

**Executive Office of Health and Human Services  
Department of Children and Families  
Central Administrative Office  
600 Washington Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02111**

**Linda S. Spears, Commissioner**

**Voice: (617) 748-2000  
Fax: (617) 261-7428**

**IN THE MATTER OF: SL**

**Fair Hearing # 20170388**

**FAIR HEARING DECISION**

The Appellant, SL (hereinafter "SL" or "the Appellant"), appeals the decision of the Department of Children and Families (hereinafter referred to as the "Department" or "DCF"), pursuant to M.G.L. c.119, §51B, to support allegations of neglect on behalf of J.

**Procedural History**

On March 1, 2017, the Department of Children and Families received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect of J by her mother, ShL, and maternal grandmother, SL. On March 22, 2017, the Department decided to support allegations of neglect, pursuant to M.G.L. c. 119, §51B, by ShL and by Appellant on behalf of J.

The Appellant made a timely request for a Fair Hearing to appeal the Department's decision. The Fair Hearing was held on May 24, 2017 at the Department's Hyde Park Area Office. In addition to the Hearing Officer, the following persons appeared that day:

SL            Appellant/Maternal Grandmother  
LF            Department Response Worker

In accordance with 110 C.M.R. §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 on one (1) compact disc, pursuant to 110 CMR 10.26.

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

For the Department:

Exhibit A Intake Report - 51A Report dated 3/1/2017

Exhibit B Child Abuse/Neglect Non-Emergency Response dated 3/22/2017

For Appellant:

Exhibit 1 Fair Hearing Request and Department support letter

The Hearing Officer need not strictly follow the rules of evidence....Only evidence which is relevant and material may be admitted and may form the basis of the decision.  
110 C.M.R. § 10.21

**Statement of the Issues**

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 Appellants; 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 Appellants; 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 or human trafficking. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

**Findings of Fact**

On the basis of the evidence, I make the following factual findings:

1. Appellant was the maternal grandmother of J. [Exhibit A; Exhibit B]
2. ShL was the mother of J. [Exhibit A; Exhibit B]
3. At the time in question: J was twelve years old and attending 6<sup>th</sup> grade at the CL school since October 2016; she was diagnosed with ADHD and oppositional defiant disorder and prescribed Ritalin; she had an IEP for academic support services; and she participated in a school advisory group in an effort to increase her social/emotional skills;. [Exhibit B, pp.4,5,7]
4. J reported having been bullied at school since November 2016. [Exhibit B, pp.4,7]
5. Upon investigation, school personnel determined that J and another party both participated in bullying of one another on social media. [Exhibit B, p.4]

6. There is no evidence that school personnel took any action to address the bullying behaviors referenced above despite requests for mediation by ShL. [Fair Hearing record]
7. On February 27, 2017, J got into a physical altercation with another girl, D, at school. The altercation lasted about 90 seconds. The girls were separated by teachers. School personnel contacted ShL to inform her of what had happened. ShL called Appellant, informed her that J had been jumped at school and was hurt, and requested that Appellant respond to the school to wait with J as Appellant could arrive there sooner than ShL. Appellant agreed. Upon arrival, Appellant went into the school, located J with school staff, and walked out of the building with J. ShL arrived as Appellant was walking out of the school with J. [Exhibit B, pp.3-4,7,9; Exhibit A]
8. What transpired after Appellant and/or ShL arrived at the school is in dispute:
  - School personnel reported that ShL and Appellant threatened to “fu’k up” students involved, threatened to “fu’k up” school staff, and instructed J to beat up the students involved;
  - ShL denied encouraging J to fight students, threatening students or staff, or using profanity; ShL acknowledged having encouraged J to defend herself if a bully were to physically assault her at school;
  - J denied witnessing ShL or Appellant threaten students or staff or use profanity; J also denied that either ShL or Appellant encouraged her to fight students on February 27, 2017;
  - Appellant denied threatening students or staff, or using profanity; Appellant denied approaching any child; she acknowledged approaching a man in a vehicle whose grandchild she believed had instigated the altercation between J and D; Appellant acknowledged raising her voice at the man and asking him to teach his child not to instigate fights. [Testimony of Appellant; Exhibit B, pp.3-4,7,9; Exhibit A]
9. School personnel contacted the police who responded after approximately 40 minutes and took statements from those present, including Appellant. Appellant and ShL had remained on school grounds until the police arrived so they could document the incident and their concerns that the school was not taking their concerns around the bullying of J seriously. The police requested that a clerk magistrate’s hearing take place to determine whether criminal charges should issue against any party. [Exhibit B, pp.3-4,7,9; Exhibit A]
10. On March 30, 2017, a clerk magistrate’s hearing was held to determine whether criminal charges would issue against ShL, Appellant, and/or CL school personnel. The magistrate issued complaints against ShL and Appellant. [Exhibit B, p.9; Testimony of Appellant]
11. I do not credit Appellant’s denials relative to any threatening behavior. It is reasonable to believe that ShL and/or Appellant were involved in some kind of

commotion at the school as the police responded and made applications for criminal complaints which later issued. [Fair Hearing record]

12. There was no evidence provided as to specifically whom Appellant allegedly threatened or swore at, where this took place (in or out of the school), and whether J or ShL were present. [Fair Hearing record]

13. I find the evidence insufficient to conclude that Appellant was a "caregiver" of J at the time in question. [Fair Hearing record]

### 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.

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. DCF Protective Intake Policy #86-015, rev. 2/28/16

“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. 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 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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

In making a determination, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29(2)


### Analysis

On the basis of the factual findings and standards set forth above, and for the reasons set forth below, I reverse the Department’s decision to support allegations of neglect against Appellant.

After review and consideration of all the evidence presented, I find that the evidence in this case, in its totality, is insufficient to support the determination that Appellant was a caretaker of J at the time in question. On February 27, 2017, Appellant responded to the school at the request of ShL, J’s mother. ShL responded not long after Appellant. Although it is reasonable to believe that Appellant did engage in some threatening and/or belligerent behavior at the CL school on February 27, 2017, the evidence is unclear as to the specifics of this behavior, i.e. whom did Appellant threaten; at whom did Appellant swear; where were J and/or ShL at the time. I find that the Department did not have sufficient cause to believe that Appellant, SL, was a caretaker of J at the time.

Conclusion and Order

The Department's decision to support the allegations of neglect of J by Appellant, SL, was not made in conformity with Department policy and regulations. Therefore, the Department's decision is **REVERSED**.

  
\_\_\_\_\_  
Antonia Chronis,  
Administrative Hearing Officer

11/16/2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sophia Cho, LICSW  
Supervisor, Fair Hearings

\_\_\_\_\_  
Date

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