

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

Middlesex, ss.

Johanny Narvaez Garcia,  
Petitioner,

Docket No.: OC-26-0146

and

Gabriel Marin Pagan,  
Petitioner,

Docket No.: OC-26-0177

v.

Department of Early Education and Care,  
Respondent.

**Appearances:**

For Petitioners: Johanny Narvaez Garcia, pro se and  
Gabriel Marin Pagan, pro se

For Respondents: Leah Potash, Esq. and  
Fatima Islam, Esq.

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF RECOMMENDED DECISION**

Ms. Garcia applied for a family daycare license. Because she had a prior substantiated finding of abuse by the Department of Children and Families, the Department of Early Education and Care (EEC) denied her application. At the same time, it also conducted a discretionary review of a household member, her husband. Based on prior criminal charges, it found he was not a suitable household member and denied her application on this ground, too. After a hearing, I recommend EEC reverse its decisions. Ms. Garcia has submitted enough new evidence to show that her mistake was minor and unlikely to recur. Mr. Pagan's charges occurred over 19 years ago. While I have some doubt about whether he even committed the alleged conduct, even if he did, more than enough time has passed to demonstrate he is rehabilitated.

## **INTRODUCTION**

The Petitioners timely appeal decisions by the Department of Early Education and Care (“EEC” or “the Department”) denying Ms. Garcia’s application for a family daycare license. Although the Department provided an individual rationale to each Petitioner, the matters were related; for efficiency’s sake, I conducted a joint, virtual hearing on September 9, 2026. I have consolidated the decisions in both cases into one document.

In Ms. Garcia’s case, the Department presented one witness, Emmanuel Santiago, a background-check reviewer. In Mr. Pagan’s matter, the Department presented a different witness, Erin Mee, also a background-check reviewer. Each Petitioner testified. I entered exhibits 1-9 into evidence in Ms. Garcia’s matter, and 1-13 in Mr. Pagan’s case. The parties submitted closing arguments at which point I closed the administrative record.

## **FINDINGS OF FACT**

### **I. Johany Garcia (OC-26-0146)**

1. Ms. Garcia previously worked as an assistant in a daycare center for a few years. Around 2018, she obtained her own family daycare license. However, following an incident in 2019, her license was revoked. (Garcia.)
2. Ms. Garcia was previously married. She and her ex-husband<sup>1</sup> separated sometime before 2019. They used to live together in the same apartment out of which she

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<sup>1</sup> The Department of Children and Families report referred to him in 2019 as Ms. Garcia’s husband. Ms. Garcia referred to him at the hearing as her ex-husband. So as not to confuse him with her current husband, Mr. Pagan, I will refer to him as her “ex-husband.”

operated her daycare. The apartment took up the 2<sup>nd</sup> and 3<sup>rd</sup> floor of a three story home. The daycare was located on the 2<sup>nd</sup> floor; the residence was located on the 3<sup>rd</sup> floor. Each floor could be accessed internally. Each floor also had a separate external entrance. (Garcia.)

3. There is some dispute about whether Ms. Garcia's ex-husband still lived at home when the 2019 incident took place. She said he did not, but the police said they found his personal belongings there. Regardless, there is no dispute that he still had access to the home. For example, he would go there to check his mail and retrieve important documents. (Garcia; Garcia ex. 6.)
4. On August 20, 2019, the police arrested the ex-husband at the residence. The arrest occurred at a time when a parent was dropping off a child at the daycare. (Garcia ex. 6.)
5. The police found out he might be there after talking to someone at a different location who said the ex-husband lived at that address. (Garcia ex. 6.)
6. It turns out her ex-husband had a criminal record, including charges for a sex offense in Puerto Rico. He was wanted for failure to register as a sex offender in Massachusetts. (Garcia ex. 6.)
7. When the Department of Children and Families (DCF) found out about the arrest, they opened an investigation. (Garcia ex. 6.)
8. DCF interviewed the parents of the daycare. One parent said they had seen Ms. Garcia's ex-husband in the past (presumably during day care hours). (Garcia ex. 6.)
9. Ms. Garcia confirmed to DCF that her ex-husband would come back for his mail and

other belongings from time to time. She denied knowing anything about his criminal past. After this incident, she did talk to him about it and he said “it was something that occurred in the past.” (Garcia ex. 6.)

10. Ms. Garcia also said she had never been involved with DCF in the past. But DCF pointed out that was not true. In 2011, DCF investigated Ms. Garcia and her then boyfriend (not the same person who was arrested in 2019). During that investigation, DCF learned that her boyfriend was a convicted sex offender. DCF noted that she dated this person for a few months after learning about his status.<sup>2</sup> (Garcia ex. 6.)
11. DCF substantiated the allegations of abuse against Ms. Garcia. It concluded that “she did not take the necessary steps to ensure the overall well being of the daycare children.” She failed to have her ex-husband submit to a background check even though he was a household member/frequent visitor; she failed to exercise good judgment in allowing him potentially to have access to the children; and she failed to notify EEC about an arrest on her premises. (Garcia ex. 6.)
12. Finally, it said she provided false and misleading information to EEC during her initial

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<sup>2</sup> There is no record about this investigation other than DCF’s brief narrative in its 2019 investigative report. It is not clear if DCF found Ms. Garcia committed any abuse or neglect in 2011. Based on the limited facts, it does not appear DCF did; nor do I see any evidence that Ms. Garcia did anything wrong in 2011. There is nothing inherently wrong with dating someone with a prior conviction, even for a sex offense; nor is there necessarily anything inherently wrong with living with that person and with your children. To be clear, that is not the wrongdoing DCF attributed to Ms. Garcia in 2019. The 2019 case is different because it involved exposing a convicted sex offender to other people’s children in her daycare and not complying with EEC regulations.

application when she indicated she had no prior involvement with a child protection agency.<sup>3</sup> (Garcia ex. 6.)

**Discretionary review process**

13. After being notified of the Department’s review, the Petitioner submitted additional documents: a candidate statement and several letters of support. (Garcia exs. 7-9.)
14. In her statement, she essentially said the same thing she had told DCF in 2019: her ex-husband did come back from time to time to pick up mail, and he still kept some things at the house, but she considered that space separate from the daycare. (Garcia ex. 7.)
15. She added that she no longer had contact with him. She had worked with kids for years in various settings and never had complaints. (Garcia ex. 7.)
16. She submitted two glowing references, though neither mentioned the 2019 incident and it is unclear if the individuals who wrote them were aware of it. (Garcia exs. 8-9.)
17. One reference was by a child therapist who observed Ms. Pagan care for her children and other people’s children too. She listed various positive qualities which “combined with her nurturing nature and long-standing experience with her children make her exceptionally well-suited to operate a home daycare. (Ex. 8.)
18. The other letter from Ms. Pagan’s supervisor at an elementary school where Ms. Pagan worked as a Parent Facilitator for six years. She noted Ms. Pagan’s ability to

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<sup>3</sup> This last point seems to be a reference to the 2011 DCF investigation. Other than this statement, there is no evidence in the record that Ms. Garcia failed to disclose this in her initial application and, if she did, whether she was obligated to—since it is possible DCF did not substantiate any allegation of abuse or neglect.

communicate well with parents, providing a “welcoming demeanor.” (Ex. 9.)

19. Upon receiving the new information, the EEC reviewer—here, Mr. Santiago—  
  
conducted the review by considering a series of factors listed in 606 Code Mass. Regs. §  
  
14.12(f):

1. Time since the incident(s);
2. Age of the candidate at the time of the incident(s);
3. Seriousness and specific circumstances surrounding the incident(s);
4. Relationship of the incident(s) to the ability of the candidate to care for children;
5. Number of criminal offenses or findings of abuse/neglect;
6. Dispositions of criminal offenses and findings of abuse/neglect;
7. Relevant evidence of rehabilitation or lack thereof; and
8. Other relevant information, including information submitted by the candidate.

(Santiago.)

20. At the hearing, he explained how he reviewed and weighed each factor. Other than the fact that there was only one incident, the other factors largely all weighed against Ms. Garcia. Mr. Santiago was particularly concerned with the circumstances of the incident, calling it a “prominent factor.” He highlighted the fact that she had previously dated and lived with someone else who had been convicted of a sex offense; with the present incident, he felt there was now a “pattern of behavior.” (Santiago.)
21. He did not interpret her statement or letters of support as evidence of rehabilitation. That said, the letters were supportive. He agreed Ms. Garcia appears to be a good caretaker who has a lot of experience in childcare. (Santiago.)

**New evidence at the hearing**

22. Ms. Garcia testified at the hearing but did not present any new evidence about the incident, echoing what she said in her candidate statement. (Garcia.)
23. She did add that she sincerely thought her ex-husband did not need to submit to a background check because, even though he still had personal items at home and came by from time to time, he did not live there. She thought she only had to have household members submit to a background check, which she had all of her kids do. (Garcia.)
24. She also considered the daycare space separate from her residence (even though she admitted someone could access each space from inside the apartment). (Garcia.)
25. She again said she did not know her ex-husband had been convicted of a sex offense. However, she knew he had some criminal involvement because a probation officer used to stop by. (Garcia.)
26. She did present new evidence about her personal situation. She explained that since EEC revoked her license, she was still in touch with some of the parents from her daycare. They all still supported her and brought their kids to see her. (Garcia.)
27. She has worked with kids in various settings: at schools, at the YMCA, and at her church. (Garcia; Garcia ex. 7.)
28. She no longer has any contact with her ex-husband. (Garcia.)
29. She and Mr. Pagan have been married for a few years and now live together. (Garcia; Pagan.)

**II. Mr. Pagan (OC-26-0177)**

30. In 2007, Mr. Pagan lived at home with his partner and her children. (Pagan; Pagan ex. 5.)
31. At some point he and his partner broke up. He had a new girlfriend and was staying with her. He had not yet changed his address, so he still needed to pick up his mail there from time to time. (Pagan; Pagan ex. 5.)
32. On December 29, 2007, at 2:30 a.m., someone called 911 to report a male discharging a gun at Mr. Pagan's former residence. When the police arrived, they spoke with Mr. Pagan's upstairs neighbor, who had made the call. Mr. Pagan was not there. (Pagan Ex. 4.)
33. The neighbor told them that he, Mr. Pagan's ex-partner, and other friends went out that night. When they got home, they saw Mr. Pagan waiting. Mr. Pagan and his ex-partner spoke and then went into their apartment. The neighbor followed them in, but went to the kitchen. The neighbor then heard arguing. He went to the hallway and saw Mr. Pagan and his ex-partner physically fighting and struggling to get control of a gun. The gun discharged. Mr. Pagan left. Mr. Pagan's ex-partner did not want to call the police, but the neighbor did because he thought the ex-partner's children, who were sleeping in another bedroom, had been placed in harm's way. (Pagan Ex. 4.)
34. The police left a message for Mr. Pagan that night. According to them, he called them back around 6:15 a.m. He said he no longer had the gun because he had thrown it in the river. He added "it is not a regular gun, I made it." He agreed to turn himself in,

which he did without incident. (Pagan Ex. 4.)

35. Mr. Pagan's ex-partner did not give a statement to the police, but she later did give one to DCF. She told them Mr. Pagan and her neighbor were arguing that night. She blamed Mr. Pagan, saying he was jealous because he thought she was having an affair with the neighbor. She did not really know what happened but at one point she "blinked and he shot the gun and then took off." (Pagan Ex. 5.)
36. DCF also spoke to one of the children living in the house. The child confirmed hearing something like a "firework" in the middle of the night and then heard their mother screaming. (Pagan Ex. 5.)
37. Mr. Pagan spoke to DCF and gave them a different narrative. He said he and his ex-partner had broken up a few months prior to the incident. The night of the incident, his ex-partner had called and said he had mail at the house. Although she said she would bring it to him, she never did. He decided to go to the house and wait for her. She finally showed up around 2:30 a.m. After she gave him the letter, his "neighbor started to get involved." Mr. Pagan saw him looking in his pockets and was worried. He normally has a "nipple gun"<sup>4</sup> in his bag. He took it out, pointed it at the ceiling, and fired it once just to scare them. Then he left. (Pagan ex. 5.)
38. He was ultimately arrested and charged with various counts related to the incident. However, the charges were all dismissed two years later. (Pagan ex. 6.)

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<sup>4</sup> At the hearing, Mr. Pagan explained that a "nipple gun" referred to small gun that could be homemade. (Pagan.)

**Discretionary review process**

39. After being notified of the Department’s review, Mr. Pagan submitted additional documents: a candidate statement, several letters of support, and a few other documents. (Pagan exs. 7-11.)
40. In his statement, he explained that the allegations were false. He said what really happened is that the individuals hanging out with his ex-partner were harassing him. He left the property, and only after that did one of them fire a gun. (Pagan ex. 10.)
41. He also submitted a statement saying he does not own a gun (and never has.) (Pagan ex. 11.)
42. Upon receiving the new information, the EEC reviewer—here, Ms. Mee—conducted the review by considering a series of factors listed in 606 Code Mass. Regs. § 14.12(f):
1. Time since the incident(s);
  2. Age of the candidate at the time of the incident(s);
  3. Seriousness and specific circumstances surrounding the incident(s);
  4. Relationship of the incident(s) to the ability of the candidate to care for children;
  5. Number of criminal offenses or findings of abuse/neglect;
  6. Dispositions of criminal offenses and findings of abuse/neglect;
  7. Relevant evidence of rehabilitation or lack thereof; and
  8. Other relevant information, including information submitted by the candidate.
- (Mee.)
43. At the hearing, Ms. Mee explained how she reviewed and weighed each factor.
44. She first noted that Mr. Pagan’s current statement—that he did not fire a gun, someone else did—conflicted with what he previously told DCF and the police at the

- time. She said he could not provide evidence to back up his claim. (Mee.)
45. As for the factors, because this was only one incident and was so long ago, that weighed in his favor. But his age at the time (29) and the seriousness of the incident weighed against him. (Mee.)
46. His character references were very positive. On the other hand, Mr. Pagan did not provide any evidence of rehabilitation. (Mee.)
47. Given that these charges occurred so long ago, and EEC still says Mr. Pagan is not suitable, I asked Ms. Mee, what, if anything, could he ever show to demonstrate suitability. She said that the passage of time alone, is not enough given how serious the incident was. He would have to show something more, such as evidence of rehabilitation, e.g., anger-management counseling. (Mee.)

**New evidence at the hearing**

48. In his candidate statement and at the hearing, Mr. Pagan gave an explanation for what happened that was totally different from his statements to the police and DCF at the time of the incident. He denied ever shooting a gun (or ever even owning or possessing a gun). On the night in question, he did go to his ex-partner's house. When he got there, he left almost immediately because he was "not welcomed." (Pagan.)
49. His timeline of the events that night is not clear, but he says at some point he spoke to his ex-partner. She told him DCF was going to take her kids away. He was worried they were looking for someone to blame (for the shooting) and might blame his ex-partner. He did not want her kids to be taken away. He lied about his participation so that she

would not be blamed. (Pagan.)

50. When the police called looking for him, he agreed to turn himself in. He made up a statement about having a homemade gun and throwing it into a river. (Pagan.)
51. When the police arrested him, they tested for gunshot residue; the test came back negative. (Pagan.)
52. Mr. Pagan previously worked as a truck driver. Following his arrest, he worked as a firefighter in Springfield for many years. Now he owns his own business as a home contractor. (Pagan.)

### **DISCUSSION**

When an applicant has a potentially disqualifying background, EEC conducts a review to determine whether to grant or deny a childcare license. *See* 606 Code of Mass. Regs. § 14.10(6). That discretion is not unfettered. EEC's regulations define what factors a reviewer must consider. *Id.* at § 14.12(2)(f). These regulations also state that "the candidate [for a childcare license must present] clear and convincing evidence demonstrating the candidate's suitability for licensure, employment or affiliation in light of the concern for children's safety." *Id.* at § 14.12(2)(e). An agency is bound to adhere to its regulations. *Royce v. Commissioner of Correction*, 390 Mass. 425, 427 (1983). This means that EEC may not issue a license to a candidate with a potential disqualifying background if the candidate failed to present clear and convincing evidence of suitability. By the same token, if the candidate presented clear and convincing evidence of suitability, EEC must grant the license.

**Johanny Garcia, OC-26-0146**

Supported allegations of abuse or neglect by DCF may form the basis for a valid discretionary denial of a license application. *See EEC v. Berroa-Abad*, OC-25-0009, 2025 WL 2365553, \*4 (Div. Admin. Law Apps. Aug. 6, 2025); *EEC v. Curran*, OC-24-0351, 2025 WL 509465, \*4 (Div. Admin. Law Apps. Feb. 7, 2025). However, there must at least be some corroboration that the abuse or neglect occurred: for example, an admission by the party or evidence from the investigation. *Berroa-Abad, supra*; *EEC v. Vasquez*, OC-24-0664, 2025 WL 2365552, \*3 (Div. Admin. Law Apps. Aug. 6, 2025); *cf. EEC v. Barra*, OC-25-0693, 2026 WL 1256779, \*2 (Div. Admin. Law Apps. May 1, 2026) (“It is also clear that the department cannot act against an applicant when it possesses no evidence whatsoever of wrongdoing.”).

Here, Ms. Garcia does not really dispute the facts which formed the basis for DCF’s findings. At most, there is a dispute as to whether her ex-husband was still living with her. But even assuming he was not, he clearly still had personal items at the house, had access to the house, and came by from time to time, including during daycare hours. And while it is possible—though doubtful—that Ms. Garcia did not know her ex-husband had been convicted of a sex offense, she definitely knew he had some criminal past since his probation officer used to stop by.

Under those circumstances, Ms. Garcia should have known that she needed to submit her ex-husband to a background check since he was regularly on the premises. At least once, if not more, he was on the premises during daycare hours with access to the daycare. EEC was right to consider that a serious enough violation of its regulations that, in weighing the various factors, revocation was warranted in 2019. But whether revocation was warranted in 2019 is a

different question than whether she is a suitable candidate for licensure today.

To answer that question, I should “consider new evidence that emerges at a hearing, especially if it sheds light on a particular factor or provides context not apparent from the record before EEC.” *Berroa-Abad, supra*, at \*7. Ms. Garcia has worked with children for many years, and this case appears to be the only complaint against her in this capacity. Others attested to her ability to care for children and communicate well with parents. At the time of this incident, her ex-husband accessed the apartment infrequently, apparently only once time during daycare hours, he was never in the daycare itself. Moreover, in reapplying for her license now, she no longer has any contact with her ex-husband and she made sure her current husband submitted his information for a background check. Thus, she is a good caregiver to children; her past violation was minor, resulting in no harm; and her current conduct demonstrates she understands her reporting obligations to EEC.

Mr. Santiago’s main concern was that Ms. Garcia engaged in a pattern of troubling conduct. If by “pattern,” he meant that Ms. Garcia has a history of dating persons who have been charged and/or convicted of criminal offenses, including sex offenses, she indeed appears to engage in that pattern. But that alone cannot be grounds for denying someone a license, because there is no legal or regulatory prohibition against it. Mr. Santiago may have meant Ms. Garcia had a pattern of not informing EEC about her partners and their criminal background. However, one time does not make a pattern. Although Ms. Garcia did fail to inform EEC about her ex-husband in 2019, she had no obligation to inform anyone about anything in 2011 because she was not then operating a daycare. Thus, there is no pattern of conduct to support the denial of her license.

**Pagan, OC-26-0177**

In Mr. Pagan’s case, EEC is not relying on a substantiated allegation of abuse or a criminal conviction. Rather, it is relying on dismissed charges—very old, dismissed charges.

“Unlike a conviction, the mere fact of a charge is not corroboration that the conduct occurred.”

*EEC v. Andino*, OC-25-103 & 425, 2025 WL 3127144, at \*11 (Div. Admin. Law Apps. Oct. 24, 2025).

The Department may certainly rely on [unsubstantiated allegations or charges that did not result in convictions]<sup>[5]</sup> but its review must evince a careful evaluation of the facts. It is one thing for an agency to rely on the facts of an incident when the accused was, for example, convicted of the crime. It is another thing to accept as true alleged facts after the legal process has provided no verdict and, in this instance, the prosecution has abandoned its allegations. That requires a more searching inquiry.

*EEC v. Gupta*, OC-23-0396, \*10 (Div. Admin. Law Apps. Oct. 18, 2024); *Barra, supra*, \*2 (“It is also clear that the department cannot act against an applicant when it possesses no evidence whatsoever of wrongdoing.”).

It is a close call as to whether there is sufficient evidence to corroborate the charges, mainly because Mr. Pagan made some admissions at the time of his arrest. But he gave a plausible explanation for why he may have lied to the police at the time: to protect his ex-partner from losing her children. There is also evidence that would support his innocence: the gunshot residue test was negative, and the prosecution ultimately dropped the case. Finally, his ex-partner’s version of events differed from her neighbor’s; each said Mr. Pagan was arguing with the other one when he shot the gun. That also raises some doubts about the validity of the

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<sup>5</sup> In *Gupta*, I mistakenly used the term “uncharged conduct” when, in context, I clearly meant unsubstantiated allegations of abuse or charges that did not result any convictions.

charges. That said, even assuming Mr. Pagan did the things alleged, EEC should not have found him unsuitable.

For Ms. Mee, the passage of time alone is not enough to demonstrate rehabilitation. But in some situations, it can be. *EEC v. Aguilar*, OC-23-0351, 2023 WL 9022704, \*4 n.5 (Div. Admin. Law Apps. Dec. 21, 2023). A “person is rehabilitated when he or she stops committing crimes and returns to a law-abiding, constructive life.” *EEC v. Florence F.*, OC-25-0622, 2026 WL 1050635, \*5 (Div. Admin. Law Apps. April 10, 2026). It may be hard to define exactly how much time must pass to show change. But it is not that hard to recognize it at the outer limits: one year is clearly not enough; 19 years is, especially 19 years since the last (and by all accounts the only) incident. Since 2007, there are no allegations of aggression against Mr. Pagan, let alone criminal charges or DCF accusations of any kind. EEC knew as much when it conducted its review. After 19 years, it is unnecessary to also require some evidence of, for example, anger-management counseling when there is no evidence of any current anger requiring management.

Adding new evidence from the hearing only strengthens this conclusion. After the charges were dropped, Mr. Pagan became a firefighter,<sup>6</sup> and he now runs his own business. He and Ms. Garcia have been together for a few years and they get along well. These are not the accomplishments of someone who is likely to act impulsively or with aggression.

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<sup>6</sup> I infer that he could not have applied to be a firefighter without the city conducting some sort of background check that would have uncovered his charges. If so, the charges were obviously not an impediment to being hired to a position of public trust just a few years after his arrest.

**CONCLUSION AND RECOMMENDED ORDER**

Ms. Garcia has proven by clear and convincing evidence that she is suitable for licensure, and I recommend EEC's decision be reversed.

Mr. Pagan has proven by clear and convincing evidence that he is a suitable household member, and I recommend EEC's decision be reversed.

SO ORDERED.

Date: October 7, 2026

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

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Eric Tennen  
Administrative Magistrate