



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case #16-090-9008
Jacob's Ladder Child Care

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving complaints of possible rights violations involving a child with disabilities who received services at Jacob's Ladder Child Care. The allegations were as follows:

- 1. Inappropriate discharge and denial of services.**
- 2. Facility will not allow parent access to child's records.**

If found substantiated, the allegations would violate the Department of Children and Family Services (DCFS) Licensing Standards for Day Care Centers (89 II Admin Code 407).

Jacob's Ladder Child Care is a day care service that serves mostly the Eureka, IL. area but also provides care for some children from Washington and East Peoria, IL. The facility is licensed to serve 63 children. The facility has 16 employees.

Complaint Statement

The complaint states that a child with a Down Syndrome diagnosis was removed from daycare because he could not keep up developmentally. According to the complaint, the daycare advertises that they serve children with special needs and made no statement about the child's diagnosis when the child's mother applied. Allegedly, there were no reported problems with the child during the 6 months he received service. Without advance warning, the child's mother reportedly received a letter from the day care stating they could no longer serve the child because he was not at the same developmental level as other babies. The parent removed the child from the facility. Additionally, the decision to discharge the child was made at a board meeting and the parent was reportedly denied notes when requested.

Interview with staff (1/20/2016)

The facility staff began by stating only two children with disabilities have been enrolled at the facility and the facility does the best that they can to provide service unless they do not have the means to help the children. The child involved with this complaint was one of the

children and the other child had been enrolled since the child was six weeks old. The diagnosis was discovered while the child was enrolled. Staff explained that typically parents will discuss the child's disability and services before the child is enrolled. Staff said they could not provide the services needed for either child.

Staff stated that the child's mother received a tour of the facility and enrolled the child without mentioning that the child was diagnosed with Down Syndrome; the facility discovered the diagnosis through another teacher who knew the family. There was not even a statement in the admission paperwork indicating that the child had Down syndrome as per staff. The facility staff discussed the diagnosis with the child's mother on the child's first day and she stated that the child had no delays but, throughout the child's time at the facility, they noticed otherwise. Staff explained that the child was not mobile and could only roll if placed on the ground. There was a suggestion made to put the child in a car seat all day but they could not do that. Staff reported that therapists started coming to the school but the child's mother would not inform the school when they were coming. There were four different therapists coming to the day care and they were all from outside sources. They stated that the child's mother would not cooperate with asking the therapists to not come during naps. The therapists provided occupational, speech, feeding and physical therapy. The staff said that the child's mother would not provide them with any information regarding the child. The child's mother would give the staff eye glasses and hearing aids without the direction to figure out how to use them.

Staff said that the child cried all day no matter what interventions were attempted. They stated that they had to feed the child in a high chair and would need to set the child there for 30 minutes prior to feeding. The child was upset during this time. The child would try to throw himself off the changing station. Staff explained that the room ratio is one caretaker for every four children, but with this child, there was always another staff member in the room. Staff said that they did not know what to do to help the child because he seemed so miserable and not even the two staff members could keep him happy. According to staff, they were unable to communicate with the student's mother because she never wanted to discuss the situation and she would ignore them. Eventually they contacted the DCFS licensing representative who advised them on the situation. He was too big to be in the infant room but did not accomplish the needed milestones to go into the toddler room as reported by staff. They did not have cribs in the toddler room and they thought it would be dangerous because of his immobility. He would just lay there and they did not want toys dropped on him. The board decided that the facility could no longer take care of the child and it was felt that the child was not happy at the facility, so they voted to discharge the child from the facility. The facility said that they tried to contact the child's mother but they could not reach her over the telephone, so they sent a letter to her, as well as referrals, per DCFS. As soon as the child's mother received the letters, she removed the child from the day care even though she was given 30 days. The facility said that they would help to find a new day care and had actually found facilities that would take the child but the child's mother did not want the help. Eventually the child's mother called and asked if they could use another week at the facility. Six people came to pick up the child that first day and asked questions, including the board contact information that day. Someone in the family contacted DCFS and made an official complaint and the outcome of the complaint was that DCFS required staff training regarding disabilities and they were trying to schedule a presenter. According to the staff, DCFS had findings because the facility did not have a conference with the student's mother.

Staff stated that there is no different acceptance criteria for children with disabilities but they cannot accept a child if they do not have staff or resources to take care of the child. The child was at the facility for five or six months. The other child with a disability was at the facility from the age of six weeks until the child was two years old. That child was not mobile and could not graduate to the toddler room. With that child, they even extended the child's time at the facility a month or two until the child's mother found another facility. Staff explained that they involve DCFS with discharge. In this case they tried to talk to the child's mother but staff stated that she was not communicating. They wrote on daily sheets that are passed back and forth about the children as a communication means and she stopped picking up the child. The board president said to follow up with a letter and they sent that to DCFS as well. The letter said they are having a hard time meeting the needs of the child and they listed a date for the discharge. Staff reported that they have no documented admission policy or procedure but the enrollment information has expectations in them such as admission forms being completed. When there is someone with interest, they contact them and give them a tour of the facility and try to introduce them to the teacher. The interested family receives an information packet with documents that need completed. There is no grievance policy written in the policy book but family can go to staff with a grievance and can speak with the board. Staff will also contact the board if a parent is upset. There is a place in the admission information where families can fill out medical information and the child's mother only mentioned that the child has reflux and nothing about the child's diagnosis or the needed therapy. When asked on the first day, the child's mother said that she thought she had told them. The facility told the child's mother that they would do what they could and provide child care for the child as long as they could. They never had a formal meeting regarding needed accommodations. Staff explained that according to DCFS, if a child needs accommodations, they do whatever they can do to help. The facility said that they do not have a written policy on accommodations but the board has been compiling one. DCFS also told staff to try and corner the child's mother to speak about the discharge but she would not sit down and talk. Staff said they thought they tried hard to accommodate the student and they tried to make him happy. Staff said that there is no formal appeal process but parents can request a meeting with staff and a meeting with the board but neither of these were accepted by the child's mom. Staff explained that the facility is not intended to deal with major special education issues and they do not have needed items to assist. They also stated they do not always have funding for a one-on-one aide. They stated that they do not advertise about accepting children with special needs. They attempted some accommodations such as using a highchair, but the child was too big. They also tried holding the child, and they tried involving two teachers (including the administrator taking him into her office when crying). They also tried to work with the therapist on ideas to work with the child's mobility. Staff explained that if a parent came to the facility and told them that their child had a disability, they would tell them that they would help them for as long as they could. They stated that in order for the child to graduate to the next class, they have to accomplish milestones, such as eating regular food, mobility, sitting in a chair and sleeping in a cot. This child was not eating table food and was not moving at all as per staff. With another child that was unable to sit, they bought a highchair that would hold them but this child would not fit into that chair according to staff. Staff reported that this child would also throw himself off a cot and would roll on top of other babies.

Staff said that they have never been contacted about releasing information to anyone. They said that a family member emailed the president of the board about obtaining a copy of the board minutes. Staff explained that they had decided to not release the board meeting minutes

until they could meet with the parents but there was no response from the parents when the facility requested a meeting. Staff said they never informed the family that the child would be discussed at the board meeting. They did not think the meetings would help the parents without having a discussion. The facility felt like they were being treated like a public entity even though they are not; they are an entity of the church and the board is not a public board. Staff explained that they receive a small amount of DCFS funding and they also have a very low number of state funded children, but they do recognize that they must follow DCFS regulations. Staff explained that they do not keep many records. They have enrollment papers, physicals, etc. and they will document behavior issues. They start documenting short reports on students when they are in the toddler room. They stated that they probably do not have a procedure for providing records to families but they would be willing to provide records. Staff said that they never started documenting information about this child until the child's mother stopped communicating.

FINDINGS

With proper consent, the HRA reviewed resident records and facility policy that pertain to the allegations in this case. The HRA also combined the two complaints because they are part of the same issue of discharge.

Complaint #1 - Inappropriate discharge and denial of services and Complaint #2 - Will not allow parent access to child's records.

The HRA reviewed the facility child care parent policy handbook, and in the handbook there is no mention of children with disabilities. The handbook states that the center serves children from 6 weeks to 10 years old and also has a before and after school and summer program for children ages 6 to 12. In the admission criteria, it states that the facility "... does not discriminate on the basis of race, color, national and ethnic origin in administration and admission policies." In the payment section, it reads "Because individual classroom fees are based on child/staff ratios, parents must pay the fee for the room that their child is in until there is an opening in the next classroom allowing their child to be moved up." Another section of the policy handbook discusses the age related expectations. They state that at 15 months, infants will typically move to the Toddler Room, which has more of a structured schedule but bottles and pacifiers will not be used. Additionally, toddlers will sleep on a cot and sit at a low table for meals. Also, the handbook discusses children working on being potty trained between the ages of 2 and 3 with the goals of being completely trained before they move into the 3 and 4 year old room. The facility also presents guidelines for bottles, transitioning off baby food, self-feeding, and using open cups. A section of the handbook titled "Discipline" describes the procedure taken regarding discipline and reads "If a behavior problem persists, parents will be notified and a joint effort will be made to help the child solve the problem. Attempts will be made to meet the child's individual needs, but if the child continues to demonstrate inability to benefit from the type of care offered by Jacob's Ladder Child Care, or whose presence is detrimental to the other children, he/she shall be discharged from the Center. In all instances, when Jacob's Ladder Child Care decides that it is in the best interest of the child or any part involved to terminate enrollment, the child's and parent's needs shall be considered by: (1) a parent conference, (2) notification in writing, (3) a two-week notice, and (4) referrals to other agencies that offer

comparable service to Jacob's Ladder."

The admission application for the child does not have a statement completed regarding the child's diagnosis. Under medical concerns it is stated that the child has hearing loss, holes in his heart, strabismus, aspirates, and needs medication for acid reflux and constipation. The HRA reviewed a letter from the Director of the facility to the child's mother on 7/30/2015. The letter reads "Once a month we have a board meeting with the board of directors for Jacobs Ladder Child Care. This month there was concern brought up about [child] and his development. [Child] is at the age to move up to the toddler room. At this point, there is not any way that we can move [Child] up to the toddler room because of his developmental delays. We do not have the proper equipment in the toddler room to accommodate him right now. We also can not keep him in the infant room much longer because of the DCFS guidelines. The board came to the decision that it would be best for [Child] if alternative care was found for him. As much as all the teachers and staff love having [Child] in our care, we feel as though we can not provide him with the care that he needs to continue to grow and meet his milestones. The board has decided to give you until the end of August (August 28th) to find another place to care for [Child]. We will continue to provide him with the care he needs until that day. The board and the staff at Jacobs Ladder only want the best for [Child] and his progress. We are so sorry for the inconvenience of this situation, but feel that it is best for everyone involved. Please let me know if you have any questions or concerns about this. If you would like to talk to any of the board members about the decision, please let me know and I will get you any information you need. Below is a website that might help you find additional resources to help." A website is included in the letter. Another letter, dated 8/11/2015, which is 12 days after the initial letter, reads "I have called several child care facilities in the area and found a few that are willing to care for [Child]. I spoke to each of the directors of the child care facilities listed below and explained the situation. Each directors names is listed and they are all expecting calls from you. Let me know if I can help in any other way." In the letter there was contact information for 3 referrals.

The facility shared a copy of some written notes from 8/10/2015 and 8/11/2015 which describe the child's day at the facility and interactions with the child's mother. These notes are written after the child was already dismissed from the facility. On 8/10/2015 the child was dropped off by a family member that the child's mother "wouldn't even enter room to drop him off" and that was considered "Very out of character. Normally she comes in and talks to all the other kids." The notes read that the child became "fussy" before his morning nap and was hard to change and was crying in his crib. They stated he finally fell asleep and the times noted were 9:15am to 9:40am. They tried to feed the child around 11am but he would not eat very well and then it was noted that the child's mother contacted the facility because she had forgotten to leave Tylenol for the child because he was teething. They laid the child down again at 12:40pm and he started crying and finally fell asleep at 1:05pm. At 1:40pm the child woke up crying and they said that he was "inconsolable." At 2pm they gave him a fresh diaper and it took two teachers because the child was thrashing around. He continued to cry and at 2:45pm and they gave him another bottle. The child was picked up at 4pm by his mother and a family member and it stated that they were not talkative and they went over the child's daily sheet but received very little response back. On 8/11/2015 the child's mother dropped off the student and said that the student had therapy coming at 2pm. The notes read that the child became inconsolable after she left and "We laid him down in his crib. He continued crying we tried patting him and it made him cry and thrash around even more" and "It took him from 9:35 to 10:05 to calm down and fall asleep." The notes read that he was happier when he woke up from the nap. At 11:45am it took

two teachers to change the child because he was thrashing around and it took him 25 minutes to fall asleep because he was crying and thrashing around in his crib. The notes stated that they woke him up at 2pm because of the physical therapy but they did not show up until 2:30pm and it took two of them to change the child again. It was noted that the facility staff discussed the arrival time with the therapist and they stated they told the parent between 2:30pm and 2:45pm and that this was not the first time that the facility received the incorrect time. The facility provided no other notes documenting the child's behavior while at the facility.

Regarding the complaint that the facility would not allow the parent access to the child's records, the HRA requested policy regarding records but did not receive any policies. The facility handbook reads "The information, which a day care center may give out concerning a child or the child's family, is restricted by law. Jacob's Ladder Child Care may not give out information to an individual, an agency, a school district, a hospital, or any other persons without first obtaining permission from the parent or guardian to do so."

Through the process of the investigation, the HRA discovered that DCFS had investigated the situation and there were findings. The HRA spoke with DCFS about the complaint and staff referred to a website which contained compliance reports for the day care facilities that contained the findings of the investigation. According to the Sunshine Illinois Accountability Project website through DCFS (www.sunshine.il.gov), after a visit by DCFS on 8/7/2015, the facility was found in violation of rules. The website indicated the corrective plan date was to begin 8/20/2015 and end 9/30/2015 and the status of the corrective action plan indicated that it had been corrected. According to the website, the rules violated were "When the needs of individual children dictate, additional staff may be required to meet the needs of all children. The appropriate ratio shall be determined through consultation among the parent, staff, resource personnel and the Department" (89 Il Admin Code 407.190 (g)). The additional rules violated were "The day care center shall enroll only those children eligible under the center's written enrollment policies. The center shall not use eligibility criteria that screen out children with disabilities, and shall make reasonable modifications in policies, practices and procedures to accommodate children with disabilities" (89 Il Admin Code 407.250 (a)) and "In all instances, when a facility decided that it is in the best interest of the child to terminate enrollment, the child's and parents' needs shall be considered by planning with the parents to meet the child's needs when he or she leave the facility, including referrals to other agencies or facilities." (89 Il Admin Code 407.250 (k)).

The HRA also reviewed additional standards not cited in the DCFS complaint. A section of the standards states that: "j) Any child who, after attempts have been made to meet the child's individual needs, demonstrates inability to benefit from the type of care offered by the facility, or whose presence is detrimental to the group, shall be discharged from the facility." (89 Il Admin Code 407.250 (j)). Another part of the standards requires that: "c) The day care center shall provide publicly available written statements that include the following and that are given to parents at the time their child is enrolled in the facility: ... 7) Admission, enrollment, and discharge policies and procedures: A) Hours of operation; B) Information regarding part-time enrollment, if applicable; C) Holiday and vacation schedules" (89 Il Admin Code 407.250 (c)). Also, "n) When a specific plan is developed to meet a child's individual needs, the record shall include: 1) Any assessments by center staff or resource personnel; 2) Written program recommendations and goals for the child; 3) A written plan for implementing those recommendations within the program; 4) Periodic written evaluations of whether goals are being met; 5) Adjustments to the program plan as indicated by the evaluations. 6) Staff shall consult

with parents before implementing any special procedures required to meet a child's individual needs.” (89 II Admin Code 407.200)

As far as regulations pertaining to the second complaint, the DCFS licensing standards for daycare defines a “governing body” as follows: “‘Governing body’, as used in this Part, means the board of directors of a corporation. Otherwise, the term means the owners or other persons, agency, association or organization legally responsible for the operation of the day care center that serves as the policy-making authority and that exercises general direction over the affairs of the facility“ (89 II Admin Code 407.45) and “a) The members of the governing body of the day care center shall be legally responsible to the Department for maintaining the standards set forth in this Part. The members of the governing body shall be of reputable and responsible character. The governing body may delegate responsibility for day-to-day compliance with the standards to the day care center director ... b) The governing body shall file with the Department written policies outlining any delegation of responsibility for compliance with this Part and lines of communication among the governing body, facility staff and parents. This statement shall be signed by the governing body and the day care center director with updates as changes occur” (89 II Admin Code 407.70). The regulations also read “b) Information pertaining to the admission, progress, health, or discharge of an individual child shall be confidential and limited to facility staff designated by the child care director and Department representatives unless the parent(s) of the child has granted written permission for disclosure or dissemination. 1) The facility shall have confidentiality release forms signed by the parent(s) which specify to whom information may be released and the length of time the release form is valid. Such release forms shall be on file at the facility prior to the release of confidential information.” (89 II Admin Code 407.80). The HRA found no direct standards determining that board meeting minutes must be provided to parents.

Complaint #1 & 2 - Conclusion

After reviewing the provided documentation, the HRA discovered no evidence of any planning with the parents to address the child’s needs as part of the discharge process and as required by DCFS licensing standards (89 II Admin Code 407.250 (k)). Additionally, the section of the Parent Handbook that addresses discharge, indicates that the parent’s needs will be considered by a parent conference, notification in writing, a two-week notice, and referrals to a comparable agency but neglects to address the standards requirement of planning with the parents to address the child’s needs. There was also no documentation indicating that there were any accommodations made for the child or demonstrated inability for the child to benefit from the type of care provided by the facility nor was there documentation indicating that the child’s presence was detrimental to the group (89 II Admin Code 407.250 (a) & (j)). The facility failed to document specific reasoning for the discharge besides the child’s general “developmental delays” cited in the discharge letter to the parents and the facility failed to document the attempted use of accommodations or reasons why accommodations could not be used, only that they did not have the proper accommodations. The only planning for the child’s needs consisted of the letter to the parents about the board decision and referrals which came later; and the parents were not part of either process. DCFS regulations (89 III. Admin. Code 407.200) also allow for the development of a written plan to meet an individual child’s needs; however, no such plan was developed for this child before considering discharge. The HRA recognizes that the facility stated that the student’s parent was reluctant to communicate with them but again saw

no evidence of that reluctance documented until after there had already been a letter sent to the parent stating that the child was discharged. Also the regulations are clear in making that statement that the discharge planning needs to be with the parents. Instead, a letter documented a board meeting at which the board decided to discharge the child; according to staff, the parents were not informed of the meeting. **Because the child was discharged without any documented attempts to provide accommodations, without any discharge planning activities prior to sending the discharge letter and without any parental involvement in the discharge decision/planning, the HRA substantiates the complaint that there was an inappropriate discharge and service denials and recommends the following:**

- To ensure compliance with DCFS requirements (89 Ill. Admin. Code 407.250 (a)), create policy and procedure that assure the facility is making reasonable modifications in policies, practices and procedures to accommodate children with disabilities and train staff in these policies and procedures. Provide the HRA with documented evidence that the facility has policy and procedure in place regarding accommodations for children.
- Update discharge policy and procedure to assure that parental planning is part of the process to assure the facility in compliance with regulations regarding discharge (89 II Admin Code 407.250 (k)) and train staff in these policies and procedures. In these standards, assure that the children are only being discharged when there is demonstrated inability for the child to benefit from the type of care provided by the facility or that the child's presence was detrimental to the group (89 II Admin Code 407.250 (j)). Provide the HRA with documented evidence of this policy, procedure and practice.

Regarding the complaint that the parent was not allowed board minutes for the meeting where the child's discharge was discussed; the facility admitted to not providing the board meeting minutes to the parent and, the HRA did not find any specific mandate or policy requiring that the board minutes must be provided to the parent. Thus, the complaint that the day care did not allow parental access to the child's records, specifically, the board minutes documenting the child's discharge, is an **unsubstantiated rights violation**. The HRA takes this opportunity to make the following **suggestions**:

- The HRA is concerned about the lack of documentation regarding the child's delays that led to his discharge. The HRA **strongly suggests** that in the future, the facility document children's progress including issues that may keep the child from progressing through the system and that the documentation occur in a timely manner.
- The facility discharge procedure appears in the handbook under the section about discipline, but the HRA suggests that the discharge procedure is taken from that section and made into a separate procedure to ensure there is no confusion or that it is overlooked by parents or staff.
- While the discharge letter indicated that the parents could talk to the board about its decision, access to the board minutes was denied. The HRA suggest that the board allow parents copies of any meeting minutes/documentation of decisions to discharge a child from the daycare as a part of the planning requirements per DCFS regulations (89 II Admin Code 407.250). In addition, the board should consider informing the parents of the board meeting at which a discharge decision would be considered in case they want to be present for the portion concerning their child.
- The discharge letter stated that the facility did not have the ability to accommodate the

child “right now” indicating that there may be future plans to accommodate. The HRA suggests the facility explore these plans, create a timeline, and discuss this situation with the child’s parent.

- The regulations discuss creating a specific plan to assist in meeting the child’s needs (89 II Admin Code 407.200). The HRA suggests in future cases with children who need accommodations, the facility comply with this section of the regulations and establish procedures to do so.
- DCFS regulations (89 II Admin Code 407.70) discuss lines of communication being created among staff, board and parents. The HRA suggests that the facility review this requirement and ensure these lines of communication are transparent and accessible to the families of the children served, including informing parents if their children will be discussed at board meeting.
- The HRA also suggests the development of a grievance policy and a discharge appeal mechanism as part of the discharge policy.
- The practice of stating the facility will help as long as they can negates the idea of accommodating children with disabilities and indicates that the child will be discharged once a limit has been reached. The HRA **strongly suggests** the facility cease this practice.
- Follow through with training on serving children with disabilities, including training on various accommodations that could be made to meet the needs of individual children as well as the development of written plans. As part of training, review disability mandates to ensure that practices and policies protect against discrimination. Consider contact with a school special education program, Easter Seals or other disability related organizations regarding accommodations and written plans to meet the needs of children. Consider contact with Advocates for Access regarding disability awareness, training and requirements.