THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Commissioner

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IN THE MATTER OF	)	
	)	
DP/JM	)	**FAIR HEARING DECISION**
	)	
FH # 20170595	)	
	)	

The Appellants in this Fair Hearing were DP (hereinafter "DP" or "Appellants") and JM (hereinafter "JM" or "Appellants"). The Appellants appealed 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 April 7, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of W (hereinafter "W" or "the child") by his parents, DP and JM. A response was conducted and on May 1, 2017, the Department made the decision to support the allegations that W was neglected by the Appellants. The Department notified the Appellants of its decision and their right to appeal.

The Appellants made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was rescheduled several times per the request of the Appellants' through counsel. The hearing was held on July 27, 2017 and November 9, 2017, at the DCF Coastal Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing on July 27, 2017:

Laureen Decas	Fair Hearing Officer
DP	Appellant
JM	Appellant
AN	Attorney for Appellants
JB	Department Response Social Worker
JV	Department Supervisor

The following persons appeared at the Fair Hearing on November 9, 2017:

Laureen Decas	Fair Hearing Officer
DP	Appellant
AN	Attorney for Appellants
JB	Department Response Social Worker
JV	Department Supervisor

The record on this matter remained open through November 30, 2017, to allow the Appellants to submit additional evidence.

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 on two (2) compact disks in accordance with regulations.110 CMR 10.26

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

For the Department:

Exhibit A:	51A Report, dated 4/7/17
Exhibit B:	51B Report, completed 5/1/17

Appellant

Exhibit 1:	CRA Docket Information
Exhibit 2:	Information from [redacted], psychiatrist for W
Exhibit 3:	Letters to [redacted] Public Schools
Exhibit 4:	Correspondence with DCF about screen out
Exhibit 5:	Medical Documentation relative to W
Exhibit 6:	Letter of previous therapist
Exhibit 7:	Copy of letters to DCF
Exhibit 8:	Copies of information provided to school department
Exhibit 9:	Copy of email from [redacted] Public School

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. At the time of the filing of the subject 51A report, W was seven (7) years old. He resided in [redacted] MA with the Appellants and his brother, G, age nine (9). (Fair Hearing Record)

2. The Appellants are the parents of the subject child; therefore they are deemed caregivers pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

3. The P/M family was previously involved with the Department beginning in 2014 when concerns arose regarding G not attending school regularly. In June of 2015, the Department substantiated concerns for W, as he was exhibiting aggressive, acting out behaviors and concerns about the level of care that he received were noted. Between 2014 and 2017, seven (7) 51A reports were screened out pertaining to the family and lack of schooling for W. (Exhibit B, p.1)

4. G participated in educational and behavior testing. He was placed at the [redacted] School through his school department in an out of district placement. (Fair Hearing Record)

5. On April 7, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging the neglect of W by his parents, DP and JM. According to the reporter, the Appellants had educationally neglected W. W was enrolled but not attending school. W was diagnosed with dyslexia, seizure disorder, ADHD, a behavior disorder encompassing elements of bipolar and separation disorder. He was initially on an IEP in a Substantially Separate Program out of district [redacted], [redacted] had since created their own Substantially Separate Program. Parents insisted that W be placed in a more restrictive educational setting, [redacted]. The Appellants revoked consent for special education services in 2017. They were given another option to go back to [redacted] to the program W was previously in. The Appellants refused option and did not bring him to school; they took him off the IEP. The Appellants met with the Superintendent on March 15, 2017. Releases were gathered for providers, but were very specific about what could be talked about by the providers. W was given a tutor during the time the Superintendent was gathering information. 18 days were scheduled for the tutor but the Appellants canceled 13 of those days. The tutor reported she could not go back to the home because JM was hostile toward her and demeaned her about her qualifications; he yelled often within ear shot of W, criticizing the school and their staff. School staff held numerous

meetings with the Appellant to try to get W to school. They also offered transportation even though W was no longer on an IEP. The Appellants wanted a 504; school staff wrote a 504 plan on March 6, 2017, sent it to the Appellants to sign and never got it back. In addition the school created a daily transition into the school and proposed it to the parents. On March 13, 2017, the first day they were using the new protocol W skipped to the door (child is not supposed to be alone); JM was with him, dropped him at the office, signed him in and then put his back pack on the bench. JM then turned around and walked past W without saying a word and exited the building. W was not supposed to be alone, so they called their point person for him. W bolted out the same door that JM did, W ran the path that he took to come in the school. W ran past JM and ran down the hill away from the school. JM said he didn't see child and the Appellants were driving away in the parking lot. School staff was going after W; they tried to get the Appellants; who stopped the car, DP went after child in their van and staff called the police. A neighbor went after the car and then saw W get in DP's car. DP reported that there was a stranger trying to get W into their car, however this neighbor saw W get into the car without anyone near them. School staff felt that if JM followed the protocol W this may never have happened. The Appellants were aware of the protocol that W was never to be left alone. This report was screened in for an investigative response. (Exhibit A)

6. The Department learned W was placed on a home hospitalization by his psychiatrist from September 8, 2016, through February 21, 2017. W had previously had a home hospitalization in November, 2016. (Exhibit 2, Exhibit B, p.3)

7. An IEP meeting was held regarding W in February, 2017. The team determined W did not meet the level of a therapeutic day school and that his educational needs could be met in a Substantially Separate classroom. The Appellants disagreed and revoked W's IEP[1]. W was then left without special education services. The Appellants met with the Superintendent thereafter and while he/she collected information from the professionals involved home tutoring was to take place. (Exhibit B)

8. The Appellants felt the tutor sent to the home was unprepared, didn't pick up books, and was uncomfortable when JM asked for her credentials. They baked her cookies and provided her with objects which W enjoyed. (Testimony of DP)

9. DP said the reason W had not attended school was that he did not feel safe. She reported she tried to get him to go to the [redacted] school but he refused both times. (Exhibit B, p.4)

10. The Appellants disagreed with the school department's assertion that W did well the previous year in his placement in [redacted] and was a role model student. The Appellants reported there were fifty-six (56) incidents[2] involving W that year, including two (2) restraints in which he received injuries which they did not receive reports of from the school, only via W. (Testimony of DP)

[1] The School district wrote a 504 plan for W per the request of the Appellants' however they did not sign it so it was not implemented.
[2] It was not clear from the Appellant's testimony what she considered an incident.

11. The [redacted] School Department filed a CRA[3] on behalf of W for failure to attend school. A report card from August, 2016 which indicated progress and outstanding academic achievement was provided to the court. The judge was also provided an email from DP to [redacted] Public School staff stating she was thrilled with W's progress at the [redacted] School [redacted] in July, 2016. (Exhibit B, p.5)

12. According to a counselor for W at the [redacted] School in [redacted], W attended from January 2016 to August 2016 for his kindergarten year. W was resistant in the very beginning but did very well after getting used to the school. W only had one (1) incident of aggression that led him to be restrained. Other than that W did great. He never showed any aggression or defiance and had zero behavioral issues. W was in the general education classroom and did very well socially with his peers. He was seen as a role model. W also was progressing academically. When W was in the summer program in 2016, DP reported to the staff that W had two (2) incidents where he was fire setting at home and the Appellants did not feel the [redacted] School was safe for him anymore. They reconvened the team and asked for W to be placed at [redacted] Collaborative. The school did not feel W met that level of need and the Appellants were not happy. The Appellants continued to fight but never sent W back to the school. When W did the fire setting the school offered in home services but DP declined. (Exhibit B, p.5)

13. DP reported the [redacted] School could not keep W safe. She cited examples of W locking himself in the transportation van for fifty (50) minutes prior to entering the building to begin his day when he was taking off the head rests and banging the windows, as well as the reported incident of him absconding from the building immediately upon entering the building. (Testimony of DP)

14. The Appellants were asked why W did not feel safe when he had not been to the [redacted] school. They said that every time he was in a school in [redacted] he felt unsafe. W thought something would happen to him. The Appellants were asked why he thought that and they said he saw his brother, G, be mistreated there. (Exhibit B, p.10)

15. According to the Superintendent of [redacted] schools, due to W being a possible flight risk, they met with the Appellants to come up with a safety plan for when W did enter the [redacted] School. JM did not follow this the last time he was present and left W at the front door. JM was supposed to wait to give a hand to hand send off to the staff at the school. He did not do this and W bolted. He bolted right past Appellants' van. The Appellants subsequently said that a male tried to kidnap W and called [redacted] News on the school. JM did not follow protocol which was recorded on security videos. (Exhibit B, p.12)

16. DP reported W continued to miss school after February vacation due to needed medical observed testing for a seizure disorder. The Department learned this testing was not completed, the long-term EEG testing, because Appellants felt W could not handle it. (Exhibit B, p.12)

[3] Child Requiring Assistance formerly known as a CHINS Petition

17. In January 2017, W ran from his neurologist's office and ended up pulling a pocket knife out of his pocket when he ran away. He was transported to the emergency room for an evaluation but DP refused to allow him to go inpatient. W was supposed to have a follow up appointment in March that included W needing to go through a metal detector before the appointment. DP did not follow this protocol and entered the building through a different entrance that they were not supposed to go through. When the doctor confronted DP she said she didn't want her son going through a metal detector. (Exhibit B, p.13)

18. W was not receiving consistent therapeutic treatment. DP reported that she was unable to drive with W in the car because of his outburst and meltdowns. He had not been in therapy for three (3) months. In home behavioral therapy was referred for W. W's therapist said she had never seen an outburst or concerning behavior by him. (Exhibit B, p.13)

19. W was observed in his home by the Department. He appeared cheerful and engaged in small talk and at no point was W aggressive, hostile or inappropriate. W was asked how come he wasn't going to the [redacted] school and he replied the school was lying about everything but when asked for specifics he replied he couldn't remember. He then said, "They lie about me doing well and being at the right school" and when asked how he knew that W said he just knew. (Exhibit B, pgs.13, 14)

20. On May 1, 2017, pursuant to M.G.L. c. 119, §51B, the Department supported the allegations that the Appellants neglected W when he had not attended school at all during the academic school year (September 2016- May 1, 2017). The Department found W was supposed to be in the first grade but was severely behind academically and there had not been sufficient effort by the Appellants to have W educated. (Exhibit B, p.17)

21. After consideration of the relevant evidence, I find the Department's decision to support the allegations of neglect by the Appellants was based on reasonable cause and was made in accordance with Departmental regulations. The inactions by the Appellants posed substantial risk to W's safety or well-being. The Department had reasonable cause to intervene with this family in order to ensure the W's safety and well-being.

Applicable Standards

A "support" finding of abuse or neglect means that 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) placed 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. 2/28/16

"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)

"[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of §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 §51B. Id. at 64; M.G.L. c. 119, §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

"Neglect" is defined as 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; 110 CMR 2.00

"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. 2/28/2016

"Risk" is defined as the potential for future harm to a child. DCF Protective Intake Policy z386-015, rev. 2/28/2016

A "caregiver" means a child's (a) parent,(b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child's health or welfare; and (e) 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; 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) 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

Analysis

It is undisputed that Appellants were caregivers pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellants, through counsel, contested the Department's decision to support allegations that they neglected W by failing to ensure he was educated in the first grade. All evidence submitted in this case was reviewed and considered in rendering this decision. The Appellants asserted W was not safe at the school he was assigned to attend, the [redacted] School; and insisted he would only be able to attend [redacted] Collaborative safely. W's IEP team did not support that he needed the level of placement the Appellants wanted, and determined W's educational needs could be safely provided for in the less restrictive setting of the [redacted] School. The Department found the Appellants negligent in their efforts to support W being educated anywhere outside their specific wants and requests which led to W being severely behind academically.

The record reflected that the Appellants were offered and provided several different options in attempts to ensure W received an education; a Substantially Separate classroom at the [redacted] School, a Substantially Separate classroom at the [redacted] School, and in home tutoring. Their engagement and commitment to these options was less than minimally adequate to provide for W's extensive educational needs, thus the Department found the Appellants neglected W's emotional stability and growth, or other essential care (education). It was uncontested that W was a uniquely challenging child who had mental health issues which impacted his daily functioning. However, the Appellants exposed W to their own thoughts and feelings regarding his schooling, failed to follow protocols put in place to keep W safe, failed to engage him in needed mental health treatment, and ultimately, failed to have him educated at all during first grade. Although the Appellants had the right to disagree with the school departments evaluations for W, they did not have the right to hinder his learning and development, and should have ensured his educational and mental health needs were met while they appealed education decisions they disagreed with.

The Appellants did not present persuasive evidence in this matter at the time of the Fair Hearing to allow for a reversal of the Department's decision in this case.

Based on a review of the evidence presented, in its totality, this Hearing Officer finds that the Department had reasonable cause to believe that W neglected while in the care of the Appellants, as defined by Departmental regulations. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 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 § 51B." Id. At 64; G.L. c.119, §51B. The Department's determination of neglect did not require evidence of actual

injury. Lindsay v. Department of Social Services, 439 Mass. 789 (2003)

Considering the entirety of the record in this case, I find that there was no evidence that the Department acted unreasonably when supporting this report, the Appellants were not substantially prejudiced by the Department's decision, and the Appellants have not shown by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegations of neglect.

Conclusion

The Department's decision to support the allegations of **neglect** of W by the Appellants was made with a reasonable basis and therefore, is **AFFIRMED.**

This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for the county in which they live, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

Laureen Decas

Laureen Decas
Administrative Hearing Officer

Date: 4/25/18

Darlene M. Tonucci, Esq.
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