

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
600 WASHINGTON STREET, 6<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02111

Linda Spears  
Commissioner

Voice: 617-748-2000  
Fax: 617-261-7428

IN THE MATTER OF

CR #2017 0248

**FAIR HEARING DECISION**

Appellant, CR, appeals the Department of Children and Families (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On January 19, 2017, the Department received a report which alleged neglect of K by the Appellant, her mother. The basis of the reporter's concern was K's disclosure that the Appellant slapped her face and pushed her around during an argument the previous weekend; and, K's disclosure that the Appellant, her mother, was "more angry" since taking medication for a nerve disorder and there were other incidents that had occurred over the past year. The Department screened-in the report and conducted a response. On February 17, 2017, the Department made the decision to support an allegation of neglect of K by the Appellant. The Department notified the Appellant of its decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was scheduled for May 4, 2017, but was continued after the Appellant informed the Hearing Officer of a death in her family. A hearing was rescheduled and held at the DCF Springfield Area Office on June 27, 2017. In attendance were Maura Bradford, Administrative Hearing Officer; MA, DCF Supervisor; PL, DCF Response Worker; CR, Appellant. The Appellant's daughters were present with the Appellant, introduced on the record but did not participate in the hearing.

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

The Fair Hearing was digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

- Exhibit A: 51A Report of January 19, 2017
- Exhibit B: 51B Report completed on February 17, 2017 by PL

For the Appellant(s):

- Exhibit 1: Collection of Documents

**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) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

**Findings of Fact**

1. The Appellant is the mother of La, L, and K. The children's father is GR from whom the Appellant was divorced. La is 26 years old and resided outside the home. The Appellant resided with L and K, who at the time of the report in question were 17 and 14 years old, respectively. (Exhibit B, p. 1)
2. The subject child in this matter is K. The Appellant is K's caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

3. The Appellant was involved with the Department in 2004 following a domestic incident perpetrated by GR. The Appellant was not otherwise involved with the Department. (Exhibit A, pp. 3, 4)
4. K experienced depression and suicidal ideation because of being bullied in middle school. The Appellant sought treatment for K, which she attended briefly in 2015 and at the time of the report in question, the search continued for a therapist that K could relate to. Following her brief treatment in 2015, K experienced academic and social improvement. (Exhibit A, p. 2; Exhibit 1; Testimony of Appellant)
5. K appeared older than her chronological age. K was a freshman in high school and dated an 18-year-old senior. The Appellant allowed K to spend chaperoned time with the young man; however, did not approve of a romantic relationship given the age difference between the two. K struggled with the Appellant's limit setting as it regarded the relationship. (Exhibit B, p. 2; Testimony of Appellant)
6. On or around January 14, 2017, K and her sister had a "movie marathon" and the girls got ready for bed. Unbeknownst to the Appellant and without her permission, K did not go to bed, but instead snuck out of the home for a pre-arranged meeting with the 18-year-old. (Exhibit B, pp. 2, 3; Testimony of Appellant and PL)
7. At 10:50PM, the Appellant noticed the rear sliding door was open and went to look for K. K was not in the living room or in her bedroom and K's phone was missing. The Appellant was anxious and feared something happened to K. The Appellant asked L to try and call K. After repeated attempts to call K, K answered the phone and L told her to come home. (Exhibit B, pp. 2, 3; Testimony of PL and Appellant)
8. K returned to the house and became confrontational, which precipitated an argument with the Appellant regarding her disappearance from the home and her whereabouts at such a late hour. When asked where she was, K blatantly lied to the Appellant. The Appellant slapped K across the face and pushed her up the stairs.<sup>1</sup> When the Appellant slapped K she left a red mark. (Testimony of PL and Appellant)
9. On Thursday January 19, 2017, a report was filed on behalf of K which alleged neglect by the Appellant. The basis of the reporter's concern was K's disclosure that: The Appellant slapped her face and pushed her around during an argument the previous weekend; the Appellant was "more angry" since taking medication for a nerve disorder; there were other incidents that had occurred over the past year; and, K described feeling depressed. The Department screened-in the report and conducted a response. (Exhibit A; Testimony of PL)
10. During the response, K told the Response Worker "I wasn't thinking straight" when she snuck out of the house, admitted she lied to the Appellant and denied routine use of physical discipline by the Appellant, which L corroborated. During the response, K

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<sup>1</sup> The Appellant testified "I don't know why I thought a Hollywood slap would be the answer" and that she felt "ridiculous" after she slapped K.

denied depression or suicidal ideation. The Appellant and K's statements regarding the argument were consistent. (Exhibit B, p. 2; Testimony of PL)

11. Between 2008 and 2014, the Appellant was married to KK and maintained regular contact with thereafter. KK provided a statement on the Appellant's behalf. KK denied the Appellant used physical discipline and described the Appellant as a devoted caretaker for her children. (Exhibit 1)
12. During the response, the Department did not identify any other protective concern for K and except for emotional stability, determined that the Appellant met K's basic needs. (Exhibit B; Testimony of PL)
13. On February 17, 2017, the Department supported an allegation of neglect of K by the Appellant because the Appellant used "inappropriate discipline" and therefore failed to provide minimally adequate emotional stability for K. The Department determined the Appellant's use of physical discipline posed a substantial risk to K's safety and well-being. (Exhibit B, pp. 6, 7; Testimony of PL)
14. The Department closed the case following the response. The Department determined the incident was isolated, there were no other concerns reported by the school and the Department determined the Appellant could resolve the matter without further Department intervention. (Exhibit B, p. 7; Testimony of PL)
15. After a review of all the evidence and for the following reasons, I find the Department did not have sufficient evidence to support an allegation of neglect of K by the Appellant:
  - a) The Department did not demonstrate that the Appellant failed to provide minimally adequate care for K, including minimally adequate emotional stability (110 CMR 2.00 and 4.32), and;
  - b) The Department did not demonstrate that the Appellant's actions placed K in danger or posed a substantial risk of harm to K's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

#### **Applicable Standards**

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 caregiver occurred 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 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

"Reasonable cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would

lead one to conclude that a child has been abused or neglected.” Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caregiver; 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

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

To prevail, an Appellant must show based upon all of the evidence presented at the hearing, by a preponderance of the evidence that: (a) the Department’s or Provider’s decision was not in conformity with the Department’s policies and/or regulations and/or statutes and/or case law and resulted in substantial prejudice to the Appellant, (b) the Department’s or Provider’s procedural actions were not in conformity with the Department’s policies and/or regulations, and resulted in substantial prejudice to the aggrieved party, (c) if there is no applicable policy, regulation or procedure, that the Department or Provider acted without a reasonable basis or in an unreasonable manner which resulted in substantial prejudice to the aggrieved party; or (d) if the challenged decision is a supported report of abuse or neglect, that the Department has not demonstrated there is reasonable cause to believe that a child was abused or neglected. 110 CMR 10.23

### **Analysis**

The Appellant was K’s caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

The Department supported an allegation of neglect of K by the Appellant because the Appellant used “inappropriate discipline” and therefore failed to provide minimally adequate emotional stability for K. The Department determined the Appellant’s use of physical discipline posed a substantial risk to K’s safety and well-being. 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant candidly admitted that she reactively and regrettably slapped K; however, argued that the Department did not demonstrate [substantial evidence to support] neglect.

It is undisputed that the Appellant slapped K after K left the house without permission, returned only after numerous calls by her sister, became confrontational because the Appellant was upset with her and lied to the Appellant about where she was and whom she was with. The Appellant reactively slapped K and immediately regretted that she did so. When, several days later, K told a mandated reporter about the incident, K opined that the Appellant was increasingly angry with her and she and the Appellant frequently

argued without providing any context for the previous weekend's argument.

This Hearing Officer is obliged to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that the Appellant neglected K. The conclusory statements of the Investigator, that the Appellant used inappropriate discipline, which was a failure to provide emotional stability and growth, and that the Appellant's discipline may have placed K at risk of harm, was speculative. Without evidence obtained by the Department that the Appellant's actions did in fact impact K's emotional stability and growth and place her in danger or pose a substantial risk to her safety or well-being, the allegations cannot be supported.<sup>2</sup> For these reasons and those enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision was not based on reasonable cause or supported by substantial evidence. (110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App. Ct. 739, 843 N.E.2d 691). Additionally, there was no evidence that the Appellant's actions placed K in danger or posed a substantial risk to K's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

#### Conclusion and Order

Appellant has shown by a preponderance of the evidence that the Department's decision to support an allegation of neglect on behalf K was not in conformity with Department's policy or regulations; therefore, the Department's decision is REVERSED.

4-9-18  
Date

Maura E. Bradford (ms)  
Maura E. Bradford  
Administrative Hearing Officer

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

\_\_\_\_\_  
Date

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Linda S. Spears  
Commissioner

<sup>2</sup> Such evidence, that the child was in danger or the Appellant's actions posed a substantial risk to the child's safety or well-being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of "concern" which would also require that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the child's safety or well-being. (See DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29)