

BEFORE THE  
DEPARTMENT OF SOCIAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

LOVETTE TORRES  
dba Torres Family Child Care  
1068 W. Suncrest  
San Bernardino, CA 92407

Respondent.

CDSS Case No. 6705026002

OAH No. L2006030120

10 CDSS 10

**PROPOSED DECISION**

On April 5, 2006, in Riverside, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael LeLouis, Staff Attorney, represented the complainant (hereafter “Department”).

Respondent Lovette Torres (hereafter “respondent”) was present and represented herself.

Evidence was received, the record was closed and the matter was submitted for decision on April 5, 2006.

**FACTUAL FINDINGS**

1. On or about February 17, 2006, Jo Frederick, Deputy Director, Community Care Licensing Division, California Department of Social Services) authorized the filing of the Accusation against respondent Torres Family Child Care Home License pursuant to Government Code section 11503.

2. The Department issued a facility license to respondent Lovette Torres to operate a family child care home (hereafter the facility) at 1068 W. Suncrest, San Bernardino, California. The facility was initially licensed on August 23, 2001. It was license with a capacity of eight.

3. By virtue of licensure by the Department, respondent is obligated to operate her facility in accordance with the statutes and regulations governing the licensing and operation of family child care homes.

4. The Department filed the Accusation against Torres on a variety of grounds. The first is that on numerous occasions respondent has operated her facility in excess of her licensed capacity. There were alleged to be factors in aggravation including respondent being overcapacity after a non-compliance conference with the Department in August 2004. Also, respondent, it is alleged, failed to maintain required paperwork and on at least one occasion had un-cleared adults residing or working in the facility while children were in care. Finally, as a factor in aggravation, respondent is charged with denying access to Department personnel on more than one occasion.

5. The Department of Social Services was acting appropriately and in accordance with its regulatory mandate when it filed this Accusation. It has a primary obligation to protect the extremely large and vulnerable population who are served by its licensees. It had sufficient information to create a reasonable concern about the conduct of respondent to justify filing the Accusation. By the same token, allegations are simply that, claims about past conduct and how that past conduct should most fairly be characterized. The Department had concerns, expressed in this case, about the potential safety of children in care. They were also concerned about what they perceived as respondent's lack of cooperation as a licensee.

6. Respondent did not contest the accuracy of the allegations contained in paragraphs 10-13 of the Accusation save and except for disputing paragraph 10 B. Therefore, the allegations contained in paragraphs 10-13 are found to be established by the Stipulation of the parties. The only disputed allegation is paragraph 10 B which alleges that respondent's facility exceeded the licensed capacity as listed on the license on the date of December 9, 2004.

7. A family child care home takes care of generally young children during the day while their parents are busy working to earn the money to keep a roof over their head. These are vulnerable populations that require sustained quality care.

8. Overcapacity can be a minor or major deficiency depending on a variety of factors. However, all facilities are licensed for a particular census. Based upon evaluative factors, the Department places limits on the number and ages of those allowed to be in care at a facility at any one time. Depending on the number of children in care, Department regulations require more than one staff person to be present to insure safe child care. Operating a facility over-capacity can happen on a rare occasion even to a prudent care giver. But when such violations are uncovered on a repeat basis, there is serious cause for concern. Over-capacity operation places children in care at risk of harm and this is unacceptable. Respondent has a long history of over-capacity operations extending back to 2003. In August 2004, after four previous over-capacity violations, she was called into the District

office for a compliance conference. Unfortunately, this did not spur her to adequate compliance.

9. Respondent's over-capacity violations are compounded by her denial of access to Department personnel as they were doing their regulatory inspections. Not only did she deny access, her attitude in dealing with Department personnel has been abysmal. She has been rude and abusive and uncooperative with Department personnel. This is unacceptable.

10. At the hearing, respondent apologized for her actions. Although she seemed sincere her course of conduct in ignoring Department regulations and her abusive behavior are inconsistent with continued licensure. She may, at some future time, qualify for re-licensure. That will happen, if at all, when she learns that following Department regulations is mandatory and that treating Department employees with respect, not abuse, as they perform their regulatory duties, is not dependent on whether she is having a good day or a bad day.

11. Although she offered testimony on the issue, respondent was not persuasive on the question of over-capacity on December 9, 2004. What respondent did manage to demonstrate was that she was not dishonest in filling out forms for the Child and Adult Care Food Program (CACFP).

## LEGAL CONCLUSIONS

1. This matter arises under the California Child Day Care Facilities Act, Health and Safety Code section 1596.70 et seq., which governs the licensing and operation of family child care homes.

2. The regulations which govern the licensing and operation of family child care homes are contained in California Code of Regulations, title 22, Division 12, Chapter 3, section 102351.1, et seq. The term "family child care home" as used in regulation section 102352(f) is the same as the term "family day care home" as used in Health and Safety Code section 1596.78.

3. The California Department of Social Services is the agency of the State of California responsible for the licensing and inspection of family child care homes.

4. Administrative proceedings before the Department of Social Services must be conducted in conformity with the provisions of the California Administrative Procedures Act, commencing with Government Code section 11500, et seq.

5. By virtue of Health and Safety Code section 1596.854, the Department may institute or continue a disciplinary proceeding against a licensee following the suspension, expiration, or forfeiture of a license.

6. The standard of proof to be applied in these proceedings is the preponderance of evidence by virtue of Health and Safety Code sections 1596.887, subdivision (b) and 1596.889.

7. Cause to impose discipline against the facility license of Lovette Torres pursuant to Health and Safety Code section 1596.885, subdivisions (a) and (b) was established in that respondent has violated the laws and regulations of the Department by reason of Factual Findings 1-11. These violations are serious and substantial.

8. Cause to impose discipline against the facility licenses of Lovette Torres pursuant to Health and Safety Code section 1596.885, subdivision (c) was established in that respondent engaged in conduct which is inimical to the health, morals, welfare and safety of individuals receiving services from the facility and the people of this state by reason of Factual Findings 1-11.

9. All evidence of extenuation, mitigation and aggravation has been considered in fashioning the disciplinary order below. Respondent's conduct as found above and her abysmal attitude and mistreatment of Department personnel are inconsistent with licensure at this time.

#### ORDER

The license issued to respondent Lovette Torres to operate a family child care home is revoked.