

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET  
BOSTON, MASSACHUSETTS 02111

LINDA S. SPEARS  
COMMISSIONER

Voice: (617) 748-2000  
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IN THE MATTER OF )  
 )  
A. B. )  
 )  
FH # 2017 0279 )

**HEARING DECISION**

**Procedural Information**

The Appellant in this Fair Hearing is Ms. A.B. (hereinafter "the Appellant"). The Appellant appeals the Department of Children and Families' ("the Department" or "DCF") decision to support allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On December 14, 2016, the Department received two 51A reports filed by a mandated reporters alleging neglect of G, ("G" or "the child") by the Appellant; the allegations were subsequently supported. The Department informed the Appellant of its decision and of her right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06.

The Fair Hearing was held on May 16, 2017, at the Department of Children and Families' Greenfield Area Office. All witnesses were sworn in to testify under oath. The record remained open until May 23, 2017, to allow for the submission of additional documents to be entered into the record.<sup>1</sup>

The following persons appeared at the Fair Hearing:

Anastasia King  
Ms. A.B.  
Ms. K.A.

Administrative Hearing Officer  
Appellant  
DCF Supervisor<sup>2</sup>

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.

<sup>1</sup> Exhibit "E"

<sup>2</sup> DCF Supervisor, Ms. K.A., ("Supervisor") provided testimony on behalf of the Department. (Fair Hearing Record)

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 1: 51A Report – dated December 14, 2016 @ 2:29 p.m.

Exhibit 2: 51A Report – dated December 14, 2016 @ 4:18 p.m.

Exhibit 3: 51B Response

For the Appellant:

Exhibit A: Appellant's Statement

Exhibit B: Letter of Support by Ms. M.L.

Exhibit C: Letter of Support by Ms. F.H.

Exhibit D: E-mail Correspondence from Ms. K.T. to the Appellant

Exhibit E: E-mail of Appellant's Statement

Pursuant to 110 CMR 10.21, 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.

**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 subject child of this Fair Hearing is G ("G" or "the child"); a male child who was eight years old at the time the 51A reports were filed on December 14, 2016. (Exhibit 1, p.1)
2. On December 14, 2016, two 51A reports were filed by mandated reporters alleging neglect of the child by the Appellant. According to the reports, the child, who had



12. In October of 2015, because the child was upset with the Appellant and KT for speaking to his therapist about him, the child refused to continue to meet with his therapist. After the child's refusal to meet with his therapist, the Appellant and KT did not agree service providers for the child's therapeutic treatment. (Exhibit D; Testimony of Appellant)
13. On December 14, 2016, an emergency hearing was conducted in Probate Court and temporary custody of the children was granted to KT. (Exhibit 3, p.2; Testimony of Appellant)
14. On January 11, 2017, the RW spoke to [REDACTED] supervisor who reported that the child was seen quite often by [REDACTED] and that the child made gestures about harming or killing himself. The child had been seen by [REDACTED] for 2 ½ years, had eight evaluations, and had been battling through the Appellant and KT's separation. (Exhibit 3, p.4)
15. [REDACTED] had been called by the school on January 5, 2017, after the child put cords around his neck and stated that he would rather be in heaven than alive. (Exhibit 3, p.4)
16. No contact with the school regarding the child was made by the Department during the 51B response. (Fair Hearing Record)
17. The RW met with the child on January 4, 2017. The child reported that the Appellant had locked him in his room and struck him in the face on more than one occasion. The child also reported that he and A would go to the park unsupervised while at the Appellant's home. (Exhibit 3, p.3)
18. The Appellant met with the RW on January 25, 2017, and denied the reported allegations. The Appellant reported that because the home was previously used as office space there were locks on all the doors in the home. The Appellant denied ever striking the child and reported that she had never locked the child in his room, but on one occasion when the child had gone after A with a knife, the Appellant had placed the child in his room, closed the door, and remained on the other side of the door for approximately five minutes. (Exhibit 3, p.7; Testimony of Appellant)
19. Although the child's disclosures to the 51A reporters and the RW were consistent regarding the reported incident, no collateral contacts were made by the Department regarding the child's credibility. The child had significant issues prior to the reported incident and was struggling with the separation of the KT and the Appellant who had recently moved into a new home. (Fair Hearing Record)
20. There were no witnesses to the reported incident and no evidence was presented that any marks or bruises were found on the child's face following a visit at the Appellant's home. (Fair Hearing Record).
21. On February 17, 2017, pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the child by the Appellant. The Department based its

determination on information obtained during the 51B response. (Exhibit 3, p.11; Testimony of Supervisor)

22. After consideration of all the evidence provided, this Hearing Officer finds that the Department did not have reasonable cause to believe that the Appellant failed to provide the subject child with minimally adequate care, and the Appellant's actions or inactions did not place the child in danger or pose substantial risk to his safety or well-being as required by the Department's intake policy when supporting an allegation of neglect. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16)
23. Therefore, this Hearing Officer further finds that the Department's decision was not in compliance with its regulations and policies. (DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00 & 4.32) (See, "Analysis")

### Analysis

#### 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. DCF Protective Intake Policy No. 86-015 (rev. 02/28/2016.)

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. DCF Protective Intake Policy No. 86-015 (rev. 02/28/2016.)

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 . . . DCF Protective Intake Policy No. 86-015 (rev. 02/28/2016.)

"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))

"[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

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

When reviewing a support decision, 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 Department's decision. (110 CMR 10.21(6))

Based on the information obtained in the 51B response, the Department supported allegations of neglect of the child by the Appellant. However, the evidence presented did not support the Department's conclusion. Although the child was consistent with his disclosures of the reported incidents, there were no witnesses to corroborate the child's statements and the Department failed to provide independent evidence that the child was a credible reporter. The child had significant issues prior to the reported incident and was struggling with the separation of the KT and the Appellant, who had recently moved into a new home. The concern expressed regarding Appellant's disagreement with the child's involvement in therapy was not relevant at the time of the support decisions, as the child was residing with Ms. KT and had been receiving therapeutic treatment from [REDACTED] Even if accepting the reliance on the child's statements and the Department's premise that the child was neglected, the Department failed to provide evidence that the Appellant's actions placed the child in danger or posed substantial risk to his safety or well-being as required by the Department's intake policy when supporting for neglect. (Protective Intake Policy 86-015 (revised 2/28/16))

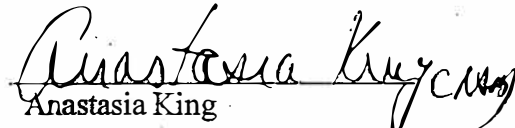
As a result, this Hearing Officer finds insufficient evidence with the Department's determination that the Appellant's actions, as described by the evidence presented, rose to

the level necessary to support the allegation of neglect.<sup>3</sup> A Hearing Officer's decision must be supported by substantial evidence; there must be substantial evidence supporting the Hearing Officer's conclusion that the Department had reasonable cause to believe that neglect occurred in this instance. (Wilson v. Dep't of Soc. Servs., 65 Mass. App. Ct. 739, 745-746 (2006))

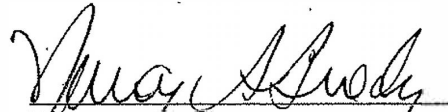
The Appellant has shown by a preponderance of the evidence that the Department acted without reasonable basis or in a reasonable manner, and resulted in substantial prejudice to the Appellant. Therefore, the Department's determination that the Appellant's actions constituted neglect, as defined in its regulations, was not made in conformity with Department regulations and with a reasonable basis.

**Conclusion**

The Department's decision to support the allegation of neglect of the child by the Appellant was not made in accordance with its policies and regulations and therefore, **REVERSED.**

  
Anastasia King  
Administrative Hearing Officer

Date: 3-14-18

  
Nancy S. Brody  
Supervisor, Fair Hearing Unit

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

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

<sup>3</sup> 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)