

OREGON DEPARTMENT OF EDUCATION
OFFICE OF CHILD CARE

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

The Office of Child Care of the Oregon Department of Education hereby suspends the family child care registration of Leanne Downey 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."

APPLICABLE LAWS

ORS 183.415(3) states, "Notice under this section must include: (f) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website."

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a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person's certification or registration while under investigation by the Office of Child Care, is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 414-205-0010(20) states, "Provider" means a resident of the registered family child care home who is responsible for the children in care; is the children's primary caregiver; and the person whose name is on the certificate of registration."

OAR 414-205-0035(15) states, "Any caregiver who has reason to believe that any child has suffered abuse (physical injury, mental injury, neglect that leads to physical harm, sexual abuse and/or exploitation, or threat of harm) must report the information to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day."

OAR 414-205-0040(1) states, "The registered provider and any substitute provider shall: (c) Be mentally, physically and emotionally capable of performing duties related to child care."

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 the child care children even if they are not generally at home during child care hours."

OAR 414-205-0100(2) 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 414-205-0170(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."

THE FACTS

Leanne Downey's (the provider) Registered Family Child Care Home license (license) was most recently renewed April 3, 2016. Pursuant to ORS 329A.330(1) and (2), this license allows a provider to care for up to ten children, including the provider's own children, in the provider's home.

On or about July 12, 2017, the Office of Child Care (OCC), received information from [REDACTED]

On or about July 13, 2017, OCC received additional information from [REDACTED]

The fact [REDACTED] raise serious concerns for OCC related to the health and safety of the child care children in the Provider's care. OCC finds that the continued operation of this registered family child care home poses a serious danger to the public health and safety.

Based on these circumstances OCC issued an Emergency Suspension of the Registered Family Child Care Home License of the Provider on July 14, 2017.

CONCLUSIONS OF LAW

The provider, Leanne Downey, 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 414-205-0035(15), OAR 414-205-0040(2) and OAR 414-205-0100(2) when she put her child care children at risk by not protecting them from others.

OCC finds serious danger to the public health or safety to child care children based on the provider's negligence in protecting children from harm.

These violations, individually and together, raise serious doubts about the provider's ability and willingness to provide a safe and healthy environment. Based on the facts and non-compliance with the applicable rules, the provider's Registered Family Child Care Home license is suspended effective July 14, 2017.

NOTICE OF RIGHT TO REQUEST HEARING

You have the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order. If the demand for hearing is not received within 90 days of the date of notice of the emergency suspension order, you have waived your right to a hearing regarding the emergency suspension order.

The request should be sent to the Office of Child Care, 875 Union Street, NE, Salem, OR 97311. The request may also be submitted via fax at (503) 947-1428 or e-mail occ.hearings@state.or.us. After receiving the request, a hearing date will be set and you will be notified. You will be provided with information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

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 of Child Care that you will not appear at the specified time and place, the Office of Child Care may issue a final order in this matter. The Office of Child Care designates as the record, the Office of Child Care's complete file which automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.

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.

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Dated this 14 day of July 2017

Kim Brockamp

Kim Brockamp
Central Office Manager

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