

**OKLAHOMA COMMISSION ON CHILDREN AND YOUTH
OFFICE OF JUVENILE SYSTEM OVERSIGHT**

**Report of a Complaint Investigation
DHS Child Welfare Services
Review of Child Care Homes**

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Introduction

On May 22, 2007, the Office of Juvenile System Oversight (OJSO) began a complaint investigation to review the Department of Human Services' (DHS) involvement with a child care provider prior to the death of a child in the provider's Large Child Care Home. On May 17, 2007, a two-year-old boy was found by DHS staff members at the child care home nearly dead after being bound with masking tape covering his mouth and hands. He was admitted to a hospital where he later died. The provider was charged with First Degree Murder on May 24, 2007.

Based upon concerns identified in the initial complaint investigation, the OJSO requested the OKDHS Division of Child Care (DCC) licensing unit provide a statewide sampling of cases from January 1, 2007, through August 1, 2007, where the child care homes were closed by the issuance of an Emergency Order or where the provider's child care home license had been revoked. The DCC provided the OJSO eight cases for review. Two of the homes were closed by Emergency Order and six of the homes were closed by the process of revocation. According to the DCC Statewide Licensing Coordinator, the total number of homes closed during this same time frame was sixty-nine. Eleven Emergency Orders were issued, forty-nine homes were closed by the process of revocation and nine applications were denied.

The Oklahoma Commission of Children and Youth (OCCY) received eleven complaints concerning daycare homes between the initial complaint on May 22, 2007, and October 15, 2007. Five of these complaints concerned child deaths that occurred in DCC licensed child care homes and two complaints concerned near deaths, one of which was in a DCC licensed child care home and the other in an unlicensed home.

The OJSO reviewed a total of eighteen DCC child care home cases and conducted interviews with the DCC Director, the Statewide Licensing Coordinator, an Assistant Licensing Coordinator and a Division of Family Support Services, Programs Manager. The OJSO has developed a number of recommendations based on documents reviewed and interviews conducted.

Application Status

- The OJSO recommends the DCC cease the current practice of allowing home applicant's to provide child care while their case is in application status.
- The DCC should ensure that all of the DCC Application for License requirements are fulfilled prior to the provider providing child care services.
- The OJSO believes it is imperative that individuals requesting to provide child care have these basic training certificates prior to being approved to care for such a vulnerable population.

The OJSO also recommends the following **additional items** should be included in the DCC Application for License requirements:

- Names of all the applicant's children including those not living in the home and any adult children
- A list of six references
- A copy of the provider's homeowners insurance
- Completed Oklahoma supreme Court Network (OSCN), KIDS and Juvenile On Line Tracking System (JOLTS) terminal checks on all persons listed on the application
- Completed reference checks that approximate the reference checks completed by Child Welfare when approving resource family applicants to provide foster care

Stipulations

- **The DCC approves child care homes where family members are not allowed at the home during child care hours.**

It is an unrealistic expectation by the DCC to approve a child care home with the stipulation that a family member, who poses a potential threat to the children in care, is never to be present during child care hours. According to the Statewide Licensing Coordinator, this stipulation doesn't happen with the exception when the DCC or Child Welfare is conducting an investigation.

Of the nineteen child care home cases reviewed, three cases documented a stipulation that a family member, who posed a potential threat to the children in care, was not to be in the home during child care hours. This stipulation

was in place without documentation of an ongoing investigation by the DCC or Child Welfare.

Permits

- **The DCC allows more than one six-month permit to assist the provider in coming into compliance with DCC licensing standards.**

The OJSO recommends the DCC utilize only one six-month permit to assist the provider to come into compliance with the DCC licensing standards that do not concern the safety of the children in care. Six months should be adequate time to correct deficiencies that existed, which necessitated issuance of a permit.

Daily Operations

- **The DCC allows child care employees to continue to provide care without an OSBI background check on file.**

The OJSO recommends that the DCC develop a licensing standard that would allow a child care home license to be revoked if the provider repeats the non-compliance violation of not maintaining an OSBI background check on file for all employees.

- **The follow-up required regarding the documented non-compliance issues should be tied to the date documented on the provider's plan of correction.**

The OJSO recommends the DCC ensure the provider is in full compliance by the date noted on the plan of correction.

- **Assistant caregivers in child care homes are only required to be sixteen years old.**

The OJSO recommends the minimum age be at least eighteen years old, the age at which the caregiver may provide care without the provider present.

Revocations

- **Based on the eight child care home closed cases reviewed, revocation was not pursued once serious non-compliance was documented. Serious non-compliance is defined as non-compliance with licensing requirements that exposes children to conditions that present an imminent risk of harm. The OJSO**

found the total number of serious non-compliance violations documented in the eight cases reviewed was 47. Also, the OJSO found the average number of documented serious non-compliance violations in a case was 5.87 before revocation was recommended with the range of 1 to 14 documented serious non-compliance violations.

The OJSO recommends revocation be pursued once a serious non-compliance violation that exposes children to an imminent risk of harm has been documented.

Internal Communications

- **The Division of Family Support Services (FSS) contracts with child care providers who provide care for children that receive child care subsidies. According to the FSS Program Manager, the FSS does not routinely notify the DCC when an application to contract for services has been denied. Likewise, Child Welfare and Licensing do not routinely notify FSS of Confirmations or Substantiated licensing violations. The Statewide Licensing Coordinator did report to the OJSO that the DCC does notify the FSS once the decision to revoke a license has been made and when an emergency order to close the home or facility has been issued.**

The OJSO recommends the FSS notify the DCC when an application for contract services has been denied. This would allow the DCC to review the reason(s) for denial and determine if the reasons for denial would also constitute a licensing violation.

The OJSO also recommends Child Welfare and the DCC notify the FSS of Confirmations and/or Substantiated serious licensing violations by the provider. This would allow the FSS to review the Confirmations and/or Substantiated serious licensing violations and determine if the continuation of the contract with the provider is warranted.

External Communications

- **Currently, a child care employee who has a confirmed child welfare finding of abuse and/or neglect may be terminated from the place of employment in which the abuse and/or neglect occurred; however, that individual can maintain employment within the child care industry without the threat of the confirmed history being disclosed to the prospective employer. Child welfare findings are confidential and the DCC can not disclose the findings of child welfare investigations.**

The OJSO supports the DCC in seeking legislative changes that would allow the DCC to provide child welfare confirmed findings to child care providers and centers where the individual is seeking employment.

Waiver Request Process

The OJSO reviewed the DCC policy regarding waiver requests and requested the DCC licensing unit provide the total number of waivers requested and granted from January 1, 2006, through July 1, 2007. The total number of waivers requested was 139 and the total granted was 99. Eleven of the granted waiver requests were reviewed by the OJSO.

DCC policy 340:110-3-85(3) (4) states, "Persons who have pending charges or are convicted or enter a plea of guilty or nolo contendere, no contest, to certain crimes cannot be licensed to care for children, live in a family child care home, provide care for children, or be a substitute or assistant caregiver, or be on the premises when children are in care. Those crimes include: (A) violence against a person; (B) child abuse or neglect; (C) possession, sale, or distribution of illegal drugs; (D) sexual misconduct; (E) gross irresponsibility or disregard for the safety of others; (F) animal cruelty; or (G) a pattern of criminal activity. A primary caregiver may request a waiver from the requirement described in paragraph (3). A waiver may not be requested or granted to any person who has been convicted of a sex offense pursuant to the Sex Offender Registration Act.

(A) The waiver request is made in writing to OKDHS and considered by the statewide licensing coordinator in Licensing Services. (B) The person for whom the waiver is requested cannot be on the premises when children are in care while a decision is pending. (C) The person for whom the waiver has been denied cannot be on the premises when children are in care."

DCC policy 340:110-1-8.1(h) in part, states, "The decision to grant a waiver is made by the statewide licensing coordinator or designee. The decision is based on documentation indicating that the health, safety, and well-being of children will not be endangered. DCC State Office notifies the provider of the decision in writing. Licensing staff monitor any additional instructions made to the provider and verify that the waiver notice is posted in the facility. Criteria considered included the (1) type of crime or offense for which the person was convicted or a finding made; (2) nature of the offense(s); age of the person at the time of the offense(s); (4) circumstances surrounding commission of the offense(s) that demonstrate whether it is likely the person will re-offend; (5) number of offenses for which the person was convicted or findings made; (6) length of time elapsed since the last conviction or finding; (7) relationship of the offense(s) to the ability to care for children; (8) evidence of rehabilitation or education activities, such as counseling, since the offense was committed; (9) statement from the person with the criminal history; and (10) opinions of reliable community members concerning the person in question."

Based on the review of the DCC policy regarding waiver requests and the eleven granted waiver requests, the OJSO identified the following areas of concern:

- **The unrealistic expectation cited in DCC policy 340:110-3-85(4)(B)(C) “The person for whom the waiver is requested cannot be on the premises when children are in care while a decision is pending and the person for whom the waiver has been denied cannot be on the premises when children are in care.”**

It is unrealistic to expect a spouse of a provider not to be in the home during child care hours awaiting the waiver request process.

- **According to the State Licensing Coordinator, the result of an OSBI background check is the only documentation required when a waiver request has been submitted. All other information submitted is optional.**

The OJSO recommends the DCC conduct background checks that approximate the background checks completed by Child Welfare when approving a resource family applicant to provide foster care.

It is also recommended the DCC obtain a statement from the person with the criminal history, along with any supporting documentation of rehabilitation or education activities, such as counseling, since the time of the offense.

- **The Statewide Licensing Coordinator and the Assistant Licensing Coordinator have the authority to approve a waiver request.**

The OJSO recommends a committee comprised of licensing, child welfare and family support personnel be established to review and approve all waiver requests.

The OJSO also recommends an approval process requiring child welfare administrative personnel and legal personnel to review any application or wavier request for a person who has a confirmed child welfare history.

Summary

The OJSO appreciates the cooperation of all DCC staff members who have assisted in this case review. The recommendations that have been made are intended to ensure the safety of all children receiving child care services.

The OJSO supports the DCC in seeking legislative changes that would allow the DCC to provide child welfare confirmed findings of a child care employee to the prospective child care employer.

In addition to the noted recommendations, the OJSO suggests that the DCC consider the development of yearly peer reviews of the child care homes and pursue incentives and rewards to those providers who participate in the peer review process. As always, the safety of the children should be paramount.