

January 11, 2021

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*Delivered via regular mail to:*

DCFS Administrative Hearing Tracker  
195 North 1950 West  
Salt Lake City, Utah 84116

Re: Good Client, Case No. 1234567

To Whom it May Concern:

This letter is in response to the Notice of Agency Action regarding case number 1234567 (hereinafter referred to as this “Case”) that was sent to our client, Good Client, on December 29, 2020. This Case involves, among other things, allegations of physical abuse inflicted upon Ms. Client’s minor child, Child. The specific allegations are that Ms. Client spanked Child with a plastic clothes hanger.

Via this letter, Ms. Client challenges the action placed against her by DCFS, because the facts do not support the finding of physical abuse. Indeed, it is legal in Utah for a parent to physically discipline their children, even with an object. Determining whether the physical discipline is reasonable depends upon various circumstances in the case.<sup>1</sup> According to *State ex. rel. L.P.*,<sup>2</sup> the factors that Utah courts use to determine if corporal punishment is reasonable include:

1. whether the act left any bruises, contusions, or abrasions on the child;
2. whether it involved unreasonably cruel punishment such as beating with a belt, paddle, hose, or other object;
3. the need for the use of corporal punishment;
4. the relationship between the need for discipline and the amount of punishment administered;
5. whether the punishment was administered in a good faith effort to maintain discipline, or if it was done maliciously and sadistically for the purpose of causing harm;
6. whether the discipline was accompanied by verbal threats or verbal abuse; and

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<sup>1</sup> *KY v. Div. of Child & Fam. Serv.*, 2010 UT App 335, 244 P.3d 399.

<sup>2</sup> 1999 UT App 157, 981 P.2d 848.

7. whether the incident was isolated, or if it was a step in an apparent progression of mistreatment.<sup>3</sup> Furthermore, mere spanking with an object—without more—does not constitute abuse unless accompanied by evidence of harm to a child.<sup>4</sup>

In applying the foregoing elements outlined in *State ex. rel. L.P.* to the case at hand, the following is true:

1. spanking Child with the clothes hanger did not leave any bruises, contusions, or abrasions on Child;
2. spanking Child with the clothes hanger did not involve, nor can it be constituted to be, an unreasonably cruel punishment;
3. to the best of Ms. Client's parenting ability, it was necessary for Ms. Client to use corporal punishment on Child to curve Child's behavioral issues;
4. the amount of discipline administered in relation to the discipline needed was not unreasonable or excessive;
5. Ms. Client punished Child in good faith and to the best of her parenting ability, trying to curve Child's behavioral issues;
6. the discipline administered by Ms. Client was not accompanied by verbal threats or verbal abuse; and
7. this punishment was an isolated incident, not a step in an apparent progression of mistreatment.

Therefore, it is clear that the punishment administered by Ms. Client upon Child was not unreasonable, and that it was indeed necessary, pursuant to Ms. Client's best parenting ability, to curve Child's behavioral issues.

In *State ex. rel. K.T.*,<sup>5</sup> the court determined that to make a finding of physical abuse upon a child under Utah law, a court must find harm.<sup>6</sup> Furthermore, "[t]he rule the juvenile court articulated—that '[h]itting a child with a belt or a strap or another object is abuse'—is overbroad and alters the statutory meaning of 'abuse'" under the Utah Code.<sup>7</sup> Further, "harm" under the Utah Code involves "physical, emotional, or developmental injury or damage."<sup>8</sup>

In the case at hand, it is unclear how hard Ms. Client hit Child, whether Child suffered emotional or physical pain, and whether Child was injured. *Therefore, the court cannot arrive at a finding that Child suffered physical abuse at the hands of Ms. Client, because the facts do not support that Child was harmed as a result of being spanked with a plastic clothes hanger.*

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<sup>3</sup> *See id.*

<sup>4</sup> *State ex. rel. K.T.*, 2017 UT 44, 424 P.3d 91.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶ 9.

<sup>7</sup> *Id.* at ¶ 15.

<sup>8</sup> Utah Code § 78A-6-105(19).

As to the reasonableness of the punishment administered by Ms. Client upon Child, given the circumstances, reason compels the strong conclusion that the punishment was reasonable. According to a letter written by Child' doctor on January 6, 2021 (attached hereto as "Exhibit A," Child was diagnosed with (1) Attention Deficit Hyperactivity Disorder (ADHD) in June of 2017, (2) a mood disorder in April of 2018, and Oppositional Defiant Disorder (ODD) in August of 2020. Child's doctor further states that "ADHD and ODD can cause behaviors such as impulsivity, inattention, hyperactivity, defiance, difficulty regulating emotions, anger outbursts, aggression, manipulative behaviors, attention-seeking behaviors, and excessive oppositional behaviors."<sup>9</sup> Therefore, given the difficulties that Child's mental disorders cause upon himself and his family, it was reasonable for Ms. Client to resort to physical punishment to try to curve Child's behavioral issues.

In conclusion, given the fact that Ms. Client's physical punishment upon Child was neither unreasonable nor excessive, and because the punishment did not cause harm as defined above, there cannot be a finding of physical abuse in this Case. Consequently, the Case against Ms. Client should be dismissed.

Sincerely yours,

/s/ Saul Goodman  
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<sup>9</sup> Exhibit A.