

STATE OF OREGON
OREGON DEPARTMENT OF EDUCATION
OFFICE OF CHILD CARE

In the Matter of

Marcella Abilez
Marcella's Child Care

EMERGENCY ORDER OF
SUSPENSION

Emergency Order Suspension of
Family Child Care Registration

Marcella Abilez



The Office of Child Care (OCC) of the Early Learning Division (ELD) is charged with licensing registered family child care homes, pursuant to ORS 329A.250 through 329A.460 and 329A.994, and OAR 414 chapter 205. The Registered Family Child Care Home of Marcella Abilez is suspended under the provisions of ORS 183.430(2), ORS 329A.350(1), OAR 414-205-0170(2) 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."

According to OAR 137-003-0560(1), "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.”

According to OAR 414-205-0010(20), "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.”

According to OAR 414-205-0040(1)(b), “Have competence, sound judgment and self-control when working with children.”

According to OAR 414-205-0040(2), “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.”

According to OAR 414-205-0040(3), “The applicant and other residents of the home 18 years of age or older must be enrolled in 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 their 18th birthday.”

According to OAR 414-205-0170(3), “A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.”

According to OAR 414-205-0170(4), “A provider whose registration has been suspended must immediately provide OCC with all names, work and home telephone numbers and addresses of the parent(s) or legal guardian(s) for each child.”

According to OAR 414-205-0170(5), “A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents and others for the duration of the suspension.”

According to OAR 414-205-0170(6), “If necessary to protect children, OCC may give public notice of denial, suspension or revocation action taken. The type of notice will depend on individual circumstances.”

According to OAR 414-205-0170(7), “If the provider does not request a hearing and the conditions which resulted in suspension have not been corrected, the registration shall be revoked.”

According to OAR 414-205-0170(10), “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.”

ORS 329A.252 states, “Provision of care by persons whose enrollment in registry is denied, revoked, or suspended. (1) As used in this section, “exempt prohibited individual” means: (a) An individual whose certification or registration is suspended, has

been denied for cause or has been revoked under ORS 329A.350. (b) An individual whose enrollment in the Central Background Registry established by ORS 329A.030 is suspended, has been denied for cause or has been removed under ORS 329A.030. (c) An individual whose certification, registration or enrollment in the Central Background Registry is subject to an emergency order of suspension under ORS 183.430(2). (d) An individual who voluntarily surrendered the individual's certification, registration or enrollment in the Central Background Registry while under investigation by the Office of Child Care or at any time after the Office of Child Care has given notice of an administrative proceeding against the individual or the individual's child care facility. (e) An individual to whom the Office of Child Care has issued a final order to cease and desist: (A) After a contested proceeding; or (B) That has become effective because the individual did not request a hearing. (2) For five years following the date on which an individual becomes an exempt prohibited individual, the exempt prohibited individual: (a) Is ineligible for enrollment in the Central Background Registry; and (b) May not provide care to a child who is not related to the exempt prohibited individual by blood or marriage within the fourth degree as determined by civil law."

THE FACTS

Marcella Abilez (Provider) was originally issued a Registered Family Child Care Home license on May 5, 2016. The license expiration date is March 7, 2023.

On May 28, 2021, OCC received a complaint about a physical altercation between Individual and an adult residing in the home. Through an OCC [REDACTED] investigation it was found that the other adult was injured and left the child care home [REDACTED]. The Individual admitted that she was arrested for this incident. The incident occurred while child care children were in care. In addition, the investigation revealed that Individual's husband, whose enrollment in the CBR was denied, and who is an exempt prohibited individual and is not allowed to live in the child care home, is living in the child care home.

Pursuant to OAR 414-205-0040(1)(b), a provider must "[h]ave competence, sound judgment and self-control when working with children." The Provider did not demonstrate competence, sound judgement and self-control when she assaulted an adult in the child care home while child care children were present.

Pursuant to OAR 414-205-0040(2), "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." The Provider exhibited out of control behavior that is a risk to child care children. Moreover, Provider allowed an exempt prohibited individual whose enrollment in the CBR was denied to live in the home, in addition to two other adults who were not enrolled in the CBR. Enrollment in the CBR involves an extensive background check to insure adults do not pose a threat to child care children.

Pursuant to OAR 414-205-0040(3), "The applicant and other residents of the home 18 years of age or older must be enrolled in 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 their 18th birthday." Two adults in the home were not enrolled in the CBR, and one adult previously applied to be enrolled in the CBR and was denied.

CONCLUSIONS OF LAW

Assaulting and injuring an adult in the presence of child care children is behavior that poses a serious danger to child care children's health and safety. Additionally, allowing an individual whose enrolment in the CBR was denied and who is an exempt prohibited individual to live in the child care home poses a serious danger to children's health and safety. OCC has determined that the suspension of Provider's Registered Family Child Care Home license is necessary to protect child care children from a substantial threat to their health and safety. The Registered Family Child Care Home license is suspended effective June 11, 2021, pursuant to ORS183.430(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 OCC no later than 90 days from the date this order was mailed. The request should be sent to the Office of Child Care, 700 Summers St. NE, Suite 350, Salem, OR 97301. The request may also be submitted via fax at (503) 947-1428 or e-mail occ.hearings@state.or.us.

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.

When the agency is required to issue a contested case notice pursuant to ORS 183.415, OAR 137-003-0505(1)(h) provides that 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[.]"

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.

ACTIVE DUTY SERVICEMEMBERS

Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

DATED this 11th day of June, 2021

OFFICE OF CHILD CARE

/s/ Meg Kirschnick

Meg Kirschnick
Enforcement Officer

MK:njd