

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DEPARTMENT OF EARLY
EDUCATION AND CARE,
Petitioner

v.

SABRINA KEITH
Respondent

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Docket No. OC-24-0387

Appearances:

For Petitioner: Ryan Foreman, *Esq.*
For Respondent: Sabrina Keith, *pro se*

Administrative Magistrate:

Eric Tennen

SUMMARY OF RECOMMENDED DECISION

Sabrina Keith was granted a day care license in 2022. After she opened, the Department of Early Education and Care undertook several investigations for various issues. Ms. Keith then closed her daycare for personal reasons. In 2023, she reapplied for a license. The Department refused to issue her a license based on the various allegations raised in the prior investigative reports, in addition to her conduct at meeting in February 2024. Because I agree that the allegations which formed the basis for the Department's refusal to issue occurred, and supported the Department's decision, I recommend it be affirmed.

INTRODUCTION

Pursuant to 102 Code Mass. Regs. § 1.08(2)(a) and 606 Code Mass. Regs. § 14.14(2), Ms. Keith timely appeals a decision by the Department of Early Education and Care ("EEC" or "the Department") refusing to issue her a daycare license. On January 16, 2025, I conducted a virtual hearing on the WebEx platform with the consent of both parties. The Department presented two witnesses: Erin Craft, the regional director and Melissa Gauger, a child care licenser; Ms. Keith testified on her own behalf, as did her husband, Stephen Keith. I entered

exhibits 1-26 into evidence.

FINDINGS OF FACT

1. Ms. Keith was first granted a license to operate a family daycare in March 2022. (Sabrina Keith testimony.)
2. Prior to being granted her license, EEC conducted a pre-license visit. Among other things, the Department issued a report that went over several requirements, including that no child is allowed to start until all enrollment forms are completed and that Ms. Keith must keep daily attendance logs. (Ex. 5.)

May 5, 2022 Investigation

3. On May 5, 2022, EEC received a complaint from a parent that Ms. Keith was being unprofessional. (Ex. 10.)
4. The allegations involved a lack of communication between the parent and Ms. Keith regarding a variety of things, such as closures, contract changes, and retrieving formula that the parent left behind. (Ex. 10.)
5. Melissa Gauger was the licenser assigned to investigate the matter. After going over the alleged violations with Ms. Keith, and reviewing text messages, Ms. Gauger agreed there was a lack of communication. However, she did not find any regulatory non-compliances. (Ex. 10.)

June 15, 2022 Investigation

6. On June 15, 2022, EEC received another complaint from a parent whose child was enrolled in Ms. Keith's daycare. She accused Ms. Keith of being unprofessional; she also reported that Ms. Keith may have some mental health concerns. (Ex. 2.)

7. Specifically, the parent complained that Ms. Keith did not communicate well regarding closings. The parent also appeared to be concerned whether Ms. Keith was even capable of keeping the day care open. (Ex. 2.)
8. A different licensor, Christina Dunn, was assigned to this investigation. As to these allegations, she did not find Ms. Keith had mental health problems. Rather, she wrote that ongoing family issues could have impacted Ms. Keith's interactions with parents. There were some concerns with whether Ms. Keith appropriately notified parents of the times when she would be closed, but nothing that rose to the level of a regulatory violation. (Ex. 2.)
9. However, in conducting the investigation, the licensor found two regulatory concerns unrelated to this investigation: 1) Ms. Keith did not have an enrollment packet for one child and 2) she did not keep daily attendance records. (Ex. 2.)
10. Ms. Keith agreed to call a professional development center ("PDC")¹ for assistance with some of her problems. (Ex. 2.) However, EEC believes she never followed up with the PDC. (Craft testimony.)
11. On July 21, 2022, EEC officially issued Ms. Keith a list of outstanding compliance issues regarding the enrollment packet and attendance records. (Ex. 1.)
November 9, 2022 Investigation.
12. In November 2022, EEC received yet another complaint that Ms. Keith was acting unprofessional and may have mental health concerns. (Ex. 4.)

¹ A PDC is an organization that provides support to educators beyond the basic requirements of licensure. It helps with things such as developing policy, parent communication, etc. (Craft testimony.)

13. Ms. Gauger was again assigned to the investigation. (Gauger testimony.)
14. The first reporter was a parent who intended to send her child to Ms. Keith's daycare in July 2022, but could not because it was closed. In November 2022, she put out a message on social media asking for daycare recommendations. (Ex. 2.)
15. The parent received a reply from Brie Erdely² saying the parent should send her child to Ms. Keith's daycare. After the parent said she was not interested in having her child attend that daycare, she received another message from Brie Erdely saying she, Ms. Erdely, was Ms. Keith's licensor and her own children attend Ms. Keith's daycare. (Ex. 2.)
16. The parent believed the messages were from Ms. Keith, who was misrepresenting herself as someone else. She blocked the number. The parent then received a message on Snapchat from Sabrina Keith questioning her about trusting Ms. Keith with the reporter's children. Specifically, the message was from an account named "Sabrina Daycare West Springfield" and said, "Seriously, you don't trust me with you son. Wtf." (Ex. 3, pg. AR079). The parent blocked Ms. Keith on all outlets. (Ex. 2.)
17. A few days later, the parent called EEC again to say that Ms. Keith was now contacting her husband through Facebook using the name Sabrina Ann. (Ex. 2.)
18. Around November 17, 2022, EEC received a different complaint from an educator. The educator explained that someone named "Brie" is on a Facebook group, pretending to be a parent, and responding to messages saying she knows Sabrina Keith is an excellent

² Erdely is Ms. Keith's maiden name. (Ex. 4; Sabrina Keith testimony.)

- provider and has openings. (Ex. 3, pgs. AR059, 075.)
19. The educator, who was also the moderator of the group, blocked “Brie Erdely” from joining the group. “Brie Erdely” then replied, “I can’t join the group?” (Ex. 3, pgs. AR077.)
20. EEC received a complaint from yet a third reporter who ran her own daycare. This person shared a screenshot in which “Brie Erdely” posted on the reporter’s business page “Don’t send your child here. She is not nice to the kids.” (Ex. 3, pg. AR 0078)
21. One of the reporters³ later followed up with EEC to say that Ms. Keith actually came to her home. The reporter had been communicating with “Brie Erdely,” and there was a picture attached to that account. The reporter confirmed that the person in the picture was the same person who came to her house. (Ex. 3, pg. AR067, Ex. 13.)⁴
22. “Brie Erdely” sent other messages to some of these reporters. In response to one of them asking why she, “Brie,” was reaching out for childcare if she was a provider, “Brie” responded as follows:

Not a fraud. But thanks. If im inactive and trying to find care for my daughter so I can help take care of my mom right now. Im allowed to send my daughter and def not a fraud. Thanks tho. Your just mad cause I pointed out you being rude and disrespectful. Go ahead and comment whatever you want. I ask John today and he said it’s def not fraud.

³ In total there were three different people who reported alleged misconduct to EEC. Because the records are redacted, it is not always clear which reporter provided certain information. However, the exact identity of the reporter is not relevant, especially since every report was accompanied by screenshots of the various posts the reporters referenced.

⁴ The reporter also said that Ms. Keith came to her house with Ms. Keith’s daughter, and identified the little girl in the picture as Ms. Keith’s daughter. It turns out the little girl in the picture is not actually Ms. Keith’s daughter. (Sabrina and Stephen Keith testimony.) Ms. Keith made much of this at the hearing, saying that was proof the reporter was lying about the entire interaction. I disagree. I find the reporter simply made an understandable and simple mistake.

(Ex. 3, pg. AR 074.)_

23. One of the reporters also said that they received the following message from “Sabrina Ann”:

Tell her wife/girlfriend to stop talking shit about me. Saying I’m a horrible person and telling people to not trust me. I didn’t wanna take you kiddo nor do I have to. And it’s not my fault bugs got in your bag from outside. She should have picked them up when she said she was goin [sic] to. She needs to shut her mouth. Cause I have a little people who can vouch for me saying I’m a great person. I’m sure your baby is a great baby. But I didn’t feel comfortable taking toddlers at the time.

(Ex. 3, pg. AR 066).

24. Ms. Keith explained that she had one Facebook account that was hacked. She had a second account that she shared with her ex-husband. She had a business account for her daycare. And after her original account was hacked, she opened a new one under the name Sabrina Ann. However, she denies sending any of these messages on any platform under any name. She also denies visiting the reporter’s home. (Sabrina Keith testimony.)

Personal issues impacting care.

25. During the summer and fall of 2022, Ms. Keith was experiencing legitimate personal issues regarding her mother in law’s health. This did impact her ability to operate the daycare. (Sabrina and Stephen Keith testimony.)
26. She had to close her daycare often, sometimes for more than 30 days. When that happens, EEC places the educator’s license in “inactive” status. (Ex. 2.)
27. After the November 2022 investigation began, Ms. Keith told EEC that she was going to close her daycare on February 1, 2023. Because she closed, EEC did not need to take any action with respect to the pending investigation. (Ex. 4.) Rather her license was “inactivated” on February 1, 2023. (Ex. 12.)

28. Though no witness expressly stated this, I infer that when her license was “inactivated,” that meant it was no longer valid, and she could not simply start up again if she wished to provide care. Thus, on October 12, 2023, Ms. Keith applied for her license. (Ex. 12.)
February 2024 meeting with EEC.
29. Upon reapplying, Ms. Keith submitted a new application which required her to do many things again, such as get fingerprinted and take some classes. (Exs. 11 & 18; Sabrina Keith testimony.)
30. She then requested a meeting with EEC to talk about her application. On February 5, 2024, she met with Ms. Craft, Ms. Gauger, and Andrew Rome, Deputy Commissioner for Field Operations. (Ex. 9; Gauger and Craft testimony.)
31. EEC went over the prior investigations and lingering concerns, such as the fact that Ms. Keith had misrepresented herself on social media platforms. Ms. Keith denied posting anything on social media. (Ex. 9; Gauger and Craft testimony.)
32. EEC went over complaints about her lack of communication and that she terminated a child with little to no notice. She responded that the infant cried all the time. (Ex. 9; Gauger and Craft testimony.)
33. Ms. Keith countered that Ms. Gauger did not help her or refer her for help. EEC explained that they did—the PDC—but Ms. Keith never followed up. (Ex. 9; Gauger and Craft testimony.)
34. Ms. Keith then accused EEC of parking in front of her house, which EEC denied it did generally, and specifically in this case. (Ex. 9; Gauger and Craft testimony.)
35. During the meeting, Ms. Keith became agitated and raised her voice to the point that Mr.

Rome had to ask her to lower it. When the meeting was over, she left screaming in the hallway and continued to the lobby, where she audibly cursed. (Ex. 9; Gauger and Craft testimony.)

Order refusing to issue license.

36. On May 30, 2024, EEC sent Ms. Keith an order refusing to issue her license. (Ex. 12.)
37. The order stated two reasons. The first was Ms. Keith repeatedly demonstrated poor judgment and an inability to appropriately care for children. (Ex. 12.)
38. The Department cited her lack of judgment when she “used pseudonyms on social media to make negative comments about other providers and misrepresented herself as an EEC licenser.” (Ex. 12, *citing* 606 Code of Mass. Regs. § 7.09(8).)
39. It also cited her behavior at the February 2024 meeting:

[T]he Applicant became belligerent while meeting with EEC licensing staff and appeared unable to control her anger, de-escalate the situation, and appeared unable to respond to information from EEC in a professional way. The Applicant acted inappropriately, was insensitive, and largely unconcerned about the allegations made by parents and other educators about her program. This conduct, in an EEC office environment, demonstrates that the Applicant does not possess the ability to demonstrate and maintain at all times the physical, mental and emotional ability to care for children[.]

(Ex. 12, *citing* 606 Code of Mass. Regs. § 7.09(6).)

40. The second reason was her failure to comply with EEC regulations. This ground referenced the June 2022 investigation in which EEC cited her for not having an attendance log or proper enrollment packets. (Ex. 12, *citing* 606 Code of Mass. Regs. § 7.04(4) & (7).)

DISCUSSION

An educator seeking a license, or already licensed, to run a daycare must meet many

requirements. 606 Code of Mass. Regs. § 7.09. Among them, they must demonstrate the mental and emotional ability to care for children, and exercise good judgment at all times. *Id.* at §§ 7.09(6) & (8). Additionally, educators must maintain an individual record for each child and complete and accurate records including daily attendance logs. *Id.* at §§ 7.04(7) & (4). Failure to follow any regulation or deficiency correction could have consequences. If licensed, sanctions may include probation, suspension, refusal to renew or revocation; if applying for a license, past violations may result in a refusal to issue a license. 102 Code of Mass. Regs. § 1.07 (4)(a).

As noted, the Department *may* refuse to issue a license in certain circumstances, as it did here. Because Ms. Keith is applying for a license, and is appealing EEC's refusal to issue, she bears the burden of proof by a preponderance of the evidence that EEC abused its discretion. *See generally Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 227 (2014), *quoting* A.J. Celia, *Administrative Law and Practice* § 243 (1986) (party initiating appeal bears the burden of persuasion). Here, the Department refused to issue Ms. Keith a license on two grounds: 1) that she repeatedly demonstrated poor judgement and an inability to care for children and 2) that she failed to comply with EEC regulations. Either violation would warrant affirmance of the Department's decision.

1. Ms. Keith failed to comply with EEC regulations.

EEC cited two prior instances in which Ms. Keith failed to comply with department regulations: she failed to keep an attendance log or have an enrollment packet for one of the children in her care. Both are required. 606 Code of Mass. Regs. § 7.04 (4) & (7). Ms. Keith did not dispute these allegations when EEC cited her in 2022. It is not clear if she even rectified them because she was inactive shortly thereafter, and then closed her daycare altogether. At the hearing, she also did not dispute these allegations. Her only explanation for lacking these

documents is that, she claims, the licensor told her it was “recommended.”

I do not credit this explanation because the pre-licensing report clearly says she must do both. And in any event, the regulations do not say these things are recommended; the regulations say they are things an educator “must” do. 606 Code of Mass. Regs. § 7.04 (4) (licensee “must” maintain complete and accurate records that include daily attendance records) & 606 Code of Mass. Regs. § 7.04 (7) (license “must” maintain an individual record for each child).

The Department may refuse to issue a license if it finds an applicant “failed to comply with any applicable regulation, or any deficiency correction order.” 102 Code of Mass. Regs. § 1.07(4)(a)(1). Because I find that Ms. Keith failed to comply with these regulations, Ms. Keith has not proven by a preponderance of the evidence that the Department abused its discretion in refusing to issue her license on this ground. *See DEEC v. Metheny*, OC-06-1110, 2007 WL 2262793 (Div. Admin. Law Apps. May 24, 2007) (regulatory violations grounds for refusal to issue license).

2. Ms. Keith demonstrated poor judgment.

The Department’s second ground has to do with two things. First, it argues Ms. Keith exercised poor judgment because she created fake on-line accounts; she then used those accounts, and her own real account, to both harass others and pretend to be a parent who sent her child to Ms. Keith’s daycare.

I do not credit Ms. Keith’s testimony that she was not the one posting these things on social media under any name, including Brie Erdely or Sabrina Ann. At the hearing, she submitted a document purporting to be an e-mail from someone named Catelyn. The e-mail said Catelyn tried texting Ms. Keith numerous times to let her know she made fake accounts pretending to be Ms. Keith and was sorry. Catelyn did this because she was upset that Ms. Keith

did not help her with Sydney (presumably a reference to her child). Ms. Keith blames the various posts on Catelyn, surmising that Catelyn must be the person who hacked her Facebook account.

This testimony was not believable. First, Catelyn did not testify, and I have no way of knowing if she is a real person who wrote that e-mail.⁵ Second, there were messages sent, not just from the Brie Erdely, but from Sabrina Ann—which Ms. Keith agrees is her current account. There were also messages sent on Snapchat by “Sabrina’s Daycare West Springfield.” I have a hard time believing Catelyn, or anyone else, hacked multiple accounts on multiple social media platforms. Moreover, Ms. Keith did not say her Snapchat or Sabriana Ann account were ever hacked.

Also, as EEC pointed out at the hearing, some of the messages from these accounts were not disparaging but instead intended to convey Ms. Keith’s daycare was great and parents should send their kids there. The messages included accurate, personal information about Ms. Keith, such as the fact she had to shut down her daycare to take care of family. It makes little sense that someone who hacked Ms. Keith’s account with the intent of hurting her would post positive things and would be aware of such specific, personal details.

The regulations require that educators “exercise good judgment at all times and demonstrate an ability to handle emergency situations appropriately.” 606 Code of Mass. Regs. § 7.09(6).⁶ Having found Ms. Keith posted these messages, I agree with EEC that she exercised

⁵ Ms. Keith also submitted a letter of support in the form of an e-mail screenshot from “Brianna E.” This person did not testify, and I likewise have no way of knowing if she is real and actually sent the e-mail. I take note of the fact the person’s name is “Brianna E” which is very similar to “Brie Erdely.” (Ex. 17.)

⁶ The regulation is broadly worded. It could conceivably cover conduct in which an educator did not exercise good judgment in a situation totally unrelated or irrelevant to their ability to provide care. However, I need not decide whether the regulation does cover those situations because in this case, Ms. Keith’s exercise of poor judgment was directly related and

poor judgment here. She disparaged one educator's business, she pretended to be someone else to make up positive reviews about her own daycare, she harassed a parent who decided not to send her child to Ms. Keith's daycare, and she then reached out to that parent's husband after the parent blocked Ms. Keith. Ms. Keith has not proven by a preponderance of the evidence that the Department abused its discretion in refusing to issue her license on this ground.

EEC also based its decision on Ms. Keith's conduct at the February 2024 meeting. I am less troubled by this and, if it were the only allegation, this would be a closer call. I credit EEC's version of events. I do not doubt that Ms. Keith raised her voice and was angry. I also understand Ms. Keith's frustrations because she had to essentially reapply for her license, and everything that came with that, before EEC told her it would not issue her a license. She spent time and money that she cannot recover. She asked for the meeting and was probably taken by surprise when EEC confronted her with its concerns. Nevertheless, while EEC was likely within its right to deny her license on this ground, I need not base my decision on this allegation because I find that Ms. Keith exercised poor judgment with respect to the social media postings.

CONCLUSION AND RECOMMENDED ORDER

I recommend the Department uphold its decision to refuse to issue Ms. Keith a license for the reasons stated in this decision.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

relevant to her ability to provide care. It implicated parents and educators and involved her daycare center.