

July 28, 2023

CERTIFIED MAIL

Heather Erin McCaustlin, Authorized Agent
Kids Count Daycare and Learning Center, Inc
6100 Century Ln
Prior Lake, MN 55372

License Number 1034376 (Child Care Center)
Report Number 202210536

ORDER OF LICENSE REVOCATION

Dear Heather McCaustlin:

The Department of Human Services (DHS) is revoking your license to provide child care services at Kids Count Daycare and Learning Center located at 6880 Boudin St 200, Prior Lake, MN 55372. This revocation is based on the license holder knowingly withholding relevant information from or giving false or misleading information to the commissioner, and failure to comply with applicable licensing laws or rules. Details of our findings are provided below. Our next steps and your options are also detailed.

The revocation goes into effect on August 10, 2023, at 6:01 p.m. to allow time for delivery of this order and ten days for you to inform the Commissioner whether you intend to appeal the license revocation explained below.

REASON FOR LICENSE REVOCATION

1. False or misleading information

DHS determined that you knowingly withheld relevant information from or gave false or misleading information to the commissioner regarding your compliance with licensing rules and laws.

- **Child's file:**
Through conversations with staff persons on March 29, 2023, and interviews with staff persons on May 9, 2023, the DHS licensor determined that you (CI1) knowingly gave an incorrect child's file to the licensor. The DHS licensor requested to see the file for a child in attendance on March 29, 2023. It was determined that the name of the child in attendance was written on a file for a different child that was no longer enrolled in the program because you did not have a file for the child in attendance that day.
- **Fire and tornado drills:**

Through conversations with staff persons on March 29, 2023, and interviews with staff persons on May 9, 2023, the DHS licensor determined that the documentation you (CI1) gave to the DHS licensor, showing that fire drills and tornado drills were conducted for calendar year 2022 and to date for 2023 were not actually done except for one fire drill that was conducted after the licensing visit in March 2023. When shown the completed fire and tornado drill logs during interviews on May 9, 2023, staff were asked if they were present for any of the drills. Staff replied that they did not recall doing fire or tornado drills except for a fire drill that was done on March 31, 2023.

- **Inservice training records:**
On March 29, 2023, you were not able to provide any documentation that the required in-service training was completed by staff for the 2022 calendar year. On May 9, 2023, you (CI1) gave the DHS licensor documentation of staff in-service training records for calendar year 2022. Through interviews with staff persons on May 9, 2023, the DHS licensor determined that numerous staff persons had not completed some or all of the in-service training documented on their training records, and two staff persons stated that the signature on the training logs was not theirs.

Legal Authority: Minnesota Statutes, section 245A.07, subdivision 3 (a) (3)2.

2. Failure to comply with licensing laws and rules

DHS determined that your program failed to fully comply with the laws and rules that apply to licensed child care centers. DHS has also considered the nature, chronicity, or severity of the violations that led to the revocation of your license.

Nature and Severity: Several of the violations that led to the revocation of your license relate to the health and safety of children served by your program. Six of the eight violations are repeat violations for which you were previously cited. Kids Count Daycare and Learning Center has:

- Knowingly provided false or misleading information to DHS
- Failed to comply with staff-to-child ratios
- Failed to comply with the terms of the license
- Failed to comply with infant safe sleep requirements
- Failed to comply with staff training requirements
- Failed to maintain children's records
- Failed to conduct fire and tornado drills

Chronicity: Your program has demonstrated a history of noncompliance with licensing rules and statutes. The information below summarizes this history:

- July 28, 2023 Revocation (this order): 8 violations (6 repeat)
- July 14, 2022 Correction Order: 18 violations (10 repeat)
- May 27, 2020 Correction Order: 20 violations (8 repeat)
- August 17, 2019 Correction Order: 24 violations (6 repeat)
- April 25, 2018 Correction Order: 14 violations

Legal Authority: Minnesota Statutes, section 245A.07, subdivision 3(a)(1).

3. Commissioner's evaluation of program

In determining whether a licensing action is warranted, DHS evaluated the facts, conditions, and circumstances concerning your program's operation and considered the nature, chronicity, and severity of the violations and the effect the violations have on the health, safety, or rights of children served by the program.

DHS has determined that you knowingly withheld information from or provided false or misleading information to the commissioner regarding a child's file, staff training records, and tornado and fire drill logs during the licensing investigation conducted on March 29, 2023, and May 9, 2023. When the department cannot trust the license holder to provide true and accurate information, the department cannot rely on information provided by the license holder to ensure the health, safety or rights of children served by the program are protected. Several additional violations were found during the course of the licensing investigation that also impact the health, safety, or rights of children served by your program. DHS has determined that revocation of your license is appropriate based on the serious and chronic nature of the violations as identified in this order.

Legal Authority: Minnesota Statutes, section 245A.04, subdivision 6; and section 245A.07, subdivision 1 (a).

LICENSING VIOLATIONS DETERMINED ON MARCH 29, 2023, and MAY 9, 2023

DHS determined that your program failed to follow licensing rules and statutes, as described below.

Program practices

1. Violation: The program was not operating within the terms of the license.
 - Through conversations with staff persons on March 29, 2023, and interviews with staff persons on May 9, 2023, the DHS licensor determined the program was providing "Parent Night Out" two times

a month after the approved licensed hours of operation, on Friday evenings from 6:00 pm to 11:00 pm. The program is only authorized to provide care between the hours of 6:00 am and 6:00 pm.

- On March 29, 2023, the licensor observed an infant being cared for by CI1 in the Owner/Director's office. Office space is not approved licensed space to provide care for children.

Citation: Minnesota Statutes, section 245A.04, subdivision 7a, paragraph (a)

Repeat Violation: The license holder was previously cited for a similar violation in a Correction Order dated August 14, 2019.

2. Violation: The required staff-to-child ratios were not maintained.

- On March 29, 2023, during the licensing visit, the Wobbler classroom had one staff person with six children. One of the children was infant aged; therefore, a 1:4 staff-to-child ratio was required and two staff persons were needed.
- Through conversations with staff persons on March 29, 2023, and interviews with staff persons on May 9, 2023, the DHS licensor determined that the program had regularly been out of ratio while providing "Parent Night Out" child care services after hours, twice monthly. It was determined that only two staff persons worked regardless of how many children are signed up to attend each session and that there were many instances that the program was not in ratio.

Citation: Minnesota Rules, part 9503.0040, subpart 1

Repeat Violation: The license holder was previously cited for a similar violation in the following orders:

- A Correction Order dated July 14, 2022
- A Correction Order dated April 25, 2018

3. Violation: During the program's regular hours of operation infants were mixed with other age categories.

On March 29, 2023, a 15-month-old infant was combined with toddlers in the Wobbler Classroom. It was determined through a conversation with staff persons that the child had been in the toddler classroom for several weeks. A toddler is defined as a child at least 16 months old but less than 33 months old.

Citation: Minnesota Rules, part 9503.0040, subpart 3, item B, (1)

Repeat Violation: The license holder was previously cited for a similar violation in the following orders:

- A Correction Order dated July 14, 2022
- A Correction Order dated August 14, 2019

Food and Water

4. Violation: Snacks did not comply with USDA requirements.

- Snack did not include two of the four food components identified by the USDA (fluid milk, juice or fruit or vegetable, meat or meat alternate, bread/bread alternate or cereal). Through interviews with staff persons on May 9, 2023, the DHS licensor determined snack is regularly served with one food component and water. Because water is not an approved component, a second approved food item was required. (Facility: Facility, Toddler/Preschool classroom)

Repeat Violation: The license holder was previously cited for a similar violation in the following orders:

- A Correction Order dated July 14, 2022
- A Correction Order dated May 27, 2020

Infant and toddler care

5. Violation: When an infant fell asleep before being placed in a crib, the program did not move the infant to a crib as soon as practicable.

On March 29, 2023, the DHS licensor observed two infants sleeping in equipment other than their cribs. The staff persons did not attempt to move the infants until the DHS Licensor intervened. One staff person began to feed another infant and the other staff person was cleaning the classroom. (Young Infants: Infant classroom)

- One infant was observed sleeping in a swing. When the DHS licensor discussed the requirement to move the sleeping infant to the crib to sleep, the staff person stated they were not aware of this. The staff person then removed the infant from the swing and placed them on the floor stating that the infant had been sleeping for a long while and it was time for the infant to wake up.
- Another infant was observed sleeping in a bouncy seat and the DHS licensor requested the staff person move the sleeping infant to a crib. Rather than moving the infant to the crib, the staff person just woke the sleeping infant up.

Citation: Minnesota Statutes, section 245A.1435, paragraph (c)

Repeat Violation: The license holder was previously cited for a similar violation in a Correction Order dated April 25, 2018.

Documentation Logs

6. Violation: The program failed to complete monthly fire drills and tornado drills as required.

Through conversations with staff persons on March 29, 2023, and interviews with staff persons on May 9, 2023, the DHS licensor determined that although there was documentation that fire and tornado

drills were conducted in 2022 and to date in 2023, staff persons stated that the program did not actually complete monthly fire and tornado drills as required. Full time staff persons stated they do not recall any fire or tornado drills being completed during 2022 or yet in 2023, except for a fire drill that was done on March 31, 2023, after the licensing visit on March 29, 2023.

Citation: Minnesota Rules, part 9503.0110, subpart 3, items D and E and subpart 4, item B

Staff Training

7. The required in-service training had not been completed for 3 of 3 (SP1, SP2 and SP3) individuals for the previous concluded calendar year.

On March 29, 2023, several staff files were reviewed. The program was not able to provide any documentation that the required in-service training was completed for the 2022 calendar year. In addition, conversations were had on this date with five staff persons and all five staff persons stated they had not completed any recent in-service training.

On May 9, 2023, in-service training records were present at the center. Staff were shown their in-service training record and they stated they had not completed some or all of the trainings that were documented on the record.

Citation: Minnesota Statutes, section 245A.40, subdivision 7

Repeat Violation: The license holder was previously cited for a similar violation in the following orders:

- A Correction Order dated July 14, 2022
- A Correction Order dated May 27, 2020
- A Correction Order dated August 14, 2019

Children's Records

8. Violation: A record had not been maintained at the program for each child. On March 29, 2023, there was no record for 1 of 1 (C2) child.

Citation: Minnesota Rules, parts 9503.0115; and 9503.0125

Repeat Violation: The license holder was previously cited for a similar violation in the following orders:

- A Correction Order dated May 27, 2020
- A Correction Order dated August 14, 2019
- A Correction Order dated April 26, 2018

YOUR RIGHT TO APPEAL

You have the right to appeal the revocation. Your request must be in writing and clearly state that you are requesting a contested case hearing for this matter. Your request must be made before the deadlines provided below. If you do not meet this deadline, you lose your right to an administrative appeal. The timeline to appeal began when you received this order.

If you are mailing your request, it must be sent by certified mail and postmarked within 10 calendar days from when you received this order. Please send it to:

Commissioner, Department of Human Services
Office of Inspector General
Legal Counsel's Office
Attention: Licensing Legal Unit
PO Box 64953
St. Paul, MN 55164-0953

If your request is being personally delivered, it must be received by DHS within 10 calendar days from when you received this order. Please bring it to:

Commissioner, Department of Human Services
Office of Inspector General
Legal Counsel's Office
Attention: Licensing Legal Unit
444 Lafayette Road North
St. Paul, MN 55155

Upon DHS' receipt of your timely appeal, your case would be scheduled for a contested case hearing in front of an Administrative Law Judge. Following this hearing, the Commissioner of DHS will issue a final order. If you do not appeal or if the order is affirmed by the Commissioner following a hearing, DHS is prohibited from issuing you and the controlling individuals a license for five years. In addition, any additional licenses held by you or the controlling individuals shall also be revoked.

Legal representation at the contested case hearing:

You do not need a lawyer to appeal. However, a lawyer can help you with your appeal. The state or county will not get you a lawyer and will not pay for a lawyer. If you cannot afford a lawyer, you may be able to get free legal advice or help with your appeal. To find out if free help is available, contact: Volunteer Lawyers Network at 612-752-6677; Central Minnesota Legal Services at 612-332-8151; Southern Minnesota Legal Services at 651-222-4731; or go to www.lawhelpmn.org to find a local legal services program that may be able to help you.

You can also find information on contested cases from the Office of Administrative Hearings website at <https://mn.gov/oah/self-help>. Click on Administrative Law Overview, then click on Administrative Law Contested Case Hearing Guide for a list of frequently asked questions.

Operating the program pending the outcome of the appeal:

If you file an appeal within the timeframes described above, you may continue to operate pending the outcome of your appeal. If you continue to operate, you must do so in full compliance with all licensing laws and rules. Failure to follow a law or rule that may impact the health or safety of children served by your program could result in the immediate suspension of your license.

If you are a provider registered to receive Child Care Assistance Program (CCAP) payments, this revocation order could impact your ability to receive CCAP funding. If your CCAP registration is closed or denied as a result of this Licensing action, you will get a separate notice(s).

If you have questions about:

- Your CCAP registration and you get a notice telling you your registration is being closed or denied, contact the agency that sent the notice.
- Billing or payments for specific children, contact the county or CCAP agency where the children get CCAP.

Posting of this licensing action

You are required to place this Order of License Revocation in a place that is clearly noticeable to the people receiving services and all visitors to the facility for two years, even if you appeal.

Legal authority for this licensing action

- This action is taken under Minnesota Statutes, section 245A.07, subdivision 3, which describes under which conditions DHS may revoke a license.
- The timeline to appeal a revocation order is provided in Minnesota Statutes, section 245A.07, subdivision 3(b).
- "Controlling individual" is defined under Minnesota Statutes, section 245A.02, subdivision 5a.
- License holders have a right to appeal licensing actions and request a contested case hearing, under Minnesota Statutes, chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612.
- The requirement to post this order in a clearly visible location is required under Minnesota Statutes, section 245A.07, subdivision 5.
- If a license holder files a timely appeal of a revocation order, the license holder may continue to operate the program pending a final order of the appeal under Minnesota Statutes, section 245A.07, subdivision 1(b).
- Under Minnesota Statutes, section 245A.04, subdivision 7, paragraph (d), clause (3), the commissioner shall not issue or reissue a license if the applicant, license holder, or controlling individual has had a license issued under this chapter revoked within the past five years.
- Under Minnesota Statutes, section 245A.04, subdivision 7, paragraph (d), clause (5), when a license issued under this chapter is revoked under clause (1) or (3), the license holder and controlling individual

Heather McCaustlin, Authorized Agent

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may not hold any license under chapter 245A for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.

Questions

If you have any further questions regarding this matter, you may contact Chad Kratzke, Supervisor, at 651-431-4535.

Sincerely,

A handwritten signature in black ink, appearing to read "Alyssa Dotson". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Alyssa Dotson, Deputy Inspector General

Licensing Division

Office of Inspector General