

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

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

v.

Docket No. OC-22-0329

**Mandy Jarominski,**  
Respondent

DEC 21 2023

**Appearance for Petitioner:**

Leah Potash, Esq.  
Assistant General Counsel  
The Department of Early Education and Care  
50 Milk Street, 14<sup>th</sup> Floor  
Boston MA 02109-5002

**Appearance for Respondent:**

Many Jarominski, *pro se*

**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF RECOMMENDED DECISION**

The Petitioner challenges a decision by the Department of Early Education and Care ("EEC") to deny her application for licensure as a family childcare provider. The Petitioner is the subject of four supported G.L. c. 119, § 51B reports of neglect (issued in 2002, 2009, 2011, and 2018, respectively). The EEC concluded that the Petitioner had not met her burden of demonstrating by clear and convincing evidence that she was suitable for licensure because these reports depict, among other things, emotional outbursts, a volatile relationship with one of the Petitioner's children, inappropriate comments, and a home life marked by turmoil. Nevertheless, the application should be granted. The evidence demonstrates that the Petitioner has experienced considerable personal growth in the last several years. She has left a toxic relationship and the troubled home life that accompanied it, greatly improved her ability to deal with stress and conflict, pursued her education, and continued to participate in therapy. She works as a paraprofessional with high school children with disabilities, with evident

commitment and pride. She is good with children and is particularly good at engaging them in play. She has presented clear and convincing evidence that she is suitable for licensure as a family childcare provider.

### **RECOMMENDED DECISION**

The Petitioner, the “EEC,” denied the application of the Respondent, Mandy Jarominski, to become a licensed family childcare provider. Ms. Jarominski submitted a notice of claim and requested an adjudicatory hearing. The matter was referred to the Division of Administrative Law Appeals (“DALA”).

I held a hearing on June 22, 2023 via the WebEx conferencing platform.<sup>1</sup> The hearing was recorded. I admitted Exhibits 1-11 into evidence.

The EEC called the following witness: Daniel Whalen, the EEC Background Record Check Unit specialist who had reviewed Ms. Jarominski’s application as part of the EEC’s review process.

Ms. Jarominski testified on her own behalf and also called the following witnesses:

- Amanda Craig – Ms. Jarominski’s neighbor;
- Tina Baxter – Ms. Jarominski’s friend and the owner of a day care business;
- Tammy Favreau – Ms. Jarominski’s sister; and
- Michael Jarominski – Ms. Jarominski’s father

The EEC filed a post-hearing brief, at which point the record was closed.

### **FINDINGS OF FACT**

Based on the evidence presented by the parties, along with reasonable inferences

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<sup>1</sup> This matter was originally heard by another magistrate before she left DALA for another position. The parties were given the option to either have the matter decided on the existing hearing record or for a new evidentiary hearing to be convened. Ms. Jarominski elected to proceed with a new hearing.

drawn therefrom, I make the following findings of fact:

A. Proceedings Before the EEC

1. As part of Ms. Jarominski's application to become a licensed family child care provider, the EEC performed a background records check. (Whalen Test.).
2. As a result of the background check, the EEC learned that the Department of Children and Families ("DCF") had issued four supported 51B reports of neglect by Ms. Jarominski. (Whalen Test; Exhibits 1-4).<sup>2</sup>
3. The first 51B report was issued in 2002, when Ms. Jarominski was twenty-five years old. At the time of this report, Ms. Jarominski and her daughter were living with Ms. Jarominski's mother and stepfather. The "Investigation Conclusions" section states:

The allegations of neglect on behalf of [Child A] should be supported. The neglect concerns are exposure to domestic violence. Mother has been assaultive to relatives in front of {Child A}. Mother has temper tantrums in front of {Child A}. Mother has thrown stuff at {Child A}. The case is in need of further assessment.

(Exhibit 1).<sup>3</sup>

Based on the narrative contained in the 2002 51B report, the "assaultive" behavior referred to incidents in which Ms. Jarominski allegedly choked her mother and sister.

The report contains no details about these incidents. With respect to the allegation

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<sup>2</sup> A 51B report is a "report prepared pursuant to M.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.

<sup>3</sup> Consistent with G.L. c. 119, § 51E, I have redacted the names of Ms. Jarominski's three children and will identify them in this decision from oldest to youngest as Child A, Child B, and Child C, respectively. When the redactions are set forth in quoted material, they will be indicated with italicized brackets. Redactions in normal brackets reflect redactions original to the exhibits as provided to DALA.

that Ms. Jarominski threw things at Child A, the report states the following: “Mother reportedly throws toys (stuffed animals ... teddy bears) and bags at her. Mother threw bags at {Child A} when her hamster escaped.” It is not clear what kind of “bags” were thrown, though the report notes that Child A denied marks or bruising as a result of these actions. (Exhibit 1).<sup>4</sup>

4. The second 51B report was issued in 2009, when Ms. Jarominski was thirty-one years old. By this time, Ms. Jarominski had three daughters and the four of them were living with Ms. Jarominski’s partner, the father of Ms. Jarominski’s youngest daughter. The “Investigation Conclusions” section states in pertinent part as follows:

Both Ms. Jarominski and [redacted] have reported that arguments have gotten loud in the home and have acknowledge that they have occurred with the children present. [Redacted] {Child C} reported that she witnessed [redacted] hit her mother “on the butt.” [Redacted] There was also a concern presented that [redacted] has sent the dog to attack Ms. Jarominski as well. Ms. Jarominski reported that she has been a victim of domestic violence in the past. This case is recommended for assessment.

(Exhibit 2).

This report contains three separate findings of neglect, one for each child, but each appears to be based upon the same household environment. (Exhibit 2).

5. The third 51B report was issued in 2011, when Ms. Jarominski was thirty-three years old. At the time of this report, Ms. Jarominski and her daughters had recently moved out of her partner’s home and into a property owned by her mother and stepfather.

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<sup>4</sup> Ms. Jarominski denies that she threw items “at” her child. She says that she threw items in piles in the middle of the room for purposes of instructing her daughter on cleaning up. (Jarominski Test.). Either way, when reviewing this decades old allegation, there is no indication that any harm was intended or resulted. In later reports, Child A stated that, during this time-frame, Ms. Jarominski had slapped her for crying after one of these alleged incidents and that on one occasion Ms. Jarominski held her down. (Exhibits 2, 3).

Ms. Jarominski and her eldest daughter (then fifteen years old) got into an argument in which Ms. Jarominski called her daughter a “piece of crap” and made other inappropriate comments. The “Investigation Conclusions” section states:

Both {Child A} and Ms. Jarominski report that they have a very volatile relationship. They both admit that this evening Ms. Jarominski said things that were inappropriate due to being upset and escalated. There has been a history of verbal abuse by Ms. Jarominski in the past by her own admission. After consultation with OCS Calos the decision was made to keep the case open for services. Though the family does already have supports in the home the case is going to remain open for services to further assess the family's functioning.

(Exhibit 3).

6. The fourth 51B report was issued in 2018, when Ms. Jarominski was forty-one years old. The “Investigation Conclusions” section states:

Ms. Jarominski gets angry at her 10 year [old] daughter for wanting to maintain a relationship with her father. Ms. Jarominski dictates to her daughter what she is allowed and not allowed to share with her father. Ms. Jarominski is unable to be in the same room with Mr. Zurowski without there being an explosive argument; this has been a barrier to much needed family therapy. {Child C} loves her mother and wants to have a better relationship with her, but Ms. Jarominski's actions are making that nearly impossible. {Child C's} [redacted] each reported an increase in anxiety over the past few weeks. {Child C} is in her [redacted] daily to digress about what her mother is telling her to do or what she is angry with her about. {Child C} focuses a lot on what the probate orders are and reports on how her mother is not following them the way that she should. Mr. Zurowski demonstrates a greater understanding of how the situation impacts his daughter. It appears that Mr. Zurowski supports his daughter's emotional well-being and is making efforts to ensure she feels comfortable and accepted at his home. Based on the reports received during this response, Ms. Jarominski continues to blame and shame her daughter {Child C} for desiring to have a relationship with her father just as she did with [redacted]. Although Mr. Zurowski is planning to obtain custody of {Child C}, his hearing is not for another month and the outcome of that hearing is unknown. The Department will remain involved to ensure that Ms. Jarominski is refraining making detrimental remarks to her daughter that cause her emotional distress.

(Exhibit 4).

7. A “supported finding for any child welfare offense” is deemed a “discretionary disqualification,” barring the candidate from licensure as a family childcare provider unless the candidate is granted approval after an EEC discretionary review process. 606 CMR 14.04.
8. Ms. Jarominski was apprised of the existence of the discretionary disqualification and, on or about January 27, 2022, she submitted a discretionary review application. (Exhibit 5).
9. As part of her discretionary review application, Ms. Jarominski provided a personal statement that included, as to each of the four reports, her explanations of “what transpired to cause DCF to be involved.” (Exhibit 6).
10. Ms. Jarominski did not have copies of the 51B reports when she prepared her accounts of what had occurred. (Jarominski Testimony).
11. In the personal statement she submitted to the EEC, Ms. Jarominski also explained that she loved children and had worked with children successfully in various capacities, including coaching her daughters’ soccer teams and working with disabled children in the public school system. Ms. Jarominski also noted that she was finishing her degrees in Criminal Justice and Psychology and had graduated from the Police Academy. (Exhibit 6).
12. Ms. Jarominski submitted two letters in support of her application. One was from the owner of a daycare, Tina Baxter, who stated that Ms. Jarominski had done an excellent job working in the school system for the last several years and that Ms. Jarominski would provide children with “the highest quality of care.” (Exhibit 7).
13. The other supportive letter was from Emily Stelmach, who stated that Ms. Jarominski

had, in the past, babysat her and her sisters and that she had spent “countless hours at her house and on outings with her.” Ms. Stelmach stated that Ms. Jarominski’s children had “put her through a lot as they were growing up and now that is in the past.” Ms. Stelmach opines that Ms. Jarominski now has a “great relationship” with her daughters “as they get older they see how harmful all their lies are.” (Exhibit 8).

14. As the EEC reviewer for Ms. Jarominski’s application, Mr. Whalen considered the four 51B reports, Ms. Jarominski’s personal statement, and the letters in support of Ms. Jarominski’s application. (Whalen Test.; Exhibit 6).
15. In his review of Ms. Jarominski’s discretionary review application, Mr. Whalen considered the factors set forth in 606 CMR 14.12(f). (Whalen Test.). Those factors will be discussed in greater detail below.
16. On or about June 6, 2022, the EEC issued a discretionary review decision denying Ms. Jarominski’s application for discretionary approval. (Exhibit 9).

B. Evidence Presented at the Hearing

17. Ms. Jarominski has been a paraprofessional in the local high school for several years, working with students who have disabilities. She finds this work meaningful and takes pride in helping her students succeed. (Jarominski Test.; Baxter Test.).
18. Ms. Jarominski coached her two younger daughters’ soccer team, which made it to the state championships. (Jarominski Test.).
19. Ms. Jarominski has recently become a grandmother. (Jarominski Test.).
20. Ms. Jarominski has nearly completed her degrees in Criminal Justice and Psychology. (Jarominski Test.).
21. In the past, Ms. Jarominski had emotional outbursts and had difficulty controlling her

anger. (Jarominski Test., Favreau Test., Michael Jarominski Test.). Ms. Jarominski acknowledges that she had handled stress by “taking it out on people that I loved.” (Jarominski Test.).

22. Ms. Jarominski’s home life was tumultuous and volatile while she was living with her ex-boyfriend (the father of her youngest daughter), who, among other things, engaged in controlling and hurtful behavior. (Jarominski Test.; Favreau Test.). He would, for example, try to prevent Ms. Jarominski and the children from spending time with Ms. Jarominski’s family. (Favreau Test.). He had also stated that the only reason Ms. Jarominski and her other two daughters were residing in his home was that he wanted his daughter living with them. (Favreau Test.).

23. Far more important than the ascription of blameworthy conduct to Ms. Jarominski’s ex-boyfriend, and far more certain from the record, is that the relationship and living situation was unhealthy, tumultuous, and had a negative impact on Ms. Jarominski’s emotional health. (Testimony of Jarominski; Testimony of Favreau).

24. Ms. Favreau would not let her children visit her sister’s home unaccompanied when they were younger because of the emotional turmoil in the household. (Favreau Test.).

25. Over the past few years, however, Ms. Jarominski’s sister and father have witnessed considerable personal growth by Ms. Jarominski --- particularly after she left her ex-boyfriend for good.<sup>5</sup> This growth includes an increased capacity for controlling her reactions when upset or under stress and a greater receptivity to criticism. (Favreau

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<sup>5</sup> Ms. Jarominski had left her partner on an earlier occasion, but returned. (Jarominski Test.).



Test.; Michael Jarominski Test.).

26. Ms. Favreau testified to a dramatic change in her sister:

- “[It is] probably the first time in my life that I can actually say that I’m really proud of my sister.”
- “I never would have believed that you could have turned into the person that you turned into.”
- “It’s just crazy how you have turned your life around.”
- “I finally have a sister, which I didn’t have for a long time.”

(Favreau Test.).<sup>6</sup>

27. At some point during the COVID pandemic, Ms. Favreau’s children were attending school remotely and stayed with their aunt for weeks at a time. This was a very positive experience for them. (Favreau Test.).

28. Ms. Jarominski’s relationship with her mother had been strained. (Jarominski Test.; Exhibit 1; Exhibit 3). It appears to have improved. Ms. Jarominski is helping her mother take care of her stepfather, who has late-stage Alzheimer’s disease. (Jarominski Test.; Favreau Test.). Ms. Jarominski is “kind and gentle and patient with him.” (Favreau Test.).

29. Ms. Jarominski is in counseling. She has undergone different kinds of therapies, changing therapies when she believes she has hit a “dead end.” She has learned a great deal about how to better deal with difficult situations. She has testified that she has worked on processing “certain traumas” in her life, adding: “I’m not making the excuse because it’s not, but led me in that way to act the way I did. And through therapy, I was able to learn a better response to protect myself.” (Jarominski Test.).

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<sup>6</sup> Ms. Favreau lives out-of-state and sees her sister only a few times a year. (Favreau Test.). I do not find that this materially detracts from her ability to note significant personal growth by Ms. Jarominski.

30. One way in which Ms. Jarominski deals with stress is by walking and running. As a result, she has lost seventy pounds. (Jarominski Test.).
31. Ms. Jarominski must still interact with her ex-boyfriend since he is the father of one of her children. But she remains calm in the face of petty or obstructive conduct, such as blocking his driveway when Ms. Jarominski was coming to pick up her daughter from his home. (Jarominski Test.).
32. Amanda Craig is Ms. Jarominski's neighbor and has known her for about nine years. Ms. Jarominski has participated in (and often arranged) fun activities for Ms. Craig's daughter (who by the time of the hearing was nine years old). Ms. Craig credibly testified that she would have no hesitation entrusting her daughter to Ms. Jarominski's care. Ms. Craig noted that children can be challenging, but that, in her experience, Ms. Jarominski steps up to the challenge and is able to respond calmly to an upset child. Ms. Craig also observed that Ms. Jarominski is good at keeping children entertained and engaged.
33. Tina Baxter is a daycare provider with twenty-three years of experience. She has known Ms. Jarominski for about fifteen years. Ms. Baxter has witnessed Ms. Jarominski deal with difficult situations with children, such as when Ms. Jarominski was coaching her daughters' soccer team. Ms. Jarominski remained calm and would "get down on [the kids'] level" and explain that it was okay to get upset and suggest that they might need a little break. Although Ms. Baxter is selective about who can spend time with her own children (which is one reason she started a daycare business in the first place), she has had her children accompany Ms. Jarominski on walks and to parades. (Baxter Test.).

34. Ms. Baxter credibly describes Ms. Jarominski as a patient person who actively engages in play with children. (Baxter Test.). Ms. Baxter testified that Ms. Jarominski would be an excellent daycare provider because she has the necessary patience and a drive to help children. (Baxter Test.).

### **CONCLUSION AND ORDER**

When, as is the case here, the candidate for licensure is subject to the EEC's discretionary review process, the candidate must present "clear and convincing evidence demonstrating the candidate's suitability for licensure ... in light of the concern for children's safety." 606 CMR 14.12(e). For the reasons set forth below, I recommend that the EEC grant discretionary approval to Ms. Jarominski.

#### **A. Applicable Standard**

At the outset, it is necessary to clarify the standard of review applicable to this appeal. I rely here, as does the EEC in its post-hearing brief, on *Lindsay v. Department of Soc. Serv.*, 439 Mass. 789, 797-798 (2003), which --- although it relates to a different set of regulations --- serviceably illuminates the relevant stages of an administrative appeal.

*Lindsay* concerned a challenge to a supported finding of neglect by the Department of Social Services on the ground that, among other things, the finding was not supported by substantial evidence. 439 Mass. at 790. The Court's analysis outlined three decision-making stages. First, an investigator's initial decision to support an allegation of neglect requires "reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker *did* occur." *Id.* at 797 (citation and internal quotation marks omitted) (emphasis in original). Second, the

issue on “an administrative appeal from the investigator’s decision is whether, based on all information then available (which may take into consideration information not considered by the investigator during the original investigation), there was—and still is ‘reasonable cause to believe’ that the child was abused or neglected.” *Id.* at 798. Third, judicial review employing the “substantial evidence” standard under G.L. c. 30A, § 14(7)(e) requires a reviewing court to determine whether there was “substantial evidence” that there was “reasonable cause to believe” that the individual neglected the child. *Id.*

Here, the EEC was called upon to determine whether Ms. Jarominski had furnished “clear and convincing evidence demonstrating” her “suitability” for licensure as a family childcare provider “in light of the concern for child safety.” 606 CMR 14.12(e). As for this appeal, although administrative adjudications typically employ a preponderance of the evidence standard, *Med. Malpractice Joint Underwriting Ass’n of Mass. v. Comm’r of Ins.*, 395 Mass. 43, 46 (1985) (citation omitted), in light of Ms. Jarominski’s underlying burden, I construe my task as determining, based on the entirety of the record, whether Ms. Jarominski furnished “clear and convincing” evidence of her suitability for licensure. In the licensing context, clear and convincing evidence requires that the evidence be “sufficient to convey a ‘high degree of probability’ that the provider is suitable to care for children.” *EEC v. Metherall*, OC-18-0483, at \*18 (DALA Aug. 27, 2019) (quoting *Doe v. Sex Offender Reg. Bd.*, 473 Mass. 297, 309 (2015)).

The EEC states that “DALA’s role is to evaluate whether or not the Petitioner’s decision is based upon sufficient facts, is arbitrary or capricious, or is otherwise unsupported by law.” (EEC Post-Hearing Brief at 2 (citing *Lindsay*, 439 Mass. at 797-

798).<sup>7</sup> Although this recitation of the standard of review has been set forth in a long line prior DALA decisions reviewing EEC determinations, *see, e.g., EEC v. Reyes*, OC-17-086, 2017 WL 5195187, at \*4 (DALA Aug. 1, 2017), for the reasons outlined above, it does not accurately reflect the applicable law.<sup>8</sup>

To describe the matter in more general terms, the phrases “substantial evidence,” “arbitrary or capricious,” and “otherwise unsupported by law” pertain to judicial review of agency decisions under G.L. c. 30A, § 14(7). Administrative review under the Informal Rules of Adjudicatory Practice and Procedure, 801 CMR 1.02, which is what governs this appeal, 606 CMR 14.14, follows different standards.

There is one related issue to address before turning to the substantive merits of Ms. Jarominski’s appeal. During the hearing, the EEC observed that Ms. Jarominski had not challenged the issuance of the 51B reports through the 110 CMR 10.06 fair hearing process and that this appeal was not an appropriate vehicle for contesting them. Such collateral attacks are not permitted, or at least highly disfavored. *See, e.g., Kobrin v. Bd. of Registration in Med.*, 444 Mass. 837, 847 (2005) (doctor’s challenge to the validity of his criminal convictions in disciplinary proceedings before the Board of Registration in Medicine properly rejected as collateral attacks). If Ms. Jarominski wanted to challenge

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<sup>7</sup> Because “based upon sufficient facts” is listed alongside two familiar criteria for reversal of an administrative decision (that is, “arbitrary or capricious” and “otherwise unsupported by law”), I assume that “substantial evidence,” another familiar administrative law term, was what had been intended. (“Based upon sufficient facts” is a standard typically applied when considering the admissibility of expert opinion testimony. *See Aleo v. SLB Toys USA, Inc.*, 466 Mass. 398, 406 (2013) (citing Mass. G. Evid. 702(a) (2011)).

<sup>8</sup> I also acknowledge the recommended decision issued today by Magistrate Tennen, *Aguilar v. DEEC*, OC-23-0251, which follows prior DALA decisions in utilizing a more deferential standard of review in EEC appeals.

the conclusions contained in the 51B reports, she should have done so with DSS and/or DCF.

Prior DALA decisions have sounded a note of caution about relying upon supported 51B reports based on a “reasonable cause to believe” standard in making adverse licensure determinations. *See Metherall, supra*, at \*19; *EEC v. Boodakian*, OC-17-151, 2017 WL 8792839, at \*7 (DALA Dec. 28, 2017).<sup>9</sup> Perhaps matters stand on a different footing where, as was the case here, the subject of the supported findings did not seek to challenge them via the fair hearing process. *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). Whether a 51B finding was challenged or not, DALA is not the place for a collateral attack on a 51B finding. DALA must accept such a finding but accept it only for what it is.

Assuming the four 51B reports can be relied upon here, there remains a question as to *what* from these reports may be relied upon. The bare findings that Ms. Jarominski did act with neglect? The subsidiary conclusions set forth in the “Investigative Comments” sections? The personal observations of the individuals who wrote the reports? Statements made by the interviewees?

The use of these reports is further complicated by the difficulty in assaying the credibility of the various assertions that are levied therein, which are numerous, are

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<sup>9</sup> The cautionary notes arise from *Lindsay*, which held that the “reasonable cause to believe standard” is constitutionally sound for purposes of triggering the provision of DSS services to a child, but was more guarded with respect to whether and how other agencies may rely upon a supported 51B finding based on a reasonable cause standard. 439 Mass. at 801-03.

enmeshed in complicated interpersonal and family dynamics, concern events that occurred years (if not decades) ago, and are frequently conclusory and/or conveyed through multi-level hearsay. I conclude that, for the most part, the recitations in the “Investigative Conclusions” sections of these reports bear sufficient indicia of reliability in their overall gist, if not in every particular detail.<sup>10</sup> There is a certain consistency in the tenor of the conclusions, and their tenor is also consistent with much of the testimony reflecting tumultuous living situations and Ms. Jarominski’s emotional volatility.<sup>11</sup>

B. The 606 CMR 14.12(2)(f) Factors

In determining whether a candidate who is the subject of neglect findings is suitable for licensure, the EEC must give “due weight” 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;

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<sup>10</sup> One finding warrants a few additional comments. The Investigative Conclusions section of the 2002 report references some instances in which Ms. Jarominski purportedly assaulted her mother and sister. (Exhibit 1). Although for purposes of discussion I will assume that something along these lines occurred, I am not inclined to credit this allegation. These incidents are mentioned in a conclusory, almost off-handed, fashion in the narrative of the report. Given the fact that it concerns alleged physical violence, I find this surprising. In addition, although the 2002 allegation that Ms. Jarominski threw bags and stuffed animals at Child A was mentioned again years later in the 2009 and 2011 reports, the alleged assaults against Ms. Jarominski’s mother and sister never resurface again. Nor does the testimony of Ms. Jarominski, Ms. Favreau, or Mr. Jarominski reference, for example, physical displays of temper that would make the allegation more plausible.

<sup>11</sup> I acknowledge Ms. Jarominski’s criticisms of various aspects of the reports and the fact that she disputes many details. I will note that, based partly on Ms. Jarominski’s and Ms. Favreau’s testimony, but more so on the descriptions of some of the interviews in the reports, I do not view Ms. Jarominski’s eldest child as an especially reliable reporter. That said, for the reasons set forth above, I do not believe wading through the thicket of the reports’ many allegations is practicable or particularly useful in this appeal.

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). I discuss each of these factors in turn.

*1. Time since the incident(s)*

Some incidents, such as the alleged incidents where Ms. Jarominski choked adult family members and threw items at her daughter, occurred more than 20 years ago in 2002. (Exhibit 1). Although the 2009 and 2011 reports mention that Ms. Jarominski had thrown things at her daughter, they appear to refer to events from 2002, rather than conduct that persisted into 2011. (Exhibits 2 and 3). Of course, other conduct referenced in the 2009, 2011, and 2018 51B reports is more recent, and 2018 is fairly proximate in time.

*2. Age of the candidate at the time of the incidents*

As the EEC noted in its discretionary review decision, during the sixteen-year time span between the first supported finding of neglect and the most recent one, Ms. Jarominski “advanced in age from twenty-five (25) to forty-one (41) years of age.” (Exhibit 9). This tends to suggest that the supported instances of neglect were not the product of youthful impulse or ignorance, but instead reflected the actions of a fully-fledged adult.

*3. Seriousness and specific circumstances surrounding the incidents*

The findings contained in the supported 51B Reports may be fairly characterized as serious in that they depict assaultive behavior, a tumultuous home life, verbally abusive comments, and emotional volatility. Nevertheless, the EEC’s characterization of Ms. Jarominski’s record as presenting “an extremely concerning pattern of violent and



abusive behavior toward both family members and children,” (Exhibit 9), overshoots the mark.

First, there is no “pattern” of violence against family members. There were alleged choking incidents sometime in the past, as of 2002, but even leaving to one side the fact that we have almost no information concerning these events, there is no indication that such incidents reoccurred in the intervening decades. Second, the alleged violence against Ms. Jarominski’s children consisted of the following: (1) throwing items, such as stuffed animals and “bags” at her eldest daughter when she was approximately six or seven years old; (2) slapping her for crying after one of those occasions; and (3) on one occasion “holding” the child down. Although the incidents were mentioned in the 2002, 2009, and 2011 reports (Exhibits 1, 2, and 3), they all appear to refer to conduct that reportedly occurred when Ms. Jarominski’s eldest daughter was approximately six or seven years old. These incidents, clustered together at the very outset of a sixteen-year time frame of DCF involvement, do not constitute a meaningful “pattern” for purposes of assessing Ms. Jarominski’s suitability for licensure. In any case, it is not a pattern against “children” plural.

The EEC’s conclusion that there was a pattern of abusive conduct stands on more solid footing. The reports can be fairly read as depicting a pattern of emotional outbursts and inappropriate and hurtful comments.

*4. Relationship of the incident(s) to the ability of the candidate to care for children*

The EEC’s discretionary review decision reasonably observes that the 51B reports paint a picture of a turbulent home life that would be quite concerning in the context of a family childcare program. In fact, this turbulent situation is the reason why Ms.

Jarominski's sister was, in the past, not willing to have her children stay unaccompanied in Ms. Jarominski's home when they were younger. (Favreau Test.). Moreover, the reports also paint a picture of an applicant who had manifested deficits in self-regulation inconsistent with the level-headedness and control necessary for someone entrusted to care for children.

*5. Number of findings of abuse/neglect*

The EEC observes that from the four 51B reports, there were a total of six supported findings of neglect. Merely adding up the number of findings, however, is not incredibly revealing – at least not in this case. In the 2009 51B report, there were three supported findings, but that was because Ms. Jarominski had, by that time, three children, who were subject to the same turbulent home environment. So, from the perspective of assessing Ms. Jarominski's fitness to provide childcare services, it is not clear that the three findings in that one report are more concerning than if there had been only one. On the other hand, it appears that in some reports multiple incidents are subsumed under a single supported finding of neglect.

*6. Dispositions of findings of abuse/neglect*

All four 51B Reports list a disposition of "Open for Services." (Exs 1-4). It is not clear how long they remained open.

*7. Relevant evidence of rehabilitation or lack thereof*

As the testimony and the 51B reports make clear, Ms. Jarominski had emotional outbursts and had difficulty controlling her anger. Ms. Jarominski, herself acknowledges that she had handled stress by "taking it out on people that I loved." Although the conduct in the reports may have been precipitated by stressors specific to her personal life

that would perhaps not reoccur in the more neutral context of providing childcare services, the fact remains that the underlying difficulties in self-regulation would be concerning in the childcare context, even if the historical triggers are likely to be absent.

If the only thing Ms. Jarominski had done was remove herself from the triggering environment of her prior relationship, that would have been positive, but insufficient. The evidence demonstrates, however, that Ms. Jarominski has worked on her underlying difficulties in responding to stress and conflict, including via therapy. The testimony, particularly that of Ms. Favreau, credibly shows that Ms. Jarominski has been largely successful. Moreover, the picture of Ms. Jarominski conveyed by Ms. Craig and Ms. Baxter, both of whom struck me as credible and sensible individuals, is not consistent with that of a person who displays endemic dysregulation.

I note, too, that Ms. Jarominski's work in improving her abilities to process frustration, conflict, and tension is complemented by other efforts at self-improvement, namely, the pursuit of her education and physical exercise. The picture that emerges from the evidence is that of an individual who has grown substantially, and along different dimensions, as a person.

It is understandable that the EEC was not favorably impressed by Ms. Jarominski's accounts of the circumstances surrounding the issuance of the 51B reports. Her accounts fail to address critical allegations and conclusions; and, in some cases, she blames DCF involvement on lies told by her children. But some of the infirmities in her accounts are probably traceable to the fact that she did not have the 51B reports in front of her when she prepared her account. Details that may seem important from the perspective of an

individual's lived experience from years ago may look like non-sequiturs when they are proffered as responses to a written report the person has not seen.

That said, at the hearing Ms. Jarominski did occasionally seek to ascribe some of the allegations contained in the reports to lies and manipulations by her children (who may have understandably manifested their own concerning behaviors in response to difficult family circumstances). But I do not, in this case, view Ms. Jarominski's indulgence in the very human impulse to "correct the record" to evince a failure to accept responsibility for serious mistakes, even if she disputes some of the details and particulars recited in the reports. And, to be fair, at least some of Ms. Jarominski's comments about her children were corroborated by Ms. Favreau – who I credit with being a devoted aunt to whom her nieces could and did turn for assistance and unbiased guidance.

#### *8. Other relevant information*

Ms. Jarominski is employed in a position that requires her to work with high school children who have disabilities. Ms. Jarominski finds the work of assisting her students meaningful and rewarding.

Moreover, Ms. Craig and Ms. Baxter have credibly testified that Ms. Jarominski is quite good with children. She is patient with them and has a knack for playfully engaging with them. Indeed, Ms. Jarominski's ability to have fun with and engage children in play was a recurring detail in the testimony. (Favreau Test.; Craig Test.; Baxter Test.).

#### C. Conclusion

The 51B reports depict conduct that is inconsistent with the confidence and trust that must be reposed in a family childcare provider. They suggest emotional

dysregulation and a volatile home life. It was Ms. Jarominski's burden to establish her suitability by clear and convincing evidence. Based on the record before it, the EEC understandably reached the conclusion that she did not meet this standard.

I, however, have had the benefit of additional evidence and the opportunity to hear from witnesses and assess their testimony.<sup>12</sup> From that vantage point, two significant points emerge.

First, Ms. Jarominski is, in fact, good with children. She cares about them and understands them. I acknowledge that discretionary approval is to be assessed "in light of the concern for children's safety," 606 CMR 14.12(e), rather than the candidate's skill with children *per se*. That said, a candidate's aptitude for and interest in the work will likely inform her ability and willingness to weather the challenges associated with childcare in an effective, productive, and healthy manner.

Second, I have found that Ms. Jarominski has made meaningful changes to her life. The testimony of her sister, in particular, credibly and evocatively describes significant personal growth. Ms. Jarominski has changed her circumstances: she left a toxic relationship and tumultuous living situation. And she has changed herself: she has improved her responses to stress and conflict, learned from therapy, continued her education, and has engaged in pro-social ways of dealing with stress that have not only improved her emotional well-being, but apparently her physical health as well.

If a concern that arises from the 51B reports is that Ms. Jarominski would expose children within her to care to a volatile environment, that concern has been dispelled

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<sup>12</sup> Because the hearing was conducted via WebEx, I could, and did, view the witnesses' testimony multiple times.

because she has left that environment and I see no tangible reason a similarly dysfunctional environment would be expected to develop in the future. If the concern is that Ms. Jarominski would “fly off the handle” in the course of caring for children, I have found that Ms. Jarominski has developed good tools for managing her emotions, and, in any case, I would expect that it would be her own personal relationships, and not the frustrations inherent in minding children, that would pose the greatest challenge to her improved ability to self-regulate. It bears mention in this regard that Ms. Baxter and Ms. Craig have testified to Ms. Jarominski’s level-headedness in dealing with children.

I conclude that Ms. Jarominski has established her suitability to be licensed as a family childcare provider by clear and convincing evidence. Accordingly, I recommend that the EEC grant Ms. Jarominski’s discretionary application for licensure as a family childcare provider.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Timothy M. Pomarole*

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Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: December 21, 2023