

**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**

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**IN THE MATTER OF: RD**

**Fair Hearing # 2017-0893**

**FAIR HEARING DECISION**

Appellant, RD, appeals the decision of the Department of Children and Families, pursuant to M. G.L. c.119, §51B, to support allegations of neglect on behalf of N.

**Procedural History**

On May 31, 2017, the Department of Children and Families ("Department") received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect of N by his mother, RD ("Appellant"). On July 7, 2017, the Department decided to support allegations of neglect on behalf of N, pursuant to M.G.L. c. 119, §51B, by Appellant.

The Department notified Appellant of its decision and of her right to appeal. Appellant made a timely request for a Fair Hearing pursuant to 110 C.M.R. §10.06. The Fair Hearing was held on September 7, 2017 at the Department's Area Office in Lynn, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the Fair Hearing:

MM	Department Supervisor
RD	Appellant
MN	Witness/Grandmother of subject child

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 digitally recorded. All witnesses were sworn in to testify under oath. The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A Intake Report – 51A Report  
Exhibit B Child Abuse/Neglect Non-Emergency Response

For Appellant:

- Exhibit 1 Fair Hearing request/Department support letter  
Exhibit 2 E-mail  
Exhibit 3 Report card  
Exhibit 4 Letter of Outreach and Tracking Caseworker  
Exhibit 5 Health Form

The record closed upon conclusion of the oral evidence.

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 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 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, 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 is the mother of N, a fifteen year old male who was in ninth grade at the time in question. Appellant is a single mother who worked full time. [Exhibit A; Exhibit B]
2. As the mother of N, Appellant is deemed a caregiver pursuant to the Department's Protective Intake Policy. See below. [Testimony of Appellant; Exhibits A and B]

3. As of May 2017, N had a girlfriend, C, a fellow student who was constantly truant and was going on her fifth year with a Child Requiring Assistance (“CRA”) in place. [Exhibit A; Exhibit B, pp.4,7]
4. Appellant was concerned about the negative influence C had on N. [Exhibit B; Testimony of Appellant]
5. On May 16, 2017, Appellant contacted the principal at N’s school regarding an issue with school bus transportation for N. There had been a change in the school schedule for a few days during which N did not start classes until later than the usual time. There was no transportation provided for him to get to school at the later time. N had stayed with his friend in order to get to school later. However, Appellant was unsure whether N had actually gone to school. The principal suggested that N either take the school bus and wait in the cafeteria until his classes started or continue to stay at a friend’s home. [Exhibit 2]
6. On May 31, 2017, C’s mother called C out sick for school. [Exhibit A]
7. On May 31, 2017, at 10:45 a.m., Appellant again contacted the principal requesting his help/advice as N was “rebellious pretty hard” and Appellant felt that C had taken his mind off of studies, sports, home, etc. N had not been home for the last two nights. Appellant had tried to communicate with C’s mother to no avail. C’s mother did not respond and did not make C go to school. [Exhibit 2]
8. On May 31, 2017, at the request of the school, the truancy officer went out to C’s home and was told by C’s mother that N was not there. In fact, N was there and had not awoken in time to go to school. [Exhibit B, p.3]
9. On May 31, 2017, at 1:55 p.m., the Department received a report, pursuant to M.G.L. c. 119, §51A alleging the neglect of N by Appellant as N had not been attending school regularly and had been late every day for his MCAS exams. The Department initiated a response to look into the allegations. [Exhibit A; Exhibit B]
10. N was sexually active. Appellant had initiated conversations with him about safe sex practices. Appellant was also aware that N had experimented with marijuana. [Exhibit B, p.4]
11. N was medically up to date with physical examinations and immunizations. [Exhibit B, p.5; Exhibit 5]
12. On July 7, 2017, pursuant to M.G.L. c. 119, §51B, the Department supported allegations of neglect on behalf of N against Appellant. [Exhibit B; Testimony of Response Worker]
13. N passed all of his classes during the 2016-2017 school year. [Exhibit 3]

14. During the summer 2017, N worked part-time at a local variety store. [Testimony of Appellant; Testimony of Maternal Grandmother]
15. On August 15, 2017, Appellant and N began working with an Outreach and Tracking program. Appellant was very engaged with services and maintained constant contact with the assigned caseworker. Appellant set clear limits, rules, and consequences for N. Appellant expressed difficulty in forcing N to abide by her rules, expectations, and limits and asked for help as needed. N was also engaged with services as he came to understand that his actions affected not only him but his mother as well. [Exhibit 4]
16. As of the date of the Fair Hearing, N had recently started the new school year. He was going to school and showing Appellant his homework assignments. [Testimony of Appellant]
17. Based on the totality of the evidence presented at the Fair Hearing, including testimony from all witnesses and documents submitted by the parties, this Hearing Officer finds that the Department's neglect support decision was not made in compliance with its regulations. See definitions of "Reasonable Cause" and "neglect" below.

### Applicable Standards

Protective Intake Policy #86-015, 6/15/1986, as revised 2/28/2016

#### **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 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.

#### **A "Support" finding means:**

##### ***Allegation(s)***

- 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 or human **trafficking**.

“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 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. Id.

“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

A Fair Hearing shall address (1) whether the Department’s or provider’s decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;.... In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 C.M.R. §10.05.

To prevail, the aggrieved party must show by a preponderance of the evidence that (1) the Department’s or provider’s decision was not in conformity with the Department’s policies and/or regulations and resulted in substantial prejudice to the aggrieved party.... 10 C.M.R. §10.23.

### 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 neglect support decision.

The Department failed to meet the threshold set forth for neglect in this case. Appellant was having a difficult time with her fifteen year old son. N had started going to school inconsistently after beginning a relationship with a student who had a long history of truancy. Appellant was appropriately concerned about this relationship. She acknowledged her concerns, tried unsuccessfully to reach out to the other student’s mother, initiated conversations with N about safer sex practices, and reached out to the school principal for help and advice. N was medically up to date and provided with a safe home environment. The totality of the evidence indicates that Appellant was providing N with minimally adequate essential care. Furthermore, Appellant was invested in N’s well-being and, as of the time of the Fair Hearing, had engaged with services in furtherance of that goal.

**Conclusion and Order**

The Department's decision to support the allegations of neglect of N by Appellant RD was not made in conformity with Department regulations and policies and/or with a reasonable basis. Therefore, the Department's decision is **REVERSED**.

Antonia Chronis (eo)  
Antonia Chronis,  
Administrative Hearing Officer

1/16/18  
Date

Erica Pognon  
Erica Pognon  
Supervisor, Fair Hearing Unit

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Date

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Linda S. Spears,  
Commissioner