THE SEED, INC.
6900 West State Road 84
Ft. Lauderdale, Fla., 33317

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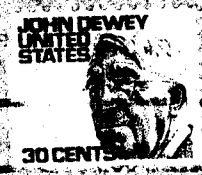

Via: ~~Certified & Special Delivery~~

AIR MAIL
SPECIAL DELIVERY

Confidential - To Be Opened By
Addressee Only

The Honorable Reubin O'D. Askew
Governor, State of Florida
The Capitol
Tallahassee, Florida, 32304

RETURN RECEIPT REQUESTED

CERTIFIED MAIL No. 279474

AIR MAIL
SPECIAL DELIVERY

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The Seed, Inc.

6900 west state road 84
fort lauderdale (davie), florida 33317
305/791-4900

Art Barker
president

April 8, 1975

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The Honorable Reubin O'D. Askew
Governor, State of Florida
The Capitol
Tallahassee, Florida, 32304

Dear Governor Askew:

For your information, please read the enclosed petition - THE SEED, INC. vs. BUREAU OF DRUG ABUSE PREVENTION, DIVISION OF MENTAL HEALTH OF THE DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES OF THE STATE OF FLORIDA, which outlines the problems that have arisen with reference to the licensing regulations of the State of Florida.

For any additional information you may need, please do not hesitate to contact this office.

Respectfully,

THE SEED, INC.

Shelly Barker

(Mrs.) Shelly Barker
Secretary-Treasurer

SB/jmr

Encl.

Via - Certified & Special Delivery

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BUREAU OF DRUG ABUSE PREVENTION
DIVISION OF MENTAL HEALTH
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES
STATE OF FLORIDA

THE SEED, INC.,

Petitioner

vs-

BUREAU OF DRUG ABUSE PREVENTION, DIVISION OF MENTAL HEALTH OF THE DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES OF THE STATE OF FLORIDA,

Respondent.

PETITION FOR HEARING PURSUANT TO FLORIDA STATUTE 120.56(2)

COMES NOW, THE SEED, INC., a non-profit organization of the State of Florida, by and through their undersigned attorney, and respectfully Petitions the Division Director of Mental Health, of the Department of Health and Rehabilitative Services of the State of Florida to assign a hearing officer appointed by the Department of Administration, Division of Administrative Hearings of the State of Florida, to conduct an administrative determination of the validity of Rule 10E-7 of the BUREAU OF DRUG ABUSE PREVENTION pursuant to Florida Statute 120.56(2) and said hearing to be conducted pursuant to Florida Statute 120.57, and for grounds says:

1. That THE SEED, INC. is a substantially affected person and is so affected by Rule 10E-7 that the BUREAU OF DRUG ABUSE PREVENTION intends to deny its application for a license renewal for the year 1975 because of alleged non compliance with specifically Rule 10E-7.07(2)(b). Attached see letter of Frank D. Nelson dated March 28, 1975.

2. That the Rule 10E-7 is an invalid exercise of validity delegated legislative authority, and/or that the Rule is an exercise of invalidity delegated legislative authority.

3. That the Rule making proceedings under Florida Statute 120.54 does not provide adequate opportunity to protect the Petitioner's interest as THE SEED, INC. asserts that their substantial interest will be effected in that their license

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will not be renewed by the State because of the illegal, invalid and/or unconstitutional Rule 10E-7, and only a proceedings under Florida Statute 120.57 will protect THE SEED, INC.'S interest.

4. That the DIVISION OF MENTAL HEALTH, BUREAU OF DRUG ABUSE PREVENTION OF THE DEPARTMENT OF HEALTH AND REHABILITATION SERVICES in adopting Rule 10E-7 failed and refused to accord THE SEED, INC. due process of law, and failed and refused to accord THE SEED, INC. their constitutional statutory and procedural rights and, in addition, failed and refused to accord THE SEED, INC. the purposes and objectives of the law pursuant to the Administrative Procedures Act, Florida Statute 120, Chapter 74-310 of the 1974 Regular Session of the Florida Legislature.

5. That in adopting the above mentioned Rule in the proceeding paragraph the Department, Division and/or Bureau violated the Florida Statutes, The Florida Constitution and the United States Constitution.

6. That Rule 10E-7 actually rewrites completely Chapter 397 of the Florida Statutes, and, therefore, is violative of Florida Statute 120.031. In addition, the above said Rule violates the provision of the following Florida Statutes, to-wit:

A) 120.011

B) 120.031

C) 120.041

D) 120.53

E) 120.54

F) 120.60

G) 397.091

H) 397.10

7. That THE SEED, INC. has been substantially affected by the adoption of Rule 10E-7 in that the Department, and/or Division and/or Bureau, prior to the passing of the above said Rule

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in no way notified THE SEED, INC. of the proposed Rule even though THE SEED, INC. is the only drug program in the State of Florida that would be known as a Day Care Center With Foster Home Components, and yet they wrote a Rule, specifically 10E-7.07(2)(b), that in effect destroyed a major component factor of the successful operation of THE SEED, INC.; and without any such notice to THE SEED, INC. they were denied due process of law and procedural fairness. Further, the SEED, INC. denies that it really has foster home components for its Day Center, and demands strict proof thereof. That THE SEED, INC. really uses only voluntary or interim homes for a short period of time, and/or half way homes and/or quarters for its clients.

Therefore, threatened denial of THE SEED, INC.'S license by the BUREAU OF DRUG ABUSE PREVENTION by letter of Mr. Frank D. Nelson is illegal, invalid and unconstitutional, and THE SEED, INC. should have been granted its 1975 license as it has fully complied with all laws, rules and regulations of the State of Florida, pursuant to Chapter 397.

8. That had THE SEED, INC. been notified of the proposed Rule 10E-7 and that a public hearing would be held to discuss such proposed Rule then THE SEED, INC. organization would have had its president, attorney, as well as numerous witnesses ready to testify that there is absolutely no need for the above said Rule, and that the said Rule would destroy the effectiveness and success of THE SEED, INC. Further, that THE SEED, INC. is the most successful drug rehabilitation program in the State of Florida, and by said Rule the State of Florida is completely interferring with a private non-profit organization whose only purpose is helping children, and in effect is throwing said organization out of the State of Florida. That Rule 10E-7 completely rewrites Chapter 397 of the Florida Statutes and only the legislature of the State of Florida can do the above, and that the Department and/or Division and/or Bureau, illegally and unconstitutionally passed said Rule. That had

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THE SEED, INC. been notified of the proposed Rule 10E-7 it would have offered further evidence in a public hearing that the said Rule would ruin THE SEED'S program; that the said Rule invades the confidentiality of Parents Home; that it constitutionally violates the privacy of the home of the parents; that the said home records that must be kept by THE SEED, INC. are to be made available to the Departmental staff, therefore giving them the right to go into any of these homes which is a constitutional violation; that the State is not pay the said home parents; and that the said home parents of THE SEED, INC. are carefully chosen by THE SEED, INC. and that their own children have been made straight by THE SEED, INC.; and that these home parents only want to help children by providing a place to sleep and transportation to and from THE SEED program. In addition, testimony would have been adduced in a public hearing, had one been held showing that THE SEED, INC. uses only middle class homes and personally knows the parents and children living in said home; that the said families clearly understand THE SEED program; that said families knew that their own children previously had been in an intermediate home; that the SEED, INC. only assigns children over night to homes that have Certificate of Occupancy previously approved by the city and/or county and/or state; further, had a public hearing been held testimony would have been adduced that THE SEED, INC. has no constitutional right to go into a persons home to inspect for fire and safety, sanitary conditions, etc., and, in addition, no appropriate standards were set by the specific Rule 10E-7 dealing with the inspection aspect that were made mandatory by said Rule 10E-7 of THE SEED, INC. Testimony would further have been illicited that the children are fed twice a day at THE SEED, INC.; that most of the children were either taken out of jail or had ripped off the community by stealing and also were involved in the use or abuse of drugs; further testimony would show that

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THE SEED, INC. closes every meeting with the say of the Lord's Prayer, and furtner encourages all its clients to go back to the family church after completing THE SEED Program. That with the above information no Advisory Board of Agency or Division or Department would have adopted Rule 10E-7, and THE SEED, INC. was prohibited from presenting the above information in addition to other information, by having no notice whatsoever of any meeting that would consider adopting Rule 10E-7.

9. That The BUREAU OF DRUG ABUSE PREVENTION illegally intends to deny THE SEED, INC. application for a license renewal when Chapter 397.091(1) of the Florida Statutes states that a license shall be renewed upon the filing of an application for such renewal on forms prescribed by the Department, and the said SEED, INC. filled out said license application and complied with statutory requirements for licensure, and only just before the time for licensure did the BUREAU advise THE SEED, INC. as to the brand new Rule 10E-7 and at no time prior thereto did THE SEED, INC. have any knowledge that the above said Rule existed.

10. That the said BUREAU OF DRUG ABUSE PREVENTION is in violation of Florida Statute 102.54(12) in that no agency has authority to establish penalties for violation of a Rule unless the legislature when establishing a penalty specifically provides that the penalty shall apply to Rules. Nowhere under Florida Statute 397 or any sections thereof has the legislature given the Bureau or Agency any authority to establish penalties for violation of a Rule but that the BUREAU OF DRUG ABUSE PREVENTION took upon itself to intend to deny THE SEED, INC. application for license renewal.

11. That the above Rule 10E-7 was never made available for public inspection, and, therefore, the Rule is invalid.

12. That the said Rule 10E-7 is arbitrary, unfair and without authority.

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13. That the said Rule 10E-7 is unduly restrictive and at odds with the legislative intent as stated in Florida Statute 397.10. The Florida Statute 397.19 states:

> It is the intent of the legislature to provide a meaningful alternative to criminal imprisonment for individuals capable of rehabilitation as useful citizens through techniques and programs not generally available in state or federal prison systems or programs operated by the division of youth services.
> Underlined by Pleader.

Relying on the words "meaningful alternative" and with THE SEED'S tremendous success rate qualifying it as a "meaningful alternative" then the Department was not fulfilling the legislative intent by its regulating a successful program to death.

14. That Rule 10E-7 is a denial of equal protection under the law in that the rules and regulations adopted thereunder do not apply equally to other drug programs and that THE SEED, INC. is selectively picked out by the Department and/or Bureau and/or Division, to have additional rules and regulations that no other drug program has to comply with, and, therefore, denies THE SEED, INC. due process as well as a denial of equal protection of the law, and therefore, should be held illegal and that Rule 10E-7 should be voided.

15. That Sheriff Edward J. Stack, Sheriff of Broward County, Florida who is Regional Council Chairman of the Department of Health and Rehabilitative Services recommended full licensing of THE SEED and thereby overruling the Regional Coordinator Phil Emenheiser of tha Bureau, and attached is his recommended report for licensure.

16. That as a complete defense to Rule 10E-7 and as an additional affirmative defense THE SEED, INC. says that another Division of the Department of Health and Rehabilitation , to-wit: Division of Youth Services, has publically pleaded for volunteer

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foster homes for children who should not be detained in the various detention centers, whose charges are not such that they warrant said detention, i.e., primarily family problems. That no licnese is needed for said volunteer family homes, and attached hereto and made a part hereof is a newspaper clipping from the Miami Herald, Broward Newspaper, Section BR of the Thursday, March 20, 1975 issue headlined "HOMES NEEDED FOR 87 YOUTHS".

17. THE SEED, INC. further alleges that where the rights of an individual are concerned, due process requires that they be given an opportunity to be heard, and that they be given a fair hearing by an impartial body.

WHEREFORE, THE SEED, INC. moves that an administrative determination of the validity of Rule 10E-7 be made and heard by an independent hearing officer pursuant to Florida Statute 120.56(2), and that the hearing be conducted pursuant to Florida Statute 120.57 and after said hearing that Rule 10E-7 be declared null and void.

DATED this 4th day of April, 1975.

Edward P. Swan

EDWARD P. SWAN
Attorney for Petitioner
19 W. Flagler Street
Miami, Florida 33130
305-3772726

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition For Hearing was mailed to Frank D. Nelson, Chief, Bureau of Drug Abuse Prevention, 1323 Winewood Blvd., Tallahassee, Florida 32301; O.J. Keller, Secretary, Department of Health and Rehabilitative Services, 1323 Winewood Blvd., Tallahassee Florida 32301, and Dr. Stewart N. Cahoon, Director, Division of Mental Health, 1323 Winewood Blvd., Tallahassee, Florida 32301, this 4th day of April, 1975.

Of Counsel

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DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES
DRUG ABUSE PROGRAM
RECOMMENDATION REPORT FOR LICENSURE

PROGRAM: THE SEED, INC. DATE: March 20, 1975
TYPE: Day Care With Foster Care Component
DIRECTOR: Art Barker ADDRESS: 6900 W. State Rd. 84
Ft. Lauderdale
Florida 33317

REGIONAL COORDINATOR — APPROVE ____ DISAPPROVE X — REGULAR X INTERIM ____

REMARKS AND/OR REASONS FOR INTERIM LICENSE: REASONS FOR DENIAL:
(1) Mr. Barker verbally demonstrated his unwillingness to comply with Section III, Paragraph (F) of the 1975 Rules and Regulation pertaining to Day Care With Foster Care Component, Mr. Barker stated that he could not comply with these requirements on the basis that it would jeopardize the principles of the program. When questioned as to whether or not he intended to make an effort to comply, Mr. Barker stated that he intended to oppose this requirement via legal process.

(2) The Seed did not submit completed fiscal forms required by the Bureau of Drug Abuse Prevention.

REGIONAL COUNCIL CHAIRMAN — APPROVE X DISAPPROVE ____

REMARKS:

See attached, page 2 hereof

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1. My disagreement with the Coordinator is based on my opinion that the rule-making power vested in the Bureau of Drug Abuse is improperly delegated to the program under the provisions of paragraph F, sub-paragraph 1(a), of the 1975 Rules and Regulations, in that no standards are set forth therein to control the program in complying with the provisions of said sub-paragraph other than general categories, such as "Fire Safety," "Sanitary Conditions," etc. In my opinion, the attempted delegation of rule-making authority, without appropriate standards, would render the attempted rule-making delegation void.

2. The Coordinator's decision is also based upon the program's failure to complete fiscal forms. Since the program did furnish the Coordinator with a certified statement of income and expenses, the failure to provide a balance sheet, in my opinion, is not an omission of such magnitude as would justify denial of a license.

For the reasons stated, I am recommending renewal of the license.

During the renewal period, the Bureau should, in my opinion, either adopt its own rules and regulations for foster homes or provide the programs with appropriate standards to permit programs to adopt rules and regulations.

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DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES
O. J. Keller, Secretary

STATE OF FLORIDA
Reubin O'D Askew, Governor

1323 WINEWOOD BOULEVARD • TALLAHASSEE, FLORIDA 32301
Stuart N. Cahoon, M. D., Director

March 28, 1975

Mr. Art Barker
Director
The Seed, Inc.
6900 West State Road 84
Ft. Lauderdale, Florida 33314

Re: Seed, Inc.'s Application for License Renewal

Dear Mr. Barker:

It is our understanding that you are not in compliance with the Rules and Regulations of the Bureau of Drug Abuse pertaining to the foster care component of your program, specifically Rule 10-B-7.07 (2) (b) of the Florida Administrative Code, in that you are not establishing and adhering to written standards for foster homes, executing responsibility agreements with the foster families, and inspecting and maintaining records on the foster homes utilized. Therefore, the Bureau intends to deny your application for a license renewal.

Within ten days from the receipt of this notice, you have the right to request in writing a fair hearing before this department pursuant to Chapter 397.092, Florida Statutes.

The Bureau will not proceed to deny your license until the above-mentioned ten-day period has lapsed without a hearing request. If you demand a fair hearing within the ten-day period, no determination on your application for renewal will be made until after the fair hearing.

At this time, pursuant to Chapter 397.091, Florida Statutes, you are being issued an interim license until a final disposition is made by the department on your application for renewal.

If you feel that you are in compliance with the abovementioned rule, please so inform us within the ten-day period.

After the fair hearing, judicial review, if necessary, may be pursued under Chapter 120.68, Florida Statutes, Chapter 74-310, Laws of Florida.

Sincerely,

Frank D. Nelson, Chief
Bureau of Drug Abuse Prevention

FDN:rs
cc: Hon. Herboth S. Ryder, Chairman, State Advisory Council on Drug Abuse

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cc: (continued from first page)

Mr. Ed Stack, Chairman, Region 10-A Advisory Council
Mr. Phil Emenheiser, Regional Coordinator, Region 10-A
Stuart N. Cahoon, M. D., Director, Division of Mental Health
Mr. O. J. Keller, Secretary, Department of Health & Rehabilitative Services
Mr. Ed Swan, Chairman, Seed Advisory Board
Mr. Eric Haugdahl, HRS Legal Council
Mr. Harry W. Moffett, Regional Coordinator Supervisor
Mr. Billy J. Harper, Licensing Coordinator

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LAW OFFICES
EDWARD P. SWAN
219 BISCAYNE BUILDING
19 WEST FLAGLER STREET
MIAMI, FLORIDA 33130

RECEIVED
GOVERNOR'S OFFICE
APR 9 2 37 PM '75

April 4, 1975

Mr. Frank D. Nelson, Chief
Bureau of Drug Abuse Prevention
1323 Winewood Blvd.
Tallahassee, Florida 32301

RE: The Seed, Inc., Application
For License Renewal 1975

Dear Mr. Nelson:

Pursuant to Florida Statute 397.092, a fair hearing is demanded by the licensee pursuant to your letter of March 28, 1975. Further, pursuant to Florida Statute 120.60 and Florida Statute 120.57, The Seed, Inc. demands that a hearing officer be appointed by the Department of Administration, Division of Administrative Hearings of the State of Florida, and a formal proceedings hearing be held under Florida Statute 120.57. In addition, The Seed, Inc. requests a copy of the procedures governing the above hearing pursuant to Florida Statute 120, Chapter 74-310. Also, please send to us forms for subpoenas and instructions for their issuance.

The Seed, Inc. is in compliance with Chapter 397 of the Florida Statutes and demands the issuance of their 1975 license pursuant to Florida Statutes 397.091(1), and the State of Florida is in error in denying the license to The Seed, Inc. The Seed, Inc. does not have a foster home component to its program, but in reality has a voluntary or interim residence for its clients, and thus the application filed by The Seed, Inc. fully complies with the license requirements of Chapter 397 of the Florida Statutes.

However, before a hearing date is set pursuant to the above first paragraph, demand is hereby made and a Petition is enclosed for an Administrative Hearing pursuant to Florida Statute 120.56(2), and said hearing to be conducted

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by a hearing officer appointed by the Department of Administration, Division of Administrative Hearings of the State of Florida, and said hearing to be conducted pursuant to Florida Statute 120.57(1). Further, The Seed, Inc. requests a copy of the procedures governing the hearing demanded in this paragraph pursuant to Florida Statute 120, and also forms for subpoenas and instructions for their issuance.

I would appreciate as the attorney for The Seed, Inc., that all further correspondence pertaining to this matter be directed to me with a copy going to my client, The Seed, Inc.

Thanking you in advance for your courtesies in this matter and setting for hearing the Petition which is attached pursuant to Florida Statute 120.56(2), I remain

Very truly yours,

EDWARD P. SWAN
Attorney for The Seed, Inc.
219 Biscayne Building
Miami, Florida 33130
305-377-2726

ART BARKER, President of
The Seed, Inc.

cc: Stewart N. Cahoon, M.D.
Mr. O.J. Keller

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#039
LICENSE NUMBER

This certifies that

THE SEED, INC.

6900 WEST STATE ROAD 84 FORT LAUDERDALE (DAVIE) FLORIDA 33317

has complied with the standards for DATE Centers established by the Department of Health and Rehabilitative Services pursuant to Florida Statutes Chapter 397 and is hereby licensed and approved to operate as a

NON-RESIDENTIAL TREATMENT CENTER - DAY CARE WITH FOSTER HOME COMPONENT

by the State of Florida for the dates MARCH 28, 1975 to

INTERIM LICENSE
Expires on
EFFECTIVE UNTIL FINAL DISPOSITION BY THE DEPARTMENT.

Stuart N. Cahoon, M.D.

STUART N. CAHOON, M.D., DIRECTOR
DIVISION OF MENTAL HEALTH

Frank D. Nelson

FRANK D. NELSON, CHIEF
BUREAU OF DRUG ABUSE PREVENTION

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Broward News
SECTION BR
The Miami Herald
Thursday, March 20, 1975

Homes Needed for 87 Youths

By COURTLAND MILLOY
Herald Staff Writer

Overcrowding at the Pompano Beach juvenile detention center is so severe that Broward families are being asked to provide temporary homes for noncriminal youths, a Division of Youth Services spokesman Wednesday.

First priority has been given to finding homes for 87 runaways and other youths considered criminal but in need of nonsupervision, the spokesman said.

"With the economy like it is, I really have to ask people to do this," said Janice Krieger, volunteer coordinator for Broward County. "But the kids just really need a home, some of the workers have said some children home," she said.

THE STATE FACILITY in Pompano Beach was designed for 32 youthful offenders, children in need of special supervision who sometimes end up there for lack of anywhere else to go.

Presently, 50 boys and eight girls are being detained at the center.

Homes are being sought for the children at the center who state officials agree shouldn't be there — runaways and those ousted from their homes — and youths with similar problems.

Youths in that category account for about 20 per cent of the 11,000 juveniles that pass through Broward's courts each year.

Around the state, beds for some 500 youths are needed in light of imminent service cutbacks during the coming fiscal year, apparent increases in the number of troubled teenagers and overcrowding in existing detention facilities, DYS deputy director Allan Ubanks said.

WITH POMPANO Beach the only state facility available in Broward County, inadequate volunteer response will mean only one thing.

"We have a provision for that kind of eventuality that I hope would rarely be used," Ubanks said. "To make room, some would be transferred to the county jail. And a child in jail is a terrible problem."

To avert transfers to the county jail, screening sessions are being held weekly to determine which juveniles are even remote candidates for release.

However, state officials said they were optimistic that volunteers will come through. "We did this experimentally in several northern counties and got something like 35 beds in each one. We expect the same in Broward," resource director Jeff Schemberia said.

"IN MOST CASES, it's just a matter of finding a runaway child a place to stay until we contact his parents. We prefer this as an alternative to detention," he said.

So far in Broward, two beds have been offered. "They were two of our friends," Krieger said. "They're just great people. We knew they'd do it."

Ellen Greenwald, a VISTA volunteer with DYS, said parents are asked to supervise the youths for three to 30 days. Volunteers can specify what kind of child they want and for how long, she said.

"They are children usually from seven to 17. They are runaways who usually have turned themselves in, saying they've had enough adventure and are waiting to go home," Miss Greenwald said.

"We have others and just no place for them, kids who were kicked out by their mothers because the kids were 'cramping the mother's style,'" she said.

Those interested in being volunteer parents can call 523-7311.

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