

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

Linda S. Spears
Commissioner

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

IN THE MATTER OF

SB #2017-0241

FAIR HEARING DECISION

SB appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

Procedural History

On January 27, 2017, the Department received four 51A reports alleging physical abuse of C by his father, SB. The Department screened-in the reports for a non-emergency response and, on February 17, 2017, the Department made the decision that the allegation of physical abuse was unsupported, but that SB had neglected C. The Department notified SB of its decision and of his right to appeal.

SB made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held at the DCF Area Office in Cambridge on April 4, 2017. SB, the Department response worker and the Department supervisor testified at the hearing.

The hearing was digitally recorded and transferred to compact disc.

The hearing record was held open for two weeks to allow the parties to submit additional evidence. The hearing record was closed on April 18, 2017.

The Department submitted the following exhibits at and after the hearing.

Exhibit A: 51A report dated January 27, 2017, at 3:07am.
Exhibit B: 51A report dated January 27, 2017, at 10:43am.
Exhibit C: 51A report dated January 27, 2017, at 12:38pm.
Exhibit D: 51A report dated January 27, 2017, at 2:23pm.
Exhibit E: 51B report completed February 17, 2017.
Exhibit F: 51A report dated November 21, 2016.
Exhibit G: 51A report dated November 26, 2016.
Exhibit H: 51B report completed December 13, 2016.
Exhibit I: 51A report dated December 12, 2001.
Exhibit J: 51B report completed December 21, 2001.

SB submitted the following exhibits at and after the hearing.

Exhibit 1: [REDACTED] medical notes regarding C.
Exhibit 2: [REDACTED] medical notes regarding C.
Exhibit 3: Notice to SB of a Department determination dated December 13, 2016.
Exhibit 4: SB's written statement/argument.
Exhibit 5: SB's written statement/argument
Exhibit 6: Several pages from the January 2017, 51A and B reports as marked by SB.
Exhibit 7: [REDACTED] Police reports.
Exhibit 8: C's school attendance record for the 2016-2017 school year.
Exhibit 9: C's school grade history for the 2016-2017 school year.
Exhibit 10: [REDACTED] Juvenile Court, Families and Children Engaged in Services Agreement, dated February 3, 2017.
Exhibit 11: Photographs.

The hearing record was closed on April 18, 2017.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

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. 110 CMR 10.05.

Findings of Fact

1. SB (hereinafter "father") and DF (hereinafter "mother") are the parents of C (born September 28, 2001). At the time of C's birth, father was incarcerated, apparently due to assaulting mother. Mother and father were never married, however, they attempted to reconcile after father was released from jail and were living together shortly after C's birth. (Exhibit A, p.1; Exhibit C, p. 3; Exhibit E, pp. 2, 3; Exhibit I, p. 1).
2. The family initially became involved with the Department a few months after C's birth. On December 12, 2001, the Department received a 51A report alleging neglect of C by mother and father. The reporter stated that father physically assaulted mother while she was pregnant and father was arrested. Mother had a restraining order against him in the past. Father was recently released from jail and was living with mother and C. Mother and father argued on a daily basis and C witnessed verbal and physical violence in the home. The Department investigated however, the investigator did not speak to father. On December 21, 2001, the Department made the decision that the allegation of neglect of C by mother and father was supported. (Exhibit I; Exhibit J).
3. Mother and father ended their relationship when C was age 2. C lived with mother and visited with father on weekends. (Exhibit E, pp. 2, 3).
4. At some point, father was incarcerated again. He was released from jail in 2003. There was no specific information in the hearing record regarding the reason for his incarceration. Upon his release, he became re-involved with C. He ultimately obtained physical custody of C in 2008, and mother had weekend visits and paid child support. (Exhibit E, p. 2; Exhibit 1, notes dated October 12, 2016; Testimony of father).
5. Mother and father had an amicable relationship until March 2016. (Exhibit E, p. 3).
6. In March 2016, C needed braces. Father told mother that she needed to pay for half the cost. Mother did not or could not contribute to the cost. Father brought the matter to probate court. C was aware that his parents were fighting about money. (Exhibit 1, notes dated October 12, 2016; Testimony of father).
7. On April 19, 2016, C had an annual physical exam. The pediatrician's exam notes listed "Adjustment reaction of adolescence" on the patient active problem list as well as obesity. There was nothing in the notes to indicate the reason for the adjustment reaction diagnosis, however, the records submitted did not appear to be complete as the first page submitted by father states "continued" at the top of the page. No particular behavior problems were listed on the pages submitted. C was counseled regarding healthy diet and exercise at that time. No other referrals were made. (Exhibit 1, notes dated April 19, 2016).

8. C was known to be a good student with good attendance. During the 2015-2016 school year he was getting A's and high B's. During the fall 2016, he was getting low B's and C's. He actively participated in classes and had good relationships with peers and teachers and was well liked. There were no suspicions of C using drugs or alcohol. C's school counselor checked in with C or C sometimes went to her to discuss his relationship with father. Father had been in contact with the C's school counselor seeking guidance around parenting. (Exhibit H, p. 4; Exhibit 1, notes for October 12, 2016).
9. In September 2016, mother filed a motion for increased visitation with C. (Exhibit E, p. 4).
10. On or about September 28, 2016, (C's birthday) father had taken C's phone away and looked at his text messages. He saw text messages that C sent to mother that were supportive of her. C told father he wanted to live with mother. Father became upset and angry and he told C "everything about his mother" including that she has a history of using and selling drugs. C was very upset with father over this and father's revelations to C significantly changed their relationship. (Exhibit E, p. 4; Testimony of father)
11. Throughout the fall of 2016, C and father were not getting along and there was on-going and escalating conflict between them primarily related to C not doing his chores. C had trouble waking up for school. He would fall back asleep after his alarm went off. Father would try to wake him up and this annoyed C and they would argue. C would then be running late and forget to do chores (take out trash and feed the dog) or not have time to do them which led to more arguments. Father felt that C was being non-compliant and disrespectful. C felt that father was relentless and rigid. They ended up arguing about the same things over and over. Although C felt safe at home, he sometimes would not want to go home after arguments with father. C felt that mother was more calm and relaxed, she handled conflict differently and she was more lenient. (Exhibit H, pp. 2-3).
12. On October 12, 2016, father brought C to the pediatrician and told the pediatrician that he was having difficulty managing C's behavior; specifically he had trouble getting him to do chores. The pediatrician referred them for therapy. (Exhibit H, p. 3; Exhibit 1, notes dated October 12, 2016).
13. On November 11, 2016, father brought C to the pediatrician for a psychiatric evaluation due to poor grades, arguments with father and adjustment to recent probate issues. C was evaluated and no acute risks were noted. The psychiatric diagnoses were adjustment disorder with mixed disturbance of emotions and conduct and rule out developmental trauma disorder. Family conflict was noted as a contextual factor. The initial plan was to contact collaterals, meet with the treatment team and present feedback to father. (Exhibit 1, notes dated November 11, 2016).
14. On November 20, 2016, father was trying to contact C by phone and C would not answer his calls. C was talking to his mother and would not pick up father's calls.

When father returned home, he went to C's room. He asked C for his phone and C refused to give it to him. Father tried to grab it and C pulled it away. Father ultimately took the phone from C and C tried to get it back. The two ended up in a physical struggle. They were pushing each other and yelling. Father's wife (step-mother) unsuccessfully tried to break them up and ended up being pushed. Father called police and police responded. Police were able to de-escalate the situation. No one was arrested. (Exhibit 7, November 21, 2016, police report; Exhibit F, p. 2; Exhibit G, p. 3; Exhibit H, p. 2).

15. On November 21 and 25, 2016, the Department received 51A reports alleging physical abuse and neglect of C by father due to the above incident. The Department screened-in the reports for a non-emergency response. (Exhibit F and G).
16. On Sunday, November 27, 2016, C refused to go to church and he and father argued. Father called the police and the BEST team was contacted. The BEST team referred C to the [REDACTED] Hospital Emergency Department for a psychiatric evaluation. (Exhibit H, p. 2; Exhibit 1, notes for November 27, 2016; Exhibit 2, notes for November 27, 2016).
17. C was evaluated by the psychiatric staff on that date. C reported that his parents were separated, there was a lot of stress and father's home was frustrating. C said he wanted to live with his mother. The only diagnosis identified was adjustment disorder of adolescence. Family therapy was recommended and the family was referred to the Psychiatric Transition Services for follow up. Father was resistant to following up with this service due to other commitments. C began seeing a therapist shortly thereafter. (Exhibit H, pp. 2, 3, 5; Exhibit 1, notes for November 27, 2016; Exhibit 2, notes for November 27, 2016).
18. During the evening of December 4, 2016, there was some conflict between father and C. Father felt that C was being disrespectful, verbally abusive and non-compliant. Father called the police to seek help from the BEST team. The BEST team did not respond because it did not accept father's insurance. The police went to the home and spoke to father. Father said there was no violence and he was going to contact his family doctor and would call police if needed. (Exhibit H, p. 4; Exhibit 7, report dated December 4, 2016).
19. Meanwhile, the Department response worker spoke with father, C and various professionals involved with the family. On December 13, 2016, the Department made the decision that the allegation of neglect was unsupported. The Department determined that the C had no injuries from the incident, father was been seeking services and C had begun treatment with a therapist. (Exhibit H, pp. 5-6).
20. On January 26, 2017, C and father engaged in a verbal argument that led to a physical altercation after C went to father's room at 10:30pm asking him to turn on the internet so he could do his homework. Father did not allow him to access the internet after 10:00pm and he refused to turn on the internet. They argued about that and other things. The argument became physical. Although there were some discrepancies in

the record regarding exactly what occurred, it was undisputed that father and C were pushing and hitting each other and ultimately father pushed C to the floor and ended up on top of him. They both had some injuries as a result. (Exhibit A, p. 3; Exhibit B, p. 3; Exhibit C, p. 3; Exhibit D, p. 3; Exhibit E, pp. 4, 5).

21. Father called police who responded to the home. Police spoke to the family members and determined that both C and father were aggressors and no one was arrested. C remained in the home that night. (Exhibit A, p. 3; Exhibit 7, reported dated January 27, 2017).
22. The following day, C went to school appearing disheveled and he reported to school staff what had occurred the night before. Mother picked him up at school for his weekend visit with her. She brought him to urgent care to be medically assessed. (Exhibit A, pp. 3, 7; Exhibit C, p. 3).
23. On January 27, 2017, the Department received four 51A reports alleging physical abuse of C by father due to the above incident. The Department screened-in the reports for a non-emergency investigation. (Exhibits A, B, C and D).
24. The Department response worker spoke with father. He provided some background information consistent with the above findings and he described the recent reported incident. He said that he had been having a difficult time with C since September 2016, after mother filed a motion for increased visitation and C began having an attitude and saying he wanted to live with her. He described C as "broken." He said C is not a bad kid but he has been pushing back at him. He said that C cried himself to sleep and father was very worried about him. (Exhibit E, pp. 2, 3-4).
25. The Department response worker spoke with mother. She provided some background information. She said things had been deteriorating between C and father and she was concerned that things had become physical. She was also concerned that C was depressed. (Exhibit E, p. 3).
26. The Department response worker spoke with C. He reported having on-going conflicts with father. He said it started a few months ago when father started talking negatively about mother. Father told C that C's mother was not a good mother. He called her irresponsible and a slut. C was very upset and felt he needed to defend her. Since then C had been angry with father, refusing to do chores and not doing his homework. C described the reported incident from his perspective. (Exhibit E, pp. 4-5).
27. The Department response worker spoke with C's school social worker who reported that C had recently been looking disheveled and unhappy and his grades were dropping. She described C as a nice kid who was well liked at school and had never had any behavior problems. C told the school social worker on-going conflicts with father. C made it clear to the school social worker that he wanted to live with his mother. (Exhibit E, pp. 5-6).

28. The Department response worker spoke with C's therapist who had seen C for 10 sessions. He had also met with C and with C and father together. C and father talked about getting physical with each other. C made it clear to his therapist that he wanted to live with mother. The therapist had advised father to let C live with mother, but father would not agree to that. C talked to his therapist about father saying negative things about mother. The therapist had tried to work with father to come up with better solutions to deal with C, as many of father's solutions only made C angrier and things between them were deteriorating. (Exhibit E, p. 6).
29. On February 17, 2017, the Department made the decision that the incident on January 26, 2017 did not rise to the level of physical abuse and the allegation of physical abuse was unsupported. The Department determined that father failed to provide minimally adequate emotional stability due to the on-going conflicts between them, father saying negative things to C about mother and his punitive approach to dealing with C. The Department supported the allegation of neglect. (Exhibit E, pp. 6-7; Testimony of the Department response worker; Testimony of the Department supervisor).
30. By weight of evidence and testimony I find the Department had reasonable cause to support the finding of neglect of C by the Appellant.

Applicable Standards and Analysis

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.

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.

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)

As C's parent, father is his caretaker under Department regulations. 110 CMR §2.00(5).

Neglect is 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 a failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. (*Id.*)

To Support a finding means:

- There is reasonable cause to believe that 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 . . . (*Id.*)

Danger is a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. (*Id.*)

A Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party; . . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR 10.05

To prevail, an Appellant must show by a preponderance of all of the evidence presented at the hearing, 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

The Department found that father neglected C by engaging in on-going conflict with his son, C; telling C negative things about his mother; and taking a punitive approach to dealing with C. The Department determined that father failed to provide minimally adequate emotional stability and growth for C.

Father did not dispute that he told C negative things about mother's past in September 2016, because he was angry about supportive text messages C sent to mother and C's desire to spend more time with her and/or live with her. Appellant admitted that this was a poor judgment; however, he argued he could not be found neglectful based upon one incident. Father also contended that many of the other events that formed the basis of the Department's decision had already been investigated and found to be unsupported in December 2016. He claimed that C's behavior began to deteriorate in April 2016, long before he said anything negative to C about mother. At that time, he took C to the pediatrician and C was diagnosed with adjustment reaction to adolescence. Over the next several months, C was being a rebellious teenager and Appellant was only trying to take control of his behavior. Appellant called the police 5 times, brought C to the pediatrician and sought treatment because of his behavior.

Appellant also submitted a written statement which focused primarily on discrepancies in the 51A and B reports regarding the incident on January 26, 2017. Despite the discrepancies noted, it was undisputed that the incident escalated from a verbal argument to a mutual physical altercation during which both parties suffered some degree of injury. However, given that the Department did not make a finding of physical abuse due to the incident, it was unnecessary to scrutinize the details or make any specific findings regarding exactly what occurred.

There was nothing in the hearing record to suggest that C had any particular behavior problems in or out of the home prior to September 2016. At that time, mother sought increased visitation. C was supportive of mother and expressing a desire to spend more time with her and father told C negative things about mother's past out of anger. Although the pediatrician's notes from the April 2016, visit list "adjustment reaction to adolescence," there was nothing in the notes that father submitted to indicate the reason for that impression and the only documented issue that the pediatrician dealt with was C's weight and he was counseled regarding exercise and diet.

Beginning with the fall semester, the school noted that C appeared disheveled and unhappy and his grades were falling. Despite this, he was still known to participate in class and be well liked by teachers and peers and he had no behavior problems in school. There was no evidence that C was exhibiting any behavior problems in mother's home. The only reports of C having behavior problems were made by father and even those were relatively minor.

On October 12, 2016, father brought C to the pediatrician because he was having difficulty getting him to do chores. The pediatrician referred them to therapy.

On November 11, 2016, father brought C to the pediatrician for a psychiatric evaluation due to poor grades and arguments between them. No acute risks were noted. C was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. Family conflict was noted as a contributing factor.

Thereafter, father contacted police for assistance with C on several occasions. On November 20, 2016, father was angry with C for not answering his calls because C on the phone talking to mother. When father later tried to take C's phone away, they engaged in a physical struggle. Father called police who de-escalated the situation. That situation resulted in a report of physical abuse to the Department. The allegation was unsupported since C was not injured and the family was in the process of seeking help.

On November 27, 2016, father called police and C was ultimately taken for a psychiatric evaluation because he refused to go to church. Again, family therapy was recommended.

On December 4, 2016, father called police because he felt that C was being disrespectful, verbally abusive and non-compliant. Police responded and father reported that there was no violence and he would follow up with the pediatrician.

On January 26, 2017, the incident that prompted the 51A report that is the subject matter of this appeal occurred. Father and C had an argument that became physical. The incident was more violent than any that had occurred previously. Father called police. Police responded and determined that father and C were both aggressors and equally responsible and no one was arrested.

During the investigation that followed, C clearly articulated that the factor that precipitated the deterioration in his relationship with father was father speaking negatively to him about mother.

Contrary to father's contention, Department regulations clearly contemplate that an isolated incident may form the basis of a finding of neglect. The evidence in this case showed that father was angry about mother's refusal to contribute to the cost of C's braces; was angry about her effort to increase time with C when he brought the matter to court; and was angry about C's desire to spend more time with his mother. This led father to share negative information about mother's history with C in a clear attempt to cause him to adopt his own negative feelings towards mother and discourage him from spending more time with her. This form of parental alienation is widely recognized as detrimental to a child's emotional wellbeing and potentially destructive to a child's relationship with the parent who is being targeted. Although father's efforts obviously had the opposite of the intended effect, the Department need not wait for such efforts to be successful before making a finding of neglect.

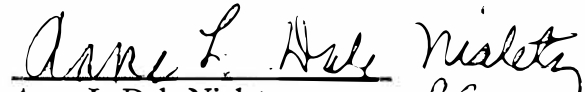
The evidence showed that father and C's relationship deteriorated after father spoke negatively about mother. C became very upset and he felt that he needed to defend her. Although C's anger manifested itself in relatively benign ways (not doing chores, not going to church, not doing homework, being disrespectful), father responded by initiating police responses and psychiatric evaluations. Although C did eventually begin seeing a therapist, which he felt was helpful, C's and father's relationship continued to deteriorate and conflict between them was clearly escalating. C's mother felt that C was depressed and the school noted that his grades were suffering and he appeared disheveled and sad.

Considering all of the evidence, there was reasonable cause to believe that father failed to provide minimally adequate emotional stability and growth for C and, therefore, he neglected him under Department regulations.

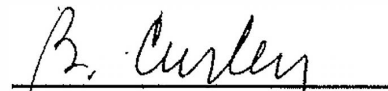
Conclusion and Order

The Department's decision to support allegations of neglect of C was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county of Suffolk or for the county in which Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c.30A, §14). In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Anne L. Dale Nialetz,
Administrative Hearing Officer

September 19, 2017
Date


Barbara Curley, Supervisor