COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Department of Early Education and Care**,

Petitioner

v. Docket No. OC-18-0455

**Brenda Schofield**,

Respondent

**Appearance for Petitioner**:

Denise Karlin, Esq.

Department of Early Education and Care

51 Sleeper Street, 4th Floor

Boston, MA 02110

**Appearance for Respondent**:

Jeremy M. Carter, Esq.

Carter DeYoung

270 Winter Street

Hyannis, MA 02061

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF RECOMMENDED DECISION**

Respondent provided unlicensed child care and then applied for a child care license. In an Order to Protect Children, Department of Early Education and Care (EEC) denied respondent’s application for a license. Respondent timely appealed. In an Amended Order to Protect Children, EEC again denied respondent’s application, alleging certain events on September 11, 2018. Respondent did not timely appeal the Amended Order. It is recommended that EEC deny respondent’s application under a regulation that allows a denial when an applicant has previously provided unlicensed child care, and because respondent incorrectly answered a question on an application. It is not recommended that EEC deny the application under the other legal bases that it cited. As for the bases related to the allegations of September 11, 2018, there are no recommendations because the Amended Order to Protect Children is not on appeal.

**RECOMMENDED DECISION**

 The respondent, Brenda Schofield, appeals the denial by the petitioner, the Department of Early Education and Care (EEC), of her application for a child care license.

 I held a hearing on December 12, 2018, which I recorded digitally. EEC called as witnesses the following EEC employees: Melissa Reilly, a licensor; Kelli Piligian, the family child care licensing supervisor in the Taunton office; and Diana Phillips, the regional director of the southeast and Cape office.

 Ms. Schofield testified, and called as witnesses Angela Clark, whom she had employed in her day care operation; Donna Holland, Ms. Schofield’s mother; and Molly MacGregor, a family friend whose son EEC suspected Ms. Schofield had cared for on September 11, 2018. (The hearing determined that it was another person’s son.)

 I accepted into evidence 28 exhibits at the hearing. On my own initiative, I admit Ms. Schofield’s first Notice of Claim (appeal), dated July 11, 2018, as Exhibit 29, and another notice of claim, dated November 6, 2018, as Exhibit 30. Both parties submitted post-hearing briefs.

**Findings of Fact**

 1. Ms. Schofield lives at and operated an unlicensed child care facility at 15 Partridge Lane, Harwich. (Reilly and Schofield testimony.)

 2. Before opening her child care operation, Ms. Schofield made various efforts to find out if she needed to be licensed. She received incorrect information from one or more lawyers and one or more government entities, and was unable to locate the correct information through her inquiries, including internet searches. (Schofield testimony.)

 3. In March 2017, Ms. Schofield accepted her first child in her operation. Over months, through word of mouth, more children enrolled. (Schofield testimony.)

 4. Ms. Schofield accepted money for the children she took care of, except for one child for whom she accepted landscaping services. (Schofield testimony.)

 5. On September 12, 2017, EEC received a report about Ms. Schofield’s operation. (Ex. 6, Reilly testimony.)

 6. On October 4, 2017, in the early afternoon, Melissa Reilly, who is an EEC licensor, and another EEC employee visited Ms. Schofield’s home. (Reilly and Schofield testimony.)

 7. Ms. Reilly said to Ms. Schofield either “I’m here to shut you down” or “I’m here to shut this down,” drawing a circle with her finger and indicating Ms. Schofield’s operation. (Schofield testimony.)

 8. The adults present were Ms. Schofield and Ms. Clark. (Reilly and Schofield testimony.)

 9. Present were six children younger than two years, and two children who were two years old. (Reilly testimony.)

 10. Ms. Schofield confirmed that she did not have a license to provide child care. She said that she thought she was merely babysitting and didn’t need a license. (Reilly testimony.)

 11. Ms. Reilly discussed with Ms. Schofield the process for applying for a child care license. (Reilly and Schofield testimony.)

 12. Ms. Reilly told Ms. Schofield that she would have to stop caring for children by the end of the day and could not resume until she was licensed. (Reilly testimony.)

 13. Ms. Reilly told Ms. Schofield that she could tell parents to call EEC if they needed help finding child care. (Reilly testimony.)

 14. Ms. Reilly also told Ms. Schofield that she would be receiving a cease and desist order. (Schofield testimony.)

 15. On the next day, October 5, 2017, Ms. Schofield and Kelli Piligian, a family child care licensing supervisor, spoke on the telephone. Ms. Piligian told Ms. Schofield that she needed to stop providing child care. (Piligian testimony.)

 16. Also on October 5, 2017, Ms. Piligian told Ms. Schofield that parents could contact Ms. Piligian if they needed referrals for child care. Schofield passed on that information to parents. (Schofield.)

 17. Some time after October 5, 2017, two parents called Ms. Schofield, desperate for child care. They reported that they had contacted EEC to learn about child care facilities, had contacted the facilities, but that the facilities did not have vacancies. (Schofield testimony.)

 18. Some time after October 5, 2017, three parents of children whom Ms. Schofield had cared for held a conference call with Ms. Schofield. The parents noted that Ms. Schofield’s home was equipped for child care. They proposed that Ms. Schofield make her home available to parents who would care for each other’s children for a few days a week until Ms. Schofield could become licensed. (Schofield testimony.)

 19. Ms. Schofield responded that she had no problem with anyone coming into her house, but that she couldn’t be present in her home while the parents and children were there. (Schofield testimony.) (It is unclear whether the parents and Ms. Schofield agreed that Ms. Schofield would inform them when she would be absent, or whether the parents would inform Ms. Schofield when they would be present. Schofield testified to both.)

 20. Schofield did not ask EEC about her plan to have parents take care of children in her home. (Schofield.)

 21. On three and possibly four occasions between October 5 and 19, 2017, adults cared for children in Ms. Schofield’s home. One of the occasions was October 19, 2017. (Schofield testimony.)

 22. When parents used Ms. Schofield’s home, they did not pay her. (Schofield testimony.)

 23. One week after EEC visited Ms. Schofield’s home on October 5, 2017, it issued its first of three cease and desist orders. (Ex. 3, p. 1.) (The one-week delay went unexplained at the hearing.)

 24. On October 12, 2017, EEC sent to Ms. Schofield the first cease and desist order. The first paragraph of the order read:

The Department of Early Education and Care (“EEC”) has determined that you are providing unlicensed child care. You do not currently hold a license to provide child care in the Commonwealth of Massachusetts at 15 Partridge Lane in Harwich. State law requires that you be licensed as a family child care educator when providing child care to children who are not related to you outside the home of the children. This requirement ensures that children are being cared for in a manner that meets their needs and maximizes their safety. It is illegal to care for children you are not related to without a license from EEC. *See* G.L. c. 15D, §§ 1(a) and 6(a); 102 CMR 1.03(2). **You must stop providing all unlicensed child care immediately.**

(Ex. 3, p. 1 (bold and underline in the original).)

 25. The first cease and desist order later contains this paragraph:

In order to ensure that children are properly cared for in a way that protects their health and safety, the Commonwealth of Massachusetts requires that you hold an EEC license to provide child care. Given that you are not legally authorized to provide child care services to unrelated children at 15 Partridge Lane in Harwich, EEC is issuing this Cease and Desist Order.

(Ex. 3, p. 3)(emphasis omitted.)

 26. A paragraph with the heading “Cease and Desist Order” in all capital letters, bolded, and underline, reads:

Caring for children not related to you outside the home of the children without a license from EEC is illegal. *See* G.L. c. 15D, § 6(a); 102 CMR 1.03(2). You must immediately stop providing all unlicensed care to any and all children who are not related to you, if you have not already done so. EEC may make unannounced monitoring visits to ensure that all unlicensed care has ceased. If at any time EEC determines that you are continuing to provide unlicensed child care, then EEC will take further legal action against you, including the enforcement of this Cease and Desist Order in Superior Court. *See* G.L. c. 15D, § 15(b). Should you seek to apply for a new license, approval, or certification at any time in the future, then EEC will take your past licensing history into account, including, but not limited to, the circumstances surrounding this Cease and Desist Order.

(Ex. 3, p. 3.)

 27. Other sentences in the cease and desist order refer to Ms. Schofield’s provision of child care. (Ex. 3, p. 3, last ¶ (“if you do not...immediately stop[] the provision of unlicensed child care”), p. 4, 1st ¶ (“your continued provision of unlicensed child care”).)

 28. Although the first cease and desist order indicates that it was mailed by first class mail and by certified mail with return receipt requested (Ex. 3, p. 1), a return receipt is not in EEC’s file. (Piligian testimony.)

 29. Ms. Schofield did not receive the first cease and desist order by certified mail. (Schofield testimony.)

 30. Ms. Schofield received the first cease and desist order in the afternoon of October 20, 2017. (She can identify the date because she sent the cease and desist order electronically to her aunt, a lawyer in Michigan.) (Schofield testimony.)

 31. On October 19, 2017, the day before Ms. Schofield received the first cease and desist order, EEC licensors conducted an unannounced visit to Ms. Schofield’s home to see whether her unlicensed day care operation had ceased. (Reilly testimony, Ex. 6, p. 3.)

 32. When the EEC licensors arrived around 10:30 a.m., two cars were in the driveway. (Reilly testimony.)

 33. Ms. Reilly and the other licensor could see two children through the glass part of a door. (Reilly testimony.)

 34. The licensors knocked on the door of Ms. Schofield’s home, but no one responded. (Reilly testimony.)

 35. The licensors eventually contacted the Harwich Police Department. (Reilly testimony, Ex. 6, p. 3.)

 36. While waiting for the police to arrive, a third car arrived. A woman, later identified as Donna Holland, Ms. Schofield’s mother, got out of the car and went into the house. (Reilly testimony, Ex. 6, p. 3.)

 37. The police arrived at around 10:45 a.m. They knocked on the door and were let inside. One police officer came outside and reported that the adults inside would allow the licensors inside. (Reilly testimony, Ex. 6, p. 3.)

 38. The licensors entered the home. They saw two adults, Ms. Holland and Rebecca Legere, who said she was a friend of Ms. Schofield. (Reilly testimony, Ex. 6, p. 3.)

 39. Ms. Holland said that seven children were present, but the licensors counted nine, including Ms. Schofield’s stepson. Seven of the children had been present on October 4, 2017. (Reilly testimony.)

 40. The two adults were not related to eight of the children. (Ex. 6, p. 3.)

 41. Ms. Holland said that Ms. Schofield was not on that premises and that Ms. Schofield believed that if she did not provide care directly, that was acceptable. (Reilly testimony.)

 42. Ms. Reilly said that a license was needed to care for children and that care needed to stop at Ms. Schofield’s home. (Reilly testimony.)

 43. After the morning visit, Ms. Piligian telephoned Ms. Schofield and instructed her to contact the parents of all children in her home to come pick up their children immediately. (Ex. 6, p. 3.)

 44. On October 19, 2017, around 2:45 p.m., the same EEC licensors and Harwich police officers returned to the house. All the children were still present. (Reilly testimony, Ex. 6, p. 3.)

 45. EEC licensors asked for the names and contact information of the parents of the children in care. Ms. Legere provided contact information for six children but was unable to provide it for the other three children. (Ex. 6, p. 3.)

 46. During the two visits of EEC licensors and Harwich police officers on October 19, 2017, the grandmother of one child and the mother of another child being cared for went upstairs in Ms. Schofield’s home to avoid contact with the licensors and officers. (Schofield and Holland testimony.)

 47. Only three of the children were related to the adults caring for them. (Holland)

 48. In October 2017, Ms. Schofield decided to apply for a child care license. As part of the application process, Ms. Schofield attended two meetings called potential provider meetings. Ms. Reilly taught them. Ms. Schofield received a blank application at one meeting. (Reilly and Schofield testimony.)

 49. On October 31, 2017, Ms. Schofield signed the filled-in application for a family child care license. (Ex. 4, p. 8.)

 50. When Ms. Schofield was asked on the application, “Have you ever had previous involvement with EEC due to unlicensed child care?” she answered no. (Ex. 4, p. 4.)

 51. For whatever reason or reasons, EEC did not receive Ms. Schofield’s application shortly after she signed it. She contacted EEC, learned that it did not have her application, and sent it again. (Ex. 16, Schofield testimony.)

 52. On January 10, 2018, EEC received Ms. Schofield’s application. (Ex. 4, p. 1.)

 53. Based on the events of October 19, 2017, EEC issued a second cease and desist order on March 7, 2018. (Ex. 6, pp. 1, 4.) (The delay went unexplained at the hearing.)

 54. The basis for the second cease and desist order was that Ms. Schofield was “providing or permitting unlicensed family child care services in her home to nine children” and that she had violated the first cease and desist order. (Ex. 6, p. 4.)

 55. The second cease and desist order read:

Ms. Schofield must immediately stop providing all unlicensed care to any and all children who are not related to her.

(Ex. 6, p. 4)(bold omitted).)

 56. On June 28, 2018, EEC issued an Order to Protect Children: Notice of Refusal to Issue and Notice of Ability to Fine. Among other things, the order denied Ms. Schofield’s application for a child care license. (Ex. 7.)

 57. The order and denial of Ms. Schofield’s application for a child care license had four legal bases.

 A. Ms. Schofield allegedly provided or permitted unlicensed child care in her home. EEC cited G.L. c. 15D, §§ 1 and 6, 606 CMR 7.10(4), and 102 CMR 1.07(4)(a)6. (Ex. 7, p. 5.)

 B. Ms. Schofield allegedly violated the first cease and desist order. EEC cited 102 CMR 1.07(4)(a)1. EEC’s theory was that Ms. Schofield

continued to provide unlicensed child care...by allowing her mother and her friend to provide child care while she was off the premises.

(Ex. 7, p. 5.)

 C. Ms. Schofield allegedly lacked good judgment. EEC cited 606 CMR 7.09(6) and (8). (Ex. 7, pp. 5-6.)

 D. Ms. Schofield allegedly provided false and misleading information to EEC. EEC cited 102 CMR 1.07(4)(a)3. EEC alleged that when Ms. Schofield was asked, “Have you ever had previous involvement with EEC due to unlicensed child care?” she answered no. (Ex. 7, p. 6.)

 58. On July 11, 2018, Ms. Schofield timely appealed. (Ex. 29.)

 59. On September 11, 2018, Ms. Piligian and Ms. Phillips conducted an unannounced visit to Ms. Schofield’s home. (Ex. 9, p. 3.)

 60. On that day, Ms. Schofield was under a court order from the probate court as a result of her divorce. The order involved her selling her home (although she did not ultimately need to do so), which necessitated that she tidy up the property. (Schofield testimony.)

 61. Also on September 11, 2018, Ms. Schofield’s brother used his truck to take items to the dump. While he went to the dump, he asked Ms. Schofield to care for his girlfriend’s son. She agreed. (Schofield testimony.)

 62. At the hearing, Ms. Schofield in effect conceded that her care for her brother’s girlfriend’s son had violated the first and second cease and desist orders. She justified it because it was only for 45 minutes, her brother was doing her a favor, she had begged him to take the day off from work, and she was trying to save the only home that her children had known. (Schofield testimony.)

 63. Ms. Schofield testified that she was careful to obey the cease and desist orders. When her brother and his girlfriend had wanted to go out for the evening, and had asked her to take care of the girlfriend’s son, she told them: I cannot take care of any kids. (Schofield testimony.)

 64. On October 12, 2018, EEC issued the third cease and desist order based on the events of September 11, 2018. (Ex. 9.)

 65. Also on October 12, 2018, EEC amended the Order to Protect Children: Notice of Refusal to Issue and Notice of Ability to Fine to include the allegations of September 11, 2018. (Ex. 10.)

 66. The Amended Order to Protect Children resembles the Order to Protect Children. The Amended Order relied on the same four legal bases.

 67. Ms. Schofield did not timely appeal the Amended Order to Protect Children. (Ex. 30.)

**Discussion**

 Timeliness of appeal

 Ms. Schofield timely appealed the Order to Protect Children, dated June 28, 2018, but not the Amended Order to Protect Children, dated October 12, 2018. Ms. Schofield had 21 days after receiving the Amended Order to Protect Children to appeal it. 102 CMR 1.08(2)(a). The Amended Order to Protect Children was presumably mailed and emailed to Ms. Schofield’s lawyer on October 12, 2018, the date that appears on the order. October 12, 2018 was a Friday. Even if Ms. Schofield did not receive the emailed order until Monday, October 15, 2018, she appealed on November 6, 2018. (Ex. 30.) That was 22 days after receiving the emailed order or one day past the deadline.

 Meeting deadlines for administrative appeals, including the one in 102 CMR 1.08(2)(a)., is a jurisdictional requirement. If an appeal is not timely filed, this agency does not have jurisdiction to hear it. *See Flynn v. Contributory Retirement Appeal Board*, 17 Mass. App. Ct. 668, 669 (1984) (“the thirty-day limitation upon the filing of actions seeking review of administrative agency action is jurisdictional. When jurisdiction is absent, “waiver or consent cannot confer it.” *Second Bank-State St. Trust Co. v. Linsley*, 341 Mass. 113, 116, (1960); *Flynn*, 17 Mass. App. Ct. at 670.

The Order to Protect Children, dated June 28, 2018, is before me, but not the Amended Order to Protect Children.

 First legal basis, citing G.L. c. 15D, §§ 1 and 6, 606 CMR 7.10(4), and 102 CMR 1.07(4)(a)6

 The relevant legal authority,102 CMR 1.07(4)(a)6, allows EEC to

refuse to issue a license or approval if it finds...the applicant or licensee failed to obtain a license prior to opening a program or facility....

 This is straightforward. Ms. Schofield operated a child care program and opened a child care facility without a license. Therefore, EEC may deny her a license after she applied for one.

 The Amended Order to Protect Children alleges that Ms. Schofield operated an unlicensed child care program on October 4 and 19, 2017 and September 11, 2018. Actually, Ms. Schofield operated an unlicensed child care program from March 2017 through at least October 4, 2017. I recommend that EEC deny Ms. Schofield’s license under this regulation based on the events of October 4, 2017.

 Ms. Schofield’s allowing unlicensed child care in her home in October 2017, including on October 19, 2017, was not wise, especially for someone planning to apply for a license, but it may not have violated 102 CMR 1.07(4)(a)6. (Ms. Schofield’s allowing an illegality to occur in her home – the provision of child care by non-relatives outside of the children’s homes – might not be barred by any EEC regulation.) Strictly speaking, Ms. Schofield did not “open[] a program or facility.” She may have allowed parents to open a program or facility, or continue her already opened program. I recommend that EEC not deny Ms. Schofield’s license under this regulation based on the events of October 19, 2017.

 I do not need to decide whether Ms. Schofield’s care for her brother’s girlfriend’s son on September 11, 2018 constituted a “program,” as the regulation specifies. This allegation was added by the Amended Order to Protect Children, which Ms. Schofield did not timely appeal. I have no recommendation, as this allegation is not before me.

 EEC informed Ms. Schofield how to apply for a license after it discovered her unlicensed child care operation. However, that did not commit EEC to approving it.

 Ms. Schofield’s efforts to learn whether she needed a license and the incorrect advice that she received are ultimately irrelevant. 102 CMR 1.07(4)(a)6 does not contain an intent element. Ms. Schofield operated an unlicensed child care program, whether or not she intended to, whether or not she was given incorrect information, and EEC may deny her a license for that reason.

 The other three legal authorities do not support EEC’s denial of Ms. Schofield’s license in this appeal. G.L. c. 15D, § 1 is a policy statement. G.L. c. 15D, § 6 bars people from operating child care programs without a license from EEC. If the statute provides a penalty or remedy for violating it, EEC has not cited it in the Order to Protect Children or otherwise brought it to my attention.

 606 CMR 7.10(4) regulates the number of children that an educator can care for. An educator is a person whom EEC has licensed to provide child care. 606 CMR 7.2 (definitions). Therefore, it does not apply to Ms. Schofield. It is incongruous that EEC alleges both that Ms. Schofield was unlicensed and that regulations that govern licensees govern her.

 Second legal basis, citing 102 CMR 1.07(4)(a)1

 102 CMR 1.07(4)(a)1 allows EEC to

refuse to issue a license or approval if it finds...the applicant or licensee failed to comply with...any deficiency correction order, notice of sanction, suspension, agreement or terms of probation....

 EEC’s theory was that Ms. Schofield violated the first cease and desist order by

continu[ing]to provide unlicensed child care...by allowing her mother and her friend to provide child care while she was off the premises.

(Ex. 7, p. 5.)

 Ms. Schofield’s position is that the seven “you”s and one “your” in the first cease and desist order applied to her directly, not to parents using her home. I do not have to reach the reasonableness of her position.

 I do not have to do so because Ms. Schofield did not receive the first cease and desist order until October 20, 2017, one day after EEC alleges that she allowed unlicensed child care at her home. Therefore, she did not violate the cease and desist order on October 19, 2017.

 The EEC did orally order Ms. Schofield to stop providing unlicensed child care on October 4 and 5, 2017. And on October 4, 2017, Ms. Reilly informed Ms. Schofield that she would be receiving a cease and desist order. Also on October 4, 2017, Ms. Reilly in effect informed Ms. Schofield that the “you” in the forthcoming cease and desist order applied to her unlicensed child care operation and not only to Ms. Schofield directly. Ms. Reilly did so by telling Ms. Schofield that Ms. Reilly was there to shut “you” down or shut “this” down, indicating the operation with a finger.

 Nonetheless, the regulation does not apply to oral orders. And the Order to Protect Children does not refer to the oral orders. I recommend that EEC not deny Ms. Schofield’s license under this regulation.

 Third legal basis, citing 606 CMR 7.09(6) and (8)

 The cited excerpts of 606 CMR 7.09 read:

(6) All educators must demonstrate and maintain at all times the physical, mental and emotional ability to care for the children for whom they are responsible in a way that meets the generally accepted physical, social, emotional and intellectual needs of children. Educators must follow good personal hygiene practices at all times.[[1]](#footnote-1)

....

(8) Educators must exercise good judgment at all times and demonstrate an ability to handle emergency situations appropriately.

 Both regulations refer to educators, that is, people whom EEC has licensed to provide child care. 606 CMR 7.2 (definitions). Therefore, these regulations do not apply to Ms. Schofield. I recommend that EEC not deny Ms. Schofield’s license under this regulation.

 Fourth legal basis, citing 102 CMR 1.07(4)(a)3

 102 CMR 1.07(4)(a)3 allows EEC to

refuse to issue a license or approval if it finds... the applicant or licensee submitted any misleading or false statement or report required under 102 CMR 1.00 through 8.00 *et seq.*...

 EEC’s factual theory was twofold. Ms. Schofield submitted a misleading or false statement on her application by answering no to the question “Have you ever had previous involvement with EEC due to unlicensed child care?” (Ex. 4, p. 4.) And she submitted a misleading or false statement by telling Ms. Piligian and Ms. Phillips on September 11, 2018 that the boy in her care was her nephew (Ex. 7) or brother’s stepson. (Ex. 9, p. 3.)

 Ms. Schofield testified as follows: Upon receiving the application at a potential provider meeting, she looked at it, saw this question, and asked Ms. Reilly how to answer it. Ms. Reilly asked her if she had had any involvement other than the involvement that month, October 2017. Ms. Schofield said no, and Ms. Reilly advised her to answer this question no.

 Ms. Reilly testified as follows: She did not remember so advising Ms. Schofield. She would not have advised Ms. Schofield to answer no. And at the end of potential provider meetings, people, having just received the application, don’t tend to ask questions about it.

 I do not know how Ms. Schofield came to answer this question no. However, even if Ms. Schofield’s testimony is correct, it does not matter.

The principle of promissory or equitable estoppel usually does not operate against governmental bodies in Massachusetts. The decisions are longstanding and consistent. *See especially Doris v. Police Commissioner of Boston*, 374 Mass. 443, 449-450 (1978); *Building Inspector of Lancaster v. Sanderson*, 372 Mass. 157, 161-164 (1977); *Elbe File & Binder Co. v. City of Fall River*, 329 Mass. 682, 685-686 (1953); *Attorney General v. Methuen*, 236 Mass. 564, 578-579 (1921); *Harrington v. Fall River Housing Authority*, 27 Mass. App. Ct. 301, 307-308 (1989); *Outdoor Advertising Board v. Sun Oil Co. of Pennsylvania*, 8 Mass. App. Ct. 872, 873 (1979); and *DiGloria v. Chief of Police of Methuen*, 8 Mass. App. Ct. 506, 515-516 (1977).

 A practical purpose underlies this “government nonestoppel principle.” *Harrington v. Fall River Housing Authority*, 27 Mass. App. Ct. at 307. The errors of government officers, especially their actions in excess of their proper authority, cannot defeat the public interest embodied in the statutes and rules which the officers have violated. *Attorney General v. Methuen*, 236 Mass. at 578-579 (leading general statement).  The government may correct its errors of commission and omission in order to fulfill a public purpose, despite the reliance of third parties upon those errors.

 I recommend that EEC deny Ms. Schofield’s license under this regulation and factual theory.

 I do not need to decide factually whether Ms. Schofield identified the child in her care on September 18, 2018 as her brother’s girlfriend’s son on one hand, or her nephew or brother’s stepson on the other hand. If Ms. Schofield misidentified the child, I do not need to decide whether she “submitted any misleading or false statement or report required under 102 CMR 1.00 through 8.00 *et seq.*” and what statement or report 102 CMR required. This allegation was added by the Amended Order to Protect Children, which Ms. Schofield did not timely appeal. I have no recommendation, as this allegation is not before me.

**Conclusion and Order**

It is recommended that EEC deny Ms. Schofield’s application under a regulation that allows such a denial when an applicant has previously provided unlicensed child care, and because Ms. Schofield falsely answered a question on the application. It is not recommended that EEC deny the application under the other legal bases that EEC cited. There are no recommendations related to the allegations of September 11, 2018, because the Amended Order to Protect Children, which includes those allegations, is not on appeal.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Kenneth Bresler

 Administrative Magistrate

Dated: January 22, 2019

1. Although the heading in the Order to Protect Children for the third legal basis refers to “good judgment,” this regulation does not mention it. [↑](#footnote-ref-1)