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2013 IL App (4th) 121075-U

NO. 4-12-1075

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 23, 2013

Carla Bender

4th District Appellate
Court, IL

DOUG BOGGESS and BRENDA BOGGESS,)	Appeal from
Plaintiffs-Appellants,)	Circuit Court of
v.)	Vermilion County
THE DEPARTMENT OF CHILDREN AND FAMILY)	No. 11MR183
SERVICES, an Agency of State Government; RICHARD)	
H. CALICA, as Director of The Department of Children)	
and Family Services, Successor in Office to ERVIN)	
McEWEN; and SUSAN WAMBACH, Administrative)	Honorable
Law Judge,)	Mark Goodwin,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed in part and vacated and reversed in part, concluding the Director of the Department of Children and Family Services (DCFS) did not err by (1) refusing to expunge the indicated finding of abuse against Doug Boggess, (2) revoking the Boggesses' foster license, and (3) upholding DCFS's decision to remove the Boggesses' foster children from their home; however, the Director did err by refusing to expunge the indicated finding of neglect against Brenda Boggess.

¶ 2 In November 2010, the Department of Children and Family Services (DCFS) removed S.F., K.F., and B.R. from the home of their foster parents, plaintiffs Doug and Brenda Boggess, after Doug struck S.F.'s face and buttocks with a rubber strap and the Boggesses failed to report the incident to DCFS. Following a clinical placement review later that month, a reviewer upheld DCFS's decision to remove the children.

¶ 3 In December 2010, DCFS entered an "indicated" finding of abuse against Doug based on cuts, bruises, welts, abrasions, and oral injuries (89 Ill. Adm. Code 300. Appendix B (Allegation 11/61) (2001)) and an "indicated" finding of neglect against Brenda based on a substantial risk of physical injury/environment injurious to the health and welfare of the minors (89 Ill. Adm. Code 300. Appendix B (Allegation 10/60) (2001)). In April 2011, DCFS sent the Boggesses notice of its intent to revoke their foster parent license.

¶ 4 Following a July 2011 hearing, an administrative law judge (ALJ) issued a decision recommending the Director (1) uphold the indicated findings against the Boggesses, (2) revoke the Boggesses' foster license, and (3) uphold DCFS's decision to remove the children from the Boggesses' home. In August 2011, the Director entered a final administrative decision in each of the three matters, adopting the ALJ's findings and (1) denying the Boggesses' expungement requests, (2) revoking the Boggesses' license, and (3) upholding the removal of the children. In October 2011, the circuit court affirmed the Director's decisions.

¶ 5 The Boggesses appeal, arguing they were improperly indicated for abuse and neglect and DCFS acted arbitrarily and capriciously in revoking their foster care license and removing the children from their home.

¶ 6 We affirm in part and reverse and vacate in part.

¶ 7 I. BACKGROUND

¶ 8 A. The Administrative Law Hearing

¶ 9 The following facts were gleaned from the July 2011 administrative hearing.

¶ 10 1. *Events Leading to DCFS's Removal of the Children*

¶ 11 a. The Boggesses Become Licensed Foster Care Providers

¶ 12 In June 2008, as part of a licensing requirement for foster care providers, the Boggesses signed an agreement with DCFS affirming they would not use any type of corporal punishment upon children in their care. The agreement specified that violating the licensing requirement could "result in the revocation of a license to provide care for children." In July 2008, the Boggesses became licensed foster care providers.

¶ 13 In January 2009, DCFS placed brothers S.F. (born May 9, 2004) and K.F. (born January 2, 2007) in the Boggesses' home. In October 2009, DCFS also placed B.R. (born October 5, 2009) with the Boggesses. In July 2010, the circuit court terminated the parental rights of S.F. and K.F.'s biological parents. Thereafter, DCFS adoption specialist Brenda Clark initiated the pre-adoption home study process with the Boggesses in anticipation of them adopting S.F. and K.F.

¶ 14 b. Doug Strikes S.F.

¶ 15 The Boggesses knew DCFS prohibited the use of physical discipline. However, at some point, they purchased a 10-inch rubber strap to use in disciplining the children. According to Doug, fellow church members suggested the Boggesses purchase the strap, which Brenda said would not leave a mark but would "sting." Before purchasing the strap, Doug used a paddle for discipline, and Brenda gave the children "taps" on the buttocks with a wooden spoon.

¶ 16 In September 2010, Doug lost his job. To save money, Doug discontinued his use of Lexapro, a psychotropic medication for depression. Brenda noticed a change in Doug's behavior and mood in that he became irritable and easily aggravated. Brenda called Doug's doctor, who said he could prescribe Doug a cheaper, generic version of his prescription. Brenda obtained the generic prescription; however, Doug refused to take it. The Boggesses told Brenda

Clark, the adoption specialist, that Doug lost his job but did not tell Clark that Doug stopped using his medication.

¶ 17 In November 2010, Doug was in the kitchen with S.F., who was then six years old. S.F. refused to do his homework, despite Doug instructing him to do so. Doug then took out the strap and placed it on the table so S.F. could see it. Seeing the strap did not "phase [*sic*] [S.F.] one bit," so Doug asked S.F. to stand up so that he could spank him. S.F. stood up and pulled his pants down as instructed but refused to bend over. Doug then struck S.F. across the face with the strap. Afterward, Doug also spanked S.F. with the strap twice across the buttocks.

¶ 18 Doug testified that after hitting S.F. in the face, Doug "was totally in shock." According to Doug, this was the first time he had used the strap. Brenda saw Doug administer the second spanking and saw S.F. run into the bathroom. She followed S.F. into the bathroom and saw S.F.'s red cheek, then went into the kitchen to ask Doug what he was doing. Doug answered that he had spanked S.F. Brenda then told Doug, "Take a look at him. And do you see his face?" At that point, Doug said he "just couldn't believe what [he] had done." Doug asked S.F. to forgive him, and S.F. told Doug that he did. According to Doug, he was not acting like himself on the night he hit S.F.

¶ 19 c. Doug is Arrested After Driving Erratically

¶ 20 The mark across S.F.'s face remained visible over the next two days, and the Boggesses decided S.F. should not go to school. On the second day that S.F. stayed home, November 10, 2010, Brenda's mother and sister decided to visit, so Doug took S.F. and K.F. out for a drive. That day, Georgetown police officer Whitney Renaker pulled them over because Doug was driving erratically. As Renaker approached the car, Doug yelled, "I am going to punch

you in the fucking face" and started acting "very hostile" and "aggressive." Renaker placed Doug in handcuffs, at which point Doug started crying and apologizing. Renaker then noticed the boys and saw that S.F. had a large, swollen, purplish-black bruise on his right cheek. S.F. told Renaker that Doug had hit him.

¶ 21 Renaker requested assistance from the Vermilion County sheriff's department, which took over the case. Deputy sheriff John Watson arrived on the scene and spoke to S.F. Watson described the mark on S.F.'s face as purple or reddish-brown, approximately "two inches wide," spanning from S.F.'s ear to his mouth. Watson went to the Boggesses' home, where Brenda told Watson that Doug had "been under a tremendous amount of stress after losing his job" and had discontinued using his Lexapro. Brenda described Doug as "a different man." Brenda told Watson what had happened two days earlier and showed Watson the strap. Initially, Brenda told Watson that S.F. was not in school because S.F.'s attention deficit/hyperactivity disorder (ADHD) medication had not been working. However, Brenda later admitted that S.F. was not in school because the mark on S.F.'s face was visible.

¶ 22 The Vermilion County police arrested Doug, transported him to the police station, and called DCFS's abuse and neglect hotline to report him. Child protection investigator Anna Foote went to the police station to speak to Doug, who acknowledged hitting S.F.'s face with the rubber strap when S.F. refused to do his homework. Doug also said he had used the strap on previous occasions to spank the boys' buttocks. Foote also spoke to Brenda, who said she was upset with Doug and explained that Doug had been stressed over losing his job and had stopped taking his medication. Brenda also acknowledged that she and Doug purchased the strap to spank the children because they believed it would not leave marks. Brenda expressed concern

that the children would be removed from her care.

¶ 23 Around November 12, 2010, Brenda called Foote to tell her that while she was bathing S.F., she saw bruises developing on S.F.'s buttocks. The next day, Foote accompanied Brenda to S.F.'s appointment with the Boggesses' family physician, at which Foote saw "purply [*sic*]" bruises on S.F.'s buttocks. The doctor also examined K.F. and B.R. but did not observe any marks or report any concerns with regard to the care of those children. Prior to the incident with S.F., the doctor had not observed any marks indicative of abuse on the children.

¶ 24 Following his arrest, Doug remained in jail for two days before being released on bond. The State charged Doug with domestic battery but later dismissed the charges after Doug provided proof of completing an anger management course.

¶ 25 *2. DCFS's Removal of the Children*

¶ 26 On November 12, 2010, DCFS held a meeting to discuss whether the children should remain in the Boggesses' care. Initially, DCFS planned to leave the children in Brenda's care, with a safety plan in place requiring a third party to be constantly present and Doug to remain out of the home with no contact with the children. Both Brenda and Doug agreed to this plan. However, the following Monday, November 15, 2010, DCFS staff met again after child protection manager Jamie Ralph "strongly suggested" the children be removed based on the safety issues in the Boggesses' home. Ralph rejected the use of a safety plan because safety plans are intended to be short-term and the issues with the Boggesses could not be resolved quickly. Ralph determined the children should be removed that day, so Foote and Clark took the children to their new foster homes in accordance with Ralph's decision.

¶ 27 Clark, who remained K.F. and S.F.'s caseworker, said that initially K.F. and S.F.

"asked a lot of questions," and K.F. sometimes cried at night and asked for "Daddy." Gradually, however, the boys "transitioned very well into their home." The boys' foster parents expressed willingness to adopt them, and Clark recommended the boys remain with the foster parents. Likewise, according to DCFS supervisor Nancy Abbott, B.R. initially demonstrated difficulty with her new placement but had bonded with her foster parents. The foster parents expressed willingness to adopt B.R.

¶ 28

3. The Clinical Placement Review

¶ 29 At the Boggesses' request, on November 22, 2010, DCFS public service administrator Janet Uphoff conducted a clinical placement review. Later that month, Uphoff issued a written determination upholding the removal of the children from the Boggesses' care based on (1) the pending abuse and risk of harm investigations, (2) the pending domestic battery charge against Doug, (3) the young age of the children and their inability to communicate and protect themselves, and (4) the injuries S.F. sustained.

¶ 30

4. The Abuse and Neglect Investigation

¶ 31 Following her abuse and neglect investigation, Foote recommended entering an "indicated" finding of (1) abuse against Doug for cuts, bruises, welts, abrasions, and oral injuries (89 Ill. Adm. Code 300. Appendix B (Allegation 11/61) (2001)), based on S.F.'s injuries; and (2) neglect against Brenda for a substantial risk of physical injury/environment injurious to the health and welfare of the minors (89 Ill. Adm. Code 300. Appendix B (Allegation 10/60) (2001)), based on Brenda's failure to report and attempts to hide S.F.'s injuries. DCFS entered indicated findings and notified the Boggesses of its findings on December 2, 2010. Thereafter, the Boggesses sought an administrative appeal, seeking to have the indicated findings expunged.

¶ 32

5. The Licensing Investigation

¶ 33 The DCFS hotline call also triggered a licensing complaint. Renee Cunigan, a DCFS licensing worker, testified that she started investigating the Boggesses after the clinical placement review and the abuse investigation were completed. Cunigan's investigation revealed several licensing violations, including using corporal punishment on children in the Boggesses' care, failing to provide a stable environment, and failing to report suspected abuse or neglect. In February 2011, Cunigan sent the Boggesses notice of the violations.

¶ 34 In April 2011, foster care licensing manager Legertha Barner conducted an informal review as requested by the Boggesses. Following the review, Barner issued a written decision determining the violations were substantiated and recommending DCFS seek to revoke the Boggesses' foster care license. In June 2011, DCFS formally sought revocation and, at the Boggesses' request, filed a statement of charges. The Boggesses sought an administrative appeal.

¶ 35

6. The Boggesses' Testimony

¶ 36 Brenda testified she loved the children and wanted to adopt them. She acknowledged that she and Doug were wrong to ever start using corporal punishment, explaining that she forgot the children were foster children because they had already started the adoption process. According to Brenda, she and Doug used corporal punishment as a means of correcting dangerous behaviors, such as being too rough with the dogs. As to the type of corporal punishment she used, Brenda said she "tapped" S.F. and K.F. on the buttocks with wooden spoons and also used the strap to strike the boys' buttocks. Brenda did not tell DCFS about Doug hitting S.F. or send S.F. to school because she feared losing the kids. She did not think Doug would hurt any of the other children because she believed Doug slapping S.F. was an isolated

incident.

¶ 37 Doug testified he felt "very regretful" for having disciplined S.F. in anger and acknowledged that S.F. was merely refusing to do his homework, not engaging in unsafe behavior. Doug also acknowledged that before using the strap, he sometimes used a wooden paddle to administer spankings. Doug explained that he stopped taking his medication first for financial reasons but later because he did not want to take it.

¶ 38 After DCFS removed the children from their home, Doug resumed taking his medication and he and Brenda both went to counseling and took family-life skills and parenting classes. Brenda also purchased 13 books on parenting, and Doug completed an anger management class in conjunction with the State's agreement not to prosecute the domestic battery charges.

¶ 39 *7. The Boggesses' Additional Evidence*

¶ 40 In addition to their own testimony, the Boggesses presented the testimony of various witnesses attesting to the Boggesses' parenting skills and love for the children. Brenda's sister, Debrah Kagels, described the Boggesses' home as "very loving" and said Brenda was a "wonderful mother" with whom the children were bonded. Kagels and her husband, who attended church with the Boggesses, both noticed Doug started acting withdrawn after losing his job; however, Doug's behaviors did not make Kagels think Brenda or the children were in danger. Around Thanksgiving, after the incident with S.F., Doug "actually broke down" crying, asking Kagels and her husband to forgive him. Kagels said in the entire time that Doug and Brenda were married, Kagels had never seen Doug raise his hand to anyone or anything.

¶ 41 Sondra Blankenship, who had known Brenda for 39 years, described Brenda as

the "most honest person" she'd ever met and described Doug as "very patient." She felt "totally surprised" when she learned about the mark Doug left on S.F.'s cheek. Blankenship believed the children should be placed back in the Boggesses' home.

¶ 42 Stephanie Potts, S.F., K.F., and B.R.'s caseworker from January 2009 through September 2010, testified that when she was the children's caseworker, she visited the Boggesses' home, unannounced, approximately once a month. In all of her visits, Potts never felt concerned about the children. She described the Boggesses' home as "very loving" and "caring," and observed that the children did not fear either parent. Potts opined that, even though Doug hit S.F. with the strap, the children should be returned to the Boggesses. Specifically, Potts noted that the "Boggesses acted as the parents in every fashion" and the children felt safe and secure in the Boggesses' home. Moreover, Potts believed the incident with S.F. "was a one-time incident" and the Boggesses had taken steps afterward to correct the conditions leading to the incident.

¶ 43 Several church members testified to the Boggesses' religious devotion and their devotion to the children. Joe Humrichous, a former pastor at the Boggesses' church, testified he never felt concerned about the boys' safety while they were in the Boggesses' care, although he acknowledged that he would have been concerned if he saw Doug strike S.F.'s face with the strap. Marianne White, S.F.'s kindergarten teacher, testified when S.F. first came to her classroom, he demonstrated behavioral issues that gradually improved with behavioral modification and medication. White never noticed any bruises or marks on S.F. and said that, when the Boggesses came to school for events, she could tell S.F. loved them.

¶ 44 8. *The ALJ's Recommended Decision*

¶ 45 In July 2011, the ALJ issued a decision recommending the Director deny the

Boggeses' requests to expunge the indicated findings, enter an order revoking the Boggeses' license, and deny the Boggeses' request to reverse DCFS's decision to remove the children from their home.

¶ 46 First, the ALJ found that a preponderance of the evidence established (1) Doug abused S.F. by striking his face and buttocks with a strap, and (2) Brenda neglected S.F. by failing to report and trying to hide S.F.'s injuries. The ALJ rejected Doug's contention that this was a "one-time incident at a time when he was not in his right frame of mind," finding the Boggeses made a conscious, calculated decision to use corporal punishment and to purchase a strap they believed would not cause marks. The ALJ further noted that, in addition to the strap, the Boggeses struck the boys with a paddle and wooden spoons.

¶ 47 Rejecting the Boggeses' argument that they used corporal punishment to deal with S.F.'s "extreme behavioral problems," the ALJ pointed out that several witnesses described improvements in S.F.'s behavior over time, which would have supported decreasing the use of discipline, not increasing it. Moreover, S.F. was not engaged in "imminently harmful" behavior when Doug struck him with the strap and S.F.'s conduct "did not warrant such an extreme form of discipline and the excessive use of physical force against him was abusive."

¶ 48 Next, the ALJ found DCFS presented sufficient evidence to support the revocation of the Boggeses' foster care license. She opined that the facts underlying the indicated findings supported revocation, as did the Boggeses' multiple violations of licensing standards, including (1) subjecting the children to corporal punishment, (2) failing to protect the children from abuse and neglect, (3) failing to tell DCFS that Doug discontinued use of his medication, (4) failing to openly communicate and share information about a child with members

of the child welfare team, and (5) failing to report abuse of a child. The ALJ rejected the Boggesses' argument that this was a "one-time incident or a mere error in judgment," finding the Boggesses "chose to act independently of the agency" and use corporal punishment despite being instructed not to do so.

¶ 49 Finally, the ALJ found it was not in the best interests of S.F., K.F., or B.R. to be returned to the Boggesses based on the Boggesses' use of corporal punishment and Brenda's failure to protect the children from Doug. In sum, the ALJ concluded, "[T]here is no doubt that the [Boggesses] clearly love [S.F., K.F., and B.R.], and that while the children were with them, they cared for them as though they were their own children. However, the events that transpired in their home and that affected the well-being of these children are so grave and so seriously endangered the health and welfare of these children that it cannot be found to be in their best interests to be returned to [the] home of the [Boggesses]." The ALJ further noted that, regardless of other considerations, if the Director revoked the Boggesses' foster care license, DCFS would lack authority to place the children with them.

¶ 50 B. The Director's Final Administrative Decisions

¶ 51 In August 2011, the Director issued a final administrative decision in each of the three matters, adopting and incorporating the ALJ's findings and conclusions and (1) denying the Boggesses' requests to expunge the indicated findings, (2) revoking their state-issued foster care license, and (3) denying their appeal challenging the removal of the children from their care.

¶ 52 C. The Circuit Court Proceedings

¶ 53 In September 2011, the Boggesses filed a complaint for administrative review in the circuit court. In October 2012, the court entered an order affirming the Director's final

decisions.

¶ 54 This appeal followed.

¶ 55 II. ANALYSIS

¶ 56 On appeal, the Boggesses contend they were improperly indicated for abuse and neglect and DCFS acted arbitrarily and capriciously in revoking the Boggesses' foster care license and removing the children from their home. We address the Boggesses' contentions in turn.

¶ 57 A. Standard of Review

¶ 58 In an administrative review appeal, this court reviews the final decision of the agency, not the judgment of the circuit court. *Campbell v. Department of Personnel, Secretary of State*, 2013 IL App (4th) 120610, ¶ 28, 989 N.E.2d 1198. In doing so, we employ three different standards of review. We review factual questions under the manifest weight of the evidence standard, overturning those findings only if "the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on evidence." *Id.* ¶ 29, 989 N.E.2d 1198. However, we review questions of law *de novo*. *Id.* Finally, "[w]e review mixed questions of fact and law by asking whether the agency's decision is clearly erroneous." *Id.* ¶ 30, 989 N.E.2d 1198. A decision is clearly erroneous if, after reviewing the entire record, this court is "left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted). *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337, 909 N.E.2d 806, 814 (2009).

¶ 59 B. Whether the Director Erred by Refusing To Expunge the Indicated Findings

¶ 60 The Boggesses assert the Director erred by denying their request to expunge the indicated findings against them. We address the finding against Doug and the finding against

Brenda separately.

¶ 61 *1. The Indicated Finding of Abuse Against Doug*

¶ 62 Under the Abused and Neglected Child Reporting Act (Child Reporting Act), DCFS is responsible for receiving, investigating, and creating a central register of reports of child abuse and neglect. 325 ILCS 5/7.3, 7.7 (West 2010). All reports must be categorized as "indicated," "unfounded," or "undetermined." 325 ILCS 5/7.14 (West 2010). An "indicated" report is one for which "an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2010). An "abused child" includes a child whose caregiver (1) inflicts, by other than accidental means, physical injury that "causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function"; (2) creates, by other than accidental means, a substantial risk of physical injury; or (3) inflicts excessive corporal punishment. 325 ILCS 5/3 (West 2010).

¶ 63 The indicated finding of abuse against Doug was premised on Doug inflicting a cut, bruise, welt, abrasion, or oral injury to S.F. (89 Ill. Adm. Code 300. Appendix B (Allegation 11/61) (2001)). As set forth in appendix B of section 300 of title 89 of the Illinois Administrative Code (Administrative Code), DCFS's rules provide that "[n]ot every cut, bruise, welt, abrasion, or oral injury constitutes an allegation of harm." 89 Ill. Adm. Code 300. Appendix B (2001). Rather, the following factors must be considered: (1) the child's age, mobility, and developmental stage; (2) the child's medical condition and behavioral, mental, or emotional problems; (3) whether similar incidents of injury have occurred; (4) the severity and extent of the injuries; (5) the location of the injuries; (6) the pattern of the injuries; (7) whether the injury was caused by an instrument used by the child; and (8) whether a previous history of

indicated abuse, neglect, or history of previous injuries exists. 89 Ill. Adm. Code 300. Appendix B (2001).

¶ 64 An individual who is the subject of an "indicated" report may appeal the report. 325 ILCS 5/7.16 (West 2010); 89 Ill. Adm. Code 336.50, 336.80 (2000). At an administrative hearing on the matter, DCFS must prove its finding of abuse or neglect by a preponderance of the evidence. 89 Ill. Adm. Code 336.100(e)(2) (2000). If the Director elects not to amend or expunge a report, the individual may seek judicial review under the Administrative Review Law (735 ILCS 5/3-101 to 113 (West 2010)). 89 Ill. Adm. Code 336.220(b) (2000).

¶ 65 In this case, the Director, after adopting the ALJ's findings and determination of Doug's use of physical discipline against S.F., denied Doug's request to have the finding expunged.

¶ 66 Upon reviewing the record, we cannot say the ALJ's findings, adopted by the Director, were against the manifest weight of the evidence. Specifically, the ALJ found (1) Doug used extreme and excessive physical discipline against S.F., and (2) the Boggesses hit the children with objects on multiple prior occasions. These findings are supported by the record. Doug acknowledged using the strap on prior occasions to spank the boys across the buttocks and also admitted he used a wooden paddle to administer spankings. On the night Doug struck S.F., S.F. was not engaged in dangerous behavior, but rather, was refusing to do his homework. Doug's striking of S.F. caused bruises on S.F.'s cheek and buttocks that remained visible days after the incident. In particular, we note that when Renaker pulled Doug over two days after the incident, Renaker described S.F. as having a large, swollen, purplish-black bruise on his right cheek, and Watson described the mark as "purple or reddish-brown" and spanning from S.F.'s ear

to his mouth. Brenda also noticed bruises on S.F.'s buttocks approximately three days later. Based on the foregoing, the ALJ's findings of fact were not against the manifest weight of the evidence.

¶ 67 Nor can we say the Director's determination that those findings constituted abuse was clearly erroneous. "Abuse" includes inflicting injuries that impair a child's physical or emotional health, creating a substantial risk of such injuries, and inflicting excessive corporal punishment. 325 ILCS 5/3 (West 2010). Although, as Doug points out, he (1) had not previously inflicted injuries on any of the children and (2) immediately felt remorseful for striking S.F., the evidence nonetheless established Doug hit the boys with objects in the past, which could have led to injuries. Moreover, the record could support a determination that Doug inflicted excessive corporal punishment on S.F., as Doug struck S.F., a six-year-old boy, hard enough to leave bruises on S.F.'s face and buttocks merely because S.F. refused to do his homework.

¶ 68 The cases cited by the Boggesses are inapposite. In *In re J.P.*, 294 Ill. App. 3d 991, 1004-05, 692 N.E.2d 338, 346 (1998), the mother hit her daughter with a wooden spoon on the buttocks, over clothing, and on one occasion caused a 1 to 1-1/2 inch bruise on her daughter's buttocks. By contrast, here, Doug struck S.F. across the face, leaving a two-inch bruise, and struck S.F. across his bare buttocks. Moreover, the proportionality of Doug's response to the behavioral issue that S.F. was exhibiting distinguishes Doug's case from the other cases he cites. See *Korunka v. Department of Children and Family Services*, 259 Ill. App. 3d 527, 529-30, 631 N.E.2d 759, 760-61 (1994) (the teacher left "marks" when he grabbed a junior high school student by the shoulder and held the student in his seat, which the teacher believed was necessary

for the student's safety and the safety of others); *Briggs v. State of Illinois*, 323 Ill. App. 3d 612, 614, 619, 752 N.E.2d 1206, 1208, 1212 (2001) (the teacher left red marks on a six-year-old student's neck when intervening after the student punched another student). Here, S.F. was refusing to do his homework, not engaging in behavior that could cause harm to himself or others like the children in *Korunka* and *Briggs*.

¶ 69 Based on the foregoing, we conclude the Director did not clearly err by refusing to expunge DCFS's indicated finding of abuse against Doug.

¶ 70 *2. The Indicated Finding of Neglect Against Brenda*

¶ 71 The Boggesses also argue the Director's indicated finding of neglect against Brenda should be expunged. The Attorney General concedes that the Illinois Supreme Court's recent decision in *Julie Q. v. Department of Children and Family Services*, 2013 IL 113783, 995 N.E.2d 997, renders the finding against Brenda invalid. We agree.

¶ 72 In *Julie Q.*, the trial court entered an indicated finding against the plaintiff based on Allegation 60, which provides that neglect occurs when an "individual plac[es] a child in an environment that is injurious to the child's health and welfare." *Id.* ¶ 5, 995 N.E.2d 977 (citing 89 Ill. Adm. Code 300. Appendix B (2001)). The supreme court concluded that Allegation 60 was void because prior to the plaintiff's case, the legislature specifically removed the "environment injurious" language from its definition of neglect contained in the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1-1 *et seq.* (West 2010)), and DCFS lacked authority to reinsert a definition of neglect that the legislature had deleted. *Id.* ¶¶ 29, 35, 995 N.E.2d 977. Although the legislature subsequently reinserted the "environment injurious" language into the Juvenile Act in 2012, the plaintiff's case predated the legislature's amendment. *Id.* ¶ 42, 995

N.E.2d 977.

¶ 73 Here, DCFS entered an indicated finding against Brenda based on the same allegation as the allegation in *Julie Q*, and the allegations against Brenda predated the legislature's 2012 amendments. Thus, pursuant to *Julie Q*, the finding of neglect against Brenda was invalid. Accordingly, we reverse the trial court's judgment in part and vacate DCFS's indicated finding against Brenda.

¶ 74 C. Whether DCFS Improperly Revoked the Boggesses' Foster Care License

¶ 75 The Boggesses next challenge the Director's revocation of their foster care license.

¶ 76 The Child Care Act of 1969 charges DCFS with prescribing and publishing standards for licensing of child care facilities, including foster family homes. 225 ILCS 10/2.05, 7 (West 2010). It also allows DCFS to revoke the license of a foster family home that fails to maintain DCFS's standards. 225 ILCS 10/8(1) (West 2010). When a foster home is the subject of an indicated report of abuse or neglect, DCFS must reexamine the home to determine whether it continues to meet the minimum standards for licensure. 225 ILCS 10/4.2 (West 2010); 89 Ill. Admin. Code 383.40 (2008).

¶ 77 DCFS's licensing standards require foster parents to be "stable, law abiding, responsible, mature individuals, at least 21 years of age." 89 Ill. Adm. Code 402.12(c) (eff. June 15, 2009). In addition, foster parents are required to (1) treat all children in the foster family equitably; (2) appropriately supervise the children, protect them from exploitation, neglect, and abuse; (3) report suspected child abuse or neglect to the supervising agency or DCFS immediately; and (4) notify the supervising agency immediately of any situation affecting the care of the child, including death, serious illness, incarceration, death of a child, or any other

significant occurrence. 89 Ill. Adm. Code 402.16 (2002).

¶ 78 With respect to discipline, DCFS's standards state, "No child shall be subjected to corporal punishment, verbal abuse, threats or derogatory remarks about him or her or his or her family." 89 Ill. Adm. Code 402.21(c) (1996). Further, "[d]iscipline shall be appropriate to the developmental age of the child, related to the child's act, and shall not be out of proportion to the particular inappropriate behavior." 89 Ill. Adm. Code 402.21(a) (1996). The Foster Parent Code also sets forth foster parents' responsibilities, which include (1) openly communicating with DCFS about children in their care, (2) treating children in their care with dignity and respect, and (3) knowing and fulfilling their roles as mandated reporters of suspected child abuse or neglect. 89 Ill. Adm. Code 340.50(a)(1), (4), (12) (2009).

¶ 79 If DCFS's licensing investigation discloses a violation, a licensee may request an informal review. 89 Ill. Adm. Code 383.60 (2008). If, after the informal review, DCFS seeks to revoke a license, licensees may request an administrative hearing and receive a statement of charges. 89 Ill. Adm. Code 383.85 (2008). At a hearing before an ALJ, DCFS must prove a preponderance of the evidence supports revocation. 89 Ill. Adm. Code 383.145 (2008). After the hearing, an ALJ issues a recommendation, and the Director issues a final administrative decision, which is subject to judicial review. 89 Ill. Adm. Code 383.150, 383.155 (2008).

¶ 80 Here, the ALJ concluded the revocation of the Boggesses' license was appropriate based on the Boggesses' failure to comply with DCFS licensing standards by (1) subjecting the children to corporal punishment; (2) failing to protect the children from abuse and neglect; (3) failing to notify DCFS that Doug was not taking his prescribed medication; (4) failing to openly communicate with DCFS about a child; (5) failing to treat the children in their care with dignity

and respect; and (6) failing to fulfill their roles as mandated reporters by failing to report abuse of a child. The Director adopted the ALJ's findings and conclusions, revoking the Boggesses' state-issued foster care license.

¶ 81 We cannot say the Director's decision was clearly erroneous. The Boggesses admitted (1) Doug hit S.F. with a strap across the face and on the buttocks, (2) Doug and Brenda both used the strap on previous occasions to spank the boys' buttocks, (3) Doug also used a wooden paddle to administer spankings, and (4) Brenda administered "taps" with wooden spoons. These admissions are sufficient to prove the Boggesses subjected the children to corporal punishment, in violation of DCFS's rules. See 89 Ill. Adm. Code 402.21(c) (1996). Moreover, the record indicates neither Brenda nor Doug informed DCFS of Doug's (1) decision to stop taking Lexapro or (2) striking S.F. with a strap across the face. Thus, the evidence established the Boggesses violated multiple DCFS rules requiring foster parents to communicate about their foster children's welfare and to report suspected child abuse or neglect. See 89 Ill. Adm. Code 340.50(a)(1), (12) (2009)); 89 Ill. Adm. Code 402.16 (2002).

¶ 82 In support of their argument that the Director erred, the Boggesses contend the ALJ "relied significantly on the fact that both Doug and Brenda" were "indicated" for abuse and neglect. However, we note that the ALJ specifically stated the indicated findings were "not sufficient to automatically deny licensure," instead finding the facts underlying those indicated findings supported a revocation of the Boggesses' license.

¶ 83 In addition, the Boggesses rely on title 80, section 385.50 of the Administrative Code for the proposition that the Director failed to consider such factors as the circumstances surrounding the abuse or neglect and the likelihood of repetition. However, that portion of the

Administrative Code relates to the licensing of new foster parents who have been the subject of an indicated allegation. 89 Ill. Adm. Code 385.50 (2004). In the Boggesses' case, the Director was revoking their license and was doing so, in part, based on other violations of DCFS's rules, such as the use of corporal punishment and failure to report abuse.

¶ 84 The Boggesses also argue that the Director failed to consider the efforts the Boggesses made after Doug struck S.F. to correct the conditions leading up to the incident with S.F. Specifically, the Boggesses point out that Doug resumed his medication and the parties attended parenting classes and a 25-week course in family life skills. However, the record indicates the ALJ considered these actions, as evidenced by the fact that she included them in her written order, and nonetheless concluded revocation of the Boggesses' license was warranted.

¶ 85 Based on the foregoing, we cannot say the Director's revocation of the Boggesses' license was clearly erroneous.

¶ 86 D. Whether DCFS Improperly Removed the Children From the Boggesses' Home

¶ 87 Finally, the Boggesses posit the Director erred by upholding DCFS's decision to remove the children from their home. However, we need not consider the Boggesses' third argument, as DCFS may place its wards only in licensed foster care homes and we have already determined the Director's decision to revoke the Boggesses' foster care license was not clearly erroneous. See 225 ILCS 10/4(a) (West 2010) ("Any person, group of persons or corporation who or which receives children *** must apply for a license to operate one of the types of facilities defined in Sections 2.05 through 2.19 and in Section 2.22 of this Act.").

¶ 88 III. CONCLUSION

¶ 89 For the reasons stated, we affirm (1) DCFS's indicated finding of abuse as to

Doug, (2) the Director's revocation of the Boggesses' foster care license, and (3) the Director's decision to uphold DCFS's removal of the children from the Boggesses' home; and we reverse and vacate DCFS's indicated finding of neglect as to Brenda.

¶ 90 Affirmed in part and reversed and vacated in part.