

STATE OF OREGON
OREGON DEPARTMENT OF EDUCATION
OFFICE OF CHILD CARE

In the Matter of

Naomi C. Gil
Crib Midget Day Care

Emergency Order Suspension of
Certified Family Child Care Registration

License No. CF502299

Naomi C. Gil


EMERGENCY ORDER OF
SUSPENSION

The Office of Child Care (OCC) of the Early Learning Division (ELD) is charged with licensing certified family child care homes, pursuant to ORS 329A.250 and 329A.280 through 329A.310, and OAR chapter 414 division 350. The Family Child Care Home Certification of Naomi Gil is hereby suspended pursuant to ORS 183.430(2), ORS 329A.350(1), OAR 137-003-0560, and OAR 414-350-0390(5).

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 329A.350(1): "An initial application from a child care facility for certification or registration or a renewal application from a child care facility for certification or registration may be denied, or a temporary or regular certification or regular registration may be revoked or suspended, if the Office of Child Care finds: That

the facility or its operation does not comply with ORS 181A.200, 329A.030 and 329A.250 to 329A.450 or with applicable rules or with any term or condition imposed under the certification or registration[.]”

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 414-350-0390(5): “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.”

According to OAR 414-350-0390(6), “A provider whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension.”

According to OAR 414-350-0390(9): “An owner whose certification 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 414-350-0390(10): “A certified family child care home whose certification has been denied or revoked must immediately notify all parents of the closure and shall post a notice of the closure where it can be viewed by parents and others. The notice shall remain posted for a minimum of 2 weeks.”

According to OAR 414-350-0390(4): “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 414-350-0390(8): “If the provider does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked.”

According to OAR 414-350-0390(2): “The provider has the right to appeal any decision to suspend, deny or revoke the certification, subject to the provisions of Chapter 183, Oregon Revised Statutes.”

According to OAR 414-350-0240(3)(a): “The guidance and discipline policy shall:(a) Provide for positive guidance, redirection, and the setting of clear boundaries[.]”

According to OAR 414-350-0240(6): “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[.]”

According to OAR 414-350-0120(1)(a): “The number of caregivers and group size shall be determined by the number and ages of the children in attendance. All children in the home, including the provider’s or other caregivers’ own children, shall be counted in determining the caregiver/child ratio and group size[.]”

According to OAR 414-350-0140(1)(a): “The indoor area used for child care shall meet the following requirements: If the provider is certified to care for 12 children or fewer, there shall be a minimum of 35 square feet of indoor activity area, as defined by OAR 414-350-0010(1), per child. If the provider is certified to care for more than 12 children, there shall be a minimum of 35 square feet of indoor activity area per child for 12 or fewer children, and 50 square feet of indoor activity area available per child for each of the additional four children. This space, considered in determining capacity of the home, shall be available for use by children at all times. The following shall not be counted as part of the 35 square feet per child requirement: heating units, storage areas; large permanent equipment; any space not useable by children.”

According to OAR 414-350-0170(9)(b): “Items of potential danger (e.g., cleaning supplies and equipment, paints, poisonous and toxic materials, plastic bags, aerosols, detergents) shall be: [s]tored under child-proof lock.”

According to OAR 414-350-0170(9)(h): “All exposed electrical outlets in rooms used by preschool or younger children shall have hard-to-remove protective caps or safety devices when not in use[.]”

According to OAR 414-350-0190(6): “Litter boxes shall not be located in any part of the home used by children or for food storage, preparation, or eating.”

According to ORS 329A.252(1)(c): “As used in this section, “exempt prohibited individual” means: * * * 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).

According to ORS 329A.252(2): “For five years following the date on which an individual becomes an exempt prohibited individual, the exempt prohibited individual: * * * 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

Naomi Gil (Provider), was originally issued a Certified Family Child Care Home license on February 3, 2015. Pursuant to ORS 329A.330(1) & (2), this license allows a provider to care for up to 16 children, including the provider’s own children, in the provider’s home. Provider’s license allows up to 15 children.

On February 3, 2021, Provider renewed her Certified Family Child Care Home license, which will expire on February 3, 2022.

On or about October 6, 2021, OCC received notification of allegations that Provider struck a child care child at Crib Midget Day Care, license no. CF502299. An OCC investigation confirmed that Individual spans or hits child care children several times per week, every week, causing the children to cry. Individual spans or hits all of the children in her care, except for the youngest infants. The majority of children in Individual's care are nonverbal. In addition, Provider frequently yells at children and sometimes calls children names such as "stupid."

Individual owns multiple certified family child care homes and Individual's enrollment in the CBR gives her unsupervised access to child care children. Based on these circumstances and resulting concerns, OCC has determined that the Individual poses a substantial threat and serious danger to the health and safety of children and suspended the Individual's enrollment from the CBR effective October 7, 2021.

During an unannounced visit on October 6, 2021, OCC staff observed that there were two staff and 13 children present. Seven of the children were infants, five were preschool age, and one was school age. Based on the ages of the children in care, there were not enough staff to meet OCC's staff to child ratio. In addition, the preschool age children were in a room that is not an approved child care space. The room included an uncovered cat litter box within reach of children, and other hazards including hand sanitizer within reach and uncovered electrical outlets.

Ed Gil is the substitute provider at Crib Midgets Day Care, which operates 24 hours per day, 7 days per week. Through its investigation, on October 8, 2021, OCC learned that Ed Gil pushed a toddler age child, causing the child to "fly" and stumble for approximately six feet. On other occasions, Ed Gil grabbed children roughly by their wrists.

CONCLUSIONS OF LAW

Provider and Ed Gil's physical discipline of children is in violation of OAR 414-350-0240(3)(a) because positive statements and redirection of behaviors were not used.

Provider and Ed Gil's spanking, rough grabbing, and pushing of children is in violation of OAR 414-350-0240(6)(a) because corporal punishment is prohibited.

When Provider yells at children and calls them names, her behavior violates OAR 414-350-0240(6)(b) because yelling and name calling is a prohibited form of punishment.

On October 6, 2021, there were not enough staff for the number of children in care, in violation of OAR 414-350-0120(1)(a).

By providing care for preschool age children in a room that was not an approved child care space, Provider violated OAR 414-350-0140(1)(a) because child care may only be provided in approved spaces within the home.

Provider violated OAR 414-350-0170(9)(b) and (h) because multiple electrical outlets were not covered and other hazards were in arm's reach of preschool age children.

Provider violated OAR 414-350-0190(6) because there was a cat litter box within arm's reach of child care children. Cat litter boxes are unsanitary and hazardous to child care children.

Based on the foregoing facts and violations, OCC has determined that the suspension of Provider's license is necessary to protect children from serious danger. Further, OCC has determined that suspension is necessary to protect child care children from physical or mental abuse and other substantial threats to their health, safety, and well-being.

Provider's Certified Family Child Care Home license is hereby suspended effective October 8, 2021. ORS 183.430(2), 320A.350(1), OAR 137-003-0560(1) and OAR 414-350-0390(5).

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.

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 these proceedings under the federal Service members 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.

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 8th day of October 2021

OFFICE OF CHILD CARE

/s/ Meg Kirschnick
Meg Kirschnick
Enforcement Officer

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