/a, Little Peoples Learning Center for up to 21 days, pursuant to O.C.G.A. § 20-1A-13(c)(1).

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Order for Intended Emergency Closure is hereby **AFFIRMED**.

SO ORDERED, this 3rd day of July, 2013.



Barbara A. Brown
Administrative Law Judge