

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0508-21

DEPARTMENT OF CHILDREN
AND FAMILIES,

Petitioner-Respondent,

v.

D.E. (MONKEY BARS
LEARNING CENTER),

Respondent-Appellant.

Submitted October 12, 2022 – Decided November 14, 2022

Before Judges Messano and Rose.

On appeal from the New Jersey Department of Children and Families, Docket No. 19-0660.

Williams Law Group, LLC, attorneys for appellant (Alvin Eugene Richards, III, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; James Pham, Deputy Attorney General, on the brief).

PER CURIAM

Following a hearing before an administrative law judge (ALJ), the Department of Children and Families (the Department) entered a final agency decision affirming revocation by the Office of Licensing (OOL) of Monkey Bars Learning Center's (the Center) license to operate a childcare center. D.E., the Center's owner, now appeals.¹

OOL's August 20, 2019 revocation letter had attached inspection violation reports citing multiple violations, only some of which had been abated after numerous inspections, and others that arose during the course of reinspections. The letter advised the Center that it could request a hearing before revocation became effective. The Center did, and the matter was transferred to the Office of Administrative Law as a contested case for a hearing before the ALJ.

The testimony from Emily Gear, OOL's supervisor of childcare inspections, explained the process that follows routine inspections of licensed childcare facilities based on regulations known as the Child Care Manual (the Manual).² Gear said if the facility addresses the violations, OOL "abate[s] the

¹ Pursuant to N.J.S.A. 9:6-8.10a, all records relating to the investigation and findings remain confidential. As a result, we use appellant's initials, as did the ALJ and the Department.

² See N.J.A.C. 3A:52-1.1 to -9.9.

report and close[s] it out" until the next inspection, which occurs routinely every year. Gear testified that OOL began its "enforcement process" at the Center in April 2019 and moved to revoke the Center's license in August because there was "no progress being made." Gear identified interim notices OOL sent after enforcement began, evidencing continued violations, and additional violations, that had not been abated by the Center. The notices provided the Center with a period of time to abate the violations.

Samuel Page testified that he inspected the Center on a bi-weekly basis after May 2018. He personally observed violations of regulations requiring certain student to staff ratios and recorded them in his inspection reports. Page also described child supervision violations and background check violations he observed during his inspections, and he identified inspection reports issued after enforcement began. He described continued violations that he witnessed and recorded.

D.E. testified. As the ALJ found, D.E. acknowledged she had not been present at the Center as much as she should have been prior to spring 2019 because of personal issues and that she "probably dropped the ball a lot." D.E. said her staff signed for the first two OOL enforcement notices, and that she never saw them at the time. D.E. said the Center was continuously working to

abate the violations, although she acknowledged OOL's inspections continued to reveal new violations. D.E. explained that background checks were initiated promptly, but extensive employee turnover—she hired one or two new employees every month—meant there were always staff members in process.

In her initial decision, the ALJ found that from May 2018 to April 2019, OOL visited the Center twenty-eight times. The ALJ found that Page's testimony established the Center "did not abate the violation or . . . when a violation was abated, a new violation occurred thereafter." The judge also noted that Page's testimony explained a "pattern of supervision violations . . . [that] create[d] a child safety issue." The ALJ found the violations demonstrated the Center did not ensure adequate supervision of the children, failed to maintain adequate staff-to-child ratios, and failed to properly conduct background investigations and fingerprint checks on its staff.

She also concluded OOL "provided the Center a reasonable amount of time and support to abate those violations." The ALJ noted that "N.J.A.C. 3A:52-2.4(a)(1) authorizes . . . OOL to revoke a childcare license when there is any failure to comply with any of the provisions of the Manual." The ALJ found, "The Center continued to violate the very policy and regulations promulgated to operate and ensure the safety of children by its ongoing pattern of violations that

were either not abated or continued throughout multiple . . . inspections." The ALJ affirmed OOL's revocation of the Center's license.

The Center filed exceptions to the ALJ's initial decision. In large part, the Center, which was still operating pending the Department's decision, cited inspections that had occurred after August 2019, and it essentially contended these reports demonstrated the progress it had made since the August 2019 revocation letter was issued and prior to the April 2021 hearing before the ALJ.

The Department's final agency decision adopted the ALJ's initial decision, concluding it was "well-reasoned . . . thorough" and fully supported by the judge's "credibility determinations." The Department affirmed OOL's revocation of the Center's childcare license.

Before us, D.E. contends the ALJ "made improper findings of fact and conclusions of law based on the record" at the hearing, and she urges us to reverse revocation of the Center's license. We have considered the arguments in light of the record and applicable legal standards. We affirm.

We apply a limited standard of review to the Department's final decision, namely, whether that determination was arbitrary, capricious, or unreasonable. N.J. Dep't of Child. & Fams. v. E.L., 454 N.J. Super. 10, 21–22 (App. Div. 2018) (citing Brady v. Bd. of Review & Gen. Motors Corp., 152 N.J. 197, 210 (1997)).

"[I]n challenging an agency's determination, an appellant carries a substantial burden of persuasion, and the agency's determination carries a presumption of reasonableness." Dep't of Child. & Fams. v. C.H., 414 N.J. Super. 472, 479–80 (App. Div. 2010) (citing Gloucester Cnty. Welfare Bd. v. State Civ. Serv. Comm'n, 93 N.J. 384, 390 (1983)).

"It is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" Dep't of Child. & Fams. v. D.B., 443 N.J. Super. 431, 440 (2015) (alteration in original) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)). However, "we are not bound by the agency's legal opinions." C.H., 414 N.J. Super. at 480 (quoting Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001)).

D.E. claims the ALJ's findings were "so askance with the evidence and . . . so wide of the mark as to deny justice." In large part, she cites her own testimony, which essentially showed that the Center was doing the best it could to abate violations as they occurred. Only in a rare instance, however, did D.E. deny the existence of any particular violation. Having carefully reviewed the entire record of the hearing, we conclude "the decision of an administrative

agency is supported by sufficient credible evidence on the record as a whole."
R. 2:11-3(e)(1)(D).

Moreover, the regulations clearly provide for the Department's actions. The Manual is issued pursuant to the "Child Care Center Licensing Act," N.J.S.A. 30:5B-1 to -42. See N.J.A.C. 3A:52-1.1(a). N.J.A.C. 3A:52-2.4(a) authorizes OOL to revoke a childcare license "for good cause" and sets out a non-exhaustive list of violations or failures that support such a finding.³

OOL's revocation letter cited two regulations supporting good cause for revocation: the Center's failure to comply with statutes cited in the applicable regulations, N.J.A.C. 3A:52-2.4(a)(1);⁴ and "activity, policy, or staff conduct that adversely affects or presents a serious hazard to the education, health, safety, well-being[,] or development of a child attending a center, or that otherwise demonstrates unfitness of a sponsor, [sponsor representative,] or staff member(s) to operate a center," N.J.A.C. 3A:52-2.4(a)(6). The regulations impose exacting staffing ratios, provide for adoption of methods to keep track

³ A center may submit a new application for a license after one year. N.J.A.C. 3A:52-2.4(d). In its discretion, presumably as an alternative to revocation, OOL "may require" a center to "submit in writing a corrective action plan." N.J.A.C. 3A:52-2.4(g).

⁴ The letter miscited the applicable regulations by using a citation that preceded recodification in 2017. See 49 N.J.R. 98(a).

of all children at a center, and require specific procedures for background checks of potential employees. N.J.A.C. 3A:52-4.3, -4.10, and -4.11. The ALJ found violations of these regulations on a recurring basis.

Given our limited standard of review, we find no reason to reverse the Department's final agency decision affirming OOL's revocation of the Center's license.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION