

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

CHARGE NO.: **2012CP2701**
ALS NO.: **13-0211**

D.S.¹ A MINOR, by ESTELLA SOLID,)
PARENT,)
Petitioner.)

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Duke Alden presiding, upon D.S.'s ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")² of Charge No. 2012CP2701; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's Notice of Dismissal is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

A. PROCEDURAL HISTORY

1. The Petitioner filed a perfected charge of discrimination with the Respondent on May 3, 2012. The Petitioner alleged that Karrasel Child Care Center ("Karrasel"), denied him full and equal enjoyment of its facilities on August 8, 2011 due to his disability, autism, in violation of Sections 5-101, and 5-102 of the Illinois Human Rights Act ("Act").
2. The Petitioner alleged that on August 8, 2011, Karrasel denied him full and equal enjoyment of its services, and that similarly situated students without disabilities were not asked to leave after one day of attendance.
3. On December 5, 2012, the Respondent dismissed the Petitioner's Charge for Lack of Substantial Evidence.
4. On March 8, 2013, the Petitioner filed this timely Request. On July 2, 2013, the Respondent filed its Response to the Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

¹ To protect the privacy of the minor, initials are used.

² In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent."

1. The Petitioner, a minor, was enrolled in Karrasel's day care center.
2. August 8, 2011, was the Petitioner's first and last day of attendance at Karrasel.
3. The Petitioner was born on September 17, 2008 and had special needs.
4. The Petitioner was enrolled in a home day care prior to attending Karrasel's center, but State of Illinois Early Intervention program ("Early Intervention") indicated that home day care was not meeting the Petitioner's needs and that he required a more specialized structured environment.
5. Estella Solid ("Solid") stated that in July 2011, she set up a "play date" at Karrasel's facility. During the appointment, the Petitioner knocked things over and fell. Solid asked if it could handle this since Petitioner's behavior reflected what he was like and other schools declined to enroll him. Solid stated that Petitioner's medical records reflected a concern for autism, but the diagnosis could not be given until the age of three.
6. On August 8, 2011, Petitioner started at Karrasel's center and on the same date, at 4:00 p.m. Karrasel's representative called Solid and asked her to pick him up. Solid and Ricky Solid ("R.Solid"), her husband, went to pick the Petitioner up and Adriana Villa ("Villa"), Director, Kimberly Klasky ("Klasky"), Assistant Director, and Kim, title unknown, advised them they had until Friday to find a new school because Karrasel could not accommodate Petitioner's needs.
7. Solid stated she was "shocked" since she visited the school in July 2011 and went into detail about Petitioner's needs. Solid also enrolled her daughter and she withdrew both children. She was not provided with documentation of the "disenrollment". Solid stated she did not see any other children with disabilities at Karrasel's center.
8. Klasky stated she met with Solid in July 2011 and she inquired about enrolling two children. Klasky asked Solid if Petitioner could sit up, drink from a cup, and walk and Solid replied he could. Klasky did not read the paperwork during the meeting, but Solid told her Petitioner was a toddler two to three years old, and that a therapist recommended he stay in home care, but she felt it was holding him back and she wanted home to go to day care.
9. Klasky stated that she asked Solid to bring the children. When Solid brought the Petitioner to Karrasel's center, Petitioner met with Villa. Solid told Villa she was applying for "action for children" so she waived the twenty dollar fee. Villa explained that the charge was \$75 per week pending "action for children" approval, but she did not take money from Solid at that time. Villa stated that the Petitioner was not a good fit for the two-year old room because the room had three exits, so he was placed in the two and a half to three-year old room which was away from exits.

10. On August 8, 2011, Klasky assisted with the Petitioner after his teachers indicated he needed one-to-one supervision. Klasky became concerned with the Petitioner's safety. He was running, bumping into furniture, trying to leave the room, knocking over toys, bumping into children, and uninterested in planned activities. The Petitioner fell, picked himself up, and ran in circles. When outside, he tried to eat mulch and lap up water from a puddle. On the way back to the classroom, he knocked toys down from a shelf. Klasky tried to get the Petitioner to help put them back, but he would not. Klasky took the Petitioner's hand and he tried to bite her. The Petitioner ate with his hands and ate someone else's plate and slid out of his chair. At nap time she rubbed his back until he fell asleep. In the afternoon, similar activities repeated. Klasky called Solid to tell her the Petitioner fell on his head. When R.Solid picked up the children, Villa told him Karrasel could not provide the one-on-one care the Petitioner needed.
11. Solid returned to Respondent's premises later on August 8, 2011. Villa told her that Karrasel could not provide care for the Petitioner on Friday. Solid stated she could not find care for the Petitioner in one week and Villa stated she offered to provide care for one week free of charge. Solid was upset and Villa told her that if she was going to scream and threaten, their conversation was over. About thirty minutes later, Solid called Karrasel asking how the Petitioner got a bump on his forehead and Klasky stated that he had it when he arrived and Solid disagreed. R. Solid came in a few days later and Villa told him Karrasel offered a second week free of charge, but he picked up both the children's things and left.
12. Karrasel's Parent Handbook reflects that Karrasel makes reasonable accommodations for children who can participate safely in a group care environment. Further, Karrasel's Disenrollment Policy states that after attempts are made to meet a child's needs, a child who demonstrates an inability to benefit from the care, or whose presence is detrimental or disruptive to the group, shall be discharged from the center; and the needs of the child and parents shall be considered to better serve the child when he leaves the center.
13. Karrasel's classrooms provide programs according to the age and development of a child and each room has a fixed student/teacher ratio. The Petitioner was placed in a classroom with the capacity for sixteen students and one teacher for every eight students.
14. On August 8, 2011, there were fourteen students in the classroom. On August 8, the Petitioner required the attention of one of the two teachers and the other teacher had to attend to all the other children. That's when Klasky assisted in the Petitioner's room. Villa stated that if Solid could have provided someone to be one-on-one with the Petitioner, he could have continued at the center.
15. Villa stated that Karrasel cancelled enrollment of other students whose behavior that was a safety concern, even when the student was not identified as having "special needs". On June 22, 2012, Karrasel wrote a letter to a student dis-enrolling him to insure the well-being of all the children because the student engaged in aggressive behavior and biting and the child was given a week to find alternate care.

16. On August 11, 2011, one hundred twelve students were enrolled at the center, and eleven had developmental delays. Some were being screened for autism, but none were diagnosed. A letter from Sheena Samuelson ("Samuelson"), Developmental Therapist, indicates that she was seeing a student at Respondent every Thursday since June 28, 2012 for services. A letter from Bethany Saxton ("Saxton") dated September 12, 2012, stated that her son was attending Karrasel's daycare for two and half years and had a host of special needs including a rare metabolic disorder, cognitive and physical impairment, and severe epilepsy. A letter from Camille Vasquez dated September 13, 2012, stated that her grandson had special needs and Karrasel worked diligently to get him the care he required. At one point she attended a conference concerning whether Karrasel could meet his needs and she looked around in case she had to send him elsewhere. She understood that Karrasel could not give him the attention and services required if he worsened, but thereafter, her grandson improved, and she thanked Karrasel for assisting.
17. In his Request, the Petitioner asks numerous questions regarding evidence that Karrasel submitted and contends that the evidence was not made available to him. The Petitioner also tendered letters of support that explain that the Petitioner has not exhibited aggressive behavior.
18. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argued the evidence was insufficient to establish a *prima facie* case of discrimination. The Respondent further argued that Karrasel articulated a non-discriminatory reason for its actions and its investigation uncovered no evidence of pretext.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for Lack of Substantial Evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission finds there is no substantial evidence to establish a *prima facie* case of discrimination. Typically, a *prima facie* case of a denial or refusal to afford full and equal enjoyment of a place of public accommodation requires a complainant to show that: (1) he is a member of a protected class; (2) he was denied the full and equal enjoyment of the subject facility; and (3) others not within the protected class were afforded full enjoyment of the facility. See In the Matter of: Rosalind R. Gibbs and Clare's Beauty Supply, IHRC, Charge No. 2006SP0066, 2010 WL 3457651, *3 (April 14, 2010). In the Petitioner's matter, the first and third elements were not established. First, the evidence showed that the Petitioner was not denied enrollment and in fact enrolled at Karrasel. Furthermore, Karrasel offered the Petitioner its services for free until the Petitioner could find a new day care center. As such, the evidence indicated that the Petitioner was not denied the full and equal enjoyment of a place of public accommodation. Additionally, the evidence revealed that Karrasel also cancelled enrollment of children

who were outside of the Petitioner's protected class under similar circumstances: therefore, the third element was not established.

The Commission further concludes that Karrasel articulated a non-discriminatory reason for its actions and there was no evidence of pretext in the articulated non-discriminatory reason. Karrasel stated that the Petitioner was asked to leave because of his behavior, which included running through the room; colliding with furniture and other children; falling; attempting to ingest non-food items; throwing toys to the ground and attempting to bite a teacher and not his disability. The Petitioner has not offered any evidence of a disability animus by Karrasel or evidence of pretext in his Request. In the absence of any evidence that the business consideration relied upon by Karrasel is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the Karrasel. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights and, Morningside Karrasel Child Care Center as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 29th day of October 2018.

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Duke Alden