

State of Oregon
Department of Human Services
Child Welfare Program
500 Summer St. NE E62
Salem, OR 97301-1067

In the Matter of:

Eastern Oregon Academy, Inc.

Licensee.

**Notice of Intent to Revoke License of Child
Caring Agency and Opportunity for a
Hearing**

To:

Jen Hoke
Executive Director
Eastern Oregon Academy
705 Hwy 20 S.
Hines, OR 97738

I. Notice of Intent to Revoke License

The Oregon Department of Human Services (“DHS”) is the State agency authorized to issue licenses to operate Child Caring Agencies in Oregon. This is a Notice of Intent to Revoke the License of Approval to Operate a Child Caring Agency (“Notice”) held by Eastern Oregon Academy, Inc. (referred to hereafter as “EOA” and/or “Licensee”).

This Notice of Intent to Revoke the License of Child Caring Agency and Opportunity for a Hearing (“Notice”) is issued to you pursuant to Oregon Revised Statute (ORS) Chapter 183; ORS 409.050; ORS 418.005; ORS 418.205 through ORS 418.327; Oregon Laws 2016, Chapter 106, and OAR 413-215-0000 through OAR 413-215-0131 (Licensing Umbrella Rules), and OAR 413-215-0501 through OAR 413-215-0586 (Licensing Residential Care Agencies).

II. Background

ORS 418.005(1)(a) gives DHS the authority to adopt “all necessary rules and regulations for administering child welfare services” in order “to establish, extend, and strengthen welfare services for the protection and care of homeless, dependent or neglected children or children in danger of becoming delinquent[.]”

The Department of Human Services (DHS) has adopted administrative rules that prescribe standards for licensing private child-caring agencies, including residential care agencies, and

procedures for DHS to follow when it revokes a license. OAR 413-215-0081 to OAR 413-215-0121. DHS conducts periodic inspections to determine whether a program is maintained and operated in compliance with the rules in OAR 413-215 and other applicable rules and laws. DHS also screens all reports of abuse, dereliction, or deficiency in or by an agency. OAR 413-215-0106. Under this authority, DHS has licensed EOA as a Child Caring Agency for several years and most recently renewed EOA's license on May 1, 2015. Since that renewal, there have been multiple announced and unannounced site visits by the Office of Licensing and Regulatory Oversight ("Licensing"). EOA provides residential treatment to male children aged 10-17 at its Hines, Oregon facility, and is licensed to serve up to 32 youth. Some residents are wards of the juvenile court or the Oregon Youth Authority ("OYA"), or both.

DHS staff have reviewed EOA's programs on numerous occasions throughout EOA's period of licensure. DHS staff have reviewed EOA both periodically for licensing review and intermittently as necessary to investigate specific concerns or complaints. DHS has been monitoring the program closely since receiving an increasing number of reports since 2015. Those incidents primarily involve sexual contact and/or inappropriate conversations of a sexual nature between youth and staff; staff furnishing youth with cigarettes, controlled substances, and illegal drugs; staff assisting youth with eloping from the facility; failures to timely report runaway youth; and staff use of improper physical holds and verbal assaults and profanity toward youth. DHS has also been concerned about EOA's hiring and training practices, which demonstrate a pattern of hiring immature or otherwise unqualified staff and failing to adequately train staff. These circumstances, in conjunction with a recent mandatory reporting failure, necessitate the issuance of this Notice to protect the health, safety, and well-being of youth admitted to EOA's program.

DHS' Office of Adult Abuse Prevention and Investigations ("OAAPI") has investigated a number of incidents that have resulted in substantiated findings of abuse or neglect. In February 2015, a 46-year old staff member assisted two youth in the custody of OYA, one of whom was a juvenile, with obtaining marijuana by allowing them to use a personal cellular phone and provided the youth with cigarettes on an unauthorized outing. Witnesses reported the staff was observed kissing and fondling the older youth. The staff later made the keys to an EOA vehicle accessible to the youth, who ultimately stole the vehicle and eloped. OYA issued felony warrants. Law enforcement, including SWAT officers, contacted the youth and took them into custody at a Bend, Oregon hotel two days later. OAAPI substantiated a finding of maltreatment with respect to the juvenile EOA resident. The staff member was initially placed on administrative leave and subsequently was terminated from employment. DHS required corrective actions in April 2015, specifically related to safety, emergency planning, service planning, assessments, and personnel requirements.

In April 2016, OAAPI investigated an incident in which a staff member provided cigarettes and Norco tablets to youth on at least two separate occasions. EOA residents reported the staff member appeared to be under the influence of drugs at work, and was referred to as a "tweaker." This staff reportedly offered youth oxycodone, Xanax, Percocet, and Norco in exchange for the hallucinogenic drug "acid." EOA leadership was aware of the staff's nickname, and sent staff home for appearing to be under the influence after the staff revealed taking a number of prescription medications for a genetic disorder. Management instructed staff to keep the

medications locked in the trunk of staff's vehicle. The youth who received the Norco tablets reported being frustrated with management's lack of response to the incident he reported but was ultimately interviewed by law enforcement. The youth tested positive for opiates, however law enforcement has been unable to locate the staff to make an arrest. OAAPI substantiated two findings of neglect for failure to take action to protect the child's health or welfare.

OAAPI has also investigated allegations of sexual abuse at EOA. A July 2016 OAAPI investigation regarding alleged sexual conversations involving the age of consent and fellatio between a 20-year old female staff member and a 16-year old EOA resident was inconclusive. Witnesses to that investigation reported "boundary issues" between staff and the youth. The staff was placed on administrative leave, and ultimately her employment was terminated.

In November 2015, OAAPI began an investigation into alleged sexual abuse of youth by a staff member and neglect of two youth. An 18-year old female staff member assisted two 17-year old EOA youth with eloping from the facility multiple times by buying one youth a phone, and picking the youth up at night in her vehicle to "hang out." One of the youth was in OYA custody and the other was in DHS custody. The youth ultimately eloped from the facility for a longer period of time and stayed at staff's home for a week, around which time staff failed to show up for her EOA shifts. Staff and youth traveled to Pendleton, Oregon and engaged in numerous criminal activities including multiple thefts, drug and alcohol use, and drug dealing. Staff and one of the youths began a sexual relationship before staff was terminated from EOA. Staff later gave birth to the youth's child. The staff was convicted of Attempt to Commit a Class C Felony – Custodial Interference in the Second Degree, and the count of Sexual Misconduct was dismissed. The youth also faced criminal charges. Staff reported she received no training and was simply told during her interview that the residents would have a crush on her and to keep her boundaries. She further stated she believed it was not a good idea to hire "girls my age because I'm the same age as all of them." Upon closure of the staff's criminal case, OAAPI substantiated a finding of sexual abuse and two findings of neglect with respect to the staff.

In July 2016, DHS became aware that EOA may not have been reporting runaway youth (a historic problem for the program) to DHS, as required by rule, or to law enforcement. DHS was concerned youth eloped from the facility and were engaging in criminal behavior. Licensing determined EOA was not in full compliance with the OARs governing Child Caring Agencies, and that EOA's noncompliance posed or threatened a serious danger to any child or to the public, or placed the health, safety, or welfare of children at risk. To address these concerns, DHS amended EOA's license by imposing conditions requiring a restriction on new admissions to the program, staff re-training on mandatory abuse reporting requirements, and a review of hiring practices with a DHS-approved consultant. OYA removed its youth from EOA on August 11, 2016.

EOA worked closely with DHS to address the conditions, and stipulated to amended license conditions twice in August, 2016, which included an agreement that any staff, employee, or contractor who was the subject of a pending OAAPI investigation would be removed from contact with all youth at all times. DHS lifted the restriction on admissions and subsequently withdrew its conditions in late September.

On December 2, 2016, OAAPI substantiated a finding of neglect for leaving a youth in a remote wilderness area without supervision against two EOA staff members. During its investigation, OAAPI determined the youth refused to get in a vehicle to return to EOA after a dispute on a nature field trip and staff became frustrated. Staff left the youth alone in a very remote area, approximately 30 miles from the facility on July 18, 2016, with no water while the temperature was over 80 degrees Fahrenheit. The youth had a history of defiance in perceived unfair situations, and frequently experienced depression, anger, and anxiety. EOA retrieved the child approximately two hours later after leadership indicated this was not incorrect protocol. DHS learned of this incident more than two weeks after it occurred when it was called in to the abuse hotline by a mandatory reporter who learned about the incident from EOA staff. An EOA staff member called the child abuse hotline to report abuse sometime between August 4 and August 10, 2016. The report involved a hypothetical scenario of a child being left in the woods and the question of whether that was abuse, but did not include the reporter's name, or EOA's name. Shortly before the time the EOA staff made this report to the hotline, all EOA employees completed mandatory abuse reporting training as required under the license conditions. When a child in care has been neglected and that neglect was known to the agency and the agency did not take immediate steps to report the abuse or neglect and to ensure the child's safety, the agency must take immediate steps to revoke the agency's license.

DHS has learned during the course of other investigations and reports it has received that EOA has probably failed to comply with mandatory abuse reporting requirements with respect to incidents at its program during 2016.

At this time, more than 20 OAAPI investigations regarding children in care at EOA are pending. DHS continues to monitor EOA closely on a regular basis. DHS's findings underlying the current proposed revocation are summarized below. Excerpts of law are printed in italic.

III. DHS Findings

1. Failure to comply with mandatory abuse reporting requirements

Oregon Laws 2016, Chapter 106, Section 36

(1) "Abuse" means one or more of the following:

(b) Neglect of a child in care.

(c) Abandonment, including desertion or willful forsaking of a child in care or the withdrawal or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker or other person.

ORS 419B.010 Duty of officials to report child abuse; exceptions; penalty.

(1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015 (Report form and content).

ORS 419B.015 Report form and content; notice

(1)(a) A person making a report of child abuse, whether the report is made voluntarily or is required by ORS 419B.010 (Duty of officials to report child abuse), shall make an oral report by telephone or otherwise to the local office of the Department of Human Services, to the designee of the department or to a law enforcement agency within the county where the person making the report is located at the time of the contact. The report shall contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for care of the child, the child's age, the nature and extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information that the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

413-215-0021 Governance

(4) The executive or program director must be responsible for all of the following:

(h) Complying with all laws, and ensuring that all child-caring agency employees, contractors, and agents comply with all laws, including mandatory child abuse reporting laws.

413-215-0091 Responsibilities of Licensees

A licensee is responsible to do all of the following:

(3) Comply with all federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the licensee and ensure that the licensee's employees and volunteers comply with all federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the licensee.

(12) Notify a Department licensing coordinator within one business day if a critical event occurs. As used in this section, a "critical event" is a significant event occurring in the operation of a child-caring agency that is considered likely to cause complaints, generate concerns, or come to the attention of the media, law enforcement agencies, first responders, Child Protective Services, or other regulatory agencies. Compliance with this notification requirement does not satisfy the mandatory reporting requirements under ORS 419B.005 to 419B.045.

EOA failed to comply with mandatory abuse reporting requirements by failing to report the abuse of one of its residents who was left in the woods unsupervised for approximately two hours violation of ORS 419B.010. Leaving a child with increased supervision and mental health needs in the woods unattended for two hours meets the statutory definition of abuse, and OAAPI substantiated a finding of neglect with respect to two EOA staff based on the incident. DHS did not learn of the incident until nearly two weeks after it occurred, and the report was made by a mandatory reporter not affiliated with EOA. An EOA staff member reported to OAAPI

investigators that he made the abuse report to the abuse reporting hotline but failed to provide any identifying information such as the child's name, the program's name, or the nature and extent of the abuse or neglect. The staff presented the report as a hypothetical question to the abuse screener. This report does not meet the content requirements of ORS 419B.015.

EOA staff received abuse reporting training shortly before the EOA staff reportedly made the abuse report, but staff did not comply with statutory abuse reporting requirements. A licensee is required to comply with all laws pursuant to OAR 413-215-0091. Licensee failed to meet this requirement. Moreover, EOA leadership failed to ensure its employees complied with mandatory abuse reporting requirements. EOA leadership was aware of the incident on the day it occurred and instructed staff to retrieve the youth from the woods. Leadership did not instruct staff to make an abuse report, nor did leadership make a report. This conduct violates OAR 413-215-0021.

2. Failure to consistently employ qualified staff who do not compromise the health, safety, or welfare of children

413-215-0001 Regulation of Child-Caring Agencies

(3) A child caring agency must comply with all the of the Department rules that apply to the child caring agency.

(5) All child-caring agencies, their governing boards, and executive director, and program director, employees, contractors, and agents shall ensure the following standards, procedures, and protocols are met:

(c) The child caring agency engages in and applies appropriate behavior management techniques.

(f) The child-caring agency ensures the safety of children, including ensuring adequate supervision.

(i) The child-caring agency fully and timely corrects violations and maintains standards in accordance with any plan of correction imposed by the Department.

(m) The child-caring agency is in full compliance with the standards of care and treatment in these rules.

413-215-0021 Governance

(4) The executive or program director must be responsible for all of the following:

(a) The daily operation and maintenance of the child-caring agency and its facilities in compliance with the rules in Division 413-215 and the established program budget.

(c) Ensuring that only individuals whose presence does not jeopardize the health, safety, or welfare of the children in care served by the child-caring agency are employed or used as volunteers.

(h) Complying with all laws, and ensuring that all child-caring agency employees, contractors, and agents comply with all laws, including mandatory child abuse reporting laws.

413-215-0051 Resources Required

(2) A child-caring agency must employ or contract for a sufficient number of competent and qualified employees to perform the functions regulated by these rules and to provide adequate care, safety, protection, and supervision of the children in care and families the child-caring agency serves.

413-215-0056 Policies and Procedures

(1) For each program it is licensed to operate, a licensee must have and adhere to comprehensive policies and procedures that are well organized, accessible, and easy to use.

413-215-0091 Responsibilities of Licensees

A licensee is responsible to do all of the following:

(1) Ensure that children in care are well cared for and safe from self-harm, physical harm, and abuse from others.

(2) Adhere to and comply with all policies and procedures of the licensee and ensure that the licensee's employees and volunteers adhere to and comply with the licensee's policies and procedures.

(3) Comply with all federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the licensee and ensure that the licensee's employees and volunteers comply with all federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the licensee.

(12) Notify a Department licensing coordinator within one business day if a critical event occurs. As used in this section, a "critical event" is a significant event occurring in the operation of a child-caring agency that is considered likely to cause complaints, generate concerns, or come to the attention of the media, law enforcement agencies, first responders, Child Protective Services, or other regulatory agencies. Compliance with this notification requirement does not satisfy the mandatory reporting requirements under ORS 419B.005 to 419B.045.

EOA has consistently hired inadequate, inexperienced, immature, and incompetent individuals who are unable to maintain appropriate boundaries with the youth EOA serves. These shortcomings have resulted in serious safety threats and jeopardized the health and wellbeing of EOA's residents for a sustained period of time. Staff have assisted youth with eloping from the facility, both by facilitating absconding from EOA and outright providing youth with keys to an

EOA vehicle. That incident resulted in OYA felony warrants and significant law enforcement response. Staff have also assisted youth with obtaining marijuana and have provided drugs to youth, including Norco tablets. Staff are not permitted to provide youth with drugs or medication that is not prescribed. This conduct violates OAR 413-215-0001's directive for a child caring agency to ensure the safety of children and to provide them with adequate supervision as well as the requirement in 413-215-0056 to follow all policies and procedures.

EOA staff have engaged in sexual activity with EOA residents. A staff member engaged in a sexual relationship with an EOA resident she helped elope, subsequently harbored at her home, engaged in criminal activity with, and eventually gave birth to his child. This experience resulted in criminal charges for both the staff and the youth. This former staff member conceded it was inappropriate for a person of her age and experience to be charged with supervising members of the opposite sex so close to her own age. The staff reported she received no training and was told, during her interview, by management, that the youth would be attracted to her and to "have boundaries." EOA leadership has failed to ensure that only individuals whose presence does not jeopardize the health, safety, or welfare of the children in care served by the child-caring agency are employed in violation of ORS 413-215-0021.

Despite that staff's termination in September 2015, EOA's hiring practices do not appear to have changed much in the interim. OAAPI investigated a report of inappropriate sexual conversations between staff and youth in July 2016. License conditions were imposed later that month. During the course of its regulatory enforcement duties and during the period of heightened supervision, DHS learned personnel files were severely lacking in background check documentation. Leadership indicated background checks were rarely completed because most of the applicants were known to EOA due to it being situated in such a small community. EOA is simply not meeting the requirement in OAR 413-215-0051 to employ a sufficient number of competent and qualified employees to perform the functions regulated by the licensing rules and to provide adequate care, safety, protection, and supervision of the children in care.

Youth in EOA's care have been subject to neglect and maltreatment by EOA staff who have facilitated unsafe, often delinquent, behavior that jeopardizes the youth's ability to grow into healthy adults. This conduct endangers youth not only from a safety perspective, but by further criminalizing them. Despite DHS' efforts to implement a plan of correction designed to address EOA's challenges, including engagement with a consultant to evaluate hiring practices, EOA has failed to make the meaningful change required to ensure the children in its care are safe, well-cared for, and safe from abuse by others in violation of OAR 413-215-0091.

3. Revocation

413-215-0001 Regulation of Child-caring Agencies

(5) All child-caring agencies, their governing boards, and executive director, and program director, employees, contractors, and agents shall ensure the following standards, procedures, and protocols are met:

(m) The child-caring agency is in full compliance with the standards of care and treatment in these rules.

Oregon Laws 2016, Chapter 106, Section 4

(c) In the following circumstances the department may not issue, renew or place conditions on a license, certificate or authorization of a child-caring agency but must take immediate steps to suspend or revoke the license, certificate or other authorization of the child-caring agency, if any of the following are found to exist:

(B) There has been sexual or physical abuse or neglect of a child in the agency's care or custody that was known to the agency and the agency did not take immediate steps to report the abuse or neglect and to ensure the child's safety.

OAR 413-215-0121 Denial, Suspension, or Revocation of License and Placing Conditions on a License

(2) The Department may suspend, revoke, or place conditions on the child-caring agency's license, certificate, or other authorization in the following circumstances:

(a) The child-caring agency is not in full compliance with the requirements of OAR 413-215-0001(5) or other applicable requirements in OAR 413-215-0001 to 413-215-1031.

(b) The Department finds, after investigation by the Department or law enforcement, that abuses, deficiencies, violations, or failures to comply are founded.

(6) The Department will take immediate steps to suspend or revoke the license of a child-caring agency if any of the following circumstances are found to exist:

(b) There has been sexual or physical abuse or neglect of a child in care in the child-caring agency's care or custody that was known to the child-caring agency, and the child-caring agency did not take immediate steps to report the abuse or neglect and to ensure the child in care's safety;

Pursuant to Oregon Laws, Chapter 106, Section 4, and codified in OAR 413-215-0121(6), DHS is mandatorily required to take immediate steps to suspend or revoke an agency's license if there has been sexual or physical abuse or neglect of a child in care in the child-caring agency's care or custody that was known to the child-caring agency, and the child-caring agency did not take immediate steps to report the abuse or neglect and to ensure the child in care's safety. The most recent OAAPI investigation resulted in a substantiated finding of neglect with respect to the youth who was left in the woods for nearly two hours without water on a hot day. EOA failed to report this incident to the child abuse hotline or law enforcement as required by statute and rule.

Furthermore, EOA is not in full compliance with OAR 413-215-0000 through OAR 413-215-0131 and OAR 413-215-0501 through OAR 413-215-0586 as required in OAR 413-215-0001. This is also a basis to revoke EOA's license pursuant to OAR 413-215-0121(2).

The above-described violations and conduct require DHS to revoke EOA's license for failure to comply with mandatory abuse reporting requirements. EOA has violated essential requirements relating to the necessary care and services to its residents and its license must be revoked pursuant to Oregon law and administrative rule.

Based on the reasons set forth above, DHS hereby provides notice of its intent to revoke the License of Residential Care Facility held by EOA, pursuant to OAR 413-215-0121 for failing to consistently employ qualified staff who do not compromise the health, safety, or welfare of children.

During this period while the proposed revocation is pending, DHS reserves the right to take further and/or immediate action if necessary to protect the health, safety, and welfare of youth.

IV. Notice of Opportunity for Hearing

Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR 413-215-0121, you have the right to a contested case hearing in this matter. To request a hearing, you must submit your request in writing to the Department of Human Services' Licensing Unit within 30 days of the date DHS mailed the notice of revocation. The hearing would be held before an administrative law judge pursuant to the Administrative Procedures Act described in the contested case procedures (ORS 183.310 through 183.550) and the Attorney General's Model Rules of Procedure (OAR 137-003-0000 through 137-005-0070).

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation, and other rights of parties related to the conduct of the hearing before commencement of the hearing. You may request a hearing by sending your request to:

Harry Gilmore, Manager, Children's Care Licensing Unit
Department of Human Services Licensing Unit
PO Box 14530
Salem, OR 97309

If you do not request a hearing within 30 days of the mailing of this notice, you will have waived your right to hearing and DHS may issue a final order by default and revoke your license. If you waive your right to a hearing, withdraw a hearing request, notify DHS or the Administrative Law Judge that you will not appear at the hearing as scheduled, DHS may also issue a final order by default and revoke your license. DHS has designated the relevant portion of its files on this matter, including all materials that you have submitted relating to this matter, as the record in this case for the purposes of proving a *prima facie* case upon default.

V. Notice of Right to Legal Representation

You have the right to be represented by counsel. Legal aid organizations may be able to assist those with limited financial resources. If you are an agency, corporation, partnership, limited

liability company, trust, government body or an unincorporated association, you must be represented by an attorney licensed in Oregon.

VI. Notice to Active Duty Servicemembers

Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

Dated this 2nd day of December, 2016.



Tom van der Veen
Licensing & Regulatory Oversight, Interim Director
Department of Human Services