

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Aida Yazmin Colon Berrios,
Petitioner

v.

Docket No. OC-26-0110

Department of Early Education and Care,
Respondent

Appearance for Petitioner:

Aida Yazmin Colon Berrios, *pro se*

Appearance for Respondent:

Fatima Islam, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF RECOMMENDED DECISION

The Petitioner applied to the Department of Early Education and Care (EEC) for a license to open a family childcare program. Because her husband resides in the home in which the childcare would be provided, he is also considered a family childcare candidate. The EEC conducted a background check and learned that her husband was the subject of two G.L. c. 119, § 51B reports “supporting” allegations of neglect as well as several dismissed criminal charges. The EEC concluded that her husband is not a “suitable” family childcare candidate.

I recommend that the EEC’s final agency decision find her husband suitable. The concerning items in the husband’s record stem principally from two incidents in 2018 in which the husband engaged in aggressive or violent behavior. The two incidents are concerning, but are isolated and reflect poor decision-making in response to an emotionally charged situation rather than a general propensity for aggressive or disruptive conduct. And the Petitioner’s husband has since worked on responding more constructively to emotionally fraught situations.

RECOMMENDED DECISION

Aida Yazmin Colon Berrios (Ms. Colon) appeals a determination by the Department of Early Education and Care (EEC) that her husband is not a “suitable” “family childcare candidate.” Ms. Colon submitted a notice of claim and requested an adjudicatory hearing concerning the EEC’s determination. The matter was referred to the Division of Administrative Law Appeals (“DALA”).

I held an in-person hearing on July 16, 2026. The hearing was recorded. I admitted Exhibits 1-16 into evidence.¹

Unique Dodd, an EEC Background Record Check Unit specialist, testified on behalf of the EEC. Ms. Colon and her husband, Raymond Serrano Pedrazza (“Mr. Serrano”), testified. They testified in Spanish. An interpreter, Nicholas Magnolia, provided interpretation. Ms. Colon and the EEC provided oral closing statements.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Colon and Mr. Serrano are currently married. They have two children together.

(Colon Test.; Serrano Test.).

Early 2018 Incident

2. In early 2018, Ms. Colon and Mr. Serrano – who, at that time, had been together for

¹ I granted the EEC’s motion to impound Exhibits 7-8, and 11 on the ground that those exhibits contain personally identifiable information related to minor children. See G.L. c. 4, § 7, cl. 26(a) and (c), G.L. c. 119, § 51E and F, and G.L. c. 6, § 172.

six years – had been separated for about one month. (Serrano Test.; Exhibit 7).

3. Mr. Serrano believed that Ms. Colon may have been romantically involved with a former coworker of his. On at least one occasion, he had attempted to grab Ms. Colon’s cell phone so that he could look at her text history.² On that occasion, he broke her phone. Their two children, around three and six years of age, were present. (Serrano Test.; Exhibit 7).
4. During the course of a DCF investigation that followed this incident, Ms. Colon reported to the investigator that Mr. Serrano was an “excellent” and “extremely appropriate” father to their children. (Exhibit 7).
5. Based on this incident, DCF issued a 51B report supporting a finding of neglect by Mr. Serrano. (Exhibit 7).³
6. As a result of this incident, Mr. Serrano was charged with assault and battery on a family/household member and larceny. Those charges were dismissed, evidently

² The DCF report indicates there may have been more than one occasion on which Mr. Serrano had attempted to forcibly take Ms. Colon’s cell phone. (Exhibit 7). I make no finding that this happened on multiple occasions.

³ A 51B report is a “report prepared pursuant to G.L. c. 119, § 51B detailing the MA DCF investigation into allegations of abuse or neglect upon a child and a determination by DCF whether there is reasonable cause to believe a child identified in the report has been, or is at risk of being, abused or neglected. A 51B report will either support or unsupport the allegations of abuse or neglect.” 606 CMR 14.04.

Because there was no challenge before DCF to the 51B report, I assume here the soundness and validity of DCF’s determination that the neglect allegations against Mr. Serrano were “supported” (that is, that there was “reasonable cause” to conclude that there had been neglect). *Cf. Kyle K. v. Department of Children and Families*, 103 Mass. App. Ct. 452, 462-63 (2023) (stating that when a party failed to raise certain alleged deficiencies in DCF proceedings his arguments concerning them were deemed waived).

because Ms. Colon refused to testify. (Exhibit 9).

May 2018 Incident

7. On May 10, 2018, Mr. Serrano was driving his van and stopped short in front of a vehicle occupied by Ms. Colon and another man (the same man with whom Mr. Serrano thought Ms. Colon had been involved), who were in the front seats; Ms. Colon's and Mr. Serrano's two children were in the back seats. The second vehicle rear-ended Mr. Serrano's van. (Serrano Test.; Exhibit 11).
8. Mr. Serrano did not intend a collision. Instead, he wanted to force the second vehicle to stop. (Serrano Test.).
9. Mr. Serrano exited his vehicle to confront the man in the second vehicle. A confrontation ensued, resulting in the man drawing a knife and stabbing Mr. Serrano in the arm. Mr. Serrano fled the scene in his van. (Exhibit 11).⁴
10. Mr. Serrano returned to the scene on foot. By that time, police had arrived. They noted that Mr. Serrano's arm was injured. Mr. Serrano claimed that it was the result of a fall earlier in the day. (Exhibit 11).⁵
11. Mr. Serrano and the other man were arrested. (Exhibit 11).

⁴ Mr. Serrano did not acknowledge that he had been stabbed. That is an inference I draw from the police report and other evidence.

⁵ In a statement to the EEC, Mr. Serrano indicates that he was later charged with assault with a dangerous weapon because he had been able to grab the knife from the other man and so the police saw him with the knife. (Exhibit 13). This remark is difficult to reconcile with the police report, which indicates that the police did not see him with a knife and did not charge him for any offense related to a knife. Nor did Mr. Serrano testify that he ever held the knife. I do not find that Mr. Serrano ever got hold of a knife.

12. As a result of this incident, Mr. Serrano was charged with: (1) negligent operation of a motor vehicle; (2) assault and battery on a household/family member; (3) assault with a dangerous weapon (motor vehicle); and (4) violation of a G.L. c. 209A order. (Exhibit 11). Those charges were dismissed. (Dodd Test.; Exhibit 1; Exhibit 13).
13. This incident also appears to have precipitated a DCF investigation. The resulting DCF report supported allegations of neglect by both Mr. Serrano and Ms. Colon. DCF concluded that both Ms. Serrano and Mr. Colon violated a 209A order. (Exhibit 8).⁶
14. At some point after May 2018, Mr. Serrano and Ms. Colon reconciled. (Colon Test.; Serrano Test.).

April 2021 Incident

15. On April 5, 2021, Mr. Serrano was riding a “‘sports-bike’ type motorcycle.” A police officer attempted to pull him over for speeding (an estimated 55 miles-per-hour in a 45 miles-per-hour zone), but Mr. Serrano fled, speeding away. (Exhibit 12).
16. Later that day, Mr. Serrano went to the police station and asked if there were any open warrants for his arrest. He explained that he fled because he had forgotten that his motorcycle was registered and was concerned the police would tow it. (Exhibit 12).
17. Mr. Serrano was charged with (1) negligent operation of a motor vehicle; (2) failure

⁶ The 51B Report related to this incident is heavily redacted, so the specific details of how Mr. Serrano and Ms. Colon violated a 209A order are not clear. The precise nature of the order is also unclear. It is possible it was a mutual restraining/no contact order issued under G.L. c. 209A, § 3.

to stop for police; (3) failure to drive in the right lane; and (4) speeding. (Exhibit 10).

These charges were dismissed. (Exhibit 1).

Developments in Mr. Serrano's and Ms. Colon's Personal Lives

18. At some point, Mr. Serrano and Ms. Colon got married. (Serrano Test.).

19. In 2022, Mr. Serrano and Ms. Colon joined a church. The church has provided Mr.

Serrano with guidance and direction. (Serrano Test.).

20. At their church, there are opportunities to discuss with their pastor and/or other members of the church any marital difficulties they might be having. (Serrano Test.).

21. Mr. Serrano and Ms. Colon do regular check-ins to discuss issues in their relationship. (Serrano Test.).

22. Mr. Serrano has improved his communication skills, and if he is upset or angry with his wife, he takes some space or discusses his concerns outside the presence of their children. (Serrano Test.).

23. Mr. Serrano's and Ms. Colon's children are doing well. (Serrano Test.; Colon Test.).

EEC Application

24. Ms. Colon applied to the EEC for a license to operate a family childcare program.

(Dodd Test.; Exhibit 1).⁷

25. Because Mr. Serrano is a member of Ms. Colon's household, the EEC performed a background check on Mr. Serrano. (Dodd Test.).

26. As a result of the background check, the EEC learned that Mr. Serrano had seven

⁷ As a household member, Mr. Serrano also submitted an application. (Exhibit 2).

criminal charges and that the Department of Children and Families (“DCF”) had issued 51B reports supporting allegations of neglect by Mr. Serrano. (Dodd Test.; Exhibit 1).

27. The EEC informed Mr. Serrano and Ms. Colon that, as a result of its background review, Mr. Serrano had a potentially disqualifying background. It invited Ms. Colon and Mr. Serrano to provide additional information as part of the EEC’s review process. (Dodd Test.).

28. In response, Mr. Serrano submitted a statement to the EEC in which he acknowledges having made poor decisions and states that he has since improved his self-control, communication, and mindfulness. He states that he is committed to not repeating his mistakes and to “handling stress and conflict in a healthy and respectful way.” (Exhibit 13).

29. Mr. Serrano also submitted two letters of reference in his favor, one from a friend and another from his pastor. Both letters depict a valued member of the church community who is kind, patient, and gentle, and who treats others with respect. (Exhibits 14-15). It is not clear from the record how much these individuals know about the specific incidents outlined above, but it is a fair inference from the record that they appreciated that Mr. Serrano had had some need to grow and develop as a person. Mr. Serrano credits the church with assisting him in that growth. (Serrano Test.).

30. Ms. Dodd was the EEC Background Check Unit specialist who conducted Mr. Serrano’s review. Ms. Dodd has worked as a reviewer at the EEC for seven years.

(Dodd Test.).

31. In conducting her review, Ms. Dodd considered the 51B reports, records relating to the criminal charges, and the materials submitted by Ms. Colon and Mr. Serrano.

(Dodd Test.).

32. In her review of Mr. Serrano's application, Ms. Dodd considered the factors set forth in 606 CMR 14.12(f). (Dodd Test.; Exhibit 1).

33. Weighing those factors, Ms. Dodd determined that Mr. Serrano was "not suitable for affiliation with an EEC licensed and/or funded program." This determination was reviewed and approved by Ms. Dodd's supervisors. (Dodd Test.).

34. The EEC informed Ms. Colon and Mr. Serrano that it had determined that Mr. Serrano was found to be "not suitable" and that they could file a Notice of Claim requesting an adjudicatory hearing. (Exhibits 3-4).

35. Ms. Colon filed a Notice of Claim and requested an adjudicatory hearing. (Exhibit 6).

CONCLUSION AND ORDER

Ms. Colon appeals the EEC's determination that Mr. Serrano is not a "suitable" "family childcare candidate." For the reasons set forth below, I recommend that the EEC, in its final agency decision, find Mr. Serrano suitable.

Under EEC regulations, the term "family childcare candidate" includes an individual seeking a license to open a family childcare program, as well as "household members" who are 15 years of age or older, regardless of whether they are on the premises during childcare hours. 606 CMR 14.04. Here, because Ms. Colon proposes to open a family childcare program, Mr. Serrano is a "family childcare candidate."

It is Ms. Colon's burden to present "clear and convincing evidence demonstrating [Mr. Serrano's] suitability . . . in light of the concern for children's safety." 606 CMR 14.12(e).

In determining his suitability, "due weight" must be given to the following factors:

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 [. . .] findings of abuse/neglect;
6. Dispositions of [. . .] findings of abuse/neglect;
7. Relevant evidence of rehabilitation or lack thereof; and
8. Other relevant information, including information submitted by the candidate.

606 CMR 14.12(2)(f).

The fourth 606 CMR 14.12(2)(f) factor is "Relationship of the incident(s) to the ability of the candidate to care for children." In the context of a "family childcare candidate" who is not going to be providing actual care to children, I interpret this factor as asking whether the incidents suggest that the candidate's presence on the premises could adversely impact the safety or well-being of the children being cared for. On this view, even though Mr. Serrano would not be providing childcare, he would be unsuitable if, for example, the incidents in question indicate that he would be a disruptive or toxic presence.

Notwithstanding the EEC's position that its initial unsuitability determination is to be reviewed under an abuse of discretion standard, the "majority view at this time is that DALA must freshly evaluate each case based on the appellate record." *Florence F. v. Department of Early Educ. & Care*, OC-25-0622, 2026 WL 1050635, at *3 (Div. Admin.

Law App. April 8, 2026) (citing *Gonzalez v. Department of Early Educ. & Care*, No. OC-25-251, 2026 WL 539320, at *4-8 (Div. Admin. Law App. Feb. 19, 2026); *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); *Department of Early Educ. & Care v. Jarominski*, No. OC-22-329, 2023 WL 9022703, at *7 (Div. Admin. Law App. Dec. 21, 2023)). I turn now to Mr. Serrano's suitability as a family childcare candidate.

In arguing for Mr. Serrano's unsuitability, the EEC relies principally upon the two incidents in 2018. The 2021 incident involving his motorcycle evinces questionable judgment, but has little connection to the care of children.

The two incidents in 2018 are serious (factor 3) because they involve violence; and they are both serious (factor 3) and at least potentially related to the care of children (factor 4) because they took place in the presence of Mr. Serrano's two children. That said, the "specific circumstances" (factor 3) matter. These episodes appear to have stemmed from a particular dynamic – romantic jealousy. That does not excuse the behavior, of course. But there is no evidence that Mr. Serrano's aggressive actions evince a broader pattern of violent and disruptive conduct. On the contrary, several years appear to have passed without any further incidents (factor 1). And Mr. Serrano has worked on addressing concerns and conflicts in his relationship and improved his communications (factor 7). He has the support of his wife and his church in these efforts. Additionally, his reference letters depict a man who is essentially kind and patient (factor 8).

Romantic jealousy can bring out the worst in us. And Mr. Serrano's concerning reactions to his situation, which took place in view of his children, reflected some combination of poor judgment and poor self-control. Nevertheless, the incidents were isolated and took place several years ago, and in the intervening time Mr. Serrano has grown as a person. Mr. Serrano would not be a violent, aggressive, or toxic presence amid the children being cared for by his wife.

Thus, Ms. Colon has established by clear and convincing evidence that Mr. Serrano is suitable to be a household member of a home in which an EEC family childcare program operates. I recommend that the EEC's final agency decision reverse the determination that Mr. Serrano is not a suitable family childcare candidate.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: October 2, 2026