

QA

[REDACTED]

APPELLANT * BEFORE KERWIN A. MILLER, SR.,
v. * AN ADMINISTRATIVE LAW JUDGE
MARYLAND STATE DEPARTMENT * OF THE MARYLAND OFFICE OF
OF EDUCATION, * ADMINISTRATIVE HEARINGS
OFFICE OF CHILD CARE * OAH No: MSDE-OCC-28-18-36004

* * * * *

DECISION

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STATEMENT OF THE CASE

On November 20, 2018, the Maryland State Department of Education's Office of Child Care (OCC) notified the Appellant that she was prohibited from employment at a child care center. On November 20, 2018, the Appellant requested a hearing to appeal the OCC's determination.

On November 29, 2018, I held a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Code of Maryland Regulations (COMAR) 13A.16.18.07. The Appellant was present and represented herself. [REDACTED] Esquire, represented the OCC.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the OCC, and the Rules of Procedure of the Office of Administrative Hearings govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.16.18 and 28.02.01.

ISSUE

Did the OCC properly prohibit the Appellant from employment at a child care center?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the OCC's behalf:

OCC #1	Circuit Court of Maryland Case Search Document, [REDACTED] 2018
OCC #2	Circuit Court for [REDACTED] County Case History, [REDACTED] 2018
OCC #3	District Court of Maryland for [REDACTED] County, Statement of Charges, [REDACTED] 2017
OCC #4	District Court of Maryland for [REDACTED] County, Statement of Probable Cause, [REDACTED] 2017
OCC #5	Letter from OCC to Appellant, November 20, 2018

The Appellant did not offer any exhibits for admission into evidence.

Testimony

The OCC presented the testimony of [REDACTED] OCC Regional Manager for [REDACTED]

[REDACTED] The Appellant testified on her own behalf.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Appellant was employed an as Aide with [REDACTED] in [REDACTED]
2. On [REDACTED] 2017, the Appellant was charged with two counts of controlled dangerous substance possession with intent to distribute; two counts of controlled dangerous substance possession-not marijuana; and one count of theft less than \$100.00.
3. On [REDACTED] 2017, the Appellant pled guilty to one count of controlled dangerous substance possession with intent to distribute and received a disposition of probation before judgment.

4. On [REDACTED] 2018, the Appellant filed a petition for expungement of her probation before judgment for controlled dangerous substance possession with intent to distribute. Her petition for expungement was denied on [REDACTED] 2018.

DISCUSSION

The Maryland General Assembly has declared that minor children are incapable of protecting themselves, and when parents have relinquished the care of their minor children to others, certain potential risks arise that require “compensating measures.” Md. Code Ann., Fam. Law § 5-502(a) (2012). Consequently, Maryland has propounded the following policies:

- (1) to protect minor children whose care has been relinquished to others by the children's parent;
- (2) to resolve doubts in favor of the child when there is a conflict between the interests of a minor child and the interests of an adult; and
- (3) to encourage the development of child care services for minor children in a safe, healthy, and homelike environment.

Md. Code Ann., Fam. Law § 5-502(b) (2012).

In furtherance of these policies, the OCC regulations provide that a child care center may not employ any person who has been convicted, received probation before judgment or a not criminally responsible disposition; or who has a pending charge for the commission or attempted commission of one or more of certain crimes. COMAR 13A.16.06.03A. Md. Code Ann., Educ. I § 9.5-414 (2014 & Supp. 2016). The crimes that result in a mandatory employment bar include: crimes involving a child, cruelty to animals, domestic violence, or weapons; a sex offense; a violent crime classified as a felony; abduction or kidnapping; abuse of a child or adult; confinement of an unattended child; **manufacturing, distributing, or dispensing a controlled dangerous substance**; perjury; pornography; possession with intent to manufacture, distribute, or dispense a controlled dangerous substance; or reckless endangerment. COMAR 13A.16.06.03A.

If an individual has received a conviction, probation before judgment disposition, not criminally responsible disposition, or has a pending charge for the commission or attempted

commission of a crime **other** than one of those set forth above, the OCC is required to assess the individual's suitability for employment before barring that person from such employment.

COMAR 13A.16.06.03B(1). The OCC must consider the following factors in making its assessment:

- (a) The job position at the center for which the individual is applying or in which the individual is currently employed;
- (b) The nature and seriousness of the incident, crime, or offense;
- (c) How long ago the incident, crime, or offense occurred;
- (d) The age of the individual at the time the incident, crime, or offense occurred;
- (e) The individual's probation or parole status, if applicable; and
- (f) Any other information the office considers pertinent . . .

COMAR 13A.16.06.03B(1).

The parties did not dispute the fact that the Appellant was charged with controlled dangerous substance possession with intent to distribute in 2017 and that the Appellant ultimately received a disposition of probation before judgment for that charge. However, the Appellant contended that the majority of charges lodged against her in the [REDACTED] 2017 statement of charges were dropped and that she is not a bad person.

The OCC through the testimony of Ms. [REDACTED] and the submission of documents, produced credible evidence to establish that the Appellant was indeed charged with controlled dangerous substance possession with intent to distribute in 2017 and ultimately received a disposition of probation before judgment for that charge. This was not refuted by the Appellant.

While I have no doubt that the Appellant is not a bad person and made a mistake which led to her criminal charges, unfortunately I am bound by the dictates of the State legislature in enacting the applicable law. In accordance with the statutes and regulations, and as emphasized by Ms. [REDACTED] the OCC is bound to consider the health and safety of children in any OCC decision. Statutorily, the OCC is required to resolve any doubts in favor of children. In this

case, the Appellant was involved in serious criminal activity that showed a significant lack of judgment on her part.

COMAR 13A.16.06.03A and section 9.5-414 of the Maryland Education Code specifically provide that a probation before judgment disposition for controlled dangerous substance possession with intent to distribute requires a mandatory employment bar. I am only permitted to consider mitigating circumstances if an individual has received a conviction, probation before judgment disposition, not criminally responsible disposition, or has a pending charge for the commission or attempted commission of a crime **other** than one of those set forth in COMAR 13A.16.06.03A.

While I understand the Appellant's frustration over the OCC's action, I am constrained to follow the statutory and regulatory dictates.

CONCLUSION OF LAW

I conclude that the OCC properly prohibited the Appellant from employment at a child care center. Md. Code Ann., Educ. I, § 9.5-414 (2018); COMAR 13A.16.06.03.

ORDER

I **ORDER** that the OCC's exclusion of the Appellant from employment at a child care center is **AFFIRMED**.

December 6, 2018
Date Decision Mailed

Signature Appears on Original

Kerwin A. Miller, Sr.
Administrative Law Judge

KAM/cmg
#177107

REVIEW RIGHTS

This is the final decision of the Maryland State Department of Education. A party aggrieved by this final decision may, within thirty (30) days of the date of this decision, file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222 (Supp. 2018); Md. Rules 7-201 through 7-210. A petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

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