

**BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
QUALITY ASSURANCE DIVISION**

IN THE MATTERS OF:

THE RANCH FOR KIDS, INC.,  
William Sutley, Executive Director  
  
License No. 580.

Consolidated Case No. MF-2019-0001

**HEARING OFFICER'S FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
RECOMMENDED DECISION**

This matter concerns the Private Alternative Adolescent Residential or Outdoor Program (PAARP) License No. 580, which was issued to The Ranch for Kids, Inc. (RFK) with William Sutley as its Executive Director. Following the summary suspension of RFK's license, RFK requested—and was granted—an administrative hearing, which was conducted on November 11-15, 2019. At the hearing, RFK was represented by its counsel Matthew Lowy and William Sutley attended as RFK's party representative. DPHHS was represented by Michelle Peterson-Cook, Peter Bovingdon, Nick Domitrovich, and Flint Murfitt. Carter Anderson attended the hearing as the party representative of DPHHS.

DPHHS called the following witnesses: Grace Berger, Heidi Kaufman, Seth Gardner, Nancy Riva, Dr. Doug Muir, Kami Stone, Ralph Martin, Debbie Lepo, Helen

White, Dr. Eric Arzubi, I.R, Michael Ronca, Brittany Jahns, Traci Collett, J.D, I.L., J.H., Richard Munson, Aaron Thompson, E.Y., Rachel Limewood, Jeremy Evjene, Daniel Sutley, William Sutley, Carter Anderson, and Noah Scott. While RFK cross-examined these witnesses, it did not call any witnesses of its own to testify on its behalf.<sup>1</sup>

During the hearing, the following DPHHS exhibits were admitted into evidence: A, B, C, D (without audio), F, G, H, M, P, Q, R, S, T, U, V, and W. RFK offered exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, all of which were admitted during the hearing.

Following the hearing, the parties submitted briefs on various evidentiary issues that arose during the hearing. Those issues were resolved by way of an Order issued by the undersigned on January 22, 2020. RFK also raised a post-hearing discovery issue following DPHHS' late disclosure of certain documents that RFK requested. As a result of RFK's motion, the undersigned issued an order on June 29, 2020, and excluded the testimony of Elijah Young from consideration.

Now, all preliminary matters having been fully resolved, and from the proposed submissions by the parties and the testimony and documents in the record, the following findings of fact, conclusions of law, and recommended decision are hereby submitted for the Board's consideration.

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<sup>1</sup> At the conclusion of the initial hearing, RFK sought, and was granted, an additional two days to put on its case-in-chief. However, on the eve of the continued hearing, RFK moved to vacate the hearing and did not present its case-in-chief.

## FINDINGS OF FACT

### **I. PAARP Generally**

1. Prior to the transfer of PAARP licensing to DPHHS, PAARP licenses were regulated by the PAARP Board within the Montana Department of Labor and Industry (DLI). *Berger Test.*, Tr. 57:1-20.

2. When a facility wanted to obtain a PAARP license, it was required to submit an application and fee to DLI. Along with the fee, the facility was required to submit their proposed policies and procedures, an average census of participants, background checks on individuals who are going to have direct contact with participants, and a floor plan of the facility. *Berger Test.*, Tr. 66:18-67:5.

3. The facility also had to be inspected. *Berger Test.*, Tr. 67:15-18.

4. Once the PAARP Board received all the necessary information, the application went before the Board for deliberation and consideration. *Berger Test.*, Tr. 67:19-23.

5. The PAARP Board might have required an applicant facility to alter the documents they submitted or present more information. *Berger Test.*, Tr. 68:6-11.

6. However, the 2019 legislative session transferred regulation of the PAARP licenses from DLI to the Quality Assurances Division of DPHHS. *Berger Test.*, Tr. 57:25-58:5.

7. The effective date of the transfer of PAARP license from DLI to DPHHS was July 1, 2019. *Berger Test.*, Tr. 58:11-12.

8. The PAARP Board rules, that were in effect at DLI, remained in effect until DPHHS promulgated and adopted its own rules. *Berger Test.*, Tr. 58:16-21.

9. The relevant rules and statutes setting forth some of the regulations of PAARP facilities were set forth in Mont. Code Ann. § 37-48-101, et seq. and Admin. R. Mont. 24.181.301 through 2101.

## **II. History of RFK.**

10. RFK was a PAARP facility located in Rexford, Montana that originally obtained a PAARP license in 2009. *Berger Test.*, Tr. 60:8-20.

11. RFK had its principal operation at the site of the former Rexford School. *Ex. A* at 00256.

12. Mr. William Sutley was the executive director of RFK, and son of RFK co-founder, Joyce Sterkel. *W. Sutley Test.*, Tr. 1381:23-1382:1; *Ex. A* at 00257.

13. Daniel Sutley, who is the son of William Sutley, was the secretary and treasurer for RKF. *D. Sutley Test.*, Tr. 1270:20-24.

14. In 2009, RFK was issued a provisional license by the PAARP Board, which is a license that allows a PAARP facility to operate even though the facility may have not met all the inspection and other requirements. *Berger Test.*, Tr. 63:3-13.

15. The grant of a full license to RFK was conditioned on an inspection of RFK's facilities and an agreement to cure any deficiencies noted during said inspection.

*Ex. B at 1.*

16. After an onsite inspection in June 2010, the Board prepared a stipulation which provided that RFK would have 90 days within which to correct any deficiencies noted in the onsite inspection. *Ex. B at 1.*

17. RFK refused to stipulate to these conditions and it did not cure the code deficiencies found during the inspection. *Ex. B at 2.*

18. The PAARP Board issued notice to RFK of its intent to terminate RFK's provisional license. *Ex. B at 2.*

19. The Board even gave RFK an extension in which to cure the deficiencies or request a hearing. *Ex. B at 2.*

20. RFK requested an administrative contested case hearing, but failed to appear at the hearing. *Ex. B at 2.*

21. As a result, the Board terminated RFK's provisional license and sent a cease and desist letter to RFK demanding that they immediately cease operations at an unlicensed facility. *Ex. B at 2.*

22. RFK sought judicial review of the Board's Order. *Ex. B at 2.*

23. On judicial review, RFK attempted to argue that it was an adjunct of a ministry, and, therefore, a religious organization, that was exempt from licensure. *Ex. B.*

24. The district court granted summary judgment in favor of the Board and determined that RFK was not affiliated with any church or ministry, and was subject to PAARP licensure requirements. *Ex. B* at 4.

25. In addition to litigation as to whether RFK was exempt from licensure, RFK also faced another lawsuit brought by DLI over building code violations found at RFK's facilities. *Ex. C*.

26. That litigation was resolved in favor of DLI. *Id.*; *Berger Test.*, Tr. 63:23-64:11.

27. Upon the resolution of the litigation, RFK applied for its second license, in 2013. *Berger Test.*, Tr. 66:4-17.

28. As part of the application process, RFK was required to submit a plan of operation. *Berger Test.*, Tr. 67:9-14; *Ex. A*.

29. The PAARP Board required RFK to alter its policies and procedures prior to approving RFK's application. *Berger Test.*, Tr. 68:12-15.

30. After making the necessary changes, RFK was issued License No. 580 in 2015. *Berger Test.*, Tr. 66:10-14.

### **III. RFK's Policies and Procedures.**

31. According to RFK's plan of operation, it billed itself as "a Christian home for 'at risk' adoptees who may be experiencing difficulties in their new families in the U.S.A." *Exhibit A* at 00258.

32. RFK held itself out as specializing in the treatment of children with Reactive Attachment Disorder (RAD) and who have prenatal alcohol exposure (FASD). *Ex. A* at 00258.

33. RAD involves an abnormal parent-child relationship, co-regulation does not exist and attachment between the parent and child does not develop. RAD was developed to diagnose children who were exposed to severe abuse and neglect, which has prevented the attachment or bond between parent and child to develop. *Arzubi Test.*, Tr. 480:10-482:2.

34. Ninety-five percent of children with RAD develop some other mental health problem(s). *Arzubi Test.*, Tr. 483:17-20.

35. FASD is a spectrum disorder resulting from prenatal exposure to alcohol in utero. *Arzubi Test.*, Tr. 530:24-531:15.

36. Children with FASD may exhibit physical characteristics that stem from fetal alcohol exposure, such as having growth deficiency, a reduced palpebral fissure length, a smooth philtrum, or a thin upper lip. *Arzubi Test.*, Tr. 531:16-532:5.

37. Children with FASD are at greater risk for developing mental health issues such as depression, ADHD, and suicidality. *Arzubi Test.*, Tr. 532:17-533:2.

38. Children with FASD, who have been exposed to abuse and neglect, struggle with regulation of their emotions, behaviors, and attention. *Arzubi Test.*, Tr. 533:13-534:5.

39. FASD is not curable, but the resulting symptoms are manageable, and requires a multidisciplinary team to assess the child and determine what therapies are needed and appropriate. *Arzubi Test.*, Tr. 532:17-533:8.

40. RFK stated that it provided room and board in a safe, therapeutic, home-like atmosphere that was highly structured. *Ex. A* at 00261.

41. It also claimed to provide “direct care staff who are highly experientially-trained in dealing with children who have attachment issues, oppositional behavior and the residual effects of prenatal alcohol exposure and the separation, grief and loss issues associated with being adopted.” *Ex. A* at 00261.

42. RFK claimed that “[i]n order for these children to become functioning members of our society, they need to heal from the trauma of their orphanage experience and or further difficulties in their adoptive placements. We uniquely provide/create an environment of their peers that can support, encourage, and connect with our kids and their background.” *Id.*

43. RFK espoused a belief that a “common sense relaxed approach to everyday life and a sound moral base contribute to building a successful lifestyle.” *Id.*

44. RFK supposedly “strive[d] to be a bridge of hope and healing between families and children as they transition into lives free of pain, trauma, and abandonment.” *Ex. A* at 00260.



45. RFK asserted that all its services were provided, and all children resided, at the Rexford Lodge, which was located at 144 Gateway Road, in Rexford, Montana. *Ex. A* at 00257.

46. RFK claimed to serve youth of approximately 12-18 years old. *Ex. A* at 00260.

47. The average daily census for RFK was 11-24 participants and RFK specified that it could house a maximum capacity of 24. *Id.*

48. Supposedly, participants who were not good candidates were not be admitted into its program. Participants who were not good candidates are those who are: 1) suicidal; 2) drug addicts or detoxing; 3) alcoholics; 4) convicted felons; 5) children who have killed, committed arson, or extremely violent; 6) participant with eating disorders; 7) severely depressed; 8) Asperger's or any autism spectrum disorders; and 9) pregnant. *Ex. A* at 00271-272.

49. After a participant was admitted, RFK's policies and procedures stated that it would discharge a participant if the participant became "too high risk to remain" at RFK's facility. A participant became too high risk if they were: 1) a habitual runaway; 2) violent so as to become a danger to himself or herself or others; or 3) sexually acting out. *Ex. A* at 00272.

50. Several pages of RFK's policies and procedures manual were dedicated to outlining the discipline imposed at RFK on participants. *See Ex. A* at 00275-00278.

51. As part of its disciplinary system, RFK employed a level system for its participants. All participants started out at Level 2, which is the highest level and includes the most privileges. *Ex. A* at 00331-00334.

52. The lowest level on RFK's systems was Level 00, which was reserved for "only the most extreme behavior when all other avenues of reaching the program participant have failed." *Ex. A* at 00331.

53. Those participants assigned Level 00 were excluded from group activities, isolated from peers, only allowed to do jumping jacks for exercise, and allowed no privileges such as movies, recess, music, and sugary treats or desert. *Id.*

54. The participant must remain on Level 00 for a minimum of seven days and can only attain a higher level by exhibiting good behaviors. *Id.*

55. RFK's handbook dedicated several pages to the discipline that it would utilize as consequences toward participants. *Ex. A* at 275-277.

56. RFK included the following philosophy on their disciplinary attitudes towards its participants: "Many of our children 'size us up' to see if we are powerful and strong adults who can protect them. Because of their backgrounds of abuse and neglect they are careful to scrutinize their caregivers. The philosophy is 'if you are not powerful enough to control me then you are not powerful enough to protect me.' We believe that 'power perceived is power achieved.' The children must see us as capable adults that can manage not only our own lives but also the behaviors that the program participants may

demonstrate.” *Ex. A* at 00276.

57. RFK does not include any educational or psychological reference to substantiate its philosophy. *Id.*

58. With respect to discipline administered at RFK, its handbook provided that it would make every effort to avoid physical confrontations with participants, but when physical confrontation was unavoidable, RFK stated that the participant’s dignity and privacy would be protected as much as possible. *Ex. A* at 00275.

59. It states that discipline would be consistent, purposeful, fair, and proper, depending on the individual needs of the child. *Ex. A* at 00277.

60. Further, RFK’s policies and procedures stated that no disciplinary measures would be physically or emotionally damaging to any child, and it would not employ “harsh, cruel, or unnecessary punishment.” *Ex. A* at 00277.

61. RFK’s disciplinary policy asserted that no punishment will befall in any action or word that might be detrimental to the child’s spirit, or be demeaning to his or her character in regards to academics, family background, past mistakes or other social, physical, or emotional limitations. *Ex. A* at 00277.

62. Discipline was to be meted out based upon a careful assessment of the circumstances of each case, and would be based upon factors such as the seriousness of the offense, the child’s age, and the frequency of the misconduct. *Ex. A* at 00277.

63. RFK's handbook describes its use of restraints and seclusion policies as being enforced only when the child: 1) was a danger to themselves; 2) was a danger to staff or others; 3) was running away; 4) was attempting to or destroying property. *Ex. A* at 00275.

64. The RFK handbook further discussed seclusion as a disciplinary tool. In that regard, it stated that "when used properly, [seclusion] can protect a child from harming him/herself, others, or property. We believe seclusion or 'quiet time' gives the child space and quiet to rethink and reflect upon the issues that has [sic] brought him to act out in destructive and harmful ways." *Ex. A* at 00276.

65. The policy goes on the state that a seclusion room is not used, and that children will be in the company of adults, seated apart from the group, and the child is not allowed to interact with the group during this time. *Id.*

66. RFK claimed to allow seclusion for a maximum of 1-3 days while staff intensively counseled the child, and, during this time, the necessities of life, such as food, water, warmth, etc., would never be denied or used as punishment. *Id.*

67. RFK's policy and procedures also state that the denial of an adequate diet or using withdrawal of food is never used as a form of punishment. *Ex. A* at 00276.

68. It also stated that corporal punishment, punishment by other participants, and unsupervised restraint, seclusion, therapeutic holding, or passive holding as a regular component of behavior support would never be used. *Id.*

69. Though not mentioned explicitly in either RFK's policies and procedures or its handbook, RFK utilized long walks as a form of discipline. *I.R. Test.*, Tr. 589:1-591:25; *J.D. Test.*, Tr. 829:20-25; *I.L. Test.*, Tr. 891:4-7; *Jahns Test.*, Tr. 711:13-14.

70. These walks were described as upwards of 16 to 20 miles and were meted out for behaviors such as running away or self-harm. *I.L. Test.*, Tr. 891:4-7; *J.D. Test.*, Tr. 829:20-25; *I.R. Test.*, Tr. 589:1-3; 591:17-592:1.

71. RFK's participant handbook also prohibited any kind of sexual behavior between participants and detailed the repercussions if sexual contact between participants occurred. It warned that such behavior would result in serious disciplinary measures, notification of the participants' parents, and possible criminal prosecution. *Ex. A* at 00293.

72. The handbook outlined the procedures that it would follow in the event of sexual contact between participants. It warned that sexual contact between someone over 16 and someone under 16 is considered statutory rape and that the police must be notified. *Ex. A* at 00300.

73. With respect to attempted suicide and suicidal ideation, RFK's policies and procedures state that "[a]ny program participant who vocalizes or writes any thoughts about suicide will be on a suicide watch and transferred for a psychological evaluation." *Ex. A* at 00284.

74. RFK's policies and procedures clearly state that "[a]ll program participants will be given an adequate diet for age and activity level." *Ex. A* at 00278.

75. According to RFK's policy and procedure manual, it provided a custom designed education system with individual tutoring. *Ex. A* at 00261.

76. RFK also asserted that all participants would have access to appropriate medical care, that medications would be dispensed under the direction of a licensed physician, and medications were to be dispensed per the participant's doctor's orders. *Ex. A* at 00278-00279.

77. RFK promised that its participants would be seen by a physician for routine and emergency care as the need arose, and a psychologist as needed. *Ex. A* at 00279.

78. RFK's policies stated that it would adhere to all applicable state and federal laws in conducting its program, including the administration, hiring and employment practices, as well as care of its participants. *Ex. A* at 00255.

#### **IV. Events Precipitating Investigation Into RFK.**

79. Throughout its history, RFK has had seven complaints lodged against it through the PAARP Board. *Kaufman Test.*, Tr. 96:2-6.

80. One such complaint was lodged in September 2017, when the PAARP Board received a complaint from the parents of M.M., who was a 9-year-old former participant at RFK. *Kaufman Test.* Tr. 96:18-25; *Munson Test.*, Tr. 1005:7-12.

81. The complaint alleged that M.M. was physically, verbally, and emotionally abused while a participant at RFK. *Ex. I* at 1:25.

82. That complaint, identified as 2017 PAP 640, was sent to the screening panel of the PAARP Board. *Kaufman Test.*, Tr. 97:10-12.

83. The screening panel of the PAARP Board is a part of the Board that reviews complaints and gathers information in relation to the complaint. Its purpose is to determine whether violations have occurred and if disciplinary action is warranted. *Kaufman Test.*, Tr. 90:19-25.

84. After reviewing the complaint, the screening panel requested an investigation into the complaint. *Kaufman Test.*, Tr. 97:7-16.

85. The investigation revealed that M.M. was at the lowest levels in RFK's level system during M.M.'s entire stay at RFK. *Ex. I* at 7:38-7:45; *Munson Test.*, Tr. 1000:25-1001:8.

86. The parents of M.M. alleged that M.M. was punished by being forced to complete long therapy walks as punishment. *Munson Test.*, Tr. 1001:20-1002:3.

87. M.M. has a club foot. *Munson Test.*, Tr. 987:23-25.

88. Even though M.M. has a club foot, M.M. was made to go on therapy walks of sixteen miles, according to RFK's own staff. *Munson Test.*, Tr. 1002:4-8.

89. In addition to the walks, the parents of M.M. alleged that RFK provided minimally nutritional food, that M.M.'s food was limited as punishment, that RFK

refused to provide direct care notes, that a comfort item was taken away as punishment, and that M.M.'s phone calls were limited. *Ex. I* at 1:30-2:45; *Munson Test.*, Tr. 996:20-23; 994:25-995:16; 1005:13-22.

90. When M.M.'s parents visited her, they were shocked by her appearance. They described M.M. as having the appearance of a dog beaten into submission. They described M.M. as being unkempt. M.M.'s feet were disgusting with fungus growing in her toenails. M.M.'s hair was ratty, and M.M. was in a fragile mental state. *Munson Test.*, Tr. 999:2-1000:8.

91. M.M.'s parents also described M.M. as ravenous. When given blueberries and carrots, M.M. stated that the food was great and that "I've never had this kind of food in a long time." *Munson Test.*, Tr. 999:17-23.

92. After seeing M.M. in that state, M.M.'s parent decided to remove M.M. from RFK. *Munson Test.*, Tr. 1000:9-14.

93. When they picked M.M. up, one of RFK's staff members, Kathy, stated "Leave [M.M.] here and we will break [M.M.]." *Munson Test.*, Tr. 1002:18-25.

94. After being removed from RFK, M.M. had to undergo "lots and lots" of physical therapy to correct problems that had arisen with M.M.'s club foot. *Munson Test.*, Tr. 1003:11-21.

95. Additionally, M.M.'s parents attempted to obtain records related to M.M.'s treatment at RFK; however, they never received M.M.'s records and were told that



M.M.'s records were lost in the cloud. *Munson Test.*, Tr. 1003:22-1004:18.

96. On February 21, 2019, the screening panel conducted a hearing involving both M.M.'s parents and RFK representatives. *Ex. I* at 00:52.

97. At the conclusion of the hearing, the screening panel rendered a reasonable cause finding. *Ex. I* at 49:00-52:28; *Kaufman Test.*, Tr. 97:7-16.

98. Then, on June 5, 2019, DPHHS' Child Protective Services Central Intake received a report alleging physical and verbal abuse stemming from an incident involving C.E., a former RFK participant. *Gardner Test.*, Tr. 160:25-161:16; *Muir Test.*, Tr. 226:12-13.

99. Dr. Muir, who is a board-certified child and adolescent psychiatrist, began treating RFK participants in the fall of 2014. *Muir Test.*, Tr. 194:4-16; 233:21-23.

100. One of Dr. Muir's patients was C.E., whom he saw in February 2019 to assess C.E.'s suicidal ideation. *Muir Test.*, Tr. 217:1-7.

101. Based upon his assessment, Dr. Muir had recommended that C.E. be admitted to an in-patient program at Pathways. *Muir Test.*, Tr. 217:8-11.

102. C.E. was admitted into Pathways, but was discharged at some point. *Muir Test.*, Tr. 217:11-12.

103. Dr. Muir saw C.E. in April 2019 where, again, C.E. was expressing suicidal ideation. Again, Dr. Muir recommended that C.E. be admitted to Pathways' psychiatric facility. *Muir Test.*, Tr. 217:12-15.

104. However, C.E. was not admitted into Pathways and was sent back to RFK. *Muir Test.*, Tr. 217:19-21.

105. Dr. Muir saw C.E. again in June 2019. During this visit, C.E. was distraught and expressed suicidal ideation. C.E. stated an intent to jump from the van on the way back to RFK. *Muir Test.*, Tr. 218:8-11.

106. At that point, Mr. Muir wanted to talk with RFK's direct care staff regarding C.E. *Muir Test.*, Tr. 218:12-13.

107. Mr. Muir escorted C.E. to a private room and asked a nurse, Nancy Riva, to stay with C.E. and try to calm her down while he talked to RFK staff. *Muir Test.*, Tr. 218:13-18.

108. Dr. Muir talked with RFK's direct care staff, Kathy Ness, and expressed his concerns regarding C.E. Dr. Muir informed Ms. Ness that he was leaning towards admitting C.E. but wanted to speak with C.E. again before making his final determination. *Muir Test.*, Tr. 220:17-25,

109. Ms. Ness grossly minimized Dr. Muir's concerns, and stated that C.E.'s statements were manipulation and that C.E. was not suicidal. *Muir Test.*, Tr. 218:19-219:15.

110. Dr. Muir characterized Ms. Ness' demeanor as not one of a concerned parent and that her demeanor escalated the situation with C.E. *Muir Test.*, Tr. 221:1-4; 221:7-12.

111. Ms. Ness informed Dr. Muir that she was going to call Bill Sutley and that she disagreed with his assessment of C.E. *Muir Test.*, Tr. 221:18-23.

112. While Dr. Muir was speaking with Ms. Ness, Nurse Riva sat with C.E. trying to get her to calm down so she could do an assessment. *Riva Test.*, Tr. 170:14-25.

113. Nurse Riva attempted to comfort C.E. by rubbing her back and having her do some deep breathing exercises. *Riva Test.*, Tr. 171:1-5.

114. After she had calmed down, Nurse Riva conducted her assessment wherein C.E. repeated her intent to attempt suicide if sent back to RFK. *Riva Test.*, Tr. 173:3-8.

115. Nurse Riva inquired as to why she did not want to go back to RFK. *Riva Test.*, Tr. 173:20-21.

116. In response, C.E. indicated that she was being physically abused by the staff at RFK and made to go on long walks without proper attire as punishment. *Riva Test.*, Tr. 173:20-174:12.

117. While Nurse Riva was talking with C.E., Dr. Muir and Ms. Ness entered the room where Nurse Riva was attending to C.E. *Muir Test.*, Tr. 219:24-220:1; *Riva Test.*, Tr. 174:21-22.

118. Upon Ms. Ness entering the room, the situation escalated quickly. C.E. started crying and struck Ms. Ness as she walked towards C.E. *Muir Test.*, Tr. 220:3-7; *Riva Test.*, Tr. 174:25-175:9.

119. At that point, Nurse Riva asked Ms. Ness to leave the room, and that is when C.E. ran out and started running around the office. *Muir Test.*, Tr. 220:3-7; *Riva Test.*, Tr. 175:10-12.

120. Dr. Muir attempted to deescalate the situation but C.E. broke a doorknob, kicked Dr. Muir a couple of times, grabbed a flashlight, and was holding it in a threatening manner. Eventually, C.E. ran out the back door of the building. *Muir Test.*, Tr. 220:8-11; *Riva Test.*, Tr. 175:19-176:4.

121. Nurse Riva followed C.E. outside because she was concerned that C.E. would run away. *Riva Test.*, Tr. 176:5-177:3.

122. Upon exiting the office, Mr. Muir had his staff contact the police department to have them help transport C.E. to the emergency room for evaluation. *Muir Test.*, Tr. 220:11-14; *Riva Test.*, Tr. 177:5-6.

123. Officer Seth Gardner of the Whitefish Police Department was dispatched to Dr. Muir's office. *Gardner Test.*, Tr. 123:6-14.

124. Upon arriving, Officer Gardner went behind the building and observed C.E. holding a plastic flashlight. According to Officer Gardner, C.E., did not appear violent, but was terrified. Officer Gardner stated that C.E. appeared to be shaking and hyperventilating. *Gardner Test.*, Tr. 124:3-8.

125. Officer Gardner then introduced himself to C.E. but C.E. started walking away briskly. Officer Gardner pursued C.E. until C.E. finally stopped. *Gardner Test.*, Tr. 124:18:20; 125:20-25; 126:12.

126. Once C.E. stopped, Officer Gardner requested that C.E. be seen by paramedics who had arrived on scene. *Gardner Test.*, Tr. 127:5-7.

127. Eventually, C.E. agreed to be seen by the paramedics, and voluntarily got into the ambulance and was transported to the emergency room. *Gardner Test.*, Tr. 127:17-20.

128. After C.E. was taken to the ER by the paramedics, Officer Gardner went back to Dr. Muir's office to follow up. There, he met with Kathy Ness who stated to Officer Gardner that she wished he had just tased C.E. because C.E. deserved it. Officer Gardner did not find this comment to have been made in jest. *Gardner Test.*, Tr. 130:24;131:2; 131:18-23.

129. After his interaction with Ms. Ness, Officer Gardner went to the ER to ensure that C.E. was complying with medical staff and that medical staff was not having any issues with C.E. *Gardner Test.*, Tr. 132:15-21.

130. While at the ER, one of the nurses requested that Officer Gardner attend to a situation in the ER lobby. *Gardner Test.*, Tr. 135:24-136:4.

131. When he went to the ER lobby, Officer Gardner observed Bill Sutley having a heated telephone conversation. *Gardner Test.*, Tr. 137:17-20.

132. On that conversation, Mr. Sutley stated that he did not care what kind of evaluation or recommendation for care occurred, and that C.E. was just manipulating hospital staff, and that C.E. was going back to RFK. *Gardner Test.*, Tr. 137:17-20; *Muir Test.*, Tr. 224:24-225:21.

133. Mr. Sutley said that he was the only one who could keep C.E. safe and that Dr. Muir could not. Mr. Sutley also stated that the incident involving C.E. was inconveniencing him from other obligations in Eureka, that he had wasted several hours, and would waste several more. Mr. Sutley used a lot of obscenities and curse words during the conversation. *Muir Test.*, Tr. 225:7-14.

134. Dr. Muir described it as one of the most disrespectful conversations he has ever had with someone in the business of helping kids. *Muir Test.*, Tr. 225:14-18.

135. Dr. Muir feared for C.E.'s safety given his interactions with Mr. Sutley, and believed that the risk of harm to C.E. was "pretty significant." *Muir Test.*, Tr. 226:14-20.

136. Dr. Muir informed Mr. Sutley that he intended on having C.E. evaluated by a contracted mental health professional, and Mr. Sutley refused to allow C.E. to be evaluated. As a result, Dr. Muir told Mr. Sutley that he considered Mr. Sutley's refusal to be medical neglect and had staff contact CPS. *Muir Test.*, Tr. 226:2-13.

137. After Mr. Sutley got off the phone with Dr. Muir, he approached Dr. Stone, who was the doctor attending to C.E. at the ER, to figure out what the hospital was doing with C.E. and how long it would take. *Gardner Test.*, Tr. 138:4-8.

138. As Dr. Stone was attempting to discuss the protocols and procedures, Mr. Sutley kept interrupting her, acted aggressively towards her, and had squared up with her. *Gardner Test.*, Tr. 138:23-139:4.

139. At one point, Mr. Sutley stated that if hospital staff would let him talk to C.E. alone, he would have C.E. walking out in 5 minutes. *Gardner Test.*, Tr. 143:10-12.

140. Officer Gardner refused to allow Mr. Sutley to see C.E. because he did not want someone as agitated as Mr. Sutley to see a minor and potentially aggravate the situation. *Gardner Test.*, Tr. 143:12-17; 143:21-144:1.

141. Mr. Sutley stated that he did not care what the medical recommendations were, and that he was going to take C.E. back to RFK. Mr. Sutley also stated that he knew what was best for C.E. because he had been taking better care of C.E. than any doctor or mental health professional could. *Gardner Test.*, Tr. 144:11-15; 145:4-7.

142. The incident with C.E. was called into DPHHS's Central Intake by hospital staff. *Muir Test.*, Tr. 226:12-13; *Gardner Test.*, Tr. 156:1-3.

#### **V. CPS' Investigation Into RFK.**

143. Kami Stone, a child protection specialist supervisor with the State of Montana, was assigned to investigate RFK following the June 2019 report involving C.E. *Stone Test.*, Tr. 297:12-13; 298:3-11.

144. As with any investigation, Ms. Stone first looked at the prior reports concerning potential neglect and abuse at RFK. *Stone Test.*, Tr. 302:11-14.

145. Ms. Stone then contacted the reporter of the incident with C.E. to get as much detail as possible on the incident before going in and doing her investigation. *Stone Test.*, Tr. 302:15-25.

146. After conducting the preliminary part of her investigation, Ms. Stone traveled to Kalispell to conduct a forensic interview with C.E. *Stone Test.*, Tr. 299:7-8; 302:4-6.

147. Following her interview with C.E., Ms. Stone had concerns that physical abuse, psychological abuse, and possible neglect were occurring at RFK. *Stone Test.*, Tr. 303:12-15.

148. Ms. Stone's concerns stemmed from reports of physical abuse, RFK's potential use of food as a disciplinary mechanism, and long walks that RFK participants were made to go on. *Stone Test.*, Tr. 306:23-307:12.

#### **A. Testimony of Law Enforcement.**

149. Upon concluding her forensic interview with C.E., Ms. Stone traveled to Eureka and spoke with law enforcement officials regarding reports that had been called in concerning RFK. *Stone Test.*, Tr. 307:22-308:4.

150. In addition to Officer Gardner's testimony, as detailed above, Ranger Debbie Lepo, who was a federal law enforcement ranger for the National Forest Service, testified as to her interaction with an RFK participant on June 13, 2018, at approximately 8:00 p.m. *Lepo Test.*, Tr. 414:20-23; 417:25-418:7.



151. Ranger Lepo was on patrol when she observed a child running in front of a car on a forest development road. *Lepo Test.*, Tr. 418:10-21.

152. This particular road was a windy, desolate road with no cell coverage. *Lepo Test.*, Tr. 419:4-19.

153. Bear, mountain lions, elk, deer, and moose inhabit the areas surrounding this forest development road, and there have been human/wild animal incidents in the area in the past. *Lepo Test.*, Tr. 419:20-25; 438:11-439:10.

154. Upon seeing the juvenile running, Ranger Lepo and her partner stopped the vehicle that was trailing the juvenile. Ranger Lepo questioned the juvenile and gathered information from both of the occupants of the vehicle that was following the juvenile. *Lepo Test.*, Tr. 420:24-422:3.

155. The driver identified himself as being an employee of RFK and that he was running the juvenile for disciplinary reasons. *Lepo Test.*, Tr. 423:4-18.

156. The information on the juvenile came back that he had been reported as a missing person. *Lepo Test.*, Tr. 422:5-10.

157. Ranger Lepo was taken aback the driver's attitude, who was attempting to intimidate her and continually exiting his vehicle. *Lepo Test.*, Tr. 425:18-426:6.

158. Following the traffic stop, Ranger Lepo called RFK and spoke with an employee who confirmed that the juvenile was made to run 13 miles as discipline for running away to California and that they had forgotten to report the juvenile as no longer

being a runaway. *Lepo Test.*, Tr. 429:12-430:7; 434:17-435:4.

159. Ranger Lepo noted that RFK did not have a plan of operation or license to be conducting these walks within National Forest Service land, and, though she did not issue a citation for this violation, Ranger Lepo referred the matter onto the district ranger who has five years in which to issue a citation. *Lepo Test.*, Tr. 434:22-24; 445:5-446:9.

**B. Testimony of Prior RFK Staff.**

160. Another part of Ms. Stone's investigation involved speaking with former RFK staff members about their concerns with the treatment of the RFK participants. *Stone Test.*, Tr. 308:5-15.

161. One such employee, who testified at the hearing, was Brittany Jahns. Ms. Jahns worked at RFK from August 2018 through July 2019 when RFK was shut down. *Jahns Test.*, Tr. 755:5-11.

162. Ms. Jahns, initially, believed that RFK was a place where she could help children in a closed setting, where they did not go home to environments that were causing a lot of their issues like in a public school setting. *Jahns Test.*, Tr. 703:24-704:6.

163. Ms. Jahns tried to be somebody that would help the RFK participants and advocate for them. *Jahns Test.*, Tr. 754:11-16.

164. Ms. Jahns discovered, almost immediately though, that RFK was not the type of environment she had expected. *Jahns Test.*, Tr. 704:14-17.

165. One of her first experiences involved Kathy Ness. Ms. Jahns had an

interaction with an RFK participant, and Ms. Ness took it upon herself to intervene in the situation, physically force the RFK participant into a corner and onto the floor, and verbally scold the child for being disrespectful. *Jahns Test.*, Tr. 704:20-705:8.

166. Ms. Jahns felt as though Ms. Ness' behavior was abusive and attacking, and that Ms. Ness became involved in a situation that did not involve her. *Jahns Test.*, Tr. 705:24-706:6.

167. RFK created a special level for this particular participant: 000. On this level the child was not allowed to interact with other RFK participants. The child was made to sit in the gym and had to sleep on a mat in the gym due to bed wetting. All the participant's concerns were disregarded as manipulation. *Jahns Test.*, Tr. 706:9-24.

168. In addition to peer restriction, this child was placed on food restrictions. The participant's AMP (alternative meal plan) meals consisted of iceberg lettuce, two hard-boiled eggs, and five saltine crackers. *Jahns Test.*, Tr. 707:8-22.

169. Ms. Jahns noticed physical changes to this child as a result of the AMP meals RFK instituted. His calves were smaller than his kneecaps and his cheeks were gaunt. *Jahns Test.*, Tr. 710:24-711:9.

170. Ms. Jahns also testified that this child was made to go on the most therapy walks, as punishment, of any child during her tenure. *Jahns Test.*, Tr. 711:13-712:3.

171. One day, Ms. Jahns witnessed this same child doing a walk on a treadmill. She noticed that he was wearing rubber boots that were too big for his feet. The child got

Ms. Jahns' attention and asked her to look at his foot. When he removed a boot, there was a sizeable blister. Ms. Jahns then put ointment on the sore and wrapped his foot with a bandage. Ms. Jahns later learned that he had been on the treadmill almost the entire day. *Jahns Test.*, Tr. 712:4-23.

172. Ms. Jahns also witnessed staff instigate the children, especially the children that were easily triggered. *Jahns Test.*, Tr. 726:11-15.

173. She witnessed Bill Sutley get close to participants and back them into walls. *Jahns Test.*, Tr. 759:7-8.

174. Ms. Jahns witnessed RFK staff isolating kids and the kids becoming angry as a result. *Jahns Test.*, Tr. 728:19-23.

175. Ms. Jahns also witnessed an incident where an RFK member staff tackled a participant, and another staff member grabbed the participant's head and push the participant's face into the snow on the ground. *Jahns Test.*, Tr. 729:5-25.

176. While transporting the child back to the Ranch following the snow incident, a staff member pulled out a taser and told Ms. Jahns to use it on the participant if the participant tried anything. *Jahns Test.*, Tr. 730:5-10.

177. Ms. Jahns witnessed RFK staff using the participants' medical conditions as a means of discrediting or shaming them for their behavior. *Jahns Test.*, Tr. 731:25-732:16.

178. Ms. Jahns was also aware of incidents of a sexual nature between RFK participants. *Jahns Test.*, Tr. 736:6-16; 738:20-23.

179. One of these incidents involved a participant who was 19 and other participants who were much younger. *Jahns Test.*, Tr. 781:6-11.

180. Despite this sexual contact, and RFK's policy prohibiting sexual contact between RFK participants, RFK never removed the offending participant. *Jahns Test.*, 735:16-17; 736:17-21.

181. In fact, the offending participant was allowed to be around and sleep in near proximity to other vulnerable RFK participants. *Jahns Test.*, Tr. 739:2-6.

182. Ms. Jahns also personally witnessed RFK participants assault other participants. *Jahns Test.*, Tr. 749:19-24; 751:4-23.

183. Despite having a policy that stated that participants would be removed for assaultive behavior, RFK did not follow this policy with, at least, respect to this participant, even though Ms. Jahns raised concerns about the participant's assaultive behavior to staff. *Jahns Test.*, Tr. 749:11-17; 750:8-15.

### **C. Testimony of Concerned Citizens.**

184. Ms. Stone's investigation caused her to interview concerned citizens or neighbors who had submitted reports concerning RFK. *Stone Test.*, Tr. 312:17-21.

185. One such citizen was Helen White who observed an RFK participant on a therapy walk during winter condition. *White Test.*, Tr. 455:25-456:2; *Ex. D.*

186. In November 2017, Ms. White was hunting with her husband and were driving in the Kootenai National Forest when they encountered an RFK participant who was running on the forest service road with a vehicle following him. *White Test.*, Tr. 456:4-10.

187. After passing the boy, they turned around to catch up with the boy to see if he was okay. *White Test.*, Tr. 456:12-17.

188. As they caught up to the boy, Ms. White took a video. *White Test.*, Tr. 456:15-17; *Ex. D.*

189. Ms. White described the weather conditions as being below freezing with snow on the ground. These conditions were confirmed by the video. *White Test.*, 457:1-4; *Ex. D.*

190. Ms. White stated that the boy was wearing jeans, a button-up collared shirt, and tennis shoes, which, again, was confirmed by the video. Ms. White also noticed that the boy's jeans were wet almost up to his knees. *White Test.*, Tr. 457:20-458:5; 469:15-21; *Ex. D.*

191. Ms. White asked the boy whether he was okay, but the boy did not respond and just looked down. *White Test.*, Tr. 459:3-7.

192. Ms. White then spoke with the driver of the vehicle and stated her concern that the boy was not properly clothed for the conditions and needed to be wearing an orange vest given it was hunting season. She offered the driver a spare orange vest, but

the driver refused it. *White Test.*, Tr. 465:5-18.

193. Following this, Ms. White contacted both law enforcement and the Child Abuse Hot Line to report the incident. Ms. White followed-up on the report she lodged with law enforcement but was never told the outcome of her report. *White Test.*, Tr. 470:19-21; 471:12-20.

194. Ralph Martin also testified about his interaction with an RFK participant.

195. Mr. Martin was on his way to a meeting, in January 2019, when he observed a young boy running through the woods who was seemingly trying to avoid being seen. *Martin Test.*, Tr. 381:6-14.

196. The weather was cold and there was snow on the ground, but the child was not dressed for the conditions. It was only approximately 30 degrees, and the child's clothes were visibly damp. *Martin Test.*, Tr. 382:5-11; 391:6-7, 12-13.

197. Mr. Martin was able to get the child to come over and speak with him. *Martin Test.*, Tr. 382:1-2.

198. In speaking with the child, Mr. Martin got the impression that the child was not supposed to be where he was. *Martin Test.*, Tr. 382:22-25.

199. Mr. Martin waited with the child for his acquaintance to arrive and gave the child his sandwich and muffin. *Martin Test.*, Tr. 385:22-23.

200. When Mr. Martin's acquaintance arrived, the child tried to leave again. Mr. Martin's acquaintance followed the child and ordered him into his truck. *Martin Test.*,

Tr. 388:23-389:13.

201. Mr. Martin's acquaintance transported the child to their meeting spot, had the child wait in an upstairs room, and contacted RFK to come pick the child up. *Martin Test.*, Tr. 391:18-392:1.

202. About 30-45 minutes later, someone from RFK arrived to pick the child up. *Martin Test.*, Tr. 392:3-12.

203. Following his meeting, Mr. Martin went to RFK to check on the child. He was told by RFK staff that the child was in lockdown and that he needed to learn that there are consequences for his actions. *Martin Test.*, Tr. 395:18-21; 396:15-19.

204. After his visit with RFK, Mr. Martin went to the Eureka Police Department to inform them as to what had happened. *Martin Test.*, Tr. 399:14-20.

205. Eventually, Mr. Martin was interviewed by CPS regarding this incident. *Martin Test.*, Tr. 401:3-8.

#### **D. Testimony of Dr. Muir.**

206. In addition to his testimony regarding the incident with C.E., Ms. Stone also was able to speak with Dr. Muir regarding his other concerns with RFK. *Stone Test.*, Tr. 317:17-20.

207. Dr. Muir had concerns about one participant, in particular, who had a history of sexual assault. Dr. Muir was aware of sexual contact that this participant had with another RFK participant. *Stone Test.*, Tr. 317:20-22; *Muir Test.*, Tr. 196:22-197:1.



208. Dr. Muir voiced his concerns about having a participant, in an RFK setting, who had a history of sexual assault, who had a record of preying on younger and naïve victims. *Muir Test.*, Tr. 198:1-199:6; 205:3-7.

209. Dr. Muir became aware of inappropriate sexual contact between this participant, who was 18, and another RFK participant, who was 13 years old. *Muir Test.*, Tr. 200:3-201:7.

210. When reviewing documentation regarding the inappropriate sexual contact between these two RFK participants, Dr. Muir testified that it seemed to him that responsibility for the incident was placed upon the 13-year-old and that it was unconscionable that responsibility was placed on the 13-year-old victim. *Muir Test.*, Tr. 201:21-202:9.

211. Moreover, Dr. Muir had concerns about how this older participant had established a pattern of sexual assault against younger children, and the likelihood of him doing it again was certainly greater. *Muir Test.*, Tr. 205:7-12.

212. When speaking with RFK staff regarding this incident, Dr. Muir learned that RFK had not reported it to CPS. He felt as though RFK staff had minimized the older participant's role in the sexual incident based on statements they made to Dr. Muir. *Muir Test.*, Tr. 203:20-24; 210:2-21.

213. Dr. Muir did not believe that RFK was following their own policy and removing participants who were sexually acting out. *Muir Test.*, Tr. 216:6-17.

214. Given the sexual nature and severity of the incident, Dr. Muir reported the incident to CPS. *Muir Test.*, Tr. 203:23-25.

215. Dr. Muir also had concerns with the isolation techniques utilized by RFK. He testified that in the treatment of reactive attachment disorder, the standard of care is to foster healthy relationships, and that isolation as a means of punishment is frowned upon in the field of psychiatry. *Muir Test.*, Tr. 214:15-215:4.

216. Isolating someone with reactive attachment disorder is further traumatizing. *Muir Test.*, Tr. 215:9-13.

217. Dr. Muir was also concerned with RFK staff making medical decisions regarding participants' medications without consulting him. One such instance concerned C.E. In a visit with Dr. Muir just days prior to C.E.'s June 2019 incident, C.E. informed Dr. Muir that she was not receiving medication from RFK staff that he had prescribed. *Muir Test.*, 227:14-20.

218. Dr. Muir opined that RFK's failure to give C.E. her medication, which is a mood stabilizer, could have contributed to her presentation in June 2019. *Muir Test.*, Tr. 227:19-22; 227:25-228:10.

219. Dr. Muir also was concerned about RFK staff discontinuing Abilify, which he had prescribed to a participant. *Muir Test.*, Tr. 228:25-229:3.

220. Dr. Muir explained that the discontinuation of a medication needs to be done under the supervision of a professional given the potential side effects of that

discontinuation. In the case of Abilify, the discontinuation of that medication can cause withdrawal dyskinesia, which is a very uncomfortable feeling of constantly having to move and inability to control those motor movements. *Muir Test.*, Tr. 229:3-15.

221. As more and more came to light, it became clear to Dr. Muir that his recommendations were not being followed by RFK staff. Dr. Muir felt as though RFK's failure to abide by or follow his recommendations was putting the children's lives in danger. Based upon this, Dr. Muir determined that he could no longer provide care for the participants, and, after discussing the situation with colleagues and the North Valley Hospital leadership, he decided to terminate his relationship with RFK. *Muir Test.*, Tr. 231:19-232:15.

222. After arriving upon this decision, Dr. Muir contacted Bill Sutley and informed him of his concerns regarding RFK's treatment of the participant and this belief that his concerns were not being taken seriously by RFK, that he could not, in good conscience, continue to provide care for the children, and gave Mr. Sutley several referrals. *Muir Test.*, Tr. 237:11-18.

223. Dr. Muir provided records and medication to the participants until they were able to be seen by other providers. *Muir Test.*, Tr. 234:13-15.

224. After discontinuing his care for the RFK participants, Dr. Muir followed up with CPS to inform them that he was no longer caring for the participants and to check on the status of the case. *Muir Test.*, Tr. 237:25-238:12.

### **E. Testimony of Former RFK Participants.**

225. Ms. Stone also had occasion to speak with some of the former RFK participants regarding their experiences at RFK, and those interviews corroborated what had been explained to her previously. *Stone Test.*, Tr. 320:12-23.

226. DPHHS called some of these former participants to testify as to their experiences while they were at RFK.

227. One former participant who testified in this matter was I.R., who was a participant at RFK from June 2011 through March 2015. *I.R. Test.*, Tr. 577:4-9.

228. I.R. as diagnosed with PTSD, ADHD, FASD, defiant disorder, and as bipolar. *I.R. Test.*, Tr. 613:19-23.

229. I.R. discussed how diet was used as a form of discipline. I.R. testified that her disciplinary meals consisted of beans and rice that, sometimes, were not even heated. She testified that she ate these meals for almost a whole summer. *I.R. Test.*, Tr. 580:15-581:1.

230. Through her testimony she confirmed that, while she was on zero levels, she was put into isolation where she could not talk to anyone. She described corner time where she would have to stand in one spot for hours and could not do anything. *I.R. Test.*, Tr. 581:2-9.

231. If she tried to speak with staff during isolation, staff would yell at her and move her further away from the other participants. *I.R. Test.*, Tr. 581:18-24.

232. Under this discipline, I.R. found it hard to establish relationships. *I.R. Test.*, Tr. 582:5-7.

233. I.R. also testified that, on certain levels, phone privileges were taken away and she was not able to speak with her father. *I.R. Test.*, Tr. 582:21-23.

234. I.R. detailed the physical labor that she was made to perform while at RFK, such as digging ditches, clearing brush, hauling firewood, and working on staff's personal residences. *I.R. Test.*, Tr. 584:3-10; 14-18; 586:4-11.

235. During her time at RFK, I.R. was forced to go on three walks, which were used as a form of discipline. *I.R. Test.*, Tr. 591:3-4; 591:19-592:1.

236. All of I.R.'s walks occurred at night. *I.R. Test.*, Tr. 591:7-8.

237. I.R. was not given food or water during the walks. *I.R. Test.*, Tr. 592:2-3.

238. I.R.'s walks ranged between 12 and 20 miles. *I.R. Test.*, Tr. 592:6-10.

239. On one walk, during the fall or winter, she was woken up in the middle of the night and made to do the walk in her pajamas and oversized men's snow boots. She was not allowed time to put on her socks. *I.R. Test.*, Tr. 589:1-21.

240. The boots were too big for I.R.'s feet, which caused blisters. Eventually, I.R. removed the boots due to the pain and completed the walk barefoot in the snow. *I.R. Test.*, Tr. 589:15-591:2.

241. On another walk, I.R. was made to carry a bag of rocks. *I.R. Test.*, Tr. 591:14-16.

242. Typically, someone in a red van would follow I.R. during these walks; however, there were times when staff would leave her alone for hours at a time. *I.R. Test.*, Tr. 592:23-593:4.

243. Being left alone during these walks scared I.R. *I.R. Test.*, Tr. 593:5-9.

244. When the van was following, if I.R. got tired and stopped during the walk, RFK staff would drive the van up next to her and honk the horn to make her start walking again. *I.R. Test.*, Tr. 592:18-22.

245. I.R. also testified as to an instance when she was put in a hold by Bill Sutley. I.R. walked away from Bill. He pursued her, got in her face, and backed her into a wall. I.R. evaded him and Bill put her in a hold and brought her to the ground. *I.R. Test.*, Tr. 608:13-24.

246. I.R. also detailed a sexual assault committed by an RFK staff member. During this assault, the staff member hugged her and then began touching her breasts and pelvic area. *I.R. Test.*, Tr. 601:10-602:4.

247. I.R. told a staff member of the assault. However, I.R. was made to recant her statement in front of RFK staff and the alleged assailant. *I.R. Test.*, Tr. 603:11-18.

248. I.R. described how RFK staff would talk down to her, telling her that she had ruined her family and that she was not going home anytime soon. She also testified as to how RFK staff would call her manipulative even when she would be asserting legitimate concerns. *I.R. Test.*, Tr. 579:8-13; 606:17-607:5.

249. I.R.'s PTSD was exacerbated by her experience at RFK. *I.R. Test.*, Tr. 631:23-632:1.

250. I.L. was another former RFK participant who testified in this matter. I.L. attended RFK from December 2016 through August 2017. *I.L. Test.*, Tr. 883:4-14.

251. I.L. detailed the level system. In so doing, she described the AMP meals that were provided on Level 00 as consisting of beans and rice, foods that were unseasoned such as meats or noodles, and breakfasts made up of unseasoned oatmeal, hard boiled eggs, and unseasoned cereal. *I.L. Test.*, Tr. 883:22-885:16.

252. She also testified as to the isolation that participants were subjected to on certain levels. For example, when a participant was on level zero or double zeros, the child had to complete a certain number of isolation hours, where the child was made to sit in a particular spot with no interaction with staff or peers. If the participant spoke, the time was restarted. *I.L. Test.*, Tr. 884:17-885:10; 885:20-24.

253. I.L. characterized the level system as being subjective, arbitrary, and unpredictable. *I.L. Test.*, Tr. 888:8-889:6.

254. I.L. detailed the walks that she was forced to go on as a consequence for running away. During her time at RFK, she was made to go on three walks each of which was at least 16 miles and all of which were at night. *I.L. Test.*, Tr. 891:6-12; 892:9-11.

255. The first walk that I.L. went on was approximately 16 miles. She had to perform the walk at night during the winter. She was not properly dressed for the conditions. She wore sneakers and her feet became “sopping wet.” She got blisters on her feet from the walk, and she recalled that even though she had a coat, she became extremely cold. *I.L. Test.*, Tr. 891:25-892:8.

256. On her first walk, Kathy Ness trailed I.L. in the van. Towards the end of her walk, I.L. fell on the ice. Kathy Ness passed I.L. and laughed at her. *I.L. Test.*, Tr. 893:8-16.

257. I.L. did not find any therapeutic value in the walks and described them as a form of pure pain. *I.L. Test.*, Tr. 894:1-3.

258. On her walks, she was given a peanut butter sandwich, two granola bars, and a small amount of water, which was not enough for a 16-mile walk. *I.L. Test.*, Tr. 12-17.

259. She also witnessed another RFK participant who was in extreme pain and crying after a walk. This participant, M.M., had a club foot, and would cry for days after walks due to the pain. *I.L. Test.*, Tr. 894:4-17.

260. I.L. testified as to the manual labor that the participants were made to perform while at RFK. The participants were required to work at the Deep Springs property that was owned by Mr. Sutley. They would shovel snow, mow lawns, move big rocks, paint, pull weeds, and garden. *I.L. Test.*, Tr. 897:2-898:15.



261. I.L. recalled having to dig a foundation for a new building that was going to be constructed on the Deep Springs property. When the participants worked on digging the foundation, they would work 8-10 hours a day. *I.L. Test.*, Tr. 898:16-899:8.

262. While conducting this work, I.L. was provided one peanut butter and jelly sandwich, one apple, one granola bar, and, occasionally, chips. *I.L. Test.*, Tr. 900:2-7.

263. Participants were given water intermittently, which was concerning to I.L. because it was insufficient especially when they were working in the extreme heat. *I.L. Test.*, Tr. 900:8-19.

264. I.L. testified that the RFK staff's attitude towards the participants was extremely harsh. She believed that staff expected the participants to behave more appropriately than the staff did themselves, and that they were constantly looking for things the participants were doing wrong. *I.L. Test.*, Tr. 901:18-902:7.

265. I.L. also testified that the staff made critical comments to participants that their parents did not want them and that they were never going home. *I.L. Test.*, Tr. 902:8-11.

266. According to I.L., Kathy Ness was one of the worst at demeaning the participants. *I.L. Test.*, Tr. 902:14-16.

267. I.L. experienced and witnessed physical altercations between RFK staff and participants. She saw Kathy Ness slam girls against doors, push them to the ground, pull their hair, and frequently scream at them. *I.L. Test.*, Tr. 903:12-904:3.

268. Most of the physical altercations that I.L. witnessed took place in the girls' bathroom or in hallways where there were no cameras. *I.L. Test.*, Tr. 907:16-23.

269. I.L. saw Dr. Muir in the first few months after arriving at RFK for the purpose of getting medication started. However, after that, she did not receive any medical attention even though she requested it. *I.L. Test.*, Tr. 908:4-911:3.

270. I.L. detailed an assault she suffered at the hand of another participant. I.L. had been instructed by RFK staff to retrieve this participant. When I.L. attempted to restrain the participant, the participant assaulted her by choking her and slamming her head into the ground repeatedly. *I.L. Test.*, Tr. 911:6-913:9.

271. She also, personally, witnessed Bill Sutley and his temper. *I.L. Test.*, Tr. 904:5-905:17.

272. J.D. was another former RFK participant who was at RFK from July 2015 through January 2017, and who testified in this matter as to her experiences at RFK. *J.D. Test.*, Tr. 827:16-19.

273. J.D. suffers from depression. *J.D. Test.*, Tr. 827:20-23.

274. Prior to coming to RFK, J.D. had attempted suicide. Despite having been notified of this fact, RFK still accepted J.D. as a participant. *J.D. Test.*, Tr. 827:24-825:3.

275. J.D. did not recall receiving any treatment for her depression. *J.D. Test.*, Tr. 828:4-6.

276. When J.D. sought help for her depression, RFK staff accused her of attention seeking. *J.D. Test.*, Tr. 828:7-17.

277. J.D. was made to go on walks. Her first walk was for running away and self-harm. *J.D. Test.*, Tr. 829:20-25.

278. The day of her first walk, it was cold. She was dressed in high heeled boots, leggings, and a short sleeve shirt. She did not have a coat. Despite the conditions and lack of proper attire, she was made to walk 15 miles. *J.D. Test.*, Tr. 830:6-831:8.

279. When J.D. protested doing a walk in the clothes she was wearing, RFK staff stated that she had made her own choices that she was going to walk in whatever she was wearing. *J.D. Test.*, Tr. 831:25-832:5.

280. Trying to get out of the walk, J.D. cut herself with a nail that she found. RFK staff knew she had cut herself and was bleeding, but she was still forced to do the walk. *J.D. Test.*, Tr. 832:21-24; 833:19-25.

281. When that did not work, J.D. inserted the nail into her vagina to try to get out of doing the walk. *J.D. Test.*, Tr. 835:2-6.

282. According to J.D., RFK staff was aware what she had done. *J.D. Test.*, Tr. 7-8.

283. Staff still made her complete the walk. Towards the end of the walk, she attempted to remove the nail, but could not get it out. RFK staff told her that she would just have to leave the nail in and try again in the morning. *J.D. Test.*, Tr. 835:9-16.

284. During that walk, J.D. was only given crackers, apples, and water. *J.D. Test.*, Tr. 835:17-19.

285. After the walk, J.D.'s feet were in pain. It took her a couple of days before the pain started to resolve. *J.D. Test.*, Tr. 835:23-836:4.

286. J.D. also described having to work at staff members' houses or Mr. Sutley's personal residence. *J.D. Test.*, Tr. 843:15-844:10.

287. Finally, J.H., who was a participant at RFK from February 2014 through January 2016, testified as to his experience at RFK. *J.H. Test.*, Tr. 942:11-19.

288. While there, J.H. went on one walk. He was made to go on a walk after he got caught passing a note to a girl and became defiant. It was late at night and staff instructed him to get into the van. Staff drove J.H. approximately 20 miles. When they stopped, staff instructed J.H. to get out of the van, but he refused. He was then forcibly removed from the van by Mr. Sutley and Ryan Hamson. *J.H. Test.*, Tr. 947:1-22.

289. J.H. estimated that he started walking at 11:30 at night. *J.H. Test.* Tr. 949:20-23.

290. He believed that he walked 16 miles in that time. *J.H. Test.*, Tr. 949:24-25.

291. During the walk, all he was given a small bottle of water and a granola bar. *J.H. Test.*, Tr. 950:8-14.

292. Staff in the van would drive ahead of J.H. to where he could not see them. When he caught up to the van, they would drive off again. *J.H. Test.*, Tr. 950:15-23.

293. J.H. finished the walk at approximately 6:00 a.m. the following morning. *J.H. Test.*, Tr. 949:22-23.

294. J.H. witnessed Mr. Sutley throw a textbook at one of the female participants. *J.H. Test.*, Tr. 957:13-23.

295. The only thing that J.H. learned from his experience at RFK was how to suppress his anger, and turn it into anger and hatred towards himself. *J.H. Test.*, Tr. 978:19-22.

#### **F. Testimony Regarding Education at RFK.**

296. In addition to the walks, physical labor, lack of medical attention, and general negative and assaultive behaviors towards RFK participants, former participants and a parent of a former participant testified as to the substandard education provided by RFK.

297. According to I.R., the school portion of her RFK experience consisted of the students taking turns reading out of the same textbook for 45 minutes to an hour each day. *I.R. Test.*, Tr. 603:12-21.

298. I.R. was made to attend Mr. Sutley's class wherein he spoke of financial success and spoke out against Child Protective Services. *I.R. Test.*, Tr. 603:25-604:24.

299. After I.R. left RFK and was enrolled in school, she was several grades behind. At that time, she was supposed to be in seventh grade, but she failed and had to go to summer school and online courses to get caught up. *I.R. Test.*, Tr. 629:17-21.

300. I.R. finished middle school, but only went to two months of high school because she was so far behind. At that point, I.R. had to get her GED online. *I.R. Test.*, Tr. 629:23-630:1.

301. I.L. confirmed I.R.'s account of the substandard education at RFK. She testified that the high school aged participants did not pursue much in the way of coursework because their classes consisted mostly of lessons geared toward middle and elementary school grades and they were required to assist the younger participants. Needless to say, the older RFK participants did not advance as they were supposed to due to the structure of the educational programming. *I.L. Test.*, Tr. 894:25-895:15.

302. I.L. also corroborated I.R.'s testimony regarding the substance of Bill's classes which all participants were required to attend. These classes consisted of books and religious materials being read to the participants. Mr. Sutley would speak about government agencies, how they were the enemy, and how they were out to tear families apart. *I.L. Test.*, Tr. 895:16-896:7.

303. Mr. Sutley's classes also consisted of financial literacy, where Mr. Sutley would instill a message in the participants that they were winners if they created their own business and a loser if they worked for someone else. *I.L. Test.*, Tr. 896:8-15.

304. A parent of a former RFK participant, Rachel Limewood, also testified as to the substandard education provided to the participants.

305. Ms. Limewood's son, D.L., attending RFK for two and a half years starting in March 2017. *Limewood Test.*, Tr. 1171:14-23.

306. At the time that D.L. entered RFK, he was in the eighth grade. *Limewood Test.*, Tr. 1176:20-21.

307. Education was incredibly important to Ms. Limewood because, when D.L. came to live with them at the age of 5, he was very far behind. Ms. Limewood and her husband worked very hard to get D.L. caught up to where he needed to be from an educational perspective. *Limewood Test.*, Tr. 1173:18-1174:8.

308. Before he started at RFK, Ms. Limewood sent RFK a copy of D.L.'s most recent report card to RFK. *Limewood Test.*, Tr. 1174:10-15; 1175:4-8; *Ex. T.*

309. At that time, D.L. was doing well in math and science. He was the furthest behind in English, but they had worked hard and D.L. had caught up significantly and had received a score of 99. *Limewood Test.*, Tr. 1175:9-18; *Ex. T.*

310. After D.L. left RFK, in July 2019, Ms. Limewood requested D.L.'s education records from RFK. *Limewood Test.*, Tr. 1176:22-24.

311. After repeated attempts, RFK finally sent D.L.'s records to his father who forwarded them onto Ms. Limewood. *Limewood Test.*, Tr. 1177:14-19.

312. The records were very confusing to Ms. Limewood and she could not get any of her questions answered by RFK staff, so she had D.L. tested independently. *Limewood Test.*, Tr. 1177:20-1178:13.

313. The testing confirmed that D.L. had regressed academically. At the time of the hearing, he was at an eighth-grade level in both math and English. *Limewood Test.*, Tr. 1188:19-24; 1189:4-10.

314. Given his age, he should have been a junior in high school. *Limewood Test.*, Tr. 1190:15-17.

315. J.H. confirmed that the education was not suited to the age of the participants. In fact, he was performing sixth grade work when he should have been learning eighth and ninth grade material. *J.H. Test.*, Tr. 943:17-944:1.

**G. Ms. Stone's Post-Eureka Investigation.**

316. Ms. Stone stayed in Eureka, conducting her investigation for one week. *Stone Test.*, Tr. 349:21-25.

317. Ms. Stone did not want to leave Eureka as she did feel that the children were safe and wanted to remove them from RFK. *Stone Test.*, Tr. 330:14-20.

318. However, even after leaving Eureka, Ms. Stone continued working on her investigation through the end of June or beginning of July by contacting past reporters and former RFK participants. *Stone Test.*, Tr. 332:6-13.

319. During her investigation, she learned of an active case against RFK that was open within the Montana Department of Labor and Industry regarding M.M. and she found more reports that had been lodged against RFK. *Stone Test.*, Tr. 331:21-332:3.

320. Once Ms. Stone had gathered all the aforementioned information, she took



that information to her division head, Mary Vining. *Stone Test.*, Tr. 321:16-19.

## **VI. QAD's Action Against RFK.**

321. Ms. Stone also briefed Carter Anderson, who is the administrator for the Quality Assurance Division (QAD) of DPHHS, as to her investigation regarding C.E. *Anderson Test.*, Tr. 1523:9-13; 1532:7-9.

322. QAD continued to stay apprised of information obtained by CFS through its investigation, and Mr. Anderson participated in a couple of meetings with CFS' directors and administrators regarding the information CFS was gathering. *Anderson Test.*, tr. 1531:11-16.

323. However, QAD did not get involved in the matter, other than being briefed on CFS' investigation, until July 1, 2019. *Anderson Test.*, Tr. 1524:8-10.

324. Eventually, Mr. Anderson signed a summary suspension order on July 22, 2019. *Anderson Test.*, Tr. 1461:8-11; *Ex. V.*

325. The reason for the summary suspension order was that RFK was no longer meeting the minimum requirements for a PAARP facility and was endangering the safety of the children in their program. *Anderson Test.*, Tr. 1462:23-1463:2.

326. Based upon information he learned from CFS, Mr. Anderson found that RFK had the potential for physical and mental abuse, as well as verbal abuse, of the participants under their care. This was derived from several statements about harm that was happening the RFK participants. *Anderson Test.*, Tr. 1463:6-10.

327. Mr. Anderson had also learned of issues regarding proper medical care for the participants, RFK's failure to report or respond to incidents of abuse and neglect, food restrictions, and not reporting runaways as required. *Anderson Test.*, Tr. 1463:10-19.

328. Mr. Anderson was aware of the therapy walks that participants were made to go on. He had concerns that these walks were a form of corporal punishment, and that they endangered the safety and welfare of the participants because the walks were occurring at night and there was wildlife in the area. *Anderson Test.*, Tr. 1465:2-11.

329. The summary suspension order sets forth the factual and legal basis for QAD's summary suspension of RFK's license. *Ex. V*.

330. The summary suspension cites Mont. Code Ann. § 2-4-631 as the authority for the immediate suspension of RFK's license. *Ex. V* at 1-2.

331. The factual assertions of the Order of Summary Suspension recite those findings from CPS' investigation. *Ex. V* at 3-13.

## **VII. Participants Removed from RFK.**

332. Ultimately, 27 RFK participants were removed from RFK's facility on July 23, 2019. *W. Sutley Test.*, Tr. 1383:13-17.

333. At the time of removal, the female participants had been moved to a new facility and were no longer housed in the Rexford Lodge. *Stone Test.*, Tr. 344:25-345:4.

334. Additionally, two more former RFK participants were removed after July 23, 2019. *W. Sutley Test.*, Tr. 1383:18-22.

335. Again, RFK listed its average daily census as 11 to 24 participants, and that it had a maximum capacity to house 24 participants. *Berger Test.*, Tr. 72:7-10; 73:11-13.

336. At no time prior to July 1, 2019, did RFK request to amend their operation plan that included their policies and procedures or the number of participants it would be housing. *Berger Test.*, Tr. 74:6-9.

337. Even after the participants were removed and RFK was served with the Order of Summary Suspension, Mr. Sutley was adamant about calling parents and letting them know that RFK could take their children even without a license. *Jahns Test.*, Tr. 756:16-23.

338. After the participants were removed from RFK, they were evaluated and interviewed by Dr. Eric Arzubi. *Arzubi Test.*, Tr. 477:20-23; 519:14-18.

339. CFS reached out to Dr. Arzubi because they wanted to ensure that: 1) the way that the adults who were involved in the removal of the children were interacting with them in a way that would not be retriggering or retraumatizing to them; and 2) to do a risk assessment to make sure that the children were safe. *Arzubi Test.*, Tr. 519:22-520:21.

340. Presumably, Dr. Arzubi was selected due to his experience and expertise in the field of child psychiatry. Dr. Arzubi has a medical doctorate from Yale University, and is board certified in adult as well as child and adolescent psychiatry. *Arzubi Test.*, Tr. 474:1-5.

341. Dr. Arzubi is the former chair of the psychiatry department at Billings Clinic, was named physician of the year in 2014, is the former president of the Big Sky Chapter of the American Academy of Child and Adolescent Psychiatry, and is on the board of directors of Prevent Child Abuse Montana. *Arzubi Test.*, Tr. 474:8-477:10.

342. Dr. Arzubi determined that RFK was employing a model called attachment therapy. Attachment therapy is the use of coercive therapies, such as restricting or manipulating food intake, and by placing the blame on the child and trying to break them of these behaviors. *Arzubi Test.*, Tr. 589:24-590:21.

343. Dr. Arzubi emphasized the need for evidence-based interventions or therapies to be administered by trained or licensed professionals. If the provider does not have the skills to administer the intervention or the experience and training to understand when they go wrong, it can go very wrong very quickly. *Arzubi Test.*, Tr. 507:18-508:23.

344. Dr. Arzubi testified that coercive therapies can be harmful to children with RAD, such as those whom RFK claimed to treat. They are harmful because these children are away from lifelong attachment figures and they are not provided the safety, security, and consistency necessary for creating attachments, so they are being harmed over and over again. The only things that kids with RAD are learning with these coercive interventions is that adults cannot be trusted, they will not listen to you, they will make you do things, and they will not validate what you are feeling. Coercive interventions do not help the self-esteem or mental health of children with RAD. *Arzubi Test.*, Tr. 510:5-

511:6.

345. Telling children with these diagnoses that they are the problem, they are liars, they manipulate, only serves to shame and retraumatize the child and disrupts attachment. *Arzubi Test.*, Tr. 515:24-516:6.

346. Dr. Arzubi found fault with RFK's level system, and testified that RFK's level system, particularly with isolation and food restrictions, ran counter to what is appropriate and is in line with the APSAC task force recommendations of what not to do. *Arzubi Test.*, Tr. 524:10-25.

347. According to Dr. Arzubi, isolation techniques are countertherapeutic because when a child is isolated and shamed, it does not heal relationships or put children in a developmentally appropriate situation. *Arzubi Test.*, Tr. 525:7-526:11.

348. Nothing proves that children with reactive attachment or DSED are more prone to lying, manipulation, or triangulation than any other children. *Arzubi Test.*, Tr. 512:2-7; 513:24-514:5.

349. Dr. Arzubi also took issue with the sexual situation between two RFK participants. He testified that a 13-year-old participant is not in a position to decide whether the situation was appropriate and wondered why the incident was not reported and who was looking out for the safety of the 13-year-old. *Arzubi Test.*, Tr. 530:3-17.

350. Dr. Arzubi did not see that RFK did anything helpful to kids who had FASD. *Arzubi Test.*, Tr. 537:1-4.

351. Dr. Arzubi testified that he did not find any evidence that anyone at RFK was qualified to start or stop the participants' medications, and validated Dr. Muir's frustrations with RFK's decision to interfere with participants' medicine regimen. *Arzubi Test.*, Tr. 541:11-542:7.

352. Having interviewed the former RFK participants and reviewed materials related to RFK's treatment of the participants, Dr. Arzubi did not see that RFK employed any interventions that met the definition of a clinical standard. *Arzubi Test.*, Tr. 546:1-7.

353. Rather, Dr. Arzubi found that RFK employed standards and practices that are contraindicated. *Arzubi Test.*, Tr. 546:8-10.

354. RFK's treatment techniques, such as visual coercion, physical domination, humiliation, withholding or adjusting food and water intake, social isolation, and assuming exaggerated levels of control or domination over a child are contraindicated because of the risk of harm to vulnerable children and have no proven benefit. *Arzubi Test.*, Tr. 546:10-22.

355. The prediction or assumption that certain children are likely to become psychopaths or predators should never be made based on childhood behaviors because it creates an atmosphere conducive to overreaction and harsh or abusive treatment. *Arzubi Test.*, Tr. 546:23-547:5.

356. Intervention models, such as the one employed by RFK, that portray children in a negative way, such as describing them as cunning, manipulative, or

deceitful, are not conducive to good treatment and may promote abusive practices.

*Arzubi Test.*, Tr. 547:6-11.

357. These counter-therapies are exactly what was happening at RFK. *Arzubi Test.*, Tr. 547:12-16.

358. Based upon his education, training, skill, experience, and review of RFK's documentation, Dr. Arzubi concluded that RFK was not providing an appropriate therapeutic environment to children with RAD or FASD. *Arzubi Test.*, Tr. 549:17-24; 550:8-14.

359. Dr. Arzubi found that RFK did not provide a safe environment for its participants to thrive and heal. *Arzubi Test.*, Tr. 551:5-18.

#### **VIII. Post-Suspension Action.**

360. On October 11, 2019, DPHHS issued an Amended Combined Notice of Violation and Investigation. *Anderson Test.*, Tr. 1470:15-19; *Ex. W.*

361. The Amended Notice was necessary because there was more than one action and they needed to be combined, and the Department had learned additional information through CPS's continued investigation. *Anderson Test.*, Tr. 1470:15-1471:4.

#### **CONCLUSIONS OF LAW**

1. DPHHS has jurisdiction and legal authority to bring proceedings against RFK's PAARP license pursuant to Mont. Code Ann. § 52-2-801, et seq. in accordance with SB 267 of the 2019 Montana Legislature.

2. SB 267 transferred the regulation of PAARP facilities from the Department of Labor and Industry to DPHHS. 2019 Mont. Laws. 1095.

3. Under SB 267, DPHHS was to “apply and administer the existing rules” of the PAARP Board “to the extent that these rules do not conflict with” Mont. Code Ann. § 52-2-801, et seq., until DPHHS adopted its own rules. 2019 Mont. Laws 1095.

4. DPHHS did not promulgate and adopt its own PAARP rules until November 2019. As such, at all material times herein, DPHHS was required to act under DLI’s existing PAARP rules.

5. Pursuant to Mont. Code Ann. § 37-1-308(2), DLI may, with the concurrence of a member of the Board’s screening panel, investigate a complaint to determine whether there is reasonable cause that the licensee committed a violation.

6. “The transfer or abolition of an agency or function by a reorganization within the executive branch does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceedings shall be substituted as a party in interest.” Mont. Code Ann. § 2-15-134.

7. Pursuant to Admin. R. Mont. 24.181.601(1)(a), alternative adolescent programs are required to have plans of operation, which must include: 1) a description of the program and facility; 2) a description of the mission, goals, and objectives of the



program for program participants; 3) a description of the services provided; 4) a description of the population served by the program, including the maximum number of program participants to be served and gender of program participants; 5) a policy regarding communication privileges and restrictions; and 6) expectations for program participants and family participation.

8. A program shall submit a significant change to its plan of operation to the Board or Department for approval. Admin. R. Mont. 24.181.601(2).

9. A significant change to a plan of operation is defined as “a major addition or deletion of advertised services or location, or change of services offered by the program.” Admin. R. Mont. 24.181.301(9).

10. A program is prohibited from deviating from its plan of operation without prior approval from the Board or Department. Admin R. Mont. 24.181.601(2).

11. Failure by a program to comply with Admin. R. Mont. 24.181.601(2) constitutes unprofessional conduct as set forth in Mont. Code Ann. § 37-1-306, or a failure to meet minimum standards in accordance with Mont. Code Ann. § 52-2-808(b).

12. Based upon the above findings of fact, RFK failed to follow its own plan of operation, expressed in its policies and procedures, and failure to get Board or department approval prior to deviating from its plan of operation, and such failure and/or deviation constitutes a violation of Admin. R. Mont. 24.181.601(3).

13. RFK's housing of, at a minimum, 27 participants, in excess of its stated maximum occupancy of 25, constitutes a violation of Admin. R. Mont. 24.181.601(3).

14. Pursuant to Admin. R. Mont. 24.181.604(1), programs must comply with all applicable federal and state regulations and codes, including building and fire codes.

15. RFK's housing of participants at locations unapproved by the Board or the Department and that did not meet building and fire code regulations violated Admin. R. Mont. 24.181.601(3), 24.181.608(2)(c), and 24.181.625.

16. RFK's use of disciplinary walks, including having participants walk extreme distances without weather-appropriate clothing which caused pain and injury to participants, violated Mont. Code Ann. § 37-1-316(18) (conduct that does not meeting the generally accepted standards of practice); Mont. Code Ann. § 52-2-808(b) (minimum standards prescribed by the department); Admin. R. Mont. 24.181.603(1)(g) (requiring each program to have policies and procedures regarding rights and responsibilities of participants including the right to . . . be free from corporal punishment or the infliction of physical pain as a disciplinary measure); Admin. R. Mont. 24.181.608(2)(c), and 24.181.616(2)(iii) (description of the methods of discipline to be used by the program which include . . . the methods of discipline must not include abuse as defined in § 53-21-102, MCA, including such things as verbal abuse, ridicule, humiliation, profanity, threats or other forms of degradation directed at the program participant or the program participant's family, or practices which are humiliating or degrading to the program

participant); and Admin R. Mont. 24.181.625 (each program shall comply with all applicable federal and state regulations, laws, and codes).

17. RFK's use of AMP meals and restricting food for participants violated Mont. Code Ann. § 37-1-316(18), Mont. Code Ann. § 52-2-808, and Admin. R. Mont. 24.181.601(3) and 24.181.626 (each program shall provide food adequate to the nutritional needs of participants and sanitary conditions and take reasonable steps to provide safe drinking water).

18. RFK's restriction of phone calls to parents violated Mont. Code Ann. § 37-1-316(18) and Admin. R. Mont. 24.181.601(3) and 24.181.616(3)(c) (program participants cannot be denied visits or communication with the program participant's parent(s) or guardian(s), except as specified in the program's design and planned activities, or the program participant's treatment plan or court order).

19. RFK's withholding of medical attention for participants, including for those who were expressing suicidal ideations, violated Admin. R. Mont. 24.181.601(3) and 24.181.603(1)(c).

20. RFK's withholding of medical attention for participants while sick or after injury violates Admin. R. Mont. 24.181.601(3) and 24.181.603(1)(c).

21. RFK's withholding of medication to participants violated Admin. R. Mont. 24.181.601(3) and 24.181.603(1)(c).

22. RFK's physical abuse of participants violated Admin. R. Mont.

24.181.601(3), 24.181.603(1)(c) and (g), 24.181.608(2)(c), 24.181.616 ((2). "The program shall have written behavioral management policy and procedures including, but not limited to, the following: (a) description of the methods of discipline to be used by the program which include: . . . (ii) a statement outlining that discipline methods must not employ the use of corporal punishment as defined in § 20-4-302, MCA; and (iii) the methods of discipline must not include abuse as defined in § 53-21-102, MCA, including such things as verbal abuse, ridicule, humiliation, profanity, threats or other forms of degradation directed at the program participant or the program participant's family, or practices which are humiliating or degrading to the program participant; (3) in developing the discipline methods for this policy, programs must take into account the following prohibitions: . . . (b) program participants cannot be forced to take an uncomfortable position for an extended period of time, which is anticipated to cause physical pain, for no purpose other than for punishment; (c) program participants cannot be denied visits or communication with the program participant's parent(s) or guardian(s), except as specified in the program's design and planned activities, or the program participant's treatment plan or court order; (d) program participants may not be confined in a locked room; and (e) program participants may not administer discipline to another program participant unless proper staff supervision exists and the discipline follows the written policy regarding participant to participant discipline interactions; (4) if the program

intends to utilize restraint as a method of behavioral management, the program must only use passive physical restraint methods; (a) restraint must be performed in a manner that is safe, proportionate, and appropriate to the severity of the behavior, the patient's size, gender, physical, medical, psychiatric condition, and personal history; (b) restraint may only be used in emergency situations to ensure the physical safety of the youth, parent(s) or guardian(s), other youth, or staff of the program and only when less restrictive measures have been found to be ineffective to protect the youth or others from harm; (c) restraint procedures must be implemented in accordance with program policies and discontinued when the behaviors that necessitated the restraint or seclusion are no longer in evidence; (d) the policy governing the use of restraint must include a chain of notification within the organization, notification of parent(s) or guardian(s) and outline the manner in which the use of restraint is to occur.), and Admin. R. Mont. 24.181.625.”

23. RFK's verbal abuse of participants, including use of disparaging language, violates Admin. R. Mont. 24.181.601(3), 24.181.603(1)(b) and (c) and 24.181.616(2)(a)(iii).

24. RFK's acceptance, continued care, and failure to discharge participants who habitually ran away, presented a danger to other participants, or sexually acted out violates Admin. R. Mont. 24.181.601(3), and 24.181.603(1)(c).

25. RFK's failure to adequately inform and train staff regarding the minimum training requirements under the Board's rules, including mandatory child abuse reporting

laws, violates Admin. R. Mont. 24.181.609(3) ((3) “Direct care staff initial training shall consist of the following minimum requirements: (a) the program’s policy, procedures, organization, and services; (b) mandatory child abuse reporting laws; (c) confidentiality; (d) medical protocols and emergency procedures; (e) suicide prevention; and (f) de-escalation of crisis situations and passive physical restraint techniques to ensure the protection and safety of the program participants and staff).”

26. Under Mont. Code Ann. § 52-2-802(2) direct access is defined as “an individual has or likely will have person-to-person spoken or physical contact with or access to a program participant.”

27. RFK’s failure to report sexual abuse between participants and individuals who had direct access to participants constitutes a violation of Admin. R. Mont. 24.181.601(3), 24.181.603(1)(c), 24.181.607, 24.181.608(2)(c), and 24.181.625, and Mont. Code Ann. § 41-3-201(1).

28. RFK’s failure to provide meaningful educational opportunities to participants violates Admin. R. Mont. 24.181.603(1)(c).

29. When foster care, residential, or institutional workers “know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child’s welfare, they shall report the matter promptly to the” Department. Mont.

Code Ann. §41-3-201(1) and (2)(f).

30. RFK's failure to report staff members' abuse and neglect of participants violates. Admin. R. Mont. 24.181.601(3), 24.181.603(1)(c), 24.181.608(2)(c), and 24.181.625, and Mont. Code Ann. § 41-3-201(1).

31. RFK's forcing participants to complete labor projects of an unreasonable nature, duration, and sometimes risk, including digging trenches and house projects at RFK staff members' properties (cleaning, yard work, and shoveling drives), violates Admin. R. Mont. 24.181.601(3), 24.181.603(1)(c), and 24.181.626.

32. Upon a finding that the licensee is no longer in compliance with the minimum standards prescribed by the Department, the Department may, after written notice to the licensee, suspend, cancel, reduce, modify, or revoke a license. Mont. Code Ann. § 52-2-808.

### **DISCUSSION**

At numerous points, RFK has admitted that it is a foregone conclusion that its license must be revoked because it no longer holds the lease to the facility where the license was sited. RFK admits that it cannot maintain its license because it does not have a location to continue its operations. As such, it should be no surprise to the parties that the recommended decision will be that the PAARP Board revoke RFK's License #580.

However, there remains RFK's contention that DPHHS either did not have the authority to summarily suspend its PAARP license or that it should have somehow issued

a notice of corrective action and allowed RFK to continue to operate while it fixed the deficiencies in its operations. By analogy, RFK attempted to argue that since DPHHS had given daycares notices of corrective action and allowed them to cure deficiencies, they should have been provided that same opportunity.

The issue with RFK's argument is that there is nothing in the statutes or administrative rules that required DPHHS to issue a notice of corrective action, or to give RFK notice and an opportunity to cure violations of law or PAARP rules prior to suspending its license. Rather, the statutes and rules explicitly provide DPHHS with the authority and discretion to summarily suspend a PAARP facility's license when it feels as though such a suspension is warranted.

By a preponderance of the evidence, it is clear that DPHHS made a sufficient evidentiary showing that abuse and neglect of these vulnerable child was occurring to warrant immediate suspension of RFK's operations. The vivid, and often difficult, testimony of the former participants, employee, and medical providers regarding RFK treatment of the participants was extremely disturbing. Long walks/runs without proper food or attire, food rationing, isolation, lack or denial of medical and mental care, forced labor, physical and mental intimidation, sexual abuse, and manipulation were the common experiences by those who lived at RFK. It is even more concerning given the vulnerable population that RFK supposedly served.



Dr. Arzubi stated it best when he stated, in his un rebutted testimony, that, after reviewing RFK's practices, he found nothing therapeutic or redeeming in what RFK provided to its vulnerable participants. These children came to RFK damaged, and, from the testimony elicited at the hearing, RFK's practices had the potential, if not certainty, to leave them in an even worse state. Given the horrors that these children likely faced as infants and their resulting mental and physical medical conditions, they needed a program that would help them to create and form lasting relationship. Instead, they were re-traumatized on a daily basis through isolation from adults and their peers, forced walks which were unnecessarily long under conditions for which they were ill equipped or prepared. They were degraded, told that they were the reason their families' issues, and told that they their families did not want them back. They were forced into manual labor for the personal benefit of Mr. Sutley and others who had residences on or near the RFK campus. They were denied proper medical care, and when they did ask for care, they were labeled as manipulative. RFK staff unilaterally, and without an understanding of the potential for severe complications, took it upon themselves to discontinue medications for some participants. Some were subjected to sexual assaults with little or no repercussions coming to the assailants, and were made to take the blame for being assaulted.

Yet, in spite of this mostly un rebutted testimony, RFK argues that they should have been given the opportunity to correct these deficiencies. However, given the

pervasiveness and severity of these violations, coupled with RFK's either a lack of understanding or willful disregard of the mental and physical health and wellbeing of the participants, DPHHS was justified in its decision to immediately suspend RFK's operations.

RFK's insinuation that the participants were liars and manipulative was directly contradicted by Dr. Arzubi's testimony, and RFK offered nothing more than this insinuation to try and discredit the participants' testimony. It is important to note that RFK offered no concrete or circumstantial evidence to show that the participants were, in fact, lying or manipulating their testimony at trial. RFK also failed to present its own witnesses to rebut the testimony and allegations put forth at the hearing. In the absence of such evidence, the undersigned found the testimony of the witnesses, and in particular the former participants' testimony, credible.

Further, there is no merit to RFK's accusation that DPHHS did not have jurisdiction over its license when it started investigating RFK following Dr. Muir's report pertaining to the incident with C.E. What RFK fails to acknowledge in making this argument is that this investigation started in the Child Protection Services Bureau of DPHHS. It was not started at the behest of the Quality Assurances Division or the PAARP Board. Rather, QAD followed the investigation, and, once it had acquired jurisdiction over PAARP licenses, suspended RFK's license based upon those findings. Given this chronology of events, it cannot be said that the DPHHS, and more specifically

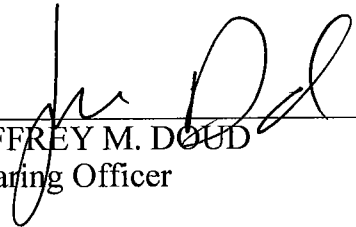
QAD, acted in the absence of jurisdiction when it summarily suspended RFK's license.

Simply put, DPHHS has carried its burden, by a preponderance of the substantial, competent evidence in the record, to show that RFK was not meeting the minimum standards required under the applicable PAARP statutes and rules. When the totality of the proven accusations against RFK are considered, this conclusion becomes strikingly clear. The fourteen findings of fact, proposed by RFK, are rejected in their totality as they are not supported by substantial, competent evidence. Since RFK failed to put forth sufficient evidence in the record to refute the allegations against it or to show that DPHHS otherwise failed to carry its burden, it is the recommendation of the undersigned that RFK's license be permanently revoked.

**RECOMMENDED DECISION**

Based on the foregoing, the undersigned hereby finds reasonable cause that RFK committed violations of the PAARP rules, and recommends that the summary suspension RFK's license be upheld and that RFK's License #580 be revoked permanently.

SO ORDERED this 9th day of October 2020.

  
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JEFFREY M. DOUD  
Hearing Officer

cc: Matthew Lowy  
Nicholas Domitrovich  
Flint Murfitt  
Michele Peterson-Cook  
Peter Bovingdon