

**Pinellas County License Board for
Children's Centers & Family Child Care Homes**

Our mission is to protect and promote the health, safety, and mental development of
children cared for in children's centers and family child care homes in Pinellas County

**Faith Bornoff, M.Ed., Executive Director
Commissioner Gerard, Chairperson**



Petition for Variance from () or Waiver of () Rule

Please select the appropriate box if you are seeking a variance or a waiver and list the Citation of the Applicable Rule

PETITIONER: _____
Name of Childcare Center or Home Provider

IF NOT REPRESENTED BY AN ATTORNEY:

Name _____ Telephone Number _____
Address _____ Email Address _____
Fax Number _____

IF REPRESENTED BY AN ATTORNEY: (Attorney or qualified representative of the Petitioner information)

Name _____ Telephone Number _____
Address _____ Email Address _____
Fax Number _____

APPLICABLE RULE OR PORTION OF THE RULE _____

CITATION TO THE STATUTE THE RULE IS IMPLMENTING _____

IS THIS VARIANCE OR WAIVER REQUEST APPLICABLE TO A PINELLAS COUNTY REGULATION ONLY AND YOU WILL MEET ALL STATE REGULATIONS? YES _____ No _____

TYPE OF ACTION REQUESTED _____

SPECIFIC FACTS THAT DEMONSTRATE A SUBSTANTIAL HARDSHIP OR VIOLATION OF



PRINCIPLES OF FAIRNESS THAT WOULD JUSTIFY A WAIVER OR VARIANCE FOR THE PETITIONER

THE REASON WHY THE VARIANCE OR THE WAIVER REQUESTED WOULD SERVE THE PURPOSES OF THE UNDERLYING STATUTE;

IS THIS VARIANCE OR WAIVER REQUEST PERMANENT? _____

IS THIS VARIANCE OR WAIVER REQUEST TEMPORARY? _____

IF TEMPORARY, INCLUDE THE DATES INDICATING THE DURATON OF THE REQUESTED VARIANCE OR WAIVER _____

SIGNED _____ DATE _____

PLEASE RETURN THE COMPLETED FORM TO PCLB, 8751 ULMERTON ROAD, SUITE 2000, LARGO FLORIDA 33771

PLEASE NOTE: A VARIANCE IS GRANTED TO ALL OR PART OF THE LITERAL REQUIREMENTS OF AN AGENCY RULE TO A PERSON WHO IS SUBJECT TO THE RULE. A WAIVER IS A DECISION BY AN AGENCY NOT TO APPLY ALL OR PART OF A RULE TO A PERSON WHO IS SUBJECT TO THE RULE.

Your petition will be processed in accordance with applicable law. The process followed will depend upon whether your petition seeks a variance/waiver from a Pinellas County regulation and you will continue to meet all state regulations or if you are seeking a variance/waiver from a state regulation.

DEC 20 2018

**STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES**

DCF Department Clerk

**In re: Bugaboos Kids Club and
Learning Center,****Petitioner.****CASE NO. 18-040W
RENDITION NO. DCF-18-288-WO****ORDER ON PETITION FOR WAIVER**

Petitioner, Bugaboos Kids Club and Learning Center, has requested a variance of section 3.8.4(A) of the Child Care Facility Handbook, which is incorporated by reference in Rule 65C-22.001(6), Florida Administrative Code. Section 3.8.4(A), Child Care Facility Handbook, requires that during the facility's license year, fire drills utilizing the approved alarm system must be conducted monthly at various dates and times when children are in care. Rule 65C-22.001(6), Florida Administrative Code, states in pertinent part that child care programs must follow the standards found in the Child Care Facility Handbook, October 2017, incorporated herein by reference. Petitioner requests a variance of the Child Care Facility Handbook and administrative rule cited in pertinent part above so that they be permitted to use a recording of the actual alarm system monthly fire drills.

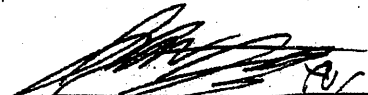
Section 120.542, Florida Statutes, permits a person who is adversely affected by an agency rule to request a waiver or variance of the application of the rule. Section 120.542(1), Florida Statutes, provides the Department discretion to grant waivers and variances to the requirements of Department rules consistent with Section 120.542 and Chapter 28-104, Florida Administrative Code. The Department cannot waive statutory

requirements, and must consider whether a requested waiver or variance from a particular rule will permit the purpose of the underlying statute to be fulfilled.

Section 120.542, Florida Statutes, requires Petitioner to demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the Petitioner. "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Petitioner has demonstrated that adherence to the Child Care Facility Handbook and rule's requirements creates a hardship or violates principles of fairness as in order to conduct a drill using the approved alarm system, the alarm would cause a fire drill for the entire campus building. By Petitioner using a recording of the actual alarm system sound during the monthly fire drills the purpose of the underlying statute and rule would be met by the granting of this variance.

Accordingly, Petitioner's request for a variance of section 3.8.4(A) of the Child Care Facility Handbook and Rule 65C-22.001(6), Florida Administrative Code, is **GRANTED**; Petitioner is permitted to use a recording of the actual alarm system sound during monthly fire drills. This variance will remain in effect as long as there is no lapse in license or a change of ownership.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 20 day of December, 2018.


Rebecca Kapusta, Interim Secretary

RIGHT TO ADMINISTRATIVE PROCEEDING

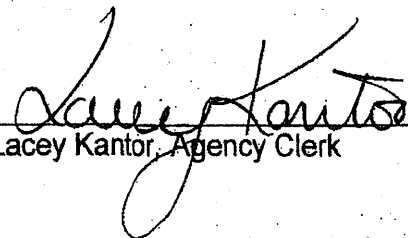
IF YOU BELIEVE THIS DECISION IS IN ERROR, YOU MAY REQUEST AN ADMINISTRATIVE HEARING IN ACCORDANCE WITH THE ENCLOSED "NOTIFICATION OF RIGHTS UNDER CHAPTER 120, FLORIDA STATUTES."

Copies furnished to the following via U.S. Mail on date of Rendition of this Order. ¹

Mariana Contreras, Owner
Bugaboos Kids Club and Learning Center
15250 S. Tamiami Trail #116
Fort Myers, FL 33908

Joint Administrative Procedures
Committee
Pepper Bldg., Rm. 680
111 W. Madison St.
Tallahassee, FL 32399

Dinah Davis
Child Care Regulation
Department of Children and Families
1317 Winewood Blvd.
Tallahassee, FL 32399


Lacey Kantor, Agency Clerk

¹ The date of the "rendition" of this Order is the date that is stamped on its first page.

NOTIFICATION OF RIGHTS UNDER CHAPTER 120, FLORIDA STATUTES

IF YOU BELIEVE THE DEPARTMENT'S DECISION IS IN ERROR, YOU MAY REQUEST AN ADMINISTRATIVE HEARING UNDER SECTIONS 120.569 AND 120.57, FLORIDA STATUTES, TO CONTEST THE DECISION. YOUR REQUEST FOR AN ADMINISTRATIVE HEARING MUST BE RECEIVED BY THE DEPARTMENT BY 5:00, P.M., NO LATER THAN 21 CALENDAR DAYS AFTER YOU RECEIVED NOTICE OF THE DEPARTMENT'S DECISION.

You must submit your request for an administrative hearing to the Department at the following address:

Agency Clerk
Department of Children and Families
1317 Winewood Blvd.
Building 2, Room 204
Tallahassee, FL 323900-0700

IF YOUR REQUEST FOR AN ADMINISTRATIVE HEARING IS NOT RECEIVED BY THE DEPARTMENT BY THE ABOVE DEADLINE, YOU WILL HAVE WAIVED YOUR RIGHTS TO A HEARING AND THE DEPARTMENT'S PROPOSED ACTION WILL BE FINAL.

If you disagree with the facts stated in the Department's decision, you may request a formal administrative hearing under Section 120.57(1), Florida Statutes. At a formal hearing, you may present evidence and arguments on all issues involved, and question the witnesses called by the Department.

If you do not disagree with the facts stated in the notice, you may request an informal administrative hearing under Section 120.57(2), Florida Statutes. At an informal hearing, you may present your argument or a written statement for consideration by the Department.

Your request for an administrative hearing must meet the requirements of Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code, depending on whether you request a formal hearing or an informal hearing. In either event, your request for an administrative hearing must:

1. Include a copy of the decision received from the Department;
2. Be prepared legibly on 8 ½ by 11 inch white paper; and
3. Include all of the following items:
 - a. The Department's file or identification number, if known;

- b. Your name, address, email address (if any) and telephone number and the name, address, email address (if any) and telephone number of your representative, if any;
- c. An explanation of how your rights or interests will be affected by the action described in the notice of the Department's decision;
- d. A statement of when and how you received notice of the Department's decision;
- e. A statement of all facts in the notice of the Department's decision with which you disagree. If you do not disagree with any of the facts stated in the notice, you must say so;
- f. A statement of the facts you believe justify a change in the Department's decision;
- g. A statement of the specific rules or statutes you believe require reversal or modification of the Department's proposed action;
- h. A statement explaining how the facts you have alleged above relate to the specific rules or statutes you have identified above; and
- i. A statement of the relief you want, including precisely the action you want the Department to take.

Section 120.569, Florida Statutes, and rule 28-106.201(4), Florida Administrative Code, require the Department to dismiss your request if it is not in substantial compliance with the requirements above.

Mediation as described in Section 120.573, Florida Statutes, is not available. However, other forms of mediation or informal dispute resolution may be available after a timely request for an administrative hearing has been received, if agreed to by all parties; and on such terms as agreed to by all parties. The right to an administrative proceeding is not affected when mediation or informal dispute resolution does not result in a settlement.