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NO. 4-17-0246

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Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ALLISON DAVIDSMEYER, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, and GEORGE N. SHELDON, its Director, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 16MR168 Honorable Rudolph M. Braud, Jr., Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed, finding plaintiff entitled to expungement from the state central registry indicated findings of neglect on the ground defendants failed to strictly comply with administrative procedures violating plaintiff's due process rights.

¶ 2 In September 2015, defendant, the Illinois Department of Children and Family Services (DCFS), entered indicated findings of child neglect against plaintiff, Allison Davidsmeyer. Plaintiff thereafter administratively appealed the findings and requested they be expunged from the state central register. Following an evidentiary hearing, the administrative law judge (ALJ) recommended to deny the expungement request. In January 2016, defendant George N. Sheldon, as Director of DCFS (Director), agreed and denied plaintiff's expungement request. In February 2016, plaintiff sought administrative review in the circuit court seeking

reversal of the Director's decision. In March 2017, the circuit court affirmed the Director's decision.

¶ 3 Plaintiff appeals, arguing (1) defendants violated her right to due process by failing to issue a final agency decision in a timely manner and (2) defendants' decision to deny plaintiff's request for expungement was clear error. Because we find plaintiff's due process rights were violated, we reverse and order expungement as stated herein.

¶ 4 I. BACKGROUND

¶ 5 The following factual recitation is taken from the pleadings, testimony, and exhibits of record.

¶ 6 Plaintiff was the single parent of four children, L.T. (born September 18, 2002), A.T. (born January 3, 2007), N.T. (born June 16, 2009); and K.T. (born June 2, 2012, now deceased). On June 16, 2015, law enforcement-officers were dispatched to plaintiff's home in response to an unsuccessful effort to revive K.T., who had drowned in a swimming pool. Due to the condition of the home and K.T.'s drowning death, officers contacted the DCFS child-abuse-and-neglect hotline.

¶ 7 After an investigation, DCFS determined credible evidence supported indicated findings of neglect against plaintiff for "51-Death by Neglect" and "74-Inadequate Supervision." See 89 Ill. Adm. Code 300.Appendix B (Allegation No. 51, Allegation No. 74) (2014) (hereinafter, Allegation No. 51 and Allegation No. 74).

¶ 8 In July 2015, plaintiff filed an administrative appeal, requesting expungement of the indicated report of child neglect. In December 2015, the ALJ held an administrative hearing.

¶ 9 In 2013, plaintiff moved back to Illinois from Arizona. Plaintiff's mother purchased a three-story home with a basement in Springfield, Illinois, where plaintiff and her

children lived with her mother. At the time of purchase, the home had an above-ground pool in the backyard, approximately 15-20 feet in diameter and 5 feet deep.

¶ 10 All of the children were aware of the rules for using the pool. An adult had to be present when they were in the pool. K.T. knew she had to wear her life jacket. The three older children knew how to swim. K.T. had not been taught how to swim yet. There had been no incidents of K.T. attempting to use the pool on her own.

¶ 11 Plaintiff testified she used a tall piece of plywood and bungee cord to secure the steps and prevent entry into the pool. Plaintiff used the plywood and bungee cord "if any of the neighborhood children were to come into the backyard, we would use that. And other than that, you know, that was the main time when people I didn't know, younger people that I wasn't familiar with were in the backyard."

¶ 12 Plaintiff testified she earned an associate's degree in nursing in May 2015. In June 2015, she was studying for her licensing exam. During the morning of June 16, 2015, she and the children celebrated N.T.'s sixth birthday with a birthday party. In the afternoon, plaintiff and the children left the home and took lunch to plaintiff's boyfriend, Justin Behnke. After they returned home, L.T., N.T., and K.T. went on a long walk around the neighborhood with plaintiff. The children helped plaintiff gather mushrooms. A.T. chose not to go on the walk and went to play with a neighborhood friend. The friend lived a few doors down from A.T. and had siblings who were approximately the same age as L.T. and N.T. The children regularly played at each others houses. Plaintiff and the neighbor had an agreement to keep an eye on the children when playing at their house.

¶ 13 When they returned home from their walk, L.T. and N.T. went to play with A.T. at the neighbor's house. K.T. stayed with plaintiff. K.T. asked plaintiff if she could go

swimming in the pool in the backyard. Plaintiff told K.T. she would need to wait because plaintiff needed to find K.T.'s swimming suit. Plaintiff went into multiple rooms looking for K.T.'s swimsuit.

¶ 14 During her search for the swimsuit, plaintiff found her phone charger. K.T. was waiting for plaintiff in the living room as she looked for the swimsuit. Plaintiff told K.T. she was still looking for the swimsuit. She plugged in her charger to charge her phone. Plaintiff wanted to take pictures of the mushrooms with her phone. According to plaintiff, K.T. "was kind of fussing at me still about wanting to go swimming." Plaintiff "told her again, hold on, you know, wait, I'm going to take some pictures."

¶ 15 After her phone was charged, plaintiff went out to the back porch and took pictures of the mushrooms. K.T. remained in the house. Plaintiff took the pictures while positioned between the house and the swimming pool.

¶ 16 After taking the pictures plaintiff entered the house. Plaintiff called for K.T. but K.T. did not respond. Plaintiff searched the house calling for K.T. Plaintiff then went out the front door to the neighbor's house to see if K.T. had gone there to play. K.T. was not there. Plaintiff went back to the house calling for K.T. L.T. came with her and helped to search. Plaintiff searched the house again. Plaintiff then went into the backyard and found K.T. in the swimming pool. She jumped in the pool and carried her out placing her on the back porch.

¶ 17 A neighbor, Curt Reynolds, saw plaintiff run out of the back door and to the pool. He saw her pull K.T. out of the pool. He ran to another neighbor's house, Eric and Amy Eberding. Eric Eberding, a police officer, ran to the backyard. He and his wife began cardiopulmonary resuscitation (CPR) on K.T.

¶ 18 Springfield police officer Sam Rosario and his partner were the first on-duty officers to arrive at the home. He testified plaintiff was in shock and unable to give any details of what happened. Plaintiff told Rosario she had gone from the backyard to the front yard, back and forth. The children were playing with a neighbor. She lost sight of K.T. for a moment and then found her in the swimming pool. He asked plaintiff "about how much time did she think it was." Rosario testified that plaintiff "said it might have been 20 to 30 minutes." Rosario was unable to determine whether plaintiff meant 20 to 30 minutes before she started to look for K.T. or whether she had looked for her for that period of time.

¶ 19 In his written report, Rosario recorded that he spoke with plaintiff "who stated the following, not verbatim: she went on a walk with her kids and returned home at an unknown time. The kids were playing and running in and out of the house throughout the day and hanging out at a neighbor's house with their kids. She realized she hadn't seen or heard [K.T.] for some time and she went down the street to see if [K.T.] was at the neighbor's house. She couldn't find [K.T.] inside the house and went out the back door to see if she was in the backyard. When she didn't see [K.T.] in the backyard, she ran to the pool and saw [K.T.] at the bottom of the pool. She ran to the ladder, jumped in the pool and pulled [K.T.] out of the water. She got [K.T.] up to the back porch and doesn't remember anything else." Rosario was unable to determine any timeline for the series of events that afternoon.

¶ 20 Detective Steve Dahlkamp drove plaintiff and L.T. to the hospital emergency room where K.T. had been taken by ambulance. Dahlkamp did not secure a statement from plaintiff that afternoon because plaintiff was despondent and in shock. Dahlkamp interviewed plaintiff the following day. The coroner found no indication of physical abuse or foul play and

the autopsy results were consistent with accidental drowning. Therefore, Dahlkamp did not intend to proceed any further with the investigation.

¶ 21 Behnke testified he met plaintiff in late September 2014. Behnke swam with the children in plaintiff's swimming pool in late May or early June 2015. He was familiar with the household rules regarding use of the pool. The children wore floatation devices and "were not to go out there unless there was an adult supervising them." He stated K.T. understood the rules.

¶ 22 Behnke received a voice mail from plaintiff on June 16, 2015, at approximately 4:30 p.m. Behnke went to the hospital immediately. He remained at the hospital with plaintiff until he and plaintiff went to his apartment, arriving around 8:30 p.m. DCFS investigator Glenn Curry arrived at Behnke's apartment at 8:45 p.m. to interview plaintiff. Curry interviewed plaintiff for approximately 20 minutes. Behnke was present during the interview. Plaintiff had just left K.T. at the hospital and was exhausted mentally, emotionally, and physically. According to Behnke, she was unable to provide many details. The interview was the only inquiry the DCFS investigator made of plaintiff about the events in question.

¶ 23 Behnke characterized plaintiff as a good mother who was protective of her children. K.T. was very attached to plaintiff and always wanted to be with her. Behnke did not believe plaintiff would have let 30 minutes go by without her being aware that K.T. was absent.

¶ 24 Curry testified he was assigned to investigate the child-abuse-and-neglect hotline report. Curry compiled a 202-page record of the investigation. The report alleged death by neglect of K.T. and substantial risk of physical injury/environment injurious to health and welfare by neglect of L.T., A.T., and N.T. The report stated plaintiff had been unable to find K.T. for approximately 30 minutes before locating her in the pool. Plaintiff had described looking for K.T. at a neighbor's house and in the family's residence before looking in the pool.

¶ 25 Curry reported the home had an above-ground pool in the backyard, approximately 15-20 feet in diameter and 5 feet deep. Although the yard was fenced, "access to the pool was not restricted." Curry described a ladder on the back side of the pool capable of folding to restrict access to the pool, but the placement of the ladder within three feet of the privacy fence made it impossible to fold the ladder.

¶ 26 Curry testified he interviewed plaintiff on the evening of September 16, 2015. His report indicated he began the interview at 8:45 p.m. He believed the interview lasted about 15-30 minutes. Curry did not record the interview. The interview was the only inquiry Curry made of plaintiff about the events in question.

¶ 27 Curry's notes of the interview are contained in the investigative report. Plaintiff stated to Curry that the children were always going in and out of the house. They played at a neighbor's house a few doors down. K.T. "always r[a]n around with the older kids." Plaintiff told Curry she and the girls had gone for a walk earlier in the afternoon. When they came home, the older girls went to play at the neighbor's house. K.T. stayed with plaintiff. Plaintiff advised Curry that at some point she noticed K.T. was not around her and felt she should look for her.

¶ 28 According to Curry, plaintiff went down to the neighbor's house, thinking K.T. went to the house to play with her siblings but K.T. was not there. Plaintiff came back and looked through the house but could not find K.T. Plaintiff then went out into the backyard, finding K.T. in the pool and unresponsive.

¶ 29 During the interview, plaintiff stated K.T. played throughout the house so it was not unusual to not see K.T. in the immediate area. It was also not unusual for K.T. to play at the neighbor's house with her siblings.

¶ 30 Curry stated in his report that plaintiff thought she had not seen K.T. for 30 minutes but she was not completely sure of the time frame. Plaintiff testified K.T. was never out of her sight or hearing for 30 minutes. She did not tell anyone she had not seen or heard K.T. for 30 minutes. Curry agreed that nobody knew how long K.T. was out of plaintiff's sight.

¶ 31 A note in the investigative file stated the family was unable to stay at the family home immediately following K.T.'s death, "as they [were] too emotionally distraught to be there."

¶ 32 Curry next met with plaintiff on July 6, 2015. He did not ask plaintiff questions about June 16, 2015. Plaintiff told Curry the pool had been taken down while they were away. Curry confirmed the pool had been removed completely.

¶ 33 Curry admonished plaintiff about other water safety issues such as not leaving children unattended in the bathtub. He provided plaintiff a pamphlet advising "drowning tragedies can be prevented by supervising children at all times when they are in or near water."

¶ 34 Curry stated the death by neglect allegation was indicated. In support of his finding, Curry noted K.T. was three years old and required close supervision. According to Curry, plaintiff admitted losing track of K.T. for 30 minutes and K.T. was able to get into the pool and drown. The ladder was "not secured" in a manner to deny access to the pool by K.T. "A reasonable person would conclude that a [three-year-old] child needs much closer supervision, and that this was blatant disregard of parental responsibilities," leading to K.T.'s death. Curry also found an "inadequate supervision" allegation indicated. He noted K.T. "was able to get outside the house, to the back of the back yard [*sic*], and into the pool, all without [plaintiff's] knowledge." Finally, with regard to the substantial risk of physical

injury/environment injurious to health and welfare allegations as to L.T., A.T., and N.T., Curry found each of those allegations unfounded.

¶ 35 When asked what led him to conclude there was a blatant disregard of the caretaker responsibility, Curry stated "what happened was so severe and the level of supervision so inappropriate that a reasonable person would know that that is not appropriate for a child that age and that situation. And the fact I can say a three-year-old child that had been unsupervised for as long as 30 minutes and knowing that there was a pool on the property and the pool was not secured."

¶ 36 Curry did not have concerns regarding plaintiff's mental health and found the home met basic standards. He did not consider either matter in his investigation.

¶ 37 On January 26, 2016, the ALJ found DCFS had proved "allegations of harm" No. 51 and No. 74 by a preponderance of the evidence. (Allegation No. 51, which is entitled "Death," and Allegation No. 74, which is entitled "Inadequate Supervision," are located in part 300, appendix B, of title 89 of the Illinois Administrative Code (Administrative Code) (89 Ill. Adm. Code 300.Appendix B (2014))).

¶ 38 In her analysis, the ALJ stated that "[d]epartment rules define the [d]eath allegation as where the parent acts with blatant disregard of parental responsibilities which resulted in the child's death." She characterized inadequate supervision as "also a neglect allegation" but noted "its focus is not on whether a child was actually harmed, but instead whether the child is left unattended in a place that is unsafe for him or her when their maturity, physical condition, and mental abilities are considered." The ALJ stated that "the analysis essentially comes down to whether the [plaintiff] was acting in blatant disregard of her parental

responsibilities by leaving the pool unsecured when she concurrently allowed her three year old significant freedom to wander."

¶ 39 The ALJ found the family had lived in the home for approximately two years. The above-ground pool was present when plaintiff's mother purchased the home. On June 16, 2015, the children were ages 10, 8, 6, and 3. The pool was approximately 15-20 feet in diameter and 5 feet deep. She characterized the pool as "unsecured," meaning "the pool was set up so close to a privacy fence that the pool's built in safety feature of the retractable ladder could not be used because the act of swinging up the ladder was blocked by the privacy fence." Although plaintiff used a tall piece of plywood and bungee cord to secure the steps, she did so "only when children other than her own were in the yard." The ALJ concluded plaintiff believed her children were "either obedient enough or mature enough to know not to risk using the pool." The ALJ found, however, three-year-old K.T. "too young to understand the dangers of the pool." Further, it was not reasonable to expect K.T. to always do what she was told.

¶ 40 With regard to the 30-minute time frame alleged in the narrative of the hotline report, the ALJ found that "whatever the actual time frame, [K.T.] was missing and unsupervised long enough for her to go to the pool, climb that ladder, and then fall or climb in."

¶ 41 Finally, the ALJ found it clear that K.T. was allowed "a great deal of freedom to roam." In support of her finding, the ALJ referenced plaintiff's testimony that when plaintiff "did notice [K.T.] was missing, she simply assumed that [K.T.] had walked out the front door, by herself since the other children were already gone, and then went three or four doors down to the neighbors" where she and her siblings played. The ALJ concluded that "allowing a child that young to walk three or four houses, without at least an older sibling accompanying her or without some communication between the two households constitutes inadequate supervision in

itself" and further, "knowing an unsecured pool was nearby was tantamount to asking for the tragedy that ultimately occurred."

¶ 42 The ALJ concluded DCFS met its burden of proof, explaining the "lack of supervision combined with the failure to secure the pool, caused the death of [K.T.] and as such both findings should remain indicated *** the [plaintiff] inadequately supervised [K.T.] and thereby caused her death by neglect."

¶ 43 On January 21, 2016, the Director issued a final administrative decision adopting the ALJ's recommendations, denying plaintiff's request for expungement and ordering the report remain on the State Central Registry for 50 years. On February 17, 2016, plaintiff sought administrative review in the circuit court. On March 3, 2017, the circuit court affirmed the Director's final administrative decision and further, found the decision timely issued. Plaintiff timely appeals.

¶ 44 II. ANALYSIS

¶ 45 On appeal, plaintiff argues defendants (1) violated her right to due process by failing to issue a final agency decision within 90 days of her appeal and (2) erred in denying her petition to expunge the indicated findings of neglect due to inadequate supervision (Allegation No. 74) and death by neglect (Allegation No 51).

¶ 46 Defendants state in their brief before this court that they withdraw their argument "that [plaintiff] should remain on the state central register because of the indicated finding for Allegation No. 74, inadequate supervision." Defendants reference a "separate lawsuit" in which the Circuit Court of Cook County certified a class of: " 'Any persons who, at any time from February 24, 2012[,] to the present, have been investigated, indicated, or registered in the Illinois State Central Register as perpetrators of child neglect based on Allegation [No.] 74, including all

persons whose indicated report under Allegation [No.] 74 is on the Illinois State Central Register. ' " *Nicole P. v. Department of Children and Family Services*, No. 16-CH-12809. According to defendants, the instant plaintiff is "arguably" a member of the class and the plaintiffs in *Nicole P*. are presently in settlement negotiations with DCFS. Thus, we limit our review to whether defendants erred in denying plaintiff's petition to expunge the indicated finding of neglect due to death by neglect (Allegation No. 51) and whether defendants violated plaintiff's due process rights by failing to issue a final agency decision in a timely manner.

¶ 47 "It is well settled that courts should avoid constitutional questions when a case may be decided on other grounds." *People v. Alcozer*, 241 Ill. 2d 248, 253, 948 N.E.2d 70, 74 (2011). Accordingly, we first address plaintiff's assertion that defendants' decision to deny plaintiff's request for expungement was clear error.

¶ 48 A. Standard of Review

¶ 49 In administrative cases, this court reviews the decision of the administrative agency and not the determination of the circuit court. *Walk v. Department of Children & Family Services*, 399 Ill. App. 3d 1174, 1181, 926 N.E.2d 773, 779 (2010). The appropriate standard of review depends on whether the question presented is one of law, one of fact, or a mixed question of law and fact. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210, 886 N.E.2d 1011, 1018 (2008).

¶ 50 The agency's interpretation of its own regulations or a statute is a question of law. *Cinkus*, 228 Ill. 2d at 210. We review *de novo* an agency's decision on a question of law. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532, 870 N.E.2d 273, 293 (2006). In such cases, the agency's decision is not binding upon the reviewing court; rather, our review is independent and not deferential. *Cinkus*, 228 Ill. 2d at 210. However, the agency's

interpretation of its own rules and regulations enjoys a presumption of validity. *Walk*, 399 Ill. App. 3d at 1181.

¶ 51 "Review of purely factual findings made by an administrative agency is conducted under a manifest-weight-of-the-evidence standard." *Walk*, 399 Ill. App. 3d at 1186. Under this standard, we may not substitute our judgment for that of the agency and do not reweigh the evidence or make an independent determination of the facts; rather, the proper inquiry is whether the opposite conclusion was clearly evident. *Walk*, 399 Ill. App. 3d at 1181. We will not reverse the agency's decision merely because we would have come to a different conclusion. *Walk*, 399 Ill. App. 3d at 1186-87. Instead, " 'If there is evidence in the record supporting the administrative agency's decision, it should be affirmed.' " *Walk*, 399 Ill. App. 3d at 1187 (quoting *MJ Ontario, Inc. v. Daley*, 371 Ill. App. 3d 140, 145, 861 N.E.2d 1161, 1166 (2007)).

¶ 52 When the agency decision presents a mixed question of law and fact, our inquiry is whether the administrative decision was clearly erroneous. *Walk*, 399 Ill. App. 3d at 1187. A mixed question of law and fact is presented when the dispute concerns the legal effect of a given set of facts. *Cinkus*, 228 Ill. 2d at 211. A decision is clearly erroneous when the reviewing court is left with the definite and firm conviction a mistake has been made. *Cinkus*, 228 Ill. 2d at 211.

¶ 53 B. Abused and Neglected Child Reporting Act

¶ 54 The Abused and Neglected Child Reporting Act (Child Reporting Act) (325 ILCS 5/1 to 11.8 (West 2014)) requires DCFS to maintain a central register of suspected child abuse or neglect cases that are reported as required by the statute. 325 ILCS 5/7 (West 2014). When DCFS receives a report of possible abuse or neglect, it conducts an investigation to determine whether the report is "indicated," "unfounded," or "undetermined." 325 ILCS 5/7.12 (West

2014). A report is deemed "indicated" where the investigation establishes "credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2014). "Credible evidence" of child neglect is present when “the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected." 89 Ill. Adm. Code 300.20 (2014).

¶ 55 Once an indicated finding is entered into the central register, the subject of the report "may request [DCFS] to amend the record or remove the record of the report from the register." 325 ILCS 5/7.16 (West 2014). The subject of the report is entitled "to a hearing within [DCFS] to determine whether the record of the report should be amended or removed on the grounds that it is inaccurate." 325 ILCS 5/7.16 (West 2014). At this hearing, DCFS must show a preponderance of the evidence supports the indicated finding. 89 Ill. Adm. Code 336.100(e)(2) (2014). Following this hearing, the Director receives the ALJ's recommendation and decides whether to accept, reject, amend, or remand the ALJ's recommendation. 89 Ill. Adm. Code 336.220(a) (2014). The Director's decision then becomes the final administrative decision for purposes of review. 89 Ill. Adm. Code 336.220(a) (2014).

¶ 56 Section 3 of the Child Reporting Act defines "neglected child," in relevant part, as any child "who is subjected to an environment which is injurious insofar as (i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare and (ii) the likely harm is the result of a blatant disregard of parent *** responsibilities." 325 ILCS 5/3 (West 2014). " 'Blatant disregard' means an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm." 325 ILCS 5/3 (West 2014).

¶ 57 DCFS has promulgated appendix B, which describes specific incidents of harm "alleged to have been caused by the acts or omissions" of a parent or caretaker sufficient to trigger an investigation of reported child neglect. 89 Ill. Adm. Code 300.Appendix B (2014). The allegations focus on the harm or the risk of harm to the child. 89 Ill. Adm. Code 300.Appendix B (2014). In this case, the Director denied plaintiff's request for expungement, finding plaintiff "caused K.T.'s death by neglect," which satisfied Allegation No. 51. See 89 Ill. Adm. Code 300.Appendix B (Allegation No. 51) (2014).

¶ 58 C. Neglect Finding

¶ 59 In challenging defendants' denial of her expungement request, plaintiff points to "the erroneous assertion that plaintiff did not see or hear [K.T.] for 30 minutes before beginning to look for her." Plaintiff also argues no evidence supported she was aware the pool was unsecured on June 16, 2015. In raising these arguments, plaintiff asks this court to substitute our judgment for that of the trier of fact by reweighing the evidence and drawing our own conclusion as to the credibility of the witnesses. That is not the function of this court, however, as it is the province of the administrative agency to determine the credibility of witnesses and resolve conflicts in the evidence. See *Marconi*, 225 Ill. 2d at 540. The findings and conclusions of an administrative agency on questions of fact are held to be *prima facie* true and correct and will not be disturbed on review unless they are against the manifest weight of the evidence. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 50, 72 N.E.3d 288. Factual determinations are against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Beggs*, 2016 IL 120236, ¶ 50.

¶ 60 Here, the ALJ found "no dispute that the pool was left unsecured." The evidence showed the pool was setup so close to a privacy fence that the pool's built-in safety feature of the

retractable ladder could not be used because the act of swinging up the ladder was blocked by the privacy fence. Plaintiff testified she used a tall piece of plywood and bungee cord to secure the steps and prevent entry into the pool. However, plaintiff used the plywood and bungee cord only "if any of the neighborhood children were to come into the backyard" and not when her own children were in the backyard. Plaintiff did not secure the steps with the plywood and bungee cord on June 15, 2016, as she testified when she found K.T. in the swimming pool, she immediately jumped in the pool. In further support for the ALJ's finding the pool was left unsecured, a neighbor witnessed plaintiff run out of the back door from his kitchen window. Plaintiff ran to the pool and pulled K.T. out of the pool. Plaintiff did not remove plywood and a bungee cord from the stairs before entering the pool.

¶ 61 Although plaintiff admits "it was clear to everyone involved that the pool was not secured" on September 16, 2015, she asserts there was no evidence *she* failed to secure the pool "that day or the day before or any other day." Plaintiff did not testify she secured the pool on September 16, 2015, or that she had secured the pool the day before. The record shows plaintiff used the plywood and bungee cord to secure the steps when neighborhood children played in the backyard. Specifically, she testified she secured the steps "[e]specially if any of the neighborhood children were to come into the backyard, we would use that. And other than that, you know, that was the main time when people I didn't know, younger people that I wasn't familiar with were in the backyard."

¶ 62 The neighborhood children did not play in plaintiff's backyard on September 16, 2015. Plaintiff and the children celebrated N.T.'s birthday inside on the morning of September 16, 2015, took lunch to Behnke, and went for a long afternoon walk. After the walk, plaintiff

took photographs in the backyard. There were no neighborhood children playing in the backyard.

¶ 63 Further, plaintiff admitted the plywood and bungee cord did not appear in the photographs taken of the backyard on September 16, 2015. Plaintiff testified "[i]f we removed it, you know, I might set it sort of wherever in the yard. There wasn't a specific home for the plywood ***." The record is clear plaintiff controlled the use of the plywood and bungee cord, including on September 16, 2015. She determined those circumstances that required the pool be secured and those that did not.

¶ 64 Based on the evidence presented, the ALJ reasonably found K.T. "simply too young to understand the dangers of the pool [and], given her young age, it was not reasonable to expect her to always do as she was told."

¶ 65 In her written recommendation, the ALJ also acknowledged plaintiff denied leaving K.T. unattended for 30 minutes before beginning to look for her. However, the ALJ credited the testimony of Rosario (the first on-duty officer to arrive at the home) and Curry. Rosario testified he asked plaintiff "about how much time did she think it was." Plaintiff told Rosario "it might have been 20 to 30 minutes." Rosario acknowledged he was unable to determine whether plaintiff meant 20 to 30 minutes before she started to look for K.T. or whether she had looked for her for that period of time. Curry testified when he interviewed plaintiff on June 16, 2015, plaintiff said "she wasn't sure of the exact time frame *** the 30 minutes [stated] in the [child-abuse-and-neglect hotline] report. She said it could have been a half hour, but she wasn't exactly sure. It was about 30 minutes *** that she had not seen [K.T.] and *at that point* went to try and find her to see if she was somewhere in the house." (Emphasis added.)

¶ 66 The ALJ made her findings of fact after receiving all the evidence and observing the witnesses. " 'Conflicts in witness testimony do not constitute a sufficient reason to reverse an administrative agency's decision, since the agency's responsibility is to resolve the conflicting evidence. ' " *Orsa v. Police Board*, 2016 IL App (1st) 121709, ¶ 47, 63 N.E.3d 912 (quoting *Collura v. Board of Police Commissioners*, 135 Ill. App. 3d 827, 839, 482 N.E.2d 143, 150 (1985)). We find defendants' factual findings were not against the manifest weight of the evidence. Thus, we do not reverse the decision to deny plaintiff's request for expungement on this basis.

¶ 67 D. Due Process

¶ 68 We next address plaintiff's argument defendants violated her right to due process by failing to issue a final administrative decision within 90 days of her written request for appeal. The private interest affected by the Director's final administrative decision to deny plaintiff's request for an expungement is her interest in present or future employment as a registered nurse. See *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 273-74, 807 N.E.2d 423, 431 (2004) (holding damage to one's reputation alone is insufficient to claim deprivation of a due process liberty interest, but stigma plus the loss of present or future employment is sufficient.)

¶ 69 Following the investigation of K.T.'s death, and in a letter dated September 14, 2015, defendants notified plaintiff it had determined the report of child abuse and neglect was indicated for "51-Death by Neglect" and "74-Inadequate Supervision." The letter further informed plaintiff "the indicated finding will be maintained on the State Central Register for fifty (50) years, unless you are successful in an administrative appeal." Defendants attached to the notice "a letter that you can use to request an administrative appeal ***." On September 30,

2015, defendants received plaintiff's request for a "regular appeal (90 days)" of the indicated findings. Section 336.20 of Title 89 of the Administrative Code defines a "regular appeal" as:

> "an appeal that may be requested by a child care worker or any other person for whom the Department has determined that an allegation of child abuse and/or neglect is indicated. Regular appeals require that the Director issue a final administrative decision within 90 days after receipt by the Department's Administrative Hearings Unit of a written request for the appeal. The 90 day time period excludes any time attributable to an appellant's request for a continuance or to any continuance or date set by the agreement of the parties." 89 Ill. Adm. Code 336.20 (2014).

¶ 70 In a letter dated October 6, 2015, defendants advised plaintiff of a prehearing conference, by telephone conference call, scheduled for October 26, 2015. See 89 Ill. Adm. Code 336.20 (2014) (" 'Appeal process' means the prehearing conference and formal administrative hearing."). On October 26, 2015, the ALJ, counsel for plaintiff, and counsel for defendants participated in the prehearing conference. The ALJ confirmed plaintiff had "not been charged with anything" and encouraged the exchange of witness lists and exhibits between counsel for plaintiff and counsel for defendants.

¶ 71 The ALJ next referenced a script "having to do with the timing of the hearing itself." Defendants required the "script" be read by the ALJ if "you haven't done one of these recently" or "basically for *pro se* appellants." Plaintiff declined the reading of the "script" stating, "No, I understand the 90 [days] and we want to stick fast to it." The following colloquy ensued:

"ALJ: Okay. Then in that case what time – when would you like to – in a perfect world what time frame would you like this scheduled?

MR. YOUNG [Plaintiff's counsel]: I assume we are going to – most likely, I will assume the first couple of weeks in December.

ALJ: Okay. [Mr. Davlantis] [Defense counsel], what do you got [*sic*]?

MR. DAVLANTIS: Let me get there. I know I have openings. I have December 3rd that's my first open in December. Were we looking for two in a row or –

ALJ: That would be ideal. Let's try for it.

MR. YOUNG: I have the 3rd and 4th open.

ALJ: Unfortunately, I'm scheduled for both those days.

MR. DAVLANTIS: For two in a row I have got 17 and 18.

ALJ: That I can do.

MR. DAVLANTIS: Of December?

MR. YOUNG: I can, too, or the 10th and 11th.

MR. DAVLANTIS: Let me look at that and see if I have got – I am supposed to be in the [*sic*] hearing in the morning on the 10th. But I have the afternoon of the 10th and the full day on the 11th, I don't know – but that's not going to work, though.

ALJ: I can do either option, Mr. Young, your choice.

MR. YOUNG: I would prefer to start on the 10th. I mean, probably we can get it done in a day and a half, I would think, if we can start in the afternoon of the 10th and the 11th."

ALJ: Okay.

MR. YOUNG: We can get that done."

¶ 72 The hearing began on December 10, 2015, and concluded on December 11, 2015. On January 6, 2016, the ALJ issued a recommended decision upholding defendants' indicated findings. On January 21, 2016, the Director adopted the ALJ's recommended finding as his final administrative decision, 113 days after defendants' receipt of plaintiff's written request for an appeal.

¶ 73 "Procedural due process claims question the constitutionality of the procedures used to deny a person's life, liberty, or property." *Lyon*, 209 Ill. 2d at 271. "It is a well-established constitutional principle that every citizen has the right to pursue a trade, occupation, business or profession. This inalienable right constitutes both a property and liberty interest entitled to the protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions." *Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton*, 105 Ill. 2d 389, 397, 475 N.E.2d 536, 540 (1985). "Generally, the State must act reasonably before depriving a person of an interest protected by the due process clause." *Lyon*, 209 Ill. 2d at 272, 807 N.E.2d at 431. We review *de novo* defendant's claim of the denial of due process. *Lyon*, 209 Ill. 2d at 271, 807 N.E.2d at 430.

¶ 74 Section 336.220(a)(2) of Title 89 of the Administrative Code provides, in relevant part:

> "The Director of the Department shall receive the Administrative Law Judge's recommended decision 90 days after receipt of a timely and sufficient request for an appeal, unless extended by action of the appellant or a stay pending a final judicial decision of a criminal or juvenile court proceeding based upon the same set of facts. Within the same 90 day period, the Director shall receive and accept, reject, amend or return to the Administrative Hearings Unit for further

> proceedings the Administrative Law Judge's recommendation. The 90 day time period may be extended by the actions of the appellant. The Director's decision is the final administrative decision of the Department. 89 Ill. Adm. Code 336.220(a)(2) (2014).

¶ 75 Defendants received plaintiff's request for a "regular appeal (90 days)" on September 30, 2015. The Director issued his final decision on January 21, 2016, or 113 days later. Plaintiff argues defendants violated her right to due process by failing to issue a final administrative decision within 90 days of her written request for appeal. Defendants argue the 90-day time period was extended by plaintiff's actions where plaintiff declined the reading of the "script" offered at the prehearing conference, and thus, did not understand "the rules governing selection of the hearing date." Defendants argue further plaintiff's actions extended the 90-day time period where plaintiff requested the hearing be set "the first couple of weeks in December." Defendants further assert the 23-day delay in issuing the final administrative decision was "neglible" and plaintiff did not suffer harm.

¶ 76 The regulations at issue in this case derive from Part 336 of Title 89 of the Administrative Code (89 Ill. Adm. Code 336 (2014)), which governs appeals of child abuse and neglect investigation findings. "Administrative regulations have the force and effect of law," and thus courts interpret them with the same canons as statutes. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 38, 998 N.E.2d 1227. Our supreme court has explained statutory construction as follows:

> "When interpreting a statute, the primary objective is to give effect to the legislature's intent, which is best indicated by the plain and ordinary language of the statute itself. [Citation.] Words should be given their plain and obvious

> meaning unless the legislative act changes that meaning. [Citation.] In giving meaning to the words and clauses of a statute, no part should be rendered superfluous. [Citation.] Statutory provisions should be read in concert and harmonized." *Hartney Fuel Oil Co.*, 2013 IL 115130, ¶ 25.

Additionally, "an agency's interpretation of its regulations and enabling statute are 'entitled to substantial weight and deference,' given that 'agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent.' " *Hartney Fuel Oil Co.*, 2013 IL 115130, ¶ 16 (quoting *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 387 n. 9, 925 N.E.2d 1131 (2010)).

¶ 77 Section 336.110 of Title 89 of the Administrative Code (89 Ill. Adm. Code 336.110(a) (2014)) addresses the administrative hearing and prehearing conference. It specifically enumerates many of the responsibilities of the "Chief" ALJ in the appeals process. Relevant to the instant appeal, section 336.110(a)(4) requires the "Chief" ALJ to "provide a written notice to the parties within 10 calendar days after the receipt of a sufficient request for an administrative hearing, *which shall contain* *** the date and time of the pre-hearing conference" *and* "the date, time, place and nature of the hearing." (Emphasis added.) 89 Ill. Adm. Code 336.110(a)(4) (2014). Further, section 336.110(a)(2) of Title 89 of the Administrative Code (89 Ill. Adm. Code 336.110(a)(2) (2014)), provides the "Chief" ALJ with detailed guidelines as to the setting of the prehearing conference date and administrative hearing date, directing that "in the absence of a pending criminal or juvenile court action or an agreement of the parties, schedule a pre-hearing conference at least 15 days before the first hearing date and a hearing at a date within 70 calendar days after the date of receipt of the appellant's request for an administrative hearing." Finally, in scheduling an administrative hearing, the "Chief" ALJ is to

"ensure that the *** hearing is scheduled at a time and place reasonably convenient for all parties." 89 Ill. Adm. Code 336.110(a)(3) (2014).

¶ 78 In the instant case, plaintiff completed the request for administrative appeal provided to her by defendants. Defendants' administrative hearing unit received plaintiff's request on September 30, 2015. In a written notice to plaintiff dated October 6, 2015, the administrative hearing unit advised plaintiff of a prehearing conference, by telephone conference call, scheduled for October 26, 2015, at 11 a.m. However, the written notice did not provide "the date, time, place and nature of the hearing" as required by section 336.110(a)(4) of Title 89 of the Administrative Code (89 Ill. Adm. Code 336.110(a)(4) (2014)). Here, the "Chief" ALJ did not provide written notice to plaintiff of "the date, time, place and nature of the hearing" in violation of regulatory requirements. Because defendants failed to strictly comply with the applicable regulatory requirements, causing a delay in the resolution of the appeal process, defendants violated plaintiff's due process rights. See *Lyon*, 209 Ill. 2d at 283, 807 N.E.2d at 437 ("[W]e require strict statutory and regulatory compliance [] if the Department uses the credible-evidence standard to indicate a report and to consider [an appeal]").

¶ 79 Defendants assert "[t]he ALJ did not specify [at the prehearing conference] her first available date because plaintiff declined to hear the 'script' and rather asked for the hearing to be held 'the first couple of weeks in December' 2015." Thus, according to defendants, "any ambiguity about the ALJ's first available date should [] be construed against [plaintiff]." However, section 336.110(a)(4) of Title 89 of the Administrative Code (89 Ill. Adm. Code 336.110(a)(4) (2014)), applies to the "Chief" ALJ's duties *before the prehearing conference* as it requires the "Chief" ALJ to provide written notice of both the prehearing conference date and the administrative hearing date.

¶ 80 In this case, there were no pending criminal or juvenile court actions and no agreement by the parties before the "Chief" ALJ was required to execute his/her responsibilities under sections 336.110(a)(2), (a)(3), and (a)(4) of Title 89 of the Administrative Code (89 Ill. Adm. Code 336.110(a)(2), (a)(3), (a)(4) (2014)). The "Chief" ALJ was required to establish a prehearing conference date *and* an administrative hearing date and provide plaintiff written notice of those dates. Although defendants provided written notice to plaintiff on October 6, 2015, the notice provided only a prehearing conference date and not an administrative hearing date. Thus, defendants failed to comply with sections 336.110(a)(2), (a)(3), and (a)(4) of Title 89 of the Administrative Code (89 Ill. Adm. Code 336.110(a)(2), (a)(3), (a)(4) (2014)).

¶ 81 Applying the principles of *Lyon* to the case at bar, we conclude defendants violated plaintiff's right to due process by issuing its final administrative decision 113 days after defendants' receipt of plaintiff's written request for an appeal. Defendants were obligated to strictly comply with the regulations governing the appeal process. Thus, we reverse the circuit court's order finding defendants' final administrative decision was timely issued and order the expungement of the indicated report against plaintiff from the State Central Register on this basis.

¶ 82 III. CONCLUSION

¶ 83 For the reasons stated, we reverse the judgment of the circuit court and order expungement as stated.

¶ 84 Reversed; expungement ordered.