

**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            )  
                                          )  
                  AG                    )  
                                          )  
                  FH # 20170098        )  
                                          )

**FAIR HEARING DECISION**

The Appellant in this Fair Hearing was AG. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On December 16, 2016, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of B by his mother, AG. A response was conducted and on January 11, 2017, the Department made the decision to support the allegation of the neglect of B by his mother. The Department notified AG (Ms. G or "Appellant") of its decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on March 9, 2017, at the DCF Coastal Area Office. All witnesses were sworn in to testify under oath. The record closed on March 9, 2017.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
AMG	Appellant
LS	Department Response Social Worker

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this matter, having no direct or indirect interest, personal involvement, or bias in this case.

The Fair Hearing was recorded on one compact disk.

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

For the Department:

- Exhibit A Child Abuse/Neglect Report dated 12/16/16  
Exhibit B Child Abuse/Neglect Emergency Response completed 1/11/17

Appellant

- Exhibit 1 B's Biology grades  
Exhibit 2 Emails To/From Appellant and B's school

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

**Issue to be Decided**

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, in supporting the 51A report of neglect 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; for a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, whether there was reasonable cause to believe that a child had been 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 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16.

**Findings of Fact**

1. At the time of the filing of the subject 51A report, B was fifteen years old. He resided in ██████, MA with his mother, AMG. (Exhibit A)
2. The Appellant is the mother of the subject child; therefore she was a caregiver pursuant to Departmental regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. B participated in a Neuropsychological Evaluation in 2014 where he received diagnosis of ADHD, Depression and Anxiety, as well as Non-Verbal Learning Disabilities. The evaluation recommended weekly behavioral therapy as well as medication management for B. B's school was not provided with any documentation that the recommendations were followed. (Exhibit B, p.4)
4. During the 2015-2016 school year B had twenty six (26) unexcused absences. (Exhibit B, p.4)
5. On December 16, 2016, the Department of Children and Families received a report pursuant to M.G.L. c. 119, s. 51A from a mandated reporter alleging the neglect of B by his mother, AMG. According to the reporter, they received eight different doctors' notes which were

discovered to be forged. B had missed fifteen (15) days of school that school year. B was reported to be failing multiple courses due to his absences. The 51A report was assigned for a response. (Exhibit A)

6. Due to B's absences the school filed a CRA<sup>1</sup> petition in ██████ Juvenile Court. (Fair Hearing Record)

7. AMG had acknowledged to the school that B exhibited a high degree of anxiety around school. (Exhibit B, p.4)

8. B reported he had been sick with stomach issues when asked about his lack of attendance. He denied having a diagnosis and denied having a treatment regimen. (Exhibit B, p.4)

9. B should have failed his first term of sophomore year; he did not because the school was unaware the medical notes were forged at that point. (Exhibit B, p.4)

10. At the time of the subject 51A report, B was not engaged in counseling nor was he prescribed medication. (Fair Hearing Record)

11. On January 11, 2017, pursuant to M.G.L. c. 119, s. 51B, and based on the evidence gathered during its response, the Department supported the allegation that AMG neglected B as he was not being treated by his pediatrician for his self-reported stomach issues, was not in treatment for his anxiety, both of which were impacting his education as he was not getting to school, resulting in a CRA being filed. (Exhibit B, p.7)

12. B presented as overweight, gave mumbled answers, and made poor eye contact when interviewed at school. (Testimony of LS)

13. B was brought to ██████ Minute Clinics due to his diarrhea; they suggested he avoid dairy which he did and his stomach issues improved. (Testimony of AMG)

14. The Neuropsychological Evaluation which B participated in also recommended B receive forty five minutes a week of in school counseling, which the school was not providing. (Testimony of AMG)

15. After consideration of the relevant evidence, I find the Department's decision to support the allegation of neglect by the Appellant was based on reasonable cause and made in compliance with its regulations. The Appellant's actions or inactions did place B in danger and posed substantial risk to K's safety and well-being.

### **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 caretaker occurred and the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed substantial risk to the

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<sup>1</sup> Child Requiring Assistance Petition, formerly known as a CHINS Petition.

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. 110 CMR 4.32(2).

"Reasonable cause" is "[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

"Neglect" is defined as failure by a caregiver, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; malnutrition; or failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

Caregiver is defined as:

- (1) A child's parent, stepparent or guardian, or any household member entrusted with Responsibility for a child's health or welfare; or
- (2) Any other person entrusted with 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 and camp counselors. The "caregiver" definition should be construed broadly and inclusively to encompass any person who at the time in question is entrusted with a degree of responsibility for the child. This specifically includes a caregiver who is a child such as a babysitter under age 18. 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. 110 CMR 10.23

### Analysis

It is undisputed that Appellant was a caregiver pursuant to Departmental regulation. DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant contested the Department's decision to support an allegation that she neglected her son B. She argued that B was seen by pharmacists at [REDACTED] for his chronic diarrhea, as her insurance did not require him to have a primary care doctor. The Appellant further argued she did not forge the notes the school discovered; however, she did not ask her son where they came from either. The Appellant maintained the school was supposed to offer her son in school therapy weekly which they also failed to do, and therefore it was unfair to support a report on her and not them. I find the Appellant's arguments unpersuasive.

The Appellant did not offer any information at the time of the Fair Hearing to allow for a reversal of the Department's decision to support neglect. The actions/inactions of the Appellant failed to provide for B's minimally adequate care; it was necessary for her to attend to his chronic diarrhea, depression and anxiety which impacted his ability to attend school and receive an education. The Appellant was responsible for his daily needs. It was recommended years prior that B engage in therapeutic services. The Appellant did maintain email communication with B's teachers when assignments showed as missing on the school's parent portal; however, she did not address B's behaviors, lack of school attendance, and presentation of depressive/anxious symptoms, as recommended and necessary. The Department's determination of neglect does not require evidence of actual injury; Lindsay v. Department of Social Services, 439 Mass. 789 (2003).

### Conclusion

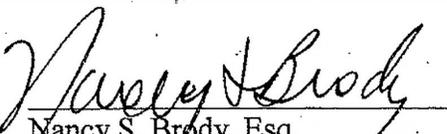
The Department's decision to support the allegations of **neglect** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

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 she lives, or within Suffolk County, 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.

Date: \_\_\_\_\_

1-2-18

  
Lauren Decas  
Administrative Hearing Officer

  
Nancy S. Brody, Esq.  
Supervisor, Fair Hearing Unit