

PINELLAS COUNTY LICENSE BOARD FOR CHILDREN'S CENTERS  
AND FAMILY DAY CARE HOMES  
Minutes for the Special Board Meeting  
May 25, 2011

APPROVED MINUTES

The Special Board Meeting of the Pinellas County License Board for Children's Centers and Family Day Care Homes was scheduled and properly noticed for Wednesday, May 25, 2011, at 4175 East Bay Drive, Clearwater, to begin at 1:30 p.m.

Board Members Present: Elise Minkoff, Board Chair; Michael Bessette; Anne Brooks; Judith Bruckner (arrived at 1:35); Norm Roche; Judi Vitucci, Secretary

Board Members Absent: Lourdes Benedict

Ex Officio Member Present: Charles Minor

Advisory Members Present: Lynn Bittner, Ann Hofmeister, Elizabeth Krakowski, Nina Meyers, Susan Weber

Advisory Members Absent: DaVee Henderlong, Merlita Jones, (Consultant position vacant)

Attorneys: Colleen Flynn and Evan Frayman

Staff Members Present: Patsy Buker, Executive Director; Kathy Krause, Supervisor Family Child Care Homes; Jorie Massarsky, Supervisor Children's Centers; Dana Stajkowski, Board Recorder, and other Health Department staff

Call to order: The meeting was called to order at 1:30 p.m.

I.C. Minutes:

**Motion:**

A motion was made by Judi Vitucci and was seconded to approve minutes from the 4/14/11 Regular Board meeting. Unanimously approved.

I.D. Public Comment: None

II. B. Final Agency Action: Evan Frayman, attorney, provided an overview of the hearing/appeal process timeline and Board responsibilities for Board and Advisory Committee members. A copy of the Rules of Procedure used by Attorney Frayman in his overview is attached. The record of the hearing consists of:

- All notices, pleadings, motions, etc.
- Evidence, testimonies
- Matters officially recognized such as regulations
- Objections to be considered
- Proposed findings and exceptions
- Decisions, opinions, orders, reports
- Staff data presented
- All matters placed on the record not heard by all parties
- Official transcript

A standard of review by the hearing officer is "a clear and convincing evidence standard." Evidence that is precise, explicit, lacking in confusion and that produces a firm belief or conviction without hesitation.

II. B. Final Agency Action – continued

The Board schedules a hearing on the exceptions filed. The Board is not asked to reweigh the evidence or hear new evidence. The Board is asked to determine if the hearing officer's finding of fact is supported by competent and substantial evidence in the record – was the procedure followed, was there proper notice of the hearing, was there an opportunity to present evidence; was the "clear and convincing evidence standard" used or another standard, etc.

The Board has the right to decline to rule upon exceptions which don't identify the disputed portion of the recommended order by page number or paragraph, which don't identify the legal basis for the exceptions, or which don't include the appropriate citations to the record.

Following the presentation of the parties (if exceptions are presented and Board votes to hear argument pertaining to the exceptions), Board shall deliberate and either adopt or reject or modify the Hearing Officer's recommended order as follows:

- To reject or modify a conclusion of law over which the Board has jurisdiction, the Board must state with particularity the reason for rejecting or modifying the conclusions of law and must make a finding that its substitute conclusion or interpretation is as or more reasonable than that of the hearing officer.
- To reject or modify a finding of fact requires a review of the entire record and a statement that the finding was not based on competent, substantial evidence or that the proceedings did not comply with the essential requirements of law. Either there wasn't evidence to support the findings or there was a procedural error in the way the hearing was conducted.
- The Board can increase or decrease the penalty after a complete review of the record by stating the particular reason for the increase or decrease and citation to the record justifying the action.
- The Final Agency Action is then sent to the affected party, who can then appeal to the Department of Children and Families.

Board Chair: Elise Minkoff read into the record the issue before the Board regarding Final Action for Precious People.

Motion: A motion was made by Judith Bruckner and was seconded to summarily deny the Exceptions filed for failing to comport with 120.57(1)(k).

Discussion: Evan Frayman clarified the choices for the two different motions and what they mean. Following that discussion, Ms. Bruckner entered the following motion:

Motion: A motion was made by Judith Bruckner and was seconded to deny the motion to summarily deny the Exceptions filed for failing to comport with 120.56(1)(k).

Discussion: Board members discussed the Exceptions and agreed the evidence did not cite to the record with specificity nor was new evidence cited.

II. B. Final Agency Action – continued

The final motion was read into the record a second time.

Vote: Yeas – Judith Bruckner and Anne Brooks  
Nays – Judi Vitucci, Michael Bessette, Commissioner Roche  
Vote failed

Motion: A motion was made by Michael Bessette and was seconded by Commissioner Roche to grant the motion to summarily deny the Exceptions filed for failing to comport with 120.57(1)(k). Yeas – Michael Bessette, Commissioner Roche, Anne Brooks, Judi Vitucci; Nays – Judith Bruckner

Attorney comment: Lucy Pineiro who represents Precious People Learning Center requested and was granted permission to make a statement to “preserve the record for appeal.” Attorney Pineiro commented that this is a court of equity and as such the motion to move to summarily grant the motion to deny the exceptions is harsh punishment. Attorney Pineiro then requested the Board allow the captions to be added to the Exceptions so that justice can be met.

Board Chair: Elise Minkoff thanked Attorney Pineiro for her comments.

Discussion: The Board requested clarification on the following action items. Following that discussion the following motions were made.

Motion: A motion was made by Judith Bruckner and was seconded to accept the findings of fact. Unanimously approved.

Main Motion: A motion was made by Judith Bruckner and was seconded by Commissioner Roche to modify the Conclusions of Law.

Discussion: Board discussed the Conclusions of Law found in the Findings of Fact, Conclusions of Law and Recommendations of Hearing Officer, specifically item 3 and 7 and understanding of the term “imminent threat of serious harm.”

Friendly Amendment: A motion was made by Judi Vitucci and was seconded by Anne Brooks to amend Judith Bruckner’s motion to add the rejection of Conclusion of Law #7 on the basis that the Board has determined that as a matter of law the accepted facts do not rise to the level of imminent threat and such Conclusion of Law is as reasonable or more reasonable than that of the hearing officer. Unanimously approved.

Main motion repeated: A motion was made by Judith Bruckner and was seconded by Commissioner Roche to modify the Conclusions of Law. Unanimously approved.

Motion: A motion was made by Judi Vitucci and seconded by Judith Bruckner that this Board having reviewed all the evidence move to reduce the penalty in accordance with modified Conclusions of Law to a Class II violation. Unanimously approved.

II. C.

Board direction: Board requested that staff look at a definition for imminent threat of serious harm.

Patsy Buker discussed the staff recommendation and the PCLB approved language as of January 5, 2011 with an overlay, along with her staff recommendations for language additions and revisions for clarification.(House Bill 1039) ( Senate Bill 2074)

Patsy Buker requested that staff have up 60 days to accept a change licenses application to increase capacity.

Discussion: There was discussion regarding new providers having less than 8 children at the beginning until they prove they can meet regulations.

Public Comment: Lynn Gibson, 8679 78<sup>th</sup> Avenue North, Seminole, FL 33777 made the following comments speaking for a group (Pinellas County License Providers):

- o That the word “large” should be inserted in the appropriate paragraphs
- o That currently, all children under 13 years of age count in our capacity in Pinellas County and that is why we can now have 10 children
- o That the references of 402 used in the regulations are not accurate
- o That the appropriate number of bathroom facilities be required according to bathroom needs of the children and that the regulation for bathrooms be reviewed
- o That perhaps a large family child care home provider can be approved immediately for 8 children for a regular family child care home since they already meet the regulations for large
- o That the providers she spoke to all support the proposed definitions for family child care home and large family child care home

Board Discussion: Board proceeded to discuss the elements of the staff recommendation for family child care homes.

**Motion:** A motion was made by Judith Bruckner and was seconded to approve the definition for Family Child Care Home. Unanimously approved

**Friendly Amendment:** A motion was made by Judith Bruckner and seconded to add an effective date of July 1, 2011 for Family Child Care Home. Unanimously approved.

- II. C. **Family Child Care Home:** means an occupied residence in which child care is regularly provided for children from at least two unrelated households with or without compensation. A family child care home shall be allowed to provide care for one of the following groups of children, which shall include household preschool aged children whether present or not, and household school aged children under 13 years of age when on the premises of the family child care home or on a field trip with children enrolled in care.
- A) A maximum of 6 children, if no more than 3 are under 18 months of age.
  - B) A maximum of 6 preschool aged children, if no more than three are under 18 months of age, and all are older than 12 months of age**
  - C) A maximum of 8 children, if no more than five are preschool age and of those five no more than three are under 18 months **of age**, and of those three, no more than two are under 12 months **of age**.

Recommendation for changes for Large Family Child Care Home Definition:

In Large Family Child Care Home, change “rule” to “regulation” and add “Large” where it is missing.

**Motion:** A motion was made by Commissioner Roche and was seconded to approve the amended definition for Large Family Child Care Home. Unanimously approved with an effective date of July 1, 2011.

**Motion:** A motion was made by Judi Vitucci and was seconded to approve staff recommendation for up to 60 days to process application for change of capacity. Unanimously approved.

Board Chair: Elise Minkoff stated that while we did not make any promises to rehear these two issues again that we did assure the providers back in January that we would be willing to hear about it.

**Large Family Child Care Home** – A large family child care home **for the purposes of this regulation** means a home that is licensed under section 402.3131, F.S. A large family child care home means an occupied residence in which child care is regularly provided for children with or without compensation from at least two (2) unrelated households and which has at least two (2) full-time child care personnel on the premises during the hours of operation. One (1) of the two (2) full-time child care personnel must be the operator or the operator’s substitute. A large family child care home must first have operated as a licensed family child care home for two (2) consecutive years, with an operator who has had a child development associate credential or its equivalent for one (1) year, before seeking licensure as a large family child care home. The two consecutive years of operation as a licensed family child care home must have been **in the state of Florida** and within five years of the date of application to operate a large family child care home. **A large family child care home shall be allowed to provide care for one of the following groups of children, which shall include household preschool aged children whether present or not, and household school aged children under 13 years of age when on the premises of the large family child care home or on a field trip with children enrolled in care:**

- A) A maximum of 8 children from birth to 24 months of age
- B) A maximum of 12 children, with no more than 4 children under 24 months of age

Large family child care homes must meet and comply with all standards of this **regulation** at all times unless there are insufficient numbers of children in care to meet the definition of a large family child care home in which case an additional employee is not required.

Respectfully submitted by:

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Judi Vitucci, Board Secretary

**RULES OF PROCEDURE FOR HEARINGS**

October 6, 2010 – revised

**1. PURPOSE:**

In accordance with the authority given to this Board by its enabling acts, and in accordance with this Board's desire to conduct its hearing procedures in a fair and impartial manner, the following rules of procedure are hereby adopted. These rules shall be binding upon the Board in its hearings and shall only be subject to change by the affirmative vote of a simple majority of members. The Board may adopt further "guidelines" as it deems necessary to further assist the parties in preparing for the conduct of these proceedings, however, such guidelines shall not have the force or effect of these rules. The adoption of these rules supersedes all Board Rules adopted previously.

**2. AVAILABILITY OF HEARING:**

Any licensed provider or applicant who has been issued a Notice of Imposition of Fine, Notice of Intent to Revoke, Notice of Intent to Suspend, or Notice of Intent to Deny Application is entitled to request a hearing under these procedures.

**3. REQUEST FOR HEARING:**

Providers or applicants entitled to a hearing shall, as a condition precedent to being granted a hearing, file a written Request for Hearing. Such Request for Hearing must be received by the Pinellas County License Board for Children's Centers and Family Day Care Homes within fifteen (15) calendar days of receipt of written notice of fine, intent to revoke suspend or deny to which the provider or applicant is being subjected. The Request shall be deemed effective upon actual receipt. Failure to provide such written request within the fifteen (15) day period shall constitute a voluntary waiver by the provider or applicant of all rights to an administrative appeal and the matter will be scheduled for Final Agency Action pursuant to the Special Act.

The Request for Hearing shall contain, as a minimum, the following items:

- (a) a statement that the person filing the Request for Hearing is entitled to an appeal;
- (b) a brief statement of the action which is being appealed and the basis for the appeal; and
- (c) a specific request for relief (i.e. a request to the hearing officer to take specific action).

The appealing provider or applicant shall be limited in the scope of his or her appeal to the issues which are raised in the Request for Hearing.

**4. NOTICE TO PROVIDER, APPLICANT, BOARD AND INTERESTED PARTIES:**

Within two (2) working days of receipt of the provider or applicant's Notice of Appeal/Request for Hearing, the PCLB staff shall transmit to the Board Attorney the Notice of Appeal/Request for Hearing and the underlying action being appealed. The Board Attorney shall then schedule a hearing with a senior judge and this information shall be furnished by U. S. mail by the Board Attorney to all interested parties forthwith. Absent a waiver from the provider, the hearing must be held within thirty (30) days of the effective date the Notice of Appeal/Request for Hearing.

**5. HEARINGS:**

All hearings and proceedings related thereto shall be conducted according to the rules followed by the Department of Administrative Hearings, as found in Florida Statutes, Chapter 120, as may be amended.

**6. APPEALING PARTY FAILS TO APPEAR:**

Where a proceeding is commenced by a party pursuant to the Special Act or the procedures adopted pursuant thereto, and said party, after filing their initial Request for Hearing, fails to appear for any scheduled proceedings, such party shall be deemed to have waived their appeal, and accepted the decision of the PCLB staff as final. Further, said party agrees that the Hearing Officer is authorized by this Rule, to dismiss said appeal and submit a Recommended Order to that effect.

**7. REVIEW BY BOARD:**

Upon receipt by the Board Attorney of executed Findings of Fact and Recommendations of the Hearing Officer (Order) from the Hearing Officer, the same shall be distributed to all interested parties. Either the PCLB or the appealing provider or applicant – whichever is aggrieved by the Order – shall have the right to file written Exceptions to the Board within fifteen (15) days of their receipt of the Order. If both parties are aggrieved, then the party against whom the written Exceptions are filed, would have the right to file written Cross-Exceptions within fifteen (15) days of their receipt of the original Exceptions.

Responses to Exceptions shall be filed within ten (10) days of the service of the Exceptions, and time shall be computed in accordance with Florida Administrative Code, rules 28-106.217 and 28-106.103, as may be subsequently amended. The Board will schedule or calendar hearings in such a manner as to accommodate the time frames provided in this section and the Board Attorney will notify all parties of the date and time of the hearing.

**8. WRITTEN EXCEPTIONS:**

Each exception shall specify with particularity the finding of fact, conclusion of law, or recommendation which is objectionable and the reasons therefore. The exceptions themselves shall state with specificity if the finding of fact excepted to is not supported by competent substantial evidence or that the proceedings did not comply with the essential requirements of law or that the conclusion of law excepted to departs from the essential requirements of law. In accordance with Florida Statutes, section 120.57(1)k, the Board has the right to decline to rule upon Exceptions which do not identify the disputed portion of the recommended order by page number or paragraph, do not identify the legal basis for the exception, or do not include appropriate and specific citations to the record.

Facts upon which exceptions to findings of fact or conclusions of law are based which are not set forth in the Recommended Order shall be provided by the party filing the exceptions. It is the responsibility of the excepting party to notify the Board Attorney so that a transcript may be promptly ordered and made available to the provider or applicant at actual cost.

**9. BOARD HEARING:**

All exceptions to the recommended order shall be considered at a hearing before the Board. In the event a conflict exists, the party in conflict may file a written request for continuance of the hearing, which will be considered at the hearing.

At the hearing before the Board, in cases where exceptions have been filed, each party or their representative shall each be given 15 minutes to present their argument as to why the Hearing Officer's recommended order should be adopted by the Board or why the order should be rejected or modified. The excepting party shall proceed first. The parties are limited in their presentation to matters of law and to the facts contained within the record of the administrative hearing and may not argue any facts not contained within that record. If no exceptions have been filed, no argument shall be received by the board.

Following presentations of the parties, the Board shall deliberate and either adopt the Hearing Officer's recommendation or reject or modify the recommended order, as it deems appropriate. The Board may not reject or modify findings of fact unless the Board first determines from a review of the entire record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Board hearings shall be recorded and minutes prepared following each hearing.

Any party desiring or requiring a verbatim transcript, is responsible for retaining and compensating a court reporter to record the proceeding.

**10. FINAL AGENCY ACTION:**

The Chairman, or in the Chairman's absence, the Secretary or designee, shall execute the Final Agency Action prepared by the Board Attorney and reflecting the decision of the Board at the hearing held on this cause. The determination of the Board becomes final within fifteen (15) days of service of the decision if not appealed.

**11. APPEALS OF FINAL AGENCY ACTION:**

An aggrieved party may file an appeal of the Final Agency action with the Department of Children and Families. The Chairman, or in the Chairman's absence, the Secretary or designee, shall execute the Final Agency Action prepared by the Board Attorney and reflecting the decision of the Board at the hearing held on this cause by filing a Notice of Appeal within fifteen (15) days of service of the Final Agency Action.