

OREGON DEPARTMENT OF EDUCATION
OFFICE OF CHILD CARE

In the Matter of)
Christina Boehnen) **AMENDED**
Christinas Childcare) **EMERGENCY ORDER OF SUSPENSION**
CF502937)
Emergency Order of Suspension of)
Certified Family Child Care Home)

Added material in this order is bolded. Deleted material is bracketed [].

The Office of Child Care (OCC) is charged with licensing certified family child care homes, pursuant to ORS 329A.250 through 329A.460 and 329A.992, and OAR 414 chapter 350. The Certified Family Child Care Home of Christina Boehnen is suspended under the provisions of ORS 183.430(2), ORS 329A.350(1), and OAR 137-003-0560; According to ORS 183.430(2), "In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by this chapter confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee."

ORS 329A.252 states, "Provision of care by persons whose enrollment in registry is denied, revoked, or under suspension. (1) Notwithstanding ORS 329A.250(4), care provided to children other than the children of the person providing the care by a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person's certification or registration while under investigation by the Office of Child Care is "child care" for purposes of ORS 329A.030 and 329A.250 to 329A.450."

OAR 137-003-0505(1)(h) states, "When the agency is required to issue a contested case notice pursuant to ORS 183.415, the notice shall include: If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise."

OAR 137-003-0560(1) states, "If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order."

OAR 414-350-0000(1)(c) states, "Care for three or fewer children if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC."

OAR 414-350-0000(1)(d) states, "Provide care for preschool children that is primarily educational for four hours or less a per day and where no preschool age child is present at the facility for more than four hours per day if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC."

OAR 414-350-0000(1)(e) states, "That provide care on an occasional basis by a person not ordinarily engaged in providing child care if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC."

OAR 414-350-0000(1)(f) states, "That provide care for children from only one family other than the person's own family if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC."

OAR 414-350-0010(20) states, "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider. (34) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed."

OAR 414-350-0090(2) states, "All caregivers, including the provider, shall: (a) Have competence, sound judgment, and self-control in working with children. (b) Be mentally, physically, and emotionally capable of performing duties related to child care."

OAR 414-350-0090(4) states, "No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during hours of operation. This does not apply to parents of children in care when they drop off and pick up their children."

OAR 414-350-0090(4)(a) states, "The owner, the provider, all caregivers and other residents of the home 18 years of age or older must be enrolled in OCC's Central Background Registry prior to the issuance of an initial or renewal certificate. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday. Certification may be denied, suspended, or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry."

OAR 414-350-0120(2) states, "Children shall at all times have the full attention of and be supervised by the required number of caregivers. (a) Children shall be within sight and/or sound of a caregiver at all times. (b) A caregiver shall be near enough to children to respond when needed. Children out of direct visual contact shall be monitored regularly and frequently and must be in approved activity areas. (c) Children may not be on a floor level of the home unless a caregiver is on the same floor level, except as specified in OAR 414-350-0120(2)(d).

OAR 414-350-0240(5) states, "Guidance and discipline shall be fair, consistently applied, timely, and appropriate to the behavior and age of the child. Positive statements or redirection of behaviors shall be used."

OAR 414-350-0240(6) states, "Prohibited punishment includes, but is not limited to: (d) Confining a child in an enclosed area, (e.g., a locked or closed room, closet, box)."

OAR 414-350-0400(1) states, "OCC may immediately, and without prior notice, suspend the child care certification when, in the opinion of OCC, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed. (a) A provider whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension. (b) A provider whose certification has been suspended must post the suspension in the home where it can be viewed by parents and others."

OAR 414-350-0400(2) states, "The provider has the right to appeal any decision to suspend the certification, subject to the provisions of Chapter 183, Oregon Revised Statutes."

OAR 414-350-0400(3) states, "If the provider does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked."

THE FACTS

Christina Boehnen's (Provider) applied for a Certified Family Child Care Home License (License) on February, 2, 2017. OCC issued Provider a [temporary] License on March 23, 2017, pursuant to ORS 329A.300(2). Pursuant to ORS 329A.280(1), (2), and (3), a Certified Family Child Care Home license allows a provider to provide care for up to 16 children, including the provider's own children, in the provider's home. This facility was licensed to care for 12 children, including the Provider's children, which is normal practice for the first year as a certified facility.

On or about May 16, 2017, the Office of Child Care (OCC), received information [REDACTED]

On May 16, 2017, OCC received information [REDACTED]

On May 19, 2017, OCC received information from two staff who worked in the Provider's facility.

On May 15, 2017, a preschool-aged child was left in a room in the upstairs portion of Provider's licensed facility for several hours. The child is normally dropped off around 7:00 am. The two staff members working that morning and afternoon (staff A and staff B) arrived after the child and were not aware of the child's presence in the home until the child's parent arrived at approximately 1:00 pm to pick up the child. The Provider had not made her staff aware of the child's presence in the home or location in the upstairs room. When the parent arrived, staff A communicated with the Provider about the location of the child and the Provider reported that the child was in the office for getting in trouble. According to staff, the child was upstairs in the room for six hours without supervision.

The room where this child was location is not part of the licensed child care space and was not inspected by OCC staff to ensure that it met safety requirements and otherwise complied with applicable regulations.

On May 15, 2017, The the Provider used profanity against staff B the Provider pushed staff B with such force that staff B flew across a 6 foot deck. The Provider then screamed at staff A and said, " If you have a fuckin problem you can leave too." Child care children were present during the altercation between Provider and staff B and observed to be frightened and scared.

OCC confirmed [REDACTED]

OCC staff also confirmed that Staff A and Staff B were working in the licensed facility without being enrolled in the Central Background Registry.

In addition, there were 21 child care children in care at one time on May 15, 2017.

Based on these circumstances and resulting concerns, OCC made a determination that the Provider is not suitable and suspended the Provider from the Central Background Registry (CBR) effective May 19, 2017.

OCC also learned of additional allegations indicating that Provider persistently violates OCC licensing regulations, including but not limited to the following:

- The Provider routinely has too many children in care, or is out of compliance with approved caregiver-to-children ratios. This conduct violates OAR 414-350-0030(6), OAR 414-350-0120(1)(c), OAR 414-350-0120(4).
- The Provider routinely fed dairy to a lactose intolerant child, even after being repeatedly told by the child's parents not to feed the child dairy. This caused the child to suffer from bloating, indigestion, and diarrhea. This conduct violates OAR 414-350-0220(1).
- The Provider allowed minor children to supervise child care children without another caregiver present. This conduct violates OAR 414-350-0120(2).
- The Provider and her spouse use improper physical discipline in the child care facility, including but not limited to spanking, threatening spanking, and slapping. This conduct violates OAR 414-350-0240(5). OAR 414-350-0240(6)(a)(b).
- The Provider failed to provide enough food for children attending her facility, causing them to return home hungry. This conduct violates OAR 414-350-0220(1) and OAR 414-350-0210(1).

The facts identified above raise serious concerns for OCC related to the health and safety of the child care children in the Provider's care. The provider failed to ensure safety by allowing a child to be left alone in a different part of the house without informing anyone, she had 9 additional children in care when she was only supposed to have 12, she failed to ensure her staff had appropriate credentials (CBR) to be employed in her facility and have unsupervised contact with child care children and engaged in physical aggression in front of children.

Provider persistently violates OCC rules regulating the health and safety of child care facilities. OCC finds that the continued operation of this certified family child care facility poses a serious danger to the public health and safety.

Based on these circumstances OCC issued an Emergency Suspension of the Certified Family Child Care Home License of the Provider on May 19, 2017.

CONCLUSIONS OF LAW

The Provider, is responsible for the operation of certified family child care home, including compliance with certification requirements. The Provider has violated the following:

- The Provider violated OAR 414-350-0090(2)(a) and (b), and OAR 414-350-0090(4) when she assaulted a staff member in front of child care children;
- The Provider violated OAR 414-350-0090(4)(a) by employing individuals in her facility who were not enrolled in the Central Background Registry;
- The Provider violated OAR 414-350-0120(2)(a), (b) and (c), by failing to maintain appropriate ratios and supervision over child care children, including by leaving a child on time out in a separate area of the facility for an extended duration;
- The Provider violated OAR 414-350-0240(5) and OAR 414-350-0240(6)(d) by confining a child care child on timeout for an extended period of time;
- The provider violated OAR 414-350-0030(6), OAR 414-350-0120(1)(c) and OAR 414-350-0120(4), by routinely having too many children in care. The Provider routinely has too many children in care, or is out of compliance with approved caregiver-to-children ratios. This conduct violates OAR 414-350-0030(6), OAR 414-350-0120(1)(c).
- The provider violated OAR 414-350-0220(1) by routinely feeding dairy to a lactose intolerant child, even after being repeatedly told by the child's parents to feed the child dairy.
- The Provider violated OAR 414-350-0120(2) by allowing a minor to supervisor the child care children without another caregiver present.
- The Provider violated OAR 414-350-0240(5) &(6)(a)(b) by her and her spouse using improper physical discipline in the child care facility.
- The Provider violated OAR 414-350-0220(1) and OAR 414-350-0210(1) by failing to provide enough food for children attending her facility, causing them to return home hungry.

As providers must be enrolled in the Central Background Registry to operate a child care program, the Provider is not in compliance with the Office of Child Care requirements due to her suspension from the Central Background Registry. ORS 329.030(2),(8)(a); see also OAR 414-350-0090(4)(a).

As set forth above, OCC finds that the facts surrounding these violations create a serious danger to the public health and safety and that immediate action is necessary to protect children from physical or mental abuse or a substantial threat to health, safety or well-being. Based on the facts the provider's Certified Family Child Care Home license is suspended effective May 19, 2017. ORS 183.430(2), OAR 137-003-0560(1), OAR 414-350-0400(1).

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedures Act (chapter 183, Oregon Revised Statutes). Under ORS 329A.360 and OAR 137-003-0560, you have the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order. [If you want a hearing, you must make a written request to the Office of Child Care no later than 90 days from the date this order was mailed. The request should be sent to the Office of Child Care, 875 Union St., NE, Salem, OR 97311. The request may also be submitted via fax at (503) 947-1428 or e-mail occ.hearings@state.or.us.] **You have already requested a hearing in this matter and the hearing has been set for August 3, 2017 at 9:00 a.m.**

The Department of Human Services and Child Care Resource and Referral Agency will be notified of this suspension action. This suspension order may cause payment vouchers from the Department of Human Services to be discontinued.

If you request a hearing, you will be notified of the time and place of the hearing. You may be represented by legal counsel at the hearing. Legal aid organizations may be able to assist you if you have limited resources. The Office of Child Care will be represented by an Assistant Attorney General from the Oregon Department of Justice. You will be provided information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be conducted by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

Active duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar (1-800-452-8260) or the Oregon Military Department for more information (1-800-452-7500). The United States Armed Forces Legal Assistance Legal Services Locator can be accessed at <http://legalassistance.law.af.mil/content/locator.php>.

If you fail to request a hearing, if you request a hearing and subsequently withdraw your request for hearing, if you fail to appear for the hearing, or if a hearing is scheduled and you later notify the Office that you will not appear at the specified time and place, you will have waived your right to a hearing. OCC designates the relevant portions of its file, including all materials you have submitted, as the record for purposes of this emergency order of suspension.

When the agency is required to issue a contested case notice pursuant to ORS 183.415, the notice shall include: (h) If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise.

Dated this 1 day of August, 2017



Dawn Woods
Child Care Director

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