

[REDACTED] * BEFORE DANIEL ANDREWS,
 [REDACTED] * AN ADMINISTRATIVE LAW JUDGE
 OWNER/OPERATOR, * OF THE MARYLAND OFFICE OF
 APPELLANT * ADMINISTRATIVE HEARINGS
 v. *
 MARYLAND STATE DEPARTMENT *
 OF EDUCATION, *
 OFFICE OF CHILD CARE * OAH No.: MSDE-OCC-26A-20-25065

* * * * *

DECISION

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STATEMENT OF THE CASE

On October 15, 2020, the Maryland State Department of Education (MSDE), Office of Child Care (Agency or OCC), notified [REDACTED] the owner and operator of [REDACTED] that the child care center license issued to the Center was suspended on an emergency basis. On November 14, 2020, the Appellant requested a hearing to appeal the emergency suspension. On November 16, 2020, the OCC transmitted the appeal to Office of Administrative Hearings (OAH) to schedule a hearing.

¹ In this Decision, I will refer to Ms. [REDACTED] as "the Appellant". See Code of Maryland Regulations (COMAR) 13A.16.18.02B(2). I shall refer to [REDACTED] as "the Center".

On November 17, 2020, the OAH sent a Notice of Hearing to the parties which scheduled a hearing for November 24, 2020, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. On November 18, 2020, the parties filed a joint request to hold the hearing remotely through a video conferencing platform. A pre-hearing conference was held on November 19, 2020 and the request to convert the hearing to a remote video conference, using WebEx, was granted.

On November 24 and December 2, 2020, I held the requested hearing as scheduled using the WebEx platform. Md. Code Ann., Educ. §§ 9.5-107(3) and 9.5-108 (2018);² COMAR 13A.16.18.07; *see also* COMAR 28.02.01.20B(1). [REDACTED] Assistant Attorney General, represented the OCC. [REDACTED] Esquire, represented the Appellant, who was present.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the OCC, and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 13A.16.18; COMAR 28.02.01.

ISSUE

- 1) Did the OCC establish regulatory violations applicable to child care centers under COMAR 13A.16?
- 2) Did the OCC properly suspend the Appellant's child care center license on an emergency basis?

² Unless otherwise indicated, all references to the Education Article are to the 2018 volume.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the OCC:

- OCC Ex. 1 License for the Center, issued July 20, 2020
- OCC Ex. 2 Variance Response ([REDACTED]), issued July 20, 2020
- OCC Ex. 3 Variance Response ([REDACTED]), issued July 20, 2020
- OCC Ex. 4 Email form [REDACTED] Licensing Specialist, OCC, to the Appellant, dated July 20, 2020
- OCC Ex. 5 Complaint Intake Form, dated September 29, 2020
- OCC Ex. 6 Child Care Center Inspection Report, dated October 6, 2020
- OCC Ex. 7 Child Care Center Inspection Report, dated October 14, 2020
- OCC Ex. 8 Emergency Suspension Letter, dated October 15, 2020
- OCC Ex. 9 Child Care Subsidy, Registered and Licensed Invoice for services period September 28 through October 11, 2020, with Invoice Detail Report for service period September 14 through September 27, 2020

I admitted the following exhibits offered by the Appellant:³

- APP Ex. 1 Sixteen photographs of the Center (exterior and interior)
- APP Ex. 2 Six photographs (interior entrance area of the Center)
- APP Ex. 3 Six photographs (childcare rooms and office area)
- APP Ex. 4 Four photographs (child gate)
- APP Ex. 5 Packet of documents regarding the Appellant, including:
- Children - The Next Generation, October 29, 2016
 - Child Care I: Growth and Development (45 hours), September 26, 2020
 - Infant/Toddler Care and Development, July 27, 2011
 - Supporting Breast Feeding in Child Care, December 9, 2015
 - Emergency Preparedness: Project Security Blanket, August 11, 2011
 - [REDACTED] Health, Safety, and Nutrition, Medical Administration Training, December 13, 2015
 - Children and the Americans with Disabilities Act, October 25, 2015

³ Some of the Appellant's exhibits did not contain dates.

- [REDACTED] Transcript, Undergraduate, [REDACTED] Major, May 15, 2005, print dated November 26, 2013
- OCC Personnel Qualification Evaluation, July 22, 2020
- Variance Request, July 8, 2020
- [REDACTED] Registration, Child Care 1: Child Growth and Development, July 8, 2020
- Variance Response, July 20, 2020
- Variance Request, July 17, 2020
- Child Care Facility Personnel List/Staff Change Form, March 28, 2020

APP Ex 6 Packet of documents regarding [REDACTED] including:

- Variance Response, July 20, 2020
- Personal Qualification Evaluation, July 22, 2020
- Variance Request, July 17, 2020
- Transcript from [REDACTED] undated
- [REDACTED] Class Registration, July 17, 2020
- Certificate of Completion, All Children and the ADA, September 3, 2020
- Maryland Educator Certificate, valid July 2, 2020 through July 1, 2025

APP Ex. 7 This exhibit was not admitted into evidence on the basis of relevancy⁴

APP Ex. 8 Packet of documents regarding child ([REDACTED]),⁵ including:

- Center Packet cover page
- Center Packet checklist
- Center Advertisement
- Student Picture page (blank)
- Emergency Card
- Enrollment form, anticipated start date August 1, 2020
- Center operational information
- Attendance Record (blank)
- Health Assessment-Part I, August 1, 2020
- Health Assessment-Part II, July 25, 2020
- Lead Testing Certificate, September 24, 2020
- Immunization Certificate, October 16, 2020
- Allergy Action Plan (blank)
- Asthma Action Plan (blank)
- Medical Report for Child Care (blank)
- Emergency Form, August 1, 2020
- Binding Contract, August 1, 2020

⁴ APP Ex. 7 consisted of a packet of documents regarding [REDACTED] This individual was not employed by the Center at any relevant time discussed in this Decision.

⁵ For confidentiality purposes, any reference to a child in this case shall be by the child's initials.

APP Ex. 9 Packet of documents regarding child (), including:

- Center Packet cover page
- Center Packet checklist
- Center Advertisement
- Student Picture page (blank)
- Enrollment form, anticipated start date October 2, 2020
- Center operational information
- Attendance Record (blank)
- Health Assessment-Part I, September 11, 2020
- Health Assessment-Part II, undated
- Lead Testing Certificate, undated
- Immunization Certificate, undated
- Allergy Action Plan, September 15, 2020
- Asthma Action Plan (blank)
- Medical Report for Child Care (blank)
- Emergency Form, September 14, 2020
- Binding Contract, September 15, 2020
- Consent Form, September 14, 2020
- Payment Receipts, September 21 and October 5, 2020
- Center application and handbook signature page (blank)
- Health Assessment-Part I, September 11, 2020
- Health Assessment-Part II, September 25, 2020
- Lead Testing Certificate, September 24, 2020
- Immunization Certificate, undated (blank)
- Allergy Action Plan, September 15, 2020
- Asthma Action Plan (blank)
- Medical Report for Child Care, September 25, 2020
- Immunization Certificate, undated
- [redacted] payment receipt, September 22, 2020
- [redacted] Intake Form Acknowledgement, September 22, 2020
- Consent Form, illegible date
- Center payment receipt, October 13, 2020

APP Ex. 10 Packet of documents regarding child (), including:

- Center Packet cover page
- Center Packet checklist
- Center Advertisement
- Student Picture page (blank)
- Enrollment form, anticipated start date October 6, 2020
- Center operational information
- Attendance Record (blank)
- Emergency Form (blank)
- Binding Contract for Transportation (blank)
- Binding Contract for Crib and Cot Permission (blank)

- Binding Contract for Child Care Services, October 7, 2020
- Child Health Assessment-Part II, October 8, 2020
- Immunization Certificate with Immunizations, October 8, 2020
- Lead Testing by [REDACTED] revised August 2015
- Binding Contract for Crib and Cot Permission, undated
- Binding Contract for Communication (blank)
- Binding Contract for Agreement for Child Care Services, undated

APP Ex. 11 Packet of documents regarding child [REDACTED], including:

- Consent Form, October 6, 2020
- Consent Form, October 5, 2020
- Enrollment (Drop-In), anticipated start date September 8, 2020
- Center enrolled student picture page (blank)

APP Ex. 12 Packet of documents regarding Emergency Cards and Attendance, including:

- Emergency card (blank)
- Attendance record for September 25 through October 15, 2020
- Emergency cards for several children

APP Ex. 13 Several emails between the Appellant and the OCC, from July 6 through October 15, 2020

Testimony

The OCC presented the testimony of [REDACTED] Licensing Specialist Supervisor, and [REDACTED] Regional Manager, [REDACTED] County.

The Appellant testified on her own behalf and presented the testimony of [REDACTED]⁶ the Center's Director, and [REDACTED] a volunteer delivery person for the Center.⁷

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

Background

1. The Center is located at [REDACTED] Maryland.

⁶ The record reflects Ms. [REDACTED]'s name as [REDACTED], [REDACTED], or [REDACTED]. Ms. [REDACTED] testified and introduced herself as [REDACTED]. For consistency purposes, I shall only refer to Ms. [REDACTED] as [REDACTED].

⁷ Mr. [REDACTED] also testified that he is related to the Appellant and is the father to the Appellant's grandson.

2. The Appellant is the owner and operator of the Center. Ms. [REDACTED] is the Center's Director.

3. On July 20, 2020, the OCC issued the Center an initial Child Development Program License, referred to as a Child Care Center License (the License). The License only permitted the Center to provide child care only to maximum capacity of six children.

4. The License only permitted the Center to provide child care to children who were two, three, and four years of age.

5. The License did not permit the Center to provide child care to any infants (ages between 6 weeks and 17 months) or toddlers (ages between 18 and 23 months).

6. The Licensee only permitted child care services to be provided within one room of the Center, described as a yellow room.

7. Before the Center could provide child care to infants or toddlers the Appellant was required to complete a child growth and development course. Upon completion of the course, the OCC would approve the Appellant to be a child care teacher for infants and toddlers. Ms. [REDACTED] was required to complete an Americans with Disability (ADA) course. Upon completion of the course, Ms. [REDACTED] would be approved as a child care center director for infants and toddlers.

8. As of September 29, 2020, or after, the OCC never received any documentation that the Appellant or Ms. [REDACTED] completed the child care growth and development or ADA courses.

9. As of September 29, 2020, or anytime after, the Center was not licensed to provide child care to infants or toddlers.

Serious Regulatory Violations

10. On October 6 and 14, 2020, there were children in care who were under the age of two and older than the age of five.

11. On October 14, 2020, the Appellant was alone with several children in care at the Center and left the Center to briefly speak to Mr. [REDACTED] who was parked in a vehicle just outside the Center.

12. On October 6, and 14, 2020, the Appellant was alone and providing child care to children at the Center but at the time the Appellant was only qualified as a child care aide and was not a qualified child care teacher. As a result, she was not permitted to be alone with the children.

DISCUSSION

Applicable Law

The Maryland General Assembly has declared that minor children are incapable of protecting themselves, and when parents relinquish the care of their minor children to others certain potential risks “require compensating measures.” Md. Code Ann., Educ. § 9.5-102(a). Consequently:

It is the policy of the State:

- (1) To protect minor children whose care has been relinquished to others by the child’s parent;
- (2) To resolve doubts in favor of the child when there is a conflict between the interests of a minor child and the interests of an adult; and
- (3) To encourage the development of child care services for minor children in a safe, healthy, and home-like environment.

Id. § 9.5-102(b)(1)-(3). *See also* Md. Code Ann., Fam. Law § 5-502 (2019).

The statutes governing child care centers contain the following additional admonition:

- (a) *Findings.* -- (1) The General Assembly finds that:
 - (i) A child is not capable of self-protection; and
 - (ii) If care of a child is given over to another, mental and physical risks arise that need to be offset by reasonable protective measures.
- (2) The General Assembly also finds that:
 - (i) There is a shortage of child care placements for children under the age of 2 years; and
 - (ii) The rules and regulations adopted under this subtitle should provide for small child care centers that provide care in a homelike environment.

Id. § 9.5-402.

In furtherance of these policies, the MSDE Superintendent may suspend a child care center's license on an emergency basis for a period not exceeding one year. Md. Code Ann., Educ. § 9.5-106 (1).

Section 9.5-411(d) of the Education Article provides, in part:

- (d) *Emergency suspensions.* -- (1)(i) The State Superintendent may suspend the license or letter of compliance to operate a child care center on an emergency basis when the State Superintendent determines that this action is required to protect the health, safety, or welfare of a child in the child care center.
 - (ii) When the State Superintendent suspends a license or letter of compliance on an emergency basis, the State Superintendent shall deliver written notice of the suspension to the licensee stating the regulatory basis for the suspension.
- (2)(i) Upon delivery of the emergency suspension notice, the licensee or letter holder shall cease immediately operation of the child care center.
 - (ii) The licensee or letter holder may request a hearing before the State Superintendent.
- (3)(i) If a hearing is requested by the licensee or letter holder, the State Superintendent shall hold a hearing within 7 calendar days of the request for a hearing. The hearing shall be held in accordance with the Administrative Procedure Act.
 - (ii) Within 7 calendar days of the hearing a decision concerning the emergency suspension shall be made by the State Superintendent.
- (4) If the emergency suspension order is upheld by the State Superintendent, the licensee or letter holder shall continue to cease operations until it is determined that the health, safety, or welfare of a child in the child care center is no longer threatened.
- (5) Any person aggrieved by a decision of the State Superintendent to uphold an emergency suspension may appeal that decision directly to the circuit court in the county in which the child care center is located.

Id. § 9.5-411(d). *See also* Md. Code Ann., State Gov't § 10-226(c)(2) (2014); COMAR 13A.16.17.05A.

Pursuant to COMAR 13A.16.17.05B, the OCC is required to hand deliver written notice of the emergency suspension to the operator stating:

- (1) The regulatory basis for the suspension;
- (2) That the operator shall immediately stop providing child care;
- (3) That the operator is entitled to a hearing before the [OAH] within 7 calendar days of the operator's request for a hearing;
- (4) That the [OAH] shall issue a decision concerning the emergency suspension within 7 calendar days of the hearing;
- (5) That if the emergency suspension order is upheld, stoppage of child care at the center shall continue until it is determined that the health, safety, or welfare of a child in the facility is no longer threatened;
- (6) That the suspension may lead to revocation; and
- (7) That the operator is required to surrender the letter of compliance to the office when the suspension becomes effective.

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

In this case, the OCC bears the burden to show, by a preponderance of the evidence, that it properly suspended the Appellant's child care license on an emergency basis. COMAR 28.02.01.21K(1)-(2)(a).

When reviewing an emergency suspension, I must consider "the complete record" to determine whether the OCC correctly applied the applicable State regulations that were in effect when it decided to impose the emergency suspension. COMAR 13A.16.18.08A. If there is any doubt about the safety of the children in a child care center, I must resolve that doubt in favor of

the children, not the adult provider, by affirming the suspension. Md. Code Ann., Fam. Law § 5-502(b)(2).

The OCC contends its emergency action against the License was proper and in accord with the controlling regulations set forth below. After considering all the evidence, including testimony of witnesses, I determine that certain regulatory violations weighed heavily in favor of upholding the emergency suspension. On other alleged regulatory violations, if established, weigh much less against an emergency violation. Collectively, when considering the regulatory violations that were established, I conclude that the emergency suspension shall be upheld.

Background

A discussion of the alleged violations begins with the Appellant's effort to open the Center and obtain a license from the OCC to operate the Center. As the Appellant testified, since 2008, she had been licensed by the OCC as a family child care home provider in [REDACTED]. Based on this experience, the Appellant made plans to own and operate a child care center. Originally, the Appellant intended to open a child care center located at [REDACTED]. She claims that due to a delay caused by the OCC, the landlord cancelled the lease for this location. She, however, was able to secure another lease from the same landlord for a location located at [REDACTED] in September 2019. In November 2019, the Appellant notified the OCC of a new location for her child care center. Unfortunately for the Appellant, she was required to go through the process of having the new location inspected and approved by the OCC as a licensed child care center. Essentially, the OCC had to inspect the new location and determine its physical layout and suitability for a child care center before it would issue a license to the child care center at the new location. As a result, the Appellant went through a long process to apply for a child care center license for the address of [REDACTED].

The Appellant explained that her business goals included opening a child care center to provide child care services for children ranging in age from six weeks to fifteen years of age. But the Appellant explained that she did not want to focus her business on the older school aged children because this group tended to only require transportation for after school activities. Instead, the Appellant wanted to offer child care services to infants and toddlers (6 weeks to 23 month-old children) and preschool children (2 to 5 year-olds).

Based on the photographs admitted into evidence, the new location required a lot of work to install child care rooms for certain age groups of children. Each room was a distinct area created out of half-walls and painted in specific colors to designate the location where specific age group children would be cared for when attending the child care program. There was an infant zone for 6 weeks to 17 months children, which had a multi-colored tiled floor, a purple room for 18 months to 23 months old children, a yellow room for two to three year children, and a green room for four to five year old children.

Before issuing a child care center license for the new location, the OCC had to review and approve the qualifications of the proposed staff for the new location. Prior to July 2020, the staff included the Appellant and [REDACTED] who was to be the Director for the child care center. To obtain approval for the child care staff, the Appellant had to obtain and submit to the OCC educational transcripts and child care training certifications for each proposed staff member. Each proposed staff member had to pass a criminal background check as well as a background check for child abuse or neglect investigations.

The process to approve and issue a child care center to the Appellant for the Center at the location located on [REDACTED] took from November 2019 through July 2020. However, in July 2020, for a reason not clearly explained by either party, Ms. [REDACTED] was no longer the proposed director. As a result, the Appellant located another proposed director,

██████████ Ms. ██████████ however, also was required to provide all her educational qualifications, prior child care training or experience, and pass all required background checks.

On July 8, 2020, the Appellant filed a Variance⁸ Request seeking a variance for herself to the regulatory requirements for a child care center teacher. On the same date, the Appellant enrolled in a child care growth and development class offered at the ██████████

██████████ The course was to begin on August 1 and continued through September 26, 2020.

On July 17, 2020, the Appellant filed another Variance Request for the Center's Director and the staffing requirements related to completing a course on the ADA. On the same date, the Appellant enrolled the Center's Director in an ADA course offered at ██████████
██████████ which was to start on August 3, 2020.

The Appellant's purpose for the variance requests and enrolling herself and Ms. ██████████ in these courses was to obtain a child care center license from the OCC, which would permit her to provide child care services to infants and toddlers.

After a long and tedious process, including multiple submissions of documents, many emails and telephone calls between the Appellant and the OCC, and several inspections, the OCC issued the License to the Center on July 20, 2020. The License, however, was limited. The Center could only provide child care to children who were two, three, or four years old and the maximum capacity of children that could attend the program was six. The only location or room within the Center where the children could be cared for was the yellow room.

⁸ The OCC may grant a variance to a regulation:

- (1) If the safeguards to a child's health, safety, or well-being are not diminished;
- (2) When the operator presents clear and convincing evidence that the regulation is met by an alternative which complies with the intent of the regulation; and
- (3) For a limited period of time as specified by the office, or for as long as the license remains in effect and the operator continues to comply with the terms of the variance.

When the OCC issued the License, it also issued a variance to the Appellant and Ms. [REDACTED] individually. Both variances were issued by [REDACTED] a licensing specialist supervisor for the OCC. The variance granted to the Appellant was a variance to COMAR 13A.16.06.09A(1)(b). This regulation addresses the staff requirements for child care teachers in preschool centers. In order for the Appellant to be a child care teacher for infants and toddlers, she was required to take a growth and development course. Through the variance, the OCC required the Appellant to complete the growth and development course by November 30, 2020.

The variance granted to Ms. [REDACTED] was variance to COMAR 13A.16.06.05. This regulation addresses the staff requirements for Directors in all child care centers. The variance indicated that Ms. [REDACTED] had all the requirement to be a preschool director but had not completed the ADA course. The variance, however, did not contain any specific conditions that Ms. [REDACTED] had to complete under the variance. The variance expired on September 30, 2020.

When Ms. [REDACTED] issued the variances, on the same date, she also sent an email to the Appellant. In this email, Ms. [REDACTED] explained that when Ms. [REDACTED] completes the ADA course and the Appellant wants to open the infant and toddler rooms, Ms. [REDACTED] will need another variance for the forty-five hour infant and toddler course. Ms. [REDACTED] also explained, after she completed the infant and toddler growth and development course, if the Appellant wanted to become a preschool child care center teacher she will need to complete a forty-five hour preschool curriculum course.

Sometime after the License was issued, the Appellant opened the Center and began enrolling children to attend the program. Both the Appellant and Ms. [REDACTED] attended the courses required by the variances. Ms. [REDACTED] completed the ADA course and a certificate of completion was issued to Ms. [REDACTED] on September 3, 2020. The Appellant testified that she completed the growth and development course on September 17, 2020, but documentation of

completing the course was not issued until September 26, 2020.⁹ The Appellant never submitted any documentation to the OCC to confirm she or Ms. [REDACTED] satisfied the conditions of the variances issued by the OCC.

On September 23, 2020, through a series of emails, the Appellant was communicating with [REDACTED] a licensing specialist assigned to the Center.¹⁰ The reason for this communication was that the Appellant wanted the opportunity to open more child care rooms in the Center. The current License and restrictions were not sufficient for her business needs. The email exchange became alarming to the Appellant because Ms. [REDACTED] seemed to require the Appellant to submit documentation of items already submitted and adding more requirements beyond the requirements of the variances issued on July 20, 2020 in order to open the infant and toddler rooms of the Center. As a result, on September 24, 2020, the Appellant requested a meeting with OCC supervisors and in her emailed request stated that she was disgusted with the OCC's process and continuous attempt to see her business fail.¹¹

Based on the Appellant's email, Ms. [REDACTED] scheduled a remote video conference meeting with the Appellant, which was held on September 29, 2020. Attending the video conference hearing were the Appellant, Ms. [REDACTED] Ms. [REDACTED] and [REDACTED] the [REDACTED] County Regional Manager for OCC.¹² During the conference, Ms. [REDACTED] asked the Appellant if she was providing child care services at the Center for an infant. The Appellant responded by stating that she was not caring for an infant. However, Ms. [REDACTED] had information from the Child Care Subsidy program which indicated a payment voucher was issued to the Center for child care services provided from September 14 through September 27, 2020 to [REDACTED] a ten-month old child.

⁹ This document is titled "Award of Recognition" and was presented to the Appellant for her successful completion of Child Care I: Growth and Development (forty-five hours). See APP Ex. 5.

¹⁰ See APP Ex. 13.

¹¹ *Id.*

¹² See OCC Ex. 5.

When confronted with that information, the Appellant admitted to providing child care to an infant. Based on the information developed during this meeting, the Appellant was informed that she could not provide child care services to infants and the child () never returned to the Center. Also as of September 29, 2020, the Center was not licensed to provide child care to infants or toddlers. As a result of the September 29, 2020 meeting, the OCC issued a Complaint Intake Form to document the situation.¹³ Additionally, the information caused the OCC to conduct unannounced inspections of the Center on two occasions, October 6 and 14, 2020, which also led to the letter of emergency suspension issued on October 15, 2020.

Regulatory Violations

Both Ms. () and Ms. () testified about an investigation of the Center that they conducted on October 6 and 14, 2020. The result of each inspection was recorded in a Child Care Center Inspection Report.¹⁴ The inspections resulted in a determination that several regulatory violations described below were present.

Program Records

During the investigations, Ms. () found these program record violation required under COMAR 13A.16.03.03A(2), B(1), and D, which respectively provides:

The operator shall create and maintain, for at least 2 years after their creation, records of attendance, by groups of children, which indicate the dates of attendance of each child in the center and verification by each child's parent of that child's recorded daily attendance in care;

The operator shall maintain procedures to ensure that the whereabouts of each child in attendance is known at all times; and

The operator shall negotiate and maintain a written agreement with the child's parent that specifies the fees for and provision of care.

¹³ *Id.*

¹⁴ See OCC Ex. 6 and 7.

On October 6, 2020, the attendance records for the children in care only contained parent names and did not contain any children's names. On October 14, 2020, the Center did not have attendance records with the names of children on them and there were written agreements or contracts with the children's parents present but two agreements were not signed by the parents and one child did not have any file or agreement at all.

During the hearing, the Appellant presented three exhibits containing the entire child care file for those children in care at the Center.¹⁵ She testified that these records were present at the Center and were reviewed by Ms. [REDACTED]. She acknowledged that some information was missing and required corrections, which she did. Even though Ms. [REDACTED] and Ms. [REDACTED] testified about missing program records and the Appellant may have agreed that some records were incomplete, it appears that Appellant had corrected those issues. Nevertheless, even if established, I find that the incomplete attendance records or written child care agreements do not demonstrate that a child's health, safety, or welfare was threatened and carries no weight in support of an emergency suspension.

Child Records

During the inspections, Ms. [REDACTED] found these child record violations required under COMAR 13A.16.03.04A, B(2), C, and E, which respectively provides:

For each child admitted to, or continuing in care, the operator shall maintain written records, on forms provided or approved by the office, that meet the requirements of this regulation;

Each child's written records shall be kept on file at the center during the period of a child's enrollment and for 2 years after the child's disenrollment;

The operator shall obtain and maintain emergency information from the child's parent contains the child's name and date of birth; the parent's full name, current address, and home and work telephone numbers; the name and telephone number of the individual who is authorized to pick up the child each day; the name and telephone number of at least one individual who is authorized to pick up the child

¹⁵ See APP Ex. 8, 9, and 10.

in an emergency; the name, address, and telephone number of the child's physician or other health care provider; the child has a special health condition, includes emergency medical instructions for that condition; is signed and dated by the child's parent; is updated as needed, but at least annually; and is readily accessible to each staff member supervising the child, including during an off-site activity;

The operator shall maintain documentation that, as required by COMAR 10.11.04, each child admitted to, or continuing in, care has received an appropriate lead screening unless the child is school-aged and attends a school.

On October 6, 2020, there were no medical forms or immunizations records for any child present in the Center. There were no emergency cards found at the Center but the Appellant stated that she would have the emergency cards completed later that evening. There were no lead screening records present at the Center.

On October 14, 2020, Ms. [REDACTED] found emergency information for children in care were listed on index cards, but there were no emergency cards with information required by regulation. She also found that one child was missing an immunization shot record, another child was missing an enrollment contract and had no lead screening record, another child was missing parts of a required health inventory record, no lead screening record and no immunizations shot record, and a school aged child had no file. Ms. [REDACTED] explained that these records are important for the health, safety or welfare of all children in care because should a child have an health emergency an incomplete emergency card or health record may prevent that child from receiving adequate or immediate health care and the Center staff would be unable to contact a responsible adult.

The Appellant acknowledged that the emergency information she had for the children in care were not consistent with the information required by the regulation. After the inspection, she researched for examples of the emergency cards required by the OCC and corrected this issue. As to the missing health inventory records, lead screening, or immunization records, she asserts that some of those records were in the child care files reviewed by Ms. [REDACTED] and other

records, the parent had not provided and had an appointment with a medical professional to obtain and provide to the Appellant. To support her testimony, as with the program records, she presented child care files into evidence.

I find that the emergency information at the Center were incomplete and did not meet the regulatory requirements. I am also persuaded that there were missing health records for children in care. Even though the potential for harm to a child in care existed at the time of inspection, the Appellant corrected the issues especially as it applied to the emergency card information. Nevertheless, based on the evidence presented, I am not persuaded that the harm to a child's health, safety, or welfare was not seriously at risk at the time of inspection and carries little weight in support of an emergency suspension.

Staff Records

During the inspections, Ms. [REDACTED] found staff record violations required by COMAR 13A.16.03.05B, D(1), and E, which respectively provides:

The operator shall for review by the OCC and by parents who have enrolled their children or are considering enrolling their children, post in a conspicuous location a current and complete staffing pattern, on a form supplied or approved by the office, that specifies: the number and ages of children enrolled; the staff/child ratio in relation to the daily schedule; and by staff name, all child care assignments;

The operator shall maintain documentation required for substitutes, pursuant to COMAR 13A.16.06.13; and

The operator shall maintain a calendar or other written record of the: days on which a substitute provides care; and staff member in whose place the substitute worked.

On October 6, 2020, when Ms. [REDACTED] conducted the inspection, she observed the Appellant alone in the yellow room providing child care to children in care. Ms. [REDACTED] was in the Center's office with another child. Ms. [REDACTED] observed a staffing pattern posted at the Center but the posted staffing pattern did not match the staffing pattern on file with the OCC. She

explained that the staffing pattern on file with the OCC identified that Ms. [REDACTED] was the child care teacher who was to be in yellow room but the staffing pattern posted at the Center listed the Appellant as the staff member in the yellow room. The same staffing pattern was posted on October 14, 2020. Ms. [REDACTED] also explained that the posted staffing pattern at the Center was an issue because the Appellant was not a qualified child care teacher and was only considered an child care aide and not permitted to be alone with children in care.

On October 14, 2020, when Ms. [REDACTED] entered the Center, the Appellant was alone and there were children in care at the time. That day, Ms. [REDACTED] was unable to work at the Center because of a concern that she was exposed to an individual with the COVID virus. During this inspection, the OCC permitted the Appellant to provide child care to the children in attendance, after she was permitted to be a child care substitute, for Ms. [REDACTED]. However, the Center was charged with the regulatory violation regarding substitutes because there were no substitute information or documentation on file at the Center.

The staffing pattern issue is related to the enrollment and attendance issue which I discuss next. However, on this specific issue, the OCC never presented the document it had on file regarding the staffing pattern of the yellow room. I understand that Ms. [REDACTED] and Ms. [REDACTED] testified that the staffing pattern posted at the Center was not the same as the staffing pattern of file with the OCC. But without the actual document being presented in evidence, I am cannot find the OCC has met its burden to establish this violation. For this reason, I find that this alleged violation carries no weight in support of the emergency suspension.

Enrollment and Attendance

During the inspections, Ms. [REDACTED] found enrollment and attendance violations under COMAR 13A.16.04.02D, which provides:

An operator may enroll a child only if the office has given written approval for the facility to care for children of that child's age.

On October 6 and 14, 2020, Ms. [REDACTED] observed that there were several children in care at the Center, including a child under the age of two and another child who was school age and was six years old. The License issued to the Center did not permit children of these ages to attend the Center.

The Appellant testified that she understood that when she and Ms. [REDACTED] completed the courses required by the variance she would be able to open the Center to enroll infants and toddlers. As indicated earlier, Ms. [REDACTED] completed her ADA course on September 3, 2020. The Appellant completed the growth and development course on September 17, 2020 but did not receive the completion certificate until September 26, 2020. She argued that by completing the course, even though she never submitted documentation to the OCC, that she was able to enroll infants and toddler for care at the Center. She explained that the variance issued by the OCC only required course completion and did not require providing supporting documentation.

I find the evidence clearly establishes that this regulatory violation occurred. During the inspections, the Appellant had children in care who were younger and older than the ages permitted by the License. The Appellant's position is unpersuasive. I find her testimony on this issue to lack credibility and find it hard to believe that the Appellant did not understand that the OCC would not require documentation of the courses required by the variance. Especially, that the entire history the Appellant had with the OCC and the opening of the Center required detailed documentation of every regulatory requirement.

Ms. [REDACTED] and Ms. [REDACTED] explained that without proper training for child care staff who provide care to infants and toddlers, the OCC cannot know that the staff is trained to provide proper care and emotional support to infants and toddlers. Based on the issue discovered during the September 29, 2020 remote conference and the results of this inspection, it appears that the Appellant was too eager to open the Center to infants and toddlers. Because of the repeated

nature of this violation, I find that this violation was serious and weighs heavy in support of the emergency violation. Even though by October 6, 2020, the Appellant and Ms. [REDACTED] completed the required course work, the fact of the matter is that the OCC was not provided any documentation of the course completion and the Center's license was not updated to permit the Center to care for infants and toddlers.

General Cleanliness

During the inspection on October 6, 2020, Ms. [REDACTED] found a general cleanliness violation under COMAR 13A.16.05.11D, which provides that each room used for child care shall have a trash container with a disposable liner. During this inspection, the Center did not have a trash can within the yellow room, which was the only room authorized by child care by the OCC. The Appellant explained and the OCC also recognized that there was a trash can present but it was located just outside the half-walled yellow room.

Even though the regulation requires the trash can to be inside the yellow room, I find this violation to be so minimal that carries no weight in support of the emergency suspension.

Child Security

During the inspections, Ms. [REDACTED] found child security violations under COMAR 13A.16.07.06A, which provides that the operator shall ensure the safety and security of each child at all times. On October 6, 2020, while inside the Center and during the inspection, Ms. [REDACTED] observed a child be able to exit the yellow room by pushing or opening a security gate and leave the room, run down a hallway toward the Center's Office where the Appellant was located and was obtaining documents requested by Ms. [REDACTED]. The child was returned to the yellow room by the Appellant.

On October 14, 2020, Ms. [REDACTED] testified that she arrived early for the inspection and observed a black vehicle parked outside the Center. She then observed the Appellant to exit the

Center and briefly speak to the driver of the vehicle through the passenger window and return inside the Center. Upon entering the Center, Ms. [REDACTED] observed that there were children in care and the Appellant was the only staff member present. Based on these circumstances, Ms. [REDACTED] found that the Appellant left the children in care unattended endangering the children's' safety and security.

The Appellant presented testimony and picture evidence to demonstrate how the security gate operated and was attached to the yellow room's entryway. During the hearing, she explained that she was in the yellow room with the Ms. [REDACTED] and the children. Ms. [REDACTED] asked her to retrieve several documents that were located in the Center's office and was attempting to do as requested by Ms. [REDACTED]. Under the circumstances, the Appellant was of unaware how the child was able to get outside the gate and contends that she was only doing as requested by Ms. [REDACTED]. She also asserts that the child was returned to the yellow room and the child's health, safety, or welfare were never threatened.

As to the incident involving the black vehicle, the Appellant testified the driver of the vehicle was Mr. [REDACTED]. She explained that she never left the Center but only poked her head out of the Center's front door and spoke very briefly to Mr. [REDACTED]. The Appellant also testified that she gathered up the children in care and walked with them to the Center's front door so she could speak to Mr. [REDACTED]. Mr. [REDACTED] offered testimony which supported the Appellant.

Because the child was able to exit the yellow room and run toward the Center's office, the child was technically a safety risk because the child could have run to other areas of the Center and be in danger. But that risk was minimal and it was resolved by the Appellant bringing the child back into the yellow room. I found that this regulatory violation was established but that it weighs very little in support of the emergency suspension.

As to the incident on October 14, 2020, I do not find the testimony of the Appellant or Mr. [REDACTED] to be credible. It simply is unreasonable to believe that the Appellant gathered children up and kept them with her to only poke her head out a door and speak very briefly to Mr. [REDACTED]. Mr. [REDACTED] picks up and delivers supplies for the Appellant but he is also the father of one of the Appellant's grandchildren. For this reason, I believe Mr. [REDACTED] has a strong reason to provide testimony to support the Appellant.

Even though the Appellant left the children in her care briefly unattended. There was other evidence that the children had been able to escape the yellow room. Further, upon entering the Center, Ms. [REDACTED] or Ms. [REDACTED] found a candle burning. These facts demonstrate that there was a risk to the health, safety and welfare of the children in care. The violation related to this incident carries strong weight in support of the emergency suspension.

Child Supervision, Qualified Staff in Charge of Group, and Group Size and Staffing

During the inspection Ms. [REDACTED] found several regulatory violations related to child supervision, qualified staffing, and group staffing, including:

COMAR 13A.16.08.01A(1) - An operator shall ensure that each child receives attention to the child's individual needs

COMAR 13A.16.08.02A and B - At all times while in care, each child shall be assigned to a group of children that is supervised by an individual who meets the requirements of COMAR 13A.16.06.09 or .10 [child care teachers], depending on the age composition of the group; or has received a variance, issued by the OCC to serve as a teacher.

COMAR 13A.16.08.03A - One or more child care teachers shall be assigned to each group of children as needed to meet the requirements for group size and staffing.

These regulatory violations are closely related to the issue presented by my earlier discussion involving enrollment and attendance. Neither the Appellant nor Ms. [REDACTED] documented for the OCC that they had completed the requirements of the variances issued to them. Also, the OCC had not licensed the Center to care for infants or toddlers. During the

inspections on October 6 and 14, 2020, the Appellant was alone with children in care, including a child under the age of two, a toddler. However, because the Appellant had not yet demonstrated to the OCC that she completed the terms of her variance she was not yet qualified to be a child care teacher for toddlers. Ms. [REDACTED] also explained that when the OCC issued the License to the Center, the Appellant was only qualified as an aide and was not permitted to be alone with children in care, including the children who were between the age of two and five. She also explained that Ms. [REDACTED] was the only staff member who was permitted to provide care services the children in care. Ms. [REDACTED] explained that when children are cared for by staff without proper qualifications, there is a risk that the child emotional development could be harmed by a staff member who is not properly trained to respond to the child's needs.

As discussed earlier, the Appellant contends that she was qualified as a child care teacher because she completed the growth and development course. But as I concluded her understanding of the variance and its requirements was not credible and was self-serving. The Appellant did assert disbelief that she was only qualified as an aide when the License was issued, especially based on her extensive educational and family child care experience.

It is unclear based on the evidence presented if there was miscommunication between the Appellant and the OCC. But what is clear to me is that the Appellant was not qualified by the OCC to provide child care to toddlers and during both investigations she had toddlers in care and that she was the staff member providing care to that aged child. Based on my review of the evidence, I am persuaded that the Appellant was overly eager to open her child care centers to infants and toddlers as soon as possible to keep her business afloat. To do so, she liberally construed her ability to care for such children and took the associated risk. I find that these regulatory violations weigh heavily in favor of the emergency suspension. These particular

regulations are for the purpose of protecting the health, safety, and welfare of children and when these regulations violated a risk of harm to children in care is created.

Schedule of Daily Activities

During the inspection on October 6, 2020, Ms. [REDACTED] found a violation of COMAR 13A.16.09.01C(2), which provides:

Limited use of appropriate interactive technology may support, but may not replace, creative play, physical activity, hands-on exploration, outdoor experiences, social interactions, and other developmentally appropriate learning activities for children 2 years old or older.

As to this violation, Ms. [REDACTED] explained that while conducting the investigation, a two year old child was having a behavioral issue and in an attempt to calm or distract the child, Ms. [REDACTED] placed her personal cell phone down to a level so the child could watch a video which was playing on the phone. In her opinion, the use of a video being streamed over a cell phone was an inappropriate activity for a two-year-old child. Ms. [REDACTED] did not dispute that she gave the child her phone to watch a video, but it was an attempt to calm the child down.

Even though Ms. [REDACTED] may have believed this regulatory violation occurred there is no evidence how this isolated incident placed the child's health, safety, or welfare at risk. This violation, if it occurred carries no weight in support of the emergency suspension.

Potentially Hazardous Items

During the inspection on October 6, 2020, Ms. [REDACTED] found a potentially hazardous item violation under COMAR 13A.16.10.04A, which provides that the operator shall store all potentially harmful items in locations which are inaccessible to children in care. On October 6, 2020, Ms. [REDACTED] observed a six-year-old child getting Lysol for Ms. [REDACTED] who was going to clean a table in the yellow room. On October 14, 2020, Ms. [REDACTED] observed that cleaning supplies, including Windex and hand sanitizer were located on the half-wall of the yellow room, which children in care could potentially have access to.

Ms. [REDACTED] explained that she asked the child to get the Lysol which she had in a bag which she normally carries with her. The Appellant explained that even though the cleaning supplies were on the half-wall, the children did not have access to the supplies, and she removed the supplies to a safer location.

Like the other violations, I find this violation to be a minimal regulatory violation which were corrected. I do not find this violation to have substantially caused a risk of harm to a child's health, safety, or welfare, especially since the violations were corrected. This violation carries no weight in support of the emergency violation.

CONCLUSIONS OF LAW

I conclude as a matter of law that the OCC established regulatory violations involving Enrollment and Attendance, Child Security, Child Supervision, and Qualified Staffing. COMAR 13A.16.04.02, COMAR 13A.16.07.06, 13A.16.08.01, 13A.16.08.02, and 13A.16.08.03.

I further conclude as a matter of law, based on the regulatory violations established, the child care center licensed issued to the Center should be suspended on an emergency basis because the health, safety, or welfare of a child has been established. Md. Code Ann., Educ. §§ 9.5-106 and 9.5-411 (2018); COMAR 13A.16.17.05B(5).

ORDER

I **ORDER** that the Office of Child Care's emergency suspension of the Appellant's child care center license is **AFFIRMED**.

Signature Appears on Original
[REDACTED]

December 9, 2020
Date Decision Mailed

Daniel Andrews
Administrative Law Judge

DA/kdp
#189197

REVIEW RIGHTS

This is the final decision of the Maryland State Department of Education. A party aggrieved by this decision may, within thirty (30) days of the date of the decision, file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2020); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]