

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DHR 02507

<p>Orlando McCullough owner/operator Honeybees Nest Learning Center LLC Petitioner,</p> <p>v.</p> <p>NC Department of Health and Human Services, Div of Child Dev and Early Education Respondent.</p>	<p style="text-align: center;">FINAL DECISION</p>
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On November 13, 2020, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina pursuant to N.C. Gen. Stat. § 150B-23 and Petitioner's appeal of the June 19, 2020 Decision by Respondent Division to deny Petitioner's application for a star-rated childcare facility license based upon 10 NCAC 09 .2215(a)(6)(A)(B)(C) and (F).

APPEARANCES

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Attorney for Petitioner

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Attorney for Respondent

ISSUE

Whether Petitioner should be granted or denied a star-rated day care facility license for having a relationship with a former day care facility operator, to wit: his estranged spouse, whose own license had been revoked?

APPLICABLE STATUTES & RULES

N.C. Gen. Stat. §§ 110-85, 110-86, 110-90(5), 110-90.2, 110-98, 110-105.6
10A NCAC 09 .0102
10A NCAC 09 .02215(a)(6)(A), (B), (C) and (F)
10A NCAC 09 .2703

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1, 1a, 1b, 1c, 1d, 2, 3, and 4

For Respondent: 1-9, 11-21, and 23. Official Notice taken of statutes and rules in Respondent's Exhibit 22, N.C. Gen. Stat. § 110-105.6 and 10A NCAC 09 .2703.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at hearing, the documents and exhibits admitted into evidence and the entire record in this proceeding, having weighed all evidence and assessed the credibility of the witnesses by considering the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interest, 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, the undersigned hereby finds as follows:

Parties

1. Respondent, Division of Child Development and Early Education (the "Division"), is a division of the North Carolina Department of Health and Human Services and an administrative agency of North Carolina State Government operating under the laws of North Carolina and administering the licensing program for childcare facilities in the State of North Carolina. See N.C. Gen. Stat. § 110-85, *et seq.*

2. The Division is mandated to ensure that children in childcare facilities are cared for by qualified persons of good moral character in physically safe and healthy environments where the developmental needs of the children are met. N.C. Gen. Stat. § 110-85(1).

3. Petitioner Orlando McCullough ("Petitioner" or "Mr. McCullough") is the sole member-manager of Honeybee's Nest Learning Center LLC ("Honeybee's Nest LLC"), a limited liability company organized on December 19, 2019 for the purpose of owning and operating Honeybee's Nest LLC, a childcare facility located at 437 Moore Street, Clayton, North Carolina. (Resp. Ex. 8)

4. On September 30, 2019, Respondent Division received an initial application from Petitioner McCullough to operate Honeybee's Nest Learning Center ("Honeybee's Nest" or "the facility") as a sole proprietorship. (Resp. Ex. 1).

5. As of the date of this hearing, Orlando McCullough was married to Bianca McCullough ("Ms. McCullough"), but separated, and living separate and apart. Petitioner McCullough and Bianca McCullough have been separated and living separate and apart since June 2018 when Petitioner moved out of the marital home at 6108 Oak Forest Drive, Raleigh, North Carolina.

Honeybee's Nest Application

6. In September 2019, Bianca McCullough assisted Petitioner McCullough in completing his license application for Honeybee's Nest. On that application, Petitioner listed Mr. McCullough as the facility contact person and legal operator/owner, and listed Bianca McCullough as the facility's Administrator. (Resp. Ex. 1, p. 5) Ms. McCullough's cell phone number was listed as the facility's telephone number. Both Mr. and Ms. McCullough's addresses were listed as 6108 Oak Forest Drive, Raleigh, North Carolina 27616. On the October 9, 2019 Legal Designee form, Petitioner listed Ms. McCullough as the legal designee and wrote that Ms. McCullough's relationship to him as "wife." (Resp. Ex. 1)

7. Nowhere on Petitioner's license application, the application Appendices, or the Legal Designee form did Mr. McCullough list Bianca McCullough as an owner of Honeybee's Nest.

8. When Petitioner submitted the license application for Honeybee's Nest to Respondent, Ms. McCullough had signed the lease, for the building housing Honeybee's Nest facility, as the Director of Honeybee's Nest. (Resp. Ex. 2)

9. Ms. McCullough served as the Administrator of Honeybee's Nest from October 7, 2019 until her resignation on or about October 28, 2019. (Note: Respondent's Exhibit 15 incorrectly stated that Ms. McCullough served as Administrator for Honeybee's Nest LLC "since October 7, 2020"; See Resp. Ex. 19 citing correct date of October 7, 2019 date)

Bianca McCullough's Former Family Child Care Facility

10. Bianca McCullough had operated her own four-star license facility, Oak Forest Child Development Center, LLC, in Raleigh, North Carolina from July 17, 2018 until August 21, 2019. Oak Forest Child Development Center ("Oak Forest CDC") was a family childcare home previously located at 6108 Oak Forest Drive, Raleigh, North Carolina 27616, the McCullough's former marital home.

11. On August 21, 2019, the Division issued a Notice of Administrative Action to Oak Forest LLC summarily suspending its four-star license to operate Oak Forest CDC. ("Summary Suspension"). (Resp. Ex. 12) On October 25, 2019, Respondent Division issued a Notice of Pending Placement on the Child Maltreatment Registry pursuant to N.C. Gen. Stat. § 110-105.5 ("Notice of Pending Placement") and disqualified Ms. McCullough from being a childcare provider pursuant to N.C. Gen. Stat. § 110-105.6. (Resp. Ex. 23) On January 23, 2020, the Division issued a Notice of Revocation of Oak Forest LLC's four-star license to operate Oak Forest CDC. (Resp. Ex. 13) Ms. McCullough appealed the Division's actions.

12. On or about March 6, 2020, Ms. McCullough entered into a Settlement Agreement with Respondent in lieu of a hearing on the Summary Suspension, Revocation Notice, and Notice of Pending Placement (Resp. Ex. 19). Pursuant to the terms of the Settlement Agreement, the Summary Suspension and Revocation issued to Oak Forest

LLC were effective, but the Division agreed not to place Ms. McCullough on the Child Maltreatment Registry. Ms. McCullough further agreed to never apply for another childcare license. (Resp. Ex. 19)

13. Pursuant to 10A NCAC 09 .2703 and the Settlement Agreement, Ms. McCullough was not eligible for employment in childcare until she reapplied and obtained a qualification letter from the Division. That is, the terms of the Settlement Agreement did not bar Ms. McCullough from working as a childcare provider. (Resp. Ex. 23, p. 3, I.A.1.b.)

14. On July 23, 2020, Ms. McCullough obtained a qualification letter from the Division to work as a childcare provider. (Resp. Ex. 23)

Application Process for Honeybee's Nest

15. On October 9, 2019, Division Lead Childcare Consultant Michele Remington conducted a Rules Review for licensees. Mr. and Ms. McCullough attended that Rules Review session as part of a precicensing process for Honeybee's Nest. Ms. McCullough signed the Visit Summary for that session on behalf of the facility. (Resp. Ex. 3) At the contested case hearing, Ms. Remington acknowledged that she "assumed" that Mr. and Ms. McCullough were married on October 9, 2019 because they arrived and sat together at the Rules Review. Ms. Remington also acknowledged that on October 9, 2019, she "assumed" Ms. McCullough would be the facility's Administrator.

16. On October 14, 2019, Ms. Remington conduct a precicensing visit at Honeybee's Nest with Petitioner and Ms. McCullough. Ms. McCullough signed the Visit Summary on behalf of the facility. (R. Ex. 4) At the contested case hearing, Ms. Remington indicated that Ms. McCullough represented that she was the facility's Administrator on that day. Ms. McCullough signed the Visit Summary on the facility's behalf. Ms. Remington "understood" that Mr. McCullough and Ms. McCullough were married.

17. Also, on October 14, 2019, the Clayton Fire Department conducted a Fire Inspection at Honeybee's Nest. Ms. McCullough attended the inspection and signed the inspection report on the facility's behalf. (Resp. Ex. 5). On October 18, 2019, Honeybee's Nest obtained its Sanitation Standards Evaluation. Ms. McCullough attended the inspection and signed the report on the facility's behalf. (Resp. Ex. 5) Both the Fire Inspection and the Sanitation Standards Evaluation were provided to the Division as part of Mr. McCullough's application for a childcare license.

18. On October 28, 2019, Respondent issued a Temporary Child Care License to Honeybee's Nest Learning Center. (Resp. Ex. 6).

19. On or about December 19, 2019, Petitioner formed a limited liability company ("LLC") as owner of Honeybee's Nest Learning Center, LLC.

20. On December 19, 2019, Ms. Remington conducted an unannounced visit at Honeybee's Nest from 3:00 p.m. until 5:35 p.m. Ms. McCullough was not employed by Honeybee's Nest as she had resigned from the facility October 28, 2019. However, Ms. McCullough was present at the facility to pick up her daughter when Ms. Remington arrived. Ms. McCullough was talking with her mother, Ruth Reed, who was working at the facility, when Remington arrived. Mr. McCullough was not present at the facility that day.

a. Shortly after Ms. Remington arrived, Ms. McCullough left the facility and took her daughter with her. Ms. McCullough called Mr. McCullough, who asked her to return to the facility. Ms. McCullough picked up her goddaughter and returned to the facility with both children. She was an authorized person to pick up both children from the facility.

b. Because she had prior knowledge of the facility as a former employee, Ms. McCullough answered Ms. Remington's questions. Ms. McCullough also signed the Visit Summary on the facility's behalf. Ms. Remington counted Ms. McCullough as one of the three staff members present in the facility's staff/child ratio even though the facility's staff/child ratio was appropriate after Ms. McCullough and her daughter left the facility. (Resp. Ex. 7) Ms. McCullough did not inform Ms. Remington that she was no longer employed by Honeybee's Nest.

21. On December 27, 2019, Ms. Remington received, via email, Mr. McCullough's updated application and Appendix D naming Honeybee's Nest Learning Center, LLC as the owner of Honeybee's Nest. (Resp. Ex. 8). Petitioner was the sole member of Honeybee's Nest Learning Center, LLC.

22. Respondent Division updated Petitioner's information in its system. On December 27, 2019, the Division issued a Temporary License to Honeybee's Nest LLC. The facility's compliance history was noted as 93%. (Resp. Ex. 9).

23. On January 30, 2020, Ms. Remington conducted an unannounced visit at Honeybee's Nest with Mr. McCullough. Ms. McCullough was not present at the facility. Remington reviewed the process for obtaining a star-rated license, verified the facility's employees' qualifications, and discussed the staff uploading their credentials into WORKS to be considered in calculating points for the facility, based on education standards. (Resp. Ex. 11)

24. On or about March 17, 2020, Ms. Remington called Honeybee's Nest to gather information regarding its operational status in response to COVID-19. Ms. Remington spoke with a female who answered the phone. Ms. Remington thought she spoke with Ms. McCullough. (Resp. Ex. 17, p. 4) However, at hearing, Ms. McCullough vehemently denied speaking with Ms. Remington that day. Ms. McCullough suggested that Remington might have spoken with her mother, Ruth Reed. At hearing, Respondent

did not present any evidence confirming and/or proving that Ms. McCullough was the female Ms. Remington spoke with on the phone on March 17, 2020.

25. Ms. Remington's Licensing Supervisor, Teraesa Leak, reviewed Remington's COVID-19 contact documentation, recognized Ms. McCullough's name, and confirmed that Ms. McCullough associated with Honeybee's Nest was the same Bianca McCullough that previously owned and operated Oak Forest CDC.

26. After reviewing Petitioner's license applications and the Summary Suspension and Revocation documents issued to Oak Forest CDC, Ms. Leak recommended that Honeybee's Nest LLC license application be denied based upon Petitioner's relationship with Ms. McCullough, a former operator who owned or operated a regulated childcare facility that was issued a summary suspension and revocation.

27. Lois Harrington, Ms. Leak's manager, reviewed the file and agency records and submitted a recommendation to the Division's Licensing Enforcement Unit to deny Petitioner's childcare license application based upon Petitioner's relationship with Ms. McCullough, a former operator who owned or operated a regulated childcare facility that was issued a summary suspension and revocation.

Internal Review Panel and Recommended Denial of License

28. On April 21, 2020, the Division's Internal Review panel reviewed the proposed Administrative Action and recommended a Denial of License to Honeybee's Nest LLC based on North Carolina Child Care Rule 10A NCAC 09 .2215(a)(6)(A), (B), (C), and (F) and Petitioner's relationship with Ms. McCullough, a former provider whom Respondent had issued a Summary Suspension and Revocation of License. (Resp. Ex. 15).

29. On May 6, 2020, the Division provided a copy of the proposed Administrative Action, Denial of License to Honeybee's Nest LLC and gave Petitioner an opportunity to respond to the proposed denial in writing. (Resp. Ex. 16). On May 29, 2020, Petitioner's attorney provided a written response to the Division's proposed action. (Resp. Ex. 17, pp. 6-9)

30. On June 9, 2020, the Internal Review panel evaluated Petitioner's response and the Division staff's reply to Petitioner's response. The Panel proceeded with the denial of Petitioner's license application based upon his relationship with Ms. McCullough whom, they noted, owned a facility that had received a Summary Suspension and Revocation. The Panel's decision was specifically based upon the following:

- a. The Panel believed that Mr. McCullough was residing with Ms. McCullough until at least November 2019 based on (1) Mr. McCullough's designation of Ms. McCullough as his legal designee, (2) Petitioner's indication on the legal designee form that Ms. McCullough was his wife, (3) both Mr. McCullough and Ms. McCullough listing the same address as

their residence on Petitioner's initial application for a childcare license, (4) and Petitioner being listed as a household member on Ms. McCullough's July 11, 2019 Verification of Required Information for her childcare facility, Oaks Forest CDC.

b. The Panel believed that Ms. McCullough was employed at Honeybee's Nest until at least April 2020 based upon Ms. McCullough's signing of the December 19, 2019 Visit Summary and interactions with Division staff that day, Ms. Remington's "assumption" that she was speaking with Ms. McCullough on the telephone on March 17, 2020, and Ms. McCullough's entry of information into WORKS on April 30, 2020. (Resp. Ex. 17)

Notice of Denial of License

31. On June 19, 2010, the Division issued the Notice of Administrative Action denying Honeybee's Nest LLC a license based upon Petitioner's aforementioned relationship with Ms. McCullough. ("Denial of a License"). (Resp. Ex. 18)

32. On July 27, 2020, Ms. Remington conducted an unannounced visit at Petitioner's facility, during which time Petitioner advised Ms. Remington that he was the Administrator. Ms. Remington received a correction letter for the minor violations cited at the July 27, 2020 visit by email on July 29, 2020.

Adjudicated Facts at Hearing

33. The Undersigned takes judicial notice of the Division's revocation of Bianca McCullough's childcare facility license for Oaks Forest CDC. Although Ms. McCullough settled her licensing matter with the Division, a considerable portion of Respondent's evidence presented at hearing was about Bianca McCullough's licensing issues. (See Resp. Exs. 12-15,19)

34. N.C. Gen. Stat. § 50-20 "Distribution by court of marital and divisible property" determine, among other things, the point at which a married couple has a legal interest in separate property acquired by one's spouse before or during the marriage.

35. The preponderance of the evidence at hearing established that Petitioner McCullough and Bianca McCullough have been legally separated, living separate and apart since June 2018.

a. Neither Petitioner nor Ms. McCullough consider themselves married. In June of 2018, Petitioner moved out of the marital home and began residing at 558 Lipscomb Court, Raleigh, North Carolina. While Petitioner no longer lived in the marital home, he continued to visit the home to share in childcare duties and custody of their three children, including one child who has special needs. (Pet. Exs. 1, 1a-1d)

b. On July 19, 2018, a Division Consultant accepted a Verification of Required Information for Oak Forest CDC that showed that Petitioner was no longer listed as a household member at 6108 Oak Forest Drive, Raleigh, North Carolina. (Pet. Ex. 4) This Verification replaced and superseded the July 11, 2019 Verification form Oak Forest CDC had submitted to Respondent where Petitioner had been listed as a household member of Ms. McCullough.

c. By letter dated June 25, 2019, Respondent notified Petitioner that Respondent had qualified Petitioner as a caregiver under the N.C. Child Care Act. Petitioner's address on that letter was 558 Lipscomb [sic] Ct, Raleigh, North Carolina.

d. Petitioner's North Carolina driver's license, issued on August 26, 2019, listed Petitioner's residential address as 504 Lipscomb Ct, Raleigh, North Carolina.

36. At the point in time at which Mr. and Ms. McCullough chose to live separate and apart with the intent to no longer live as husband and wife, Bianca McCullough had no legal interest in any business started by Petitioner McCullough thereafter.

37. At hearing, Petitioner credibly explained why he listed 6108 Oak Forest Drive, Raleigh, North Carolina as his address on his initial application. He did so because at the time he completed his license application, the physical location of his facility was not yet completely open, the mail delivery at the physical location was not consistent, and he had moved residences a couple of times. He felt that since Ms. McCullough had remained at the same residence, she could receive any mail from Respondent at the 6108 Oak Forest Drive address.

38. A preponderance of the evidence at hearing established that when Petitioner McCullough hired Ms. McCullough as his facility's Administrator, and when he submitted his initial application for a star-rated facility license in September/October 2019, he was unaware that his estranged wife was having issues with her own daycare facility in Raleigh.

39. Ms. McCullough corroborated Petitioner's testimony. When Ms. McCullough resigned from Petitioner's business in October 2019, she did not give Petitioner a reason for resigning. She did not tell Petitioner she was about to, and had, lost her daycare facility license because she was stressed, embarrassed, and did not think the licensing sanction would be as severe as revocation. She also hoped she could continue working in daycare. On October 28, 2019, three days after Respondent Division issued the October 25, 2019 Notice of Pending Placement to Ms. McCullough, Ms. McCullough tendered her resignation to Petitioner. (Resp. Ex. 23) Ms. McCullough received the Notice of Pending Placement on October 30, 2019. Respondent Division did not issue the Notice of Revocation of Ms. McCullough's facility license until January 23, 2020. (Resp. Ex. 13)

40. Sometime in late January 2020, Petitioner confronted Ms. McCullough and she told him about her licensing issues with the Division.

41. Since Petitioner was unaware of his estranged wife's licensing issues when he submitted his licensing application to Respondent, he had no reason to believe that Ms. McCullough could not be the Administrator of his facility.

42. After learning about Ms. McCullough's licensing issues, Petitioner began taking steps to correct any errors or misrepresentations regarding the operation of Honeybee's Nest.

a. Petitioner McCullough removed Bianca McCullough from any legal relationship and/or documents with Honeybee's Nest and updated his records with the Division.

b. As of the hearing date, Petitioner was taking the requisite class at Wake Technical Community College to become the facility's Administrator. Petitioner designated Ruth Reed, an experienced childcare provider, and his employee, as the Administrator of record at Honeybee's Nest until he completed the prerequisite community college course(s).

c. On June 5, 2020, Petitioner entered into a new lease for his facility in the name of Honeybee's Nest LLC, thereby removing the last document legally connecting Bianca McCullough with the facility.

43. A preponderance of the evidence at hearing showed that Ms. McCullough signed three Visit Summaries on behalf of Honeybee's Nest: to wit, October 9, 2019, October 14, 2019, and December 19, 2019.

a. When Ms. McCullough signed the October 2019 Visit Summaries, she was employed as the Administrator for Honeybee's Nest and therefore authorized to sign such summaries. However, at that time, Petitioner was unaware of Ms. McCullough's licensing issues with the Division, and Respondent had not yet issued its Notice of Pending Placement until October 25, 2019.

b. When Ms. McCullough signed the December 19, 2019 Visit Summary and answered Ms. Remington's questions pursuant to Petitioner's request as he was not at the facility that day and Ms. McCullough was a former employee. However, Ms. McCullough was not authorized to sign the visit summary on the facility's behalf that day.

44. At hearing, Respondent argued that it has continued with a Denial of Petitioner's license application because Petitioner never presented the Division with any documents, marked as Petitioner's Exhibits, until the contested case hearing, including

Petitioner's new lease for his facility. However, the ultimate issue at hearing is whether Petitioner is eligible for the childcare license for which he has applied.

a. At hearing, Ms. Leak admitted that the only problem with Petitioner's license application is his relationship with Bianca McCullough.

b. The preponderance of the evidence at hearing showed that Petitioner presented sufficient documentation explaining, pursuant to 10A NCAC 09 .22115(b), that his only familial relationship with Ms. McCullough is as his estranged wife and mother of his three children with whom he is separated. Ms. McCullough does not participate in the administration or operation of Honeybee's Nest, has no financial interest or ownership in the operation thereof, does not reside at the facility, and does not provide care to children at the facility, even as a volunteer. Nonetheless, as of July 23, 2020, Ms. McCullough is qualified by Respondent as a caregiver.

45. For over a year, Petitioner McCullough has operated Honeybee's Nest successfully under a Temporary License. His successful operation is evidenced by the Division's "Visit Summary" for unannounced inspections during this period admitted into evidence as Respondent's Exhibit 3 (Visit Summary 10/19/2019), Respondent's Exhibit 4 (Visit Summary 10/14/2019), Respondent's Exhibit 7 (Visit Summary 12/19/2019), Respondent's Exhibit 11 (Visit Summary 1/30/2020), Respondent's Exhibit 14 (Visit Summary 7/11/2019), and Petitioner's Exhibit 3. There was no evidence at hearing that Ms. McCullough participated in any of these visits or signed any of these Visit Summaries on the facility's behalf.

46. Petitioner proved at hearing that he meets all the qualifications to possess the childcare license for which he has applied.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, the Office of Administrative Hearings has subject matter and personal jurisdiction over this matter, and venue is proper.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).

3. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 284 S.E.2d 171, 174, 54 N.C. App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844, 847, 10 N.C. App. 545, 549 (1971).

4. The Division has a mandate to protect children in childcare settings by ensuring that children are cared for in a physically safe and healthy environment where their developmental needs are met and where they are cared for by qualified persons of good moral character. N.C. Gen. Stat. § 110-85(1).

5. The Division may deny a license to any applicant that fails to meet childcare standards or rules. N.C. Gen. Stat. § 110-90(5).

6. Pursuant to 10A NCAC 09 .2215(a)(6), the Division "may deny an application for a childcare facility license or the issuance of any permit to operate a childcare facility . . . if the Division determines that the applicant has a relationship with an operator or former operator who owned or operated a facility that was issued a summary suspension or a revocation.

7. 10A NCAC 09 .2215 (a)(6) also provides:

An applicant has a relationship with a former operator if the former owner or operator would be involved with the applicant's childcare facility in one or more of the following ways:

- (A) would participate in the administration or operation of the facility;
- (B) has a financial interest in the operation of the facility, as evidenced by, among other things, a familial relationship with the former owner or operator, employment at the new facility, and ownership of the building or property where the facility is located; or entering into a lease for the building;
- (C) provides care to children at the facility, even as a volunteer;
- (D) resides in the facility;
- (E) has an ownership interest in the facility as defined in 10A NCAC 09 .0102(33); or
- (F) would serve on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;

8. An "owner" includes any person with a five percent or greater equity interest in the childcare facility. 10A NCAC 09 .0102(33).

9. "Operator" means the owner, director, or other person having responsibility for operation of a childcare facility. N.C. Gen. Stat. § 110-86(7); 10A NCAC 09 .0102(32).

10. In this case, Respondent Division presented evidence that Petitioner McCullough's estranged wife had prepared Petitioner's initial application during the pendency of her own license disciplinary matter, and that Ms. McCullough served for a short period as Administrator of Honeybee's Nest.

11. Petitioner presented credible evidence to show he was unaware of his estranged wife's disciplinary action against her own day care license until after Petitioner's licensing application was submitted to Respondent.

12. Petitioner presented reliable and convincing evidence that he and his estranged wife, Bianca McCullough, were separated and not living together, and had been separated since June of 2018. The "assumptions" made by Respondent's staff that Mr. McCullough and Ms. McCullough were still married was an insufficient and inappropriate basis to deny Petitioner's license application under 10A NCAC 09 .2215.

13. Petitioner presented substantial evidence that he had taken corrective measures to sever any legal or business relationship between Honeybee's Nest and Bianca McCullough. Under N.C. Gen. Stat. § 50-20, Bianca McCullough, Petitioner's estranged wife, has no legal interest in Honeybee's Nest childcare facility.

14. By the manner and actions in operating Honeybee's Nest with a temporary license for over one year, Petitioner has proven by a preponderance of evidence that he is capable of operating a childcare facility and meets the qualifications to justify Respondent issuing a permanent childcare license to Petitioner.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **REVERSES** and **RESCINDS** Respondent's denial of Petitioner's license application and **ORDERS** Respondent to issue a full star-rated childcare facility license with no restrictions to Petitioner.

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.

This the 28th day of January, 2021.



Melissa Owens Lassiter
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 28th day of January, 2021.



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