**COMMONWEALTH OF MASSACHUSETTS**

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| Suffolk, ss. | **Division of Administrative Law Appeals** |
| **Department of Early Education and Care,** Petitioner v.**Christina Frechette**, Respondent | Docket No. OC-18-0175 |

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| **Appearance for Petitioner**:Caroline Hayes Lopez, Esq.Department of Early Education and Care51 Sleeper Street, 4th FLBoston, Massachusetts 02210 |
| **Appearance for Respondent** |

*Pro Se*.

14 Lauren Lane

Fiskdale, MA 01518-1163

**Administrative Magistrate**:

Judithann Burke

**Summary of Recommended Decision**

 The decision of the Department of Early Education and Care (EEC) to issue a Second Cease Desist Order to the Respondent is not supported by the evidence regarding the events of January 22, 2018. The EEC does not have reasonable cause to impose a fine (fines) on the Respondent for providing child care in her home without an EEC license on that date.

 **RECOMMENDED DECISION**

On February 12, 2018, the Petitioner, Department of Early Education and Care (EEC) issued an Order to Protect Children: Second Cease and Desist Order and Notice of Fine to the Respondent, Christina Frechette. (Exhibit 2.) The Respondent filed a Notice of Claim and Request for a Hearing on February 18, 2018. (Exhibit 3.) The appeal was received by the Division of Administrative Law Appeals on February 28, 2018.

EEC alleged that the Respondent was providing child care to unrelated children in her home on January 22, 2018 in violation of G.L. c. 15D, §§ 6 & 15. EEC had issued to the Respondent a first Order to Cease and Desist the provision of illegal, unlicensed child care in her home to unrelated children on December 6, 2017. In February 2018, EEC imposed three fines of $250 each on the Respondent for allegedly caring for three unrelated children on January 22, 2018 in violation of G.L. c. 15D, § 10 and 102 CMR 1.07(3)(b).

 I held a hearing on May 17, 2018 at the offices of the Worcester Registry of Deeds, 90 Front Street, Worcester, MA. I admitted three (3) exhibits into evidence. EEC presented the testimony of EEC Investigator Timothy Smith and Erin Murphy Craft, EEC Regional Director of the Western Regional Office. The Respondent testified and argued in her own behalf. She called no other witnesses and proffered no documents. Both parties stated their arguments for the record. I made a digital recording of the hearing.

**FINDINGS OF FACT**

 Based on the testimony and documents submitted during the hearing in the above-entitled matter, I make the following findings of fact:

1. The Respondent, Christina Frechette, resides at 14 Lauren Lane in Fiskdale, MA. (Exhibits 1 and 2.)
2. The Respondent formerly held a license to operate a family child care program out of her home in Fiskdale. She was licensed by EEC until June 2017 to provide care for up to eight child care children in her home (with two children required to be school aged), with the first floor and basement of her home constituting licensed child care space. (Exhibit 2.)
3. On June 9, 2017, EEC issued an Order to Protect Children: Notice of Emergency Suspension, Notice of Revocation, and Notice of Intent to Fine (Order). EEC suspended and revoked the Respondent’s family child care license for the following reasons:
4. Failure to exercise good judgment and for failure to have the mental and emotional ability to care for children. It was alleged that the Respondent threw a toy at an EEC licensor because she was upset during a monitoring visit on May 24, 2017. It was further alleged that the Respondent attempted to lock EEC licensors out of her family child care program and refused to allow them access when they observed an infant in unlicensed child care space on the second floor of her home. It was further alleged that the Respondent attempted to stop operating her program during the monitoring visit and asked the licensors to care for her child care children instead of her.
5. The Respondent provided false and misleading information to EEC licensors during a monitoring visit, claiming that she was only caring for six children when EEC licensors discovered a seventh child in her care.
6. The Respondent was alleged to have failed to properly supervise child care children by caring for seven children, who were all younger than school aged. In addition, she was caring for three children under the age of two when none could walk independently. The Respondent allegedly allowed a child care child to be alone in unapproved space in the second floor of her home. This child was being supervised by an unapproved caregiver.[[1]](#footnote-1)
7. It was determined that the Respondent’s home was not safe for child care, with clutter and hazards accessible to children. (*Id.*)
8. As a result of the Order, and as of June 9, 2017, the Respondent was required to immediately stop providing child care services in her home. (*Id.*)
9. The Respondent did not file an appeal of the June 2017 Order. As a result, the Order became EEC’s Final Agency Decision suspending and revoking the Petitioner’s family child care license on June 30, 2017. (*Id.*)
10. On December 5, 2017, an EEC investigator conducted an unannounced visit to the Respondent’s home in response to a complaint received concerning her providing unlicensed child care. After a period of observation, the EEC investigator determined that the Respondent was providing illegal, unlicensed child care to unrelated children in her home. On December 6, 2017, EEC issued the Respondent a Cease and Desist Order for continuing to operate her family day care program without a license. (*Id.*)
11. The December 2017 Cease and Desist Order ordered the Respondent to stop providing illegal, unlicensed child care in her home. The Order also notified the Respondent that she would be subject to fines of up to $250 for each violation of the Order. The Respondent failed to seek administrative reconsideration of the December 2017 Cease and Desist Order. (*Id.*)
12. On January 22, 2018, EEC Investigator Timothy Smith conducted an unannounced visit to the Respondent’s home to determine whether she had ceased providing unlicensed child care as required by the December 2017 Cease and Desist Order. Mr. Smith arrived at the Respondent’s home at approximately 9:30 a.m. and did not detect any activity at the home at that time. (*Id.*)
13. Timothy Smith returned to the Respondent’s home at approximately 3:30 p.m. on the same day. He parked his car several yards away and observed the home for several minutes. He observed the friend of the Respondent’s son walk up the street and enter the Respondent’s home. A short time later, the Respondent’s son and the boy Mr. Smith had observed left the home and walked down the street to the friend’s house. Mr. Smith believed that the boys were siblings and that the Respondent was caring for them. (*Id.* and Smith Testimony.)
14. Mr. Smith then observed an adult woman drive to the Respondent’s home in an SUV, exit the vehicle and enter the Respondent’s home. The same woman exited the home approximately ten minutes later with a little girl approximately three to four years old. They drove away in the SUV. The woman is the mother of a pre-school friend of the Respondent’s daughter. The Respondent and the little girl’s mother take turns car-pooling the children to the pre-school. The Respondent’s daughter and the little girl were playing after pre-school until the girl’s mother picked her up. The Respondent was not providing paid, unlicensed child care to her. (Exhibit 2, Smith Testimony and Respondent Testimony.)
15. After the woman and child left in the SUV, Mr. Smith approached the home and knocked on the front door. He observed multiple children inside of the home. The Respondent told Mr. Smith that he was not welcome to enter her home. She stepped outside and told Mr. Smith that she was caring for her own five children, two nephews and the child of a neighbor who had gotten off of the school bus and stayed at the Respondent’s house until his mother returned home. The Respondent did not provide any information regarding the identities or ages of the children. The Respondent indicated that she was not providing child care and that she was working as an architect. When Mr. Smith asked about the two boys he had seen leaving the Respondent’s home, the Respondent accused him of spying on her. She went back inside her home and slammed the door. (Exhibit 2 and Smith Testimony.)
16. Mr. Smith determined that the Respondent was caring for at least three unrelated children. A Second Cease and Desist Order was issued on February 12, 2018. (Exhibits 1 and 2.)
17. After determining that the Respondent committed three violations of the First Cease and Desist Order by caring for three unrelated children in her home, EEC imposed three fines of $250 each, for a total fine of $750. (Exhibit 2.)
18. The Respondent cares for her cousin’s child a few days per week. The mother pays her for this service. (Respondent Testimony.)

**DISCUSSION AND CONCLUSION**

 The Petitioner did not meet its burden of proving that the Respondent was providing unlicensed child care in her home on January 22, 2018. While I find Mr. Smith’s testimony to be credible and his intentions well-meaning, I believe he misinterpreted the events of that day, which he took to be the provision of unlicensed child care. He believed that the Respondent’s son and his friend were day care children. They were not. He believed that the Respondent was providing unlicensed child care to the daughter of the woman who drove up to the house in the SUV. She was not. The little girl had been in the Respondent’s home playing with the Respondent’s daughter after pre-school. Mr. Smith was not able to ascertain the names and ages of these children and, thus, he was unable to say with any certainty that they were child care children.

 I credit the Respondent’s testimony that she lives in a neighborhood where there are many children and families. The parents provide support and back-up for one another. The Respondent has a busy house of her own with five children, all of whom have occasional play dates in her home and at the homes of their friends. The Respondent cares for the child of a family member a few days a week and receives payment. I do not believe that the evidence in the record regarding the events of January 22, 2018 supports the notion that the Respondent was providing unlicensed child care to at least three unrelated children on that date. Accordingly, there is no basis to support the imposition of three $250 fines.

 This Recommended Decision speaks only to the allegations and conclusions set forth in the Second Cease and Desist Order pertaining to January 22, 2018. EEC is certainly within its rights to follow up on any additional complaints and conduct additional investigations. Further, the directives set forth in each Cease and Desist Order are still in play. The Respondent is not authorized to provide child care to unrelated children in her home. If it is discovered that she has re-commenced providing child care and she is unlicensed, EEC is entitled to take further action including the enforcement of the Cease and Desist Orders and/or the imposition of fines.

 **DIVISION OF ADMINISTRATIVE LAW APPEALS,**

Judithann Burke,

 Administrative Magistrate

DATED: May 25, 2018

1. I credit the Respondent’s hearing testimony that the child on the second floor of her home in May 2017 was her nephew. He was being supervised by his father, the Respondent’s brother. [↑](#footnote-ref-1)