

Lawsuit challenges stringent background checks for day care

By Bob Salsberg, The Associated Press

Posted Aug 29, 2019 at 5:08 PM

BOSTON — A class action lawsuit filed Thursday contends that recently expanded background checks for child care workers in Massachusetts go too far and discriminate against people of color.

The lawsuit, filed in Suffolk Superior Court against the state Department of Early Education by the organization Lawyers for Civil Rights and Boston-based law firm Lichten & Liss-Riordan, was filed on behalf of a longtime day care employee who was banned from her profession because of a decades-old juvenile conviction.

It states that Tara Gregory and others are being unlawfully disqualified for life from working in child care facilities as a result of “overly stringent” background check requirements, without any recourse or right to appeal.

Gregory worked for 20 years at a day care in Boston’s Hyde Park neighborhood, driving and caring for hundreds of young children over that period. She had cleared background checks in the past and had an exemplary work record, according to the lawsuit.

But after new regulations were issued by the state in 2018, Gregory was told she could no longer be a child care worker in Massachusetts because of a juvenile delinquency finding dating back 33 years, when she was 16. In that case, Gregory was charged with assault and battery with a dangerous weapon after kicking someone during a fight among several girls. She completed two years of probation and has committed no other offenses, the lawsuit said.

In April, Gregory received a letter from the department stating she had a “mandatory disqualifying background” and would have to leave her job within two weeks.

“Thus, although Ms. Gregory has held a position in the childcare industry for the past 20 years without posing any risk at all to children entrusted to her care, EEC has now permanently barred her from her chosen profession,” according to the 11-page complaint.

In addition to denying the right to due process for Gregory, who is black, her lawyers also contend the recent changes in background check requirements violate the state’s anti-discrimination laws and equal protection guarantees under the Massachusetts constitution. Because of historical racial disparities in the prosecution of juveniles, the new regulations have a disproportionate impact on people of color, the lawyers said.

In response to a request for comment on the lawsuit, a spokeswoman said the department does not comment on pending litigation.

The agency has previously said the enhanced background checks were necessary to meet “new federal mandates.” Republican Gov. Charlie Baker, in a March 2018 statement announcing the expanded checks, said they would “provide additional safeguards to protect our kids.”

The complaint filed Thursday acknowledges that the state is forced to disqualify workers who have been convicted in the past of certain felonies or risk the loss of federal funding for child care programs. The plaintiffs, however, contend the state went above and beyond the federal requirements by also imposing mandatory lifetime disqualifications for offenses committed as a juvenile.

“(Massachusetts) through this regulation is eliminating a talented and diverse workforce on the basis of stale juvenile justice histories that bear no relation to current fitness,” said attorney Harold Lichten, whose firm is providing pro bono representation for Gregory and other similarly affected workers.

The lawsuit asks that a judge prohibit the mandatory dismissal of child care workers on the basis of a juvenile conviction, and that the state instead make determinations on a case-by-case basis.

“I never imagined that my whole career could be taken from me because of something that happened when I was a 16-year-old,” Gregory, now 49, said in a statement. “What happened to giving people second chances?”