

**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

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IN THE MATTER OF)
)
) **FAIR HEARING DECISION**
 EL)
 FH #2017-0271)
)
)

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

Procedural History

On January 19, 2017 and February 9, 2017 , the Department received two (2) 51A reports alleging neglect of D (hereinafter "D" or "the child") by the Appellant. The Department conducted a response and, on February 17, 2017, the Department made the decision to support the allegation of neglect by the Appellant. The Department notified the Appellant of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing originally scheduled for May 2, 2017 was rescheduled to May 16, 2017 due to a conflict within the DCF Area Office. The May 16, 2017 Hearing was rescheduled at the request of the Appellant. The Hearing was held on August 15, 2017 at the DCF New Bedford Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the Hearing for the Hearing Officer's request for the DCF Assessment Worksheet; the document was not submitted.¹ The record closed on September 8, 2017.

¹ 110 CMR 10.20 Hearing Officer's Duties and Powers(4) receive, rule on, exclude, or limit evidence (which shall include the right to request that any party produce additional evidence such as witnesses, documents, etc. but shall not include the right to require any party to do so)

The following persons appeared at the Fair Hearing:

Carmen Temme	Fair Hearing Officer
EL	Appellant
VF	Department Response Social Worker

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 Fair Hearing was recorded pursuant to DCF regulations. 110 CMR 10.26

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

For the Department:

Exhibit A	DCF Intake Report/51A Report, dated 1/19/2017
Exhibit B	DCF Intake Report/51A Report, dated 2/9/2017
Exhibit C	DCF Child Abuse/Neglect Non-Emergency Response, completed 2/17/2017

For the Appellant:

Exhibit 1	Correspondence from [REDACTED] Inc., dated 8/11/2017
Exhibit 2	Correspondence from IHT AA, [REDACTED], undated
Exhibit 3	Correspondence from D's psychiatrist DR MR-B, dated 8/15/2017
Exhibit 4	Correspondence from D's individual therapist KHS [REDACTED] dated 8/7/2017
Exhibit 5	[REDACTED] 'ESP Child/Adolescent Comprehensive Assessment', dated 9/30/2016
Exhibit 6	[REDACTED] 'MCI Comprehensive Assessment, dated 4/4/2017

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 is D; at the time of the subject 51A response, D had just turned fourteen (14) years old. (Exhibit A, p.1; Exhibit B, p.1; Exhibit C, p.1)
2. The child's father is CC; The Appellant is D's mother and primary caretaker; therefore, she is deemed a caregiver pursuant to Departmental regulation 110 CMR 2.00. At the time of the 51A response, D's parents were no longer together as a couple. (Exhibit C)
(Fair Hearing Record)
3. Since 2006, the Appellant accessed various community support services to address D's behavioral issues. (Testimony Appellant) D carried a diagnosis of ADHD since he was three (3) years old.
4. The Appellant had history with the Department dating back to 2007; physical abuse of D by his father was the subject of two 51A reports filed in 2007. (Exhibit A, p.8)
5. In December 2009, the Department unsupported allegations of neglect by the Appellant and the child's father CC (hereinafter "CC") due to allegations of domestic violence. Departmental documentation reflects D's behavioral issues as observed in school and at home. The Appellant sought out community based treatment services for D. An in time neuropsychological evaluation noted that D displayed a great deal of anger and was "lashing out." D's diagnosis at the time was ADHD; he had "various" medication adjustments. D was transferred to a behavioral modification program where he spent "most of his days in isolation with a 1:1 paraprofessional." At times D needed to be removed from his afterschool program as his behaviors were seen as a threat to the other children in the program. Due to D's behaviors, the Appellant needed to change her shift at work. (Exhibit A, p. 7)
6. Since April 2013, D received individual counseling services from [REDACTED]
(Exhibit 4)
7. From September 2015 through August 15, 2017, D received "consistent" psychiatrist care and prescribed medication from Dr. MR-B.² (Exhibit 3; Testimony Appellant)
8. On December 21, 2015, KHS (hereinafter "KHS") was assigned as D's individual therapist from [REDACTED] D saw KHS on a consistent basis until November 17, 2016.

² As the correspondence was dated August 15, 2017, this Hearing Officer makes no finding of continued compliance following this date. (Exhibit 3)

(Exhibit 4)

9. On July 2016, In Home Treatment (IHT) services through [REDACTED] with AM (hereinafter "AM") commenced. (Exhibit A, p.5)

10. On September 20, 2016, the Appellant requested an assessment of D through [REDACTED]. The Appellant noted her concern that D would go to "[REDACTED]" to see his friends without her permission; the Appellant did not believe this was a good place for him to be. The Appellant asked the director of [REDACTED] to call when D went there. D would run away from her when she went to get him. The week prior, D stole a honey bun and batteries from Stop and Shop. D was scheduled to attend youth court and had a trial date of October 11, 2016.³ The Appellant was upset when D did not meet with criteria for a CBAT placement, as she was concerned that D would run away while she attended a funeral. (Exhibit 5; Testimony Appellant)

11. On September 30, 2016, the Department received a 51A report alleging neglect of D by the Appellant. At that time, in home therapeutic services continued. D had "angry outbursts" and was "destructive;" he reportedly punched holes in the walls and broke household furniture. The Appellant no longer permitted D to sleep in his bedroom, until such time that he could control his behaviors and not damage things. D slept on the couch. The mandated reporter noted concern with this sleeping arrangement due to D's anger issues and having no private space to "cool down." The reporter noted that services needed to occur in the backyard, as the Appellant did not permit the reporter in the home. The Department screened this report out. (Exhibit A, pp.5-6)

12. D did not meet with his individual therapist KHS from November 17, 2016-December 22, 2016. D met with KHS on December 22, 2016, January 5, 2017 and January 12, 2017. (Exhibit 4)

13. On January 19, 2017, the Department received a report from a mandated reporter pursuant to M.G. L. c. 119, §51A, alleging neglect of D by the Appellant. Since October 2016, due to shoplifting and runaway issues, the child was involved with youth court. According to the reporter, on two (2) occasions D took beer and wine coolers from the refrigerator in the home, which he then hid in his room. The first incident occurred on the weekend of December 17, 2016; the child reportedly drank a wine cooler prior to going to school that Monday. The Appellant was notified of the concern on or about December 22, 2016. The reporter described the Appellant as "nonchalant" stating that 'we will address this with the therapist next time.' On January 4, 2017, the child attended the behavior modification camp. The child told the behavior team "about taking alcohol from the fridge at home," a second time. The week prior, the child brought a knife to school, which he took from his father's home. Once the school filed criminal charges, the child would be "defaulted from youth court and would be involved with the Juvenile Court in the "traditional" manner. The family had multiple services in place, to include In Home Therapy (IHT) through [REDACTED], counseling through [REDACTED], and mentor services through [REDACTED]. According to the reporter, the Appellant took "little responsibility to discipline child," stating that she wanted "the providers involved to deal with the matter." The child was becoming increasingly assaultive. The week prior, he pushed a teacher. D argued with the

³ The Court subsequently dismissed the shoplifting charge(s). (Exhibit 5)

Appellant's boyfriend. Additionally, D would leave the home and return when he wanted. The Appellant did not know nor did she inquire of his whereabouts. The Appellant did apprise the providers of D's behaviors. The reporter did not know whether the Appellant was afraid of the child due to his behaviors or that, she did not want to deal with the child. According to the reporter, the Appellant only stepped in to "defend" D but did not "discipline" him. (Exhibit A, p.2; Testimony VF)

14. The 51A report was assigned for a response, pursuant to M.G.L. c. 119, § 51A to AF (hereinafter "AF"), Social Worker from the DCF New Bedford Area Office. (Exhibit C; Testimony VF)

15. At the time of the subject 51A report, D was in the 7th grade. As part of his IEP, he was in a contained behavioral classroom at the [REDACTED] School. (Exhibit A, p.2; Testimony VF; Exhibit 5)

16. The school adjustment counselor reported that the school planned to press charges against D for "carrying a weapon." Due to D's lack of progress at his in time school, a recommendation was made for the child to attend the [REDACTED]. The Appellant initially did not agree but did change her mind. The school adjustment counselor described the Appellant as "difficult, often requesting details regarding issues/concerns but then not wanting to take responsibility in following through with recommendations."⁴ Despite the child's behaviors, D's grades were good. (Exhibit C, p.2)

17. On February 9, 2017, the Department received a second 51A report filed by a mandated reporter. According to the mandated reporter earlier in the week, D was throwing rocks; the local police brought D home. According to the reporter, "it was suggested that the mother file a CRA and mother has been dragging her feet's on filing this report." The reporter believed that D avoided being home as he did not have his own bedroom and slept on the couch in the living room. The child had no privileges to use electronics in the home. The reporter alleged that the Appellant was not responsive to D's missing meetings with involved providers, D's possible drug use, D's failure to return home after school, failure to contact the police, or his possible suicidal thoughts. Additionally the reporter stated that the Appellant failed to follow through with a tour of the Trinity School. (Exhibit B, p.2; Testimony VF)

18. On February 10, 2017, the school contacted D's pediatrician regarding issues with his bowels. The pediatrician's office provided a note to the school indicating that due to D's inability to feel the sensation when he has a bowel movement he needed to use the bathroom immediately after lunch and required time to sit on the toilet. D was to be permitted to use the toilet any time he needed to. The school informed the doctor's office that D would go but refused to clean himself up afterwards. According to the pediatrician's office, the Appellant had not followed up with his GI appointment for the previous five (5) years. (Exhibit C, p.8)

19. Due to AF's sick and maternity leave, VF was assigned as a secondary response worker on February 10, 2017; VF needed to address the second 51A report and completed the response. (Exhibit C, p.3; Testimony VF) Prior to February 9, 2017m AF had submitted the 51B as a

⁴ The record is absent clarification regarding the nature of the recommendations. (Exhibit C, p.2)

support decision regarding the initial 51A report and wrote the Disposition comment. (Testimony VF)

20. On February 17, 2017, the Department supported the aforementioned report for neglect of D by the Appellant. The Department based this determination on the following:

- The Appellant's failure to follow through with services provided to the family. According to "All collaterals involved," the Appellant was "not consistent with meeting with them and with addressing D's mental health needs."
- Concerns with the Appellant's "lack of responsibility" when D required discipline
- D's risky behaviors, such as bringing a knife to school, smoking marijuana and drinking alcohol on a few occasions. Due to these behaviors, his in time school recommended that D attend the Trinity Day School for a forty-five (45) day assessment.
- D's failure to return home "on a daily basis after school for hours."
- The Appellant being unaware of his whereabouts and not making "a full effort to locate him further putting his well-being and safety at risk."
- D's diagnosis of ODD, ADHD, and a gastrointestinal condition. According to D's pediatrician, the Appellant was inconsistent with D's gastroenterology appointments. D's school noted concern with D often smelling of feces and other hygiene issues.
- The Appellant's lack of "follow through and consistency" in addressing the concerns noted for D. (Exhibit C, p.9; Testimony VF)
- The Appellant's "mental health issues... It is unclear what her diagnosis is and if her mental health needs are effectively being met." (Exhibit C, p.7; Testimony VF)

21. According to the Appellant, at the time of the subject 51A report, D was involved with youth court, individual counseling with KHS from [REDACTED], psychiatrist Dr. MR-B, mentor services with CD, IHT with AM and another co-worker. (Exhibit C, pp.2-3) The Appellant informed the Department that despite the aforementioned services, D continued to do as he pleased and did not care. D's bedroom was bare as he slept in the living room where the Appellant could supervise him and ensure that he did not leave the apartment. During VF's February 15, 2017 home visit, she deemed D's sleeping arrangements to be "safe and appropriate." The in-home therapist and her co-worker were also present in the home and met with D. As the Appellant suspected that the IHT filed the 51A report, she planned to address this after they left the home. (Exhibit C, p.7) At some point thereafter, the Appellant accessed IHT services with a different agency. (Exhibit 2) (Exhibit C, pp.2-3)

22. During the aforementioned home visit, VF noted that D presented as neat and clean; however, she noticed an odor of feces coming from his person. The Appellant reported that D refused to shower and at age fourteen, she could not make him. (Exhibit C, p.7) D's school adjustment counselor noted concerns with D's hygiene, issues with his bowel movements and often smelling of feces. D would not get up to use the bathroom. The Appellant was contacted and informed that the strong odor was starting to affect the other classroom students. This was not an issue the year prior. (Exhibit C, p.2) According to the pediatrician's office, D had encopresis; since 2012, D had been followed at [REDACTED]. D had a follow-up appointment scheduled at [REDACTED] however no date was provided. The Appellant was reportedly upset, as she was uncertain if she could get the time off work. The Appellant "no showed" for this unspecified appointment. (Exhibit C, p.8) According to the Appellant, there

was an appointment scheduled for January 2017, which needed to be cancelled due to snow. The Appellant maintained that there were no other follow up appointments missed. (Testimony Appellant)

23. According to D, he drank alcohol on three (3) occasions; however, D denied that he drank at home more than once. (Exhibit C, p.3) The record is absent sufficient information to determine that the Appellant acted negligently following the one (1) incident wherein she found two (2) wine coolers under the couch. The Appellant credibly maintained that there was only one occasion wherein D took alcohol from the refrigerator. The Appellant knew this as she rarely kept alcohol in the refrigerator but did so due to the holidays. Following the first incident, on or about December 22, 2017, the Appellant removed alcohol from the home unless there was a weekend when the child visited with his father. The Appellant reasonably asserted that had the child presented at school under the influence of alcohol, the school would have notified her; this did not occur. (Testimony Appellant; Exhibit C, p.2) I find that the evidence is insufficient to determine that the Appellant continued to keep alcohol in the home following the December 22, 2016 incident.

24. The Appellant acknowledged concerns with D smoking marijuana with his friends. The Appellant learned of this when he admitted to smoking marijuana in youth court. The Appellant did request that D be tested following his admission that he had used marijuana. The Appellant noted her concerns that at times D did not go home when the bus dropped him off from school. The Appellant worked until 3:00, which was after D arrived home from school. The Appellant believed that the increase in D's behaviors were in part due to D's older sister starting college in September 2016. D and his sister were very close; she helped care for him and assisted with his homework. D's sister met D at his bus stop daily until she started college as a commuter student. There were days when D's sister was not at home and not present to meet his bus. (Testimony Appellant)

25. The Appellant did contact the police the first time that D "disappeared" until 9:00pm in December 2016. She was unaware that she was expected to do this each time that D did not come home. The majority of the time D would return home between 5:30-6:00pm. (Testimony Appellant)

26. According to the Appellant, D missed counseling appointments on the days that he did not come home and on a couple of occasions due to inclement weather. D's appointments with the IHT and his individual therapist were scheduled on the same day; D missed four (4) appointments in January 2017. (Testimony Appellant) According to D's mentor CD (hereinafter "CD"), the Appellant had been consistent with her follow up. According to CD, D's behaviors had become more impulsive. As of February 16, 2017, CD's last appointment with D was on January 31, 2017, as D was not coming home from school. CD planned to meet with D the following day. (Exhibit C, p.8)

27. Due to D's escalating behaviors, the Appellant acknowledged that she was considering filing a CRA but wanted to gather more information prior to doing so; additionally, she believed that this should be a last resort. According to the Appellant, one (1) of the providers told her that D needed to be missing three (3) times in a week, before she could not request a CRA. (Testimony

Appellant; Exhibit C, pp.2-3) The Appellant maintained that she did go to look for D when he was missing. She did so in conjunction with her brother who also worked for [REDACTED] and at times D's prior mentor assisted the Appellant. (Testimony Appellant)

28. The Appellant acknowledged that from September 2016 through January 2017, "things were a little bumpy." Additionally, the Appellant acknowledged that at times she "can come off as being defensive." The Appellant believed that she advocated for D to the best of her ability. (Testimony Appellant)

29. The Appellant denied that she had a mental health diagnosis, specifically depression as alleged by a mandated reporter. The Appellant did take Celexa medication to address anxiety issues related to D and his behaviors. (Testimony Appellant) The record is absent verification that the Appellant had a mental health diagnosis. (Fair Hearing Record)

30. The Appellant denied that she had any concerns that D was suicidal. (Testimony Appellant) The record is absent evidence to support the reporter's stated concern. (Exhibit C)

31. On February 15, 2017, the Appellant and D completed an intake at the [REDACTED], D started classes at [REDACTED] on February 27, 2017. (Exhibit C, p.7, p.8; Testimony Appellant)

32. From March 23 to August 3, 2017, D met on a regular basis with his therapist KHS.⁵ (Exhibit 4)

33. On April 4, 2017, at the Appellant's request, [REDACTED] completed an in home evaluation of D after he punched a glass window when the Appellant attempted to discipline him by taking away his telephone. The Appellant reported that for the previous couple of weeks, D's behaviors had been good; therefore, she gradually reinstated his telephone privileges per his discipline plan until the reported incident. The evaluator noted that D presented "with limited insight and believes he has no problems." The Appellant and D contracted for safety within the home, to include face-to-face check ins. (Exhibit 6)

34. On June 2017, D began therapeutic mentoring Services with [REDACTED].⁶ An August 11, 2017 correspondence from the Therapeutic Mentoring Director reflected that during this period, D met consistently with his assigned mentor on a weekly basis and participated in sessions. (Exhibit 1)

35. On June 29, 2017, D completed an intake session with [REDACTED] Family Services. His IHT AA wrote that from the aforementioned dates through August 10, 2017, the child was available for regularly scheduled appointment; however "his engagement was limited. The Appellant was "fully engaged in the therapy sessions." Future appointments were scheduled. (Exhibit 2)

36. Following the DCF assessment, the Department closed its case with the Appellant and D.

⁵ As the correspondence was dated August 7, 2017, this Hearing Officer makes no finding of continued compliance following this date. (Exhibit 3)

⁶ [REDACTED] records indicate that due to the Appellant being on vacation and phone difficulties, D's May 2017 intake meeting did not occur until June 15, 2017. (Exhibit 1)

(Testimony Appellant; Testimony VF)

37. In light of the totality of evidence in this case, I find that there was insufficient evidence to support the allegation of neglect of D by the Appellant. There was not reasonable to cause that the Appellant failed to provide essential care for D. Additionally, there was no evidence that the actions or inactions by the Appellant placed D in danger or posed substantial risk to his safety or well-being. (110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16) (Fair Hearing Record)

Applicable Standards and Analysis

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 finding of support 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. 2/28/2016)

“Danger” is defined as 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. DCF Protective Intake Policy #86-015, rev. 2/28/16

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Police, (rev. 2/28/2016)

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

It is undisputed that the Appellant is a caregiver for D. 110 CMR 2.00

The issue for resolution in the instant case is whether the Appellant’s actions constituted neglect per Departmental regulations and policy. D has exhibited behavioral concerns since he was three (3) years old. Throughout the ensuing years, the Appellant accessed and had D engaged with various community supportive services. Additionally, D received special education services through the school department. These community services remained in place at the time of the subject 51A response.

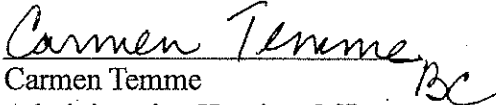
The Appellant acknowledged that the situation became “a little bumpy” in September 2016. In part, the Appellant attributed this to D’s sister having a diminished role in his life when she started college in September 2016. Throughout the ensuing months, D’s behaviors escalated to include shoplifting, bringing a knife to school after visiting his father, drinking alcohol, smoking marijuana and not returning home after school. The child was involved with youth court and then formally with the Juvenile Court after the school filed charges against him. While certain providers questioned the Appellant’s response(s) or lack thereof, the Findings support that the Appellant did provide the child with minimally adequate care. Additionally, certain allegations were made with no corroborating information. The months of December 2016 through February 2017 were admittedly difficult months for the Appellant and D; however, thereafter service provision and the child’s behaviors stabilized. Additionally, in February 2017, the child was enrolled in an alternative school. The Department closed its case after a forty-five day assessment period. Absent refuting information, this was indicative that the home situation had stabilized.

“...When reviewing a support decision or an Alleged Perpetrator listing, the hearing officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Departments decision.” (110 CMR 10.21 (6))


The Appellant has shown by a preponderance of the evidence that the Department failed to comply with its regulations and policies when it made a finding to support the allegations of neglect. The evidence was insufficient to determine that the Appellant failed to provide less than “...minimally adequate...supervision, emotional stability and growth or other essential care...care” of D. (110 CMR 2.00) Additionally, there was no information that the actions or inactions by the Appellant placed D in danger or posed substantial risk to his safety or well-being, and without such information, the Department lacked the evidence necessary to support findings of abuse or neglect. (DCF Protective Intake Policy #86-015, rev. 2/28/2016)

Conclusion and Order

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


Carmen Temme
Administrative Hearing Officer

April 17, 2018
Date


Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner