

OREGON DEPARTMENT OF EDUCATION
OFFICE OF CHILD CARE

In the Matter of)

Melinda Hagen
Sunnyside Sprouts Playschool)
CF503113

EMERGENCY ORDER OF SUSPENSION

Emergency Order of Suspension of)
Certified Family Child Care Home

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 Melinda Hagen 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a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person's certification or registration while under investigation by the Office of Child Care is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 414-350-0120(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 414-350-0240(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: (a) Hitting, slapping, shaking, striking with hand or instrument, pinching, tying or binding, or inflicting any other form of corporal punishment;(b) Mental or emotional punishment including, but not limited to, name calling, ridicule, yelling, or threats;(d) Confining a child in an enclosed area, (e.g., a locked or closed room, closet, box);(e) Forcing or withholding meals, snacks, rest, or necessary toilet use."

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

Melinda Hagen (Provider) applied for a Certified Family Child Care Home License (License) on December 20, 2017. OCC issued the Provider a license effective December 30, 2017. The license is valid through December 30, 2018, 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 is licensed to care for 12 children, including the Provider's own children.


On or about May 3, 2018, the Office of Child Care (OCC), received information that infants and toddlers are placed and confined in cribs as punishment. It was reported that these children are left in cribs for extended amounts of time unsupervised. It was also reported that all children are required to sleep on their stomachs. Sunnyside Sprouts Playschool's website reflects that parent access is limited to the front porch for drop off and pick up; limiting the parents access to the home. Based on the seriousness of the information received, OCC staff made a mandatory report to the Department of Human Services, Child Protective Services (DHS).

On May 8, 2018, the Office of Child Care (OCC), received additional information that included a photo of a sixteen month old child care child tied up with blankets in a crib. The child's arms were bound and tied to their body with a blanket covering him/her. It was stated that the provider tied up the child care child because she heard the child crying. It was further reported that after the provider tied up the child, she left the child in the crib, in the basement unsupervised. It was also reported that there were two other children, both toddler age, in the basement unsupervised. Approximately one hour later a staff member went to the basement and found the child care child tied up. It was reported that the child appeared to be in distress. It took approximately two minutes for the child to be unbound.

It was further disclosed that nap time is from 12:15 pm to 4:00 pm and the child care children are confined to the basement with no supervision. The provider requires all child care children under the age of two to sleep in a zip up sleep sack, which doesn't allow the children to move around. The child care children are then placed on their stomachs, and staff are told to leave them there unsupervised. It was also stated that a 2 ½ year old child care child was placed in a zip up sleep sack, to help him/her from sucking his/her thumb. During this time it is stated that the provider watches the street, and has a code word for staff, if someone approaches the house. The provider reportedly does not allow the parents in the home and makes them text before picking up a child early, so the child can be picked up on the porch.

Information also indicates that the provider withholds food from children for discipline purposes. On another occasion the provider was observed kneeling down next to a toddler aged child and holding him/her down with one arm and force feeding the child solid food. The child was visibly upset and the provider appeared frustrated and scolded the child for not eating during this interaction.

The Office of Child Care made a second mandatory report on May 8, 2018 to the Department of Human Services, Child Protective Services (DHS). [REDACTED]



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 8, 2018.

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 children to be unsupervised in an area of the home that was not within sight or sound of the caregiver. The provider uses corporal punishment as demonstrated by tying a child up for discipline purposes and causing severe threat of harm by laying child care children on their stomachs, while not being able to move. 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 8, 2018.

CONCLUSIONS OF LAW

The Provider, is responsible for the operation of certified family child care home, including compliance with certification requirements. The Provider has been suspended from the CBR effective May 8, 2018. The facility has violated OAR 414-350-0090(2), OAR 414-350-0090(4), OAR 414-350-0120(2)(a-c), OAR 414-350-0240(5), OAR 414-350-0240(6)(a)(b)(d).

As providers must be enrolled in the CBR to operate a child care program, the facility is not in compliance with the OCC requirements due to the Provider's suspension from the CBR. 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 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 8, 2018. 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

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.

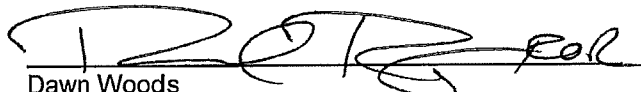
If you request a hearing, you will be notified of the time and place of the hearing. You may be represented by legal counsel at the hearing. Legal aid organizations may be able to assist you if you have limited resources. The Office of Child Care will be represented by an Assistant Attorney General from 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 8th day of May 2018


Dawn Woods
Child Care Director

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