

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

LITTLE ANGELS PRESCHOOL AND :  
CHILDCARE, INC., :  
Petitioner, :

v. :

GEORGIA DEPARTMENT OF EARLY :  
CARE AND LEARNING, :  
Respondent. :

Docket No.: OSAH-DECAL-CCLC-  
1519961-31-Howells



FILED  
OSAH

FEB 20 2015

**FINAL DECISION**

**I. INTRODUCTION**

Kevin Westray, Legal Assistant

Petitioner Little Angels Preschool and Childcare, Inc. (“Little Angels”) appeals the decision of Respondent Georgia Department of Early Care and Learning (“DECAL”) to impose an enforcement fine in the amount of \$1196.00 and restrict Little Angel’s right to transport children for a period of 12 months. The hearing in this matter was held on January 23, 2015 before the undersigned Administrative Law Judge at the Office of State Administrative Hearings (“OSAH”) in Atlanta, Georgia. Little Angels was represented by Johnny C. Waller Jr., Esq. and DECAL was represented by Clare Michaud, Esq.

After careful consideration of the evidence and the arguments of the parties, and for the reasons set forth below, the Notice of Intent to Impose Enforcement Fine and Restrict Transportation is **AFFIRMED**.

**II. FINDINGS OF FACT**

*Little Angels Learning Center*

1.

Little Angels is licensed by DECAL to operate a child care learning facility. Little Angels operates at 2723 Mt. Zion Road, in Jonesboro, Georgia. Ms. Shelly Burns is a director of

the center. (Attachment to OSAH Form 1, Testimony of Burns, Hutchinson, Ex. R-8.)

2.

Like many child care learning facilities, Little Angels provides transportation to the children under its care. Little Angels routinely transports children to several local schools and from those schools to its facility on Mt. Zion Road. Little Angels currently provides transportation services to 35 of the 71 children enrolled. (Ex. P-4.)

*DECAL's Transportation Rules*

3.

Regulations for Child Care Learning Facilities require that each facility complete a passenger checklist to account for the children that the facility transports. These checklists are generally completed by the driver of each vehicle. Whoever completes the checklist is required to immediately document when each child enters or exits the vehicle by placing a check mark or other symbol next to each child's name on the checklist. (Testimony of Pollard, White.)

4.

After all children have been unloaded from the vehicle, the center's driver, or another designated staff person, is required to conduct a physical investigation of the vehicle's interior. The staff member must walk through the vehicle and ensure that all children have exited. Upon completing this inspection, the staff member must sign the passenger checklist, which indicates that he or she has conducted the inspection and concluded that no children remained in the vehicle. (Testimony of Pollard, White.)

5.

For vehicles that do not have a child safety alarm installed, the director or a staff member who was not present on the trip must conduct a second physical investigation of the vehicle when

it returns to the center. After performing the second physical investigation, the second staff member must also sign the transportation checklist. (Testimony of Pollard, White.)

*The March 3, 2014 Incident – Little Angels*

6.

On the afternoon of March 3, 2014, Kenyotta White was transporting children to Little Angels from their schools in one of the center's vans ("van #1"). While at Thurgood Marshall Elementary School to pick up an additional child, Ms. White noticed that van #1 was overheating. (Testimony of Pollard, White.)

7.

At approximately 3:00 p.m., Director Shelley Burns received a call from Ms. White notifying her that the van was overheating. Ms. Burns told Ms. White she would pick up Ms. White and the children in a different van ("van #2"). (Testimony of Pollard, White, Burns; Ex. R-3.)

8.

At approximately 3:10 p.m., Ms. Burns arrived at Thurgood Marshall in van #2. Ms. White intended to transfer the children in van #1 to van #2. (Testimony of Pollard, White, Burns; Exs. R-2, R-3.)

9.

When transferring the children to van #2, Ms. White noticed that [REDACTED] was asleep, so she had another child wake him but did not ensure that he actually exited van #1. (Testimony of White, Ex. R-2.)

10.

Ms. White testified that she did a partial physical check of van #1 by looking to the back,

but admits she did not go all the way to the back of the van to check for children. Ms. White believes she would have seen [REDACTED] if he was still on van #1. Ms. White then boarded van #2. No second physical check of van #1 was performed. (Testimony of White, Burns, Ex. R-2.)

11.

Ms. White's statement from the day after the incident indicates that she finished her unload log for van #1 on the way back to Little Angels. (Ex. R- 2). At the hearing, Ms. White first testified that she completed the required paperwork for unloading van #1 while on van #2 en route to the Little Angels because she was "sure" that all of the children had exited van #1.<sup>1</sup> Ms. White later testified that she stood outside van #1 and checked off each child as they exited. Ms. White then said she checked each child off while everyone was still on van #1. Ms. White also testified that she later altered the bus log to reflect an "absence" for [REDACTED] once she realized he was missing. (Testimony of White.)<sup>2</sup>

12.

Van #2 arrived at Little Angels at approximately 3:20 p.m. The required unload paperwork was not completed upon their arrival, and neither Ms. White nor Ms. Burns realized [REDACTED] was missing. Ms. White and Ms. Burns also admitted that, regardless of their signatures on the required paperwork, no first or second physical checks of the van were conducted at Little Angels. (Testimony of Pollard, White, Burns; Ex. R-1.)

13.

At approximately 4:15 p.m., another teacher asked a child "whose white folder was on

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<sup>1</sup> It appears that Ms. White was not "sure" that van #1 was empty, as her first action upon hearing [REDACTED] was missing was to drive back to Thurgood Marshall to check van #1.

<sup>2</sup> Ms. White's testimony was inconsistent with her prior statement and to some extent illogical. For those reasons, the undersigned did not find her to be credible. Further, the court finds that Ms. White completed the checklist while on van #2 en route to the daycare as she stated in her written statement dated March 4, 2014.

the floor.” The child stated that the notebook belonged to [REDACTED]. The teacher responded that was not possible, as [REDACTED] was absent that day. Ms. White overheard this conversation, and volunteered that [REDACTED] was indeed present as he had been on her bus. (Testimony of Ms. White; Ex. R-2.)

14.

A search of the building commenced, and [REDACTED] was not found. Ms. White informed Ms. Burns that [REDACTED] was missing. No one at Little Angels called the police.<sup>3</sup> (Testimony of White, Burns; Exs. R-2, R-3.)

15.

At approximately 4:20 p.m., Ms. White returned to Thurgood Marshall Elementary to look for [REDACTED] on van #1. [REDACTED] was not in the van, but his notebook was. Ms. White testified that the doors of van #1 were locked when she arrived. (Testimony of Pollard, White, Burns; Exs. R-2, R-3.)

16.

Ms. White called Ms. Burns to let her know that [REDACTED] was not in the van. Ms. White then began driving around the area looking for [REDACTED]. At approximately 4:30 p.m. she stopped and went into Thurgood Marshall to see if [REDACTED] was there. Thurgood Marshall did not have [REDACTED], so Ms. White again called Ms. Burns to let her know that she had made no progress. (Testimony of Pollard, White, Burns; Exs. R-2, R-3.)

17.

Ms. White then spent another 20 minutes driving around and searching on foot looking for [REDACTED]. At that point, the police still had not been notified that [REDACTED] was missing. (Testimony

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<sup>3</sup> Ms. Pollard opined that this is the point where the child became “missing” and the police should have been called.

of Pollard, White, Burns; Exs. R-2, R-3.)

18.

At approximately 5:00 p.m., Ms. White again called Ms. Burns and was directed to return to Little Angels. Ms. Burns then called ██████'s mother to ask her if she had picked up ██████ early. ██████'s mother told Ms. Burns that she had not checked ██████ out early, and wanted to know why Ms. Burns was asking. (Testimony of Pollard, White; Exs. R-2, R-3.) At the hearing, Ms. Burns testified that she "immediately" called the mom when she received the report from Ms. White. She also testified that she "would have called the police" and she's "sure [she] did [call the police]." After she refreshed her recollection, Ms. Burns then admitted that it appeared she did not call the police. Ms. Burns then testified that ██████'s mom told her she was going to call the police and Ms. Burns therefore would not have found it necessary to make an additional call.<sup>4</sup> (Testimony of Burns.)

19.

Shortly after speaking to Ms. Burns, ██████'s mother received a phone call from the Resource Office at Elite Scholars Academy. Officer Duhart had ██████ at Elite Scholars Academy and would wait for ██████'s mother to pick him up there. (Testimony of Pollard, Exs. R-2, R-4.)

20.

Pursuant to DECAL rules, Little Angels was required to develop and implement an emergency plan. The emergency plan in question clearly requires Little Angels to contact the police as soon as they determine that a child is missing. (Testimony of Pollard, Ex. R-7)

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<sup>4</sup> Ms. Burns' testimony was inconsistent and uncertain. She admitted that she was having trouble remembering. For these reasons, the undersigned did not find Ms. Burns to be a credible witness.

*The March 3, 2014 Incident* – [REDACTED]

21.

[REDACTED] was left in van #1 in the parking lot at Thurgood Marshall Elementary. [REDACTED] then exited the vehicle, walked out of the school parking lot, crossed to the other side of Old Rex Morrow Road, and continued down that road for some distance. The traffic on Old Rex Morrow Road near Maddox Road is moderate to heavy, as it there are two elementary schools and a high school in the area. (Testimony of Austin-Ohanenye, Pollard; Exs. R-4, R-5, R-6.)

22.

At approximately 4:10 p.m., Ms. Genothan Austin-Ohanenye, a local schoolteacher, was en route to pick up her son when she saw [REDACTED] walking down Old Rex Morrow Road by himself. Ms. Austin-Ohanenye was concerned because the child was small, not wearing a coat and appeared to be alone. Ms. Austin-Ohanenye pulled over, spoke to the only other pedestrian (a high school student who was approximately 25 steps in front of [REDACTED]) to determine whether [REDACTED] was with her. When she determined that [REDACTED] and the high school student were not together, she approached [REDACTED] (Testimony of Austin-Ohanenye, Pollard; Ex. R-4.)

23.

[REDACTED] was able to tell Ms. Austin-Ohanenye his name and that he was 5 years old, but could not tell her who his mother was or what school he attended. At that point, Ms. Austin-Ohanenye asked [REDACTED] to get in her car and she took him to nearby Elite Scholars Academy, as she knew there was a resource officer on duty there. (Testimony of Austin-Ohanenye, Pollard; Ex. R-4.)

24.

At approximately 4:15 p.m., Ms. Austin-Ohanenye delivered [REDACTED] to Officer Duhart at

Elite Scholars Academy. At approximately 5:00 p.m. [REDACTED]'s mother was notified that [REDACTED] was at Elite Scholars Academy with Officer Duhart. (Testimony of Austin-Ohanenye, Pollard; Ex. R-3. R-4.)

*Following the March 3, 2014 Incident*

25.

Little Angels self-reported the March 3, 2014 incident to DECAL on March 4, 2014. (Testimony of Pollard, Rogers, Burns.)

26.

As a result of the March 3, 2014 incident, DECAL issued a Notice of Intent to Impose Enforcement Fine and Restrict Transportation ("Notice") to Little Angels on October 17, 2014. In the notice, DECAL stated that its decision to restrict Little Angels' right to transport was based on the seriousness of the rule violations.<sup>5</sup> (Ex. R-8.)

27.

On or about October 21, 2014, Little Angels requested a hearing to dispute DECAL's decision to impose a fine and restrict their right to transport. DECAL referred the matter to the Office of State Administrative Hearings for adjudication. The hearing on Little Angels' appeal was conducted by the undersigned over the course of one day.

28.

At the hearing, Little Angels contended that a twelve-month transportation restriction

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<sup>5</sup> In the Notice, DECAL cited the following rule violations:

**Violation 1:** By leaving [REDACTED] unattended in the vehicle, Little Angels violated Rules 591-1-1-.32(6) and 591-1-1-.36(6)(h).

**Violation 2:** By failing to use a passenger checklist to document each time a child was loaded or unloaded, Little Angels violated Rule 591-1-1-.36(6)(c)(3).

**Violation 3:** By failing to check the transportation vehicle to ensure that all children were unloaded, Little Angels violated Rule 591-1-1-.36(6)(d).

**Violation 4:** By failing to implement written policies and procedures for handling emergencies, Little Angels violated Rule 591-1-1-.21(1)(p).



would devastate its business, because most of Little Angels' clients rely on its transportation services. Little Angels also claimed that such a restriction would impose undue hardship on the families that rely on Little Angels for childcare, stating that Little Angels is all many of the families can afford. (Testimony of Hutchison, Attachment to OSAH Form 1.)

29.

Transportation is a selective service. Out of the 24 childcare facilities in the same zip-code as Little Angels, 16 provide transportation. The other 8 do not, and they are able to maintain their enrollment. Currently, only about half of the children enrolled at Little Angels receive transportation services from Little Angels. (Testimony of Rogers, Ex. R-10.)

30.

Of the 71 children enrolled at Little Angels, 36 receive Child and Parent Services ("CAPS") subsidies. If these children needed transportation as a service, their CAPS caseworker could easily assist them with finding and transferring to another center. (Testimony of Rogers, Ex. R-12.)

31.

This incident could have been prevented by simply following procedure and properly completing the required paperwork. (Testimony of Pollard, Rogers.)

### **III. CONCLUSIONS OF LAW**

1.

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

2.

Georgia Code section 20-1A-12(c) provides DECAL with the authority to, *inter alia*,

revoke any license, impose a fine, or limit or restrict any license as the department deems necessary for the protection of the public when the licensee has violated any of the provisions of section 20-1A-12(b) or the laws, rules, regulations, or formal orders related to the initial or continued licensing of the child care licensing center. O.C.G.A. §§ 20-1A-12(c), 20-1A-2(5). When determining which action to take, if any, the department must consider “the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public.” O.C.G.A. § 20-1A-12(c).

3.

DECAL rule 591-1-1-.38 provides the department with similar authority. In pertinent part, rule 591-1-1-.38(e) authorizes the department to restrict a licensee “from providing certain kinds of care or services to children . . . if the [d]epartment determines that the [licensee] either cannot comply with these rules or has not complied with these rules.” Ga. Comp. R. & Regs. 591-1-1-.38(e).

4.

Additionally, DECAL may assess a fine of up to five hundred dollars per day for each rule violation against any licensee who violates any licensing provision or department rule or regulation, “thereby subjecting a child in care to injury or a life-threatening situation.” Ga. Comp. R. & Regs. 591-1-1-.38(f)(1)(i). Further, rule 591-1-1-.38(f)(5) specifies the range of allowable fines based on the severity of the violation and the injury or harm, or the potential for injury or harm to a child. The lowest range of fines that may be assessed is between \$50.00 and \$299.00. Ga. Comp. R. & Regs. 591-1-1-.38(f)(5)(iii). A fine in this range may be assessed for “any violation of these rules which demonstrates a reckless and serious disregard for the physical

or mental health or safety of a child in care but which may or may not result in physical injury to a child or for any other violation of these rules for which a license may be revoked.” *Id.* Rule 591-1-1-.38(f)(6) provides the factors that DECAL is to consider in assessing the enforcement fine. Specifically, it states, in pertinent part, “[t]he [d]epartment will consider in assessing an enforcement fine the severity of the rule violation, the duration of non-compliance, the licensee’s prior licensure or history and the voluntary reporting of the violation.” Ga. Comp. R. & Regs. 591-1-1-.38(f)(6).

5.

With regard to the March 3, 2014 incident when a five-year-old child was left on a van and then allowed to wonder around unsupervised, DECAL seeks a fine in the amount of \$299.00 per rule violation for a total of \$1196.00 and a 12 month transportation restriction. In its notice, DECAL cited the following rule violations: 591-1-1-.32(6) and 591-1-1-.36(6)(h)<sup>6</sup>, 591-1-1-.36(6)(c)(3), 591-1-1-.36(6)(d), and 591-1-1-.21(1)(p).

6.

Violation 1: Rule 591-1-1-.32(6) requires children to be supervised at all times and Rule 591-1-1-.36(6)(h) requires that children not be left unattended on a vehicle.

7.

Violation 2: Rule 591-1-1-.36(6)(c)(3) requires that center staff “immediately document in writing, with a check or other mark/symbol on the passenger checklist, each time a child gets on and off the vehicle *so that each child is accounted for* every time the vehicle is loaded or

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<sup>6</sup> The undersigned notes that in both DECAL’s rules published on its website and the rules published on LEXIS, there appears to be a scrivener’s error. The numbering of rule 591-1-1-.36 progresses from -.36(6)(g) to -.36(6)(i). In other words, no -.36(6)(h) is listed. Notwithstanding, if the rule had been properly numbered the provision located at .36(6)(i), which states “A child shall never be left unattended in a vehicle,” would have been numbered -.36(6)(h). While the notice provided to Little Angels cites 591-1-1-.36(6)(h), it also provided the text of the rule. Thus, Little Angels had notice of the alleged violation.

unloaded.” (emphasis added).

8.

Violation 3: Rule 591-1-1-.36(6)(d) requires that the vehicle be thoroughly checked by a staff person who was present on the vehicle during the trip and then a second check be conducted by the director or the director’s designated staff person who was not on the trip. “[T]he individual charged with that responsibility must: “[p]hysically walk through the vehicle; [v]isually inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle’s interior; [and] [s]ign the passenger transportation checklist with their full name, indicating all of the children have exited the vehicle.”

9.

Violation 4: Rule 591-1-1-.21(1)(p) requires center staff to establish and implement written policies and procedures that describe the center’s operations for handling emergencies like the loss of a child.

10.

On March 3, 2014, five-year-old Q.W. was left unattended in Little Angels’ van in the parking lot of an elementary school. Little Angels did not discover [REDACTED] was missing for approximately one hour. During that time, [REDACTED] exited the vehicle, crossed a busy intersection, and walked along a road with moderately heavy traffic. [REDACTED] was found by a passerby at approximately the same time Little Angels discovered he was missing. By the time [REDACTED] was reunited with his mother, Little Angels’ staff had failed to supervise him for almost two hours. Accordingly, Little Angels violated Rules 591-1-1-.32(6) and 591-1-1-.36(6)(h).

11.

On March 3, 2014, Little Angels’ staff failed to complete a passenger checklist each time

children were loaded and unloaded from a vehicle, resulting in Q.W. being left unattended on the van. Accordingly, Little Angels violated Rule 591-1-1-.36(6)(c)(3).

12.

On March 3, 2014, Little Angels' staff failed to complete a first or second physical check of van #1 when transferring the children to van #2. This resulted in [REDACTED] being left unsupervised in a disabled vehicle. Staff also failed to complete a first or second check of van #2 when the children arrived at Little Angels, despite signatures indicating that such physical checks had been completed. Little Angels therefore violated Rule 591-1-1-.36(6)(d).

13.

Also on March 3, 2014, Little Angels' staff failed to *implement* the center's emergency procedure for a lost child. It took over an hour after [REDACTED] was discovered missing for Little Angels to notify his mother. Little Angels never notified the police. Therefore, Little Angels violated Rule 591-1-1-.21(1)(p).

14.

DECAL has established that on March 3, 2014, Little Angels violated five rules, two of which are related.<sup>7</sup> As a result a five-year-old child was left alone on Little Angels' vehicle and allowed to wonder around unsupervised by Little Angels' staff for one hour and forty-five minutes. It took almost an hour for Little Angels' staff to realize the child was missing. The careless manner in which the transportation form was completed and the failure to actually perform the procedures on March 3, despite certifying that they had been completed, demonstrates a reckless and serious disregard for the safety of the children in Little Angels' care. Furthermore, the serious nature of these violations and the grave potential hazard to the safety of

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<sup>7</sup> As noted above, DECAL seeks a fine of \$299.00 per rule violation for a total of \$1196.00. Presumably, DECAL has treated the two related violations as one, thus arriving at four violations.

the children in Little Angels' care warrants a fine at the top of the \$50.00 to \$299.00 range. O.C.G.A. § 20-1A-12(c); Ga. Comp. R. & Regs. 591-1-1-.38(f)(6). Accordingly, the undersigned concludes that a fine in the amount of \$1196.00 for the violations associated with the March 3 incident investigation is appropriate.

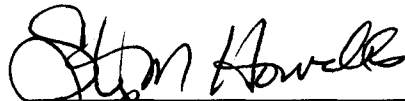
15.

DECAL also seeks a twelve-month transportation restriction based on the March 3 incident. The egregious nature of the violations, and the seeming lack of regard for the proper procedures, indicates that there is a serious potential hazard to the safety of the children in Little Angels' care. The undersigned concludes that a twelve month restriction is necessary to allow Little Angels time to review and re-train their staff on the proper procedures and impress on Little Angels the seriousness of the violations and the importance of following the rules.

#### IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, DECAL's decision to impose an \$1196.00 fine and twelve-month transportation restriction based on the March 3, 2014 incident is **AFFIRMED**.

**SO ORDERED, this 19th day of February, 2015.**



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**STEPHANIE M. HOWELLS**  
Administrative Law Judge