

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

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Commissioner

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IN THE MATTER OF

CB & IB #2017 0337

FAIR HEARING DECISION

Appellants, CB ("CB") and IB ("IB"; Collectively "Appellants") appeal the Department of Children and Families (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On February 15, 2017, the Department received a report which alleged neglect of M by the Appellants, who are his parents. The basis of the reporter's concern was M's excessive school absences and perceived failure of the Appellants to address and/or improve M's attendance. The Department screened-in the report and conducted a response. On March 11, 2017, the Department made the decision to support an allegation of neglect of M by the Appellants. The Department notified the Appellants of its decision and their right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06(4) (b). A hearing was held at DCF Robert Van Wart Area Office on May 25, 2017. In attendance were Maura Bradford, Administrative Hearing Officer; IB, Appellant; CB, Appellant; EP, DCF Response Worker; KP, DCF Supervisor.

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 February 15, 2017
- Exhibit B: 51B Report completed on March 11, 2017 by EP

For the Appellant(s):

- Exhibit 1: Neurobehavioral Exam; Eligibility Determination from ██████████ Public Schools

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 Appellants are the parents of M and J. At the time of the report in question, M was 11 years old and J was 10 years old. (Exhibit A)
2. The Appellants are M's caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. CB is a stay at home parent. IM works outside the home and was consistently employed by the same agency for 19 years. (Exhibit B, p. 2)
4. The Appellants were briefly involved with the Department in 2010 and 2012 for an Initial Assessment and Investigation, respectively, which closed at the completion of the response without any concerns. Both the Appellants have adult children and no history of involvement with the Department was associated with them. (Exhibit A,

pp. 5, 6; Exhibit B. pp. 1, 2)

5. Prior to November 2016, M attended [REDACTED] where he was involved in an incident in school. Following the incident, the school district transferred M to [REDACTED] School, an alternative school in [REDACTED]. Since he was enrolled in [REDACTED] School in November 2016, M's has had poor attendance and he demonstrated increasingly difficult behaviors that the school and Appellants struggled to manage. The Appellant were frustrated with the school's lack of contact with them, including phone calls when M left school¹, lack of written correspondence or other efforts by the school to inform them that M was "skipping" school. (Exhibit B, pp. 3, 5; Testimony of EP and Appellants)
6. CB brought the children to and from school each day. CB dropped M off at school, sometimes in the parking lot behind [REDACTED] School, which is adjacent to J's elementary school, and picked M up each day. Unbeknownst to the Appellants, after CB dropped M off, M frequently left school, and then returned to school grounds at dismissal time after he spent the day at a friend's house near the school². In January 2017, IB had an informal meeting with Mr. C, and developed a plan to address M's behavior; thereafter, CB walked M into school. By February 2017, communication between the school and M improved, but M's school aversion did not. After an issue with a staff member³, M started to walk out of the building again and the school could not prevent him from leaving. (Exhibit B, pp. 2-5; Testimony of Appellants)
7. On one occasion, the school counselor saw M riding his bicycle near the school after he walked out. Given that, the school inferred that M returned home when he left school, the Appellants were aware that M left school and failed to encourage his attendance. (Testimony of Appellants and EP)
8. On February 15, 2017, the Department received a report which alleged neglect of M by the Appellants. The basis of the reporter's concern was M's excessive school absences and perceived failure of the Appellants to address and/or improve M's attendance. The Department screened-in the report for educational neglect and conducted a response. (Exhibit A; Testimony of EP)
9. During the response, the Appellants described their efforts to get M to school and concern that the school did not contact them until M missed 36 days of school. (Exhibit B, p. 4; Testimony of IB)
10. Prior to the report in question, the Appellants grew concerned for M's mental health; CB, who had a diagnosed mental health condition, saw similarities between himself

¹ IB testified that she never received an automated call from the school and no contact from an "actual person" until M already missed 36 days.

² The Appellants testified they learned that M spent time with a teenager and quickly acted to ensure M and the boy had no further contact.

³ The Response Worker spoke with the [REDACTED] Principal and staff Mr. C, who admitted the staff member was "rough around the edges" and they spoke with the staff member about his interactions with M. Mr. C told the Response Worker M used the staff member as a "scapegoat" for his own behavior. (Exhibit B, p. 6)

and M. The Appellants requested accommodation for M, including a half-day at school and a behavioral examination. The school did not accommodate the request for a half-day schedule; the examination was scheduled for April 18, 2017. (Exhibit 1, Neurobehavioral Status Examination, p. 1; Testimony of IB)

11. J missed school early in the academic year due to illnesses; his absences were excused. J attended a one-month reading and math program during the summer for additional academic support. There were no other concerns for J. (Exhibit B, p. 6; Testimony of Appellants)
12. On March 8, 2017, the Department supported allegations of neglect of M by the Appellants due to M's excessive school absences. The Department determined that because he was out in the community, there was a lack of supervision that created a substantial risk to M's safety and well-being. (Exhibit B, pp. 7, 8; Testimony of EP)
13. In part, under the impression that the Appellants knew M left school, the Department determined the Appellants failed to provide appropriate supervision for M. IB testified that when CB dropped off M at school, their presumption was that the school assumed caregiving responsibility for M and should have contacted them when he left. (Testimony of EP)
14. On April 18, 2017, after a neurobehavioral evaluation by an independent clinic, M was diagnosed with Attention Deficit Hyperactivity Disorder and Oppositional Defiant disorder. The licensed psychologist(s) who conducted the evaluation recommended M receive services, including an Individualized Education Plan, to address his emotional and behavioral needs. The ██████████ School District determined that that M was not eligible for special education services; M's absences and unwillingness to complete [school] evaluations were cited as factors in the school district decision. (Exhibit 1; Testimony of IB)
15. After a review of all the evidence and for the following reasons, I find the Department did not have reasonable cause to support an allegation of neglect of M by the Appellants:
 - a) The Department did not demonstrate that the Appellants failed to provide minimally adequate care for M, including minimally adequate supervision or other essential care or neglected M under Department regulations (110 CMR 2.00 and 4.32), and;
 - b) There was no evidence that the Appellant's actions or inactions placed M in danger or posed a substantial risk to M's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Applicable Standards and Analysis

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 means 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition." 110 CMR 2.00

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

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

The Appellants are M's caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

The Department supported allegations of neglect of M by the Appellants due to M's excessive school absences. The Department determined that because he was out in the community, there was a lack of supervision that created a substantial risk to M's safety and well-being. 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellants argued that they were not informed of M's excessive absences prior to the report in question, had already undertaken steps to address M's behavior and were unaware that M was leaving school. The Appellants illustratively argued they did not neglect M.

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 Appellants neglected M. In the instant case, it is undisputed that M exhibited significant behavioral issues, including that he frequently left school after being dropped off by his father and at days' end, returned for pick-up as if he was in school all along. The Appellants credibly testified that they undertook steps to address M's behavioral issues and evidence submitted by the Appellants included recommendations to assist the Appellants and the school in managing M's behavior; recommendations that were rejected by the school.

The evidence suggests the chief difference of opinion between the school and the Appellants was where the responsibility lay for M's lack of attendance. The evidence suggests that the school viewed M's behavior as willful and that the school presumed the Appellants simply ignored M's absences. The evidence suggests that M's behavior is more than merely willful and may be organic in nature and also owing to some miscommunication between the Appellants and the school, that M's absences reached a critical point before the school made the Appellants aware of the excessive amount of absences and filed a report with the Department. In reaching the decision that the Appellants neglected M, the Department gave significant weight to the school's assertion that the Appellants knowingly allowed M to repeatedly skip school; a claim that is not well-supported by the evidence, including M's own statements. 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 or inactions placed S in danger or posed a substantial risk to S'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

The Appellants have shown by a preponderance of the evidence that the Department's decision to support allegations of neglect on behalf of M was not made with a reasonable basis; therefore, the Department's decision is REVERSED.

Maura Bradford

Maura E. Bradford
Administrative Hearing Officer

April 23, 2018
Date

Barbara Curley

Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner