

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
BOSTON, MASSACHUSETTS 02111**

**LINDA S. SPEARS
COMMISSIONER**

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IN THE MATTER OF)
)
H.C. & J.A.)
)
FH # 2017 1371)

HEARING DECISION

Procedural Information

The Appellants in this Fair Hearing are Ms. H.C., (hereinafter "Appellant C" or "the Appellants") and Ms. J.A. ("Appellant A" or "the Appellants"). The Appellants appealed the Department of Children and Families' ("the Department" or "DCF") decision to support allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On October 10, 2017, the Department received a 51A report alleging neglect of K, ("K" or "the child(ren)") by the Appellants. On October 25, 2017, the Department received a 51A report alleging neglect of M, ("M" or "the child(ren)") by Appellant C. On October 31, 2017, the Department received a 51A report alleging neglect of Mi, ("Mi" or "the child(ren)") by the Appellants. All three 51A reports involved the same incident; the allegations were subsequently supported. The Department informed the Appellants of its decision and of their right to appeal the Department's determination. The Appellants made a timely request for a Fair Hearing under 110 CMR 10.06.

The Fair Hearing was held on January 18, 2018, at the Department of Children and Families' Worcester East Area Office. All witnesses were sworn in to testify under oath. The record closed at the end of the Hearing.

The following persons appeared at the Fair Hearing:

Anastasia King
Ms. H.C.
Ms. J.A.

Administrative Hearing Officer
Appellant
Appellant

Mr. J.I.
Ms. L.N.
Ms. M.P.
Ms. A.S.
Ms. M.H.

Attorney for the Appellants
DCF Supervisor
DCF Response Worker
DCF Response Worker
Witness

In accordance with 110 CMR 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 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 1: 51A Report – dated October 10, 2017
Exhibit 2: 51A Report – dated October 25, 2017
Exhibit 3: 51A Report – dated October 31, 2017
Exhibit 4: 51B Response

For the Appellants:

Exhibit A: List of Appellants' Exhibits
Exhibit A1: Statement by Appellant C
Exhibit A2: Statement by Appellant A
Exhibit A3: 15 Letters of Support
Exhibit A4: Letter from Parent, Ms. R.A.
Exhibit A5: Letter from Principal, Mr. J.L.

Pursuant to 110 CMR 10.21, 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.

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) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16)

Findings of Fact

1. The subject children of this Fair Hearing are K, ("K" or "the child(ren)") a female child who was 17 years old at the time the 51A report was filed on October 10, 2017; M, ("M" or "the child(ren)") a female child who was 17 years old at the time the 51A report was filed on October 25, 2017, and Mi, ("Mi" or "the child(ren)") a female child who was 17 years old at the time the 51A report was filed on October 31, 2017. (Exhibit 1, p.1; Exhibit 2, p.1; Exhibit 3, p.1)
2. On October 10, 2017, a 51A report was filed alleging neglect of K by the Appellants. According to the report, the Appellants were chaperones of a seven day survival trip in ██████ hosted by K's school. K was a senior and attended the class trip, along with 11 other female students. It was reported that the Appellants encouraged the female students to bathe nude in a remote lake with the Appellants present. The reporter stated that K's father was upset that K bathed nude with the other girls and the Appellants present. The reporter spoke to Appellant C, who stated that although she did ask the children to bathe, it was not mandatory, and some of the children opted out of bathing nude. Although K's father was assured that school regulations would be put into place to ensure a similar incident would not occur in the future, the father was not satisfied and went to the superintendent's office to protest. The reporter was asked by the superintendent to file the 51A report. (Exhibit 1, p.3; Exhibit 1, p.6; Testimony of RW P)
3. The 51A report was screened in for a Non-Emergency Response and assigned to DCF Response Workers, Ms. M.P., ("RW P" or "the RWs") and Ms. A.S., ("RW S" or "the RWs") for a 51B Response. (Exhibit 1, p.6; Exhibit 4, p.1)
4. On October 25, 2017, a 51A report was filed alleging neglect of M by Appellant C. According to the report, during a class trip a month prior, Appellant C took off her clothes and persuaded the female students to go swimming in the nude. When Appellant C invited the 12 female students to swim, four of the students, including M, did *not* go swimming. (Exhibit 2, p.3; Testimony of RW P)
5. The 51A report was screened in for a Non-Emergency Response and added to the ongoing for a 51B Response. (Exhibit 2, p.6)
6. On October 31, 2017, a 51A report was filed by a mandated reporter alleging neglect of Mi by the Appellants. It was reported that Mi reported feeling uncomfortable after being interviewed about the incident that prompted the 51A reports filed and received by the Department on October 10, 2017 and October 25, 2017. The reporter was asked

to file another 51A report to add allegations of neglect of Mi. (Exhibit 3, p.3; Testimony of RW P)

7. The 51A report was screened in for a Non-Emergency Response and added to the ongoing for a 51B Response. (Exhibit 3, p.6)
8. The subject children, who were seniors at [REDACTED], a private [REDACTED] school, ("the school") participated in the school's yearly senior survival trip. ("the trip"). (Testimony of RW P; Testimony of the Appellants)
9. The reported incident occurred during the trip which took place from September 15, 2017 – September 22, 2017. (Exhibit A2; Testimony of the Appellants)
10. There were five chaperones responsible for the approximately 21 children on the trip. The Appellants were the chaperones for the 12 female children and the three male chaperones were responsible for the eight or nine male children that attended the trip. (Testimony of the Appellants) The Appellants were "caregivers" as defined by Departmental regulation 110 CMR 2.00.
11. Appellant C, [REDACTED], had been chaperoning the trip for six years, and had been the [REDACTED] at [REDACTED] for eight years at the time of the reported incident. The [REDACTED] was the affiliated [REDACTED] for the school, and as such, Appellant C worked closely with the children and their families. Appellant C was also an adjunct [REDACTED] at the [REDACTED], as well as the [REDACTED] team. (Testimony of Appellant C)
12. Appellant A, who had been chaperoning the trip for 11 years, was a [REDACTED] [REDACTED] (Exhibit 4, p.8; Testimony of Appellant A)
13. The trip, which had been occurring at the school for approximately 14 years, was designed to give the children an opportunity to bond as a class and develop team building as well as spiritual growth. The trip was a one week survival trip and included a 30 plus mile canoe trip and camping in a wooded and isolated environment. The children were required to pack and carry their own gear, as well as canoes, and cook with limited resources. (Exhibit A2; Testimony of the Appellants)
14. As a result of the environmental conditions, as well as the amount of physical endurance required on the trip, the children were often wet and sweating. The Appellants, due to their experiences during prior trips, were aware of the increased risk of infection and of the importance of feminine hygiene. (Exhibit 4, p.5; Testimony of the Appellants)
15. Although personal hygiene was available during the trip, due to privacy restrictions, the children were limited to bathing in lakes with the male children while wearing their bathing suits or by cleaning themselves using baby wipes. However, an area half way through the trip offered privacy as well as flowing water in which the children would have an opportunity to bathe without the male children or male chaperones present. The Appellants had shared this information with the children at the beginning

of the trip. The children were also informed by the Appellants that they would be given the option to stay back at the campsite with the male chaperones and children, or join the Appellants to privately bathe. The children would also be given the option to bathe in their swim suits or in the nude. The Appellants had been utilizing this private bathing area during prior trips for approximately three years. (Exhibit 4, p.8; Exhibit 4, p.11; Exhibit A2; Testimony of the Appellants)

16. When the Appellants and children reached the private bathing area, the Appellants reiterated the children's options that they could bathe privately with their group or stay with the male students and chaperones. It was also reiterated that if they did decide to attend, it was the children's option to wear a bathing suit or bathe in the nude. (Exhibit 4, p.11; Testimony of Appellants)
17. When interviewed by RW P on October 27, 2017, K reported that on the day of the reported incident, she chose not to participate and remained at the campsite. (Exhibit 4, p.18; Testimony of RW P)
18. When interviewed by RW S on October 27, 2017, M reported that she chose to bathe in her bathing suit on the day of the reported incident. M reported that she experienced anxiety as a result of the reported incident. However, M also reported that when she "gets anxiety", she cries, but she did not cry during the reported incident, she "just felt uncomfortable." (Exhibit 4, p.15)
19. Although the 51B response indicated that when Mi was interviewed by RW P on October 27, 2017, Mi reported that she was uncomfortable during the reported incident and chose to bathe in her sports bra and shorts. However, Mi testified at the Fair Hearing that she told RW P that she chose to bathe in the nude on the day of the reported incident and denied that she stated to RW P that she was uncomfortable as the 51B response indicated. (Exhibit 4, p.17; Testimony of Witness) The Department did not dispute Mi's testimony. (Fair Hearing Record)
20. No evidence was presented that the Appellants pressured the children to join them or to bathe in the nude on the day of the reported incident. (Fair Hearing Record)
21. The Department found the children to be credible reporters and relied on their statements when making its determination to support the allegations of neglect of the children by the Appellants. (Testimony of RW P)
22. I find such reliance to be reasonable as the statements made by the children were detailed and consistent with other accounts of the reported incident. In addition, no evidence was presented to suggest that any of the children were motivated to make false allegations against the Appellants. (Edward E. v. Dep't of Soc. Servs., 42 Mass. App. Ct. 478, 484-485 (1997))
23. The Department received no evidence that the children's parents or staff at the school the children attended had observed any changes in the children's grades or in their behaviors following the reported incident. (Testimony of RW P)

24. On October 31, 2017, pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the children by the Appellants. Based on information obtained during the 51B response, the Department concluded that as a result of their actions, the Appellants failed to provide with the children with minimally adequate emotional stability and growth. (Exhibit 4, p.19; Testimony of RW P)
25. The Department did not provide any independent evidence that the children's emotional growth and stability had been negatively affected as a result of the reported incident. (Fair Hearing Record)
26. Although I found the children to be reliable witnesses, and the Department's reliance of their statements to be reasonable, after considering the entirety of the record in this case, I find that the Department did not have reasonable cause to believe that the Appellants failed to provide the children with minimally adequate emotional stability and growth, or that the Appellants' actions placed the children in danger or posed substantial risk to their safety or well-being as required by the Department's intake policy when supporting for neglect. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16)
27. Therefore, I find insufficient evidence with the Department's determination that the Appellants' actions, as described by the evidence presented, rose to the level necessary to support the allegation of neglect. (Wilson v. Dep't of Soc. Servs., 65 Mass. App. Ct. 739, 745-746 (2006))
28. As a result, I further find that the Department's decision was not in compliance with its policies and regulations. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16 & 4.32) (See, "Analysis")

Applicable Standards

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 of 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 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))

"[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

"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. Protective Intake Policy #86-015, rev. 2/28/16.

"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)

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

When reviewing a support decision, the Hearing Officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Department's decision. (110 CMR 10.21(6))

Analysis

Based on the information obtained in the 51B response, the Department supported allegations of neglect of the children by the Appellants. However, though the children were reliable witnesses, and the Department's reliance on their statements was reasonable, there was insufficient evidence to support the Department's conclusion that the children were neglected. The children were provided with options for bathing; there was no evidence that they were pressured or forced to bathe nude. In fact, K chose not to participate and remained at the campsite; M bathed in her bathing suit, and could have chosen to bathe separately from the others had she wanted to, and Mi gave varying accounts, telling the response worker that she wore a sports bra and shorts, but testifying that she bathed nude and denied she was uncomfortable, as was reported.

While the Department may not have found the Appellants' actions to be appropriate, the Department did not provide sufficient evidence to support its conclusion that the children's emotional stability and growth had been negatively affected as a result of the reported incident, or that the Appellants' actions placed the children in danger or posed substantial risk to their safety or well-being as required by the Department's intake policy when supporting for neglect. As a result, this Hearing Officer found insufficient evidence with the Department's determination that the Appellants' actions, as described by the evidence presented, rose to the level necessary to support the allegation of neglect. A Hearing Officer's decision must be supported by substantial evidence; there must be substantial evidence supporting the Hearing Officer's conclusion that the Department had reasonable cause to believe that neglect occurred in this instance. (Wilson v. Dep't of Soc. Servs., 65 Mass. App. Ct. 739, 745-746 (2006))

The Appellants have shown by a preponderance of the evidence that the Department's decision was not based on reasonable cause and that it resulted in substantial prejudice to the Appellants.

Therefore, the Department's determination that the Appellants' actions constituted neglect, as defined in its regulations, was not made in conformity with Department regulations.

Conclusion

The Department's decision to support the allegation of neglect of **K** by the **Appellant C** was not made with a reasonable basis and therefore, **REVERSED**.

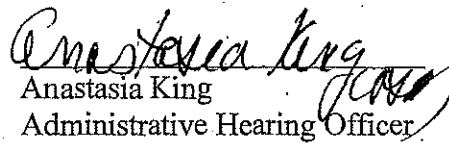
The Department's decision to support the allegation of neglect of **M** by the **Appellant C** was not made with a reasonable basis and therefore, **REVERSED**.

The Department's decision to support the allegation of neglect of **Mi** by the **Appellant C** was not made with a reasonable basis and therefore, **REVERSED**.

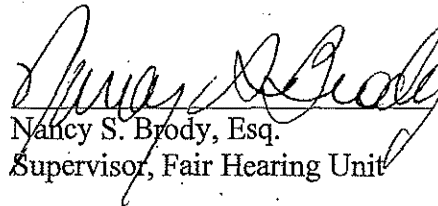
The Department's decision to support the allegation of neglect of **K** by the **Appellant A** was not made with a reasonable basis and therefore, **REVERSED**.

The Department's decision to support the allegation of neglect of **M** by the **Appellant A** was not made with a reasonable basis and therefore, **REVERSED**.

The Department's decision to support the allegation of neglect of **Mi** by the **Appellant A** was not made with a reasonable basis and therefore, **REVERSED**.


Anastasia King
Administrative Hearing Officer

Date: 3-12-18


Nancy S. Body, Esq.
Supervisor, Fair Hearing Unit

Date: _____

Linda S. Spears
Commissioner