EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN & FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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LINDA S. SPEARS,
COMMISSIONER

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IN THE MATTER OF

B. Q.

FH # 2017 0139

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Ms. BQ ("the Appellant"). The Appellant appeals the Department of Children and Families' ("the Department" or "DCF") decision to support a report of neglect pursuant to Mass. Gen. L., c. 119, sec. 51A. Notice of the Department's decision was sent to the Appellant on December 14, 2016, and the Appellant filed a timely appeal with the Fair Hearing Office.

The Fair Hearing was held on April 6, 2017, at the DCF Springfield Area Office. The following persons appeared at the Fair Hearing:

Linda A. Horvath, Esquire	Administrative Hearing Officer
BQ	Appellant
DS	Appellant's Husband
MS	DCF Special Investigator

In accordance with 110 CMR 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 pursuant to DCF regulation. 110 CMR 10.26.

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

For the Department:

Exhibit 1: 8/22/16 51A Report

Exhibit 2: 11/04/16 51B Report (w/Attached 9/18/15 Police Narrative and Social Media Listing)

The Appellant did not submit documentary evidence into the hearing record.

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, 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, 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 of human trafficking. Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

Findings of Fact

1. The subject female child of this Fair Hearing is "A" ("the child"), who was fifteen (15) years old at the time of the 51A filing referenced below. (Exhibit 1, p.1.)

2. In 2015—2016, the child was in DCF custody through a CRA[1] Petition in Juvenile Court. From July 28, 2015, to August 19, 2015, the child was placed at [redacted] residential facility ("[redacted]" or "the program") in [redacted], MA. Thereafter, she resided in a DCF foster home, and in August 2016, the child was placed in an IFC[2] home. (Exhibit 1, p.2.)

3. In 2015, and thereafter, the Appellant was employed as a direct care staff member at the program. (Exhibit 1, p.2.) This is the first 51A report filed against the Appellant, and she has never had a disciplinary issue while working for the program. (Testimony of Appellant; Exhibit 2, p.3.)

4. On August 22, 2016, the Department received a report pursuant to M.G.L. c. 119, s. 51A, alleging the neglect of the child by the Appellant after the child informed her then DCF social worker[3] that in September, 2015 (a year earlier, at age 14), while

[1] Child Requiring Assistance.
[2] Intensive Foster Care.
[3] Exhibit 2, p.8.

riding in a car with the Appellant, they came across a large group of teenagers. One of the females approached the car and was mouthing off to the Appellant and child. Not liking the way the teen was talking to the Appellant, the child got out of the car and got into a physical altercation with the teen, which led to delinquency charges for the child.[4] (Exhibit 1, p.2.)

5. The Department screened-in the 51A report as a non-emergency response. (Exhibit 1, p.5.)

6. The child confirmed the content of the 51A report during her DCF interview on September 20, 2016. The child acknowledged she got out of the car with the intent to fight the teen, without incitement or encouragement from the Appellant; in fact the Appellant pulled the child off of the teen to break up the fight. The child acknowledged she kept in contact with the Appellant after she left the program and she is friends with the Appellant's son, "E". The Appellant was on her way to get "E" when the altercation occurred. As of the date of her DCF interview, the child still spoke with the Appellant from time to time, though she could not recall the last time, and she acknowledged being "friends" with her on Facebook. (Exhibit 2, p.2.)

7. A police report documenting the altercation confirms the child's statements of the event. That report does not indicate the Appellant incited the child to fight the teen, and also evidenced that the Appellant tried to break up the fight and separate the two girls.[5] (See, Exhibit 2, Attached Police Narrative of 9/18/15.)

8. On October 20, 2016 (over a year after the altercation), the DCF Investigator interviewed the school officer ("Quebec Officer") who was employed at the child's school at the time of the incident. At the time of the incident, the officer saw cell phone video footage of it and also spoke to the Appellant about the incident. In the footage, he did not see anything physical occur. He recalled seeing the Appellant getting upset with the child over participating in the altercation. (Exhibit 2, p.4.)

9. The Appellant's testimony at the Fair Hearing was sincere and forthright. Considering the Appellant's demeanor and content of testimony, which was consistent with her explanation of events at the time of the subject physical altercation, and as she reported to the DCF Special Investigator, the Appellant is deemed credible. (Exhibit 2, p.3; Exhibit 2, Attached Police Narrative of 9/18/15; Testimony of Appellant.)

10. The Appellant first met the child at the program, and thereafter learned that her mother and the child's grandmother (child's primary caregiver) know each other through their church. After the child left the program, the Appellant learned that her son, "E", and the child were friends on Facebook. When the child left the program in

[4] The child claimed to have many delinquency charges. (Exhibit 1, p.2.)

[5] The police report refers to the Appellant by the name, "Ms. [redacted]" (her former name), and the child by another name ("Ms. [redacted]"), for reasons not in evidence. (Testimony of MS; Exhibit 2, pp.2 and 6; Exhibit 2, Attached Police Narrative of 9/18/15.)

the care of her grandmother, the Appellant gave the grandmother her phone number in case she/the child ever needed someone to talk to because the child would not listen to her own family members. The Appellant and the child would sometimes talk over the phone; the Appellant picked the child up one time from school, and drove with her another time (the day of the altercation). (Exhibit 2, p.3; Testimony of Appellant.)

11. The Appellant was not cited or arrested for any action of hers during the incident. (Testimony of MS; Testimony of Appellant.) The Appellant gave the same account of the altercation as the child, and as is documented in the police report. After the altercation, she drove the child to the child's grandmother's house and explained what had happened. After that day, the child ran from home and the grandmother called the Appellant to see if she could help find the child; a few days later the Appellant located the child and brought her to her grandmother's. The Appellant did not have any in-person contact with the child thereafter, but the child would text her or message her on Facebook to keep in touch. (Exhibit 2, p.3.)

12. During the DCF screening process for the subject matter, program supervisor, Mr. OP, indicated he *was* aware that the Appellant was having contact with the child after she left the program, but denied being aware of the September, 2015 incident. Per Mr. OP, program management allegedly spoke to the Appellant about maintaining appropriate boundaries with residents and getting approval from DCF/child's guardian to mentor or have contact with a resident outside of the program. (Exhibit 1, p.4.) However, during the 51B investigation, Mr. OP contradicted himself when he stated that if the Appellant knew the child outside of the program that she should have informed the program as "[t]here are clear rules in place for this" and this is "not something they condone." (Exhibit 2, p.3.)

13. The Appellant spoke to program staff, Mr. OP and another (2 supervisors), who knew about her contact with the child/family; the Appellant even brought the child to the program with her on at least one occasion when staff were present. The Appellant always had permission from the child's grandmother and mother to have contact with the child. The program never gave the Appellant any kind of verbal or written warning about her contact with the child. Any assistance she gave to the child/grandmother happened suddenly (a ride; helping to look for the child after she ran), as the family was afraid for the child's safety. (Exhibit 2, p.3; Testimony of Appellant.)

14. DCF and the Appellant testified that the child's grandmother was her legal guardian. (Testimony of MS; Testimony of Appellant.) The child's grandmother was her only visitor when the child was at the program. (Testimony of Appellant.) The child's mother informed the DCF Investigator that at the time of the September, 2015 incident, the child was placed back with her for 30 days; the child thereafter ran from her home and allegedly slept over the Appellant's house when she was on the run. (Exhibit 2, pp.4—5.) The child's mother claimed to not have learned of the incident until January, 2016, and that none of her family knew of the incident at the time it

occurred. (Id. at p.6.) The mother's information to DCF is deemed not credible based upon evidence obtained from the child and the Appellant. (Testimony of Appellant.)

15. On October 27, 2016, the Department supported the aforementioned report in accordance with M.G.L. c. 119, s. 51B for neglect on behalf of the subject child by the Appellant for driving the child in her personal vehicle at a time when the child left the car and got into a physical altercation with a teenager resulting in delinquency charges for the child, for failing to disclose the incident to the child's "guardian," for failing to disclose to the program she had a connection to the child through her son, and for continuing to have contact with the child outside of the program after the child left. (Exhibit 2, pp.8.)

16. The Department's conclusion states, "[The Appellant] crossed professional boundaries by forming and maintaining a relationship with [the child] out in the community without permission from [redacted] or her guardian...These types of situations are inappropriate and covered in trainings at [redacted]...These types of interactions are inappropriate and resulted in a negative outcome for [the child]." (Exhibit 2, p.8.)

17. The Department's supervisor opined the Appellant failed "to provide minimally adequate supervision and care." (Exhibit 2, p.8.)

18. The Department closed its case following its response as no DCF services were required. (Exhibit 2, p.7.)

19. Three months after the DCF support decision, the program suspended the Appellant and thereafter terminated her employment. (Testimony of Appellant.) The program found that the Appellant violated its policy regarding boundaries with clients and disclosure, including failure to disclose past CORI issues. (Exhibit 2, pp.5 and 6—7.)

20. At the time of the fair hearing, [redacted] had been calling the Appellant inquiring about the status of the hearing as they wanted her back in their employ. (Testimony of Appellant.)

21. Given the above Findings, the Department did not have reasonable cause to believe that the Appellant failed to provide minimally adequate care to the child, and there was no evidence of any action or inaction by the Appellant that placed the child in danger or posed a substantial risk to his safety or well-being. (See, DCF Protective Intake Policy #86-015, rev. 2/28/16, and Analysis below.)

Applicable Standards

A support finding of abuse or neglect requires that there be reasonable cause to believe that a child(ren) was abused and/or neglected; *and* **that** the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed 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. 110 CMR 4.32(2). 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).

"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. Care and Protection of Robert, 408 Mass. 52, 63-64 (1990). "[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 51A. Id. at 63. 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.

"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. Protective Intake Policy #86-015, rev. 2/28/16.

"Caregiver"

(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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. *Protective Intake Policy No. 86-015* (rev. 02/28/2016)

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. If the challenged decision is a supported report of abuse or neglect, the Appellant must show 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) placed the child(ren) in danger or posed 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

The Appellant was a "caregiver" pursuant to Protective Intake Policy #86-015, with respect to the subject child.

Considering the evidence in its entirety, the Appellant did not fail to provide A with minimally adequate supervision or other care by continuing her contact with the child after the child left the program. Though the Department concluded that the Appellant violated certain [redacted] policies in effect at the time by continuing a relationship with the child, this is outside the purview of a DCF fair hearing and does not relate to the DCF definition of neglect, and therefore is not a valid reason for a support decision in this matter.

With respect to the incident of September, 2015, the Appellant did not neglect the child simply by virtue of driving with the child in her car (having an outside relationship with the child) even though this may have been a violation of [redacted] policy. Though their relationship is not condoned or recommended by the program or DCF, that the child decided to jeopardize her own personal safety by willingly engaging in a physical altercation with another female teen was not the decision of the Appellant's and was not under the Appellant's control. To the contrary, by breaking up the fight, driving the child to her grandmother's house afterwards, and discussing the incident with the school safety officer after the fact, the Appellant demonstrated how she was not neglectful and had concern for A's safety and well-being. The Appellant cared about the child and agreed to assist the family whenever she could; this occurred in only a few instances. To find a nexus between the Appellant's actions in this regard and "neglect" is not reasonable.

In light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Appellant has shown by a preponderance of the evidence that the Department did not have reasonable cause to support the allegation of neglect of the child in this matter, and any action/inaction by the Appellant did not place the child in danger or pose a substantial risk to the child's safety or well-being.

Conclusion

The Department's decision to support the 51A report of August 22, 2016, for neglect by the Appellant on behalf of the subject child is **REVERSED**.

Linda A. Horvath, Esquire
Administrative Hearing Officer

Date: 2-6-18

Nancy Brody, Esquire
Fair Hearing Supervisor

Date: _____

Linda S. Spears,
Commissioner