

Stanley D. Strzempko MD, FACEP

Noble Hospital
Westfield, MA 01086
Tel 413 568 2811 x55166
Fax 413 562 5885
strzempko@comcast.net

10 June 2013

Dear Detective Sattler,

I hope you're having a good spring. To refresh I am the father of Anna Strzempko. She reported abuse at the hands of Mr. Smith to us and we subsequently, on the advice of an acquaintance, went your office about 1 1/2 years ago. I recognize you have a tough job in a tough city and I'm grateful that you are willing to do it.

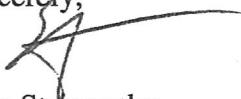
I have thought a long time about contacting you and I have decided that now is the right time. Specifically I am writing to express my disappointment with the way Anna's case was handled. I perceived a "blame the victim" mentality. At a time when we were overwhelmed by what we were going through as a family and had significant questions, you were unavailable and impossible to get a hold of for long stretches of time. More specifically I am concerned that you may have been complicit in getting a finding by DCF against a predator overturned on appeal before Anna ever got a chance to completely tell her story.

I am pleased and grateful for the fact that once Anna disclosed her abuse and began to come to terms with it her whole life turned around over time. By way of example she was an academic and athletic All-American this past year and was her high school's class speaker at graduation. Don't for a moment think the course has been an easy one. I wouldn't wish what we went through on any child, parent, or family. Anna still regularly has nightmares about Smith.

We are unfortunately confident that there are other victims of Mr. Smith. We're hopeful they will choose to disclose also because this is the path to healing. But, it is a difficult decision for anybody, let alone an adolescent or young adult, because of the insidious victim blaming and judging that accompanies such a decision.

If you feel my perceptions are significantly inaccurate in any way and wish to discuss this I would do so at any time that you might feel it would be useful.

Sincerely,



Stan Strzempko

Cc: Holyoke Chief of Police

Commonwealth of Massachusetts
Department of Children and Families*

Child Abuse/Neglect
Non-Emergency Investigation

Response Information			
Response	YMCA Holyoke/ Strzempko - 1732959 Non-Emergency Investigation	Case	YMCA Holyoke/ Strzempko - 3572526
Due date	01/24/2012	Worker	Amy Coelho - Holyoke Investigation Unit C Ryan P. Wells - Holyoke Investigation Unit A
Decision	Supported	Status	Approved - 01/31/2012
Disposition	No Services Required		

Intake Information			
Intake	Reporter	Report Date	Screening Decision
YMCA Holyoke/ Strzempko - 3195832 - 51A Report	Reporter(Mandated)	12/30/2011 - 02:04 PM	Screened In: Non-Emergency Response

Persons		
Name	Date of Birth - Age	Roles(s)
Monica Strzempko		Adult (In Home)
Anna N. Strzempko	10/22/1994 - 17 Years	Reported Child (In Home)
Randall Smith	02/02/1953 - 58 Years	Alleged Perpetrator

Collaterals	

Contacts / Interviews / Actions			
Contact Method	Other	Purpose	Case Record Review
Date and Time	01/04/2012 - 03:38 PM	Staff Person	RYAN P. WELLS
Contact With / Attempted			
Details: Case assigned today for investigation. The report was filed on 12/30/2011. The report alleges sexual abuse of Anna Strzempko by the Holyoke YMCA swim coach Randall Smith. The report alleges that the sexual abuse happened last year in Rhode Island while at a swim meet.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/04/2012 - 03:41 PM	Staff Person	RYAN P. WELLS
Contact With / Attempted			
Details: Inv. called the reporter and left a message requesting additional information regarding Randall Smith.			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/04/2012 - 04:03 PM	Staff Person	AIMEE Y. ARIZMENDI

Contact With / Attempted	
Details: Father, Stan Strzempko, called back screener for intake collateral request. He reported that he can be reached at his cell phone at 413-532-7740.	

Contact Method	Other	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 10:23 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: received case for investigation. INV reviewed 51-A.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 10:26 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to reporter. INV left Vm asking for a return call.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 10:28 AM	Staff Person	AMY COELHO
Contact With / Attempted	Monica Strzempko - Adult (In Home)		
<p>Details: P/C to mother; Monica Strzempko at [REDACTED]. INV introduced self and explained role. Mother reports that her daughter disclosed the reported information to her and she then reported the disclosure to the YMCA, where the alleged perpetrator/ child's old swim coach is employed. She reports that the YMCA dismissed the coach indefinitely and they are doing an internal investigation. Mother reports that the incident occurred in the spring of when her daughter was in the 6th grade, she would have been 12 years old at the time. Mother reports that her daughter is in counseling for other things and has been for a while.</p> <p>Mother is concerned about her daughter being interviewed repeatedly about the incident. INV explained that worker has sent the report over for a possible MIT which would eliminate this. Mother sounded relieved with this and stated that they do not want any sort of civil suit or criminal action, they just want this man away from children. INV acknowledged and scheduled an appt to meet with the family Tuesday at 4:30pm.</p> <p>Mother reports that she and her husband; Stanley Strzempko live in the home. Their adult daughter; Alex is staying with them for a short period of time right now as she graduated from college and is going into the corps.</p>			

Contact Method	Other	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 11:03 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: received information from INV R. Wells with alleged perpetrator's information. Randall Smith's address is 583 Pleasant Street, apt 4R, Holyoke. His phone is 533-1259. His DOB is 2/2/53			

Contact Method	E-mail from	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 01:22 PM	Staff Person	AMY COELHO
Contact With / Attempted			
<p>Details: email from Hahn Nguyen:</p> <p>Hi Amy</p> <p>We'd need to refer this to a police department in Rhode Island since the incident happened there. Do you happen to know which city it occurred in? If not we'd probably contact their state police</p> <p>Hanh</p>			

Hanh Nguyen

Victim Witness Advocate
Case Coordinator

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 01:23 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to mother to find out what city in Rhode Island the incident reportedly occurred. INV left VM asking for a return call.			

Contact Method	E-mail to	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 01:26 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: INV emailed Hahn back:			
I called mother and asked for a return call with this information. Would we still have the MIT here?			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/05/2012 - 02:45 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: Vm from Mother; Monica Strzempko returning call. She provides cell phone number [REDACTED]			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/06/2012 - 09:19 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Monica Strzempko. INV left VM asking for a return call.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/06/2012 - 10:00 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Mother; Monica Stremenko at 575-7755 INV asked mother where the reported incident occurred. Mother is unsure and will call INV back with this information after she speaks with her daughter.			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/09/2012 - 08:28 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: VM from Monica Stremenko stating that the abuse occurred at the YMCA and not outside of here. She asks INV to speak with her husband and provides his phone number [REDACTED].			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/09/2012 - 10:34 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to reporter. The alleged perpetrator has been placed on administrative leave, indefinitely at this time. They are not investigating because they are not "skilled" to do so. Reporter states that they have consulted with their attny about their process in this. The alleged perpetrator had been employed with them for 32 years. There were no prior incidents. Reporter states that personally, she was surprised when she was made aware of the allegations. When they informed the alleged perpetrator of the allegations he was "blown away" and he commented "I'm never alone with these kids."			

Contact Method	Call to	Purpose	Obtain/Provide Information
-----------------------	---------	----------------	----------------------------

Date and Time	01/09/2012 - 11:12 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to father; Stanley Strzempko. He reports that there is some confusion about the process and last week when INV spoke with mother around interviewing their daughter or not. INV explained that the report has been sent with request for a possible MIT. This process would eliminate multiple persons from interviewing their daughter. Father reports that he is concerned about this and has contacted an attny because their goal is to make sure their daughter is not further traumatized. INV concurred with this and explained the Department's role and the supports that the family advocacy center may be able to put in place for their daughter. INV explained that it is a process that all of the providers will walk the family through. Father then stated that one of their goals is to keep their daughter's schedule and if the appt tomorrow with INV happens, that she would have to miss practice. He reports that they are trying to keep things as normal as possible for her. Father reports that he spoke with a detective in their town and also their lawyer who both agree that Anna should be limited to the amount of people that she speaks with. INV explained that the only case where INV would need to interview her would be if there was not going to be a MIT. He asked when INV would have this information by and INV explained that worker sent an email this morning informing of where the incident took place so that they can coordinate the MIT. INV will call the family once INV has the information. Father did not seem completely satisfied with the information INV provided him about the process and stated that he would like to speak with his attny and call INV back as to whether or not they will meet with INV tomorrow at 4:30 as scheduled for home visit.			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/09/2012 - 11:24 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: VM from father; Stan Strzempko stating that he spoke with his wife and their attny. He reports that "the elephant in the room" is that Anna doesn't know that the incident has been reported to DCF and the process from here. He reports that they would like to take the time to talk with her and process things with her and she is usually busy during the week so they would like to do this over the weekend with her. He states that they would like to "not" have the home visit tomorrow and that they want to slow things down a bit. He asks for a call back at 357-740			

Contact Method	Other	Purpose	Supervision
Date and Time	01/09/2012 - 11:30 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: INV spoke with SUP A. Kochis regarding the conversation with father.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/09/2012 - 11:37 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to father; Stanley Strzempko. INV acknowledged his wish to speak with his daughter to inform her of the report being filed with DCF. INV explained of the only time constraint being that the case is due next Wednesday but that INV will work with them around this as much as possible. INV suggested incorporating their daughter's therapist in this discussion if it might help and father was receptive to this suggestion. He states that he will be in touch with INV to schedule home visit.			

Contact Method	Other	Purpose	Background Record Check
Date and Time	01/09/2012 - 12:37 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: Background record check has been performed for Case Management Category for Case, YMCA Holyoke/ Strzempko-3572526.			
No cori findings.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/11/2012 - 10:16 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to father. INV informed that a MIT has been scheduled for tuesday 1/17 at 2pm at 50 State Street in Springfield. Father thanked INV for the information and states that he will be in touch with INV.			

Contact Method	E-mail from	Purpose	Obtain/Provide Information
Date and Time	01/12/2012 - 09:41 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: Hi Amy			
I just spoke with Jen Sattler about this. Jen Spoke with the mom who really isn't interested in doing a MDT. They are, however, ok with giving a statement. They're not interested in going forward with anything but do want this incident reported. Jen will have Anna come in on a weekend to provide a statement. So it looks like we're cancelling the MDT for Tuesday.			
Hanh			
Hanh Nguyen			
Victim Witness Advocate			
Case Coordinator			
Hampden County District Attorney's Office			
Special Victim's Unit			
50 State Street			
Springfield, MA 01103			
Telephone - 413-505-5928			
Fax - 413-731-9019			
hanh.m.nguyen@state.ma.us			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/12/2012 - 03:58 PM	Staff Person	AMY COELHO
Contact With / Attempted	Randall Smith - Alleged Perpetrator		
Details: P/C to alleged perpetrator; Randall Smith at 533-1259. INV left Vm asking for a return call.			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/12/2012 - 04:03 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: VM from Randy Smith returning call. He can be reached at 533-1259			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/13/2012 - 11:06 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Randy Smith. INV introduced self and explained the need to meet with him. He reports that he is not currently being represented by an attny but has been in contact with one for advice. INV scheduled office visit for Tuesday 1/17 at 1pm			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/17/2012 - 10:11 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: VM from Jay Talbott calling from the law offices of Sullivan, Hayst and Quinn stating that he is calling with questions about today's meeting with Randy Smith. He asks for a call back at 736-4538.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/17/2012 - 10:45 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Jay Talbott. INV asked if he is representing Randy Smith and he confirms. He asks about today's meeting. INV explained that worker needs to interview him about the reported allegations. He will be accompanying Randy Smith for the scheduled interview at 1pm at this office.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/17/2012 - 11:06 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Mr. Strempzko. He states that he is in a meeting and asks to call INV back in about 5 minutes.			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/17/2012 - 11:15 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C from father; Mr. Strzempko. He reports that his family spoke over the weekend and decided that they would go the route of giving a statement to Detective Jen Satler at the Holyoke Police Department. He reports that they did that and Jen Satler told them she would be in touch with DCF to cancel the MIT. INV explained the need to still come out and see the family in the home. Father reports that he has been speaking with a friend; Detective Sue Figy in Westfield who told him that by giving the statment it would "shut things down." He was not willing to have INV come to the home. INV informed that worker would speak with supervisor about this and also call Detective Satler for a copy of the statement.			

Contact Method	Other	Purpose	Obtain/Provide Information
Date and Time	01/17/2012 - 11:30 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: conferenced case with SUP A. Kochis regarding the family not wanting any further involvement.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/17/2012 - 11:39 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Detective Jen Satler. INV left Vm asking for a copy of the child's statement and asking where they are in their investigation.			

Contact Method	In Person	Purpose	Response Visit
Date and Time	01/17/2012 - 01:00 PM	Staff Person	AMY COELHO
Contact With / Attempted	Randall Smith - Alleged Perpetrator		
Details: Scheduled office visit to interview Randall Smith, alleged perpetrator. Also present was his attny; J. Talbot. INV introduced self and explained role. INV reviewed the reported allegations that Randall Smith allegedly kissed and fondled Anna Strzempko at some point in time in the past at the YMCA, prior to a swim meet in Rhode Island. Attny Talbot asked for a time frame. INV explained that a more specific time frame could not be provided at this time. INV turned to Mr. Smith to ask of his response to the allegations. He replied "absolutly not."			
INV asked if he recalls a swim meet in Rhode Island that Anna Strzempko participated in. He reports that this was in February of 2007 to the best of his recolection. Mr. Smith informed that he has been coaching for 32 years and he has no prior allegations against him. INV asked him of his current status. He reports that he was told that he has been placed on administrative leave.			
INV asked him of his reaction when he learned of the allegations made against him. He reports that he was shocked. He			

reports that he has never had any inappropriate charges made against him in the many years that he has been employed at the YMCA. Mr. Smith reports that as head coach, he coaches kids at the pool and when the kids leave, they leave with their parents. Mr. Smith reports that he has never been in the locker rooms with the kids nor has he ever been alone with any of the kids. He informed that he is a U.S. certified swim coach and gets nationwide criminal background checks done on him and he has never done anything inappropriate.

INV asked Mr. Smith of his report with Anna Strzempko and her family. Mr. Smith reports that he has a good repore with Anna's family and that he nominated Anna's mother as president of the pact in the past. He reports that Anna is an "outstanding athlete." and describes her as a "good kid" and "intelligent." Mr. Smith's attny interupted and asked Mr. Smith to speak of the health issues. Mr. Smith reports that in December 2010, Anna's mother approached him and informed him of Anna's eating disorder and said she wanted to put things on hold for a while. Anna's mother asked the coach to meet with Anna to talk with her. INV asked Mr. Smith if he met with Anna. He reports that he did. He reports that he told her to get well. INV asked where he met with Anna in having this conversation. He reports that he met with her in the conference room at the YMCA. INV asked if anyone else was present for the meeting and he stated that nobody was in the room, but the door to the conference room was open and there were others in the buildling. INV asked if he had any other meetings with Anna. He reports that Anna's mother set up another meeting in late March. INV asked where they met and he replied "the same place." INV asked if anyone else was present in the room and he said no, but again the door was open and there were others, including Anna's mother in the building. INV asked if he had any other meeting with Anna with just he and Anna. He replied "none that I recall." INV asked if he meets with other kids on the team in this manner and he said yes. Mr. Smith's tone grew more defensive as the interview progressed.

INV asked Mr. Smith if he uses any illegal drugs. He deneis this. INV asked of his alcohol consumption. He reports that he drinks once or twice every couple of weeks. INV asked him of the last time that he drank alcohol. He reports that he last drank alcohol Friday night when he went out and had a couple of beers. Mr. Smith denies any history of physical abuse in his family history, or any history of domestic violence in his family history. He lives at his residence of 583 Pleasant Street, apt 4R in Holyoke, by himself. He does not have any children.

INV asked Mr. Smith for a more detailed description of his duties throughout a given day. He reports that it depends on the age of the kid and practice. There are three different practices. The senior practice is at 3pm to 5pm or 5:30pm. He is at the pool from 3-5pm. After this he will leave to go to his office and do paperwork then check on the next workout which is children in age ranges of 8-12 years old. This practice goes from about 5-6:15pm. He added that there is seating in their pool area which allows the parents to sit and observe. INV asked Mr. Smith of the kids' routine in the locker rooms prior to their practice. He reports that pretty much all of the students use the locker rooms prior to practice. Mr. Smith reports that his office was located on the 2nd level where he was able to observe from, but recently he was relocated to the first floor, front of the building.

INV asked if Anna ever came to his office. Mr. Smith's reply was "sure, she came to my office." INV explained of the discrepencies in his statements. INV pointed out that made a comment to staff at the YMCA that he was never alone with any of the kids. He replied "whoa." He reports that he never said anything to anyone at the YMCA about any of this. INV asked how he he was informed that he was placed on administrative leave. He reports that the executive director took him into her office and said that there was an allegation made against him. INV asked if he made a comment at that time that he was never alone with any of the kids. He reports that he does not remember. INV pointed out that aside from this, at the beginning of interview with INV, he said this to INV then he went on to say that he had at least two meetings with Anna in the YMCA conference room, and none more than this, yet he is now reporting that he also met with Anna in his office.

Mr. Smith's attny intervned to informed that Mr. Smith spoke with Anna about the issues that she was having and that after these discussions, Anna obtained part time employment at the YMCA on Sundays as a desk attendant where Mr. Smith would run into her and talk politics, and history, etc. He reports that Anna has a twitter account that shows no signs of distress and that if her disclosure ocured at the end of December 2010 there was nothing else going on to indicate anything else was going on to indicate distress. He reports that he hopes the Department looks at Mr. Smith's 35 years served as his livelihood.

INV turned back to Mr. Smith and asked of his conversation with Anna that ocured in his office. He reports that it was about training, setting goals, etc. He reports that it was never around anything else, at least "non that I recall."

INV thanked Mr. SMith and his attny for their time and provided entry letter.

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/17/2012 - 03:48 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: VM from Attorney J. Talbot stating he has a question and asks INV to call him back at 413-736-4538			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/18/2012 - 09:05 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Detective Jen Satler asking for a return call.			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/18/2012 - 01:50 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Detective Jen Satler. INV left another VM asking for the statement that Anna gave her and asked her to call SUP A. Kochis in INV's absence.			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/18/2012 - 03:48 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: VM from Attny J. Talbot asking for a return call at 736-4538			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/18/2012 - 03:55 PM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: P/C to Attny J. Talbot. voicemail came on saying "memory is full." INV unable to leave VM			

Contact Method	Call to	Purpose	Obtain/Provide Information
Date and Time	01/20/2012 - 10:11 AM	Staff Person	ANN M. KOCHIS
Contact With / Attempted			
Details: Phone call to Jen Satler. She is out today, so I left a detailed voicemail requesting a call back.			

Contact Method	Call from	Purpose	Obtain/Provide Information
Date and Time	01/20/2012 - 01:46 PM	Staff Person	ANN M. KOCHIS
Contact With / Attempted			
Details: Spoke to Jen Satler. She will fax a copy of the child's statement to the DCF office on Monday. She is out today.			

Contact Method	Other	Purpose	Other
Date and Time	01/24/2012 - 02:52 PM	Staff Person	ANN M. KOCHIS
Contact With / Attempted			
Details: Attempted several times to obtain victim's statement from Det. Satler. When she tried to fax it the fax was repeatedly busy. I called back and she then stated she would have someone else try since she was out at Morgan school. No report has been received. She did say they were not pursuing charges and that the statement was vague.			

Contact Method	Other	Purpose	Obtain/Provide Information
Date and Time	01/31/2012 - 09:20 AM	Staff Person	AMY COELHO
Contact With / Attempted			
Details: INV received a copy today of the statement given by reporter child; Anna Strzempko to Detective Jen Satler of the Holyoke Police Department. The statement reads:			
"The following statement is given by Anna Strzempko of Westfield Massachusetts to Detective Jennifer Sattler of the Holyoke Police Department. The date is January 15th, 2012 and the time is 11:06AM. Also present at Anna's request is her older brother Joseph.			

I am presently 17 years old. I am at Suffield Academy and I am a junior there. I use to swim at the Holyoke YMCA. I did that from 2005 and then in 2006 I swam with the National Team. I swam on both the YMCA team and the National team. I would practice there and Randy Smith was my coach. Last winter, in January 2011 I left swimming at the YMCA. I started working there in the summer at the front desk. Winter

When I was 13 years old I had a meeting with Randy at his office in Holyoke. This was not the first meeting I had but I was alone with him. At first we were seated and then he gets up and came over to me. He kissed me first on the lips. Then he touched me over my clothes and then under my clothes. He touched an area that is private and he did it with his hand. He did not say anything when he did that. He put his fingers inside me. It made me uncomfortable and it scared me. It was in the summer. Before I left his office, he told me that I should not tell and that he didn't want to jeopardize my future swimming. I was alarmed and he was my coach. I wanted to be an Olympic swimmer.

It happened again a few months later and I was 14 then. It was in the same office and it was the same thing. He kissed me on my face and then he touched me again. It was the same areas and the same way. Randy put his hand down the front of my pants. He put his fingers inside me.

I think this happened about 5 times. It was always the same. It was always in the office. We were always alone and the door would be closed. I would still have meetings with him in his office and there were times when nothing would happen.

The first person I ever told Billy Glidden. I told him over Facebook and it was this past fall. He tells my mother. I did not tell him specifically but I used a general term for it all and I said it was Randy. Once I tell him, my mother asked me about it. I told her all about it a few weeks ago. I did not tell her in specifics but she knows it was some kind of abuse.

My mom has told the YMCA. I know that Randy is not there. He is on a leave of absence.

I am reporting this and hope that he does not work at the YMCA anymore. I do not want to go forward with any charges against Randy. I know that I can change my mind. I do not know if he has done this to anyone else. I do not want any contact with him. The last time I saw him was about a month ago. The last time he ever did anything to me was January 2010. I was 15 then."

A copy of this statement will be filed in the case record.

Allegations

Child	Allegation	Alleged Perpetrator	Role	Decision
Anna N. Strzempko	Sexual Abuse	Randall Smith	Other Institution	Supported
Comments:				

Conclusion

Case Name & Id	YMCA Holyoke/ Strzempko - 3572526	DA Referral Made <input type="checkbox"/>
Decision & Date	Supported - 01/31/2012	
Disposition & Date	No Services Required - 01/18/2012	
Assessment of Existing Safety: Alleged perpetrator, Randall Smith, is not a caretaker for the reported child. Therefore, protective capacities are N/A in this case.		
Assessment of Danger and Risk: The reported concerns are of past sexual abuse of Ann Strzempko by her old swim team coach, Randall Smith.		
Immediate Actions:		
Action Plan:		

No immediate actions necessary at this time.

Disposition Comment:

There is reasonable cause to support allegations of neglect at this time. The reported child detailed multiple incidents of sexual abuse by her old swim coach; Randall Smith. During the interview with Mr. Smith, there were multiple inconsistencies in his statements around being alone with the reported child. Case recommended for closing since the perpetrator no longer has contact with the child.

(Investigation is being re-sent for approval today. Investigation was originally sent on 1/18 and approved, but this was prior to receiving the child's statement that was given to police. After receiving the child's statement, it is clear that the allegations of sexual abuse should be supported).

Supervisor Comment:

The statement that child reported to the police details sexual abuse by Mr. Smith. The child stated that the incidents occurred in Mr. Smith's office, where during the investigation he admitted to meeting with kids alone, although had previously denied meeting with any child alone. He stated that the door was always open though this is questionable due to the child's statements.

Approver	Title	Actual Approver	Date
Ann M. Kochis	Supervisor	Ann M. Kochis	01/31/2012 - 12:14 PM
Christy Chamberlin	Area Program Manager	Christy Chamberlin	01/31/2012 - 12:44 PM

mstrzempko@stcc.edu

0531313_20130422.pdf

Add to Drive

Download original

File View Help

Search the document.

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Children and Families
 600 Washington Street, 6th floor, Boston Massachusetts 02111
 Tel (617) 748-2000 ♦ Fax (617) 261-7435

document contains important information.
 Have it translated immediately.

Документ содержит очень
 важную информацию. Постарайтесь
 перевести его немедленно.

Documento contiene información importante.
 or, hágalo traducir de inmediato.

Dokuman sili ganyen enlithansyon ki capotan.
 Tanpri fè ou tradwi l pou ou imedyaman.

Questo documento contiene informazioni
 importanti. Questo modulo va tradotto
 immediatamente.

Este documento contiene informaciones
 importantes. Debe ser traducido prontamente.

Tài liệu này bao gồm những tin quan
 trọng. Xin dịch bản này ngay khi có thể
 của quý vị ngay.

ឯកសារនេះមានព័ត៌មានសំខាន់
 ណាស់។ ប្រសិនបើលោក/នាង
 បានឃើញឯកសារនេះ សូមបកប្រែវាជាបន្ទាន់។

ឯកសារនេះផ្ទុកព័ត៌មានសំខាន់
 សូមបកប្រែវាជាបន្ទាន់។

這文件包含重要的資訊。
 請立即把它翻譯。

THE MATTER OF: Smith

FAIR HEARING # 20120194

James Channing, Esq.
 Joseph Collins, Director of Areas



DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

JUDYANN BIGBY, M.D.
Secretary

ANGELO MCCLAIN
Commissioner

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Children and Families

600 Washington Street, 6th floor, Boston Massachusetts 02111
Tel (617) 748-2000 ♦ Fax (617) 261-7435

This document contains important information.
Please have it translated immediately.

Dokiman sila genyen enfòmasyon ki enpòtan.
Tanpri fè ou moun tradwi l pou ou imedyatman.

Tài liệu này bao gồm thông tin quan trọng.
Xin dịch bản này ra ngôn ngữ của quý vị ngay.

В этом документе содержится очень важная информация. Постарайтесь, пожалуйста, срочно перевести его.

Questo documento contiene informazioni importanti. Questo modulo va tradotto immediatamente.

ឯកសារនេះមានព័ត៌មានសំខាន់ណាស់
សូមបកប្រែឯកសារនេះបន្ទាន់បំផុត។

Este documento contiene información importante.
Por favor, hágalo traducir de inmediato.

Este documento contém informações importantes. Deve ser traduzido prontamente.

ឯកសារនេះផ្ទុកព័ត៌មានដ៏សំខាន់
សូមបកប្រែវាជាបន្ទាន់។

這文件包含重要的資訊。
請立即把它翻譯。

IN THE MATTER OF: Smith

FAIR HEARING # 20120194

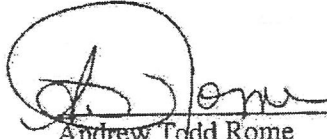
Dear James Channing, Esq.
Joseph Collins, Director of Areas

Attached please find the Hearing Officer's decision in the above entitled matter. The attached decision is the final decision of the Department of Children and Families for the purposes of judicial review.

Should the Appellant desire to appeal this matter he or she may do so by filing a complaint in the Superior Court for the county in which he/she lives or in Suffolk County within thirty (30) days of the receipt of this decision.

The Appellant must serve a copy of the complaint on the Department or other party to the proceeding as provided for by the Massachusetts Rules of Civil Procedure. {See Massachusetts General Laws, Chapter 30A, Section 14}

November 15, 2012
Date


Andrew Todd Rome
Deputy General Counsel
Fair Hearings

¹ Formerly, the Department of Social Services (or DSS) from 1980 to 7/8/09.

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

For the Department:

Exhibit 1: 12/30/11 51A Report
Exhibit 2: 12/30/11 51B Report

For the Appellant:

Exhibit A: 110 CMR 1.00, 2.00, 4.00, 9.00 and 10.00
Exhibit B: M.G.L. c.119, s.51A
Exhibit C: M.G.L. c. 119, s.51B
Exhibit D: 1/12/12 Holyoke Police Department record
Exhibit E: Diagram, Holyoke YMCA, 2nd Floor²
Exhibit F: Appellant's Post-Hearing Memorandum

Statement of the Issue

The issue presented in this Fair Hearing is whether, based on the information available at the time of and subsequent to the investigation, the Department's decision to support the 51A report for sexual abuse is in conformity with its policies and/or regulations and if not, whether the violation(s) resulted in substantial prejudice to the Appellant. 110 CMR 10.06(8)(c).

Findings of Fact

1. The subject child of this Fair Hearing is [REDACTED] (hereinafter, "Anna", or "the child"), date of birth, [REDACTED], 1994. At the time of the filing of the 51A report referenced below, Anna was 17 years old. (Exhibit 1, p.1.)
2. On December 30, 2011, the Department received a report pursuant to M.G.L. c. 119, s. 51A, from a mandated reporter alleging the sexual abuse of the subject child by Mr. Smith. (Exhibit 1, pp.1 and 2.) The Department "screened in" the report as a "non-emergency response" pursuant to 110 CMR 4.21 and 4.25. (Id. at p.4.)
3. The Appellant had been the child's swim team coach at the Holyoke YMCA however Anna had not been on Mr. Smith's swim team for over a year at the time of the filing of the 51A report. (Exhibit 1, p.2.)
4. The Department does not "screen out" allegations of sexual abuse regardless of the timeliness of those allegations. (Testimony of Ms. Kochis; See, also, Analysis below.)

² Exhibit E was drawn by the Appellant in black marker. The notations in blue ink were added in by this Fair Hearing Officer after posing questions to the Appellant.

5. The Appellant was a "caretaker" for Anna at the time the Appellant was her swim team coach pursuant to Departmental regulation 110 CMR 2.00. (See, Analysis below.)
6. At the time of the filing of the 51A report, the Appellant was the head swim coach and aquatic coordinator for the YMCA and had been employed at that facility for thirty-two (32) years. Other than the subject allegations, the Appellant has never had a complaint or accusation of inappropriate language or conduct filed against him. (Exhibit 1, p.4; Exhibit 2, pp.3 and 7; Testimony of Appellant.)
7. The child first disclosed the subject allegations to her friend, [REDACTED] ("[REDACTED]"), over Facebook in the fall of 2011. She "did not tell him specifically" but "used a general term for it all" and said it was the Appellant who was the perpetrator. (Exhibit 2, p.9.)
8. Thereafter, on a date not in evidence, [REDACTED] told the child's mother and her mother questioned Anna about it. Anna did not tell her mother "in specifics" but her mother knew "it was some kind of abuse." (Exhibit 2, p.9.)
9. The Department's investigator did not attempt to interview [REDACTED] during the course of the investigation. (Testimony of Ms. Coelho.)
10. On December 29, 2011, the child's mother, [REDACTED] ("[REDACTED]"), informed a staff member at the YMCA of her daughter's allegations. [REDACTED] reported that Anna alleged Mr. Smith "kissed her and fondled her" while at a swim competition in Rhode Island "a couple of years ago". (Exhibit 1, p.2.)
11. Following the allegations, the YMCA placed the Appellant on administrative leave. The YMCA did not perform an internal investigation as it admittedly is not "skilled" to do so. (Exhibit 2, p.3.)
12. The Department made a mandatory referral to the District Attorney's office pursuant to its regulations.³ (Exhibit 2, p.4; 110 CMR 4.51.)
13. The following Findings of Fact are derived from information given by [REDACTED] to the Department during the course of the DCF investigation:
 - a) The child initially alleged to her mother that the incident occurred in Rhode Island. This would have been in the spring when Anna was 12 years old and in the 6th grade (approximately 5 years earlier). (Exhibit 2, p.2.)

³ Although the Department's investigation does not indicate on page 9 that a DA Referral was made (i.e. the investigator did not key this in on the computer system), it is clear that one was made as a forensic interview was scheduled at the District Attorney's Office at 50 State Street, Springfield, for January 17, 2012. (Exhibit 2, p.4.)

- b) Later in the investigation, [REDACTED] reported Anna's allegations were that the abuse occurred at the YMCA and not in Rhode Island. (*Id.* at p.3.)
 - c) Anna has been in counseling "for other things and has been for a while." (*Id.*)
14. The Department's investigator did not recall if she inquired further with [REDACTED] about the inconsistencies in Anna's allegations. The investigator did not inquire further with [REDACTED] about the purpose of Anna's counseling. (Testimony of Ms. Coelho.)
15. On January 9, 2012, the DCF investigator informed Anna's father, [REDACTED] ("[REDACTED]"), of the MIT⁴ process. As of that date, Anna did not know that her mother had reported the allegations to the YMCA or that there was a DCF investigation underway. (Exhibit 2, p.4.)
16. Both [REDACTED] were concerned about Anna being repeatedly interviewed about the incident. (Exhibit 2, pp.2 and 4.) They allowed Anna to give a written statement to the Holyoke Police Department on January 15, 2012. (*Id.* at pp.8—9.) Anna gave her statement to the police in the presence of her brother. (Exhibit D, Narrative for Officer Jennifer L. Sattler, p.2.)
17. On January 17, 2012, [REDACTED] declined to allow the Department's investigator to perform an in-home visit and declined any further DCF involvement, therefore, the investigator did not view Anna, and the investigator did not interview Anna, her older sister (living in the home) nor her parents during the course of the investigation. (Exhibit 2, p.6.)
18. In addition, on January 17th, the parents ultimately declined the MIT interview for their daughter. (*Id.* at pp.5 and 6)
19. The Department received and reviewed the child's written statement during the course of its investigation. (Exhibit 2, pp.8—9.) The following Findings of Fact are derived from Anna's written statement:⁵
- a) Anna swam for the YMCA swim team from 2005, until January, 2011. (Exhibit 2, p.9.)
 - b) In the summer of 2011, Anna began working at the YMCA as a front desk worker.⁶ (Exhibit 2, p.9.)

⁴ "MIT" stands for Multi-Interdisciplinary Team, wherein a forensic interviewer takes an in-person, videotaped, oral statement from an alleged child sexual abuse victim. The interview is viewed by law enforcement, staff from the District Attorney's Office and the Department's investigator through a one-way mirror.

⁵ The child's statement as written in the DCF investigation (Exhibit 2, pp.8—9.) appears to be a verbatim copy of her statement. Anna's statement as it appears in the Holyoke Police Department Report, Narrative of Officer J.L. Sattler (Exhibit D, pp.1—2) appears to be the Officer's synopsis of Anna's statement.

- c) During her interview at the Holyoke Police Department, Anna "was highly emotional and although somewhat forthcoming, displayed difficulty during this interview". (Exhibit D, Narrative for Officer Jennifer L. Sattler at p.1.)
 - d) Anna alleged that at the age of 13 during a meeting in Mr. Smith's office, the first incident of sexual abuse occurred. "He kissed me first on the lips. Then he touched me over my clothes and then under my clothes. He touched an area that is private and he did it with his hand. He did not say anything when he did that. He put his fingers inside me. It made me uncomfortable and it scared me. It was in the summer. Before I left his office, he told me that I should not tell and that he didn't want to jeopardize my future swimming." (Exhibit 2, p.9.)
 - e) The meeting described above was not her first meeting with Mr. Smith in his office. (Exhibit 2, p.9.)
 - f) Anna alleged that Mr. Smith also sexually abused her a few months later when the child was 14 years old. "It was in the same office and it was the same thing. He kissed me on my face and then he touched me again. It was the same areas and the same way. Randy put his hand down the front of my pants. He put his fingers inside me" (Id.)
 - g) Anna alleged, "I think this happened about 5 times. It was always the same. It was always in the office. We were always alone and the door would be closed. I would still have meetings with him in his office and there were times when nothing would happen." (Id.)
 - h) Anna alleged, "The last time he ever did anything to me was January 2010. I was 15 then." (Id.)
 - i) Anna did not want to go forward with any charges against Mr. Smith. (Id.)
 - j) Anna did not want any contact with him. "The last time I saw him was about a month ago." (Id.)
20. On January 24, 2012, Officer Jennifer L. Sattler from the Holyoke Police Department ("Officer Sattler") informed DCF that the authorities were not pursuing charges against the Appellant as the child's statement was "vague". (Exhibit 2, p.8.)
21. The DCF investigator interviewed the Appellant, with his attorney present, on January 17, 2012. (Exhibit 2, pp.6—7.) The following Findings of Fact are derived from that interview and from his testimony at the Fair Hearing:

⁶ Anna worked part-time at the YMCA at the front desk from July, 2011, until December 29th or 30th of 2011. (Exhibit D, Holyoke Police Department Narrative for Officer J.L. Sattler, p.2.) There is no information in evidence as to why Anna left that part-time position.

- a) The Appellant denied the allegations as presented by the DCF investigator, responding "absolutely not" and his reaction to the allegations was "shocked". (Exhibit 2, p.6.) He denied the allegations again at the Fair Hearing. (Testimony of Appellant.)
- b) The Appellant spoke very highly of Anna and her family. Mr. Smith had a good relationship with them. He nominated [REDACTED] as President of the Parents Advisory Committee in the past. He also nominated [REDACTED] for awards, one of which she won in 2011. (Exhibit 2, p.7; Testimony of Appellant.)
- c) The Appellant coached Anna for ten (10) years from age 10 to 17. He described Anna as an "outstanding athlete" (she was a national swimmer), a "good kid" and "intelligent". (Exhibit 2, p.7; Testimony of Appellant.)
- d) The Appellant coached Anna's older sister for two years; she became a collegiate swimmer. (Testimony of Appellant.)
- e) Mr. Smith recalled a swim meet in Rhode Island in February, 2007. (Exhibit 2, p.6.)
- f) As head swim coach, the Appellant coached children at poolside and then the children would leave with their parents after practice. (Exhibit 2, p.7.) All practices were open to the public. There was a viewing area upstairs and also bleachers on the side of the pool. Parents were encouraged to watch swim practices. (Testimony of Appellant.)
- g) There would be occasions where the Appellant would have scheduled meetings with swim team members. The purpose of these meetings would be to discuss training, swimming goals and objectives for the season. (Exhibit 2, p.7; Testimony of Appellant.)
- h) The Appellant acknowledged that he would meet with his swimmers in the second-floor conference room at the YMCA during business hours. His meetings were one-on-one but they were "never a step away from others" while in the conference room. There were always people "meandering about". (Testimony of Appellant.)
- i) He was never alone with a swimmer either in the pool or in the locker room. (Testimony of Appellant.)
- j) To enter the conference room, one must enter the fitness room first and then enter through a door leading from the fitness room to the conference room; this is the only way in to the conference room. There are two other doors leading from the conference room—one to his office and one to the office of the executive director. All doors remained open during the meetings. There are windows in the fitness room overlooking the pool. There are also windows between the fitness room and

the conference room allowing anyone to see into those rooms from the other at any time.⁷ (Testimony of the Appellant; See, also, Exhibit E, diagram.)

- k) The Appellant did not have meetings with swimmers in his office. (Testimony of Appellant.)
 - l) His team members, including Anna, would show up at his office if they had questions. He had an "open door policy" for all swimmers to be able to speak with him and they were always welcome. (Testimony of Appellant.)
 - m) In December, 2010, [REDACTED] informed Mr. Smith that Anna had an eating disorder and that Anna was going to put swimming "on hold". (Exhibit 2, p.7.) [REDACTED] informed the Appellant that Anna was in therapy. (Testimony of Appellant.)
 - n) At [REDACTED] request, the Appellant first met with Anna in January, 2011, during which he told Anna to "get well". (Exhibit 2, p.7; Testimony of Appellant.) Their meeting occurred in the YMCA conference room on the second floor with the door open. (Exhibit 2, p.7; Testimony of Mr. Smith.) There were no other individuals present in the room but others were in the building, including [REDACTED]. (Exhibit 2, p.7.)
 - o) [REDACTED] set up another meeting for Mr. Smith with Anna in April, 2011, when Anna wanted to return to swimming. Their meeting occurred in the same conference room with the door open and lasted approximately 15 minutes. There were no other individuals present in the room but others were in the building, including [REDACTED]. (Exhibit 2, p.7; Testimony of Appellant.) At that meeting, the Appellant informed Anna she could only return to swimming if released by a doctor to do so, but if she lost weight she would have to stop. The child returned to swimming, immediately lost five pounds and was forced to stop swimming again. Her swim team went on to become nationally ranked. (Testimony of Appellant.)
 - p) The Appellant saw Anna when she worked part-time at the front desk at the YMCA. They would have pleasant conversation and the Appellant believed he had a "wonderful" relationship with her. (Testimony of Appellant.)
22. The Department's investigator did not follow up with Anna's parents about any information it learned from Mr. Smith during his interview. (Testimony of Ms. Kochis.)
23. On January 31, 2012, the Department supported the aforementioned report in accordance with M.G.L. c. 119, s. 51B for sexual abuse on behalf of the subject child by Mr. Smith. (Exhibit 2, pp.9—10.)

⁷ The second floor diagram was confirmed to be accurate by Ms. Lemieux and Ms. Konieczny through their testimony.

24. In making its decision, the Department relied on its assessment that Anna "...detailed multiple incidents of sexual abuse by her old swim coach; Randall Smith". (Exhibit 2, p.10.)
25. The Department also relied heavily on its assessment that during the Appellant's DCF interview, "...there were multiple inconsistencies in his statements around being alone with the reported child." (Exhibit 2, p.10.) The DCF supervisor noted Mr. Smith stated "...the door was always open though this is questionable due to the child's statements". (Id.)
26. The Department's investigator originally sent the investigation, supporting the allegations of sexual abuse, to her superiors for approval on January 18, 2012, prior to the investigator's receipt and review of the child's written statement. (Exhibit 2, p.10; Testimony of Ms. Coelho.)
27. The investigator re-sent the investigation for approval on January 31st, after receipt and review of Anna's statement, noting "After receiving the child's statement, it is clear that the allegations of sexual abuse should be supported." (Exhibit 2, p.10.)
28. The only statement reviewed by the Department prior to making its decision was Anna's statement. (Testimony of Ms. Coelho.) The Department was not aware that Officer Sattler interviewed many more individuals. (Testimony of Ms. Kochis; See, Exhibit D.)
29. [REDACTED] ("[REDACTED]") gave a statement to the Holyoke Police Department on January 23, 2012. The following Findings of Fact are derived from that statement: (See, Exhibit D, Narrative for Officer J.L. Sattler, pp.3—4.)
 - a) [REDACTED] has been employed by the YMCA for seven years. He is the Assistant Aquatics Director and is also a swim coach. He also swam on a YMCA swim team in the past.
 - b) He has known Mr. Smith for ten years both professionally and socially. He has worked side-by-side with Mr. Smith and has socialized outside of work with him as well.
 - c) The YMCA swimmers have swim meets both at their home pool and away where an overnight stay might be required. If a swimmer's parent could not attend then that swimmer might stay with a friend and their parents. "Never" would a swim coach be housed with or share a room with a swimmer.
 - d) One-on-one meetings between swim coaches and their swimmers are common, especially with older swimmers. These are usually goal-setting meetings and might occur "periodically throughout the season".
 - e) He had never seen any closed-door meetings at the YMCA between coach and swimmer.

- FROM, she has never had any issues with Mr. Smith.
- c) As a swimmer, [REDACTED] (and others) had meetings with the Appellant in his office. To her recollection, she believed the door was open at these meetings.
 - d) [REDACTED] confirmed that YMCA swimmers have swim meets both at their home pool and away. She was not aware of any time where a swim coach would stay in a room with a swimmer during away meets.
 - e) [REDACTED] never witnessed Mr. Smith be sexually inappropriate in language or in any other way with anyone. She believed Mr. Smith to be "by the book" and "trustworthy". "...[S]he would find it extremely unusual if he ever did anything that was inappropriate with anybody."
 - f) She was "slightly upset" about the allegation as Mr. Smith was not working at that time.

32. On January 24, 2012, [REDACTED] ("[REDACTED]") gave a statement to the Holyoke Police Department. The following Findings of Fact are derived from that statement: (See, Exhibit D, Narrative for Officer J.L. Sattler, p.7.)

- a) [REDACTED] has been employed by the YMCA for approximately 8 years as a swim coach and in the past she was also a YMCA swim team member.
- b) Mr. Smith was never sexually inappropriate to her or to anyone else that she witnessed when she was on the swim team.
- c) [REDACTED] was not aware of Mr. Smith being sexually inappropriate to anyone and would be "surprised" if he was as it would be "unusual" and "not like him". "Randy Smith is a great guy. He's incredibly successful and he's hardworking. He's dedicated and committed 100% to the program." On occasion he can also be "moody" if not satisfied with a swimmer's progress. He can be "direct" and this could cause "hard feelings".
- d) [REDACTED] had not spoken with Mr. Smith prior to her interview with the Holyoke Police.
- e) Her experience with the YMCA and specifically with Mr. Smith has been "positive". "...[S]he loved the swim team and being involved."

33. On January 24, 2012, [REDACTED] ("[REDACTED]") gave a statement to the Holyoke Police Department. The following Findings of Fact are derived from that statement: (See, Exhibit D, Narrative for Officer J.L. Sattler, pp.7—8.)

- a) [REDACTED] worked at the age of 16 as a lifeguard and then at age 18 she became part of the swim coaching staff at the YMCA.
- b) Mr. Smith has never been degrading, has never sworn or been sexist in her presence. She has never witnessed him to be sexually inappropriate in any way to anyone. She also has never heard rumors of such.
- c) In [REDACTED]'s opinion, it was "bullshit" that the Appellant was on administrative leave.
- d) Mr. Smith is "so passionate and extremely invested in the swim program". His commitment to the YMCA is "his life". He is one of the most dedicated members of the swim program. Mr. Smith's reputation is "fantastic in the swimming community with college coaches and with other programs". Ms. [REDACTED] wanted to see Mr. Smith back at the YMCA at his job.
- e) Mr. Smith is good at listening but is short-tempered. He could be demanding, especially of the older swimmers, and he would push them to meet certain swim times.
- f) Ms. [REDACTED] confirmed that one-on-one meetings between swimmers and their coaches do occur for reasons such as setting goals or changing swimming styles or strategies.

34. [REDACTED] ("[REDACTED]") gave a statement to the Holyoke Police Department on January 23, 2012, and also testified on behalf of the Appellant at the Fair Hearing. The following Findings of Fact are derived from her statement and her testimony:

- a) [REDACTED] has known the Appellant for 15 years. She first met him when she was 7 years old and was a swimmer on Mr. Smith's swim team at the YMCA for 10 years. (Testimony of [REDACTED])
- b) She began working at the YMCA in 2006; Mr. Smith was her boss. (Id.) In 2007, she attended college and swam for her college team. She opined that Mr. Smith "drove her to be a successful swimmer". (See, Exhibit D, Narrative for Officer J.L. Sattler, p.5.)
- c) The Appellant would be at the YMCA between 5 to 7 days per week and it was "his life". (Id.) Mr. Smith "...can push swimmers hard during practice and some could get angry about it but...he would never do anything to harm anyone." (Id.)
- d) There are one-on-one meetings that occur between swim coaches and their swimmers to go over future plans or to evaluate performances or make changes. She was not aware of any complaints about any of these meetings. (Id.)
- e) While swimming on his team, she met with Mr. Smith for these reasons one time per season without any concerns. They would meet in his office⁸ and the door was only closed if the fitness room was noisy. (Testimony of [REDACTED].)
- f) In her experience both as a swimmer and a coach, [REDACTED] was not aware of a time when a coach stayed with a swimmer during an away swim meet. (Exhibit D, Narrative at p.5.)
- g) She was not aware of any allegations of sexually inappropriate behavior on the part of Mr. Smith. (Id.) He was never inappropriate toward her and she never witnessed him be inappropriate with others. (Testimony of [REDACTED].)
- h) [REDACTED] knows Anna personally as she is friends with Anna's older sister. [REDACTED] also worked with Anna at the YMCA's front desk. Anna never mentioned anything to her about the subject allegations. (Id.)
- i) Prior to her knowledge of these allegations, [REDACTED] believed Anna to be a "fine girl". She was "...loud and attention-seeking and has always been that way...She was very dramatic after practice and meets...[an] in-your-face type of person..." (Testimony of [REDACTED].) After learning of these allegations, [REDACTED] is "not her biggest fan". (Id.)
- j) With regard to the subject allegations, [REDACTED] was "very shocked". (Id.) "I don't, can't and won't believe it." (Id.)

35. [REDACTED] ("[REDACTED]") gave a statement to the Holyoke Police Department on January 24, 2012, and also testified on behalf of the Appellant at the Fair Hearing. The following Findings of Fact are derived from her statement and her testimony:

- a) [REDACTED] is an assistant swim coach at the YMCA. She has been employed by the YMCA for 32 years, same as the Appellant, and has known him for 33 years. (See, Exhibit D, Narrative for Officer J.L. Sattler, pp.6—7; Testimony of [REDACTED].)

⁸ In 2006, the second floor was configured differently. Mr. Smith's office was very large and included what is now the conference room. That area was divided and his office was made smaller sometime in 2007. (Testimony of [REDACTED].)

- b) Mr. Smith was usually at the YMCA 6 to 7 days per week and is "committed" to the YMCA and its swimming program. (Exhibit D, Narrative at p.6)
 - c) In all of her years at the YMCA she was not aware of any allegations or complaints made against Mr. Smith for sexual inappropriate behavior. (*Id.*)
 - d) The fact that Mr. Smith was placed on administrative leave made her "sick to her stomach" (*Id.*). She does not believe the allegations are true and it is her hope that Mr. Smith returns to the YMCA. (Exhibit D, Narrative at p.7; Testimony of [REDACTED].)
 - e) It is common for swim coaches and their swimmers to have scheduled one-on-one meetings in order to set goals and to have periodic updates and reviews. (Exhibit D, Narrative at pp.6—7; Testimony of [REDACTED].)
 - f) She has often seen Mr. Smith have meetings with his swimmers on deck (of the pool). She also saw him in meetings with swimmers in the pool office on the first floor with the door open. (Testimony of [REDACTED].)
 - g) No swim coach has ever stayed in a room alone with a swimmer during an away swim meet as chaperones are present. (Exhibit D, Narrative at p.7.)
 - h) [REDACTED] was Anna's swim coach for approximately 2-1/2 years when the child was 9 to 11-1/2 years old. She was a "good kid" and a "hard worker". If she had a bad swim, Anna was "very hard on herself". Anna was also a "drama queen", as stated to [REDACTED] by Anna's mother on more than one occasion. (Testimony of [REDACTED].)
36. To date, Mr. Smith remains on administrative leave as a result of this supported 51A report. (Testimony of Appellant.)
37. This Fair Hearing Officer found the Appellant to be an intelligent, well-spoken, professional individual during the course of his testimony at the Fair Hearing. Considering his demeanor and the content of his testimony, given under oath, along with the testimony of the other witnesses appearing on his behalf, and the written statements given to the Holyoke Police Department, this Fair Hearing Officer finds Mr. Smith to be a credible individual.
38. In light of the totality of evidence in this matter, the child's credibility is questionable. (*See*, Analysis, p.17 below.)

Applicable Standards and Analysis

The Department Appropriately "Screened In" the Subject Allegations and the Department Appropriately Deemed the Appellant a "Caretaker"

"Abuse" means the non-accidental commission of any act by a *caretaker* upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual. (Emphasis added.)
110 CMR 2.00.

In examining the definition of "caretaker", it is explicit that the caretaker of a child includes a parent, stepparent, guardian, any household member entrusted with the responsibility for a child's health or welfare, and "...*(e) any other person entrusted with the responsibility for a child's health or welfare* whether in the child's home, a relative's home, a school setting, a day care setting... As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, *at the time in question*, entrusted with a degree of responsibility for the child..." (Emphasis added.) 110 CMR 2.00.

Upon receipt of a 51A report, the Department's regulations mandate that it "...shall immediately screen such report. The purpose of screening is to identify children at risk of abuse or neglect from a caretaker, and to distinguish the need for an emergency or non-emergency response." 110 CMR 4.21. If the Department's screener determines "that the report constitutes an event or subject matter within the Department's mandate" and "that the reported condition does not pose a threat of immediate danger to the life, health or physical safety of the child", then the screener screens in the report as a "non-emergency report" and the matter is assigned for an investigation. 110 CMR 4.25(2).

In situations where the Department receives 51A reports of incidents which the reporter identifies as "very outdated" (e.g. a reporter who reports an incident of a parent seen striking a child five years ago), the Department "shall 'screen out' reports for age where the reporter has no reasonably current information to convey, and where there is no reason to suspect that the child is still at risk of ongoing abuse." 110 CMR 4.21(2).

In his *Post Hearing Memorandum* (Exhibit F), the Appellant argues that the support decision for sexual abuse cannot stand in this case as the 51A report should have been screened out due to the "outdated character" of the allegations and as such, the Department's support decision was not in conformity with its regulations. Although mindful of the Department's testimony at the Fair Hearing, that DCF does not screen out allegations of a sexual nature regardless of the timeliness of those allegations, the Appellant argues that "the regulations do not differentiate between the allegations of abuse or neglect", but "clearly indicate that a screen out situation includes a reported incident that is so old it has an outdated character".⁹

While the Appellant is accurate that Departmental regulation 110 CMR 4.21(2), does not distinguish between outdated allegations of abuse or neglect, DCF Supervisor, Ms. Kochis, testified to DCF *policy* that all allegations of a sexual nature are screened in notwithstanding the outdated nature of the allegations (i.e. time of occurrence to time of reporting may be lengthy). It is understandable that such a policy exists as the nature of sexual abuse of a child is such that oftentimes a child victim of sexual abuse does not disclose the allegations until years after the event. It is also understandable that such a policy exists as the alleged perpetrator might still be in a caretaking role for the same or other children at the time the 51A report is filed. In such instances, it is appropriate for the Department, as a child protection agency, to investigate such allegations for the safety

⁹ Exhibit F, p.11.

of all children who may have had, or may be having, contact with the alleged perpetrator. DCF followed its policy in this regard and appropriately screened in the subject allegations as a "non-emergency".

In his *Post Hearing Memorandum*, the Appellant also argues that the support decision for sexual abuse cannot stand in this case as he was not a caretaker for the subject child and therefore cannot be deemed an alleged perpetrator of sexual abuse of the child in the eyes of DCF.¹⁰ The Appellant is incorrect in his assertion. A coach is akin to a teacher. Mr. Smith cannot separate himself from the definition of "caretaker" as he was the child's swim coach and most definitely a person who was entrusted with a degree of responsibility for the child while she swam as a member of his team.¹¹

Next, the Appellant contends that the Department indicates at the conclusion of its investigation that the Appellant is not a caretaker and yet, contrary to regulation and authority, issued a supported decision of abuse or neglect "by a caretaker."¹² This statement is found under the Department's "Conclusion" in the section labeled "Assessment of Existing Safety".¹³ The Conclusion continues under "Assessment of Danger and Risk", "The reported concerns are of *past* sexual abuse of Anna [REDACTED] by her *old* swim team coach; Randall Smith" and under "Action Plan", "No *immediate* actions necessary at this time".¹⁴

Though the Department could have been more explicit in its wording throughout its "Conclusion", it is clear that since Mr. Smith was no longer Anna's caretaker, and was not a caretaker living in the family home, protective capacities were not applicable in this case. Therefore, at the time of the conclusion of the investigation, no DCF services were required in this matter and the DCF case was closed.¹⁵ For the Department to support and close its case in this type of scenario is common DCF policy and does not negate that Mr. Smith was a caretaker for the child at the time she was a swimmer on his team.¹⁶

¹⁰ Exhibit F, pp.7—8; 11—12.

¹¹ The Department's regulations give an example of a situation wherein the rape of a young child by a stranger in a vacant lot, "...while certainly an incident of 'child abuse' in the broad sense, is not the type of child abuse which the Department's investigative process was created to address". See, 110 CMR 4.21, Commentary (1). The instant case differs from this scenario as Mr. Smith and Anna were in a teacher/instructor-student relationship and the abuse was alleged to have occurred at the YMCA—the place of instruction.

¹² Exhibit F, p.7.

¹³ Exhibit 2, p.9. (Emphasis added.)

¹⁴ *Id.* at pp.9—10. (Emphasis added.)

¹⁵ *Id.* at p.9. (See, Disposition and Date.)

¹⁶ This Fair Hearing Officer has encountered numerous cases wherein the Department supports an individual for abuse or neglect and closes its case due to the nature of the relationship between the caretaker and child. If the alleged perpetrator is a caretaker not living in the child's home and the child does not then or will no longer be having contact with the perpetrator, and there are no other protective concerns within the child's home, then to "support and close" a case is the Department's policy. This is the scenario in the instant matter.

The Department's Decision and Procedural Action were not in Conformity with Departmental Regulations and Resulted in Substantial Prejudice to the Appellant

The Appellant argues that the Department's investigation was patently deficient in that the agency did not follow mandatory regulations.¹⁷ The Appellant's contention in this regard has great merit.

The Department is governed by 110 CMR 4.27, with respect to performing non-emergency investigations. "The investigation *shall* include a viewing of the child who is the subject of the report *and* a visit to the home of the child who is the subject of the report *both* of which *shall* occur within three working days after the screening decision... The investigator *may* waive the visit to the home of the child in appropriate circumstances (for example, if the abuse alleged occurred outside the child's home in a day care facility *and if the child is viewed* at the day care facility)..." (Emphasis added.) 110 CMR 4.27(1).

In such circumstances where an individual or family prevents an investigator from viewing a child who is the subject of the report, as is the case here, "...the investigator *shall*, if the investigator does not have reason to believe that the child is in immediate danger of serious physical harm resulting from abuse or neglect, immediately inform his/her supervisor. The supervisor *shall* confer with a member of the legal staff to determine what legal action may be warranted. The Department *may* choose to waive a home visit *if it is able to view the child in some other location*. If the investigator remains unable to view the child, the investigator's supervisor will make the support/unsupport decision based on his/her evaluation of the nature and contents of the 51A report and any collateral information." (Emphasis added.) 110 CMR 4.27(3).

"The investigation *shall* include consulting with the reporter, checking Department files and the Central Registry, arranging medical examination(s) where appropriate, and *making any collateral contacts necessary to obtain reliable information which would corroborate or disprove the reported incident and the child's condition*... However, the parent(s) or caretaker(s) of the reported child, the reported child him/herself, *and* the reporter, are to be considered the primary sources of information. Parents and other individuals living in the home *are visited* a minimum of time, *the initial visit occurs in the home* within three working days after the screening decision." (Emphasis added.) 110 CMR 4.27(2).

110 CMR 4.27, clearly mandates specific contacts be made by the Department's investigator. In the present case, the Department's investigator performed none of those requisite contacts and as such, did not comply with 110 CMR 4.27(1). The Department's investigator did not view the child within three working days after screening and in fact, did not view the child at all. The investigator did not visit the child's home within three working days after screening and in fact, did not visit the child's home at all. The investigator did not meet with the parents a minimum of time (the initial visit to have occurred in the family's home) within three working days after screening and in fact, the

¹⁷ Exhibit F, p.12.

investigator did not meet with the parents at all and only had fairly cursory telephone conversation with the parents. The investigator also did not meet with Anna's older sister who was residing in the home at that time.

The Department did not comply with 110 CMR 4.27(3). In the instant case, the parents declined the MIT interview for the child and denied the Department access to view the child in the home. The Department did not attempt to view the child elsewhere. In fact, the investigator was made aware by [REDACTED] that Anna was not aware of the DCF investigation. There is no evidence if Anna was ever informed of the Department's involvement. It is unclear whether DCF policy would dictate that the supervisor confer with the agency's legal staff on a matter such as this. Ultimately, however, the DCF supervisory staff approved the support decision relying solely upon the child's disclosures to her mother and the child's statement given to the police—the nature and content of which encompassed three different versions of allegations.

The Department failed to comply with 110 CMR 4.27(2). The Department did not make any collateral contacts necessary to obtain reliable information in order to corroborate or disprove the reported incident and the child's condition or credibility. The Department learned that the child first disclosed the subject allegations to [REDACTED], yet the Department's investigator did not attempt to interview him. As such, the Department did not explore what his opinion was of Anna's credibility, what Anna told him, and how it compared to the information Anna reported to her mother and to the police. This information would have been pertinent in determining the consistency of the child's allegations and would have benefited the Department in making a determination of the child's credibility.

The Department's investigator did not inquire further with [REDACTED] about the inconsistency in Anna's statements made by Anna to her, specifically that the first allegation disclosed was that the abuse occurred a couple of years earlier in Rhode Island; later, that the abuse occurred in the spring when the child was 12 years old; and subsequently, that there were multiple incidents of abuse at the Holyoke YMCA when Anna was between the ages of 13 and 15.¹⁸ These are significant inconsistencies which were not explored by the investigator. In addition, the investigator did not ask [REDACTED] (or Anna's sister) about their opinions of Anna's credibility and also did not inquire further with the parents about the nature and degree of Anna's counseling and the "other issues" the child was dealing with at that time. Any and all information would have been pertinent in exploring the issue of the inconsistency of the child's allegations and would have benefited the Department in making a determination of the child's credibility.

¹⁸ The investigator noted in her first entry of her investigation that the alleged sexual abuse occurred "last year in Rhode Island while at a swim meet". (Exhibit 2, p.1.) As the investigator made this entry after receiving the case and immediately after reviewing the 51A report, this Fair Hearing officer is making the assumption that penning the words "last year" was a typographical error on the part of the investigator and does not constitute a fourth version of the time frame for the alleged abuse in this case. Notwithstanding, this error does not bode well for the Department in arguing it performed a thorough investigation when dealing with the very serious case of allegations of sexual abuse wherein the issues of consistency and credibility of the child victim are so germane.

The investigator learned early on in the investigation that Anna was involved in ongoing therapy yet the investigator did not attempt to contact and interview her therapist. This would have enabled the Department to obtain relevant information as to the nature and duration of her counseling, whether the child disclosed allegations of sexual abuse to her therapist and the details of such. The clinician's professional opinion regarding the child's credibility would have also been a beneficial, if not critical, piece to the investigation.

In addition, after interviewing Mr. Smith, it would have also been prudent for the investigator to follow up with interviews of individuals (e.g. [REDACTED], the Appellant's employer and co-workers) to either confirm or deny any of the information learned from Mr. Smith in order to get a sense of the nature of his reliability and credibility.

The Department did not have "Reasonable Cause to Believe" that the Appellant Sexually Abused the Subject Child

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 caretaker occurred. "Reasonable cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and *credibility of persons providing information*, would lead one to conclude that a child has been abused or neglected. (Emphasis added.) 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. (Emphasis added.) *Id.*

The Department erred in failing to assess several key components of the information it received during the course of its investigation. DCF relied upon three versions of allegations in making its decision. Multiple versions of the alleged abuse must give rise to a question of credibility. The Department did not attempt to corroborate or disprove any information it was given by Anna or her parents as the investigator did not make the necessary relevant collateral contacts in order to do so.

In addition, the Department did not attempt to corroborate or disprove any information it was given by Mr. Smith, as again, the investigator did not make the necessary relevant collateral contacts in order to do so. DCF failed to investigate the location of the alleged abuse, yet put enormous emphasis and weight on his statements regarding "meeting alone" with a child. The statements in evidence of several persons, including those of two individuals who also testified at the Fair Hearing, along with the corroborated explanation and diagram of the location of the Appellant's office and conference room, lend credibility to Mr. Smith's explanations to this line of questioning—that he had meetings with his swimmers in the conference room—the location of which was not

private by any means, with any number of people coming in and out of the conference and fitness rooms, including the executive director of the YMCA whose only means of egress from his office was through the conference room.

The Department failed to assess the surrounding circumstances and credibility of Anna and her parents. The child's parents denied the Department access to Anna and to their home. Anna was not permitted to participate in a MIT interview. Anna only gave a statement to the police in the presence of her brother. Anna was not made aware of the DCF investigation. Anna indicated she did not want contact with Mr. Smith yet she worked part-time at that facility knowing she would see him there. Finally, Anna and her mother stated they were not interested in pursuing criminal charges against the Appellant, and Anna specifically told the police she no longer wanted Mr. Smith to work at the YMCA—the individual who denied her the chance to be part of a nationally ranked swim team. Given the evidence in this case, Anna's credibility must be questioned. She put forth three versions of incidents of sexual abuse. In addition, this Fair Hearing Officer disagrees with the Department's assertion that the child (found in her police statement only) "detailed multiple incidents of sexual abuse". The child gave few details of one incident; she spoke in generalities about any alleged subsequent incidents. The Appellant's argument is an extremely valid one—that it is appropriate to question the motive behind the accusations, especially given the gravity of the alleged conduct.¹⁹

The Department's decision to support a report will be reversed if based on information available during the investigation and/or new information not available during the investigation, the Department's decision was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party. 110 CMR 10.06(8)(c)(1).

To prevail at a Fair Hearing, 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.

As such, in light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Appellant presented persuasive evidence in this matter to allow for a reversal of the Department's support decision. The Department's decision and procedural action was not in conformity with the Department's policies and/or regulations. The Appellant has been substantially prejudiced by this decision as he was placed on administrative leave from his job and has been prevented from participating in his coaching duties since January, 2012.

¹⁹ Exhibit F, p.15.

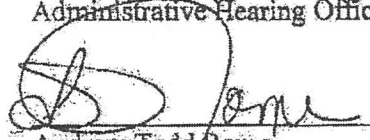
Conclusion

The Department's decision to support the December 30, 2011, 51A report for sexual abuse on behalf of Anna [REDACTED] is REVERSED.

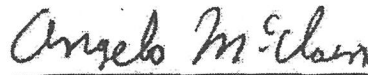
Date: 01/15/2012



Linda A. Horvath, Esquire
Administrative Hearing Officer



Andrew Todd Rome
Deputy General Counsel



Angelo McClain
Commissioner

