

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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Commissioner

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IN THE MATTER OF)

MM)
FH #2017-1223)

)
)
) **FAIR HEARING DECISION**
)
)

The Appellant in this Fair Hearing is MM (hereinafter "MM" or "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support the allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On August 11, 2017, the Department received a 51A report alleging neglect of S (hereinafter "S" or "the child") by the Appellant. On August 31, 2017, the Department received a 51A report alleging neglect of S by DB (hereinafter "DB"). The Department conducted a response and, on September 13, 2017, the Department made the decision to support the allegation of neglect by the Appellant and DB. The Department notified the Appellant of its decision and her right to appeal.¹

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on December 5, 2017 at the DCF Brockton Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the Hearing to afford the Appellant the opportunity to submit additional information. The Appellant submitted supplemental information, which this Hearing Officer reviewed, entered into evidence and considered in the decision making of the instant case. The record closed on December 8, 2017.

¹ DB is not a party to this Fair Hearing.

The following persons appeared at the Fair Hearing:

Carmen Temme	Fair Hearing Officer
MM	Appellant
DA	Attorney for Appellant
LR	Witness for Appellant/S's pediatrician (hereinafter "Dr. LR")
MJ	Head of [REDACTED] Academy (hereinafter "MJ")
RW	Department Supervisor (hereinafter "RW")

In accordance with 110 CMR 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 recorded pursuant to DCF regulations, 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

Exhibit A: DCF Intake Report/51A Report, dated 8/11/2017
Exhibit B: DCF Intake Report/51A Report, dated 8/31/2017
Exhibit C: DCF Child Abuse/Neglect Non-Emergency Response, completed 9/13/2017

For the Appellant:

Exhibit 1: Written statements from AM (hereinafter "AM"), S's therapist, dated 10/5/2017
Exhibit 2: Correspondence from Dr. LR (hereinafter Dr. LR), child's pediatrician at [REDACTED] Medical Associates to DB, dated 8/31/2017
Exhibit 2a: Correspondence from Dr. DL, [REDACTED] Pediatrics @ [REDACTED] Medical Associates to DB, dated 10/13/2017/8/30/2017
Exhibit 3: Mental Health Progress Notes re: S, dated 8/30/2017
Exhibit 4: Medical Encounter Report, prepared by Dr. LR, dated 8/29/2017
Exhibit 5: Appellant's Motion for Emergency Suspension of Parenting Time, dated 9/1/2017
Exhibit 6: Nine (9) Reports from weekly Supervised Visitation between Appellant and S, October 8, 2017-December 3, 2017
Exhibit 7: S's drawings made during supervised visits
Exhibit 8: S's eight (8) year old Well Child Visit, dated 4/27/2017
Exhibit 9: CD, audio recording of Probate Court Hearing
Exhibit 10: GAL's Motion to Quash Appellant's subpoena, dated 11/2/2017

The Hearing Officer need not strictly follow the rules of evidence....Only evidence which is relevant and material may be admitted and form the basis of the decision. 110 CMR 10.21

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. For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issue is 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. 2/28/2016

Findings of Fact

1. The subject child of this Fair Hearing is S; at the time of the subject 51A report, S was eight (8) years old. (Exhibit A, p.1; Exhibit B, p.1, Exhibit C, p.1)
2. The Appellant is S's mother and primary caretaker; therefore, she is deemed a caregiver pursuant to Departmental regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-016, rev. 2/28/2016.
3. S's father is DB; DB and the Appellant never married. The Appellant and DB terminated their relationship when S was two (2) months old. (Exhibit 3) The Appellant and DB's relationship thereafter was fraught with discord and animosity, despite their independent love for A. The Appellant and DB each raised varying complaints, counter accusations and projected motivations against one another. Each parent believed that the other was at fault and that the child was safer in his or her individual care. (Fair Hearing Record)
4. According to DB, after he and the Appellant terminated their relationship, he had parenting time with S from Thursday to Sunday until the Appellant remarried five (5) years later.² Following the Appellant's marriage and giving birth to child, the Appellant reportedly no longer wanted him involved in their life. (Exhibit C, p.13)
5. Since S was 2 ½ years old, the child's pediatrician Dr. LR from [REDACTED] Medical Center played an active role in the child's medical and emotional care. In December 2014, Dr. LR made a referral for family therapy to include the Appellant and DB due to the discord between the parents. Despite each parent's love for the child, the family therapist "scolded" the Appellant and DB, as both needed to change their behaviors. Family treatment ceased after

² According to DB, the Appellant had two previous marriages. (Exhibit C, p. 12)

several appointments (Testimony Dr. LR)

6. Beginning in November 2015, S met biweekly with her therapist AM (hereinafter "AM"), [REDACTED] (Exhibit 3; Exhibit C, p.15)

7. A June 2016 [REDACTED] Probate Court agreement reflected the Appellant had physical custody of S; and DB had parenting time. According to the 51B report, "Neither parent has full custody... Neither parent is denied legal custody of the child. [Sic]The mother has the right to select the primary care doctor and specialists. The parents have the right to participate in major decisions regarding medical care." (Exhibit C, p.5)

8. On February 27, 2017, the Department unsupported allegations of sexual abuse of S by D following a 51A response. (Exhibit A, p.6) S had approached her teacher when she arrived late to class. S asked, "Do you want to know why I was late today...because my father touched me inappropriately." According to MJ, this was not typical for a second grade student. MJ conceded that he could have used the word "coached during the 51A response when speaking with the Department at that time. At Fair Hearing, MJ referred to S providing a "prepared statement/communication" to her second grade teacher regarding the alleged sexual abuse by DB. (Testimony MJ)

9. On April 27, 2017, the Appellant and DB attended S's eight (8) year old well child examination with Dr. LR. Initially neither parent raised an issue. Dr. LR notes that S was in second grade, "bright, doing strong academic work;" S enjoyed multiple activities/sports. (Exhibit 8)

10. Following the examination, S requested to speak with Dr. LR with the Appellant present. S "started the conversation by stating, "I want my father to stop asking me questions and video-taping me when he picks me up from my mother's house. In the car right away he asks me a lot of questions and video tapes my answers. I want my father to come back to therapy with me. My father is refusing to come to therapy with me. I want to talk about my father making me feel scared when he gets angry and yells and slams things with my therapist." [Sic] DB informed Dr. LR that the Appellant wrote letters to S's classmates regarding him being an unsafe parent and made allegations of sexual abuse, which DCF investigated. According to DB, the Appellant "puts {S} up to" these statements. Dr. LR encouraged DB to participate in family counseling. (Exhibit 8)

11. On July 17, 2017, the [REDACTED] Probate and Family Court appointed Guardian ad Litum (GAL) submitted her third report regarding the Probate matter.³ (Exhibit 10) At the time of the subject 51A report, the Probate Court had appointed the GAL to address the issue of supervised visitation with DB. DB opposed the Appellant's motion for supervised visitation with S; the Court scheduled a preliminary Hearing on the matter for September 13, 2017. (Exhibit 3)

12. At the time of the subject 51A report, A continued to attend the [REDACTED] Academy, where she was about to enter the 3rd grade. According to MJ, the Appellant and DB

³ On November 2, 2017, the DCF Fair Hearing Unit accepted the GAL's Motion to Quash the subpoena issued on behalf of Counsel for the Appellant, citing to 110 CMR 10.13 (2).

“squabble over {S’s} involvement in field trips. (Exhibit 3; Testimony MJ) MJ described S as a good student, “very well spoken and astute.” (Testimony MJ) MJ informed the Department that the situation between S’s parents began to affect S’s friendships at the end of the prior school year. Parents of S’s friends were concerned that S was sharing what was occurring at home with her friends. MJ stated that should the situation worsen, S could be asked to leave the school. (Exhibit C, p.16)

13. At the time of the subject 51A report, S resided with the Appellant, her stepfather AM and her half-sister V. S visited with DB every other weekend during the school year; during the summer, S alternated between residing with the Appellant and DB. (Exhibit 3)

14. On August 11, 2017, the Department received a report from a mandated reporter pursuant to M.G. L. c. 119, §51A, alleging neglect of S by the Appellant following an altercation between the Appellant and DB, during which the Appellant physically assaulted DB. (Exhibit A, p.3, p.8; Testimony RW)

15. The 51A report was assigned for a response, pursuant to M.G.L. c. 119, § 51A to DW (hereinafter “DW”), Social Worker from the DCF Brockton Area Office. (Exhibit C; Testimony RW)

16. On August 11, 2017, S had a 9:00am appointment at South Shore Ear Nose and Throat; DB brought S to this appointment as this was during his parenting time. (Exhibit C, p.4) Prior to meeting with the doctor, the Appellant, DB and S were in the examination room. An employee (witness) overheard the Appellant yelling at DB. The employee entered the exam room and instructed them to quiet down; S was sitting in the examination chair. (Exhibit C, p.17) According to the Appellant, she asked the nurse to leave the door open due to past domestic violence. The Appellant contended that DB whispered a derogatory statement/threat to her. (Testimony Appellant)

17. Following the examination, the Appellant picked up S and exited the building, despite DB stating that his visitation ended at 6:00 pm. DB followed the Appellant and S and began to video the Appellant (Exhibit C, pp.3-4)

18. Following the examination, the aforementioned employee watched as the Appellant, DB and S exited the building. The employee viewed the reported incident; she identified the Appellant as the aggressor. Additionally, the employee observed that the Appellant held S when she grabbed DB by the shirt. (Exhibit C, p.17)

19. DW reviewed the corresponding police report. Upon the arrival at [REDACTED] Ear, Nose and Throat, the Appellant approached the responding officer “in a quick and abrupt manner... {she} went on to yell various remarks regarding what sounded like specifics or particulars of past encounters with a former boyfriend....The female now grabbed his arm aggressively as if exerting force in order to control him. {The officer} advised the women in an increased tone not to touch him and to calm down. The women complied and they began to dialogue.” The Appellant went on to speak of issues and concerns with DB. The Appellant repeatedly stated that she knew her rights and that DB could not video record her. The Appellant reported that she

grabbed DB to push him off and stop him. The police informed the Appellant that while perhaps "discourteous," video recording was not a violation of her rights. (Exhibit C, p.2)

20. The police observed scrapes on DB's right neck, bruising to his upper right chest, the collar of his shirt was stretched out and there were numerous scratches on the back of his neck. DB reported that the Appellant grabbed his cell phone, threw it to the ground, smashing it. The Appellant's husband also grabbed DB. On August 11, 2017, the police arrested and charged the Appellant with Assault and Battery and the intentional damage of DB's phone. (Exhibit C, p.3)

21. On August 12, 2017, the Appellant and S left for a planned vacation to [REDACTED] and [REDACTED] they returned on August 27, 2017. (Exhibit A, p.7; Testimony Appellant, Exhibit C, p.1)

22. On August 28, 2017, the Appellant learned of the 51A report and the Department's involvement following a telephone call from DW. (Exhibit C, p.3)

23. On August 29, 2017, the Appellant brought S to Dr. LR due to reported headaches, difficulty sleeping and expression of suicidal thoughts after she witnessed the reported incident.⁴ S met individually with Dr. LR where spoke of the aforementioned, adding that she did not want to see DB, did not want to live with him, and wanting "to take pills and go to sleep to not wake up so I don't have to go with him again." S spoke of DB constantly videotaping her using his phone; he reportedly tells her what to say. S presented Dr. LR with a written statement regarding more specific concerns and a drawing she made of her family.⁵ (Exhibit 4; Testimony Dr. LR) When speaking with the Department, Dr. LR noted that this was a "difficult co-parenting situation and recently, the parents escalated the situation in front of {S} at the doctor's office." (Exhibit C, p.7)

24. On August 29, 2017, Dr. LR referred S for a safety assessment/mental health consultation. (Exhibit 3; Testimony Dr. LR) When providing her testimony, Dr. LR became emotional as she spoke of how they "all failed {S}", that both parents "need to come to the table" and the presenting issues between the Appellant and DB and the impact that this had on S. (Testimony Dr. LR)

25. On August 30, 2017, Dr. AH (hereinafter Dr. AH") met with S; Dr. AH completed a safety assessment regarding S. S reported she felt safe with the Appellant but not with DB. S presented with depression, nervousness and stress. S's poor sleep, being easily startled, hypervigilance and increased fears that she would have to reside with DB reportedly worsened following the August 11, 2017 incident. Following the assessment, Dr. AH diagnosed S with adjustment disorder with mixed anxiety and depressed mood, acute stress disorder, sleeping difficulty. Noteworthy are S's following statements:

- "I'm stressed and worried I won't see my mom anymore since she went to jail.
- I'm scared she will go again and be away forever and I won't get to see her, and I'm scared I'd have to live with my dad.
- I know that if I have to live with my dad, I will be tortured because he will video tape

⁴ Dr. LR had been the child's pediatrician since age two (2). (Testimony Dr. LR)

⁵ Dr. LR noted that on this date, DB phoned the office three (3) times; the first two (2) calls were made regarding S's recent hand fracture; the third call was made to the department supervisor "regarding our management of today's request for a same day appointment for {S}." (Exhibit 4, p.2)

me...I'm scared of him. I have increased stress if I have to see my dad. I feel safe with my mom, and I don't want to die when I'm with my mom. I want to die when I'm with my dad."

- "My dad does not love me. He just uses me to hurt my mom... I don't want to EVER see him again in my life. I wish I could fall asleep and never wake up. Help me!"(Exhibit C, p.7; Exhibit 3; Testimony Dr. LR)

26. On August 30, 2017, DB filed a restraining order against the Appellant in ██████████ Family and Probate Court. At that time, DB did not request custody pending a move from his ██████████ residence to ██████████ MA. The Probate Court scheduled a return date for September 14, 2017. (Exhibit C, pp.6-7)

27. On August 31, 2017, Dr. LR sent correspondence to DB regarding his "abusive and threatening language...and inappropriate demands..." when interacting with staff at ██████████ Medical Center. Effective, December 13, 2017, ██████████ Medical Associates terminated S as their patient, citing to DB's "accusations and threat of Board action."⁶ (Exhibit 2a)

28. On August 31, 2017, the Department received a second 51A report filed by a mandated reporter. The report alleged neglect of S by DB based on concerns of the child's in time mental health status, fear of DB and not wanting to visit with DB. (Exhibit B, p.3; Testimony RW)

29. On September 1, 2017, the Appellant filed a Motion for Emergency Suspension of Parenting Time with the Probate Court. In her motion, the Appellant noted DB video-taping the child, the events of August 11, 2017; Dr. LR filing a 51A report on 8/31/2017, Dr. LR recommending a suspension of parenting time, and concerns for S's mental health status. The Probate Court Justice denied the Appellant's Motion, writing, "Notwithstanding, father shall not videotape the child and shall not disparage Mother to, or in front of the child. Father shall insure that the child has her own bed to stay in during his parenting time." (Exhibit 5; Testimony Appellant)

30. During DW's September 5, 2017 lengthy interview with S, S spoke at length about concerns/issues she had with DB and her statements that she wanted "to sleep forever." S reported that she felt like this then and not before because she was eight (8) years old "and understands more than she used to." (Exhibit C, p.10)

31. During the September 5, 2017 interview, S spoke in detail regarding the reported incident following her doctor's appointment. After the Appellant grabbed DB's cell phone, she yelled "Momma, Momma. She was trying to tell her mother she shouldn't be doing this. S saw the Appellant grabbed DB's shirt in an effort to grab the phone, witnessed the police responding, taking her to the police car and handcuffing her. S reported that she cried. (Exhibit C, p.10)

32. AM met with S for a scheduled counseling appointment on September 7, 2017; S never expressed any suicidal thoughts to her. (Exhibit C, p.15) S was in "good spirits" at the conclusion of their session. (Exhibit 1)

⁶ "Board action" refers to the Board of Registration of Medicine. (Exhibit 2a)

33. There are inconsistencies and/or omissions between AM's verbal report to DCF on September 8, 2017 (Exhibit C, p.15) and in her October 5, 2017 correspondence. (Exhibit 1)

34. On September 8, 2017, AM reported the following to DW:

- In the past, AM saw S and DM together. A had a "different personality" when she was with her father than when she was with her mother. When with her father, S was "sassy; she told DB she had a list of what she did not like about him.
- On May 17, 2017, a client of AM's observed the Appellant speaking in Spanish to S⁷; thereafter, S approached DB and stated that she hated him.
- On September 7, 2017, S's stepfather texted her saying that S was nervous when he brought her to the park as S believed she saw DB's car; S reported that her visit to the park went fine. When asked how her visit with DB went at the beach, S reported that the visit went well. (Exhibit C, p.15)
- Following the September 7, 2017 session, AM received a voice message from the Appellant telling her that S "forgot to tell her that S wanted to take pills and go in front of a car if she had to see her father again. AM "thought this was bizarre."
- The Appellant then texted her that S was distracted and forgot to tell her things. The text message ended with a "smiley face." AM believed this "was strange {the Appellant} would send a text about her daughter wanting to walk in front of a car and then put a smiley face next to the message."

35. In her October 5, 2017 correspondence, AM writes that in the nearly two (2) years that she worked with S, S never said anything to her that led her to believe she was "coached" by either parent. Although it appeared unusual to me that {S} never discussed having an issue with her mother, per her responses to my questions, I was never led to believe otherwise." Regarding the aforementioned phone call, AM writes:

- S called her following their appointment. S was upset and emotional.
- S stated that she was "distracted by telling me about her recent trip and wanted to make sure how that I knew how she felt about having to spend time with her father."
- While not unusual for S to be emotional or upset when speaking about DB, AM did question how this information was presented to her.
- After speaking with S and the Appellant separately, AM was not concerned that {S} was "coached to call her that particular evening...All this was reported to DCF when he called to speak with me about {S} and her family." (Exhibit 1)

36. On Sunday September 11, 2017 at 8:10 pm, S left DW a voice message stating that during her weekend visit with DB, he looked at her when she undressed; this made her feel "very uncomfortable." When in the bathroom, DB reportedly stared at her private parts. S stated that she planned to "talk with her therapist and doctor about it and tell other people she knows. She asked worker to help her so she {didn't} have to go with her father anymore." (Exhibit C, p.16)

37. At the conclusion of its response, the Department supported the aforementioned report for neglect of S by the Appellant and DB due to the following:

- The August 11, 2017 altercation in the parking lot of ~~_____~~

⁷ DB did not speak Spanish. (Exhibit C, p.9)

resulting in a police response and the Appellant's arrest.

- The employee's observation that the Appellant was the aggressor and held S when she grabbed DB by the shirt
- The marks observed on DB
- DB's ongoing video-taping of the Appellant and S
- The Appellant and DB's ongoing "feud" which is "having a negative effect on {S} The situation has escalated recently and it appears at times Mrs. M [REDACTED] coaching Sofia what to say to worker or others in an attempt to keep {DB} away from {S} Sofia permanently. {S} is a smart 8 year old but to have her say she is suicidal if she sees her father again and then see him for two days without incident raises concerns about {the Appellant's} intentions." (Exhibit B, pp.19-20; Testimony RW)

38. In its Assessment of Danger and Risk to the child, the Department identified the following/ additional concerns for S:

- S's being "caught in the middle" of the Appellant and DB's custody battle, a situation, which had progressively worsened.
- The Appellant not wanting DB involved in S's life
- Concerns that the Appellant had "coached" S to say negative things about DB
- Loss of friendships as parents of S's friends do not want their children involved with S
- S's statements that she was suicidal two (2) days after the filing of the initial 51A report. Following a Court Hearing, the presiding justice did not discontinue DB's visitation with S
- S leaving DW a phone message that she no longer wanted to see her father because he stared at her privates. This information was not provided during DB's extensive interview with the child. DW opined that the message "sounded rehearsed." DW noted concern that the Appellant had S make this call due to the September 13, 2017 Court date. (Exhibit C, pp.18-19)

39. On October 3, 2017, the Probate Court awarded DB temporary custody of S. (Testimony Appellant)

40. During October 13, 2017 to December 3, 2017, the Appellant and S visited on a weekly basis in the community; these visits were supervised per a Probate Court order. (Exhibit 6) During these visits, S drew various pictures for the Appellant. (Exhibit 7)

41. The Appellant denied "coaching" the child; according to the Appellant she, "Encouraged {S} to tell the truth." The Appellant conceded that she was guilty of not "shielding her daughter during her tumultuous relationship" with DB. Additionally, as S was aware of the friction between the Appellant and DB, the Appellant acknowledged that she "may have exchanged words in front of {S}..." (Testimony Appellant)

42. The Department's decision to support the allegation of neglect of S by the Appellant was made in conformity with its regulations and/or policies. (110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/2016) The Department had reasonable cause to intervene with this family in order to further assess and ensure J's well-being. No new information detracted from the Department's original decision. (Fair Hearing Record)

Applicable Standards and Analysis

In order to:

- “support” a report of abuse or neglect or
- make a finding of “substantiated concern”

the Department must have reasonable cause to believe that an incident of abuse or neglect by a caretaker occurred.

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.

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)

Neglect is 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 a failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. (*Id.*)

To Support a finding means:

- There is reasonable cause to believe that 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 . . . (*Id.*)

A Substantiated Concern means:

- There is reasonable cause to believe that the child was neglected; and

- The actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the child(ren)'s safety or well-being. (*Id.*)

Danger is a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. (*Id.*)

Risk is defined as the potential for future harm to a child. (*Id.*)

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. (*Id.*)

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 CMR 10.05

To prevail, an Appellant must show by a preponderance of all of the evidence presented at the hearing, 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

It is undisputed that the Appellant is a caregiver for S. 110 CMR 2.00

The Appellant, through Counsel, disputed the Department's decision to support the allegation of neglect as it pertained to the Appellant. Counsel for the Appellant argued that though the Appellant recognized her own fault in not shielding the child from the discord between her and DB, she was the more "responsive" and more "involved" parent. While acknowledging the Appellant's fractional admission regarding her role in the ongoing conflict with DB, it is the magnitude of the long term animosity, highly questionable actions and motivations of the Appellant which formed the basis for the decision to affirm the Department's decision.

The Appellant's "exchange of words" with DB, witnessed by the child, is one of the many contributing factors regarding the emotional impact on the child. The parent's ongoing discord, allegations, counter allegations, response to DB's video-taping, physical aggression towards DB,

the Appellant's arrest, medical/mental health appointment, initiation of phone calls from S to her therapist, pediatrician, school and DCF are the compelling factors in this case. While the Appellant denied, "coaching" S, at a minimum, the Appellant has influenced S. It is the child's level of emotional distress, culminating with her speaking of wanting to die if she had to visit with her father, which warrants scrutiny.

During the August 11, 2017 reported incident, the child spoke of being upset and cried during the physical altercation and the Appellant's subsequent arrest. While DB utilized questionable judgement in video-taping the Appellant and the child, he did not initiate the situation. The Appellant's actions of attempting to leave with S while still on DB's parenting time, was the catalyst for the ensuing events. Once in the parking lot, DB followed the Appellant and S. The Appellant initiated the physical altercation while holding S; the police subsequently arrested the Appellant. The child was present and in the midst of the reported incident. The Court has found that a physical or verbal altercation between caretakers, witnessed by the children, "constitutes a failure to provide the children with minimally adequate stability and growth." John D. v. Department of Social Services, 51 Mass. Ct, 125, 132 (2001)

Immediately following the altercation, the Appellant and S left on a planned vacation. Upon their return, the Department notified the Appellant of the reported allegations and 51A response. The following day, the Appellant initiated an appointment with Dr. LR as the child reportedly was suicidal if needing to visit or be with her father. The timing of this is suspect; there had been no such prior statements. During S's ensuing appointments, involved professionals questioned certain portions of the child's statements and phone call S made to them following appointments. As far back as February 2017, the director of the child's school questioned the child's "prepared statement" regarding alleged sexual abuse. Additionally, the child was in danger of being asked to leave her school as the parents of S's friends were concerned with the content of information that S shared about her parents.

"The purpose of the mandatory reporting regime under M.G.L.c. 119, § 51A is to provide the DCF with information necessary to protect a child's health, safety, and development before actual harm is done." B.K. v. Department of Children & Families, 79 Mass. App. Ct. 777, 782 (2011) "If children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing a physical or emotional injury." Lindsay v. Department of Social Servs., 439 Mass. 789, 795 (2003). In the instant case, S had been subject to the ongoing and intense discord between the Appellant and DB resulting in continued Probate Court involvement, restraining orders, police involvement, a forensic interview and two DCF involvements. The child is privy to the animosity that exists between her parents culminating in her presence in the midst of a physical altercation initiated by the Appellant. The Appellant's actions and questionable motivation created an unsafe physical and emotional environment for the child.

"Reasonable cause" implies a relatively low standard of proof which, in the context of 51A, "serves a threshold function" in determining whether there is a need for further assessment and/or intervention. "[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of Section 51A." This same reasonable cause standard of proof applies to decisions to support allegations under 51B. Care and Protection of Robert, 408 Mass. 52, 63 (1990). As set forth in the Findings, and above, I find that the evidence presented was sufficient to support

the Department's findings.

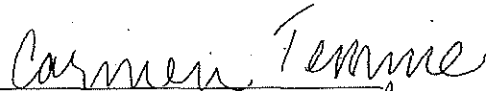
Based on the aforementioned, the Department had reasonable cause to believe that the Appellant's actions constituted a failure to provide the child with less than "...minimally adequate...emotional stability and growth..." 110 CMR 2.00, 4.32. The Appellant's act of physical aggression towards DB while holding the child, placed S in danger. Additionally, the Appellant's ongoing discord and S's involvement therein, posed a substantial risk to the child(ren)'s safety or well-being; DCF Protective Intake Policy #86-015, rev. 2/28/2016

The evidence, in its totality, was sufficient to support the Department's determination of neglect of S by the Appellant, as delineated in its regulations and policy. The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision for neglect. The undersigned will not pass clinical judgment on the Department's broad discretion as delineated in the regulations.

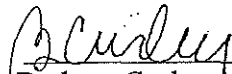
Conclusion and Order

The Department's decision to support the 51A report for neglect of S, by the Appellant, 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.


Carmen Temme *BC*
Administrative Hearing Officer

April 2, 2018
Date


Barbara Curley
Supervisor, Fair Hearing Unit