



Ombudsman Complaint A2009-0208

INVESTIGATIVE REPORT

Finding of Record and Closure

Executive Summary

June 26, 2013

This Report has been redacted to remove confidential information and information that would identify the complainant or others involved in this case per AS 24.55.160(b)

An Alaska couple contacted the Office of the Ombudsman in February 2009 to complain about the actions of the Office of Children's Services (OCS). The complainants are the aunt and uncle of three foster children placed in their home, following emergency removal from their parents' custody.

The foster children were later removed from the complainants' home and placed with another relative after the complainants' teenage son filed a report of harm against them.

The couple complained that OCS mishandled the investigation of that report of harm, erroneously finding it substantiated. They also complained that after removing the three foster children from their home, OCS then placed the children with another relative who had a history of abuse and neglect of her own children. The complainants believed that OCS improperly restricted their visitation with the children and refused to reconsider them as foster or adoptive parents. They further complained that OCS failed to respond to their contacts and requests for information.

They sought the ombudsman's assistance in removing the incident from OCS files and having the foster children returned to their care to foster or adopt.

The couple further alleged that the children's caseworker failed to look into the other relative's background and reports of harm filed against her while the three foster children were in her care. They assert that OCS ignored several reports of harm about this relative submitted by both school officials and other relatives. They contended the caseworker chose to ignore the reports of harm because she did not want to find a new placement for the foster children. They asserted that

the children were not safe in this placement, and were subjected to both verbal and physical abuse by the other relative and her partner.

During the ombudsman investigation, the children were removed from the other relative's home due to a domestic violence incident occurring between the relative and her partner. OCS then placed the children in a non-relative licensed foster home. The foster children were eventually reunified with their mother.

The investigator interviewed the complainants and multiple OCS staff. She also reviewed the agency's child protection files, licensing files, and computerized case management system (ORCA) as well as relevant statutes, regulations, and agency policy and procedures. OCS case files and computerized records are confidential by law per AS 24.55.090 and AS 24.55.160(b); the Ombudsman cannot reveal any information deemed confidential by law. Therefore, the Ombudsman is not able to reveal any specific information obtained from OCS files that the Ombudsman reviewed in connection with this investigation.

The ombudsman investigated the following allegations:

Allegation 1: Unreasonable: The Office of Children's services mishandled the investigation of a report of harm concerning the complainants resulting in the removal of related children from their home and rendering the complainants ineligible to adopt the children.

The complainants allege that OCS unreasonably handled the investigation of a report of harm that resulted in the foster children's removal from their home and resulted in their inability to adopt the children. The Office of **the Ombudsman Policies and Procedures manual** defines *unreasonable* at 4040(2).

"Unreasonable" means:

- (A) the agency adopted and followed a procedure in managing a program that was inconsistent with, or failed to achieve, the purposes of the program,
- (B) the agency adopted and followed a procedure that defeated the complainant's valid application for a right or program benefit, or
- (C) the agency's act was inconsistent with agency policy and thereby placed the complainant at a disadvantage relative to all others.

Alaska Statute (AS) 47.17.030(a) states, in relevant part:

The department shall, for each report received, investigate and take action, in accordance with law, that may be necessary to prevent further harm to the child or to ensure the proper care and protection of the child.

If OCS has evidence that a child has been abused or neglected, the agency can take emergency custody of a child for the reasons set forth in **AS 47.10.011**, pursuant to **AS 47.10.142**. This statute equally applies to OCS' obligation to investigate and take action on a report of harm concerning a child in foster care. OCS is legally responsible for ensuring the safety of children in foster care. These legal requirements apply equally to a licensed foster home and a non-licensed relative placement home.

OCS Investigation Standards

OCS has several policies in effect addressing the appropriate protocol to be followed when investigating a report of harm. **OCS Policy 2.2.5** requires that all investigations shall be conducted by an OCS worker who has been trained to conduct child abuse and neglect investigations and trained in assessing safety. An assigned investigation worker must make contact within the assigned response timelines (Priority 1, within 24 hours; Priority 2, 0-3 days; Priority 3, 0-7 days).

During the investigation, the OCS investigator is required to:

1. Gather safety-related information;
2. Determine present and impending danger;
3. Determine child vulnerability;
4. Determine if the parent or caregiver can or cannot and/or will or will not protect;
5. Determine whether to substantiate or not substantiate child abuse or neglect;
6. Determine risk level.

OCS may go to school grounds to interview a child that is the subject of a report of harm, without parental knowledge or approval. However, OCS is required to subsequently notify the parents of the interview. OCS is also required by AS 47.17.027 to have a school employee present in the room during any OCS interview with the child at school unless the child objects to their presence or the agency determines that the presence of the school official will interfere with the investigation.

OCS policy 2.2.6 requires that during the investigation of reports of abuse and neglect, the assigned worker must also assess whether there is domestic violence in the home and take action as appropriate.

An OCS investigation must be completed within 30 days of assignment. All documentation must be entered into ORCA within 15 days of the completion of the investigation. Supervisors must approve the investigation or recall/return to the worker within 7 days of receiving the investigation in ORCA.

After reaching an investigation finding at the close of investigation, the child's parents and the perpetrator of a substantiated finding must be notified of the outcome in writing.

OCS Policy 2.2.10.1. The perpetrator of a substantiated finding must be notified in writing of the right to appeal the finding and of the appeal process.

Application of Standards to Evidence

The OCS worker investigated a November 3, 2008 report of harm by the complainants' son that there was physical and emotional abuse of children in the home. The report of harm was accepted for investigation on November 3, 2008 and given a Priority 2 response timeframe.

However, the report was not assigned for investigation until November 7, 2008, four days after receipt, apparently because staff was out of the office for training. OCS was required by law to investigate the report of harm it received after it was assigned for investigation.

While the investigation was proceeding, OCS removed the foster children from the complainants' home on November 8, 2008 and placed them with another relative. This was not unreasonable or inconsistent with agency policy. OCS has the authority to remove a child from a prior placement and place the child in another home if doing so would be in the best interests of the child. Because OCS was investigating a report of child abuse, it was reasonable for OCS to remove the foster children during the course of its investigation.

The ombudsman's review of OCS's investigation leads the ombudsman to believe the OCS worker complied with OCS policies when investigating the report of harm. The worker conducted separate face-to-face interviews with the complainants' three eldest children on school grounds on November 10, 2008, three days after assignment and within the required timeframes for a Priority 2 investigation. She met with the complainants at their home the following day, November 11. The worker declined to interview the complainants' two youngest children. The worker sent the complainants a letter with the findings of the investigation.

She noted in her report that she planned to return to the home, but did not. If the worker made a promise to the complainants that she would come back, but did not, this was inconsistent with OCS policy.

After the complainants requested the worker document her concerns and recommendations in writing, the worker sent another letter on December 29, 2008 providing the requested information.

The ombudsman investigator concluded after reviewing all the evidence that overall, the manner in which the agency investigated the report of harm was reasonable and consistent with OCS policy and Alaska Statute. Consequently, the ombudsman found Allegation 1 **not supported**.

Allegation 2: Unfair: Despite the Attorney General's office reversing a substantiated report of harm determination for insufficient evidence, OCS would not return relative children to the complainants' home and required the complainants to have supervised visitation with the children.

The complainants alleged that OCS's decision not to return the foster children to their care and to allow only supervised visitation was unfair.

The Office of the Ombudsman Policies and Procedures manual defines *unfair* at 4040(3). The portion of the definition that applies to this investigation reads as follows:

“Unfair” means:

An administrative act violated some principle of justice.

Investigation of a complaint that an administrative act was “unfair” should consider both the process by which the action was taken or the decision was made and the equitableness

of that decision, that is, the balance between the agency and a complainant in the decision-making process.

Procedurally, a complaint that an administrative act was “unfair” usually will involve an examination of one or more of the following elements:

- (A) adequate and reasonable notice of the matter was not provided to the complainant;
- (B) adequate opportunity was not given for a person having an interest in a decision to be heard or, if applicable, to conduct an examination or cross-examination to secure full disclosure of the facts;
- (C) the decision maker was not without bias or other disqualification;
- (D) the decision was not made on the record: the action or decision was made without consideration of pertinent facts and circumstances, or the testimony, evidence, or point of view of those having a legitimate interest in the decision was disregarded;
- (E) the decision was not supported by reasons or by a statement of evidence relied on; or
- (F) the agency applied standards or principles inconsistently in making a decision.

Per **AS 47.14.100(a)**, OCS is required to arrange for the care of every child in its custody by placing the child in a foster home or suitable family home, and may place a child in a home for adoptive purposes.

When a child is removed from a parent’s home, OCS is required by state law to place the child, in the absence of clear and convincing evidence of good cause to the contrary, in the least restrictive setting, close to the child’s home, and following the order of preference specified by **AS 47.14.100(e)(3)**.

In addition, OCS must comply with the requirements of the Indian Child Welfare Act (ICWA) when placing a Native child.

AS 47.14.100(e)(3) sets forth the placement preferences for a child in OCS custody:

- (1) an adult family member;
- (2) a family friend who meets the foster care licensing requirements;
- (3) a licensed foster home;
- (4) an institution for children.

Good cause not to place a child with an adult family member or family friend, includes grounds for denial of a foster care license under **AS 47.35.019** or **47.35.021**, but does not include poverty or inadequate or crowded housing. If the department denies a request for placement with an adult family member or a family friend, the department shall inform the adult family member or family friend of the basis for the denial and of their right to request a hearing to review the decision.

AS 47.05.065 also states, in part:

The legislature finds that it is the policy of the state to recognize that, when a child is a ward of the state, the child is entitled to reasonable safety, adequate care, and adequate treatment and that the Department of Health and Social Services as legal custodian...should make reasonable efforts to ensure that the child is provided with reasonable safety, adequate care, and adequate treatment for the duration of time that the child is a ward of the state;...the child should be placed in a safe, secure, and stable environment; ... **[and] the child should not be moved unnecessarily ... [Emphasis added]**.

OCS Policy 2.7 indicates that adult family members and family friends will be considered for placement regardless of the child's parents' objection. OCS will consider placing the child with the adult family member or family friend unless OCS determines that placement with the family member or family friend is not in the child's best interest.

According to **OCS Policy 3.15.5**, priority preference for adoption will be given to relatives. The decision to place a child with relatives is made by the Permanency Planning Conference team. The staffing team must give preference, for both Native and non-Native children, to placement with adult family members or other relatives, unless it is not in the child's best interests or a criminal background check reveals prohibited crimes.

Adult family members or other relatives who wish to adopt a child in OCS custody must be approved for adoption with a completed adoption study.

According to **subpart d of OCS Policy 3.15.5**, the OCS staffing team will use the following guidelines when considering relatives as legal-risk or adoptive parents:

1. The family meets the basic criteria for adoptive parents outlined in section 3.23 Adoption Study.
2. Extended family members, including biological parents are supportive of the placement or the family has the ability to handle and protect the child from the possibility of interference from the biological parents.
3. The family can interpret in a positive way the reasons why the biological family cannot continue to parent the child.
4. The family will not make unfair or inappropriate comparisons of the child with biological parents.

According to **OCS Policy 3.23.1**:

All persons will have an equal opportunity to apply for the adoption of children, and should receive fair and equal treatment and consideration of their qualifications as adoptive parents as according to the Multiethnic Placement Act of 1994 (MEPA), the Removal of Barriers to Interethnic Placements Act of 1996, and the Indian Child Welfare Act of 1978 (ICWA). ICWA applies to all Native children and prevails over the other two laws.

In the selection of adoptive parents, the interests of children awaiting adoptive placement will be paramount. Potential adoptive parents should be able to bear responsibility for the child's care,

support, education, and character development, and offer the child a reasonably happy and secure family life with love, understanding, guidance, and companionship.

Some factors OCS considers in deciding to place a child with a family are:

1. The applicants must be of legal age.
2. Married couples may apply to adopt.
3. Unmarried adults living together may apply to adopt.
4. Single adults may apply to adopt.
5. Applications may be accepted where the most recent child in the family has bonded with the family and the family is able to accept a new family member.
6. The applicants are in good health, or if they have health problems, the medical prognosis indicates they will be able to rear the child to maturity.
7. Applicants should have sufficiently recovered from major surgery, or serious illness to participate in the assessment process.
8. Applicants who have lost a child by death or divorce should have dealt with the loss to a sufficient degree to allow them to emotionally participate in the assessment process.
9. Applicants have the financial resources to meet their own needs.
10. A single applicant who works will not be excluded from consideration as an adoptive applicant.
11. Preference will not be given to couples who are childless.
12. Potential placement resources located in another jurisdiction inside and outside of Alaska cannot be excluded.

Before a child in OCS custody can be legally adopted, they must be free and clear for adoption. In other words, both parents' parental rights must be voluntarily relinquished or terminated by court order.

OCS Policy 6.5.6 controls the issue of relative visitation. According to this policy, when a child has been removed from the parental home, the department should encourage frequent, regular, and reasonable contact between the child and the child's parent or guardian and family members. When determining what constitutes reasonable contact with a family member, the department shall consider the nature and quality of the relationship that existed between the child and the family member before the child was committed to the custody of the department. The court may require the department to file a Family Contact Plan (visitation plan) with the court. The department may deny contact to the parents, guardian, or family members if there is clear and convincing evidence that contact is not in the child's best interests. OCS may also determine the

scope, method, and frequency of the visitation, including whether or not visitation should be supervised by a third party.

Application of Standards to Evidence

There is no indication that the complainants had formally applied to adopt the foster children. They had simply requested that OCS consider them as an adoptive placement for the children, if adoption was the permanency goal. Based on the investigator's interviews with the OCS workers, OCS was willing to consider placing the children back with the complainants, if placement with other relative failed. However, despite the AAG's decision reversing the earlier substantiated finding against the complainants, the OCS supervisor was clear that OCS would not uproot the children from their other home, just to place them back with the complainants. While the complainants may have felt this was unfair, it was not. Of paramount importance in OCS's decision when placing a child is what is in the child's best interests. Providing stability and security to a child is significant.

OCS is required by law not to move a child from placement to placement, unless it is necessary to ensure the safety, adequate care, and adequate treatment of the child. At the time the complainants initially made their request to have the children returned to their care (February 2009 according to the complainant's statement), there was no indication that the other relative's home was an unsuitable placement for the children. However, the ombudsman believes that later during the licensure process (April 2009 through November 2009), serious concerns arose critically calling into question OCS's decision to continue placement with this couple for adoptive purposes instead of moving them to another suitable home.

The complainants also complained that OCS would not allow their family to have unsupervised visits with the foster children. OCS staff had informed the complainants that the reason the visits were supervised was due to the prior report of harm. However, because the Attorney General's office indicated in an earlier letter the finding would be removed from OCS's records as of February 2009, the complainants felt this information should not have been held against them in determining whether visitation should be supervised, or if OCS would consider them as an adoptive placement for the children.

The OCS worker confirmed that the reason she initially required the complainants' visitation with the foster children be supervised was because of the report of harm. This would not have been inconsistent with OCS policy. However, the worker based her decision on an entry in ORCA that should not have been there. OCS failed to modify its initial finding in ORCA, even after its attorney advised the complainants by letter on February 2, 2009 that OCS was withdrawing its finding and would amend its records accordingly.

As of January 14, 2010, almost a year after the AAG reversed the finding; OCS still required that the visitation be supervised. According to her activity note on this date documenting a conversation with the complainants, the investigation still showed substantiated in OCS's system. However, once the worker was provided with a copy of attorney's letter, she determined

there was no need for supervised visitation. This occurred on February 8, 2010. In essence, the complainants were required to have supervised visitation for one year for no cause. This was unfair.

As of April 9, 2013, this agency's records still had not been amended.

OCS failed to amend its records modifying the finding, despite a promise by the Assistant Attorney General that this would be done in February 2009. As a consequence of this, OCS required the complainants to have supervised visitation with the foster children for approximately one year following reversal of the finding. While it was not unfair for OCS to keep the foster children with the other relative following reversal of the finding by the AAG, the OCS worker made her decision to require supervised visitation without considering the pertinent facts and circumstances, and the complaints that it was unfair to require supervision were disregarded. Consequently, the ombudsman found the allegation ***partially justified***.

Allegation 3: An OCS worker performed discourteously in the investigation and handling of a report of harm against the complainants.

The ombudsman investigator was unable to determine with reasonable certainty whether the allegation was accurate based on the evidence reviewed. The complainants alleged that an OCS worker performed discourteously during her investigation of a report of harm. The ombudsman policy and procedures manual defines the Performed Discourteously ombudsman standard at 4040(15). An agency employee "performed discourteously" if:

- (A) the employee engaged in unprofessional conduct (complaints alleging that a state employee's performance was negligent or failed in a duty that the employee owed to the public apart from misconduct under the state's criminal statute) or
- (B) the employee was guilty of individual rudeness or discourtesy.

In analyzing this allegation, the investigator reviewed the following OCS policy:

6.1.1 EMPLOYEE CODE OF ETHICS

POLICY: Workers shall meet professional standard of conduct.

PROCEDURE: Workers shall adhere to standardized code of ethics as follows:

- a. Social workers shall adhere to the Code of Ethics of the National Association of Social Workers and the State of Alaska Code of Ethics for Public Employees.
- b. Social workers will receive copies of their code of ethics upon hire. Copies of the codes are also available for local and state personnel offices.

The NASW Code of Ethics is intended to serve as a guide to the everyday professional conduct of social workers. This code includes four sections. The first section, "Preamble," summarizes the social work profession's mission and core values. The second section, "Purpose of the NASW Code of Ethics," provides an overview of the code's main functions and a brief guide for dealing with ethical issues or dilemmas in social work practice. The third section, "Ethical Principles," presents broad ethical principles, based on social work's core values that inform social work

practice. The final section, "Ethical Standards," includes specific ethical standards to guide social workers' conduct and to provide a basis for adjudication. The *code* articulates standards that the social work profession itself can use to assess whether social workers have engaged in unethical conduct. It offers a set of values, principles, and standards to guide decision-making and conduct when ethical issues arise. It does not provide a set of rules that prescribe how social workers should act in all situations. Violation of standards in the code does not automatically imply legal liability or violation of the law. Such determination can only be made in the context of legal and judicial proceedings.

The investigator also found the following portions of the NASW code relevant when analyzing this allegation:

Value: *Dignity and Worth of the Person*

Ethical Principle: *Social workers respect the inherent dignity and worth of the person.*

Social workers treat each person in a caring and respectful fashion, mindful of individual differences and cultural and ethnic diversity. Social workers promote clients' socially responsible self-determination. Social workers seek to enhance clients' capacity and opportunity to change and to address their own needs. Social workers are cognizant of their dual responsibility to clients and to the broader society. They seek to resolve conflicts between clients' interests and the broader society's interests in a socially responsible manner consistent with the values, ethical principles, and ethical standards of the profession. [Emphasis added].

1.12 Derogatory Language

Social workers should not use derogatory language in their written or verbal communications to or about clients. Social workers should use accurate and respectful language in all communications to and about clients.

The worker is alleged to have performed discourteously by stating to the complainants the following during her investigation of the November 2008 report of harm: "How can you think about bringing another child into this home." However, the worker specifically denied making such a statement to either complainant. The complainants also took issue with the worker's subsequent letter dated December 29, 2008, which set forth several recommendations.

The ombudsman concluded that the worker's subsequent written recommendations were based on family members' disclosures to the worker during the agency's investigation.

Analyzing the worker's statement/recommendations under a "performed discourteously" standard results in an indeterminate finding of the allegation. Social workers are required to comply with the standards set forth in the NASW Code of Ethics and the State of Alaska Code of Ethics for Public Employees. Under the NASW code, Social workers treat each person in a caring and respectful fashion, mindful of individual differences and cultural and ethnic diversity. Social workers should refrain from using derogatory language in their written or verbal communications to or about clients. Social workers should use accurate and respectful language in all communications to and about clients. If the OCS worker had recommended to the complainants that they refrain from having additional children this would be discourteous and disrespectful. However, the evidence suggests that this is not what occurred. The worker

specifically denied making such a statement to the complainants, and the written statement she made appears to be based on family members' disclosures.

The complainants might have misunderstood the worker's written recommendations as the strong suggestion to not give birth to another child but it could also be understood to refer to the complainants not taking in the three foster children. In any event, this is a 'he said, she said situation' with no strong documentation or other evidence to back up the allegation.

Accordingly, the ombudsman proposes to find the allegation that the OCS worker performed discourteously indeterminate.

Allegation 4: Arbitrary: OCS failed to conscientiously consider evidence that foster parents engaged in physical abuse of foster children in their care, and exposed the children to domestic violence.

The ombudsman is constrained from revealing confidential information that is reviewed during the course of an investigation per AS 24.55.160(b). OCS's records are confidential by law. Because of these confidentiality restrictions, the ombudsman cannot reveal specific information obtained from OCS's records that were reviewed in connection with this portion of the investigation.

The ombudsman investigator reviewed the agency's case files and computerized records to determine if the agency followed its policies and procedures in response to reports of harm that may have been received. The records reviewed by the ombudsman reflect that there were serious concerns raised about the other relative home.

Alaska Statute (AS) 47.17.030(a) states, in relevant part:

The department shall, for each report received, investigate and take action, in accordance with law, that may be necessary to prevent further harm to the child or to ensure the proper care and protection of the child.

If OCS has evidence that a child has been abused or neglected, the agency can take emergency custody of a child for the reasons set forth in **AS 47.10.011**, pursuant to **AS 47.10.142**. This statute equally applies to OCS' obligation to investigate and take action on a report of harm concerning a child in foster care.

A foster parent is specifically prohibited from using corporal punishment on a child in foster care as a method of discipline or behavior management. **7 AAC 50.435(f)**.

OCS is responsible for ensuring the safety of children in foster care. The licensing section of OCS must conduct inspections and investigations of a foster care home to determine compliance with applicable state statute and regulation. **7 AAC 50.900**. Likewise, licensing is responsible for enforcement actions against a foster home that is not in compliance.

AS part of its responsibility to ensure the safety of children in foster care, OCS is required to monitor and supervise foster parents. **7 AAC 56.450**. Monitoring and supervision of services states in relevant part:

(e) If there are allegations that the foster parents or residential staff responsible for the child's care are abusing or neglecting the child, the agency shall

- (1) take the necessary action to protect the child, by supervising the placement closely or by removing the child in accordance with 7 AAC 56.460; and
- (2) shall immediately report the allegations to the division for investigation.

If emergency removal is necessary to protect the child, **7 AAC 56.460**, applies. If OCS determines that remaining in a placement setting would endanger the health or safety of a child or children, the agency may remove the child immediately.

Office of Children's Services Policy

OCS's licensing manual chapter 500 addresses the appropriate procedures for a licensing worker to follow when investigating a complaint about a licensed foster home. According to **OCS Licensing policy 510**, the investigation of complaints alleging the violation of a licensing statute or regulation is primarily the responsibility of the licensing unit.

According to **OCS Licensing Policy 510.2**, when a licensing worker receives a complaint about a foster home, they are required to obtain detailed information from the complainant about the incident, and determine what measures have been taken to protect children placed in the foster home.

If the report or complaint alleges child abuse or neglect by the foster home, or if the complaint indicates that possible serious harm to a foster child may have occurred, licensing staff are required to take additional steps to investigate the complaint, including notification of OCS's child protective services unit and a determination of what actions the protective services unit has taken in response to the incident.

However, **OCS Licensing Policy 520.1** also states that prior to the licensing worker contacting the foster home about the complaint, the licensing worker should consult with their supervisor to evaluate the information and determine whether or not the complaint appears valid. According to this policy, during this discussion between the licensing worker and the supervisor, it is determined what staff or team is most appropriate to investigate the complaint (i.e. child protection worker, licensing worker, law enforcement, or a combination); and when appropriate, joint investigations between the multiple agencies are coordinated. Licensing also does not investigate all complaints it receives about a foster home.

OCS Licensing Policy 520.1(2) states that "Reports alleging minor violations may be handled by telephone, letter, or on the next inspection visit. Child Protection reports may be investigated by the placement worker and, depending on the outcome and circumstances, may not require licensing action. However, a report of harm regarding an accidental injury may be ruled invalid by the placing worker but may raise concerns about supervision or physical safety issues that would result in a licensing investigation."

Per OCS Licensing Policy 520.5., when the OCS Licensing Section believes that a foster home has violated a licensing statute or regulation, they follow a process similar to the child protection unit by also screening and classifying the complaint for investigation by licensing. Licensing determines the appropriate response time for conducting a licensing investigation of a foster

home, by assigning a Priority 1, Priority 2, or Priority 3 classification. The same policy directs that complaints alleging abuse or neglect of a foster child that do not present immediate danger of death or serious physical harm of a foster child are assigned a Priority 2 time frame for investigation. Similarly, if the complaint alleges excessive or inappropriate discipline of children, the complaint is assigned a Priority 2 time frame for investigation by licensing.

OCS Licensing Policy 540.1. states if licensing determines that foster children may be in immediate danger, they can (1) place a hold on all future placements in the foster home; (2) remove the foster children from the foster home; (3) remove the alleged perpetrator from the foster home; and (4) immediately suspend the license of the foster home until the licensing investigation is completed.

Application of Standards to Evidence

According to the investigator's review of the agency's records, OCS received three reports of harm concerning the other relative foster home. OCS screened out the first report, and investigated the other two. As a result of the investigation by licensing of the third report of harm, OCS removed the children from the relative home. OCS failed to properly document the second report of harm, but overall OCS followed the legal requirements of investigating the report of harm. However, the ombudsman seriously questioned OCS's decision to leave the children in the relative home during OCS's investigation of the reports of harm the agency received, when in comparison, the Wasilla OCS office promptly removed the foster children from the complainants' home for similar allegations before the investigation had been completed.

The Wasilla and Anchorage OCS offices appear to have treated the two families very differently in investigating reports of harm that had been filed against them. The ombudsman questioned the necessity of removing the foster children from the complainants' home without providing similar services to maintain the placement as were provided to the other relative.

OCS's action or decision to leave the foster children in the other relative home during investigation of the second report of harm does not appear to be based on a conscientious consideration of all relevant factors. Accordingly, the ombudsman concluded that the allegation OCS acted arbitrarily is ***justified***.

RECOMMENDATIONS AND AGENCY RESPONSE

The ombudsman proposed two recommendations to the agency based on these findings:

Recommendation 1: The Office of Children's Services should issue a written apology letter to the complainants acknowledging its staff's failure to amend agency records, resulting in an unnecessary requirement for supervised visitation.

Proposed Recommendation 2: OCS should modify or amend its records reversing the substantiated finding against the complainant, as the Attorney General's office previously indicated would occur.

The ombudsman forwarded her preliminary findings and recommendations to OCS on April 12, 2013. Director Christy Lawton responded for OCS. The agency did not dispute the ombudsman's findings and accepted both recommendations, noting, "OCS will also carefully scrutinize information so that errors such as those outlined in the report do not occur again."

OCS sent the complainants an apology letter on May 17, 2013 acknowledging the agency's errors that lead to unnecessary supervised visitation with the foster children and failure to previously modify the agency's records to reverse a substantiated report of harm against the complainants. The agency's records have since been amended.