

**PINELLAS COUNTY LICENSE BOARD
IN AND FOR PINELLAS COUNTY, FLORIDA**

In Re: Skycrest Christian School, Inc.,

No: 24-001(W)

Petitioner.

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ORDER ON PETITION FOR TEMPORARY WAIVER

Petitioner, Skycrest Christina School, Inc. ("Petitioner), has requested a temporary waiver of F.S. 402.305(2)(e) as set forth in sections I.C. and I.C.1 of the Licensing Regulations Governing Pinellas County Children's Centers/4.1 and 4.2.1 of the Child Care Facility Handbook, which is incorporated by reference in Rule 65-C-22.001(6), Florida Administrative Code and is also set forth in

Accordingly, Petitioner requests a temporary waiver from the pertinent portion of the requirement that child care personnel must successfully complete DCF's 40 hours of child care training within 12 months after the date on which the training began (and it must start within 90 days of employment) as evidenced by successful completion of competency examinations offered by DCF or its designated representative with a weighted score of 70 or better.

Petitioner submitted a petition and PCLB requested additional information. It appears from the information submitted that Petitioner is requesting that for 3 current employees, A.K., A.G., and E.K. that PCLB grant them a temporary waiver from the requirement that they pass the DCF exams within 12 months from the time training began. It appears Petitioner wants an additional one to two years on top of the time permitted by the law (12 months from the time the

training began) to pass the DCF exams. Petitioner asserts that the English is not their native language and that while they are allowed to use a dictionary during the tests Petitioner assumes that passing the test in the 12 month time period will not be feasible for these three individuals. Notably, by the information submitted, A.K. has until August 29, 2024 to pass the DCF tests, A.G. has until January 4, 2025 and E.K. has until May 23, 2025. At this time E.K. has not even attempted to pass any of the 7 required DCF classes.

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. PCLB is granted discretion to grant waivers and variances consistent with applicable law. PCLB 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, F.S. requires Petitioner to demonstrate (1) that the purpose of the underlying statute will be or has been achieved by other means **and** (2) that the application of the rule would create a substantial hardship or 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.


In this case, Petitioner has not demonstrated either of the required elements for PCLB to grant the requested temporary waiver. First, Petitioner has failed to demonstrate that the purpose of the underlying statute will be or has been achieved by other means. In this instance, the rule requires child care personnel to pass all 7 of the DCF exams with a score of 70 or better within 12 months of beginning training. The DCF exams are required so that the child care employee demonstrates that he/she has the required knowledge to provide childcare in the State of Florida. Petitioner has failed to demonstrate how the underlying statute can be achieved by alternative means. In this instance the underlying purpose of the statute cannot be demonstrated by other means. The law is clear that an employee must pass the 7 required DCF tests with a score of 70 or more within 12 months from starting training in order to demonstrate competency and understanding of the regulations. Because of the explicit requirement, there is no other way to demonstrate competency other than by passing the required tests in the required time frame. Second, Petitioner has failed to demonstrate how it is suffering a substantial hardship and has not provided any facts that would indicate that denying the petition would violate principles of fairness as the literal application of the rule to it does not impact it any differently from the way it affects all other child care providers subject to the rule.

The laws and regulations are clear that in order to provide child care in Florida personnel must demonstrate competency by passing the 7 DCF tests within 12 months. There is no way that the underlying statute can be achieved

by alternative means such that a waiver can be granted. Moreover, there is no substantial hardship to Petitioner nor is there any violation of the principles of fairness as all child care providers in the State of Florida are subject to the same rules for all of their personnel.

Accordingly, Petitioner's request for temporary waiver is DENIED.

DONE AND ORDERED at Largo, Pinellas County, Florida, this 12 day of July 2024.



Faith Bornoff, Executive Director
Pinellas County License Board for
Children's Centers and Family Day
Care Homes

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 and via email on date of Rendition of this Order.

Skycrest Christian School, Inc
c/o Karen Gardner
125 N. Belcher Road
Clearwater, FL 33765
kgardner@skycrest.us

Danielle Sparks, Danielle.Sparks@myflfamilies.com
Agency.Clerk@myflfamilies.com
Agency Clerk
Department of Children and Families
2415 North Monroe Street
Sute 400
Tallahassee, FL 32303



Faith Bornoff, Executive Director

NOTIFICATION OF RIGHTS UNDER CHAPTER 120, FLORIDA STATUTES

IF YOU BELIEVE PCLB'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 PCLB 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 DCF at the following address:

Danielle Sparks, Danielle.Sparks@myflfamilies.com
Agency.Clerk@myflfamilies.com

Agency Clerk
Department of Children and Families
2415 North Monroe Street
Suite 400
Tallahassee, FL 32303

WITH A COPY TO PCLB:

PCLB
8751 Ulmerton Road
Suite 2000
Largo, FL 33771

IF YOUR REQUEST FOR AN ADMINISTRATIVE HEARING IS NOT RECEIVED 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 PCLB'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 PCLB.

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.

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 PCLB;
2. Be prepared legibly on 8½ by 11 inch white paper; and
3. Include all of the following items:
 - a. PCLB'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 interest will be affected by the action described in the notice of PCLB's decision;
 - d. A statement of when and how you received notice of PCLB's decision;
 - e. A statement of all facts in the notice of PCLB'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 PCLB's decision;
 - g. A statement of the specific rules or statutes you believe require reversal or modification of PCLB'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 PCLB to take.

Section 120.569, Florida Statutes, and rule 28-106.201(4), Florida Administrative Code, require your request to be dismissed 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.