

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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(IN THE MATTER OF)
(D.S.)
(FH #2017-1057)
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HEARING DECISION

Procedural History

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

On April 26, 2017, the Department received a 51A Report alleging neglect of K by the Appellant, his mother. The allegations pertained to the child's on-going school absences and concern that he was not up to date medically. The 51A Report was screened in for a non-emergency 51B response and assigned to response social worker, J.P. On July 3, 2017, following the 51B response, the Department supported the allegations for educational neglect of K by the Appellant because of his significant number of unexcused school absences during SY 2016-2017 and a pattern of same last school year.¹ DCF management approved the decision on July 20, 2017, and again on August 21, 2017. The Appellant's case was kept open for an assessment [FAAP], which was in process at the time of the Appellant's Hearing.

The Department notified the Appellant of the decision by letter dated July 20, 2017. The Appellant filed a request for Fair Hearing ["Hearing"] on August 21, 2017, pursuant to 110 CMR 10.06. The Appellant's request for Hearing was granted and held on October 3, 2017 at the Dimock Street Area Office in Roxbury, MA. Present were the DCF Response Supervisor, P.H. and the Appellant² both of whom were sworn in under oath and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a compact disk [CD].

Admitted into evidence for the Department was the DCF 51A Report of April 26, 2017 [Exhibit A], the corresponding DCF 51B Response Supported and Approved on July 3, 2017 and July 20, 2017, respectively [Exhibit B], and the Reported Child's Student Attendance List for the Current Year Faxed to the Response Social Worker on June 28, 2017 [Exhibit C]. Admitted into evidence for the Appellant was the Reported Child's School Attendance List as of August 23,

¹ The Department found that the child was up to date with his routine physical as well as immunizations. [Exhibit B]

² The Appellant's infant daughter, M, was present during Hearing as the Appellant had no babysitter. The infant slept through most of the proceedings. [Administrative Hearing Record]

2017 [Exhibit 1]. The Record remained open until October 17, 2017 and was further extended to November 14, 2017 at which time it was closed³.

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 to 110 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 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 51B response, the Department's decision or procedural actions, 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. [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 Appellant is the biological mother of a nine (9) year-old, K, from a previous relationship with Y.D-A., and of an infant daughter, M [REDACTED] by her current husband, whom she married in [REDACTED]. K had weekend visits with his father. [Testimony of the Appellant; Exhibit A; Exhibit B]
2. The Appellant, K, and K's father had a history with the Department on matters not relevant to the matter under appeal. Their case was last closed in 2015. [Exhibit A]

³ Exhibits C and 1 were received by the Hearing Officer on October 3, 2017, shortly after the Hearing while the Hearing Officer was still at the Dimock Street Area Office. The record remained open to provide the Appellant with an opportunity to supply the reported child's medical appointments at [REDACTED] Hospital, which took place during school time but which she had not yet requested and later had not received, and/or further updates to the child's school attendance record of SY 2016-2017. No further submissions were made.

3. The Appellant worked full time to provide for her family. At the relevant time, the family had safe, stable housing, and K's basic needs were being met and he was medically up to date. [Exhibit B]
4. At the relevant time, K was receiving individual counseling and had a psychiatrist to address his Major Depressive Disorder and Post Traumatic Stress Disorder [PTSD], the latter of which likely stemmed from the child's exposure to domestic violence during the Appellant's previous relationship with the child's father. The family was engaged in therapeutic services. [Exhibit B, pp.3-5]
5. At the relevant time, the Appellant was committed and invested in the well-being of K and getting him the mental health care that he needed. [Exhibit B, pp.3-4]
6. K had multiple allergies and asthma. At the relevant time, he underwent weekly medical treatment, including allergy shots, which at the time of the Hearing had stopped. [Exhibit A, p.2; Testimony of the Appellant]
7. At the relevant time, K was in the second grade at the ██████████ academy [hereinafter "school"]. [Exhibit A; Exhibit B]
8. K arrived at school clean and well groomed, and the record reflected that the Appellant cared for and loved her child and wanted him to do well. [Exhibit B, p.4]
9. During SY 2015-2016, K had thirty (30) school absences and was retained to repeat the second grade due to a lack of academic progress and school truancy. [Exhibit A p.2; Exhibit B, p.4]
10. During SY 2016-2017, K attended second grade, missed some school, but was promoted to the third grade. [Exhibit B, p.4]
11. On April 26, 2017, the Department received a 51A report from the school indicating that K had twenty six (26) unexcused absences during SY 2016-2017. The Appellant provided the school with medical excuse letters; however, the dates that the provider gave to the school nurse did not match the dates on the letters the Appellant provided. The child was receiving medical and/or psychiatric care from the provider on October 17, 2016, October 24, 2016, November 1, 2016, November 14, 2016, March 10, 2017, and March 17, 2017. The Appellant explained that the child missed school because of being seen at the allergy clinic by another provider; however, the school did not have any record of this or when the child was seen. [Exhibit A; Exhibit B, p.4]
12. The Appellant forged the letters with the dates and signature not matching. When confronted about this, the Appellant admitted to forging them. [Exhibit B, p.4]
13. The Appellant communicated with the school about K's mental and emotional issues, but the school was not seeing the problems she was reporting. [Exhibit B, p.4]

14. K was on a 504 plan for behavioral issues, but the child's eligibility for an IEP presented difficult given his absences from school. [Exhibit B, p.4]
15. The school reached out to the Appellant to come up with a plan to best support her and K, but the Appellant did not seem to be on board. [Exhibit B p.4]
16. The response social worker received a fax from the school at the end of SY 2016-2017, specifically on June 28, 2017, of K's attendance record. From September 13, 2016 to June 21, 2017, the child had forty (40) absences from school. Twenty (20) of those absences were not excused. [Exhibit C]
17. When the response social worker visited the Appellant's home on July 17, 2017, K reported that he was staying home from camp this date because he had a stomach ache. The Appellant reported that the child had a doctor's appointment that afternoon. [Exhibit B, p.5]
18. The therapeutic mentor, C.G., informed the response social worker that the family was referred to ██████ due to separation anxiety Appellant exhibited towards K. The Appellant became anxious when K visited his father. [Exhibit B, pp.5-6]; however, the Appellant denied having this condition at her Hearing. [Testimony of the Appellant]
19. Several times K's father went to his school to pick him up for weekend visits and he would not be there. [Exhibit B, p.6]
20. The Appellant did not dispute that K missed school. She said he was sick for two (2) to three (3) weeks and was also being bullied on the bus and at school by his peers and, although he did not talk about it at the time, these little things kept him from school. K was now attending a different school and wanted to go. [Testimony of the Appellant]
21. On July 3, 2017, following the 51B response, the Department supported for neglect of K by the Appellant, his mother, because as of June 28, 2017, K had missed forty two (42) days of school of which only eleven (11) had been excused and because K missed forty (40) days of school last school year and repeated the second grade. The Department opined that it was a pattern that the child did not attend school regularly. [Exhibit B, pp.7-8]
22. The school provided the Appellant with a copy of K's school absences on March 23, 2017 to provide her with an opportunity to clear up the child's attendance record because, if medical, they could be excused. [Exhibit A, p.2]
23. The Appellant submitted her child's student attendance record, dated August 23, 2017, at the Hearing. From September 13, 2016 to June 28, 2017, K was absent from school for fifty one (51) days. Thirty two (32) were excused absences and nineteen (19) unexcused. [Exhibit 1]
24. Based on a review of the evidence, the Hearing Officer finds there was reasonable cause to believe that the Appellant failed to provide K with a minimally adequate education and was therefore neglectful. Reasonable cause to believe carries a low threshold. See Care and

Protection of Robert. Pursuant to the Department's Protective Intake Policy, the Appellant's actions posed a substantial risk to the child's well-being.

Analysis

A party contesting the Department's decision, to support 51A Report for educational 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 October 3, 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]

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]

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]

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

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 #24 and the below discussion.

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 evidence offered by the Appellant to be substantial or compelling to such an extent that the Department acted unreasonably and/or abused its discretion in making a decision to support for the educational neglect of her nine year-old son, K. 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 K on July 3, 2017, was made in conformity with its regulations, supported by sound clinical judgment, and there was a reasonable basis for the decision.

The Appellant did not meet her burden of proof in this appeal. [110 CMR 10.23] The Appellant did not dispute that K missed school. See Findings #20 & #23.

Order

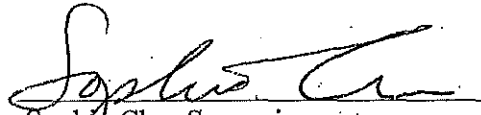
1. The Department's decision of July 3, 2017, to support the 51A Report for the educational neglect of K by the Appellant, his mother, is AFFIRMED

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, 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. [(M.G.L. c. 30A, §14]



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

Date: 2/27/2018



Sophia Cho, Supervisor
Fair Hearing Unit
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