

OREGON DEPARTMENT OF EDUCATION
OFFICE OF CHILD CARE

In the Matter of)
Theresa Smith) EMERGENCY ORDER OF SUSPENSION
Emergency Order Suspension of)
Family Child Care Registration)

Theresa Smith
374 N 8th ST
Saint Helens, OR 97051

The Office of Child Care (OCC) is charged with licensing registered family child care homes, pursuant to ORS 329A.250 through 329A.460 and 329A.992, and OAR 414 chapter 205. The Registered Family Child Care Home of Theresa Smith is suspended under the provisions of ORS 183.430(2), ORS 329A.350(1) and OAR 137-003-0560. ORS 183.430(2) states, "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a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person's certification or registration while under investigation by the Office of Child Care, is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 137-003-0560(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 414-205-0000(2)(a) states, "Registration is required for persons who provide child care: On other than an occasional basis."

OAR 414-205-0000(2)(b) states, "Registration is required for persons who provide child care: To more than three children from more than one family at any one time, other than the person's own children."

OAR 414-205-0000(2)(c) states, "Registration is required for persons who provide child care: To three or fewer children, even if from the same 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 414-205-0000(2)(d) states, "Registration is required for persons who provide child care: That is primarily educational to children age 36 months or older but not attending kindergarten for four hours or less a 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 414-205-0000(2)(e) states, "Registration is required for persons who provide child 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 414-205-0000(2)(f) states, "Registration is required for persons who provide child care: To 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 414-205-0100(1) states, "The home must be a healthy environment for children."

OAR 414-205-0170(2) states, "Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide OCC with information requested, allow inspection, or correct deficiencies."

OAR 414-205-0170(4) states, "A registration may be suspended immediately when OCC believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed."

OAR 414-205-0170(5) states, "Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed from the Central Background Registry."

OAR 414-205-0040(2) 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 child care children even if they are not generally at home during child care hours."

OAR 414-205-0040(3) states, "The applicant and other reside of the home 18 years of age or older must be enrolled in the OCC's CBR prior to the issuance of a registration. Resident of the home who are under 18 years of age must be enrolled in the Registry by the 18th birthday."

OAR 414-205-0040(4) states, "The provider must verify with OCC that the individual is enrolled in the CBR prior to that individual moving into the home, residing on a temporary basis in the home, visiting the home on a regular basis (including overnight visits) or substituting for or assisting the provider. This does not apply to parents of children in care unless they are residing in the home or substituting or assisting the provider. The provider must keep a copy of OCC's confirmation letter for all adults enrolled in the CBR that may have contact with child care children."

OAR 414-205-0170(11) states, "The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a fine, subject to the provisions of Chapter 183, Oregon Revised Statutes."

OAR 414-061-0050(1)(a)(C)&(M) states OCC "will consider OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later. (C) 164.225 Burglary in the first degree. (M) 163.732 Stalking."

THE FACTS

Theresa Smith (the provider), was originally issued a Registered Family Child Care Home license on September 18, 1984. Pursuant to ORS 329A.330(1) and (2), this license allows a provider to care for up to 10 children, including the provider's own children, in the provider's home.

On or about March 22, 2017, OCC staff conducted an unannounced visit to the provider's home to confirm compliance. During the visit, OCC staff observed an unauthorized adult, Mr. David Brown (Mr. Brown) in the home. The provider admitted to OCC staff that Mr. Brown has been residing in the home since February 23, 2017 and that she is aware that he is not currently enrolled in the Central Background Registry. The provider indicated to OCC staff that she was unwilling to come into compliance by making Mr. Brown move from her residence or temporarily cease providing child care while Mr. Brown continued to live in the residence as OCC processed his application for enrollment in the Central Background Registry; Mr. Brown's application for enrollment in the CBR was received by OCC on or about March 10, 2017.

OCC staff confirmed through the Oregon Judicial Information Network (OJIN) that Mr. Brown has criminal history that includes a conviction for Burglary in the First Degree and a conviction for Stalking in January 2017.

OCC finds that the provider's actions in allowing Mr. Brown to reside within her home and have unsupervised access to child care children and Mr. Brown's known criminal behavior poses a serious danger to the public health or safety. This individual is not enrolled in the Central Background Registry, which allows an individual to have unsupervised contact with child care children and reside in a licensed child care home.

The provider has allowed and continues to allow an unauthorized adult (Mr. Brown) unsupervised access to child care children and places child care children at risk. Based on these circumstances, the provider, Theresa Smith's Registered Family Child Care Home is suspended effective March 23, 2017.

CONCLUSIONS OF LAW

The provider, Theresa Smith, is responsible for the operation of the Registered Family Child Care Home including compliance with licensing requirements. OAR 414-205-0010(20).

The provider has failed to provide a safe and healthy environment for child care children and has placed children for whom she is responsible at risk.

The provider violated OAR 414-205-0040(2)(3) and (4) that 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 child care children even if they are not generally at home during child care hours." "The applicant and other reside of the home 18 years of age or older must be enrolled in the OCC's CBR prior to the issuance of a registration. Residents of the home who are under 18 years of age must be enrolled in the Registry by the 18th birthday." The provider allowed Mr. Brown to have access to child care children after being advised that he is not enrolled in the Central Background Registry and that he could not reside in the home.

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

Registered Family Child Care Home license is suspended effective March 23, 2017. ORS 183.430(2), OAR 137-003-0560(1), and OAR 414-205-0170(2).

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.

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.

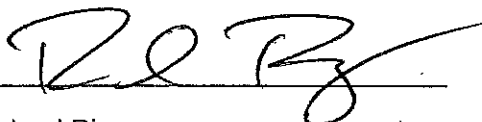
If you request a hearing, you will be notified of the time and place of the hearing. You may be represented by legal counsel at the hearing. Legal aid organizations may be able to assist you if you have limited resources. The Office of Child Care will be represented by an Assistant Attorney General from 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.

Dated this 23rd day of March 2017

OFFICE OF CHILD CARE



Richard Riggs
Legal Administrator

RR:km