

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET 6<sup>TH</sup> FLOORS  
BOSTON, MASSACHUSETTS 02111**

**Linda S. Spears  
Commissioner**

**Voice: (617) 748-2000  
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**IN THE MATTER OF: JR**

**Fair Hearing # 2017-1194**

**FAIR HEARING DECISION**

The Appellant in this Fair Hearing is Mr. JR (hereinafter JR or Appellant). The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to support allegations of neglect by the Appellant of the reported children J and JY, M, the report filed and investigated pursuant to MGL., c.119, sec. 51A and B.

**Procedural Information**

On August 24, 2017 and August 31, 2017, the Department received mandated 51A reports alleging the neglect of the subject children by the Appellant. The reports were received by the Worcester West Area office and the Judge Baker Hotline respectively, were deemed non-emergent and assigned accordingly. The Department completed its response on September 11, 2017. The allegations of neglect of the subject children by the Appellant were supported. The Appellant was informed of the decision and of his right to appeal the Department's determination. The Appellant filed a timely request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was held on November 16, 2017, at the Department of Children and Families' Worcester East Area Office. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record remained open to allow for submission of documentary evidence from the Appellant. The evidence was received and the record closed on January 5, 2018.

The following persons appeared at the Fair Hearing:

Anna L. Joseph  
JR  
ST  
KG

Hearing Officer  
Appellant  
Department Response Worker  
Appellant's Advocate

In accordance with 110 C.M.R. 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 following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit 1: 51A dated August 24, 2017
- Exhibit 2: 51A dated August 31, 2017
- Exhibit 3: 51B dated September 11, 2017
- Exhibit 4: Police Report dated August 25, 2017

For the Appellant:

- Exhibit A: Department Response Document (Annotated by Appellant)
- Exhibit B: Text Exchanges between Appellant and his former spouse
- Exhibit C: Hotel Receipt dated August 23, 2017

**Issue To Be Decided**

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 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, 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) 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. The subject children of this investigation, J and JY were ages ten (10) and eleven (11) years at the time of the reported events. (Exhibit 3, p.1)
2. J and JY are the children in common between the Appellant and his estranged spouse, hereinafter M. (Testimony of Appellant, Exhibit 3)

3. At the time of the subject report, the Appellant and M's marriage was in the process of dissolution. M had moved into another part of the house along with her adult daughter from a previous marriage, hereinafter D. (Testimony of Appellant)
4. M had a significant substance abuse and mental health history, including a diagnoses of bi-polar disorder. In the months preceding these events, M had a DUI, and unbeknownst to the Appellant, had ceased taking her psychotropic medications. (Testimony of Appellant, Exhibit 3, p.1)
5. The family has a protective history with the Department related solely to M. The Appellant had never before been had any supported allegation by the Department. (Exhibit 3, p.1, Testimony of Appellant)
6. On August 23, 2017, the Appellant and MR argued about their impending separation. After stating he wanted a divorce, the Appellant attempted to leave the marital home. M blocked the Appellant's path, at which point he retreated to his designated part of the home. M followed, insisting they continue their argument. The Appellant opened the home safe to retrieve cash in order to stay at a hotel. While this safe is the same location where the fire-arms are stored, the Appellant did not retrieve any firearm. (Exhibit 4, Testimony of Appellant)
7. On August 23, 2017, M requested a police response to the marital home, stating that the Appellant had a firearm and was suicidal. There was no evidence to support this assertion upon police response, but out of an abundance of caution, the Appellant's firearms and accompanying ammunition were seized. These firearms remain in the custody of the ██████████ Police Department at the urging of the Appellant himself, who has not retrieved them as he does not want to do so until the divorce is final. The Appellant is paying a storage fee in lieu of retrieving these items. (Exhibit 3, p.1, Testimony of Appellant)
8. The Appellant's version of these events is credible. The Appellant had no history of violence, no protective history or criminal record of any kind, and presented with a calm affect and even-tempered demeanor. (See analysis, Fair Hearing Record, Testimony of Department Response Worker)
9. The Appellant's version of these events is further bolstered by the undisputed fact that he was neither cited nor arrested on the night in question. (Exhibit A, See analysis)
10. In the interstice between the reported events and fair hearing, the Appellant had been awarded physical custody of the children. (Testimony of Appellant)
11. The incident reported to the Department on August 31, 2017, is illustrative of poor judgment on the Appellant's part, but did not constitute neglect. Given the circumstances, the Appellant should not have been using M as an early morning provider for their children. That M overslept and did not arrive at the marital home at the appointed time could not have reasonably been anticipated by the Appellant, as she had arrived promptly

in the previous days. Notwithstanding this error in judgment, these children, at ages ten (10) and eleven (11) were not at significant risk alone for two hours. (Exhibit 3, Testimony of Department Response Worker, See analysis)

12. While both children reported their parent's arguing was frequent in the month preceding this event, neither reported seeing any part of the argument, nor ever having seen their father with a firearm. Both children reported feeling safe in the Appellant's care. (Testimony of Department Response Worker, Exhibit 3)

13. The Appellant and M's communication is done only via text message. In response to the Appellant's repeated pleading for calm for the benefit of the children, M's texts are consistently volatile, accusatory and paranoid. (Exhibit B, Testimony of Appellant, see analysis)

14. The Appellant has undertaken numerous acts of protection for his children. The Appellant was pursuing sole custody, cooperating fully with the Department, and making the appropriate arrangements for the subject children's whole health. (Testimony of Appellant, Testimony of Department Response Worker, see analysis)

15. MR had continued to behave in an erratic and volatile manner, including multiple instances of appearing at the Appellant's home against the proscribed visitation order. (Exhibit B, Testimony of Appellant)

16. After a review of the evidence and for the following reasons, I find that the Department did not have reasonable cause to find that J and JY were neglected by the Appellant. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

17. The Appellant's actions did not pose a substantial risk to J and JY's safety or well-being. The Department's decision to support the allegations of neglect by Appellant of J and JY was therefore not made in conformity with its policies and regulations. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

### **Applicable Standards**

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caregiver occurred *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. 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." Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or

caregiver; 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

"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

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

The Department supported allegations of neglect of the subject children by the Appellant, their father. There is insufficient evidence to warrant the Department's decision. Contrary to his estranged spouse's account of the reported incident, the Appellant was found both unarmored and of sound mind.

While the subject children may well be facing further emotional upheaval due to their parents' volatile divorce, there is no evidence to support the Department's conclusion that responsibility fell with both parents. It was the Appellant's estranged spouse who initiated and sustained a campaign of, at best, ill-considered and damaging conduct.

The Appellant had no protective history with the Department, and had pursued every legal and appropriate avenue to safeguard his children.

With respect to the totality of the evidence, including the basic undisputed facts, this Hearing Officer found that the Department's decision was not made in accordance with Department policies and/or regulations. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); Wilson v. Department of Social Servs., 65 Mass.App.Ct. 739, 744-745 (2006)

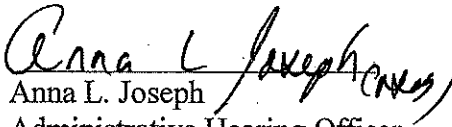
Based upon the evidence presented both at the time of the investigation and at the Fair Hearing, the decision of the Department to support the allegations of neglect, as defined in its regulations, was not made in conformity with Department regulations, policies and procedures.

**Conclusion and Order**

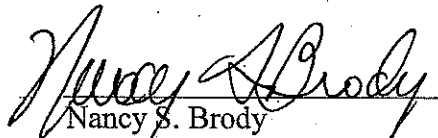
The Appellant has shown by a preponderance of the evidence, that the Department's decision to support the allegations of neglect was not in conformity with Department policy and regulations, and therefore the Department's decision is **REVERSED**.

**The Department's decision to support the allegation of neglect of J by the Appellant, JR is REVERSED.**

**The Department's decision to support the allegation of neglect of JY by the Appellant, JR. is REVERSED.**

  
Anna L. Joseph  
Administrative Hearing Officer

Date: 4-3-18

  
Nancy S. Brody  
Supervisor, Fair Hearing Unit

Date:

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Linda S. Spears  
Commissioner