

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

**DEPARTMENT OF
EARLY EDUCATION
AND CARE**

In Re: School Age Child Care)
License application)
Submitted by)
Melrose YMCA)
497 Main Street)
Melrose, Massachusetts 02176)

**EEC Docket No.
SACC 09-022**

**ORDER TO PROTECT CHILDREN: ORDER TO ISSUE
PROBATIONARY LICENSE AND NOTICE OF SANCTIONS**

Based upon the facts set forth below, the Department of Early Education and Care (“EEC”) has determined that the Melrose YMCA’s (“Melrose Y”) application for a school age child care license will be issued on a Probationary status and be subject to certain Sanctions, set forth in this Order, as conditions of license probation. The Melrose Y’s Beebe School school age child care program had been the subject of a previously issued EEC Sanctions Order, and the Melrose Y did not complete all the terms of the required Sanctions prior to surrendering its school age child care license for the Beebe School site. The Melrose Y has now submitted an application for a new school age program. The new school age program has met the requirements for EEC licensure regarding its physical facility, curriculum for children and qualifications of staff. However, since the Melrose Y had not completed many of the EEC required Sanctions before it

surrendered its license for the Beebe School site, EEC is requiring that the safeguards put in place in the previously issued Sanctions Order will also be in place at the Melrose Y's new school age child care program. As a result, EEC hereby issues this *Order to Protect Children: Order to Issue Probationary License and Notice of Sanctions*. See G.L. c. 15D and 102 CMR 1.07 (2), (3)(a) and (4).

I. BACKGROUND

1. On April 17, 2009, EEC issued an *Order to Protect Children: Order to Correct Violations and Notice of Sanctions* ("April Sanctions Order") regarding the Melrose Y's school age program run at the Beebe School site in Melrose.¹ The April Sanctions Order was based upon the findings of an EEC investigation that determined that now former senior level staff members of the Melrose Y failed to oversee the Beebe School site with the requisite due diligence required to provide for the safety and well being of children enrolled in the program. James Conner ("Conner"), a former site coordinator for the Beebe School site and a long term employee of the Melrose Y, was indicted on April 2, 2009 by a Middlesex County Grand Jury on the following charges involving two victims: rape of child by force (5 counts); indecent assault and battery on a child (4 counts); posing a child in a state of nudity (2 counts); posing a child in sexual conduct (2 counts); photographing/videotaping a nude person without their knowledge; interception of

¹ The Order of was amended on May 19, 2009 (the "May Order") to reflect EEC's determinations on the Melrose Y's Request for Administrative Reconsideration.

oral communications; and intimidation of a witness. Several of the incidents of alleged inappropriate sexual contact occurred at Melrose Y facilities. Conner has been ordered by the Court to stay away from the Melrose Y and other similar locations. He has also been ordered to have no contact with children. Conner has been placed under house arrest and ordered to wear a GPS tracking device.

2. In both the April and the May Orders, EEC found that the Melrose Y's senior level administrators and certain members of its staff disregarded and/or failed to report information that should have caused the Melrose Y's senior administration, at a minimum, to conduct inquiries into the actions of James Conner. These staff members, among other things, ignored adverse references regarding Conner and also failed to act upon a number of warning signs that Conner had, at a minimum, violated the Melrose Y's own Code of Conduct. Such violations of the Code of Conduct included numerous boundary violations with certain female children in his care. (A copy of the May 19, 2009 First Amended Order is herein incorporated by reference and is available upon request.)

II. FACTS AND REGULATORY VIOLATIONS

3. The April 17 Order and the May 19 First Amended Order ("May Order") had set forth a number of Sanctions placed upon the Melrose Y's Beebe School site's license.² The Melrose Y was beginning to make efforts to comply with the Sanctions found in the May Order, but instead chose to surrender the EEC school

² Only the Beebe School site's program had Sanctions placed upon its license. None of the other three Melrose Y EEC licensed programs were affected by the April and May Orders.

age child care license for the Beebe School site and to operate the program at that site during the summer as a summer camp licensed by the Melrose Board of Health and operated pursuant to regulations issued by the Massachusetts Department of Public Health (“DPH”). A summer camp license automatically expires when the school year begins. By surrendering its EEC school age child care license on June 23, 2009, the Melrose Y removed its Beebe School program from EEC’s jurisdiction.

4. On July 10, 2009, only a little over two weeks after it had surrendered its EEC license for the Beebe School site, the Melrose Y filed an application for a new school age child care program. Although this program would no longer be located at the Beebe School site, it bears a strikingly similar resemblance to the Beebe School program in that it will employ many of the same staff who had previously worked at the Beebe School site, including two site coordinators who had worked directly with James Conner and who had failed to report to their superiors concerns brought to them about Conner.

5. While the Melrose Y had begun to make some efforts to comply with the EEC imposed Sanctions found in the May Order, it had precipitously surrendered its license, thereby eliminating any opportunity to show any record of such compliance. In order for the Melrose Y to obtain a new school age child care license, EEC will reinstitute Sanctions so that the Melrose Y can demonstrate that it has the requisite systems and policies are in place to provide for the safety and well being of the children enrolled in the new program.

III. LEGAL BASIS FOR PROBATIONARY STATUS AND SANCTIONS

In April 2009, EEC imposed Sanctions upon the Melrose Y's former school age program located at the Beebe School, as discussed in Sections I and II of this Order. However, the Beebe School program surrendered its license to EEC prior to showing substantial compliance with the Sanctions placed upon its license in April 2009. The school age program that the Melrose Y is now opening at 497 Main Street is substantially the same program as the Beebe School site program that closed in June 2009. Any reference to the Beebe School site program applies to the 497 Main Street program since it is, in essence the same program.

A. The Melrose Y's school age child care program, located at the Beebe School, was not soundly administered. The Melrose Y did not fully comply with the Sanctions imposed by EEC in its May 19, 2009 First Amended Order. *See* 102 CMR 7.06 and 102 CMR 1.07(3)(a) and (4)(a)1.

B. The Melrose Y's Beebe School site school age child care program did not follow certain EEC requirements, as well as many of its own policies, and thus failed to engage in sound business practices that facilitated continuity of care for children and parents. *See* 102 CMR 7.06. These requirements and policies included, but were not limited to:

- The Melrose Y Code of Conduct – a internal code ostensibly designed to set appropriate boundaries between staff and children -- that prohibited staff from being alone with child care children, from hugging children, from having inappropriate contact with children, such as allowing a child to

sit on a staff member's lap, and from transporting children in their own private vehicles;

- The Melrose Y's policies regarding the use of cell phones.
- The Melrose Y's failure to directly supervise James Conner; and
- The EEC requirement to document the Background Record Check Discretionary Review Process as set forth in 606 CMR 14.11.

C. The Melrose Y Beebe School site program did not follow its own policies and provided transportation to a child who was not enrolled in its school age child care program. In addition, this child, who had aged out of the school age program, was still spending time at the school age program, where she had no direct role, while waiting for her basketball program to begin. *See* 102 CMR 7.12.

IV. PROBATIONARY STATUS

The Melrose Y was subject to the Sanctions imposed by EEC for a little over two months, only one third of the minimum time period required in the May Amended Order. Instead, the Melrose Y removed its Beebe School site program from EEC's jurisdiction, thus making full compliance with the EEC imposed sanctions an impossibility. Therefore, in order to evaluate, assess and monitor the ability of the Melrose Y to serve the needs of the children enrolled in its newly licensed school age child care program, EEC will issue a six month provisional license to the Melrose Y for a school age child care program located at 497 Main Street, Melrose, Massachusetts 02176. The six month provisional license is issued to all programs seeking a new EEC license. *See* 102 CMR 7.03(2). The six month provisional license shall be placed on probationary status for a minimum of six

months. The six month probationary period may be extended upon renewal of the provisional license should EEC deem a continuation of probationary status to be necessary. *See* 102 CMR 1.07(4)(a). At the end of the initial six month licensure period, the Melrose Y may request in writing that EEC lift the probationary status. The Melrose Y must state the reasons for the requested lifting of the probationary status. EEC, in its discretion, may allow, deny or modify such a request.

V. RIGHT OF APPEAL OF PROBATIONARY STATUS

Within twenty-one (21) days of the date of this Order, the Melrose Y may file with EEC the enclosed Notice of Claim for an adjudicatory hearing on EEC's determination to issue the Melrose Y a school age child care license subject to probationary status. *See* 102 CMR 1.08(2)(a). The Notice of Claim shall include a written Answer that specifically responds to EEC's Order by admitting, denying or explaining material facts. The Answer should also include all affirmative defenses, as well as any supporting documentation. Failure to file a written Answer may result in EEC requesting a dismissal of any Notice of Claim. Send the Answer and the Notice of Claim directly to:

**Department of Early Education and Care Legal Unit
51 Sleeper Street, Fourth Floor, Boston, Massachusetts 02210
Attn: Denise J. Karlin, Assistant General Counsel.**

*This Order to Protect Children: Order to Issue Probationary License and Notice of Sanctions shall be EEC's Final Agency Decision on its determination to make the Melrose Y's School Child Care license probationary if the Melrose Y fails to file a timely Notice of Claim or otherwise fails to respond. *See* 801 CMR 1.01(4).*

VI. SANCTIONS

As conditions of probation and to ensure that the Melrose Y is meeting the needs of the children in its care, EEC imposes the following Sanctions upon the Melrose Y's school age license to be issued at 497 Main Street, Melrose, Massachusetts 02176. *See* 102 CMR 1.07(2) and (3). Unless otherwise indicated, the Sanctions shall be in effect for at least six months from the date this Order is issued and may be extended by EEC, in its discretion, should EEC deem an extension necessary.

1. The new license shall only be issued for actual number children enrolled.

The new school age child care license shall only be issued for the exact number of children enrolled in the newly licensed program as of the date the license is issued. After the license is issued should more families wish to enroll their children in the program, the Melrose Y must seek a capacity increase from EEC.

2. The Melrose Y must maintain a 10:1 ratio of children per staff member at its new school age child care program.

During the probationary period, the Melrose Y must maintain a 10:1 ratio of children to staff only at the 497 Main Street site. All staff members who have any unsupervised contact with children must undergo the EEC Background Record Check (BRC) process as set forth in 606 CMR 14.00 *et seq.* and must meet the qualifications for their particular position in the Program as set for in 102 CMR 7.32.

