

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

May 8, 2017

KID'S EXPRESS CHILD CARE CENTER

Cheryl Mueller, Licensee

3790 26th Ave.

Columbus, NE 68601

Dear Ms. Mueller:

In accordance with the Order on Agreed Settlement that was issued on May 1, 2017, by Thomas L. Williams, MD, Chief Medical Officer, Division of Public Health, Department of Health and Human Services, your original License to operate a Child Care Center in the State of Nebraska has been placed on Probation. A license imprinted with the term "PROBATION" is enclosed. This status became effective May 1, 2017, and it will remain in effect until May 1, 2018. Upon completion of the Probation, a new license will be issued to you.

At this time we ask that you submit your current license by return mail, within the next seven (7) days, to DHHS, Division of Public Health, Licensure Unit, Attn: Marsha Wandersee, 301 Centennial Mall South, Lincoln, NE 68509-4986.

If you have any questions, please contact Kathee Sanchez, Child Care Licensing Supervisor, at (402) 471-9193.

Sincerely,

Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

BW/dcp

cc: Children's Services Licensing

This license shall be kept available in the establishment and such proof of credentialing shall be shown upon request.

State of Nebraska

PROBATION

Department of Health and Human Services
Division of Public Health

CHERYL MUELLER

Is hereby authorized in compliance with laws of the State of Nebraska to establish and conduct an
Operating **Child Care Center**
located at: **3790 26TH AVE Columbus NE 68601**

A maximum of **32** children in ages **6 WKS** to **13 YRS** may be in attendance at any one time during the hours of **0430** to **2400** on **MTWTHFS**.

KID'S EXPRESS CHILD CARE CENTER is hereby issued License No. **CCC9011** which is effective on **03/25/2009**

Amended: 05/01/2017

Given under the name and Seal of the Department of Health and Human Services Regulation and Licensure of the State of Nebraska at Lincoln on **May 9, 2017**.



Thomas L. Williams, M.D., M.P.H., Medical Officer
Director, Division of Public Health
Department of Health and Human Services

426315

LICENSURE UNIT

MAY 03 2017

RECEIVED

STATE OF NEBRASKA
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

FILED
MAY - 3 2017
DHHS Hearing Office
161255 CCC

IN THE MATTER OF)
THE REQUEST FOR HEARING BY)
KID'S EXPRESS CHILD CARE CENTER)

ORDER

This matter came before the Director of the Division of Public Health on the Department's Motion for Approval of Agreed Settlement. The Director having considered said Motion and Agreed Settlement:

1. Approves the Agreed Settlement;
2. The facts as set out in the Notice of Revocation are taken as true and adopted herein; and
3. Orders the parties to comply with all of the terms of the Agreed Settlement.

DATED this 1 day of MAY, 2017

Thomas Williams, M. D.
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2017 true and correct copies of the foregoing Order were served upon the parties by sending the same by certified United States mail, sufficient postage prepaid, return receipt requested with sufficient postage prepaid, and/or electronically to: Clark J. Grant, attorney for Kid's Express Child Care Center, at Grant and Grant, 1464 27th Avenue, P. O. Box 455, Columbus, NE 68602-0455 and cjgrant@megavision.com and to teresa.hampton@nebraska.gov.

DHHS Legal Services
P. O. Box 98914
Lincoln, NE 68509-8914
(402) 471-7237 F. (402) 742-2376

7016 2140 0000 8085 2330

LICENSURE UNIT

MAY 03 2017

RECEIVED

STATE OF NEBRASKA
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

IN THE MATTER OF)	
THE REQUEST FOR HEARING BY)	161255 CCC
)	
KID'S EXPRESS CHILD CARE CENTER)	AGREED SETTLEMENT

COMES NOW the Department of Health and Human Services, Division of Public Health (hereinafter "Department") and Cheryl Mueller d/b/a Kid's Express Child Care Center (hereinafter "Licensee"), and in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. Licensee holds a license to operate a child care center program at 3790 26th Avenue, Columbus, NE 68601 which was issued by the Department, the executive agency of the state of Nebraska charged with administration of child care licensure statutes and regulations.
2. On July 13, 2016, the Department notified Licensee that it proposed to revoke the license to operate a child care center program at 3790 26th Avenue, Columbus, NE. A copy of the Notice of Revocation (Notice) is on file herein and incorporated into this agreement by this reference.
3. Licensee is entitled to a hearing upon request on the Notice. Licensee filed a timely written request for a hearing on the Notice, a copy of which are on file herein and incorporated into this Agreement by this reference. Licensee hereby waives their right to an administrative contested case hearing and any right to judicial review of any order that approves the terms of this Agreed Settlement.
4. Licensee successfully completed a Department inspection of her program in March, 2017.
5. Licensee is represented by Clark Grant, of Grant and Grant, in this matter. Licensee at all times relevant to this and in connection with review and execution of this document has received the advice of legal counsel.
6. Licensee agrees that she and her representatives have the authority to enter into this Agreed Settlement. Other than the matters specifically stated in the Agreed Settlement, neither the Department nor anyone acting on its

behalf has made any representation of fact, opinion or promise to Licensee to induce entry into this Agreed Settlement, and Licensee is not relying upon any statement, representation or opinion or promise made by Department or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Agreed Settlement or concerning any other matter. No coercion, threats, or promises other than those stated herein were made to induce Licensee to enter into this Agreed Settlement. Licensee's signature below represents her entry into this Agreed Settlement freely, voluntarily and knowingly.

7. Licensee admits the allegations in the Notice. Licensee agrees to the provisions of this Agreed Settlement as a resolution of this contested matter. Licensee acknowledges that the Order in this matter will find the facts set out in the Notice to be true and adopted by the Director of the Division of Public Health.
8. This Agreed Settlement does not constitute a waiver, suspension, or modification of the requirements of the Child Care Licensing Act or the regulations adopted thereunder.
9. Licensee agrees that the license for the program located at 3790 26th Avenue, Columbus, NE will be placed on probation for one (1) year beginning the date this Agreed Settlement is approved, with all of the terms and conditions set out in the October 13, 2015, Notice of Disciplinary Action and the following additional terms and conditions:
 - a. Licensee must implement and comply with all of the policies and procedures approved by the Department as part of the probation previously imposed pursuant to the October 13, 2015, Notice of Disciplinary Action. Those policies and procedures concerned maintaining compliance with regulations pertaining to the overall cleanliness of the program, compliance with recommendations of a certified pest control operator, a written cleaning/maintenance policy

and procedure that included a cleaning schedule for licensee and staff to follow.

- b. Licensee must maintain all required records concern staff, training, and background checks. Such records must be available at the program and provided to the Department and Department staff at its request.
- c. Licensee must hire or contract with a certified pest control specialist within ten (10) days of the approval of this Agreed Settlement and the specialist must be approved by the Department. The specialist must conduct regular inspections and pest, including rodents and insects, control measures. Licensee must follow all recommendations of the specialist and have the specialist provide written monthly reports to the Department regarding the results of the inspections and compliance with recommendations.
- d. Licensee must hire or contract with a Registered Dietician within ten (10) days of the approval of this Agreed Settlement and the Dietician must be approved by the Department. The Dietician must conduct regular monthly inspections of all food preparation areas and all areas of the program, including food storage, diaper and toilet areas and hand washing areas that may affect the safety of the food served to children, The Dietician must provide monthly training on food handling and safety and other related topics to Licensee and staff. Licensee must ensure that Dietician provides written monthly reports to the Department regarding the results of the inspections and the provision of training.
- e. Licensee must hire or contract, within ten (10) days of approval of the Agreed Settlement, with an individual or entity to provide a minimum of a once a week cleaning and disinfection of all areas of the program. Such individual or entity must be approved by the Department. Licensee must maintain a record of cleaning completed by the individual or entity which must be available at the program and at the request of the Department.

- f. Licensee must regularly inspect medication and first aid boxes kept at the program and keep a written record of such inspections and actions taken as a result of the inspections. Such inspections must be completed monthly. Such record must be kept at the program and made available to the Department at its request.
10. Compliance with the terms of this Agreed Settlement will be monitored by unannounced inspections by Children's Services Licensing staff and may be monitored by other Department representatives (i.e. Fire Marshal or designated agent, Environmental Health Specialist or designated agent, Resource Development Worker, Children and Family Specialist, etc.). Licensee and any of their employees and agents must cooperate with the Department in these monitoring visits. Any violation will be grounds for revocation or such other discipline as the Department may determine appropriate after notice to Licensee and an opportunity for a hearing.
11. Failure to comply with the terms of this Agreed Settlement, the statutes governing the provision of child care or the Child Care Center regulations is grounds for revocation or such other discipline as the Department may deem appropriate.
12. If Licensee discontinues operation of the child care program for any reason, the time Licensee is not actively operating a licensed child care program will not count toward the Probation period and any subsequent child care license issued by the Department indicating Licensee, as licensee/director/owner shall be subject to the terms of this probation including completion of the probation period.. Licensee must notify the Department within seven (7) calendar days of any period they are is not operating. Active operation is the provision of child care for a minimum of forty (40) hours a week for fifty (50) weeks of a calendar year.
13. Licensee acknowledges that under Nebraska statutes a probation is considered a disciplinary sanction. Licensee acknowledges that they have received no representations from the Department or its employees or representatives of the effect this Agreed Settlement may have on her ability

to obtain a license or other authorization document of any nature in this or any other state.

14. If the Director of the Division of Public Health does not approve this Agreed Settlement, in its entirety, it shall become null and void and will not be admissible for any purpose at any hearing that may be held on this matter or any further disciplinary action in the future.

WHEREFORE, the parties request that an Order be entered approving and adopting the terms of this Agreement.

TH Dated this 19th day of April, 2017.

Cheryl Mueller, Licensee

By [Signature]
Cheryl Mueller

Dated this 26th day of April, 2017.

Nebraska Department of Health
and Human Services

By [Signature]
Teresa M. Hampton #16746
Legal Services
P.O. Box 95026
Nebraska Department of Health and
Human Services
Lincoln, Nebraska 68509-5026
(402) 471-4051



Division of Public Health

State of Nebraska
Pete Ricketts, Governor

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

IN THE MATTER OF:)
THE OPERATING CHILD CARE CENTER)
LICENSE OF CHERYL MUELLER, D/B/A)
KID'S EXPRESS CHILD CARE CENTER)

NOTICE OF
REVOCATION

LICENSED LOCATION: 3790 26th AV., COLUMBUS, NE., 68601
LICENSE NUMBER: CCC9011
CAPACITY: 32
AGES: SIX WEEKS TO THIRTEEN YEARS
HOURS AND DAYS: 4:30 A.M. TO MIDNIGHT, MONDAY THROUGH SATURDAY
DATE INITIALLY LICENSED: MARCH 13, 2008

NOTICE:

Cheryl Mueller (hereinafter referred to as "Mueller") is notified that the Department of Health and Human Services, Division of Public Health, (hereinafter referred to as "Department") is revoking Mueller's operating Child Care Center license for violation of the following statutes and regulations:

AUTHORITY:

Nebraska Revised Statutes, section 71-1919, of the Child Care Licensing Act provides that "the Department may ... take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;
- (2) Violation of an order of the department under the act; ...
- (4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;"

Nebraska Revised Statutes, section 71-1920, of the Child Care Licensing Act provides that "...the Department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act: (b) Suspend or revoke a provisional, probationary, or operating licensee;"

391 NAC 3-008.01 Grounds for Denial or Disciplinary Action: “The Department may deny the issuance of or take disciplinary action against a license on any of the following grounds:

1. Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the Act;
2. Violation of an order of the Department under the Act; ...

4. Conduct or practices detrimental to the health or safety of an individual served by or employed at the program;” ...

391 NAC 3-008.02B Additional Action: “If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action.”

391 NAC 3-006.01 Licensee Requirements: “The licensee must: 1. Ensure that the center is administered and managed appropriately; 2. Maintain compliance with all applicable state statutes and child care center regulations;” ...

391 NAC 3-006.02 Director Requirements: “The director is responsible for managing the day-to-day operations of the child care center. ... 1. Be responsible for the center’s compliance with rules and regulations;” ...

391 NAC 3-006.23B Diapering and Toileting: ... “2. The licensee must ensure that toilet training is conducted in a manner agreed upon with the parent. The licensee must also ensure that: ... b. Proper hand washing by the provider and the child is done each time a child is helped with toileting.”

391 NAC 3-006.27G Storage: “All medications must be kept in proper storage. This includes:

1. All prescription and non-prescription medications must be kept in locked storage at all times children are in care; ...
3. All medications must be kept in the original container and stored according to instructions, clearly labeled for the named child, and returned to the parent when no longer needed;” ...

391 NAC 3-006.29 Food Safety: “The licensee must ensure that the center complies with the Food Code whenever food is prepared and/or served on the premises of the center.” ...

391 NAC 3-006.30F First Aid Kit: “A first aid kit must be available on the premises. ... The kit must contain: 6. Scissors;” ...

391 NAC 3-006.31 Environmental Services: “The licensee must ensure that child care is provided in a safe, clean, comfortable environment.

391 NAC 3-006.31A Housekeeping and Maintenance: “The licensee must ensure that the necessary housekeeping and maintenance are provided to protect the health and safety of children in care. The center and grounds must be kept clean, safe, and in good repair. ...

2. Rooms, walls, floors, and ceilings must be kept clean, dry, in good repair, and free of odor resulting from sewage, mold, mildew, or other environmental or biological hazards or unsanitary conditions. ...
4. The licensee must equip and maintain the premises to prevent the entrance, harborage, or breeding of rodents, flies and all other insects and vermin. All doors opening to the outside must be self-closing (except sliding doors) and all windows used for ventilation must be screened. The center must have effective screening of all openings to the outside when flies or other flying insects are present.
5. All garbage and rubbish must be disposed of in a manner that minimizes odor and the transmission of infectious diseases, and prevents the attraction of rodents, flies and all other insects and vermin. This includes: a. Using containers, both indoor and outdoor, for garbage and rubbish that are watertight, have tight fitting covers, and are fly and rodent-proof;" ...

391 NAC 3-006.31B Maintenance of Equipment, Fixtures, Furnishings, and Toys: "The licensee must ensure that equipment, fixtures, furnishings, and toys used in the center are kept clean, safe, and in good repair. 1. The licensee/director must create and follow a process for routine and preventative maintenance of equipment, fixtures, furnishings, and toys so they are kept safe, in good repair, and available to meet the intended use. This includes ensuring no sharp edges, rust, or loose parts." ...

391 NAC 3-006.32 Environmental Safety: "The licensee is responsible for maintaining a safe and hazard-free environment to protect the health and safety of children in care."

391 NAC 3-006.32E Other Environmental Safety Requirements:

1. Surfaces must be smooth and free of sharp edges, mold, or dirt, and the environment must be kept free of other conditions which may pose a potential risk.
2. All cleaning agents, medications (both prescription and nonprescription), and poisonous materials must be kept in locked storage at all times children are in care. Separate locked storage must be provided for medications requiring refrigeration.
6. The licensee must ensure storage that is:
 - a. Clean and adequate for all personal items of staff;
 - b. Clean and adequate for all personal items of children;
 - c. Covered and waterproof for soiled or wet clothing; and
 - d. For staff and children's storage, areas separate from where food and medication are kept."

391 NAC 3-007.03 Fenced Outdoor Play Area: "When care is provided to children between the ages of six weeks and school-age, the licensee must ensure that a fenced outdoor play area is available. The area must: ...
5. Be kept clean and safe and contain no accident hazards, debris, or stagnant water;" ...

391 NAC 3-007.03A "The fence and all toys and equipment within the fenced area must be free of rust and free of sharp and hazardous edges."

391 NAC 3-007.04B "The licensee must ensure that no adult or child resumes work or play after using the bathroom without first washing his/her hands."

FACTS:

Mueller is the Director and Licensee of record.

On November 16, 2015, Mueller's child care center license was placed on probation with terms and conditions. Conditions stated, in part: "Failure to comply with the terms of this disciplinary action, the applicable Child Care Regulations and failure to correct the violations will be grounds for revocation or such other discipline as the Department may deem appropriate" ... and "Compliance will be monitored by Children's Services Licensing staff and may be monitored by other Department representatives" ...

In addition, Mueller was to submit written plans, policies and procedures by December 16, 2015. After multiple submissions of the plans, policies and procedures, these were approved on February 12, 2016.

On March 2, 2016, Brenda Herring (hereinafter referred to as "Herring"), Child Care Inspection Specialist, Children's Services Licensing, Licensure Unit, Division of Public Health, conducted an unannounced, semiannual inspection and noted numerous violations of regulations.

On May 11, 2016, Brenda Herring (hereinafter referred to as "Herring"), Child Care Inspection Specialist, Kathee Sanchez (hereinafter referred to as "Sanchez"), Child Care Licensing Supervisor, Children's Services Licensing, Licensure Unit, Division of Public Health, and Mandy Kearney ("Kearney"), Health Food Service, Environmental Health, conducted a monitoring inspection of Mueller's facility. The following non-compliances were observed:

- First aid kit in baby room was missing scissors.
- Floor was dirty and appeared not to have been recently mopped.
- Dead bugs and rodent droppings were located throughout the building.
- Water was on the floor in the children's bathroom and staff bathroom.
- A strong urine smell was noted in the children's bathroom.
- Soiled towels were located on floor in the children's restroom.
- The floor was sticky in the common area.
- Children's pillows were located on the steps leading to the basement.
- Mold was identified in the basement under a window.
- A window sill in the basement was dirty and has decomposing bugs on it.
- The roof was leaking and water was on the floor in the basement.
- The basement floor needed swept due to dirt, rodent droppings and dead bugs.
- Towels under dish drainers in the kitchen were dirty.
- Kitchen window sills were dirty.
- Medications were not in locked storage; medications were not properly labeled with child's name in the infant room.
- Cleaning agents were not kept in locked storage.
- Windex was located on the landing, closet containing cleaning agents was not locked, floor cleaner was located on the steps.
- Weight loss pills were not in locked storage. Pain reliever was also not in locked storage.
- Paint scraper with razor blade was not in locked storage.

- Staff clothing was scattered throughout the facility; soiled clothing not in covered containers.
- Infant seat hanging above door leading into infant room.
- Soiled towels were located on floor in the children's restroom.
- There was a cracked slide and broken chair in the play yard.
- Wire gate in the play yard was in need of repair.
- Fence was not flush with the ground in the play yard.
- There was no documentation of preventative maintenance of equipment, fixtures, and toys.
- A child was observed in the restroom not washing hands after toilet and was not redirected to do so.
- Several bags and containers of food were out of date or not dated. Several food items were not labeled. Food was spilled in the refrigerators and freezers.

On June 8, 2016, Herring and Kearney conducted a follow-up inspection of Mueller's facility. The following non-compliances were observed:

- Dirty dishes, rodent droppings, dead bugs, and trash was observed.
- Recycling was not stored in containers with lids.
- There was a broken fence with sharp edges not flush with the ground. There was a gap in the gate approximately six inches wide.
- Several boards on the fence were broken and had sharp edges.
- A broken slide was in the play yard as well as a chair.
- Screens in the kitchen had a gap in them that allowed entrance of insects.
- There was dirt in the window tracks in the kitchen allowing the breeze to blow dirt through the open windows into the kitchen.
- Trash cans were not covered.
- Vent cover was off the wall in staff bathroom.
- Food was not labeled or dated.
- Food debris was located in cupboard with dishes.
- A rotten pumpkin was on the porch.
- Pillows and blankets were stored on the basement steps.
- There was a ceiling leak in the basement. Ceiling tiles were falling down in the basement.
- What appeared to be mold was located in at least three locations in the basement.
- Rotten gourds were on the kitchen counter and sink in the upper level.
- Construction tools and weed eater were located in room behind kitchen.

Mueller was cited by Kearney for two critical and three non-critical items on the Food Establishment Inspection Report dated May 11, 2016 and again on June 8, 2016. Potentially Hazardous Food Time/Temperature, Proper date marking and disposition has been indicated on inspections conducted August 15, 2015, May 11, 2016 and June 8, 2016.

Mueller has not followed the recommendations of the pest control operator by cutting back the landscaped area to ensure the pest control can complete their part of the extermination for rodents and insects. Mueller also did not submit monthly reports from the pest control operator timely. Dead bugs and rodent droppings were observed during the inspections.

Cleaning charts were created by Mueller to be used throughout the facility; however, these charts are not being used daily, weekly or monthly. A blank chart was noted on the wall. Lack of routine and preventative maintenance is evident by the dirty dishes, trash, rotten food, and food debris observed.

In addition to being out of compliance on May 11, 2016 and June 8, 2016, Mueller is in violation of the terms of probation as set out by the Notice of Disciplinary Action dated October 13, 2015 effective November 16, 2015 as well as violating her own plan. Mueller continues to violate regulations and is not following the direction of sanitation or Pest Control.

DISCIPLINARY ACTION IMPOSED:

Based on the above information, the Department is revoking Mueller's operating Child Care Center license located at 3790 26th Avenue, Columbus, Nebraska. Mueller must send her Child Care Center license to Marsha Wandersee at the address listed below seven (7) days after this action becomes final.

BE ADVISED:

Pursuant to Nebraska Revised Statutes, section 71-1922, this action becomes final on July 28, 2016, unless the Department receives a written request for a hearing on or before such date. The license shall continue in effect until the final order of the director if a hearing is requested. If the director does not receive such request on or before such date, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department no later than July 28, 2016. It should be addressed to:

Marsha Wandersee, for DHHS
Children's Services Licensing
Licensure – Division of Public Health
P.O. Box 94986
Lincoln, NE 68509-5986

If you request a hearing, you will be notified of the time, date and place of the hearing and other pertinent information, by separate notice. On the basis of such hearing, the director will affirm, modify or rescind the determination of the Department. Be advised that pursuant to Nebraska Revised Statutes, section 71-1920, upon completion of any hearing held, the director may impose any or a combination of any of the following: probation, suspension, revocation, civil penalty, restrictions of new enrollment, restrictions or other limitations on the number of children or the ages of the children served in the program, or other restrictions or limitations on the type of service provided by the program. On the basis of the hearing, a modification by the director may include sanctions important to your program, up to and including the loss of your license.

That Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that

the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee.


Dated: July 13, 2016

Courtney N. Phillips, MPA
Chief Executive Officer
Department of Health and Human Services


Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

CERTIFICATE OF SERVICE

COMES NOW, the undersigned and certifies that on the 13 day of July, 2016, a copy of the foregoing **NOTICE OF REVOCATION** was sent by certified and first class United States mail, sufficient postage prepaid to Cheryl Mueller, Kid's Express Child Care Center, 3790 26th Avenue, Columbus, Nebraska, 68601.


Marshu Wandersee

November 18, 2015

KID'S EXPRESS CHILD CARE CENTER

Cheryl Mueller, Licensee
3790 26th Ave.
Columbus, NE 68601

Dear Ms Mueller:

In accordance with the Notice of Disciplinary Action issued on October 13, 2015, by Courtney N. Phillips, MPA, Chief Executive Officer, Division of Public Health, Department of Health and Human Services, and the Order of Dismissal, withdrawing the request for a hearing, dated November 16, 2015, your original License to operate a Child Care Center in the State of Nebraska has been placed on Probation. A license imprinted with the term "PROBATION" is enclosed. This status became effective November 16, 2015, and it will remain in effect until November 16, 2016. Upon completion of the Probation, a new license will be issued to you.

At this time we ask that you submit your current license by return mail, within the next seven (7) days, to DHHS, Division of Public Health, Licensure Unit, Attn: Marsha Wandersee, 301 Centennial Mall South, Lincoln, NE 68509-4986.

If you have any questions, please contact Kathee Sanchez, Child Care Licensing Supervisor, at (402) 471-9193.

Sincerely,


Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

BW/dep

cc: Children's Services Licensing

This license shall be kept available in the establishment and such proof of credentialing shall be shown upon request.

State of Nebraska

PROBATION

Department of Health and Human Services
Division of Public Health

CHERYL MUELLER

Is hereby authorized in compliance with laws of the State of Nebraska to establish and conduct an
Operating Child Care Center
located at: 3790 26TH AVE Columbus NE 68601

A maximum of 32 children in ages 6 WKS to 13 YRS may be in attendance at any one time during the hours of 0430 to 2400 on MTWTHFS.

KID'S EXPRESS CHILD CARE CENTER is hereby issued License No. CCC9011 which is effective on 03/25/2009

Amended:

Given under the name and Seal of the Department of Health and Human Services, Regulation and Licensure of the State of Nebraska at Lincoln on November 19, 2015.



STATE OF NEBRASKA
Department of Health and Human Services
Regulation and Licensure
1001 F Street, Lincoln, NE 68502
Phone: 402-477-2200 Fax: 402-477-2201

November 19, 2015

Cheryl Mueller
Kid's Express Child Care Center
3790 26th Avenue
Columbus, NE 68601

CERTIFIED AND FIRST CLASS MAIL

Dear Ms. Mueller:

By Order of Dismissal dated November 16, 2015, the following terms/conditions must be complied with by these amended dates:

- Your child care center license, Kid's Express Child Care Center, will be placed on probation from November 16, 2015 to November 16, 2016. (Your license will be sent to you under separate cover.)
- By December 16, 2015, you must submit written plans to the Department for approval as to how you will:

Maintain compliance with all Child Care Center regulations; specifically those regulations pertaining to the overall cleanliness of the facility, and those cited at the August 28, 2015 inspection; and

How you will comply with the recommendations of a certified pest control operator, including the submittal of monthly reports from the pest control company showing treatments made to the address of 3790 26th Avenue, Columbus.

These plans must be submitted to the Department in writing. The Department agrees that after reviewing these written plans, it will either approve or require modifications. If modifications are required, you must within ten calendar days of notice by the Department resubmit the written plans to the Department with the required modifications. The Department reserves the right to make minor unilateral modifications to the written plans.

Once approved, you must implement the plans as approved by the Department.

- By December 16, 2015, you must develop and establish:
- A written cleaning/maintenance policy and procedure that includes a cleaning schedule for the licensee and all staff to follow to ensure equipment, fixtures, furnishings and toys are clean and in good repair and the play yard is free of broken toys and other hazards. This should also

include proper sanitizing and disinfecting of surfaces and items used at the facility, cleaning rooms, sweeping, mopping, taking out trash and properly disposing of trash.

This cleaning schedule should also include inspecting toys in the play yard to ensure they are in working order, removing broken toys and cleaning any trash or debris out of the play yard daily.

The written policy and procedures should incorporate, but not limited to:

- The use of checklists,
- Staffing charts,
- Frequent monitoring/monitoring tools to ensure policies and procedures are followed,
- Accountability,
- Training of staff who count in the staff-to-child ratio, and
- Other detailed procedures and/or other information.

The policy and procedure must be submitted to the Department in writing. The Department agrees that after reviewing this policy and procedure, it will either approve or require modifications. If modifications are required, you must within ten calendar days of notice by the Department resubmit the written policy and procedure to the Department with the required modifications. The Department reserves the right to make minor unilateral modifications to the written plans.

Once approved, you must implement the policy and procedure as approved by the Department.

- By December 16, 2015, you must submit a plan that describes how current and future employee and volunteer records will be updated and maintained. You must also submit a plan describing how annual training records, including any training required by the cook, and children's records are updated and maintained.

These plans must be submitted to the Department in writing. The Department agrees that after reviewing these plans, it will either approve or require modifications. If modifications are required, you must within ten calendar days of notice by the Department resubmit the written plans to the Department with the required modifications. The Department reserves the right to make minor unilateral modifications to the written plans. You then must ensure that these records as well as future records are updated and maintained in a timely manner.

All documentation required must be submitted to Brenda Herring, Child Care Inspection Specialist, Children's Services Licensing, Licensure Unit, Division of Public Health, 1959 East Military, Fremont, Nebraska, 68025-5467.

- A copy of this Notice/Letter must be posted with the current child care license so it is clearly visible to parents and agency representatives.
- You are responsible for paying for all costs associated with compliance.

If you have questions regarding this letter, please contact Kathee Sanchez, Child Care Licensing Supervisor, 402-471-9193.

Sincerely,


Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

BW/mrw

Cc: Children's Services Licensing
Clark J. Grant, Grant and Grant, 1464 27th Avenue, PO Box 455, Columbus, NE 68602-0455

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

IN THE MATTER OF:)
THE OPERATING CHILD CARE CENTER)
LICENSE OF CHERYL MUELLER, D/B/A) NOTICE OF
KID'S EXPRESS CHILD CARE CENTER) DISCIPLINARY ACTION

LICENSED LOCATION: 3790 26th AV., COLUMBUS, NE., 68601

NOTICE:

Cheryl Mueller (hereinafter referred to as "Mueller") is notified that the Department of Health and Human Services, Division of Public Health, (hereinafter referred to as "Department") is imposing disciplinary action against Mueller's operating Child Care Center license for violation of the following statutes and regulations:

AUTHORITY:

Nebraska Revised Statutes, section 71-1919, of the Child Care Licensing Act provides that "the Department may ... take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;
- (4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;"

...

Nebraska Revised Statutes, section 71-1920, of the Child Care Licensing Act provides that "...the Department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act: (a) Issue a probationary license;" ...

391 NAC 3-008.01 Grounds for Denial or Disciplinary Action: "The Department may deny the issuance of or take disciplinary action against a license on any of the following grounds:

1. Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the Act; ...
4. Conduct or practices detrimental to the health or safety of an individual served by or employed at the program;" ...

391 NAC 3-006.01 Licensee Requirements: "The licensee must: 1. Ensure that the center is administered and managed appropriately; 2. Maintain compliance with all applicable state statutes and child care center regulations;" ...

391 NAC 3-006.03F Health Information Report: ... "All staff who are responsible for the care and supervision of children for more than 20 hours per week must complete the report within 30 days of hiring. The Health Information Report must be completed annually."

391 NAC 3-006.11 Employee Records Requirements: "The licensee must ensure the following employee records are maintained, updated as needed, and made available to the Department upon request. Records must be maintained for at least one year after an employee leaves the center."

391 NAC 3-006.11A Staff: "Records for all staff, except substitutes and volunteers, must include: ...

6. Documentation of a criminal history record check;
7. A completed Health Information Report;
8. Documentation of Nebraska registry checks with no adverse findings;" ...

391 NAC 3-006.11C Volunteers: "Records for each volunteer must include: ... 5. Documentation of Nebraska registry checks with no adverse findings;" ...

391 NAC 3-006.23B Diapering and Toileting: "1. The licensee must ensure that diapering procedures are established and followed by center staff. The procedures must include: ...f. Proper hand washing is done after each diaper change."

391 NAC 3-006.29 Food Safety: "The licensee must ensure that the center complies with the Food Code whenever food is prepared and/or served on the premises of the center." ...

391 NAC 3-006.31 Environmental Services: "The licensee must ensure that child care is provided in a safe, clean, comfortable environment. Every area and building on the same premises used for child care must comply with these regulations."

391 NAC 3-006.31A Housekeeping and Maintenance: "The licensee must ensure that the necessary housekeeping and maintenance are provided to protect the health and safety of children in care. The center and grounds must be kept clean, safe, and in good repair.

1. The center and any building on the premises in or around areas where children are present must be kept free of exposed lead-based paint surfaces that are flaking, peeling, or chipped.
2. Rooms, walls, floors, and ceilings must be kept clean, dry, in good repair, and free of odor resulting from sewage, mold, mildew, or other environmental or biological hazards or unsanitary conditions. ...
4. The licensee must equip and maintain the premises to prevent the entrance, harborage, or breeding of rodents, flies and all other insects and vermin." ...

391 NAC 3-006.32 Environmental Safety: "The licensee is responsible for maintaining a safe and hazard-free environment to protect the health and safety of children in care."

391 NAC 3-007.03 Fenced Outdoor Play Area: "When care is provided to children between the ages of six weeks and school-age, the licensee must ensure that a fenced outdoor play area is available. The area must: ...
5. Be kept clean and safe and contain no accident hazards, debris, or stagnant water;" ...

391 NAC 3-007.03A "The fence and all toys and equipment within the fenced area must be free of rust and free of sharp and hazardous edges."

FACTS AND FINDINGS

Mueller is the licensee of an operating Child Care Center that is currently licensed for 32 children, six weeks to 13 years, 4:30 a.m. to midnight, Monday through Saturday. This program was licensed on March 13, 2008.

On August 28, 2015, Brenda Herring (hereinafter referred to as "Herring"), Child Care Inspection Specialist, Children's Services Licensing, Licensure Unit, Division of Public Health and Mandy Kearney (hereinafter referred to as "Kearney"), Environmental Health Scientist, Health licensure and Investigations, conducted an inspection of Mueller's program and observed the following:

- Rodent droppings were located in the kitchen, storage area, lower level and throughout the center.
- A broken window was in the upper level of the center.
- Toys with sharp edges were located on the play yard.
- Gutters that had fallen off were located in the play yard.
- Medications were not in locked storage.
- Medications were not properly labeled.
- Bug spray was located within the reach of the children in the play yard. The play yard needed mowed.
- Sun screen was within the reach of the children.
- The refrigerator was at 50 degrees; several items of food were not dated or labeled.

In addition to the above sanitation issues, Herring noted the following non-compliances:

- Health Information Reports were not available for E. Hansen and S. Mueller.
- Documentation was missing from employee/volunteer files:
 - E. Hansen – Needed Health Information Report, documentation of staff qualifications, documentation of annual training (seven hours), documentation that staff has read and understands regulations, documentation of orientation training, criminal history record checks, documentation of Nebraska State Patrol sex offender registry check
 - Cheyenne, a volunteer -- Needed name, address and telephone number, start date, Report of Law Enforcement Contact, Documentation of Nebraska registry checks with no adverse findings, and a written schedule that included the hours and days of the week the individual serves as a volunteer
- Herring observed staff changing diapers but staff did not wash their hands after changing diapers.
- Baby room had several medications that were not in locked storage and not labeled with the child's name.

Mueller has consistently been in violation and has failed to maintain compliance with the regulations; many of which are the same as indicated above. A file review shows the following history:

2009 – Incomplete staff records, health information report, staff required training hours not met, medications not locked or labeled

2010 – Incomplete staff records, health information report, orientation, facility had worn carpet, house droppings and dead bugs in kitchen

2011 – Incomplete staff records, orientation, staff required training hours not met, children's records incomplete

2012 – Incomplete staff records, health information report, staff required training hours not met, medication not returned to parents, medication records not maintained

2013 – Staff records not available, fence in disrepair, policies not developed or available, orientation not completed, blankets in cribs and expired medications

2014 – Incomplete paperwork, could not locate records, facility in disrepair, mouse droppings, food code not followed, children's records incomplete, staff records incomplete, pet records incomplete, health information report, staff not completing required training

On August 8, 2014, a Notice of Suspension was sent to Kid's Express because of a sanitation disapproval; however, this action was dismissed on September 29, 2014 because of receipt of a sanitation approval.

DISCIPLINARY ACTION IMPOSED:

Based upon the facts presented above, the Department intends to impose the following:

1. Mueller's child care center license is placed on Probation for a period of one year effective October 29, 2015. Terms and conditions include:
 - a. By November 12, 2015, Mueller must supply the Department with a copy of the written contract established with a licensed pest control company of her choice showing the treatment schedule that Mueller has contracted for.
 - b. By November 30, 2015, Mueller must submit written plans to the Department for approval as to how she will:
 - Maintain compliance with all Child Care Center regulations; specifically those regulations pertaining to the overall cleanliness of the facility, and those cited at the August 28, 2015 inspection; and
 - How she will comply with the recommendations of a certified pest control operator, including the submittal of monthly reports from the pest control company showing treatments made to the address of 3790 26th Avenue, Columbus.

These plans must be submitted to the Department in writing. The Department agrees that after reviewing these written plans, it will either approve or require modifications. If modifications are required, Mueller must within ten calendar days of notice by the Department resubmit the written plans to the Department with the required modifications. The Department reserves the right to make minor unilateral modifications to the written plans.

Once approved, Mueller must implement the plans as approved by the Department.

c. By November 30, 2015, Mueller must develop and establish:

- A written cleaning/maintenance policy and procedure that includes a cleaning schedule for the licensee and all staff to follow to ensure equipment, fixtures, furnishings and toys are clean and in good repair and the play yard is free of broken toys and other hazards. This should also include proper sanitizing and disinfecting of surfaces and items used at the facility, cleaning rooms, sweeping, mopping, taking out trash and properly disposing of trash.

This cleaning schedule should also include inspecting toys in the play yard to ensure they are in working order, removing broken toys and cleaning any trash or debris out of the play yard daily.

The written policy and procedures should incorporate, but not limited to:

- The use of checklists,
- Staffing charts,
- Frequent monitoring/monitoring tools to ensure policies and procedures are followed,
- Accountability, and
- Training of staff who count in the staff-to-child ratio, and
- Other detailed procedures and/or other information.

The policy and procedure must be submitted to the Department in writing. The Department agrees that after reviewing this policy and procedure, it will either approve or require modifications. If modifications are required, Mueller must within ten calendar days of notice by the Department resubmit the written policy and procedure to the Department with the required modifications. The Department reserves the right to make minor unilateral modifications to the written plans.

Once approved, Mueller must implement the policy and procedure as approved by the Department.

d. By November 12, 2015, Mueller must ensure that a thermometer is in the refrigerator in order to be able to track the temperature. Mueller must ensure that all food is dated, discarded and thawed appropriately at the direction of the Environmental Health Scientist and seek clarification as needed by contacting Environmental Health at 402-471-0742. Monitoring processes approved by Environmental Health are to be used.

e. By November 30, 2015, Mueller must submit a plan that describes how current and future employee and volunteer records will be updated and maintained. Mueller must also submit a plan describing how annual training records, including any training required by the cook, and children's records are updated and maintained.

These plans must be submitted to the Department in writing. The Department agrees that after reviewing these plans, it will either approve or require modifications. If modifications are required, Mueller must within ten

calendar days of notice by the Department resubmit the written plans to the Department with the required modifications. The Department reserves the right to make minor unilateral modifications to the written plans. Mueller then must ensure that these records as well as future records are updated and maintained in a timely manner.

g. Mueller is responsible for paying for all costs associated with compliance.

h. All documentation required must be submitted to Brenda Herring, Child Care Inspection Specialist, Children's Services Licensing, Licensure Unit, Division of Public Health, 1959 East Military, Fremont, Nebraska, 68025-5467.

3. Compliance will be monitored by Children's Services Licensing staff and may be monitored by other Department representatives (i.e., Fire Marshal or designated agent, Environmental Health Specialist/Scientist or designated agent, Resource Development Worker, Children and Family Services Specialist/Worker, etc.). Mueller and any employees and/or agents must cooperate with the Department in these monitoring inspections.

4. A copy of this Notice of Disciplinary Action must be posted with the current child care license so it is clearly visible to parents and agency representatives.

5. Failure to comply with the terms of this disciplinary action, the applicable Child Care Regulations and failure to correct the violations will be grounds for revocation or such other discipline as the Department may deem appropriate after notice to the licensee and an opportunity for a hearing.

6. If Mueller discontinues the child care program for any reason, the time Mueller is not actively operating a licensed child care program will not count toward the probation period and any subsequent child care license issued by the Department indicating Mueller and/or Kid's Express Child Care Center as licensee/director/owner shall be subject to the terms of this probation including completion of the probation period. Mueller must notify the Department, in writing, within seven (7) working days of any period that they are not actively operating the program. Active operation is the provision of child care for a minimum of forty (40) hours a week for fifty (50) weeks of a calendar year.

BE ADVISED:

Pursuant to Nebraska Revised Statutes, section 71-1922, this action becomes final on October 28, 2015, unless the Department receives a written request for a hearing on or before such date. The license shall continue in effect until the final order of the director if a hearing is requested. If the director does not receive such on or before such date, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department on or by October 28, 2015. It should be addressed to:

Marsha Wandersee, for DHS
Children's Services Licensing – Licensure
Division of Public Health
P.O. Box 94986
Lincoln, NE 68509-4986

If you request a hearing, you will be notified of the time, date and place of the hearing and other

pertinent information, by separate notice. On the basis of such hearing, the director will affirm, modify or rescind the determination of the Department. Be advised that pursuant to Nebraska Revised Statutes, section 71-1920, upon completion of any hearing held, the director may impose any or a combination of any of the following: probation, suspension, revocation, civil penalty, restrictions of new enrollment, restrictions or other limitations on the number of children or the ages of the children served in the program, or other restrictions or limitations on the type of service provided by the program. On the basis of the hearing, a modification by the director may include sanctions important to your program, up to and including the loss of your license.

That Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee.

Dated: October 13, 2015

Courtney N. Phillips, MPA
Chief Executive Officer
Department of Health and Human Services


Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

CERTIFICATE OF SERVICE

COMES NOW, the undersigned and certifies that on the 13 day of October, 2015, a copy of the foregoing **NOTICE OF DISCIPLINARY ACTION** was sent by certified and first class United States mail, sufficient postage prepaid to Cheryl Mueller, Kid's Express Child Care Center, 3790 26th Avenue, Columbus, Nebraska, 68601.


Marsha Wanderssee