

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
BOSTON, MASSACHUSETTS 02111**

LINDA S. SPEARS
Commissioner

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IN THE MATTER OF

PW

#2017-0022

Fair Hearing Decision

The Appellant in this Fair Hearing is PW. The Appellant is appealing the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of the physical abuse of R, pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Procedural History

On December 6, 2016, the Department became involved with the Appellant after receiving a 51A report from a mandated reporter alleging physical abuse of R (or "Youth") by PW. This allegation was screened in for a non-emergency response by the Department and upon conclusion of its response period, the Department supported the allegation. The Department informed the Appellant of its decision and of his right to appeal the Department's determination. The Appellant's made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on March 16, 2017, at the Department of Children and Families' Central Area Office in Boston, MA. All witnesses were sworn in to testify under oath. The record was left open until April 4, 2017 to allow parties to submit additional evidence. The record was official closed on that date.

The following persons appeared at the Fair Hearing:

Carmen Colón
PW
JN

Fair Hearing Officer
Appellant
DCF Response Social Worker

In accordance with 110 C.M.R. 10.03, the Administrative Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement or bias in this case.

The Fair Hearing was recorded on a digital voice recorder, pursuant to 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A: 51A Intake Report -- Institutional Abuse of 12.07.2016
- Exhibit B: Child Abuse/ Neglect Non-Emergency Response of 12.29.2016
- Exhibit C: Notice of Response of 12.09.2016
- Exhibit D: Response Outcome of 12.29.2016
- Exhibit E: Pictures of R (1-4)
- Exhibit F: Video Surveillance of 12.02.2016

For the Appellant:

- Exhibit 1: Request for Fair Hearing
- Exhibit 2: Employee Evaluation Results

The Hearing Officer need not strictly follow the rules of evidence...Only evidence which is relevant and material may be admitted and form the basis of the decision. (110 CMR 10.21)

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 response, the Department's decision or procedural action, in supporting the 51A report 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, the issue is whether the Department failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant. For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issue is whether there was reasonable cause to believe that a child had been abused or neglected and the actions or inactions by the parents(s)/ caregiver(s) placed the child (ren) in danger or pose substantial risk to the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.05, DCF Protective Intake Policy #86-015, rev.

2/28/16

Findings of Fact

1. The Appellant on this case, PW, was employed at [REDACTED] as a full time Crisis Specialist. On December 2, 2016, the Appellant was on duty and assigned to escort R. As an employee of the center and assigned staff person to R, Appellant was considered the caregiver of R, pursuant to Departmental regulation 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev 2/28/16. (Exhibit B, DCF testimony, Appellant testimony)
2. At the time of the filing, R was 14 years of age. R was detained at the center and residing at the program full time. (Exhibit B, p. 1, Appellant testimony)
3. R carried an active diagnosis of "Attention Deficit Disorder, Mood Disorder, Emotional Disorder and MI." (Exhibit B, p. 2)
4. On December 2, 2016 the following took place:
 - a. R disrupted a classroom to which he was not assigned as he wanted to and began to argue with a peer (Exhibit B, p.3).
 - b. Appellant intervened and told R to leave the classroom. R refused and punched Appellant in the face which led to a two person restraint of R. R disclosed having been pushed out of the classroom by Appellant prior to punching him (Exhibit B, p. 3)
 - c. After being restraint R was left alone with Appellant who was in charge of escorting R from the school to the residence building (DCF testimony, Exhibit A, p.1, Exhibit B, p2, 3).
 - d. While escorting R out of the building, Appellant engaged in a one person take down of R by deliberately pushing R to the ground causing injuries R's lip, face and hand (DCF testimony, Exhibit B, p.3).
 - e. This one person take down is found to be against program policies (Exhibit B, p.6)
5. As a result of this event, Appellant was taken off of his work schedule indefinitely pending a hearing decision (DCF testimony, Exhibit B, p. 2-3).
6. On December 7, 2016, a 51A report was filed by a mandated reporter alleging the physical abuse of R by Appellant (Exhibit A, DCF testimony).
7. In interviews with program personnel, DCF RSW obtained statements from three employees of the program who were on duty at the time of the event corroborating R's disclosure of having been purposely pushed down by Appellant. (Exhibit A, p. 1, Exhibit B, p. 2-4)
8. DCF RSW obtained documentation as evidence of R's injury at the time of the restraint/take down by Appellant. R suffered the following injuries:
 - a. "Cut and abrasion to his lower left side of his lip"
 - b. "Cut between his right 4th and 5th finger with a flap of skin hanging"
 - c. "Small linear laceration to his right wrist"
 - d. "Small laceration underneath his right knee with a flap of skin hanging"(Exhibit B, p.4, Exhibit E)

9. On December 2, 2016, DCF RSW interviewed Appellant. In this interview Appellant denied having pushed R down, instead Appellant stated having been tripped by R and falling over. Additionally, Appellant stated having been verbally threatened by R, prior to the fall. This account was not corroborated by any eyewitness or video surveillance provided to DCF RSW (Exhibit B, p. 3-5, Exhibit F, DCF testimony, Appellant testimony)

10. After review of the documentation and testimony provided by the Appellant and DCF, I find that the allegation of the physical abuse of R by Appellant should have been supported for the following reasons:

- a. Appellant was viewed to be forcefully pushing R to the ground while R was restrained;
- b. Three experienced staff witnesses described the Appellant's actions as deliberate and forceful;
- c. The Appellant's action of taking R down caused R to have multiple injuries which were documented and viewed by DCF RSW.
- d. The actions taken by Appellant meet the Departmental definition of abuse and the actions or inactions by the caregiver placed the child in danger or pose substantial risk to the child's safety or well-being. (DCF Protective Intake Policy #86-015, rev 2/28/16)

Applicable Standards

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caregiver occurred and the actions or inactions by the parent(s)/caregiver(s) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015, rev. 2/28/16.

"Reasonable cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected." Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caretaker; physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals (e.g. professionals, credible family members); and the social worker's and supervisor's clinical base of knowledge. 110 CMR 4.32(2)

"[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 51A." Care and Protection of Robert, 408 Mass. 52, 63 (1990) This same reasonable cause standard of proof applies to decisions to support allegations under s. 51B. Id. at 64; M.G.L. c. 119, s. 51B "Reasonable cause" implies a relatively low standard of proof which, in the context of 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Id. at 64

"Caregiver" means (1) a child's parent, stepparent, guardian, any household member entrusted with the responsibility for a child's health or welfare; or, (2) any other person entrusted with the responsibility for a child's health or welfare, whether in the child's home, a relative's home, a

school setting, a child care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such the term "caregiver" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caregiver" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child such as a babysitter under the age of 18. Protective Intake Policy #86-015 Rev. 2/28/16.

"Abuse" means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

"Substantial Risk of Injury" A situation arising either through intentional act of omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse to a child. DCF Protective Intake Policy #86-015 Rev. 2/28/16

"Physical Injury" Death; or fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such factors as the child's age, the circumstances under which the injury occurred, and the number and location of bruises. DCF Protective Intake Policy #86-015 Rev. 2/28/16

To prevail, an Appellant must show based upon all of the evidence presented at the hearing, by a preponderance of the evidence that: (a) the Department's or Provider's decision 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, (b) the Department's or Provider's procedural actions were not in conformity with the Department's policies and/or regulations, and resulted in substantial prejudice to the aggrieved party, (c) if there is no applicable policy, regulation or procedure, that the Department or Provider acted without a reasonable basis or in an unreasonable manner which resulted in substantial prejudice to the aggrieved party; or (d) if the challenged decision is a supported report of abuse or neglect, that the Department has not demonstrated there is reasonable cause to believe that a child was abused or neglected and the actions or inactions by the parent(s)/caregiver(s) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

After review of the evidence provided, and the information obtained during the DCF response period, it is undisputed per R, and eyewitness accounts, that on December 2, 2016, R did in fact disrupt class by entering a classroom he was not assigned to and argued with a peer. R subsequently became aggressive to program staff including the Appellant, whom he punched

several times.

R's actions led to him being restrained and removed from the classroom. This is where Appellant argued that having been escorting R alone, he was tripped by R which caused him to fall on to the youth. Although Appellant remained adamant that he did not purposely push R, there was video surveillance as well as eyewitness accounts (aside from the accounts of R) in which Appellant was seen purposely tripping R and pushing R down to the concrete. This take down, conducted by Appellant, happened while the youth's hands were restrained; this led to R's injuries and the Appellant's suspension from work.


Appellant also argued that while escorting R, R verbally threatened him, and although no proof of this was obtained during the response or Fair Hearing, it does not negate the fact that Appellant forcefully conducted a one person take down of youth.

At the Fair Hearing, the argument made by Appellant was not supported by the evidence and was not persuasive. The Department's decision was based on credible evidence of visible bruising to the youth as well as accounts obtained from several eyewitnesses. The evidence demonstrated that the Appellant's actions caused a physical injury to the youth and therefore met the definition of physical abuse and the actions or inactions by the caregiver placed the child in danger or pose substantial risk to the child's safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16

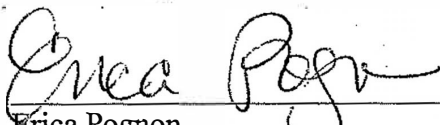
Conclusion and Order

In conclusion, the Department's decision to support the 51A report of Institutional Physical Abuse of R by the Appellant is **AFFIRMED**.

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


Carmen Colón
Fair Hearing Officer

10/16/17
Date


Erica Pognon
Supervisor, Fair Hearing Unit