

**COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT**

SUFFOLK, ss.

Civil Action No. \_\_\_\_\_

TARA GREGORY,

*Plaintiff,*

v.

COMMONWEALTH OF  
MASSACHUSETTS and SAMANTHA  
AIGNER-TREWORGY IN HER CAPACITY  
AS COMMISSIONER OF THE  
DEPARTMENT OF EARLY EDUCATION  
AND CARE,

*Defendants.*

**CLASS ACTION COMPLAINT SEEKING INJUNCTIVE AND DECLARATORY  
RELIEF,  
AND JURY DEMAND**

1. This is an action brought by Tara Gregory, on behalf of herself and others similarly-situated, challenging overly stringent background check regulations promulgated by the Massachusetts Department of Early Education and Care (“EEC”), which unlawfully bar individuals from childcare jobs for life without any individualized review, based solely on juvenile adjudications that occurred in many cases decades ago.

2. Ms. Gregory is a dedicated childcare worker in the Commonwealth of Massachusetts, who worked at a daycare in Hyde Park, Massachusetts for more than twenty years. Ms. Gregory worked full-time at the daycare and was subject to numerous criminal background checks over the past decade, performed by EEC, none of which were ever found to disqualify her from safely working in the childcare industry. However, based on new state regulations, EEC has now informed Ms. Gregory that she is subject to permanent and mandatory

disqualification from employment in the childcare industry in Massachusetts because of a juvenile delinquency adjudication from thirty-three years ago when, as a sixteen year-old, Ms. Gregory got into a fight with a group of girls. Moreover, EEC's regulations explicitly state that Ms. Gregory and other similarly-situated individuals have no right to administrative or judicial review of its disqualification findings, through which individuals could demonstrate that they can safely continue to work. Thus, although Ms. Gregory has held a position in the childcare industry for the past twenty years without posing any risk at all to the children entrusted to her care, EEC has now permanently barred her from her chosen profession.

3. EEC's actions deprive Ms. Gregory and other similarly-situated individuals of their rights to due process of law under the Massachusetts Constitution. In addition, because of known racial disparities in juvenile prosecution and adjudication, EEC's regulations barring individuals from working in childcare based on juvenile records violate the equal protection guarantees of the Massachusetts Constitution and the Commonwealth's anti-discrimination laws. EEC's regulations have a discriminatory and unlawful disparate impact on minority individuals such as Ms. Gregory, and it is not reasonably related to EEC's business purpose of ensuring the safety of childcare facilities in the Commonwealth. There are less discriminatory alternatives to EEC's permanent and mandatory disqualification scheme, including individualized assessments of individuals such as Ms. Gregory who have juvenile records but are nonetheless fully qualified to work in childcare. Although these alternatives are available to EEC, it has not adopted them.

#### **THE PARTIES**

4. Plaintiff Tara Gregory is an adult resident of Boston, Massachusetts.

5. The Defendant Commonwealth of Massachusetts is a state of the United States and, through its administrative agencies, regulates the childcare industry in the Commonwealth.

6. The Defendant Samantha Aigner-Treworgy is the Commissioner of the Department of Early Education and Care (“EEC”) and oversees EEC, which is responsible for licensing childcare programs, performing background checks of childcare workers, and setting policies and regulations related to early education and care services in the Commonwealth.

### **JURISDICTION AND VENUE**

7. Jurisdiction is proper under the Declaratory Judgment statute, G.L. c. 231A, § 1, *et seq.*, because Plaintiff seeks a Declaratory Judgment that EEC’s regulations mandating disqualification from employment based on juvenile adjudications are unconstitutional, both as applied and on their face.

8. Venue is proper as the Commissioner of EEC has her office in Suffolk County and Plaintiff is a resident of Suffolk County.

### **FACTS**

9. Plaintiff Tara Gregory is a forty-nine-year-old Black woman who lives in Hyde Park with her daughter, her mother, and her brother.

10. Since approximately 1996, she was employed by New Beginnings Academy in Hyde Park. New Beginnings is a daycare provider that employs approximately 20 individuals and provides daycare services for as many as eighty children at a given time, ages thirteen months to six years old.

11. In the spring of 2019, Ms. Gregory’s schedule at New Beginnings was as follows: she worked five days per week, beginning each morning at 6:45 a.m. by driving a passenger van to pick-up children and bring them to the daycare center. She then worked a full shift each day in the office at New Beginnings from approximately 9:30 a.m. to 4:30 p.m., answering phones, performing administrative work, and caring for the children that attend the daycare. At the end

of each day, she drove her passenger van to drop-off children at their homes and completed her day at approximately 6:30 p.m.

12. Over the course of her 20-year career at New Beginnings, Ms. Gregory has been responsible for the care of more than 1,000 children. Not once has she been subject to employee discipline during that time period, and her employer has not received any complaints about her job performance from parents of the children who attend the New Beginnings daycare. To the contrary, her employer has praised her job performance and would restore her to her previous position if permitted.

13. On numerous occasions throughout her career, Ms. Gregory has been subjected to fingerprint checks and criminal background checks through EEC in order to continue her employment at New Beginnings. Prior to 2019, neither New Beginnings nor EEC ever expressed any concern that the results of these background checks rendered Ms. Gregory incapable of safely caring for the children who attended the daycare.

14. EEC promulgated regulations in 2018 that included new “mandatory” disqualifications for childcare workers. See 606 CMR 14.10(1). EEC’s regulations were promulgated in part to comply with a new federal law, which sets forth background check requirements for any State receiving certain federal childcare funds. See 42 U.S.C. 9858f.

15. For example, the federal law requires States receiving federal funds to disqualify anyone “convicted of a felony” for a list of enumerated crimes. See 42 U.S.C. 985f(c)(1)(D). The new State regulations impose these same disqualifications, which Plaintiff does not challenge. See 606 CMR 14.10 (1)(b).

16. However, the State regulations go far beyond the federal law’s requirements, by also imposing a mandatory disqualification for juvenile adjudications. See 606 CMR 14.10

(1)(b) (disqualifying not only individuals who have a felony conviction for enumerated offenses, but also those who “have been adjudicated delinquent as a juvenile”). The list of offenses includes assault and battery with a dangerous weapon. Id.

17. In or around February 2019, Ms. Gregory submitted fingerprints and information to New Beginnings so that EEC could perform its regular background check, as she had done many times in the past.

18. Shortly thereafter, she received a letter from EEC dated April 2, 2019 labelled “Mandatory Disqualifying Background.” The letter informed her, “[b]ased on information you provided, the Department of Early Education and Care (EEC) has found that you have a **Mandatory** disqualifying background under EEC regulations and policy.” The letter stated that EEC would issue a “Not Suitable” determination and she would be “disqualified from being present in or affiliated with any EEC program.” The letter also stated that “**[a]ny EEC program that you are presently affiliated with will be required to remove you within 14 days unless EEC requires that you be removed sooner.**”

19. Upon receipt of this information, Ms. Gregory called EEC and was informed that she was disqualified based on her juvenile record. In 1986, when Ms. Gregory was sixteen years old, she got into a fight with a group of girls. Along with several other girls, Ms. Gregory was charged with assault and battery with a dangerous weapon, based on the allegation that she wore a shoe on her foot.

20. At that time, Ms. Gregory appeared in Dorchester Juvenile Court. She entered a plea of delinquent to the charge of assault and battery with a dangerous weapon and received a two-year suspended sentence to the Department of Youth Services; she was never committed to DYS, she spent two years on probation without any alleged violations of the terms of her

probation, and her case was terminated around the time of her eighteenth birthday.

21. This juvenile adjudication formed the sole basis for Ms. Gregory's disqualification from continued employment at New Beginnings or any other childcare facility in the Commonwealth.

22. EEC's newly promulgated regulations state that this disqualification is "for life" as long as the juvenile adjudication continues to appear on Ms. Gregory's record. See 606 CMR 14.10(1)(e)(2).

23. EEC's regulations also state that Ms. Gregory "may not have [her] disqualification reviewed," unless she wished to contest the accuracy of her CORI or other criminal history records, which is not at issue. See 606 CMR 14.12(1).

24. On information and belief, there are hundreds if not thousands of childcare employees in the Commonwealth who have been, or soon will be, permanently disqualified from employment in their chosen profession based on delinquency adjudications in Juvenile Court, without any right to obtain review of their disqualification and without any individualized consideration of the nature of the offense, the time period when it occurred, or the individual's demonstrated ability to perform childcare work safely and effectively over the course of many years. The regulations' treatment of juvenile adjudications as equivalent to felony convictions is contrary to the Commonwealth's explicit policies that differentiate between juvenile adjudications and felony convictions. See, e.g., G.L. c. 119, § 53 (children in juvenile proceedings "shall be treated not as criminals, but as children in need of aid, encouragement, and guidance. Proceedings against children under said sections [juvenile proceedings] shall not be deemed criminal proceedings."); Department of Youth Services v. A Juvenile, 384 Mass. 784, 786 (1981) ("An adjudication of a juvenile is not, of course, a conviction of a crime.");

25. Moreover, racial and ethnic imbalances have plagued the American juvenile justice system from its start in the early 20<sup>th</sup> century.<sup>1</sup> Such disparities persist today, both nationwide and in Massachusetts. For example, Black youth in Massachusetts are 10 times more likely to be incarcerated as compared to white youth, a disparity that grew by 66 percent from 2001 to 2015.<sup>2</sup> Because of this disproportionate prosecution and adjudication of minority individuals in juvenile courts, EEC's disqualification scheme based on juvenile delinquency adjudications has a disparate impact on minority employees in the childcare industry. In addition, the policy bears serves no legitimate business purpose, and less discriminatory alternatives (such as individualized assessment) are available.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26. Ms. Gregory has filed a Charge of Discrimination with the MCAD and requested immediate removal of her Charge so that she may pursue her claims for unlawful discrimination in this Court. She is awaiting formal confirmation of her withdrawal from MCAD and will amend her Complaint when such confirmation is received.

#### **CLASS ALLEGATIONS**

27. Ms. Gregory brings this case on her own behalf and on behalf of a class of all similarly-situated individuals in the Commonwealth who have been disqualified by Defendants from working in childcare facilities based on juvenile delinquency adjudications, pursuant to Mass. R. Civ. P. 23.

28. The proposed class of employees satisfies all the requirements for class certification, as the group is so numerous that joinder of all members in impracticable; there are

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<sup>1</sup> Nellis, A. (2016). *A Return to Justice: Rethinking our Approach to Juveniles in the System*. Lanham: Rowman and Littlefield.

<sup>2</sup> Rovner, J. (2017). "Black Disparities in Youth Incarceration." *The Sentencing Project*: Washington, DC.

questions of law and fact raised by Plaintiff's claims common to all members of the proposed class; these common issues predominate over any individualized issues; Plaintiff is typical of all other individuals who EEC has disqualified from employment based on juvenile delinquency adjudications; Plaintiff and her counsel are adequate representatives of the class; and class treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

**COUNT I**  
**VIOLATION OF THE RIGHT TO DUE PROCESS OF LAW UNDER THE**  
**MASSACHUSETTS CONSTITUTION**

29. Plaintiff incorporates the allegations above and realleges them as though fully set forth herein.

30. EEC's categorical, lifetime disqualification of Ms. Gregory and other similarly-situated individuals from childcare employment in the Commonwealth based on juvenile delinquency adjudications, without any right to administrative or judicial review, violates the Massachusetts Constitution's guarantee of due process of law. See Article 12 of the Massachusetts Declaration of Rights.

**COUNT II**  
**VIOLATION OF THE RIGHT TO EQUAL PROTECTION OF THE LAWS UNDER**  
**THE MASSACHUSETTS CONSTITUTION**

31. Plaintiff incorporates the allegations above and realleges them as though fully set forth herein.

32. EEC's categorical, lifetime disqualification of Ms. Gregory and other similarly-situated individuals from childcare employment in the Commonwealth based on juvenile delinquency adjudications, without any right to administrative or judicial review, violates the right to equal protection of the laws under Article 1 of the Massachusetts Declaration of Rights, as

amended by Article 106.

**COUNT III**  
**VIOLATION OF CHAPTER 151B, SECTIONS 4(1) AND (4A) OF THE GENERAL LAWS**

33. Plaintiff incorporates the allegations above and realleges them as though fully set forth herein.

34. Defendants have utilized employment practices, including its categorical, lifetime disqualification of Ms. Gregory and other similarly-situated individuals from childcare employment in the Commonwealth based on juvenile delinquency adjudications without any right to administrative or judicial review, that have a significant disparate impact on racial minorities and are not reasonably related to job performance or required by business necessity. Less discriminatory alternatives, such as individualized assessment, exist.

35. Defendants have implemented these practices with knowledge that the practices have a significant disparate impact on racial minorities and are not reasonably related to job performance or required by business necessity.

36. Defendants' actions described above constitute direct employment discrimination and intentional interference with the enjoyment of the rights of Plaintiff and other similarly-situated individuals under Chapter 151B to be free from discrimination in the terms, conditions, and privileges of employment, in violation of G.L. c. 151B, § 4(4A).

**COUNT IV**  
**VIOLATION OF THE MASSACHUSETTS EQUAL RIGHTS ACT, CHAPTER 93, § 103 OF THE GENERAL LAWS**

37. Plaintiff incorporates the allegations above and realleges them as though fully set forth herein.

38. In event that Plaintiff does not have a statutory remedy under Chapter 151B, Defendants' actions described above alternatively violated G.L. c. 93, § 102, as they constitute unlawful discrimination based on race.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Court to:

- a. Certify the matter as a class action on behalf of the proposed class;
- b. Designate Plaintiff Gregory as Class Representative;
- c. Designate Plaintiff's Counsel as Class Counsel;
- d. Enter a Declaratory Judgment finding that Defendants' policy of permanently and mandatorily disqualifying Ms. Gregory and others from childcare employment based on juvenile adjudications violates the constitutional protections of due process and equal protection, as well as G.L. c. 151B and G.L. c. 93, § 102, both as applied to Ms. Gregory and on its face;
- e. Grant a preliminary and permanent injunction prohibiting Defendants from permanently and mandatorily disqualifying Ms. Gregory and other Class Members from childcare employment based on juvenile adjudications;
- f. Award costs and reasonable attorneys' fees incurred in bringing suit;
- g. Grant such other relief that the Court deem just and proper.

Respectfully submitted,

TARA GREGORY,

On behalf of herself and all those similarly situated,

Plaintiff,

by her attorneys,



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DATED: August 28, 2019