

**INVESTIGATION MEMORANDUM**  
**Department of Human Services, Division of Licensing**  
**Public Information**

*Minnesota Statutes, section 626.556, subdivision 1, states, "The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse."*

**Report Number:** 20074188

**Date Issued:** August 12, 2008

**Name and Address of Facility Investigated:**

ABC Montessori School  
10801 Normandale Blvd  
Bloomington MN 55437

**Disposition:** Allegation 1: No determination  
Allegation 2: Maltreatment  
Determined

**Program License Number:** 800022

**Rule and/or Statute under which Facility is Licensed:** 3

**Investigator(s):**

Melanie Daniel  
Division of Licensing  
Minnesota Department of Human Services  
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**Suspected Maltreatment Reported:**

Allegation 1: It was alleged that a staff person (SP1) inappropriately touched an alleged victim (AV1) on the upper thigh and had inappropriate relationships with children.

Allegation 2: It was alleged that a staff person (SP2) was verbally abusive toward the children and handled the children in a rough manner which included grabbing children by the arms.

**Date of Incident(s):** Ongoing prior to November 7, 2007

**Nature of Alleged Maltreatment Pursuant to Minnesota Statutes, section 626.556, subdivision 2, paragraph (d), (g), and (n):**

"Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse includes threatened sexual abuse.

"Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means.

"Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury.

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**Investigation Procedure:**

**Site visit:** This investigator and a Department of Human Services licensor conducted an unannounced site visit on November 20, 2007.

**Interviews:** Interviews were conducted with the following persons from November 14, 2007, through December 6, 2007:

- SP1
- SP2
- Seven staff persons (P1-7)
- Four children who attended the facility (AV4 and AV10-12)
- A family member (FM1) of a child (AV8) who attended the facility
- A family member (FM2) of AV10-12
- A community person (CP) who was associated with the association/curriculum used by the private school program

**Documents reviewed included:**

- A typed letter from FM1 to SP2 dated March 22, 2007
- A Memo to all staff, undated and titled *Prohibited Actions/Unacceptable Behavior Guidelines- Policies and Procedures for staff.*
- Personnel files including training records

**Pertinent Information/Summary of Findings:**

The facility operates a private school. The private school consists of a preschool program, an elementary school, and before/after school childcare. The preschool program and the before/after school childcare are licensed as a childcare program by the Minnesota Department of Human Services. Therefore, the Division of Licensing has jurisdiction regarding the preschool and before/after school childcare. The elementary school is not required to be licensed because it is a private school program. Therefore, no state agency or county child protection services has jurisdiction. Any incidents in the elementary school are the jurisdiction of law enforcement.

SP1's work was primarily with the elementary school but on occasion s/he worked in the after school childcare. SP2's work included work throughout the entire facility and all programs.

**Allegation 1:** *It was alleged that SP1 inappropriately touched AV1 on the upper thigh and had inappropriate relationships with children.*

AV1 attended the elementary school and the before/after school program.

The allegation that SP1 touched AV1 on the upper thigh was consistently described as occurring in the elementary school at the facility and was also investigated by law enforcement. Although law enforcement did not determine that a crime had been committed, the allegation might have met the definition of maltreatment. However, because the elementary school is not within the jurisdiction of the Department of Human Services, any other state agency, or any county agency, no determination was made.

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Allegation 2: *It was alleged that SP2 was verbally abusive toward the children and handled the children in a rough manner which included grabbing children by the arms.*

P6, three elementary school children (AV10-12), and a family member (FM2) of AV10-12 all provided information regarding SP2's interactions with children. Although some school age children attended the before/after school program which is licensed by the Department of Human Services, it was not determined when the incidents provided by P6, AV10-12, and FM2 occurred. Therefore, no determination will be made regarding these incidents.

AV4 was approximately four and a half years old at the time of the incident and attended the preschool program. During his/her interview, AV4 stated that SP2 "always put me in [his/her] office" because AV4 was "naughty." AV4 stated that "naughty" was when s/he was "climbing and laughing and crying and grumpy and sleepy and sneezy . . ." When asked if SP2 touched AV4 on the arms, AV4 replied, "Yeah," and "[S/he] squeezed my arms." AV4 stated that the squeezing did not hurt.

A family member (FM1) of a child (AV8) who attended the facility in the preschool program, provided the following consistent information during his/her interview and in a typed letter to SP2:

- AV8 attended the facility for approximately two years.
- On one occasion AV8 told FM1, "I am never a good [boy/girl]." When FM1 asked who told AV8 that, AV8 gave the name of a staff person. AV8 also told FM1, "I always have trouble learning." When FM1 asked who told AV8 that, AV8 stated SP2. FM1 stated that s/he determined that while at the facility, AV8 was "being managed by fear."
- There were occasions when FM1 and AV8 interacted together in an attempt for FM1 to learn what went on during AV8's day while at the facility. During those interactions, AV8 demonstrated "a lot of anger" and used "belittling" and "talking down" towards FM1 such as, "You have trouble learning," "You are not using your brain," and you are "not intelligent."
- On one occasion when FM1 dropped AV8 off at the facility, AV8 was in the process of hanging up his/her coat when SP2 walked into the hallway with AV8. FM1 stated that SP2 "screamed" at AV8 and said, "That is not how we hang up our coats. Pick that up." AV8 "looked dejected and slumped and said to FM1, 'I love you and have a good day.'"

P2, a facility staff person, provided the following information:

- There was an occasion several years prior when SP2 was observed "manhandling" the children. Because parents observed SP2's behavior, several parents removed their children from the facility.
- P2 was told about an incident, by a parent, whose child (AV2) attended the preschool program. Another child used profanity while at school and when AV2 did not tell SP2 what was said, SP2 "pulled" AV2 out of the classroom and "scolded" AV2. P2 stated that AV2 was so "scared" that AV2 urinated in his/her pants. The parent told P2 not to say anything to SP2 about the incident, because SP2 would "take it out" on AV2. When P2 did speak to SP2 about the parent's concern regarding the incident, SP2 said, "Oh, well. They will get over it. They don't count."

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- On one occasion, P2 was sitting in the office when a staff person (P3) came into the office with an alleged victim (AV3) who attended the preschool program. AV3 was "sobbing" and could not catch his/her breath. P3 told AV3, "I am so sorry this happened. [SP2] is not to touch you like this. Tell your [family member]." P2 stated that while s/he did not see the incident on that day between SP2 and AV3, there were other occasions when P2 observed SP2 "grabbing" children by the arms and "dragging" them to a different location, either into or out of the classroom, and times when SP2 made a child sit down in a chair by the classroom door. When asked how often P2 observed SP2 grab children, P2 stated that it occurred "daily" and was a "regular occurrence."
- There was an occasion when a staff person (P4) told P2 that an alleged victim (AV4) sustained "red marks" as a result of SP2 grabbing AV4 when SP2 was upset with AV4.
- P2 observed occasions when SP2 physically manipulated a child's hand "forcing" the child to complete a project such as painting or drawing in a particular way. While manipulating the child's hand, SP2 "screamed" at the child.
- On occasions, P2 heard SP2 became upset with children and said, "Where is your brain?" "You can't think. What is wrong with you?" and "You are a baby. We don't cry."

P3, a facility staff person, provided the following information:

- Prior to working at the facility, P3 was told by parents whose children previously attended the facility that SP2 was "controlling" and that staff persons were not allowed to communicate with one another.
- P3 stated that when s/he first observed SP2's interactions with children, SP2 referred to his/her behavior as "classroom management." P3 said that the interactions caused P3 to have a "physical reaction." On more than one occasion, P3 observed SP2 "physically drag" children across the classroom "hard and fast" as though their arm was going to "pull out of socket." SP2 then "put them" into a chair in front of their work, "slammed down and pushed [their] head" into the work and said, "Do not get up!" SP2 also "pushed" and "yanked" children. One alleged victim (AV6) who attended the preschool program at first "cried and sobbed" but later "became immune" to SP2's behavior. P3 said that there were also occasions when AV6 got up from the table during lunch. When SP2 saw AV6 get up from the table, SP2 "shoved" AV6 down and said, "If you get up again, it will only be to clean up lunch. If you do it again, I will come in." P3 stated that s/he told AV6 to tell his/her family member about SP2's behavior and that it was "not okay" for SP2 to treat AV6 "that way." After the incident, SP2 said to P3, "I hope you don't mind me being firm." P3 responded, "Oh, I didn't know you called it that."
- P3 stated that s/he also observed incidents when SP2 "drug" AV2 and AV3. AV2's family member spoke to P3 regarding SP2's treatment of AV2. AV2's family member thought that SP2 was "too harsh" but was "afraid" to talk to SP2 because of possible "repercussions" for AV2. On one occasion involving AV3, SP2 told AV3 to leave the classroom. P3 took AV3 out of the classroom and into the office where P2 was present. While in the office P3 began crying because of the way that SP2 treated AV3 and P3 told AV3 that it was "not okay for [SP2] to do that" and that AV3 should tell his/her family member about the incident.
- There was an incident that occurred when children were "walking the line." P3 stated that walking the line was supposed to be a "spontaneous" activity where children learn "poise and concentration." At the facility, children were required to walk the line everyday at 11:30 a.m. When "walking on the line," music was played, there were "certain actions" that were to be done with each song. SP2 made children "keep their mouth shut" or they

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would get "in trouble" and be "shamed" in front of the other children by SP2. On November 14, 2007, SP2 "yanked" four children from walking on the line. SP2 "grabbed" one child and "pushed" the child to another location, then "grabbed" and "pushed" a second child, and then the remaining two children followed. The four children had to walk on a different line.

- P3 provided information consistent with the information provided by P2 regarding the incident between SP2 and AV2 which caused AV2 to urinate and regarding the incident with AV4 sustaining "red marks."
- P3 stated that SP2 dragged children "at least once" everyday and that if it did not occur in his/her classroom it occurred in another classroom. Because of SP2's interactions with children, the children were "scared to death" of SP2. One child told P3 that children did not need to listen to the staff persons and only needed to listen to SP2.
- There were "numerous" occasions when SP2 held children by the arms and would "shake" them when SP2 was upset. While holding and shaking the child, SP2 said things such as, "You can't do that. Put it away," "You don't do it right," or "Excuse me, you don't know what you are doing."
- P3 provided information consistent with the information provided by P2 regarding SP2 "manhandling" the children and parent's observations of the manhandling which subsequently led to the disenrollment of several children by the parents.

P4, a facility staff person, provided the following information:

- There were occasions when children were working on projects that if done "incorrectly" according to SP2 resulted in SP2 "ripping up" the child's work and throwing it away. SP2 would then tell the child, "That is not the proper way." P4 stated that SP2's tone of voice was "shaming" and was a "self-esteem blower for any child."
- There were occasions when SP2 took children out of the classroom when a child had done something incorrectly or was being disruptive. Because P4 was "curious" about what SP2 was doing, P4 "usually" went to the door and attempted to listen to what was taking place. There was an occasion when a child who was two and a half years old, returned to the classroom "crying."
- P4 stated that on a Monday in November 2007, an incident occurred between SP2 and AV4. P4 did not see the incident or what precipitated the incident, but SP2 took AV4 out of the classroom. At the time, P4 was busy with other children and was unable to go listen to the interaction between SP2 and AV4. When AV4 returned to the classroom, P4 saw that AV4 had "red marks" on his/her upper arms that lasted approximately 15 minutes. P4 asked AV4 if AV4 was "okay." AV4 told P4, "[SP2] squeezed me and almost broke my bones." P4 looked at AV4's arms to see if AV4 sustained any bruises but P4 did not see any bruises.
- P4 stated that s/he had not seen SP2 "grab" or "yank" on children's arms but had heard about incidents from other staff persons. P4 stated that SP2 "guided" children by the arms but not in a manner that s/he considered to be "rough."
- There were occasions when SP2 told children, "You are not smart," "You don't do good work," and "You are not being a good thinker." P4 stated that children appeared to be "scared" of SP2 because SP2 was "bullyish," "got into [the children's] faces," and talked to the children in a "firm voice."

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P5, a facility staff person, provided the following information:

- SP2's "methodology was based on fear of intimidation of staff, kids, and parents." Approximately one and a half weeks prior to P5's interview, P5 was in a facility hallway with a child. The child was changing his/her shoes and saw SP2 come into the facility. The child said, "I'm afraid of [SP2]." SP2 heard what the child said and "got into [the child's] face." SP2 said, "You should be. If [you are] afraid, then you will learn. Being scared is the only way to learn."
- When a child did not complete an activity in the way that SP2 expected it to be completed, SP2 "physically manipulated" the child or "grabbed" the child and directed them to a different area. P5 stated that on occasion, when physically manipulated, a child said "owe." When SP2 grabbed their arms there were times when the children would "rub" their arms. P5 stated that s/he had not seen any injuries, including red marks or bruises, on any child as a result of SP2's actions.
- P5 stated that the facility was just "short of a . . . concentration camp." On one occasion, while "walking the line," an alleged victim (AV9), who attended the preschool program, fell causing another child to fall and sustain an injury. SP2 "immediately" picked AV9 up, "shook" and "screamed, 'I am very upset with you.'" AV9 was "stoic" and "shocked" during the incident but did not cry.
- P5 stated that on one occasion an alleged victim (AV7) who attended the preschool program had to stay inside during recess. When P5 returned into the facility, AV7 was standing in a hallway "bawling uncontrollably and almost vomiting." P5 asked another staff person what was wrong with AV7 and the staff person told P5, "I don't know, [SP2] had [AV7]." Later in the day, P5 spoke to AV7. AV7 told P5, "I guess I wasn't listening." There were other occasions when P5 saw SP2 in an office with children who were "sobbing."

P7, a staff person, provided the following information:

- SP2 was "strict" with the children who attended the facility. When asked if P7 had concerns regarding SP2's interactions with children, P7 replied, "Yes." P7 stated that there were at least two occasions while outside with the children when children picked up rocks. SP2 "grabbed" the child who picked up the rocks and said, "What part can't you understand?" P7 stated that SP2 held onto the child's arms and turned them. After turning the child, SP2 touched the child's face by putting his/her hand on the child's chin and pushing the child's face up. SP2 then asked the child, "How many times to I have to tell you, you don't behave well?" The child did not respond to SP2 but looked at SP2 "very quiet." There were occasions when P7 saw SP2 grab and drag children by the arms when a child did not do as SP2 requested. When asked if s/he had observed SP2 "shake" children, P7 demonstrated on this investigator his/her observation of SP2's interactions with children. (This investigator stood with her back to P7. P7 put his/her hands on each of this investigator's arms and forcefully turned this investigator to face P7. P7 then replaced his/her hands on each of this investigator's arms and squeezed, shook, and lifted up in a firm manner.)
- On November 15, 2007, P7 was in the nap room at the facility when P7 heard someone "crying loudly." P7 opened the nap room door and saw SP2 touch and "push" a child into an office which was located across the hall from the nap room. P7 was unable to see who the child was.
- P7 stated that SP2 "yelled" at the children when they did not "behave well." When asked how SP2's interactions made P7 feel, P7 stated, "The first week it was hard for me to watch because I don't like it. But what am I going to do?"

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The CP, who was associated with the association/curriculum used by the private school program, stated that s/he had received ongoing "complaints" since 1998 regarding SP2's interactions with children. The CP stated that his/her documentation showed that SP2 "seemed" to be "abusive to children, physically or mentally." Documentation from 1998, showed that SP2 used "name calling, shaming, derogatory [language], and used language that threatened and [was] frightening" when working with children. In addition, SP2 "pulled and grabbed and picked kids up and dropped [them] onto the floor." SP2 also "shamed, mocked, and yelled" at the children.

SP2 provided the following information:

- SP2 stated that s/he did not believe s/he "shook" children but that s/he was "firm" with the children and was told s/he was "too strict."
- When asked about the incident when AV4 sustained red marks on his/her arms, SP2 replied, "I don't remember."
- When asked about the incident when AV2 urinated in his/her pants, SP2 stated that s/he was not aware of the incident.
- When asked about grabbing and dragging children, SP2 stated, "I don't grab. I hold the shoulders and say look at my eyes when I talk to you." SP2 also stated, "Not that I know of." SP2 stated that there were times when s/he held a child's hand while moving the child to a different location.
- When asked if children were afraid of SP2, SP2 replied, "I don't think so." SP2 denied "grabbing," "shaking," "dragging," "hitting," and "spanking" children.

The memo to all staff titled *Prohibited Actions/Unacceptable Behavior Guidelines- Policies and Procedures for staff* stated that staff persons were prohibited from actions including but not limited to "rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking." In addition, the memo prohibited staff persons from subjecting a child to emotional abuse including "name calling, ostracism, shaming, making derogatory remarks about the child or the child's family, and using language that threatens, humiliates or frightens the child."

Training records showed that SP2 was trained on "Assessing and Responding to Challenging Behavior," "Working with Challenging Children," and "Coping with the Difficult Child." There was no information that SP2 was trained on the *Reporting of Maltreatment of Minors Act*.

P2-4 provided the following information regarding training on the *Reporting of Maltreatment of Minors Act*:

- P2 stated that s/he received no training regarding the *Reporting of Maltreatment of Minors Act*.
- P3 stated that s/he received no training from the facility regarding interactions with children or the *Reporting of Maltreatment of Minors Act*.
- P4 stated that s/he received no training from the facility regarding interactions with children or the *Reporting of Maltreatment of Minors Act*. Because of P4's previous employment, P4 was aware of licensing rules and regulations, but P4 stated, "A lot of things we don't do."

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Minnesota Rules, part 9503.0055, subpart 1, item A, states that the facility must have and enforce behavior guidance policies and procedures that ensure that each child is provided with a positive model of acceptable behavior.

Minnesota Rules, part 9503.0055, subpart 3, item A, states that the license holder must have and enforce a policy that prohibits subjection of a child to corporal punishment. Corporal punishment includes, but is not limited to, rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking.

Minnesota Rules, part 9503.0055, subpart 3, item B, states that the license holder must have and enforce a policy that prohibits subjection of a child to emotional abuse. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, making derogatory remarks about the child or the child's family, and using language that threatens, humiliates, or frightens a child.

**Conclusion:**

A. Maltreatment:

Regarding verbal interactions:

P2 stated there were occasions when SP2 became upset with children and said, "Where is your brain?" "You can't think. What is wrong with you?" and "You are a baby. We don't cry." P4 stated that SP2 spoke in a "shaming" tone of voice and was a "self-esteem blower for a child." P4 also stated that SP2 also was "bullyish," "got into [the children's] faces," and talked to the children in a "firm voice," telling children, "You are not smart," "You don't do good work," and "You are not being a good thinker." P7 stated that SP2 "yelled" at children when they did not "behave well."

P3 stated that the children were "scared to death" of SP2. P5 stated that SP2's "methodology was based on fear of intimidation of staff, kids, and parents." On one occasion, a child saw SP2 come into the facility. The child said, "I am afraid of [SP2]." SP2 heard the child and "got into the child's face." SP2 then told the child, "You should be. If [you are] afraid, then you will learn. Being scared is the only way to learn." P4 said that children appeared to be "scared" of SP2.

FM1 was told by AV8 that SP2 told AV8 that AV8 "had troubles learning." FM1 stated that while AV8 attended the facility AV8 was told, "You have trouble learning," "You are not using your brain," and you are "not intelligent." There was one occasion when FM1 observed SP2 "scream" at AV8 when AV8 was not hanging up his/her coat as required by SP2.

Although SP2 stated that s/he did not believe that children were afraid of SP2, given the aforementioned incidents described by P2, P3, P4, and P7 which involved SP2's verbal interactions with children, there as a preponderance of the evidence that SP2's verbal interactions with children included name calling, shaming, making derogatory remarks, and using language that threatened, humiliated, or frightened children which was a violation of Minnesota Rules, part 9503.0055, subpart 1, item A and subpart 3, item B.



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Regarding incident with AV4:

AV4 stated that SP2 "squeezed" AV4's arms but that it did not hurt. P4 provided consistent information to P2, P3, and this investigator that on a Monday in November 2007, SP2 took AV4 out of the classroom. P4 stated that s/he was not aware of what precipitated SP2 and AV4 leaving the classroom. However, when AV4 returned into the classroom, P4 saw "red marks" on AV4's upper arms. When P4 asked AV4 if AV4 was "okay," AV4 told P4, "[SP2] squeezed me and almost broke my bones." P4 stated that the red marks lasted approximately 15 minutes.

When asked about the incident, SP2 stated, "I don't remember." Given that AV4 stated that SP2 "squeezed" AV4's arms and that P4 provided consistent information regarding AV4 sustaining red marks, there was a preponderance of the evidence that SP2 squeezed AV4's arms causing AV4 to sustain red marks. SP2's use of physical discipline with AV4 was a violation Minnesota Rules, part 9503.0055, subpart, 1, item A, and subpart 3, item A, and caused injury to AV4. It was determined that abuse occurred (any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means.)

Regarding physical interactions:

P2, P3, P5, and P7 each stated that SP2 "grabbed" and "dragged" children by the arms. P2 and P3 stated that it occurred on a "daily" basis. P3 stated that the actions appeared as though the child's arm was going to "pull out of socket." P3 also stated that SP2 "slammed down and pushed [the children's] heads" into the work and said, "Do not get up!" SP2 also "pushed," "yanked," and "shook" children. P5 stated that there were times when SP2 grabbed children by the arms and afterwards the child "rubbed" their arms.

P7 stated that there was one occasion when s/he heard someone "crying loudly" and observed SP2 touch and "push" a child into an office. Because P7 was unable to see who the child was it was not determined whether the child was enrolled in the preschool program or the private school program.

P2 and P5 each stated that there were also occasions when SP2 physically manipulated children's hands, "forcing" the child to complete a project. P2 said that while manipulating a child's hand, SP2 "screamed" at the child. P5 stated that on occasion when physically manipulated by SP2, a child said "owe."

The CP stated that s/he had received ongoing "complaints" since 1998 regarding SP2's interactions with children. The complaints involved physical and verbal interactions with children.

P4 stated that s/he had not seen SP2 "grab" or "yank" on children's arms but had heard about incidents from other staff persons. P4 stated that SP2 "guided" children by the arms but not in a manner that s/he considered to be "rough."

P2 and P3 provided consistent information that there was an occasion when SP2 "pulled" AV2 out of the classroom and "scolded" AV2. AV2 was "scared" and urinated in his/her pants. There was another occasion when SP2 "drug" or "grabbed" AV3 and asked P3 to remove AV3 from the classroom. When P3 took AV3 out of the classroom, P3 began crying and was upset by the way that SP2 treated AV3. When asked about the incident, SP2 stated that s/he was not aware of the incident.

P3 stated that AV6 first "cried and sobbed" as a result of SP2's interactions with AV6. However, later AV6 "became immune." On one occasion during an interaction with AV6, SP2 "shoved" AV6. After the incident, SP2 said to P3, "I hope you don't mind me being firm." P3 stated that on November 14, 2007, SP2 "yanked" four children from walking on the line. SP2 "grabbed" one child and "pushed" the child to another location, then

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"grabbed" and "pushed" a second child, and then the remaining two children followed. The four children had to walk on a different line.

P5 stated that on one occasion while walking on the line, AV9 fell causing another child to fall and sustain an injury. SP2 picked AV9 up and "shook" AV9 and "screamed, 'I am very upset with you.'" AV9 was "stoic" and "shocked" during the incident but did not cry. There was one occasion when AV7 was inside during recess. When P5 returned into the facility, AV7 was standing in a hallway "bawling uncontrollably and almost vomiting." P5 asked another staff person what was wrong with AV7 and the staff person told P5, "I don't know, [SP2] had [AV7]." Later AV7 told P5, "I guess I wasn't listening."

P4 stated that s/he had not observed SP2 "grab" or "yank" on children's arms but had heard about incidents from other staff persons. Although SP2 denied handling children in a physically forceful manner, including "grabbing" and "shaking," P2, P3, P5, and P7 each stated that they had observed SP2 engage in the aforementioned behavior. There was a preponderance of the evidence that SP2 handled children, including AV2, AV3, AV6, AV7, AV8, and AV9, in a physically forceful manner.

SP2 stated that s/he did not believe that s/he "shook" children but that s/he was "firm" with the children and was told s/he was "too strict." There were occasions when SP2 "held" a child's shoulders and said, "Look in my eyes when I talk to you." SP2 denied "grabbing," "shaking," "dragging," "hitting," or "spanking" children.

Given that P2, P3, P5, and P7 each described several incidents when SP2 engaged in physical interactions characterized as "grabbing," "shaking," "dragging," "slamming," "pushing," and "yanking," with children and that the CP stated that s/he had received ongoing "complaints" regarding SP2's physical interactions with children, there was a preponderance of the evidence that SP2 handled children in a physically forceful manner which was a violation of Minnesota Rules, part 9503.0055, subpart, 1, item A, and subpart 3, item A.

Although there was no information that SP2's actions resulted in injury to a child, SP2's repeated use of physical discipline with children were violations of Minnesota Rules, part 9503.0055, subpart, 1, item A and subpart 3, item A, and represented a substantial risk of physical injury to the children. It was determined that abuse occurred ("Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means. "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury.)

B. Responsibility pursuant to Minnesota Statutes, section 626.556, subdivision 10e, paragraph (i):

When determining whether the facility or individual is the responsible party, or whether both the facility and the individual are responsible for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

- (1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;
- (2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in

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the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

- (3) whether the facility or individual followed professional standards in exercising professional judgment.

SP2 had significant administrative and supervisory authority and discretion regarding the operation of the facility. Therefore, SP2 and the facility were responsible for the maltreatment.

C. Recurring and/or Serious Maltreatment:

The Division of Licensing is required to evaluate whether substantiated maltreatment by an individual meets the statutory criteria to be determined as "recurring or serious." Individuals determined to be responsible for recurring or serious maltreatment are disqualified from providing direct contact services. Minnesota Statutes, section 245C.02, subdivision 16, states:

"Recurring maltreatment" means more than one incident of maltreatment for which there is a preponderance of evidence that maltreatment occurred and that the subject was responsible for the maltreatment.

Minnesota Statutes, section 245C.02, subdivision 18, states:

"Serious maltreatment" means sexual abuse, maltreatment resulting in death, maltreatment resulting in serious injury which reasonably requires the care of a physician whether or not the care of a physician was sought, or abuse resulting in serious injury. For purposes of this definition, "care of a physician" is treatment received or ordered by a physician but does not include diagnostic testing, assessment, or observation. For purposes of this definition, "abuse resulting in serious injury" means: bruises, bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal injuries; head injuries with loss of consciousness; extensive second-degree or third-degree burns and other burns for which complications are present; extensive second-degree or third-degree frostbite and other frostbite for which complications are present; irreversible mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and objects that are harmful; near drowning; and heat exhaustion or sunstroke. Serious maltreatment includes neglect when it results in criminal sexual conduct against a child or vulnerable adult.

It was determined that the substantiated maltreatment for which SP2 was responsible was not "serious" maltreatment. Although AV4 sustained red marks on his/her arms, the red marks were transitory and did not meet the definition of a serious injury.

However, it was determined that the substantiated maltreatment for which SP2 was responsible was "recurring" maltreatment. SP2 was responsible for the single incident of maltreatment of AV4 and SP2's pattern of behavior constituted an additional incident of maltreatment.

SP2 was disqualified from providing direct contact services.

**Disposition:**

Maltreatment determined as to abuse by SP2.

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Pursuant to Minnesota Statutes, section 626.556, subdivision 10f, and subdivision 11c, all investigative data maintained in this report will be kept by the Department of Human Services for at least ten years after the date of the final entry in the report.

**Action Taken by Department of Human Services, Licensing Division:**

On December 20, 2007, for reasons unrelated to this report, SP1 was disqualified from a position allowing direct contact with, or access to, persons receiving services from facilities licensed by the Department of Human Services, the Department of Health, facilities serving children or youth licensed by the Department of Corrections, and unlicensed Personal Care Provider Organizations.

SP2 was disqualified from a position allowing direct contact with, or access to, persons receiving services from facilities licensed by the Department of Human Services, the Department of Health, facilities serving children or youth licensed by the Department of Corrections, and unlicensed Personal Care Provider Organizations.

On August 12, 2008, the facility's child care license was revoked as a result of the maltreatment determinations and numerous licensing violations.

The maltreatment determination, SP2's disqualification, and the revocation are each subject to appeal.

**Certification:**

The information collection procedures followed in this investigation were pursuant to Minnesota Statutes, section 626.556, subdivision 10, paragraphs (h), (i), and (j). All individuals that are subjects of data in this investigation have the right to obtain private data on themselves which was collected, created, or maintained by the Department of Human Services.