

**DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS**



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**PETITIONER,
Applicant/Petitioner,**

v.

**DISTRICT OF COLUMBIA OFFICE OF
THE STATE SUPERINTEDEDENT OF
EDUCATION,
Agency/Respondent.**

Docket No.: 2019-CBX-825

FINAL ORDER

I. INTRODUCTION and STATEMENT OF CASE

On December 18, 2019, {Petitioner} (“Petitioner”) filed an appeal with the D.C. Commission on Human Rights (Commission) challenging an ineligibility determination made by the D.C. Office of the State Superintendent of Education (OSSE) pursuant to the Criminal Background Checks for the Protection of Children Act of 2004, D.C. Code §§ 4-1501.01 – 4-1501.11 and the Child Care and Development Block Grant Act of 2014, 42 U.S.C. § 9858f. More specifically, Petitioner seeks review of OSSE’s determination that she is ineligible to work as a Teacher’s Assistant at a licensed child development agency. The ineligibility letter dated December 11, 2019, was received by Petitioner on the same date. Petitioner timely filed this appeal on December 18, 2019.

The Commission docketed the case as 2019-CBX-825, and the case was assigned to Chief Administrative Law Judge Erika Pierson, who reviewed the record and applicable laws and made a recommendation to a tribunal of Commissioners.

On January 15, 2020, Judge Pierson issued an Initial Order for OSSE to complete a Position Statement and file all documents related to the ineligibility determination. Exhibit (Exh.) 2. On February 14, 2020, Hillary Hoffman-Peak, Assistant General Counsel for OSSE, filed a Position Statement and supporting documentation. Exh. 3. Petitioner was then given 15 days to respond to OSSE's Position Statement but did not file any response. Exh. 7.

For the reasons discussed below, the December 11, 2019 ineligibility determination made by OSSE is reversed. There is nothing in the Criminal Records Checks for the Protection of Children Act or the Child Care and Development Block Grant Act that automatically excludes from employment at a covered agency receiving Block Grant funds, an individual that has been convicted of a drug-related offense in the preceding five years. OSSE must make a suitability determination by weighing Petitioner's conviction in light of the suitability factors set forth in 5A DCMR § 133.10 (2016) and 6B DCMR § 417.4.

II. JURISDICTION

The Criminal Background Checks for the Protection of Children Act of 2004, D.C. Code §§ 4-1501.01 – 4-1501.11 (the Protection Act), confers jurisdiction on the Commission to review the appeal of an applicant, employee, or volunteer of a covered child or youth services provider who is denied employment or the opportunity to volunteer because it is determined that the applicant, employee, or volunteer, presents a present danger to children or youth. *See* D.C. Code § 4-1501.05a(c) (2007); 6B DCMR § 438 (2018).

OSSE is the District agency charged with implementing the federal Child Care and Development Block Grant Act of 2014, 42 U.S.C. § 9858f. OSSE's Regulations implementing the Block Grant Act confer jurisdiction on the Commission to review OSSE's notice of ineligibility. 5A DCMR § 135.6 (2016). As discussed further below, it is not clear if the Commission has jurisdiction over appeals under the Block Grant Act where the Council of the District of Columbia has not authorized the Commission to decide these cases.

III. FINDINGS OF FACT

1. OSSE is the lead agency under the federal Child Care and Development Block Grant Act of 2014 (Block Grant Act) to make determinations regarding a child care staff member's eligibility for employment in a licensed Child Development Facility (Facility).
2. In November 2019, OSSE performed a criminal background check on Petitioner . At that time, Petitioner was employed as a Teacher's Assistant at the Home Away from Home Child Development Center (Home Away from Home), a Facility licensed by OSSE in the District of Columbia.¹ Exh. 3.
3. Home Away from Home receives funding from the District of Columbia under the Block Grant Act to provide subsidized daycare to low income families. Exh. 6.
4. Petitioner 's criminal background check reflected that on June 21, 2018, Petitioner pleaded guilty in the District of Columbia Superior Court to a class II felony for Attempted

¹ The record does not reflect how long Ms. had been employed at Home Away from Home.

Distribution of a Controlled Substance. Exh. 5. The offense occurred on March 8, 2018. Petitioner was sentenced to five years of probation. *Id.*

5. In a letter dated December 11, 2019, OSSE informed Petitioner that she was ineligible for employment as of November 18, 2019, in a licensed child development facility, because she did not meet the suitability requirements. Exh. 1. The letter stated that the criminal background check was conducted in accordance with “Section 658 of the Child Care and Development Block Grant Act of 2014 (Pub. L. 113-186; 42 U.S.C. §§ 9858f) and Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (D.C. Code § 4-1501 *et seq.*).”²

III. STANDARD OF REVIEW

A. The Criminal Background Checks for the Protection of Children Act of 2004 (Protection Act).

The Protection Act applies to “covered child or youth services providers,” which are defined as “any District government agency providing direct services to children or youth and any private entity that is licensed by or contracts with the District to provide direct services to children or youth.” D.C. Code § 4-1501.02(2). Home Away from Home is a private entity, providing direct services to children, that is licensed by OSSE. The Protection Act is silent as to the type of review an applicant is entitled to other than to file an appeal with the Commission. D.C. Code § 4-1501.05a(c). However, the Protection Act authorized the Mayor to issue rules to implement the

² Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, is also referred to as the “Criminal Background Checks for the Protection of Children Act of 2004,” codified at D.C. Code § 4-1501.01 *et seq.*

Act, including “procedures for an applicant or employee to *challenge allegations* that the applicant or employee committed a proscribed offense.” D.C. Code § 4-1501.11(5) (emphasis added).

The D.C. Office of Human Resources’ (DCHR) regulations implementing the Protection Act provide that an applicant applying for a protection sensitive position who is found to be a present danger to a child or youth and deemed unsuitable for a District Government position, may seek review of that determination with the Commission. 6B DCMR § 438.8(e). The DCHR Regulations further provide that the Commission shall issue a decision affirming or reversing the suitability determination based exclusively on the Notice of Appeal and the Agency’s answer and record. 6B DCMR § 438.8(e). The Commission is to make a “recommendation to the personnel authority.” 6B DCMR § 438.8. In addition, the Commission’s decision is final and cannot be appealed to any administrative body or court. 6B DCMR § 438.10. Thus, these cases are not contested cases under the D.C. Administrative Procedures Act (DCAPA).³ In considering appeals under the Protection Act, the DCHR Regulations provide that the Commission’s standard of review is deferential to the determination made by DCHR or the independent hiring authority. 6B DCMR § 438.8(e) (The Commission “shall not set aside the suitability determination if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law.”).

³ A “contested case” is defined by the DCAPA as “a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law ... or by constitutional right, to be determined after a hearing before the Mayor or before an agency....” D.C. Code § 1–1502(8). “The principal manifestation of a ‘contested case’ is its character as a quasi-judicial process based upon particular facts and information, and immediately affecting the interests of specific parties in the proceeding.” *Citizens Ass'n of Georgetown v. Washington*, 291 A.2d 699, 702 (D.C. 1972). This “quasi-judicial process” consists of a “trial-type” hearing, *Chevy Chase Citizens Ass'n v. District of Columbia Council*, 327 A.2d 310, 314 (D.C.1974) (en banc), which is “statutorily or constitutionally compelled....” *W.C. & A.N. Miller Dev. Co. v. District of Columbia Zoning Comm'n*, 340 A.2d 420, 422 (D.C.1975). A contested case under the DCAPA is, by statute, appealable to the D.C. Court of Appeals.

B. The Child Care and Development Block Grant Act of 2014 (Block Grant Act)

The Block Grant Act is a federal law that applies only to child care facilities that are licensed by OSSE, which is the lead agency in the District charged with implementing the Block Grant Act. For the purposes of this decision, the Block Grant Act's provisions on the review process is slightly different as compared to the D.C. Protection Act.

The Block Grant Act requires a jurisdiction to “provide an applicant with an opportunity to *appeal the results* of a criminal background check conducted to *challenge the accuracy or completeness of the information* contained in the criminal background report.” 45 C.F.R. 98.43(e)(3) (emphasis added). Following this provision, as the implementing agency under the Block Grant Act, OSSE promulgated regulations, effective December 12, 2016, stating that “The Notice of Ineligibility for Employment shall provide that the staff member may request a hearing challenging the accuracy or completeness of the information in the reports within 30 days of receipt.” 5A DCMR § 135.5(b) (2016) (emphasis added). OSSE's regulations further state that such a request for review shall be filed with the Commission on Human Rights. 5A DCMR § 135.6 (2016). OSSE's regulations are otherwise silent as to the type of review required, the standard of review, or any subsequent appeal right, i.e. the regulation does not state that such a hearing shall be conducted in accordance with the DCAPA or that there is no further appeal.

Moreover, it is not clear that the Commission has jurisdiction to review appeals pursuant to the Block Grant Act under OSSE's regulations.⁴ OSSE, as the State Education Agency for the District of Columbia, has broad authority to formulate and promulgate rules to carry out its functions. *See* D.C. Code § 38-2602(b)(11). That authority, however, does not include supplementing the jurisdiction of the Commission or any other administrative body whose authority is derived directly from the Council of the District of Columbia.

In reviewing this case, the Commission has applied the same standard of review set forth in the DCHR Regulations. There is no reason that the District of Columbia would have different appeal standards for D.C. Government employees and private employees working in covered child or youth facilities.

Thus, the standard of review is deferential to the hiring authority (OSSE) and the Agency's determination will not be set aside if it is supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law. 6B DCMR § 438.8(e). The District of Columbia Court of Appeals has held that "substantial evidence is defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Davis-Dodson v. D.C. Dep't of Emp't Servs.*, 697 A.2d 1214, 1218 (D.C. 1997). "[E]vidence is not substantial if it is so 'highly

⁴ DCHR's Regulations implementing the Protection Act state that the purpose of Rule 438.8 is to "promulgate rules and procedures for the efficient and uniform administration of suitability appeals before the Commission." 6B DCMR § 438.1. Thus, it makes sense for these cases to be appealed to the Commission same as cases under the Protection Act, it is not clear that the Commission has jurisdiction over cases under the Block Grant Act. The Commission derives its jurisdiction from acts of the Council of the District of Columbia, primarily through the Human Rights Act of 1977, D.C. Code § 1-1501.01 *et seq.* The Council has vested in the Commission other jurisdictions such as appeals related to the Federal Criminal Records Screening Act of 2014, D.C. Code § 32-1343 (2015). However, the Council never vested the Commission with jurisdiction to decide appeals related to criminal background checks performed pursuant to the Block Grant Act. Rather, OSSE, through its rulemaking authority, created a right to appeal suitability determinations to the Commission.

questionable in the light of common experience and knowledge’ that it [i]s unworthy of belief.”
Metro. Police Dep’t v. Baker, 564 A.2d 1155, 1159-60 (D.C. 1989).

IV. DISCUSSION AND CONCLUSIONS OF LAW

Petitioner was found ineligible for employment with a licensed child care agency under two different statutes. The Protection Act requires the District to conduct background checks on applicants, employees, and volunteers for positions that involve direct, unsupervised contact with children and youth in covered child or youth services providers. D.C. Code § 4-1501.03. The Protection Act applies to both D.C. Government employees in covered positions and private entities that are licensed by or contracting with the District of Columbia, which include those licensed by OSSE under the Block Grant Act.

Under the Protection Act, except for convictions that involve certain sexual offenses which automatically preclude employment, the information obtained from a criminal background check does not create a disqualification or presumption against employment of an applicant unless the hiring agency determines that the applicant “poses a present danger to children or youth.” D.C. Code § 4-1501.05a(a). The hiring authority must make a suitability determination by considering eight statutory factors set forth in the regulations at 6B DCMR § 417.4.⁵ Regarding drug-related

⁵ Those factors are:

- a) The specific duties and responsibilities of the position;
- b) The bearing, if any, the derogatory information has to those duties and responsibilities;
- c) The length of time that has passed since the criminal offense(s);
- d) The age of the individual at the time of the criminal offense(s);
- e) The frequency and seriousness of the criminal offense(s);
- f) Any mitigating information provided by the individual in response to the derogatory information;
- g) The contributing social or environmental conditions; and
- h) The District’s policy favoring re-entry of ex-offenders in the work force.

convictions, DCHR's Regulations implementing the Protect Act also state that reasons that may be used in making a determination of disqualification may include "Evidence of ongoing abuse of a drug or alcohol." 6B DCMR § 408.2(d). As such, under the Protection Act, there is no automatic disqualification for a drug-related offense.

The reauthorized federal Block Grant Act requires, among other things, mandatory criminal background checks for child care staff members and applicants of all licensed, regulated, or registered child care providers. 42 U.S.C. § 9858f; 45 C.F.R. § 98.43. The Block Grant Act sets forth what databases must be used to conduct criminal background checks, which is more extensive than required by DCHR, and lists reasons a staff member will be ineligible for employment. 45 C.F.R. § 98.43(c)(1). The Block Grant Act's list of disqualifications include a list of felonies and misdemeanors that disqualify an individual from being employed as a child care staff member. *Id.*

In this case, Petitioner sought a position as a Teacher's Assistant with a licensed child care Facility that is subject to the criminal background check requirements of both the Protection Act and the Block Grant Act. Unlike the other requirements in the background check section, the Block Grant Act only applies the restriction against employing ineligible child care staff members to child care providers receiving assistance from the Child Care and Development Fund (CCDF), but gives states the flexibility to impose the disqualification on any licensed Facility. *See* 45 C.F.R. § 98.43.⁶ OSSE reported that Home Away from Home receives funds from CCDF under the Block Grant Act. Nonetheless, OSSE's eligibility regulations appear to apply to any licensed child care facility, not just those received CCDF funds. OSSE's regulations implementing the Block Grant

⁶ <https://www.federalregister.gov/d/2016-22986/p-677>

Act state it applies to “A Child Development Facility that is licensed, required to be licensed, or applying for a license under the Facilities Act and this chapter, and their respective staff.” 5A DCMR § 101.2. Consistent with the disqualifying convictions listed in the Block Grant Act, OSSE’s regulations provide that an applicant or staff member shall be ineligible for employment with a Facility, if such individual has been convicted of any of the following felonies:

1. Murder, as described in Section 111 of Title 18, United States Code;
2. Child abuse or neglect;
3. A crime against children, including child pornography;
4. Spousal abuse;
5. A crime involving rape or sexual assault;
6. kidnapping;
7. Arson;
8. Physical assault or battery;
9. **Subject to Subsection 133.10, a drug related offense committed during the preceding five (5) years.**

5A DCMR § 133.9(e) (emphasis added); *See also* 42 U.S.C. §§ 9858f(c)(1)(A) – (E) (2018).

Critical to the paragraph 9 above, disqualification for a drug related offense in the preceding five years is subject to the provisions of subsection 133.10 of OSSE’s Regulations. Subsection 133.10 provides that a prospective or current staff member may be ineligible for employment with a covered Facility, if OSSE determines that such individual “poses a present danger to children or youth or if an individual’s prior conviction for crimes impact the fitness of the individual to provide care for and have responsibility for the safety and welfare of children. In making this determination, the following factors shall be considered:

- (a) The specific duties and responsibilities of the applicant;
- (b) The impact or likelihood of an impact, if any, that the criminal offense for which the person was previously convicted will have on his or her fitness or ability to perform one or more of such duties or responsibilities;

- (c) The length of time that has elapsed since the occurrence of the criminal offense;
- (d) The age of the person at the time of the criminal offense;
- (e) The frequency and seriousness of any criminal offense(s);
- (f) Any information produced by the applicant, or produced on his or her behalf, regarding his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
- (g) Any applicable public policy encouraging employment of ex-offenders provided that:
 - (1) A Licensee shall not employ or permit to serve as a volunteer an applicant who has been convicted of, has pleaded *nolo contendere* to, is on probation before judgment, or placed on a case on the stet docket because of, or has been found not guilty by reason of insanity, for any sexual offenses including but not limited to those involving a minor, child abuse, or child neglect.”

5A DCMR § 133.10 (2016). These factors are almost identical to the factors required to be considered by DCHR under the Protection Act. *See* 6B DCMR § 417.4, *Supra* at Fn 5.

As such, OSSE’s Regulations also do not automatically disqualify from employment an individual who has been convicted of a drug offense in the preceding five years. Rather, an individual who has been convicted of a drug offense in the preceding five years is ineligible for employment if OSSE determines the individual “poses a present danger to children or youth or if an individual’s prior conviction for crimes impact the fitness of the individual to provide care for and have responsibility for the safety and welfare of children.” *Id.* Similarly, regarding drug-related offenses, the Block Grant Act states that an individual is ineligible for employment at a licensed Facility if they are convicted of, “**subject to subsection (e)(4), a drug-related offense committed during the preceding 5 years.**” 42 U.S.C. § 9858f; 42 U.S.C. § 9858f(c)(1)(D)(ix). Subsection (e)(4) of the Block Grant states:

The State may allow for a review process through which the State may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in subsection **(c)(1)(D)(ix) [drug-related offenses on preceding 5 years]** is eligible for employment described in subsection (c)(1), notwithstanding subsection (c). **The review process shall be consistent with title VII of the Civil Rights Act of 1964** (42 U.S.C. 2000e *et seq.*).

42 U.S.C. § 9858f(e)(4) (emphasis added).

In its Position Statement, OSSE stated that Petitioner was ineligible for employment under § 9858f(c)(1)(D)(ix) of the Block Grant Act due her conviction for attempted distribution of a controlled substance:

#3. An individual may not serve as a childcare staff member if her or she has been convicted of a felony consisting of “drug related offense committed during the preceding 5 years.”

#4. LaJuan was convicted of Felony Possession with Intent to Distribute on August 21, 2018. This conviction was deemed disqualifying pursuant to 42 U.S. Code sec. 658H(c)(1)(D)(ix).⁷

Exh. 3. Thus, it appears that OSSE found Petitioner automatically ineligible based on her conviction. However, OSSE failed to apply the plain language of either the Block Grant Act or OSSE’s Regulations for drug-related offenses which require OSSE to determine whether Petitioner poses a present danger to children or youth.

In determining what conviction renders an applicant ineligible for employment under the Block Grant Act, the U.S. Department of Health and Human Services, Administration for Children and Families (ACF), specifically excluded drug-related offenses committed in the preceding five years and permitted states to review them on a case-by-case basis. When the ACF published the

⁷ OSSE’s citation to 658H is to the public law, Pub. L 97-35. The codified law is 42 U.S.C. § 9858f(c)(1)(D)(ix) (2018).

final rulemaking implementing the Block Grant Act, it discussed at length, in the comments, the disqualification of employees convicted of drug-related offenses under § 9858f(c)(1)(D)(ix) of the Block Grant Act. *See* 45 C.F.R. § 98.43 (2016); 81 Fed. Reg 67,438 (Sept. 30, 2016):⁸

With the exception of a felony conviction of a drug-related offense committed during the preceding five years, all of the felony and violent misdemeanor convictions listed by the Act are lifetime bans against employment by a child care provider delivering CCDF services. The Act does not allow any flexibility to grandfather in current child care staff members who have been convicted of one of the crimes described in the Act. States do have the option to individually review drug-related felony convictions that were committed during the preceding five years. As discussed later in the preamble, we encourage States to conduct these reviews in accordance with guidance from the U.S. Equal Employment Opportunity Commission.

81 Fed. Reg. 67,500 (Sept. 30, 2016) (emphasis added). Accordingly, the Block Grant Act gave States discretion to allow for a review process specifically for staff members convicted of drug-related felonies committed during the previous five years:⁹

States may use this review process, also known as a waiver process, to determine those staff members convicted of drug-related felonies committed during the previous five years to be eligible for employment by a CCDF provider. The review process is different from the appeals process because it allows the Lead Agency to

⁸ <https://www.federalregister.gov/d/2016-22986/p-3>

⁹ ACF's comment regarding drug-related offenses was in response to a letter co-signed by several national organizations which stated:

“Communities of color, and women of color in particular, have suffered immeasurably as a result of the collateral consequences of an arrest or conviction for a drug offense. Indeed, women now represent the fastest growing segment of the criminal justice system, due largely to drug offenses, not violent crime. In fact, 24 percent of all incarcerated women were convicted of drug offenses, compared to just 16 percent of men. As the ACLU concluded in their analysis of the issue, '[w]omen of all races use drugs at approximately the same rate, but women of color are arrested and imprisoned at much higher rates.' [W]e urge ACF to emphasize in the preamble that the States should adopt robust waivers procedure as applied to disqualifying drug offenses. In addition, ACF should specifically incorporate the EEOC guidelines in the regulations (Section 98.43(e)(4)), which would provide specific direction to the States beyond simply referencing Title VII.”

consider extenuating circumstances on a case-by-case basis. The Act's review process requirements appear at § 98.43(e)(4) of the final rule.

81 Fed. Reg. 67,503 (Sept. 30, 2016).¹⁰ OSSE, in its Regulations, created the same opportunity for review by making the disqualification for a drug-related offenses in the preceding five years subject to a determination that the applicant poses a present danger to children or youth or the conviction impacts the fitness of the applicant to provide care for children. 5A DCMR § 133.9(e)(9) and § 133.10. That review must be conducted by considering the seven suitability factors listed in OSSE's Regulations at 5A DCMR § 133.10 and the eight suitability factors listed in DCHR's Regulations at 6B DCMR § 417.4.

As cited above, for drug-related offenses, the Block Grant Act specifically encourages states to conduct a review that is consistent with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), which prohibits employment discrimination based on race, color, religion, sex and national origin, and encourages following EEOC guidance:

ACF interprets the statutory reference to Title VII of the Civil Rights Act to mean that Lead Agencies must conduct the review processes in accordance with the EEOC's current guidance on the use of criminal background checks in employment decisions, which requires individualized consideration of the nature of the conviction, age at the time of the conviction, length of time since the conviction, and relationship of the conviction to the ability to care for children, or other extenuating circumstances.

Lead Agencies should consult the EEOC's current guidance on the consideration of criminal records in employment decisions to ensure compliance with Title VII's prohibition against employment discrimination (U.S. Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf). As described in the comment, members of low-income communities of color are disproportionately charged and convicted of drug-related offenses. Establishing a robust process for an individualized review that follows

¹⁰ <https://www.federalregister.gov/d/2016-22986/p-706>

EEOC guidance is important to protect these individuals. This process allows Lead Agencies to consider extenuating circumstances and to make nuanced decisions to deem an individual to be eligible for employment.

81 Fed. Reg. 67503 (Sept. 30, 2016).¹¹

The EEOC guidance recommends reviewing the following evidence:

[T]he facts or circumstances surrounding the offense or conduct; the number of offenses for which the individual was convicted; older age at the time of conviction, or release from prison; evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct; the length and consistency of employment history before and after the offense or conduct; rehabilitation efforts (e.g., education/training); employment or character references and any other information regarding fitness for the particular position; and whether the individual is bonded under a federal, State, or local bonding program.

U.S. Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964 (2012).¹²

OSSE's Regulations at 5A DCMR § 133.10 are consistent with the EEOC recommendations. Nonetheless, there is no evidence in the record that OSSE applied the seven factors in § 133.10 to determine whether Petitioner posed a present danger to children or youth or that her conviction otherwise impacted her fitness. Instead, OSSE automatically excluded Petitioner from employments based solely on her conviction which is not consistent with the Block Grant Act or OSSE's Regulations.

¹¹ <https://www.federalregister.gov/d/2016-22986/p-722>

¹² https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#VIII

In conclusion, there is nothing in the federal Block Grant Act or the D.C. Protection Act that automatically excludes from employment in a covered agency receiving Block Grant funds, an individual that has been convicted of a drug -related offense in the preceding five years. OSSE must make a suitability determination by weighing Petitioner 's conviction in light of the suitability factors set forth in 5A DCMR § 133.10 and 6B DCMR § 417.4. For these reasons, the December 11, 2019, ineligibility determination for Petitioner is reversed so that OSSE may make a suitability determination in light of this decision.

Therefore, it is this **15th day of June 2020**:

ORDERED, that OSSE's December 11, 2019, determination that Petitioner is ineligible for employment with a licensed child development facility based solely on her conviction for attempted distribution of a controlled substance in the preceding five years is **REVERSED**; and it is further

ORDERED, that nothing in this Final Order amounts to a suitability determination or a guarantee of employment. This Order only requires that OSSE make a suitability determination considering the factors set forth in 5A DCMR § 133.10 and 6B DCMR § 417.4; and it is further

ORDERED, that pursuant to 6B DCMR 438.9, this decision is final and cannot be appealed to any administrative body or Court.

Motoko Aizawa
Commissioner Motoko Aizawa

Timothy Thomas
Commissioner Timothy Thomas

Teri J. Quinn
Commissioner Teri J. Quinn