

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

September 19, 2019

Middlesex, ss.

Docket No. OC-17-795

DEPARTMENT OF EARLY EDUCATION AND CARE, Petitioner

v.

US TKD EDUCATION, INC., d/b/a U.S. TAEKWONDO EDUCATION, Respondent

RECOMMENDED DECISION

Appearance for Petitioner:

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Dep't of Early Education and Care
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Appearance for Respondent:

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Administrative Magistrate:

Mark L. Silverstein, Esq.

*Summary of Decision***Family Child Care Group and School Age Licensing - License Renewal - Denial - Large Group and School Age Program - Failure to comply with applicable regulations and prior sanction (program enrollment freeze).**

A large group and school age program licensed by the Massachusetts Department of Early Education and Care (EEC) appealed the agency's August 1, 2017 decision denying the renewal of its provisional group and school age license, pursuant to M.G.L. c. 15D, § 10 and 102 C.M.R. § 1.07(3) and (4). EEC based its denial upon (1) violations observed by agency staff during visits to the program between August 28, 2015 and May 22, 2017 that included incomplete children's records, indoor space and play area violations, inadequate child supervision by qualified, supervised staff, violations related to health, safety, personal hygiene and sanitation, child transportation-related violations, violations of physical facility requirements, and, during the last EEC visit, the program's apparent use of unlicensed space in the same building and violation of a prior enrollment freeze. Following a hearing:

(1) It is recommended that EEC make final its decision denying renewal of the program's group and school age license, based upon the violations that were observed during the agency's final visit to the program on May 22, 2017, with the exception of allegedly false and misleading statements by program staff during that visit regarding the use of additional, unlicensed studio space down a hallway from its licensed space (*see* (2) below). Several of those violations were also noted during earlier visits, and several were first observed during the May 22, 2017 visit. Each of these violations furnishes an independent basis for not renewing the program's provisional license.

(2) It is not recommended that the refusal to renew the program's license be based upon false and misleading oral statements by TKD program staff to EEC staff during the May 22, 2017 visit, regarding the use of additional, unlicensed studio space down a hallway from the program's licensed space. 102 C.M.R. § 1.07(4)(a)3, which EEC cited, allows the agency to refuse license renewal if it finds that the licensee "submitted any misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00." It is not clear from the plain wording of the regulation that any of the oral statements made by staff was the "submission" of a "misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00." The submissions required by 102 C.M.R. 1.00 through 8.00 are solely written ones, and the regulation does not clearly make a misleading or false *oral* statement a ground for refusing to renew a license.

(3) It is also not recommended that refusal to renew the program's license be based upon other violations observed during EEC's previous visits, but not observed during the final visit on May 22, 2017. Adding these additional grounds is unnecessary. EEC did not elect to terminate TKD's provisional license or decline to renew in on those grounds prior to the May 22, 2017 visit; in addition, the agency issued a second provisional license to the program in early 2016 based upon the expected correction of previous violations, several of which were either corrected, or were not observed again, as of the May 22, 2017 visit.

Background

Respondent US TKD Education, Inc., doing business as “U.S. Taekwondo Education” (TKD), operated a large group and school age program for children ranging in age from five to fourteen years old (“the program” or “TKD program”) at a shopping plaza building in Fall River, Massachusetts shopping plaza, under a provisional group and school age license (No. 9025089) issued by the Massachusetts Department of Early Education and Care (EEC). The program’s administrator, Black Belt Taekwondo Master Wonsam Lee, is also the Grand Master of a Taekwondo martial arts program for children, adults and families in the same building. It is not subject to early education and care licensing requirements.

EEC first issued a provisional license to TKD on April 10, 2015. It allowed TKD to operate the program for two years, with capacity limited to 39 school-age children. EEC staff visited the program on several occasions between August 28, 2015 and May 22, 2017. During each visit, they observed a varying degree of noncompliance with the agency’s regulations governing the provision of early education and care services, including violations that persisted or re-appeared. Among these were incomplete children’s records, indoor space and play area violations, inadequate child supervision by qualified, supervised staff, violations related to health, safety, personal hygiene and sanitation, child transportation-related violations, and violations of physical facility requirements. The program appeared to have corrected some, but not all, of these violations by the end of March 2016. Nevertheless, EEC issued a second provisional license to TKD in early April, 2016, but with a one-year term and no increase in school-age child capacity.

EEC staff continued to observe violations during visits to the program through May 22, 2017, including, during that last visit, the apparent use of other space in the same building that EEC had not licensed for the program's use. On August 1, 2017, the agency denied the renewal of TKD's license pursuant to M.G.L. c. 15D, § 10 and 102 C.M.R. § 1.07(3) and (4).¹ It did so based upon violations that its licensing staff had observed during its visits to the program between August 28, 2015 and May 22, 2017. (See attached *Appendix* summarizing the types of violations that EEC staff observed during their visits to the program, with references to this recommended decision's related findings). EEC also based its refusal to renew TKD's license upon its failure to comply with the agency's prior order, issued on May 12, 2017, freezing the program's enrollment at 39 children and requiring that TKD hire a consultant to assist it with regulatory compliance and program improvement, and that its program director and staff attend training related to these objectives.

TKD timely appealed EEC's decision by filing a notice of claim and request for hearing with the agency on August 16, 2017. It denied intentionally operating its program in an unlicensed space, attributing the use of such space to Master Lee's belief that he could also operate a program for children on TKD program waiting list. TKD claimed that it had attempted to make the corrections EEC had required in its May 2017 order, and that it was continuing to do so with a consultant's assistance by (among other things) changing staffing assignments and improving its curriculum.

EEC transferred the appeal to DALA for adjudication on September 1, 2017. I held a prehearing conference on November 2, 2017, at which I identified the main issue to be decided as

¹/ EEC's August 1, 2017 decision was entitled "Order to Protect Children: Notice of Refusal to Renew Group and School Age License and Notice of Intent to Fine."

whether EEC properly denied the renewal of TKD's group and school age license, pursuant to M.G.L. c. 15D, § 10 and 102 C.M.R. § 1.07(3) and (4), based upon the violations alleged in the agency's August 1, 2017 Order. A related issue was whether the alleged violations occurred and, if so, whether each of the violations was an independent ground for denying license renewal.

On January 18, 2018, EEC filed a prehearing memorandum and 22 proposed hearing exhibits, and TKD filed a prehearing memorandum with 10 proposed hearing exhibits. TKD filed a revised memorandum on January 20, 2018. I held a hearing at DALA in Boston on January 24, 2018 and February 22, 2018, which I recorded digitally. Prior to presenting its witness testimony on the first hearing day, EEC offered an additional exhibit that it had omitted inadvertently from the exhibits it filed with its prehearing memorandum—TKD's March 3, 2015 disclosure of persons with administrative authority to operate its licensed large group and school age program, and their respective administrative responsibilities. I marked this as Exhibit 23. I marked TKD's 10 proposed hearing exhibits as Exhibits 24-33. I then marked all 33 exhibits in evidence, without objection.

All four of EEC's witnesses testified during the first hearing session on January 24, 2018: Marya Fry and Deborah Cavanagh, both EEC group and school age licensors and licensing specialists based at the agency's Southeast and Cape Regional Office in Taunton, Massachusetts; Renee Collyer, an EEC group and school age supervisor based at the same regional office; and Diana Phillips, the regional director of the Southeast and Cape Regional Office in Taunton. TKD's three witnesses testified during the second hearing session on February 22, 2018—Wonsam Lee, Taekwondo Master and former administrator of the TKD program; Yejung (Hannah) Han, the program's current director and administrator; and Donna Jasak, the consultant who has been working

with Master Lee and Ms. Han since 2017. Both parties waived closing arguments. At the end of the February 22, 2018 hearing session, I left the record open only for the receipt of post-hearing memoranda. Master Lee filed an untitled document on the respondents' behalf on March 22, 2018 that I treat as TKD's post-hearing memorandum. On March 23, 2018, EEC filed a document entitled "closing argument" that I treat as its post-hearing memorandum. Its filing closed the record fully.

Findings of Fact

1. Petitioner Massachusetts Department of Early Education and Care (EEC) is "the state education agency for the purposes of early education and care services under federal law." M.G.L. c. 15D, § 2, first unnumbered clause. Since July 1, 2005, EEC has combined the functions of the former Massachusetts Office of Child Care Services and of the Massachusetts Department of Education's former "Early Learning Services Unit." *Id.* M.G.L. c. 15D designates EEC as "the lead agency of the commonwealth for administering and providing early education and care programs and services to children," and directs the agency to license or approve a number of specified facilities and programs, including child care centers and school-age child care programs. *See* M.G.L. c. 15D, §§ 2, first unnumbered clause; 2(a); and 2(c). Consistent with its responsibilities under Chapter 15D, EEC has promulgated regulations with which all providers of early education and care services in the Commonwealth, "whether home, school or center-based," must comply. *See* 606 C.M.R. § 7.00 *et seq.* ("Standards for the Licensure or Approval of Family Child Care; Small Group and School Age and Large Group and School Age Child Care Programs").

2. Respondent US TKD Education, Inc. (TKD) is a Massachusetts domestic for-profit

corporation whose sole officer and director is Wonsam Lee, a Black Belt Taekwondo Master who is also the Grand Master of a Taekwondo martial arts program for children, adults and families at the same location that is not subject to early education and care licensing requirements.² TKD was first organized, and filed its articles of organization with the Secretary of the Commonwealth, in July 2014. Its primary corporate purpose is to provide Taekwondo education and classes for persons of all ages. (*See* Exh. 21: US TKD Education, Inc., Articles of Correction filed with Secretary of the Commonwealth, dated Nov. 7, 2017.)³

3. In November 2014, TKD first applied to EEC for a license to operate a large group and school age child care program in indoor shopping plaza space at 360 Rhode Island Avenue in Fall River, Massachusetts. EEC licensing specialist Marya N. Fry reviewed the license application. On April 10, 2015, EEC issued a large group and school age program license (No. 9025089) to TKD. The license allowed TKD to operate its program at this location for 39 school-age children ranging in age from five to fourteen years old. (Fry direct testimony; EEC Order to Protect Children (enrollment freeze), dated May 12, 2017, at 2; EEC Order to Protect Children (license renewal denial), dated Aug. 1, 2017 at 2, para. 4.)

4. On March 3, 2015, Master Lee filed, with EEC, a form on which it disclosed which

²/ Taekwondo is a self-defense art—one of the world's oldest—based upon a combination of kick movements. It originated in Korea and is now also practiced as a sport. Modern Taekwondo training emphasizes, in addition to self-defense, improved character, self-discipline, self-respect and confidence. *See* <https://www.olympic.org/taekwondo> .

³/ The Secretary of the Commonwealth dissolved the corporation involuntarily on June 30, 2017 for failure to file an annual report and pay the required annual fee. However, upon TKD's application and satisfaction of previously unfulfilled filing requirements, it was reinstated as a domestic for-profit corporation by the Secretary of the Commonwealth on November 7, 2017. (Exh. 21.)

persons had administrative authority to operate TKD's large group and school age program, and how their administrative responsibilities were divided. According to the form:

(a) Master Lee was the program's administrator and Yejung Han (Master Lee's wife) was the program's site coordinator. Each of them were authorized to act as TKD's agent, and both were responsible for administering TKD's licensed large group and school age program.

(b) Master Lee's scheduled administrative hours at the program were 9:00 a.m. to 6:00 p.m., and he had no scheduled teaching hours. Ms. Han's scheduled administrative hours were 8:00 a.m. to 10:00 a.m., and 1:00 p.m. and 3:00 p.m., and her scheduled teaching hours at the program were 6:00 a.m. to 8:00 a.m. and 3:00 p.m. to 6:00 p.m.

(c) Business management and recordkeeping responsibility were divided between Master Lee and Ms. Han. Master Lee was responsible for maintaining the program's account books, financial documentation, and personnel records. Ms. Han was responsible for the program's children's records and staff schedules.

(d) Responsibility for the development and maintenance of the program was divided among Master Lee, Ms. Han, and two other persons. Master Lee was responsible for the early childhood education program; the school age program; staff training and orientation; and staff development and supervision between 5:00 p.m. and 6:00 p.m. Ms. Han was responsible for parent involvement in the program, and for services for program children with disabilities and social services. One of the other persons, Sungho Jung, was responsible for social services and for the program children's daily activities between 10:00 a.m. and 12 noon. The other, Juan Kim, was responsible for the program's equipment between 1:00 and 1:30 p.m.

(Exh. 23.)

Health and Safety Visit, August 28, 2015

5. It was EEC's practice to visit a first-time large group and school age program during the provisional licensing period in order to determine how it was caring for the enrolled children, inspect its physical space, review its policies, and decide whether the program was meeting

applicable licensing requirements. Often this visit was unannounced, and that was the case here. EEC group and school age licenser Marya Fry made an unannounced health and safety visit to the TKD program on August 28, 2015. (Fry direct testimony.)

6. During this visit, Ms. Fry interviewed Master Lee, Ms. Han, and other program staff and volunteers. She observed ongoing daily activities, and reviewed seven child care files. She typically reviewed 7-8 files during visits such as this one. The files she reviewed were missing required contents, including parental medication and transportation consents. Ms. Fry also inspected the three vehicles that TKD used to transport child care children, and concluded that one of them was “not in good condition,” as it had a broken seat with a board across it on which was written “do not use.” In addition, the program had not documented the times when the child care vehicles were empty. (Fry direct testimony.)

7. Ms. Fry prepared a report of her August 28, 2015 visit to the TKD program and a “visit narrative” that included a synopsis of the program and a summary of the activities she had observed. The report directed TKD to respond to each instance of noncompliance and propose a corrective plan within 14 days. The visit narrative also included Ms. Fry’s recommendations and comments based upon the visit, which were that: (1) “[t]he visit revealed significant non-compliances and lack of understanding of EEC requirements for a school age program;” (2) the program needed to share Ms. Fry’s report with a child care provider coach from the SEEPP program;⁴ and (3) EEC would make an another unannounced visit to assess the program before the

⁴/ SEEPP (Southeast Education Professional Partnership) is a child care provider training contractor that is approved by, and works with, EEC.

license renewal visit. (Exh. 16.) The violations Ms. Fry observed during the visit included the following:

7(a). *Incomplete program volunteer documentation.* There were no files for the TKD program's volunteers showing the results of background record checks; their responsibilities; their dates and hours of service; or their orientation, supervision and training, as required by 606 C.M.R. § 7.03(1)(c)7. EEC required that the program develop a volunteer plan that complied with the regulation.

7(b). *Incomplete children's records:*

(I) Two of the seven records that Ms. Fry reviewed did not include a face sheet identifying the child or the date of the child's admission to the program, and had no emergency consent form signed and dated by a parent. Four children taking medication at home or in the program lacked a consent form signed by a parent. Five children with chronic health care conditions did not have completed individual health care plans. One child had no injury report on file. Two parents had not signed a statement that the child's medical information was available at the school. All of this information was required by 606 C.M.R. § 7.04(7)(a) and (b).

(ii) The program's posted list of children's medical information did not include the medical condition to which this information related, did not identify the emergency medication that TKD kept on-site and where it was stored, and did not include allergy-related information or other emergency medical information the parents supplied, as required by 606 C.M.R. § 7.04(14)(c).

(iii) The program did not prepare an injury report for a child who had fallen and broken her arm, and did not submit the report to EEC, as 606 C.M.R. § 7.04(15)(a)2 required.

(iv) The location of the program's first aid kit was not clearly posted, as 606 C.M.R. § 7.04(17)(p)3 required.

7(c). *Curriculum-related deficiencies.* Ms. Fry observed children presenting

speeches and oral book reports, and performing martial arts exercises. However, she saw no evidence “of a curriculum that included a variety of creative activities, such as art, music, literature, dramatic play and science, encouraging exploration, experimentation and discovery,” as 606 C.M.R. § 7.06(1)(b) required.

7(d). *Indoor space and play area violations:*

(I) The program “did not have a variety of interest areas with enough equipment and materials that promote imagination and creativity that are available for children during free choice time,” *citing* 606 C.M.R. § 7.06(1)(c)1, 3 and 4, and 606 C.M.R. § 7.07(16)(c)5 (requiring that indoor play areas be clearly defined by spatial arrangement reflective of the variety of creative activities required by 606 C.M.R. § 7.06(1)(b)3).

(ii) The space that EEC had approved for the program “did not include a small, quiet area that is inviting to children, visible to staff, and easily accessible to a child who seeks or needs time alone,” as 606 C.M.R. § 7.06(1)(c)5 required.

(iii) Children’s clothes, papers and backpacks “were all over the floor and not stored in individual storage spaces,” as 606 C.M.R. § 7.07(10)(g) required.

7(e). *Inadequate child supervision by qualified, supervised staff:*

(i) While the site coordinator was checking children into the TKD program at the front counter, a group of 22 children in the back room was left with a new employee who lacked evidence of qualification as a group leader, and two volunteers who were not under the direct visual supervision of a qualified educator at all times, *citing* 606 C.M.R. §§ 7.03(1)(c)(requiring that licensed large group and school age program using volunteers develop a plan requiring that volunteers be under the direct visual supervision of an EEC-qualified educator at all times), 7.09(1)(required educator qualifications), and 7.09(19)(a)2 (regarding child care group program leader qualifications).

(ii) One new staff person had no evidence on file of having had a physical examination within one year prior to employment, as 606 C.M.R. § 7.09(11)(a) required.

(iii) The program had not implemented its staff supervision plan, including documentation of bimonthly observations and conferences with staff, *citing* 606 C.M.R. § 7.09(17)(b).

(iv) The program did not have, on file, evidence that a staff member acting as a group leader met the experience requirements for that position, *citing* 606 C.M.R. § 7.09(19)(a)2 (group leader qualification requirements).

7(f). *Violations related to health, safety, personal hygiene and sanitation:*

(I) A program child's inhaler had no prescription label, in violation of 606 C.M.R. § 7.11(2)(c).

(ii) Children who arrived mid-morning and had brought food from home ate sitting on the floor, rather than at cleaned and sanitized tables, and without washing their hands first, in violation of 606 C.M.R. §§ 7.11(10)(c)2 and 7.12(7)(b).

(iii) No evacuation procedures and diagrams were posted in any of the interior rooms used by the program, in violation of 606 C.M.R. § 7.11(18)(b).

7(g). *Child transportation-related violations:*

(i) One of the vehicles the program used had a ripped seat with exposed foam and a back seat labeled "not for use," in violation of 606 C.M.R. §§ 7.13(6)(a) (requirement that number of children riding in vehicles not exceed the number of seats, and that all children be seated while the vehicle was in operation), and 7.13(6)(j) (requirement that a first aid kit, seat belt cutter, and emergency numbers for the children, be "easily available" in all vehicles the program used).

(ii) The program submitted a transportation schedule showing children riding for more than 45 minutes, in violation of requirement that all trips must be under 45 minutes, *citing* 606 C.M.R. §§ 7.04(7)(b)8 and 7.13(6)(i) (45-minute trip time limitation).

(Fry direct testimony; Exh. 16: Report dated Sept. 16, 2015 regarding August 28, 2015 visit to US TKD Education program.)

8. In her report on the August 28, 2015 visit to the TKD program, Ms. Fry stated that she had observed not only “significant non-compliances” but, as well, “a lack of adequate understanding of the EEC regulations regarding operation of a school age child care program.” She mailed her report to Master Lee and Ms. Han on September 21, 2015. In the accompanying cover letter, Ms. Fry directed Master Lee and Ms. Han to enroll in a coaching and mentoring support service offered by SEEPP (*see* above at 9 n. 4), review Ms. Fry’s report with the SEEPP coach, and develop a plan to come into compliance with the applicable EEC regulations. Ms. Fry’s report also required that Master Lee and Ms. Han submit, within 14 days, a correction plan for each instance of noncompliance the report described. (Fry direct testimony; Exh. 16: EEC Report dated Sept. 16, 2015 regarding August 28, 2015 visit to US TKD Education program; visit narrative prepared by Licensor Marya Fry; and accompanying letter, Marya Fry to Wonsam Lee and Yejung Han, dated Sept. 21, 2015, regarding Aug. 25, 2015 health and safety visit.)

License Renewal and Capacity Increase-Related Visit, October 19, 2015

9. TKD’s first provisional large group and school age child care program license expired in October 2015. In September 2015, TKD applied to EEC for a regular license to continue operating its large group and school age child care program at the same Fall River shopping plaza site. It also requested that the program’s capacity be increased from 39 to 52 school-age children. (Fry direct testimony.)

10. In view of the license renewal application and the requested increase in school-age child capacity, Ms. Fry and another EEC licensor visited TKD’s program on October 19, 2015.

During this visit, Ms. Fry interviewed Master Lee, Ms. Han and other program staff. She also observed ongoing daily activities, and reviewed eight child care files. Ms. Fry noted in particular that children entering the building that the TKD program used had to run through several rooms in order to reach the program area. Ms. Fry did not observe incomplete program volunteer documentation, curriculum-related deficiencies, or indoor space and play area violations, three of the violations she had noted during her August 28, 2015 visit to the TKD program.⁵ However, she observed other types of violations:

10(b). *Incomplete children's records.* While Ms. Fry did not observe missing face sheets identifying the child or the date of the child's admission to the TKD program, or absent emergency consent forms signed and dated by a parent as she had during the August 28, 2015 visit (*see* Finding 7(b) above), Ms. Fry observed two new children's record-related violations:

(i) The attendance list showing the time that each child arrived at the program from a program vehicle was not updated immediately as the children arrived, and one new staffperson waited several minutes before marking children as having arrived, in violation of 606 C.M.R. § 7.04(4)(a)(1).

(ii) Three of the children's records that Ms. Fry reviewed showed a chronic

^{5/} There are, as a result, no Findings 10(a), (c) or (d).

As to the curriculum, Ms. Fry noted that there had been an "improvement in the amount and variety of equipment available." She requested that the program "continue to add equipment and interest and design the curriculum to provide opportunities for children to participate in a variety of creative activities, such as art, music, literature, dramatic play and science, encouraging exploration [and] experimentation and discovery," as 606 C.M.R. § 7.06(1)(b) required. (Fry direct testimony; Exh. 15: Report dated Oct. 28, 2015 regarding October 19, 2015 visit to US TKD Education program; visit narrative prepared by Ms. Fry).

medical condition that did not require medication at the program, but there was no individual health plan explaining the condition and what to do if the child showed symptoms, contrary to the requirements of 606 C.M.R. § 7.04(4)(b)(5).

(iii) The list of children's medications that the TKD program posted did not show all the medications the program had on-site, all of the children's allergies, or all of the children's chronic medical conditions for which the program did or did not have medication. *See* 606 C.M.R. § 7.04(14)(c)(1) and (2).

10(e). *Inadequate child supervision by qualified, supervised staff.* Ms. Fry observed child supervision deficiencies similar to those she had noted during her August 28, 2015 visit, including insufficient staff to supervise children, and staffpersons without evidence of having had the required physical examination. Although she did *not* note the absence of a staff supervision plan, as she had during the earlier visit, she noted that:

(I) During the October 19, 2015 visit, Ms. Fry observed that the driver of a van was busy checking in arriving children, leaving only one staffperson to supervise sixteen children who had arrived and were joining a combined group activity. 606 C.M.R. § 7.10(1) required that the schedule be arranged so that the ratio of one staff to 13 children or 2 staff to 26 children was never out of compliance in a room used for program activities.

(ii) The program had no evidence on file that two new staffpersons had a physical examination within one year prior to employment, as 606 C.M.R. § 7.09(11)(a) required. The program director had no documentation of having had a physical examination within the previous two years. One staffperson had no documentation showing the required two MMR (measles, mumps and rubella) immunizations. *Id.*; *see also* 606 C.M.R. § 7.09(11)(b).

(iii) The posted staffing schedule was not current, as 606 C.M.R. § 7.10(8)(b)(2) required.

10(f). *Violations related to health, safety, personal hygiene and sanitation.*

(I) Ms. Fry observed two violations of EEC's regulations governing the administration of medication at a licensed large group and school age program, 606

C.M.R. § 7.11(2)—a program child's inhaler had no prescription label, in violation of 606 C.M.R. § 7.11(2)(c) (requiring that all prescription medications be in the containers in which they were originally dispensed and with their original labels affixed, and that over-the-counter medications be in the original manufacturer's packaging); and medication was stored in an unlocked desk drawer within the potential reach of children, in violation of 606 C.M.R. § 7.11(2)(e) ("Unless otherwise specified in a child's individual health care plan, the educator must store all medications out of the reach of children and under proper conditions for sanitation, preservation, security and safety during the time the children are in care and during the transportation of children.")

(ii) Although the staff cleaned and sanitized the program's snack table before snacks began, they did not do so after each child completed a snack and before the next child sat in the same place, as 606 C.M.R. § 7.11(10)(h) required. The program needed to use a placemat, tray or other removable surface so that each child ate at a clean and sanitized space each time. *Id.* It also needed to give children a plate, bowl or napkin on which to spread out crackers or other snacks, and to not allow children to walk around with snacks or eat at homework areas. *Id.*

(iii) Ms. Fry observed a snack of animal crackers and milk or fruit juice being given to children during her October 19, 2015 visit. There was no nutritious food in the program matching what was listed on the snack menu, and there were open packages of cookies, chips and "other unsuitable snack items." *See* 606 C.M.R. §§ 7.12(1), (7)(a), and 7(d). She directed the program to plan its food shopping in advance so it would have healthy foods available for children attending the program.

(iv) A staffmember's purse was in reach of children. *See* 606 C.M.R. § 7.07(13)(g) ("Educators must ensure that all hazardous objects, including but not limited to matches, lighters, toxic materials, sharp objects, plastic bags and purses are locked or inaccessible to children.")

10(g). *Child transportation-related violations.*

(I) For three of four drivers who transported children in the program's vans, there was no copy of their child transport license on file, no documentation that they had been instructed as to the program's child transportation plan, or that they had completed the driver safety training EEC required. *See* 606 C.M.R. §§ 7.09(17)(a)(1), 7.13(4)(d) and (e), and 7.17(a)(1).

(ii) Drivers were not inspecting their vehicle after each trip to ensure that

children were not left alone in the vehicle, and no person from the program was making an additional inspection for this purpose, in violation of 606 C.M.R. §§ 7.13(4)(j).

(iii) Emergency contact information for each child being transported was not available in each vehicle, as 606 C.M.R. §§ 7.13(6)(j) required.

(Fry direct testimony; Exh. 15: Report dated Oct. 28, 2015 regarding October 19, 2015 visit to US TKD Education program; visit narrative prepared by Marya Fry; and Letter, Marya Fry to Wonsam Lee and Yejung Han regarding Oct. 19, 2015 license renewal visit, dated Oct. 28, 2015.)

11. Ms. Fry prepared a report, dated October 28, 2019, regarding the instances of non-compliance that she had observed during her October 19, 2015 license renewal visit to the TKD program. She also prepared a “visit narrative” regarding her October 19, 2015 visit that included a synopsis of the program and the instances of noncompliance she had observed. Again, she gave TKD 14 days to propose a corrective plan. The visit narrative also included Ms. Fry’s recommendations and comments based upon the visit, which were that Master Lee and Ms. Han (a) continue to work with the program’s SEEPP coach (*see* above at 9 n.4) on curriculum, activities and scheduling and providing adequate materials for them; (b) carefully review their own, and EEC’s, transportation requirements to assure that they were meeting them; and (c) be sure they had adequate staffing, including drivers, for the increased school-age child capacity they had requested; and (d) that the program was using all of its space (the three rooms that were each large enough to hold 19 children) in addition to the Taekwondo studio in order to avoid overcrowding program children in any particular room, making sure that no group in any one room had more than 26 children. Ms. Fry mailed the report and visit narrative to Master Lee and Ms. Han on October 28, 2015, with a cover

letter noting that the report showed “non-compliances that must be corrected.” (Exh. 15.)

License Renewal-Related Visit, December 15, 2015

12. In view of the deficiencies she had observed during the October 19, 2015 visit, Ms. Fry made another visit to the TKD program on December 15, 2015 relative to its requests for a permanent license and increased school-age child capacity. She was accompanied during this visit by Mary McCarthy, an EEC licenser from the agency’s Taunton, Massachusetts office. Ms. Fry interviewed Master Lee, Ms. Han and other program staff. She also observed ongoing daily activities, reviewed staff and program child records, and conducted an exit interview with Master Lee and Ms. Han. Ms. Fry did not observe incomplete program volunteer documentation, or curriculum-related deficiencies, two types of violations that she had observed during earlier visits.⁶ However, she observed other violations that she had noted during earlier visits, including overcrowded transport vehicles; children not being signed-in upon arriving at the program; staff in the building’s back rooms not knowing who had arrived; and inadequate staff supervision of children. In addition, children’s medical files continued to lack required information. Ms. Fry’s overall impression, following the December 15, 2015 visit, was that the TKD program could not be granted a regular (as opposed to a provisional) license in view of the many observed instances of noncompliance with the EEC regulations, several of which had been noted during more than one visit. (Fry direct testimony; Exh. 14: EEC Report dated Dec. 16, 2015 regarding December 15, 2015 visit to US TKD Education program; visit narrative prepared by Licensor Marya Fry (undated);

⁶/ As a result, there are no Findings 13(a) or (c).

Letter, Marya Fry to Wonsam Lee regarding December 15, 2015 license renewal visit, dated Dec. 17, 2015.)

13. Ms. Fry and Ms. McCarthy observed the following violations during their December 15, 2015 visit to the TKD program:

13(b). *Incomplete children's records.* EEC's regulations require documentation of child attendance and presence. *See* 606 C.M.R. § 7.04(4)(a)(1) and (2). However, Ms. Fry and Ms. McCarthy observed that:

(i) Program children were not being signed into the building where the program operated immediately upon arriving; in addition, the staffperson signing them in did so from the list of children the program van driver provided, rather than by actually checking each child.

(ii) Staff inside the building did not sign out children who went from the program to a Taekwondo class.

(iii) Parents were responsible for signing children out at the front of the building, but they sometimes forgot to do so, or signed somewhere other than on the front of the program's sign in/sign out sheet.

EEC's regulations also require that emergency and life-saving medications used by children in the program be posted. *See* 606 C.M.R. § 7.04(14)(c)(1) and (2). Ms. Fry and Ms. McCarthy observed, however, that:

(iv) The program's list of children's allergies, medications and emergency medical information was still not accurate, and not all allergies including those related to medication, food and environmental factors were listed on the program's allergies list; and

(v) The program was not carefully reviewing child enrollment documents, including lists of allergies and medical conditions, or requesting additional information needed for individual child health care plans.

13(d). *Indoor space and play area violations.* During her December 15, 2015 visit, Ms. Fry observed (as she had during her August 28, 2015 visit) a poor use of the program's indoor space that was "contributing to a chaotic environment." Specifically:

(I) Children working on homework or engaged in quiet activities were not separated from those playing loud and active games or those eating snacks; and

(ii) Although the program had adequate square footage in each of its three rooms for 18 children (and therefore for its licensed capacity of 39 school-age children), it was not using all three rooms, particularly the back room. The program was required to use all three rooms throughout the program day. *See* 606 C.M.R. §§ 7.06(1)(a)(3) and 7.07(16)(c)(1).

13(e). *Inadequate child supervision by qualified, supervised staff.*

(i) A child who had been taken to the program administrator's office for "time out" was left alone in the room—a violation of 606 C.M.R. § 7.05(5)—while the administrator went to the building's front entrance to talk to parents and monitor child transportation.

(ii) The program lacked documentation showing that a new staffperson considered to be a group leader had a college degree. The same staffperson also drove the vans used to transport children to and from the TKD program, but the program had no documentation that this person had completed the required transportation safety and USDA choking training courses. *See* 606 C.M.R. § 7.09(19)(a)(2).

(iii) The posted staff schedule did not include the schedule for a new staffperson. *See* 606 C.M.R. § 7.10(8)(b)(2).

(iv) Although the program had six staffpersons, including the program administrator, three of them were "in and out of the center on bus runs," and it was not clear which staff remained at the building with program children while the others were out of the building transporting children. *See* 606 C.M.R. § 7.10(1).

(v) Program staff were not adequately supervising program children. Among other things, staff stayed in the snack room during snack time, but children moved

back and forth between the snack room and another room where there was no staffperson; TKD program children also mixed with a group of parents and other children who were observing Taekwondo classes; TKD program children were not assigned to groups that had an assigned staffperson and a separate attendance list; TKD program children also used the same bathrooms as children from the Taekwondo classes; and program staff were not supervising bathroom use. *See* 606 C.M.R. §§ 7.10(5) and 7.10(8)(a).

13(f). *Violations related to health, safety, personal hygiene and sanitation.*

(i) Children's emergency medications were taken on the van when program children were picked up from school, and remained on the van until all the van runs were completed. As a result, children were present at the program without their medications until transportation was completed, in violation of 606 C.M.R. § 7.11(2)(f).

(ii) As Ms. Fry had observed during the October 19, 2015 visit, the program's snack tables were cleaned before snacks began, but they were not cleaned after each child completed a snack and before the next child sat in the same place, as 606 C.M.R. § 7.11(10)(h) required. An appropriate sanitizing solution was not used to clean the tables, whether prior to or during snack use.

(iii) Ms. Fry observed a child sharing candy with others at her table. Several violations were indicated in this circumstance—children are not allowed to share food, especially when brought by a child; the program must not allow this food sharing, and must ensure that all food provided to children is nutritious; and the program may make available a second nutritious choice for children who do not want what is served, but it must list this second choice on the menu. *See* 606 C.M.R. §§ 7.12(1) and 7(a).

(iv) One snack table was covered with cups that had been labeled for each child. The same table was also being used by children who were eating. The table was crowded and chaotic, with some children eating while others were constantly retrieving cups. A separate table should have been provided for each of these uses. In addition, staff reported that cups were being re-used later in the day, but because the program had a small kitchen without a dishwasher or three-compartment sink, it was not clear that cleaning cups for reuse was feasible. A better solution would have been for the program to use disposable cups for snacks, and to make available labeled water bottles for each child to use throughout the day. *See* 606 C.M.R. §§ 7.12(11)(b) and 7(e).

13(g). *Child transportation-related violations.*

(I) A van used to transport children to and from the program was overcrowded, with ten children on board rather than the eight allowed by state motor vehicle regulations. This violated 606 C.M.R. §§ 7.13(4)(b), 7.13(4)(c) and 7.13(6)(d).

(ii) The design of the program's vehicle log made it difficult to determine how many children were transported during each vehicle trip, a matter of particular importance because the vehicle appeared to be overcrowded.

(iii) The program's transportation log did not include a statement verifying that the driver and another person from the program had walked through the vehicle and inspected the seat surface, the area beneath it, and all compartments or recesses in the vehicle's interior to ensure that children were not left alone in the vehicle, as required by 606 C.M.R. §§ 7.13(4)(j).

(Fry direct testimony; Exh. 14.)

14. Ms. Fry prepared a report (entitled "Statement of Noncompliance") regarding the violations she had observed during the December 15, 2015 visit to the TKD program, and a "visit narrative" that included a synopsis of the TKD program and a summary of the program activities she had observed. She gave TKD until January 6, 2015 to propose a corrective plan. According to Ms. Fry's visit narrative:

(a) The visit "revealed a large number of repeat and new non-compliance with health and safety regulations including supervision, sanitation, food service and transportation," and EEC staff "provided technical assistance . . . regarding alternate ways to split the children into groups, document attendance and meet food service / sanitation requirements;"

(b) EEC staff advised the program (meaning Master Lee and Ms. Han) that "continued overcrowding" of the program's child transportation vans, whose capacity was limited to eight children, "violated the 7D requirements" (meaning the Massachusetts Registry of Motor Vehicles's requirement that no more than eight children were allowed on each such van);

(c) The program's license could not be renewed until the program complied with all applicable; and

(d) An increase in school-age child capacity "cannot be considered at this time."

Ms. Fry mailed her report on the December 15, 2015 visit, and visit narrative, to Master Lee on December 17, 2015. (Exh. 14: Letter, Marya Fry to Wonsam Lee dated Dec. 17, 2015; visit narrative (undated) regarding December 15, 2015 visit; and "Statement of Noncompliance" regarding December 15, 2015 visit, dated Dec. 28, 2015.)

Compliance Visit, January 13, 2016

15. EEC did not issue the TKD program a regular large group and school age child care license, in view of the violations that Ms. Fry observed during the December 15, 2015 visit, and because she had observed the same or similar violations during earlier visits. In addition, Ms. Fry and her supervisor, Renee Collyer, decided to visit the program again, this time unannounced, in order to determine whether the program should remain licensed at all. They made this unannounced visit on January 13, 2016. Ms. Fry and Ms. Collyer counted 41 children present, two more than the program's licensed school-age child capacity. They spoke about this with Master Lee, who stated that not all 41 children were present every day, and that 38 were actually attending the program. Nonetheless, 41 children were present when Ms. Fry and Ms. Collyer made their unannounced visit. This was of particular concern to them, because over-enrollment violated the TKD program's license and raised questions about whether the building where the program operated had a sufficient number of fire exits; whether the program had enough materials for the children attending the program; and

whether the license's requirements were adequate in view of the number of children present. Ms. Fry and Ms. Collyer told Master Lee, consequently, that the program's enrollment was frozen at 39 children, no new children could be enrolled, no previously-terminated children could be re-admitted, and no vacancies could be filled. They also informed Master Lee that a meeting would be scheduled at EEC's Taunton office to discuss the status of the program's provisional license and, as well, whether, in view of over-enrollment, the program would be allowed to transport children to a public park for outdoor play. EEC Acting Regional Director Diana Phillips confirmed the enrollment freeze and the upcoming meeting to discuss the program's licensing status by letter to Master Lee dated January 27, 2016. Ms. Fry prepared a report regarding the violations she had observed during the January 13, 2016 visit to the TKD program, and a "visit narrative" that included a synopsis of the program and a summary of the program activities that she and Ms. Collyer had observed. The visit narrative required that Master Lee submit a plan to correct the observed violations within 14 days. It also stated that EEC would be reconsidering the program's plan to transport children to a public park for outdoor play once a week in lieu of having a playground on-site, particularly in view of overcrowding at the program and in its transport vehicles, and that the program would have to submit a new plan showing how it would provide outdoor time for the children. EEC mailed Ms. Phillips's letter confirming the enrollment freeze, along with Ms. Fry's report and visit narrative, and the cover letter accompanying those two documents, to Master Lee on or about January 27, 2016. (Fry direct testimony; Collyer direct testimony; Exh. 13: Cover letter, Diana Phillips, EEC Acting Regional Director, to Wonsam Lee, dated Jan. 27, 2016, accompanying undated "Visit Narrative" prepared by Marya Fry regarding January 13, 2016 visit to TKD program; and "Statement of

Noncompliance” regarding violations observed during January 13, 2016 visit).

16. During their January 13, 2016 compliance visit to the TKD program, Ms. Fry and Ms. Collyer did not observe incomplete program volunteer documentation, or indoor space and play area violations, which she had noted during her earlier visits.⁷ However, they observed other violations noted previously, and new violations as well:

16(b). *Incomplete children’s records.*

(i) The program’s list of medications was not accurate. One child with an inhaler was not listed on the program’s allergies list. Ms. Fry had observed this violation of 606 C.M.R. § 7.04(14)c)(1) previously, during the October 19, 2015 visit (*see* Finding 10(b)(iii)), and during the December 16, 2015 visit (*see* Finding 13(b)(4) above).

(ii) Attendance records were not accurate, and program staff did not know how many children were present at all times. Ms. Fry had observed similar violations of 606 C.M.R. § 7.04(4)(a)(1) and (2) during her visits on October 19, 2015 (*see* Finding 10(b)(1) above), and on December 15, 2015. (*See* Finding 13(b) above.) TKD program staff were not aware of a newly-implemented attendance system “using magnetic names that move with the children for attendance.” When Ms. Fry and Ms. Collyer asked how attendance was taken, a staff member told them that “they take it up front and when all the children get in here we take it again.”

16(c). *Curriculum-related deficiencies.* During the January 13, 2016 visit, one of the rooms being used by the TKD program children had an Xbox video game console, and four of the games for use with the Xbox were rated “M” for mature (17 years of age or older)—“Call of Duty 4,” “Gears of War,” “Gears of War 3,” and “Mortal Kombat Complete Edition.” Ms. Fry and Ms. Collyer viewed this as noncompliance with the requirements of 606 C.M.R. § 7.08(1)(b), which provides in pertinent part that “[t]he licensee must have

^{7/} As a result, there are no Findings 16(a) or (d).

evidence of a plan describing how program activities support and engage children through specific learning experiences,” and that “[s]uch plan must be appropriate to the ages and development of the children served, to the length of the program day and to the program objectives.”

16(e). *Inadequate child supervision by qualified, supervised staff.*

(i) There was a poor use of the program’s indoor space that was “contributing to a chaotic environment,” as Ms. Fry had observed during her December 15, 2015 visit. (*See* Finding 13(e).) Children working on homework or engaged in quiet activities were not separated from those playing loud and active games or those eating snacks. Although the program had adequate square footage in each of its three rooms for 18 children (and therefore for its licensed capacity of 39 school-age children), it was not using all three rooms, particularly the back room. On several occasions, there were 24 or 25 children in Room 2. Stacks of boxes in two rooms limited the space available for use by children and reduced their capacity. The program was required to use all three rooms throughout the program day. *See* 606 C.M.R. §§ 7.06(1)(a)(3) and 7.07(16)(c)(1).

(ii) Although the program had six staffpersons, including the program administrator, three of them were “in and out of the center” on bus runs, and it was not clear which staff remained at the building with program children while the others were out of the building transporting children. *See* 606 C.M.R. § 7.10(1).

(iii) Program staff were not adequately supervising program children. Among other things, staff stayed in the snack room during snack time but children moved back and forth between the snack room and another room where there was no staffperson; TKD program children were not assigned to groups that had an assigned staffperson and a separate attendance list; program staff were not supervising bathroom use; and one child was observed standing on snack table chairs to hang his coat and backpack on hooks. and did so for approximately one minute but staff did not intervene to help the child so he would be safe. *See* 606 C.M.R. §§ 7.10(5) and 7.10(8).

16(f). *Violations related to health, safety, personal hygiene and sanitation.*

(i) After a snack was given to the children, program staff sprayed a

bleach/water solution on the table and immediately wiped it off the surface. This practice did not follow EEC's cleaning, sanitizing and disinfecting policy.⁸

(ii) The program children's snack was left uncovered on the snack table for more than an hour, beginning at 2:30 p.m. *See* 606 C.M.R. § 7.12(7)(d).

(iii) The program had cups labeled with the children's names at the sink in the kitchen that were used during snack time, but it appeared that the cups were being re-used. The program's kitchen did not have a 3-compartment sink, which was required to clean and sanitize dishes. *See* 606 C.M.R. § 7.12(7)(e). Ms. Fry had observed a similar violation during her December 15, 2015 visit to the TKD program. (*See* Finding 13(f)(iv) above.)

16(g). *Child transportation-related violations.* Ms. Fry and Ms. Collyer noted that the TKD program's transportation logs were not signed by the child transportation vehicle's driver and a second staffperson to verify that the vehicle had been inspected after each trip, as the EEC regulations required. *See* 606 C.M.R. § 7.13(4)(j).

16(h). *Violations of physical facility requirements.*

(i) In one room (Room 2), the ceiling fan was dusty, and boxes of Taekwondo supplies were stacked in a corner but were not secure. In another room (Room 3,

^{8/} This is one of EEC's "Group and School Age Child Care Programs Safety and Emergency Procedures Policies," which are found on the web at: <https://www.mass.gov/lists/>. What is not clear from the "statement of non-compliance" for the January 13, 2016 visit (part of Exh. 13) is how the bleach/water solution spraying and wiping of the snack table violated the EEC policy. I note, however, that the policy prescribes a procedure for sanitizing and disinfecting with bleach that differs materially from what the TKD program staff were doing with the snack table. Per the policy, the correct procedure is to (1) clean the surface before applying the bleach solution; (2) apply the bleach solution only when children are not present in the area, and allow for fresh air ventilation when possible until the bleach solution has dried; (3) apply a bleach solution diluted as the EEC policy instructs, using a disposable cloth rinsed in the solution and discarded after each use; (4) the surface should be visibly wet after applying the bleach solution, and then allowed to air dry in order to assure the "contact time" specified on the label of the bleach product; and (5) if using a spray bottle, the setting must be adjusted in order to produce a heavy spray or stream instead of a fine mist, when possible, because the fine mist could contain particles of strong chemicals that can cause asthma or allergy-like symptoms.

used as a snack room for the children), five cubby units were not secure, and neither was a game shelf or a large metal first aid cabinet on a shelf behind the snack table. A “container of bleach/water” was on the snack table. A closet that contained cleaning chemicals was not locked or latched. In a third room used by children enrolled in the program (Room 4), a large television on a cabinet was not secure, and neither were a microwave on a shelf, a large gray plastic shelf used for toy storage, or approximately 30 stacked boxes of Taekwondo supplies. These conditions violated EEC’s requirement that indoor space used by children enrolled in licensed child program space be clean and maintained in safe condition, *see* 606 C.M.R. § 7.07(10), as well as EEC’s safety requirements for equipment, materials and furnishings. *See* 606 C.M.R. § 7.07(13).

(ii) The thermostat in the back room was set at 64 degrees. The actual temperature was colder, but children were not using this room when Ms. Fry and Ms. Phillips visited on January 13, 2016. The EEC regulations required a minimum temperature of 65 degrees for indoor space used by a licensed child care program. *See* 606 C.M.R. § 7.07(13)(i).

16(i). *Violations of emergency preparedness requirements.* TKD submitted an evacuation drill log indicating that the practice evacuation of the program’s licensed space took up to 30 minutes to complete, which was excessive, and that the effectiveness of the drill had not been evaluated. Both deficiencies violated 606 C.M.R. § 7.11(7)(h) (requiring that evacuation drills be practiced monthly and that their effectiveness be evaluated).

17. On January 27, 2016, EEC Acting Director Diana Phillips formally notified Master Lee that the TKD Program’s enrollment was frozen, no new children could be enrolled, no previously-terminated children could be re-admitted, and no vacancies could be filled, and that the agency could assess a \$50-\$250 civil fine against the program if it violated the enrollment freeze, *citing* 102 C.M.R. § 1.07(3)(b)(1). The notice stated that this sanction was imposed “due to the results of a recent visit to the program” (on January 13, 2016), and that “[n]on-compliances

identified during this visit included, but were not limited to . . . over-enrollment, provision of false and misleading information to the EEC Staff, supervision, record-keeping and health and safety issues.” The notice directed Master Lee to submit a list of the children who were enrolled in, or were “in placement,” in the program. Finally, the notice advised that US TKD had the right, pursuant to 102 C.M.R. § 1.08(1)(a), to file with EEC a written request to reconsider the enrollment freeze.⁹ (Fry direct testimony; Exh. 12: Notice of Sanction of Enrollment Freeze and Notice of Intent to Fine, issued by EEC and addressed to Wonsam Lee, signed by Acting Regional Director Diana Phillips, dated Jan. 27, 2016.)

18. On February 15, 2016, Ms. Phillips, Ms. Fry and Ms. Collyer met with Master Lee and Ms. Han at EEC’s regional office in Taunton, Massachusetts regarding the violations observed during the January 13, 2016 visit to the TKD program. As a result of this meeting, EEC agreed that if a subsequent unannounced visit showed substantial compliance with the agency’s requirements for a large group and school age program, the agency would issue the program “a second provisional license.” Master Lee and Ms. Han agreed that (i) the program would comply with all applicable regulations; (ii) all of the program’s staff would take “school age child care environment rating scale” (SACERS) training; (iii) the program would hire an EEC-approved consultant to assist with understanding and attaining compliance with EEC regulations; and (iv) the program would begin the “EEC QRIS process,” and had to register in the EEC QRIS system as a “level one provider” by March 1, 2016. On February 16, 2015, Ms. Phillips sent Master Lee a letter confirming this outcome

⁹/ There is no evidence in the record that TKD requested reconsideration of the enrollment freeze.

and advising that the program's failure to maintain compliance with EEC's regulations "may result in further action against your license." (Exh. 11: Letter, EEC Regional Director Diana Phillips to Wonsam Lee, dated Feb. 15, 2016.)¹⁰

^{10/} The record does not explain what the "EEC QRIS" process or system is. "QRIS" stands for "Quality Rating and Improvement System." It was developed by the "National Center for Early Childhood Quality Assurance" which, in turn, was, and remains, funded by the U.S. Department of Health and Human Services, Administration for Children and Families. See <https://qrisguide.acf.hhs.gov/about-qris> (scroll down to website section entitled "About QRIS.")

The objectives of EEC's large group and school age licensing requirements, and the QRIS ratings, are different. The primary purpose of the licensing requirements is to protect the health and safety of children enrolled in a school-age child care program and assure them a curriculum providing a variety of creative activities. The consequences for violating those requirements are sanctions that include the denial of license renewal. In contrast, QRIS appears to relate, at least currently, to the standardization of child care and early education administration in accordance with federal requirements, the violation of which can bring about economic and social consequences, including loss of financial incentives to providers, and diminished consumer ratings for particular child care and early education programs.

Per the federal Department of Health and Human Services's QRIS website, the objective of QRIS is to "improve the availability and quality of early and school-age care and education programs" by (among other things) standardizing, via federal requirements, early education and child care requirements that are currently set by each state. In this "aligned" system, the programs offered by early education and child care providers would become different "learning environments" or "ranges of settings" in a federal pre-K or school-age system that would include "family child care homes, child care centers, school-based programs, Head Start programs [and] early intervention [programs]." *Id.* The programs operated by these providers would be licensed by states participating in the QRIS program to provide federally-standardized early education and care—or, at least initially, to meet federally-approved minimum standards for early education and care. The agency administering early education and child care programs in that state, such as EEC in Massachusetts, would do so in accordance with federally-approved standards, and would receive federal education subsidies and/or reimbursement in return. See <https://qrisguide.acf.hhs.gov/about-qris> (scroll down to website section entitled "What is QRIS?")

Currently, EEC's regulations do not incorporate (at least, not specifically) the "common elements" of QRIS. Those common elements include "program standards" used to assign ratings to early education and child care programs participating in a "quality rating and improvement system." The purpose of these standards is to provide parents and the public with information about the quality of early education and child care programs—for example, by assigning more "stars" to programs deemed to be of higher quality. Another, and related, QRIS "common element" is "consumer education," to the extent that QRIS quality symbols, such as stars, would "indicate the levels of quality and inform and educate parents." Currently, EEC's regulations governing early and school-age care and education programs

Compliance Visit, March 28, 2016

19. To determine whether EEC would issue another provisional license to the TKD program, Ms. Fry and Ms. Phillips made another unannounced compliance visit to the program on March 28, 2016. They did *not* observe incomplete children's records, curriculum-related deficiencies, inadequate child supervision by qualified, supervised staff, violations related to health, safety, personal hygiene and sanitation, child transportation-related violations, and indoor space and play area violations—violations that Ms. Fry had noted during prior visits on August 28, 2015, October 19, 2015, December 15, 2015 and January 13, 2016. (*See* Findings 7, 10, 13 and 16.)¹¹ However, they did note violations of requirements related to the program's physical facilities and emergency preparedness, and to information, postings and staff:

19(a). *Incomplete program volunteer documentation.* Two program volunteers had only a background record check information on file. 606 C.M.R. § 7.03(1)(c) requires more information than that, however, none of which Ms. Fry found during her March 28, 2016

include no such ratings system or standards. Other QRIS “common elements” that have no analogue in the EEC regulations governing large group and school age programs are (1) “professional development systems,” which are intended to “organize training opportunities, recognize practitioners’ achievements, and help ensure the quality of available training” for early education and child care provider programs; (2) “financial incentives” that are used to “help early and school-age care and education providers improve learning environments, attain higher ratings, and sustain long-term quality,” including child care subsidy reimbursement rates, as well as “bonuses, quality grants, or merit awards; refundable tax credits; loans linked to quality ratings;” and (3) quality assurance and monitoring” to “determine how well early education and child care programs meet QRIS standards,” how the participating programs are assigned ratings, and how their ongoing compliance with QRIS is verified, and to create “benchmarks for measuring quality improvement” that provide “a basis of accountability for programs, parents, and [funding sources]” *See* <https://qrisguide.acf.hhs.gov/about-qris> (scroll down to section entitled “What are the elements of a QRIS?”)

¹¹/ There are, as a result, no Findings 19(b)-(g) or 19(i).

visit: (1) a program for using volunteers that includes appropriate orientation, supervision and training; (2) documented dates and hours of service, and the specified responsibilities, of each volunteer; and (3) a provision that a volunteer be under the direct visual supervision of an EEC-qualified educator at all times, as well as provisions for compliance with EEC background record-check requirements regarding volunteers. EEC required that the program submit a checklist for all of its volunteers so the agency could determine whether it had the required information on file.

19(h). *Violations of physical facility requirements.* The temperature in the rear room used by the program did not reach the required 65 degrees (*see* 606 C.M.R. § 7.07(13)(I)), even though the program administrator stated that he had turned up the heat and that it was very warm in other parts of the building.

19(j). *Additional requirements as to information, postings and staffing.* During the March 28, 2016 visit, Ms. Fry and Ms. Phillips observed a type of violation that had not been observed during any of the prior visits—one new staff member, a person who drove children to the program, did not have documentation of his orientation training, as required by 606 C.M.R. § 7.13(4)(e), and had only one reference on file. *See* 606 C.M.R. § 7.04(18)(c)(4) (two verbal reference verifications required, including one professional or academic reference).

Ms. Fry prepared a report regarding the violations she and Ms. Phillips had observed during the March 28, 2016 visit, and a “visit narrative” that included a synopsis of the TKD program and a summary of the program activities that she and Ms. Phillips had observed. As before, TKD was

given 14 days to file a correction plan addressing the observed violations. The visit narrative also included Ms. Fry's recommendations and comments based upon the visit, which were that overall, "[t]his visit showed substantial compliance with the regulations except for the few noncompliances" identified in Ms. Fry's report" (her testimony during the hearing was that the visit "went well"), and that EEC would issue a second provisional license to TKD once it received the program's correction plan. Ms. Fry also made recommendations regarding SACERS training for the program's staff, the use of a consultant, and completing the QRIS provider approval process. (Fry direct testimony; Exh. 10: Letter, Marya Fry to Wonsam Lee, dated Apr. 1, 2016, and attached undated Visit Narrative re March 28, 2016 visit prepared by Ms. Fry, and "Statement of Noncompliance" dated March 28, 2016 regarding that visit.)

Issuance of Second Provisional License Following March 28, 2016 Visit

20. Based upon the March 28, 2016 visit, EEC decided to issue the program a second provisional license. Unlike the initial provisional license, however, the license term was one year rather than two years. This license was conditioned upon the program submitting a plan for compliance regarding the violations that were observed during the March 28, 2016 visit. EEC noted the program's efforts to undertake the measures to which it had agreed at the February 15, 2016 meeting. (*See* Finding 18.) TKD Program staff had not yet started the required SACERS training, but Master Lee agreed to contact the SEEPP program and have it begin this training. Master Lee had proposed two consultants to assist the program with compliance, but EEC did not approve them. The agency also disapproved another proposed consultant whose fees it considered to be excessive.

However, EEC agreed to defer requiring that the TKD hire a consultant unless and until it proposed a school-age child capacity increase. TKD had also applied for approval as a level 1 QRIS provider, but only in draft form. EEC directed Master Lee to proceed with seeking final level 1 approval for the program, and then seek approval as a QRIS level 2 provider. (Fry direct testimony; Exh. 9: Letter, Marya Fry to Wonsam Lee, dated April 1, 2016 (stating that a provisional large group and school age license “will be issued” following EEC’s receipt of an acceptable plan for compliance in response to Ms. Fry’s March 28, 2016 “statement of noncompliance”); Exh. 10: Letter, Marya Fry to Wonsam Lee, dated Apr. 1, 2016; attached undated Visit Narrative re March 28, 2016 visit prepared by Ms. Fry; and “Statement of noncompliance” dated March 28, 2016 regarding that visit.)¹²

21. By letter dated April 7, 2016, Ms. Phillips notified Master Lee that the enrollment freeze imposed on the TKD program would be lifted, effective April 8, 2016, because the program had addressed the instances of noncompliance observed during the January 13, 2016 visit. (Fry direct testimony; Exh. 9.)

Enhanced Monitoring Visit, August 9, 2016

22. Ms. Fry made an unannounced “enhanced monitoring” visit to the TKD program on August 9, 2016. The purpose of the visit was to check on the program’s compliance with EEC large

^{12/} The second provisional license itself is not in the record, and the precise day it was issued is not clear. However, EEC acknowledged in writing, on April 7, 2016, that TKD had corrected the “non-compliances identified” during the January 13, 2016 visit (*see* Exh. 9), and it is undisputed that EEC issued the second provisional license to TKD not long afterward.

group and school age program license requirements before the new school year began.

(a) Ms. Fry interviewed the program's site coordinator (Ms. Han) and other program staff. She also inspected the facility and observed ongoing daily activities, reviewed staff and program child records, and conducted an exit interview with Master Lee and Ms. Han. Ms. Fry prepared a report regarding the violations she had observed during this visit, and a "visit narrative" that included a synopsis of the TKD program and a summary of the program activities that she had observed. The visit narrative stated that corrective action was required within 14 days.

(b) Not all of the violations that Ms. Fry had observed during previous visits reappeared during the August 9, 2016 visit. However, she observed several new violations, and, as well, violations that appeared to have been resolved as of March 28, 2016, which had persuaded EEC to issue the TKD program a second provisional license. A significant new violation was that a summer camp program was being operated alongside the large group and school age program. The summer camp had no license from the Fall River Board of Health. TKD program staff to whom Ms. Fry spoke told her there was such a license, but they were unable to produce it. Having found no evidence that it was licensed, Ms. Fry treated the summer camp as part of the TKD large group and school age program. All told, she counted 34 children in the space licensed to TKD to operate its large group and school-age program. This was below the licensed capacity of 39 school-age children but, in Ms. Fry's view, it was still possible that enrollment was over-capacity because the number of children enrolled in the summer camp was unclear.

(c) In addition to the unlicensed summer camp, Ms. Fry observed other violations during her August 9, 2016 visit. One was having no qualified administrator present. Another was that program children were taken to a local park with hazards, including insufficiently thick ground surface on which children could fall from play equipment. There was no restroom at the park, which meant that children had to walk back to the Taekwondo center to use one. In addition, not every child had a parental permission slip to go to the park; there was no posted staff schedule; the identity of the group leader for the children taken to the parks was unclear, and new and regular staff had no evidence of the education and experience required to be a group leader; the children's files were incomplete; and none of the children Ms. Fry observed had with them the program's new address and telephone number.

(d) Based upon the number and nature of the violations she observed during her visit to the TKD program on August 9, 2016, Ms. Fry was concerned that the program did not appear to know or understand the requirements for a large group and school age program, or the need to have a license for a summer camp.

(Fry direct testimony; Exh. 8: cover letter from Marya Fry to Wonsam Lee concerning August 9, 2016 visit, dated August 19, 2016; and accompanying undated "visit narrative" for Aug. 9, 2016 visit to TKD program, and "statement of noncompliance" dated Aug. 15, 2016.)

23. During the August 9, 2016 visit, Ms. Fry did not observe violations related to incomplete program volunteer documentation, curriculum-related deficiencies (including those related to Xbox games), indoor space and play area violations, or child transportation-related

violations.¹³ However, in addition to finding no summer camp license, Ms. Fry observed several repeated and new violations:

23(b). *Incomplete children's records*

(i) The attendance sheet showed an incorrect attendance figure—22 children instead of the 24 who were actually present. That was because one line was used to sign in two siblings. The regulations required, however, that each child have his or her own line for signing in. *See* 606 C.M.R. § 7.04(4)(a)(1).

(ii) Ms. Fry reviewed children's files for four of the 19 children in the summer camp program. None of them had consents for first aid/emergencies, off-site travel, or transportation, as 606 C.M.R. § 7.04(7) required.

23(e). *Inadequate child supervision by qualified, supervised staff*

(i) A review of three regular staffpersons' files showed no evidence that any of them had the education and experience required to be a group leader, as 606 C.M.R. § 7.04(5)(b) required.

(ii) An assistant group leader and three volunteers, who ranged in age from 15 to 17 years of age, were assigned to supervise 16 school age children without a qualified staff member being present. An assistant group leader had this assigned task for four days while the license holder (Master Lee) and one of the program's site coordinators were not available. This violated the requirements of 606 C.M.R. § 7.10(9)(b)(6).

(iii) There was no current staffing schedule available or posted, as 606 C.M.R. § 7.10(8)(b)(2) required.

23(f). *Violations related to health, safety, personal hygiene and sanitation.*

(i) Educators did not protect children from sun-related injury, as 606 C.M.R. § 7.05(h) required; specifically, they did not apply sunscreen before children in the TKD program were walked to the park.

¹³/ There are, as a result, no Findings 23(a), (c), (d), or (g).

(ii) Children did not wash hands before lunch, as 606 C.M.R. § 7.11(2)(c) required.

(iii) The program's educators had not been trained as to the allergies that the children had, or the medications they took for them. The educators were also unaware that the backpack taken to the park by the group contained medication that did not belong to any of the children who were present. Medication was unnecessarily exposed to high temperatures (meaning temperatures that exceeded the recommended storage temperature of 77 degrees). *See* 606 C.M.R. § 7.11(2)(e)(2).

(iv) At the offsite park which children in the program used on August 9, 2016, the "use zone" beneath a playground climber and swings accessible to the children (meaning the area onto which children could fall) was covered with wood chips to a depth of no more than four inches. EEC policy required, however, that this cover have a depth of at least nine inches. *See also* 606 C.M.R. § 7.07(16)(e) (requiring that "[t]he use zones under and around swings, slides and moving structures must be covered with an adequate depth of impact absorbing material, in accordance with EEC policy.")

(v) The program's field trip to the park did not meet several requirements for the use of off-site facilities. The program should have confirmed the appropriateness of the park for the children's use, including access to bathrooms, before the children used it (*see* 606 C.M.R. § 7.11(6)(a)); it should have obtained written parental consent that specified the date, destination and duration of the park trip and the means of transportation to and from the park (*see* 606 C.M.R. § 7.11(6)(d)); and it should have assured that each child carried the name, address and telephone number of the program during the trip to the park (*see* 606 C.M.R. § 7.11(6)(f)). It had not done any of these things.

23(h). *Violations of physical facility requirements.* Ms. Fry observed that a staff purse, a mop, and a bucket of water were accessible to children in the program facility's back room; there was an unlocked closet containing cleaning materials; and three shelves in the program's studio were not secured. These conditions violated EEC's safety requirements for equipment, material and furnishings. *See* 606 C.M.R. § 7.07(1).

23(i) *Violations of emergency preparedness requirements.* During her August 9,

2016 visit, Ms. Fry observed a different violation of 606 C.M.R. § 7.11(7)(h)—the program's documentation of emergency evacuation drills did not identify the exit route that was used during the most recent drill.

23(j). *Additional requirements as to information, postings and staffing.*

(I) In calling part of the program a “camp” during the summer of 2016, the TKD program did not provide correct information to its educators, as 606 C.M.R. § 7.04(17)(a)(2) required; the local Board of Health had not, in fact, issued a summer camp permit to the program.

(ii) Evacuation procedures and diagrams were not posted in all rooms. *See* 606 C.M.R. § 7.04(17)(p)(4)(in addition to where evacuation and emergency procedures must be posted per 606 C.M.R. § 7.04(14), they must also be posted “next to each exit”).

(iii) There was no qualified administrator at the program site; in addition, the staff person who was left in charge had no evidence of site coordinator or group leader qualification on file. This violated the program administrative staffing requirements of 606 C.M.R. § 7.04(17)(m)(8).

(Fry direct testimony; Exh. 8: “statement of noncompliance” regarding August 9, 2016 visit, dated Aug. 15, 2016.)

24. In her letter to Master Lee regarding her August 9, 2016 visit to the TKD program, Ms. Fry stated her concerns about his ability to maintain compliance with EEC's regulations and ensure that the program provided safe, quality childcare. She also noted that the program's history included “significant repeat non-compliances, an enrollment freeze, an enforcement meeting with EEC regional administration and the issuance of a second provisional license.” The letter advised Master Lee that “[i]mmediate correction of the non-compliances” was required, and that a plan for corrective action had to be submitted to EEC by August 24, 2016. It also advised Master Lee that

EEC staff would make another unannounced visit to the program and evaluate its compliance history at that time. (Exh. 8: cover letter from Marya Fry to Wonsam Lee concerning August 9, 2016 visit, dated August 19, 2016).

Followup Visit, September 26, 2016

25. To followup on her August 9, 2016 visit and determine whether the TKD Program's second provisional license would be replaced by a regular license, Ms. Fry made another unannounced visit to the program on September 26, 2016. Although not all of the violations she had observed previously were repeated on September 26, 2016, Ms. Fry observed what she characterized during her hearing testimony as "many" violations, and concluded that the program was "not in substantial compliance" with EEC's large group and school age program license requirements. Among other things, she found inaccurate child attendance figures; an inhaler stored in an unlocked desk; unsanitized snack tables, snacks served to program children that consisted of chips and a drink, and no distribution of snack menus to parents; children sitting without activities or anything else to do; program staff who lacked references or qualifications; and the use of a strong disinfectant without proper ventilation.

26. Ms. Fry observed no curriculum-related deficiencies, child transportation-related violations, or violations of emergency preparedness requirements during her visit to the TKD program on September 26, 2016.¹⁴ However, she observed the following violations:

26(a). *Incomplete program volunteer documentation.* Ms. Fry found that a 15 year

^{14/} There are, as a result, no Findings 26(c), (g) or (i).

old volunteer had no file, which violated 606 C.M.R. § 7.04(5).

26(b). *Incomplete children's records.* Ms. Fry observed that attendance was off by one child when a staff member mistakenly entered, on the TKD program's attendance sheets, a child who was not present. Correct attendance figures are required by 606 C.M.R. § 7.04(4)(a)(1).

26(d). *Indoor space and play area violations.* Ms. Fry observed that children in the program were sitting at a table without activities, from their arrival at 3:15 p.m. and after, until they went to their Taekwondo class. Per 606 C.M.R. § 7.06(2)(a), the program was required to plan appropriate activities so that children had a variety of things to do.

26(e). *Inadequate child supervision by qualified, supervised staff.*

(i) The program administrator (Master Lee) and two site coordinators (including Ms. Han) had been at the program for more than a year and had worked there more than 20 hours per week, but none of them had documentation showing completion of 20 hours of professional development, and had only completed EEC required training and had attended training renewal meetings. Two program staff who had been at the program for more than a year lacked documentation of having completed 12 hours of training. All of this documentation was required by 606 C.M.R. § 7.09(19)(b). One of the site coordinators ("YK," not Ms. Han) did not have documentation of education and experience qualifying her for that role, as required by 606 C.M.R. § 7.04(5)(b).

(ii) Staff and volunteers with no documented group leader qualification supervised two groups of children without any oversight by qualified staff, in violation of 606 C.M.R. § 7.10(9)(b)(6).

(iii) One staffperson did not have evidence of program orientation on file, as required by 606 C.M.R. § 7.09(17)(a)(2).

(iv) There was no current staffing schedule available or posted, as 606 C.M.R. § 7.10(8)(b)(2) required.

(v) Staff records were missing information. Of the ten staff files that Ms. Fry reviewed, one had no verification of references, one was expired, three did not show updated medication training during the preceding year, four did not show physical examinations, and several were missing other types of information required by 606 C.M.R. § 7.04(5).

26(f). *Violations related to health, safety, personal hygiene and sanitation.*

(i) Medication was stored in an unlocked desk drawer that was not locked or latched; there were bottles of glucose tablets that were not marked in the medicine box; and there was a white pill in a bag with no name or label. All of these medications were within the potential reach of children, in violation of 606 C.M.R. § 7.11(2)(e).

(ii) The program was using a strong disinfectant with a label directing its use only in well-ventilated areas, but the space that the program used had no windows. This did not comply with regulatory requirements regarding disinfectant solutions used to clean surfaces used by program children. *See* 606 C.M.R. § 7.11(10)(n).

(iii) The program also used this disinfectant on surfaces that children used for eating snacks. The product label did not state that it was safe for food contact surfaces. The first group of children were not given placemats that would have been a barrier to direct food contact with disinfectant residue on the snack table, and portions of their snacks had contact with the table on which the disinfectant had been used.

(iv) The program had no snack menu to inform parents about what was being served to the children. *See* 606 C.M.R. § 7.12(1) and (7)(f).

(v) The snack that the program served to the children during the September 26, 2016 visit was a bag of chips and later a small cup of juice, which would not meet United States Department of Agriculture requirements for a healthy snack. *See* 606 C.M.R. § 7.12(1)(requiring that a large group and school age program license holder “implement a nutrition program that meets the U.S.D.A. guidelines for the nutritional and dietary needs and feeding requirements of each child”)

(vi) An electric fan was accessible to children. *See* 606 C.M.R. § 7.07(13)(“Safety Requirements for Equipment, materials and Furnishings”), in particular 606 C.M.R. § 7.07(13)(f), which provides that “[e]lectric fans, if used, must not be accessible to children.” This type of violation was not observed during

any of the previous visits to the TKD program.

(vii) Dry erase cleaner, disinfectant and liquid air freshener were left within reach of children in the classroom and bathroom the TKD program was using. *See* 606 C.M.R. § 7.07(13)(g) (“Educators must ensure that all hazardous objects, including but not limited to matches, lighters, toxic materials, sharp objects, plastic bags and purses are locked or inaccessible to children.”)

26(h). *Violations of physical facility requirements.* A shelf in the middle room used by the Program was not secured, in violation of 606 C.M.R. § 7.07(13). There was also a hole in the studio wall that Ms. Fry noted as a failure to keep equipment in good repair, in violation of 606 C.M.R. § 7.07(13).

26(j). *Additional requirements as to information, postings and staffing.* During the September 26, 2016 visit, neither the Program administrator (Master Lee, who arrived at 3:10 p.m.) nor the site coordinator (Ms. Han) were present when children began arriving at 2:35 p.m. The absence of a qualified administrator on site violated 606 C.M.R. § 7.04(17)(m)(8). (Fry direct testimony; Exh. 7: Letter, Marya Fry to Wonsam Lee dated Nov. 25, 2016; Letter, Diana Phillips, Regional Director, to Wonsam Lee dated Dec. 2, 2016; accompanying undated “visit narrative” for September 26, 2016 visit to TKD program; and “statement of noncompliance” dated Nov. 11, 2016 regarding September 26, 2016 visit).

27. In view of the violations that Ms. Fry observed on September 26, 2016, EEC became concerned, again, about the program’s ability to provide safe and quality child care. In separate letters, EEC Group and School Age Program Supervisor Renee Collyer and EEC Regional Director Diana Phillips informed Master Lee that he would be required to attend another regional enforcement

meeting at EEC's Southeast Cape Regional Office in Taunton, Massachusetts, on December 9, 2016, to discuss the program's failure to maintain compliance with applicable requirements and its licensing future. (Fry direct testimony; Exh. 7: Letter, Marya Fry to Wonsam Lee dated Nov. 25, 2016; Letter, Diana Phillips, Regional Director, to Wonsam Lee dated Dec, 2, 2016.)

28. During the December 9, 2016 enforcement meeting, EEC informed Master Lee that the TKD program's enrollment had been frozen as a sanction for repetitive instances of non-compliance identified during the September 26, 2016 visit;¹⁵ in addition, the program had to submit to the agency a list of the children who were already enrolled in it. EEC issued a written notice of the enrollment freeze sanction to Master Lee on December 13, 2016, and stated that EEC had authority to levy a civil fine if the enrollment freeze was violated. The notice included a statement of appeal rights, but US TKD did not appeal the enrollment freeze. (Fry direct testimony; Exh. 6: Notice of Sanction of Enrollment Freeze and Notice of Intent to Fine, signed by EEC Regional Director Diana Phillips and issued to Wonsam Lee, dated Dec. 13, 2016.)

Investigation Visit, March 22, 2017

29. On March 2, 2017, a person not identified in the record called EEC and alleged that

^{15/} The written notice referred to over-enrollment as a type of non-compliance identified during the September 26, 2016 visit. During that visit, however, Ms. Fry had found inaccurate attendance figures but not over-enrollment. (See Findings 25 and 26(b) above.) During the August 9, 2016 visit, Ms. Fry did not actually observe more than the 39 children the Program was allowed; instead, because the program was operating an unlicensed summer camp, and the number of children enrolled in the summer camp was unclear, she had noted the *possibility* that the combined enrollment of TKD's large group and school age program and the camp was over its allowed capacity. (See Finding 22(c) above.)

(a) the TKD program had a “green room” for discipline in which children were made to stay for 5-6 minutes in a position where they balanced on their knuckles on the floor while their feet were on chairs; (b) the program was over-enrolled and “hid” its extra children from licensing authorities in a “black room” inside a Chinese Restaurant at the same Fall River shopping plaza; and (c) a “master” was “too friendly” with the children in the “black room” and told one child that he loved her. Another unidentified caller alleged, on March 21, 2017, that (a) a child was injured at the program but the parents were not given an injury report form to complete; (b) the program rented out the China Star Restaurant in the shopping plaza; and (c) the “older children” were going to a “black room” in the restaurant. (Collyer direct testimony; Cavanagh direct testimony; Exh. 5: Investigation Report prepared by Renee Collyer regarding visit to TKD program on March 22, 2017, dated May 22, 2017, at 1-2.)

30. On March 22, 2017, EEC group and school age licensing program supervisor Renee Collyer and EEC licensor Deborah Cavanagh made an unannounced visit to the TKD program to investigate the allegations made by the callers. They interviewed Master Lee, Ms. Han, and two individuals who were serving as TKD program group leaders. They also reviewed the program’s children and staff files, staff schedule, transportation logs, medication logs, attendance records and program postings, and a “51A” investigation report prepared by the Massachusetts Department of Children and Families (DCF).¹⁶ Ms. Collyer and Ms. Cavanagh found a room in the back with a

^{16/} A “51A” report is a written report, by a person defined as a “mandatory reporter,” regarding the suspected abuse or neglect of a child. The report is filed with the Massachusetts Department of Children and Families (DCF). *See* M.G.L. c. 119, § 51A. The “51A” report in question is not in the record.

garage door and walls painted a light green color, but insufficient evidence that the room was used for disciplining children. The program staff they interviewed denied that children were disciplined as the caller had alleged, or by doing push-ups; instead, they stated, children enrolled in the Taekwondo program were given physical training instruction through drills that included push-ups, and that this was done to build respect and discipline. Ms. Collyer and Ms. Cavanagh interviewed three male staff employed by the program, but found no evidence in the DCF “51A” report, and insufficient evidence overall, that any of them had ever behaved inappropriately with the children. Ms. Collyer and Ms. Cavanagh also found no evidence that the program had violated EEC’s December 2016 enrollment freeze order. They also did not observe a “black room” in the space that the agency had licensed for use by TKD’s large group and school age program. Several staffpersons told them that although the TKD program also rented space at the China Star Restaurant, that space was used only by children who attended the Taekwondo class. Ms. Collyer and Ms. Cavanagh found that a child had tripped and fallen at the program but, according to program staff, no injury report was furnished to the parents because the child had sustained “barely a scratch.” (*Id.*)

31. Ms. Cavanagh went on to inspect the additional, unlicensed space that the TKD program appeared to be using.

(a) Ms. Cavanagh observed that the restaurant was at one end of the building that the TKD program used, and that the “main program” (meaning the TKD large group and school age program) was at the other end. At the restaurant end of the building, she found a door, approximately 6-8 doors down from the restaurant, with painted lettering that read “Open 3-8 Black Belt only. . . .” Above the door was a small sign that read “Suite 5.” EEC had not

licensed the use of this space by the TKD large group and school age program.

(b) Ms. Cavanagh entered Suite 5 through the door and found herself in a large room with a mat floor on which nine children were engaged in “karate activity” with one person. She asked the person at the suite’s front desk if there was a flyer for the activity in the suite, and was told that there wasn’t, and that the children in it “have to be Black Belt.” After leaving the suite and speaking with Ms. Collyer, Ms. Cavanagh returned to Suite 5 and was told, in answer to her questions, that the children in the suite arrived on the vans used by the TKD large group and school age program at around 3 p.m. and stayed until 4:30-5:00 p.m., when their parents picked them up, and that they were given a snack.

(c) On March 22, 2017, the snack provided in Suite 5 (crackers and juice) was the same snack that was served in the large group and school age program. Ms. Cavanagh also observed, in Suite 5, a five foot tall shelf filled with shoes that was unsecured; a large TV screen on the wall and a second, 24-inch TV that was not secured; two large speakers and what appeared to be a stack of video games; and a sectional couch with book bags piled on it, with children who were both on the couch and on the floor. There were two bathrooms, and a back door through which, she was told, children entered Suite 5 on rainy days. In a side entry area, Ms. Cavanagh found two unsecured ladders (20 and 12 feet long) leaning against a wall, as well as “a bucket with some sort of liquid,” two mops, and stacks of cardboard boxes.

(d) Ms. Cavanagh concluded that Suite 5 was being used by both the Taekwondo program and by the TKD large group and school age program, even though it was not

licensed for the latter use. She proceeded to the licensed TKD program space at the other end of the building, told Master Lee that the suite was unlicensed care space, and directed that this use cease as of the next day (March 23, 2017). According to Ms. Cavanagh, “there was a LOT of discussion on this” (her emphasis, in an email to Ms. Collyer regarding her visit), and that Master Lee “was swaying between not understanding, and giving reasons” about the suite’s use, including that it was used “by a different corporation,” although he stated that he owned it.

(e) Ms. Han showed Ms. Cavanagh a local building inspection certificate for Suite 5 on which its capacity was stated to be 49 persons, but this was for a business use generally, and did not show that the space was being used for child care or was appropriate for use as a child care facility. She then returned with Ms. Han to the suite, where they counted 17 children present. Ms. Cavanagh spoke with three parents at the suite who told her that their children either came to that space or to the “main school” where they took karate, and that they paid for their children at the “main school.” Before leaving, she and Ms. Collyer repeated to Master Lee that there was to be “no care in the unlicensed space” as of the next day, to which he replied by asking “when his (enrollment) freeze would be lifted.”

(Exh. 4: copy of email, Deborah Cavanagh to Renee Collyer dated May 22, 2017 regarding her March 22, 2017 visit to the TKD program; as to what the building inspection certificate did not show specifically as to Suite 5’s appropriate use, *see also* Exh. 1: EEC Provider Transaction History Report for US Taekwondo Education printed Jan. 12, 2018; noncompliance associated with May 22, 2017 visit at 2.)

32. Master Lee knew that EEC had not licensed the “black room” at the restaurant for use by the large group and school age program. His intention was to use the room for Black Belt students in the Taekwondo program, and did not perceive any problem if children enrolled in the large group and school age program who were also Black Belt students moved from that program to Suite 5 down the hall for Black Belt instruction. He had thought this would be a good way to accommodate parents whose children were enrolled in both programs. He understood, starting on March 22, 2017, that EEC wanted a complete physical and curricular separation of the Taekwondo program and the after-school large group and school age program, and that in the agency’s view, the students’ ability to travel from one program to the next down the same corridor of the same building showed that the two programs were not separated, as was the fact that he administered both programs. Master Lee did not want to discontinue the Taekwondo program, or cease being its administrator, because it was popular with the parents in the low-income community it served, and it was the only Taekwondo program in the area. (Lee direct testimony.)

33. During their March 22, 2017 visit, Ms. Collyer and Ms. Cavanagh also observed violations of EEC regulations that included incomplete or incorrectly-documented transportation logs; failure to provide a well-balanced curriculum of specific, planned learning experiences that supported the social, emotional, physical, intellectual and language development of all children; the availability to the children of inappropriate movies/videos and an Xbox game; violations of physical facility requirements; and the posting of an outdated allergy list that included a child who no longer attended the program. Based upon their observations, Ms. Collyer and Ms. Cavanagh concluded that “the license holder” (meaning US TKD, Inc.) “continues to fail to demonstrate and maintain the

ability to care for children entrusted to the program's care" and "continues to fail to soundly administer the program." Ms. Collyer prepared a report of her investigation, which mentioned the violations but did not list them individually or the EEC regulations they violated. (Collyer direct testimony; Exh. 4: copy of email, Deborah Cavanagh to Renee Collyer dated May 22, 2017 regarding her March 22, 2017 visit to the TKD program; Exh. 5: Investigation Report dated Mar. 22, 2017.)

34. Based upon Ms. Cavanagh's email and Ms. Collyer's report of the March 22, 2017 visit, EEC Regional Director Diana Phillips concluded that the TKD program had provided the agency with false and misleading information regarding its use of unlicensed space (Suite 5), and that the space was in fact being used by the program despite being unlicensed for that use. She was also concerned that the individual who appeared to be in charge within the unlicensed space was not licensed by EEC as a caregiver in the program, but had contact with program children. Ms. Phillips considered those factors and, as well, the program's licensing history, including the violations observed during the EEC staff visits, the program's varying success in correcting a number of its violations, and the enrollment freeze the agency had imposed. She concluded that, overall, the risk to children enrolled in the program outweighed the program's compliance success, and that consequently the program's provisional license should not be renewed. (Phillips direct testimony.)

Order to Protect Children, May 12, 2017

35. On May 12, 2017, EEC issued a sanction order to US TKD, Inc. based upon the violations observed during the March 22, 2017 visit. The order froze the program's enrollment, directed that TKD complete a licensing study and hire a consultant to assist with regulatory

compliance, and required that the program's director and staff attend a "School Age Child Care Environment Rating Scale" (SACERS) training. The Order also directed (at 5) that a redacted copy of it "must be posted in the Program in a location that is easily viewed by parents, visitors and employees until further written notice from EEC." (Exh. 17.)

Monitoring Visit, May 22, 2017

36. On May 22, 2017, Ms. Fry made an unannounced visit to the TKD program. The purpose of the visit was to determine whether the program had corrected the violations noted in EEC's May 12, 2017 Order to Protect Children, and, thus, whether the agency should renew the program's large group and school age license and, if it did so, whether the program's licensed capacity should remain frozen at 39 school-age children.

(a) Ms. Fry prepared a report (entitled "Statement of Noncompliance") regarding the violations she had observed during the May 22, 2019 visit to the TKD program (Exh. 1), and a "visit narrative" that included a synopsis of the program and a summary of the program activities that she had observed (part of Exh. 2.) The visit narrative stated that corrective action by the program was required within 14 days.

(b) Ms. Fry counted 16 children in the program's licensed space. Master Lee told her that 22 children were enrolled in the program. She also observed up to 17 school age children in Suite 5, along with three staffpersons. The staffpersons reported that this room was for Black Belt-level children only. On the glass front entrance to this space was painted "Open 3-8 p.m., Black Belt Only." They also reported that children were transported to Suite

5 by US Taekwondo vans, and that enrollment figures for the Black Belt program, and other program information, could be obtained from the U.S. Taekwondo Program's program administrator. Ms. Fry concluded that the TKD Black Belt program and large group and school age program were parts of the same program, as they had been on March 22, 2017; based upon this conclusion, Ms. Fry concluded further that the large group and school-age portion of the program was using unlicensed space (Suite 5) and had enrolled 17 new children, in violation of the enrollment freeze.

(c) Although she observed several improvements, including the service of a nutritious snack to the program children, Ms. Fry observed many violations she had observed previously during one or more of the visits she had made starting on August 28, 2015.

(d) TKD responded to the violations Ms. Fry listed in the report, and identified corrective measures it had already taken or that it proposed to take.

(Fry direct testimony; Exh. 1: EEC "Provider Transaction History Report," U.S. Taekwondo Education, printed Jan. 12, 2018; sections entitled "Noncompliance associated with Visits," Visit Date May 22, 2017, at 1-7 (including a statement of observed "noncompliances," and TKD Program's correction plan); and "Noncompliance associated with Investigation" dated Mar. 23, 2017, following visit of same date, at 32-24 (including statement of noncompliance observed, and TKD Program's correction plan); Exh. 2: Letter, Diana Phillips, Regional Director, to Wonsam Lee dated Jun. 8, 2017; and accompanying undated "visit narrative" for May 22, 2017).

37. During her May 22, 2017 visit, Ms. Fry did not observe incomplete program volunteer documentation, curriculum-related deficiencies, indoor space and play area violations, violations

related to health, safety, personal hygiene and sanitation, child transportation-related violations, violations of emergency preparedness requirements, or violations of additional requirements as to information, postings and staffing.¹⁷ The violations that Ms. Fry observed during her May 22, 2017 visit to the TKD program and identified in her report, and the program's responses, were as follows:

37(b). *Incomplete children's records.* The Studio 5 staff stated that they had no attendance records for the children present in that space, and that this information was kept in the main space (meaning the licensed space used by the TKD program). However, the administrators at the main site did not have an attendance record showing the arrival or departure time for the children in Studio 5. This violated 606 C.M.R. § 7.04(4)(a)(1), which required that the licensee maintain complete and accurate accounts, books and required records, including daily attendance records indicating each child's attendance, including arrival and departure times. The program administrator and staff had no method by which they would know which children enrolled in the program were present on the premises, whether in the licensed or unlicensed space, at any particular time, as 606 C.M.R. § 7.04(4)(a)(2) required.

As to this violation, the program responded that the Studio 5 space was closed on May 23, 2017, and was not used afterward; in addition, the site coordinator (Ms. Han) planned to hold regular meetings with the staff, and to discuss attendance policy and

^{17/} There are, as a result, no Findings 37(a), (c), (d), (f), (g), (i) or (j). Although Ms. Fry noted a failure to post EEC's earlier sanctions order during the May 22, 2017 visit, this was not a violation of additional requirements regarding information, postings and staffing. Ms. Fry reported the violation, instead, as failure to post a sanctions order. See Finding 37(m) below).

requirements, and their importance, during the June 2017 staff meeting.

37(e). *Inadequate child supervision by qualified, supervised staff.* During her May 22, 2017 visit, Ms. Fry noted the following violations regarding staff records, experience, qualification, references and documentation of staff observation and conferences:

(i) Of six staff files that Ms. Fry reviewed, two of them were for persons listed as group leaders, and neither of those included evidence of experience working with school age children. One file was for an assistant site coordinator who had experience teaching Taekwondo in another state, but it was not clear whether that had been a licensed program. This did not comply with the staff record requirements of 606 C.M.R. § 7.04(18)(d)(requiring that the licensee maintain, on site, copies of licenses, certifications, and registrations held by all regular staff) or the educator qualification requirements of 606 C.M.R. § 7.04(9)(2)(“licensee must employ educators and volunteers who, by prior education, training, experience . . . are qualified to meet the needs of children enrolled and who meet the qualifications for their respective positions.”)

(ii) Of six staff files reviewed during the visit, one did not have evidence of verbal reference verifications, as 606 C.M.R. § 7.04(18)(c) required; five had no documentation of bimonthly observations and conferences since January 2017, which did not comply with the requirements of 606 C.M.R. § 7.09(17)(b) as to ongoing staff supervision and observation on a regular basis, with documentation.

(iii) One driver did not have a copy of her school pupil transport certificate, or documentation that she had passed a required written test, in her staff file, as required by 606 C.M.R. § 7.04(5)(b).

As to this type of violation, the program responded that each of its group leaders had evidence of prior experience that qualified them for this position and, as well, to meet the needs of children enrolled in the TKD program, including working at a Taekwondo program in a different state, and had completed SACERS (“school age child care environment rating scale”) training, and each had a SACERS certificate in a staff file.

37(h). *Violations of physical facility requirements.* During the May 22, 2017 visit

Ms. Fry observed, in Studio 5, violations of safety requirements for indoor space used by large group and school age programs, and for equipment, materials and furnishings, *see* 606 C.M.R. § 7.07(13). Ms. Collyer and Ms. Cavanagh had observed these violations in Studio 5 during their March 22, 2017 visit, although they did not prepare a report of observed instances of noncompliance as Ms. Fry had done for her previous visits (*see* Finding 31): a five foot tall shelf filled with shoes that was unsecured; a 24-inch television that was not secured; two unsecured ladders (20 and 12 feet long) that were leaning against the wall and were not secured; unsecured stacks of cardboard boxes; and a bucket containing an unknown liquid and two mops.

The Program's response with respect to this type of violation was that it had closed the Studio 5 space on May 23, 2017 and was no longer using this space, although it wanted to consider using it as part of its licensed space at a future date.

37(k). *Use of unlicensed space for child care without notifying EEC.* Based upon her conclusion that the Black Belt Taekwondo program and the TKD large group and school age program were not separated and were part of the same program, Ms. Fry also concluded that the TKD program was using unlicensed space (Studio 5) for child care, and had failed to notify the agency that it was doing so, in violation of 606 C.M.R. § 7.04(15)(e) and (f)(both regulation subsections: large group and school age program licensee must notify EEC at least 30 days prior to any change in the space used by the program, when possible or, if not possible, by telephone immediately upon learning of an impending space use change). Ms. Fry had not observed this violation during any of the visits between August

28, 2015 and September 26, 2016. Ms. Collyer and Ms. Cavanagh had observed this violation during their March 22, 2017 visit, but had not prepared a noncompliance report listing this (or any other) violation.

TKD program's response was that it was not aware of the written notification requirement, but that in the future, it would notify EEC of "any program changes" at least 30 days in advance, or would seek clarification of its notice responsibilities by emailing or faxing Ms. Fry.

37(l). *Enrollment freeze violation.* Based upon the same conclusion, Ms. Fry concluded, as well, that the 17 children she observed in Studio 5 were additional children who were enrolled in the TKD program after EEC issued its May 12, 2017 sanction order freezing enrollment.) Ms. Fry identified this as a violation of the enrollment freeze. She described this not as noncompliance with a particular regulation but, rather, as a ground for denying the renewal of the TKD program's license, *citing* 102 C.M.R. § 1.07(4)(a)(1)(providing that EEC may make probationary, suspend, refuse to renew, revoke, or refuse to issue a license if the license holder failed to comply with (among other things) any notice of sanction.)

The program's response to this violation was (as it had been with respect to the physical facility violation; *see* Finding 37) that it had closed the Studio 5 space on May 23, 2017 and was no longer using this space, although it wanted to consider using it as part of its licensed space at a future date.

37(m). *Failure to post sanction order.* Upon arriving for her visit on May 22,

2017, Ms. Fry did not see EEC's May 12, 2017 order to protect children posted anywhere at the TKD program. This violated the requirement of 102 C.M.R. § 1.09(2)(a) that "[e]very licensee shall post in a conspicuous place any current license or approval issued" by EEC "and any . . . notice of sanction, order or decision . . . that pertains to the program or facility," and that "[s]uch posting shall be in an area easily viewed by visitors and employees.") At Ms. Fry's request, the order was posted on the program's front (or "parent") bulletin board. The program noted this posting in its response.

37(n). *Providing false and misleading information to EEC.* Based upon her conclusion that the Black Belt Taekwondo program and the TKD large group and school age program were not separated and were part of the same program, Ms. Fry concluded that the program had provided false and misleading information to EEC regarding the program's use of unlicensed space (Suite 5), the identity of the children in Suite 5, and their enrollment in the program. Ms. Fry identified this not as the violation of a particular regulation, but as a ground for sanctioning the TKD program, *citing* 102 C.M.R. § 1.07(4)(a)(3)(EEC may sanction an applicant or licensee who "submitted any misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00 by, among other things, refusing to renew or issue a license).

The program responded that it did not intend to mislead EEC regarding the use of the Studio 5 space, that it had only wanted to use the space to provide additional Taekwondo classes, which were not attended by students receiving EEC vouchers, and that it had hired a consultant (Donna Jasak) to assist the program with remaining in compliance and

improving the TKD program.

37(o). *Employee background check-related violation.* Ms. Fry found no evidence that a staff member working with children in Studio 5 had a completed background record check, as required by 102 C.M.R. § 2)(a) for each person employed by the licensee who had the potential for unsupervised contact with children.

37(p). *Failure to provide positive behavior guidance to children.* Ms. Fry noted that on several occasions, children had been disciplined by having them get into a “push-up stance” and stay there, and that children had also been yelled at for their misbehavior. These occurrences confirmed the accuracy of information EEC had received in early March 2017 regarding the discipline of children attending the TKD program (*see* Finding 29.) These forms of discipline were noted by Ms. Fry as not complying with the requirement of 606 C.M.R. § 7.05(5)(a) that educators in licensed programs “must provide guidance to children in a positive and consistent way based on an understanding of the individual needs and development of children,” through the use of techniques the regulation listed, none of which involved physical abuse or yelling.

The program’s response was that US TKD had “revised its positive behavior plan and is no longer using yelling as a way to encourage positive behavior.” In addition, all staff were participating in training by its consultant (Donna Jasak) to promote positive behavior, which would be completed by July 30, 2017.

(Exh. 1: EEC “Provider Transaction History Report,” U.S. Taekwondo Education, printed Jan. 12, 2018; section entitled “Noncompliance associated with Visits,” Visit Date May 22, 2017, at 1-7

(including statement of noncompliance observed, and TKD program's correction plan.)

38. On May 23, 2017, a day after Ms. Fry's visit, TKD hired Donna Jasak, an independent early education consultant with 20-25 years of experience in operating and managing preschool and after-school programs in EEC's administrative regions in Massachusetts, and in assisting those programs with grant-writing. Her task was to assist the TKD program in complying with the EEC regulations, make recommendations to Master Lee and Ms. Han regarding program curriculum and staffing, and comply with EEC's request that the program participate in the QRIS ("Quality Rating and Improvement System") program.¹⁸ Ms. Jasak reviewed the program's children and staff files, created a compliance binder for the program, ran a workshop for program staff on the program and its operation, and worked with the program to implement the use of SACERS ("school age child care environment rating scale") as EEC had directed over a year earlier, when it issued the program a second provisional license (*see* Finding 20 above).¹⁹ The term of Ms. Jasak's consultancy with the program was one year, until May 22, 2018. (Jasak direct testimony and answers to questions by the Administrative Magistrate.)

39. Based upon the TKD program's history of what EEC determined were serious instances of noncompliance with regulatory requirements and the agency's orders, in particular the May 12, 2017 sanctions order, and the noncompliance findings that were observed during the May

¹⁸/ As to the QRIS program, *see* above at 30 n. 10.

¹⁹/ Ms. Han, TKD program's site coordinator, had believed that the program was not required to hire a consultant after EEC rejected three proposed candidates, unless and until the agency directed that the program do so. (Han cross-examination.) She was partially correct—in issuing the program a second provisional license, EEC agreed to defer requiring that the program hire a consultant unless and until it proposed an increase in its school-age child capacity. (*See* Finding 20 above.)

22, 2017 visit to the program, EEC decided that it would not renew the program's group and school age license. (Phillips direct testimony and cross-examination.) That license had remained provisional following the issuance of the second provisional license on April 7, 2016 and the enrollment freezes EEC had ordered on January 13, 2016 and February 15, 2017, which EEC had kept in place when it issued its sanctions order on May 12, 2017.

40. On August 1, 2017, EEC denied the renewal of TKD's large group and school age license pursuant to M.G.L. c. 15D, § 10 and 102 C.M.R. § 1.07(3) and (4). It did so based upon violations that its licensing staff had observed when it visited the TKD program between August 28, 2015 and March 13, 2017, including the program's use of unlicensed space; violations related to child transportation (including transporting children for longer than 45 minutes and incomplete child transportation logs); record-keeping violations (among them, having outdated child medical records, not having first aid and emergency consents from parents, failure to maintain a current allergy list for children in the program, not training staff on the program children's respective allergies and medications, and failing to complete a child injury report); and unsound program administration, examples of which included the lack of a well-balanced curriculum, and allowing children in the program to access inappropriate movies and video games. EEC also based its refusal to renew TKD's license upon its failure to comply with the agency's prior order, issued on May 12, 2017, requiring specific action to correct these violations, including hiring a consultant to assist TKD with regulatory compliance and program improvement, and having the program director and staff attend training to improve program operation and improvement. The prior order had warned TKD that further noncompliance with the order or with EEC's regulations could result in license

revocation, suspension or non-renewal, or a different sanction that the agency deemed appropriate. (Exh. 18: EEC's August 1, 2017 decision was entitled "Order to Protect Children: Notice of Refusal to Renew Group and School Age License and Notice of Intent to Fine," dated Aug. 1, 2017.)

41. TKD timely appealed EEC's decision on August 16, 2017. It denied intentionally operating its program in an unlicensed space, attributing the use of such space to the program director's belief that he could simultaneously operate a program for children on a waiting list for enrollment in the TKD program. TKD claimed to have attempted correcting the alleged violations by (1) hiring a program consultant and increasing the frequency with which she monitored the program, updating the program's attendance system; (2) transferring program administrator and director duties to others who met EEC requirements for an after-school child care program site coordinator; and (3) changing staffing assignments to assure compliance with EEC child transportation policy. TKD also claimed that the program's staff members attended the school age child care environment rating scale (SACERS) training in January 2017, before EEC had issued its May 12, 2017 order, and that the training program had emailed the completion certificates to EEC on February 6, 2017. TKD's appeal also listed steps it intended to take regarding curriculum improvement and limiting child access to movies and computer games. (Exh. 19: TKD Notice of Claim dated Aug. 16, 2017, and attached letter.)

42. EEC transferred the appeal to DALA for adjudication on September 1, 2017.

Discussion

1. Enforcement Options and Applicable Standards

EEC has several enforcement options when it determines that a program or facility providing licensed child care is not complying with its regulations:

(1) *It may issue a “deficiency correction order” directing that the program correct “noncompliances” (violations) the order identifies.* The order must include a statement of the agency’s observations and the regulations that the program’s violations violated, and may prescribe the methods of complying with the regulations and a reasonable time for doing so. *See* 102 C.M.R. § 1.07(1). Based upon the regulatory description of this option, EEC’s reports on the observations made during the visits to TKD program between August 28, 2015 and May 22, 2017, together with the cover letters that accompanied them, were “deficiency correction orders.” EEC availed itself of this enforcement option on eight occasions during that time period, identifying, following a visit to the program, what violations it observed, and (beginning with its report following the second visit on October 19, 2015) which violations had been corrected or had been repeated since the previous visit or visits, and, as to the current or ongoing violations, what EEC regulations or policies were violated. The reports also directed that the program identify how it had corrected, or would correct, the violations. (*See* Findings 7, 11, 14, 15,19, 22, 25 and 36 above.) It is not clear whether the program responded on prior occasions; the copies of Ms. Fry’s reports of visits conducted before May 22, 2017 that are in the record do not include responses next to each identified violation. However, the program responded to the violations identified in Ms. Fry’s report of her May 22,

2017 visit, and the responses included corrective action the program had already taken or proposed to undertake. Stated another way, EEC identified the program's violations in detail, and offered the program an opportunity to correct them each time it mailed a copy of Ms. Fry's report and visit narrative to Master Lee—eight times over a period of more than 21 months—before it formally refused to renew the program's provisional license to operate a large group and school age program. That said, EEC also opted to issue a second provisional large group and school age license to TKD in April 2016, in view of apparent and promised improvements, rather than to refuse a license at that time.

(2) *EEC may also issue a sanction or fine for the violations it observes.* Sanctions that EEC may impose include, but are not limited to, ceasing the program's enrollment of new children, reducing the number of children enrolled in the program, ordering that the program hire a consultant to provide technical assistance and/or training, and ordering the program to hire additional staff on a temporary or permanent basis. *See* 102 C.M.R. § 1.07(3). Before imposing a sanction or fine on a licensed child care program, EEC must consider the “noncompliances” themselves, the risk they “present to the health, safety and welfare of children,” “the nature, scope, severity, degree, number and frequency of the noncompliances,” the licensee's failure to correct them, “any previous noncompliances,” and “any previous enforcement action(s).” *See* 102 C.M.R. § 1.07(2). In this case, EEC employed the sanction option twice, on January 27, 2016 (*see* Finding 17 above) and on May 12, 2017 (*see* Finding 35 above), in each instance freezing TKD program's enrollment and prohibiting it from enrolling new children in the program after considering the program's observed violations and their nature, scope, severity, degree, number and frequency, their prior occurrence,

and whether or not the program had corrected previously-noted violations. Although it is not clear whether it also considered specific risks these violations presented to the health, safety and welfare of the children in the program, the program did not appeal either of the sanction orders. Here, it has contested their occurrence only to the extent of professing confusion or misunderstanding as to what the applicable regulations required the program to do or avoid doing. What is worth emphasizing, however, is that although EEC was not required to exhaust less drastic enforcement options before taking action against TKD's license, EEC employed two such options initially—sanctions (twice) and deficiency correction orders (eight times)—before it formally refused to renew the program's provisional license to operate a large group and school age program.

(3) *EEC may also take action with respect to the program's license itself. See 102 C.M.R. § 1.07(4)(a)* (“Probation, Suspension, Revocation, and Refusal to Issue or Renew Licenses and Approvals”). This action includes refusing to issue or renew a license or approval. 102 C.M.R. § 1.07(4)(a) provides in pertinent part that EEC:

“may make probationary, suspend, refuse to renew, revoke, or refuse to issue a license or approval if it finds any of the following:

1. the applicant or licensee failed to comply with any applicable regulation, or any deficiency correction order, notice of sanction, suspension, agreement or terms of probation . . .

3. the applicant or licensee submitted any misleading or false statement or report required under 102 CMR 1.00 through 8.00 *et seq.* . . .

or

6. the applicant or licensee failed to obtain a license prior to opening a program or facility or prior to changing the location of a program or facility.

Per the plain language of 102 C.M.R. § 1.07(4)(a), each of these grounds furnishes an

independent basis for refusing to renew, or take other action with respect to, the program's child care program license.

The regulations explain the effect of a refusal to renew a license (or any of the other actions that subsection (a) allows EEC to take with respect to a license or approval) thus:

1. Upon revocation, refusal to renew, or suspension, the licensee shall immediately return the license or approval to the [EEC] Office [of Child Care Services] and cease providing service.
2. An Applicant or licensee shall not qualify for a license or approval from the Office for five years after a final agency decision to revoke or refuse to issue or renew a license or approval . . . Thereafter, an applicant or licensee shall be eligible only if he/she can demonstrate a significant change in circumstances.
3. The Office may, at its sole discretion, entertain an application for approval or licensure prior to the expiration of five years, if it determines that a significant change in circumstances has occurred. Such exercise of discretion shall not be appealable.

102 C.M.R. § 1.07(b)(1)-(3).

2. Refusal to Renew License: Grounds and Justification

The main issue to be decided here is whether EEC properly denied the renewal of TKD's large group and school age license, pursuant to M.G.L. c. 15D, § 10 and 102 C.M.R. § 1.07(3) and (4), based upon the violations alleged in the agency's August 1, 2017 Order (*see* Finding 40 above). The subsidiary issues as to proper license renewal denial are whether the violations alleged in the August 1, 2017 Order occurred and, if so, whether each alleged violation was an independent ground for refusing to renew the TKD program's large group and school age license.

The short answer to this last question is "yes." Based upon the plain language of 102

C.M.R. § 1.07(4)(a), each alleged violation shown to have occurred is an independent ground for refusing license renewal. That said, not all of the occurrences alleged here need have actually occurred for EEC to have properly refused to renew the TKD program's license under 102 C.M.R. § 1.07(4)(a).

The short answer with respect to the occurrence of the violations is also “yes,” with the exception of the allegedly false and misleading statements of program enrollment and space use during the May 22, 2017 visit, because it is not clear that the oral statements in question violated 102 C.M.R. § 1.07(4)(a)(3).

a. Violations Recommended as Grounds for Not Renewing the License

From Ms. Fry's first visit to the TKD program on August 28, 2015, to her final visit on May 22, 2017, she (and, on several occasions, other EEC staff) observed many individual “instances of non-compliance” with the agency's regulations, several of them on multiple occasions. Some were corrected, only to reappear during subsequent visits. Several were not observed during that final visit. Those noted during the May 22, 2017 visit (with the exception of providing false and misleading statements to EEC, for the reasons given below) furnish sufficient independent grounds for refusing to renew TKD program's large group and school age license.

Ms. Fry made eight visits to the TKD program between August 28, 2015 and May 22, 2017. For each of these visits, Ms. Fry prepared a report (“Statement of Noncompliance”) regarding the violations that she (any other EEC who accompanied her during several of the visits) had observed. Each visit revealed one or more failures by the program to comply with EEC's applicable

regulations. There was a pattern of repeated violations, most seemingly corrected by the fourth visit on March 28, 2016, only to appear again during subsequent visits, including the last visit on May 22, 2017, along with several new types of violations.

The attached *Appendix* shows this pattern. Most of the types of violations that Ms. Fry's reports noted during the visits on August 28, 2015, October 19, 2015, December 15, 2015 and/or January 13, 2016 were observed to have been corrected during the March 28, 2016 visit—these were the “instances of noncompliance” that I have categorized in both the Findings and the *Appendix* as incomplete program volunteer documentation (Finding 7(a) above); incomplete children's records (Findings 7(b), 10(b), 13(b) and 16(b) above); curriculum-related deficiencies (Findings 7(c) and 16(c) above); indoor space and play area violations (Findings 7(d) and 13(d) above); inadequate child supervision by qualified, supervised staff (Findings 7(e), 10(e), 13(e) and 16(e) above); violations related to health, safety, personal hygiene and sanitation (Findings 7(f), 10(f), 13(f) and 16(f) above); child transportation-related violations (Findings 7(g), 10(g), 13(g) and 16(g) above); and violations of emergency preparedness requirements (Finding 16(I) above). One type of violation observed during the August 28, 2015 visit that was not noted during the three subsequent visits (incomplete program volunteer documentation) had reappeared, and was observed, during the March 28, 2016 visit (*see* Finding 19(a) above). Another violation, first noted during the January 13, 2016 visit, was observed again during the March 28, 2016 visit (violations of physical facility requirements, including temperature and unsecured shelving; *see* Findings 16(h) and 19(h) above). Another violation was noted for the first time during the March 28, 2016 visit—information, postings and staffing-related violations (*see* Finding 19(j) above).

Several violations that appeared to have been corrected as of the March 28, 2016 visit were again noted during subsequent visits, however, and were also observed during the final visit on May 22, 2017. Those observed again during that final visit were:

- (1) Incomplete children's records (*see* Finding 37(b) above; as to observations of this violation type during prior visits to the program, *see* Findings 7(b), 10(b), 13(b), 16(b), 23(b) and 26(b) above);
- (2) Inadequate child supervision by qualified, supervised staff (*see* Finding 37(e) above; as to observations of this violation type during prior visits to the program, *see* Findings 7(e), 10(e), 13(e), 16(e), 23(e) and 26(e) above); and
- (3) Violations of physical facility requirements, including temperature and unsecured shelving (*see* Finding 37(h) above; as to observations of this violation type during prior visits to the program, *see* Findings 16(h), 19(h), 23(h) and 26(h) above.²⁰

²⁰/ Violations that were observed during visits prior to May 22, 2017 but *not* during the final visit on May 22, 2017 were:

- (1) Incomplete program volunteer documentation (as to observation during visits prior to May 22, 2017, *see* Findings 7(a), 19(a) and 23(a) above);
- (2) Curriculum-related deficiencies (as to observation during visits prior to May 22, 2017, *see* Findings 7(c) and 16(c) above);
- (3) Indoor space and play area violations (as to observation during visits prior to May 22, 2017, *see* Findings 7(d), 13(d), and 26(d) above);
- (4) Violations related to health, safety, personal hygiene and sanitation (as to observation during visits prior to May 22, 2017, *see* Findings 7(f), 10(f), 13(f), 16(f), 23(f) and 26(f) above);
- (5) Child transportation-related violations (as to observation during visits prior to May 22, 2017, *see* Findings 7(g), 10(g), 13(g), and 16(g) above);
- (6) Violations of emergency preparedness requirements (as to observation during visits prior to May 22, 2017, *see* Findings 16(i) and 23(i) above); and
- (7) Information, posting and staffing-related requirements (as to observation during visits prior to May 22, 2017 *see* Findings 19(j), 23(j), and 26(j) above.)

The May 22, 2017 visit also revealed several new types of violations that had not been observed previously:

- (4) The use of new, unlicensed space by the TKD program (Studio 5) without notice to EEC (*see* Finding 37(k) above);
- (5) Violation of the enrollment freeze that EEC imposed in its May 12, 2017 sanction order (*see* Finding 37(l) above);
- (6) Failure to post the sanction order (*see* Finding 37(m) above);
- (7) An employee background check-related violation (*see* Finding 37(o) above); and
- (8) Failure to provide positive behavior guidance to children (*see* Finding 37(p) above).

Another new violation that EEC noted during the May 22, 2017 visit was providing false and misleading information to the agency regarding the TKD program's use of unlicensed space (Studio 5). (*See* Finding 37(p) above).

Violating the enrollment freeze imposed by sanction order was a particularly significant ground for refusing to renew the license, as this violated the provisional license itself. Enrollment under TKD program's provisional license was limited to 39 school-age children, and EEC had declined the Program's request to increase this licensed capacity. (*See* Finding 15: during their January 13, 2016 visit to the Program, Ms. Fry and Ms. Collyer counted 41 children present, two more than the program's licensed school-age child capacity). After the May 12, 2017 froze enrollment at 39 school-age children (Finding 17), Ms. Fry was unable to determine, during her May 22, 2017 visit, how many children were enrolled in Suite 5 separate and apart from enrollment in TKD's licensed large group and family child care program, and whether the licensed program's enrollment included the children who were in Suite 5. Circumstances that included the ambiguity

of the enrollment and attendance records, the physical proximity of the two programs in the same building down the hallway from each other, and the fact that Master Lee administered both of them, suggested reasonably to Ms. Fry that the 17 children in Suite 5 were new or additional TKD program children who were enrolled in violation of the May 12, 2017 sanctions order's enrollment freeze. (*See Findings 36 and 37(b) above.*)

Aside from the alleged provision of false and misleading information, which I address below, the occurrence of each of the other violations observed during the last visit on May 22, 2017 (*see 69-71 above*) was not genuinely disputed, and their occurrence has been proven sufficiently. Each is an independent ground for declining to renew TDK program's large group and school age program license. I recommend that the refusal to renew the license be made final based upon these violations. These are identified by type and by Finding number in the right-hand column of the Appendix (*see also Findings 37(b), (e), (h), (k), (l), (m), (o) and (p) above*). Doing so is commensurate with the type of violations in question, particularly since EEC issued a second provisional license to TKD program, conditioned upon the correction of previous violations (several of which were corrected by, or were not observed during, the final visit on May 22, 2017), and also because EEC initially imposed less drastic enforcement measures to bring about the correction of these violations and compliance with regulatory requirements.

b. Violations Not Recommended as Grounds for License Non-Renewal

i. Other Violations Observed Before, But Not During, the Last Visit

It is unnecessary to add, as grounds for license non-renewal, the other types of violations

that were noted during previous visits but were not noticed during Ms. Fry's last visit on May 22, 2017. Doing so is unnecessary, particularly since EEC did not elect to terminate TKD's license or decline to renew in on those grounds prior to the May 22, 2017 visit. Indeed, EEC issued a second provisional license to the program in early 2016 based upon the expected correction of previous violations (*see* Finding 20 above), several of which were not observed again during the final EEC visit to the TLKD program on May 22, 2017. It makes no sense to recommend finalizing the license non-renewal based upon violations that appeared to have been corrected by the last agency visit.

For these reasons, I do not recommend that the denial of license renewal be based upon the additional violations that were observed prior to, but not during, the final visit on May 22, 2017.

ii. False and Misleading Statements

EEC based its refusal to renew TKD's provisional license in part upon allegedly false and misleading statements that TKD's administrators allegedly made to agency staff regarding the number of children enrolled in the program during the January 13, 2016 visit (*see* Finding 15 above), and during the May 22, 2017 visit, as noted above. (EEC Order to Protect Children, dated Aug. 1, 2017, at 11-12.) In doing so, EEC cited 102 C.M.R. § 1.07(4)(a)3, which allows the agency to refuse license renewal if it finds that the licensee "submitted any misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00." As the appeal progressed, EEC placed more emphasis upon the allegedly false and misleading statements made during the May 22, 2017 visit as the factual basis for refusing license renewal based upon the submission of false and

misleading statements. Even with both instances of misleading and false statements considered, however, it is important to keep in mind that the statements in question were oral, and that the ground for basing license renewal refusal upon those statements is the misconduct that 102 C.M.R. § 1.07(4)(a)3 identifies—“submitt[ing] any misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00 *et seq.*”

The questions presented as to this ground for license non-renewal are, therefore, (1) whether in making any of the oral statements in question, TKD staff “*submitted* any . . . statement” per 102 C.M.R. § 1.07(4)(a)3; and (2) whether “any” misleading or false statement made by the licensee, whether oral or otherwise, is a ground for refusing license renewal under 102 C.M.R. § 1.07(4)(a)3, or whether the false or misleading statement must be one that is “required under 102 C.M.R. 1.00 through 8.00”

(1) “*Submitted any . . . statement.*” It is unclear whether “statement,” as used in this phrase, includes oral as well as written statements. 102 C.M.R. § 1.07(4)(a)3 does not define “statement,” and nor does it add any qualifying language after the word “submitted,” as it could have, such as “whether oral or written.” “Statement” is also not defined at 102 C.M.R. § 1.02, the “definitions” section of 102 C.M.R. § 1.01 *et seq.*

Considered alone, and as unqualified by the regulatory language that follows, “submitted,” as 102 C.M.R. § 1.07(4)(a)3 employs this term, might be read broadly as encompassing oral as well as written statements or reports. As a matter of common language use, however, it is somewhat awkward to refer to making an oral statement to someone during conversation as “submitting” an oral statement; stated another way, describing words spoken to another as “the submission of a

statement” to that person is extraordinarily uncommon usage, making their conflation contrary to the reasonable construction of words and phrases. As a result, it is unlikely that a person working for a licensed large group and school age program would know that he or she was “submitting an oral statement” by speaking with an EEC staffperson or answering the staffperson’s questions orally.

In the context of legislative drafting, “submitted” is more often used to refer to written materials (for example, evidence, motions and briefs, in the adjudicatory context, and applications to agencies for licensing or other forms of approval, in the regulatory context) rather than to oral statements, and functions as a synonym for “filed.” *See, e.g.*, alternative definitions of “submit” including “to give or offer something for a decision to be made by others,” with two examples: “You must submit your application before 1 January,” and “[t]he developers submitted building plans to the council for approval.” *Cambridge Dictionary*, online Ed. (undated; retrieved Sept. 12, 2019), <https://dictionary.cambridge.org/dictionary/english/submit>. In the legislative context, the verb “making” is generally used in conjunction with oral statements, and to indicate that oral statements are within the scope of proscribed conduct, particularly statements made to public officials that are false or misleading. *See, e.g.*, 18 U.S.C. § 1001(a)(2), the federal “False Statements” statute (providing that any person who “*makes* any materially false, fictitious, or fraudulent statement or representation” in “any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States,” shall be punished by fine and/or imprisonment as the statute directs), and *Brogan v. United States*, 522 U.S. 398 (1998) (conviction for violating 18 U.S.C. § 1001(a)(2) affirmed; defendant falsely answered “no” when

federal agents asked him whether he had received any cash or gifts from a company whose employees were represented by the union in which he was an officer, and this violated the statute even though the false statement consisted of a mere two-word denial of wrongdoing, the so-called “exculpatory ‘no’.”)

Closer in context here, M.G.L. c. 15D, the statute under which EEC is designated as the lead Commonwealth agency for administering and providing early education and care programs and services to children (*see* Finding 1), provides in pertinent part that EEC may refuse to issue or renew a license to a person who “*furnishes or makes* any misleading or false statements relative to any submission required under the rules and regulations” M.G.L. c. 15D, § 10 (emphasis added.) With the inclusion of the word “makes,” misleading or false oral statements are brought within the statute’s purview even if such statements might not fall clearly within the purview of statements that are “furnished,” although the language that follows add a qualifying element—the statement must be “relative to any submission required under the rules and regulations.” The difference effected by including the word “makes” in section 10 is, in good measure, a function of common understanding and usage. As statements made orally in the course of conversation are not generally understood to have been “submitted” to the person with whom one speaks, so, too, oral statements are not generally understood to have been “furnished” to the person with whom one speaks—at least not unless the person speaking is told that what he or she says will be deemed to have been “submitted” or “furnished,” rather than merely said or bantered-about in the course of conversation, or unless a statute or regulation clearly says that speaking words is “submitting” or “furnishing” them to the other conversationalist.

The same principles are applied usefully in construing the regulation at issue here, 102 C.M.R. § 1.07(4)(a)3. In contrast with M.G.L. c. 15D, § 10 and statutes that criminalize the making of false and misleading statements such as 18 U.S.C. § 1001(a)(2), 102 C.M.R. § 1.07(4)(a)3 uses only the verb “submitted” with respect to “false or misleading statement or report,” rather than the phrase “submitted or made.” The verb “made” would tend to clarify that the false or misleading statements in question may be oral ones, in view of common usage according to which oral statements are understood as having been “made,” rather than “submitted.”

Absent any clarifying definitions or additional verbs such as “made,” then, it is not clear that the oral statements by TKD staff to EEC staffpersons regarding the use of unapproved space for the TKD program during the two visits in question were “submitted” statements, per 102 C.M.R. § 1.07(4)(a)3.

(2) *“Any misleading or false statement,” or “any misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00.”* The difference between these two phrases is that the former is very broad, encompassing any misleading or false statements, whether or not required by 102 C.M.R. 1.00 through 8.00, while the latter is a narrower universe of statements. The difference comes down to a comma, or, rather, to the absence of one before the phrases “false statement and report” and “or report required” With a comma in place, there would be two independent clauses, each describing a different universe of misconduct that EEC could sanction under 102 C.M.R. § 1.07(4)(a)3, one of them being “any misleading or false statement” by the licensee, regardless of whether its “submission” was “required under 102 C.M.R. 1.00 through 8.00.” However, the regulation includes no such comma between the two phrases. As written,

there is one operative phrase— “misleading or false statement or report required under 102 CMR 1.00 through 8.00.” Therefore, the misleading or false statement (or report) in question must be one that 102 C.M.R. 1.00 through 8.00 requires; it cannot be read properly as distinguishing misleading or false statements in general from those that 102 C.M.R. 1.00 through 8.00 require.

It is not clear that what any of the TKD staffpersons told Ms. Fry during the March 16, 2016 or May 22, 2017 visits was, per 102 C.M.R. § 1.07(4)(a)(3), the submission of “misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00.” The statements or reports that are required by 102 C.M.R. 1.00 through 8.00 are written ones, as follows:

- (a) Applications to EEC for licenses and approvals, *see* 102 C.M.R. § 1.03; *see also Dep't of Early Education and Care v. Schofield*, Docket No. OC-18-0455, Recommended Decision (Mass. Div. of Admin. Law App., Jan. 22, 2019)(family child care license application was properly denied because applicant had previously operated a child care program and opened a child care facility without a license from EEC, and because on her application, she made a misleading or false statement in answering “no” to the question “[h]ave you ever had previous involvement with EEC due to unlicensed child care,” and EEC had previously issued to her three orders directing her to immediately cease and desist from providing unlicensed childcare to unrelated children at her home);
- (b) A program’s records and information required by “any [EEC] regulations governing such programs,” *see* 102 C.M.R. § 1.06(3);
- (c) A plan for compliance required by a report by EEC of non-compliance identified during a visit to the program, *see* 102 C.M.R. § 1.06(4);
- (d) Notifications by the program to parents of enrolled children and to all funding agencies of any suspension of the program’s license or approval, per 102 C.M.R. § 1.07(5); and
- (e) Documents that EEC must be allowed to review during follow-up enforcement visits, *see* 102 C.M.R. § 1.07(6)(a) and (d).

Although 102 C.M.R. § 1.06(3) requires that an applicant or licensee “make available any information requested by [EEC] to determine compliance by providing access to (among other

things) staff,” the regulation does not require that staff submit any oral reports or statements; it requires only “access” to the program’s staff. The quantity, quality, articulateness or veracity of staff statements may factor into EEC’s compliance determination, but defects in any or all of these qualities are not themselves made violations by the program of 102 C.M.R. § 1.06(3).

In short, it is not clear from the plain wording of 102 C.M.R. § 1.07(4)(a)(3) that any of the oral statements made by TKD program staffpersons was the “submission” of a “misleading or false statement or report required under 102 C.M.R. 1.00 through 8.00.” The submissions required by 102 C.M.R. 1.00 through 8.00 are solely written ones, and the regulation is not worded to make any misleading or false oral statement a ground for refusing to renew a license. In view of this ambiguity, I do not recommend that the refusal to renew EEC’s license be based upon the “submission” of “false and misleading statements” in violation of 102 C.M.R. § 1.07(4)(a)(3).

c. Violations or Adverse Findings Neither Made nor Implied

In concluding that there are several independent grounds listed by 102 C.M.R. § 1.07(4)(a) for sustaining the license renewal denial, I make no adverse finding regarding Master Lee’s Taekwondo program or the program’s suitability for young people as a privately-run after-school program not subject to licensing as a child care program. Taekwondo itself is a venerable self-defense art and sport, and provides training that emphasizes, in addition to self-defense, improved character, self-discipline, self-respect and confidence. Master Lee has a positive reputation in the Fall River community and beyond, and is unquestionably devoted to teaching Taekwondo, particularly to school-age children. He has had difficulty running a Taekwondo program and a

licensed, regulated child care program at the same time and keeping the two programs, and their students, separate. Their instructive methodologies and objectives are different, and, as this appeal has underscored, it is difficult to keep the two programs separate, and the licensed child care program compliant, when they share administrators, building space, and pupils.

It was my impression from his testimony that Master Lee understands this, but that he wanted, nonetheless, to do what he could to accommodate the parents of Taekwondo and child care program children by offering both programs in the same location. Events and time proved this to be a nearly impossible task. Inevitably, the two student bodies and their instruction mixed, and while Master Lee controlled the objectives, educational methodology, student capacity and discipline techniques of the Taekwondo program, these were not congruent, in many respects, with the regulatory and licensing requirements that applied to the licensed TKD program. The result has been a frustrating experience for Master Lee, and for Ms. Han as well. Master Lee may find it less frustrating to run the Taekwondo program for which is he is renowned, and to devote his full energies and talents to Taekwondo education at the location he chose for this program originally.

The result here is most constructively viewed, therefore, not as a punishment but as the restoration of two separate harmonies—one within Master Lee's successful Taekwondo program, and the other within the regulated universe of licensed child care programs, the safety and lawful operation of which are the responsibility of EEC and its very dedicated personnel.

It may be that Ms. Han can effectively separate a child care program of her own from Master Lee's Taekwondo program, both as to location and operative authority, if she chooses to establish such a program and apply to EEC for a license to operate it. If she does so during the next five

years, she would need to convince the agency that significantly-changed circumstances justify her own licensing to operate a large group and school age program, despite the five-year disqualification period that will otherwise apply here if EEC makes final the non-renewal of TKD's provisional license. *See* 102 C.M.R. § 1.07(b). Ms. Han may find, however, that she prefers to continue working as an administrator within her husband's Taekwondo program. The result here leaves her free to make this choice.

Disposition

Based upon the findings of fact I have made, and for the reasons set forth in the Discussion above, I now issue this decision recommending that the Massachusetts Department of Early Education and Care's August 1, 2017 decision denying the renewal of U.S. TKD Education's large group and school age program be made final based upon the violations that were observed during EEC's May 22, 2017 visit to the TKD program, other than providing false and misleading statements in violation of 102 C.M.R. § 1.07(4)(a)(3). (*See above at 68-69.*)

I do not recommend that the refusal to renew the license be based upon other types of violations that were observed during EEC visits to the program prior to May 22, 2017 but not during that final visit. (*See above at 68 n. 20.*)

I also do not recommend that refusal to renew the program's license be based upon false and misleading oral statements that were allegedly made by TKD program staff during the May 22, 2017 visit. TKD staff were ambiguous, and may not have been forthright, in answering questions posed to them by Ms. Fry regarding the children present in Suite 5, or the licensed program's use

of Suite 5 for its enrolled children. However, it is not clear that what any of the staff stated was, per 102 C.M.R. § 1.07(4)(a)(3), a “misleading or false *statement or report required under 102 C.M.R. 1.00 through 8.00 . . .*,” as these required statements or reports are written ones.

This recommended decision reserves fully to EEC the discretionary decision of whether, and, if so, when, it will finalize the denial of license renewal and begin the closure of U.S. TKD Education’s large group and school age program, which would include identifying alternative day care options for any of the large group and school age children who remain in the formerly-licensed TKD program.

SO ORDERED.

This is a recommended decision of the Division of Administrative Law Appeals. The parties are hereby notified that, pursuant to 801 C.M.R. § 1.01(11)(c)1, each of them has 30 days to file with the Department of Early Education and Care any written objections to this recommended decision, which may be accompanied by a supporting brief. A final agency decision in this matter will be issued by the Commissioner of the Department of Early Education and Care.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Mark L. Silverstein
Administrative Magistrate

Dated: September 19, 2019

[*Note*: The Appendix to the Recommended Decision follows on the next page]

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