



Exhibit 2: 2/10/17 51B Report

For the Appellant:

Exhibit A: 1/10/17 J.Y., MD  
Exhibit B: 4/28/17 J.Y., MD  
Exhibit C: 2/15/17 Medical Note, [REDACTED]  
Exhibit D: 6/21/17 Note of Appellant  
Exhibit E: 5/2/17 NC, LMHC  
Exhibit F: 4/12/17 DMH Denial  
Exhibit G: 1/27/17 Progress Report, [REDACTED]  
Exhibit H: 3/31/17 IEP Proposal/Evaluation Consent Form/Meeting Forms  
Exhibit I: 2016—2017 School Retention Meeting Stats with Attendance Record  
Exhibit J: 2016—2017 i-Ready Online Assessments for Math and Reading  
Exhibit K: 2/8/17 Letter from School Principal with 8/30/16—2/8/17 School Attendance Record  
Exhibit L: 5/9/17 Note of Pathways Clinician  
Exhibit M: 1/27/17 Note of Appellant  
Exhibit N: School Attendance Policy and Procedures  
Exhibit O: 3/20/17 Parent Meeting  
Exhibit P: 12/19/16 J.L., Principal  
Exhibit Q: 1/20/17—3/21/17 Emails, Appellant and School Staff  
Exhibit R: 12/16/16 Suspension Notice  
Exhibit S: 11/3/16 J.S. SPED Director  
Exhibit T: 9/23/16 Notice of Tardies  
Exhibit U: 2/17/17 Notice of Parents' Rights Workshop  
Exhibit V: [REDACTED], Appointments with Dr. V.

Statement of the Issue

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, and on the information available at the time of and subsequent to the investigation, the Department's decision or procedural action, in supporting the 51A report, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant; if there is no applicable statute, policy, regulation or procedure, whether the Department failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant; for a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, whether there was reasonable cause to believe that a child had been abused or neglected and the actions or inactions by the parent(s)/caregiver(s) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

### Findings of Fact

1. The subject male child of this hearing is "Z" ("the child") who was 12 years old at the time of the 51A filing referenced below. (Exhibit 1, p.1.)
2. The Appellant is the biological mother of the child and a caregiver, pursuant to Departmental policy. (Exhibit 1, pp.1 and 3; DCF Protective Intake Policy #86-015, rev. 2/28/16)
3. The child had diagnoses of ODD and ADHD. He has an IEP at school due to his ADHD.<sup>1</sup> Although at the time of the 51A filing, referenced below, he was between psychiatric providers, his pediatrician was continuing to prescribe the medications Focalin, Clonidine and Risperdal until a new provider was secured. The child had been on these medications for "a long time." The child had attended a partial hospitalization program two times in the past. (Exhibit 2, p.2.) The child took his medications regularly and did not resist taking them. (Id. at p.3.) He was denied DMH services. (Exhibit F.)
4. The child was attending a Charter School ("the School"), in [REDACTED] MA. (Exhibit 4.)
5. On January 20, 2017, the Department received a 51A report pursuant to M.G.L. c. 119, s. 51A, from a mandated reporter<sup>2</sup> alleging the neglect of the child due to lack of school attendance (educational neglect). As of that date, the child was absent 21 times since the start of the 2016—2017 school year. This included 22 days tardy (where 3 days tardy equals 1 absence) plus 13 absences. The Appellant declined a home visit from school staff and at least two requests for an in-school meeting to discuss the issue. The Appellant provided "a 'blanket' excuse note from the pediatrician which did [n]ot specify dates for absences or tardies and was insufficient to excuse absences." (Exhibit 1, pp.1 and 3.)
6. The Department screened-in the 51A report as a non-emergency response. (Exhibit 1, p.14.)
7. The School's Attendance Policy stated, in part: (See, Exhibit N.)
  - "An approved absence occurs when a student is absent for a legitimate, acceptable reason and is able to provide adequate written documentation for such absence within 3 days after he/she returns to school with a note from a parent/guardian explaining the reason for the absence. Students will be marked absent, administratively, until the expiration of the 3 days and then

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<sup>1</sup> The IEP Evaluation Consent Form of 3/31/17 indicates this was a 3-year reevaluation. (Exhibit H.)

<sup>2</sup> Testimony of TD.

will be marked truant if the school has not received a note. Vacations and non-emergency travel are not approved absences."

- "Approved absences including (sic) the following: Student illness, Medical appointment for the student, Death in the family, Observance of a religious holiday, Court appearance for the student[.]"
- In the event that a student is absent from school and does not bring a note from his or her parent, the absence will be marked as "UNEXCUSED[.]"
- "A student who missed 10% or more of the school year (18 school days) may not be promoted to the next grade. All students with 12 or more absences will be required to attend summer school."
- "...At eighteen (18) unexcused/excused absences, parents will be notified via mail that their student is at risk of retention."
- A student is truant when "...he/she is absent without approval...if he/she is absent for an unacceptable reason (one not listed above). A student who is truant will not be able to file an appeal for days missed due to truancy. A parent's note cannot excuse truancy, if the absence does not meet the criteria of an approved absence."
- A student is tardy if he/she arrives after 8:00AM. "For a tardy to be excused, a student must either present to the teacher a signed note by a parent with a legitimate reason, or the parent must call the main office."

#### **Relevant History:**

8. The family's DCF history contained allegations of neglect of Z by the Appellant in February, 2016, for the child not going to school. The allegation was unsupported and the case was closed as DCF determined "the child has trauma and mental health issues." The number of absences at that time is not in evidence. (Exhibit 1, p.12; Exhibit 2, p.5.)
9. As of the first three weeks of the 2016—2017 school year, the child had a total of 5 days tardy. This was documented in correspondence from the school dated September 23, 2016, which reminded and instructed the Appellant that each absence must be accompanied by a written excuse. (Exhibit T.)
10. On December 16, 2016, the School authored a letter sent to the Appellant explaining its reasoning for suspending the child for one day due to a violation of the School's Code of Conduct. (Exhibit R.) The child served this out of school suspension on December 19, 2016. (Exhibit K, p.1.)
11. On December 19, 2016, the School sent written notice inviting the child to attend Saturday school sessions to help the child prepare for the MCAS exam. Sign-ups for the program were on a first-come, first-serve basis. (Exhibit P.) The School (Ms. L) enrolled the child on its own accord into the Saturday school session, however the Appellant notified the school she was unable to transport him due to her schedule and wanted all work from Saturday sessions sent home for the child. (Exhibit Q, email of

3/7/17.) The evidence is not clear that this was an option for the child in lieu of attending Saturday sessions. (See, hearing record.)

12. On January 10, 2017, at the Appellant's request, the child's pediatrician, Dr. Y, authored a note indicating that due to the child's ODD and ADHD, "[t]hese past few months have been particularly difficult as he is between psychiatric providers. It has come to my attention that [Z] has been absent or tardy a number of times this year. I was hoping you could take this into consideration...I do appreciate the difficulties mom has had in getting [Z] to school." (Exhibit A.) The Appellant gave this note to the School. (Testimony of Appellant.)
13. On January 11, 2017, the School (Ms. B, Guidance Counselor) emailed the Appellant acknowledging receipt of Dr. Y's note but informing the Appellant that "based on our attendance policy we cannot excuse any of [Z's] absences based on this letter. If you would like to set up a meeting with myself and Ms.[L] to discuss this matter, please give me a time that works for you and I can coordinate it." (Exhibit Q, email of 1/11/17.)
14. On or about January 19, 2017, the day before the 51A filing, a member of the School's staff telephoned the Appellant in order to have her meet with them regarding Z's excessive absenteeism. The Appellant declined stating she had been sick with "the flu" for two months.<sup>3</sup> She asked the School staff member what documentation she needed from providers in order to satisfy the attendance requirement. The next day, the subject 51A was filed. (Testimony of Appellant.)
15. On January 20, 2017, the subject 51A report was filed with DCF. (See, above.) Also on that date, there was email communication between the School (Ms. B) and the Appellant wherein Ms. B indicated he mailed home a letter containing the child's current attendance standing, attendance report and attendance policy. Ms. B asked the Appellant for a meeting regarding the issue for the following Thursday at 9AM. (Exhibit Q, email of 1/20/2017.) The Appellant emailed back that she would be in attendance on that date/time. (Exhibit Q, email of 1/20/17.)
16. Prior to the DCF response, the Appellant had just secured, Dr. V, a provider to prescribe the child's medications. Dr. V's office verified this and that the child had appointments on January 24, 2017 (Exhibit 2, pp.2 and 5; Testimony of Appellant), with a follow-up appointment scheduled for February 24, 2017. (Exhibit V.)

**Current Response and Evidence Following Response:**

17. Z acknowledged to the RW that he had "trouble waking up in the morning to get to school...[S]ometimes he stays home from school because he is sick and sometimes

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<sup>3</sup> The Appellant's doctor's note of February 15, 2017, indicates the Appellant was treated for "cold like symptoms for the last 2 months" and does not mention the flu. The note indicates that the "Associated Diagnosis" is "None." (Exhibit C.)

because his mother doesn't have his medicine he is supposed to take" but he did not know why. When questioned, the Appellant denied ever being without the child's medications and showed the RW a locked box in which she kept them. (Exhibit 2, p.3.) The RW did not view the medications inside (Testimony of TD); however, there was no evidence that the child was not taking his prescribed medications. (See, hearing record.)

18. The Appellant was waking the child up at 6:30AM for school, but he was having a hard time getting up.<sup>4</sup> The Appellant often drove the child to school even though he had a bus. (Exhibit 2, p.3.)
19. The Appellant had engaged with IHT (In-Home Therapy) and KEY tracking in the past for her older son, J, but did not have success with them. (Testimony of Appellant.) When the RW offered these services to the Appellant for Z, she declined opting to stay with only therapy and medications for the child. (Exhibit 2, p.3.)
20. The child's pediatrician had no concerns for the child and he was up-to-date medically. The provider confirmed the Appellant's attempts at securing a new psychiatrist for Z. (Exhibit 2, p.4.)
21. The therapist for the Appellant's older children (J and H) had been seeing them since September, 2014. He had also just started seeing Z as a patient and had one appointment with him as of the 51A filing date. The therapist did not have any concerns for the family as they were very consistent with appointments; the therapist did not have concerns regarding the Appellant's parenting. (Exhibit 2, p.4; See, also, Exhibit E.<sup>5</sup>)
22. The Appellant took issue with the School in testing the child on materials he missed as a result of being tardy/absent, and not allowing her (the Appellant) to work with the child on missed work and/or make appropriate accommodations for the child to receive assistance in making up missed work. The School provided all make-up work in an "absent folder" in which he was given the work and given the appropriate time to make up the work and be tested on it; the child did not turn in assignments and was also caught cheating on a test. (Testimony of Appellant; Exhibit Q, emails of 1/29/17 and 1/30/17.)
23. On January 29, 2017, the School asked to meet with the Appellant on 2/6/17 or 2/7/17 to discuss the issues of the child's lack of academic progress and failing grades. (Exhibit Q, email of 1/29/17 at 8:37PM.) Despite the School's notifications to the

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<sup>4</sup>The Appellant has an older son, "J", who had the diagnoses of ADHD and Bipolar Disorder and was in therapy;<sup>4</sup> he also had a difficult time waking up in the morning for school however J's school reported no concerns for him. J's DCF interview was unremarkable. The Appellant's oldest minor child in the home is a daughter, "H", who has anxiety issues and is in therapy. H attended school regularly and is a high-functioning student; her school had no concerns. H's DCF interview was unremarkable. (Exhibit 2, pp.2—3; 4.)

<sup>5</sup> Although the Appellant claimed that Exhibit E was the therapist's note with respect to Z, the therapist's report clearly stated J's name and that he had been a patient of his since 2014. (Exhibit E.)

Appellant regarding his lack of completing make-up work, the Appellant responded that a meeting was premature and denied that the child was given his make-up assignments to complete. (Id. at email of 1/29/17 at 10:29PM.)

24. Disputes were ongoing with the Appellant and School regarding several issues, including that of make-up assignments. The Appellant also took issue with the child's IEP and that appropriate accommodations were not being given the child when behavioral issues arose. (See, Exhibit Q; Exhibit G.) In addition, the Appellant filed a 51A report against one of the child's teachers at the school. (Exhibit D.)
25. As of February 8, 2017, the School sent a letter home to the Appellant with the information that as of that date, the child had been absent 14 days, had 26 days tardy, and had left school 4 times since the beginning of the school year. The school reiterated its intention to "work closely with you and [Z] to rectify this matter...In order to do well in school [Z] must be in school. It is very difficult to 'catch up' with our school work when you have missed many classes."<sup>6</sup> (Exhibit K.)
26. On February 10, 2017, the Department supported the aforementioned report in accordance with M.G.L. c. 119, s. 51B for neglect on behalf of the child by the Appellant due to excessive absenteeism—21 days of school in that school year as of January 20, 2017, which was affecting his academics.<sup>7</sup> The Department acknowledged the child's mental health issues and his difficulty getting up in the morning however "this has been an ongoing issue since 2016 and mother needs to engage in services to resolve these issues." (Exhibit 2, p.5.)
27. The Department's response conclusion does not specify how the excessive absenteeism relates to the definition of "neglect." (Exhibit 2, p.5; See, Applicable Standards, below.)
28. The Department opened the family for services following its support decision. (Exhibit 3; p.5.)
29. Again, on March 12, 2017, the school (Ms. L) informed the Appellant of the child's failing grades and the School's desire to meet with the Appellant. The child had ongoing issues of missing homework and assignments. The School offered to meet with the Appellant and a meeting date and time was arranged for March 20, 2017. (Exhibit Q, emails of 3/12/17 and 3/13/17) The Appellant was not present for that meeting as is memorialized in an email from her indicating her lack of ability to attend (Id. at email of 3/21/17), as well as the notes of the meeting showing the Appellant's lack of attendance.<sup>8</sup> (Exhibit O.)

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<sup>6</sup> The Appellant wrote a note to the school for the day the child was tardy on 1/27/17. (Exhibit K; Exhibit M.)

<sup>7</sup> Based upon the February 8, 2017, correspondence from the school, the child was absent 22 days as of the date of the DCF Response conclusion. (Finding #25.)

<sup>8</sup> Although the Appellant hand wrote a note on Exhibit O that she was in attendance at the March 20, 2017, school meeting, evidence suggests otherwise. (Exhibit O; Exhibit Q, email of 3/21/17.)

30. On April 28, 2017, four (4) months after the fact, Dr. Y authored an addendum to his note of January, 2017, excusing any absences the child had from school for the period December 19, 2016 to January 17, 2017. (Exhibit B.)
31. By the end of the 2016—2017 school year, the child had 17 unexcused absences and was tardy 36 times (equaling 12 days absent due to tardiness alone), for a total of 29 days absent. (Exhibit I, p.3.) The child was failing 6 out of 9 classes. (*Id.* at pp.1—2.)
32. Based on the evidence and for the reasons set forth in the following analysis, I find the Department did not have reasonable cause to believe that the Appellant failed to provide minimally adequate care to Z, and I further find that there was no evidence that the Appellant's actions/inactions placed the child in danger or posed a substantial risk to his safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16. (See, Analysis.)

#### **Applicable Standards**

A "Support" finding means: "There is 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 of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16.

"Reasonable cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected. 110 CMR 4.32(2) Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caretaker; physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals (e.g. professionals, credible family members); and the social worker's and supervisor's clinical base of knowledge. 110 CMR 4.32(2)

"Reasonable cause" implies a relatively low standard of proof which, in the context of 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Care and Protection of Robert, 408 Mass. 52, 63-64 (1990). "[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 51A. *Id.* at 63. This same reasonable cause standard of proof applies to decisions to support allegations under s. 51B. *Id.* at 64; M.G.L. c. 119, s. 51B.

"Neglect" is defined as failure by a caregiver, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other, essential care; malnutrition; or failure to thrive. Neglect cannot result solely from



inadequate economic resources or be due solely to the existence of a handicapping condition. Protective Intake Policy #86-015, rev. 2/28/16.

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

As the child's mother, the Appellant is deemed a "caregiver," pursuant to DCF Protective Intake Policy #86-015, rev. 2/28/16.

Considering the entirety of the evidence in this matter, the Department did not have reasonable cause to believe that the Appellant failed to provide Z with minimally adequate care as is contained within the "neglect" definition above, as educational neglect is not contemplated within that definition. (DCF Protective Intake Policy #86-015, rev. 2/28/16) Additionally, to support the allegation of neglect, the Department would need evidence that the Appellant's actions placed Z in danger or posed a substantial risk to his safety and well-being.<sup>9</sup>

The evidence indicated that the child did not have timely and appropriate documentation to excuse his abundance of absences throughout the 2016—2017 school year, and that the school properly notified the Appellant of such and made several attempts to meet with the Appellant regarding the attendance and academic issues. The Appellant did not follow through with the School's requests for meetings and as such, did not come to a resolution of the many grievances she had with the School and its decision-making on several issues. It was/is incumbent upon the Appellant to make sure the child gets to school. Z's final school attendance record for the subject academic year, submitted by the Appellant into evidence, clearly showed an unacceptable amount of days missed resulting in poor accountability for make-up work and poor academic performance. It was understandable why the Department intervened with this family; however, given the specific.

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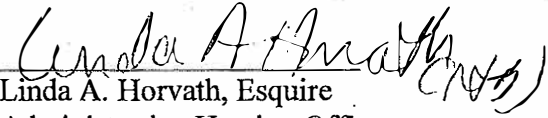
<sup>9</sup> A "substantiated concern" also requires that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the child's safety or well-being, including educational neglect or excessive or inappropriate discipline of a child that did not result in an injury, for example. (See, DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29.)


circumstances in this case, there was insufficient evidence that the Appellant placed Z in danger or pose a substantial risk to the child's safety or well-being.

Conclusion

The Department's decision to support the 51A report of January 20, 2017, for neglect by the Appellant on behalf of the child **REVERSED**.

Date: 1-28-18

  
Linda A. Horvath, Esquire  
Administrative Hearing Officer

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

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

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Linda S. Spears,  
Commissioner