Appeal No. 03991-25D0 **DOHMH v. Saag Astoria Inc. dba TLE** **September 12, 2025**

APPEAL DECISION

The appeal of Respondent, a childcare service, is **denied in part and granted in part.**

Respondent appeals from that part of a hearing decision by Judicial Hearing Officer (JHO) M. Tolin, dated June 30, 2025, sustaining violations of § 47.23(f) of the New York City Health Code (HC) for classroom occupation over teacher/student ratio (Item 2), HC § 47.67(e) for failure to comfort children when they are distressed (Item 3), HC § 47.15(a) for no qualified education director present (Item 4), and HC §47.23(d) for the education director also having classroom responsibilities (Item 6).[1]

Having fully reviewed the record, the Tribunal finds that the decision appealed from is supported by the law and a preponderance of the evidence as to Items 2, 3, and 4, and is not so supported as to Item 6. Therefore, the Tribunal finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
03991-25D0	(Item 1) HC § 47.39(b)	Dismissed	Not Appealed	$ 0
	(Item 2) HC § 47.23(f)	In Violation	Affirmed—In Violation	$ 200
	(Item 3) HC § 47.67(e)	In Violation	Affirmed—In Violation	$ 200
	(Item 4) HC § 47.15(a)	In Violation	Affirmed—In Violation	$ 200
	(Item 5) HC § 47.15(b)	Dismissed	Not Appealed	$ 0
	(Item 6) HC § 47.23(d)	In Violation	Reversed—Dismissed	$ 0

In the summons, the issuing officer (IO) affirmed observing on March 20, 2025, at 31-57 31st Street, Queens, in relevant part, as follows.

Item 2: In violation of HC § 47.23(f), "Infant-A Room 126. The classroom was out of ratio for infant age group (under 12 months). At 8:50 a.m., they were over by three children; at 9:35 a.m., they were over by four children."

Item 3: In violation of HC § 47.67(e), "Several infants were crying for long periods of time, without any comfort due to over ratio and over capacity in the classroom. Teachers were attending to two babies at a time and it was too many to comfort all 11, then 12, at once."

Item 4: In violation of HC §47.15(a), "The education director Deborah Dussack is not on site. The designee Ralph Cambardella is group teacher in the Two's classroom under preschool permit. There is no education director that is qualified to supervise the infant and toddler program at this time."

Item 6: In violation of HC § 47.23(d), "Education director, Deborah Dussack is not on site today. Designee Ralph Cambardella, is group teacher in Twos classroom. An education director for co-

[1] The Health Code is found in Title 24 of the Rules of the City of New York (RCNY).

located program (Two Permits) must be on site at all times of operation and have zero classroom responsibilities."

In a hearing submission, Respondent's attorney (counsel) stated as follows.

Item 2. The violation fails to specify the number of children who were present in Infant A-Room 126, or to allege that the room was over capacity, facts that are necessary to determine whether the room was out of ratio, as alleged. As the court may not assume that there were more than the maximum eight children allowed, and there were two teachers present, the room was never over capacity or out of ratio.[2] In support of this statement, Respondent submitted copies of an Infant A Child Attendance record for March 20, 2025, showing the clock-in and clock-out times of eight children (Respondent's B), and timesheet records for the week of March 16, 2025, for two named employees, with no indication of the their work or room assignments (Respondent's A).

Item 3. The violation fails to specify the classroom where it was alleged that the children were in distress and not comforted. The summons failed to set out any facts that the children were in distress. That children are crying is not a sign that they are in any actual distress as children cry for many reasons. The IO stated that the teachers were attending two babies at a time. It is absurd to expect that teachers can physically interact with more than two children at any specific point in time, whether or not they are "in capacity."

Item 4: Per HC § 47.13(c)(1), Mr. Cambardella is a certified group teacher and was qualified to be the education director designee on the date of inspection. He was not acting as a group teacher on that date. He did not need to meet the requirements of HC § 47.15(a) as he was not the education director.

Item 6: Mr. Cambardella was properly designated as the education director designee and did not have teaching duties on the date of inspection. He was pulled from teaching duties [to be the education director designee].

In the decision for Item 2, JHO did not credit Respondent's counsel's argument that "since Respondent was charged with the room being out of ratio, it could not have been over capacity." She found that "over ratio" for the infant age group at 8:50 a.m. meant that there were three children more than the maximum of eight, or eleven children, and that four over ratio at 9:35 a.m. meant that there were twelve children present. In addition, the JHO did not credit the timesheets submitted in evidence as they did not show which rooms the staff members were assigned to. For Item 3, the JHO did not credit counsel's argument. She found that Item 3 referred to the infant room and that when a child cries it is in distress. For Item 4, the JHO found that Mr. Cambardella was not qualified to supervise the infant and toddler program "since he was certified to teach nursery school, kindergarten, and grades 1-6," and she did not credit Respondent's arguments. For Item 6, the JHO did not find that Respondent established a defense to the violation. She "did not find that Mr. Cambardella was properly designated as education director designee for infant rooms."

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[2] Respondent cites *DOHMH v. Bon Ami Inc.,* Docket No. 15617-12F1 (October 25, 2012), for the argument that the JHO committed reversible error by making a determination based on assumed facts not clearly supported by the record. The Tribunal finds that *Bon Ami Inc*. is not applicable as the facts relied on here are supported by the record. See discussion below.

On appeal, Respondent's counsel states as follows. (Item 2) The timesheets and attendance records together demonstrate that only seven children were present in Infant A-Room at both 8:50 a.m. and 9:35 a.m. and that two staff members, Cherakie Watts Beale and Manesha Sudhu, were signed in and present. Under the 1:4 staff-to-child ratio, this staffing was fully compliant. The finding that eleven and twelve children were present is not supported by any reliable evidence and directly contradicts the contemporaneous attendance records submitted. The JHO improperly credited the IO's unsupported allegations over documentary proof. (Item 3) The finding that infants were in distress merely because they were crying lacks factual basis and legal sufficiency. The allegation that several infants were crying does not establish that they were actually distressed within the meaning of the regulation. Petitioner concedes that staff were actively attending to the children. This contradicts the claim that the children received no comfort. (Item 4) The JHO misapplied the law in finding that Mr. Cambardella was not qualified to supervise the infant/toddler program. HC § 47.13(c)(1) allows the designation of a certified group teacher as the acting education director when the regular director is absent. The designee holds a valid teaching certification covering early childhood education, including nursery school, and he was not teaching on March 20, 2025. The JHO's reasoning, which requires Mr. Cambardella to satisfy the qualification of §47.15(a), contradicts the plain language of HC § 47.13(c)(1). (Item 6) Mr. Cambardella was not teaching on March 20, 2025. He was pulled from the [classroom for two-year-olds] and was acting as the designated education director. Therefore, the program was under the supervision of the designated education director, per HC § 47.23(d). The JHO's conclusion lacks evidentiary support and is inconsistent with the dismissal of Item 5, which concerned coverage in the classroom.

Petitioner, the Department of Health and Mental Hygiene (DOHMH), did not respond to the appeal.

The Tribunal affirms the determinations of the JHO for Items 2, 3, and 4 and reverses the determination for Item 6.

(Item 2) HC § 47.23(f) provides, in relevant part, that the staff of a childcare program, for purposes of staff/child ratios, must include only the teaching staff, and lists the following minimum ratios of 1:4 or 1:3, per room/area separated from other rooms/areas by a physical barrier, for children under 12 months of age, with a maximum group size of eight. The IO affirmed observing that the Infant-A Room 126 classroom was out of ratio that morning, first by three children and then by four. In connection with Item 1, regarding the capacity of the physical space, the IO stated that there were eleven, then twelve infants in the cited classroom that morning. Item 1 was dismissed because the IO failed to provide the measurements of the physical space; the infant count, however, remains part of the record and may be considered in connection with staff/child ratios. Contrary to Respondent's assertion that "the finding that 11 and 12 children were present was not supported by any reliable evidence," the Tribunal notes that it was supported by the sworn statement of the IO, who was present at the premises; that statement was credited by the JHO over the unsworn evidence submitted by Respondent. The Tribunal generally defers to a JHO's credibility determinations and sees no basis for not doing so here. *See NYC v. Michele Radolovic*, Appeal No. 44124 (January 18, 2007). As Respondent did not successfully rebut the allegation or establish a valid defense, the JHO correctly sustained Item 2.

(Item 3) HC § 47.67(e) states, "Children shall be comforted when distressed." The specific allegation to be considered in Item 3 is that several infants were crying for long periods of time without any comfort due to "over ratio." Respondent disputes the finding that mere crying constitutes distress, arguing that the allegation does not establish that the infants were actually distressed "within the meaning of the regulation." The HC does not define the word distress, but a relevant dictionary definition ranges from "pain or suffering affecting the body, a bodily part, or the mind" (for the noun) to "to cause worry or to be troubled" (for the verb).[3] HC § 47.11 requires that each daycare service have an approved, comprehensive written safety plan that establishes policies and procedures for safe operation and for response to health and other emergencies. However, the section cited in Item 3 requires only that children be comforted when distressed. That level of response would not be adequate for bodily injury or higher levels of suffering. Therefore, as an infant communicates mostly by crying, it was reasonable for the JHO to find that when a child cries it is distressed within the meaning of the cited regulation. In addition, it has been decided by regulation that two teachers have the capacity to comfort up to eight children in a reasonable amount of time, but not eleven or twelve children. Thus, insofar as Respondent was operating over ratio, the fact that staff were actively attending to the children does not establish a defense and the JHO correctly sustained Item 3.

(Item 4) Respondent was charged with not having a qualified education director present at the time of the inspection, in that the regular education director was not present and the individual designated to cover during the education director's absence was not qualified. HC § 47.15, the cited section, applies specifically to infant/toddler programs. It states that a childcare program for children under 24 months of age may employ staff with the qualifications listed either in HC § 47.13 for each title or the qualifications listed in HC § 47.15. As qualifications for the position of education director of an infant/toddler program, HC § 47.15(a) lists (1) a baccalaureate degree in early childhood education or related field of study, and (2) "at least one year of experience as a group teacher on the teaching staff in a childcare program for children under 24 months of age, or six college credits in infant/toddler coursework, or a study plan leading to six college credits in infant/toddler coursework."

HC § 47.15 does not have a provision for designating an individual to act as education director when the regular education director is not present. That is found in HC § 47.13(c)(1), which applies to childcare programs in general, and requires the permit holder to designate an individual to cover when an education director is absent. The section states that, except as provided in § 47.15 or § 47.17,[4] such individual must be a certified group teacher or a group teacher whose application for certification is fully submitted and pending certification by the State Education Department or other accreditation organization, or whose application for certification is fully submitted and pending approval by the Department. Respondent asserts that the JHO misapplied the law in finding that Mr. Cambardella was not qualified because he was not certified for the infant/toddler age level. Respondent argues that Mr. Cambardella holds a valid teaching certificate covering early childhood education, as required by HC § 47.13(c)(1), and that the section does not require him to independently satisfy the qualifications of § 47.15(a).

The Tribunal agrees that the designee need not have the exact training or experience of the regular education director. However, the Tribunal finds that the intent of the regulatory scheme

[3] *Merriam Webster's Collegiate Dictionary,* 11th ed., s.v. "distress."
[4] HC §47.17 applies to night programs and is not relevant here.

is to ensure that anyone who is given responsibility for supervising and training infant/toddler teachers should first have classroom experience as an infant/toddler teacher. In making that finding, the Tribunal is guided by two observations: first, per HC § 47.15, the infant/toddler education director is the only teaching position that requires prior infant/toddler classroom experience for a candidate who has had any relevant formal education above high school; second, HC § 47.13(c)(1), itself, defers to HC § 47.15 by qualifying the requirements it sets forth for a designee with the words, "except as provided in Section 47.15 or 47.17." For these reasons, the Tribunal finds that the JHO correctly sustained Item 4.

(Item 6) HC § 47.23(d) states that an infant/toddler teacher in a childcare program, under the supervision of the education director, may be in charge of individual groups of infants and toddlers, or children "in a night childcare program." As noted above, the summons alleges, "Education director, Deborah Dussack is not on site today. Designee Ralph Cambardella, is group teacher in Twos classroom. An education director for co-located program (Two Permits) must be on site at all times of operation and have zero classroom responsibilities." Even if true, the narrative alleged does not make out a violation of the section that is cited. Item 6 should be dismissed.

Accordingly, the Tribunal affirms the finding of violation of HC § 47.23(f) (Item 2), HC § 47.67(e) (Item 3), and HC § 47.15(a) (Item 4) and imposition of their regulatory penalties. The Tribunal reverses the finding of violation of HC § 47.23(d). Item 6 is dismissed.

By: OATH Appeals Division