

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Paule Lorine Flaherty &
Paulette Demosthenes,**
Petitioners

v.

Docket No. OC-25-0515

**Department of Early Education
and Care,**
Respondent

Appearance for Petitioners:

Ricardo B. Telemaque II, Esq.

Appearance for Respondent:

Nicole G. Munroe, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

The Department of Early Education and Care's decision finding a day care operator's daughter unsuitable as a person regularly on the premises should be upheld because the daughter had a supported 51B on file with DCF that credibly accused her of abuse and neglect of a child in her care while she was working for another day care center.

RECOMMENDED DECISION

Petitioners Paule Lorine Flaherty and Paulette Demosthenes requested an adjudicatory hearing to challenge Respondent Department of Early Education and Care's (EEC) decision that Ms. Flaherty's background is not suitable for affiliation with an EEC-

licensed program. See 102 CMR 1.07(4)(a)(1); 606 CMR 7.00. The parties filed a joint pre-hearing memorandum and 17 proposed exhibits. On February 18, 2026, I held an evidentiary hearing by Webex video platform. It was digitally recorded. I entered the 17 proposed exhibits into evidence as marked. (Exs. 1-17.) EEC called two witnesses: EEC Licensor Jennifer Meighan and EEC Background Record Check Reviewer Arlyn Singletary. Ms. Flaherty and Ms. Demosthenes testified on their own behalf and also called Ms. Demosthenes's assistant, Jocelyn Marcelin. The parties filed closing briefs.

FINDINGS OF FACT

Based on the evidence in the record and reasonable inferences drawn from it, I make the following findings of fact:

1. Paulette Demosthenes lives in a single-family home in Randolph, Massachusetts. (Ex. 14.)
2. Ms. Demosthenes has been licensed as a family childcare provider since June 2013. (Ex. 14.)
3. She currently operates a family childcare program out of her Randolph home. Her licensed space includes a first-floor kitchen, nap room, living room, and family room. She is licensed to care for up to ten children, with the support of a Family Child Care assistant. (Ex. 14.)
4. Paule Lorine Flaherty is Ms. Demosthenes's daughter. (Flaherty Testimony.)
5. Ms. Flaherty and her three children reside in Fitchburg, Massachusetts. (Flaherty Testimony.)

6. In September 2024, Ms. Flaherty was employed at Mt. Hope Christian School (Mt. Hope), a large childcare program. (Ex. 2.)

7. On September 19, 2024, the Department of Children and Families (DCF) received a 51A report from Mt. Hope alleging that Ms. Flaherty physically abused a child in her care. (Exs. 2, 4.)

8. According to the report, staff members at Mt. Hope observed linear marks, which appeared to be adult fingerprints, on a child's forearm after Ms. Flaherty had taken the child on two walks outside the sight of other staff members. (Ex. 4.)

9. On September 24, 2024, a DCF investigator and a Department of Early Education and Care (EEC) investigator visited Mt. Hope to investigate the 51A report. The investigators interviewed several Mt. Hope staff members. (Ex. 4.)

10. On September 25, 2024, EEC received information that Ms. Flaherty had been residing at Ms. Demosthenes's home in Randolph and had been assisting with caring for the children in the family childcare program. (Ex. 14; Meighan Testimony.)

11. A review of EEC records revealed that Ms. Flaherty was not an EEC-approved Family Child Care assistant or EEC-approved household member. (Ex. 14; Meighan Testimony.)

12. Upon learning this information, Family Child Care Licensor Jennifer Meighan, who has worked as Ms. Demosthenes's licensor since 2017, conducted an unannounced visit to the program on September 26, 2024. (Ex. 14; Meighan Testimony.)

13. During the visit, Licensor Meighan interviewed Ms. Demosthenes.

Licensor Meighan summarized Ms. Demosthenes's statements during the interview as follows: Ms. Flaherty's children attend the childcare program. Ms. Flaherty and her children often stay overnight at Ms. Demosthenes's Randolph home on the weekends. When Ms. Demosthenes needs staffing coverage for herself or her assistant, she asks Ms. Flaherty to work at the program. Ms. Flaherty last worked at the program in July 2024, when Ms. Demosthenes had to travel out of state to care for her mother. During this time, Ms. Demosthenes left Ms. Flaherty and her regular assistant, Jocelyn Marcelin, in charge of the program. A review of the program's attendance records shows that Ms. Flaherty covered at the program on June 17, June 18, June 20, and June 21, 2024. (Ex. 14; Meighan Testimony.)

14. Ms. Demosthenes and Ms. Flaherty confirm that, when Ms. Meighan filed her report in 2024, Ms. Flaherty's children attended, or were attending, Ms. Demosthenes's childcare program. All three of Ms. Flaherty's children are presently enrolled in public school and no longer attend Ms. Demosthenes's daycare program. (Demosthenes Testimony; Flaherty Testimony.)

15. Since Ms. Meighan's 2024 report, Ms. Flaherty has not stayed overnight at her mother's home in Randolph. (Demosthenes Testimony; Flaherty Testimony.)

16. Licensor Meighan also interviewed the program's regular assistant, Jocelyn Marcelin. Licensor Meighan summarized Ms. Marcelin's statements during the interview as follows: When Ms. Marcelin cannot come to work, Ms. Flaherty covers for

her. The last time Ms. Flaherty covered for her was July 2024. (Ex. 14; Meighan Testimony.)

17. Based on Licensor Meighan’s investigation, EEC informed Ms. Demosthenes that Ms. Flaherty was considered a person regularly on the premises of the childcare program and therefore would have to undergo a background record check (BRC).¹ (Meighan Testimony.)

18. Following this notification, Ms. Demosthenes added Ms. Flaherty to her licensing profile as a person regularly on the premises. She also submitted the documents needed for the BRC. (Ex. 14; Meighan Testimony.)

19. On October 8, 2024, EEC’s BRC Unit initially marked Ms. Flaherty as suitable. (Ex. 14.)

20. However, shortly after making its initial determination, EEC received information from DCF that there was an open DCF investigation involving allegations of abuse and neglect by Ms. Flaherty at a separate EEC-licensed facility. (Ex. 14.)

21. On October 10, 2024, the Family Child Care Licensing Supervisor contacted Ms. Demosthenes and informed her that her license would be placed on inactive status until all persons regularly on the premises were found suitable by EEC’S BRC Unit. At this time, Ms. Demosthenes’s program was temporarily closed. (Ex. 14; Meighan Testimony.)

¹ Ms. Demosthenes was also informed that her own husband, who visited her home on the weekends, was considered a person regularly on the premises and would have to undergo a BRC. His BRC is not the subject of this appeal.

22. On October 28, 2024, EEC received DCF’s 51B report regarding the Mt. Hope investigation. The 51B report concluded that the allegations of physical abuse and neglect by Ms. Flaherty were supported. Ms. Flaherty filed an administrative appeal of DCF’s conclusion. After a hearing, a DCF hearing officer affirmed the supported 51B. (Ex. 4; Meighan Testimony.)

23. DCF defines abuse as “the non-accidental commission of any act by a caretaker upon a child under age 18 which causes or creates a substantial risk of physical or emotional injury” 110 CMR 2.00.

24. According to the report, multiple staff members reported that the subject child was upset and crying on the playground. Ms. Flaherty removed the child from group play activity and took the child on two separate walks. During these walks, Ms. Flaherty and the child were out of sight of the other educators. During the second walk, staff members heard the child scream. Soon after the walks, multiple staff members observed three linear bruises on the child’s forearm. (Ex. 4.)

25. The staff members believed that the bruising resembled the grip of adult fingerprints. The child’s pediatrician, who saw the child following the incident, agreed that the bruising mimicked the grip of adult fingerprints. The child’s mother confirmed that the child did not have any bruises prior to arriving at daycare that day. (Ex. 4.)

26. Based on these findings, DCF concluded that the allegations of physical abuse by Ms. Flaherty were supported. (Ex. 4.)

27. DCF defines neglect as “failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with

minimally adequate . . . supervision, emotional stability and growth, or other essential care . . .” 110 CMR 2.00.

28. According to the report, Ms. Flaherty failed to meet the emotional needs of the child. The report explained that, rather than consoling the child when he was upset, Ms. Flaherty used physical methods which ultimately harmed the child. (Ex. 4.)

29. Based on these findings, DCF concluded that the allegations of neglect by Ms. Flaherty were supported. (Ex. 4.)

30. In November 2024, EEC finished its investigative report regarding the Mt. Hope facility. The report concluded that Ms. Flaherty, listed as “Educator A” in the report, was responsible for the physical neglect and abuse of a child in the program. (Ex. 2.)

31. The EEC investigative report included one statement of noncompliance: “[a]n educator physically abused and neglected a child in care at the program, leaving bruises on the child’s arm.” (Ex. 3.)

32. On November 6, 2024, Licensor Meighan issued an investigative report regarding Ms. Demosthenes’s program. Among other determinations, the report concluded that “a person regularly on the premises had failed to maintain a background free of conduct that, in the Department’s judgment, adversely affected the educator’s ability to care for children.” In support of this determination, the report noted that Ms. Flaherty, a person determined to be regularly on the premises, had four DCF supported findings (that stemmed from the one incident at Mt. Hope) on her record. (Ex. 14.)

33. The EEC investigative report included seven statements of noncompliance:

- “The educator did not ensure that her program was soundly administered by a qualified person, when she left the state and left a person in charge of the childcare who did not have the required EEC family childcare certificate.”
- “The educator allowed two persons on the premises of the family childcare without suitable BRC as required.”
- “The licensor observed the regular assistant alone on the premises with seven children on the day of the visit. The educator had left her alone with seven children for approximately one hour.”
- “A school-aged child was observed to be in an unlicensed bedroom during the visit. The door was closed, preventing appropriate supervision of the child.”
- “A review of the educator’s attendance records shows that on several occasions there were more than six children signed in on attendance and no assistant was documented. None of the children in attendance were school-aged.”
- “The educator did not notify the Department within seven days of a change in the household composition.”
- “A person regularly on the premises failed to maintain a background free of conduct that, in the Department’s judgment, adversely affected the educator’s ability to care for children.”

(Ex. 15.)

34. On November 11, 2024, in response to Licensor Meighan’s report, Ms. Flaherty submitted an affidavit of proof of residence to EEC. The affidavit stated that Ms. Flaherty resided at 68 Lincoln Street, Fitchburg, MA 01402, and that she would refrain from spending time at Ms. Demosthenes’s home during daycare program hours.

(Ex. 17.)

35. However, Ms. Flaherty also asserted that she “reserve[s] the right to visit [her] parents on the week-ends or after hours when all the children under [Ms. Demosthenes’s] care have left the premises.” (Ex. 17.)

36. Based on Ms. Flaherty’s representations, EEC did not accept her affidavit as evidence that she was not a person regularly on the premises of the childcare program. Therefore, EEC concluded that Ms. Flaherty would still have to undergo a BRC. (Meighan Testimony.)

37. On December 4, 2024, Ms. Flaherty consented to a BRC. (Ex. 6.)

38. While the discretionary review of Ms. Flaherty was pending, the EEC informed Ms. Demosthenes that, under 606 CMR 14.11(9)(a), her license could return to active status subject to household member and visitor limitations. EEC informed Ms. Demosthenes that she could reopen her program so long as she agreed that Ms. Flaherty would no longer visit the home. (Meighan Testimony; Demosthenes Testimony.)

39. EEC provided Ms. Demosthenes with an affidavit to fill out. This affidavit required Ms. Demosthenes to attest, under the pains and penalties of perjury, that the

candidate, Ms. Flaherty, was either: (1) “no longer a household member (HHM)” or (2) “no longer a visitor regularly on the premises (ROP).” (Ex. 16; Meighan Testimony.)

40. EEC expected that Ms. Demosthenes would check the box indicating that Ms. Flaherty is “no longer a visitor regularly on the premises.” (Meighan Testimony.)

41. However, Ms. Demosthenes checked the box indicating that Ms. Flaherty “is no longer a household member” because she was not living there. (Ex. 16.)

42. Ms. Demosthenes did not understand the regulatory difference between a household member and a person regularly on the premises. However, it is clear that she understood that by checking either box she was agreeing that Ms. Flaherty could not visit her home. (Demosthenes Testimony.)

43. Upon receiving the signed affidavit, EEC informed Ms. Demosthenes that her program could be reopened, which she did on or around March 19, 2025. (Meighan Testimony; Demosthenes Testimony.)

44. Despite allowing Ms. Demosthenes’s program to reopen, EEC has proceeded with its discretionary BRC. That is to say, notwithstanding its implicit conclusion that Ms. Flaherty *would no longer be* a visitor regularly on the premises, EEC continued with its discretionary review process that, by definition, rests on the conclusion that Ms. Flaherty *is* a person regularly on the premises of the childcare program. (Meighan Testimony; Singletary Testimony.)

45. Arlyn Singletary, an EEC Background Check Unit Specialist, conducted Ms. Flaherty’s discretionary review. Ms. Singletary has worked as a reviewer at EEC since 2014. (Singletary Testimony.)

46. In conducting her review, Ms. Singletary considered the supported 51B report and EEC investigative report regarding the incident at Mt. Hope. Ms. Singletary also considered the candidate statement and letters of support submitted on behalf of Ms. Flaherty. (Singletary Testimony.)

47. In her review of Ms. Flaherty's application, Ms. Singletary considered the factors set forth at 606 CMR 14.12(f). Ms. Singletary concluded that only two factors weighed towards suitability: the number of findings and other relevant information. Ms. Singletary concluded that the remaining factors weighed against suitability. (Ex. 1; Singletary Testimony.)

48. Ultimately, Ms. Singletary did not find Ms. Flaherty suitable. Her determination was reviewed and approved by her supervisors. (Ex. 1; Singletary Testimony.)

49. On July 31, 2025, EEC notified Ms. Flaherty and Ms. Demosthenes of its determination.² (Exs. 11, 12.)

50. On August 14, 2025, Ms. Flaherty filed a Notice of Claim requesting a hearing regarding EEC's determination. Ms. Flaherty's Notice of Claim stated that she is not a person regularly on the premises. (Ex. 13.)

51. Ms. Flaherty has not visited her mother's home in Randolph since her daycare opened again in March 2025. There is no longer a need to visit for childcare, as

² It does not appear that EEC intended to suspend or revoke Ms. Demosthenes's license. The notice stated only that it had concluded that Ms. Flaherty was not suitable to be regularly on the premises of the child care home.

Ms. Flaherty's children are now all in public school. They do not see each other often these days, but they do see each other at church or at their relatives' houses in Fitchburg. (Demosthenes Testimony; Flaherty Testimony.)

CONCLUSION AND RECOMMENDATION

EEC regulations require that a family child care provider, like Ms. Demosthenes, must ensure that all "persons regularly on the premises (including volunteers and other regular visitors) 15 years of age or older in family child care programs" submit a written request for a background records check as part of the application process. See 606 CMR 14.05(2)(b). A person is considered regularly on the premises if she is "present at a family child care home on a recurring basis, but do[es] not reside at the home and [is] not employed by the program." 606 CMR 14.04. The first issue in these appeals is whether Ms. Demosthenes's daughter, Paule Flaherty, was a person regularly on the premises of Ms. Demosthenes's family child care home. If she was regularly on the premises, then EEC was correct to require a BRC of Ms. Flaherty.

There is ample evidence to prove that Ms. Flaherty was a person regularly on the premises before March 2025, when her mother's daycare re-opened. EEC, Ms. Demosthenes, Ms. Flaherty, and Ms. Marcelin all agree that, in June 2024, Ms. Demosthenes asked her daughter to care for the children in her family child care program. Ms. Demosthenes has admitted that Ms. Flaherty and her three grandchildren spent weekends at her home and Ms. Flaherty would then leave from the home for work on Monday. This arrangement made sense to them because Ms. Demosthenes cared for Ms. Flaherty's children at her family child care home. As a natural

consequence of this arrangement, Ms. Flaherty was also there nearly every weekday to drop the children off and pick them up. I therefore conclude that Ms. Flaherty was regularly on the premises through March 2025.

Since March 2025, however, Ms. Flaherty has *not* visited her mother's home. Ms. Flaherty and her mother credibly testified that they have abided by the affidavit that Ms. Demosthenes submitted in order to re-open her child care home. Ms. Flaherty's children are no longer in the care of Ms. Demosthenes, as they are enrolled in public school and do not require care. The two women see each other at church and then get together with other family members in Fitchburg, where Ms. Flaherty, her children, and some of their other relatives live. This has been a hardship for all persons involved.

I do not credit EEC's argument that Ms. Demosthenes never *really* promised that Ms. Flaherty would not visit her home because she checked only the "household member" box on the affidavit and not the "regularly on the premises" box. Ms. Demosthenes was not familiar with the form or the regulatory definitions contained in it. When she signed the affidavit, she was promising that, until she was told otherwise, Ms. Flaherty would not visit her at home. Moreover, as I have found above, EEC clearly concluded that Ms. Flaherty would no longer visit the child care home, as it allowed Ms. Demosthenes to open up again. It would make no sense for EEC to have concluded that Ms. Flaherty was still regularly on the premises and still have allowed Ms. Demosthenes to re-open.

To sum up, Ms. Flaherty was regularly on the premises of the child care home up until March 2025, but as of the date of the hearing in this matter she has not been regularly on the premises for approximately a year. Normally, that would present an argument for mootness, as the only reason that Ms. Flaherty has to pass a BRC is that she is regularly on the premises. Voluntary cessation of the pertinent conduct, however, does not moot a dispute unless the party claiming mootness shows, generally with more than “mere assurances,” that “there is no reasonable expectation that the wrong will be repeated.” *Branch v. Commonwealth Emp. Rels. Bd.*, 481 Mass. 810, 819 n.16 (2019).

I would consider this appeal moot if I was reasonably assured that, after making that determination, Ms. Flaherty would refrain from visiting her mother and thus avoid becoming a person regularly on the premises again. But, I am not so assured. Ms. Flaherty has asserted her right to visit her mother after child care hours and on weekends in her affidavit, which EEC wisely did not accept as assurance that she would not visit her mother’s child care home. Additionally, consistently throughout the hearing, Ms. Flaherty again asserted her right to visit her mother at the same times. Based on this evidence, I conclude that it is likely that if I simply dismiss this appeal as moot because Ms. Flaherty is no longer a person regularly on the premises, it is very likely that she will return to visiting her mother and thus become a person regularly on the premises all over again. It can’t be that Ms. Flaherty can defeat the BRC process simply by periodically refraining from visiting her mother and thus triggering the

mootness doctrine. Consequently, I must now examine whether Ms. Flaherty's BRC disqualifies her.

Ms. Flaherty's BRC revealed that she has a discretionary disqualifying background, because of her DCF supported 51B report. See 606 CMR 14.10(6)(c) (being a "person responsible for the abuse or neglect of a child . . . as appearing on any check of any state . . . child welfare or child abuse and neglect registry or database" is a discretionary disqualifying background). Ms. Flaherty appealed the DCF determination, and a DCF hearing officer has affirmed the determination that she abused and neglected a child in her care when she worked at Mt. Hope. While Ms. Flaherty denies that she abused the child, she has provided no reliable evidence to contradict DCF's conclusions.

Ms. Flaherty must now provide "clear and convincing evidence demonstrating [her] suitability for . . . affiliation in light of the concern for children's safety. 606 CMR 14.12(2)(e). 606 CMR 14.12(2)(f) provides:

In assessing the candidate's suitability given the concern for children's safety, due weight shall be given to the following factors when evaluating the candidate's criminal offense(s) or abuse/neglect finding(s):

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.

Most of the eight regulatory factors weigh against Ms. Flaherty's suitability. EEC concluded that only two factors weighed towards suitability: the number of findings and other relevant information. The 51B report was the only supported finding in Ms. Flaherty's record. Ms. Flaherty's letters of support spoke very highly of her professionalism and her work with children. I agree that these two factors weigh in favor of her suitability.

The remaining six factors weigh against suitability. The abuse occurred in September 2024. This was only seven months prior to EEC's review, and it is still only a year and a half ago as of this writing. Furthermore, she was in her early 40s when she committed the abuse. At that age, anyone should know the difference between right and wrong. Ms. Flaherty's abuse and neglect of the young boy in her care was very serious. She directly and purposefully physically injured the child to control his behavior. This violation is obviously directly related to her ability to care for children. While it remains unlikely that Ms. Flaherty would ever visit her mother during day care hours going forward, her intentional and grievous conduct against the child in her care at Mt. Hope is serious enough for me to conclude that she should be kept away from the child care home at all hours. Ms. Flaherty's candidate statement denied the allegations of abuse and neglect and failed to address how the allegations would affect her role as a person regularly on the premises of a childcare program. Finally, Ms. Flaherty has still provided no evidence of rehabilitation.

For the above-stated reasons, Ms. Flaherty has failed to present clear and convincing evidence of her suitability to be a person regularly on the premises. I

therefore recommend that EEC find Ms. Flaherty unsuitable. Because I have also concluded that Ms. Flaherty no longer visits her mother's home, this effectively means that she must continue to refrain from visiting or else risk her mother's license to operate.

I further recommend that, because Ms. Flaherty is no longer regularly on the premises, Ms. Demosthenes be allowed to continue operating her family child care business.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: April 3, 2026