

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

**Linda Spears  
Commissioner**

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<p>IN THE MATTER OF</p> <p>AA #2017 1384</p>
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**FAIR HEARING DECISION**

Appellant, AA (“Appellant”), appeals the Department of Children and Families (hereinafter “DCF” or “the Department”) decision to support an allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On September 15, 2017, the Department received a report which alleged neglect of C by the Appellant, her father. The basis of the reporter’s concern was C’s “emotional turmoil” in school, which the reporter attributed to the Appellant’s dispute with services provided to C under her Individualized Education Plan (IEP). The reporter stated the Appellant was forbidding C “the services she needs” and was the cause of C’s emotional breakdowns at school. The Department screened-in the report and conducted a response. On October 5, 2017, the Department made the decision to support the allegation of neglect of C by the Appellant. The Department provided the Appellant with written notification of the decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at DCF Pittsfield Area Office on January 23, 2018. In attendance were Maura Bradford, Administrative Hearing Officer; TB, DCF Supervisor; RG, DCF Response Worker; AA, Appellant.

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 digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

Exhibit A: 51A Report of September 15, 2017

Exhibit B: 51B Report completed on October 5, 2017 by RG

For the Appellant(s):

Exhibit 1: Disciplinary Reports, Correspondence and School Report Cards

**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 Appellant is C's father. C has a younger sibling, H. The children's mother is LF. (Exhibit B; Testimony of AA)
2. The Appellant was C's caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. The Appellant and LF were in a relationship of 7 years and were not married. At the time of the report in question, the Appellant and LF did not reside together. The couple shared legal custody of the children, who visited with the Appellant at his home every other Friday through Sunday. (Exhibit B, p. 3; Testimony of Appellant)

4. At the time of the report in question, C received individual therapy; the initial referral followed the Appellant's separation from LF. C was diagnosed with Generalized Anxiety. The Appellant did not discourage A from attending therapy and attended therapy himself. (Exhibit B, pp. 4, 5; Testimony of RG and Appellant)
5. Between 2011 and 2017, there were 13 reports filed with the Department which involved the family. Details including the nature of the allegations and case history were redacted from the reports submitted by the Department at the hearing, which prevented a thorough review of the Appellant's involvement. Of the reports, only one (1) in 2012 led to a support decision. (Exhibit A, p. 6)
6. Since 2014, when C was in 2<sup>nd</sup> Grade, the school documented behavioral issues which included hitting and swearing at other students, disrupting class, running out of class, disrespect toward teachers and refusal to comply with directions; and, at times hitting teachers or throwing objects at them when they intervened. Between 2014 and October 2017, there were 114 document incidents. The highest number of incidents (65) occurred when C was in the 3<sup>rd</sup> Grade. C also exhibited difficult behavior at LF's home. An Individualized Education Plan (IEP) was developed to address C's behavior at school. (Exhibit B, pp. 1, 2, 5; Exhibit 1; Testimony of Appellant)
7. C's IEP included academic support (Math) and access to a School Adjustment Counselor (SAC) when she needed emotional support. In 2017, the Appellant contested the portion of C's IEP which dealt with emotional support and wished to modify the IEP. The Appellant did not want C to continue to access the SAC ("Mrs. A").<sup>1</sup> At the time of the report in question, the Appellant was preparing to file a formal appeal but unable to afford an attorney to represent him. (Exhibit B, pp. 1, 2, 5; Testimony of RG and Appellant)
8. At the time of the report in question, C was in the 5<sup>th</sup> grade. C's behavioral issues at school had decreased in frequency. Prior to the Fair Hearing, the Appellant was involved in mediation with the school and understood the school was considering reducing C's level of support to a 504 plan instead of an IEP. (Exhibit 1, Student Discipline Reports; Testimony of Appellant)
9. On September 14, 2017, the school's principal ("Mrs. K") conducted an observation in C's art class. When she arrived in the class, C offered Mrs. K an unsolicited greeting which interrupted the lesson. After Mrs. K left the class, C left without permission and refused to return. Mrs. A intervened and C still refused to return. Because C was out of class for more than 20 minutes, Mrs. K told C she was going to make a phone call home, which upset and escalated C,

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<sup>1</sup> The Appellant testified that during C's 3<sup>rd</sup> grade year, Mrs. A and other staff escorted C to an isolation room, which was a quiet room. C responded negatively to the physical contact and isolation and required a crisis team to respond to the school. The Appellant was concerned that these incidents were not well-documented by the school and that the relationship between C and Mrs. A was "tremendously unhealthy".

who began “rambling and crying” about a letter the Appellant put in her school home folder, which was in A’s backpack.<sup>2</sup> The letter reflected the Appellant’s desire to rescind the emotional support portion of C’s IEP and not implement that portion of the IEP, including contact with/by Mrs. A. C had read the letter. (Exhibit 1, Student Discipline Reports, p. 2/20; Exhibit B, p. 3; Testimony of RG and Appellant)

10. On September 15, 2017, a report was filed with the Department which alleged neglect of C by the Appellant. The reporter stated that the Appellant was causing C to have emotional turmoil due to her IEP, which the Appellant wished to stop; and, that the Appellant was the source of C’s “emotional breakdowns”. The Department screened in the report (Exhibit A) and conducted a response. (Exhibit B; Testimony of RG)
11. At the time of the report in question, C’s IEP remained in place pending a formal appeal by the Appellant. The IEP required one (1) parent’s signature to remain active. It is within the Appellant’s rights to reject C’s IEP. (Exhibit B, p. 2; Testimony of RG and Appellant)
12. On September 21, 2017, the Department met with LF, LF’s Attorney, LF’s mother, LF’s partner and C and H. The discussion with the adults focused on C’s IEP and the Appellant’s rejection of the emotional support component. LF supported the IEP and felt that C’s behavior had improved because of it. The Response Worker interviewed C with her mother and mother’s partner present; the Response Worker was unsure if their presence had any influence on C’s statements. (Exhibit B, pp. 2-4; Testimony of RG and TB)
13. When the Response Worker explained his role to C, C immediately went her backpack and produced the letter the Appellant had written, which the worker had reviewed previously.<sup>3</sup> C stated she wanted to keep meeting with the SAC and that she “[felt] she had to lie” to the Appellant about seeing the SAC due to the Appellant’s lack of approval; and, regarding the reported incident, had walked out of school because she had read the letter. C had no other complaints regarding the Appellant’s care. (Exhibit B, pp. 3, 8; Testimony of RG)
14. There was no evidence that C’s statements were related to the precipitants to her behavior on September 14, 2017. The evidence suggested C’s disruption of the classroom was precipitated by the Principal’s arrival, and her behavior continued when she walked out of her class and refused to return despite intervention by the principal and Mrs. A. (Fair Hearing record)
15. The Department met with the Appellant at the Pittsfield Area Office. The meeting focused on the Appellant’s perspective regarding C’s IEP, which the Appellant

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<sup>2</sup> The Appellant testified the letter was in an unsealed envelope and placed in the folder.

<sup>3</sup> The letter “stated C’s IEP had been rejected and that she’s not expected to participate in IEP services until both parents sign the plan.” (Exhibit B, p. 3)

was hesitant to discuss with the worker, preferring to address the issue at the IEP hearing. The Appellant discussed his concern about C meeting with Mrs. A and told the worker he felt he was acting in C's best interest after C told him she did not want to meet with Mrs. A. The Appellant did not wish to rescind the entire IEP or prevent A from receiving support. The Appellant's testimony at the hearing was consistent with his statements to the Response Worker. (Exhibit B, p. Testimony of RG and Appellant)

16. Under C's IEP and as the SAC, Mrs. A was identified as the primary response person if C had an emotional/behavioral issue at school. The school district did not have the ability to formally utilize another staff.<sup>4</sup> (Testimony of RG and Appellant)
17. During the Response, the Department contacted Mrs. K for follow-up regarding incidents at school during the current academic year (September 2017 forward). Mrs. K attributed the September 14, 2017 incident to C reading the letter from the Appellant, which I find was inconsistent with the school's documentation regarding the incident. The evidence, including the school's documentation, suggested that due to her behavior, C was faced with a call home and in response to that, she escalated and cited the Appellant's letter. (Exhibit 1, Student Discipline Reports, p. 2/20; Testimony of RG and Appellant)
18. The Appellant was concerned with the utility of Mrs. A's intervention, where in the past it seemed that she did not help C. The evidence suggested that prior to and following the report in question, C demonstrated disruptive behavior without any apparent link between the Appellant's rejection of the emotional support component of the IEP and C's behavior. During incidents documented by the school, C was often unresponsive to staff redirection and Mrs. A's intervention. (Exhibit 1; Testimony of RG and Appellant)
19. On October 5, 2017, the Department supported an allegation of neglect of C by the Appellant. The Department determined the Appellant failed to provide minimally adequate emotional stability and growth for C when he rejected her IEP; and, that the Appellant's actions, in writing a letter regarding the IEP that C had access to, posed a substantial risk to C's safety and well-being where they resulted in C's emotional instability at school. (Exhibit B, pp. 7, 8; Testimony of RG; 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16)
20. The Department closed the case following the response on the basis that LF continued to act in C's best interest by signing the IEP (i.e., by preventing revocation of the IEP or its respective components). (Exhibit B, p. 8; Testimony of RG and TB)
21. After a review of all the evidence and for the following reasons, I find the

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<sup>4</sup> The Appellant testified that the school's legal counsel initially rejected his request for modification of the IEP and that the school district did not have the budget to add another counselor.

Department did not have reasonable cause to support an allegation of neglect of C by the Appellant (Also see Analysis):

- a) The Department did not demonstrate that the Appellant failed to provide minimally adequate care for C, including minimally adequate emotional stability and growth (110 CMR 2.00 and 4.32), and;
- b) The Department did not demonstrate that the Appellant's actions, including his rejection of a component of C's Individualize Education Plan (IEP) placed C in danger or posed a substantial risk of harm to C's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

22. In reaching the instant decision, the Hearing Officer gave due weight to the clinical decision made by the Department. 110 CMR 4.32; 110 CMR 10.29(2)

### **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. 110 CMR 2.00 and 4.32; 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. Protective Intake Policy #86-015, rev. 2/28/16.

Danger is "A condition in which a caregiver's actions or behaviors resulted in harm to a child or may result in harm to a child in the immediate future." DCF Protective Intake Policy #86-015, rev. 2/28/16

Risk is "The potential for future harm to a child." DCF Protective Intake Policy #86-015, rev. 2/28/16

To prevail, an Appellant must show based upon all of the evidence presented at the hearing, by a preponderance of the evidence that: (a) the Department's or Provider's decision was not in conformity with the Department's policies and/or regulations and/or statutes and/or case law and resulted in substantial prejudice to the Appellant, (b) the Department's or Provider's procedural actions were not in conformity with the Department's policies and/or regulations, and resulted in substantial prejudice to the aggrieved party, (c) if there is no applicable policy, regulation or procedure, that the Department or Provider acted without a reasonable basis or in an unreasonable manner which resulted in substantial prejudice to the aggrieved party; or (d) if the challenged decision is a supported report of abuse or neglect, that the Department has not demonstrated there is reasonable cause to believe that a child was abused or neglected and the actions or inactions by the parent(s)/caregiver(s) 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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

### Analysis

As C's father, the Appellant was her caregiver under Department policy and regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department supported an allegation of neglect of C by the Appellant. The Department determined the Appellant failed to provide minimally adequate emotional stability and growth for C when he rejected her Individualized Education Plan (IEP); and, that the Appellant's actions posed a substantial risk to C's safety and well-being where they resulted in C's emotional instability at school. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

In part, the Appellant asserted he has provided ample support and advocacy for C through dozens of meeting with the school regarding C's IEP and appropriate support for C. The Appellant expressed concern that the report in question was filed due to his disagreement with the school's intervention and that "things were steered in the narrative" of the report to implicate the Appellant's actions as the cause of C's behavior at school, which he disputed. The Appellant argued that considering the totality of the evidence, he did not neglect C under Department regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

This Hearing Officer finds the Appellant's argument compelling. The evidence suggests there was disagreement regarding C's Individualized Education Plan and that the Appellant took steps to appropriately express his concern and dissent regarding a portion of the plan, including writing a letter directed to school staff regarding C's IEP, which directed staff not to implement the IEP until both parents signed off. During the Fair Hearing, the Department did not dispute that the Appellant was within his rights to dispute the IEP. The Appellant's dispute with the school district over the IEP is not a proper topic of an administrative Fair Hearing and will not be addressed further. 110 CMR 10.06

The question before this Hearing Officer is whether the evidence supports that the Appellant's actions led to C's emotional dysregulation on September 14, 2017 and support the Department's conclusion that the Appellant neglected C under Department regulations and applicable policies. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

In making a determination on the matter under appeal, the Hearing Officer may consider information available during the Department's investigation and new information discovered or provided after the investigation that would either support or detract from the Department's decision. 110 CMR 10.21(6)

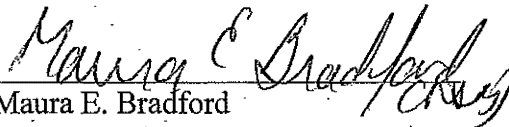
This Hearing Officer contemplated evidence submitted by the Appellant, including documentation of C's behavior. Contrary to the report in question, the evidence suggested that C's emotional dysregulation on the day of the reported incident was not precipitated by the Appellant's letter, but instead by an unrelated series of events which began with C disrupting class and culminated in the Principal's call home when, even with intervention by the School Adjustment Counselor (SAC), C refused to return to class.

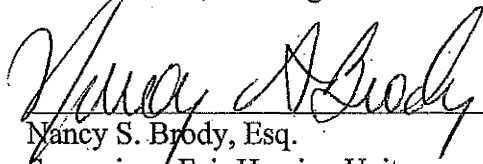
For these reasons and those enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision was not based on reasonable cause or supported by sufficient evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App.Ct. 739, 843 N.E.2d 691. Additionally, there was no evidence that the Appellant's actions or inactions placed C in danger or posed a substantial risk to C's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

### Conclusion and Order

Appellant has shown by a preponderance of the evidence that the Department's decision to support an allegation of neglect on behalf of C was not in conformity with Department's policy and regulations; therefore, the Department's decision is REVERSED.

5-10-18  
Date

  
Maura E. Bradford  
Administrative Hearing Officer

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

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Date

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Linda S. Spears  
Commissioner