

1) South Carolina Department of Social Services
Gayle Robinson - Hearing officer

2) State of South Carolina Administrative Law Court
Deborah Brooks Durden - Administrative Law Judge

3) Docket No. 15-ALS-18-013 **RECEIVED**

4) Feb 19, 2015 DSS

SEP 08 2015

SC Court of Appeals

July 21, 2015 Administrative Law Court

July 28, 2015 Administrative Law Court

Pamela
Cohen

DSS

Serving Children and Families

AMBER E. GILLUM
INTERIM STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

CERTIFIED

December 16, 2014

Pamela Cohen, Director
Family Child Care Home
64 Rocky One Rd
Winnsboro, SC 29180

Cohen's DC

RECEIVED

SEP 08 2015

SC Court of Appeals

Dear Ms. Cohen:

After careful review of the information submitted to this office, we find that we must deny your application to operate a registered family child care home. According to South Carolina Code of Law Section 63-13-10 et seq., it is the responsibility of the Department to safeguard children in places other than their own homes, ensuring the minimum levels of protection. The reason for this proposed action is based upon facts and circumstances outlined in the enclosed summary statement.

You have the right to appeal the decision to deny your application in writing to the Office of Administrative Hearings within (30) calendar days of receipt of this letter. Your appeal must be in writing and mailed to the Office of Administrative Hearings, Department of Social Services, Post Office Box 1520, Columbia, South Carolina 29202-1520. Therefore, if it is your intent to appeal, you should submit your request for appeal immediately.

In addition, you may request in writing a meeting with Department staff to discuss the conditions leading to the denial and possible solutions to the identified problem. This meeting with the Department staff will in no way extend your right to appeal beyond thirty days of receipt of this letter, nullify your right to appeal, nor will the meeting necessarily resolve the identified problems. You also have the right to review the case record documenting the reasons which led to the denial of your application.

If you do not request an appeal and continue to operate after the thirty (30) day period for the request for an appeal hearing has expired, Department staff will take appropriate legal action.

Sincerely,

Cynthia S. Lara

Cynthia S. Lara, Director

Division of Early Care and Education, Office Child Care Licensing

cc: April McDaniel, Child Care Licensing Supervisor
Frankie M. Peterson, Child Care Licensing Supervisor
Sherry Smith, ABC Program Monitoring
Mary Abney-Young, Child and Adult Care Food Program

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South Carolina Department of Social Services
The Office of Administrative Hearings

Pamela Cohen

47 - DC Lic. & ABC

Petitioner,

v.

South Carolina Department of
Social Services


Respondent.

ORDER FOR
PREHEARING STATEMENT

IT IS HEREBY ORDERED that each party shall file a Prehearing Statement setting forth each party's position with regard to the following. The Prehearing Statement must be filed with the Office of Administrative Hearings and served on all parties within Fifteen (15) days of receipt of this order. The parties have a continuing obligation to update the information during the course of the proceeding.

1. The nature of this proceeding.
2. Statutory provision(s) and/or regulations supporting the issue(s) of this case.
3. Unique legal authorities upon which the appeal or defense is based.
4. The issues presented for determination.
5. The relief requested.
6. A summary of the facts supporting the party's position.
7. A list of proposed witnesses and exhibits.
8. Subpoena list with addresses.
9. Is discovery completed? If not, what remains?
10. Are all motions disposed of?
11. Estimated length of time to present your case.
12. Other special matters.

This the 8th day of January, 2015


Gayle Robinson, Hearing Officer
Office of Administrative Hearings
South Carolina Department of Social Services
P. O. Box 1520
Columbia, SC 29202-1520

DSS

Serving Children and Families

AMBER E. GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

January 8, 2015

Certified Mail

Ms. Pamela Cohen
64 Rocky One Road
Winnsboro, SC 29180

Dear Ms. Cohen:

In response to the allegation that the South Carolina Department of Social Services improperly denied your license to operate a registered family child care home and terminated your program as a Level C provider, your fair hearing is scheduled for **Monday, February 9, 2015, at 9:30 a.m.** The hearing will be held at the South Carolina Department of Social Services, Suite 302, 3150 Harden Street, Columbia, SC. The governing authority for the hearing is S.C. Code Ann. § 1-23-320 (Supp. 2014).

You can present your own case, appoint a representative or be represented by an attorney. If you cannot afford an attorney, you may call your local Legal Services Organization.

You may exercise the following rights:


- Review your case file prior to the hearing;
- Request a pre-hearing conference with your caseworker;
- Give testimony;
- Present witnesses on your behalf;
- Submit written evidence that may help your case.

You may request subpoenas be issued. However, by requesting a subpoena, you automatically accept responsibility for the cost. Most professionals charge by the hour and for mileage, and by requesting the subpoena you accept responsibility for these charges.

You should immediately notify the Office of Administrative Hearings at the South Carolina Department of Social Services at 1-800-311-7220 or 803-898-8080, if you will not be able to attend the hearing on this date. This agency will dismiss your appeal if you fail to appear at the hearing without good cause.

If you have a disability or a special communication need, such as an interpreter, which requires special accommodations in order for you to participate in the hearing, please contact us at 1-800-311-7220, to make arrangements.

Sincerely,


Gayle Robinson, Hearing Officer
Office of Administrative Hearings

GR/kf

cc: Rose Mary McGregor, Esquire, Office of General Counsel
April McDaniel, Region II Child Care Licensing
Cynthia Lara, Child Care Licensing & Regulatory Services
Sherry Smith, ABC Program, State Office
Noelle McInerney, ABC Program, State Office
Leigh Bolick, Child Care Licensing, State Office

Individual & Provider Rights 800-311-7220/803-898-8080/Fax 803-898-7269

SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, P.O. BOX 1520, COLUMBIA, S.C. 29202-1520
WEB SITE: www.dss.sc.gov

SOUTH CAROLINA DEPARTMENT OF)
SOCIAL SERVICES)

BEFORE THE
FAIR HEARING COMMITTEE

Pamela Cohen)
Case No. 47-DCLIC / ABC)

Petitioner,)

v.)

South Carolina Department of)
Social Services)

Respondent)

**FINAL ADMINISTRATIVE
ORDER**

This matter comes before the Director upon Petitioner's appeal of Respondent's action pursuant to S.C. Code Ann. §§ 1-23-320 and 43-5-150 (Supp. 2013), and 27 S.C.Code Ann.Reg. 114-180 (Supp.2013). An evidentiary hearing was held on February 9, 2015, in Columbia, South Carolina.

Prior to the hearing, with all individuals present, an explanation was given regarding the procedures used. Petitioner's attention was called to the Petitioner's right to examine the recording of the hearing. The Petitioner was also advised of the Petitioner's right to ask questions, or refute or disclaim any evidence or testimony presented by the South Carolina Department of Social Services (DSS), and to produce documents of the Petitioner's choice. Those present were also advised that no decision would be made at the hearing, but would be made at a later date. All testimony was sworn. The hearing was recorded digitally.

Those participating in the hearing were:

Pamela Cohen, Petitioner
Sherry Smith, ABC Quality Program
Caitlin Price, DSS Child Care Licensing Specialist
Rose Mary McGregor, Esq., Respondent's Attorney
Gayle Robinson, Hearing Officer

ISSUE:

The issue is whether the Department's decision to withdraw the Petitioner's registration to operate a family child care home and terminate the day care program as a Level C Provider in the ABC Child Care Program should be upheld.

EXHIBITS:

Respondent:

1. DSS Level C Provider Agreement, dated July 9, 2010; three (3) pages
2. ABC Termination Letter, dated December 19, 2014; two (2) pages
3. DSS Registration Certificate to the Petitioner, dated October 21, 2013; one (1) page
4. DSS Letter to the Petitioner citing September 4, 2014 deficiency, dated September 18, 2014; three (3) pages
5. DSS Letter to the Petitioner, dated December 16, 2014, denying Petitioner's application to operate a registered family child care home; three (3) pages

Petitioner:

None

SUMMARY OF THE EVIDENCE AND FINDINGS OF FACT:

The Petitioner, Pamela Cohen, operated a registered family child care home for a maximum of six children, including her own or related children, at any one time. Her most recent regular registration was issued October 21, 2013 and was to expire October 21, 2014. (See Respondent's Exhibit 3.)

The following events precipitated the denial of Pamela Cohen's application to renew her Family Child Care Home Registration, which was filed on October 7, 2014.

On September 4, 2014 Caitlin Price and another DSS employee made an unannounced visit to Pamela Cohen's family child care home as a result of a complaint received stating that Ms. Cohen was keeping more than the allowed six children. Ms. Price observed eight children (ages 7 months to 4 years) in the front room and three children (ages 2 to 4 years) sleeping unsupervised in a back room. Furthermore Pamela Cohen was cited for having an unqualified caregiver present who had not yet undergone both the SLED/FBI criminal background check and Central Registry check. Both deficiencies were cited as risking the health and safety of the children. (See Respondent's Exhibit 4.)

On December 16, 2014, the Petitioner was notified that her application to renew her registration to operate a registered family child care home was denied. The Department's basis for withdrawing the Petitioner's registration was based on the events occurring on September 4, 2014 in which the family child care home was over capacity, had an unqualified caregiver present, and did not provide adequate supervision. (See Respondent's Exhibit 5.)

The Petitioner signed a Level C Provider Agreement on July 9, 2010 which listed the conditions in which a day care facility must operate in order to participate in the ABC program. The Level C Provider Agreement requires that the facilities maintain a current DSS registration with a history of compliance to regulations. The Agreement further

defines history of compliance as "no frequent or multiple deficiencies or a significant event posing substantial threat to the health or safety of the children that involve supervision, compliance with ratios, or health and safety violations." On December 19, 2014, the Petitioner was notified that her participation in the ABC program as a Level C Provider was terminated based on the history of non-compliance to licensing regulations. (See Respondent's Exhibits 1 and 2.)

The Petitioner stated that she was sorry.

APPLICABLE LAW AND POLICY:

The intent of this subarticle is to define the regulatory duties of government necessary to safeguard children in care in places other than their own homes, ensuring for them minimum levels of protection and supervision. Toward that end, it is the purpose of this subarticle to establish statewide minimum regulations for the care and protection of children in childcare facilities, to ensure maintenance of these regulations and to approve administration and enforcement to regulate conditions in such facilities. It is the policy of the State to ensure protection of children under care in childcare facilities, and to encourage the improvement of childcare programs.¹

The statute provides definitions to be used in Chapter 13, Childcare Facilities:

For the purpose of this chapter:

(13) "Family childcare home" (FCCH) means a facility within a residence occupied by the operator in which childcare is regularly provided for no more than six children unattended by a parent or legal guardian, including those children living in the home and children received for childcare who are related to the resident caregiver. However, an occupied residence in which childcare is provided only for a child or children related to the resident caregiver or only for the child or children of one unrelated family or only for a combination of these children is not a family childcare home.²

Registrations issued by the Department to a family day care home operator shall be valid for one year from date of issuance, unless withdrawn by the Department or voluntarily surrendered by the operator. In addition, the number of children present in the facility at any given time shall not exceed the number specified on the registration. The Department shall withdraw the registration if the health and safety of the children is determined to be at risk or in threat of harm; or if the operator cares for more children than the number stated on the registration; or if the operator fails to comply with the registration procedures defined in statute and these regulations.³

¹ S.C. Code of Laws § 63-13-10(A)

² S.C. Code of Laws § 63-13-20(13)

³ S.C. Code of Regs. §114-528(D)(1),(3),(5)

The Department of Social Services, by law, is the licensing and regulatory authority of FCCH's. Inspections, consultations, and reporting for registered and/or licensed and/or approved FCCH come under the purview of DSS Child Care Licensing and Regulatory Services.

- (1) Upon receipt of a regulatory complaint, Department staff shall conduct an unannounced visit to the family day care home to investigate the complaint. If the complaint is written, Department staff shall provide a copy to the operator upon request.⁴

To be employed by or to provide caregiver services at a childcare facility licensed, registered, or approved under this subarticle, a person first shall undergo a state fingerprint-based background check to be conducted by the State Law Enforcement Division (SLED) to determine any state criminal history, a fingerprint-based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, and a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child.⁵

Registration expires at the end of one year from the date of issuance of the statement of registration. Registration may be renewed according to the procedures developed by the department.⁶

Department staff shall review the registration renewal materials and shall complete the following:

- (a) ~~Contact by telephone within thirty days of receipt of references the person(s) listed as new references and document their comments;~~
- (b) ~~Issue regular registration if all regulatory requirements have been met;~~
- (c) ~~Issue provisional registration when regulations can and will be met within a reasonable time and the deviations do not seriously threaten the health and safety of the children; or~~
- (d) Deny the application for registration renewal.⁷

Termination of Provider Enrollment by the ABC Program:

The ABC Program will initiate termination of an ABC child care provider's enrollment agreement if the provider fails to comply with the requirements of the ABC Program and criteria to maintain enrollment at the level enrolled. To maintain enrollment in the ABC Program at any level, a provider is required to meet regulatory requirements and attendance and payment documentation requirements at all times.⁸

⁴ S.C. Code of Regs. §114-528(H)(1),(7)

⁵ S.C. Code of Laws § 63-13-40(D)(1)

⁶ S.C. Code of Laws § 63-13-830(E)(1)(3)

⁷ S.C. Code of Regs. §114-528(D)(3)

⁸ SC DSS-ABC Child Care Program Policy Manual, Chapter 5.18(1)

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CONCLUSIONS OF LAW:

A daycare center must have adequate and proper supervision for the children in its care. In order to ensure the health, safety and welfare of the children, the law stipulates there be qualified staff and FCCH staff to child ratios. The Division of Child Care Licensing and Regulatory Services cited the Petitioner's FCCH for serving more children than she was registered to serve and for having an unqualified caregiver on the premises.

The visit on September 4, 2014 revealed that the Petitioner's daycare was over capacity, and an unqualified caregiver was present who had not obtained all the required background checks. All the citations posed a risk to the health and safety of the children in her care. The Petitioner's failure to comply with the regulatory provisions that ensure the safety of children justifies the denial of her application for renewal of her family child care home registration.

One of the basic requirements of child care providers participating in the ABC Child Care Program is to maintain the minimum licensing and regulatory requirements as defined by the law and regulations. Since the facilities registration has been withdrawn, the facility cannot participate in the ABC Child Care Program. The termination of this facility from the ABC Child Care Program was proper.

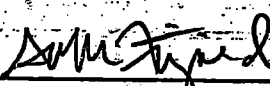
DECISION:

The Departments decision to deny the Petitioner's application to renew her registration to operate a family child care home and terminate the facility, a Level C provider, from the ABC Child Care Program, is **UPHELD**.

Fair Hearing of:

Pamela Cohen

Case No. 47-DCLIC/ABC


Director's Designee

DATED:

2/13/15

IN COLUMBIA, SOUTH CAROLINA

DSS

Serving Children and Families

V. SUSAN ALFORD
STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

February 19, 2015

CERTIFIED MAIL

Ms. Pamela Cohen
64 Rocky One Road
Winnsboro, SC 29180

Dear Ms. Cohen:

The State Director/Designee of the South Carolina Department of Social Services (DSS) has carefully reviewed the evidence and testimony at your hearing on February 9, 2015. Enclosed is the decision made by the State Director.

You have the right to initiate judicial review in the South Carolina Administrative Law Court, 1205 Pendleton Street, Edgar A. Brown Building, Suite 224, Columbia, South Carolina 29201, within 30 days of this notice, as provided in the S.C. Code Ann. §§ 1-23-600 and 63-13-460 (Supp. 2014), if you are not satisfied with this final administrative decision. You may contact the Clerk of the ALC at 803-734-0550.

The Administrative Law Court has requested that this Office inform you that a filing fee of \$100.00 must be filed directly with the Clerk of the ALC Division at the time you file an appeal. A party who is unable to pay the filing fee may request a waiver of the fee by filing a completed Request for Waiver form with the Clerk of the ALC.

Sincerely,



L. Lynn McLendon, Director
Individual & Provider Rights

LM/dh

Enclosure

cc: Rose Mary McGregor, Esquire, Office of General Counsel
Leigh Bolick, Early Care and Education, State Office
Frankie Peterson, Child Care Licensing and Regulatory Services
Cynthia Lara, Child Care Licensing & Regulatory Services, State Office
Sherry Smith, ABC Quality, State Office

March 16, 2015

South Carolina Administrative Law Court
1205 Pendleton Street,
Edgar A. Brown building suite 224,
Columbia SC, 29201

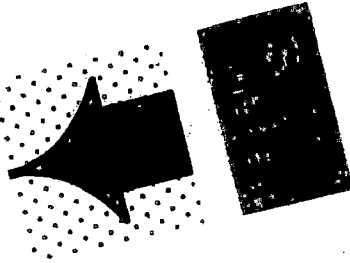
To whomever this may concern,

On September 4, 2014, Cohen's daycare was over capacity by five (5) children. The daycare is registered for six (6) children because it is in a mobile home. At that time there wasn't proper supervision for three (3) of the children that were in another room. These issues were resolved immediately and the provider, Pamela Cohen, notified all the parents to come pick up their children. At that time all the children were placed in the same room under her supervision. On October 28, 2014 the specialist, Caitlin Price, conducted an onsite visit and cited that only five children were present. She also cited that no children were alone in another room and were provided the proper supervision from the provider.

I, Pamela Cohen, am aware of my actions and I apologize for them. I understand that my daycare is only registered for six children and I will not make this mistake again. I give each and every of them my undivided attention at all times. I hope my apology is received as sincere and that I may have the opportunity to conduct my business as it should be conducted. Thank you for your consideration of my appeal.

Sincerely, *Pamela Cohen*

Pamela Cohen
64 Rocky One Road
Winnsboro SC, 29180
(803) 633-2303
Pamvcohen@gmail.com



FILED

MAR 20 2015

SC ADMIN. LAW COURT

SOUTH CAROLINA DEPARTMENT OF)
SOCIAL SERVICES)

BEFORE THE
FAIR HEARING COMMITTEE

Pamela Cohen
Case No. 47-DCLIC / ABC

Petitioner,

v.

South Carolina Department of
Social Services

Respondent

**FINAL ADMINISTRATIVE
ORDER**

This matter comes before the Director upon Petitioner's appeal of Respondent's action pursuant to S.C. Code Ann. §§ 1-23-320 and 43-5-150 (Supp. 2013), and 27 S.C. Code Ann. Regs. 114-180 (Supp. 2013). An evidentiary hearing was held on February 9, 2015, in Columbia, South Carolina.

Prior to the hearing, with all individuals present, an explanation was given regarding the procedures used. Petitioner's attention was called to the Petitioner's right to examine the recording of the hearing. The Petitioner was also advised of the Petitioner's right to ask questions, or refute or disclaim any evidence or testimony presented by the South Carolina Department of Social Services (DSS), and to produce documents of the Petitioner's choice. Those present were also advised that no decision would be made at the hearing, but would be made at a later date. All testimony was sworn. The hearing was recorded digitally.

Those participating in the hearing were:

Pamela Cohen, Petitioner
Sherry Smith, ABC Quality Program
Caitlin Price, DSS Child Care Licensing Specialist
Rose Mary McGregor, Esq., Respondent's Attorney
Gayle Robinson, Hearing Officer

ISSUE:

The issue is whether the Department's decision to withdraw the Petitioner's registration to operate a family child care home and terminate the day care program as a Level C Provider in the ABC Child Care Program should be upheld.

Tuesday, July 21, 2015

To Whom It May Concern,

Please accept my sincerest apologies for my delay in providing you with the accurate documentation. There is no excuse for my behavior. The purpose of this letter is to convey to Your Honor and the court my sincere apologies for any inconvenience or unpleasantness I have caused the Department of Social Services and the Court.

I am very passionate about my career as a child care provider and take it very serious. I am committed to providing a safe and healthy environment for all of the children under my care. I admit that I was wrong and I accept full responsibility for my behavior. I promise the court that I will never do this again. I am extremely remorseful about my actions. I ask that you consider not closing my business. I have several families who depend on me to provide care for their children while they are working. To close my business would not only be a detriment to my family it will also impact the children and families I provide service. It is a challenge for a parent to uproot a child from a daycare provider whom they are very comfortable with and I would hate to disturb the routines of the children who are currently in my care. It is a major transition for them to make to another daycare and they require routine and continuity.

I can understand that it may be difficult for the court to accept my apology, but I hope that this letter give me an opportunity to help prove my remorse and to offer some amends.

Sincerely,

Pamela Cohen

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

SEP 08 2015

SC Court of Appeals

NOTICE OF ASSIGNMENT

Pamela Cohen,

Appellant,

v.

South Carolina Department of Social
Services,

Respondent.

DOCKET NO. 15-ALJ-18-0136-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on March 20, 2015. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2014), the **Honorable Deborah Brooks Durden**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the second day of April, 2015.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

APR 02 2015

SC ADMIN. LAW COURT

DSS

Serving Children and Families

V. SUSAN ALFORD
STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

August 25, 2015

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Pamela Cohen, Director
Family Child Care Home
64 Rocky One Rd
Winnsboro, SC 29180

Dear Ms. Cohen:

On December 16, 2014, we mailed a letter notifying you that the Child Care Licensing Office denied your application to operate a registered family child care home because you were found caring for 11 children at your Registered Family Child Care Home and because an adult was found caring for children without the required criminal and child abuse background check. In that letter you were also notified of your right to appeal within 30 days from receipt of the revocation. The appeal hearing was held on February 9, 2015 and the decision was made to uphold the denial of your registration on February 13, 2015. We were then notified that an appeal was made to the Administrative Law Court. However, we received their order signed July 20, 2015 that dismissed your request for an appeal to them.

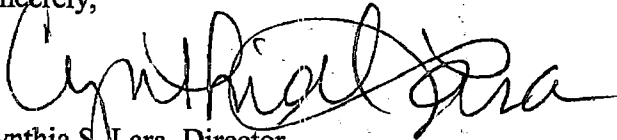
Consequently, there are no other opportunities to appeal this matter further, you must close your Family Child Care Home immediately. Failure to close your facility as directed may result in the Department seeking an injunction through the court, contacting law enforcement officials or requesting assistance from zoning officials to close the facility.

SECTION 63-13-410. Licensure required for private centers and group homes.

No person, corporation, partnership, voluntary association, or other organization may operate a private childcare center or group childcare home unless licensed to do so by the department.

If you have any questions, please call the Regional Supervisor, April McDaniel, at 803-898-9001 or me at the Child Care Licensing Central Office at (803) 898-9024. Someone will visit your facility to verify closure. Thank you.

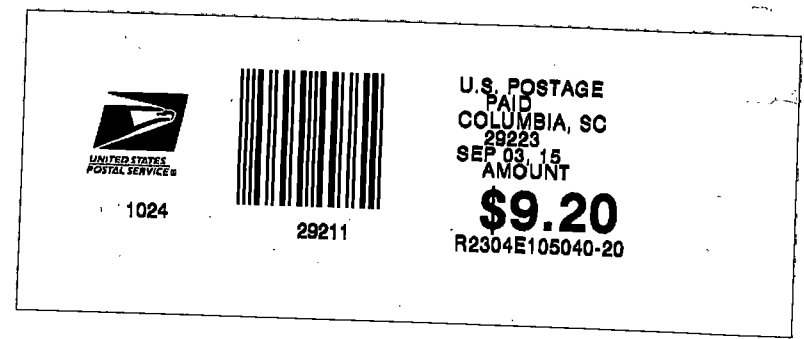
Sincerely,



Cynthia S. Lara, Director
Child Care Licensing, Division of Early Care and Education

cc: April McDaniel, Child Care Licensing Supervisor
Rose Mary McGregor, General Counsel

Pamela Cohen
64 Rocky one Rd
Winnabow SC 29180



Clerk of Court
P.O. Box 11629
Columbia S.C. 29211

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SEP 08 2015
SC Court of Appeals

