



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

In The Matter Of:

**Children's Campus
1731 East Raines
Memphis, TN 38116**

NOTICE OF DENIAL OF APPLICATION FOR LICENSE

This document serves as Notice that, pursuant to Tenn. Code Ann. §§ 71-3-501 *et. seq.* and Chapters 1240-04-05 and 1240-04-03 of the Rules of the Tennessee Department of Human Services, the application for renewal of the license of Mr. Berlin Boyd, Owner, to operate Children's Campus, a "child care agency," as defined by Tenn. Code Ann. § 71-3-501(4), and a "child care center," as defined by Tenn. Code Ann. § 71-3-501(5), located at 1731 East Raines, Memphis, Tennessee, 38116, is hereby **DENIED**.

A. SUMMARY OF BASIS FOR DENIAL:

On March 3, 2014, Mr. Berlin Boyd submitted a New Child Care Agency Application for a License to Operate for Children's Campus, located at 1731 Raines Road in Memphis. The two hundred dollar (\$200.00) application fee was received on March 27, 2014. Tanna Stevenson was listed on the application as the Director.

On March 20, 2014, DHS Child Care Program Evaluators ("PEs") Linda Allison and Aneta Cassetty conducted an announced consultation visit with Mr. Boyd at the agency. As a result of that visit, a confirming letter was mailed to Mr. Boyd on March 24, 2014, addressing actions necessary to recommend temporary license.

This location was formerly licensed as child care agency KARE II. Ms. Kimberly Chism was the Owner of KARE II. On November 14, 2013, the Department served a safety plan on KARE II, which required the agency to close immediately because it had been served with a federal search warrant on that same day, which prevented the agency from operating in compliance with the Department's child care licensing rules while federal and/or state law enforcement officials were onsite. During the time DHS staff were onsite on November 14, 2013, Ms. Chism was argumentative with law enforcement. She became belligerent and was arrested by Memphis Police. KARE II's license expired August 31, 2014, however, the agency submitted a written statement voluntarily closing January 3, 2014.

Despite this being a “new” application from Mr. Boyd, the Department has learned that Ms. Kimberly Chism is assignor on the lease for the building.

The Department of Human Services has determined that the current Application for A License to Operate a child care agency is an effort by Mr. Boyd and Ms. Chism to circumvent a history of violations of the licensing law and regulations and to otherwise attempt to circumvent the licensing law and regulations and prior licensing actions instituted by the Department. The Application does not demonstrate that the applicant has the safety, welfare and best interest of children in mind, lacks the proper character, and does not have an adequate method of administration and management for the new agency.

B. VIOLATIONS:

1. FAILURE TO FOLLOW LICENSING PROCESS IN GOOD FAITH.

Licensing violations at KARE II had been observed just prior to its closing. During the visit on November 14, 2013, the Department representatives, who were onsite to serve the safety plan, noted several violations. 1) One child present at the agency had not been signed in and another child did not even have a file; 2) DHS representatives observed caregivers speaking to children in harsh tones; and, 3) There was no heat at the agency and agency staff reported that the heat had been out for three days. These were three serious licensing violations, for which KARE II was under investigation. The Department believes that the decision to close KARE II and open Children's Campus is a deliberate attempt to circumvent the licensing rules.

On January 2, 2014, Mr. Boyd attended a child care orientation meeting with the Shelby County child care licensing staff and submitted a Licensing Inquiry Form for the Raines site, prior to KARE II notifying licensing of their closing. The lease Mr. Boyd submitted for the building lists Kimberly Chism as assignor on the lease. Mr. Boyd's inquiry prior to KARE II's closing and his application is an attempt to escape the ramifications of possible legal enforcement actions and to fool the Department into believing that the “new” owner will operate the agency in compliance with licensing laws. The Department will not allow the previous owners and the new owner to circumvent the licensing regulations in this manner

The actions described above are in violation of the following child care licensing regulations:

1240-04-05-.03 LICENSING PROCESS.

(1) Licensing Criteria.

(a) A license for the operation of a child care agency is issued and its continued approval is based upon the following general criteria:

- 1. The safety, welfare and best interests of the children in the care of the agency;**

2. **The capability, training and character of the persons providing or supervising the care to the children;**

...

5. **The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.**

...

(14) Transfers of Licenses.

...

- (c) **If the Department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the Department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the Department, the Department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in TCA §§ 71-3-509 and 71-3-510 and other applicable laws and rules governing the Child Care Agency Board of Review.**

And

Tenn. Code Ann. § 71-3-502. Basis for licensing -- Regulations -- License application -- Temporary license -- Non-transferability of license -- Transfer of operation to circumvent licensing laws or regulations – Fees.

...

- (e) (1) **Except as provided in this subsection (e), no license for a child care agency shall be transferable, and the transfer by sale or lease, or in any other manner, of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately. If the transferee has made application for, and is granted, a temporary license, the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.**
- (2) **If the department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in**

order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the department, the department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in § 71-3-509.

Compliance with the above statute and child care licensing rules requires that licenses be issued only to individuals or entities that possess the intent, capability and character to provide for the safety and best interest of the children in care of the agency.

2. FAILURE TO OBTAIN FIRE INSPECTION APPROVAL.

During the scheduled visit on March 20, 2104, the PEs noted that the agency had not yet received fire inspection approval from the Department of Commerce and Insurance.

The actions described above are in violation of the following child care licensing regulations:

1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

...

(6) Issuance of a Temporary License to New Child Care Agencies shall require:

...

(e) Verification that the physical facilities have received fire safety and environmental approval;

And

1240-04-03-.12 PHYSICAL FACILITIES.

(1) Inspections and Compliance with Fire, Health and Safety Standards.

(a) All facilities shall annually pass an inspection verifying compliance with all applicable state and local fire and environmental requirements.

(b) The following facilities, in addition to meeting the requirements set forth in subparagraph (a) above, shall pass inspection by the State Fire Marshall's Division of the Tennessee Department of Commerce and Insurance and the Food and General Sanitation Division of the Tennessee Department of Health:

1. Facilities that are currently unlicensed;

In order to ensure that children are not placed at extreme risk of harm, all facilities shall annually pass an inspection verifying compliance with all applicable state and local fire requirements.

3. FAILURE TO OBTAIN CRIMINAL HISTORY AND ABUSE REGISTRY BACKGROUND CHECKS.

At the March 20, 2014 visit, the PEs noted that the Director and Owner had not completed criminal history background checks or checks of the State's abuse registry and no clearance letter of any background checks had been received.

The actions described above are in violation of the following child care licensing regulations:

1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

• • •

(6) Issuance of a Temporary License to New Child Care Agencies shall require:

• • •

(f) Verification that the on-site director/manager has successfully completed a criminal background check and has a negative criminal history as required by T.C.A. § 71-3-507 and this Chapter;

And

71-3-507. Criminal history violation information required of persons having access to children -- Review of records and registries -- Verification -- Exclusion from access to adults.

(a) (1) The following shall complete a disclosure form in a manner approved by the department disclosing criminal records, juvenile records histories and the status of such person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, the state's sex offender registry and status as an indicated perpetrator of abuse or neglect in the records of the department of children's services and the department of human services, or in any jurisdiction, and shall agree to release all such records to the childcare agency and to the department to verify the accuracy of the information contained on the disclosure form:

(A) A person applying to work with children as a paid employee, director or manager with a childcare agency as defined in § 71-3-501, with any detention center or temporary holding resource as described in § 37-5-109, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or who applies for any license, that is not the renewal of an existing license or otherwise seeks to be an operator,

as defined by the rules of the department, of a childcare agency as defined in § 71-3-501 and who has significant contact with children in the course of such role and is not otherwise exempted from the application of this section by rules of the department;

In order to protect children from the extreme risk associated with exposure to potentially dangerous individuals the agency should ensure that all staff submit to a criminal background check in a timely manner.

4. FAILURE TO ATTEND ORIENTATION SESSION.

During the visit on March 20, 214, the PEs noted that the Director had not attended any orientation sessions provided by the Department.

This action constitutes a violation of the following child care licensing rules:

1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

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- (3) The applicant shall attend one pre-application training session as provided by the Department. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by the applicant. If the applicant is not responsible for the day-to-day management of the program, this training shall be attended by both the applicant and the individual responsible for the day-to-day management.**

• • •

- (6) Issuance of a Temporary License to New Child Care Agencies shall require:**

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- (g) Verification that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children.**

Compliance requires that staff have sufficient training to understand licensing rules and other requirements, prevent emergencies, and properly manage any situations that might occur in the course of providing care for children. Failure to have such orientation and training puts children at risk by them not having a caregiver who is prepared for the responsibility of their care.

5. FAILURE TO SUBMIT A BUDGET.

Children's Campus – June 2014

Mr. Boyd has also not submitted a budget to DHS. Nor did the PEs see a budget when they visited onsite on March 14, 2014.

This action constitutes a violation of the following child care licensing rule:

1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

...

(6) Issuance of a Temporary License to New Child Care Agencies shall require:

...

(h) Verification that the applicant has the apparent ability and intent to comply with the licensing law and regulations;

And

1240-04-03-.05 Ownership, Organization, and Administration.

(3) Finances and Legal and Regulatory Status.

(a) In order to ensure the appropriate continuity of care for children the applicant must provide a reasonable plan with a proposed budget for the financial support of a center. The proposal must demonstrate adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation. Adequate financing of the center's operation shall be maintained throughout the licensing year.

Child care agencies must plan for and maintain adequate financing in order to ensure the children will have continued services. Failure to have such required financing puts both the parents and owner of the agency at extreme risk of hardship should the agency be unable to continue operation, or even pay for basic necessities such as food, heat/air, or toiletries.

6. FAILURE TO MAINTAIN OR PROVIDE PROPER PHYSICAL FACILITIES.

During the visit on March 14, 2014, the PEs observed that the playground fence was in disrepair and need to be fixed or replaced. Additionally, the PEs noted that the use of the facility's floor space had yet to be defined and the classrooms had not yet been designated.

These actions violate the following child care licensing rules:

1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

...

(6) Issuance of a Temporary License to New Child Care Agencies shall require:

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- (i) **Verification by the Department, after appropriate on-site inspection, that the site is suitable for child care activities and does not endanger the welfare or safety of children;**

And

1240-04-03-.12 PHYSICAL FACILITIES.

• • •

- (2) **Neither a temporary nor an annual license shall be issued unless all of the following requirements are met:**

• • •

- (b) **The physical facilities (indoor and outdoor) present no apparent hazards; and**

(c) **The physical facilities are otherwise deemed appropriate by the Department for the safe care of children.**

• • •

- (8) **Licensed Capacity of Physical Space.**

• • •

- (b) **A minimum of thirty (30) square feet of usable indoor play space must be provided for each child.**

- (c) **Each naproom must contain a minimum of thirty (30) square feet of floor space per child.**

In order to ensure that the children have safe and ample space in which to play and develop necessary skills, the agency must provide sufficient indoor space. So that children will not be placed at extreme risk of serious injury or death, all facilities accessible to children, indoors and outdoors, must be childproofed and well maintained prior to children attending the agency and throughout the licensing year.

VIOLATIONS OF KARE II: Licensing Period – September 1, 2013 – January 3, 2014 (the date of the voluntary closure):

7. **FAILURE TO MAINTAIN SIGN-IN SHEETS AND CHILDREN'S RECORDS.**

During the Licensing period of September 1, 2013 – August 31, 2014, this agency was named KARE II. The Owner of KARE II, Ms. Chism, submitted a letter voluntarily closing the agency on January 3, 2014. However, before closing, Department representatives observed several KARE II licensing violations.

During the visit on November 14, 2014, the Department representatives noted that the sign-in and sign-out sheets of attendance and the files for children were not up to date. One (1) child present at the agency that day had not been signed in and another child did not even have a file.

These actions violate the following child care licensing rules:

1240-04-03-.05 OWNERSHIP, ORGANIZATION, AND ADMINISTRATION.

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(5) Enrollment Restrictions.

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(e) All children physically present in the facility shall be counted in the adult:child ratio and group size, and shall have all required records on file before care is provided.

(6) Requirements for Communication with Parents.

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(g) Children shall be signed in and out of the center by the custodial parent or other person specifically authorized by the parent or the appropriate staff person. Center staff shall verify parental authorization and the identity of any person to whom a child is released.

• • •

(7) General Record Requirements.

(a) All records required by this Chapter shall be maintained in an organized manner on-site at the agency and shall be immediately available to the Department upon request.

Children must be signed in and out properly so that they are always accounted for. Failure to do so puts children at extreme risk of harm that could be prevented by acceptable adult supervision.

Compliance requires that children be logged in and out upon arrival and departure in every instance where responsibility for children is transferred from one adult to another for the

purpose of tracking children and assuring that adult responsibility is clearly defined and accepted. Failure to properly account for children's whereabouts and adult responsibility puts them at extreme risk of preventable harm.

In order to ensure children's health and safety in an emergency, as well as to prevent the spread of disease, all of the required children's records must be verified and maintained. Information on whom to contact in the event of an emergency or whom to release the child to is essential for child protection.

8. FAILURE TO USE PROPER BEHAVIOR MANAGEMENT AND GUIDANCE.

During the visit on November 14, 2013, DHS representatives observed caregivers speaking to children in harsh tones.

These actions violate the following child care licensing rules:

1240-04-03-.09 PROGRAM.

• • •

(5) Behavior Management and Guidance.

• • •

(b) Discipline shall be reasonable, appropriate, and in terms the children can understand.

(c) Discipline that is potentially shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.

In order to protect children from damage to their self-esteem and in order to additionally assure that children can learn the proper management of their own behavior, no method of discipline must ever be used which would be shaming or humiliating to the child. In order to be in compliance caregivers and staff must be trained and overseen in the use of developmentally appropriate behavior management techniques.

9. FAILURE TO MAINTAIN PHYSICAL FACILITIES.

During the visit on November 14, 2013, DHS representatives noted that there was no heat in the building. Staff reported that the heat had been out for three (3) days. Children were even wearing their coats.

This incident constitutes a violation of the following child care licensing rule:

1240-04-03-.12 PHYSICAL FACILITIES.

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(11) General Sanitation and Safety of Building and Grounds.

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(c) Building, Grounds and Pools.

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- 4. All rooms used by children shall be maintained at a temperature of between 68 degrees to 78 degrees F by means of heating, cooling or ventilation sources approved for use.**

For the comfort of children and staff and to avoid frostbite and other risks to their health, indoor temperatures must be maintained in the required range.

C. STATUTORY VIOLATIONS:

Pursuant to Tenn. Code Ann. §71-3-502(a)(3), the approval of the licensing status of the child care agency is based upon the following criteria:

- (A) The safety, welfare and best interests of the children in the care of the agency;
- (B) The capability, training and character of the persons providing or supervising the care of the children;
- (C) Evidence that the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or, during licensure, that the actual performance of any of the duties of caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;
- (D) The quality of the methods of care and instruction provided for the children;
- (E) The suitability of the facilities provided for the care of the children; and
- (F) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

Children's Campus child care agency has failed to demonstrate that its proposed care of children is consistent with Paragraphs (A), (B), (C), (D), (E), and (F) in that the agency has consistently failed to adhere to child care licensing rules and has done almost nothing to prepare to open for care of children, despite the Department's best efforts to offer Technical Assistance and to work with the agency to correct violations. The health, safety, and welfare of the children at the agency would be at great risk if the agency were allowed to open.

Additionally, the previous child care agency at this location, KARE II, had serious violations that were never addressed before Ms. Chism closed her agency. While some of those violations were not as serious as others and may have been correctable, the seriousness and number of the remaining violations, the lack of cooperation from the agency in fixing the violations, and the inappropriate manner in which Mr. Boyd and Ms. Chism have attempted to circumvent the licensing rules, require that the Department deny Children's Campus a temporary license to operate child care. Failure to comply with the Department's regulations puts children at risk, compromises their safety and needs being met, and stifles development and growth. The circumstances surrounding these violations justify denial.

In this situation, because of the seriousness and number of the violations of licensing rules, and the attempt to circumvent the licensing rules, the Department is authorized to deny the agency's license regardless of compliance by the agency before or after receipt of this notice pursuant to Tenn. Code Ann. § 71-3-509(d)(1).

D. BASIS FOR DECISION:

As described by the listing of violations in Part B above, the agency's failure to demonstrate compliance with child care rules is such that the record clearly does not justify its operation as a child care agency. The application for a license to operate a child care agency, is, therefore, **DENIED**.

E. APPEAL RIGHTS:

Pursuant to Tenn. Code Ann. § 4-5-307, the Licensee/Agency is given the following notice:

1. The agency has a right to appeal this denial of the application for a license to operate a child care agency **within ten (10) calendar days from the earliest date of service of this Notice as shown in the Certificate of Service** on the last page of this Notice.
2. The appeal must be made by making a request in writing to: Commissioner of Department of Human Services, c/o Child Care Licensing, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37243, for a hearing before the Child Care Agency Board of Review.
3. The appeal is held under the provisions of:
 - a. The Uniform Administrative Procedures Act (Tenn. Code Ann. §§ 4-5-301 *et seq.*);
 - b. Tenn. Code Ann. §§ 71-3-501 *et seq.*;

- c. Rules of the Tennessee Department of Human Services, Chapters 1240-04-05, 1240-04-03 and 1240-05-13.

4. Description of Appeal Process and Agency's Status:

- a. The hearing before the Child Care Agency Board of Review provides a process for persons and entities licensed by the Department of Human Services to appeal an action of the Department of Human Services affecting a licensed child care agency. The Child Care Agency Board of Review determines whether the action regarding the child care agency's license that is proposed by Department of Human Services is supported by the facts and the law, and, based upon the evidence presented at the hearing, the Board will determine whether the agency's license should be denied permanently or, if the Board so determines, whether the license of the affected child care agency should be granted based upon restrictions or conditions placed upon the license.
- b. Failure to appeal by the end of the appeal period noted in paragraph c. below will result in permanent closure of the child care agency on the effective date of denial stated in part E, subject to any right to re-apply for a license as stated in Part F.
- c. If not appealed within ten (10) calendar days of the earliest date of service of the Notice as stated in the Certificate of Services on the last page of this Notice, the denial of the application for a license takes effect on the date it is served.
- d. If appealed within ten (10) calendar days of the date of service, the Board of Review will hear this matter in accordance with the law and the agency will be notified of the date, time, and place of the hearing.

5. The agency has a right to be represented at the hearing by retained legal counsel.

F. EFFECTIVE DATE OF DENIAL:

If not appealed within ten (10) calendar days of the earliest date of service of the Notice as stated in the Certificate of Services on the last page of this Notice, the denial of the application for a license takes effect on the date this Notice is served.

G. REAPPLICATION PROCEDURES:

If this Notice is not appealed, the agency has a right to make application again after one (1) year from the effective date of denial. If, on appeal, the Department's decision is upheld, the child care agency may apply for a license one (1) year after the entry of the final order of the Board or a reviewing court.

H. ASSISTANCE WITH PLACEMENT OF CHILDREN:

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If the applicant is in need of assistance in making plans for children in its care or in appealing this decision, the applicant may contact the Program Evaluator for the child care agency or the State Office Licensing Unit: Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37243.

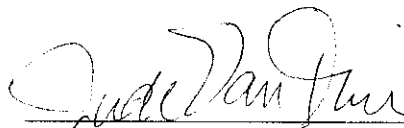
Issued this 24th day of June 24, 2014.

Raquel Hatter (rd)
Raquel Hatter, M.S.W., Ed. D., Commissioner
Tennessee Department of Human Services

By: _____
Authorized Representative
State of Tennessee
Department of Human Services

Certificate of Service

I do hereby certify that this NOTICE OF DENIAL OF APPLICATION FOR LICENSE was, on this day, transmitted by both USPS Mail First Class, postage fully prepaid, and USPS Certified Mail (Return Receipt Requested) No.7011 2000 0001 8782 6041, a true and exact copy to Mr. Berlin Boyd, 449 Monroe Avenue #103, Memphis, Tennessee 38103. This 24th day of June, 2014.



Authorized Representative of
Tennessee Department of Human Services