

**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 Spears  
Commissioner

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

IN THE MATTER OF )  
 )  
 MM ) **FAIR HEARING DECISION**  
 )  
 FH #2017-0193 )  
 )

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

**Procedural History**

On January 20, 2017 the Department received two (2) 51A reports alleging the neglect by the Appellant of the child.<sup>1</sup> The Department conducted a response and, on February 14, 2017 the Department made the decision to support the allegation of neglect by the Appellant. The Department notified the Appellant of its decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was originally scheduled for April 13, 2017 and was continued at the request of the Appellant due to the Department not providing complete discovery to the Appellant. (Exhibit A) The Hearing was held on June 6, 2017 at the Department's Lowell Area Office in Lowell, Massachusetts. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the Hearing.

The following persons appeared at the Fair Hearing:

David Halloran	Fair Hearing Officer
MM	Appellant
MB	Attorney for Appellant
AL	Witness
AW	Witness
CC	Witness
MC	Department Response Worker
DA	Department Response Supervisor

<sup>1</sup> The Department added the allegation of neglect of the child by CC. That allegation was unsupported.

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

For the Department:

- Exhibit 1: Department Intake Report/51A Report, dated January 20, 2017 at 12:36 PM
- Exhibit 2: Department Intake Report/51A Report, dated January 20, 2017 at 1:48 PM
- Exhibit 3: Department Child Abuse/Neglect Emergency Response, completed February 14, 1917
- Exhibit 4: Police Report dated January 20, 2017

For the Appellant:

- Exhibit A: Nine Emails
- Exhibit B: Memorandum by MB, attorney for Appellant dated June 6, 2017 with attachments
- Exhibit C: Letter dated May 4, 2017
- Exhibit D: Emails between Department and Appellant dated February 17, 2017
- Exhibit E: Safety Plan for J dated January 23, 2017
- Exhibit F: TAT Notes, [REDACTED], January 20, 2016
- Exhibit G: Undated Observations of J
- Exhibit H: Undated Target Goals for J
- Exhibit I: Statement by Appellant

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 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 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 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16

**Findings of Fact**

1. The subject child of this Fair Hearing was J. At the time of the subject 51A reports A was seven (7) years old. (Exhibit 1, page.1; Exhibit 2, page 1, Exhibit 3, page 1)

2. The Appellant was the principal of the school where J attended and was in a position of overall responsibility for the child, therefore, he is a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16. (Exhibit A, pages 1, 2; Exhibit B, page 1)
3. The Appellant did not have a prior history with the Department. (Exhibit 1, pages 3,4; Exhibit 2, pages 4,5; Exhibit 3, page 1)
4. On January 20, 2017, the Department received two (2) reports pursuant to M.G. L. c. 119, §51A, alleging neglect of J by the Appellant. The reports alleged that that J left the school and was found one-half (1/2) mile from the school .He was crying and stated that he wanted to go home. He had not done this before. He was in a regular class and was being taught by a paraprofessional at the school. The reports are discrepant in that one (1) report stated that he asked to use the bathroom and did not return. The second report stated that during class transition time, from reading to sitting on the carpet, he left without the knowledge of anyone. School personnel searched inside and outside the school and called the police six (6) minutes into the search for J. He told the paraprofessional that he was tired and he wanted to go home. This behavior was unusual for the child. The 51A reports were consolidated and screened in and for a non-emergency response, pursuant to M.G.L. c. 119, § 51A (Exhibit 1, pages 1, 2 , 4; Exhibit 2, pages 1,3,5; Exhibit A; Testimony of Department Response Worker)
5. J told his mother after the reported incident that he left the school because he “just wanted to go home” and the teacher would not let him. J’s mother was going to work with school staff and her son on limit setting and his compliance with limit setting. J was doing “fine”. (Exhibit 3, page 2)
6. According to the Appellant, J’s regular teacher was absent for part of the day and paraprofessional CC was responsible for J and his classroom until the teacher returned at 10:30 AM. J was in a regular classroom setting and did not have an education plan. He did well academically. He had no history of running from school or threatening to leave the school. The Appellant was not in the classroom at the time of the reported incident and did not have direct responsibility for the classroom. J arrived at school on time at 9:10 AM. (Exhibit 3, page 3, 5)
7. The Appellant described CC as one of his best staff. She was familiar with J since she worked in his classroom previously. She was chosen to substitute for the teacher since there were a couple of “busy’ children in the classroom in addition to J, who was described by the Appellant as hyperactive and presented with behaviors consistent with a child diagnosed with Attention Deficit Disorder (hereinafter “ADD”). He “blurts” out a lot and talks a lot. He had difficulty focusing and would yell out and touch others. J’s mother was not receptive to J having an ADD assessment. She told his teacher that his pediatrician wanted to wait until December of first grade to see if his behavior changed. Since he entered first grade he was doing well. He was specifically placed in his teacher’s classroom, since she was very structured. Due to his behaviors, he was purposely placed next to the teacher’s desk. CC

described J as high energy that morning. He repeatedly asked CC if he could be his helper, but she denied the request because being overly boisterous disruptive and distracting. He did complain about feeling tired and stated that he wanted to go home. He rolled around on the classroom floor. J engaged in circle time. The classroom then transitioned into groups. Some students transitioned with assigned tutors outside the classroom and other transitioned to their assigned groups in the classroom. This occurred at 10:05 AM. It was during this transition time that CC noticed at 10:08 AM that J left the classroom. He did not ask to leave the classroom to go to the bathroom or anywhere else. He did not take any of his belongings with him. CC asked another student to check the bathroom for J. When the student immediately returned with no information about J, CC called the school office. (Exhibit 3, pages 3, 4, 5; Exhibit G)

8. According to the Appellant, when he was informed that J was missing, he initiated a "soft lockdown". A clerk made an overhead announcement asking J to go to the office. This announcement also alerted the other teachers to check the hallways for a wandering student. The Appellant checked the school bathrooms and AL, the interim assistant principal, conducted a building search. The building search occurred at 10:09 AM. At approximately 10:12 AM, an exterior search of the school perimeter started. During the exterior search, a woman approached the assistant principal and stated that she saw a kid on the street. AL then pointed out to the Appellant the direction where J would found. J was found by police at 10:18 AM, thirteen (13) minutes after CC noticed that J was missing. The school did not have hall monitors and video cameras in the hallway. J was brought back to the school by the Appellant. (Exhibit 3, pages 3,4,5)
9. Since the reported incident, the Appellant told all substitute teachers that they need to keep an ongoing head count of the students in the classroom. J's mother was asked to keep J a home for a few days so that the school could develop a safety plan for the child. Since he returned to school J told his teacher that he needed to be watched all of the time. He described the incident as an adventure. (Exhibit 3, pages 4, 5)
10. According to CC, J was a "ball of energy" the day of the reported incident. During circle time he crawled under the desk and spoke out of turn. CC sent J to his desk and told him to "pull it together". J said that he wanted to go home because he was very tired. He went to bed late. He was allowed to return to the circle. After circle time, the reading tutors arrived and took three (3) of the twenty-three (23) students out of the room. CC was then directing the remaining twenty (20) students to their activity stations, when she noticed that J was missing. It was one (1) to two (2) minutes after he left. The Response worker did not question CC as to how long after the tutors left with the students did the class break down into groups and that she noticed J missing. (Exhibit 3, pages 5,6)
11. According to AL, the Interim Assistant Principal, she participated in the exterior building search. When J was not located during the exterior building search, 911 was called. (Exhibit 3, page 10)

12. According to MM, the school social worker, the school secretary called the police when J could not be located inside or outside the building. (Exhibit 3, page 9)
13. J subsequently informed school staff that he used the recess door to leave the building because he saw tutors and other staff by the other doors. He also wanted to avoid hallway cameras. He originally reported that he used the dismissal door to leave. (Exhibit 3, page 6)
14. According to J, he believed that he was sent to his desk during circle time because he said that he was tired. He then became angry and "snuck out when they called group". He wanted to find his grandmother, with whom he and his mother live, because he wanted to go home. He did walk by a teacher. J denied that he planned to leave the school. (Exhibit 3, pages 6,7)
15. J's mother reported that when she arrived at the school, she was asked by the school social worker to bring J to crisis, which she did resulting in a normal evaluation. J's mother also expressed concerns about possible inconsistencies in the school reports regarding the incident. She was told that J asked to use the bathroom prior to his leaving school. (Exhibit 3, pages 7,8)
16. According to the [REDACTED] Police a passer-by called the police at 10:19AM. The principal called the police at 10:28AM. J was found a few blocks from his school. The Appellant informed the police that J asked to use the bathroom before he left the school. (Exhibit 3, pages 8 ,9, 13; Exhibit 5)
17. J's teacher, TH, confirmed that the reported incident was "very out of character" for J and she was "shocked" when she learned that he left the school. CC knew J well and was very familiar with his behaviors. CC typically assisted TH during the reading groups. They each supervised two (2) groups during the reading time because it was "a lot to manage and oversee four (4) groups". CC typically arrived at 10:05AM and stayed in the classroom for forty-five (45) minutes. (Exhibit 3, page 16)
18. At the end of its response, the Department supported the allegation of neglect of the child by the Appellant, determining that the Appellant did not notify the police until 10:28AM, which meant the child was missing for twenty-four (24) minutes before the police were notified. Also, CC did not have additional support during transition time to manage the behavior of the students in the classroom, which may have prevented J leaving the school. The Department also was concerned that J's mother was not notified until after J returned to the school. The Department concluded this constituted neglect as defined by its regulations and in accordance with its policies. The allegation of neglect by CC was unsupported. ( Exhibit 4 pages 20, 21, 22; Testimony of Department Response Worker)
19. The Appellant testified at the Fair Hearing. He was the principal at the school. He had a

Doctorate in education. He was certified as a principal and superintendent. He recently received an award to improving the performance in his school (Exhibit B). His school was very well organized without chaos. Teachers always wanted additional staffing and he had three (3) floating paraprofessionals for five hundred (500) students. The doors are locked from the outside. J was boisterous, high energy and active. Each of his classrooms had approximately five (5) students that had similar behavior to J. J's special seating was common in the classroom. J did not have an Individual Education Plan (hereinafter "IEP"). On the day of the reported incident J's teacher was at a funeral and returned to school at 10:45 AM. He assigned CC to the classroom because she was the most competent. If a substitute teacher was assigned, she would not know J and that he was missing. At the time of the Department's Response he did not realize that after the tutors arrived in the classroom, CC continued the Sparkle game in the circle for a few minutes after the tutors left with the students, which meant that the time frame that he reported during the Response was a mistake. Sparkle game continued after the tutors left and J was still there. J was upset because he lost Sparkle game around 10:10 AM or 10:15 AM. Then the remaining students went into groups and J left. When J left there were twelve (12) to fifteen (15) students there. When he received the call that J was missing they began looking for him. They also went on the intercom asking J to come to the office. The clocks at the schools are not synchronized. All schools have a [REDACTED] School Crisis Manual. He followed the abduction policy exactly in the manual. Seven (7) staff participated in the search. (Exhibit B) They search the two (2) floors and then went outside. This took minutes. His clerk, AW, told him that four (4) minutes had passed since CC called the office and he told her to call the police. AL, the interim assistant principal, was outside and a woman was yelling at her that she saw J running on the street. The Appellant got in his car with AL and they found J. When they got back they called J's mother. J was brought to his office. J seemed to be fine and was loving the attention. The Appellant was concerned because J was getting a lot of attention and would not recognize that he made a mistake. His behavior may be reinforced. Everyone was very emotional. He believed seven (7) minutes passed from when he got the call to when the police were called. He did everything that he was supposed to do. The school immediately developed a safety plan for J. J has had a good year. He asked the Department to meet with him to explain the finding of neglect so that he could improve his practice and they did not respond. He never called 911. His clerk is the one who called the police. A safety plan for J was immediately developed. (Exhibit E) He tried to do everything right. (Testimony of Appellant) I find that the Appellant's testimony consistent and credible.

20. CC testified at the Fair Hearing. She was J's teacher the day of the reported incident. She was familiar with J since she was in the classroom for forty-five (45) minutes every day. J was high energy like a lot of students in his classroom and other classrooms. He asked CC to be her buddy, which she declined. He did ask to go home one time. There were twenty-three (23) students in the classroom that day. When the tutors arrived, eight (8) to ten (10) students left with the tutors. After the students left they continued the Sparkle game. The children were high energy. It is their favorite game. J was good until he did not get a spelling word right. After the Sparkle game they transitioned into groups in the room. The students left the circle to go to their desks and look at the board to determine what group in the room they were assigned. She looked at the board for a minute to see what group she would lead. That was when J left. She asked another student to check the bathroom. When he immediately

came back one (1) to two (2) minutes later, she called the office. After she called the front office, another student told her that J was not sitting at his desk during transition time, but was sitting on a stool by the front door, which led her to believe that he planned to leave. She gave the Department this information. Approximately ten (10) minutes passed between the time when the tutors left with the students and the classroom transitioned into their reading groups in the room and J left. (Testimony of CC ) I find that CC's testimony was credible.

21. AW testified at the Fair Hearing. She was a clerk at the school and employed there for seven (7) years. On the day of the reported incident, when CC called the front office at 10:12 AM, AW informed the Appellant. She called the intercom twice which alerted all of the staff that a child was missing. She called 911 exactly four (4) minutes after CC's call, as she was trained to do by a social worker. A grandmother of another student was in in the office and witnessed her call to 911. She asked about the call and told AW that she saw J leave the building. AW informed the Appellant and the police of this information since she was still on the phone with the police and on the radio monitor with the Appellant. The next day the grandmother who was in her office gave her a note that stated "You Matter". (Testimony of AW) I find that AW's testimony was consistent and credible.
22. In light of the totality of the evidence in this case, I find that there was insufficient evidence to support the allegation of neglect of J by the Appellant because there was no reasonable cause to believe that neglect occurred and because there was no evidence that the actions or inactions by the Appellant placed J in danger or posed substantial risk to his safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16

#### Applicable Standards

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. 110 CMR 2.00

"[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

“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)

Neglect is the 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. 110 CMR 2.00

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*
- 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

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) 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 issue for resolution in the instant case was whether the Appellant’s actions on January 20, 2017 constituted neglect of J by the Appellant and whether his actions placed the child in danger or posed substantial risk to the child’s safety or well-being;

It is undisputed that J left his school without the permission of the school.

The Department found that the Appellant neglected the child because he did not provide additional support for J’s teacher, which may have prevented the child from leaving the school and did not call the police in a timely manner. The Department also expressed concern about the Appellant’s failure to notify J’s parent in a timely manner.



Regarding the Department's decision to support the neglect allegation as it related to the additional support for the child's teacher, the Department made no inquiry as to the number of students in the school with the behavior similar to J's and the resources available to the school. J was in a regular classroom and did not have an IEP. The Appellant testified he had over 500 students in his school and each regular classroom had approximately five (5) students with special behavioral needs. He had three (3) paraprofessionals for the entire school to assist the teachers and he assigned CC to teach the class during the hour and half that the teacher was absent based on CC's competence and her familiarity with the students. The Department during its testimony called the Appellant's decision not to place an additional teacher in J's classroom as reckless. The Department stated that there should have been two (2) teachers in that classroom since J ran away. Yet at the time that the decision was made regarding the staffing for the classroom during the limited time that the teacher was absent, no one thought that J would leave as he had no prior history of leaving the school and threatening to leave the school.

In its Response, the Department characterized CC as being overwhelmed at the time and that J had behavioral issues that day and that she was "set up". However, CC's testimony did not reflect that she was overwhelmed. The evidence reflected that until he left the building, J's behavior was typical. J took off when groups were called because he wanted to, not because of any student-teacher ratio. The evidence showed that the classroom was no more active than usual that day. The Appellant testified that he did the best that he could with the limited resources available to him and I find his testimony persuasive.

The Appellant argued that the police were notified by AW within minutes of the child leaving the school and that he followed the School District's Crisis plan exactly. The school clerk, AW, who called the police, was not interviewed, even though the school social worker told the Response Worker that the clerk was the one who called the police. AW testified at the hearing that she notified police four (4) minutes after she received the call from CC that J was missing. The police had at least two (2) errors in its reporting of the events. It listed a staff member accompanying the Appellant when J was located and that staff member was not at the scene. Also the police reported that the Appellant called 911 at 10:28 AM when the Appellant never called the police; the clerk made the call.

The Appellant followed the School District's Crisis Plan. Since there was not a plan for children leaving the school, he followed the plan for abducted students. The school immediately formulated and implemented a safety plan for J to address the reported issue of his running away from school. In fact they asked J to stay at home the following school day so the plan could be completed.

Considering all the evidence and the circumstances, I find that the Department's decision did result in substantial prejudice to the Appellant and that the Department did not have reasonable cause to believe that neglect occurred in this case and the decision to support the allegation of neglect was not in conformity with its policies and/or regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

**Conclusion and Order**

The Department's decision to support the 51A report of neglect on behalf of J by the Appellant is **REVERSED.**

 (5)

David Halloran  
Administrative Hearing Officer

3/12/2018  
Date:



Sophia Cho, LICSW  
Supervisor, Fair Hearing Unit

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

\_\_\_\_\_  
Linda S. Spears  
Commissioner