

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Cosne Dania Novas Cuevas,
Petitioner

Docket No. OC-26-0104

v.

Department of Early Education and Care,
Respondent

Appearances:

For Petitioner: Cosne Dania Novas Cuevas, pro se

For Respondent: Nicole Monroe, Esq.

Administrative Magistrate:

Judi Goldberg

SUMMARY OF DECISION

Petitioner appeals from respondent's decision that she is not suitable to hold a family childcare license. The undisputed facts relating to two altercations between petitioner and her teenage daughter result in the conclusion that petitioner has failed to provide clear and convincing evidence of her suitability as a childcare provider. Respondent's motion for summary decision is therefore granted, and respondent's finding of unsuitability is recommended to be affirmed.

ORDER GRANTING SUMMARY DECISION

In October 2025, petitioner Cosne Dania Novas Cuevas applied to renew her family childcare license. Respondent Department of Early Education and Care (EEC) conducted a background record check (BRC) to determine her suitability for such a license. 606 CMR 14.09, 14.12, 14.13. The BRC disclosed the presence of an arrest and criminal charges from an incident in July 2024. EEC was already aware of another arrest and criminal charges from March 2022; this incident also resulted in a supported finding of physical abuse by the Department of Children and Families (DCF).

As the result of the BRC, EEC determined that Ms. Cuevas is not suitable to hold a family childcare license. Ms. Cuevas timely appealed EEC's decision to the Division of Administrative Law Appeals (DALA). EEC then filed a motion for summary decision without an affidavit as permitted by 801 CMR 1.01(7)(h), which Ms. Cuevas opposed (Cuevas June 2026 submission). After a non-evidentiary hearing on EEC's motion, EEC filed a supplement to its motion that included unredacted copies of its investigation reports, police reports from both incidents, and the DCF investigation report. Ms. Cuevas provided a written response to the unredacted documents (Cuevas August 2026 submission).

Summary decision standard

Summary decision in administrative proceedings is appropriate when there are no genuine issues of material fact and the case may be decided as a matter of law. *See Jack King and Nat'l Refrigeration, Inc. v. Office of the Att'y Gen., Fair Lab. Div.*, LB-12-367 & LB-12-407, at *7 (Div. of Admin. L. App. Jan. 29, 2014); 801 CMR 1.01(7)(h). A fact is "material" only if it might affect the outcome of the case. *King, supra*. An issue of material fact is "genuine" only if a factfinder could reasonably resolve the dispute in favor of either party. *Id.*

The moving party, in this case EEC, must demonstrate the absence of any genuine issues of material fact. 801 CMR 1.01(7)(h). Any inferences must be drawn in the light most favorable to the opposing party, Ms. Cuevas. *Beatty v. NP Corp*, 31 Mass. App. Ct. 606, 607 (1991). For the reasons detailed below, EEC has established that there is no genuine issue of material fact. As a result, an evidentiary hearing "would be a meaningless exercise." *Kobrin v. Board of Reg. in Med.*, 444 Mass. 837, 846 (2005).

Undisputed facts

The following facts are undisputed.

1. Ms. Cuevas first held a childcare license in 2008. In 2021, she voluntarily closed her program during the pandemic. (Cuevas June submission.)

2. In 2022, Ms. Cuevas was 43 years old and her daughter was 17 years old. The March 2022 incident occurred when Ms. Cuevas was trying to enter a bathroom in her home where her daughter was taking a shower. Her daughter tried to close the door and caught Ms. Cuevas's arm in the door. According to Ms. Cuevas, she responded by hitting her daughter in the face with her hand. Her husband heard the fighting and told the daughter to call the police. (Cuevas June 2026 submission.)

3. The police arrested Ms. Cuevas for assault and battery and resisting arrest. The case was later dismissed for failure to prosecute. (EEC investigation report.)

4. A DCF investigation resulted in a supported finding of physical abuse. (EEC investigation report.)

5. In 2023, Ms. Cuevas applied to EEC for licensure as a family childcare provider. EEC reviewed the facts and circumstances relating to the March 2022 incident, noted that this appeared to be an isolated incident and was not part of a pattern of criminal conduct, and found Ms. Cuevas suitable to provide childcare. (EEC investigation report.)

6. On October 20, 2025, Ms. Cuevas applied to renew her family childcare license. EEC conducted a new BRC to determine her suitability. The BRC revealed a second incident that occurred in July 2024. (EEC investigation report.)

7. The July 2024 incident arose out of an altercation that Ms. Cuevas had with the same daughter, who was then over 18 years old. According to Ms. Cuevas, the July 2024 incident occurred in the daughter's bedroom when Ms. Cuevas attempted to take her daughter's phone away from her while she was talking on it. Ms. Cuevas's daughter lashed out at her and Ms. Cuevas slapped her in the face. (Cuevas June and August submissions.)

8. The conflict escalated and Ms. Cuevas and her daughter wound up on the floor. Ms. Cuevas was on top of her daughter holding her arms down.¹ Ms. Cuevas slapped her daughter in the face a second time while they were on the floor. Ultimately, her daughter again called the police. (Cuevas June and August submissions.)

9. Ms. Cuevas, then 45 years old, was arrested for assault and battery and assault and battery with a dangerous weapon (the floor). Both charges were dismissed for failure to prosecute. There was no DCF involvement as the daughter was then an adult. (EEC investigative report.)

10. At least some of Ms. Cuevas's minor children were present in the home during both incidents. (Cuevas June and August submissions.)

11. Ms. Cuevas explains that before these incidents, her daughter had been in a physical altercation with her friends, after which she had become emotionally withdrawn and rebellious. Ms. Cuevas believes that the altercation with her friends left her daughter confused and emotionally unwell. (Cuevas June and August submissions.)

¹ It is disputed whether Ms. Cuevas grabbed her daughter by the hair and forced her head down to the floor multiple times and whether the daughter bit Ms. Cuevas. There is no dispute that the two women wound up on the floor during the altercation with Ms. Cuevas on top of her daughter.

12. Ms. Cuevas also explains that in both instances she hit her daughter to get her daughter to respect her and because children should not hit their parents. (Cuevas June and August submissions.)

13. She describes herself as a person who wants the best for her children and as someone who is devoted to her family and to God. (Cuevas June submission.)

Analysis

EEC has the responsibility of granting or denying licenses to family daycare operators and employees. G.L. c. 15D, §§ 6-7. To that end, EEC runs BRCs on applicants. 606 CMR 14.08, 14.09. The BRC on Ms. Cuevas disclosed the DCF finding of physical abuse and information about the two criminal cases. The presence of the DCF finding and two criminal cases that did not result in a conviction create a “discretionary disqualification,” which means that Ms. Cuevas could not be eligible for licensure unless EEC finds her to be suitable after conducting a BRC. 606 CMR 14.04, 14.12(2).²

Under the BRC process, Ms. Cuevas is required to present “clear and convincing evidence demonstrating [her] suitability . . . in light of the concern for children’s safety.” *Id.* 14.13. The clear and convincing evidence standard is exacting: the “evidence must be sufficient to convey to a high degree of probability that the proposition is true The requisite proof must be strong and positive; it must be full, clear and decisive.” *Adoption of Iris*, 43 Mass. App. Ct. 95, 105 (1997) (internal citations and quotation marks omitted).

² Ms. Cuevas was subject to a discretionary disqualification because she had charges resulting in a non-conviction for criminal offenses listed in 606 CMR 14.18, Table B (including assault and battery and assault and battery with a dangerous weapon). 606 CMR 14.04 (defining discretionary disqualification).

In determining whether Ms. Cuevas furnished clear and convincing evidence of her suitability, EEC regulations require that a series of factors receive “due weight.” 606 CMR 14.13.³

Time since the incident(s). Ms. Cuevas applied to renew her family childcare license in October 2025, more than three years after the March 2022 incident and slightly more than one year after the July 2024 incident. The incidents occurred in the recent, not distant, past. The recency of the events weighs against Ms. Cuevas’s suitability.

Age of the candidate at the time of the incident(s). Ms. Cuevas was 43 and 45 years old at the time of the two incidents. Her conduct did not result from immaturity or inexperience. Her age weighs against her suitability.

Seriousness and specific circumstances surrounding the incident(s). Both incidents were serious. Both involved altercations during which Ms. Cuevas hit her daughter in the face with her hand; the second incident resulted in Ms. Cuevas striking her daughter in the face twice and the two women fighting on the floor. Both instances occurred while at least some, if not all, of Ms. Cuevas’s other minor children were in the home. Both incidents involved the police intervening and arresting Ms. Cuevas, although all the charges were later dismissed.

Ms. Cuevas explains that she hit her daughter to discipline her for being disrespectful. In Massachusetts, a parent has the right to physically discipline their child provided that the force used is reasonable, is reasonably related to the child’s welfare, and does not cause or create substantial physical harm or severe mental distress. *Commonwealth v. Dorvil*, 472 Mass. 1, 12-13

³ On appeal to DALA, a candidate’s application receives *de novo* review. See *Aguirre v. Department of Early Educ. & Care*, No. OC-24-0598, 2026 WL 446272, at *5 n.3 (Div. Admin. Law App. Feb. 6, 2026).

(2015) (finding parental privilege as defense to criminal liability). In the instant case, Ms. Cuevas's own description of both incidents paints a picture that goes well beyond a parent disciplining a child (and young adult daughter in the second incident). Rather, even viewing the evidence in the light most favorable to Ms. Cuevas, both incidents, and especially the second incident, appear to have involved two people engaging in physical altercations more than a parent reasonably disciplining her teenager. That some of Ms. Cuevas's minor children were in the house at the time of both incidents adds to the seriousness of the situations. This factor weighs against her.

Relationship of the incident(s) to the ability of the candidate to care for children. The two incidents occurred between Ms. Cuevas and her 17-year-old and then young adult daughter. A parent's response to their own teenage child is not necessarily indicative of how they will care for other people's children. However, the burden is on the applicant to provide clear and convincing evidence that an incident of violence was (or in this case, incidents of violence were) unrelated to how they will care for other children. EEC gave Ms. Cuevas the benefit of the doubt after the March 2022 incident, finding that it was an isolated incident. Having a second, and arguably more serious, incident less than two years later creates doubt as to Ms. Cuevas's ability to regulate her behavior. Moreover, incidents of violence in the home increase the risk that children receiving childcare in that home may witness violence. That risk was borne out here as at least some of Ms. Cuevas's younger children were in the home during both incidents, a fact that did not stop Ms. Cuevas from engaging in the altercations. She has not produced clear and convincing evidence that these incidents are unrelated to her ability to care for children. This factor weighs against her.

Number of criminal offenses or findings of abuse/neglect and dispositions of criminal offenses and findings of abuse/neglect. Two criminal cases arose out of Ms. Cuevas's conduct; both were dismissed for failure to prosecute. DCF investigated the first incident and supported a finding of physical abuse. Although the existence of the two formal criminal cases does not weigh against her as prosecutors declined to prosecute both cases and they were dismissed, the DCF finding of physical abuse weighs against Ms. Cuevas.

Relevant evidence of rehabilitation or lack thereof. There is no evidence of rehabilitation, remorse, responsibility, or reflection in the record. Ms. Cuevas explains that both incidents resulted from her daughter's rebelliousness; in essence, she indicates that both incidents were her daughter's fault. Even assuming that this was true, Ms. Cuevas expresses no remorse or regret that the situations escalated to physical violence. This factor weighs against Ms. Cuevas.

Other relevant information, including information submitted by the candidate. Ms. Cuevas provided a statement to EEC from a long-time friend. Her friend said that Ms. Cuevas is hard-working and has a great sense of humor. She said that Ms. Cuevas is always willing to help family members and care for their children. She noted that Ms. Cuevas participates in church activities and always brings her family to church. This factor weighs in favor of Ms. Cuevas.

Taking all these factors into consideration and giving each due weight, Ms. Cuevas has not presented "clear and convincing" evidence of her suitability to operate a daycare program as required by EEC's regulations. As noted above, how a person deals with their own offspring may not be the same as how they deal with other people's children. The evidence shows that Ms. Cuevas *might* be a suitable candidate, but that is not the standard she must meet. Even looking

at the evidence in the light most favorable to Ms. Cuevas, she has not shown by clear and convincing evidence that she is suitable to be a family childcare provider at this time.

Order and Recommended Decision

For the reasons set forth above, it is ORDERED that EEC's motion for summary decision is allowed. A recommended decision is hereby entered such that EEC should affirm the determination that Ms. Cuevas is not suitable to be a family childcare provider at this time.

Dated: September 23, 2026

/s/ Judi Goldberg

Judi Goldberg

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

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