



**Department of
Early Education and Care**
THE COMMONWEALTH OF MASSACHUSETTS

Background Record Check Unit

External Policy Statement: Provisional Status and Mandatory Pending Disqualifications – All Child Care Programs

Date: September 10, 2019

EEC BRC UNIT POLICY NUMBER: 19-005

Provisional Status and Mandatory Pending Disqualifications

Provisional Status: After a candidate completes the required sex offender checks, has touched the glass for a fingerprint-based check, and EEC completes its preliminary screening process, EEC may authorize the Program to hire the candidate in provisional status. EEC may also determine that the candidate's BRC history precludes them from being hired in a provisional status and has the right to revoke provisional status at any time. *See* 606 CMR 14.13(2)(a).

Provisional status can only be applied if the program's staffing allows for direct supervision of the candidate. Family child care candidates, in home non relative caregiver, relative caregiver, transportation personnel, temporary agency staff, and contracted/service providers are not eligible for provisional status and therefore are not eligible for provisional status for a mandatory pending. *See* 606 CMR 14.04.

Pending Mandatory Disqualification: This applies to any charge(s) with an open status and/or no final disposition that are found on the Table of Disqualifying Offenses - Mandatory Disqualifications. *See* 606 CMR 14.11(6). The regulations at 606 CMR 14.11(6) provide the following:

- a. EEC will not issue a final suitability determination of suitable until the pending charges are resolved and EEC completes its review process;
- b. EEC will require the candidate to provide updates as requested;
- c. The candidate must notify EEC when the charges are resolved; and

- d. EEC may elect to allow a candidate to remain in a provisional status with a pending mandatory disqualification after completion of EEC's review process.

A candidate with a pending mandatory has 45 days to provide EEC with disposition information if attainable. A candidate with a pending mandatory disqualification may make a written request to the EEC BRC Unit for a presumptive review within that time frame. EEC may, within its discretion and with the approval of EEC's General Counsel, grant a provisional status following a presumptive review, until a final suitability can be determined.

The candidate must provide the BRC Unit Reviewer with the status of the pending case and also must provide a court docket that shows the final disposition of the charge(s) in order for a final suitability determination to be made by EEC. If the charge(s) is determined to be non-conviction, then EEC will complete the review process and make a final suitability determination regarding the candidate. If the final disposition of a charge that led to the pending mandatory disqualification is determined to be a conviction, the candidate will automatically be found "not suitable", resulting in a lifetime "mandatory disqualification". This "mandatory disqualification" will be EEC's final suitability determination with no right for the candidate to appeal.