



Mitchell E. Daniels, Jr., Governor
James W. Payne, Director

Indiana Department of Child Services
Office of General Counsel-Hearing and Appeals
302 W. Washington Street, Room E306 – MS47
Indianapolis, Indiana 46204-2739
317-234-5784
FAX: 317-234-4497
www.in.gov/dcs
Child Abuse and Neglect Hotline: 800-800-5556

NOTICE OF HEARING DECISION

APPELLANT: New Horizon's Youth Ministries, Inc.
CASE NUMBER: CCI-27-155460933
HEARING DATE: December 16 & 17, 2009

FILED
INDIANA DEPARTMENT

FEB 17 2010

OF CHILD SERVICES
HEARING & APPEALS

JURISDICTION

This hearing was held under the provisions of IC 31-27-3-20 and IC 4-21.5-3 et seq., as directed by IC 31-27-3-21.

ISSUE

The sole issue before the Administrative Law Judge is in regards to a revocation of the Child Caring Institution License of New Horizon's Youth Ministries, Inc.

The Administrative Law Judge has carefully reviewed the testimony presented at the hearing, all evidence, Federal/State regulations, Rules and DCS Policy in regard to this matter. The Decision, which follows, outlines the facts and conclusions that are the basis for the final determination by the Administrative Law Judge.

THIS DECISION IS FAVORABLE TO THE STATE.



FINDINGS OF FACT

1. Appellant, New Horizons Youth Ministries Inc., was licensed as a Child Caring Institution (CCI) by the Indiana Department of Child Services (DCS) under license #33447. The only facility covered by the Indiana license is located in Marion, Indiana and is known as New Horizon's Academy (NHA).
2. On October 2, 2009, a certified letter (DCS Exhibit C) was mailed to Appellant by Regina Ashley, Deputy General Counsel, for DCS, which stated the following:

This letter is to inform you that the Indiana Department of Child Services (DCS) is revoking the Child Caring Institution (CCI) license (#33447) of New Horizons Academy (NHA). A licensee shall operate a CCI in compliance with the rules established under Indiana code 31-27 and is subject to disciplinary sanctions if DCS finds that the licensee has violated this article of a rule adopted under this article.

NHA's second probationary period ended on September 30, 2009. According to IC 31-27-3-14, a probationary status period is for not more than six (6) months. However, DCS may extend a probationary period for one (1) additional period of six (6) months. At the expiration of the second probationary period, DCS shall revoke the license.

Specifically, your CCI license is revoked due to the following non-compliances:

- Violation of IC 31-27-3-32 which states that a licensee shall operate a CCI in compliance with the rules established under this article and is subject to disciplinary sanctions if DCS finds that the licensee has violated this article or a rule adopted under this article; DCS may revoke the license when DCS finds that a licensee has committed a violation.
- Violation of 465 IAC 2-9-66 regarding treatment plans and 465 IAC 2-9-68 regarding services to families. Included in NHA's treatment plans are inappropriate program policies for a DCS licensed residential treatment facility. Residents do not receive family therapy until nine (9) months after admission. This is contrary to best practices in residential



care, which is to support early family involvement and reduce length of stay in placement. For example, the maximum length of stay (without an extension) in residential care for a DCS ward is nine (9) months.

- Violation of 465 IAC 2-9-57 regarding discipline and guidance. NHA's policies include use of physical discipline as consequences to behavioral problems for residents. Physical discipline consists of 100 exercises per "Unit of Concern", such as push-ups, sit ups, mountain climbers, squat thrusts, 2 mile run, and "saw logs". NHA policy lists "disrespect" as a Unit of Concern Category and is 5 Units of concern. Thus, if a resident disrespects a staff person at NHA, they may have to run 10 miles or do 500 sit ups, push ups, etc. NHA also uses the inappropriate methods to control behavior: an hour of unpaid work per "Units of Concern," "behavior supports" and hair cuts. For example, one resident explained that if a resident gets into a fight, staff at NHA will hold a random section of hair and cut it. This is supported by NHA policy. Examples of "behavior support" are "notebook support" (resident being restricted from speaking and only able to communicate through written form), "doorway support" (resident must perform a number of exercises before entering any room or building on campus), "square meal support" (resident required to eat only in specific manner involving the creation of a right angle), and "sleep support" (where one "trustworthy" student is required to place under their mattress near the door in their bedroom in an attempt to prevent/deter the other student, who has been placed on precaution, from exiting their bedroom). NHA continued to utilize these non-therapeutic techniques for residents despite DCS giving a directive that they cease and desist these practices immediately.
- Violation of 465 IAC 2-9-62 regarding work experience. NHA requires children placed to do manual labor on the property. For example, during a visit to the facility in the fall of 2008, children were digging a trench from the saw mill to another building on campus before school in the morning.



- Violation of 465 IAC 2-9-64 regarding visiting and correspondence and 465 IAC 2-9-68 regarding services to families. The family visitation and phone call policy remains unclear, despite one (1) year of probation. When NHA was placed on probation, children were not permitted to have telephone contact with their family for two (2) months or visitation with their family for seven (7) months after admission. Family therapy was not permitted until nine (9) months. In addition, all phone calls are recorded, scrutinized and counselors can give residents consequences as a result of phone conversations. These policies are not appropriate for maintaining connections between children and their families. The current policies are silent on whether children can visit their families any sooner than seven (7) months. In addition to the above, other programmatic concerns include policies which cover resident relationships, including romantic relationships and physical intimacy. An example is a policy which requires residents to obtain a "certificate of affection" from staff in order to pursue a relationship with a member of the opposite sex, which requires the resident's first kiss to be in front of the staff and residents of the facility, and which requires any further kissing and hugging to be in the presence of the House Father (but the kissing and hugging must cease if/when others become uncomfortable). These are not appropriate policies for a residential treatment facility.

The above areas of concern, as well as others which are listed in the attached letter, have been cited and discussed with various personnel of NGA and have yet to be resolved. Therefore, it is necessary for DCS to revoke NHA's CCI license (#33447).

3. In the October 2, 2009 letter, Appellant was given the opportunity to request an informal meeting within ten (10) days and/or an administrative hearing within thirty (30) days after receipt of the notice letter. An email request for an appeal was received by the DCS licensing unit on October 19, 2009. The request was forwarded to DCS Hearings and Appeals, and filed on October 20, 2009.
4. A notice reflecting the date, time and place of the scheduled hearing and other rights available to the Appellant, was sent to the Appellant on October 19, 2009, by the Hearing and Appeals Coordinator. A hearing was scheduled to be heard



on November 20, 2009. The hearing was converted to a telephonic Status Conference upon receipt of a request to continue the hearing by Appellant and the hearing was reset to be heard on December 16, 2009. The hearing was heard on December 16 and 17, 2009, at the Indiana Government Center South, Conference Center, Indianapolis, Indiana, under the provisions of IC 31-27-3-20 and IC 4-21.5-3, et seq., as directed by IC 31-27-3-21.

5. At the Administrative Appeal Hearing, Appellant New Horizons Youth Ministries, Inc. appeared by CEO Tim Blossom, and by counsel, Phillip Stephenson. DCS appeared by DCS licensing unit Placement Manager, Beverly Gatling and by counsel, Jill Sandifur. The following witnesses were also in attendance; DCS Human Services Consultant Myron Dance, New Horizon's Counseling Director John Stark and New Horizon's Managing Director Zac Blossom. In addition, two parents of children, formerly placed in the facility, were present for the period of their testimony, [REDACTED] and [REDACTED].
6. The following Exhibits were admitted at the Administrative Hearing by the parties:
 - a. Appellant's Exhibits 1-10.
 - b. DCS Exhibits A-GG
7. The parties stipulated to the following:
 - a. The admission of DCS Exhibits A, B, C, D, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, DD, EE, FF and GG.
 - b. "New Horizons Youth Ministries, Inc. is an Indiana not-for-profit corporation, recognized as a 501(c)(3) organization, and holds a child caring institution license (#33447) in the name of New Horizons Youth Ministries as the licensee and New Horizons Academy as the facility that was revoked pursuant to a letter sent to New Horizons from DCS on October 2, 2009, with the effective date of the revocation being approximately November 2, 2009 (depending on when New Horizons received DCS' October 2, 2009, letter.)"
 - c. "New Horizons operates its New Horizons Academy facility at 1002 S. 350 E., Marion, IN 46953."
 - d. The parties also stipulate to the written testimony of Joseph Combs in lieu of his actual testimony.
8. New Horizons' license was placed in a probationary status on October 3, 2008. A secondary probationary period was initiated by DCS on April 3, 2009.
9. While New Horizons Youth Ministries Inc. also operates facilities in the Dominican Republic and in Canada, any facility owned or operated by the entity,



beyond the legal boundaries of Indiana, is not covered by the Indiana license. New Horizons Academy (NHA), the facility located in Marion, Indiana, closes over the summer months and residents are placed in facilities outside the United States, without discharge, as a part of its standard operation. Only the facility in Indiana is addressed in this decision. No care and supervision of any resident, during the period of time that the child is taken outside the United States, is covered by the license granted by Indiana through DCS, the licensing agent.

10. NHA is located on an unknown number of acres in Marion, Indiana. There is an old school building on the grounds that is used as an administration building. In addition, a new school building, a maintenance shop, two (2) staff houses in which the directors reside with their families, and four (4) student homes which include a dormitory and a sick room are present. Over the prior two (2) years, only two (2) of the student housing units have been used to house children, one for girls and one for boys. The other two student homes have been utilized as additional staff housing. According to the testimony of NHA's counseling director, five (5) licensed counselors were on staff at the facility, with psychiatric counseling outsourced.
11. Regarding the population of children placed in NHA, residents were both boys and girls, ages fourteen (14) through eighteen (18) years of age. Last year, a total of 22 children were placed at the facility, with approximately six (6) girls and six (6) boys being placed at any one time. The children placed at the facility are primarily private placements, with only four (4) DCS wards placed at the facility since 2000.
12. As to the violations of 465 IAC 2-9-66 (Treatment Plan) and 465 IAC 2-9-68 (Services to Families), DCS asserted New Horizons Academy inappropriately failed to ensure family therapy because the Family Counseling policy (DCS Exhibit DD) specifies no family therapy is offered to the children and their parents until the child is a resident for nine (9) months. No revision to the Family Counseling policy was provided to DCS prior to revocation of the license. The Student Visits policy (DCS Exhibits U, dated August 2007) references the first visit with family only after seven (7) months of placement and family counseling only after twelve (12) months. In the letter dated March 25, 2009, signed Tim Blossom, from NHA to DCS, the following appears: "Remember that New Horizons calling is to the private sector. The listing of 465-29-64 and 68 (sic) is being done in practice with the New Horizons parent's prior and continued approval. Parents are in attendance when the treatment plan is written. We are unaware of the existence of a problem here."



13. As to the violation of 465 IAC 2-9-57 (Discipline and Guidance), DCS asserts NHA staff, in accordance with written policies addressing Behavioral Supports, Points and Levels System, Consequences and Units of Concern assessed to the residents are inappropriate methods to control the behavior of the children.
- a. Behavioral Supports were identified in NHA's written policy (DCS Exhibit K) and was objectionable to DCS. The supports identified in the policy include requiring a child to carry a bucket of water wherever they go, not speak, but to "rely solely on the notebook to communicate with others" and complete one (1) to five (5) push-ups before entering any room or building on campus. Another support involved having all of the student's clothing confiscated, with the student being required to ask to get clothing items from staff. Another behavioral support involves a trustworthy student sleeping on a mattress near the door to monitor the exit or bathroom after hours. DCS specified its disapproval in written correspondence as "children should not be expected to or required to supervise each other while in treatment." DCS Exhibit H, page 3. NHA's position, as stated in correspondence dated March 25, 2009, as to supports is that "Supports are no more than reminders that the student willingly chooses to do to help them to overcome themselves." Additionally, the letter claims that the technique "works." (DCS Exhibit L) Attached to the correspondence of Tim Blossom dated May 15, 2009, is a revision to the Behavioral Supports policy. The policy, as revised specified that "Specific Behavioral Supports are to be determined in the summer of 2009." (DCS Exhibit S) No further policy was received by DCS prior to license revocation. CEO Tim Blossom continues to defend the practice as appropriate for the minor residents.
 - b. Another NHA policy that incorporates physical exercises is the Points and Levels System (DCS Exhibit I). Each Level a child achieves is tied to physical accomplishment. While the facility referenced the physical exercise as optional, it was identified as a requirement (DCS Exhibit I, pages 3 and 5) in order to move to a higher level at the facility as follows: "Do 10 perfect push-ups, sit ups and squat thrusts."
 - c. NHA's Consequences policy (DCS Exhibit J) states "up to 10 exercises for any one minor offense" can be determined by a supervising staff member. In addition, the residents' belongings can be confiscated by staff if forgotten or left out of place. The residents' consequence is \$.10 and 10 push-ups for each item. A child reported to DCS staff on January 6, 2009, that if the children do not pass inspection, their belongings are indeed confiscated and they must do push ups and pay a fine to get them back (DCS Exhibit E, page 4). Another child reported that when phone calls were allowed, the calls were recorded. If they mentioned "checked" topics they got into trouble and received Units of Concern. DCS Exhibit E, page



5. A child also reported that the week prior, a staff member was belittling her in front of others and said "do you want to see her get her hair cut, just hit me." So, she did. Thereafter, she was restrained and her hair was cut. DCS staff observed that her hair did look like it had been cut in an uneven manner (DCS Exhibit E, page 4). DCS found the policy allowing a staff member to cut a child's hair as a consequence or manner of discipline to be inappropriate for a licensed child caring institution/residential treatment facility.

- d. The written student handbook includes the policy of Units of Concern, version 2000/Rev. 2007, admitted as DCS Exhibit F. In accordance with this policy, Section I defines a Unit of Concern as 100 exercises. Section III specifies that Insubordination by a resident receives 10 Units of Concern. Therefore, for an incident of insubordination, a child would be required to perform 1000 sit-ups, push ups or other listed exercises. NHA's position, as stated in correspondence dated March 25, 2009, as to discipline, the letter states, "We do not administer physical discipline, period. We have rules and regulations that require certain behavior on the part of our students. If these rules are violated there are consequences." The letter states that "what you would call discipline, is extrinsically and willingly paid." Appellant defends the policy of administering physical exercises as discipline and to achieve a level in the facility by pointing out the ability of the child to choose exercise over other consequences, including the choice to fail to advance levels. (DCS Exhibit L) DCS Policy 8:18, Discipline in Resource Homes applies to licensed residential treatment facilities according to Mr. Dance and prohibits physical exercise as a type of punishment. (DCS Exhibit G) NHA's Units of Concern policy involved physical exercise as a means of disciplining the children. Revision to the policy by removing the specific numbers of sit-ups and push-ups (DCS Exhibit U) did not meet the request of DCS to ensure the practice was eliminated. Mr. Dance testified that the use of physical discipline as a consequence, punishment or as part of the level system at the facility is not acceptable to DCS for a licensed entity. Whether or not the resident has a choice to accept the physical discipline is not a determining factor as to whether the practice or policy is acceptable.

14. As to the violations of 465 IAC 2-9-62 (Work Experience), DCS asserts work experience for residents of child caring institutions is allowed. However, it is limited by parameters delineated in the Indiana Administrative Code.

- a. On January 6, 2009, DCS representatives Mr. Dance and Ms. Gatling inspected the facility and observed very muddy shoes for the girls. They were told by NHA staff and the residents that the girls were digging a



- trench to the saw mill at the facility. The girls in the house stated they woke up early and dug a three (3) foot deep trench for an hour and a half before going to school (DCS Exhibit E, pages 1 and 4). The trench digging was not determined to be voluntary in nature through interviews with residents and staff. The trench was determined by DCS to be a maintenance task, better performed by employees or hired workers.
- b. A separate child interview revealed one girl was retained in a secure care room (concrete walls and floor with a metal door) with no chair for period of time in excess of 24 hours. She was released for work duty, including using the machete and digging large holes. At night she was given something to sleep on. (DCS Exhibit E, page 3)
 - c. Units of Concern can also involve work by the resident at NHA. For insubordination, a resident is required to provide 10 hours of unpaid work for the facility according to the Units of Concern policy (DCS Exhibit F). One Unit of Concern is defined as 10 "saw logs," requiring the child, as a result of insubordination, to complete 100 saw logs for the facility. Ten (10) cuts on a piece of wood equal one saw log.
 - d. According to John Stark, the day of the week that the child is designated to provide community service is unpaid. For other days, the resident is required to work for a designated period of time and is paid in accordance with his/her level at the facility. Level zero residents receive no pay for working. Level one (1) receives \$.50 an hour up to \$2.00-\$2.50 per hour for Level five (5) residents. The pay is kept in an account for toiletries and snacks. In some instances, funds were also used for activities of the resident.
 - e. As to discipline, every hour worked equals an hour of concern assessed. No pay is received for the work done by the resident in those circumstances and it is the understanding of DCS that the residents were generally paid a minimal amount to chop wood at NHA and that the efforts of the children were not voluntary.
15. As to the violations of 465 IAC 2-9-64 (Visiting and Correspondence) and 465 IAC 2-9-68 (Services to Families), DCS asserts that the policies of the facility that restrict family phone contact, visits and mail are inappropriate and in violation of the rules for licensed child caring institutions. In the original probation documentation, the concern that residents, by policy, are not allowed phone calls until after two (2) months and visits after seven (7) months was identified.
- a. No phone calls are permitted by the residents until after two full months of placement. After two months, a call is allowed once monthly with the child's parent/guardian. The NHA Phone Calls policy (DCS Exhibit EE) requires staff to record and review the calls. In the policy revision attached



to the September 2, 2009, email from Zac Blossom (DCS Exhibit T) to DCS, the Phone Call policy requires recording of phone calls with review under specific circumstances. No assurance of phone calls with family is ensured by the revised policy in that the information regarding time frames was removed.

- b. In accordance with the NHA Student Visits policy (DCS Exhibit U), visits between parents and their children are prohibited for the first seven (7) months of the child's placement in the facility. Although the policy also allows for the timing of the first visit to be altered for therapeutic reasons, it states "All New Horizons therapeutic decisions are final." Therefore, NHA staff could extend the visits to begin even later or begin earlier, with no oversight. DCS' view is that the policy discourages family visitation without justification in violation of 465 IAC 2-9-68. Maximum interaction and involvement between the parent and child is encouraged by DCS (DCS Exhibit W).
- c. The Family Counseling policy (DCS Exhibit DD) specifies no family therapy is offered to the children and their parents until the child had been a resident for nine (9) months. No revision to the Family Counseling policy was provided to DCS prior to revocation of the license. Inconsistently, the Student Visits policy (DCS Exhibits U, dated August 2007) also references the first family counseling after 12 months. The Student Visits policy attached to the September 2, 2009 email from Zac Blossom, dated July 10, 2003, references staff determination of appropriate visits in conjunction with the treatment plan. (DCS Exhibit T, page 7-8). No treatment plan policy was submitted at the hearing to allow a determination concerning how a treatment plan would be determined in the facility. In that the majority of the residents were in a private placement situation, no external caseworker provided oversight of the plans for these children. As a result, there is a critical need for the policies to be detailed and followed by staff to ensure adequate care for the residents. As to the Student Visits policy, Myron Dance testified that the policy submitted in September 2, 2009 was too vague to ensure adequate visitation among family members. DCS Policy 8:12 identifies the importance of a healthy parent/child relationship to the well-being of a child and states "Regular visits and contact will help the child not to feel abandoned by his or her parent...." (DCS Exhibit X).
- d. It was determined by Myron Dance through his interviews, that mail was also monitored and consequences were given to the children if they mentioned certain things during the calls or in written correspondence (DCS Exhibit E, page 5 and DCS Exhibit H, page 7). Monitoring of phone calls is common in residential facilities. However, recording the calls and



imposing consequences as a result of the communication was seen as abnormal and inappropriate. All children, in any level, according to the Points and Level System policy, DCS Exhibit I and S, have the following restriction "All outgoing mail is read. All incoming mail is inspected and read." There is no requirement that there be a reasonable fear that the contents could harm the child or others, in accordance with the Indiana Administrative Code.

16. In addition, other policies and/or practices of the New Horizons Academy were of concern to DCS, specifically, the policy of the facility regarding relationships and intimacy. In the Staff/Student Redemptive Relationships policy (DCS Exhibit FF), physical restraint is identified. While the relationship policy was not revised, the Physical Restraint policy was revised in two separate versions eliminating physical restraints. (DCS Exhibit S, submitted to DCS by Tim Blossom, dated May 15, 2009 and DCS Exhibit T, submitted by Zac Blossom to DCS on September 2, 2009). The policy revisions are consistent in permitting no physical restraints by staff. An appropriate response by staff is now identified as calling for law enforcement. The Male-Female Relationships policy (DCS Exhibit GG), requires residents to apply for a "Certificate of Affection" and "both students must "kiss in front of the gathering at community lunch." The parameters described in this policy appear to DCS to include demonstration of affection in front of others, an unusual process, not seen in other institutions. While DCS staff found no specific administrative regulation that currently addresses this type of policy, the impact of enforcement of the policy on children placed in the facility remained a concern to DCS.
17. Myron Dance, DCS Human Services Consultant testified at the administrative hearing. He conducted the NHA annual licensing review on October 3, 2008, including completing a check list (DCS Exhibit A), conducting a site inspection, performing interviews of staff and residents and reviewing personnel and resident files. On that date, he placed the facility on probationary status due to numerous concerns. He conducted further investigation into operations during the term of the probationary period and discovered additional areas of concern on behalf of the licensing agency. On January 6, 2009, he conducted an unannounced visit to NHA and interviewed staff and residents. Mr. Dance summarized his observations and findings in DCS Exhibit E. On March 19, 2009, he was notified that Tim Blossom would be taking over as legal representative for New Horizons. On April 2, 2009, at the conclusion of a six (6) month probationary period, the facility was placed on an additional probationary period (DCS Exhibit B) due to NHA's failure to provide written policies that reflect adequate adherence to the Indiana Administrative Code. During the probationary periods, DCS continued



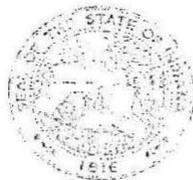
communication with NHA regarding the need for necessary compliance and updated written policies. He sent a reminder to Zac Blossom on May 5, 2009, confirming that outstanding issues remained. In response (DCS Exhibit Q), additional time was requested by Zac Blossom. Mr. Dance responded with the reminder that "Unfortunately, New Horizons is already in the second probationary period and time is of the essence." (DCS Exhibit R). Tim Blossom sent a letter to Mr. Dance on May 15, 2009 (DCS Exhibit S). The letter states that the child care model of the facility would be reviewed over the summer when New Horizons was closed and that policies and manuals would be rewritten at that time. Attached to the letter were policies that removed some, but not all, objectionable terms that had been previously identified by DCS. Following the second probationary period, due to a continued failure to comply with DCS requests for adequate policy revisions, Appellant was notified of license revocation by email, phone call and by letter sent certified mail.

18. Beverly Gatling, DCS Placement Manager testified at the administrative hearing. She has been the supervisor of the placement unit staff since 1998. She is responsible for DCS licensing of all licensed residential facilities in Indiana on behalf of the licensing agency. She was designated as an expert in DCS licensing for child caring institutions without objection. DCS is the licensing agency for the state of Indiana. As the licensing agent, DCS interprets the Indiana Administrative Code in determining what practices that child caring institutions can participate in to maintain compliance with the parameters of the license. DCS policies apply to all DCS licensed institutions (DCS X and W) and provide guidance to institutions. As the licensing agent, DCS requires licensed institutions to have written policies to allow DCS the ability to adequately provide oversight in determining whether or not institutional policies are in compliance with administrative rules. DCS also requires assurance that the written policies consistent with practice. She reports that Appellant was originally licensed as a child caring institution in 1993, and is designated as a Title IV-E facility. The corporation's license is for residents, not to exceed 12 boys and 12 girls, aged 14 through 18. She participated in an inspection of NHA with Mr. Dance, initiated because of an issue involving staff members who were sleeping instead of providing oversight of children who had sexual abuse issues. She sent a summary of DCS concerns to NHA on March 3, 2009 (DCS Exhibit H). She also participated in a conference call with Appellant, along with her supervisor, the Deputy Director of Licensing Operations Gina Ashley and Myron Dance on March 26, 2009, following receipt of a letter dated March 25, 2009 (DCS Exhibit L) from Tim Blossom. In the letter, no changes in policy or practice are identified, with the exception of the representation that the facility would cease using its confinement room. Her purpose, in the conference call, was to make outstanding



probationary issues clear to the Appellant, along with informing Appellant as to what needed to be done to cure the violations. At that time, Mr. Blossom said he would "do whatever it takes" to maintain a current license. During her evaluation, she reviewed NHA's written policies and Student Handbook. She also reviewed revisions to policies sent on behalf of NHA by both Tim and Zac Blossom. In her opinion, the NHA written policies as originally presented by NHA and the revised written policies do not comply with Indiana regulations in that the policies tie a child's ability to participate in physical exercise to the Level the child is able to achieve in the facility. In addition, the policies either specifically identify physical consequences as a means of discipline or retain the possibility that a student will receive physical consequences as discipline. Whether or not the student is given a choice for a different type of discipline is irrelevant to her in that all choices offered as consequences in NHA policies are punitive. Also, in her opinion, the policies regarding visits, mail and phone calls do not assure compliance by the facility with Indiana regulations with regard to adequate visits and phone calls for the residents. The removal of excessive time frames from the policies, do not assure compliance with Indiana regulations requiring appropriate contact. Recording phone calls and monitoring mail, as required by NHA policy, in her opinion, may discourage communication between the child and parent, and/or CASA/GAL/Caseworker, which violates Indiana regulations, especially when the information is used to establish consequences for discussing certain topics. In addition, she believes the policy restricting communication with other children and requiring a child to ask to go to the bathroom violates Indiana regulations. Four (4) placements have been made by DCS to NHA. She acknowledged that NHA is primarily a private pay facility. Normally, in a non-private pay situation, the Caseworker provides oversight as to the parameters of the treatment plan for the resident. In private pay situations, the DCS licensing unit provides the only oversight, other than the parents themselves. She summarized the basis of her conclusion to recommend revocation of the license of the facility and her opinion that, while the policies and practices of NHA may be acceptable for a different type of facility, perhaps DOC boot-camp, the policies are not acceptable for a facility licensed as a child caring institution through DCS.

19. John Stark, Counseling Director for New Horizons Youth Ministries, testified at the administrative hearing. He makes a big distinction between his private pay placements and DCS placements. While the behaviors and attitudes of the children may look the same, he sees DCS kids as emotionally needy kids who never had anything when they were growing up and were never given proper parenting. Therefore, he treats them differently when they come to the NHA program. He is aware that DCS representative Myron Dance came to the facility and pointed out the policies that needed to be updated. Depending on the Policy,



his supervisor, not the written Policy was often his guidance at the facility and he was aware that many of the policies were outdated and did not coincide with NHA practice. In practice, he modified the policies with approval from his supervisor. He describes NHA policies to be "in flux." His understanding of the reason NHA wants to be licensed by DCS is to have accountability to the state. Mr. Stark deferred to Zac Blossom for NHA issues related to the Units of Concern policy. For other policies, he offered the following information:

- a. As to the written Phone Call policy for NHA, while the policy says two (2) months before a child can participate in a phone call with his/her parent, he has participated in developing treatment plans and altered the written policy based on the situation. He reported that the time deadlines in the policies are not strictly followed by staff. Tim [Blossom] gave him the ability to alter the written policy in practice. As to the portion of the Phone Call policy that requires recording resident phone calls, he is unaware of any phone calls being recorded since 2007, because it was difficult to download and a hassle for staff. Before then, he does not believe every phone call was reviewed.
- b. As to the practice of Student Visits for children placed in the facility, over the past five (5) years, the practice has changed and no longer coincides with the written policy. The practice is much more lax than the written policy. His practice is that the children visit with parents after they are placed in the facility for two (2) to four (4) months, rather than seven (7) months, depending on his evaluation of the situation.
- c. As to the policy regarding Student Mail, he does not review every letter. He believes that the NHA practice is to check correspondence for contraband.
- d. As to the Consequence policy regarding discipline, for the DCS placement in 2007, that child was limited to 10 push-ups a day. At that time other children had no case worker and received different treatment. Practice is now that staff members are limited in the number of exercises they can impose on the residents. Any quantity beyond that limit would require documentation and administrative review. Since September of 2009, he is only aware of laps and work hours being used as a discipline consequence. He views exercise as therapy. To his knowledge, physical exercise is only used as discipline by the child's choice. He acknowledges that the Consequences written policy does not have a therapeutic component to allow variance from the written policy, nor is there a choice component for the resident in that policy.
- e. As to the Points and Levels policy, physical exercise is used to advance levels as a part of the level system without choice. The levels may fluxuate daily. Staff, in practice, made exceptions for some residents. Parameters,



including therapeutic needs of the resident, for allowing exceptions are not identified in the written policy.

- f. As to Behavioral Supports, he is aware that, all behavioral supports were determined to be unacceptable to DCS and have been stopped. He is unaware of the most current NHA policies as they relate to behavioral supports, consequences and units of concern.
- g. As to the practices of NHA related to work done by the residents, he stated that he doesn't ask the children to do anything he wouldn't do, cleaning trash cans, digging ditches, cutting down trees, bringing in wood, splitting wood and building shelves. Work time was not voluntary for the residents. He wants the work to be meaningful, which he defined as needing to be done. Students did dig a trench and put in an electrical line to the saw mill so they could be benefited by having electric lights at the saw mill. The electricity allowed the residents the ability to work both during the day and after dark. Residents split wood for the school to heat the administration building and for NHA to sell to the community. The residents were paid and used the money to go on mission trips and other required service projects. Students have also used pay to attend a baseball game and other outings.

20. Zac Blossom, New Horizons Managing Director testified at the administrative hearing. He was employed by New Horizons for approximately ten (10) years. From his knowledge and experience with NHA policies he offered the following testimony:

- a. He was unaware of the Relationship policy until DCS' counsel read it at the administrative hearing.
- b. As to the NHA Behavioral Supports policy, he is unaware of any child being required to carry a bucket of water, even though it was one of the two examples given in the policy. He reported that supports were requested by staff to be initiated for children who had habits that were annoying to the staff. He reported that he redirected staff away from the use of supports. Over a period of time, supports at the facility were used less and less. In March, the practice was phased out because the staff was made aware that DCS did not approve of supports. Most recently supports were stopped by the Program Director that replaced him in August of 2009.
- c. As to the NHA policies related to Consequences and Units of Concern, he is familiar with discipline at the facility and personally administered or approved Units of Concern for discipline since 2004. He reported that a child could choose to lose a Level at the facility or another consequence instead of physical exercise as long as the staff member feels the



consequence chosen is related to the bad behavior. While he referenced an incident report as a method available for a child to object to and appeal physical exercise as discipline, the incident report was also used to report an injury, missed medication or anything else in which documentation was needed at the facility. No reference to the use of an incident report in the policy is identified.

- d. He performed the most recent resident hair cut as a consequence. The girl had long hair and he cut it straight across. He denies that he held her down as he cut her hair. He disagreed with DCS' position that a hair cut was an inappropriate consequence, but he agreed to cease the practice after Mr. Dance told him it was inappropriate.
 - e. He revised some NHA policies and submitted them to DCS on September 2, 2009. He was informed by DCS that the policies, as revised, were insufficient and that the license was in the process of being revoked. NHA was given the opportunity to voluntarily relinquish the license prior to revocation. He continued to work on policy revisions but did not give any further revision to DCS prior to the revocation. One of those is Appellant's Exhibit 1, Units of Concern. While it has the date of September 2, 2009, it was not a policy attached to his September 2, 2009 email. [DCS Exhibit T, Units of Concern policy is dated March 7, 2000 and is a revision of DCS Exhibit F, dated Orig.2000/Rev.2007] In the proposed revision, he took the authority for staff to cut a child's hair as discipline out of that policy. As to the proposed policies dated November 24, 2009, he never sent those to DCS but the revisions were admitted at the hearing as Appellant's Exhibits 2-9. The proposed policies reflect what he thought would be acceptable under the regulations, despite his belief that NHA's former policies met the regulations. He received no additional information between the time he wrote the policies submitted to DCS in September and the proposed revisions. The proposed policies were not approved by the board but were reviewed and approved by Tim Blossom.
21. Tim Blossom testified at the administrative hearing. He is aware that NHA became licensed as a child caring institution in 1993. He feels that the facility is not a good placement for DCS children because they do not have strong Christian backgrounds. The number one (1) criteria for NHA placement is religion. Residents are, 15-20%, pastor's kids or from missionary families with a strong Christian background. Other placements view them as "religious freaks or cultish." In his opinion, those children would not be successful in their program. He was retired but came back to work for New Horizons in February of 2009. When he returned, NHA leadership viewed the efforts of Myron Dance as "jerking around" because of the issues that resulted in the original probationary period by



DCS. For example, DCS expressed disapproval of sleeping by adult supervisors at night when children having a history of sexual predatory behavior were housed in the same dormitory as children without a history of sexual abuse. DCS expressed concern that inadequate supervision placed the children at risk of harm. In addition, issues at that time involved incomplete resident medication records and inappropriately completed staff CPS checks. He was not given legal power to act for the corporation at that time. He was approved by the board on March 19, 2009, (DCS Exhibit P) to legally represent the corporation. However, at that time, he was ambivalent about the process because the former New Horizons CEO, Chuck Redwine, could have returned. In addition, he was under the assumption that since he had been away from the operations of the facility, someone from DCS would tell him about pertinent licensing rules and laws. He directed no written communication with DCS other than DCS Exhibit L sent on March 25, 2009 and DCS Exhibit S on May 15, 2009. In the March 2009, conference call, he recalls the conversation to be "hot." He heard "loud and clear" during the call that no physical exercise as discipline was appropriate to DCS. So, he did not contact Mr. Dance after the conference call and feels that nothing substantive happened after that, due to his ambivalence, and because he feels strongly about the physical exercise and doesn't see choosing physical exercises as a discipline as a violation of the rules. The basis of his delay in producing policies to comply with the requests of DCS was that he had no real power, until September of 2009, when he became CEO. At that point, he determined, "We're going to beat the state standards because they are good for us, they sharpen us up. I like it." He acknowledges that he likes the standards, if the standards are consistent with his philosophy. While few referrals are made by DCS, he reported a desire to keep the license because "Number 1, if we can't beat the system, in essence, we need to get out of business, is number 1. Number 2, is just what I said, in essence you've got some strong Christian families who do not have the resources and finances, in essence, and if they want to petition the judge the judge will let it happen or not happen and that's how the system works." He stated that DCS helps them be better than the system, by coming in and looking them over and talking to them about "all kinds of little rules and regulations." New Horizons considered changing to an unlicensed facility over the summer of 2009. As to specific policies of NHA, he reported the following:

- a. He is not a proponent of therapeutic holds by staff and was pleased to remove the Staff / Student Redemptive Relationships policy authorizing it as reflected in his May letter to DCS and in DCS Exhibit FF.
- b. In the 1970s, he determined that the optimal timeframe for placement is 18 months. Generally, with New Horizons, children are placed in Canada or the Dominican Republic and finish in Marion, Indiana, participating in more therapy at that time to prepare for re-entry into their families. This



conclusion supports NHA policies for delayed calls, visits and family therapy. As to the policies specifying 2 months before a phone call, 7 months before a family visit and 9 or 12 months before family therapy, he reports that the therapist has the opportunity to overrule the written policy. The phone call policy is from the 1980s. The policy is in place for the purpose of holding off controlling parents and his opinion that the student needs a break. Placements include manipulative kids and he stated the "apple doesn't fall far from the tree" stating also that he has some manipulative mothers, "helicopter mothers." These families look through all his rules and regulations and he is able to use those [the policies] to control the parents.

- c. As to the behavioral supports implemented at NHA, he stated to DCS that he would be willing to eliminate the policy, but intended to continue to implement behavioral supports informally.
 - d. As to all NHA policies related to physical exercises, he does not see a child's choice of physical exercise as discipline because the child owns it. He is not going to give this up because he believes physical exercise is good for kids. He provided three articles to support his position that exercise is beneficial, Appellant's Exhibit 10. At the hearing, he stated he would change that only if he is shown a basis for it. If that is the decision of DCS, "so be it, we'll part."
 - e. Tim Blossom's position is that policies should follow good practices, not the other way around. In his opinion, if you rely on staff, they will mess up and interpret things differently and you are forever training them.
22. [REDACTED] is the parent of a child who she placed with New Horizons from October 18, 2007, until August 20, 2009. She received letters weekly from her son and sent letters to him more frequently than weekly. She did not speak to him by phone until he was in placement 3-4 months. She also spoke to him on Thanksgiving, Christmas and on his birthday in January. She testified at the administrative hearing that the first parental visit, after placing her child at NHA, was in May of 2008. As to family counseling, she first participated in November of 2008. Her husband first participated in family counseling during March of 2009. Her son, during his placement, was sent to Canada, over the summer, and also to the Dominican Republic. She reported that her husband visited their son in the Dominican Republic in November and she traveled to the Dominican Republic to visit him in March. It is unclear what time frame this child was physically in the NHA Indiana facility.
23. [REDACTED] is the parent of a child who he placed with New Horizons for approximately one year, beginning in May of 2007. His son was originally placed



in Canada until August. He took his son from the facility for dinner and to get his hair cut in August before the child was sent to the Dominican Republic. After his placement in the Dominican Republic, he returned to Indiana at the end of December or the beginning of January. In February, his son turned 18 years of age. At that time, due to his Level and age, he was allowed weekly communication with his parents. [REDACTED] received a mandatory weekly letter from his son during his son's placement. After his son returned to Indiana, he saw his son once monthly during the remainder of his placement. Family counseling involving the parents and their son occurred in January or February of 2008. It was unclear from testimony whether the son returned to the Dominican Republic after turning 18, because [REDACTED] reported he traveled to the Dominican Republic facility in March to assist. It is unlikely he would have traveled to that facility if his son was not there. Therefore, the time frame that this child was at the NHA facility in Indiana is unclear.

24. The specific issues that resulted in the original probation, as seen in DCS Exhibit A, are not the same list as the list that appears in the notice of revocation, DCS Exhibit C. Some issues were cured. DCS Exhibit T, submitted to DCS by Zac Blossom on September 2, 2009, reports the facility removed the Confinement Room policy and reported that the facility would not longer utilize a Confinement Room. In curing that concern by the agency, the Indiana Administrative Code violation presented by the use of that room is not addressed in this decision. Similarly, the use of therapeutic holds was removed from the Physical Restraint policy by correspondence dated May 15, 2009 (DCS Exhibit S) and the attachment to the September 2, 2009 email (DCS Exhibit T).
25. Tim Blossom did not present Appellant's Exhibits 1-9, proposed policy revisions, to DCS prior to Appellant's license revocation. Most, if not all of the revisions were prepared by Zac Blossom, after the license revocation became effective. Zac Blossom also did not present the proposed policy revisions to DCS prior to the effective date of Appellant's license revocation.

LEGAL BASIS

IC 31-27-2-1; Duties of department of child services

The department shall perform the following duties:

- (1) Administer the licensing and monitoring of child caring institutions, foster family homes, group homes, and child placing agencies in accordance with this article.
- (2) Ensure that a criminal history background check of an applicant is completed before issuing a license.



- (3) Provide for the issuance, denial, and revocation of licenses.
- (4) Cooperate with governing bodies of child caring institutions, foster family homes, group homes, and child placing agencies and their staffs to improve standards of child care.
- (5) Prepare at least biannually a directory of licensees, except for foster family homes, with a description of the program capacity and type of children served that will be distributed to the legislature, licensees, and other interested parties as a public document.
- (6) Deposit all license application fees collected under section 2 of this chapter in the department of child services child care fund established by IC 31-25-2-16.
As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.26; P.L.1-2007, SEC.201.

IC 31-27-2-5; Monitoring of licensed entities

(a) The department shall monitor the entities licensed under this article for continued compliance with this article and the rules adopted by the department, including conducting the following:

- (1) Onsite inspections, record reading, observation, and interviewing.
- (2) An onsite licensing study at least one (1) time a year in announced or unannounced visits.

(b) The department is entitled to access to the premises, personnel, children in care, and records, including case records, foster care records, personnel files, corporate and fiscal records, and board minutes of the licensee. Access shall also be provided to personnel from other state agencies or other persons who provide inspections at the request of the department.

As added by P.L.145-2006, SEC.273.

IC 31-27-2-7; Child caring institutions and group homes operated by churches and religious ministries

(a) Except as provided in subsections (b) and (c), the department shall exempt from licensure a child caring institution and a group home operated by a church or religious ministry that is a religious organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11) and that does not:

- (1) accept for care:
 - (A) a child who is a delinquent child under IC 31-37-1-1 or IC 31-37-2-1; or
 - (B) a child who is a child in need of services under IC 31-34-1-1 through IC 31-34-1-9; or
- (2) operate a residential facility that provides child care on a twenty-four (24) hour basis for profit.



(b) The department shall adopt rules under IC 4-22-2 to govern the inspection of a child caring institution and a group home operated by a church or religious ministry with regard to sanitation.

(c) The fire prevention and building safety commission shall adopt rules under IC 4-22-2 to govern the inspection of a child caring institution and a group home operated by a church or religious ministry under this section. The rules must provide standards for fire alarms and fire drills.

(d) A child caring institution and a group home operated by a church or religious ministry under this section shall comply with the rules established by the department and the fire prevention and building safety commission under this section."

As added by P.L.145-2006, SEC.273.

IC 31-27-3-14; Probationary status; duration; expiration; extension

(a) The department may place a licensee on probationary status if the licensee is temporarily unable to comply with a rule and if:

(1) the noncompliance does not present an immediate threat to the health and well-being of the children;

(2) the licensee files a plan with the department, state department of health, or the state fire marshal to correct the areas of noncompliance within the probationary period; and

(3) the department, state department of health, or state fire marshal approves the plan.

(b) A probationary status period is for not more than six (6) months. However, the department may extend a probationary status period for one (1) additional period of six (6) months.

(c) At the expiration of a probationary status period, the department shall:

(1) reactivate the license to the end of the original term of the license;

(2) extend the probationary status period as permitted under subsection (b); or

(3) revoke the license.

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.28.

IC 31-27-3-19; Notice of enforcement actions; informal meetings

Except as provided in section 29 of this chapter, the department shall give a licensee thirty (30) days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the department. The licensee must request the meeting not more than ten (10) working days after receipt of the certified notice.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-20; Administrative hearings

(a) An administrative hearing concerning the decision of the department to impose a



sanction under this chapter shall be provided upon a written request by the child caring institution. The request must be made not more than thirty (30) days after receiving notice under section 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) An administrative hearing shall be held not more than sixty (60) days after receiving the written request.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-32; Compliance with rules; disciplinary sanctions; revocation of license

(a) A licensee shall operate a child caring institution in compliance with the rules established under this article and is subject to the disciplinary sanctions under subsection (b) if the department finds that the licensee has violated this article or a rule adopted under this article.

(b) After complying with the procedural provisions in sections 19 through 22 of this chapter, the department may revoke the license when the department finds that a licensee has committed a violation under subsection (a).

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.30.

465 IAC 2-9-5; "Children's home" or "child caring institution" defined

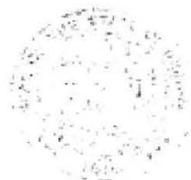
As used in this rule, "children's home" or "child caring institution" means a children's home, an orphanage, an institution, a shelter care facility, a private secure facility, or other place maintained or conducted by any group of individuals, or political subdivision engaged in: (1) receiving and caring for dependent children, children in need of services, or delinquent children; or (2) operating for gain a private business of boarding children who are unattended by a parent, guardian, or custodian.

(Department of Child Services; 465 IAC 2-9-5; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1959; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR-465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-5) to the Department of Child Services (465 IAC 2-9-5) by P.L.234-2005, SECTION 195, effective July 1, 2005.

465 IAC 2-9-15; "License" defined

As used in this rule, "license" means a document authorizing the operation of a child caring institution at a specific address, the number of children which may be cared for, the age range and gender of the children, and the expiration date of the authorization.

(Department of Child Services; 465 IAC 2-9-15; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1960; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR-465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-15) to the Department of Child Services (465 IAC 2-9-15) by P.L.234-2005, SECTION 195, effective July 1, 2005.



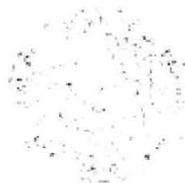
465 IAC 2-9-30; "Treatment plan" defined

As used in this rule, "treatment plan" means a goal-oriented, time-limited, individualized program of action for a child and his or her family, developed by the child caring institution in cooperation with the placing agency and the family.

(Department of Child Services; 465 IAC 2-9-30; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1962; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR-465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-30) to the Department of Child Services (465 IAC 2-9-30) by P.L.234-2005, SECTION 195, effective July 1, 2005.

465 IAC 2-9-57 Discipline and guidance

- (a) The child caring institution shall:
 - (1) have a written discipline policy; and
 - (2) make the policy available to:
 - (A) placement agencies;
 - (B) staff;
 - (C) parents; and
 - (D) children in care.
- (b) Discipline and guidance shall be as follows:
 - (1) Consistent.
 - (2) Based on an understanding of individual needs and development.
 - (3) Promote self-discipline and acceptable social behavior.
- (c) Children shall be treated kindly and humanely at all times.
- (d) The administrator shall not use, or permit any person to use, any of the following:
 - (1) Cruel, harsh, or unusual punishment.
 - (2) Treatment that is mentally, physically, or emotionally abusive or neglectful.
 - (3) Any humiliating or frightening method to control the actions of any child or group of children.
- (e) Children shall not be humiliated or subjected to degrading, abusive, or profane language.
- (f) The child caring institution shall prohibit, as a method of discipline, the following:
 - (1) Confinement to a locked or dark room.
 - (2) Use of mechanical restraints.
 - (3) Undue confinement to bed.
 - (4) Deprivation of meals or snacks.
 - (5) Inappropriate assignment of work.
 - (6) Group discipline for an offense by an individual child.
 - (7) Any child or group of children punishing another child.
 - (8) Deprivation of visits or contact with:
 - (A) parents;



- (B) guardian ad litem;
- (C) court appointed special advocate; or
- (D) placing worker.

(Department of Child Services; 465 IAC 2-9-57; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1969; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-465040316FRA; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR-465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-57) to the Department of Child Services (465 IAC 2-9-57) by P.L.234-2005, SECTION 195, effective July 1, 2005.

465 IAC 2-9-62; Work experience

(a) The child caring institution may use work experience to provide a learning experience for children. The child caring institution shall not use such work experience as a substitute for staff members.

(b) The child caring institution may provide work experience and training which is appropriate to the age, health, and ability of the children in care. However, the child caring institution shall not require a child to do work which would interfere with time for school, study, and recreation periods, religious participation, normal community contacts, or visits with family.

(Department of Child Services; 465 IAC 2-9-62; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1971; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR-465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-62) to the Department of Child Services (465 IAC 2-9-62) by P.L.234-2005, SECTION 195, effective July 1, 2005.

465 IAC 2-9-64; Visiting; correspondence

(a) The child caring institution shall have written policies and procedures which provide for visits with families, mail, telephone calls, and other forms of children's communication with family, friends, and significant others.

(b) Denial of home visits shall be made only in accordance with the treatment plan as approved by the placing agency.

(c) The child caring institution shall prohibit overnight visits with staff or persons other than the child's family except as such persons are identified by the treatment plan for the child and are approved by the placing agency.

(d) The child caring institution shall make writing material available to children in care. Each child shall have privacy in handling his or her correspondence.

(e) The child caring institution may require that a child open his or her mail in the presence of a staff member if there is reasonable fear that the contents other than the letter may harm the child or others. However, staff persons shall not have the right to withhold a child's correspondence without a court order.



(Department of Child Services; 465 IAC 2-9-64; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1971; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR- 465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-64) to the Department of Child Services (465 IAC 2-9-64) by P.L.234-2005, SECTION 195, effective July 1, 2005.

465 IAC 2-9-66; Treatment plan

(a) The child caring institution shall have completed a written treatment plan for each child within forty-five (45) days of admission and shall provide a copy of the plan to the placing agency or placing parent or guardian.

(b) The child caring institution shall involve staff members who provide direct care, social services, education, recreation, and health services in developing and implementing the treatment plan for the child and the family.

(c) The child caring institution shall involve the child, the parent, legal guardian, or placing agency when available in the development of the treatment plan. Upon request, the parent or guardian shall receive a copy of the plan.

(d) The treatment plan shall include an assessment of the following with the child and family:

- (1) Needs.
- (2) Strengths.
- (3) Weaknesses.
- (4) Problem areas.

(e) The treatment plan shall state goals to be achieved, staff assignments, time schedules, and steps to be taken to meet the goals in at least the following areas:

- (1) Education.
- (2) Daily living activities.
- (3) Any specialized recreation.
- (4) Any specialized services, such as counseling.
- (5) Family involvement and plan for visitation.
- (6) The projected length of stay.

(f) If the assessment of a child indicates the child is in need of treatment by a psychiatrist or is currently under psychiatric care, the child caring institution shall provide or arrange for appropriate consultation and treatment.

(g) The child caring institution shall share with the child decisions regarding development, changes, or continuation of plans, and contacts with the family, placing agency, or other significant persons outside the child caring institution.

(h) The child caring institution shall review and revise as necessary the treatment plan at least every six (6) months. The review shall include input from the child, direct care workers, and the placing agency.

(i) The child caring institution shall provide a written summary of each quarterly review to the placing agency or placing parent or guardian.



(Department of Child Services; 465 IAC 2-9-66; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1972; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR-465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-66) to the Department of Child Services (465 IAC 2-9-66) by P.L.234-2005, SECTION 195, effective July 1, 2005.

465 IAC 2-9-68; Services to families

(a) The child caring institution shall make efforts to maintain ongoing contact with the child's parents, guardian, or other primary caretaker. The child caring institution shall encourage these persons to communicate and visit with the child in accordance with the treatment plan and in compliance with or subject to court orders and any limitations stated therein.

(b) The child caring institution shall encourage parents to assume responsibilities for the child and to cooperate with the child caring institution in carrying out its plans for him or her. The child caring institution shall document efforts to provide services to the child's family.

(Department of Child Services; 465 IAC 2-9-68; filed Jun 27, 1991, 12:00 p.m.: 14 IR 1972; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Nov 27, 2007, 6:52 a.m.: 20071226-IR-465070551RFA) NOTE: Transferred from the Division of Family Resources (470 IAC 3-11-68) to the Department of Child Services (465 IAC 2-9-68) by P.L.234-2005, SECTION 195, effective July 1, 2005.

DCS Policy 8:18; Discipline in Resource Homes; (effective June 1, 2008) [See the full of the Policy in DCS Exhibit G.] states in part, "The Indiana Department of Child Services (DCS) prohibits the use of the following types of punishment by resource families including but not limited to:

1. Corporal punishment [defined as Physical hitting or any type of physical punishment inflicted in any manner upon the child's body.];
2. Physical exercise (e.g., push-ups, running);
3. Requiring or using force to make the child take an uncomfortable position;
4. Verbal remarks that ridicule the child and/or his or her family;
5. Denial of an emotional response;
6. Denial of essential services (e.g., health care, food, clothing, bedding, sleep, mail, or family visitation, etc.);
7. Threats of removal or denying reunification;
8. Shaking;
9. Placement in a locked room; and/or
10. Holding with physical, mechanical, or chemical restraints."

DCS Policy 8:11; Parental Interaction and Involvement (Effective June 1, 2008) [The full text of the Policy can be seen in DCS Exhibit W] states in part, "The Indiana



Department of Child Services (DCS) will encourage and support the maximum amount of interaction and involvement that is appropriate between the parent, guardian, or custodian given the need for child safety and well-being, unless otherwise ordered by the court.”

DCS Policy 8:12; Developing the Visitation Plan (Effective May 1, 2009) [The full text of the Policy can be seen in DCS Exhibit X] states in part, “The Visitation Plan provides parameters for visitation between the child and his or her parent(s), guardian, or custodian, sibling(s), family members, and other individuals with whom the child has formed significant relationships. All Visitation Plans will have the following:

1. Goal of reestablishing, maintaining, and/or strengthening the bond that exists between the child and his or her family;
2. Face-to-face contact with the parent, guardian, or custodian at least once per week and at least twice per week if the child is an infant (age 0-1) or toddler (age 1-2); unless the court has ordered otherwise;
3. Face-to-face contact with the child’s siblings at least once per week; and
4. Face-to-face contact with other adults with whom the child has a positive, significant relationship as long as deemed appropriate, and does not negatively affect the child.

This should not interfere with or disrupt the regular visitation of the parent, guardian, or custodian.

Note: All Visitation Plans must include alternative forms of contact (e.g., phone calls, cards, letters, photographs, recordings, etc.) to supplement face-to-face visits. If the court has ordered no face-to-face contact between the child and his or her parent, guardian, or custodian, alternative forms of contact may be requested, if appropriate to maintain and develop the parent-child bond.”

CONCLUSIONS OF LAW

The Administrative Law Judge concludes that DCS had authority to place Appellant’s license in a probationary status for a limited period of time under IC 31-27-3-14.

The Administrative Law Judge finds that Appellant’s license was placed in a probationary status on October 3, 2008, and that appropriate notice of noncompliance was provided to Appellant.



The Administrative law Judge finds that Appellant's license was placed in a second probationary period on April 3, 2009, and appropriate notice of noncompliance was provided to Appellant.

The Administrative Law Judge concludes that DCS is the licensing agency for child caring institutions and has authority to revoke the license of a child caring institution in accordance with IC 31-27-2-1(3) and IC 31-27-3-32.

The Administrative Law Judge concludes that written policies for a child caring institution are critical to the licensing agency's oversight of a child caring institution. Written policies are exceptionally critical in circumstances that involve private placements of minors, due to the lack of oversight by caseworkers/GAL/CASAs and courts.

The Administrative Law Judge concludes that the written policies for New Horizons Academy (NHA), the Indiana facility of New Horizons Youth Ministries, Inc., were outdated and not adhered to by NHA staff.

The Administrative Law Judge concludes Appellant was made aware of the policies determined to be noncompliant and was given ample opportunity to correct defects.

The Administrative Law Judge finds the following violations by Appellant of administrative rules applicable to licensed child caring institutions:

Appellant's written policies titled Units of Concern, Points and Levels, Behavioral Supports and Consequences, current at the time of the license revocation, and/or actual staff conduct permitted at the facility of Appellant, violate 465 IAC 2-9-57 (Discipline and Guidance) by providing inappropriate or insufficient guidance to assure appropriate compliance by the facility. This conclusion is supported by factual paragraphs 13, 18, 19, 20 and 21.

Appellant's written policies titled Units of Concern and Consequences, current at the time of the license revocation, and/or actual staff conduct permitted at the facility of Appellant, violate 465 IAC 2-9-62 (Work Experience) by providing inappropriate or insufficient guidance to assure appropriate compliance by the facility. This conclusion is supported by factual paragraphs 14, 19 and 20.

Appellant's written policies titled Student Visits, Student Mail, Phone Calls, Family Counseling, and Visitation and Correspondence, current at the time of the license revocation, and/or actual staff conduct permitted at the facility of Appellant, violate 465 IAC 2-9-64 (Visiting; Correspondence). This conclusion is supported by factual paragraphs 15, 18, 19, 21 and 22.



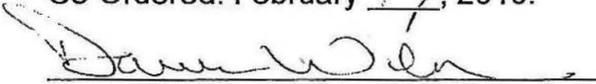
Appellant's written Family Counseling policy, current at the time of the license revocation, and/or actual staff conduct permitted at the facility of Appellant violates 465 IAC 2-9-66 (Treatment Plan). This conclusion is supported by factual paragraphs 12, 18, 21 and 22.

Appellant's written policies of Student Visits, Student Mail, Phone Calls and Family Counseling, current at the time of the license revocation, and/or actual staff conduct permitted at the facility of Appellant, violate 465 IAC 2-9-68 (Services to Families). This conclusion is supported by factual paragraphs 18, 19, 21 and 22.

DECISION

The Administrative Law Judge upholds Department of Child Services' decision to revoke the child caring institution license of New Horizons Youth Ministries, Inc.

So Ordered: February 17, 2010.


Dawn Wilson, Administrative Law Judge
Indiana Department of Child Services

APPEAL RIGHTS ALL PARTIES HAVE THESE APPEAL RIGHTS

This is the final action of the agency. no further consideration of this matter will be available through the Indiana Department of Child Services.

If you are the Appellant in this matter and are dissatisfied with this final Agency action, you may ask that a court review the matter. This is a process called judicial review. **If you choose to file a petition for judicial review, it must be filed within thirty (30) days after the date you receive this notice.** Since this involves filing a legal petition with the appropriate court, as well as other specific requirements, it is advisable (but not required) to have legal representation or help. However, the Indiana Department of Child Services cannot provide or pay for this representation, nor can the agency assist beyond the general information provided here. More detailed information on this process can be found in statutory law at Indiana Code 4-21.5-5.



Indiana Rule of Trial Procedure 5(G) and Indiana Administrative Rule 9(G) may apply to a judicial review petition filed.

Distribution:

New Horizon's Youth Ministries, Inc., Appellant
Phillip Stephenson, Attorney for Appellant
DCS Legal, Jill Sandifur
DCS Beverly Gatling (licensing unit)
DCS local office Director (Grant County)

