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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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(IN THE MATTER OF S.L. FH #2017-0457)

HEARING DECISION

Procedural History

The Appellant, S.L., appeals the decision of the Department of Children and Families [hereinafter "the Department" or "DCF"], to support for neglect by her of daughter, J, pursuant to M.G.L., c.119, §§51A & 51B.

On March 1, 2017, the Department received a 51A Report from a mandated reporter alleging neglect of J by the Appellant, her mother [and by the maternal grandmother] in connection with a fight between J and another student at their school on February 27, 2017 and its aftermath. The 51A Report was screened in for a 51B non-emergency response and assigned to response social worker, LF. On March 22, 2017, following the 51B response, the Department supported for neglect of J by the Appellant [and maternal grandmother] for failing to provide J with minimally adequate emotional stability and growth in connection with the incident, and opened the family's case for a comprehensive assessment; now named a Family Assessment Action Plan – FAAP.

The Department notified the Appellant of the decision and her right of appeal by letter dated March 22, 2017. The Appellant filed a timely request for Fair Hearing ["Hearing"] on April 6, 2017. [110 CMR 10.06 & 10.08] The Appellant's request for Hearing was granted and held on June 14, 2017 at the Department's Hyde Park Area Office in Hyde Park, MA. Present were the DCF Supervisor, S.F. and the Appellant, both of whom were sworn in and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a CD.

Admitted into evidence for the Department was the DCF 51A Report of March 1, 2017 [Exhibit A] and the corresponding 51B Response Supported on March 22, 2017 [Exhibit B]. Admitted into evidence for the Appellant was a Letter of March 17, 2017 from J's psychiatrist, [redacted]. [Exhibit 1], the Appellant's Request for Appeal with the DCF Notice to the Appellant of the Neglect Finding [Exhibit 2], Court Docket Report for J [Exhibit 3], and Application for Criminal Complaint Against the Appellant [Exhibit 4]. The Hearing record was closed on June 14, 2017 and a draft decision written and sent for review on July 10, 2017.

On January 17, 2018, the Appellant submitted a Criminal Docket as to Dismissal of the Charges brought against her for Disorder Conduct and Threat to Commit a Crime [Exhibit 5] and asked that it be considered. The Hearing record was reopened to consider this new information. The Hearing record was closed on January 22, 2018.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Standard of Review

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. [110 CMR 10.05]

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected [110 CMR 10.05] and whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being or the person was responsible for the child being a victim of sexual exploitation or human trafficking. [DCF Protective Intake Policy #86-015 Revised 2/28/16]

Findings of Fact

1. The thirty seven year-old Appellant is a single parent and the mother of twelve year-old J; fifteen year-old S; and, eighteen year-old J. Maternal grandmother, S.L., who lives at the same address, is a support to the Appellant. [Exhibit A, pp.1-3; Exhibit B, pp.1 & 5; Exhibit 2, p.1; Testimony of the Appellant]

2. The Appellant was a residential counselor for children. [Testimony of the Appellant]

3. The Appellant has a history with the Department, but nothing of relevance to the current situation. [Exhibit A; Exhibit B, pp.1-2]

4. Twelve year-old J had diagnoses of ADHD [Attention Deficit Hyperactivity Disorder], Oppositional Disorder, and Anxiety Disorder for which she received medication and was under the care of a psychiatrist. [Exhibit 1; Exhibit 2, p.1; Exhibit B, p.5]

5. During her enrollment at her new school, [redacted] J's behaviors were deemed not exemplary. Per the reporter, J talked back to school personnel, engaged in drama, "egg[ed] things on", "stir[red] the pot", spit on fourth graders riding the school bus on February 27, 2017, told the third graders she was "going to F them up", and has been suspended one to two times for these behaviors. J would arrive at school without a uniform and when spoken to about this by school personnel, said, "my mom says I don't have to listen to you". [Exhibit B, p.3-4]

6. The Appellant reported that J was bullied and humiliated by some of her peers and some staff, since attending her new school, [redacted], in October 2016. [Exhibit 2, p.1; Exhibit B, pp.4-5; Testimony of the Appellant]

7. J saw and told her psychiatrist on November 4, 2016 that she felt embarrassed at school [redacted] because the teachers were commenting about her in front of other children. The child also reported significant symptoms of anxiety. J was referred for therapy and attended a session with a therapist on November 14, 2016. This information is related by J's psychiatrist in a letter dated March 17, 2017, which was submitted by the Appellant at her Hearing of June 14, 2017. [Exhibit 1]

8. During a visit to the family's home on March 7, 2017, J told the response social worker, L.F., that upon her arrival at [redacted] students began bullying her because she defended her cousin, A., from being bullied. Students screen shot her social media posts and accused her of gossiping. J reported voicing her concerns of bullying to school personnel. [Exhibit B, pp.5-6]

9. Per the 51A Report of March 1, 2017, there had been some "back and forth" between social media involving concerns of bullying between a small group of girls at the school. [Exhibit A, p.3]

10. The reporter of the March 1, 2017 51A Report acknowledged that the family had reported that J was bullied but, upon closer investigation, school personnel found that J and the other party [involved in the incident below] both had participated in bullying of one another on social media. [Exhibit B, pp.3-4]

11. On February 27, 2017, J got into a fight with student, D; this is not under dispute. [Exhibit A; Exhibit B; Testimony of Supervisor; Testimony of the Appellant]

12. Although not a witness to the fight that took place between J and D at [redacted] on February 27, 2017, the Appellant reported that J was jumped by an eight grade student. [Exhibit 2] However, per the reporter, J was the primary aggressor during the incident. She pushed D three times. On the third push, D lost her footing, fell to ground, pulled J down with her, and the two engaged in a physical altercation. The physical fight lasted about 90 seconds and was broken up by teachers. [Exhibit B, p.3]

13. J, who was interviewed by the response social worker at her home on March 7, 2017, reported the incident differently. She said, on two occasions D approached her in the school hallway and asked, "what were you saying on social media? "I want to fight you". J said she ignored D, but then D approached her in the hallway a third time and was getting in her face so J, who felt threatened, pushed D. D then pushed J back and J retaliated by pushing D again, only this time D grabbed J's arm and the two girls fell to the ground and proceeded to fight. J stated that D was reportedly on top of her; denied that the teachers broke it up; and said that they just got up and off of one another, and the teachers then separated them. [Exhibit B, p.5]

14. According to the Appellant, Mr. W, a school administrator, contacted her at work to tell her that J was in a fight. The Appellant in turn called maternal grandmother and asked her to respond to the school, until she could arrive as she was closer. According to the Appellant, upon her arrival, J and maternal grandmother were outside the building on school grounds. [Exhibit B, p.4; Testimony of the Appellant] Maternal grandmother separately corroborated being called by the Appellant and responding to the school. Maternal grandmother reported that, upon her arrival, she entered the school building through the unlocked door, found the receptionist and requested to speak with Mr. W., and then met with Mr. W and J on the way up the stairs on route to his office, as they were going down the stairs. [Exhibit B, p.7] Per the reporter, however, the maternal grandmother snuck into the school building to find child, D. Maternal grandmother was escorted [out]. [Exhibit A, p.3; Exhibit B, p.10]

15. According to the Appellant, when she arrived at the school, the maternal grandmother and J were outside and there were maybe two or three kids hanging outside after dismissal. She saw maternal grandmother talking to a parent in a car, told J to sit inside her [Appellant's] car, and then talked with maternal grandmother about what was going on. The Appellant said she then walked away from the maternal grandmother and saw the disciplinary guy with gray hair standing on top of the steps. All of them, the staff who worked there, were standing up there, on top of the steps, because she guesses that maternal grandmother, when she got there, had been upset. [Testimony of the Appellant]

16. According to the mandated reporter and, as supported by the Department, while outside, the Appellant and maternal grandmother made verbal threats toward D, other students, and staff. They threatened to "fu*k up" the students involved, made statements "I want Mr./Mrs. to come outside I'm going to fu*k him/her up", and the Appellant was instructing J to beat up the students involved. The Appellant and maternal grandmother called three additional people to the school. Family reportedly stationed themselves in the doorways and continued to make threats. The Appellant and maternal grandmother approached another student, N, and made threats to her because she was a friend of D's. N mentioned that the Appellant was holding a pocket knife close to her side. N reported that the Appellant said, "Pop out of the car so I can fuck you up". [Exhibit A, p.3; Exhibit B, pp. 3-4 & 9-10]

17. It is undisputed that the police were called. The school issued an indefinite no trespass order against the Appellant and maternal grandmother in connection with the February 27, 2017 incident. [Exhibit A, p.3; Exhibit B, pp. 4-5, 7 & 9-10; Testimony of the Appellant]

18. The school made a decision to suspend J for five days. [Exhibit A, p.3] However, the Appellant immediately removed J from [redacted] after the incident occurred. [Testimony of the Appellant; Exhibit B, p.4; Exhibit 2, p.1] J was transferred to another school. [Exhibit B, p.9; Testimony of the Appellant] At the time of the hearing, the child is reportedly doing well there. [Testimony of the Appellant]

19. J denied witnessing the Appellant and maternal grandmother threatening students or staff or using profanity on February 27, 2017; denied any knowledge of the Appellant possessing, carrying, handling and exposing a pocket knife at that time; and, denied that the Appellant and maternal grandmother encouraged her to fight students that day. [Exhibit B, p.5]

20. Maternal grandmother denied threatening students and staff or using profanity on February 27, 2017; denied that the Appellant was carrying, handling a pocket knife/weapons at any time; denied there was any commotion involving the relative [and N], and denied being escorted off school grounds by the police. [Exhibit B, p.7]

21. The Appellant denied going up on to the school steps or blocking doorways or going into the building, denied encouraging J to fight students on this occasion, denied threatening staff and students or using profanity, and denied possessing, carrying, handling and exposing a pocket knife at any time. The Appellant told the response social worker that, while waiting for the police to arrive, school dismissal began and a relative, A.L., arrived to pick up child, N. The Appellant testified that she did not call the relative to come to the school. The relative reportedly stayed in her vehicle and inquired through her window what had happened; the Appellant spoke to her but denied causing any commotion. The Appellant denied being escorted off school grounds. After the police arrived and took statements, the Appellant reported that the family voluntarily walked off school grounds. [Exhibit B, p.4; Testimony of the Appellant]

22. The Hearing Officer finds that the Appellant, maternal grandmother, and J are well matched in their extensive denial of all culpability regarding the commotion that took place after the fight between J and D. However, this hearing officer does not find their denials to be compelling or persuasive.

23. The Appellant reported she encouraged J to defend herself, if assaulted first by a bully, because the school would do nothing to protect her child from the bullying. The Appellant reported at Hearing that she spoke to the disciplinary guy at the school about the bullying two weeks before the February 27th incident and on the day of the incident told him she was going to file a complaint against the school because, if this issue had been addressed earlier, the incident of February 27th would not have happened. The Appellant filed the internal complaint against the school on March 1, 2017, following the incident, because the school was negligent in addressing the bullying of J. The Appellant testified at Hearing having received notification from the school, following investigation, that basically there was no finding against the school. The notification included a packet from the school that indicated she had missed numerous meetings with the school, which she denied at her Hearing. The Appellant opined that the no trespass order was issued and 51A Report filed maliciously by

the school afterward, in order to deflect the school's negligence. Court charges also came afterward. [Exhibit B, pp. 4-5; Exhibit 2, p.1; Testimony of the Appellant]

24. The Hearing Officer is not convinced that the school retaliated against the Appellant as suggested above. There is no evidence to support Appellant's argument; no trespass orders were served, and applications for criminal complaints against J and the Appellant filed with the court as related with specificity below.

    a) On March 10, 2017, the [redacted] School Police filed an application for complaint against reported child, J, for assault and battery, in connection with the incident of February 27, 2017. On May 19, 2017, a hearing was held with the [redacted] Clerk Magistrate whereby the detective, Appellant, and J were present in court, but the complaining witness was not present. [Exhibit 3] The hearing was requested by the detectives, who were not present during the physical altercation and did not witness the commotion that followed. The detectives stated that all information received was reported by witnesses. [Exhibit B, p.9] On May 19, 2017, the Clerk Magistrate disposed of the case by determining that no probable cause was found and so the complaint was not issued. [Exhibit 3] According to the Appellant, J's charges were thrown out, because the victim did not appear. [Testimony of the Appellant]

    b) On March 10, 2017, a hearing was held at the [redacted] Court – [redacted] on an application for criminal complaint made against the Appellant for disorderly conduct, dangerous weapon, carry [pocket knife], and threat to commit a crime – all in connection with the February 27, 2017 incident. [Exhibit 4] At the hearing, probable cause was found and the complaint issued for disorderly conduct and threat to commit a crime, but the complaint was not issued on the offense of carrying a dangerous weapon. The Appellant was arraigned on the two charges on April 12, 2017. [Exhibit 4]

    c) The Appellant reported having gone to court and the magistrate brought school staff into the room. According to the Appellant, they threw out the pocket knife charge so the only thing she now has to address in this on-going proceeding will be the other two charges. [Testimony of the Appellant]

25. New information was submitted by the Appellant on January 17, 2018, showing that the charges against the Appellant for disorderly conduct and two counts for a threat to commit a crime were dismissed for failure to prosecute on November 15, 2017. [Exhibit 5]

Analysis

A party contesting the Department's decision, to support a 51A Report for neglect, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellant requested a Hearing, which was granted and held on June 14, 2017.

Regulations, policies, and case law applicable to this appeal include, but are not limited to, the following.

After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are supported or unsupported. To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question. Reasonable cause to believe is defined as 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 caretaker, physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals, e.g., professionals, credible family members, and the social worker and supervisor's clinical base of knowledge. [110 CMR 4.32]

"[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

The 51A report under appeal is supported for neglect. Neglect means failure by a caretaker, 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. This definition is not dependent upon location, i.e., neglect can occur while the child is in out-of-home or in-home setting. [110 CMR 2.00]

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 children 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. One such example is neglect that has led to a serious physical or emotional injury. Protective Intake Policy #86-015 [2/28/16]

Substantial Risk of Injury: A situation arising either through intentional act or omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse to a child. Protective Intake Policy #86-015 [2/28/16]

Our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590,599, 664 N.E. 2nd 434 (1996), cited in John D. v. Department of Social Services, 51 Mass. App. 125 ((2001), Adoption of Ramon, 41 Mass. App.

Ct. 709, 714 (1996). Even with no indication or evidence that a child has been injured, either physically or emotionally by the domestic violence, the state need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879, 389 N.E.2d 68, 73 (1979).

The Court has also held that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789 (2003).

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 an 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 the age of 18. [Protective Intake Policy, #86-015, Revised 2/28/16]

The Appeals Court, in Wilson v. Department of Social Services, held that "the standard of proof and kinds of evidence that are appropriate for the Department's purposes may not be the standard to be used by another agency notified of the Department's decision to "support" an allegation of child abuse or neglect".

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]

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Department in the matter under appeal. See Findings #1 to #25 and the below discussion.

The Appellant was a *caregiver* of her twelve year-old daughter, J. as defined herein, at 110 CMR 2.00, and within the Department's Protective Intake Policy.

Based on the record as a whole and giving due weight to the clinical judgment of Department

social workers, the Hearing Officer finds that the Department had "reasonable cause to believe" that the Appellant failed to provide J with minimally adequate emotional stability and growth on February 27, 2017 and was therefore neglectful. "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. See Care and Protection of Robert.

On February 27, 2017, J engaged in a physical fight with another female student, D, at their school, [redacted] J's maternal grandmother and the Appellant, J.'s mother, responded to the school on this date. The evidence presented by the mandated reporter conveyed that during the aftermath of the fight, the Appellant and maternal grandmother, while outside but still on school grounds, made verbal threats toward D, other students such as N, and the Appellant instructed her daughter J to beat up the students involved. The Appellant was seen with a pocket knife. The police were called. A no trespass order was served on the Appellant and maternal grandmother, and complaints filed in court against J and the Appellant. J was present during the commotion outside the school building, when she, the Appellant, and maternal grandmother were still on school property. Regardless of the dismissal of charges against the Appellant, our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well being of children and constitutes a "distinctly grievous kind of harm." See Custody of Vaughn,, cited in John D. v. Department of Social Services and Adoption of Ramon. Although there is no actual evidence of injury to J from the Appellant's and maternal grandmother's conduct on February 27, 2017, the Court has held that the Department's determination of neglect does not require this. See Lindsay v. Department of Social Services. In addition, even with no indication or evidence that a child was injured, either physically or emotionally by the incident, the state need not wait until a child has actually been injured before it intervenes to protect a child. See Custody of a Minor

The Hearing Officer has no reason to doubt the clinical experience and judgment of the Department in the instant matter. The Hearing Officer did not find any information offered by the Appellant to be substantial or compelling or reliable to such an extent that the Department acted unreasonably and/or abused its discretion in making a decision to support for neglect of J. Based upon a review of the evidence presented at the Hearing, including testimony from the parties and documents submitted, the Hearing Officer finds that the Department's decision, to support for neglect of J for the Appellant's failure to provide the child with minimally adequate emotional stability and growth, was made in conformity with its regulations, supported by sound clinical judgment, and there was a reasonable basis for the decision. Pursuant to the Department's Protective Intake Policy, the events of February27, 2017 posed substantial risk to the child.

The Appellant failed to meet her burden of proof. [110 CMR 10.23] The Appellant has denied total culpability in the events following the physical altercation of J and D on February 17, 2017.

The Appellant is employed as a residential counselor for children. She testified that her employer did not promote her because of the Department's decision of March 22, 2017, to support for neglect of J by the Appellant. If accurate, please note that the Appeals Court, in Wilson v. Department of Social Services, held that "the standard of proof and kinds of evidence that are

appropriate for the Department's purposes may not be the standard to be used by another agency notified of the Department's decision to "support" an allegation of child abuse or neglect". For the record, there is no evidence that the Department notified the Appellant's employer of this finding.

Order

1. The Department's decision of March 22, 2017, to support the 51A Report for neglect of J by the Appellant, is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal these decisions, she may do so by filing a complaint in the Superior Court for the county in which she lives within thirty (30) days of the receipt of this decision. [See, M.G.L. c. 30A, §14].

Frances Wheat (SS)

Frances I. Wheat, MPA
Administrative Hearing Officer
Office of the General Counsel

Date: 1/24/2018

Hyaegun Cho, Supervisor
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