

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Ana Maria Gonzalez Ramirez,
Petitioner,

Docket No.: OC-25-0251

v.

Department of Early Education and Care,
Respondent.

Appearances:

Ana Maria Gonzalez Ramirez, pro se
For Respondent: Ryan Foreman, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF RECOMMENDED DECISION

Eighteen months ago, the petitioner reacted ineffectively and deceptively when a child ran away from her daycare program. Based on a fresh review of the evidentiary record, the petitioner has not presented clear and convincing evidence of her suitability to operate an early education and care program at this time.

RECOMMENDED DECISION

Petitioner Ana Gonzalez appeals from a determination of the Department of Early Education and Care (department) that she is unsuitable to operate a daycare program. I held an evidentiary hearing on December 11, 2025, at which only Ms. Gonzalez testified. During and after the hearing, I admitted into evidence exhibits marked 1, 2, 7-10, and A-N. I now also admit an affidavit of department employee Arlyn Singletary.¹

¹ Ms. Singletary became unavailable to attend the hearing once its start time was postponed to accommodate an interpreter. After Ms. Gonzalez waived her right to cross-examine Ms. Singletary, I directed the department to file Ms. Singletary's testimony in writing. The crux of her affidavit is an opinion about the appropriate disposition of this case. See *Greenspun v. Boghossian*, 95 Mass. App. Ct. 335, 340-41 (2019); *Commonwealth v. O'Connor*, 7

Findings of Fact

I find the following facts.

1. Ms. Gonzalez grew up in Puerto Rico and moved to Massachusetts as a young adult. She has three children. She has served as a foster parent to several additional children. She is a caring person, deeply committed to the wellbeing of the children in her life.

(Exhibits D-F; Gonzalez testimony.)

2. For approximately seven years, Ms. Gonzalez worked as a certified assistant in a daycare program operated by another individual. At some point, after Ms. Gonzalez purchased a home, she obtained a license to operate her own program. (Gonzalez testimony.)

3. Ms. Gonzalez opened her program in mid-2023, working out of her basement. She hired two certified assistants to work with her. The program cared for approximately six children aged 1-4. (Gonzalez testimony.)

4. On August 8, 2024, Ms. Gonzalez left her daycare at approximately 11:00 am to attend a work-related meeting. At about 12:30 pm, Ms. Gonzalez's assistants sent one of the daycare's four-year-old boys to take a nap. About ten minutes later, the assistants noticed that the boy was missing. They began to look for him inside the house. They did not alert Ms. Gonzalez, the boy's parents, or the police. (Exhibits 1, 2, 9, 10; Gonzalez testimony.)

5. Ms. Gonzalez returned to the daycare at approximately 1:00 pm. The assistants told her about the missing boy. Ms. Gonzalez immediately began to search her neighborhood

Mass. App. Ct. 314, 321-22 (1979). I nevertheless admit the affidavit in the absence of an objection and given the permissive nature of G.L. c. 30A, § 11(2).

by car. She did not contact the boy's parents or the police. (Exhibits 1, 2, 9, 10; Gonzalez testimony.)

6. Approximately one hour into her search, at about 2:00 pm, Ms. Gonzalez received a text message from the missing boy's mother. The topic was mundane: the mother intended to pick her son up earlier than usual. Ms. Gonzalez responded, "Hi ok," and continued her search. (Exhibits 1, 2, 9, 10; Gonzalez testimony.)

7. In the meantime, local police officers found the boy and collected him from a nearby curb. They took him to the police station at approximately 12:45 pm and posted a photo of him on Facebook. (Exhibits 1, 2, 9, 10; Gonzalez testimony.)

8. The boy's mother saw the Facebook post fifteen or thirty minutes after her text exchange with Ms. Gonzalez, at 2:15 or 2:30 pm. She called Ms. Gonzalez and asked whether Ms. Gonzalez had her son. Ms. Gonzalez at first replied that the boy "had been hiding"; in response to a follow-up question, Ms. Gonzalez admitted that the boy was not with her. (Exhibits 1, 2, 9, 10; Gonzalez testimony.)

9. The police brought the boy to be examined at a local hospital at approximately 2:45 pm. Ms. Gonzalez visited him there later that day. He had suffered no visible harm. (Exhibits 1, 2, 9, 10; Gonzalez testimony.)

10. In total, Ms. Gonzalez kept the boy's parents in the dark about his disappearance for 90 minutes or so. She realizes that this was a terrible mistake. The parents deserved an immediate update. The police also should have been called. Searches by Ms. Gonzalez and her assistants were severely inadequate safeguards of the boy's wellbeing. I credit Ms. Gonzalez's

testimony that she behaved as she did because she “panicked,” “froze,” and found herself unable to think straight. (Gonzalez testimony.)

11. Acting on instructions from the department, Ms. Gonzalez shut down her program immediately after the August 8 incident.² During the ensuing weeks, she worked to address the problems that had infected her program on that day. Ms. Gonzalez has equipped her daycare with an improved set of security cameras. She has written a “safety protocol” and a “missing child action plan,” both of which prescribe preventative and responsive safety measures. The preventative measures include regular tracking of the children’s presence on standard forms. The prescribed responses to a disappearance include immediate notice to the “primary caregiver” and a call to law enforcement. Ms. Gonzalez has provided training to her assistants about these topics. She has written a separate document describing a “missing child drill” to be run at the daycare from time to time. She has completed a twelve-hour continuing education program offered by the department. (Exhibits 7, 8, A-C, G-J; Gonzalez testimony.)

12. Other than in connection with the August 8 incident, Ms. Gonzalez and her daycare have received good reviews. At interviews with a department investigator, Ms. Gonzalez’s assistants stated that she is “very organized,” has a “great curriculum,” and maintains a “beautiful” space. Parents interviewed by the department identified “no concerns with the care and attention [that Ms. Gonzalez] provides their children”; they specifically reported “a great deal of communication from [Ms. Gonzalez] regarding their children.” (Exhibits 1, 9, 10.)

² It is not clear from the record whether, formally speaking, the department revoked Ms. Gonzalez’s license, suspended it, or took some other action.

13. Three acquaintances have written letters in support of Ms. Gonzalez and her program. They describe Ms. Gonzalez as having taken responsibility for her failures on August 8 and as having grown from the experience. They speak warmly about Ms. Gonzalez’s patience, commitment to the children in her program, and skill at building relationships with children and parents. (Exhibits D-F.)

14. During September 2024, Ms. Gonzalez asked the department for permission to reopen her program. While the request was pending, in October 2024, the Department of Children and Families (DCF) made a formal finding that Ms. Gonzalez had been guilty of “neglect” in connection with the August 8 incident. (Exhibit 10; Gonzalez testimony.)

15. With Ms. Gonzalez’s consent, the department conducted a fresh check of her background. The only item flagged by the inquiry was DCF’s finding of neglect. On the basis of that finding, a reviewer for the department determined that Ms. Gonzalez is unsuitable to operate a daycare program. The reviewer acknowledged that Ms. Gonzalez “has made commendable efforts to tackle [the department’s] concerns.” The reviewer considered those efforts to be inadequate on the basis that “it is too early to accurately evaluate [their] effectiveness.” Ms. Gonzalez timely appealed. (Exhibits 1, 2.)

Analysis

The discussion that follows addresses: first, the regulations that govern the department’s review of requests for licensure; second, the legal standard that governs DALA’s review of determinations made by the department’s reviewers; third, the application of the foregoing principles to this case.

I. Licensure Applications

Early education and care programs in Massachusetts may operate only under licenses from the department. G.L. c. 15D, §§ 6-7. “Subject to the requirements of chapter 30A, the department may . . . refuse to issue or renew the license of any person . . . in accordance with rules and regulations.” *Id.* § 10.

The department’s regulations call for background checks to be run on all applicants for licensure. 606 C.M.R. §§ 14.07-14.09. The potential findings of a background check are assigned to three categories, namely “mandatory,” “presumptive,” and “discretionary” disqualifications. *Id.* § 14.10. A “discretionary” disqualification arises in various situations, including where the candidate “ha[s] been found to be the person responsible for the abuse or neglect of a child.” *Id.* § 14.10(6).

When a candidate is subject to a discretionary or presumptive disqualification, the regulations direct the department to consider 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 criminal offenses or findings of abuse/neglect;
6. Dispositions of criminal offenses and findings of abuse/neglect;
7. Relevant evidence of rehabilitation or lack thereof; and
8. Other relevant information, including information submitted by the candidate.

Id. § 14.12(2)(f). With these datapoints in mind, the department must determine whether the candidate has presented “clear and convincing evidence demonstrating the candidate’s suitability for licensure . . . in light of the concern for children’s safety.” *Id.* § 14.12(2)(e).

The phrase “clear and convincing evidence” is a recurrent term of art. *See MacDonald v. Caruso*, 467 Mass. 382, 390 (2014). “In order to be clear and convincing, the evidence must be sufficient to convey a high degree of probability that the proposition is true. . . . The requisite proof must be strong and positive; it must be full, clear and decisive.” *In re Adoption of Zoltan*, 71 Mass. App. Ct. 185, 188 (2008). These requirements are intended to be more demanding than “proof by a preponderance of the evidence” but less stringent than “proof beyond a reasonable doubt.” *In re Laurent*, 87 Mass. App. Ct. 1, 7 (2015).³

II. Standard of Review

Under the department’s regulations, “[l]icensees who have been found ‘not suitable’ . . . may file for an adjudicatory hearing at [DALA].” 606 C.M.R. § 14.14(2). The hearing must be held “pursuant to [the administrative procedure act,] M.G.L. c. 30A.” *Id.*

In prehearing papers, the department’s hearing counsel raised and briefed the issue of the legal standard that governs DALA’s review of the determinations made by the department’s

³ Arguably, the regulations adopt a questionable construction of the enabling act, G.L. c. 15D, §§ 6-10, which does not say anything about “clear and convincing” evidence. That standard of proof ordinarily is imposed on prosecutors or agencies seeking to disrupt important individual rights. *See MacDonald*, 467 Mass. at 390 (collecting authorities). Nevertheless, on-the-books regulations are binding on this administrative tribunal if they are at all reconcilable with the applicable statutory requirements. *Compare Pepin v. Division of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014), and *Doe v. Sex Offender Registry Bd.*, 459 Mass. 603, 629 (2011), with *Veksler v. Board of Registration in Dentistry*, 429 Mass. 650, 652 (1999). Perhaps it would be possible to theorize that the phrase “clear and convincing” calls for a nonstandard interpretation in this particular context; Ms. Gonzalez has not offered such a theory.

reviewers. To address that issue, the following sections consider DALA’s case law, the absence of any controlling precedents, and lastly the merits of the issue on its own terms.

A. *DALA’s Case Law*

Over the years, a line of DALA decisions applied a deferential standard of review to the determinations of the department’s reviewers, asking whether the reviewers committed any “abuse of discretion,” including any “arbitrary or capricious” action or any action “not in accordance with law.” That line of decisions was surveyed in and followed by *Aguilar v. Department of Early Educ. & Care*, No. OC-23-251, 2023 WL 9022704, at *4 & n.4 (Div. Admin. Law App. Dec. 21, 2023).

Another decision issued on the same day as *Aguilar* critiqued the abuse-of-discretion approach. That decision argued that DALA must “determin[e], based on the entirety of the record, whether [the applicant] furnished ‘clear and convincing’ evidence of her suitability for licensure.” *Department of Early Educ. & Care v. Jarominski*, No. OC-22-329, 2023 WL 9022703, at *7 (Div. Admin. Law App. Dec. 21, 2023). Otherwise stated, *Jarominski* stands for the view that DALA must consider each case “de novo.”

More recent decisions have not necessarily used the terms “abuse of discretion” or “de novo.” But they have generally adopted *Jarominski’s* view: the question they have asked is whether “the candidate presented clear and convincing evidence of suitability”—i.e., the same question already tackled by the department’s reviewer. See, e.g., *Aguirre v. Department of Early Educ. & Care*, No. OC-24-0598, 2026 WL 446272, at *5 n.3 (Div. Admin. Law App. Feb. 6, 2026); *Andino v. Department of Early Educ. & Care*, No. OC-25-103, 2025 WL 3127144

(Div. Admin. Law App. Oct. 22, 2025); *Rathor v. Department of Early Educ. & Care*, No. OC-25-156, 2025 WL 2365554 (Div. Admin. Law App. Aug. 7, 2025).

B. The Absence of Controlling Precedent

Within DALA's case files for *Aguilar* and *Jarominski* are copies of final agency decisions issued by the Commissioner in those matters. The Commissioner's decisions endorse the view followed by the magistrate in *Aguilar*: i.e., that DALA should review the determinations of the department's reviewers only for abuses of discretion (including equivalent errors).

The department's hearing attorney refrained in his papers from citing the Commissioner's decisions as authority. He was right to do so. For the sake of future disputes, it may be important to see why.

In the American legal tradition, it is well accepted that the judicial appellate courts may bind the judicial trial courts through precedential decisions. *See Hart v. Massanari*, 266 F.3d 1155, 1163-74 (9th Cir. 2001). *See also* Evan H. Caminker, *Why Must Inferior Courts Obey Superior Court Precedents?*, 46 *Stan. L. Rev.* 817 (1994). In quasi-judicial, administrative jurisdictions, the relationship between appellate-level and trial-level tribunals has generated more controversy. But in an especially persuasive opinion, then-Judge Ruth Bader Ginsburg wrote: "ALJs are entirely subject to the agency on matters of law. . . . [The ALJ] is governed, as in the case of any trial court, by the applicable and controlling precedents. These precedents include . . . the agency's policies as laid down in its published decisions." *Iran Air v. Kugelman*, 996 F.2d 1253, 1260 (D.C. Cir. 1993) (cleaned up). *See also* Ronald M. Levin, *Administrative Judges and Agency Policy Development: The Koch Way*, 22 *Wm. & Mary Bill Rts. J.* 407 (2013).

Returning to the courts, not every appellate opinion is a binding precedent. The appellate courts may designate any of their opinions as nonprecedential, i.e., binding only with respect to a particular dispute among specific parties. *See, e.g.*, Mass. App. Ct. R. 23.0. *See also Hart*, 266 F.3d at 1163-74. There appears to be no doubt that administrative appellate tribunals share the same option of withholding precedential force from some or all of their decisions. *See Precedential Decision Making in Agency Adjudication*, 88 Fed. Reg. 2312 (Jan. 13, 2023); Bernard W. Bell et al., *Improving the Affirmative Disclosure of Agency Legal Materials*, 13 Mich. J. Envtl. & Admin. L. 342, 445-46 (2024).

In some administrative jurisdictions, agencies specifically designate some of their decisions as precedential and others as nonprecedential. *See Precedential Decision Making, supra*. That practice may be uncommon in Massachusetts. The Commissioner has given no particular designation to her decisions in *Aguilar* and *Jarominski*.

For purposes of determining whether the Commissioner's decisions should be treated as precedential, one feature of them stands out: they are not published, either online or elsewhere. The department's hearing counsel so reported at the hearing. In this context, the terms "published" and "precedential" are nearly synonymous. Historically speaking, judicial precedents were not viewed as binding until the published reporter series became widely available. *See Hart*, 266 F.3d at 1163-74. From a more substantive perspective, when government bodies wish to impose rules on the public, principles of due process and good governance require them to announce those rules publicly. *See Op. Att'y Gen. No. 1*, at 32, 33 (July 9, 1970). *See also Arthurs v. Bd. of Registration in Med.*, 383 Mass. 299, 313-14 (1981). It would be inappropriate for an agency to administer a body of "secret agency law." *New York*

Legal Assistance Grp. v. Board of Immigr. Appeals, 987 F.3d 207, 223 (2d Cir. 2021). The *Iran Air* opinion was therefore being precise when it described the precedents that bind administrative law judges as an agency's "published decisions." 996 F.2d at 1260. See also *Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1044 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The Commissioner's decisions are not available to the department's applicants and licensees.⁴ Those decisions therefore must be viewed as binding only with respect to their specific parties and circumstances. The governing standard of review needs to be identified without the benefit of the Commissioner's guidance.

*C. The Merits
(of the Standard-of-Review Issue)*

On the merits (of the standard-of-review issue), the only logical approach is for DALA to review the determinations of the department's reviewers de novo. The reasons for this conclusion flow from the broader legal terrain.

Today's governments make myriad decisions about their constituents' licenses and other entitlements. With respect to such decisions, our system of administrative law relies on a division of labor between the executive and judicial branches.

⁴ According to the department's hearing counsel, copies of the Commissioner's decisions may be obtained from the department through public records requests. As a practical matter, that time-intensive undertaking would not be useful to the litigating public. See *Dent v. Holder*, 627 F.3d 365, 374 (9th Cir. 2010). The situation also would not change materially if the department were "to provide a copy of [pertinent unpublished decisions] to the opposing party," in which case "lawyers representing the [department] could review the range of unpublished decisions and select those most helpful to their position . . . while their opponents are blocked from doing the same." *New York Legal Assistance Grp.*, 987 F.3d at 223.

The executive branch makes the call in the first instance. In the process of doing so, executive agencies must afford the affected parties an array of procedural protections. Roughly speaking, those protections include: fair notice of the pertinent allegations, an opportunity to confront adverse witnesses, an opportunity to call supportive ones, an opportunity to be represented by counsel, and access to an impartial decision maker. These measures are prescribed both by principles of due process and by statute, i.e., the administrative procedure act. *See Goldberg v. Kelly*, 397 U.S. 254 (1970); *Costa v. Fall River Hous. Auth.*, 453 Mass. 614 (2009); G.L. c. 30A, §§ 10, 11, 12.

Once an administrative decision becomes final, the judiciary's role is hands off. The proceedings in court are generally "confined to the [administrative] record." G.L. c. 30A, § 14(5). The judicial standard of review is also deferential: an agency's decision will be reversed or modified only in cases of serious, prejudicial errors, including where the decision involved abuses of discretion, arbitrary or capricious decision making, violations of the law, or "unlawful procedure." *Id.* § 14(7).

The process through which a department's reviewer prepares his or her determination does not seek to satisfy the governing statutory and constitutional requirements. It is enough to note that the affected party receives no opportunity to confront adverse witnesses or to call friendly ones. *See Goldberg*, 397 U.S. at 267-68; G.L. c. 30A, § 11(3). The department's practice in this respect is not anomalous: it is common for early-stage administrative calls to be made based on non-robust procedures. The Legislature has specifically blessed that strategy, as long as the procedural deficiencies are later cured: "it shall be sufficient if the last hearing available

to [a] party complies with the requirements of [the administrative procedure act], and the earlier hearings need not so comply.” G.L. c. 30A, § 10, 2d para.

Intra-executive-branch appeals to DALA typify the approach endorsed by G.L. c. 30A, § 10, 2d para. The fundamental purpose of these appeals is to supply the due process protections that the affected party has not yet received. Once the original procedural deficits have been remedied, the judiciary’s usual hands-off review becomes appropriate.

Perhaps the most critical point for present purposes is the following. Due process protections are not empty formalities. They serve their purpose only if the operative agency decision is genuinely based upon them. As a result, when a curative hearing “provides a narrow basis for relief . . . it is not an adequate opportunity for [the affected party] to be heard.” *Ethridge v. Bell*, 49 F.4th 674, 688 (2d Cir. 2022). *See also Concrete Pipe & Prods. of California, Inc. v. Construction Laborers Pension Tr. for S. California*, 508 U.S. 602, 626 (1993); *South Dakota v. United States Dep’t of Interior*, 787 F. Supp. 2d 981, 998 (D.S.D. 2011). It is perhaps for that reason that the Appeals Court has already described at least some appeals to DALA as “de novo” hearings. *See, e.g., Dunn v. Contributory Ret. Appeal Bd.*, 46 Mass. App. Ct. 359, 363 (1999); *Namay v. Contributory Ret. Appeal Bd.*, 19 Mass. App. Ct. 456, 461-62 (1985).

In support of an abuse-of-discretion review, the department’s core argument runs as follows: “Where the Superior Court must abide by [a] very deferential standard . . . it does not make practical sense for DALA to conduct a de novo review.” But the Superior Court would overturn the determination prepared by the department’s reviewer, standing on its own two feet: either based on “unlawful procedure,” G.L. c. 30A, § 14(7)(d), or because “additional evidence” needs to be taken, *id.* § 14(6). The point of the robust hearing at DALA is to cure

these problems. But that goal would not be accomplished if the DALA appeal were to “provide[] a narrow basis for relief.” *Ethridge*, 49 F.4th at 688. To serve its purpose, the DALA proceeding must involve a fresh consideration of the evidence presented.⁵

The same conclusion follows from a related line of analysis. Due process protections serve a practical purpose: they allow the government’s decisions to be made on an informed, well-rounded, reliable basis. The rationale prepared by the department’s reviewer lacks the benefit of such a foundation. It rests on an unavoidably partial view of the facts. It would be irrational for a determination of that nature to command a deferential review. The opinions of even the best experts carry force only when they are rooted in adequate factual underpinnings. *See* Mass. Guide Evid. 702(b); *Lightlab Imaging, Inc. v. Axsun Techs., Inc.*, 469 Mass. 181, 191 (2014); *Meadows v. Anchor Longwall & Rebuild, Inc.*, 306 F. App’x 781, 790 (3d Cir. 2009).⁶

The department’s applicants and licensees are entitled to decisions made on the basis of constitutionally and statutorily adequate procedures and information. The only way to

⁵ An agency decision that denies an “original” license to a non-licensee may trigger more limited procedural rights than a decision that revokes, suspends, or refuses to renew an existing license. *See* G.L. c. 30A, § 13; *Massachusetts Outdoor Advert. Council v. Outdoor Advert. Bd.*, 9 Mass. App. Ct. 775, 790 (1980). But the applicable regulations do not prescribe distinct appellate procedures for original-license cases. And *whenever* the regulations invite applicants to litigate hearings before DALA, the clear point of that choice is to trigger DALA’s series of procedural protections. The regulations must intend for those protections to serve their purpose meaningfully, i.e., to produce a decision that is truly based upon them. In all events, it would be hard to view Ms. Gonzalez’s atypical case as involving a denial of an original license.

⁶ In practice, it is possible for one or both parties to leave important evidence out of their DALA presentations. For example, various individuals consulted by the reviewer may or may not be called to testify. Even so, the significance of the DALA proceeding is in the adequate *opportunity* that it offers for a fulsome factual inquiry.

properly honor that entitlement is for the initial determination made by the department's reviewer to be reexamined de novo on the basis of the DALA hearing.⁷

III. The Law as Applied to This Case

It follows that the substantive question presented is whether Ms. Gonzalez has presented "clear and convincing evidence demonstrating [her] suitability for licensure . . . in light of the concern for children's safety." 606 C.M.R. § 14.12(2)(e). This question must be addressed with attention to the factors listed in the department's regulations. *Id.* § 14.12(2)(f).

The case is a difficult one. It arises from an incident that occurred within the last two years (factor 1), when Ms. Gonzalez was in her forties (factor 2). The incident was not necessarily grave on traditional scales of criminality or immorality (factor 3). But it was weighty in terms of its implications for Ms. Gonzalez's ability to care for children (factor 4).

To be clear, the truly worrisome aspects of the August 8 incident began only after the child was gone. Ms. Gonzalez's panic left her dysfunctional. Instead of enabling the child's parents and the authorities to launch a professional search for him, she drove around on her own. She deprived the parents of information to which they were desperately entitled. She crossed into downright deceptive behavior by writing an anodyne "hi ok" to the boy's mother in the midst of her search.

The considerations on the other side of the scale are substantial. Ms. Gonzalez's missteps related to a single incident (factor 5). She has accepted responsibility for that incident and has worked to immunize her program against similar problems in the future (factor 7). The

⁷ The review conducted by the Commissioner upon receiving DALA's recommended decision is beyond the scope of DALA's jurisdiction and the current analysis.

evidence about Ms. Gonzalez's character and devotion to children from her acquaintances and her own testimony is forcefully positive (factor 8).

On balance, the evidence of Ms. Gonzalez's suitability to operate a daycare program at this time is not "clear and convincing," 606 C.M.R. § 14.12(2)(e), i.e., "full, clear and decisive," *Adoption of Zoltan*, 71 Mass. App. Ct. at 188. The problem does not revolve around the "effectiveness" of Ms. Gonzalez's new operating procedures (as the reviewer wrote). The real question is whether Ms. Gonzalez is personally capable of dealing with emergencies: on a recent occasion, when she was a mature adult, Ms. Gonzalez panicked so badly in a crisis that her response was both dysfunctional and deceptive. Before she can be allowed to run a childcare again, Ms. Gonzalez must in some way demonstrate that she will be able to react to future emergencies more appropriately.

It is important to emphasize that Ms. Gonzalez's errors during the August 8 incident were not necessarily so devastating as to be insurmountable. She should not be banned from department licensure forever. She is a fundamentally caring educator. But in order to justify a second chance, Ms. Gonzalez must find some way to show that she has repaired the emergency-response capacities that failed her on August 8. It will be up to Ms. Gonzalez to figure out how to make that showing. Some form of counseling might make a difference. Additional work in related settings might help. But the serious concerns that emanate from Ms. Gonzalez's conduct on August 8 are not resolved by the mostly on-paper, prevention-oriented remediation efforts that she has undertaken in recent months.

Conclusion

I recommend that the Commissioner determine that Ms. Gonzalez is unsuitable to operate an early education and care program at this time.

Dated: February 19, 2026

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

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