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Department of Children and Families
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**IN THE MATTER OF:
L.G. & M.G.
FH #2017-0560**

FAIR HEARING DECISION

Appellants, herein named Mr. and Mrs. G, appeal the decision of the Department of Children and Families' ["Department" or "DCF"], to remove subject child, B, from their DCF unrestricted foster home.

Procedural History

On April 27, 2017, the Department's Dimock Street Area Office notified the Appellants in writing of the removal of B and another foster child, X, from their foster home, and of their appeal rights. The children were removed because Mrs. G. breached the confidentiality of their foster children by using social media to show images and videos of their foster children. In addition, Mrs. G used social media to communicate with the birth mother of a child named Be, who had been previously placed in her home. She developed a relationship with that birth mother such that the child's legal case and movement toward permanency was disrupted. On April 27, 2017, B and X were removed from the Appellants' foster home. The immediacy of their removal was based on 110 CMR 110 7.116 (2) (c), which allows for the removal of children, if their continued physical, mental, and emotional well-being were endangered by leaving them in the home. The Appellants filed a timely request for a Fair Hearing ["Hearing"] on May 8, 2017, pursuant to 110 CMR 10.06 & 10.08, as it pertained to the removal of subject child, B, not X.¹ The Appellants' request for appeal was granted and their Hearing held on June 28, 2017 at the Department's Dimock Street Area Office in Roxbury, MA. Participants included the Department's Deputy Regional Counsel, M.M.; the DCF Area Director of the Dimock Street Area Office, G.C.; and, the Appellants.² The Area Director and the Appellants, notably Mrs. G., were sworn in under oath and testified. The

¹ The Appellants subsequently confirmed at Hearing their intention to appeal only the removal of B from their home. [Testimony of the Appellants]

² Although the Appellants' Family Resource Supervisor, H.B. and Family Resource Social Worker, L.C., were initially present at Hearing, they did not remain and were not called back to testify. [Administrative Hearing Record]

proceedings were digitally recorded, pursuant to 110 C.M.R. 10.26, and downloaded to compact disk [CD].

Admitted into evidence for the Department was 110 CMR 7.116: Removal of Foster Children from Foster/Pre-Adoptive Homes [Exhibit 1]; an April 27, 2017 Notice to the Appellants of the Department's Decision to Remove the Children [Exhibit 2]; An Unsigned Agreement Between the Department and the Foster/Pre-Adoptive Parents [Appellants], pp.1-5 [Exhibit 3-a]; the Signed Page of the Agreement with the Appellants, p.5 [Exhibit 3-b]; the DCF 51B Response Unsupported on September 14, 2016 [Exhibit 4-a] and Attached Facebook Pages with Screen Shots of Foster Children and Associated Blogs [Exhibit 4-b]; a CD of the "Green Bean Incident" Involving B [Exhibit 5]; and, Portions of the MAPP: Massachusetts Approach to Partnerships in Parenting Training Manual [Exhibit 6]. Admitted into evidence for the Appellants was the Department's Notice to the Appellants that a 51A Report was Received [Exhibit A-1]; the Department's Notice to the Appellants that the 51A Report was Unsupported [Exhibit A-2]; Mrs. G.'s Certificate of Completion of MAPP Training [Exhibit B]; a May 19, 2017 Letter from Mrs. G.'s Primary Care Physician, [REDACTED] [Exhibit C]; a May 18, 2017 Letter from B's Primary Care Physician, [REDACTED] and a May 19, 2017 Letter from B's Nurse, [REDACTED] [Exhibit D]; an E-Mail dated April 28, 2017 to Mrs. G from Babysitter, [REDACTED] [Exhibit E]; and, a CD of the "Green Bean Incident" Involving B [Exhibit F].³ The Hearing record was closed on July 14, 2017 following receipt of Exhibits 5, 6 & F.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Standard of Review

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record as a whole, and giving due weight to the clinical judgments of the Department social workers, the Department's decision or procedural action, in making a decision to remove B from the Appellants' unrestricted foster home, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellants. 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 Appellants. [110 CMR 10.05]

³ The Department's objection was overruled and Exhibits C, D, & E accepted as evidence. [Administrative Record]

Findings of Fact

1. The Appellants, Mrs. G. and her husband, Mr. G, are DCF licensed unrestricted foster parents for the temporary placement of children in their home. [Testimony of Area Director; Testimony of Mrs. G; Exhibit 4-a] The Appellants were initially licensed by the Department in July 2015. Mrs. G. is the primary caregiver. [Testimony of Mrs. G.; Exhibit 4-a, p.10]
2. The Appellants have had thirteen foster children during the two years they have been licensed to receive placements. [Testimony of the Appellants; Testimony of the Area Director]
3. The physical care of the Appellants' foster children has not been in doubt. [Exhibit 4-a, p.5; Exhibit D] Prior to 2017, there have been generally good reports about the children they cared for without complaint to the Department. [Testimony of the Area Director]
4. Female foster child, Be, was placed with the Appellants for fifteen months, from November 13, 2015 to January 19, 2017. Be is currently assigned to an adoption social worker and was placed in a pre-adoptive home, after involvement with the Appellants. [Exhibit 4-a, p.2] Mrs. G had wanted to adopt Be, but a relative came forward and was approved because there were two other siblings already in the relative's home. Although Mrs. G agreed with the decision, the Department found there was a deterioration of their otherwise positive relationship. In a post on Facebook, Mrs. G was critical of the DCF process. [Ibid, p.6]
5. Male foster child/subject child, B, was placed with the Appellants on October 19, 2015, when four months old, and he and another foster child, X, who was newly placed and an infant, were removed from the Appellants home on April 27, 2017 due to the matter under appeal. B was twenty two months old, when removed. [Testimony of Mrs. G.; Testimony of the Area Director; Exhibit 2; Exhibit 4-a]
6. B was the longest placement the Appellants had. [Testimony of Mr. G.]
7. B can be identified by his [REDACTED] hair. [Exhibit 4-a, p.6] The Facebook Screen Shots submitted by the Department show B in Exhibit 4-b, pp. 6, 7 & 8. [Testimony of the Area Director; Testimony of Mrs. G] The Area Director, in addition, identified B in Exhibit 4-b, pp.1-2. [Testimony of the Area Director]
8. B has had an open adoption case with the Department, since March 20, 2017. [Exhibit 4-a, p.1]
9. Mrs. G told the adoption social worker assigned to B's case that it had been harder to bond with the child than she wished. [Testimony of Mrs. G.]

10. On April 26, 2017, the Appellants' DCF [Dimock Street Area Office] Family Resource Supervisor, H.B. and now former Family Resource Area Program Manager, S.H., called Mrs. G. to discuss concerns brought to their attention, that Mrs. G. was in recent contact with C.C., who was the biological mother of Be; a child previously placed in the Appellants' foster home. Mrs. G. reported knowing that Be's biological mother had been missing for about a year and said she had asked the child's then on-going social worker, C. P, for permission to locate the mother. The child's on-going social worker, however, denied this; rather on November 2, 2016, Mrs. G. told the social worker that she had made contact with the biological mother through Facebook, after the social worker was unable to reach the mother for a visit. The social worker reported that Mrs. G. frequently voiced her support of the mother and the mother's relationship with Be. Mrs. G. reported having created a [private] Facebook account for Be so that she and the child's mother could communicate back and forth, which they did approximately once every six weeks. In addition, the biological mother sent memos to Mrs. G. Mrs. G. reported that on Easter, she saw that the mother had posted on Facebook a video of an ultrasound so she contacted mother and learned she was pregnant. Mrs. G. asked mother where she was and if she was safe. Mrs. G. then visited the biological mother at her new drug treatment program, hugged her, and offered to help her, and also met with the program director. [Exhibit 4-a, pp 1-3] Mrs. G. assumed, then and now, that because Be was no longer placed with her that her relationship with the child's mother was no longer professional and they could be friends. [Ibid, p.2; Testimony of Mrs. G.]

Mrs. G. also reported that she had permission from B's DCF social worker, C.S., to text some photographs of B to his biological mother, which she did two to three times a week. The social worker could not remember, if she gave Mrs. G. permission to do this, but remembered having given Mrs. G. permission for B's mother to attend a holiday dinner with the child and the Appellants at the Appellant's foster home. [Exhibit 4-a, pp.2 & 10]

DCF Area Program Manager S.H. and/or Family Resource Supervisor, H.B., discussed with Mrs. G the Department's concerns about her boundaries with Be's biological mother and with biological parents of other children in her home; the need to review her role as a foster parent and issues of confidentiality; and, discussed their concern that her contact was about her need to communicate with parents rather than the needs of the children placed with her. Mrs. G explained that her behavior was driven by her belief that all children deserve a healthy life and a connection to all who are connected to them. Her motivation is simple: support the whole family. The Department explained to Mrs. B that it was not her role as a foster parent to assess parental capacity; this is the role of the children's social workers. The Department asked Mrs. G to discontinue contact with Be's biological mother and any other parent not approved by the Department. [Exhibit 4-a, p.4]

During this conversation, the Department asked Mrs. G to complete a mental health assessment to better understand her motivation for continued contact with biological parents to which she agreed. Mrs. G was asked to clarify her mental health history as

it was not reflected in her application or home study to become a foster parent. Mrs. G related that she was diagnosed with Depression in 2004/2005 and was prescribed medication for one year and then again in 2012. She reported that Mr. G is aware of the warning signs. [Exhibit 4-a, p.2; Testimony of the Area Director]

11. At Hearing, Mrs. G submitted a letter from her primary care physician dated May 19, 2017, who wrote in part that there was nothing about the doctor's interaction with Mrs. G, which would have prompted the doctor to independently refer Mrs. G. for a mental health evaluation. [Exhibit C]
12. On April 27, 2017, the Department additionally learned that Mrs. G had been operating Facebook group pages as well as Facebook profiles where she posted public pictures of her DCF foster children and a video, and an internet blog where she wrote and spoke about her experiences and frustrations of being a foster parent. The Department found that Mrs. G skirted the laws and regulations relating to confidentiality by partially obscuring the faces or eyes of the foster children in the photos and videos; and then created a private Facebook profile using the full first name of Be, including a photo of Be from the neck down, to request friendship with her biological mother. Mrs. G.'s relationship with the biological mother caused disruption in Be's permanency. Mrs. G interfered in Be's legal case, after the child's mother refused a colloquy in court following Mrs. G's recent in person and Facebook contact with her. [Exhibit 4-a, pp.2-3; Exhibit 4-b; Testimony of the Area Director]
13. Of significant concern to the Department was one video where Mrs. G spoke for two or three minutes straight about what she does not like about foster parenting while live-streaming a struggle with B, over the child eating a green bean. [Exhibit 4-a, p.3; Exhibit 5; Exhibit F; Testimony of the Area Director] Although B was not yet fully verbal, the Department found that Mrs. G's negative comments about foster parenting could be interpreted by others as emotionally or psychologically damaging to B. [Exhibit 4-a, p.3]
14. Three links to Mrs. G.'s social media locations were identified by the Department on April 26, 2017 and/or April 27, 2017 - one for the Appellants' internet blog website, one for the Facebook Groups, and one for a private Facebook account to friend Be's mother. [Exhibit 4-a, p.3]
15. On April 27, 2017, a 51A Report was filed with the Department by a mandated reporter alleging neglect of B [and X]. The 51A Report was filed on the basis of the information contained in Findings #10 & #12 to #14. [Exhibit 4-a, pp.1-2; Exhibit A-1]
16. The Department submitted the 51B response by Special Investigation Unit [SIU] response social worker, T.M., who was assigned to investigate the issues raised in the 51A Report of April 27, 2017. He confirmed the allegations, when he spoke with DCF Family Resource Supervisor, H.B., during the response. At the conclusion of his report, the response social worker *unsupported* the allegations of *neglect* of B and X

by Mrs. G. The SIU response social worker concluded that, while there were possible breaches of the foster-parent agreement and confidentiality, this did not lead to any known negative effect on B [and X]. [Exhibit 4-a; Exhibit 4-b; Exhibit A-2]

17. The SIU response social worker had reviewed the social media accounts belonging to Mrs. G, which contained a number of images of the children in her care with their faces obscured, to include B and Be [Exhibit 4-b]. He was also aware that Mrs. G had possibly undermined the permanency of Be by reaching out to the child's biological mother and communicating with her regularly, but made no decision to support or unsupport on Be, given that she was not a subject of his investigation. Although the posting of the "green bean incident" involving B was not available, the response social worker still found it could be subject to different interpretation and had no noticeable or determined effect on B. [Exhibit 4-a]
18. The Department submitted Mrs. G.'s Facebook pages for review by the Hearing Officer. [Exhibit 4-b] Like the SIU response social worker, the Hearing Officer found that Mrs. G had obscured the faces of the foster children in the photographs she had posted on Facebook, though there is one of a foster child, B, which is more revealing than the others. [Ibid, p.6].
19. The Department understood that Mrs. G disguised the faces of the foster children on the Facebook pages, but was concerned that the biological parents would know their children, especially if Mrs. G was in contact with them and made postings. Of note, there was a headshot of B, and although his face is covered, it clearly shows his distinctive [REDACTED] hair. [Exhibit 4-a, p.6; Exhibit 4-b]
20. Next to some of the posted pictures of the Appellants' foster children on Facebook were notes made by Mrs. G conversing about the children and/or their cases. Within these notes, Mrs. G used pseudonyms for some of the foster children, to include B, whom she named, [REDACTED]. [Exhibit 4-b; Testimony of Mrs. G; Exhibit E]
21. On a Facebook page for B, Mrs. G wrote in part the following: "We have court in May. His mom...has completed her service plan. She's done "everything" DCF has asked her to do. And still, reunification is not guaranteed because this stupid system is broken." [Exhibit 4-b, p.8]
22. Mrs. G also created a private Facebook profile for Be, but instead of using a pseudonym for the child, she referred to Be by her full first name. Be's biological mother was the only follower for this account. The Appellant maintained contact with the biological mother, visited her, and went to the [REDACTED] Court during the care and protection proceeding for Be where the mother was going to stipulate, but then changed her decision. Mrs. G advocated for and influenced the mother in making a different decision. [Exhibit 4-a, p.6; Exhibit 4-b, p.9; Testimony of the Area Director]

23. The Appellant and the Department each submitted a CD of the "Green Bean Incident" for review by the Hearing Officer. [Exhibit 5; Exhibit F] Mrs. G and B are the subjects of this video. [Testimony of Mrs. G; Administrative Record] Mrs. G. had posted the video on Facebook. [Testimony of the Area Director]
24. The "Green Bean Incident" was recorded by Mrs. G. on Tuesday, April 25, 2017 around 6:00 p.m. [Exhibit F; Exhibit 5; Testimony of Mrs. G.] Mr. G was not home, when it happened. Foster children, B and X, were. [Exhibit E; Testimony of Mrs. G]
25. The Hearing Officer found that B was substantially hidden in the video, but there was one moment when the child leaned forward in his chair and became more visible to the public eye. (Exhibit 5, Exhibit F)
26. Mrs. G claimed that B threw green beans at her, which was not captured on the video. [Testimony of the Appellants]
27. Mrs. G submitted an email from the babysitter, who arrived at the Appellants' home on Tuesday, April 26, 2017, after the video was shot. [Testimony of Mrs. G; Exhibit E⁴]
28. Mrs. G created a website blog journaling her experiences of being a foster parent. [Testimony of the Area Director] The Department was unable to obtain copies of the blog, because it was taken down by the Appellants, nor did the Appellants submit any examples at their Hearing. [Administrative Review]
29. Mrs. G explained at Hearing that the main purpose of her blog was to increase awareness of foster parenting in light of the need the Department had of needing more foster parents. Mrs. G explained that, if she could provide a day to day view into the life of a foster parent, she could convey that it is not as scary as it seemed. In the two years the Appellant had been foster parenting, they have had a lot of people reach out to them from being exposed to their social media links on a level these individuals had not been privy to previously. She showed the joys and also challenging moments of being a foster parent. She felt it was important to show the full spectrum of what it was to be a foster parent. [Testimony of Mrs.]
30. There is no dispute that Mrs. G maintained public Facebook pages with pictures of the foster children placed in her home along with written conversations or notes about the child/cases, to include B; that Mrs. G shot a video of B and posted it on Facebook for public viewing; had contact with Be's biological mother through a private Facebook account established for this purpose; and, created a blog of her foster parenting experiences and feelings. [Administrative Record]
31. Mrs. G acknowledged communicating with Be's biological mother, but argued that she had explicit permission to do so. She attended a court hearing on January 7, 2013

⁴ Any statements made by the babysitter, as to her educational background and clinical experience, and application of such to Mrs. G's state of mind on this day, carried no weight. [Exhibit E]

and told everybody who was present that she had contact with Be's mother through Facebook. Mrs. G reported that Be was placed with her at this time and no one had told her not to contact the biological mother. Mrs. G said that she learned of the biological mother's pregnancy through the social worker, not from mother, and then reached out to the mother and subsequently contacted the shelter to facilitate a way to say good bye. [Exhibit 4-a, p.10]

32. On April 26 and 27, 2017, G.C., the DCF Area Director [of the Dimock Street Area Office] was notified of the overall issues by her staff and on April 27th reviewed Mrs. G.'s public Facebook pages to include photographs of her foster children, some of whom she recognized as being foster children in the Department's care, despite attempts to disguise their identity. She also read notes/texts made by Mrs. G. next to the pictures of the foster children whereupon she conversed about the children and/or their cases. She then looked at the posted video of the "Green Bean Incident" of B and Mrs. G on the Facebook page, which caused her to be concerned about the child's safety. She found that Mrs. G was frustrated in the video and made veiled threats about how she would handle B and how he couldn't tell if she handled him differently than allowed. The Area Director was concerned about Mrs. G.'s escalating behavior and could not tell what had happened to the child after the video just stopped. Given all issues learned, but particularly the video, the Area Director, given the Appellant's history of depression, felt the Appellant was under some sort of stress, was afraid for B, and felt the child's safety was at risk. [Testimony of the Area Director]
33. As a result, on April 27, 2017, following a legal consult, the Department initiated an emergency removal of B [and X] from the Appellants' home [Testimony of the Area Director; Exhibit 2] citing 110 CMR 7.116 (2 (c) as set forth below [Exhibit 1]:

(2) Whenever the Department determines that a foster child shall be removed from a foster/pre-adoptive home for the purpose of achieving a more suitable placement for permanency, safety or well-being, and not because of a request made by the foster/pre-adoptive parent(s) for removal of the foster child nor because of the occurrence or threat of abuse or neglect of a child in the foster/pre-adoptive home, the Department shall do the following:

(c) if the foster/per-adoptive parent files an allowable fair hearing claim of appeal of the removal decision within ten working days after receiving written notice, the foster child shall not be removed until ten working days following the issuance of a decision of the hearing office adverse to the foster/pre-adoptive parent's claim, or until the child is removed for non-appealable reasons, or until the child is removed in accordance with the provisions of 110 CMR 7.116 (1) or (3), or until it is determined by an Area or Regional Director that the foster child's physical, mental, or emotional well-being would be endangered by leaving the child in the foster/pre-adoptive home, whichever comes first.

34. Consistent with 110 CMR 7.16, the Department notified the Appellants of the removal, their rationale for the removal, and their appeal rights in a written letter dated April 27, 2017. [Exhibit 2]
35. In summary and as written and explained by the DCF Area Director, the Department found that Mrs. G. engaged in a pattern of unacceptable behavior for foster parents, which was escalating in nature, as in the "Green Bean Incident" of B, and put their foster children at risk. Mrs. G. violated the confidentiality of their foster children and their families by using social media accounts and showing images and videos and write ups of their foster children – all in violation of their foster/pre-adoptive parent agreement and the directions given to them at MAPP training. Mrs. G exhibited poor boundaries. In addition, Mrs. G. engaged in direct contact with birth parents through social media and in person, leading to her interference in a pending C & P for Be and the Department's attempts to achieve permanency for the child. Overall, it was the concern of the Department that the acceleration of the Appellants' behavior created risk for the physical, mental, and emotional well-being of the foster children placed in their home, which led to the decision to remove B [and X]. [Exhibit 2; Exhibit 4-a; Testimony of the Area Director; Administrative Record]
36. The Department does not have a written social media policy, then or now. [Administrative Record] Nor has the Hearing Officer been able to find any DCF policy, regulation or a statute on this particular subject.
37. As foster parents, the Appellants participated in MAPP training. Mrs. G took MAPP training from maybe November 2014 to January 2015. [Testimony of Mrs. G] Mrs. G also completed a MAPP training of trainers.[Exhibit 4-a, pp.3 & 11; Exhibit B]
38. The Appellants' family resource supervisor, H.B., was at the Appellants' MAPP training. [Testimony of Mrs. G] He reported, and the Department did not dispute, that MAPP curriculum had not been updated to accommodate social media instructions [Exhibit 4-a, p.5; Administrative Record]
39. MAPP training of foster parents included discussions about confidentiality and not photographing foster children for publication. If pictures were taken of foster children, they were given to their social workers for possible decimation to the children's parents. [Testimony of the Area Director]
40. Mr. G acknowledged that their MAPP co-leader mentioned that foster children could not be videotaped on social media. [Exhibit 4-a, p.5]
41. The Department submitted portions of a MAPP Participant Manual, which specifies in part the following: [Exhibit 6]
 - a) The Appellants agree, for each child/youth placed in his/her home, to: maintain confidentiality in all matters concerning the child/youth and his/her family.

[Foster/pre-adoptive families are bound by the same standards of confidentiality as the Department and its employees.] [p.95]

- b) Foster and pre-adoptive parents will encounter many professionals in their lives. These professionals include doctors, court personnel, advocates, mental health providers, and school personnel. It can be difficult for foster and pre-adoptive parents to know their role, what to share, and how to work with these different people. It is their responsibility to advocate for this child/youth as much as possible when working with these professionals. It is also important to know that foster and pre-adoptive parents are entitled to be given all of the information about the child/youth's mental and physical health, as well as education. *The only information that they are not entitled to is any information that pertains strictly to birth parents.* [p.233]
42. In addition, it is the responsibility of the Appellants' family resource social worker, L.C., and family resource supervisor, H.B., to work with the Appellants on issues, to include discussions about what the standards are governing confidentiality. [Testimony of the Area Director]
 43. Pursuant to 110 CMR 7.104 (1) (q), a foster parent applicant must demonstrate, to the satisfaction of the Department, the ability: (q) to assume and carry out all other responsibilities of a foster/pre-adoptive parent as detailed in the standard written agreement between the Department and foster/pre-adoptive parents.
 44. Consistent with 110 CMR 7.104 (1) (q), the Appellants, as foster parents, signed a written agreement with the Department in July 2015, which delineates the responsibilities of each party toward the other. Of relevance to this appeal, the Appellants agreed to: [Exhibit 3-a; Exhibit 3-b; Exhibit 4-a, p.5]
 - a) promote the physical, mental, and emotional well-being of the child, as well as assist the child in maximizing his or her potential; and,
 - b) maintain confidentiality in all matters concerning the child and his/her family. [Foster/pre-adoptive families are bound by the same standard of confidentiality as the Department and its employees].
 45. At Hearing, the Appellants did not dispute that the Department was concerned about Mrs. G's use of social media, especially since DCF staff just learned about it. Nevertheless, the Appellants argued that the Department's behavior escalated very quickly to the removal of the children. Prior to April 26, 2017, no one had conversations with them about confidentiality or social media concerns. In addition, no one had ever made any comment to them about their care of B and, in fact, Mrs. G had received accolades from DCF staff and those outside in the community about her care of foster children. The Department did not talk with Mrs. G to clarify things. She went from a model foster parent to having a child removed from her home without

warning or notice and, as an emergency. Mrs. G could not understand how this rose to the level of an emergency pull. [Testimony of Mrs. G]

46. Mrs. G denied breaching confidentiality because, in order to do so, a person would have to connect the Facebook notes she wrote to a specific child or mother given that faces of the individuals are hidden and pseudonyms of children used. [Testimony of Mrs. G]
47. The Appellants also argue that the Department unsupported for neglect of B by Mrs. G on the same issues. [Testimony of Mrs. G]
48. All Facebook accounts were locked no later than May 3, 2017. [Exhibit 4-a, p.6] Mrs. G reported at Hearing having taken all the accounts down. [Testimony of Mrs. G]

Conclusion

A foster parent has the right to appeal a decision, to remove a foster child from the foster home, minus some exceptions, which are delineated at 110 CMR 10.06 (4) (b). The Appellants' request in this regard was granted and their Hearing held on June 28, 2017 at the Department's Dimock Street Area Office.

Applicable regulations and policies pertaining to the Appellant's appeal include, but are not limited to, the following:

Department decisions involving the recruitment and approval of foster/pre-adoptive parents, and placement and removal of children, are governed by 110 CMR 7.100, et seq.

Removal of Foster Children from Foster/Pre-Adoptive Homes [110 CMR. 7.116]:

(2) Whenever the Department determines that a foster child shall be removed from a foster/pre-adoptive home for the purpose of achieving a more suitable placement for permanency, safety or well-being, and not because of a request made by the foster/pre-adoptive parent(s) for removal of the foster child nor because of the occurrence or threat of abuse or neglect of a child in the foster/pre-adoptive home, the Department shall do the following:

(a) give written notice to the foster/pre-adoptive parent as soon as the determination is made, but absent an emergency, at least fourteen days prior to the intended removal of the foster children. The written notice shall include at least the following:

- (1) the fact that the Department intends to remove the foster children from the foster/pre-adoptive home;
- (2) the reason(s) for the intended removal;
- (3) the actual or estimated date, when the foster child will be removed from the foster/pre-adoptive home;
- (4) if the reason for the intended removal is to place the child with a prospective guardian or adoptive parent, notice that the foster parent(s) may apply to become the child's guardian or adoptive parent and the procedures for applying;

(5) notice of the foster/pre-adoptive parent's right to appeal the decision to remove the foster child from the foster/pre-adoptive home, under the fair hearing or grievance procedures, provided however that no right of appeal exists, if the child is to be removed in order to be placed:

- a. with his or her parent(s);
- b. in an independent living situation;
- c. in a different foster home after the foster home was not licensed or whose license was revoked following a license study, reassessment study, license renewal study or a limited reassessment study;
- d. in a department foster home from an intensive foster care home from an intensive foster home, where the child is no longer in need of intensive foster care, unless the intensive foster care foster parent is seeking to become a pre-adoptive or guardian placement and has not been denied by the Department;
- e. in one of the following placements, if the current placement is not such a placement, unless the foster parent(s) has applied to be a pre-adoptive or guardian placement for the child and has not been rejected by the Department as a pre-adoptive or guardian placement for the child, or there is a fair hearing pending challenging the denial of the current foster parent as the child's pre-adoptive or guardian placement:
 - i. in a pre-adoptive home
 - ii. with a legal guardian
 - iii. in a home where on or more of the child's siblings is residing; or
 - iv. in a kinship home of the foster child, if the current foster parent is not a kinship home of the foster child.

(6) Notice that, if the foster/pre-adoptive parent(s), intend to file for a fair hearing from the decision to remove the child, they must do so within ten days of receipt of the notice in order to prevent the removal of the child(ren) pending the fair hearing.

(b) make arrangements for moving the child to a new placement.

(c) if the foster/per-adoptive parent files an allowable fair hearing claim of appeal of the removal decision within ten working days after receiving written notice, the foster child shall not be removed until ten working days following the issuance of a decision of the hearing office adverse to the foster/pre-adoptive parent's claim, or until the child is removed for non-appealable reasons, or until the child is removed in accordance with the provisions of 110 CMR 7.116 (1) or (3), or until it is determined by an Area or Regional Director that the foster child's physical, mental, or emotional well-being would be endangered by leaving the child in the foster/pre-adoptive home, whichever comes first.

See also Exhibit 1.

See also Removal of Children from Foster/Pre-Adoptive Homes in Family Resource Policy, Revised 7/8/2008.

Continuation of Service or Placement Pending Appeal [110 CMR 10.09]:

(3) The filing of a request for a Fair Hearing regarding a decision to remove a child from a foster or pre-adoptive placement shall stay the effect of the challenged decision until after the final decision of the agency is made pursuant to 110 CMR. 10.00. A decision to remove a child from a foster or pre-adoptive placement on an immediate basis because the Director of Areas or Regional Director has determined that the child's physical, mental or emotional well-being would be endangered by leaving the child in the foster home, as provided by 110 CMR 7.116: *Removal of children from Foster/Pre-Adoptive Homes*, shall not be stayed by the filing of a request for a Fair Hearing regarding that decision.

DCF Policy Regarding Emergency Removals from Foster/Pre-Adoptive Families [Family Resource Policy, Revised 7/8/2008

Emergency removal of a child who is in the Department's care or custody from the care of a foster/pre-adoptive family occurs in a planful way, and appropriate notice must be given the foster/pre-adoptive parents. Emergency removal is used only when the Department has determined that the child is not safe in her/his current setting and is at immediate risk. ... The foster/pre-adoptive parent(s) must be directly notified of the removal through face-to-face—or, at least, direct—contacts. Messages are not to be left on answering machines or with someone other than the foster/pre-adoptive parent...

See also 110 CMR 7.116 (2) (c) - Exhibit 1.

Standards for Licensure as a Foster/Pre-Adoptive Parent [110 CMR 7.104]:

In order to be licensed as a foster parent/pre-adoptive parent, a foster parent/pre-adoptive parent applicant must meet the following requirements:

(1) A foster parent applicant must demonstrate, to the satisfaction of the Department, the ability:

(q) to assume and carry out all other responsibilities of a foster/pre-adoptive parent as detailed in the standard written agreement between the Department and foster/pre-adoptive parents.

Written Agreement Between the Department and Foster/Pre-Adoptive Parents [110 CMR 7.111]

See also Exhibits 3A and 3b for the Appellants' Signed Written Agreement.

Out-of-Home Placements [110 CMR 7.101]:

(1) All out-of-home placement decisions shall be made in the best interests of the child, based upon safety of the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting. The following factors shall be taken into consideration:

(d) the child's individual needs including those related to his/her physical, mental, and emotional well-being and the capacity of the prospective foster or adoptive parents to meet those needs;

Burden of Proof [110 CMR 10.23]:

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.

Analysis

The Appellants challenge the Department's decision of April 27, 2017, to remove twenty two month-old male foster child, B, from their licensed, unrestricted foster home. B was placed in the Appellants' home on October 19, 2015 and removed on April 27, 2017

After review and consideration of the evidence presented by the parties, the Hearing Officer found for the Department in the matter under appeal. See Findings #1-#48 and the below discussion.

The Hearing Officer commends the Appellants for the time and effort they put into caring for the thirteen foster children placed in their home since they were licensed by the Department's Dimock Street Area Office in July 2015. Up until the matter under appeal, there had been generally good reports about their care of the children placed by the Department in their home. In addition, their physical care of the foster children was never in doubt.

Nevertheless, on April 26, 2017 and April 27, 2016, information came to the attention of the Department that Mrs. G, the primary caretaker for the Department's foster children, had set up a Facebook account where she posted pictures of her foster children and wrote up conversations about the children and their families, to include B in both instances. Mrs. G also posted a video of B and herself on Facebook wherein she asked B to eat a green bean and then made disparaging remarks about the child and her experience as a foster parent. All of these pictures, the text, and the video, the latter of which is referred to herein as the "Green Bean Incident", were for public viewing. In addition, Mrs. G established a private Facebook account for another foster child, named Be, in order to communicate with the child's biological mother, which resulted in the exchange of text between them; in Mrs. G visiting the biological mother at her drug treatment program; and, in Mrs. G's influence on the mother relative to reunification, instead of adoption, to such an extent that the biological mother refused a colloquy in the care and protection proceedings for the child. Mrs. G's interaction with Be's biological mother caused disruption in the Department's plan to establish a permanent plan for the child. Finally, Mrs. G established a website blog the main purpose of which was to increase the

awareness of foster parenting in light of the need the Department had for more foster parents. In the blog, she provided a day to day view into the life of a foster parent, showing both the joys and the challenging times.

Mrs. G did not dispute setting up the Facebook accounts wherein she posted pictures of her foster children and a video of IGGY [B], and entered text about the children and their families. Nor did she dispute creating a blog as described above nor communicating with Be's biological mother and attending court. She testified at Hearing that she was aware that the Department was concerned about her use of social media, especially since DCF staff had just learned about it.

The Department argued at Hearing that the Appellants breached confidentiality of their foster children and families, to include B, by setting up these accounts and showing images and a video and write ups of their foster children - all in violation of their signed foster/pre-adoptive parent agreement and the information given to them at MAPP training.

The Hearing Officer received no evidence pertaining to confidentiality that applied specifically to the use of social media. However, the Appellants' agreement, which they signed, specifies that the Appellants agreed to maintain confidentiality *in all matters* concerning the children and their families, and that they are bound by the same standards of confidentiality as the Department and its employees. In addition, the Department submitted portions of the MAPP Participant Manual, which included curriculum requiring that the Appellants not only maintain confidentiality for children, but also specified that the Appellants, as foster parents, are not entitled to any information that pertains strictly to the birth parents of their foster children. Further, the Appellants' MAPP trainer, per Mr. G., mentioned during training that foster children could not be video taped on social media. Finally, the DCF Area Director of the Dimock Street Area Office testified at Hearing that MAPP training included discussions about confidentiality and about not photographing foster children for publication. She has been with the Department for a significantly long time.

Mrs. G denied at Hearing that she breached confidentiality. She argued that, in order to do so, a person would have to connect the pictures, write ups, and video posted on the public Facebook pages to a specific child or mother, given that the faces of the individuals were hidden and pseudonyms of the children used. The Hearing Officer found that Mrs. G was creative in disguising the children and families on her public Facebook pages and there is evidence of record that the reporter of the April 27, 2017 51A Report, opined that Mrs. G skirted the laws and regulations relating to confidentiality by obscuring the faces of the foster children. The Hearing Officer, however, received testimony at the Hearing from the Area Director, who looked at some of the pictures of the foster children on Mrs. G's Facebook pages and was able to identify B; one of her kids, which made it easy to segue to and identify the write up on this child and his mother and identify B in the video, when at one moment he leaned forward further into the camera's range. In addition, on Mrs. G's private Facebook account is a disguised picture of Be, but this child was identified by her first name, i.e., no pseudonym. The Department

was rightly concerned that the children's biological parents would be able view these pictures, write ups, and the video of B and be able to identify their children and cases.

Mrs. G further contends that the Department's SIU response social worker, T.S., investigated her use of social media as it pertained to B and unsupported the allegations of neglect against her. The Hearing Officer concludes that the evidence and issue under consideration [neglect v. removal] is different.

Finally, Mrs. G argued that B was removed from his school, without warning, and as an emergency and could not understand how this rose to the level of an emergency, particularly when she had been viewed as a model foster parent beforehand. At Hearing, the Area Director testified in depth as to the sequence of events that led to her decision to remove B and another foster child from the Appellants' home on an emergency basis. The Area Director learned of the issues under review on April 26, 2017 and April 27, 2017. On April 27th, she went up on her IPAD onto Mrs. G's Facebook and looked at the pictures of the Appellants' foster children, some of whom she recognized; read the texts; and, finally watched the posted video of the "Green Bean Incident" involving B. This last gave her considerable concern given Mrs. G.'s presentation on the video. In this case as in others, a Hearing Officer must defer to the clinical judgment of a trained social worker, if there is a reasonable basis for the questioned decision. [110 CMR. 10.05] The Area Director provided persuasive testimony. B was removed from the Appellants' care on April 27, 2017. [110 CMR. 7.116]

Given the overall issues, the Hearing Officer had no reason to doubt the clinical experience and judgment of the Department in the instant matter. The best interests of the foster child should be paramount: See 110 CMR 7.101 which states:

(1) All out-of-home placement decisions shall be made in the best interests of the child, based upon safety of the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting. The following factors shall be taken into consideration:

(d) the child's individual needs including those related to his/her physical, mental, and emotional well-being and the capacity of the prospective foster or adoptive parents to meet those needs;

The burden is on the Appellants to show, by a preponderance of the evidence, that the Department's decision, to remove the children from their licensed foster home, was not in conformity with Department's regulations and policy. The Hearing Officer did not find any information offered by the Appellants to be substantial or compelling to such an extent that the Department acted unreasonably and/or abused its discretion in making its decision in this matter. Based upon a review of the evidence presented at the Hearing, including testimony from the parties, documents, and videos submitted, the Hearing Officer found that the Department's decision was made in conformity with its regulations, supported by sound clinical judgment, and that there was a reasonable basis for the decision. The Appellants failed to meet their burden of proof and affirms the

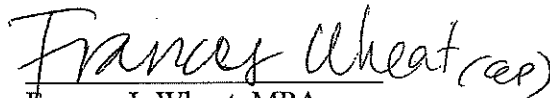
Department's decision to remove B on an emergency basis from their foster home. [110 CMR 10.23]

The Appellants and their home were licensed as a whole and therefore the decision made herein, relative to the removal of B, applies to Mr. G as well.

Order

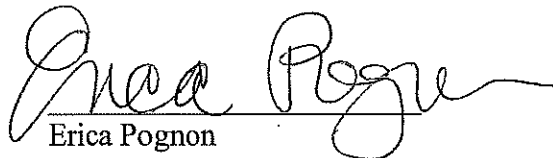
The Department's decision of April 27, 2017, to remove B from the Appellants' DCF unrestricted foster home, is AFFIRMED.

This is the final administrative decision of the Department. If Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for the county in which they live, or in Suffolk County, within thirty (30) days of the receipt of this decision. [M.G.L. c. 30A, §14]



Frances I. Wheat, MPA
Administrative Hearing Officer
Office of the General Counsel

12/7/17
Date



Erica Pognon
Fair Hearing Supervisor
Office of the General Counsel