

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

M.C.,
Petitioner,

Docket No.: OC-25-0694

v.

Department of Early Education and Care,
Respondent.

Appearances:

For Petitioner: Goerge Panas, Esq.
For Respondent: Fatima Islam, Esq.

Administrative Magistrate:

Eric Tennen

RECOMMENDED ORDER GRANTING MOTION FOR SUMMARY DECISION

The Petitioner, M.C., was a licensed daycare provider. Around 2025, the Department of Early Education and Care (EEC) conducted a routine background check. In that review EEC learned that M.C. had been charged with, but acquitted of, a criminal offense. Nevertheless, EEC found she was not suitable for licensure. Because there are no facts in dispute, I indicated I would resolve this case under a motion for summary decision. M.C. filed their motion along with Exhibits A-F. EEC filed an opposition. At the motion hearing, EEC did not object to any of the Petitioner's proposed exhibits. Neither party objected when I suggested adding two more documents as Exhibits G & H: the Department's rationale and the 2023 police report.

FINDINGS OF FACT

Based on the agreed upon exhibits, the following facts are not in dispute:

1. M.C. is a long-time licensed daycare provider and has owned her own daycare center in Tyngsboro, MA for 26 years. That daycare employed a director and several educators. (Exs. F & G.)
2. Around 2023, federal authorities received information that an educator at M.C.'s daycare might be involved in the unlawful dissemination of child images. (Ex. F.)
3. As part of that investigation, they interviewed several people including parents who had children at that daycare. They conducted one interview with the parents of minor 4. (Ex. F.)
4. Minor 4 attended the daycare in 2019. Minor 4 was not ultimately part of the criminal case that resulted from the 2023 investigation. However, minor 4's parents provided information that resulted in an unrelated charge against M.C. (Ex. F.)
5. The parents explained that their daughter attended M.C.'s daycare between February and September 2019. Minor 4's mother said she began to see some changes with her daughter around May 2019. (Exs. F & H.)
6. In June 2019, while getting ready for bed, minor 4 told her mother that one of the teachers "said this is my tickle spot," and then pointed to her pubic area. (Exs. F & H.)
7. Minor 4's mother contacted M.C. to relay this information. M.C. said they would speak with the teacher but doubted this teacher would do such a thing.¹ The next day, minor 4's mother spoke with the daycare director. The director said she had spoken with the teacher and thought there was nothing more to investigate. (Exs. F & H.)

¹ In a statement to an EEC investigator, M.C. did not recall a "report or events like this." (Ex. C.)

8. In September 2019, minor 4's mother withdrew her from M.C.'s daycare because of difficulties related to transportation. (Exs. F & H.)
9. M.C. does not dispute that she is a mandated reporter and that she did not report this incident to the Department of Children and Families (DCF) in 2019. (Ex. F.)
10. At some point in late 2023, DCF opened an investigation related to M.C.'s daycare. The record does not disclose who reported the allegations to DCF or when. Likewise, the record does not contain the allegations or any details of DCF's investigation. By context I infer it was related to the allegations involving the federal authorities. (Ex. F.)
11. The record does reflect DCF's ultimate findings from November 2023. DCF supported allegations of neglect and/or abuse against the educator referenced by minor 4 and the daycare's director. However, DCF did not support any allegations of abuse or neglect against M.C. (Ex. E.)
12. Around this time, EEC opened its own investigation. (Ex. C.) The results of the investigation are not in the record. But at the motion hearing, counsel for EEC explained that the investigation did not find M.C. committed any wrongdoing but did find one of the educators had.
13. In December 2023, minor 4's mother approached the Tyngsborough police department alleging that M.C. failed to file a 51A² report in 2019 after she brought her concerns to M.C.'s attention. The police interviewed her and she told them the same information she

² DCF investigations of alleged abuse or neglect are initiated by reports authorized under G.L. c. 119, § 51A. The results of those investigations, and whether they are supported or unsupported, are recorded in reports governed by G.L. c. 119, § 51B. These are colloquially referred to as "51A" and "51B" reports.

- had already told the federal investigators. (Ex. H.)
14. The Tyngsborough police department eventually brought charges against M.C. for failure to file a 51A report. (Ex. A.); G.L. c. 119 § 51A(c).
 15. The police alleged M.C. had “reasonable cause to believe that a child . . . was suffering physical or emotional injury resulting from abuse inflicted upon her which cause harm or substantial risk of harm to the child’s health or welfare[.]” (Ex. H.)
 16. This offense is a misdemeanor.³
 17. M.C. was arraigned in July 2024. (Ex. A.)
 18. M.C. was acquitted of the charge after a trial in February 2025.⁴ (Ex. A.)
 19. Shortly thereafter, M.C.’s had to renew her license. In the course of that process, EEC became aware of the criminal proceedings, which by that point had concluded with M.C.’s acquittal. This, in turn, triggered a review process. (Ex. G.)
 20. EEC has lists of crimes that may trigger different levels of disqualifications—mandatory, presumptive, and discretionary. The crime with which M.C. was charged creates a presumptive disqualification.⁵

³ “The distinction between felony and misdemeanor offenses is established by statute: crimes punishable by confinement in a State prison are felonies; all other crimes are misdemeanors.” *Commonwealth v. Hill*, 57 Mass. App. Ct. 240, 248 (2003), *citing* G.L. c. 274, § 1. The crime of failing to report abuse to DCF provides for a fine or only a house of correction sentence. G.L. c. 119 § 51A(c).

⁴ Thought not in the record, the parties do not dispute the case has been sealed. A search of publicly available dockets did not return a record of this case.

⁵ M.C. argues that the crime at issue is not within EEC’s list of disqualifying offenses at all. A close look reveals M.C. is mistaken. This specific crime is in EEC’s list of presumptively disqualifying offenses. [The tables are available on EEC’s website.](#)

21. M.C. submitted various documents including two reference letters and a candidate statement. (Ex. G.)
22. The reviewer accepted that M.C. committed the offense of failing to report abuse under G.L. c. 119. The reviewer then analyzed the regulatory factors. (Ex. G.)
23. One factor is time since the incident. Even though the conduct allegedly occurred in 2019, the reviewer said it had only been one year since the incident in July 2024 (the date of M.C.'s arraignment). (Ex. G.)
24. As to the severity and specific circumstances of the "offense" the reviewer quoted from the federal investigative report but gave no other analysis or information. (Ex. G.)
25. For "relationship of the incident," the reviewer said the incident related to a child in M.C.'s care. She explained M.C. "became aware of the allegation and failed to report it as a mandated reporter." (Ex. G.)
26. M.C. had "one offense stemming from one incident. The offense is an adult, non-conviction that has been closed." (Ex. G.)
27. The reviewer noted that M.C. had not submitted any evidence of rehabilitation. (Ex. G.)⁶

The main difference between a discretionary and presumptive review "has to do with how many people review the case. In the discretionary review process, there are three total people: the background check reviewer and two more. For the presumptive review process, there are a total of four people who review the case: the background check reviewer and three more." See *EEC v. J.C.*, OC-25-0357, (Div. Admin. Law Apps. Nov. 21, 2025).

⁶ In M.C.'s motion for summary decision, counsel wrote that M.C. "facilitated two meetings in 2024 alone with EEC including a supporting guidance meeting on January 19, 2024, and a 51A training on June 26, 2024. That 51A training is not mandated by the state; [M.C.] engaged in this training on her own volition, indicating how seriously she took the allegations made against her and how dedicated she was to the field of childcare as a whole." This statement is not supported by any documents in the record, so I make no finding as to whether

28. The reviewer did not reference EEC's own investigation that had cleared M.C. of any wrongdoing. The reviewer did not reference DCF's investigation that had cleared M.C. of any wrongdoing. And the reviewer did not analyze why, in her assessment, M.C. had a duty to report minor 4's statement to DCF. (Ex. G.)

DISCUSSION

Summary decision may be granted when "there is no genuine issue of fact relating to all or part of a claim." 801 Code Mass. Regs. § 1.01(7)(h). A hearing in that situation "would be a meaningless exercise." *Korbrin v. Bd. of Reg. in Med.*, 444 Mass. 837, 846 (2005). This is such a case.

When an applicant for a childcare license has a potentially disqualifying background, EEC may conduct a discretionary review to determine whether to grant or deny the license. 606 Code Mass. Regs. § 14.10(6). That discretion is not unfettered. EEC's regulations define what factors a reviewer must consider. *Id.* at § 14.12(f). These regulations also state that "the candidate [for a childcare license must present] clear and convincing evidence demonstrating the candidate's suitability for licensure, employment or affiliation in light of the concern for children's safety." *Id.* An agency is bound to adhere to its regulations. *Royce v. Commissioner of Correction*, 390 Mass. 425, 427 (1983). This means that EEC may not issue a license to a candidate with a potential disqualifying background if the candidate failed to present clear and convincing evidence of suitability. By the same token, if the candidate presented clear and convincing evidence of suitability, EEC must grant the license.

it is true. However, if EEC were aware of it, it would arguably be is some evidence of rehabilitation EEC should have considered.

EEC argues that my review is limited to whether it committed an abuse of discretion in finding M.C. was not suitable. But DALA regularly reviews EEC's decisions *de novo*. See *EEC v. Ramirez*, OC-24-0251 (Div. Admin. Law Apps. Feb. 27, 2026) (holding that DALA must review EEC decisions *de novo*); *EEC v. Aguirre*, OC-24-0598, *10, n.3 (Div. Admin. Law Apps. Feb. 6, 2026). This matters less in this case when there are no genuine issues of fact and thus no new evidence to evaluate after an evidentiary hearing. The only issue is whether I evaluate EEC's decision for an abuse of discretion or make a *de novo* assessment. Although I believe *de novo* is the appropriate approach, because there is no evidence that the Petitioner committed an offense, either standard leads to the same result: the Petitioner has proven by clear and convincing evidence that she is suitable for licensure.⁷

There is no factual dispute that M.C. is a mandated reporter and did not file a 51A report in this case. So, if she had an obligation to file a report, she would have very likely been found guilty after trial and held responsible by EEC and DCF of some wrongdoing. The fact that none of those things happened begs the question: what credible evidence exists that suggests M.C. had a legal obligation to file a 51A in 2019? The short answer is none.

⁷ Even under the most deferential standard, abuse of discretion, an "appellate court is entitled to correct a decision that is based on an erroneous view of the law or a clearly erroneous assessment of the evidence." *Com. V. Kolenovic*, 471 Mass.664, 672 n.9 (2015). Moreover, "[d]iscretion in this context does not of course mean arbitrary or capricious decision; it calls for decision based on all of the relevant facts. Troublesome facts . . . are to be faced rather than ignored . . . Only then is the judge's conclusion entitled to the great respect traditionally given to discretionary decisions." *Adoption of Stuart*, 39 Mass. App. Ct. 380, 383 (1995), quoting *Adoption of a Minor (No. 2)*, 367 Mass. 684, 688–89 (1974). If I am limited to reviewing EEC's case for an abuse of discretion, EEC abused its discretion in this case. The reviewer failed to grapple with troublesome facts which meant her conclusion was led her to an erroneous assessment of the evidence.

EEC's only "evidence" is the allegation itself. That allegation comes from the Tyngsborough police report, which simply makes conclusory statements that M.C. failed to act. It appears then, for EEC, an allegation alone is proof the offense occurred. I disagree. "Unlike a conviction, the mere fact of a charge is not corroboration that the conduct occurred." *EEC v. Andino*, OC-25-103 & 425 (Div. Admin. Law Apps. Oct. 24, 2025). I am not suggesting every case requires a legal finding, such a substantiated allegation of abuse or criminal conviction.

The Department may certainly rely on [unsubstantiated allegations or charges that did not result in convictions]⁸ but its review must evince a careful evaluation of the facts. It is one thing for an agency to rely on the facts of an incident when the accused was, for example, convicted of the crime. It is another thing to accept as true alleged facts after the legal process has provided no verdict and, in this instance, the prosecution has abandoned its allegations. That requires a more searching inquiry.

EEC v. Gupta, OC-23-0396, *10 (Div. Admin. Law Apps. Oct. 18, 2024). In short, there needs to be some corroboration beyond the allegation itself. *Id.* Moreover, in this case, EEC does not rely on unsubstantiated or dismissed conduct; it relies on acquitted conduct. "[T]he circumstances would have to be rather compelling for the Department to base its denial on acquitted conduct." *EEC v. Fournier*, OC-24-0508, 2025 WL 1092640, *13-14 (Div. Admin. Law Apps. Apr. 1, 2025), citing *Commonwealth v. Dorazio*, 472 Mass. 535 (2015) (excluding evidence of allegations for which the defendant was acquitted in a prior trial) and *Dowling v. United States*, 493 U.S. 342, 355 (1990) (Brennan, J. dissenting) (use of acquittal evidence offends the established

⁸ In *Gupta*, I mistakenly used the term "uncharged conduct" here when, in context, I clearly meant unsubstantiated allegations of abuse or charges that did not result any convictions.

interests of preserving the finality of judgments and protecting individuals from governmental overreaching).

EEC had the allegation on one hand, but significant information on the other hand indicating the allegation was not true. EEC reached the result it did because EEC failed to grapple with this evidence. The “troublesome facts” that EEC failed to address were as follows. M.C. denied she had an obligation to report this conduct. EEC’s internal investigation did not find M.C. had done anything wrong. DCF’s findings substantiated allegations of abuse/neglect against two educators, including the daycare director, but *not* against M.C. And, of course, M.C. was acquitted of the criminal allegations following a trial. The acquittal is particularly compelling because there is no dispute M.C. was a mandated reporter who did not report anything to DCF. The acquittal was not likely based on a disputed fact; rather, it was likely on account of a legal conclusion that she had no obligation to report anything.

The reviewer could have sought more information about each of these facts, especially from EEC’s own internal investigation that did not fault M.C., but she did not. The reviewer did not even consider the legal question of when an obligation to report arises. The statement by minor 4, that a teacher said “this is my tickle spot,” did not allege abuse, and there was no other evidence indicating the child had been abused. That matters:

The department argues, however, that it is obligated to support a report of abuse if there is “reasonable cause” to believe that abuse has occurred, and points out that this evidentiary threshold, as defined by regulation and case law, is a minimal one requiring a “relatively low degree of accuracy.” But where, as in this case, there is no substantiated claim of actual physical injury, a finding of abuse must be predicated on there being reasonable cause to believe that there is a *substantial risk* that such injury will occur; i.e., there must be “a collection of facts, knowledge or observations which tend to support or are consistent with the allegations” that a substantial risk of injury is present. See 110 Code Mass. Regs. § 4.32.

Cobble v. Comm'r of Dep't of Soc. Servs., 430 Mass. 385, 394 (1999) (citations omitted). If that is what the reviewer believed occurred here, she did not articulate it. Nor could she have, because nothing in the child's statement indicated there was a "substantial risk that such injury would occur."⁹

Even if the statement could be considered as having alleged abuse, that alone is still not enough:

Where, as here, the initial precipitating fact giving rise to suspicion is an utterance containing an allegation of abuse, we think something more than just the utterance itself is necessary for there to be "reasonable cause to believe" that abuse may have occurred. The Legislature, after all, requires reporting when there is "reasonable" cause, and that word cannot be ignored or read out of the statute entirely. Indeed, it implies that some exercise of judgment should occur to rule out, for example, assertions that are impossible, utterly fantastic, plainly fabricated, or made only in jest.

Cooney v. Dep't of Mental Retardation, 52 Mass. App. Ct. 378, 386 (2001).¹⁰ Here, there was nothing more than the "utterance itself."

Failure to confront the "troublesome" facts that cut against the allegation resulted in the EEC misjudging M.C.'s actions. This record does not support a finding that M.C. failed to report a credible claim of abuse. It supports the opposite finding: M.C. had no legal obligation to report

⁹ That the educator was later charged with different criminal conduct is of no moment. This case is not about hindsight. The question is, did M.C. have an obligation to report the educator to DCF in 2019, when the statement was brought to her attention, and not in 2023, when the federal authorities began an investigation? There are no allegations that M.C. did anything inappropriate in response to the 2023 investigation.

¹⁰ Although the court in *Cooney* interpreted the phrase "reasonable cause to believe" in the Department of Mental Health setting, G.L. c. 19, §§ 1 and 10, the court acknowledged the same language was present in c. 119 § 51A. Accordingly, it held both statutes should be interpreted similarly and looked to caselaw concerning § 51A in explaining what "reasonable cause to believe" means.

anything related to minor 4's statement and thus did not commit an offense. EEC's decision that M.C. did commit an offense was based on an erroneous assessment of the evidence.

There is one more error in the reviewer's report that merits discussion. For the factor "time since the incident," the reviewer wrote that it had only been less than a year from the incident, citing M.C.'s arraignment in July 2024. However, the alleged conduct was M.C.'s failure to file a report with DCF in 2019. By the time of the review, it had been over five years since the alleged incident occurred, not less than one. In that time, M.C. continued to operate her daycare, the educator was investigated for something else, M.C. cooperated with that investigation, and M.C. was not admonished in anyway. If EEC's concern was about how M.C. would handle a situation in which abuse or suspected abuse was reported, here was an example post-dating the alleged incident in which M.C. cooperated appropriately with the investigating authorities. Misapplying this factor meant the reviewer did not account for these facts.

CONCLUSION AND ORDER

Because EEC's decision was based only on an uncorroborated statement and acquitted conduct, I recommend it *reverse* its decision denying M.C. her license.

SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Date: April 9, 2026

Eric Tennen

Eric Tennen
Administrative Magistrate