

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

IN RE THE MATTER OF THE APPEAL OF:

BAY VISTA LEARNING CENTER, INC.

Petitioner/Operator,

vs.

NOTICE OF CLASS I ADMINISTRATIVE FINE

**PINELLAS COUNTY LICENSE BOARD
FOR CHILDREN'S CENTERS AND FAMILY
DAY CARE HOMES,**

Respondent.

**NOTICE OF SERVICE OF HEARING OFFICER'S RECOMMENDED
ORDER AND NOTICE OF RIGHT TO FILE WRITTEN EXCEPTIONS**

TO: VIA EMAIL AND REGULAR U.S. MAIL

Luke Lirot, Esq.
Counsel for Bay Vista Learning Center, Inc.
luke2@lirotlaw.com
team@lirotlaw.com
2240 Belleair Road, Suite 190
Clearwater, FL 33764

I HEREBY CERTIFY that a copy of the Hearing Officer's Findings of Facts, Conclusions of Law and Recommendations filed by the Honorable Senior Judge W. Douglas Baird regarding the September 6, 2024 hearing and a copy of the PCLB Rules of Procedure for Hearings were provided by e-mail and first class mail to the attorney for Bay Vista Learning Center, Inc. at the address shown above, this 20th day of September 2024.

PLEASE TAKE NOTICE that pursuant to §120.57(1)(k), Florida Statutes, either party has the right to file with the Pinellas County License Board for Children's Centers and Family Day Care Homes written exceptions to the Findings of Fact, Conclusions of Law and Recommendations contained in the Recommendations of the Hearing Officer **within fifteen (15) days** after service of the Findings of Facts Conclusions of Law and Recommendations. Exceptions by the Petitioner

must be served on the attorney for PCLB: Colleen M. Flynn, Esq., 311 Park Place Boulevard, Suite 300, Clearwater, FL 33759, colleenf@jpfirm.com.

Any written exceptions timely filed and in accordance with §120.57(1)(k), Florida Statutes will be considered by and ruled upon by the Board, along with the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendations, at a hearing at the PCLB Regular Board Meeting on Wednesday November 13, 2024 at 1:30 p.m. at 8751 Ulmerton Road, Largo, FL 33771 (outside conference room).

Should no exceptions be filed within fifteen (15) days, no hearing will be held and Final Agency Action adopting the Hearing Officer's Findings of Facts, Conclusions of Law and Recommendations will be entered automatically without further consideration at the PCLB Regular Board Meeting on Wednesday November 13, 2024 at 1:30 p.m. at 8751 Ulmerton Road, Largo, FL 33771 (outside conference room) imposing The Class I Administrative Fine in the amount of \$500.00 for violation of II.A.5 of the Licensing Regulations Governing Pinellas County Children's Centers.

ANY PARTY DESIRING OR REQUIRING A VERBATIM TRANSCRIPT for appeal or other purposes, may, at its own expense, arrange to have a certified court reporter report the hearing portion of the meeting. If the court reporter records the proceeding, the recordation shall become the official transcript.

JOHNSON, POPE, BOKOR,
RUPPEL & BURNS, LLP

By: 
Colleen M. Flynn, Esq.
FBN 0190470
311 Park Place Boulevard, Suite 300
Clearwater, FL 33759
Telephone: 727-461-1818
Facsimile: 727-441-8617
Attorney for PCLB

NOTICES TO PERSONS WITH DISABILITIES: If you are a person with a disability who needs an accommodation in order to participate in this proceeding, please call Karen Kirouac at 727-507-4857 at least 48 hours in advance of the meeting.

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**PINELLAS COUNTY LICENSE BOARD
FOR CHILDREN'S CENTERS AND FAMILY
DAY CARE HOMES,**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATIONS OF HEARING OFFICER**

THIS CAUSE came for hearing on September 6, 2024, at 9:30 a.m. before the Honorable Senior Judge W. Douglas Baird, acting in the capacity of Hearing Officer. Both parties were present. Colleen M. Flynn, Esquire appeared as Counsel for Pinellas County License Board ("PCLB"). Luke Lirot, Esquire appeared as Counsel for Bay Vista Learning Center, Inc. ("Bay Vista")

The issue before the undersigned was whether the facts and law supported the imposition of a Class I fine in the amount of \$500 on Bay Vista for the incident that occurred on June 17, 2024, for violation of Pinellas County Licensing regulation II.A.5.

Having heard the testimony of witnesses for both parties, observed the demeanor of the witnesses and taken that into consideration, argument of both parties, and after reviewing the evidence presented, admitting certain documentary evidence

the undersigned submits the following findings of fact, conclusions of law and recommendation based on the clear and convincing evidence presented at the hearing:

Facts

1. On June 17, 2024, a three year old male child "Z.G" was released from the care of Bay Vista to Hilaria Valencia Godinez ("Godinez").

2. Godinez was the Grandmother of another student at Bay Vista, K.C., and had authority to pick up K.C. from K.C.'s Parents.

3. Z.G. did not know Godinez.

3. Godinez did not know Z.G.

4. Z.G. and Godinez were not related to one another.

5. Godinez was not authorized to remove Z.G. from Bay Vista.

6. Godinez is not listed as an authorized person to pick up Z.G. from Bay Vista on the required paperwork maintained by Bay Vista.

7. Godinez did not sign the book signing Z.G. out from Bay Vista's care on June 17, 2024.

8. On June 17, 2024, Godinez provided a picture form of identification to a teacher, however, the teacher did not verify that Hilaria Valencia Godinez was on Z.G.'s list of authorized persons.

9. Godinez Left with Z.G.

10. On June 17, 2024, when Z.G.'s mother came to pick him up at approximately 6:00 p.m. Bay Vista did not know where Z.G. was or to whom he had been released, based on the failure of the teacher to fully compare Godinez's picture ID to the list of individuals authorized in writing to pick up Z.G.

11. Z.G. was returned to Bay Vista by Godinez after it was determined by looking at security camera footage who had removed him from Bay Vista and the family of the child to whom Godinez is related contacted Godinez and told her to return Z.G. to Bay Vista.

Conclusions of Law

1. II.A.5. of the Licensing Regulations Governing Pinellas County Children's Centers (version February 1, 2022) states:

A program is responsible for the supervision of a child until an authorized individual retrieves the child from the program. A child shall not be released to any person other than the person(s) authorized or in manner authorized in writing by the custodial parent or legal guardians. All individuals authorized to pick up a child must be identified in writing prior to release by the custodial parent or legal guardian to the program, and the program must verify the individual picking up the child is authorized by using a picture form of identification. Each child transported must be dropped at the designated location as agreed upon by the provider and the custodial parent/legal guardian and released to an authorized individual.

2. The Pinellas County Children's Center Standard Classification Summary (version April 1, 2020) at 5.2 classifies a violation of II.A.5. as a Class 1 violation stating:

Child Released to Unknown Person.

A child was released to an unknown or unrelated individual in a manner not authorized in writing by the Custodial parent(s) or legal guardian(s).

3. The Florida Department of Children and Families Child Care Facility Handbook (version October 2021) at Section 2.4.1.E contains the same regulation verbatim as II.A.5. of the Licensing Regulations Governing Pinellas County Children's Centers.

4. The Florida Department of Children and Families Child Care Facility Standards Classification Summary (version October 2021) at 4.30 classifies a violation of 2.4.1.E. as a Class 1 violation stating:

A child was released to an unknown or unrelated individual in a manner not authorized in writing by the custodial parent(s) or legal guardian(s). CCF Handbook, Section 2.4.1E.

5. Pinellas County License Board is a local licensing agency that pursuant to F.S. 402.306 must meet or exceed state minimum standards.

6. Pinellas County classifies a violation of II.A.5 as a Class 1S violation as set forth in 5.2 of the Pinellas County Children's Center Standard Classification Summary because the State of Florida classifies a violation of the verbatim regulation at 2.4.1.E of the state regulations as a Class 1 violation as set forth at 4.30 of the Child Care Facility Standards Classification Summary.

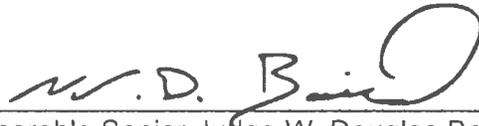
7. There is no mitigation permitted by state law for PCLB to decrease the Class 1 violation for a violation of II.A.5.

8. Based on the clear and convincing evidence, Bay Vista violated II.A.5. of the Licensing Regulations Governing Pinellas County Children's Centers on June 17, 2024, (1) when Bay Vista failed to correctly verify that Godinez was authorized to pick up K.G. from Bay Vista by comparing her picture identification with K.G.'s authorized pick up list and (2) when Bay Vista released K.G. to Godinez as she was not authorized to pick up K.G. and was not known to or related to K.G.

RECOMMENDATION

Based on the foregoing findings, it is hereby RECOMMENDED that a Class I Fine in the amount of \$500 for violation of II.A.5 of the Licensing Regulations Governing Pinellas County Children's Centers (version effective February 1, 2022) be imposed.

RESPECTFULLY SUBMITTED to the Pinellas County License Board this 19th day of September, 2024.

A handwritten signature in black ink, appearing to read "W. D. Baird", written over a horizontal line.

Honorable Senior Judge W. Douglas Baird

cc: Colleen M. Flynn, Esquire
Luke Lirot, Esq.

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PINELLAS COUNTY LICENSE BOARD FOR CHILDREN'S CENTERS AND FAMILY DAY CARE HOMES
RULES OF PROCEDURE FOR HEARINGS

1. PURPOSE:

In accordance with the authority given to this Board by its enabling acts, and in accordance with this Board's desire to conduct its hearing procedures in a fair and impartial manner, the following rules of procedure are hereby adopted. These rules shall be binding upon the Board in its hearings and shall only be subject to change by the affirmative vote of a simple majority of members. The Board may adopt further "guidelines" as it deems necessary to further assist the parties in preparing for the conduct of these proceedings, however, such guidelines shall not have the force or effect of these rules. The adoption of these rules supersedes all Board Rules adopted previously.

2. AVAILABILITY OF HEARING:

Any licensed provider or applicant who has been issued a Notice of Imposition of Fine, Notice of Intent to Revoke, Notice of Intent to Suspend, Notice of Intent to Convert to Probationary Status, or Notice of Intent to Deny Application is entitled to request a hearing under these procedures.

3. REQUEST FOR HEARING:

Providers or applicants entitled to a hearing shall, as a condition precedent to being granted a hearing, file a written Request for Hearing. Such Request for Hearing must be received by the Pinellas County License Board for Children's Centers and Family Day Care Homes within fifteen (15) calendar days of receipt of written notice of fine, intent to revoke, suspend or deny to which the provider or applicant is being subjected. The Request shall be deemed effective upon actual receipt. Failure to provide such written request within the fifteen (15) day period shall constitute a voluntary waiver by the provider or applicant of all rights to an administrative appeal and the license will be deemed suspended, revoked, or converted to probationary status, or the application denied, or the administrative fine shall be imposed.

The Request for Hearing shall contain, as a minimum, the following items:

- (a) a statement that the person filing the Request for Hearing is entitled to an appeal;
- (b) a brief statement of the action which is being appealed and the basis for the appeal; and
- (c) a specific request for relief (i.e. a request to the hearing officer to take specific action).

The appealing provider or applicant shall be limited in the scope of his or her appeal to the issues which are raised in the Request for Hearing.

4. NOTICE TO PROVIDER, APPLICANT, BOARD AND INTERESTED PARTIES:

Within two (2) working days of receipt of the provider or applicant's Notice of Appeal/Request for Hearing, the PCLB staff shall transmit to the PCLB Attorney the Notice of Appeal/Request for Hearing and the underlying action being appealed. The Attorney shall then schedule a hearing with a senior judge and this information shall be furnished by U. S. mail by the Attorney to all interested parties forthwith. Absent a waiver from the provider, the hearing must be held within thirty (30) days of the effective date the Notice of Appeal/Request for Hearing.

5. HEARINGS:

All hearings and proceedings related thereto shall be conducted according to the rules followed by the Department of Administrative Hearings, as found in Florida Statutes, Chapter 120, as may be amended.

6. APPEALING PARTY FAILS TO APPEAR:

Where a proceeding is commenced by a party pursuant to the Special Act or the procedures adopted pursuant thereto, and said party, after filing their initial Request for Hearing, fails to appear for any scheduled proceedings, such party shall be deemed to have waived their appeal, and accepted the decision of the PCLB staff as final. Further, said party agrees that the Hearing Officer is authorized by this Rule, to dismiss said appeal and submit a Recommended Order to that effect.

7. REVIEW BY BOARD:

Upon receipt by the PCLB Attorney of executed Findings of Fact and Recommendations of the Hearing Officer (Order) from the Hearing Officer, the same shall be distributed to all interested parties. Either the PCLB or the appealing provider or applicant – whichever is aggrieved by the Order – shall have the right to file written Exceptions to the Board within fifteen (15) days of their receipt of the Order. If both parties are aggrieved, then the party against whom the written Exceptions are filed, would have the right to file written Cross-Exceptions within fifteen (15) days of their receipt of the original Exceptions.

Responses to Exceptions shall be filed within ten (10) days of the service of the Exceptions, and time shall be computed in accordance with Florida Administrative Code, rules 28-106.217 and 28-106.103, as may be subsequently amended. The Board will schedule or calendar hearings in such a manner as to accommodate the time frames provided in this section and the Board Attorney will notify all parties of the date and time of the hearing.

8. WRITTEN EXCEPTIONS:

Each exception shall specify with particularity the finding of fact, conclusion of law, or recommendation which is objectionable and the reasons therefore. The exceptions themselves shall state with specificity if the finding of fact excepted to is not supported by competent substantial evidence or that the proceedings did not comply with the essential requirements of law or that the conclusion of law excepted to departs from the essential requirements of law. In accordance with Florida Statutes, section 120.57(1)(k), the Board has the right to decline to rule upon Exceptions which do not identify the disputed portion of the recommended order by page number or paragraph, do not identify the legal basis for the exception, or do not include appropriate and specific citations to the record.

Facts upon which exceptions to findings of fact or conclusions of law are based which are not set forth in the Recommended Order shall be provided by the party filing the exceptions. It is the responsibility of the excepting party to notify the PCLB Attorney so that a transcript may be promptly ordered and made available to the provider or applicant at actual cost.

9. BOARD HEARING:

All exceptions to the recommended order shall be considered at a hearing before the Board. In the event a conflict exists, the party in conflict may file a written request for continuance of the hearing, which will be considered at the hearing.

At the hearing before the Board, in cases where exceptions have been filed, each party or their representative shall each be given 15 minutes to present their argument as to why the Hearing Officer's recommended order should be adopted by the Board or why the order should be rejected or modified. The excepting party shall proceed first. The parties are limited in their presentation to matters of law and to the facts contained within the record of the administrative hearing and may not argue any facts not contained within that record. If no exceptions have been filed, no argument shall be received by the board.

Following presentations of the parties, the Board shall deliberate and either adopt the Hearing Officer's recommendation or reject or modify the recommended order, as it deems appropriate. The Board may not reject or modify findings of fact unless the Board first determines from a review of the entire record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Board hearings shall be recorded and minutes prepared following each hearing.

Any party desiring or requiring a verbatim transcript, is responsible for retaining and compensating a court reporter to record the proceeding.

10. FINAL AGENCY ACTION:

The Chairman, or in the Chairman's absence, the Secretary or designee, shall execute the Final Agency Action prepared by the Board Attorney and reflecting the decision of the Board at the hearing held on this cause. The determination of the Board becomes final within fifteen (15) days of service of the decision if not appealed.

11. APPEALS OF FINAL AGENCY ACTION:

An aggrieved party may file an appeal of the Final Agency action with the Department of Children and Families by filing a Notice of Appeal within fifteen (15) days of service of the Final Agency Action.

(July 26, 2017 – Board Approval)

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NOTICE OF CLASS I ADMINISTRATIVE FINE

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Respondent.

_____ /

NOTICE OF FINAL AGENCY ACTION

The Pinellas County License Board for Children's Centers and Family Day Care Homes (PCLB) issued a Notice of Class I Administrative Fine in the amount of \$500 to Bay Vista Learning Center, Inc., 16120 Bay Vista Drive, Clearwater, FL 33760, on July 10, 2024. Petitioner requested a hearing in accordance with the applicable rules and regulations. The hearing was held on September 6, 2024, and the Hearing Officer issued the Findings of Fact, Conclusions of Law and Recommendations of Hearing Officer recommending that the Class I Administrative Fine in the amount of \$500.00 be imposed. It was served on September 20, 2024 on Petitioner. Bay Vista did not file exceptions to the Hearing Officer's recommended order within the 15 days as required by the applicable rules and regulations.

YOU ARE HEREBY NOTIFIED that the License Board met on November 13, 2024 and took final agency action regarding the Class I Administrative Fine in the amount of \$500.00 issued to Bay Vista Learning Center, Inc. As no exceptions were

filed, no hearing was held and thus, Final Agency Action was taken by the Board adopting without further hearing the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, imposing the Class I Administrative Fine in the amount of \$500.00.

RIGHT TO APPEAL. Pursuant to Section 402.310(4) of the Florida Statutes you have the right to appeal a decision of the local licensing agency to a representative of the Department of Children & Families within fifteen (15) days from the date the Notice of Final Agency Action was served upon you. You may mail your request for an appeal of the decision to the attention of Agency Clerk, Department of Children and Families, 2415 North Monroe Street, Suite 100, Tallahassee, FL 32303 or fax 850-922-3947 or email at Agency.Clerk@myflfamilies.com. Concurrent with your request for an appeal to DCF, send a copy of it to PCLB at 8751 Ulmerton Road, Suite 2000, Largo, FL 33771.

DONE AND ORDERED at Clearwater, Pinellas County, Florida, this 13th day of November 2024.

Michael Mikurak, Board Chair
Pinellas County License Board for Children's
Centers and Family Day Care Homes

cc: Luke Lirot, Esq.
Counsel for Bay Vista Learning Center, Inc.
2240 Belleair Road, Suite 190
Clearwater, FL 33764

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Johnson, Pope, et al.
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