

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the
Adult Foster Care License
Revocation Appeal of
Joann and George Reding

FINDINGS_OF_FACT,
CONCLUSIONS_AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:30 a.m. on December 7, 1993, in the Third Floor Rock Room of the Ramsey County Government Center West in St. Paul, Minnesota. The record closed on December 22, 1993, when the Administrative Law Judge received the County's post-hearing submission.

Deborah Juhl, Assistant Ramsey County Attorney, Ramsey County Government Center West, 50 West Kellogg Boulevard, Suite 560, St. Paul, Minnesota 55102-1657, appeared on behalf of the Ramsey County Community Human Services Department ("the Local Agency") and the Minnesota Department of Human Services ("the Department"). James L. Dahlquist, Attorney at Law, 270 Grain Exchange North, 301 South Fourth Avenue, Minneapolis, Minnesota 55415, appeared on behalf of Joann and George Reding ("the Licensees").

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner of Human Services.

Parties should contact Maria R. Gomez, Commissioner, Minnesota Department of Human Services, Second Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3815, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the Licensees have fully complied with relevant provisions of the Adult Foster Care Licensing Rules set forth in Minn. Rules pts. 9555.5050 through 9555.6265 and, if not, what, if any, disciplinary action should be taken.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Joann and George Reding reside at 589 Laurel Avenue in St. Paul, Minnesota. They have been licensed to provide adult foster care since 1978.

2. In February of 1993, the Licensees had three long-term foster placements: J.D., M.Z., and R.M. J.D. and R.M. had lived in the home since 1979 and M.Z. had lived there since 1985.

3. The Licensees' foster home was relicensed in December of 1992. No complaints were received regarding the home prior to 1993.

4. In early 1993, the Local Agency received reports from various relatives of the Licensees (including Ms. Reding's sister and brother and their spouses, her son and daughter-in-law, and two nieces) that Ms. Reding had been physically and emotionally abusing the adult foster residents. (Exhibit 2.) Several of these individuals have not been in the Licensee's home for five or six years. The only reporting relative who has been present during recent years is Ms. Reding's niece, A.P. John McAlpine, Ph.D., a clinical psychologist, has treated A.P. in the past. A.P.'s capacity for truthfulness is very poor. She has no strong sense of right and wrong and frequently lies.

5. All of Ms. Reding's family members have been foster care providers in the past but are no longer licensed. In addition, several of the relatives

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6. Linda White, a Social Worker employed by the Ramsey County Community Human Services Department, investigated the allegations of abuse by talking with those making the allegations, interviewing J.D. and M.Z., discussing the matter with J.D.'s and M.Z.'s case managers, and interviewing the Licensees. Ms. White issued separate reports regarding the alleged abuse of J.D. and M.Z.

(Exhibits 2 and 3.) Ms. White did not substantiate the allegations of abuse regarding R.M., and the report relating to R.M. was not introduced as an exhibit at the hearing.

7. Ms. White issued her investigative findings regarding J.D. in a report dated April 7, 1993. Ms. White concluded that the following allegations had been substantiated: (1) Ms. Reding had slapped J.D. on the hands, had grabbed J.D.'s arm, and had put her fingers to J.D.'s lips "poking at them"; (2) Ms. Reding has sworn and yelled at her residents and they are afraid of her; and (3) Ms. Reding has told J.D. not to "say anything" to her case manager or she will get in trouble. The report indicated that hand-slapping, arm-grabbing and tapping of J.D.'s lips had occurred and that the lip-tapping had been witnessed by another resident (M.Z.). Ms. White determined that these actions constituted physical abuse because they could reasonably be expected to produce pain or injury within the meaning of Minn. Stat. § 626.557, subd. 1(D)(2) (1992). In addition, Ms. White found that the swearing, yelling, and cautioning not to "say anything" constituted emotional abuse because such actions could reasonably be expected to produce mental or emotional distress within the meaning of Minn. Stat. § 626.557, subd. 1(D)(2) (1992). Ms. White noted that "[r]eporters and victim have stated that Joanne

[sic] both swears and yells at residents and [J.D.] demonstrated outward fear of Joanne [sic] during the interview. Included in this substantiation is 'threat' as evidenced by [J.D.'s] fear and statement of 'I can't tell, she'd holler at me' and, 'Rules are I can't tell.'" (Exhibit 2.)

8. Ms. White found the evidence of abuse to be inconclusive regarding two other allegations relating to J.D., including an allegation that Ms. Reding had financially exploited J.D. In her report, Ms. White noted that Ms. Reding told her during her interview that she "has been doing foster care for so long, she no longer keeps written documentation of her expenses but keeps track of it in her head." Ms. White indicated that, "[w]ithout written documentation, I am unable to determine what monies have been spent for [J.D.]. It appears likely that there is money unaccounted for." (Exhibit 2.)

9. Ms. White also issued her investigative findings regarding M.Z. in a report dated April 7, 1993. Ms. White concluded that the following allegations had been substantiated: (1) M.Z. had been required to write numerous times that he would not repeat a particular behavior and had been required to go up and down the stairs repeatedly when Ms. Reding felt he had been too loud in coming down the steps; (2) Ms. Reding had required M.Z. to announce himself when he left his room to come downstairs; (3) M.Z. had been required to use the toilet in the basement rather than the one convenient to him on the second floor of the home; and (4) Ms. Reding had sworn and yelled at M.Z. and he was fearful of her. The report indicated that the repetitive writing and stair-climbing was "considered to be an aversive procedure and should not be used unless authorized under section 245.825 (Rule 40) [and that Ms. Reding] had not notified the case manager or therapist of these practices." Ms. White concluded that these actions constituted substantiated emotional abuse. Ms. White further determined that the requirement that M.Z. announce himself when leaving the second floor during the evening hours was "substantiated emotional abuse as this is a demeaning and unusual practice, singling the resident out in a manner inconsistent with a foster/family h

10. Ms. White found one allegation of abuse of M.Z. to be false and determined that the evidence of abuse was inconclusive regarding five other allegations relating to M.Z., including an allegation that Ms. Reding had financially exploited M.Z. In her report, Ms. White again noted that Ms. Reding had indicated that she has no written documentation regarding the amount she had spent on M.Z. and concluded that, without documentation, it was not possible to determine whether exploitation had occurred. (Exhibit 3.)

11. In a letter dated April 19, 1993, the Local Agency recommended the revocation of the Licensees' foster care license based upon the findings that Ms. Reding had abused M.Z. and J.D. Thomas Schoeller, an adult foster home licensing worker for the Local Agency, stated in the letter that four counts of recurring emotional abuse had been substantiated with respect to M.Z. and that one count of recurring physical abuse and two counts of recurring emotional abuse had been substantiated regarding J.D. Mr. Schoeller indicated that revocation of the license was appropriate under Minn. Rules pt. 9543.3070, subp. 1.b. (Exhibit 1.)

12. On approximately May 4, 1993, Mr. Schoeller responded to an inquiry from Patricia Johnson, a Child Protection Intake officer with the Local Agency, regarding the potential placement of Ms. Reding's niece in Ms. Reding's home as a child foster resident. Mr. Schoeller indicated that he had no criticisms of Ms. Reding as a foster parent. (Exhibit 12.)

13. In a letter dated July 27, 1993, James G. Loving, the Director of the Division of Licensing of the Department of Human Services, indicated that the Commissioner of Human Services was revoking the Licensees' license to provide adult foster care based upon the recommendation of the Local Agency. The letter indicated that the revocation action was based upon the presence of a disqualification under Minn. Rules pt. 9543.3070, in violation of Minn. Rules pt. 9555.6115 1/; Ms. Reding's statement that she no longer keeps written documentation of clients' expenses, in violation of Minn. Rules pt. 9555.6265; and Ms. Reding's unwillingness or inability to protect vulnerable adults from neglect and abuse in violation of Minn. Rules pt. 9555.6195. (Exhibit 4.)

14. Following the allegations of abuse, J.D. and M.Z. were removed from the Licensees' home. The Licensees' third foster resident, R.M., has remained in the home. Gary Galpin, R.M.'s case manager, has found the Licensees' home to be a reasonable placement for R.M. and believes it has been good for R.M. to live with the Licensees.

15. J.D.'s IQ is in the low 60's. She has difficulty expressing herself and suffers from poor self-esteem. Several behavior plans have been developed for J.D. which address problems with her arguing, fighting, kicking, throwing things, and making up stories. A behavior program for J.D. dated February 10, 1986, mentions that J.D. at that time told exaggerated stories as an attention-seeking device (e.g., "I'm getting married", or "I'm going on a date tonight") and sometimes accused others of picking on her. (Exhibit 15.) In addition, a treatment summary regarding J.D. dated October 1990 written by Stephen J. Antonello, Ph.D., a licensed consulting psychologist, indicates that "[a]t times [J.D.] becomes silly, argumentative, stubborn, and blows minor situations out of proportion. . . . She continues to have difficulty articulating her thoughts, needs and wants verbally." (Exhibit 14.)

16. In approximately 1980, J.D. was late coming home from work one day. The Licensees contacted the police. When the police found J.D., she told them that the bus driver had taken her to the end of the route and molested her. J.D. later admitted that the bus driver had never touched her and the bus driver was cleared of the allegations.

1/ It appears that the letter should have cited Minn. Rules pt.

9555.6125, rather than Minn.

17. In July of 1988, J.D. became angry about being placed on a different

bus than her usual one and kicked and shattered a window on the bus.

(Exhibit

10.) On other occasions, J.D. engaged in other misconduct on the bus, including panhandling, pushing elderly women out of their seats, and taking passengers' lunch bags. J.D. eventually was told that she can no longer ride MTC buses.

18. J.D. sometimes takes food, watches, or other items from people with whom she works and then claims that someone else did it so she will not get into trouble.

19. At times, J.D. changes her version of a particular event a day or two later.

20. After Linda White and J.D.'s social worker, Rebecca Meyer, interviewed her in connection with the investigation of abuse, J.D. told Ms. Reding that Ms. White and Ms. Meyer had slapped her during their meeting.

21. Ms. Reding has grabbed J.D.'s hand to prevent J.D. from injuring herself. For example, Ms. Reding grabbed J.D.'s hand on one occasion when J.D. reached for a hot heating element from a clothes dryer which Mr. Reding had placed on top of the dryer during his attempt to repair the dryer.

22. Ms. Reding has not slapped J.D.'s hands, put her fingers to J.D.'s lips, sworn or yelled at J.D., or told J.D. not to "say anything" to her case manager or she will get in trouble.

23. M.Z. is a convicted sex offender who has been diagnosed as mentally retarded, schizophrenic, autistic, and hyperactive.

24. John McAlpine, Ph.D., M.Z.'s clinical psychologist, has worked up a treatment plan with M.Z., his case manager, and Ms. Reding which includes the importance of establishing consequences for his acting-out behaviors. It is important to lay out consequences clearly for autistic individuals. In the absence of lots of structure and consequences, such individuals cannot function. A behavioral approach is usually used to treat autism.

25. On occasion, Ms. Reding required M.Z. to write 20 to 25 times that he would not engage in a particular behavior again. While Dr. McAlpine did not specifically request that Ms. Reding utilize such an approach, the repetitive writing request was within the flexible framework of consequences for behaviors. Ms. Reding discussed this method with Dr. McAlpine and he said that it was fine.

26. On occasion, if M.Z. "stomped" down the stairs, Ms. Reding would require him to go up and down the stairs quietly about five additional times. Such an approach was consistent with the approach set forth in M.Z.'s treatment plan to remedy stomping down the stairs and was approved by Dr. McAlpine.

27. M.Z. is obsessed with women's bodies and has been arrested and jailed for accosting women on the street and pulling a knife on one woman. M.Z. has walked into the bathroom while Ms. Reding was in the shower, walked

into the bedroom when she was dressing or undressing and, on two occasions, fondled girls who were staying overnight as guests of Ms. Reding's adolescent daughter. Because of these difficulties, Ms. Reding began to require M.Z. to announce at night when he was leaving his room, "This is [M.] leaving my room." If M.Z. announces when he is leaving his room at night, Ms. Reding wakes up and is then aware of where M.Z. is heading, whether it is to the bathroom or to the girls' rooms. Ms. Reding talked to Dr. McAlpine about this approach. He found it to be appropriate.

28. Ms. Reding required M.Z. to use the toilet in the basement at night and whenever he had a bowel movement. M.Z. was required to use the basement bathroom at night because he was taking medications that caused a delay in his comprehension of where he needed to go in order to go to the bathroom. Ms. Reding found that he needed the trip downstairs in order to "wake up" and realize where he needed to go. Before this requirement was imposed, M.Z. frequently urinated on the floor around the upstairs toilet and the Licensees had to replace the floor on two occas

29. M.Z.'s case manager, Hamilton Amamengo, came to the Licensees' home once a month to discuss whether M.Z. had met his written goals and what approaches should be used. Ms. Reding informed Mr. Amamengo that the methods described above were being used.

30. The Licensees' treatment of M.Z. as set forth above was consistent with good therapeutic care.

31. M.Z. was interviewed by Linda White on two occasions in connection with the investigation of the abuse allegations. During the first interview on February 24, 1993, M.Z. was given and drank a 32-ounce soft drink. If M.Z. consumes sweets, he becomes very hyperactive and it is difficult for him to stay on task and carry on a rational conversation. M.Z. became so hyperactive after his ingestion of the soft drink that it was necessary to terminate the first interview. When he arrived back at the Licensees' home, M.Z. was out of control. He was screeching and looking at the ceiling, and no one could even talk to him. A second interview was held on March 8, 1993.

32. M.Z. made significant progress while he resided in the Licensees' home. His behavior became increasingly appropriate, particularly with respect to his difficulties in relating to females. M.Z. has declined since he was moved out of the home following the abuse allegations. He has fallen back into obsessive behavior regarding females, talks to himself, and has delusions and hallucinations. M.Z.'s mother wants to have him placed at the Licensees' home again if the Licensees retain their license. M.Z.'s mother indicated in a letter to the Licensees that M.Z. "has grown and thrived" while at the Licensees' home and that the Licensees "are warm, loving people who care what happens to the people who live there in their care." (Exhibit 11.)

33. Dr. McAlpine has visited the Licensees' home approximately every other week during the past two and one-half years. He finds the Licensees' home to be clean and "homey" and has observed the foster residents freely

moving about the home and helping out with dinner. Dr. McAlpine has heard Ms. Reding occasionally raise her voice and be firm with M.Z. regarding lying, but has never heard her yell or be abusive.

34. During the hearing, counsel for the Local Agency and the Department indicated that the Local Agency and the Department were not relying upon the allegation that the Licensees failed to have written documentation of the expenses of their foster residents as a basis for their revocation action.

35. The Licensees have received various commendations and certificates from the State and from Ramsey County for providing foster care services and for their public relations efforts regarding adult foster care. They have been asked to provide training to other foster care providers in the past. They have also attended training sessions conducted by the Local Agency relating to vulnerable adults.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08 (1992).

2. The Notice of and Order for Hearing is proper in all respects and the Local Agency and the Department have complied with all substantive and procedural requirements of law and rule.

3. Minn. Stat. § 245A.08, subd. 3(a) (1992), provides as follows:

At a hearing regarding suspension, immediate suspension, or revocation of a license for . . . foster care, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hear

This allocation of the burden of proof withstood a due process challenge in In

re_Judith_Cullen, No. C4-88-2609 (Minn. Ct. App. July 18, 1989).

4. Minn. Stat. § 245A.07, subd. 3 (1992), authorizes the Commissioner to "suspend, revoke, or make probationary a license where the license holder fails to comply fully with applicable law or rules." The statute further provides that, "[w]hen applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program." Minn. Stat. § 245A.08, subd. 1 (1992). In addition, Minn. Stat. § 245A.04, subd. 6 (1992), provides that, "[b]efore granting, suspending, revoking, or making probationary a license, . . . [t]he commissioner . . . shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, consumer evaluations of the program, and information about the character and qualifications of the personnel employed by the

applicant or license holder."

5. Minn. Rules pt. 9555.6125, subp. 4.D. (1992 Supp.), provides as follows:

Subpart 4. Qualifications. Operators, caregivers, and household members must meet the qualifications in items A to G.

* * *

D. Operators, caregivers, and household members must not have a disqualification under part 9543.3070.

6. Minn. Rules pt. 9543.3070, subp. 1.D. (1992 Supp.), provides as follows:

Subpart 1. Disqualifications. Items A to D disqualify an individual from programs serving children or adults.

* * *

D. The subject is identified as the perpetrator in a substantiated report of abuse or neglect of vulnerable adults and a preponderance of evidence indicates:

- (1) an act that meets the definition of abuse or neglect in Minnesota Statutes, section 626.557, subdivision 2, occurred;
- (2) the subject committed the abuse or neglect;
- (3) the abuse or neglect was serious or recurring; and
- (4) the subject is not the victim of the abuse or neglect.

neglect" For purposes of this item "serious maltreatment, abuse, and

is defined as a serious injury as set forth in part 9543.3020, subpart 10, whether intended or suffered as the result of neglect; sexual abuse; neglect or abuse which results in illness or harm which reasonably requires the attention of a physician; or death.

7. Minn. Rules pt. 9555.6195, subp. 1 (1991) provides in pertinent part as follows:

Subpart 1. Protection from neglect and abuse. The operator shall ensure that residents are protected from abuse and neglect through compliance with the Vulnerable Adults Act and parts 9555.8000 to 9555.8500.

8. Minn. Rules pt. 9555.8100 defines "abuse" to mean "the intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress."

9. Minn. Stat. § 626.557, subd. 1(d)(2) and (5) (1992), defines "abuse" to include "nontherapeutic conduct which produces or could reasonably be

expected to produce pain or injury and is not accidental, or any repeated conduct which produces or could reasonably be expected to produce mental or emotional distress" and "any aversive or deprivation procedures that have not been authorized under section 245.825."

10. Minn. Stat. § 245.825 requires that the Commissioner of Human Services promulgate rules governing the use of aversive and deprivation procedures and states that the rules shall prohibit, inter alia, "the application of certain aversive or deprivation procedures in facilities

11. The Local Agency and the Department have failed to advance evidence establishing reasonable cause to believe that the Licensees applied an aversive procedure without proper authorization. The Local Agency and the Department have advanced evidence establishing reasonable cause to believe that Ms. Reding violated Minn. Rules pts. 9555.6125, subd. 4.D., 9543.3070, subp. 1.D., and 9555.6195, subp. 1 by engaging in nontherapeutic conduct which could reasonably be expected to produce pain, injury or emotional distress. The Licensees have shown by a preponderance of the evidence that they were in full compliance with these rules at the time of the alleged violations.

Based upon the foregoing Conclusions, and for the reasons discussed in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Human Services take no disciplinary action against the adult foster home license of George and Joann Reding.

Dated this 21st day of January, 1994.

____s/____Barbara L. Neilson_____
BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped (3 tapes).

MEMORANDUM

The decision of the Department to revoke the Redings' adult foster care license was prompted by a finding by the Ramsey County Human Services Department that Joann Reding had physically and emotionally abused J.D. and M.Z., two developmentally disabled adults who resided in the Redings' home. The investigation was triggered when the agency received complaints by various

relatives of Ms. Reding. The Licensees offered evidence at the hearing that all but one of these relatives were not in a position to provide recent information regarding conditions at their home because they had not visited the home in years; the only reporting individual who had been in their home during recent years has a poor capacity for truthfulness and no strong sense of right and wrong; and these relatives were embroiled in a custody dispute with the Redings at the time. Because none of these individuals testified at the hearing, the Administrative Law Judge is not in a position to gauge the truthfulness of these witnesses. The Licensees' evidence attacking the credibility of these reporters was unrefuted by the Local Agency and Department. Accordingly, the Administrative Law Judge has discounted the allegations made by the confidential reporters.

The report issued by Linda White regarding J.D. indicates that J.D. stated during her interview that Ms. Reding had slapped her hands and had grabbed her arm. Ex. 2 at 3. The report provides no information concerning the frequency of the alleged slapping and grabbing or the context in which they occurred. During the interview and at the hearing in this matter, Ms. Reding acknowledged that she may have grabbed J.D.'s hands to prevent her from being injured but otherwise denied that she had slapped J.D.'s hands or grabbed her arm. Id. at 3-4. Ms. White's report also states that J.D. said that Ms. Reding had "on at least one occasion put her fingers on [J.D.'s] lips and said, 'Don't you say anything'" and that Ms. Reding's fingernail hurt her lips. When asked what it was she couldn't tell, Ms. White reported that J.D. "acted fearful and stated, 'can't tell, Joanne [sic] would get mad.'" When asked what Ms. Reding would do, J.D. said that Ms. Reding would "holler at me." Ms. White indicated that, "[d]uring this exchange [J.D.] shook her head from side to side saying, 'Oh, oh, oh' as if she were very afraid of either Joanne [sic] or to talk about

Ms. White's report with respect to M.Z. indicates that M.Z. denied having ever been hit or slapped by Ms. Reding. Ex. 3 at 4, 5. He stated that he was required to announce himself when he came downstairs and said that Ms. Reding would "shoot [his] butt" if he failed to do so. Id. The report does not provide any further explanation of what M.Z. meant by the use of this phrase. M.Z. also said that he had to use the basement bathroom since he had "rotted" the floor in the upstairs bathroom. Id. at 5. Ms. White reported that M.Z. indicated that Ms. Reding swore at him and that this makes him afraid. He stated that he was required to write statements for Ms. Reding when he did something wrong "anywhere from 50 to 500 times," and that Ms. Reding has required him to go up and down the steps ten to twenty times in a softer manner if he stomps his feet too hard when he comes down the stairs. Id. During her interview by Ms. White and at the hearing, Ms. Reding denied that she had yelled at M.Z. or had been verbally abusive. Id. at 6. She indicated that, after M.Z. attempted to fondle a teen-age girl who was an overnight guest of her daughter, she required M.Z. to announce that he was leaving his room at night to ensure that she would know of his whereabouts. Ms. Reding also explained that M.Z. was required to use the basement bathroom because the upstairs toilet did not work properly for M.Z.'s bowel movements. Id. at 7. She further stated that she had required M.Z. to write about 25 times what it is he is not supposed to do and that she had required him to go

softly up and down the stairs about five times after he stomps down the steps.

Id. at 6.

At the hearing, the Department relied solely upon documentary evidence in this case and did not call J.D., M.Z., Linda White, the case managers for J.D. and M.Z., or any other witnesses. Consequently, the Administrative Law Judge was not afforded an opportunity to observe J.D., M.Z., or the other reporters in order to assess their credibility. No information was provided concerning the nature of the questioning of the vulnerable adults during the abuse investigation (e.g., whether non-leading questions were used), the impressions of Ms. White and the case managers regarding the credibility of J.D., M.Z., Ms. Reding, or the relatives who reported abuse, or the basis for Ms. White's decision to credit the information provided by J.D. and M.Z. and discredit the information provided by Ms. Reding. The Licensee presented evidence which went unchallenged by the Local Agency and Department that J.D. frequently makes up stories and that J.D. had even told Ms. Reding that Ms. White and Ms. Meyer had slapped her during the abuse interview. Ms. Reding testified credibly that she has not in fact slapped J.D.'s hands, tapped J.D.'s lips with her fingers, told J.D. not to "say anything" to her case manager, sworn or yelled at J.D. or M.Z., or grabbed J.D.'s hand except to prevent injury. The Licensees also presented convincing evidence that the approaches used by Ms. Reding with respect to M.Z. were discussed with M.Z.'s case manager, Hamilton Amamengo, and approved by his psychologist, Dr. McAlpine. 2/ Ms. Reding provided logical and non-abusive reasons for requiring M.Z. to use the basement bathroom at night and when he needed to defecate as well as requiring him to announce himself as he left his room at night. These approaches were discussed with Dr. McAlpine and he found them appropriate. The Judge has credited Ms. Reding's testimony concerning the number of times she would require M.Z. to climb the stairs or write a particular phrase, rather than the assertion reportedly made by M.Z. to Ms. White. While Dr. McAlpine did not specifically request that Ms. Reding utilize a repetitive writing approach, Dr. McAlpine testified that autistic individuals benefit from the imposition of consequences for acting-out behaviors and that the repetitive writing approach fell within the flexible framework of consequenc

2/ Ms. White's report indicates that Mr. Amamengo was surprised to learn that Ms. Reding used repetitive writing and repetitive stair-walking techniques. Ex. 3 at 7. As noted above, neither Ms. White nor Mr. Amemengo testified at the hearing. The Judge credits Ms. Reding's testimony in this regard. repetitive stair-walking was consistent with M.Z.'s treatment plan to remedy stomping down the stairs. Dr. McAlpine found Ms. Reding's treatment of M.Z. to be non-abusive and consistent with good therapeutic care.

In her report regarding M.Z., Ms. White indicated that Jerry Nord of the Department of Human Services had told her that "the repetitive writing or repetitive actions would be considered reinstitutional [sic] over correction and should have been authorized under MN Statute 245.825." Ex. 3 at 8. Minn.

Stat. § 245.825, subd. 1 (1992), requires the Department of Human Services to adopt rules which prohibit, inter alia, "the application of certain aversive and deprivation procedures in facilities except as authorized and monitored by

the designated regional review committees." The rules promulgated by the Department relating to aversive and deprivation procedures are set forth in Minn. Rules pts. 9525.2700 through 9525.2810. The rules include

"restitutional overcorrection" (presumably the term used by Mr. Nord during his conversation with Ms. White) within the controlled procedures that are permitted when implemented in accordance with the rules. Minn. Rules pt. 9525.2700, subp. 31 (1991), defines "restitutional overcorrection" to mean "a procedure that requires a person to clean, repair, or correct an area or situation damaged or disrupted as a result of the person's behavior to a point

where the area or situation is not only restored to but exceeds its original condition." Mr. Nord did not testify and the Local Agency and the Department have not provided further evidence or explanation relating to the alleged applicability of this term to the techniques employed by Ms. Reding. Dr. McAlpine disagreed with the view that the techniques utilized by Ms. Reding constituted aversive or deprivation procedures. The repetitive writing and stair-walking exercises do not appear to the Judge to fall within the definition of "restitutional overcorrection" procedures. 3/ Accordingly, the Judge finds that the Local Agency and the Department has failed to advance evidence establishing reasonable cause to believe that the Licensees applied an aversive procedure without proper authorization.

Weighing all of the evidence presented at the hearing, the Administrative Law Judge is unable to find that a preponderance of the evidence indicates that Ms. Reding committed recurring acts with respect to J.D. or M.Z. that meet the statutory definition of abuse. Rather, the

3/ Such techniques might arguably fall within the definition of "positive practice overcorrection" set forth in Minn. Rules pt. 9525.2710, subp. 25, and thus constitute a controlled procedure which must be properly authorized by the interdisciplinary team, consented to by the parent or legal guardian, and monitored by the regional review committees. The Local Agency and Department did not make such an argument in this proceeding, however, and it thus would not be appropriate to rely on such an approach in considering this revocation appeal. Moreover, based upon the evidence presented in this case that the approaches used by Ms. Reding were consistent with M.Z.'s treatment plan, it is possible that any appropriate authorizations have in fact been obtained. Finally, the Judge has credited Ms. Reding's testimony that she in fact notified M.Z.'s case manager and therapist of the repetitive writing and stair-climbing practices, contrary to the assertion by Ms. White in her report.

Licensees have shown by a preponderance of the evidence that they did in fact

comply with Minn. Rules pts. 9555.6125, subp. 4.D., 9543.3070, subp. 1.D.,
and
9555.619

B.L.N.