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Approved by:		

Interpretation

Question: When a licensing violation is the result of the direct action of an employee of that child care facility and the facility:

- followed all licensing requirements to prevent such an occurrence and
- has taken the appropriate actions to correct the violation,

is the violation to be substantiated and maintained in the child care facility record?

Applicable To: Licensed Child Welfare Agencies, Licensed Group Homes, Licensed Child Care Institutions and Maternity Centers, Licensed Day Care Agencies, Licensed Day Care Homes, Licensed Day Care Centers, Licensed Group Day Care Homes, Licensed Youth Emergency Centers

Policy Citation: Section 383.8 Disposition of Licensing Complaints Concerning Licensed Facilities

- a) The investigation shall be completed within thirty (30) calendar days of receipt of the complaint. However, upon written notice to the licensee the investigation may be extended for an additional thirty (30) calendar days.

OCFP	Index No: 2000.14	Issuance Date: 09/12/00
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- b) Within fifteen (15) business days after completing the investigation, the Department shall make a formal determination of whether a licensing violation has occurred.
- c) Within five (5) calendar days of the determination, a certified letter shall be sent to the licensee summarizing the findings of the investigation.
- d) If there is a determination that licensing rules or standards have been violated, the letter shall:
 - 1) cite the licensing rules or standards violated;
 - 2) notify the respondent that within 10 days of the postmark date of the letter he may send a written request to the licensing coordinator of the region in which the facility is located requesting an informal review of the decision with the licensing representative and licensing coordinator; and
 - 3) Notify the licensee that failure to correct the violation(s) may result in the Department's seeking to revoke or refusing to renew a license or refusing to issue a full license to the holder of a permit.
- e) When the licensee requests an informal review of the Department's findings or determination and indicates a willingness to correct the violations, a time period for compliance shall be allowed. The Department shall confirm, in writing, the time period allowed. A licensing representative shall make unannounced on-site visits to determine whether the identified violations have been corrected within the time period allowed for compliance.
- f) If the findings of the informal review do not demonstrate reasonable compliance within the specified time period, the licensee shall be notified by registered mail of the Department's intent to revoke the license or refusal to issue or renew it. The licensee shall also be notified that (s)he has 10 days from the postmark date of the registered letter to request, in writing, a hearing.

<h1>OCFP</h1>	Index No: 2000.14	Issuance Date: 09/12/00
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- g) When a licensee does not request an informal review of the Department's intent to revoke a license or refusal to issue or renew a license, the Department shall proceed to revoke or refuse to issue or renew the license.

Discussion: The Department is required to investigate alleged violations of licensing rules for the purpose of determining if a violation of standards has taken place. If the violation of the rule is substantiated, the Department is required to so notify the licensee and to establish a corrective plan to correct the violation.

A licensed child care facility is challenging the Department's procedure of substantiating a violation against the facility when the violation of rule has occurred due to the action of the facility employee, and the facility appears to have performed all of its obligations under licensing regulations to prevent the rule from being violated and takes the appropriate action to insure that the employee will not violate the rule again. See the following example.

An employee in a licensed child care institution uses corporal punishment on a child in violation of Part 384 and Part 404. The child care institution had taken actions through its employee selection process, background checks, drug testing and training program to prevent the occurrence of the incident. When the incident happened the employee was fired. A licensing investigation substantiated that the action of the employee in using corporal punishment violated the rule. Since the employee had been fired, no corrective action plan was put in place.

In the above example it was determined that there was a substantiated violation of the rule which prohibits corporal punishment. The violation happened. While the child care institution may have taken all appropriate action to prevent it from happening, the employee of the facility violated the rule. The Department does not have the authority to disregard the violation based on the action that the licensed facility took to prevent the violation from occurring.

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Response: When the Department determines that a rule has been violated by a licensed facility, the violation shall be determined to be substantiated even in those circumstances when the violation is the result of the direct action of an employee of that child care facility and the facility:

- followed all licensing requirements to prevent such an occurrence and
- has taken the appropriate actions to correct the violation.