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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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IN THE MATTER OF

SK #2017-1199

FAIR HEARING DECISION

SK appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

Procedural History

On August 2, 2017, the Department received a 51A report alleging neglect of J by her mother, SK. The Department screened-in the report for a non-emergency response. On August 18, 2017, the Department made the decision that the allegation of neglect of J was supported. The Department notified SK of its decision and her right to appeal.

SK made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held on November 29, 2017, in the DCF Arlington Area Office. SK, the Department response worker and the Department supervisor testified at the hearing. SK was represented by an attorney.

The hearing record was held open to allow the Department the opportunity to submit copies of text messages. The Department submitted copies of text messages on December 1, 2017. SK's attorney was provided a copy of the messages and the hearing record was held open until December 29, 2017, to allow her the opportunity to submit additional evidence in response. On December 27, 2017, SK requested additional time and her request was allowed. SK submitted an affidavit on January 16, 2018. The hearing record was closed on January 17, 2018.

The Department submitted the following exhibits at and after the hearing.
Exhibit A: 51A report, dated August 2, 2017.
Exhibit B: 51B report, completed August 18, 2017.

Exhibit C: Text messages related to the August 2017, response.
Exhibit D: Text messages related to the Department's May 2017, response.

SK submitted the following exhibits at and after the hearing.
Exhibit 1: Releases of information.
Exhibit 2: Mental health records from November 2016 to February 2017.
Exhibit 3: Three letters: [redacted] Associates (April 5, 2016); [redacted] Associates (January 27, 2017); [redacted] Pediatric Associates (January 30, 2017).
Exhibit 4: Statement of SK: "Explanations for my behavior with D[redacted]." and e-mail exchange between SK and another regarding SK's contact with D[redacted].
Exhibit 5: Article regarding Klonopin and Impulsive behavior from the website ehealthme.com.
Exhibit 6: Department case dictation, June 5, 2017 to August 8, 2017.
Exhibit 7: SK's affidavit, dated January 16, 2018.

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

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. 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; 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 Rev. 2/28/16, 110 CMR 10.05.

Findings of Fact

1. SK (hereinafter "mother") and MK (hereinafter "father") are the parents of J [redacted]. (Exhibit A, p. 1).

2. J had significant mental health/emotional issues. J began individual counseling in or around January 2016, at the age of 13. She was evaluated in April 2016, and

diagnosed with Attention-Deficit/Hyperactivity Disorder (hereinafter "ADHD"). Recommendations at that time focused on academic challenges. (Exhibit 3, letter dated April 5, 2016; letter dated January 27, 2017).

3. J's mental health began to deteriorate significantly by the beginning of 8th grade (fall 2016). She was bullied at school. Mother and father hired an education consultant to advocate for a social/emotional goal on her educational plan. J began a social skills group at school. When J became anxious or overwhelmed, she would runaway and hide. She had significant difficulty negotiating peer relationships. She began exhibiting self injurious behavior (cutting). (Testimony of mother).

4. J's therapist referred her for a psychiatric evaluation in November 2016. J was evaluated and diagnosed with Generalized Anxiety Disorder. Recommendations included continuing individual therapy, medication and additional academic supports. (Exhibit 2, Psychological Evaluation dated November 28, 2017).

5. Shortly thereafter, J's symptoms increased. She was having suicidal ideations, increased depression and anxiety and an incident of self harm. J was hospitalized December 13-27, 2016. Her discharge plan included continued individual therapy, medication, therapeutic mentoring and a review of her educational plan. (Exhibit 2, Clinical Discharge Note dated December 27, 2016).

6. On January 4, 2017, J was hospitalized again after she locked herself in the bathroom with a plan to overdose. She was transferred to [redacted] Hospital. She was diagnosed with major depressive disorder, generalized anxiety and panic disorder. Her treatment team recommended, among other things, that J transition to a therapeutic school setting. (Exhibit 2, [redacted] Discharge Summary, dated January 12, 2017).

7. J was discharged from [redacted] Hospital on January 12, 2017, and transferred to [redacted] Hospital Acute Residential Treatment. On January 27, 2017, she stepped down to [redacted] Partial Hospitalization Program where she remained until February 7, 2017. Upon discharge, she was referred for a therapeutic 45 day assessment. (Exhibit 2, [redacted] Hospital Discharge Summary, dated February 7, 2017; Exhibit 3, [redacted] Associates letter dated January 27, 2017, [redacted] Pediatrics Associate letter dated January 30, 2017).

8. In early April 2017, J began attending a therapeutic 45 day assessment at [redacted] Collaborative, a therapeutic day school with the goal of evaluating her needs and determining the best long term placement to meet her needs. Ultimately, it was recommended that she remain at [redacted] Collaborative. (Testimony of mother; Exhibit A, p. 4; Exhibit B, p. 1; Exhibit 6, p. 4).

9. Shortly after J began attending [redacted] Collaborative, she became friends with another student, D, a 17, almost 18 year old boy. (Exhibit A, p. 4).

10. D also had significant mental health issues. He lived in a Department of Mental Health (DMH) residential facility. (Exhibit B, p. 1).

11. School staff and the staff at D's DMH placement had concerns about D's relationship with J given their age difference. J was 14 years old and D was turning 18 in May. (Exhibit B, pp. 1-2; Exhibit D).

12. Mother became overly involved with D and in D and J's relationship. She began texting D frequently, buying him gifts and encouraging his relationship with J. She intentionally kept father and D's mother from knowing their age difference and she encouraged J and D to do the same. She lied and told D's parents that J was 16. She not only allowed, but encouraged a sexual relationship between them which she urged them to keep secret. She allowed D to sleep with J in her home. She hid this from father by having them wake up before father woke up and then allowed them to go back to J's room after he left. (Exhibit B, pp. 1-2; Exhibit D; Exhibit 4, e-mail exchange between mother and staff at D[redacted]s placement).

13. Staff at D's placement became aware of the extent of the relationship and mother's role after they took D's phone and discovered numerous text messages between mother and D. On or about May 5, 2017, mother was instructed by D's "clinical team" (DMH, facility staff and D's parents) to discontinue contact with D. Despite this, mother continued to communicate with D via various social media from multiple numbers. She also directed D to delete their communication in order to keep it a secret. She continued to send him gifts. (Exhibit 4, e-mail exchange between mother and staff at Dan's placement).

14. J's providers were concerned that mother's poor boundaries and excessive involvement in J's relationships was damaging to J and would prevent her from making progress and getting better. (Exhibit B, pp. 1-2).

15. J wanted mother to mind her own business. (Exhibit B, p. 2).

16. On May 9, 2017, the Department received a 51A report alleging neglect of J by mother due to her involvement with D and his relationship with J as noted above. The Department screened-in the report for a non-emergency response. During the response, providers expressed concerns consistent with the above findings. Mother minimized the concerns and indicated that she felt she had to navigate her daughter's peer relationships due to J's speech/communication issues. The Department determined that there were substantiated concerns. The Department concluded that mother and J were significantly enmeshed and that this was having a negative impact on J and preventing J from growing as a young adult. (Exhibit A).

17. The Department opened a case for the family. Mother continued to minimize the Department's concerns and express her feeling that it was all a misunderstanding and it would not happen again. (Exhibit 6, p. 1)

18. The Department social worker assigned to the family noted that the family was very enmeshed and the parents had difficulty allowing J to be independent. Mother's form of discipline with J has been to pick out her outfit for the day. The family therapist was encouraging the parents to let J fail, let her comb her own hair, etc. Mother

seemed to have an obsessive compulsive disorder and not be able to tolerate any imperfection. (Exhibit 6, p. 2).

19. J's DMH worker noted that J missed appointments due to medical issues that may not be as emergent as portrayed by mother and that mother fed into J's various complaints, i.e., stomach aches. He attempted to provide the family with tasks to promote J's independence but the parents did not follow through. J exhibited symptoms of extreme anxiety, psychosomatic symptoms, interpersonal instability and suicidality. DMH's treatment goal for J was to be more autonomous. (Exhibit 6, p. 2).

20. In July 2017, the [redacted] Collaborative staff reported that there has been a lot of drama around J's social relationships which mother was playing into. Mother was very focused on J as a "sick kid" and she fed into J's temper tantrums. They were concerned about the enmeshment between mother and J and their boundaries. Another student told a clinician at the school that mother was now texting another student, M. J wanted to go to a concert with another girl, but mother was pushing J to have M go to the concert with her. The school was concerned that mother was talking to boys in the school again and instigating conflict between the teenagers. (Exhibit 6, p. 4).

21. The DMH family therapist expressed his belief that the family is "highly problematic" and he was concerned about mother's behavior. He believed that mother may have more serious mental health issues than DMH and DCF were aware of and she has a history of enmeshed and abusive relationships. She disclosed her own history of trauma to him and then fired him. (Exhibit 6, pp. 4-5).

22. At some point during the summer, mother began contacting a 16 year old male student (Do) at [redacted] Collaborative through Snapchat, Facebook and text messages and sending photographs of J trying to set him up with her. She was also sending him gifts and asking him to delete their communication to keep them a secret. Mother also sent Do a note impersonating J saying, "I miss you, Love J, XOXO." She sent messages telling him that J is a virgin "so be careful when you have sex and take it slow with her" and "I hope you and J are being romantic down there" with a heart and smiley face. In one Facebook comment, mother said J is a virgin and Do could accompany J and her to J's next OB/GYN appointment to get confirmation. Do's mother intercepted some of the messages sent by mother. She complained about it to the school and she contacted mother telling her she is making Do anxious and she asked her to stop. The school contacted mother, but she denied contacting Do. (Exhibit A, p. 2; Exhibit C).

23. On August 2, 2017, the Department received a 51A report alleging neglect of J by mother due to her continuing contact with J's peers as noted above. The reporter stated that this is the 4th peer of J's that she has contacted. The reporter also stated that J reported that her parents bribe her to lie to the Department. The Department screened-in the report for a non-emergency response. (Exhibit A).

24. Do, also a Department consumer, provided the Department with copies of messages between him and mother. (Exhibit B, p. 2; Exhibit C).

25. During her interview with the response worker, J reported the following. Do and D are now bullying her. They are telling people that she had sex with them. She asked mother to stop contacting her peers at school. She described her mother as very impulsive and over protective. Her mother has been in Florida for the past week and it has been less stressful. She said, "my mother makes me feel lower than I already feel about myself." She said her mother has panic attacks and, one week she had them every day. When her mother has panic attacks, she will shut down, mope around the house, cry a lot and just want to be left alone. J said that she heard voices when she was on a previous medication. One of the voices was her mother telling her to kill herself. (Exhibit B, pp. 2-3).

26. During the response, mother acknowledged to some extent that her behavior was inappropriate and that she needed help. She agreed not to contact J's peers anymore, engage in treatment and give up her cell phone at night which is the time frame when she would "cross boundaries." (Exhibit B, pp. 4, 5, 6).

27. On August 18, 2017, the Department made the decision that the allegation of neglect of J by mother was supported. The Department determined that mother's continued inappropriate contact with peers and poor boundaries is harmful to J's social/emotional growth. (Exhibit B, pp. 7-10; Testimony of the Department response worker and Department supervisor).

28. Mother testified to the following at the hearing. She provided some background information consistent with the above findings. She minimized the extent and content of her contact with the boys in question. She stated that she was in treatment, her previous medication increased her impulsivity and she was now on a new medication, she and J were no longer enmeshed and she was no longer contacting J's peers. (Testimony of mother).

29. Following the hearing, the Department submitted copies of messages between mother and D and Do (Exhibits C; Exhibit D). Mother responded with an affidavit. In her affidavit, mother stated that some messages were missing and, therefore, the messages may be taken out of context. Do's mother gave her permission to contact him. Do and J were close friends and J's suicidal ideation decreased as a result of their friendship. She indicated that Do had emotional and behavioral issues and she was trying to help him. She invited him to events/activities and she was only trying to coordinate those outings. When D and Do started spreading rumors that J slept around and had STD's, she sent a text to Do about going to her OB/GYN appointment in an attempt to "put out the fire" so they would stop bullying her. The bullying increased J's suicidal ideation. When Do's mother asked her not to text Do, she immediately complied. She did not realize it was causing anxiety for him. (Exhibit 7).

30. Considering all of the evidence, I find that mother neglected J and that her actions posed a substantial risk to her safety and well-being.

Analysis

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 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 C.M.R. §4.32(2)

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

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

"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.

The Department determined that mother failed to provide minimally adequate emotional stability and growth for J and that her actions posed a substantial risk to her safety and well-being.

Mother essentially minimized her excessive and inappropriate contact with J's peers, denied promoting sexual relations between J and peers and contended her communication was harmless and justified to some extent. Alternatively, she argued that she has gotten help, her impulsivity was caused by her medication which she was no longer taking, and she no longer made contact with J's peers.

In this case, J had a history of significant mental health issues including depression, anxiety and suicidal ideation. She experienced a debilitating level of social anxiety and continued thoughts of suicide. Mother was aware of how emotionally fragile J was particularly concerning social situations and peer relationships.

J's the parents successfully advocated for her to attend a therapeutic school where she could receive the emotional support that she needed. However, mother began excessively interfering with J's peer relationships. She began contacting a boy with whom J became friendly instead of allowing J to manage the relationship on her own. There was no evidence that there was any need for mother to interfere in the relationship or that the relationship itself was causing J any distress. There were concerns on the part of school staff about the age difference between J and D. Instead of setting limits on the relationship given their age difference, mother sought to promote and further it to a sexual relationship. She intentionally kept father from knowing their age difference and she lied to D's parents about J's age. She not only allowed but encouraged a sexual relationship. She contacted him regularly, sent him gifts, used various numbers and means of contact and she instructed him to delete their communication to keep it a secret. When her involvement was discovered, she was directed to discontinue her contact with D by his treatment providers, but she continued to contact him anyway. J's providers were concerned about mother's poor boundaries and excessive involvement and that it was damaging to J and would prevent her from making progress.

The situation precipitated the Department's involvement. The Department determined that mother and J's relationship was enmeshed and that mother's behavior was detrimental to J's emotional well-being and growth. Mother was instructed to stop contacting J's peers and to let her treatment providers intervene if there was a need to do so.

Thereafter, the worker and treatment providers noted continued concerns. Mother continued to feed into J's symptoms in various ways and not follow through with recommendations to encourage J's independence and social competence. J continued to exhibit symptoms of extreme anxiety, psychosomatic symptoms, interpersonal instability and suicidality. Mother continued to interfere with and control J's peer relationships and instigate conflict between her and other students at school.

By July 2017, mother was communicating with another boy at the school. She was sending messages, at times pretending to be J, sending gifts and she made explicit comments regarding him and J having sexual relations. Mother's continued involvement

resulted in J being bullied by both boys with whom mother had communicated. By mother's admission, this increased J's suicidal ideation.

Mother's continued interference with J's peer relationships led to the 51A report that was the subject of this appeal. During the response, the Department received copies of the texts and other messages. Mother acknowledged that she needed help and she agreed to seek help and give up her phone during times she was likely to contact J's peers and to not contact her peers in the future. The Department determined that mother continued to behave in a manner detrimental to J's emotional well-being and growth and, therefore she neglected her.

It is undisputed that J has been extremely vulnerable emotionally and that she experiences a debilitating level of anxiety and suicidal ideation and that social situations and interpersonal relationships are a trigger for her. By the time of the decision in question, mother was aware that her actions were determined to interfere with J's ability to make any progress and be detrimental to J's emotional well-being. Despite this, mother continued to communicate with J's peers in an attempt to orchestrate her relationship with male peers. This ultimately led to J being bullied by the peers mother contacted which led to J having increased suicidal ideation.

Considering all of the evidence, I find that mother failed to provide minimally adequate emotional stability and growth for J and that her actions posed a substantial risk to J's safety and well-being and therefore, she neglected her under Department regulations.

Conclusion and Order

The Department's decision to support allegations of neglect of J by mother was made in conformity with Department regulations and with a reasonable basis and, therefore, the Department's decision 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 in Suffolk County, or in the county in which she resides, 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.

Anne L. Dale Nialetz,
Administrative Hearing Officer

3/12/2018
Date

Sophia Cho, LICSW
Fair Hearing Supervisor