



- Exhibit B: Letter from [REDACTED] Family Center dated July 20, 2017  
Exhibit C: DCF letter dated July 25, 2017 indicating the reason for the removal of the children from the home  
Exhibit D: DCF Dictation

For the Appellant:

- Exhibit 1: Office of Children and Family Services [REDACTED] investigation decision letter dated May 26, 2017  
Exhibit 2: Office of Children and Family Services [REDACTED] investigation decision letter dated August 10, 2017

**Statement of the Issue**

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, and on the information available at the time of and subsequent to the investigation, the Department's decision or procedural action violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant; if there is no applicable statute, policy, regulation or procedure, whether the Department failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant. 110 CMR 10.05.

**Findings of Fact**

1. The subject children of this Fair Hearing are "Hei" and "Hel", who were seven (7) and six (6) years old, respectively, at the time of the removal. (Exhibit C)
2. The Appellant was a pre-adoptive placement resource for the children. The children were placed in the Appellant and his wife's home in [REDACTED], via an interstate compact agreement (ICPC regulation) on March 3, 2017. (Testimony of the Appellant; Testimony of the Adoption Worker)
3. The Appellant and his wife (R) indicated that were aware of the trauma that many children in foster care face prior to these children being placed with them. The Appellant and his wife had agreed to not use corporal discipline. (Exhibit A)
4. The Appellant and his wife contacted the Department in July 2017 and notified them that they were the subject of a [REDACTED] CPS investigation regarding the children. (Testimony of the Appellant; Testimony of the Adoption Worker; Exhibit D)
5. On the same date, the Department was notified by the [REDACTED] Child Protection Services [REDACTED] that they were investigating allegations that the children were being physically disciplined in the Appellant's home. (Testimony of the Adoption Worker; Exhibits A, B & D)

6. During this contact the Department was informed that there had been a prior investigation conducted by [REDACTED] CPS in April 2017 involving the same concerns of physical discipline being used with the children in this pre-adoptive foster home. R had acknowledged that she had used a belt to discipline "Hel." "Hei" had also reported being hit with a belt in the home. At that time (April 2017) the Appellant and his wife had agreed they would no longer use physical discipline with the children. (Testimony of the Adoption Worker; Exhibit B; Exhibit D)
7. In April 2017, both children had also disclosed being spanked, with a hand, by the Appellant and his wife. (Testimony of the Adoption Worker)
8. The Appellant disputed that he had ever spanked "Hei." The Appellant acknowledged that he had spanked "Hel" prior to the April 2017 [REDACTED] CPS investigation and ceased this form of discipline after agreeing to no longer use this method after meeting with [REDACTED] CPS. (Testimony of the Appellant)
9. Both the April and July 2017, [REDACTED] CPS investigations were "unfounded" as there were no injuries to the children. (Exhibits 1 & 2; Exhibit D; Testimony of the Adoption Worker)
10. The use of corporal discipline by the Appellant and his wife was a result of frustration with the children. The Appellant was aware, prior to the children being placed with them, that corporal punishment should not be utilized as a form of discipline. (Testimony of the Appellant; Testimony of the Adoption Worker; Exhibit C)
11. The Department removed the children from the Appellant's home by the Department on July 20, 2017, due to the repeated use of physical discipline in the foster home with the children. The Appellant and his wife were given verbal notice of the removal by the Department on July 19, 2017; as required, the Department subsequently sent the Appellant and his wife a written notice of removal of the children. (Exhibit C; Exhibit D, p. 5)
12. Pursuant to its regulations, the Department cited 110 CMR 7.116 as its reasons for removal of the children. (Exhibit C)
13. The Department's decision to remove the subject children from the Appellant's home was made in conformity with its policies and regulations and was based upon sound clinical reasoning. (See, Analysis below.)

#### Applicable Standards

"All out-of-home placement decisions shall be made in the best interests of the child, based upon safety, well-being and permanency of the child and the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning..." 110 CMR 7.101(1).

"When considering a kinship or child-specific placement, the Department shall require that the relative or extended family member or individual chosen...meet the Department's requirements, as set forth at 110 CMR 7.104 and 7.105." 110 CMR 7.101(6).

Pursuant to 110 CMR 7.116(2), "Whenever the Department determines that a foster child should be removed from a foster/pre-adoptive home for the purpose of achieving a more suitable placement for permanency, safety of well-being, and not because of a request made by the foster/pre-adoptive parent(s) for removal...the Department shall...(a) give written notice to the foster/pre-adoptive parent(s) as soon as the determination is made...at least 14 days prior to the intended removal of the foster child(ren)." 110 CMR 7.116(2)(a). The requisite content of the written notice is delineated in 110 CMR 7.116(2)(a)(1)–(5).

"Notice that if the foster pre-adoptive parent(s) intend to file for a fair hearing from the decision to remove the child, they must do so within ten days of receipt of the notice in order to prevent the removal of the child(ren) pending the fair hearing." 110 CMR 7.116(2)(a)(6).

To prevail at a Fair Hearing, an Appellant must show based upon all evidence presented at the hearing, by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and/or statutes and/or case law and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. 110 CMR 10.23.

In making a determination, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29(2).

### Analysis

At the Fair Hearing, the Appellant indicated he was committed to adopting the children. The Appellant was distraught and acknowledged that a result of this situation he and his wife were in the process of a divorce. Despite this, the Appellant still hoped to have the decision to remove the children overturned so that they could return to his care. The Appellant understood that the actions, specifically the use of corporal discipline in the home, resulted in the removal of the children from the home.

Notwithstanding the Appellant's efforts in going through the process involved to become a pre-adoptive resource for the children, the Department had reasonable clinical concerns. The Appellant and his wife's use of corporal discipline with these children despite understanding, prior to their placement, why this was not useful or beneficial to the children, and agreeing, was problematic. The Appellant and his wife were later the subjects of the April 2017, [REDACTED] CPS investigation regarding the use of physical discipline and again agreed to refrain after being informed by [REDACTED] CPS that this was not appropriate.

Despite this there was yet another CPS investigation in July 2017 with the same concerns which the Appellant's wife acknowledged were accurate. The Department's concerns that the Appellant did not have the necessary commitment to this child to give him permanency and become his pre-adoptive placement were valid, clinical reasons for removal of these children from the Appellant's foster home.

The Department looks at many factors when determining whether a prospective foster/adoptive family can meet the needs of a child in its custody. One of those factors is whether the family can work with the Department and carry on an ongoing, trustworthy, and productive relationship with the agency and with the many providers/collaterals involved with the family/child, all of which is of course for the betterment of the child(ren) in the Department's custody. Being a child protection agency, the Department was justifiably concerned with the issue of ongoing use of physical discipline with these children. 110 CMR 7.116(6).

The Department's decision was made in conformity with its policies and regulations and did not result in substantial prejudice to the Appellant. This Hearing Officer did not find the information offered by the Appellant compelling to the degree to find that the Department abused its discretion in its decision to remove the children from the Appellant's pre-adoptive placement.

#### Conclusion

The Department's decision to remove the subject children from the Appellant's pre-adoptive is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which the Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the Findings of Fact.

Lisa A. Henshall  
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Administrative Hearing Officer

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Date: 12-28-17