STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bernadette Simmons Brown, Harvest Time Academy, CDC, Appellant, vs. South Carolina Department of Social Services, Respondent.	Docket No. 20-ALJ-18-0021-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) for an administrative appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2019). In this appeal, Harvest Time Academy, CDC (Appellant or Harvest Time) along with its owner, Bernadette Simmons Brown, challenges the Final Administrative Order (Final Order) of the South Carolina Department of Social Services (Department or DSS) revoking Harvest Time's license to operate a private child care center[1] and terminating Harvest Time's participation in the ABC Voucher Program (ABC Program) as a Level C Provider.[2] Upon careful review of this matter, the Department's decision is affirmed.

BACKGROUND

Harvest Time is a childcare center located at 126 St. James Avenue, Goose Creek, SC 29445, license number #22890, and it was originally licensed by the Department on September 16, 2011. Harvest Time signed an ABC Program Enhanced Provider Agreement on February 28,

[1] "Childcare center" means "any facility which regularly receives thirteen or more children for childcare." S.C. Code Ann. § 63-13-20(3) (2010); S.C. Code Ann. Regs. 114-501(9) (Supp. 2019) ("A center that is licensed for thirteen (13) or more children for care.").

[2] The ABC Program is a childcare subsidy program that is administered by the Department. The program is supported by both federal and state funds and is therefore subject to both federal and state regulation. S.C. DEP'T OF SOC. SERVICES, *SC Voucher Program Policy Manual* at 14, https://dss.sc.gov/media/1793/voucher-policy-manual-vol-28-color.pdf. A level C Provider is licensed or registered with the Department and participates in the program at a basic level for reimbursement payments; Level A and Level B Providers are required to meet progressively higher standards and receive higher reimbursements. *Id.* at 123.

2018, in which it agreed to maintain certain standards, including licensure. On August 8, 2018, due to several regulatory violations, Harvest Time and the Department entered into a Corrective Action Plan (CAP) that would last through November 8, 2018.[3] Specifically, the CAP was put in place due to the following regulatory violations:

- March 15, 2017, the center was cited for having an unauthorized caregiver and ratio violation[4];
- February 2, 2018, the center was cited for having an unauthorized caregiver working alone with children, ratio violations, and improper tracking[5];
- April 20, 2018, the center was cited for having ratio violations and improper tracking; and
- June 22, 2018, the center was cited for having an unauthorized caregiver in the four-year old room, ratio violations, and improper tracking.[6]

The CAP contained the following corrective actions to be taken by Harvest Time:

> 1. The director will participate with Child Care Resource & Referral during the Corrective plan for technical assistance.
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> 2. The director will maintain compliance with the South Carolina Department of Social Services Regulations for Child Care Centers.
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> 3. The director will submit a written plan of correction within five days of signing this Corrective Action Plan. The plan must include a staffing schedule and a response to how all of the items in the Correction Action Plan will be resolved and how compliance with the regulations will be maintained.

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[3] This is not the first time Harvest Time has been subject to a CAP. Harvest Time was placed under its first Corrective Action Plan (CAP) on May 1, 2013, for a three-month period due to supervision and ratio violations. The CAP was then extended on August 5, 2013, because the facility received three additional citations. The citations were for improper tracking, ratio violations, and playground violations. In November 2013, Harvest Time's CAP was extended for a second time because the facility received three additional citations. The citations were for playground violations, improper tracking, and ratio violations that occurred on August 19, 2013, and October 14, 2013. A Final Warning Notice was mailed to Harvest Time on October 25, 2013. Thereafter, Harvest Time completed its CAP and was placed back in regular status after the expiration of the November 2013 extension of the CAP. The Department counts the original CAP and its extensions as three CAPs.

[4] Ratio refers to "Staff:Child Ratio," which means "[t]he maximum number of children permitted per teacher/caregiver." S.C. Code Ann. Regs. 114-501(30).

[5] Tracking means "[a] written procedure to account for the presence of each child as the child enters and exits the premises, enters and exits a vehicle, or moves to a new location in or around the center." S.C. Code Ann. Regs. 114-501(37).

[6] Some violations inherently result in other ones. For example, if an unauthorized supervisor is found, then the supervisor cannot be counted for ratio purposes and so a ratio violation also occurs. Similarly, a ratio violation can automatically result in a supervision violation. Therefore, multiple violations can stem from a single problem.

The purpose of the CAP was to attempt to resolve issues of non-compliance with South Carolina's childcare regulations. Furthermore, the CAP contained a specific warning that "[f]ailure to comply with this corrective action plan ***may*** result in the revocation of your approval, license, or registration." (emphasis added).

After the CAP was put into place, several other violations occurred. On September 27, 2018, Jaynie Weathers (Weathers), a Child Care Licensing Specialist for the Department, made an unannounced visit to follow-up on an anonymous complaint in which a one-year old child who attended the facility suffered a fractured sternum and bruises to his body. An Out of Home Abuse and Neglect (OHAN)[7] investigation had been initiated as a result of that complaint and the case was indicated for physical abuse, but it is unclear who was responsible for the abuse.[8] Weathers found the following three deficiencies at the facility:

- improper tracking in the two-year old room;
- ratio violation in the one-year old room (ratio was 1:7 and it should have been 1:5); and
- improper supervision[9] in the one-year old room due to the ratio violation.

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[7] OHAN is separate and distinct from the Department's childcare licensing section. The licensing section does not investigate abuse, it merely looks at regulatory requirements pertaining to licensing, such as ratios. However, improper ratios and supervision can indicate circumstances that are more likely to result in harm to children through, for example, lack of proper supervision.

[8] The Department's findings as to who perpetrated the abuse are confusing. Petitioner's Exhibit 6, the Department's Determination Fact Sheet, shows the Department indicated the case for physical abuse, but then contains conflicting statements about who committed the abuse. A series of check boxes on the front of the form show the Department checked boxes that indicate Harvest Time was not determined to be responsible for the maltreatment of the child but Harvest Time was being informed of the abuse because of its legal relationship to the child and because the child was in its care. The Department did not check the box stating, "A child has been determined to have been harmed while at your childcare facility." However, the last page of the form states the case decision to be "The investigation produced a preponderance of evidence that the child was abused by an Unknown Staff Member. Case is **Indicated**, for **Physical Abuse**." (emphasis original). The case decision makes it seem as if an unknown staff member at Harvest Time was responsible for the abuse.

[9] Supervision is defined as:

> Care provided to an individual child or a group of children. Adequate supervision requires staff awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements, and children's needs and accountability for their care. Adequate supervision also requires the director, and/or staff being near and having ready access to children in order to intervene when needed. Supervision requires adequate staff to meet staff:child ratios, being in the room at all times or on the playground at all times when children are present.

S.C. Code Ann. Regs. 114-501(34).

Harvest Time received a hand-written copy of the citations on the day of the visit. Thereafter, the Department sent Harvest Time a deficiency letter on October 26, 2018, noting the first deficiency was corrected onsite and the other two deficiencies were corrected after the visit.[10]

On October 15, 2018, Weathers made a CAP visit to the facility and found the following two deficiencies:

- improper tracking in the three-year old room, and
- ratio violation in the one-year old room (ratio was 1:9 and it should have been 1:5).

The facility was cited for these deficiencies onsite and in a letter dated November 17, 2018. The letter noted the deficiencies were corrected onsite.

On October 30, 2018, a CAP visit was made, and no deficiencies were noted.

On November 5, 2018, Weathers made another unannounced supervisory visit to follow-up on an additional complaint and found the following three deficiencies:

- two caregivers were alone in the infant room with eleven children (2:11 ratio- three caregivers were needed to meet ratio);
- an improper supervision violation in the infant room due to the ratio violation; and
- children thirty months old were in an area which was unapproved by the Fire Marshal.

The facility was cited for the deficiencies onsite, and the Department sent Harvest Time a deficiency letter on November 19, 2018. The Fire Marshal deficiency was corrected on site and the letter noted the other two deficiencies were required to be corrected "by close of business upon receipt of this letter."

On November 21, 2018, the ABC Program sent Harvest Time a letter notifying Harvest Time that they were in jeopardy of not meeting the "History of Compliance" requirement of the ABC Program because they had received at least three violations within the last six months.[11] The letter identified violations on February 1, 2018, April 20, 2018, September 22, 2018, July 24, 2018, September 27, 2018, October 15, 2018, and November 5, 2018. The letter informed Harvest Time that another violation could result in termination of Harvest Time's participation in the ABC

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[10] The Department staff's file also indicates that a final warning letter was sent out on September 28, 2018. However, the hearing officer found that there was no evidence that it was sent.

[11] The letter notes that the ABC Program previously sent a similar warning letter to Harvest Time via certified mail on August 7, 2018, but the ABC Program later discovered the August 7th letter was never delivered so they sent this letter via regular mail. Specifically, Sherry Smith, who works for the Department's ABC Program, testified the August 7th letter was not refused or unclaimed, but rather remained marked as "in transit."

Program. Notably, as a condition of participation in the ABC Program, the facility was also required to maintain a current childcare center license with a history of compliance with regulations.

After the timeframe of the CAP was concluded, the Department received another complaint on November 13, 2018. This complaint asserted the police had arrived at Westview Primary school to investigate allegations involving a child who also participated in after school care at Harvest Time. The complaint alleged that a child had reported two other students had shoved woodchips in her vagina at school. Because there were no woodchips at the primary school playground, the police then investigated Harvest Time. As a result of this complaint, Staci Turcotte (Turcotte), a Child Care Licensing Supervisor, along with a Child Care Licensing Specialist Jamal Hodges, made an unannounced supervisory visit to Harvest Time on November 30, 2018 to follow-up on the complaint. According to Turcotte, by that date "the situation in November had been resolved to a certain extent because the child no longer attended."[12]

When Turcotte arrived at the facility, she knocked and heard a man tell a young lady named Jamika to see who was at the door. When Jamika came to the receptionist area, Turcotte identified herself by name and badge but Jamika just walked away. Turcotte waited, tried to call the facility twice but time received no answer and could not leave a voicemail. After some time, Jamika came to the area again but again left without letting the Department's staff in the facility. The Department did not leave a citation with the facility that day since it was not allowed access. The Department made no further visits between November 30, 2018 and April 4, 2019.

When Turcotte returned to the office, she reported what happened to her supervisor who instructed her to complete a staffing form recommending revocation of Harvest Time's license. Turcotte admitted she "believe[d] that [Harvest Time] did call to say that we were welcome back anytime." According to Turcotte, the Department wanted to do a follow-up visit, but the child with the woodchip complaint no longer attended Harvest Time and was "no longer, um, a concern of safety there at that location" and Turcotte was "instructed to return to the facility in April."

On December 17, 2018, the Department created a "Staffing Form" as a result of the November 30th incident. The staffing form recommended Harvest Time's license be revoked for

[12] Additionally, it would appear that the allegation was later classified in April as "unfounded" and the investigation of the alleged incident did not "produce a preponderance of the evidence that the child was an abused or neglected child." Turcotte did not know whether OHAN every investigated Harvest Time for the incident or not.

not complying with regulations. The form was signed by the Child Care Licensing Director on December 21, 2018. The second page of the form included a recitation of recent negative actions involving the facility and included a statement that a "Final Warning Letter was drafted and sent on 9/27/2018."[13] This section of the form also included the following statement: "Recommendation: Due to ratio violation after Final Warning Letter, improper supervision of children on the playground resulting in an injury/potential assault of a child and denial of access to facility to complete an investigation of this incident, Revocation is recommended."

In a letter dated December 18, 2018, the Department cited Harvest Time for not allowing the Department entry to the facility on November 30, 2018. The letter advised that the deficiency was to be corrected "by close of business upon receipt of this letter." The letter further advised that failure to correct the deficiency within the timeframe allowed could result in the revocation or withdrawal of the license. Mr. Brown testified that after receiving the letter, he called the Department to find out what was going on; although he was not sure if he called the same day Harvest Time received the letter. He said he eventually spoke with the specialist assigned to Harvest Time who said they would get back to him, but Harvest Time never heard back from the Department.

In a letter dated December 20, 2018, the Department issued a "Final Warning Notice – Certified" (Final Warning Letter) to Harvest Time. In this letter, the Department specifically identified several "serious" citations for deficiencies between March 15, 2017, and November 30, 2018, and stated "***[t]hese specific deficiencies constitute a significant risk to the health and safety of children.***" (emphasis original). The letter also advised Harvest Time that it had violated the terms of the CAP and there would be no further warning.[14] Additionally, the letter provided:

> In accordance with Section 63-13-20 et seq., Code of Laws of South Carolina (1976), (Child Care Licensing Law), within two weeks of the receipt of this letter, you may file a written request with the Department for administrative reconsideration of this final warning.

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[13] As the Hearing Officer noted in his decision, there was no testimony or evidence presented that indicated a final warning letter was actually sent to Harvest Time on September 28, 2018.

[14] The Department also issued a letter dated March 4, 2019, in which the Department informed Harvest Time that the time for its license renewal was approaching on September 16, 2019. In that letter, the Department would be scheduling an appointment to visit the center as part of its renewal study determination. This letter, however, appears unrelated to the violations but is rather a standard aspect of the renewal process in which a letter is generated six months prior to a license expiring.

> Department of Social Services staff will visit your facility to verify that requirements are being met and maintained. Further violation of the Corrective Action Plan will result in the revocation of your license to operate a childcare facility. Enclosed is a brochure explaining your appeal rights in the event your license is revoked.

Thereafter, on March 28, 2019, the Department sent a certified letter to Harvest Time officially revoking its license to operate a childcare center. The letter stated Harvest Time's License was being revoked for the reasons stated in the attached "Summary Statement." The Summary Statement identified that Harvest Time was put under a CAP between August 8, 2018-November 8, 2018, for deficiencies related to (1) unauthorized/unqualified caregivers; (2) supervision and ratio violations; and (3) attendance/tracking. The Summary Statement also identified the visits with cited deficiencies on October 15, 2018, November 5, 2018, and November 30, 2018. It also referenced the Final Warning Letter sent on December 20, 2018. The Summary Statement concluded:

> The Department has attempted to work with Harvest Time Academy CDC to maintain regulatory compliance by offering several opportunities through Corrective Action Plans. The Center initially did not cooperate with SC-CCRR[15] but did agree to allow SC-CCRR to have the initial visit on October 11, 2018. SC-CCRR conducted a tracking training for the center. Due to the noncompliance with the Child Care Licensing Laws and Regulations, the Department has no recourse other than to revoke the license to operate a childcare center.

In a certified letter dated April 2, 2019, Harvest Time was terminated from its participation in the ABC Program. The letter referenced the warning letter sent on November 21, 2018, and cited Harvest Time's subsequent violation on November 30, 2018, and its license revocation as the reasons for termination. The Department specifically noted that Harvest Time "failed to maintain the appropriate regulatory document [sic] and maintain the history of compliance to licensing requirements and thus provide for the overall health and safety of the children in your care." Sherry Smith confirmed Harvest Time was terminated from the ABC Program because their license was revoked, and they did not meet the ABC Program's "History of Compliance" requirement. Smith further testified that if the Department had not revoked the license, they still would have terminated Harvest Time from the ABC Program because they could not meet the History of Compliance requirements. Mr. Brown testified that while Harvest Time received this

[15] This stands for South Carolina Child Care Resource and Referral, and it is a separate agency that provides free assistance and training for childcare centers. Harvest Time's CAP required them to receive help from SC-CCRR. R. 71.

April 2nd letter, Harvest Time did not receive anything from the ABC Program before that to indicate a problem (in other words, he testified Harvest Time did not receive the ABC Program's warning letters).

On April 6, 2019, Harvest Time appealed the childcare center licensing revocation and the ABC Program termination.

On April 26, 2019, Turcotte conducted a visit at Harvest Time and no deficiencies were noted.

An evidentiary hearing was conducted before a Department Hearing Officer on November 26, 2019. After hearing the testimony and reviewing the record, the Hearing Officer issued a Final Order on December 30, 2019, upholding the agency's decision to revoke Harvest Time's childcare license and to terminate the daycare program as a Level C Provider. Specifically, the Hearing Officer noted that Harvest Time was placed under "numerous Corrective Action Plans" and the "reasons for the CAP included several repeated serious infractions including but not limited to, improper supervision, improper tracking, and non-compliance with require staff to child ratios." The Hearing Officer further found Harvest Time refused entry to the Department on November 30, 2018, and as a result, the Department "decided it was time to revoke the Petitioner's license due to the [Department's] view, Harvest [Time] committed frequent violations and were not compliant with Child Care Licensing Laws and Regulations." The Hearing Officer found the deficiencies cited on September 27, 2018, October 15, 2018, and November 5, 2018 resulted in more violations of the CAP in place as of August 8, 2018, and "[t]he Petitioner was granted sufficient time and instruction to correct the repeated violations; however, the [sic] did [sic] cure all the issues." Based upon the outcome of the decision, the Court assumes the Hearing Officer intended to find "***they*** did ***not*** cure all the issues." Further, the Hearing Officer concluded a preponderance of the evidence supported "[t]he [Department's] view [that] the Petitioner's repeated violations and the fact the deficiencies/violations threatened serious harm to the health and/or safety of the children in the facility was enough to legally and properly revoke the Childcare License of the Petitioner." Finally, the Hearing Officer concluded Harvest Time failed to maintain a "History of Compliance" as required by the ABC Program, and its participation in this Program was, therefore, properly terminated.

The Notice of Appeal was filed on January 29, 2020.

ISSUES ON APPEAL

1. Whether the Department violated Harvest Time's due process rights when it revoked Harvest Time's license after sending the Final Warning Letter when no subsequent violations were documented.
2. Whether the ABC Program gave proper notice to Harvest Time of its intent to terminate Harvest Time's participation in the Program prior to its April 2, 2019 termination letter.
3. Whether the Department's actions were arbitrary and capricious both as to its revocation of Harvest Time's license to operate a childcare center and its termination of Harvest Time's participation in the ABC Program.

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). *See* S.C. Code Ann. §§ 1-23-600(A), (E) (Supp. 2019); S.C. Code Ann. § 1-30-10(A)(18) (Supp. 2019). Accordingly, the APA's standard of review governs appeals from decisions of the Department. S.C. Code Ann. § 1-23-380 (Supp. 2019). Section 1-23-380(5) provides the standard of review in this case. That section provides:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5); *see also* § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence.

Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

Due Process: License Revocation

Harvest Time argues it was denied due process when the Department terminated its childcare license on March 28, 2019, after the Department issued the Final Warning Letter on December 20, 2018 and found no subsequent violations. Specifically, Harvest Time argues it "was denied due process rights by being placed on notice of December 20, 2018 and in clear violation of [Harvest Time]'s constitutional statutory rights and was in excess of the statutory authority of the [Department]'s own regulations." On the other hand, the Department asserts Harvest Time was not denied due process.

Harvest Time's issue is not truly one of due process because it does not claim that it did not receive notice of the Fair Hearing in this case. Moreover, it was meaningfully heard at the Fair Hearing and it is receiving judicial review before this Court.[16] *See Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 68–69, 663 S.E.2d 497, 503 (Ct. App. 2008) ("Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth

[16] Most of Harvest Time's arguments in this section are better suited to its third issue – whether the Department's actions were arbitrary and capricious or otherwise an abuse of discretion. The Court will therefore address arguments related to the Department's abuse of its authority under Harvest Time's third issue.

Amendment of the United States Constitution." (citation omitted)); *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 65–66, 492 S.E.2d 62, 70 (1997) ("[T]he South Carolina Constitution provides no 'person [shall] be deprived of life, liberty, or property without due process of law . . . .'") (quoting S.C. Const. art. I, § 3)); *Leventis v. S.C. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 650 (Ct. App. 2000) ("The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." (quoting *Ogburn–Matthews v. Loblolly Partners*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998)); *see also* S.C. Const. art. I, § 22.

Therefore, I find no due process violation for the revocation of Harvest Time's license.

Due Process: ABC Program Termination

Appellant argues it was denied due process because the Department did not follow its own statutory provisions and policies in terminating Appellant's participation in the ABC Program. Specifically, Appellant asserts that it did not receive the November 21st warning letter from the Department and the Department failed to send the warning letter by certified mail as required.

The Department maintains Appellant's participation in the ABC Program was terminated after proper notice based upon the revocation of Appellant's license and Appellant's repeated regulatory violations. The Department contends Appellant was afforded due process because Appellant was able to participate in the final administrative hearing.

Again, this is not really a due process issue. Appellant does not contest that it received the notice of its termination from the ABC Program, a fair hearing, and judicial review before this Court. *Leventis v. S.C. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 650 (Ct. App. 2000) ("The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." (quoting *Ogburn–Matthews v. Loblolly Partners*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998)); *see also* S.C. Const. art. I, § 22. Therefore, Appellant's real issue is whether Appellant's rights were substantially prejudiced under section 1-23-380(5) by the Department's termination of Appellant's participation in the ABC Program.

The purpose of the ABC Program is to "[i]ncrease the availability, affordability, accessibility and qualify of child care for families in the state of South Carolina" and to "[a]ssist families in achieving and maintaining economic self-support and self-sufficiency." S.C. DEP'T OF SOC. SERVICES, *SC Voucher Program Policy Manual* § 1.1.1 (hereinafter *Policy Manual*). The ABC Program receives federal funding and the Department is responsible for implementing a

program that complies with both federal and state regulations. *Id.* §§ 1.1.1 to 1.1.2. The *SC Voucher Program Policy Manual* (Policy Manual) states that it "will be used by [Department] staff to determine eligibility for childcare assistance in a fair, consistent, and timely manner." *Id.* § 1.1.6.

In this case, when Appellant signed the "Level C Provider Policy Agreement," it agreed to "remain properly licensed, registered or approved at all times, as required, by state or federal law regulations and meet all applicable state and local health and safety requirements." Specifically, the Agreement also provides "the facility must maintain a current SC Department of Social Services (DSS) license/registration/approval with a history of compliance to regulation." The Policy Manual further states a provider must maintain a History of Compliance and can be terminated if they do not: *Policy Manual*, § 5.19. "History of Compliance" is defined as "[n]o frequent or multiple deficiencies or a significant event posing substantial threat to the health or safety of a child that involve supervision, compliance with ratios, or health and safety violations." *Id.* § 5.12. Frequent or multiple deficiencies means the facility has three or more deficiencies within a six-month period. *Id.* § 5.19. The Policy Manual also states a provider will also be terminated from the ABC Program if their license is revoked. *Id.* If a provider fails to meet the ABC Program requirements such that termination is warranted, then the policy manual states that a written letter shall be sent by certified mail to the provider notifying the provider of the intent to terminate enrollment along with notice of the provider's right to appeal. *Id.* § 5.20.

The Policy Manual requires the Department to send notice of termination proceedings by certified mail. *Id.* The Department sent Appellant a notice of termination in a certified letter dated April 2, 2019. The letter advised Appellant that its participation in the ABC Program was being terminated for failure to maintain a History of Compliance and comply with regulatory requirements (licensing). The letter also advised Appellant of its appeal rights. Therefore, the Department's termination complied with the requirements of the Policy Manual.

In her brief, Appellant does not challenge the notice of termination but rather cites to testimony that the Department sent a warning letter dated August 7, 2018, by certified mail, which was never delivered and remained "in transit," and, as a result, the Department sent a second warning letter dated November 21, 2018, by regular mail. Appellant denies ever receiving the November 21st letter and argues it should have been sent by certified mail, and the failure to do so rendered it a violation of the Department's procedure. The testimony of the Department's witness,

Sherry Smith, about the warning letter sent to Appellant, was indeed confusing. Nevertheless, although Smith did not give a good explanation for why she did not re-send a warning letter by certified mail or what, exactly, the Department's procedure is for how to mail warning letters, Harvest Time has produced no statute, regulation, or Department policy document requiring a warning letter to be sent by the Department. Moreover, even if a warning letter was required to be sent, Appellant failed to establish that a warning letter must be sent by certified mail. Furthermore, the Department did not terminate Appellant's participation until a further violation was noted on November 30th. And finally, even if Appellant had established that the Department violated its policy concerning warning letters, "[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law." S.C. Code Ann. § 1-23-10 (2005 & Supp. 2019).

Therefore, Appellant did not establish that the Department failed to properly issue its warning letter for the ABC Program termination and, even more importantly, that it failed to properly terminate Appellant from the ABC Program. The substantial evidence supports the Department's termination of Appellant's participation in the ABC Program and there is no evidence the Department's decision violates any of the provision of section 1-23-380(5). *Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency). Even if the Department improperly revoked Appellant's license (and therefore this was not a ground for terminating Appellant), I find substantial evidence in the Record shows the Department also properly terminated Appellant because Appellant failed to meet the History of Compliance requirements.

Arbitrary and Capricious

"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985). A party challenging a governmental body's administrative decision bears the burden of proving the agency's decision is erroneous. *Pressley v. Lancaster County*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001).

Harvest Time argues the Department's decision to revoke its license and terminate it from the ABC Program was arbitrary and capricious and "based on emotional and prejudicial behavior

by the [Department's] agent, Staci Turcotte." Harvest Time further argues the Department's decision was "clearly erroneous in view of the reliable probable and substantive evidence on the record" because the Department "stated no authority of any type of time frame that is required by law for the unannounced visit to the child care center." Harvest Time is referring to a time frame during which the Department must wait to be admitted access and before which the visit cannot be counted as a "denial of access." Harvest Time argues waiting 7-8 minutes was not long enough, and the Department's failure to take further action after the denial of access to investigate the complaint or otherwise check on the safety of the children between November 30, 2018, and April 26, 2019, displayed gross negligence in exercising its duties.

Additionally, Harvest Time's first issue, which it characterized as a due process issue, is better addressed in this section. Harvest Time argues the Department's failure to abide by its final warning letter was (1) an abuse of statutory authority, (2) a failure to apply its own regulations and procedures, and (3) is unsupported by the evidence. Specifically, Appellant takes issue with the fact that it did not receive notice of further violations after it received the Final Warning Notice dated December 20, 2018, in which the Department advised Harvest Time that it had violated the terms of the CAP and there would be no further warning.

The Department argues the Department's decisions to revoke Harvest Time's license and terminate it from the ABC Program were not arbitrary and capricious. The Department argues the agency was very patient with Harvest Time despite multiple violations and "two major incidents" —the child who broke his sternum and the child who had woodchips in her vagina. According to the Department, each of those cases presented sufficient reason to revoke Harvest Time's license. As the Department argued in response to Harvest Time's due process argument, "While a facility is under a Corrective Action Plan, ANY further violations are cause for revocation of their license." (emphasis original).

The Department's Authority to Review and Sanction Childcare Facilities

In setting forth the Department's purpose in regulating childcare facilities, the General Assembly provided that:

> it is the purpose of this chapter 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.

S.C. Code Ann. § 63-13-10 (2010). In exercising its licensing authority, the Department must investigate and inspect approved licensees such as Harvest Time. S.C. Code Ann. § 63-13-80(A) (Supp. 2019). In carrying out that function, the Department "may visit a childcare center, group childcare home, or family childcare home anytime during the hours of operation without prior notice once a year for purposes of investigations and inspections." *Id.* If the Department receives a complaint about a facility, it is required to conduct an unannounced inspection. *Id.*

The licensee has several obligations when the Department seeks to inspecting the facility or investigate a complaint. Specifically, during any visit, the director and staff of the facility must cooperate with the inspections or investigation, including providing the Department with physical access to the facility, its records, and staff. S.C. Code Ann. Regs. 114-502(C)(3) (Supp. 2019). Moreover, the director and staff are required to cooperate with the Department during an investigation of child abuse or neglect, and cooperation includes allowing access to the center for inspection and investigation of any child abuse allegation by the Department or other individuals as permitted by statute. S.C. Code Ann. Regs. 114-503(C)(2) (Supp. 2019).

If, during an inspection or investigation, the Department finds the facility has not met the minimum regulatory standards, the Department can cite the center for a statutory or regulatory violation or "deficiency."[17] *See* S.C. Code Ann. § 63-13-150 (2010). In such situations, the Department is required to "provide the owner and operator of the center with a brochure stating, in language easily understood, the rights and procedures available to the owner or operator for a hearing in accordance with the department's fair hearing regulations and the rights and procedures available to appeal a decision rendered under the department's fair hearing process." *Id.*

Deficiencies are governed by section 63-13-450, which provides:

> (A) Whenever the department finds upon inspection that a private childcare center or group childcare home is not complying with any applicable licensing regulations, the department shall notify the operator to correct these deficiencies.
>
> (B) Every correction notice must be in writing and must include a statement of the deficiencies found, the period within which the deficiencies must be corrected and the provision of the chapter and regulations relied upon. ***The period must be reasonable and, except when the department finds an emergency dangerous to the health or safety of children, not less than thirty days from the receipt of the notice.***

[17] A "deficiency correction notice" means "a written statement on the part of the department notifying a childcare facility which is not complying with any applicable regulations to correct the deficiencies stated in the notice within a reasonable time limit." S.C. Code Ann. § 63-13-20(10)(2010).

> (C) Within two weeks of receipt of the notice, the operator of the facility may file a written request with the department for administrative reconsideration of the notice or any portion of the notice
>
> (D) The department shall grant or deny a written request within seven days of filing and shall notify the operator of the grant or denial.
>
> (E) In the event that the operator of the facility fails to correct deficiencies within the period prescribed, the department may revoke the license

S.C. Code Ann. § 63-13-450 (2010) (emphasis added).

Therefore, the Department can revoke a license if a noted deficiency is not timely cured. S.C. Code Ann. § 63-13-450 (E) (2010). The Department has some discretion in the time-period during which the violation must be cured, but in non-emergency situations, the Department must give the facility at least thirty days to cure the violation. *Id.*

In addition, the Department has also promulgated regulations regarding its regulatory authority. Regulation 114-502(D)(2) provides that the Department may deny, revoke, or refuse to renew a license "if cited deficiencies ***threaten serious harm to the health and/or safety of the children***." S.C. Code Ann. Regs. 114-502(D)(2) (2012) (emphasis added); *see also* S.C. Code Ann. Regs. 114-502(A)(5)(c) (Supp. 2019) (providing the Department can deny an initial application for licensing if, during its review of the application and inspection of the facility, if it finds "one or more violations ***seriously threaten the health, safety, or well-being of the children***"). Moreover, the Department is empowered to seek an injunction from the family court to prevent a child care center from operating "when there is any violation of this chapter or of the regulations promulgated by the department which ***threatens serious harm to children in the childcare facility***" or "when an operator has repeatedly violated this chapter or the regulations of the department." S.C. Code Ann. § 63-13-160(2) & (3) (2010). Additionally, the Department can revoke a license if "the owner, director, any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 63-7-20 S.C. Code of Laws, as amended." S.C. Code Ann. Regs. 114-502(B)(4); S.C. Code Ann. Regs. 114-502(D)(1).

If the Department determines a license should be revoked, it must adhere to the following requirements:

> A licensee whose . . . license is about to be revoked must be given written notice by certified or registered mail. The notice must contain the reasons for the proposed action and shall inform the licensee of the right to appeal the decision to the director or his designee in writing within thirty calendar days after the receipt of the notice.

> An appeal from the final decision of the director may be taken to an administrative law judge pursuant to the Administrative Procedures Act.

S.C. Code Ann. § 63-13-460(B) (2010).

Time Frame

Harvest Time has presented no law or policy that requires the Department to wait longer than approximately eight minutes before determining that they were denied access. In fact, the evidence in the Record shows that a Harvest Time employee was on notice that the Department was present at the facility and waiting to be let in, and this employee, in fact, came to the front twice and saw the Department's representative but did not let her in the facility. Further, there is no evidence, for example, that a Harvest Time employee returned to the door in a reasonable time to let the Department's employee into the facility.

Clearly, the regulations require the facility to cooperate with the Department and allow the Department to enter the facility without regard for when it is convenient for the facility. Reg. 114-502(C)(3); Reg. 114-503(C)(2). Moreover, allowing the Department to return at a later time is simply unacceptable. A licensee could avoid scrutiny simply by refusing entrance thereby gaining time to cure a violation. Here, Harvest Time failed to show the Department was required to wait more than approximately eight minutes before declaring that they were denied access or that the Department's action in this regard was arbitrary or capricious or otherwise prejudiced Harvest Time such that the Department's decision should be reversed. *See* § 1-23-380(5).

The Department's Reasons for Revocation

Harvest Time complains the Department issued it the Final Warning Notice and then revoked its license without a subsequent incident. Ultimately, this Court must decide if the Department had the authority or discretion to revoke the license despite no subsequent violations occurring after it sent the Final Warning Letter or whether, by issuing that letter, the Department bound itself to its contents.

In this case, it is abundantly clear that Harvest Time repeatedly violated a number of the regulations promulgated to provide for the health and safety of South Carolina's children. Harvest Time violated the following regulations one or more times since it was placed under the CAP on August 8, 2018:

- Regulation 114-503(K); providing the requirements to be a qualified/authorized caregiver at a facility. *See also* S.C. Code Ann. § 63-13-30 (discussing caregiver requirements); S.C. Code Ann. § 63-13-40 (discussing background checks for employment).

- Regulation 114-504, containing requirements related to supervision and staff to children ratios.
- Regulation 114-505(H)(1), requiring facilities to comply with the State Fire Marshal's regulations and codes.

Harvest Time also violated the following regulations when it denied the Department entry to investigate a complaint of sexual assault after the CAP had expired.

- Regulation 114-502(C)(3) and Regulation 114-503(C)(2), requiring the facility to grant the Department access to the facility, particularly when the Department is investigating a complaint of child abuse such as sexual assault.

Ordinarily, either an individual violation or cumulative, repeated violations could be grounds for the Department to revoke a license because it, or they, "threatened serious harm" to the health and safety of children in the facility's care. *See* S.C. Code Ann. Regs. 114-502(D)(2). However, although many violations were documented in this case, no specific statutes or regulations were cited in the Department's revocation letter.[18] Furthermore, the evidence the Department presented in support of its determination to revoke was farraginous. The Court therefore will review the underlying issues supporting the Department's decision to revoke Harvest Time's license.

CAP Violations

The Department contends "**ANY**" violation(s) of the CAP is cause for revocation. Initially, the Court recognizes that CAPs are creations of the Department and are not discussed or prescribed by statute or regulation; therefore, their creation, violation, extension, or expiration are most fairly treated like a contract. The CAP signed by Harvest Time provided the following warning: "[f]ailure to comply with this corrective action plan ***may*** result in the revocation of your approval, license, or registration." (emphasis added). The word may "signifies permission and generally means that the action spoken of is optional or discretionary." *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250 (2001); *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980) ("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary."). Therefore, under the terms of the CAP, the Department had the discretion to revoke Harvest Time's license for non-compliance. Moreover, if Appellant is implying that the existence of the contract is a basis for estopping the Department's exercise of

[18] The only statute cited in the entire revocation letter is in the first paragraph where the Department state generally: "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." For example, the Department does not reference Regulation 114-502(D)(2) as a basis for its revocation.

its authority, it is notable that, as a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy. *South Carolina Dep't of Soc. Servs. v. Parker*, 275 S.C. 176, 268 S.E.2d 282 (1980).

In this case, the Department, by all appearances, did not revoke Harvest Time's license based upon violations of the CAP. Admittedly, the testimony of the Department's witness, Turcotte, was confusing. Harvest Time's August 8th CAP was put in place for three months and expired on November 8, 2018. Turcotte nevertheless testified "[s]o this one [the August 8th CAP] was extended, I believe." But she later admitted "I'm having trouble locating that second CAP here." Then upon cross-examination, she testified she "may have misspoken" and that the CAP was not extended, just violated. Yet, no evidence was ever admitted showing the CAP was extended beyond November 8, 2018. In fact, Turcotte confirmed the CAP expired before the November 30th denial of access occurred. Finally, Turcotte testified that the reason for the revocation was the denial of access and not violations of the CAP. Therefore, even if Harvest Time's violation of the CAP could be a reason for revoking its license, that was not a reason cited by the Department.

Cumulative Violations

In the letter revoking Harvest Time's license, the Department's Director cited numerous instances of noncompliance by the facility and ultimately concluded that due to that continuing "noncompliance with the Child Care Licensing Laws and Regulations, the Department has no recourse other than to revoke the license to operate a child care center." If the Court were to myopically review this case based upon the violations that occurred while Harvest Time was supervised under a CAP, despite the Hearing Officer's finding to the contrary, the evidence in the Record did not establish that the CAP violations were not cured.[19] However, simply because the Department exercised its discretion ***not*** to revoke Harvest Time's license after each of Harvest Time's CAP violations prior to the CAP's expiration, does not mean that those past violations cannot be considered by the Department in reviewing Harvest Time's compliance history. Indeed, the Department has the discretion to characterize a single violation, or repeated violations, as a serious threat of harm to the health and safety of the children in its care.

[19] The Hearing Officer concluded "[Harvest Time] was granted sufficient time and instruction to correct the repeated violations; however, the [sic] did [sic] cure all the issues." It is notable that the typos in the Department's records may have hindered the Hearing Officer from recognizing that Harvest Time cured their violations.

Unquestionably, as written, the statutes and regulations governing this type of case provide no limits to the amount of violations that can occur and then timely be corrected. *See* § 63-13-450. Thus, if this Court were to disregard the Department's autonomy in supervising these facilities based upon the facilities' overall compliance with the laws governing their licensing, curing a violation under a CAP would foreclose an overall review of the licensee's compliance history no matter how egregious the history. This concern is exemplified by the procedural history of this case, itself. Harvest Time was not just placed under a CAP in 2013 but had its CAP extended twice in 2013 because of multiple violations that occurred while it was under the CAP. Nevertheless, Harvest Time's license was never revoked while under the CAP because, although it kept violating the regulation, it cured the violations after they were discovered and eventually complied with the regulatory laws for a sufficient period of time.

Regulation 114-502(D)(2) provides that a license may be revoked by the Department "if cited deficiencies threaten serious harm to the health and/or safety of the children." Although there is no statute or regulation that defines a serious threat of harm, it is within the Department's discretion, and subsequently the hearing officer's discretion during a fair hearing review, to determine when this threshold is met. In this case, the Hearing Officer determined that Harvest Time's repeated violations and the fact the deficiencies/violations threatened serious harm to the health and/or safety of the children in the facility supported revocation of the license. And, indeed, the number and severity of the violations in this case, including the denial of access, support the Hearing Officer's conclusion that these repeated violations represent a threat of serious harm to the children in Harvest Time's care. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

Additionally, although the Court found no statute or regulation that defines a history of compliance, the *SC Voucher Program Policy Manual* explains that: "History of compliance is defined as having 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." § 5.12. "Frequent" is defined as having "three or more violations that pose a substantial threat to children's health and safety within a six-month period of time." *Id.* "Substantial threat" to the health and safety of the children is defined as "any action, condition or event that results in a child being placed in impending danger or harm." *Id.* I find that these

definitions reasonably identify the proper scope of review concerning history of compliance. In this case, Harvest Time had over three violations in a six-month period that threatened the health and safety of the children in its care. Therefore, there is substantial evidence to support the Hearing Officer's determination that Harvest Time was properly terminated from the ABC Program for violating the History of Compliance requirements. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

The Appellant also contends that since the Department issued its Final Warning Letter before its determination to revoke Harvest Time's license, a subsequent violation after the issuance of the Final Warning Letter was needed to provide grounds for revocation. Specifically, Appellant emphasizes that the Department's Final Warning Letter states:

> Department of Social Services staff ***will visit your facility*** to verify that requirements are being met and maintained. ***Further violation of the Corrective Action Plan will result in the revocation of your license to operate a child care facility***. Enclosed is a brochure explaining your appeal rights ***in the event your license is revoked.***

(emphasis added).

At the outset, since the Final Warning Letter was sent in December and the CAP expired on November 8, the letter could not be invoking supervision under the CAP since it was no longer in effect.[20] Therefore, the statement regarding a further violation of the CAP that was no longer in effect was either erroneous or superfluous. Moreover, even before the Final Warning Letter was sent out, the Department had made a staffing decision to move forward with revocation, which was initiated on December 17, 2018, and approved by the Department Director on December 21st. Although the intermediate action by the Department in sending out a Final Warning Notice on December 20th reflects some level of incompetency, Harvest Time has not presented any law setting forth that the staff's inconsistent position forecloses the Department Director's authority to revoke the license if a violation or repeated violations represented a serious threat of harm to the health and safety of the children in Harvest Time's care.

Thus, although Harvest Time rightfully objects to the mixed message it received from the Department as a result of the Final Warning Letter, Harvest Time nevertheless presented no law

[20] And, if it was in effect, the Court's holding above that the violation of the CAP could not be a reason for revocation would be incorrect and Harvest Time's license would have been properly revoked for violating the CAP.

to this Court that such incompetency forecloses the Department's authority to act upon the serious threat of harm emanating from Harvest Time's denial of access to the facility and further consideration of the cumulative violations that it had incurred in the past. Moreover, although the Department's Final Warning Letter references that future violations will result in revocation of Harvest Time's license, it does not state that the Department will "only" revoke Harvest Time's license if it has future violations. In fact, the Final Warning Letter states that one or more "serious" deficiencies were noted at the facility and the collective violations created a "significant risk" to the health and safety of the children in Harvest Time's care. Thus, even the Final Warning Letter itself could be construed as finding the violations "threatened serious harm" to the health and safety of the children, and thus support the Department's decision in this matter. And, indeed, the Hearing Officer found "[i]t is the [Department's] view [Harvest Time's] repeated violations and the fact the deficiencies/violations threatened serious harm to the health and/or safety of the children in the facility was enough to legally and properly revoke the Childcare License of the Petitioner."

Denial of Access

The Department's Director specifically referenced Harvest Time's denial of access to the Department on November 30, 2018, as a reason for revoking Harvest Time's license. The Department's witness, Turcotte, also confirmed that it the denial of entry on November 30th was a reason for the revocation. Turcotte explained that denying access is a serious issue because the Department needs to be able to check on the safety of children at any time. The Department thus argues the denial of access was a serious enough threat to the safety of children on its own to warrant revocation. Harvest Time contends that this ground is not supported by the evidence because the incident was not serious enough to warrant the Department's staff to go back to the facility after the incident to check on the children. Harvest Time notes the Department, instead, issued a Final Warning Letter, waited four months to revoke the license with no subsequent violation, and waited almost five months to return to the facility.

Initially, the Court finds the Department staff's explanation for waiting to be deficient. The Department claimed that since the child who was alleged to be the victim of sexual abuse was no longer at Harvest Time's facility, there was no longer an urgent need to visit the facility. However, even if the particular child was no longer attending Harvest Time, by the time the Department visited on November 30th, if a licensing issue had contributed to the alleged sexual assault of a

child, then it should not have mattered whether the child still attended the facility or not; the circumstances existing at the facility could lead to other children being exposed to harm too. Thus, the Court finds the Department's reasoning for why the situation was less serious after the child left the facility to ring hollow.

Nevertheless, the Hearing Officer reviewing this case found that the denial of access was the violation that triggered the Department to seek revocation because Harvest Time had accumulated one too many violations. Accordingly, to find in Harvest Time's favor regarding this issue, this Court would have to conclude that determination was arbitrary or capricious because the Department's employees failed to return to the facility. For instance, Harvest Time contends Turcotte was prejudiced against them. However, Turcotte testified she was instructed not to return to the facility until April 2019, and I do not find the Record supports any indication of prejudice on her part. Moreover, the Department's belated actions in failing to return to the facility to investigate the sexual assault allegation does not support a conclusive inference that the allegation was not serious or a valid reason for revoking Harvest Time's license. The staff's failure to further investigate the complaint does not remove the specter of the seriousness of the issue, and thus its relevance as a ground for revocation despite the ill-timed Final Warning Letter.[21]

Conclusion

The Record contains substantial evidence that the cumulative violations, including the denial of access during an investigation of an allegation of sexual assault, constituted a serious threat of harm to the children in Harvest Time's care, which is a proper ground for revocation under the law. While the Department's ill-timed issuance of the Final Warning Letter is unfortunate, there is ample evidence that the Department's decision to revoke the license was not made without a rational basis or at the pleasure of the Department without any adequate determining principles. *See Deese*, 286 S.C. at 184–85, 332 S.E.2d at 541 ("A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.").

[21] Notably, since Final Warning Letter was sent in December and the CAP expired on November 8th, Harvest Time could not actually subsequently violate the CAP because it was no longer in effect.

ORDER

IT IS THEREFORE ORDERED that the Department's decision to revoke Appellant's license is AFFIRMED.

IT IS FURTHER ORDERED that the Department's decision to terminate Appellant from the ABC Program is AFFIRMED.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

August 21, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

August 21, 2020
Columbia, South Carolina