COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Ada Barra,
Petitioner,

v.

Department of Early Education and Care,
Respondent.

Docket No.: OC-25-0693

Dated: April 28, 2026

ORDER GRANTING SUMMARY DECISION

Petitioner Ada Barra appeals from a decision of the Department of Early Education and Care (department) denying her application for department licensure. Ms. Barra has filed a motion for summary decision, which the department has opposed.

The undisputed facts include the following. *See generally* 801 C.M.R. § 1.01(7)(h); *Goudreau v. Nikas*, 98 Mass. App. Ct. 266, 269-70 (2020); *Caitlin v. Board of Reg. of Architects*, 414 Mass. 1, 5-7 (1992). Ms. Barra works in early education and care. She is in her late forties.

In April 2025, Ms. Barra was charged with a misdemeanor assault and battery on a family or household member. The prosecution ended in a dismissal, with no accompanying admissions by Ms. Barra. Ms. Barra reportedly told a department investigator that the prosecution grew out of a verbal, nonphysical argument over household chores. The record contains no other material information about the criminal case.[1]

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[1] The investigator also learned from Ms. Barra about a "no-abuse order" entered against her, apparently in civil proceedings under G.L. c. 209A. The department does not claim any connection between that order and the criminal case, and it has not identified the order as a basis for its decision. *See generally Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 690-91 (2012); *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 377-78 (1985).

Later in 2025, the department ran a background check on Ms. Barra. On the basis of her non-conviction, a reviewer for the department found Ms. Barra unsuitable for licensure. Ms. Barra timely requested a hearing.

The governing legal framework gives the department the responsibility of granting or denying licenses to daycare operators and employees. G.L. c. 15D, §§ 6-7. To that end, the department runs background checks on its applicants. 606 C.M.R. §§ 14.04, 14.09(2)(a). When a background check turns up a "conviction" or a "non-conviction," the department is authorized to collect additional information, including police reports, docket sheets, candidate statements, and reference letters. *Id.* § 14.12(2)(c). The department then must weigh eight factors to determine whether the candidate has presented "clear and convincing evidence demonstrating [his or her] suitability for licensure." *Id.* § 14.12(2)(e), (f).[2] On appeal, the candidate is entitled to de novo review. *See Aguirre v. Department of Early Educ. & Care*, No. OC-24-598, 2026 WL 446272, at *5 n.3 (Div. Admin. Law App. Feb. 6, 2026).

The factors that the regulations direct the department to weigh generally presuppose the occurrence of a relevant "incident" or "offense." Recent decisions have inquired into the circumstances in which that presupposition is warranted. They have had no doubt that the department may deny a license to an applicant whose disqualifying incident or offense is

[2] The factors are: "(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." 606 § 14.12(2)(f).

demonstrated by some evidence other than a conviction. *See Andino v. Department of Early Educ. & Care*, No. OC-25-103, 2025 WL 3127144, at *11 (Div. Admin. Law App. Oct. 22, 2025).

It is also clear that the department cannot act against an applicant when it possesses no evidence whatsoever of wrongdoing. *See, e.g.*, G.L. c. 30A, § 14(7)(e); *Steadman v. Securities & Exch. Comm'n*, 450 U.S. 91, 98 (1981). In such circumstances, it would be improper to treat the candidate's history as involving any adverse incidents or offenses. It would be irrational to ponder and weigh the recency, seriousness, or salience of occurrences whose very existence enjoys no substantiation. *Florence F. v. Department of Early Educ. & Care*, No. OC-25-622, 2026 WL 1050635, at *4 (Div. Admin. Law App. Apr. 8, 2026).

The resulting question is whether the bare fact that an applicant was charged with a crime offers evidence that the crime occurred. Every criminal jury is instructed that the answer is no. Indictments and complaints convey accusations, not evidence. *See De Golyer v. Commonwealth*, 314 Mass. 626, 631 (1943); *Commonwealth v. Woodward*, 157 Mass. 516, 518 (1893). As proof of criminal wrongdoing, charging documents have "no probative value or evidentiary significance." *Commonwealth v. Rodriguez*, 92 Mass. App. Ct. 774, 783 (2018). *See Commonwealth v. Kelley*, 33 Mass. App. Ct. 934, 934 (1992). The department must not act against an applicant based on what is "an allegation alone." *M.C. v. Department of Early Educ. & Care*, No. OC-25-694, 2026 WL 1050636, at *4 (Div. Admin. Law App. Apr. 9, 2026).

The rules that govern this proceeding typically require parties to pursue or resist summary decision without the benefit of depositions. *See* 801 C.M.R. § 1.01(8)(c). The summary-decision analysis must account for this procedural wrinkle. A proffer about material testimony that a non-moving party expects in good faith to elicit at a hearing may preclude

summary decision in the appropriate cases. *See Rochester Bituminous Prods. v. Attorney Gen.*, No. LB-22-5, 2022 WL 19303188, at *1 (Div. Admin. Law App. Oct. 25, 2022). *Cf. McDermott v. Public Emp. Ret. Admin. Comm'n*, No. 19-71, 2020 WL 13584379, at *2-3 (Div. Admin. Law App. Aug. 21, 2020), *vacated on other grounds*, 2025 WL 1675984 (Contributory Ret. App. Bd. Mar. 12, 2025). *See generally Massachusetts Outdoor Advert. Council v. Outdoor Advert. Bd.*, 9 Mass. App. Ct. 775, 785-88 (1980). The department makes no such proffer. It does not outline any sense of what Ms. Barra is likely to say on the stand. The documentary record also offers no reason to believe that any witness would testify to wrongdoing by Ms. Barra.[3]

To be as clear as can be, the points made in this order do not suggest any limits on the department's authority to gather facts or to withhold licensure from individuals with histories of unpunished crimes. The only sets of circumstances implicated by this order's analysis are those in which the department has wrapped up its fact gathering without learning anything material except that an applicant has faced unsubstantiated allegations. In such circumstances, the most basic principles of our system of government preclude the department from treating the applicant as a wrongdoer.

[3] In its opposition brief, the department suggests that Ms. Barra may be deemed unsuitable for licensure on the alternative basis that she failed to "submit requested information," 606 C.M.R. § 14.12, namely, any police report relating to the charges against her. But the pertinent regulation can only be interpreted as referring to information that the candidate possesses or reasonably can obtain. *See Shcherbakovskiy v. Da Capo Al Fine, Ltd.*, 490 F.3d 130, 138 (2d Cir. 2007). *See generally Estate of Olson*, 103 Mass. App. Ct. 842, 849 (2024). The department's reviewer acknowledged in her decision that the police report was unobtainable as a nonpublic "domestic report."

In view of the foregoing, it is ORDERED that the motion for summary decision is ALLOWED. A recommended decision is hereby entered to the effect that the department should grant Ms. Barra's application for licensure.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals