

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

Johanna Andino,
Petitioner,

Docket Nos.: OC-25-0103 & 0425

v.

Department of Early Education and Care,
Respondent.

Appearances:

For Petitioner: Johanna Andino, pro se
For Respondent: Ryan Foreman, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF RECOMMENDED DECISION

The Department of Early Education and Care (EEC) revoked Ms. Andino's license, citing various grounds. After a hearing, EEC proved only one of those grounds: that Ms. Andino did not keep complete and accurate records. There was no merit to the remaining grounds.

Additionally, while Ms. Andino's appeal was pending, EEC found her ineligible for a license because of a pending criminal case. There is no credible evidence that Ms. Andino committed the charged offenses. And EEC did not explain how these charges (all for financially fraudulent conduct) relate to her ability to care for children.

INTRODUCTION

Johanna Andino timely appeals two decisions by the Department of Early Education and Care ("EEC" or "the Department"). One appeal relates to an order of revocation based on various, alleged regulatory violations; the second appeal relates to a background review check

finding her ineligible for a license because of a pending criminal case.¹ On July 16 2025, I conducted a virtual hearing. The Department presented two witnesses: Luz Del Valle, an EEC licenser, and Maria Morales, a background check reviewer. Ms. Andino testified on her own behalf and called multiple fact witnesses. I entered exhibits 1-14² into evidence. The parties submitted closing briefs by August 22, 2025 at which point I closed the administrative record.

FINDINGS OF FACT

OC-25-0103: The order of revocation

1. Ms. Andino has been a licensed childcare provider since 2002. She initially had a licensed capacity for five children, but that was later increased to 10. (General testimony.³)
2. In 2024, EEC received a complaint about Ms. Andino that prompted an investigation into several alleged regulatory violations. (Ex. 4.)
3. Ms. Del Valle was Ms. Andino's licenser, so she conducted the investigation. She spoke with several people. She reviewed various documents related to Ms. Andino's care. Finally, she conducted two on-site visits. (Ex. 4; Del Valle.)
4. While she spoke to three certified assistants, she did not provide their names in her report or testimony, and they did not testify at the hearing. (Ex. 4; Del Valle.)

¹ The matters were consolidated on July 11, 2025.

² With the parties' assent, I took administrative notice of Ms. Andino's charges by way of her criminal docket, which I printed out and entered as exhibit 14.

³ There is some evidence to which several witnesses testified, and which is not in dispute. I refer to this as "general testimony." There is some evidence to which all or most of the children's guardians testified. I refer to this as "guardians' testimony."

5. Moreover, while these were all people listed as “certified assistants,” at least one did not actually care for children. Although not named in the investigative report, by context, it is clear certified assistant A is Ms. Andino’s elderly stepfather. He lived with her at the time and later took out a criminal complaint against her (as I describe below). (Ex. 4; Andino; Del Valle.)
6. Ms. Del Valle did not speak to Rahima Mendez, who was Ms. Andino’s main assistant and was present at the daycare center most of the time. Ms. Mendez worked with Ms. Andino between 2017 and 2024, when EEC suspended Ms. Andino’s license. (Mendez.)⁴
7. Ms. Mendez was not a certified assistant, which means she could not provide care to children by herself. Accordingly, she worked the most with Ms. Andino and could have provided helpful information regarding some of the alleged infractions. (Del Valle; Mendez; Andino.)
8. Ms. Del Valle spoke to seven guardians of the enrolled children, some of whom had unfavorable things to say about Ms. Andino. She did not name the guardians, but it does not appear she spoke to any of the ones who testified at the hearing, and who contradicted findings in the investigative report. (Ex. 4; Del Valle; guardians’ testimony.)
9. While Ms. Del Valle relied on several documents, such as attendance sheets and calendars, EEC did not introduce any of those documents as exhibits at the hearing, so I

⁴ Ms. Andino presented the testimony of Milagros Alcequiez, who was also an assistant for her. But she worked between 2017 until around 2020. This was not during the relevant time period, so her testimony had minimal value.

have no way of corroborating anything Ms. Del Valle said other than through testimony and Ms. Andino's admissions.

10. Ms. Del Valle ultimately alleged four sets of violations. (Ex. 4.) I group the evidence by the type of violation below.

Ms. Andino's licensed capacity

11. Ms. Andino is licensed to care for only 10 children. (Ex. 4; general testimony.)
12. A care provider may enroll more than the number of children for which they are licensed. However, they may not care for more than the number of children for which they are licensed at one time. (Del Valle; Andino.)
13. Ms. Andino had 13 children enrolled. 11 children paid with vouchers and were referred by Child Development and Education, an organization that finds placement for families seeking childcare. Two children were private pay. (General testimony.)
14. I find that Ms. Andino did not care for more than 10 children at any one time. My finding is based on the following evidence.
15. Ms. Andino provided care for children at different times of the day. She had two "shifts": the first shift ran from the morning until about 4:00 pm and the second shift ran from 4:00 pm until 8:00 pm. In reality, the shifts were not so rigid. But she did have children who mostly came in the morning and left in the early afternoon; and she also had children who mostly came in the afternoon and left in the late afternoon. (Andino; Mendez.)
16. Ms. Andino was aware of her 10-child limit and never exceeded it. She accomplished

this by being in constant contact with parents about availability. This might require her to make daily phone calls to multiple parents when she was full or a slot opened up.

She was required to keep attendance records. However, she did not keep very accurate ones and often failed to note a child's arrival and departure time. Her poor recordkeeping may have led to EEC's concern that the daycare was overcapacity.⁵

(Andino.)

17. Children attended Ms. Andino's daycare both in the morning and afternoon. Some of their guardians testified at the hearing. All of them testified that they never saw more than 10 children at any one time. Usually, they saw somewhere between 4-5 children.

(Guardians' testimony.)

18. Ms. Mendez worked most days for several hours in the morning and afternoon. She never saw, nor cared for, more than 10 children at any time. (Mendez.)

19. Also, over the course of a few months in 2024, an observer from Child Development and Education made in-person visits to Ms. Andino's daycare. They never observed more than 8 children at one time. (Ex. 4.)⁶

⁵ Ms. Del Valle based her finding, in part, on her review of the attendance records which sometimes showed more than 10 children present on one day. Given my finding that Ms. Andino kept poor records, I do not adopt Ms. Del Valle's conclusions about the significance of the attendance records on this issue.

⁶ EEC also based its finding, in part, on Ms. Del Valle's interview with three certified assistants. Certified assistant A, the criminal complainant, told EEC he witnessed 12-13 children in attendance but could not provide specific dates. Because he did not testify, clearly has a strong bias against Ms. Andino, and did not actually provide care to any children, I do not credit his statements. They are unreliable, uncorroborated hearsay.

Ms. Andino's licensed space and approved caregivers

20. Ms. Andino's daycare was on the first floor. Her licensed space included a kitchen, playroom, and a "nap" room. (General testimony.)
21. Ms. Andino's house also had a basement which was not part of her licensed space. There was a room used primarily as storage for the daycare; It had toys, boxes, and other supplies. There was a room for laundry. And there was one room where, at some point, her son used to stay on weekends. (Andino; Mendez.)
22. EEC's claim that Ms. Andino provided care in an unlicensed space is based on the allegations that she supposedly told assistants to take some children to the basement to hide them from EEC. As noted above, I do not credit that evidence and rather credit the evidence of the various witnesses who flatly denied this occurred.
23. In fact, both times Ms. Del Valle was on site, she went to the basement and did not see any children. It is not even clear to which visits the allegations pertain because they

EEC also took a statement from certified assistant B, who claimed that Ms. Andino exceeded her capacity. This certified assistant said that when EEC came to visit, she was sent to the basement with two children to hide the fact of overcapacity from EEC. But Ms. Del Valle also testified that this same person said Ms. Andino sent the children into the basement with an unauthorized caregiver. Because certified assistant B did not testify and was not even named, I do not credit her statement. It is unreliable, uncorroborated hearsay.

Indeed, no one from EEC ever corroborated these statements. Ms. Andino did have a basement, but it was used for laundry and storage. Ms. Mendez said she never took any children into the basement and never saw anyone else take children to the basement. No other witness ever saw children there. Ms. Del Valle went to Ms. Andino's basement on her first visit and did not see any children. During the second visit she and her supervisor again went to the basement but did not see any children. And, as noted above, I credit Ms. Andino that she never had more than 10 children at any one time, so she had no need to "hide" any from EEC in her basement.

cannot be the visits Ms. Del Valle documented. Because there is no other evidence this occurred, I find Ms. Andino provided care only in a licensed space.

24. The allegation of unauthorized care is related to the presence of a 14-year-old girl. (Ex. 4.)
25. One of the certified assistants with whom Ms. Del Valle spoke reported that there was a 14-year-old girl in the house during childcare hours caring for children. Ms. Andino explained in the investigation, and at the hearing, that this was a friend's daughter she knew from church. This girl helped Ms. Andino clean up the day care space, e.g., she did laundry, washed dishes, etc. She did this primarily when Ms. Andino was unable to finish it herself. This occurred infrequently and mostly after hours. (Andino.)
26. This girl never provided care to any children. When she was in the daycare space, it was always to help clean up and almost never while the children were there. (Andino.)
27. During one of the EEC visits, the girl was in the house. However, she was not in the daycare space; she was upstairs on the second floor. She came down and spoke to Ms. Del Valle. She denied ever providing care for, or supervising, children. (Del Valle; Ex. 4.)
28. Other than the uncorroborated statement by the certified assistant, which I do not credit, there is no evidence that supports this claim.⁷

⁷ It is unclear if EEC is also claiming Ms. Mendez provided unsupervised care. Ms. Mendez was not a certified assistant and thus could not provide care without Ms. Andino's supervision. 606 Code of Mass. Regs. § 7.07(15)(c)(2). However, Ms. Mendez testified that she was never alone with the children, and I credit her testimony.

Ms. Andino's recordkeeping

29. A licensee is required to keep complete records of certain things. This includes, among other things, accurate attendance, arrival and departure times, and staff records. They are required to maintain them every day without exception. (Del Valle.)
30. Ms. Andino is not a good recordkeeper. I do not find she purposely kept false records, as EEC alleges. But she did not keep up with the varied and changing schedules of the children and her staff.
31. When Ms. Del Valle conducted a site visit, she noticed the records for that day were already deficient and failed to note the children's start times. (Del Valle.)
32. Ms. Andino's staff records were also inaccurate, reporting certain certified assistants present when they had already stopped working for her. (Ex. 4.)
33. Ms. Andino even admitted to a few times in which she failed to keep accurate and complete records. (Andino).
34. Ms. Andino also participated in a program called the Child and Adult Care Food Program. There are few details about this program, but I infer it either reimburses Ms. Andino for certain meals or provides them to her directly. Regardless, their benefits are based on Ms. Andino reporting how many meals she served children and when she served them. But because there were many discrepancies in her recordkeeping, the program had sent her a Serious Deficiency Determination for claiming meals were served when she was closed or saying she served meals when she did not. (Ex. 4.)
35. I make no findings about whether Ms. Andino did or did not do these things. Either the

allegations are true, and Ms. Andino falsified her records. Or the allegations are not true, and likely came about because of her poor recordkeeping. Regardless, it is further evidence that she did not keep accurate records.

Ms. Andino's statements to EEC in the course of its investigation

36. EEC alleged that Ms. Andino provided a series of false and misleading statements.

Household composition

37. The first alleged false statement is that Ms. Andino lied about her son living with her so she would not have to include him as a household member in license renewal transactions from 2020 and 2023. (Ex. 6.)
38. When Ms. Andino's son did live with her full-time in the past, she had included him as a household member, the most recent time being in 2017. (Ex. 4.)
39. But he moved out. During the time of the investigation, he would come back when the daycare was not in session, like on nights or weekends. No guardian or assistant said they ever saw him during daycare hours. (Andino; Mendez; guardian testimony.)
40. He would sometimes sleep over on the weekends, again when the daycare was not in session. Ms. Andino had a mattress set up for him in one of the basement rooms. (Andino.)
41. Ms. Andino explained that, as far as she knew, she did not have to list her son with EEC because he was not living there. As she stated, "If the daycare is closed, he's entitled to sleep here. I don't have to notify that to EEC because the daycare is closed. You have to notify if the daycare is open." (Andino; ex. 7.)

42. Her understanding of whether she had to list her son was mistaken because he was regularly on the premises and should have been included in her household composition. However, I find that she did not make an untrue statement with the intent to mislead EEC. Rather, she did not think she had to report him because he was not staying there during daycare hours.

Using assistants to provide unsupervised care

43. EEC next alleges that Ms. Andino lied about using assistants to provide unsupervised care. (Ex. 4.)
44. A care provider may use a “regular assistant” to help them care for children, but in a program licensed for over seven children, they may only provide care “under the supervision of a licensee or certified assistant.” 606 Code of Mass. Regs. § 7.09(15)(c)(2(b)).
45. EEC never observed this. They based their allegations on the one statement by one of the unnamed certified assistants with which Ms. Del Valle spoke. (Ex. 4.)
46. The first person this could be referencing is the 14-year-old girl who helped Ms. Andino clean up. But as already noted, I do not find the 14-year-old ever provided care.
47. The other person this could apply to is Ms. Mendez. But I credit her testimony when she said she was never left alone with the children. (Andino; Mendez.)

Pending criminal charges

48. The last alleged false statement refers to Ms. Andino’s criminal charges. EEC alleges she provided false statements about her pending criminal charges by failing to disclose

them.⁸ (Ex 4.). I disagree.

49. The chronology of the charges is important. Ms. Andino was first made aware that she might be under investigation when a Methuen police officer called her on August 4, 2025. He explained the allegations to her, which she denied. (Ex 5.)
50. The officer did not note if he told Ms. Andino he was going to charge her with a crime or if he had even decided to do so at that time. (Ex 5.)
51. The Methuen police eventually took out a complaint against Ms. Andino that went before a clerk magistrate. It is not clear when Ms. Andino received notice of the allegations. However, on August 29, 2020, a clerk magistrate found probable cause for four different charges. Ms. Andino was then summonsed into court and eventually arraigned on October 10, 2024. (Exs. 7 & 14.)
52. EEC received a copy of the police report and notice that Ms. Andino would be summonsed for a clerk-magistrate hearing on August 13, 2025. (Ex. 4.)
53. When EEC issued its notice of sanction on August 22, 2024, it stated Ms. Andino “has a current court appearance pending for fraud charges. This was not reported to EEC.” (Exs. 1 & 4.)
54. The facts do not reveal whether Ms. Andino knew about her clerk-magistrate hearing when EEC issued its report on August 22, 2024, but I infer she did. Nevertheless, at that

⁸ Ms. Del Valle testified that an educator has an obligation to tell EEC anytime they have police contact for any reason—even if it involves an after-hour event unrelated to childcare. That is not a correct a reading of the regulations as I explain in the discussion section below. It is also not the reason EEC cited Ms. Andino. The citation refers to “false statements about her pending charges.” (Del Valle; ex. 6.)

time, she had not been formally charged or arraigned. Instead, there was a hearing scheduled to determine if there was probable cause to charge her. (Exs. 7 & 14.)

55. EEC’s allegations are that Ms. Andino lied by omission—by not telling them about the police interview and court summons. But that requires a finding that Ms. Andino affirmatively believed she had an obligation to tell EEC about this and purposely decided not to. I do not find that is what happened.
56. Ms. Del Valle’s report says that on August 7, 2024, Ms. Andino denied committing the alleged crimes and on August 14, 2024 she denied there were any legal proceedings against her. (Exs. 4 & 5.)
57. The only statement that could conceivably be considered false is the August 14, 2024 statement denying there were legal proceedings. I explain below why, legally, Ms. Andino had no obligation to report this. But as a factual matter, I find she genuinely did not consider herself at that time to be involved in a “legal proceeding” and thus did not intend to mislead EEC.

OC-25-0425: Ineligibility finding

58. While the appeal in OC-25-0103 was pending, EEC initiated a background check review because it had received evidence that Ms. Andino had a pending criminal case. (Ex. 8 & 14.)
59. Ms. Andino has four pending charges in the Lawrence District Court. On October 10, 2024 she was charged with: (1) being an unauthorized signatory on a credit card, G.L. c. 266 § 37B(h)(1); (2) forgery, G.L. c. 267 § 1; (3) fraudulent use of a credit card, G.L. c.

266 § 37C; and (4) identity fraud, G.L. c. 266 § 37E. (Ex. 14.)

60. The allegations are that Ms. Andino opened various credit cards and a credit line in her stepfather's name and used them without his permission. This allegedly began five years ago. The total debt was approximately \$17,500.00. Many of the cards were store credit cards for places her stepfather says he did not shop at, such as Victoria's Secret, Goldman Sachs, and Nordstrom. (Ex. 5.)
61. The police spoke to Ms. Andino as part of their investigation. She said that her stepfather was with her when she opened all these accounts. He was the one that asked her to put her phone number and e-mail on the accounts. (Ex. 5.)
62. In her statements to the police, EEC, and then at the hearing, she denied committing these offenses. She attributes the charges to personal conflicts with her family members. (Exs. 4 & 8; Andino.)
63. As part of the review process, Ms. Andino submitted a candidate statement and a few reference letters. (Exs. 8, 10-13.)
64. Once the application is complete, the EEC reviewer—here Ms. Morales —conducts the review by considering a series of factors listed in 606 Code Mass. Regs. § 14.12(f):
1. Time since the incident(s);
 2. Age of the candidate at the time of the incident(s);
 3. Seriousness and specific circumstances surrounding the incident(s);
 4. Relationship of the incident(s) to the ability of the candidate to care for children;
 5. Number of criminal offenses or findings of abuse/neglect;
 6. Dispositions of criminal offenses and findings of abuse/neglect;
 7. Relevant evidence of rehabilitation or lack thereof; and
 8. Other relevant information, including information submitted by the candidate.

(Morales.)

65. As a threshold issue, EEC has lists of crimes that may trigger different levels of disqualifications: mandatory, presumptive, and discretionary.⁹ Ms. Andino was charged with four crimes, none of which are on any of EEC's lists. (Morales.)¹⁰
66. I asked Ms. Morales how, if none of the charges were on the list of offenses, Ms. Andino was subject to the discretionary review process. She explained that when an offense is not on the list, general counsel reviews them to decide if they should nevertheless receive some level of review. That happened here, though she did not know anything about the process that brought Ms. Andino's case to her. (Morales.)
67. She also explained that she had reviewed cases before for pending charges, but never for pending charges not listed on any table of disqualifying offenses. (Morales.)
68. As to her analysis of the factors, Ms. Morales weighed many against Ms. Andino: that the charges were recent, she was older when it happened, the number of offenses, (including two felonies), and that they were serious. They were serious because the allegations were against a household member and the amount of money at issue was substantial. (Morales.)

⁹ [The tables are available on EEC's website.](#)

¹⁰ EEC counsel suggested one or more of these crimes were listed in the table of discretionary offenses. However, Ms. Morales testified that they were not. My own review of the offenses confirmed what Ms. Morales said. Therefore, based on the evidence in this case—Ms. Morales's testimony and a review of the exhibits—I find Ms. Andino's charges are not listed in the table of offenses.

69. She also weighed the “dispositions” of the offense against Ms. Andino because they were pending. This weighed even more than the circumstances of the offenses because Ms. Andino could be convicted of them and could serve a sentence. Ms. Morales explained it was in EEC’s interest to know the disposition. (Morales.)
70. Yet, when asked if she considered “pending” a disposition, she said no. (Morales.)
71. She then candidly added that if the charges had resulted in a non-conviction, she would have most likely approved Ms. Andino. (Morales.)
72. Ms. Morales also acknowledged Ms. Andino could not show evidence of rehabilitation because the charges are pending. However, she did not weigh that for or against Ms. Andino. (Morales.)

DISCUSSION

OC-25-0103

A licensed educator must comply with many regulatory requirements. *See generally* 606

Code of Mass. Regs. § 7.09. Among them, they:

- must provide care only to the number of children within their licensed capacity, *id.* at § 7.03(2),
- may only provide care in licensed spaces and by approved caregivers, *id.* at §§ 7.05(2), 7.09(1)-(2), & 7.10(05),
- cannot provide false or misleading statements to EEC. 102 Code of Mass. Regs. § 1.07(4)(a)(3); and
- must maintain an individual record for each child and complete and accurate records including daily attendance logs, *id.* at §§ 7.04(7) & (4).

Failure to follow any of these (or other) regulations may have consequences. Sanctions include

probation, suspension, revocation or a refusal to renew a license. 102 Code of Mass. Regs. § 1.07 (4)(a). Because EEC is seeking to sanction Ms. Andino under these various grounds, it bears the burden of proof by a preponderance of the evidence that she committed an infraction. *EEC v. Sanchez, et al.*, OC-22-0453 & 0601, at *13 (Div. Admin. Law Apps. May 30, 2024). It failed to prove any of the allegations against Ms. Andino except for the one relating to her record keeping.

Ms. Andino did not exceed her capacity¹¹

Ms. Andino did not provide care to children in excess of her licensed capacity. Licensed capacity is defined as “the number of children that a program can care for at any one time.” 606 Code Mass. Regs. § 7.02. Ms. Del Valle seems to have used enrollment and capacity synonymously, but that is not accurate. A provider may have more children enrolled than they can care for. They simply may not care for more children within their licensed capacity at any one time. That is what happened here. There is no credible evidence that Ms. Andino ever had more than 10 children in her care at one time: she denied it, Ms. Mendez denied it, every guardian that testified denied it, and no one from EEC who ever went to her daycare saw anything different.

The only evidence that supports this claim are the uncorroborated, unreliable hearsay statements of the certified assistants that Ms. Andino sent children into the basement when

¹¹ At the hearing, and in some of the exhibits, EEC states that Ms. Andino provided care to too many preschool children alone. On one of her visits, Ms. Del Valle observed Ms. Andino caring for eight preschool-aged children without assistance. Ms. Del Valle testified that, per regulations, an educator may not care for more than five preschool-aged children without an assistant. See 606 Code of Mass. Regs. § 7.10(4)(e). However, the Notice of Claim does not list this in its findings or cite it as a legal basis for revocation. Thus, I do not consider it in this case.

inspectors came to cover up her overcapacity. But I do not credit those statements and thus do not find that is what happened.

Ms. Andino did not use an unapproved caregiver nor provide care in unlicensed space

EEC alleges that Ms. Andino used an unapproved caregiver to supervise children. This allegation relates to the 14-year-old girl who helped Ms. Andino clean up her daycare. There is no credible evidence that this girl ever cared for, or supervised, children. While she was in the house on the second floor during one of the EEC visits, she was obviously not in the daycare, not supervising children, and she denied that she ever did. There may be some other regulation that prohibits the teenager from helping Ms. Andino clean her daycare or being in the home during daycare hours. But if such regulation exists, it is not the subject of this complaint. EEC also says

Ms. Andino provided care in unlicensed spaces (her basement). This relates to the claim she “hid” children in her basement when EEC came to visit because she was over the limit. As explained in my findings of fact, I do not find this.

Ms. Andino did not provide false statements

A licensee may be sanctioned if they submit “any misleading or false statement or report required under 102 CMR 1.00 through 8.00 *et seq.*” 102 Code of Mass. Regs. § 1.07(4)(a)(3). The regulations do not define a false or misleading statement. When words are undefined, tribunals give them their usual meanings, sometimes looking to “sources presumably known to the statute’s enactors, such as their use in other legal contexts and dictionary definitions.” *Scione v. Commonwealth*, 481 Mass. 225, 235 (2019), *quoting Commonwealth v. Campbell*, 415 Mass. 697, 700 (1993). Here I refer to Black Law’s

Dictionary: a false statement is “[a]n untrue statement knowingly made with the intent to mislead”; misleading is an adjective for something that is “delusive; calculated to be misunderstood.” *See* STATEMENT & MISLEADING, Black’s Law Dictionary (12th ed. 2024).

First, there is the allegation that Ms. Andino lied by not telling EEC that her son was living with her. I find that Ms. Andino did not lie about her son; rather she was mistaken about what was required. Even if her son was not living with her, or only stayed there on the weekends, he is still likely a “household member” or “person regularly on the premises,” both of which require notice to EEC so it can conduct background checks. *See* 606 Code of Mass. Regs. § 14.00, et seq. It seems she may have violated this notice requirement, but that is not the regulation EEC cited in support of sanctioning Ms. Andino. Rather, it cites the regulation prohibiting false statements, which is a separate and independent ground for discipline. *See* 102 Code of Mass. Regs. § 1.07(4)(a)(3). That regulation implies her conduct was intentional. Because I find Ms. Andino was simply mistaken about her obligation to report her son’s presence, EEC did not prove this allegation. Among other things, Ms. Andino listed her son as a household member when he was living with her, so I do not see why she would fail to list him now if she thought she had to.

EEC next says Ms. Andino gave false statements about her use of assistants to provide unsupervised care for children. However, because I find Ms. Andino never did that, her denial was a true statement.

Finally, EEC says that Ms. Andino lied by not telling them about her criminal charges. But this relies on a broad and erroneous interpretation of its own regulations. Ms. Andino originally did not tell EEC because she did not know about the charges. When she said that, the

statement was true—no charges had been filed, and it is not even clear she had received her summons yet. And even if she did have notice of a clerk-magistrate hearing, her failure to tell EEC would only be a false statement if she had an obligation to tell them. Yet, upon closer inspection, it does not seem she did.

Ms. Del Valle testified that a provider must notify EEC about any police contact regardless of what it is about. But the regulations require notice to EEC in more narrow circumstances: A licensee must report, within five days of the “initiation” of any legal proceeding:

- that “arises out of circumstances related to the care of children in the program or may impact the continued operation of the program”;
- for any crime listed in the department’s background check regulations;
- for any civil action in which mistreatment or neglect is alleged; or
- for any petition that anyone in the home is in need of care and protection.

606 Code of Mass. Regs. §§ 7.04(15)(d)(1)-(2).¹² None of these apply here.

First, the regulations require notice with 5 days of the “initiation” of a legal proceeding. Initiation is not defined in the regulations, but a criminal case is generally considered “initiated” only at arraignment. *Commonwealth v. Carson C.*, 489 Mass. 54, 62 (2022). Indeed, the clerk magistrate hearing, otherwise known as a “show cause” hearing, is an event that “precede(s) the formal initiation of criminal prosecution.” *Eagle-Tribune*

¹² The regulations also require notice if there is law enforcement activity on the premises that results in an arrest or for conduct that could impact the health, safety and wellbeing of a child. And they require notice if there is an “incident” that results in a response by the fire department. 606 Code of Mass. Regs. §§ 7.04(15)(i) & (j). These are not applicable in this case because Ms. Andino was not arrested, the charges have nothing to do with the well-being of any child, and the fire department was not called.

Publishing Co. v. Clerk Magistrate of the Lawrence Div., 448 Mass. 647, 655 (2007). Ms.

Andino would have had an obligation to notify DCF within 5 days of her arraignment in October. EEC's citation, however, was months before.

Second, she must also notify the department within five days of the initiation of legal proceedings for any crime listed in the department's background check regulations. As explained below, she was not charged with a crime listed in those regulations. And in any event, she could not know what she is charged with until, at the earliest, her clerk-magistrate hearing which, again, occurred after EEC issued its citation. Finally, there was no civil action in which mistreatment or neglect was alleged and there were no proceedings regarding the care and protection of any children.

Therefore, Ms. Andino's contact with the police in this context did not trigger any reporting requirements. And to the extent she had to report these charges, there was nothing to report until well after she was cited. She cannot make a false statement by failing to report something she has no obligation to report.

Failure to maintain complete and accurate records

What Ms. Andino did fail to do is maintain complete and accurate records, which is required under 606 Code Mass. Regs. § 7.04. Her attendance records were incomplete and inaccurate, even by her own admission. These deficiencies led to some of EEC's other allegations, which Ms. Andino may have avoided had she kept better records. She was also cited by Child Development and Education and the food assistance program for her poor recordkeeping. Ms. Del Valle observed this firsthand when she conducted a site visit and saw

the records for that day were deficient. Accurate records are important. This case shows one reason why—they may have avoided some of EEC’s confusion and maybe even some of their citations against Ms. Andino. EEC may sanction Ms. Andino for this violation.

OC-25-0425

When an applicant has a potentially disqualifying background, EEC conducts a review to determine whether to grant or deny a childcare license. *See* 606 Code Mass. Regs. § 14.10(6). That discretion is not unfettered. EEC’s regulations define what factors a reviewer must consider. *Id.* at § 14.12(f). These regulations also state that “the candidate [for a childcare license must present] clear and convincing evidence demonstrating the candidate’s suitability for licensure, employment or affiliation in light of the concern for children’s safety.” An agency is bound to adhere to its regulations. *Royce v. Commissioner of Correction*, 390 Mass. 425, 427 (1983). This means that EEC may not issue a license to a candidate with a potential disqualifying background if the candidate failed to present clear and convincing evidence of suitability. By the same token, if the candidate presented clear and convincing evidence of suitability, EEC must grant the license.

EEC’s background check process is detailed. A common disqualifying event is a prior criminal conviction or even just a criminal charge. Different convictions and charges may result in different categories of disqualification: automatic, presumptive, or discretionary. *See* 606 Code Mass. Regs. § 14.10. As the titles imply, automatic disqualifications cannot be rebutted while presumptive and discretionary disqualifications may be rebutted through a process. *Id.* at § 14.11. What review a certain conviction or charge may trigger depends on where it falls within a series of tables EEC has created. There are also crimes which are not listed in any of the

tables which presumably means they do not trigger any level of review. That includes all four crimes with which Ms. Andino is charged.

I have strong reservations that the regulations allow EEC to conduct a discretionary review of pending charges not listed in any of the tables of crimes in this scenario.¹³ However, putting my reservations aside, even if discretionary review was warranted, Ms. Morales did not convincingly explain why these pending charges are disqualifying. It is not unusual for EEC to deny an applicant a license based on a criminal conviction. *See, e.g., EEC v. Aguilar*, OC-23-0251, at *9, 2023 WL 9022704, (Div. Admin. Law App. Dec. 21, 2021), *citing* cases. The conviction itself is typically enough corroboration that the conduct occurred. *Id.* Sometimes the Department's denial is based on mere charges that did not result in convictions. *See, e.g., EEC v. Gupta*, OC-23-0396 (Div. Admin. Law App. Oct. 18, 2024), *citing* cases. Reliance on non-convictions can be proper only under certain circumstances, e.g. there is other corroborating information such as an admission. *Id.* This is the first case I have seen in which EEC is relying on pending charges without a disposition one way or the other.

Unlike a conviction, the mere fact of a charge is not corroboration that the conduct occurred. EEC therefore could rely on a pending charge only if there is some

¹³ EEC proffered several justifications for its actions. The strongest one is a catch-all provision that allows EEC to review pending charges for any crime not on any list. 606 Code of Mass. Regs. § 14.10(7) says that "any criminal or child welfare offenses that are not specifically listed will be categorized and may warrant review as determined by EEC's General Counsel." If read as broadly as EEC suggests, this regulation could allow EEC's general counsel to subject certain charges to the discretionary review process even if the regulations meant to exclude them. Moreover, it says the charges "will be categorized" but it is not clear whether that happened here with these charges. Finally, by noting the charges "may warrant review," it suggests that some charges are worth EEC's consideration because they have some bearing on the appropriateness of a person facing such charges being a childcare giver or a household member, but the language does not limit itself explicitly to that standard.

corroborating information to convince me that Ms. Andino is guilty of these offenses.

But Ms. Morales could not say whether Ms. Andino was guilty or not; Ms. Andino denied the charges; and the only evidence EEC presented was a police report containing uncorroborated hearsay. I cannot find on this record that she committed these crimes.

Then, of course, there is the fact that EEC must make these decisions “in light of the concern for children’s safety.” 606 Code of Mass. Regs. 14.12(e). EEC did not explain how these specific pending charges relate to Ms. Andino’s ability to care for children. In my experience at prior hearings, EEC normally has the reviewer explain how that specific conduct means the applicant poses some danger to children. But here, Ms. Morales did not explain that in her testimony or report. She simply listed the factors and how she weighed them.

Without that explanation, the record does not support EEC’s disqualification. These allegations go back five years. Ms. Andino has been caring for children that entire time without issue, other than the regulatory allegations raised now. Given that there were no complaints against Ms. Andino before 2024, and considering the glowing recommendations from her witnesses and in her letters of support, even if she was committing these crimes over the past five years, she is still capable of safely caring for children.

CONCLUSION AND RECOMMENDED ORDER

For OC-25-0103, I **affirm in part** and recommend that EEC may sanction Ms. Andino, but only for the reasons stated in this decision.

For OC-25-0425, I recommend EEC’s decision be **reversed** and it find Ms. Andino does

not have a disqualifying background.

SO ORDERED.

Date October 22, 2025

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate