

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

Yendi Marisol Velasquez,
Petitioner

v.

Docket No. OC-25-0321

Department of Early Education and Care,
Respondent

Appearances for Petitioner:

Yendi Marisol Velasquez
Obdulio Epifano Domingo Argueta

Appearance for Respondent:

Fatima Islam, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

A candidate in a prospective child care program did not present clear and convincing evidence that he is suitable for affiliation with a child care program. I recommend that EEC affirm its finding of non-suitability.

RECOMMENDED DECISION

The petitioner, Yendi Marisol Velasquez, appeals EEC's determination that her husband is unsuitable for affiliation with a child care program.

I held an in-person hearing on August 27, 2025, which I recorded. Ms. Velasquez represented herself along with her husband, Obdulio Epifano Domingo Argueta. Both testified. They called Balthazar Vazquez (who testified that Ms. Velasquez and Mr. Domingo are good and responsible people, and that he leaves his daughters with Ms. Velasquez when he is on

vacation). EEC called as a witness Emanuel Santiago, a background record check specialist for EEC. Olga Jackie Gonzalez, a Spanish translator, remotely translated the testimony of Ms. Velasquez, Mr. Domingo, and Mr. Vazquez; she translated the hearing in general for the benefit of Ms. Velasquez and Mr. Domingo.

I admitted 11 exhibits. After the hearing, I admitted Ms. Velasquez's application as Exhibit 12. I granted EEC's motion to impound EEC's discretionary review document and the arrest report of Mr. Domingo on July 24, 2019 (Exs. 1, 5) for the reasons that they contain personally identifiable information related to minor children and that disclosure would violate various statutes.

Both parties closed orally at the end of the hearing in lieu of submitting a post-hearing brief.

Findings of Fact

2019 domestic violence incident

1. On July 23, 2019, the Springfield Police Department received a telephone call reporting that a man was dragging a woman by her hair in the front yard of a certain address. (Ex. 5)

2. Springfield police officers arrived at the location and found Mr. Domingo, who fit the caller's description of the man. (Ex. 5)

3. Springfield police officers saw a red mark on each side of Ms. Velasquez's neck,¹ observed that her hair was a mess, as if she had been in a fight, and saw that her shirt collar

¹ Ms. Velasquez's name is redacted from the exhibit as submitted by EEC, but it is a reasonable inference that the police report involves her.

had been stretched out. She was reluctant to answer questions and became uncooperative. A detective tried to photograph her injuries, but she “refused to comply,” which I take to mean that she did not allow herself to be photographed. (Ex. 5)

4. The part of the police report marked “Confidential Victim Report” is entirely redacted, as submitted by EEC. (Ex. 5)

5. Springfield police officers spoke with a witness across the street who told the officers the following: Mr. Domingo pulled Ms. Velasquez by her hair in the front yard, causing her to fall multiple times. He repeatedly shoved her in an attempt to get her back into the home. (Ex. 5)

6. The witness took two videos of the incident and showed them to the police officers. The police officers identified Mr. Domingo and Ms. Velasquez in the videos. The police officers told the witness to save the two videos, but apparently did not collect them. (Ex. 5)²

7. The police officers advised Ms. Velasquez of her rights under General Laws Chapter 209A, which governs domestic violence and abuse. She refused medical treatment. (Ex. 5)

8. The police arrested Mr. Domingo. (Ex. 5)

9. On December 18, 2019, the charge against Mr. Domingo, assault and battery on a household member, was the subject of a nolle prosequi. (Ex. 3)

10. The Commonwealth entered a nolle prosequi because it lacked sufficient evidence to proceed without the testimony of Ms. Velasquez. The nolle prosequi stated that Ms. Velasquez was present in court, and told the Commonwealth that she preferred that the case

² The EEC’s background record check specialist did not see the videos (Santiago testimony); they were not entered as exhibits.

against Mr. Domingo be dismissed, she was not in fear, and she would testify for Mr. Domingo.

(Ex. 3)³

Mr. Domingo's other offenses (in reverse chronological order)

11. In 2016, Mr. Domingo was charged with leaving the scene of a motor vehicle accident after causing property damage, and attaching the wrong license plates to a motor vehicle. The first charge was continued without a finding in 2016 and dismissed in 2017. The second charge was dismissed in 2016. He was also charged with operating an uninsured and unregistered motor vehicle and doing so without a driver's license; the disposition of those charges is unknown. (Ex. 1)

12. In 2015, Mr. Domingo was charged with operating a motor vehicle without a driver's license. The disposition of that charge is unknown. (Ex. 1)

13. In 2010, Mr. Domingo was charged with operating an uninsured and unregistered motor vehicle, doing so without a driver's license, and giving a false name as the operator of a motor vehicle; the disposition of those charges is unknown. (Ex. 1)

14. In 2009, Mr. Domingo was charged with knowingly receiving stolen property. He was in default of the charge until 2016 or 2017. In 2017, the charge was continued without a finding. (Ex. 1)

15. Also in 2009, Mr. Domingo was charged with an offense listed on his criminal record as Liquor Seizure Without a Warrant. The disposition is unknown. (Ex. 1)

16. In 2008, Mr. Domingo was charged with operating a motor vehicle without a valid

³ Ms. Velasquez's name is redacted as submitted by EEC, but it is a reasonable inference that the nolle prosequi names her.

license. (Ex. 9)

Application

17. On August 21, 2024, Ms. Velasquez applied for a family child care license. (Ex. 12)

18. When asked whether any household member has “ever been arrested or charged with any crime,” Ms. Velasquez answered no. (Ex. 12)

19. This answer was untrue.⁴

20. The end of the application read as follows:

I have read and understood the questions in this application. I have reviewed my answers to the application questions, and, to the best of my knowledge, the information I have provided and the responses I have given are true. I understand that furnishing or making any misleading or false statements or reports anywhere in this application is grounds to revoke, suspend, refuse to issue or refuse to renew a license.

(Ex. 12)

Review application process

21. On October 8, 2024, Mr. Domingo signed a Review Application. (Ex. 8)

22. When asked to describe his job duties/role, Mr. Domingo wrote, “I am going to be an assistant, who is going to help around with the kids.” (Ex. 8)

23. The Review Application read:

POLICE REPORT – A police report must be produced for any matter where police were involved, even for uncharged conduct, such as when related to a DCF finding. **Failure to produce a police report may affect the outcome of your review.** *If not applicable, check here:*

(Ex. 8) Mr. Domingo placed an x in the not-applicable box. (Ex. 8) (emphasis in original)

⁴ The finding that Mr. Domingo is not suitable is what is on appeal and what is before me. Ms. Velasquez’s incorrect statement on her application that no household member had ever been arrested or charged with any crime is not part of the appeal before me.

24. The Review Application also read:

COURT DOCKET SHEET – If you were required to go to court, then submit copies of court docket sheets for each case. *If not applicable, check here:*

(Ex. 8) Mr. Domingo placed an x in the not-applicable box. (Ex. 8) (emphasis in the original)

25. The Review Application instructed an applicant to provide at least two signed reference letters and added,

The letters must clearly state why they believe your disqualifying background will not adversely impact children in the care of the EEC licensed, approved or funded program.

(Ex. 8)⁵

26. The Review Application also contains a Candidate’s Statement, which read in part:

Please explain in detail why you believe you may have provided clear and convincing evidence demonstrating your suitability in light of the children’s safety. For example, explain the specific circumstances surrounding each offense, the number of past crimes or findings, the time since your last criminal charge or finding, and any rehabilitation that you completed. **You are responsible for explaining all information appearing on your disqualifying record regardless of whether you were convicted. If you do not provide detailed responses about the facts and circumstances surrounding your criminal or child welfare background, then you may be found Not Suitable.**

Mr. Domingo did not write anything for the Candidate’s Statement. (Ex. 8) (emphasis in original)

27. During EEC’s review of Mr. Domingo’s review application, he submitted three written statements to Mr. Santiago. (Ex. 9)

28. Mr. Domingo’s first written statement, dated November 29, 2024, discussed his minor charges and may have alluded to his assault and battery charge. (Ex. 9)

⁵ The letters that Mr. Domingo submitted do not mention his disqualifying background (Exs. 6, 7), but then again, he does not admit to any serious charge, such as assault and battery.

29. On the liquor seizure charge, he wrote, "I accept this error, but now things have changed. Now I do not do that." (Ex. 9)

30. On the unlicensed operation of a motor vehicle charge, Mr. Domingo wrote, "I am sorry I did not have an opportunity to obtain a license at that time. But now I have one." (Ex. 9) He did not specify whether his statement applied to the charge in 2008, 2010, 2015, 2016, or some or all of them. He did not explain why he did not have an opportunity to get a license and why, after being charged, in 2008, 2010 and 2015, he did not get a license.

31. On the unregistered motor vehicle charge, Mr. Domingo wrote, "I was in need for transportation due to work. So, I grabbed a car." (Ex. 9) He did not specify whether his statement applied to the charge in 2010, 2016, or both.

32. On the uninsured operation of a motor vehicle charge, Mr. Domingo wrote, "At that time, I couldn't obtain a license, so I didn't have insurance for a car. Now I have insurance for my vehicles." (Ex. 9) He did not specify whether his statement applied to the charge in 2010, 2016, or both. He did not explain why he could not obtain a license.

33. On the false name charge, Mr. Domingo wrote, "Yes, I gave a false name, that was my reaction due to fear." He did not explain what he was fearful of. (Ex. 9)

34. On the leaving the scene of an accident charge, Mr. Domingo wrote, "I did not leave the scene, I went to go park in-front of my house. Which is probably why they thought I left the scene...." (Ex. 9)⁶

⁶ Nonetheless, Mr. Domingo received for this charge a continuation without a finding, which is typically, if not always, preceded by an admission to sufficient facts. See *Commonwealth v. Fayad F.*, 495 Mass. 266, 275 (2025).

35. He summarized as follows: “The errors I have made are now completed and made up for. We both now have insurance and licenses.” It is unclear whether Mr. Domingo meant that Ms. Velasquez had also operated a motor vehicle while unlicensed and uninsured. He continued, “We don’t have any problems going on and we are very happy.” This may have referred to the preceding motor vehicle and other charges; it may have alluded to the assault and battery charge. (Ex. 9)

36. In Mr. Domingo’s second written statement, dated January 20, 2025, he stated in part:

[W]e were outside playing with my wife, and some children from school saw us and they thought we were fighting and that was not happening. They called the police, and I had to present in court as well as my wife, and we told the truth about what was happening.⁷ There was also no proof of what they said,⁸ because the truth is we had a big experience now,⁹ and we thank God that everything is fine now.¹⁰

(Ex. 9)

37. In Mr. Domingo’s third written statement, dated January 27, 2025, he stated in part:

[T]here were false statements against me and there is proof as well.¹¹ Me and the victim were present in court, and testified.¹²

⁷ It is unclear whether Mr. Domingo meant that he and Ms. Velasquez had to *present* in court or *be present* in court. Other evidence indicates that they spoke but did not testify. (Ex. 3)

⁸ This was incorrect. Two videos and the physical state of Ms. Velasquez were evidence of Mr. Domingo’s assault and battery on her.

⁹ It is unclear what this means.

¹⁰ It is unclear what “everything is fine now” means.

¹¹ It is unclear what Mr. Domingo meant. Proof of what? That the statements were false? I am unaware of any such proof.

¹² They probably spoke in court, but it is unclear whether they testified. (Ex. 3)

(Ex. 9)

38. On April 28, 2025, EEC issued a Suitability Determination to Mr. Domingo. It found him “not suitable for affiliation with an EEC licensed and/or funded program.” It stated: “This means you are not able to work in, or affiliate with, any EEC licensed and/or funded program.”

(Ex. 10) (emphasis omitted)

39. On May 1, 2025, Mr. Domingo filed a Notice of Claim. He wrote in part:

I would like to request a hearing. I would like a chance to verbally express and defend my background record. I believe what is listed in my background record does not and will not interfere with the care of children.....[M]y wife, Yendi Velasquez...will be the provider and the only person who will be running her childcare in our home. During the hours of the childcare operation i will not be present due to my own work obligations.¹³

(Ex. 5) (lower case i in original)

Mr. Domingo’s and Ms. Velasquez’s hearing testimony

40. Mr. Domingo denied that on July 24, 2019, fighting occurred, he and Ms. Velasquez had hit each other, or he had held her. (Domingo testimony)

41. Ms. Velasquez testified that some children went by her and Mr. Domingo. The children saw them playing, and misinterpreted what they saw. (Velasquez testimony)

42. Neither Mr. Domingo nor Ms. Velasquez provided details or explained how Ms. Velasquez came to appear to police officers to have been assaulted and battered. (Domingo and Velasquez testimony)

¹³ Mr. Domingo’s Review Application, in which he stated that that he would be an assistant in his wife’s child care program (Ex. 8), cannot be and was not amended by his Notice of Claim, in which he said he would not be present at his wife’s program. (Ex. 5) As I discuss below, this appeal and recommended decision is based on the Review Application.

43. Although Mr. Domingo wrote in a Review Application on October 8, 2024 that he was going to be an assistant in Ms. Velasquez's day care program, helping with children (Ex. 8), he testified that if Ms. Velasquez were allowed to operate a home day care program, he would not be at home during its hours of operation. He testified as follows: He has his own job as an interior painter of new apartments. He leaves his home at 5:30 a.m. and returns at 6:00 p.m. or 7:00 p.m. If he puts in extra hours, he returns home at 8:00 p.m. It takes him 45 to 60 mins to get to work in places such as Hartford and New Haven. He works for a company, but in the evenings and on Sundays, he sometimes works for himself. He is sometimes at home during the workday but did not state how often that is. (Domingo testimony)

Discussion

Discretionary disqualification

EEC may disqualify a

candidate with an adult or juvenile offense, regardless of its disposition, including pending and resolved charges for any crime,

unless EEC approves the candidate after a review process. 606 CMR 14.04.

Discretionary disqualifying offenses include some non-convictions, 606 CMR 14.10(6), such as for assault and battery on a family member. 606 CMR 14.18 (referring to [Table of Disqualifying Offenses](#)).

EEC's review process

If EEC disqualifies a candidate because of disqualifying offenses, the candidate may generally undergo a review process within EEC. 606 CMR 14.12.

The candidate has the burden of proving by clear and convincing evidence their “suitability for licensure, employment or affiliation in light of the concern for children's safety.”

606 CMR 14.12(2)(e).

To determine suitability in the review process, EEC assesses these 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.

606 CMR 14.12(f).

If after the review process, a candidate is still found unsuitable, they may appeal to

DALA. 606 CMR 14.14.

Hearings at DALA are *de novo*

EEC hearings about candidates’ background record checks and suitability are *de novo*. *E.g., Aguirre v. Department of Early Education and Care*, OC-24-0598, 2026 WL 446272 (Div. Admin. L. App., Feb. 6, 2026); *Ana Maria Gonzalez Ramirez v. Department of Early Education and Care*, OC-25-0251, 2026 WL 539320 (Div. Admin. L. App., Feb. 19, 2026).

EEC itself relies on and seems to benefit from DALA’s *de novo* hearings. In the last paragraph of its final agency decision in *Department of Early Education and Care v. Mandy Jarominski*, DALA Docket No. OC-22-0329, EEC Docket No. ECC 22-038 (EEC 2024), EEC wrote:

Given the new evidence that emerged at the hearing, and pursuant to its authority granted under G.L. c. 15D, EEC hereby reverses its decision and finds Ms. Jarominski suitable to operate a family child care program.

DALA's de novo hearings also assess the eight factors in 606 CMR 14.12(f). *Ramirez v.*

Department of Early Education and Care.

Applying the eight factors

1. Time since the incident(s)

Over six years have passed since the most serious charge, assault and battery. Over 15 years have passed since some of the less serious charges. The passage of time and the absence of recent charges weighs in favor of Mr. Domingo's suitability.

2. Age of the candidate at the time of the incident(s)

Mr. Domingo was born in April 1991. (Ex. 8) He was 28 when he was charged with assault and battery. That is, he was not a juvenile. He was 18 when he was charged with one of his earliest less serious offenses, receiving stolen property. His age at the time of his most serious charge weighs against his suitability.

3. Seriousness and specific circumstances surrounding the incident(s)

Assault and battery on a family member is a serious charge. The specific circumstances are that Mr. Domingo allegedly committed assault and battery in public and in front of children. The seriousness of the charge and the circumstances of the allegation weigh against Mr. Domingo's suitability.

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

A person's alleged use of violence against anyone of any age presents a risk of violence against children and the risk that children may witness violence. The second risk happened on

July 23, 2019. (Both Ms. Velasquez's testimony and Mr. Domingo's statement (Ex . 9), referred to children seeing the incident.)

Mr. Domingo's motor vehicle charges, which he has not denied, are not directly related to his ability to care for children. But they concern me nonetheless. Working in a day care program requires compliance with many, many regulations. The heart of EEC's substantive regulations, 606 CMR 7.00, consists of 54 single-spaced pages of regulations.

Mr. Domingo was charged with driving without a license multiple times. After being charged once, he did not get a license or stop driving.

His statements in 2024 about his motor vehicle charges also concern me. His statement about driving an unregistered vehicle amounted to: I needed to drive for work, so I drove.

Mr. Domingo has not presented clear and convincing evidence, and I am not convinced, that were he to master the myriad requirements of 606 CMR 7.00, he would not bend or violate a requirement if he felt he needed to do so under the circumstance.

This factor weighs against Mr. Domingo's suitability.

5. Number of criminal offenses or findings of abuse/neglect

Mr. Domingo had only one serious charge, assault and battery, against him. He had multiple less serious charges, some of which were recurring. The one serious charge and the multiple recurring less serious charges weigh against Mr. Domingo's suitability.

6. Dispositions of criminal offenses and findings of abuse/neglect

Mr. Domingo was not convicted of any charge. However, he does have on his record two continuances without a finding, which, as stated above, are typically, if not always, preceded by an admission to sufficient facts. See *Commonwealth v. Fayad F.*, 495 Mass. 266,

275 (2025); *Commonwealth v. Beverly*, 485 Mass. 1, 7 (2020) (“continuances without a finding are not considered convictions”) (citation omitted). The two continuances weigh somewhat against Mr. Domingo’s suitability.

7. Relevant evidence of rehabilitation or lack thereof

On the most serious charge of assault and battery, Mr. Domingo has not presented evidence of rehabilitation because he denies that the incident happened. The incident was the misperception of children, the product of false statements, or both, he stated.

Some of Mr. Domingo’s statements about his less serious charges amount to: I don’t do that anymore. Mr. Domingo’s statement on driving while uninsured seems to amount to: I have insurance now, so no problem. His statement about giving a false name – I did it because I was afraid – provides a minimal amount of explanation, but it is certainly not exculpatory.

8. Other relevant information, including information submitted by the candidate

The Review Application required Mr. Domingo to submit a police report “for any matter where police were involved, even for uncharged conduct.” The Review Application did not ask for a police report for only matters that proceeded to a disposition in court. The application notified Mr. Domingo that failing to produce a police report could affect his application. Nonetheless, Mr. Domingo checked the not-applicable box and did not submit a police report about his arrest for assault and battery.

The issue is not whether Mr. Domingo was trying to conceal his arrest. The issue is not that EEC was going to find out about the arrest anyway through its background record check. The issue is Mr. Domingo’s ability and willingness to follow instructions, an ability and willingness that are necessary in a child care program. Mr. Domingo’s inability or unwillingness

to follow the instructions on the Review Application make me doubt his ability or willingness to follow the instructions in EEC's regulations.

The Review Application also required Mr. Domingo to submit court docket sheets for each case in which he was required to go to court. Nonetheless, Mr. Domingo checked the not-applicable box.

Mr. Domingo's inability or unwillingness to fill in his Review Application accurately weighs against his suitability.

The eight factors together

In sum, Mr. Domingo did not present clear and convincing evidence of his suitability.

What is on appeal, what is before me

Mr. Domingo signed a Review Application and wrote, "I am going to be an assistant, who is going to help around with the kids." (Ex. 8) EEC determined that he was not suitable for affiliation with a child care program. Mr. Domingo appealed EEC's determination that he was unsuitable. That is the issue on appeal, the issue that is before me.

In his Notice of Claim, Mr. Domingo wrote that his wife would operate the prospective child care program and that during its operation, he would not be present because of his own work. (Ex. 5)

At the hearing, Mr. Domingo testified to the same thing. He did not explicitly note that he had changed his planned relationship to the program from being an assistant to being uninvolved and absent during its hours of operation. In any event, Mr. Domingo's Notice of Claim and hearing testimony cannot implicitly amend his application. His signed application on

October 8, 2024 was his application that is the subject of the appeal. (Ex. 8) He did not move to amend it.

If EEC wishes to accept Mr. Domingo's statement on his Notice of Claim and his testimony before me about his planned relationship to any child care program that Ms. Velasquez might operate, and allow him to formally or informally amend or resubmit an application, I will leave it to EEC. However, on Mr. Domingo's application before me, I recommend that EEC affirm its determination that Mr. Domingo is unsuitable for affiliation with a child care program.

Conclusion and Order

Mr. Domingo has not proved by clear and convincing evidence that he is suitable for affiliation with a child care program. I recommend that EEC affirm its determination of unsuitability.

Dated: April 8, 2026

/s/

Kenneth Bresler
Administrative Magistrate
DIVISION OF ADMINISTRATIVE LAW APPEALS
14 Summer St., 4th Floor
Malden, MA 02148
Tel: (781) 397-4700
www.mass.gov/dala