

**Executive Office of Health and Human Services  
Department of Children and Families  
Central Administrative Office  
Office of the General Counsel  
600 Washington Street  
Boston, Massachusetts 02111**

**LINDA S. SPEARS  
COMMISSIONER**

**Voice: (617) 748-2000  
Fax: (617) 261-7428**

**IN THE MATTER OF:  
M.P. & J.P.  
FH #2017-0153**

**FAIR HEARING DECISION**

Appellants, M.P. and her husband, J.P., appeal the decision of the Department of Children and Families' ["Department" or "DCF"], to remove four children from their kinship, child-specific family resource home.

**Procedural History**

The Department removed the four children from the Appellants' home on January 30, 2017 and officially notified the Appellants in writing of the removal, the reasons why, and their appeal rights by letter dated January 31, 2017 hand delivered on February 1, 2017. The Appellants filed a timely request for Fair Hearing ["Hearing"] on February 7, 2017, pursuant to 110 CMR 10.06 & 10.08. The Appellants' request for appeal was granted and their Hearing held on May 2, 2017 at the Department's South Central Area Office in Whitinsville, MA. Participants included the DCF Area Program Manager [APM], L.F.; the Family Resource Supervisor, C.K.; the DCF Adoption Social Worker for the Children, H.F.; and the Appellants. All were sworn in under oath and testified. The proceedings were digitally recorded, pursuant to 110 C.M.R. 10.26, and downloaded to a CD. Admitted into evidence for the Department was the DCF 51A Report of January 30, 2017 [Exhibit A] and the corresponding DCF 51B Response Supported on February 15, 2017 [Exhibit B]; the Appellants' Initial DCF Family Resource License Study [Exhibit C]; the Appellants' DCF Family Resource License Renewal [Exhibit D]; a DCF Family Resource Dictation Report [Exhibit E]; DCF Notice to the Appellants of the Children's Removal [Exhibit F]; and DCF Notice to the Appellants about Revocation of Their License [Exhibit H]. The Appellants made no submissions. The Hearing record was closed at adjournment.<sup>1</sup>

<sup>1</sup> The Appellants did not request records in advance of the Hearing as was their right under 110 CMR 10.14 and as explained on the back of the scheduling notice they received. The Department provided the Appellants with Exhibits A-H at Hearing; most of which they had not seen. At the end of the Hearing, the

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

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

### **Standard of Review**

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record as a whole, and giving due weight to the clinical judgments of the Department social workers, the Department's decision or procedural action, in making a decision to remove the children from the Appellants' kinship foster home, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellants. 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 Appellants. [110 CMR 10.05]

### **Findings of Fact**

1. This appeal involves a sibling group of four children – two year-old male, Yoa; five year-old female, Jay; eight year-old female, Jad, and ten year-old male, Jah. [Testimony of the APM; Exhibit B]
2. The Appellants expressed interest as a kinship resource when a care and protection petition was granted on behalf of the four children. The application to initiate the process was completed on June 12, 2014 as well as the physical standard checklist and a background record check. Family resource visits were made to the Appellants' home on July 2, 2014, August 25, 2014, October 22, 2014, and November 19, 2014, as part of the licensing study. The Appellants were approved as a licensed, kinship, child-specific home for the four children on November 20, 2014. [Exhibit C]
3. Background information solicited from the Appellants during the 2014 licensing study uncovered that the Appellants, notably Appellant J.P., experienced physical discipline during their childhood: [Exhibit C, p.4; Testimony of the Family Resource Supervisor]
  - As a child, Appellant J.P. was disciplined by his mother by making him kneel on rice, sending him to his room, and hitting him with her hands. When his stepfather became involved with the family, his methods of discipline were abusive. Stepfather would hit with his hand, fists, foot, belt, and an extension cord. As a

---

Hearing Officer offered to leave the record open so the Appellants could have additional time to review the evidence and submit comments if needed. The Appellants declined this offer. [Administrative Record]

child, Appellant J.P. witnessed his stepfather hit his mother, and he would intervene.

- As a child, Appellant M.P. was disciplined primarily by her mother, who would tap her on her bottom, put her in time out, and send her to her room. Her father was an alcoholic and physically abusive to her mother, which she witnessed.
4. During the 2014 licensing study, the Appellants were aware of and agreed with the Department's policy prohibiting the use of physical discipline. This was discussed with them during this licensing study. [Exhibit C, p.6]
  5. The youngest children, [REDACTED] and [REDACTED] have a blood tie to Appellant M.P. [Testimony of Appellant M.P.; Exhibit E, p.11] She is their paternal aunt. Because there is a significant age gap between Appellant M.P. and their father, the family has traditionally referred to the Appellants as grandmother and grandfather. [Exhibit D, p.3] The four children were placed with the Appellants in June 2014. [Exhibit B, p.6; Testimony of the Family Resource Social Worker] The oldest children, Jad and Jah, have no blood ties to the Appellants, but were placed in the home, because they are half siblings to Yoa and Jay and therefore part of the sibling group. [Exhibit D, p.3; Testimony of Appellant M.P.]
  6. The Appellants struggled with Jad's behaviors, more so during the summer when school was out, than at other times. Appellant M.P. had her hands full and eventually felt she was at the end of her rope, "at her wits end", in addressing the child's behaviors. [Testimony of Adoption Social Worker; Testimony of the Family Resource Supervisor]
- By January 6, 2016, the two older children, Jad and Jah, were in therapy. Jad had an appointment with a psychiatrist on January 25, 2016, to determine if she had Attention Deficit Hyperactivity Disorder [ADHD] on top of her learning disabilities. Jad also had a behavioral plan at school and at the Appellants' home where she would earn stars. Jad's behaviors worsened two to three days a week, prior to visitation with her [parent(s)]. She would then get better, and then revert back with another visit. Jad got worked up, and at school would disrupt the class by hiding under tables and throwing things. According to Appellant M.P., this behavior started around September [2015]. [Exhibit E, p.12]
  - On February 19, 2016, a permanency planning conference [PPC] was held whereupon the goal for the two youngest children, Yoa and Jay, was changed from reunification to guardianship and the goal for the two oldest, Jad and Jah, changed to adoption. The Appellants were interested in keeping the two youngest children, but did not want to make a commitment to the older two. However, the Appellants agreed to keep the older children, until a pre-adoptive home was recruited, which took awhile. [Exhibit E, p.12; Exhibit D, p.3; Testimony of the Family Resource Supervisor; Testimony of the Adoption Social Worker]

- By March 9, 2016, Jad was on 1mg of Prozac, which did not seem to be working, had [another] appointment with the psychiatrist, and had been diagnosed with learning disabilities, anxiety, and ADHD. [Exhibit E, p.12]
- By May 10, 2016, Jad's behaviors had improved; the doctor was slowly increasing her medication. However, the child began stealing. She took \$50.00 from Appellant M.P., gave \$20.00 to a school peer, and gave the other \$30.00 away. Appellant M.P. addressed this with Jad. Appellant M.P. opined that Jad had been a bit off lately, which she attributed to uncertainty, pursuant to the conversation they had with the child about adoption. [Exhibit E, p.13]
- On August 16, 2016, the Appellant's new family resource social worker, C.B., assigned in July, initiated a license renewal of the Appellant's home, first visiting the home on that date as well as on October 24, 2016 and December 28, 2016. [Exhibit E, p.15; Exhibit D, p.1]
- On August 16, 2016, Appellant M.P. conveyed to the new family resource social worker that she was struggling with Jad's behaviors and at her wit's end. Although Jad had always exhibited challenging behaviors, the behaviors had intensified since the child's goal was changed to adoption. The child was acting out at home and at school. She was not following directions and would habitually lie, even when caught in the act of wrongdoing. In addition, the child's therapist had cancelled and rescheduled appointments and essentially had not seen the child for three months. Appellant M.P. also expressed concern about the start of school on August 24<sup>th</sup>, because Jad's behaviors had been just as atrocious at school. Appellant M.P. reported having been called to school on at least a weekly basis about something the child had done. Jad had to go to summer school this year, because she would not have been promoted to the next grade otherwise. Appellant M.P., although torn about the situation and understanding why the child was acting this way, informed the family resource social worker that Jad's behaviors were impacting the whole family and she felt she could no longer care for the child. Appellant M.P. did not know how long it would be before the older two children were transitioned out of her home into a pre-adoptive home. Due to Jad's behaviors, convincing family members to care for the child, was next to impossible. The family resource social worker provided Appellant M.P. with information about respite and babysitting services through MSPCC and also spoke to Jad's adoption social worker about these concerns. [Exhibit E, p.14; Exhibit D, p.3; Testimony of Family Resource Supervisor]
- Jad was having a big reaction to being told her permanency goal had been changed to adoption and was acting out. She was one of two children the Appellant was not adopting. Appellant M.P. had been experiencing some health issues and now had a therapist and a psychiatrist, in connection with anxiety. [Exhibit E, p.14]

- On August 22, 2016, Jad stole \$150.00 from Appellant M.P.'s purse. Appellant M.P. called her family resource social worker and left a message about this and told her that something needed to be done. The next day, the family resource social worker returned her call and learned that the Appellant had only found \$50.00; the other \$100.00 was still missing. Appellant M.P. said she should not have to live like this; locking up her belongings to keep them safe from the child. [Exhibit E, pp.14-15]
  - On September 1, 2016, the family resource social worker called Appellant M.P. to check in with her. At this time, Jad was back in school, her ADHD medication had been increased, and the child was doing better. The \$100 was still missing and Appellant M.P. was resigned to this. [Exhibit E, p.15] The family resource social worker informed her that the adoption social worker was actively recruiting a pre-adoptive home for the older children, and that the Department would like to try to make only one more move for them, and asked her if she could hang in there a bit longer. [Testimony of Adoption Social Worker; Exhibit E, p.15]
  - On October 24, 2016, during another home visit, Appellant M.P. related that Jad had settled down since school started because her routine had been re-established plus her therapy was back on track. However, after a lapse of almost four months, DCF set up a visit for Jad with her mother on October 7, 2016 and consequently the child was completely out of sorts. Appellant M.P. wondered why visits continued, when everyone knew how upsetting they were for Jad. She also queried why the guardianship of the two youngest had not been completed. These two matters were discussed with her. [Exhibit E, p.15; Exhibit D, pp.3-4]
7. The Appellant maintained at Hearing that she "can't handle [Jad]". She said she asked three times to have the child removed, the last time being in August 2016. [Testimony of Appellant M.P.]
  8. On January 20, 2017, Jad's headband was broken by a peer at her school. She was very upset and went to Ms. P. crying. Jad told Ms. P. that she was afraid to tell the Appellants because she would be hit with the belt. Ms. P reported this to the child's adoption social worker, who agreed to follow up with Jad. [Exhibit B, p.7; Exhibit A, p.3; Testimony of the Adoption Social Worker]
  9. On January 20, 2017, adoption social worker, H.F., picked Jad up from her after school program for a supervised visit. Having learned about the incident from talking with a teacher/counselor at the school, the adoption social worker had a chance to speak with the child during the car ride. During the car ride, the child spoke about breaking her headband, talked about being worried, and expressed fear that she would get into trouble for this at home. However, the child made no mention of being hit or being afraid of being hit. [Testimony of the Adoption Social Worker; Exhibit A, p.3]
  10. On January 30, 2017, when Jad got off the bus to go to her after school program, she immediately went to Ms. P. and asked for an ice pack and then agreed to show Ms. P.

her leg. [Exhibit B, p.7] The child disclosed to Ms. P. that on January 28, 2016, her brother took something from Appellant M.P. and Appellant J.P. blamed her and hit her with his belt buckle. The child had a round purplish bruise on her left upper thigh that was raised in the middle and about 3.5" in diameter, almost the size of a baseball. [Exhibit A, p.3; Exhibit D, p.4]

11. On January 30, 2017, at 3:58 p.m., in connection with Finding #10, a 51A Report was filed with the Department containing allegations of physical abuse of eight year-old Jad by Appellant J.P. At this point in time, Jah was ten, Jay five, and Joa two. The 51A Report was screened in for an emergency response and a DA referral initiated. [Exhibit A]
12. On January 30, 2017, at 4:31 p.m., during the screening process, staff from the Department's South Central Area Office conferenced the case. This included the Area Director, C.G.; the Intake Supervisor, S.G.; three Area Program Managers, one of whom was APM L.F. over adoption and family resources; the family resource supervisor, C.K.; and, the adoption social worker, H.F. The last three participants testified at the Appellants' Hearing of May 2, 2017. During this conference, a decision was made to consult with the [REDACTED] Child Protection Program, relative to physical examinations for the children, and for the response social worker, J.K., and adoption social worker, H.F. to respond to the Appellants' kinship home. [Exhibit A, p. 11]
13. On January 30, 2017, the DCF South Central response social worker, DCF co-worker, A.R., and adoption social worker, H.F., visited the Appellants' home. The adoption social worker arrived later than the other two, but was present for Jad's interview. All four children were viewed for injuries; three were interviewed as the youngest was only two years-old, and, the Appellants jointly interviewed. A summary of the visit is described below. [Testimony of the Adoption Social Worker; Exhibit B, pp 4-6]
  - Eight year-old Jad had a large horizontal bruise on her left, upper thigh. The bruises were two separate long slightly curved parallel horizontal lines approximately three inches in length.
  - Jad reported being hit by Appellant J.P. on Saturday – one time with a belt that he had been wearing. She reported having been hit by the belt before this incident. She reported that her older brother [Jah] and sister [Jay] get hit with a belt, but not Yoa. She reported being afraid of Appellant J.P. because she gets hit a lot; more than the other children. Jad reported that Appellant M.P. hit her with a belt also. She has never been injured from being hit, until Saturday.
  - No visible injuries were seen on two year-old Yoa, five year-old Jay, and ten year-old Jah, the later of whom wore boxers during the viewing.
  - Jay said she [Jay] is hit with a belt mostly, sometimes, and she hurts and cries. Jay also reported that Appellant M.P. has hit her [Jay] with a shoe, but no injuries

resulted. She confirmed that her older brother [Jah] got hit with a belt because he was naughty. Jay was aware that Appellant J.P. had hit Jad with a belt because she witnessed it, and knew about the resulting bruise. She also spoke of Jad being hit with a belt because Jad pushed her [Jay] on the bed; she witnessed the hit. She said she was not scared to be in the home, other than the bugs that come through the wall every day which causes Appellant M.P. to call the exterminator.

- Jah denied being hit, said he did not know anything about Jad being hit, has never seen any of the children in the home being hit, denied anyone was hit with a belt, and denied being scared living in the home.
  - Appellant J.P. confirmed that on Saturday, he hit Jad with a belt. He had been discussing lying and stealing with her. He meant to hit her on the butt, but she turned over and he hit her leg. He said he used the belt he is wearing. He was not aware she had a bruise on her leg. When asked how often he hits her with the belt, Appellant J.P. stated that it was not an every day thing, but this is not the first time he has hit her with a belt. He reported hitting Jad three times with a belt, since she has lived with them. He also reported hitting Jah with a belt once, but denied hitting the other two children. He stated that Appellant M.P. uses an open hand spank on the butt.
14. Following the visit in Finding #13, while still on site, management was contacted and it was determined that all four children would be removed from the home. Staff spoke to the Appellants about this and Appellant M.P. packed the children some clothing and back packs for school. [Exhibit B, p.5; Testimony of the Adoption Social Worker]
15. The children had lived with the Appellants two and one-half years, before their removal from the home on January 30, 2017. [Exhibit B]
16. During this time, the Appellants met the medical, dental, and developmental needs of all four children and participated in service planning and foster care reviews, when work schedules permitted. [Exhibit D, p.4; Testimony of Appellant J.P.]
17. On February 1, 2017, pursuant to 110 CMR 7.116, a letter dated January 31, 2017 was hand-delivered to Appellant M.P. at her home to inform the Appellants of the removal, and their appeal rights. The rationale for the removal was set forth in this letter and conveyed by the Family Resource Supervisor at the Appellants' Hearing of May 2, 2017. [Exhibit E, p.18; Exhibit F; Testimony of the Family Resource Supervisor]
- Pursuant to 110 CMR 7.105, Standards for Licensure of Foster/Pre-Adoptive Homes, (14) the home may not have any household member, frequent visitor or alternative caretaker, who would, in the judgment 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 foster home. *On January 30,*

*2017, a 51A Report was filed for the physical abuse of Jad by Appellant J.P. Jad identified that the bruise on her thigh was from Appellant J.P. hitting her with a belt.*

- Pursuant to an Agreement Between the Massachusetts Department of Children and Families and Foster/Pre-Adoptive Parents, as set forth in policy, the Appellants agree, for each child placed in their home, to (7) not use any physical punishment upon any child, who is the DCF care or custody, and (330 comply with Department regulations and policies, including the standards for becoming a DCF foster/pre-adoptive family. *Appellant J.P. admitted to utilizing a belt to physically hit Jad as a form of discipline. Physical punishment is not a method of discipline that can be utilized by foster parents, which is outlined in the foster care agreement. During the home study process, the Appellants agreed to not utilize a physical form of discipline, however, this was not followed and led to the removal of the children from the home. Appellant J.P. has a 51B supported against him for the physical abuse of Jad.*

18. During the initial 2014 licensing study [Finding #2], the Appellants were aware of and agreed with the Department's policy prohibiting the use of physical discipline. [Exhibit C, p.6] However, when later interviewed on February 13, 2017 during the below described response by T.B., Appellant M.P., said she was not aware that the Department's policy was no physical discipline on foster children, and added that she did not consider the children to be foster children, but rather her grandchildren. [Exhibit B, p.6] The Hearing Officer finds no merit in Appellant M.P.'s rationale. She is now aware of the consequences of using physical discipline and her desire to have custody of the two children is at stake.
19. On January 31, 2017, the 51A Report was assigned for response to Special Investigation Unit [SIU] Response Social Worker, T.B. During the course of the response, the response social worker, among other activities, reviewed the 51A Report; made contact with the DCF Adoption Supervisor for placement information; spoke to and viewed Jad and Jah separately at their school, to include taking a picture of Jad's bruise; viewed Yoa at her day care; interviewed Jay at her school and spoke to the school adjustment counselor; observed a forensic interview of Jad; reviewed case dictation provided by the adoption social worker about her home visit of January 30, 2017 [Finding #13]; reviewed the full report from [REDACTED] detailing the examinations of all four children; visited and interviewed the Appellants; and, spoke to the reporter. [Exhibit A; Exhibit B]
20. On February 15, 2017, following the 51B response, the Department's SIU supported for physical abuse of Jad by Appellant J.P., her foster father, as summarized below.<sup>2</sup> [Exhibit B]

---

<sup>2</sup> At Hearing, the Appellants indicated that they had not appealed the Department's finding of physical abuse. [Administrative Hearing]



- When interviewed on February 13, 2017, during the response, Appellant J.P. acknowledged using a belt to strike Jad on Saturday, January 28, 2017, causing injury to her left thigh. He did not intend to hit the child with the belt buckle, but she moved in a manner, which caused the belt and the buckle to strike her thigh area. Jad had been very disrespectful following visits with her mother and had been lying and stealing items at home and at school. Appellant J.P. expressed deep remorse for his actions
  - Jad participated in a forensic interview held on February 7, 2017 at the Worcester County District Attorney's [DA's] Office. During the interview, Jad disclosed physical abuse at the hands of Appellant J.P. She provided consistent and accurate details of the incident to the forensic interviewer, the investigator, staff at her after school, and to social workers, who responded to the Appellants' home on January 30, 2017.
  - Jad was evaluated by Dr. H.F. at [REDACTED] Hospital Child Protection Program [CPP]. While there, Jad disclosed that "grandpa hurt me". Dr. H.F. described the injury thus – "left upper thigh bruising is patterned bruise consistent with having been inflicted with a belt buckle. This represents physical abuse."
21. During Appellant J.P.'s interview of February 13, 2017, he also acknowledged using physical discipline on all the children, except the youngest, Yoa. [Exhibit B, p.6]
  22. During Appellant M.P.'s interview of February 13, 2017 with the response social worker, she acknowledged utilizing physical discipline in the home, but only to the extent of spanking the children's buttocks with an open hand, and also sending them to their rooms and withdrawing privileges. In addition, Appellant M.P. reported knowing that Appellant J.P. had used a belt on Jad on January 28<sup>th</sup> and also a couple of times in the past two years. [Exhibit B, p.6]
  23. Appellant J.P. has criminal charges pending against him. [Testimony of the APM] He has an upcoming pre-trial court date and was advised by his attorney not discuss the matter at Hearing. [Testimony of Appellant J.P.]
  24. On March 6, 2017, following and because of the supported finding of physical abuse, the Appellants' license renewal, which had been in process, was completed and a decision made to revoke their license [Exhibit D; Testimony of the Family Resource Supervisor] The Appellants were provided with written notice of this decision and their appeal rights.<sup>3</sup> [Exhibit G]
  25. At the present time, all four children have a permanency goal of adoption. The two youngest, Yoa and Jay, are in a foster home together and have been there for a while. The older two, Jad and Jah, were in another pre-adoptive home together, but because

<sup>3</sup> Although eligible to appeal the Department's decision to revoke their license, the Appellant denied their intent to do so when queried about this at Hearing. [Administrative Record]

Jad struggled there, she was transitioned to a CBAT level of care. [Testimony of the Adoption Social Worker]

26. Since the incident, Jad has stayed consistent that she was hit with a belt and that it happened more than one time, and that Jah was hit with a belt as well. Since being out of the Appellants' home, Jah has also disclosed having been hit with a belt and with the bottom of Appellant M.P.'s shoe. [Testimony of the Adoption Social Worker]
27. All the children had a close relationship with the Appellants and all have said they miss them. [Testimony of the Adoption Social Worker]
28. Appellant M.P. expressed her intent to go to court to obtain custody of the two younger children. [Testimony of Appellant M.P.]
29. The Appellants are currently engaged in attending parenting classes. [Testimony of the Appellants]
30. Based upon the totality of the evidence, I find that the Department's decision to remove Yoa, Jay, Jad and Jah from the Appellants' home was in compliance with the Department's regulations and policy and made with a reasonable clinical basis. The Department's decision is affirmed. [Fair Hearing Record]

### **Applicable Standards**

Minus some exceptions, a foster parent has the right to appeal a decision, to remove a foster child from the foster home, pursuant to 110 CMR 10.06 (4) (b). The Appellants' request in this regard was granted and their Hearing held on May 2, 2017 at the Department's South Central Area Office.

Applicable regulations and policies pertaining to the Appellant's appeal include, but are not limited to, the following:

Department decisions involving the recruitment and approval of foster/pre-adoptive parents, and placement and removal of children, is governed by 110 CMR 7.100, et seq.

#### **Removal of Foster Children from Foster/Pre-Adoptive Homes [110 CMR. 7.116]:**

(2) Whenever the Department determines that a foster child shall be removed from a foster/pre-adoptive home for the purpose of achieving a more suitable placement for permanency, safety or well-being, 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 a 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 fourteen days prior to the intended removal of the foster children. The written notice shall include at least the following:

(1) the fact that the Department intends to remove the foster children from the foster/pre-adoptive home;

(2) the reason(s) for the intended removal;

(3) the actual or 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, notice that the foster parent(s) may apply to become the child's guardian or adoptive parent and the procedures for applying;

(5) notice of 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 procedures, provided however that no right of appeal exists, if the child is to be removed in order to be placed:

a. with his or her parent(s);

b. in an independent living situation;

c. in a different foster home after the foster home was not licensed or whose license was revoked following a license study, reassessment study, license renewal study or a limited reassessment study;

d. in a department foster home from an intensive foster care home from an intensive foster home, where the child is no longer in need of intensive foster care, unless the intensive foster care foster parent is seeking to become a pre-adoptive or guardian placement and has not been denied by the Department;

e. in one of the following placements, if the current placement is not such a placement, unless the foster parent(s) has applied to be a pre-adoptive or guardian placement for the child and has not been rejected by the Department as a pre-adoptive or guardian placement for the child, or there is a fair hearing pending challenging the denial of the current foster parent as the child's pre-adoptive or guardian placement:

i. in a pre-adoptive home

ii. with a legal guardian

iii. in a home where one or more of the child's siblings is residing; or

iv. in a kinship home of the foster child, if the current foster parent is not a kinship home of the foster child.

(6) 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.

(b) make arrangements for moving the child to a new placement.

(c) if the foster/pre-adoptive parent files an allowable fair hearing claim of appeal of the removal decision within ten working days after receiving written notice, the foster child shall not be removed until ten working days following the issuance of a decision of the hearing office adverse to the foster/pre-adoptive parent's claim, or until the child is removed for non-appealable reasons, or until the child is removed in accordance with the provisions of 110 CMR 7.116 (1) or (3), or until it is determined by an Area or Regional

Director that the foster child's physical, mental, or emotional well-being would be endangered by leaving the child in the foster/pre-adoptive home, whichever comes first.

Policy Regarding Emergency Removals from Foster/Pre-Adoptive Families [Family Resource Policy, Revised 7/8/2008]

Emergency removal of a child who is in the Department's care or custody from the care of a foster/pre-adoptive family occurs in a planful way, and appropriate notice must be given the foster/pre-adoptive parents. Emergency removal is used only when the Department has determined that the child is not safe in her/his current setting and is at immediate risk. ... The foster/pre-adoptive parent(s) must be directly notified of the removal through face-to-face—or, at least, direct—contacts. Messages are not to be left on answering machines or with someone other than the foster/pre-adoptive parent...

Standards for Licensure of Foster/Pre-Adoptive Homes [110 CMR 7.105]

(14) the home may not have any household member, frequent visitor or alternative caretaker, who would, in the judgment 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 foster home.

Standards for Licensure as a Foster/Pre-Adoptive Parent [110 CMR 7.104]:

In order to be licensed as a foster parent/pre-adoptive parent, a foster parent/pre-adoptive parent applicant must meet the following requirements:

(1) A foster parent applicant must demonstrate, to the satisfaction of the Department, the ability to:

(q) assume and carry out all other responsibilities of a foster/pre-adoptive parent as detailed in the standard written agreement between the Department and foster/pre-adoptive parents.

Written Agreement Between the Department and Foster/Pre-Adoptive Parents [110 CMR 7.111]

Once a foster/pre-adoptive parent applicant has been licensed by the Department as a foster/pre-adoptive parent and has completed pre-service foster/pre-adoptive parent training, the Department and the foster-pre-adoptive parent shall enter into a written agreement. The written agreement shall be signed by each foster/pre-adoptive parent and the Department's authorized agent, shall be renewed annually, and shall include at least the following terms:

(3) a prohibition against the use of any form of corporal punishment by foster-pre-adoptive parents upon any foster child(ren);

Continuation of Service or Placement Pending Appeal [110 CMR 10.09]:

(3) The filing of a request for a Fair Hearing regarding a decision to remove a child from a foster or pre-adoptive placement shall stay the effect of the challenged decision until after the final decision of the agency is made pursuant to 110 CMR. 10.00. A decision to remove a child from a foster or pre-adoptive placement on an immediate basis because the Director of Areas or Regional Director has determined that the child's physical, mental or emotional well-being would be endangered by leaving the child in the foster

home, as provided by 110 CMR 7.116: *Removal of children from Foster/Pre-Adoptive Homes*, shall not be stayed by the filing of a request for a Fair Hearing regarding that decision.

Out-of-Home Placements [110 C.M.R. 7.101]:

(1) All out-of-home placement decisions shall be made in the best interests of the child, based upon safety of the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting. The following factors shall be taken into consideration:

(d) the child's individual needs including those related to his/her physical, mental, and emotional well-being and the capacity of the prospective foster or adoptive parents to meet those needs;

(2) The Department shall consider, consistent with the best interests of the child, the following placement resources:

(a) placement with kinship family;

Every reasonable effort should be made to place a child in accordance with 110 CMR 7.101(2).

Burden of Proof [110 CMR 10.23]:

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.

Analysis

The Appellants challenge the Department's decision, to remove the two year-old male child, Yoa; five year-old female child, Jay; eight year-old female child, Jad; and, ten year-old male child, Jah, from their formerly licensed, child-specific family resource home. This is a related sibling group. Appellant M.P. is the paternal aunt of the two younger children.

The burden is on the Appellants to show, by a preponderance of the evidence, that the Department's decision, to remove the four children from their formerly licensed kinship, child-specific family resource, was not in conformity with Department regulations and/or

policy. A Hearing Officer must defer to the clinical judgment of a trained social worker, if there is a reasonable basis for the questioned decision. [110 C.M.R. 10.05]

I have no reason to doubt the clinical experience and judgment of the Department in the instant matter. I did not find any information offered by the Appellants to be substantial or compelling to such an extent that the Department acted unreasonably and/or abused its discretion in making its decision in this matter. Based upon a review of the evidence presented at the Hearing, including testimony from the parties and documents submitted, the Department's decision was made in conformity with its regulations and policies, supported by sound clinical judgment, and there was a reasonable basis for the decision. The Appellants, contrary to the directive of the Department, were not to use any form of corporal punishment on foster children, but did in fact do so. All children were hit in one form or another by the Appellants. Despite the struggles the Appellants experienced in managing Jad's behavior, in particular, use of physical punishment to address her behaviors or any of the other children, is in violation of the Appellants verbal and written agreement with the Department, not to utilize any physical punishment on any child. [110 CMR 7.111; 110 CMR 7.104 (1) (q)] Nor is a licensed foster home allowed to have a caretaker, in this case the Appellants, who pose a threat of abuse to foster children in the home. [110 CMR 7.105 (14)]

There is no dispute in this case that physical punishment was used; the Appellants do not dispute this. Each knew that the other was physically managing the children. Appellant J.P. was remorseful about using a belt on Jad and causing injury, and is now facing criminal charges in connection with the January 28, 2017 incident involving this child. The Appellants use of physical punishment of the foster children is consistent with their own childhood experiences. The Appellants testified that they are now taking parenting classes.

Although Appellant M.P. now denies this, the evidence reflects that the Appellants were in fact made aware they could not use physical punishment with foster children. This was discussed with them during the initial 2014 licensing study that resulted in the approval of their home.

Although the Appellants appealed the removal of all four children from their home, Appellant M.P. has been consistent throughout in her desire to only obtain guardianship and now court custody of the two younger children, Yoa and Jay. When the permanency goal for Jad and Jah was changed to adoption on February 19, 2016, Appellant M.P. informed the Department that she did not want to make a commitment to the two older children, but would agree to keep them until a pre-adoptive home could be recruited. Their appeal of the removal of the two older children from their home is inconsistent with this position.

Finally, the four children were placed in the Appellants' home in June 2014 and removed on January 30, 2017. The Appellants and the children had a close relationship and, other than the matter under appeal, the Appellants met the children's medical, dental, and developmental needs, worked well with the Department, and the children do miss them. However, based on a totality of the record, I find that the Appellants did not meet the


required burden of proof to prevail. [110 CMR 10.23] The removal of the children was in the children's best interests. [110 CMR 7.101] A more suitable placement was needed. [110 CMR 7.116 (2)].

### Orders

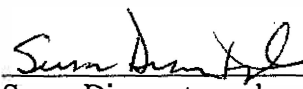
**The Department's decision of January 30, 2017, to remove Jad and Jah from the Appellants' DCF kinship foster/pre-adoptive home, is AFFIRMED.**

**The Department's decision of January 30, 2017, to remove Yoa and Jay from the Appellants' DCF kinship foster/pre-adoptive home, is AFFIRMED.**

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

  
Frances I. Wheat, MPA  
Administrative Hearing Officer

7-9-18  
Date

  
Susan Diamantopoulos  
Fair Hearing Supervisor