

STATE OF NORTH CAROLINA  
COUNTY OF ROCKINGHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
19 DHR 02817

<p>Perkins Professional Daycare Inc, Petitioner,</p> <p>v.</p> <p>Department of Health and Human Services, Respondent.</p>	<p><b>FINAL DECISION</b></p>
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**BACKGROUND**

This matter was heard before J. Randall May, Administrative Law Judge presiding, on September 17, 2019 in High Point, North Carolina.

**APPEARANCES**

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Stephanie Jordan Vlasis  
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**ATTORNEYS FOR PETITIONER**

**FINDINGS OF FACT**

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (“ALJ”) makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence, or lack thereof; and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case.

## **Parties/Witnesses**

1. Elretha Perkins is the owner and Director of Perkins Professional Daycare Center, Inc. and has been running the center since October 15, 1982. (T p. 21-22)

2. At all times relevant to this matter, Petitioner Perkins Professional Daycare Inc. operated Perkins Professional Day Care Inc. (“Perkins Professional Day Care”), a child care center, pursuant to a six (6) month Probationary License issued by the Division. Petitioner’s facility is located at 1135 Lawson Street, Eden, North Carolina, 27288. (R. Ex. 3)

3. Sophia Huguenin is currently employed at Perkins Professional Day Care. (T p. 57-58)

4. Respondent, Division of Child Development and Early Education (the “Division” or “DCDEE”), is an administrative agency of North Carolina State Government operating under the laws of North Carolina and administering the licensing program for child care facilities in the State of North Carolina. *See* N.C.G.S. § 110-85, *et seq.*

5. The Division has a mandate to ensure that children in child care facilities are in physically safe and healthy environments where the developmental needs of the children are met. *See* N.C.G.S. § 110-85.

6. Sally Allen has been employed as a licensing consultant for the Division for fourteen and a half years. (T p. 70). Ms. Allen’s responsibilities as a licensing consultant include monitoring child care facilities. (T p. 69-70)

7. Barbie Anderson is the Western Licensing Program Manager for the Division. Prior to her current position, Ms. Anderson worked for the Division in various capacities for fourteen (14) years, including as a supervisor and a child care consultant. (T p. 116-117) Ms. Anderson oversees four (4) teams of supervisors, lead consultants, and consultants, which monitor the licensing requirements of all child care facilities in thirty-seven counties in the western region of the state, which stretches from Rockingham County to the Tennessee border. In her position as a program manager, Ms. Anderson is also responsible for conducting trainings, follow-up visits, and making decisions about administrative actions issued against facilities. (T p. 117)

8. Carmine Spinks is an Administrative Officer in the Licensing Enforcement Unit of the Division. (T p. 200)

## **ISSUES**

Whether Respondent deprived Petitioner of property or otherwise substantially prejudiced its rights and acted erroneously or acted arbitrarily or capriciously when it issued a Notice of Material Breach and Administrative Action to Petitioner.

## **EXHIBITS ADMITTED INTO EVIDENCE**

Petitioner's Exhibits 1-4 were admitted into evidence. Respondent's Exhibits 1-14 were admitted into evidence. The Court took judicial notice of the statutes and rules contained in Petitioner's Exhibit 5 and Respondent's Exhibit 15.

## **APPLICABLE STATUTES AND RULES**

N.C. Gen. Stat. §§ 110-85, 110-90, 110-90.2, 110-91, 110-98, 110-102.2

Child Care Rules 10A NCAC 09 .0302, .0304, .0607, .0701, .1403, .1804, .2206, .2703, and .2805

### **Specifically: Relevant Statutes and Rules**

1. All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. N.C.G.S. § 110-91

2. Revocation of a child care facility license may be issued to an operator when a violation of any section of G.S. 110, Article 7 or the Child Care Rules has been willful or continual, as evidenced by a pattern of noncompliance or failure to comply with the terms of a corrective action plan issued with a probationary license. 10A NCAC 09 .2209

3. Each center shall maintain: (1) daily attendance records and (2) daily records of arrival and departure times at the center for each child. Each center shall make these records available to the Division for review. 10A NCAC 09 .0304(g) and .0302(d)

4. For routine transport of children to and from the center, staff shall have a list of the children being transported. Staff members shall use this list to document attendance as children board the vehicle and as they depart the vehicle. A list of all children being transported shall also be available at the center. 10A NCAC 09 .1003(l)

### **Background**

1. On April 25, 2018, Respondent issued a Notice of Administrative Action to Petitioner revoking its Three-Star License to operate Perkins Professional Day Care Inc. (R. Ex. 1; T p. 118-119)

2. Petitioner filed a Petition for Contested Case Hearing appealing the decision of the Division to revoke its license in case no. 18 DHR 2811.

3. On September 6, 2018, Petitioner and its counsel, Karen McKeithen Schaede, and Respondent and its counsel, Alexandra Gruber, attended a settlement conference with Administrative Law Judge Donald W. Overby in Raleigh, North Carolina. (R. Ex. 2)

4. As a result of that settlement conference, the parties executed a Report of Settlement Conference, which states, “Parties have agreed to the settlement of this case on the terms and conditions listed below which represent the full and final agreement of the parties...” (R. Ex. 2)

5. Rather than listing terms and conditions on its face, the Report of Settlement Conference asserts, “See Attachment 1 and Attachment 2”, which documents are attached to the Report of Settlement Conference. (R. Ex. 2)

6. Attachment I states: “The following are breaches resulting in reissuance of the Revocation: Failure to complete Corrective Action Plan (“CAP”) within required timeframes”; “More than one violation of supervision”; “More than one violation of staff/child ratio”; “A single violation of inaccurate attendance”. (R. Ex. 2)

7. Although “inaccurate” is not defined in the agreement or statute, its plain meaning is “incorrect”. (“Inaccurate.” *The Merriam-Webster.com Dictionary*, Merriam-Webster Inc., <https://www.merriam-webster.com/dictionary/inaccurate>. Accessed 15 January 2020.)

8. As communicated to Petitioner during the settlement conference, the violations listed as breach conditions in Attachment I were important to the Division given the history of repeated violations found at Petitioner’s facility; were the violations the Division had the most concerns about; and were the basis for the Administrative Action revoking Petitioner’s license at issue in 18 DHR 2811. (R. Ex. 1; T p. 124, 129-130, and 136)

9. Attachment II is an amended notice of administrative action.

10. A violation of supervision relates to North Carolina Child Care Rules, which require adequate supervision of children. Any time children are not adequately supervised in a child care center, the Division cites a violation of supervision. *See* 10A NCAC 09 .1801. (T p. 125)

11. A violation of staff/child ratio relates to the North Carolina Child Care Rules, which require a certain number of staff members based on the number and age of children present. Any time the required ratio of staff-to-children present is not maintained, the Division cites a violation of staff/child ratio. *See* 10A NCAC 09 .2818. (T p. 125)

12. A violation of attendance records relates to the North Carolina Child Care Rules, which require regulated facilities to maintain, and have available for review, “daily attendance records” and “daily records of arrival and departure times at the center for each child”. *See* 10A NCAC 09 .0304(g). (T p. 180-182)

13. If a facility’s daily attendance records are not complete and/or one hundred percent (100%) accurate, the Division cites a violation of daily attendance. If a facility’s daily record of arrival and departure times at the center (“sign-in/sign-out”) are not complete and/or one hundred percent (100%) accurate, the Division cites a violation of sign-in/out. *See* 10A NCAC 09 .0304(g). (T. p 82, 113-114, 126-128, 130, and 179-180).

14. On September 6, 2018, the date on which the Report of Settlement Conference was executed in this case, Subsidized Child Care Rule 10A NCAC 10 .0602 did not define “complete records” or “accurate records” (“2017 10A NCAC 10 .0602”). (R. Ex. 15)

15. Subsidized Child Care Rule 10A NCAC 10 .0602 was later amended to include the following: “For purposes of this Rule, ‘complete records’ shall mean records having an indication of absent or present for each day a child is scheduled to attend the facility and ‘accurate records’ shall mean attendance records with an error rate no greater than 10 percent” (“2018 10A NCAC 10 .0602”). (P. Ex. 5)

16. The Regulatory Services Section of Respondent, which is the section that cites for violations of the North Carolina Child Care Rules, does not monitor for compliance with the Subsidized Child Care Rules. (T p. 108, 191, 194, 195)

17. The parties’ agreement at the settlement conference on September 6, 2018 was reduced to writing, which writing was admitted into evidence as Respondent’s Exhibit 2. (R. Ex. 2; T p. 128)

18. The terms noted in Attachment I of the Report of Settlement Conference did not require Petitioner to meet a higher standard than is required by the North Carolina Child Care Rules. (T p. 128; 179)

19. The terms noted in Attachment I of the Report of Settlement Conference did not require Petitioner to meet a higher standard than had been expected or required from Petitioner prior to the execution of the Report of Settlement, or to adhere to a standard not required at other facilities. *See* N.C.G.S. § 110-98 (T p. 74, 83, 86, 92, and 94)

20. The Report of Settlement Conference does not reference, nor did the parties apparently discuss, either 2017 10A NCAC 10 .0602 or 2018 10A NCAC 10 .0602 on September 6, 2018.

### **Notice of Amended Action and Follow-Up Visits**

21. Pursuant to the Report of Settlement Conference, the Division issued an Amended Notice of Administrative Action on September 10, 2018 (“Amended Action”), which amended the action revoking the license to a six (6) month Probationary License. (R. Ex. 3; T p. 132-133)

22. On September 13, 2018, Division staff met with Ms. Perkins to review and discuss the Amended Action, with emphasis on the requirements of the Corrective Action Plan. (R. Ex. 4; T p. 134-135)

23. At the visit on September 13, 2018, Ms. Perkins and Division staff discussed what it meant for Petitioner to maintain accurate attendance records as required by North Carolina Child Care Rules; the Amended Action’s Corrective Action Plan; and the Report of Settlement Conference. (R. Ex. 4; T p. 72-73, 135-136)

24. At the visit on September 13, 2018, and during later visits, Ms. Perkins expressed her understanding to Division staff that the attendance records required by North Carolina Child Care Rules; the Amended Action's Corrective Action Plan; and the Report of Settlement Conference were to be one hundred percent (100%) accurate. (R. Ex. 4; T p. 73, 140)

25. On September 26, 2018, Division staff conducted a training at Petitioner's facility with Ms. Perkins and Petitioner's staff, related to the Amended Action's Corrective Action Plan, including keeping accurate daily attendance; sign-in/sign-out; and transportation attendance records. (R. Ex. 5; T p. 74)

26. On October 16, 2018, representatives of the Division conducted a visit at Petitioner's facility to monitor compliance with child care requirements. (R. Ex. 6)

27. Petitioner did not maintain a daily record of children's arrival and departure times for October 16, 2018, as there was one child that was not signed in and one child that was not signed out. ;In addition, Petitioner did not maintain attendance records for transportation on October 16, 2018, as Petitioner's staff did not document when children boarded and departed the vehicle as required by 10A NCAC 09 .0113. (R. Ex. 6)

28. On October 16, 2018, the Division cited nine (9) violations of the North Carolina Child Care Rules, including Petitioner's failure to maintain daily records of arrival and departure times at the center for children, and incomplete transportation attendance. At this visit, the Division representatives provided technical assistance related to attendance record keeping. (R. Ex. 6; T p. 77-78; 188)

29. On November 5, 2018, the Division sent Petitioner a warning letter detailing violations of the North Carolina Child Care Rules that had been cited on October 16, 2018. The letter specifically referred to these violations as breaches of the Report of Settlement Conference. (R. Ex. 7; T p. 137)

30. Rather than reissuing the revocation, though, the Division gave Petitioner another opportunity to implement the policies and procedures developed and meet the requirements of the Child Care Rules; the Corrective Action Plan; and the Report of Settlement Conference. (T p. 138-139)

31. On November 14, 2018, representatives of the Division conducted a visit at Petitioner's facility to monitor compliance. (R. Ex. 8)

32. Petitioner did not maintain daily attendance records and a daily record of children's arrival and departure times between October 16, 2018 and November 13, 2018 as follows:

- a. On October 16, 2018, in space 1, two children were not signed out; in space 2, one child was not signed in and another child was not signed out; in space 3, two children were not signed in; and space 4, four children were not signed out and one child was not signed in.

- b. On October 17, 2018, in space 1, there were two children marked present on the daily attendance record that were not signed in or out; in space 4, there were five children not signed out.
- c. On October 18, 2018, in space 2, one child was not signed in and two children were not signed out; in space 3, one child was marked present on the daily attendance record but was not signed in or out; in space 4, there were two children not signed in and three children not signed out.
- d. On October 19, 2018, in space 1, there were two children marked present on the daily attendance record that were not signed in or out; in space 2, there was one child not signed in; in space 3, there was one child not signed in; in space 4, there were five children not signed in and two other children not signed out.
- e. On October 22, 2018, in space 2, there were two children not signed out; in space 3, there were two children not signed in and four children not signed out; in space 4, there were fourteen children not signed in.
- f. On October 23, 2018, in space 2, there was a child that did not have a time in or out listed but had a parent signature; in space 3, there were three children not signed in and one child not signed out; in space 4, there were two children not signed in and two children not signed out.
- g. On October 24, 2018, in space 3, there was one child that was not signed out; in space 4, there were four children not signed out.
- h. On October 25, 2018, in space 2, there was a child marked absent on the daily attendance record that was signed in; in space 4, there were three children not signed out.
- i. On October 26, 2018, in space 1, there was one child marked present on the daily attendance record that was not signed in or out; in space 2, there was one child not signed in and one child not signed out; in space 3, there was a child signed in by a teacher at 3:00 but signed out by a parent at 2:40; in space 4, there were three children not signed in and three children not signed out.
- j. On October 29, 2018, in space 2, there were two children not signed out; in space 4, there were two children not signed out.
- k. On October 30, 2018, in space 2, there was one child not signed out; in space 3, there was one child not signed in and two children not signed out; in space 4, there were two children marked present on the daily attendance record that were not signed in or out.
- l. On October 31, 2018, in space 2, there were two children not signed out; in space 3, there were two children not signed out in the morning and one not

signed out in the evening; in space 4, two children were not signed in and one marked present on the daily attendance record that was not signed in or out.

- m. On November 1, 2018, in space 2, there was one child not signed in and four children not signed out; in space 3, there was one child marked absent on the daily attendance record that was signed in and out; in space 4, there were five children not signed in and seven children not signed out.
- n. On November 2, 2018, in space 1, there was one child that was not signed out; in space 3, there were three children not signed in and one child not signed out; in space 4, there were two children not signed in.
- o. On November 5, 2018, in space 1, there was one child not signed out; in space 2, there was one child not signed out; in space 3, there was one child not signed out and one child that was not marked present or absent on the attendance record that was signed in and out; in space 4, there was one child not signed in, three children not signed out and one child that was marked absent on the daily attendance record that was signed in and out.
- p. On November 6, 2018, in space 2, there was one child not signed in; in space 3, there was one child marked present on the daily attendance record that was not signed in or out; in space 4, there were three children not signed in, one child not signed out and one marked absent on the daily attendance record that was signed in and out.
- q. On November 7, 2018, in space 2, one child was marked present on the daily attendance record that was not signed in or out; in space 3, there were three children marked present on the daily attendance records that were not listed on the sign in/out form; in space 4, there was one child marked present on the daily attendance record that was not signed in or out, two children not signed in, and four children not signed out.
- r. On November 8, 2018, in space 1, there was one child not signed in; in space 2, there were two children not signed out; in space 3, two children were not signed in and two children were not signed out; in space 4, two children were not signed in, three children not signed out, and one child marked absent on the attendance record that was signed in and out.
- s. On November 9, 2018, in space 2, there was one child not signed out; in space 3, there was one child not signed in and one child not signed out; in space 4, there was five children not signed in and one child not signed out. On November 13, 2018, in space 3, there was one child marked present on the attendance record but not signed in or out; in space 4, there was one child not signed in and one child signed in and out but the child was not listed on the attendance record.

(R. Ex. 8)

33. On November 14, 2018, the Division cited Petitioner for two (2) violations of the North Carolina Child Care Rules, including failing to maintain daily attendance records and failing to maintain daily records of arrival and departure times at the center for children. (R. Ex. 8; T p. 82)

34. On January 7, 2019, at the request of Ms. Perkins, representatives of the Division spent sixty (60) minutes at Petitioner's facility providing technical assistance related to documenting daily attendance and arrival and departure times at the center for children. (R. Ex. 9; T p. 84)

35. On February 5, 2019, representatives of the Division conducted a visit at Petitioner's facility to monitor compliance with the Child Care Rules. (R. Ex. 10)

36. Petitioner did not maintain daily attendance records and a daily record of children's arrival and departure times between January 21, 2019 to January 31, 2019 as follows:

- a. On January 25, 2019, one child marked present on the daily attendance record was not signed in or out.
- b. On January 28, 2019, one child marked present on the daily attendance record was not signed in or out.
- c. On January 30, 2019, one child marked absent on the daily attendance record was signed in and out.

(R. Ex. 10)

37. On February 5, 2019, the Division cited Petitioner for six (6) violations of the North Carolina Child Care Rules, including failing to maintain daily attendance records and failing to maintain daily records of arrival and departure times at the center for children. (R. Ex. 10; T p. 85)

38. On or about February 20, 2019, in response to the Visit Summary and violations cited on February 5, 2019, Ms. Perkins submitted a response to Ms. Allen in which she states: "We realize that out (sic) sign-in sign out sheet must be 100% accurate and the only solution is to update our computer system... Thank-You so much for working with this center to make it a great center that operates at a 100% accuracy". (R. Ex. 14; T p. 87)

39. On February 19, 2019, representatives of the Division conducted an annual compliance visit at Petitioner's facility. (R. Ex. 11)

40. Petitioner did not maintain daily attendance records and a daily record of children's arrival and departure times between February 1, 2019 and February 15, 2019 as follows:

- a. One child not marked present or absent on the daily attendance record was signed in and out; two children marked present on the daily attendance record were not signed in or out; one child marked absent on the daily

attendance was signed out; one child marked absent on the daily attendance record was signed in at 3:00 pm and not signed out.

(R. Ex. 11)

41. On February 19, 2019, the Division cited Petitioner for twenty-three (23) violations of the North Carolina Child Care Rules, including failing to maintain daily attendance records and failing to maintain daily records of arrival and departure times at the center for children. (R. Ex. 11; T p. 90-91)

42. On March 5, 2019, representatives of the Division conducted a visit at Petitioner's facility to monitor compliance. (R. Ex. 12)

43. On March 5, 2019, Petitioner did not maintain a daily record of children's arrival and departure times as follows: in space 3, there were nine children present, but only eight children signed in. (R. Ex. 12; T p. 95)

44. On March 5, 2019, the Division cited Petitioner for two (2) violations of the North Carolina Child Care Rules, including failing to maintain daily records of arrival and departure times at the center for children. (R. Ex. 12; T p. 93)

45. Documentation for each of the follow-up visits conducted by the Division between September 13, 2018 and March 5, 2019 was provided to the Petitioner by Respondent's representative, who also answered any questions related to that documentation. (T p. 79, 82, 85, 92, and 93)

46. By hand-delivered letter dated May 1, 2019, Respondent sent Petitioner a Notice of Material Breach and Administrative Action, which informed Petitioner of its breach of the Settlement Agreement and reissuing the Revocation of Petitioner's Three-Star License. (R. Ex. 13; T p. 143)

47. The basis for the Notice of Breach was the numerous violations related to daily attendance records and daily records of arrival and departure times at the center for children. (R. Ex. 13; T p. 189)

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 110 and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder and the notice of hearing was proper.

3. The burden of proof in this case is on Petitioner. *See* N.C.G.S. § 150B-25.1(a).

4. The primary purpose of child care regulation in the State of North Carolina is to provide for the health, safety and developmental well-being of children in child care facilities. *See* N.C.G.S. § 110-85.

5. And, as stated in 10A NCAC 09 .2209:

- (3) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 has been willful or continual as evidenced by:
  - (a) a pattern of noncompliance, and the operator has not made efforts to correct repeated violations or is unable to comply; or . . . (underscoring added).

6. N.C.G.S. § 110-98 provides that compliance with Article 7 of Chapter 110 of the North Carolina General Statutes is mandatory. Therefore, Petitioner is required to comply with North Carolina’s Child Care laws and Rules, including those related to maintaining attendance records, so long as it provides child care.

7. A valid contract requires an offer; acceptance of that offer; a meeting of the minds; and consideration.

8. Petitioner and Respondent, each represented by legal counsel, entered into a valid and enforceable settlement agreement on September 6, 2018, which is documented in the Report of Settlement Conference and its attachments, Attachment I and II (hereinafter, collectively “Settlement Agreement”).

9. In exchange for Respondent agreeing to issue an Amended Notice of Administrative Action, Petitioner agreed to a voluntary dismissal with prejudice of its Petition for Contested Case Hearing in 18 DHR 2811; and to be bound by certain breach conditions that would result in the reissuance of the April 25, 2018 Notice of Administrative Action revoking Petitioner’s Three-Star Child Care License.

10. Attachment I to the Report of Settlement Conference sets forth the breach conditions, including Petitioner’s failure to complete the Probationary License’s Corrective Action Plan within required time frames; more than one citation for violation of the Child Care Rules related to adequate supervision; more than one citation for violation of the Child Care Rules related to staff/child ratios; and a single violation of the Child Care Rules related to attendance records, including sign in/sign out and daily attendance.

11. At the time of negotiating the terms of the Settlement Agreement and at its execution, the parties knew; understood; and agreed that the breach conditions set forth in Attachment I were consistent with North Carolina Child Care Rules 10A NCAC 09 .0304, .1801, and .2818, which address required attendance records, supervision, and staff/child ratios.

12. On September 6, 2018, Petitioner, by and through its owner, Ms. Perkins, knew; understood; and agreed that daily attendance records and daily sign in/sign out records had to be maintained and available to the Division to review according to 10A NCAC 09 .0304(g) and the Settlement Agreement.

13. As evidenced by the Settlement Agreement and Petitioner's response to violations of daily attendance and daily records of arrival and departure times cited on February 5, 2019, the parties knew; understood; and agreed that daily attendance records and daily sign in/sign out records had to be one hundred percent (100%) accurate in order to be "maintained".

14. North Carolina Subsidized Child Care Rule 2017 10A NCAC 10 .0602 was in effect at the time of the parties' agreement on September 6, 2018.

15. The language of the Settlement Agreement, in light of the mandatory North Carolina Child Care Rules, is plain and unambiguous.

16. North Carolina Subsidized Child Care Rule 10A NCAC .0602, as amended on November 1, 2018, does not affect the plain meaning of the Settlement Agreement.

17. Pursuant to the Settlement Agreement, the Division issued an Amended Notice of Administrative Action, a six (6) month Probationary License (effective September 13, 2018 to March 13, 2019), on September 10, 2018.

18. In breach of the Settlement Agreement, Petitioner violated North Carolina Child Care Rules related to attendance records.

19. After being issued a warning letter, between November 14, 2018 and March 5, 2019, Petitioner was cited three (3) times for failing to maintain daily attendance records and four (4) times for failing to maintain daily records of arrival and departure times at the center for children.

20. Each violation--and there were many--related to daily attendance and daily records of arrival and departure times constituted a breach of the Settlement Agreement.

21. Respondent's action to revoke Petitioner's license to operate Perkins Professional Day Care Inc. was proper and in accordance with child care law and rules.

22. The Division acted consistently when making its determination to issue the May 1, 2019 Notice of Material Breach and Administrative Action.

23. Petitioner did not meet its burden of proof to show that the Division deprived it of property; or substantially prejudiced its rights; and acted erroneously or acted arbitrarily or capriciously, when issuing the May 1, 2019 Notice of Material Breach and Administrative Action.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

### **DECISION**

This case involves many seemingly minor breaches by a Petitioner who has shown good will; however, the contractual law that has been cited by the parties fails to fully consider the most important aspect of this license, which is the settlement agreement's third party beneficiaries, the children. And, even though Petitioner has made attempts to correct her violations, there has

continued to be a pattern of noncompliance, which she has been unable to resolve. Petitioner has not met her burden. Therefore, Respondent's issuance of the May 1, 2019 Notice of Material Breach and Administrative Action is **AFFIRMED**.

**NOTICE OF APPEAL**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 16th day of January, 2020.



J. Randall May  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 16th day of January, 2020.



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