



petitioner allowed children to play in her yard without adequately monitoring their activities and whereabouts.

3. As a result of these findings the licensor sent the petitioner a "Stipulated Agreement" in which the petitioner agreed that she understood and agreed to comply with the regulations regarding the numbers of children allowed to be in her care. The petitioner signed and returned this agreement to the Department.

4. At no time did the Department take, or threaten to take, any adverse action against the petitioner's registration certificate due to these alleged violations. However, the Department did record them and place them in the petitioner's file. Because she disagrees with the licensor's conclusions, the petitioner filed an appeal to the Board to have these alleged violations stricken from her record.

5. A hearing was held in the matter on January 19, 2005. The petitioner testified that several of the children in her care last summer also participated in a town supervised park program, and that her discussion with the licensor on September 16, 2004 had been an attempt to resolve her confusion over whether these children had to be counted in her day care census during the hours that they were participating in the park program. The petitioner denied that she ever had

more than six children actually in her care at the same time during the summer without another care giver being present.

6. In the absence of any direct evidence contradicting the petitioner that she was over numbers, and considering the petitioner's credibility at the hearing, it is found that the Department's investigator misunderstood the petitioner's statements to her on September 16, 2004. It cannot be found that the petitioner was ever actually over numbers during the summer of 2004.

7. Regarding the petitioner's supervision of the children in her care, the petitioner admitted to the investigator on September 16, 2004, and again at the hearing, that she routinely allowed the children to play outside in her yard while she was inside observing them from a picture window. The petitioner further admitted that from the window one cannot actually see all sections of the yard where the children can and do play. She also admitted that there is no physical egress to the yard through the back of the house facing the play yard, and that it would take several seconds for her to get out of and around the house to reach a child in an emergency.

ORDER

The Department's decision that the petitioner was over numbers shall be stricken from her record. The finding that the petitioner did not adequately monitor children playing outside her home is affirmed.

REASONS

The Department does not maintain that children who were participating in a supervised park program had to be included in the census of children in the petitioner's home during the actual time they were at the park. As noted above, the Department did not present any direct evidence that the petitioner ever actually provided care in her home for more than the allowable numbers of children. Based on the petitioner's credible testimony, it is found that what appeared to the Department's licensor to be an "admission" by the petitioner in this regard was a mutual misunderstanding. The petitioner misunderstood that children in the park program did not have to be counted if they were not actually in her care during the time that they were at the park. The licensor misunderstood that the petitioner was not admitting to being over numbers regarding any children who were not in the park

program. Thus, this part of the Department's citation of the petitioner must be reversed.

Section II.2 of the Department's regulations includes the provision: "preschoolers and school age children may be monitored from inside the home if their area of play is within sight and earshot of a caregiver." In this case, it cannot be concluded that the Department's interpretation of the above provision to mean the *entire* area of play is unfair or unreasonable. Inasmuch as there is no dispute that the petitioner cannot see all of the outside play area from a window inside her house, the Department's decision that she was in violation of the above provision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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