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July 26, 2010

Ms. Amanda Dorris
Bureau of Certification Services
Office of Child Development and Early Learning
Department of Public Welfare
333 Market Street, 6th Floor
Harrisburg, PA 17126
Sent via e-mail to: adorris@state.pa.us

**Re: Proposed Rulemaking – Child Care Facilities
40 Pa. Bulletin No. 26, June 26, 2010
Regulation No. 14-519**

Dear Ms. Dorris:

The Pennsylvania Family Institute (PFI) understands that the Pennsylvania Catholic Conference is filing objections to the above referenced regulations and it writes to concur in those objections. PFI is a non-profit research and education organization, based in Harrisburg, which focuses on public policies and cultural trends in Pennsylvania that impact families. PFI has long been an advocate for religious liberties and parental choice in the education and upbringing of children. Throughout its twenty years of existence, PFI has provided testimony and information to policy makers and the public about issues relating to education, child-rearing, religious freedom, taxation, and more. PFI has more than 30,000 families across the Commonwealth as members.

The Department of Public Welfare has statutory authority to regulate to the benefit of children's health and safety. However, the proposed regulations go well beyond health and safety and instead go so far as to control the content of what childcare workers and directors are taught and increases the amount of state mandated training they must receive. By controlling the education process, DPW



would then gain greater control over what is ultimately taught, even in religious daycare settings.

While the state, in the abstract, has an interest in the health and safety of all children in daycare, these new regulations are unnecessary and go beyond the statutory authorization that DPW has been given. Pursuant to 71 P.S. § 745.5b(b)(4), PFI writes to express its view that the proposed regulatory scheme is not in the public interest because it “represents a policy decision of such a substantial nature that it requires legislative review.” Specifically, the regulations undermine the ability of private religious daycare to maintain their religious distinctives and to give parents the ability to choose from daycare with those distinctive values. When the state sets the content of teacher’s substantive training, the effect is to change the nature of what is taught in a religious setting.

While the requirements of the regulations may in some sense seem benign since the content of the training is only given in generalities, the vague nature of the content of training is one reason for concern. Religious daycare should be free to train its own teachers to inculcate the values that the parents participating in these daycare programs desire.

Often the best suited workers are not those that claim the training that DPW would require, but those who by experience can serve the children well. A *Washington Post* article from January, 1992 spoke glowingly of the quality, loving care that senior citizen daycare staffers provide. The director of one facility in suburban Washington told about a 72-year old grandmother they employed at the center – a woman with no college credits in the field.

“I really didn’t realize how great it would be” said the center director. “The children love her to death – when she comes in they go right to her. She’s very nurturing, very patient.”

Said one parent, “It’s not quite the same as a grandparent’s unconditional love, but it’s nice for them to be around elderly people and see the warmth and love they can give.”

At Day Care, A Meeting of Generations, WASHINGTON POST, Jan. 27, 1992. However, an arbitrary requirement may undermine the ability of people like this to serve.

Love and nurturing cannot be taught in Early Childhood 101. Yet, government regulators and child care advocates say such educational mandates are “health and safety related.” Therefore, the children suffer and parents are deprived of sending their children to places where they would be best served due to regulatory costs and due to the effect regulations have on what is taught. In that same *Washington Post* article, an executive with KinderCare Learning Centers said

that state regulations were hampering their efforts to hire these quality, loving, nurturing senior citizens: "We haven't figured out how to blend our desire to expand in this area with dealing with state certification requirements. There is a reluctance on the part of that group [senior citizens] to go back to school for extensive training." *Id.*

Pennsylvania regulators were confronted with this in the early 1990's. After enacting comprehensive regulations in 1992, DPW recognized in 1994 that many of those regulations would best be deleted or amended because they were found, in its own words, to be "confusing," "excessive," "unnecessarily burdensome," or simply "unnecessary." As DPW noted, compliance with some of these regulations *raised the cost so significantly as to make it "prohibitive to many facilities" and "available day care [was] reduced as a result of prohibitive cost."* 24 PA Bulletin 4891, *et seq.* (emphasis added). Thus, the proposed regulations in this case are also against the public interest, see 71 P.S. § 745.5b(b)(1), because of economic concerns including the effect of the cost and the availability of religious daycare.

In 1989, another time when there was a significant push for increased daycare regulation, the *Harrisburg Patriot-News* editorialized on the question of whether, in their words, "additional bureaucratic intervention" was warranted or whether it can guarantee perfection. The *Patriot-News* said:

We don't think so. Rather, we fear the result of placing additional bureaucratic burdens [on day care] is going to be a reduction in the availability of affordable day-care at a time when it is increasingly hard to find. Government oversight is no substitute for parental inspection of day-care providers, which is the best guarantee that a child has been placed in good hands.

"More Red Tape for Child Care," *Harrisburg Patriot-News*, Monday, September 25, 1989.

State licensure regulations, which are often arbitrary, create the environment where costs go up, and supply of good workers and daycare options diminishes. This can have the result of forcing families into latch-key situations, "underground" daycare providers, or worse. The imposition of regulations that allow DPW to dictate the training of daycare workers will not only be burdensome, but it will undermine the ability of daycare to provide distinctively religious daycare. The requirement creates a tension between DPW training and a daycare's religious mission.

Public policy should favor continued space for religious daycare so that society may benefit from the distinctives that such daycare provides. "[C]hurches and synagogues may be the largest providers of center-based child care in the

United States, and have been providing these services for possibly well over 100 years." *Sacred Places, Civic Purposes: Child Care Conference* (2001, Mar. 14). Many, if not most, religious daycare providers operate centers as a mission, which results in a number of significant benefits to children, families, the taxpayer, and society as a whole. First, religious daycare is typically provided at a lower cost, since churches and other religious institutions often provide facilities and cover janitorial service, utilities, and other capital and operating overhead costs at no charge to the center. This is a tremendous benefit especially in lower income settings where commercial daycare costs are prohibitive.

Second, staffers and volunteers themselves often feel a sense of "mission" or "calling" to serve the children and families at a religious daycare center. Parents and children instinctively sense the high level of love and caring exemplified in these settings – caring that is not always matched at centers motivated by other purposes.

Third, religious daycare facilities often are able to maintain greater staff longevity, again owing to the religious mission and dedication of the staff and volunteers. This longevity, experts say, is key to the well-being of children in daycare settings. See *Healthy Child Care America*, Volume 3, Number 1, January 1999. *Early Brain Development and Child Care*. American Academy of Pediatrics, pp 6-8.

Hampering religious daycare in any way has the most tragic effects in the inner city, where many parents would prefer to have their children raised in a religious environment. Religious institutions and the strong moral values they inculcate have an unchangeable record in helping inner city youth escape drug addiction, illiteracy, and poverty. Among black male teenagers in the inner city today, those with religious values are 47 percent less likely to drop out of school; 54 percent less likely to use drugs; and 50 percent less likely to engage in criminal activity. See Michael Novak, *The New Consensus on Family and Welfare* (Washington, DC: The American Enterprise Institute, 1987) p. 34.

Ultimately, the ability of parents to choose religious based daycare implicates their religious liberties. "[P]arental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society." *Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972). As the Supreme Court recognized, "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (emphasis added). Instead, the Court recognized "the liberty of parents and guardians to direct the upbringing and education of children under their control." *Id.* at 534-35. That ability, however, is undermined where regulations impair the ability of religious daycare to maintain its religious distinctives.

Therefore, DPW regulations beyond those truly implicating health and safety should not be applied to religious daycare. PFI, therefore, writes in opposition to the above referenced regulations.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'RWenger', written over a horizontal line.

Randall L. Wenger

cc: Independent Regulatory Review Commission;
Hon. Louise W. Bishop, House Committee on
Children & Youth (Majority Chair);
Hon. Dennis M. O'Brien, House Committee on
Children & Youth (Minority Chair);
Hon. Patricia H. Vance, Senate Committee on
Public Health & Welfare (Majority Chair);
Hon. Vincent J. Hughes, Senate Committee on
Public Health & Welfare (Minority Chair);
Hon. Thomas W. Corbett, Jr., Attorney General of
Pennsylvania

2854

From: Randall Wenger [rwenger@pafamily.org]
Sent: Monday, July 26, 2010 3:19 PM
To: IRRC
Subject: DPW Proposed Regulation #14-519 (IRRC#2854)
Attachments: DOC072610-001.pdf

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Dear Sir or Ma'am,

Attached please find a copy of our letter in opposition to DPW Proposed Regulation No. 14-519 (IRRC No. 2854). Please do not hesitate to call me with any issues or concerns.

Sincerely yours,

Randy

Randall L. Wenger, Esq.
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