



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of:

Candice Armstrong  
*Candi's Corner Preschool*  
3255 North 44<sup>th</sup> Street  
Milwaukee, Wisconsin 53216

**DECISION**

**ML-09-0495**

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**PRELIMINARY RECITALS**

Petitioner filed a petition on December 15, 2009, under Wis. Stat. § 48.72 (2007-08) and Wis. Admin. Code § DCF 250.11(11)(a) (December 2008), to review a decision by the Wisconsin Department of Children and Families ["DCF"] to revoke petitioner's license to operate a Family Child Care Center in Milwaukee, Wisconsin known as *Candi's Corner Preschool* ["Candi's"]. A Hearing was held on July 27, 2010 at the Madison office of the Division of Hearings and Appeals ["DHA"].

The Hearing in this matter was originally scheduled for August 2, 2010. On April 26, 2010 DCF requested that the August 2<sup>nd</sup> Hearing be rescheduled. There was no objection to DCF's request and the August 2<sup>nd</sup> Hearing was rescheduled to July 27, 2010. On July 26, 2010 at approximately 4:45 P.M. petitioner requested that the July 27<sup>th</sup> Hearing be rescheduled. DCF objected to petitioner's request. Petitioner's request to reschedule the July 27<sup>th</sup> Hearing was denied.

The issue for determination is whether or not it was lawful for DCF to revoke petitioner's Family Child Care license.

**PARTIES IN INTEREST:**

Petitioner:

Candice Armstrong  
*Candi's Corner Preschool*  
3255 North 44<sup>th</sup> Street  
Milwaukee, Wisconsin 53216

Department of Children and Families  
State of Wisconsin  
Room G200  
201 East Washington Avenue  
P.O. Box 8916  
Madison, Wisconsin 53708-8916

BY: Nicole Bjork, Attorney  
Office of Legal Counsel  
Department of Children and Families  
State of Wisconsin  
Room G200  
201 East Washington Avenue  
P.O. Box 8916  
Madison, Wisconsin 53708-8916

**OTHER PERSONS PRESENT:**

Leon Todd, petitioner's advocate (appeared via telephone at his own request)

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County, Wisconsin.
2. Petitioner's holds a license to operate a Family Child Care Center in Milwaukee, Wisconsin known as *Candi's Corner Preschool* ["Candi's"]; the scheduled hours of operation for Candi's are 7:00 A.M. to 11:30 P.M. Monday through Saturday. Exhibits #R-1 & #R-2.
3. Over a 24-month time period from January 2008 to December 2009 DCF employees attempted licensing visits at Candi's during scheduled hours of operation on the following 11 dates but, on all but 2 of the dates, were not able to gain access to Candi's because no one answered the door: January 3, 2008; January 10, 2008; January 11, 2008; July 3, 2008; July 10, 2008; July 15, 2008; July 17, 2008; October 17, 2008; August 14, 2009; September 2, 2009; and, December 3, 2009 (the 2 dates when DCF was able to gain access were January 11, 2008 and July 17, 2008); on the dates of the licensing visits DCF employees both rang the doorbell and knocked on the door. Exhibits #R-4, #R-7, #R-8, #R-9, #R-10, #R-12 & #R-15.
4. DCF sent petitioner, via Certified U.S. Mail, a warning letter dated October 9, 2009 advising her of failed attempts to gain access to Candi's on October 17, 2008, August 14, 2009, and "September, 2009 [sic]" Exhibits #R-13 & #R-14.
5. By a letter dated December 11, 2009 and entitled "Notice of Revocation of Family Child Care License" DCF revoked petitioner's Family Child Care license. Exhibit #R-15.

## DISCUSSION

The purpose of the law regulating Family Child Care Center licenses is to protect and promote the health, safety and welfare of children placed in Family Child Care Centers. Wis. Stat. § 48.67 (2007-08); Wis. Admin. Code § DCF 250.01 (December 2008). The protection of children is a paramount goal, the health and safety of children are the paramount concerns, and the best interest of the child is always the paramount consideration. Wis. Stat. §§ 48.01(1) & (1)(a) (2007-08). Given this mandate, Family Child Care Center rules must be applied and interpreted strictly so as to give effect to the paramount goal of protecting children and the paramount concern of assuring children's health and safety.

A Family Child Care Center license may lawfully be revoked if the licensee fails to meet the minimum requirements for a license. Wis. Stat. § 48.67 (2007-08); Wis. Admin. Code § DCF 250.10(8)(a)7. (December 2008); see also, Wis. Admin. Code § DCF 250.11(11)(c)1. (December 2008). In order to meet the minimum requirements for a license, it is necessary to meet all requirements contained in DCF Family Child Care Center rules unless an exception has been granted. Wis. Stat. § 48.67 (2007-08); Wis. Admin. Code §§ DCF 250.02(2) & 250.11(8)(a)7. (December 2008). Thus, a Family Child Care Center license may be denied for any failure to meet a requirement contained in DCF Family Child Care Center rules (unless an exception has been granted).

DCF Family Child Care Center rules state that a license must comply with all laws governing the facility and its operation. Wis. Admin. Code § DCF 250.04(2)(a) (December 2008). DCF Family Child Care Center rules also state that DCF may revoke a license if the licensee violates any provision of the DCF Family Child Care Center rules or violates any provision of Chapter 48 of the Wisconsin Statutes<sup>1</sup>. Wis. Admin. Code § DCF 250.11(8)(a)7. (December 2008). Chapter 48 of the Wisconsin Statutes states, in part, that DCF may visit and inspect each day care center licensed by it, and for such purpose shall be given unrestricted access to the premises described in the license. Wis. Stat. § 48.73 (2007-08). Further, DCF rules state that DCF may visit and inspect any Family Child Care Center at any time during licensed hours of operation and DCF must have unrestricted access to the premises identified in the license. Wis. Admin. Code § DCF 250.12(2) (December 2008).<sup>2</sup> As noted in the above Findings of Fact, over a 24-month time period from January 2008 to December 2009 DCF employees attempted licensing visits at Candi's during scheduled hours of operation on 11 dates but, on all but 2 of the dates, were not able to gain access to Candi's because no one answered the door. Therefore, it was lawful for DCF to revoke petitioner's Family Child Care license.

Petitioner argues that the majority of the missed visits were when she was away from her day care on field trips with the children. See, exhibit #R-6. Petitioner testified that she obtained permission slips from parents for the field trips -- a permission slip for each child for each field

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<sup>1</sup> Chapter 48 of the Wisconsin Statutes is known as the "Children's Code."

<sup>2</sup> In addition, on December 10, 2007 petitioner signed a document entitled *License Application - Family Child Care Centers* that provided, in part: "I acknowledge having received the rules for licensing a Family Child Care Center . . . and accept legal responsibility for complying with all administrative rules . . . By signature, I signify a willingness to provide the Department's licensing agency with information to verify whether or not the requirements for a license are met . . . including access to premises at any time during hours of operation." Exhibit #R-1(page 5).

trip (although children from the same family might be on the same form). She also testified that she had receipts, membership cards, and ticket stubs from her field trips and a newsletter listing all of her filed trips. However, petitioner did not produce any documentation to support her claimed field trips except for photocopies of 2 parental permission slips that were from the same parent (for field trip dates of January 10, 2010 and January 3, 2010). Exhibit A. Further, petitioner claims that "[a]ccess was not granted on July 10, or July 15, 2008 due to an issue with a my [sic] door bell not functioning properly. A sign advising visitors to knock hard was posted on the front door after we believe either the doorbell may have had problems we [sic] may not have heard the doorbell." Exhibit #R-6. However, on the dates of the licensing visits DCF employees both rang the doorbell and knocked on the door. Finally, petitioner has provided no specific explanation for why access was not granted to DCF on October 17, 2008, August 14, 2009, September 2, 2009, and December 3, 2009 -- aside from her general claim that she was on a field trip during the "majority of missed visits." Exhibit #R-6. Petitioner's testimony is not credible in this regard.<sup>3</sup>

It is not necessary to consider the other reasons DCF cites to support the license revocation in this matter (alleged use of non-licensed areas; alleged violations of safety rules; alleged failure to be fit and qualified). See, Exhibit #R-15.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, it was lawful for DCF to revoke petitioner's Family Child Care license.

**NOW, THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

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<sup>3</sup> In this connection it is noted that petitioner testified that the museum field trips were "usually on Monday because the museum is free on Mondays." Petitioner claims to have gone on a field trip to the museum on January 10, 2008. Exhibits #R-6 & A. January 10, 2008 was a Thursday, not a Monday.

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals concerning this matter must be served on the Department of Children and Families; State of Wisconsin; Room G200; 201 East Washington Avenue; P.O. Box 8916; Madison, Wisconsin 53708-8916.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_  
day of \_\_\_\_\_, 2010.

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Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals  
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