

**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

Voice: 617-748-2000  
FAX: 617-261-7428

**IN THE MATTER OF**

**JS**

**2017-0074**

**FAIR HEARING DECISION**

**Procedural History**

The Appellant in this Fair Hearing is JS. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to remove I, a foster child, placed in her home.

On January 4, 2017, the Appellant was provided with a two week notice from the Department family resource social worker, informing her that on January 18, 2017, I would be removed from her care and subsequently placed with another resource. The Department informed the Appellant of its decision and of her right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on March 7, 2017 at the Department of Children and Families' Area Office located in Chelsea, MA. All witnesses were sworn in to testify under oath. The record officially closed on the same date.

The following persons appeared at the Fair Hearing:

Carmen Colón  
GS  
WJ  
JS  
JD

Fair Hearing Officer  
Area Program Manager  
Adoption Social Worker  
Appellant  
Family Resource Supervisor

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: Notice to foster / preadoptive family: child removal – 01.04.2017

Exhibit B: DCF / collateral Email chain

Exhibit C: Response Log – [REDACTED] Police Department

Exhibit D: Arrest Report of JD – [REDACTED] Police Department – 07.04.2016

Exhibit E: Foster Care Review : FYI Notice – 01.13.2017

Exhibit F: JS request for Fair Hearing – 01.04.2017

Exhibit G: DCF Service Plan (ongoing clinical case)

Exhibit H: DCF Service Plan ( Adoption clinical case)

For the Appellant:

Exhibit 1: JS request for Fair Hearing -- 01.04.2017

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, 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**

On the basis of my assessment of all the evidence, I make the following factual findings:

1. The Appellant in this Fair Hearing was JS. The Appellant has been parenting I as an approved foster placement resource with the Department of Children and Families. The Appellant is contesting the Department's decision to remove I from her home to be placed with kin. (Appellant testimony; Adoption worker)
2. The identified child and focus of this Fair Hearing is I ("I" or "the child"). I has been in the custody of the Department since March 2, 2015; the Department placed I in the Appellant's home. (Exhibit G, Exhibit H)
3. Since the beginning of I's placement at the Appellant's home, the Department was clear in its expectations around supervision for I and contact with his biological family. (Adoption Social Worker testimony)

4. The Department held a Permanency Planning Conference to determine a permanency goal for the child on February 6, 2016. I's new goal was Permanency through Adoption. (Adoption social worker testimony, Area program manager testimony)
5. On July 4, 2016, JD engaged in a physical altercation with Appellant's father. He was arrested and charged with Assault and Battery. The altercation took place in the Appellant's home during a gathering for which I was present. (Adoption social worker testimony, Exhibit C, Exhibit D)
6. The Department was not made aware of this incident until December 2016. In December 2016, I disclosed that he had seen JD hitting walls and arguing in the home on several occasions. I also disclosed that JD was sleeping over the house and caring for the children. (Adoption Social Worker testimony)
7. During meetings with the Appellant, the Department staff discussed concerns for frequent visitors to the Appellants home as it had been reported that Appellant's boyfriend, JD, was frequenting the home as well as I's biological mother, IS. Both individuals did not have Departmental clearance to frequent the home and Appellant was aware that I's contact with mother had to be approved by DCF and supervised in full. (Adoption social worker testimony, Exhibits G and H, Exhibit F)
8. The Department staff, both Family Resource and Adoption, had ongoing conversations with Appellant regarding their concerns around JD being in the family home as well as IS access to I. Appellant was informed that this was not allowed as JD had pending charges and that I could not have unsupervised visitation with his mother. These conversations began in 2016. (Exhibit E, Adoption Social Worker testimony, Family resource supervisor testimony)
9. In addition, the Department obtained proof that NM, Appellants mother, had been providing transportation for I, without Departmental authorization. (Exhibit A)
10. On January 13, 2017, the Department held a Foster care review. At the time of the review, Appellant continued to allow JD in the family home, rely on NM for transportation of I, as well as provide I's biological parents access to child, knowing the child's goal was Adoption. (Exhibit E, Exhibit 1, Adoption social worker testimony)
11. At the conclusion of the Foster Care Review, the reviewer issued an FYI notice in which she echoed the ongoing and adoption staff concerns for I in the Appellants home. When assessing whether I was in need of placement, it was determined that Placement for the child was necessary yet inappropriate given the concerns for violence in the home, the unauthorized visitors along with I manifesting symptoms of anxiety and reporting to being uncomfortable in the home whenever JD was there. (Exhibit E)

#### **Applicable Standards**

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. 110 CMR 10.23

**110 CMR 7.101: Out of Home Placements:**

- (1) "All out of home placement decisions shall be made in the best interest of the child, based upon safety, well-being and permanency of the child and the child's individual needs. . ."
- (2) "The Department shall consider, consistent with the *best interests of the child*, the following placement resources in the following order: (a) placement with kinship family; (b) placement with a child-specific family; (c) placement in a family foster care home where the child was previously placed..."

**110 CMR 7.105: Standards for Licensure of foster /PreAdoptive Homes:**

- (14) The home may not have any household members, frequent visitor or alternative caretaker, who would , in the judgement of the Department, pose a threat of abuse or neglect to foster children placed in the home, or who would impede or prevent the provision of adequate foster care in the home.

**110 CMR 7.112 (g): Department obligations to Foster/Preadoptive Parents :**

POST PLACEMENT THE DEPARTMENT SHALL:

*Notify* the foster /pre-adoptive parent if the Department decides to pursue legal guardianship or adoption for a child placed in the foster/pre-adoptive home, and afford the foster /pre-adoptive parent adequate opportunity to apply to become the legal guardian or adoptive parent for that child;

**110 CMR 7.116(2)(1-4)**

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 or wellbeing , and not because of a request made by the foster/pre adoptive parent(s) for removal of the foster child nor because of the occurrence or threat of abuse or neglect of the child in the foster /pre adoptive home, the Department shall do the following:

- (a) give *written notice* to the foster / pre-adoptive parent as soon as the determination is made but absent an emergency at least 14 days prior to the intended removal of the foster child(ren).

The written notice shall include at least the following:

1. The fact that Department intends to remove the foster child from the foster /pre adoptive home;
2. the reason(s) for the intended removal;
3. the actual estimated date when the foster child will be removed from the foster/pre-adoptive home;

4. If the reason for the intended removal is to place the child with a prospective guardian or adoptive parent, the *notice* that the foster/ pre-adoptive parent's right to appeal the decision to remove the foster child from the foster / pre-adoptive home , under the fair hearing or grievance procedure, provided however that no right of appeal exists if the child is to be removed in order to be placed with (a) his or her parent ... (e) i. pre adoptive home, ii. Legal guardian.

#### **110 CMR 10.29(2)**

In making a determination , the Hearing Officer shall give due weight to the clinical decision made by a Departmental social worker.

#### **110 CMR 18.00 Criminal Offender Record Checks (18.04)**

##### **Definitions**

Discretionary Disqualifications : A candidate shall be ineligible for a position that entails potential unsupervised contact with persons receiving services at a Department funded or operated program if he or she has been convicted of any crime, or has pending any charge or any crime in 110 CMR 18.16: Table B or Table C, unless the hiring authority has complied with the provisions of section 110 CMR 18.11

Household Member: Any individual, regardless of age, who resides or spends substantial time in the home. This may include, but is not limited to, a non-custodial parent who visits the home; relatives, paramours, and/or other individuals who spend overnights in the home; and individual who routinely baby-sits in the home and/or otherwise assumes some degree of caretaking responsibility, in the home, for any child in that home.

##### **Analysis**

The matter in question at Fair Hearing is the Departmental decision to remove, I, from his current foster placement, at the Appellant's home. Due to the Findings above and reasons explained below, the Department's decision to remove this child has been Affirmed.

Upon thorough review of this case, it is undisputed that the Departmental staff in this matter did comply with the agency's policy and regulations. The Appellant was provided with written and verbal notice of the Department's expectation in regard to frequent visitors and was aware of JD's open criminal case, concerns for biological parent access to child along with the unauthorized use of Appellant's mother for the transportation of I. Additionally, the Department became concerned for the possible existence of domestic violence between JD and Appellant in front of I and the other children in the home. (Adoption social worker testimony)

Appellant had been given an opportunity prior to the Department bringing the case forward to management level to resolve the concern by ensuring the JD stop frequenting the home and stopping access of I's parent to child. This was not done by Appellant.

Upon thorough review of this case, it is undisputed that the Departmental staff in this matter, followed the agency's policy and regulations. The Appellant was not able to provide a persuasive argument as to why she decided to allow JD, her mother and I's parents access to the child. In fact, the Appellant, admitted to allowing this to happen even while being aware of the Department's expectations in her correspondence. (Exhibit F)

### **Conclusion and Order**

In conclusion, the Department's decision to remove I was made in conformity with Department regulations and was reasonable; therefore, the Department's decision is **AFFIRMED**.


This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for Suffolk County, or within the county in which they live, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)

4/4/18

Date



Carmen Colón  
Fair Hearing Officer



Erica Pogon  
Supervisor  
Fair Hearing Unit