



FILED
OSAH

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

AUG 12 2014

TAMIKA SEAY,
Petitioner,

v.

GEORGIA DEPARTMENT OF EARLY
CARE AND LEARNING,
Respondent.

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Kevin Westray

Kevin Westray, Legal Assistant

Docket No.:

OSAH-DECAL-CCLC-1455802-67-Baxter

Agency Reference No.: 1455802

FINAL DECISION

Petitioner appeals the denial of her license to operate a child care learning center at 5395 Light Circle, Norcross, Georgia 30071. The Petitioner represented herself. The Georgia Department of Early Care and Learning (“Department”) was represented by Clare Michaud, Esq.

I. PROCEDURAL HISTORY

On June 9, 2014, the Department filed a Motion for Summary Determination. Petitioner replied. This Court denied the motion because a material fact was in dispute. Specifically, the Department claimed Petitioner withdrew a previous appeal request subject to no conditions and Petitioner claimed she did not. Thereafter, the Department requested, and this Court agreed, to bifurcate the case, first addressing the issue of whether Petitioner actually withdrew her previous appeal of her license revocation. On July 14, 2014, the hearing was held regarding the facts surrounding the withdrawal of Petitioner’s appeal of the earlier revocation.

II. FINDINGS OF FACT

1.

On March 14, 2014, Petitioner submitted an application for a child care learning center to be located at 5395 Light Circle, Norcross, Georgia 30071 (“Light Circle Location”). Petitioner planned to move her existing facility located at 2341 Beaver Ruin Road, Norcross, Georgia 30071 (“Beaver Ruin Location”), to this new location. (Testimony of Petitioner.)

2.

On April 3, 2014, the Department sent Petitioner a Notice of Revocation for her child care learning center, Just for Kids Academy, at the Beaver Ruin Location. The revocation was based on “correctable deficiencies in the operation and management of the center” that “continued to exist and had not been sufficiently corrected.” Petitioner had ten days to request a hearing to contest the revocation. (Ex. R-1.)

3.

On April 4, 2014, Petitioner timely appealed the Notice of Revocation. Apparently, someone at the Department incorrectly notified Petitioner that the Notice of Revocation was due to failure to pay fees. While there may have been a fee issue, the Notice of Revocation does not refer to payment of fees and specifically addresses rule violations that “had the potential to negatively affect the health and safety of children in care.” (Exs. R-1, R-2; Testimony of Petitioner.)

4.

Following her appeal, the Department’s Chief Legal Officer, Ira Sudman, spoke with Petitioner. He encouraged Petitioner to obtain counsel for the appeal. Petitioner hired Ted Reed as counsel. Sudman began holding conversations with Reed on the telephone regarding the appeal. (Ex. R-3; Testimony of Sudman.)

5.

On May 16, 2014, Reed submitted a withdrawal of Petitioner’s appeal request to the clerk at the Office of State Administrative Hearings. The Honorable Kristin Miller dismissed the matter on May 19, 2014. (Exs. R-4, R-5, R-6, R-8.)

6.

According to Petitioner, the withdrawal of the appeal was predicated on receiving approval for her license at the Light Circle Location as well as approval for a change of ownership at the Beaver Ruin Location. Reed testified that the withdrawal of the appeal had no conditions attached to it. Sudman also testified that the withdrawal of the appeal had no conditions attached to it. No credible documentary evidence was presented to support Petitioner’s contention.¹ (Testimony of Petitioner, Reed & Sudman.)

¹ Petitioner relies on a May 13, 2014, letter she wrote to Sudman setting forth her conditions for withdrawing of the appeal. The evidence demonstrates that Petitioner never sent the letter to Sudman, but instead gave the letter to Reed. Petitioner and Reed discussed the letter, but according to Reed, he advised that any withdrawal would be without conditions. The letter was never provided to Sudman. (Ex. R-9; Testimony of Petitioner & Reed.)

7.

On May 29, 2014, the Department denied Petitioner's application for the Light Circle Location because her license for the Beaver Ruin Location had been revoked. (Ex. R-8.)

8.

On June 2, 2014, Petitioner requested an appeal of the Department's decision to deny the Light Circle Location application. Nowhere in the request for appeal does she state that the granting of the Light Circle Location application was a condition of her withdrawal of the appeal related to the Beaver Ruin Location.

9.

On that same day (June 2), Petitioner submitted a letter to Sudman requesting "a new appeal to the withdrawal of [Beaver Ruin Location] appeal." Sudman notified Petitioner and her counsel that the Department would not re-open the case. (Exs. R-7, R-8; Testimony of Sudman.)

III. CONCLUSIONS OF LAW

1.

Petitioner is governed by the Education Reform Act of 1996, O.C.G.A. Title 20 Chapter 1A (2012), and the Georgia Rules for Child Care Learning Centers, Ga. Comp. R. & Regs. r. 591-1-1 (the "Rules").

2.

The preponderance of the evidence demonstrates that Petitioner withdrew the hearing request associated with the revocation of the license for the Beaver Ruin Location. While Petitioner claims that the withdrawal came with conditions, counsel for the Department and Petitioner disagree. Unfortunately for Petitioner, she may not have understood the ramifications of withdrawing her request for appeal, but that does not change the fact that the appeal was withdrawn with no conditions.

3.


At the hearing in this matter, the Court discussed bifurcation of the hearing and the scheduling of the second portion of this proceeding. Given the findings above, however, the need for an additional hearing is not necessary. The Department's Rules are clear that it cannot grant a license if the applicant has had a license revocation within one year of the application. Ga. Comp. R. & Regs. r. 591-1-1-.38(a). Here, the facts demonstrate that Petitioner's Beaver Ruin

Location license was revoked on or around May 19, 2014, and thus, Petitioner's Light Circle Location application must be denied.

IV. DECISION

Respondent's decision to deny Petitioner's license to operate a child care learning center is **AFFIRMED**. No additional hearing will be scheduled in this matter.

SO ORDERED this 11th day of August, 2014.



AMANDA C. BAXTER
Administrative Law Judge