



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

IN THE MATTER OF:)
THE OPERATING SCHOOL-AGE-ONLY CENTER) NOTICE OF
LICENSE OF FUNDAMENTAL ATHLETICS) DISCIPLINARY ACTION
ACADEMY LLC)

LICENSED LOCATION: 8400 CODY DRIVE, LINCOLN, NE 68512
LICENSE NUMBER: SAOC8761
CAPACITY: 125
AGES: 5 YEARS TO 13 YEARS
HOURS AND DAYS: 7:00 AM TO 6:00 PM MONDAY THROUGH FRIDAY
DATE INITIALLY LICENSED: 08/06/2015

NOTICE:

Fundamental Athletics Academy LLC (hereinafter referred to as "Fundamental"), is notified that the Department of Health and Human Services, Division of Public Health (hereinafter referred to as "Department"), is imposing disciplinary action against Fundamental's Operating School Age Only 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 4-008.01 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 a person served by or employed at the program;" ...

391 NAC 4-006.14B Staffing Requirements:

1. All staff must be awake and alert to the needs of the children at all times, including napping/sleeping times.
2. Each room where children are receiving care must have a teacher who is involved with the direct care of children.
3. During naptime, at least one teacher must be in the room where children are napping, as long as the staff-to-child ratio is maintained center-wide.
4. At least two staff members must be on the premises at all times, except when the number of children in care is 15 or fewer.

391 NAC 4-006.18 Supervision of Children: "Adequate and appropriate supervision must be provided to children at all times children are in attendance, including during outdoor play. Ultimate responsibility for supervision rests with the licensee."

391 NAC 4-006.27E Notification to the Department of Emergencies: "The licensee/director must notify the Department within 24 hours or next business day of the following occurrences at the center:

1. The death of a child;
2. Any accident or injury to a child which requires hospitalization or treatment at a medical facility;
3. When a child has been missing, lost, or left unsupervised on or off the premises; and/or
4. An emergency or disaster that results in damage to the School-Age Only Center or the inability of the licensee/director to comply with regulations."

FACTS AND FINDINGS:

On December 1, 2017, Lori Pflanz Child Care Inspection Specialist, Nebraska Department of Health and Human Services, Division of Public Health (hereinafter referred to as "Pflanz"), conducted an unannounced complaint inspection of Fundamental. Fundamental was being inspected for an incident that occurred on October 25, 2017.

The investigation revealed that on October 25, 2017, a nine (9) year old child was left at the facility without any staff. The investigation indicated that on the day of the incident, the child had gone into the bathroom before being transported to school from the facility. Staff were not aware the child was missing from the bus intended to transport the child to school. Once left alone, the child walked away from the facility to Yankee Hill Road and was seen by Fundamental staff driving another bus. The child was picked up by that bus and transported to school. Staff were not aware the child was missing from the bus intended to transport the child to school until informed by other Fundamental staff who discovered the child walking on Yankee Hill Road.

The investigation also revealed that Fundamental did not follow their own procedures related to transportation and ensuring adequate and appropriate supervision for children. Parents were not informed in a timely matter regarding an incident. The facility did not notify the Department the child was left unsupervised as required by the regulations.

The facts found by Pflanz were consistent with the information obtained in the investigation conducted by Children and Family Services. Ann Erickson, Director of Fundamental, also acknowledged the incident occurred.

DISCIPLINARY ACTION IMPOSED:

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

1. Fundamental 's Operating School Age Only Center license is placed on probation for a period of six months from the effective date of April 4, 2018 to October 4, 2018. The following terms and conditions will apply:
 - a. By April 4, 2018, Fundamental will develop and establish policies and procedures on how adequate and appropriate supervision is provided at all times the children are in care; specifically during transport. The written policies and procedures should incorporate, but not be limited to: the use of checklists, staffing charts, frequent monitoring, accountability, training of staff who count in the staff-to-child ratio, how current and future staff will be made aware of current changes in policies and procedures, and other detailed procedures to ensure proper and adequate supervision of children at all times.
 - b. By April 4, 2018, Fundamental will submit a detailed plan as to how the Licensee / Director will actively monitor staff's compliance with policies and procedures regarding adequate and appropriate supervision.

c. By April 4, 2018, Fundamental will develop and/or revise existing transportation policies to include that when transporting children, all children are accounted for when loading and unloading. At least two staff shall provide written verification by initialing a checklist. These checklists must be maintained on the center premises for at least six months and available for review by the Department upon request. Prior to transporting any children, children must be assigned to specific staff who will then be accountable for these children.

d. By April 4, 2018, Fundamental will develop and/or revise existing written policies and monitoring procedures to ensure compliance with 391 NAC 4-006.27E Notification to the Department of Emergencies specifically, "Department is notified within 24 hours or the next business day of the occurrences."

In addition, the written policies will include but are not limited to:

1. How the staff report the occurrence.
2. The manner in which the occurrence will be reported; i.e., written, verbal, or both.
3. Who is responsible for notifying the Department.

e. By April 4, 2018, Fundamental must ensure all existing staff who have the responsibility of caring for children will be retrained on the check in/check out policy. Fundamental must submit verification of attendance and successful completion by all staff who have the responsibility of caring for children within fifteen (15) calendar days after the completion of the retraining.

These policies, procedures and plans, required in a, b, c, d, and e, must be submitted to the Department in writing. The Department agrees that after reviewing these written policies and procedures, it will either be approved or require modification. If modifications are required, Fundamental must within ten (10) calendar days of the notice by the department, resubmit the written policy to the Department with required modifications. The Department reserves the right to make minor unilateral modifications to written plans.

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

f. By May 9, 2018, Fundamental must ensure that all existing staff, who have the responsibility of caring for children, will register / enroll, attend and successfully complete a minimum of two hours of face-to-face training related to adequate and appropriate supervisions.

This training must be approved by the Early Childhood Training Center as well as the Department of Health and Human Services as meeting the requirements for acceptable training for childcare program staff.

Prior to participating in any training, Fundamental will submit in writing the following to the Department in order for the Department to determine if the training meets the requirements for which it is intended: training curriculum, date and time of training, name of the training, presenter/instructor's name, and the number of hours. This training will not count toward the required twelve (12) hours of annual training.

Upon receipt of the above information, the Department will either approve or require additional information in writing from Fundamental within ten (10) working days of the receipt of the letter requesting approval of the training. If additional information is required, Fundamental must reply with the required information within ten (10) calendar days of notice by the Department.

Fundamental must submit verification of attendance and successful completion by all staff who have responsibility of caring for children within fifteen (15) calendar days after completion of the approved training.

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

All documentation required must be submitted to Department, Attn: Lori Pflanz, PO Box 94986, Lincoln, NE 68509-4986, (402) 471-9102, Lori.Pflanzjerkovic@nebraska.gov or at such other address as directed in writing by the Department.

2. 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.). The Licensee and any employees and/or agents must cooperate with the Department in these monitoring inspections.

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

4. Failure to comply with the terms of this disciplinary action, the applicable School Age Only Center Regulations, or 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.

5. If Fundamental discontinues the child care program for any reason, the time Fundamental is not actively operating a licensed child care program will not count toward the probation period. Any subsequent child care license issued by the Department indicating Fundamental as licensee/director/owner shall be subject to the terms of this probation including completion of the probation period. Fundamental must notify the Department, in writing, within seven (7) working days of any period that it is not actively operating the program. Active operation is the provision of childcare 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 April 3, 2018, 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 on or by April 3, 2018. It should be addressed to:

Chris Kort, for DHHS
Children's Services Licensing – Licensure Unit
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.

Nebraska Revised Statutes, section 71-1911, provides that a person who has had their **“license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this action.”**

Nebraska Revised Statutes, section 71-1920 of the Child Care Licensing Act, provides that “any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of State of Nebraska in the district court of the county in which the program is located.” In addition, section 71-1920, (2), states that “a person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years.”

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: March 19, 2018

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

[REDACTED]
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 19th day of March 2018, a copy of the foregoing **NOTICE OF DISCIPLINARY ACTION** was sent by certified and first class United States mail, sufficient postage prepaid to **FUNDAMENTAL ATHLETICS ACADEMY LLC., 8400 CODY DRIVE, LINCOLN, NE 68512.**

[REDACTED]
Chris Kort
Administrative Assistant