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

L. R.

FH #2017 0672

HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is Ms. LR ("Appellant"). Appellant appeals the decision of the Department of Children and Families' ("the Department" or "DCF") to support an allegation of neglect pursuant to Mass. Gen. L., c. 119, sec. 51A. Notice of the Department's decision was sent to Appellant on May 19, 2017, and Appellant filed a timely appeal with the Fair Hearing Office.

The Fair Hearing was held on August 8, 2017, at the Holyoke Area Office. The following persons appeared at the Fair Hearing:

Linda A. Horvath, Esq.	Administrative Hearing Officer
BF	Area Clinical Manager
LR	Appellant

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 recorded on one (1) audio disk pursuant to 110 CMR 10.26.

The following evidence was submitted into the record at the Fair Hearing:

For the Department:

Exhibit 1: 5/1/17 51A Report
Exhibit 2: 5/19/17 51B Report

For the Appellant:

Exhibit A: 9/27/17 Appellant's Statement

Statement of the Issue

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 reports, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to Appellant. 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 Appellant; 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 in danger or pose substantial risk to the child's safety or well-being; or the person was responsible for the child being a victim of sexual exploitation of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

Findings of Fact

1. The subject child of this hearing is "ER", who was twelve (12) years old at the time of the filing of the subject 51A referenced below. (Exhibit 1, p.1) The Appellant is the biological mother of the child. (Exhibit 1, p.2) She is a caregiver pursuant to DCF policy. DCF Protective Intake Policy #86-015 rev. 2/28/16.

2. Appellant has a DCF history dating back to 1992. (Exhibit 1, p.3)

3. On May 1, 2017, the Department received a report pursuant to M.G.L. c. 119, s. 51A, alleging neglect of the subject child ER by Appellant due to lack of school attendance: ER had missed 18 days of school to that point and Appellant had historically struggled to ensure subject child's attendance for the last two years. Appellant's history with DCF dated back to 1992. Appellant and child were open DCF consumers but their assigned DCF Social Worker, KT, had not seen the child since 02/24/17 despite efforts to view the child and home and KT could not verify child's safety or child's attendance. (Exhibit 1, p.2)

4. The Department screened-in the 51A report for a non-emergency response on May 2, 2017. (Exhibit 1, p.7)

5. As of May 1, 2017, ER had been absent for 33.5 days of school and tardy most of the time. The Appellant brought the subject child in late to school and picked her up early without any notes from the doctor or explanation. Adjustment Counselor described ER as having dirty clothes, looking disheveled, and smelling like "Cat Pee or litter." The absences halted ER's academic progress in the Special Education services. Child would spend her day with her

head down on the desk and without interaction with anyone else. (Exhibit 1, p. 6; Exhibit 2, p. 2)

6. Appellant was aware that DCF wished to reach her but she refused to meet with social worker and while she signed certified letters did not respond. (Exhibit 2, p. 2)

7. Child was unkempt and smelled like cat urine. Subject child said that her absences were due to illness and her lateness was due to her being tired. (Exhibit 2, p. 3)

8. Appellant claimed that daughter missed less than reported amount of absences, that Doctor did not log doctor's notes, and that the school had lost several of these notes. (Testimony of Appellant) Appellant's claims are unpersuasive. (See Analysis)

9. Appellant confirmed tardy arrivals, explaining that she and ER were traveling back and forth on weekends to Appellant's fiancé's home in [redacted]. Appellant would pick daughter up early on Fridays and Appellant bring her back late on Mondays. Appellant stated that ER was sick for each absence and obtained a doctor's note. (Exhibit 2, p. 4-5; testimony of Appellant)

10. Appellant was engaged in litigation with landlord. Appellant's claims that ER was the target of physical and emotional abuse from teachers at the school were unsubstantiated. (Exhibit A, p. 1)

11. DCF response Worker confirmed Appellant had issues with landlord but also noted landlord's compliance and Appellant's exaggeration of the issues. (Exhibit 2, p. 8)

12. ER's Doctor. Dr. [redacted] saw ER on December 2, 2016 for a physical. Doctor provided a list of all sick visits as far back as April 2016, which was only for 5 visits. Dr. [redacted] disputed that they would never white out anything in a record and confirmed that their practice was that notes for excused absences were only written for one day and not several days. (Exhibit 2, p. 5)

13. Dr. [redacted] noted that excuse note dated May 2 to May 5 of 2017 was not approved by Dr. [redacted] but had been changed by an assistant after mother asked a staff member to change it. (Exhibit 2, p. 7)

14. There were no other notes for the rest of ER's unexcused absences and her lack of attendance appeared to be a pattern. (Exhibit 2, p. 7).

15. Based upon a review of the evidence presented in its entirety, Appellant was unable to take those actions necessary to provide the child with minimally adequate emotional stability and growth, or the ability to thrive. The actions or inactions by the parent(s)/caregiver(s) posed substantial risk to the child's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16; See, Analysis.)

Applicable Standards

A *Support* finding means: "There is reasonable cause to believe that a child was abused and/or neglected; and the actions or inactions by the parent(s)/caregiver(s) place the child in danger or pose substantial risk to the child's safety or well-being; or the person was responsible for the child 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.

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

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

To prevail at a Fair Hearing, an Appellant must show based upon all evidence presented at the hearing, by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies, regulations, statutes, and/or case law,

which resulted in substantial prejudice to Appellant. If there is no applicable policy, regulation or procedure, 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 Appellant. If the challenged decision is a supported report of abuse or neglect, Appellant must show 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 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. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16.

Analysis

It is undisputed that the Appellant was a caregiver pursuant to Department regulation and policy. 110 CMR 2.00: DCF Protective Intake Policy #86-015, rev 2/28/16.

The subject child, ER, missed thirty-three (33) days of school and was frequently late or pulled out early. While at school, ER was unkempt, smelled of urine, and would not interact with others. Given her absences and tardy arrivals, ER was unable to engage in school activities as part of her Special Education Program and could not progress academically. As a result of her school attendance, ER was unable to receive the necessary education she needed. The Department may act before a caregiver's less than "'minimally adequate care" results in a distinct injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789, 797 (2003).

Appellant made a variety of claims excusing ER's absences. Appellant claimed she was in housing court and had issues with her landlord. Appellant did not raise enough evidence to correlate housing court litigation with ER's absences. Additionally, Appellant did not raise enough evidence to show verbal or emotional abuse by teachers against daughter. Appellant's claim that all unexcused absences were due to sickness was unpersuasive. Appellant only provided valid doctor's notes for five of the thirty three unexcused absences and did not submit evidence to account for the rest of the unexcused absences. The doctor only confirmed five appointments and would not excuse school more than a day at a time. Furthermore, Appellant had admitted that tardy arrivals were in part due to her frequent trips out of state to see her fiancé. Appellant claimed that daughter missed less than reported amount of absences, that Doctor did not log doctor's notes, and that the school has lost several of these notes. Appellant's claims are unpersuasive because they conflict with school records, school officials, and the doctor's office statements.

In light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Department had reasonable cause to support the allegation of neglect of the child in this matter, and the actions/inactions by Appellant posed a substantial risk to the child's safety or well-being. The Appellant has not shown by a preponderance of the evidence that the Department's decision to support the allegation of neglect was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to Appellant.

Conclusion

The Department's decision to support the allegation of neglect of ER, by Appellant, is AFFIRMED.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)). In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

Linda A. Horvath, Esquire
Administrative Hearing Officer

June 26, 2018
Date

Barbara Curley, Supervisor
Fair Hearing Unit