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INVESTIGATIVE REPORT

Finding of Record and Closure – Public Report
Ombudsman Complaint A2009-1454

December 30, 2011

This investigative report has been edited and redacted to remove information made confidential by Alaska Statute and to protect individual privacy rights.

SUMMARY OF THE COMPLAINT

The Office of the Ombudsman received a complaint from the Foster Mother of three young siblings in state custody, against the Office of Children's Services (OCS) in early November 2009. The Foster Mother said that OCS in Wasilla had placed the children in her foster home more than a year before and that prior to this she had been a friend and neighbor of the children's family. The Foster Mother stated that OCS recently notified her that it had decided to remove the children from her care on a non-emergency basis and transfer them to another foster home. The Foster Mother complained that the removal of the children from her foster home was unwarranted and that OCS had failed to consider all relevant factors in making this decision.

ALLEGATIONS

After a preliminary review of the complaint, the Office of the Ombudsman opened an investigation into the following allegation restated to conform with statutory guidelines for investigations by the ombudsman (AS 24.55.150):

Allegation 1: Unfair – The Office of Children's Services removed foster children from the complainant's home without considering all relevant factors.

The ombudsman added the following allegations during the course of the investigation:

Allegation 2: Unreasonable – The Office of Children's Services failed to notify the complainant of the administrative grievance process available to her to contest the non-emergency removal of foster children from her home.

Allegation 3: Contrary to Law – OCS failed to provide the parents of children in state custody with advance notice of a non-emergency placement change and their right to request a court review hearing on the decision in accordance with AS 47.10.080.

Allegation 4: Unfair – OCS failed to provide the parents of children in state custody with advance written notice of a non-emergency placement as required by policy.

Allegation 5: Unreasonable and Performed Inefficiently – OCS failed to conduct thorough and timely child protective services and licensing investigations.

Allegation 6: Performed Inefficiently – OCS failed to meet the required minimum contact standards established in policies and procedures for home visits with children in foster care placement.

Assistant Ombudsman Charlise Huhndorf-Arend investigated this complaint. The ombudsman gave notice of investigation to OCS on November 6, 2009.

INVESTIGATION

In the investigation of this complaint, the ombudsman investigator reviewed relevant Alaska law and division policies and procedures. In addition, Ms. Huhndorf-Arend reviewed documents provided by the complainant, as well as the OCS Child Protective Services (CPS) and Licensing case files and the agency's ORCA case records.¹ She also discussed the case with the following individuals:

- OCS Community Relations Manager Mike Lesmann
- OCS Children's Services Manager Tim Bolles
- OCS Supervisor Paula Jones
- OCS Children's Services Specialist Dolores Branin, and
- Guardian ad Litem Bobbi Jones

BACKGROUND

OCS Places Children in Complainant's Foster Home

On October 23, 2008, OCS assumed emergency custody of three young children and placed them in the home of the Foster Mother. The children were sisters – A.B. age 7, L.B. age 6, and Z.B. age 1. OCS removed the children from the parental home due to the mother's history of chronic substance abuse and the father's lack of protective capacities. OCS issued the Foster Mother an emergency provisional foster home license that same day specifically to care for the girls.

The Foster Mother was also a friend and neighbor of the biological family living just across the street from their home. She had voluntarily cared for the children for a period in 2006 following an apparent accidental overdose by their mother. On that occasion, the parents had entered into a Care and Safety Plan with OCS in which they agreed to temporarily place the girls with the Foster Mother until the agency determined that the safety threats to the children were mitigated. Additionally, the Foster Mother had temporarily cared for the children in her home for short periods on several other occasions when the parents were in crisis.

Also residing in the home with the Foster Mother were her three biological children – pre-teen boys, and an elementary school-girl age .

¹ ORCA (Online Resources for Children of Alaska) is OCS's comprehensive computerized case management system.

After receiving her OCS foster home license, the Foster Mother became a licensed therapeutic foster care provider through Denali Family Services (DFS) in July 2009.

DFS is a private, non-profit organization that provides an array of human services including behavioral and mental health care services, child protection visitation services, and case management services. DFS is also licensed through OCS as a Child Placement Agency that is able to recruit and license foster homes for Severely Emotionally Disturbed (SED) children enrolled in their services. In this case, DFS was providing mental health care and visitation services to the foster children and their family.

OCS Receives Protective Services Reports Involving Foster Parent

On September 4, 2009, OCS received a protective services report alleging that the Foster Mother physically abused the foster children. The report stated that L.B. had disclosed that the Foster Mother squeezed the girls' ears and chins when they misbehaved. Mary Lou Vanairsdale, the children's therapist at DFS and a mandated reporter, made the report to OCS. The OCS case records show that the foster children had been diagnosed with SED (Severe Emotional Disturbance) and were receiving counseling services through DFS. Licensed Clinical Social Worker Mary Lou Vanairsdale was their counselor at DFS.

OCS did not investigate this protective services report but instead screened it out because the information received did not meet the definition of maltreatment.

On October 27, 2009, OCS received another protective services report alleging that the Foster Mother mentally injured the foster children. The report indicated that the Foster Mother sometimes told the girls they were asking "stupid questions," made them sleep on the floor, and would not allow them to have clothing and other items purchased by their parents. The reporter on this occasion was Children's Services Specialist (CSS) Dolores Branin, the children's assigned OCS worker and a mandated reporter. Ms. Branin made the report after DFS staff told her about concerns they had with the Foster Mother's behavior and statements they had overheard.

OCS screened in the protective services report for investigation and designated it for response as a "Priority 3" (P3) report, the lowest-level priority rating, which requires OCS to respond to the report within seven days.

OCS Initiates CPS Investigation

On October 30, 2009, the OCS Ongoing Unit initiated its CPS investigation of the protective services report when CSS Dolores Branin individually interviewed A.B. and L.B. at school. CSS Branin documented these contacts in ORCA and the CPS case file.

The ORCA case notes documenting the interviews show that A.B. and L.B. told CSS Branin that they slept on the floor in sleeping bags. They said that [the Foster Mother] did not allow them to sleep in the bunk beds at the home because they jumped on the beds. The girls told CSS Branin that they did not want to sleep on the floor any longer because it sometimes made their backs hurt and was cold. L.B. said that their mom had tried to give them a mattress but that [the Foster Mother] wouldn't accept it. A.B. said that the Foster Mother was in the process of getting beds for them.

A.B. and L.B. also told CSS Branin that their parents brought clothes, shoes, and other things to visits for them. The girls said that this “stuff” was stored under the house at the Complainant’s foster home because “we have enough junk in the house.”

Regarding discipline in the foster home, the girls said that the Foster Mother gave them “three strikes” before sending them to the corner for time out. Z.B., their little sister, got timeouts for wetting the bed. They said that the Foster Mother sometimes grabbed their ears or noses when they were in trouble. L.B. said there was no yelling in the home.

In addition, A.B. and L.B. said that they had overheard the Foster Mother talking and saying negative things about their parents. A.B. expressed that she was uncomfortable when the Foster Mother asked her about visits with their parents. L.B. expressed that she sometimes felt like she was in the middle between the Foster Mother and her mom and that this made her mad at both of them.

After interviewing the girls, CSS Branin visited the Complainant’s foster home. While at the home, CSS Branin observed Z.B. and interviewed the Foster Mother. CSS Branin was unable to interview Z.B. due to her age. CSS Branin documented these contacts in ORCA and the CPS case file. The ORCA case note read:

Home visit with [the Foster Mother]. Observed [Z.B.] throughout visit. [The Foster Mother] reports that [Z.B.] still sleeps in a playpen. The girls sleep in their sleeping bags. The girls don’t sleep in their beds because they wet the bed and she hasn’t gotten mattress covers for them yet. She reports being confused about the allegation of corporal punishment, but would not outright deny that she grabbed their ears or ponytails. She did state that she will turn their chins toward her to make them listen.

It is relevant that in reviewing the OCS case records, the ombudsman investigator noted that CSS Branin had been made aware of the of the two oldest foster children’s sleeping arrangements prior to this visit. On March 12, 2009, CSS Branin visited the foster children at the Complainant’s foster home and made the following hand-written case notes:

[L.B.] and [A.B.] have no beds – sleep on the floor – they ask to sleep with [the Foster Mother] and she says no... They have sleeping bags on floor.

On August 27, 2009, CSS Branin visited the foster children at the Complainant’s home and documented the home visit in hand-written case notes in which she again mentioned the issue. The case note read in part:

* Beds for Kids

[the Foster Mother] gave beds away because [biological mother] was going to give them their bunk beds. Now [the Biological Mother] has changed her mind and [the Foster Mother] has no beds.

OCS Decides to Remove Children

Later that same day, August 27, 2009, CSS Branin called the Foster Mother to inform her that OCS intended to remove the children from her care and place them in another foster home. The ORCA case note documenting this contact read in relevant part:

Informed [the Foster Mother] that because of the concerns I addressed with her today, the children would be moving from her home. I was providing 10 days advanced notice. She

stated that she had already talked to DFS and "briefed" them on the situation. She has talked to another therapeutic foster home that has watched these girls over the weekends previously. However, she does not think that they will take placement because she has warned them of the liabilities of having these girls. She stated that the girls lie and manipulate. She has warned the other foster parents not to allow the girls to be alone with the foster father, as they have seen adult movies and have too much knowledge. She continued to stress the issues the girls have. I assured her that there is a foster parent that is willing to take these girls ... We discussed gathering their things together over the next ten days, and the desirability of allowing the new foster parents to meet the children before the transfer occurs, so that they are not moving in with complete strangers.

OCS Sends Notice of the Removal Decision

On October 31, 2009, OCS sent a Notice of Non-Emergency Placement Change to the Foster Mother. The written notice informed the Foster Mother that OCS intended to remove the children from her care and place them in another foster home "no sooner than ten (10) days from the date of this notice." The notice also provided an explanation of the reasons for the intended removal and information on how to contest the decision in court. The notice read in part:

The reasons for OCS' proposed placement transfer is: multiple concerns regarding the current foster home. Although there are beds available at the foster home, and the children have asked to sleep in the beds, the children have spent most of the time they have been placed there sleeping on the floor. In addition, the children have disclosed that they are grabbed by the ear or nose when [the Foster Mother] is upset with them. Personnel from other agencies have observed her pulling [A.B.] by her ponytail, and speaking to the children in a degrading manner. In addition, the children report that [the Foster Mother] speaks badly of their parents, and complains about traveling to visitation as being a waste of time and gas money. Further, they report that after visits, [the Foster Mother] asks them whether their parents talked about her during the visit. The children clearly describe feeling caught in the middle between [the Foster Mother] and their parents.

IMPORTANT NOTICE: If you are a party to the case, an adult family member or a family friend, and if you disagree with this placement transfer, you have the right to contest the decision and you can ask a Judge to overrule the decision. To do this, you must file a request with the Judge on this case. You should do this as soon as possible. An appropriate form is enclosed to assist you in filing your request. Fill out the form and mail it to the address of the Court below. The Court will, thereafter, schedule a hearing at which you can appear and explain to the Judge why the children should [be] placed with you. Please know that, at this hearing, the person opposing the transfer must prove by clear and convincing evidence that the transfer is contrary to the best interest of the child. (Authority: Alaska Statute 47.10.080(s); CINA Rule 19.1(b)).

....

Please also know that adult family members and family friends contesting the decision are not eligible for a court appointed attorney. (Authority: Alaska Statute 47.14.100(m)). You may wish to consult an attorney to assist you with this matter.

OCS also sent the Notice of Non-Emergency Placement Change to the following case parties: the parents and their attorneys, the Assistant Attorney General (AAG), the Guardian ad Litem (GAL).

OCS Contacts Collateral Source in Investigation of the Protective Services Report

On November 4, 2009, CSS Branin contacted collateral contact Mary Lou Vanairsdale, the children's therapist, in the investigation of the protective services report. CSS Branin documented the contact in an ORCA case note:

Most of what Mary Lou has seen has been pretty positive. There have been some things that needed to be taught, and [the Foster Mother] sometimes does things without thinking. [The Foster Mother] is teachable. Mary Lou had not heard about the issue with the beds. [The Foster Mother] talks to them okay (although she was very hesitant and careful in her answer). [The Foster Mother] continued to pull [A.B.]'s hands down, when [A.B.] was nervous, and Mary Lou had to tell her to not do that.

[The Foster Mother] is quick to do things without thinking. Mary Lou has not done any counseling with the girls with [the Foster Mother] present. Mary Lou has taught [the Foster Mother] to not unload in front of the girls. Meaning, when [the Foster Mother] is frustrated, she will say, "we had a really hard time doing ..." [the Foster Mother] was listing 3 or 4 things at a time that the girls were not so good at. [The Foster Mother] doesn't understand that, but was trainable and did change...

Mary Lou knows that at recent visits with their [biological] mom, their mom was able to say something like "the reason you haven't been over here is because [the Foster Mother] won't take you." When those kinds of things get said and repeated to [the Foster Mother], [the Foster Mother] probably said something. Mary Lou can see where [L.B.] would feel in the middle... I informed Mary Lou that [the Foster Mother] is saying during the drive that it is a waste of time and gas.

Marylou says this is really difficult because she is not sure who is saying what. Mary Lou has heard lots of untruths from the girls - about different things, where they get things. [L.B.] has been picking up things here and there. [L.B.] is real confused, and her feeling of being in the middle is what happened when she went over to the visit. [L.B.] felt like she was in the middle and didn't know who was telling the truth...

Mary Lou doesn't doubt that [the Foster Mother] has said things that hurt the kids. [The Foster Mother] is busy with all of her kids, there have been times that she has hurt the kids. Mary Lou doesn't think it happens all the time. Mary Lou sees the kids for less than an hour once a week. Mary Lou knows that the girls feel cared for by [the Foster Mother] and [they] love her. [The Foster Mother] is capable of being trained and is teachable. [The Foster Mother] does need training.

Foster Parent Files Ombudsman Complaint

On November 6, 2009, after receiving the Notice of Non-Emergency Placement Change, the Foster Mother filed a complaint with the Office of the Ombudsman. The Foster Mother complained that OCS intended to remove the children from her care and place them in another foster home on a non-emergency basis for insufficient reasons and without considering all

relevant factors. The Foster Mother contended that the removal was unwarranted and not in the children's best interests. In her complaint to the ombudsman, she wrote:

I have been a neighbor, friend, caregiver, confidante, and "guardian" to the children for four years. Never has OCS even hinted at any complaints or change in living arrangements for these children. They placed the girls with me TWICE in two years. I have fostered the girls for a total of 15 months on a full time basis but I have known them and cared for them for nearly four years. Moving them is NOT in their best interests and would re-traumatize all of them, especially the baby.

I want OCS to leave these children in my care until are reunited with their biological family or until they are eligible for adoption.

I am the most stable person in their lives and they feel safe with me. Removing them will tear them not only from me but also our friends, family, neighbors, etc... I want to love and care for these three kiddos as long as OCS plans to keep them in foster care.

The Foster Mother discussed her complaint with Assistant Ombudsman Charlsie Huhndorf-Arend.

She explained that CSS Branin came to her home on October 30, 2009, with another worker who she later learned was Community Care Licensing Specialist (CCLS) Tom Hildreth from the Licensing Unit. She said that the OCS workers did not notify her then that the agency had received a protective services report or that they were at her home to conduct an investigation. The Foster Mother believed that the OCS workers had come only for a routine home visit. She said that she visited with the OCS workers and answered several of their questions while they were at her home. Later that evening, the Foster Mother said she was surprised when CSS Branin called her and told her that OCS had decided to remove the children from her home and place them in another foster home.

The Foster Mother provided the ombudsman with a copy of the Notice of Non-Emergency Placement Change that she had received from OCS.

The Foster Mother and the ombudsman investigator discussed the reasons for the removal as outlined in the Notice of Non-Emergency Placement Change. She acknowledged that the two oldest children slept in sleeping bags on the floor. The Foster Mother explained that the girls wanted to sleep in the same room with their younger sister and had chosen to set up sleeping bags in her room and to sleep there on the floor. She said that she thought the girls enjoyed sleeping in sleeping bags and seemed to make a game out of it. The Foster Mother said that there were beds available for the girls in the home and she denied depriving them of use of the beds.

In response to the allegation that she grabbed the children's ears, noses, chins, or pulled their ponytails when they misbehaved, the Foster Mother denied grabbing the children by their ears or noses. However, she acknowledged that she would sometimes take a hold of the girls' chins to turn their faces toward her when she reprimanded them. The Foster Mother also explained that she would sometimes gently pull or playfully tug on the girls' ponytails in order to get their attention or in horsing around with them, but that it was never done in an aggressive manner or to humiliate or hurt them.

In response to the allegation that she badmouthed the parents, the Foster Mother denied that she spoke to the girls negatively about their parents. However, she acknowledged that it was possible

they may have overheard her venting about their parents while she was on the telephone. As far as making comments about visitation, the Foster Mother said that the parents had cancelled or no-showed for several scheduled visits with the children. On these occasions, she said that she had driven the girls from Wasilla to Palmer for visitation only to learn that the parents would not be attending. The Foster Mother said that when this happened it is possible that she commented out of frustration in front of the girls that the drive had been a waste of time and gas.

The Foster Mother told the ombudsman investigator that she had done nothing to warrant removal of the children from her home. She said that even the children's therapist and GAL disagreed with OCS's removal decision and supported continued placement of the girls with her. The Foster Mother contended that removing the girls and placing them in another foster home would be detrimental to them and not in their best interests as they were attached to her and her family. She said that she would like to contest the decision in court. However, she was unsure if she had the standing to file a motion with the court because she was not a "party" to the children's Child In Need Of Aid (CINA) court case.

OCS Fails to Provide the Complainant with Notice of the Administrative Grievance Process Available to Contest the Removal Decision

Alaska Administrative Code 7AAC 54.228, Foster Parent Grievances, OCS CPS Policy and Procedure 6.1.5, Grievance Procedure, provides that a foster parent may grieve a decision by the agency to remove a foster child on a non-emergency basis by submitting a written request to the Regional Children's Services Manager (CSM) that the child not be removed from the foster home until the grievance is resolved.

In reviewing the Notice of Non-Emergency Placement Change provided by the Foster Mother, the ombudsman investigator noted that the notice did not provide information regarding a foster parent's right to grieve a decision by OCS to remove a foster child from a foster home on a non-emergency basis using the administrative grievance process, as established by regulation and set out in agency policy.

The ombudsman investigator discussed the foster parent grievance process with the Foster Mother. When asked if OCS had informed her either verbally or in writing about the process, she replied no. The Foster Mother said that she was unaware that this process was even available to her.

Later on November 6, 2009, the ombudsman investigator contacted OCS Supervisor Paula Jones to discuss the case. Ms. Jones went over the agency's concerns and reasons for the removal decision as outlined in the Notice of Non-Emergency Placement Change. She also pointed out that the Foster Mother and the children's mother had a very contentious relationship and the fact that the two lived across the street from each other created an additional challenge. Further, Ms. Jones said that it seemed that the Foster Mother did not support the permanency goal of reunification of the family. She supposed that all these factors were compromising the Foster Mother's "ability to be a good foster parent." Ms. Jones said, "The dynamics here are too close and it's too messy."

During the conversation, the ombudsman investigator asked Ms. Jones what OCS was doing to prepare the girls for the change in placement. She said that a slow transition was preferred and that it would be best if the agency, the children's therapist, the GAL and the Foster Mother could all work together as a "team." However, Ms. Jones said this would be difficult because the

parties were all “so splintered” over the removal decision. She said that the children’s therapist thought that the Foster Mother was “teachable and capable of being trained” and that the GAL was “completely advocating” for the foster parent. Ms. Jones said, “This has turned into a real power struggle.”

The ombudsman investigator also discussed with Ms. Jones that OCS had failed to provide the Foster Mother with information about the foster parent grievance process. She replied that OCS would “get that information to her then.”

Later, in discussions with the ombudsman investigator, CSS Branin acknowledged that she was not aware of the foster parent grievance process and, therefore, had not notified the Foster Mother of the process.

Throughout the month of November, GAL Bobbi Jones received numerous letters and e-mails of support from the Foster Mother’ friends and fellow church members attesting to her good character and abilities as both a mother and a foster parent. GAL Jones forwarded these e-mails to Children’s Services Manager Tim Bolles, Supervisor Fennisha Gardner, and CSS Branin for review.

OCS Removes Children and Places Them in Another Foster Home

On November 13, 2009, OCS held a meeting with Assistant Attorney General Shanna Johnston, GAL Jones, and Therapist Mary Lou Vanairsdale to discuss transition plan for the children. The ombudsman investigator noted that the meeting was not documented in ORCA or the CPS case file. The ombudsman investigator only learned of the meeting when CSS Branin mentioned it the following week in an e-mail exchange.

On Monday, November 16, 2009, OCS confirmed with the Foster Mother and first told the children that it planned on placing them in a new foster home that Friday.

On Thursday, November 19, 2009, the ombudsman investigator e-mailed CSS Branin and Supervisor Jones checking on the case status. In the e-mail, the ombudsman investigator asked when OCS planned on moving the children; what it had done to prepare them for the placement change; and if it had notified the Foster Mother of her right to appeal the agency’s removal decision using the foster parent grievance process. CSS Branin replied to the e-mail and wrote:

The girls will be moving tomorrow night. We had a meeting Friday with the AG, the GAL, and Denali Family Services, and us to finalize things. To prepare the girls for the move, I met with them on Monday evening and told them they are moving tomorrow [Friday]. On Tuesday at lunch time, they met with their therapist at Denali Family Service to talk it over with her. On Tuesday evening, the new foster parent went to Denali Family Services to meet the girls in a place where they feel safe and therapeutic support was available if necessary. Everyone reports that the meeting went well. On Friday, the new foster parent will be picking them up from Denali Family Services and the youngest from daycare and she will have them from then on.

... The foster parent was given a notice of change of placement on October 31, 2009, which includes all of the information they need to contest the change of placement [emphasis added].

The ombudsman investigator responded to Ms. Branin’s e-mail and inquired whether the children’s therapist supported the placement change. In addition, the ombudsman investigator

cited OCS CPS Policy and Procedure 6.1.5, Grievance Procedure, and again asked if the agency had notified the Foster Mother of her right to appeal the removal decision using the foster parent grievance process.

Ms. Branin wrote the following e-mail reply:

The letter does not mention that a foster parent can grieve a change in placement, and I was not aware of that procedure, so no, the foster parent was not informed by me of the right to grieve the decision [emphasis added].

Ms. Branin did not respond to the question regarding whether the therapist supported the placement change.

Later that day, the ombudsman investigator also contacted the Foster Mother. She stated that OCS had confirmed with her and notified the girls of the placement change just that Monday. The Foster Mother believed that OCS should have given the girls more than just a few days from the actual date of transfer to advise them of the move. She said that the children's therapist and GAL were opposing the placement change and she had thought that this would have delayed the move. Since learning that the move was scheduled for that Friday, the Foster Mother said, she had been very busy meeting with the girls' teachers and Girl Scout leaders, packing their belongings, and helping them to emotionally prepare for the move. The Foster Mother said that she had not yet filed a foster parent grievance or motion with the court to contest the removal decision.

Complainant Files Foster Parent Grievance

The next day, on November 20, 2009, the Foster Mother filed a written grievance with Children's Services Manager (CSM) Tim Bolles of the Southcentral Regional Office, which she hand-delivered, contesting the removal decision. She requested that the children remain in her foster home until a "proper and thorough investigation" had been conducted and the grievance was resolved. The grievance read:

I believe the caseworker made this decision in haste . . . Ms. Branin went forward with the move even though the girl's Guard ad Litem, therapist, and the agency that works with the girls were all opposed to moving them.

These children have psychological and emotional issues that are only now being addressed since they were taken into my care . . . I am the most stable and solid relationship these girls have ever had. OCS not only placed them with me twice, but they have lived across the street for nearly four years. They have been coming to my house to play and be taken care of for more than half of their lives. I started taking care of the baby when she was only days old.

There were no friends, neighbors, teachers, or coaches interviewed in reference to the claim. Ms. Branin did not consult with anyone who knows the girls and I or who knows about our relationship. As I told Ms. Branin on Monday, what she is doing is not only painful but it is unnecessary and cruel. The girls told her they do not want to leave. Moving them away from my home at this point will only result in another trauma for them.

For these reasons, and a hundred more, I am asking you to leave the girls in my care until this issue comes to a full resolution and a proper and thorough investigation can be completed.

Please do attend to this matter as it is extremely time-sensitive. My three foster girls are due to be moved this evening. I apologize for filing this grievance so late but Ms. Branin failed to inform me of my right to appeal her decision.

Later in the day on November 20, 2009, OCS removed the children from the Foster Mother's care and placed them in another foster home. CSM Bolles later told the ombudsman investigator that he had not received the Foster Mother's foster parent grievance until late that day and after the girls' transfer was already in progress.

OCS Initiates Internal Review in Response to Foster Parent Grievance

In response to the Foster Mother's foster parent grievance, CSM Bolles initiated an internal review of the agency's removal decision.

On November 20, 2009, CSM Bolles staffed the case with his supervisor, then-Child Protective Services Administrator Christy Lawton. (Ms. Lawton has since been named OCS Director.) Mr. Bolles documented in a typewritten case note only the fact that the case staffing was held. Mr. Bolles did not document what they discussed at the staffing.

On November 25, 2009, CSM Bolles interviewed the Foster Mother at her home. He documented the interview in condensed handwritten case notes. The notes reflect that CSM Bolles and the Foster Mother discussed the case history; the protective services report and allegations; the actions taken by the agency in the investigation of the report; the removal decision; and the children.

On November 27, 2009, CSM Bolles again staffed the case with Child Protective Services Administrator Christy Lawton. He again documented in a typewritten case note only the fact that the case staffing was held. CSM Bolles again did not document what they discussed.

On December 3, 2009, CSM Bolles discussed the case with CSS Branin. He documented in a typewritten case note only the fact the discussion took place. CSM Bolles again did not document what they discussed.

On December 4, 2009, CSM Bolles discussed the case with GAL Bobbi Jones. He documented the discussion in condensed handwritten case notes. The notes reflect that GAL Jones told CSM Bolles that she did not support the removal decision and was frustrated because the agency had not made efforts to preserve the placement. She expressed frustration with OCS's dismissal of her request early on to hold a team meeting to discuss the decision.

On December 10, 2009, CSM Bolles again discussed the case with GAL Bobbi Jones. He documented in a typewritten case note only the fact that the discussion took place. CSM Bolles again did not document what they discussed.

On December 11, 2009, CSM Bolles again staffed the case with Ms. Lawton. He documented in a typewritten case note only the fact that the case staffing was held. CSM Bolles did not document the details of what they discussed during the case staffing.

Also on December 11, 2009, the ombudsman investigator contacted CSM Bolles to inquire about the case status. CSM Bolles said that he was in the process of responding to the Foster Mother's foster parent grievance and reviewing the agency's change of placement decision.

CSM Bolles told the ombudsman investigator that OCS was considering placing the children back in the Foster Mother's foster home. However, he explained that he first needed to speak with the children's therapist, Mary Lou Vanairsdale, before making a decision. CSM Bolles said that he had left a phone message for Ms. Vanairsdale and was waiting on a return call.

CSM Bolles said that based on his review thus far, it appeared that the problems and concerns OCS had identified with the Foster Mother and her foster parenting style did not meet the threshold for removal of the children. Especially, he said, because the children's therapist had told agency staff that the Foster Mother was "teachable."

CSM Bolles stated that when he discussed the case with GAL Bobbi Jones, she told him that she did not support the removal decision. GAL Jones also told him that she was frustrated with OCS staff because they had denied her requests early on to have a meeting to discuss the reasons for the removal decision and explore placement preservation.

CSM Bolles acknowledged to the ombudsman investigator that OCS had failed to adequately investigate the protective services report prior to removing the children from the foster home. Specifically, he said OCS should have interviewed the Foster Mother's biological children and additional collateral sources.

CSM Bolles also commented that OCS staff should have been more "upfront" with the Foster Mother in the early stages of the investigation. He went on to explain that when agency staff went to the Foster Mother's home and interviewed her on October 30, 2009, they apparently did not inform her that the agency had received and was investigating a protective services report. Nor did they advise the Foster Mother of the allegations. In addition, Community Care Licensing Specialist Hildreth apparently did not identify himself to the Foster Mother while he was at the home.

Further, CSM Bolles acknowledged that OCS had failed to notify the Foster Mother of the foster parent grievance process. He said that OCS only rarely initiated non-emergency removals of children from foster homes and surmised that the assigned worker and supervisor in this case likely were not aware of the process.

CSM Bolles also said that the fact that the Foster Mother and the children's biological parents lived across the street from each other was likely an unhealthy dynamic. However, he said that the proximity of the parties was not now a good reason to remove the children because OCS had known this when the agency originally placed the children with the Foster Mother.

CSM Bolles said that his supervisor, Christy Lawton, wanted OCS to make a decision by the close of business that day as to whether the agency planned on placing the children back in the Foster Mother's home. He said:

I haven't heard from the therapist yet and I want to speak to her before I make that decision. . . . I really do want to weigh heavily on the therapist's view. I'm torn. We've got them in a new place and we can start getting them back involved in their activities . . . The foster parent [the Foster Mother] is like supermom in some ways – she had them involved in a lot of activities – but we've also had these reports. It's a struggle for me

because what's the best thing we can do for these kids. We may be entering another transition stage. By moving them again are we hurting their relationships and ability to attach?

On December 15, 2009, CSM Bolles was able to discuss the case with Therapist Mary Lou Vanairsdale. He documented the discussion in condensed handwritten case notes. The notes reflect that although Ms. Vanairsdale agreed with OCS that there are some concerns with regard to the Foster Mother's parenting style, she did not believe that these "little things" warranted removal of the children. Ms. Vanairsdale said that she believed these concerns could be addressed with the Foster Mother through redirection and additional training.

Ms. Vanairsdale also said that the children never disclosed to her that the Foster Mother made them sleep on the floor. Ms. Vanairsdale told CSM Bolles that the Foster Mother had provided "wonderful consistency" for the children and she did not believe that the Foster Mother was an abusive person. Ms. Vanairsdale said, "The thought of the children returning to [the Foster Mother] makes me happy." Ms. Vanairsdale recommended that if OCS intended to move the children back to the Foster Mother's foster home then the move should be done quickly.

OCS Places the Children Back in Complainant's Foster Home

On December 16, 2009, CSM Bolles wrote an e-mail to the following individuals: OCS Social Worker Becky Scales, Supervisor Fennisha Gardner, GAL Bobbi Jones, and AAG Shanna Johnston. He also copied the e-mail to Supervisor Bill Galic and Christy Lawton. The e-mail titled "Non-Emergency Placement Change," read:

After extensive review of the recent removal of the [Foster Children] from [the Foster Mother's] home, I have come to the conclusion that it is in their best interest to return to that placement. While the removal was acceptable and a safe option for the children given the concerns that were raised, I am of the opinion that the change of placement was not absolutely necessary. I am also of the opinion that the issues and concerns raised at the time of removal can be resolved with adequate training and support for the Foster Mother and her family.

I would like to initiate a Change of Placement Notice through Social Worker Becky Scales. Change of placement policy is that there needs to be a ten day notice for non-emergency change of placement. Today is the 16th, which would result in the children returning to the Foster Mother's care on the 26th or 27th of December. I am willing to waive the ten day notice if there is agreement by all parties so the children can return to [the Foster Mother's] home prior to Christmas thus being able to spend Christmas with the [the Foster Mother's] family. Apart from their parents, [the Foster Mother] is the most consistent person in the lives of the children.

AAG Shanna Johnston replied:

I did get your message through Anne yesterday and will take care of notifying . . . [the mother's attorney]. Is there a particular date that we plan to move them back? Becky can mail the father a letter. I'll talk to her about that.

CSM Bolles responded, "The children should be returned no later than the 23rd of December if at all possible."

GAL Bobbi Jones also replied to the e-mail the following morning and wrote:

Thank you, Tim, for your hard work on reviewing the placement change topic. I agree with your conclusion and am happy for the girls that they will be back with the [the Foster Mother's] family.

I hope the placement change can happen over the weekend or at least before Christmas.

For the girls, thanks again for your extra time and attention.

On December 17, 2009, the ombudsman investigator spoke again with CSM Tim Bolles and learned that OCS had decided to place the children back in the [the Foster Mother's] foster home. Mr. Bolles explained:

I've initiated returning the children to the [the Foster Mother's] home. I've had a conversation with the therapist and she feels it's the right thing to do – that it's in the children's best interests – that the foster mom was completely trainable with regard to the concerns we had – that it was in the children's best interests to be there in the home over the holidays – and that to do it in a week [and] not stretch it out...

I made the decision yesterday when I had a phone call back from the therapist. I wasn't going to do it without the therapists' input and knowing what the licensing investigation was going to be. Tom Hildreth of Licensing assured me that they have not completed the investigation but would not be removing her license. He said there are some concerns about the families being across the street from each other but that there didn't appear to be any abuse and no licensing violations...

I have spoken to [the Foster Mother] and told her what my findings were... She's actually relieved and she was in tears.

The therapist gave me a couple of different examples where [the Foster Mother] had to be redirected during therapy sessions - that she had some controlling behavior - and that [the Foster Mother] never displayed those behaviors and things again. It was normal parenting things like the foster parent was trying to control the children's behaviors. The therapist said she then redirected the foster parent and the foster parent was receptive. I talked to the foster parent and said that we needed to work on some issues. The therapist thought that the things that we had concerns about could be overcome.

I guess when this case was staffed originally the big picture wasn't there - and I learned I need to be asking the other side of the coin questions... Was removal necessary? No. Would it be better for children to be back with [the Foster Mother]? Yeah. Could the issues be resolved? Yeah. It's not like there was anything damaging to the children or safety threats - and some of the concerns have been addressed. That's what led me to the decision to place the children back into [the Foster Mother's]'s home.

The ombudsman investigator noted that if the decision was "staffed," as CSM Bolles indicated in this e-mail, the fact that an OCS staffing occurred and who participated in the staff meeting was not documented in the collective OCS case records.

On December 18, 2009, CSM Bolles, GAL Bobbi Jones, and Therapist Mary Lou Vanairsdale met with the children to tell them that they would soon be returning to the Complainant's foster home.

On December 21, 2009, OCS placed the children back in the Foster Mother's foster home.

OCS Concludes CPS Investigation

On February 16, 2010, Supervisor Mackenzie Frye staffed the case with CSS Branin. The ORCA case note entry documenting the supervisory staffing indicated that CSS Branin needed to interview the Foster Mother's biological children in order to complete the investigation. The ORCA case note read in part, "Worker encouraged to have this completed by the end of the week."

On March 1, 2010, CSS Branin interviewed the Foster Mother's seven-year-old daughter at her school. The ORCA case note documenting the contact read:

[L.B.] and [A.B.] argue a lot. [L.B.] blames stuff on other people. [Another child in the home] has a sweater that is really itchy. If [L.B.] is being bad, she has to wear the itchy sweater. An example would be if [L.B.] doesn't want to wear what [the Foster Mother] picks out for her. Other times, [L.B.] stands in the corner or goes to the garage. The garage door is locked, and [L.B.] bangs on it. One time, [L.B.] and [A.B.] were fighting, and [the Foster Mother] put them in the garage to work it out. [L.B.] was hitting [A.B.], [the Foster Mother] did nothing. Mom takes good care of the foster kids.

On March 17, 2010, CSS Branin also interviewed the Foster Mother's teen-aged sons at their school. CSS Branin documented the contacts in an ORCA case note entry which read:

The girls are doing well. [L.B.] gets really angry. She screams for 2 - 3 hours, pounds on the door, and throws things. She has to go to her room, and if she doesn't stop, she has to sit in the garage. The garage door isn't locked when she is in there. [The Foster Mother] will slap [Z.B.]'s hand. Yesterday, [the Foster Mother] slapped her hand because she put her foot in her rice. [The Foster Mother] grabs [L.B.]'s wrist. [The Foster Mother] doesn't tell the girls that [the Biological Mother] is a horrible person, just that she is doing things that are not good. [The Foster Mother] has had lots of bad experiences with men, she hates men and she is going to ruin those girls because of it.

OCS Investigative Summary

OCS concluded the CPS investigation of the protective services report in March 2010 and did not substantiate the allegation of mental injury of the foster children by the Foster Mother.

The "Investigation Summary" written by CSS Branin dated April 24, 2009, read:

What is the nature of the maltreatment?

PSR dated October 27, 2009, alleges that reporter has witnessed [the Foster Mother] telling the kids they are asking stupid questions. Reporter also verifies the information below about [L.B.] and what she has reported. Essentially, [the Foster Mother] is making the kids sleep on the floor, even though there are beds available. Parents are buying the kids stuff, clothes, backpacks, shoes, etc., and [the Foster Mother] is not letting them have it. The children disclose similar things, but Denali Family Services reports that [the Foster Mother] is "teachable" and that these issues have not negatively affected the children's mental health. Allegations of mental injury of [the Foster Children] are not substantiated against [the Foster Mother].

What surrounding circumstances accompany the maltreatment?

When the children were interviewed, they reported many concerns. They state that they have not been allowed to sleep in beds for most of the time they have been placed in this home. When this worker first became involved in the case early in 2009, [the Foster Mother] reported that she had given the children's beds away because their mother was supposed to bring their bunk beds over from their house, but this never happened. When this report was received in October, [the Foster Mother] obtained beds for the children, but they were not allowed to sleep in them. When asked about this, [the Foster Mother] stated it was because she did not have mattress covers for the beds. She is receiving therapeutic foster care rates for the two girls, and mattress covers can be purchased at Wal-Mart for less than \$10 each. The children report that [the Biological Mother] attempted to give [the Foster Mother] an air mattress, but [the Foster Mother] told her they didn't need it. [A.B.] reported that she doesn't like to sleep on the floor because it is cold sometimes and makes her back hurt. They have blankets or sleeping bags and pillows to use.

The children reported that [the Foster Mother] grabs their face or ears when she is mad at them and [L.B.] reported that it hurt really badly when [the Foster Mother] grabbed her earlobe. [The Foster Mother] has previously reported that [L.B.] gets severe infections in her earlobes when she wears earrings, so this may explain why it hurt [L.B.] more. When [L.B.] is having temper tantrums, which happens frequently, she is sent to the garage until she is done. When I interviewed the children on October 30, 2009, they reported that the last time [The Foster Mother] grabbed their ears was about three days previously. A service provider also reported that she saw [The Foster Mother] grab one of the girls by her ponytail and yank her backwards several feet, which [the Foster Mother] denies. The children report that when [the Biological Mother] gives them clothing or other things, [the Foster Mother] puts them in the garage or under the house and does not let them wear it. [The Foster Mother] says it is "junk." [The Foster Mother] reports that most of the things that [the Biological Mother] provides for the children are too small, ill fitting, or stained or torn.

[L.B.] very graphically reported motioning with her hands that she feels that [the Biological Mother] is "here" (putting one hand way out to one side), and that [the Foster Mother] is "here" (putting her other hand out on the other side), and that she is "right here" (in the middle). They report that if they make a comment about the differences between [the Foster Mother]'s home and their own home, [the Foster Mother] says, "I'm not the one who sits on the couch and does drugs and smokes." They also state that when they are going to visits, [the Foster Mother] complains about the drive and how it is a waste of time. They report that after visits, she asks them if [the Biological Mother] said anything about her.

When I talked to [the Foster Mother]'s children, they all reported that [the Foster Mother] takes good care of the foster children. However, one son reported that [the Foster Mother] hates men and she is going to ruin the girls because of it. Although at this time OCS is not substantiating abuse or neglect against these children, I am very concerned about the quality of care they receive from their therapeutic foster home and the dynamics between [the Foster Mother] and [the Biological Mother] are not healthy. [The Foster Mother's]

frustrations with [the Biological Mother] could easily be impacting her treatment of the children.

On April 26, 2010, six months after OCS had received the initial protective services report, the agency closed the CPS investigation in ORCA.

OCS CPS Policy and Procedure at 2.2.5, Conducting an Investigation; Assessing for Safety, states that a CPS investigation “must be completed within 30 days of assignment.”

OCS Licensing Investigation

In the investigation of this complaint, the ombudsman investigator requested and reviewed the OCS Licensing case file, which chronicled the actions taken by the Licensing Unit in its investigation of the protective services report.

On October 30, 2009, the Licensing Unit initiated its investigation when Community Care Licensing Specialist (CCLS) Tom Hildreth went with CSS Lori Branin and interviewed A.B. and L.B. at school. CCLS Hildreth documented these contacts in brief handwritten case notes in the Licensing case file.

CCLS Hildreth’s case notes documenting the interviews show that A.B. and L.B. said that they slept on the floor and the Foster Mother would not allow them to sleep on the bunk beds. The girls said that they did not want to sleep on the floor and described it as “cold” and “scratchy.”

A.B. and L.B. said that their parents brought clothes, shoes, and other items to them at visits. The girls said that most of this “stuff” was stored under the house at the Complainant’s foster home because “we have enough junk in the house.” They also said that the Foster Mother let them “get stuff out sometimes.” A.B. said that the Foster Mother “has threatened to garage sale stuff.”

Regarding discipline in the foster home, the girls said that the Foster Mother gave them “three strikes” before sending them to the corner for time out and Z.B. got time outs for wetting the bed. A.B. said that the Foster Mother would also take privileges away if they didn’t do their chores. L.B. said that the Foster Mother sometimes grabbed her ears “really hard” when she was in trouble. A.B. also said that the Foster Mother would grab her ears when she was in trouble, but “not hard.” L.B. said there was no yelling in the home and that the Foster Mother talked “smooth.”

In addition, A.B. and L.B. said that they had overheard the Foster Mother talking negatively about their parents and saying that their mom took drugs. The girls said that the Foster Mother would ask how visits with their parents went and if they said anything about her. The girls also said that the Foster Mother did not like driving them to visits in Palmer and would say it was a waste of gas if their parents were not there for the visit.

CCLS Hildreth and CSS Branin also interviewed the School Principal while at the school. CCLS Hildreth documented the contact in brief handwritten case notes in the Licensing case file. The notes indicate that the School Principal said the Foster Mother sometimes talked negatively about the biological mother but not in front of the children. He also said that L.B. was a “needy kid” who frequented the school nurse’s office.

The ombudsman investigator noted that CCS Branin did not document the interview with the School Principal in ORCA or the CPS case file.

CCLS Hildreth then went with CSS Branin to the Complainant's foster home. While at the home, they observed Z.B. and interviewed the Foster Mother. However, the Licensing case file did not contain case notes by CCLS Hildreth documenting these contacts. The fact that CCLS Hildreth visited the home and interviewed the Foster Mother on that day was mentioned in a subsequent e-mail he sent to the DFS Therapeutic Foster Care Program in early November 2009. The e-mail read in part:

This office has received two Protective Services Reports on the [Foster Mother] home. Last Friday, October 30, CSS Branin and myself went and interviewed the children and also [the Foster Mother].

CSS Branin has decided the children will be moved and has initiated the appropriate paperwork.

CCLS Hildreth also documented the home visit and interview with the Foster Mother a year later in a typed document he wrote on November 15, 2010, titled "Report of Investigation."

OCS case records show that the Licensing Unit did not take any further action to complete its investigation of the protective services report until one year later in November 2010.

On October 29, 2010, the ombudsman investigator sent an e-mail to Licensing Supervisor Julie Hubbard asking when the licensing investigation had been completed and requesting a copy of the final Report of Investigation. She replied to the e-mail several days later and advised the ombudsman investigator that licensing investigation and Report of Investigation had not yet been completed. Supervisor Hubbard wrote in part, "I can't provide a definite timeline for the investigation... I will ensure you receive a copy of the report once it's finalized."

On November 15, 2010, the ombudsman investigator requested a complete copy of the OCS Licensing case file for the Foster Mother for review. OCS provided a copy of the Licensing case file the following week.

The Licensing case file showed that CCLS Hildreth went to the Foster Mother's home on November 12, 2010, more than a year after receiving the initial protective services report, and interviewed her again regarding the allegations. CCLS Hildreth documented these contacts in brief handwritten case notes in the Licensing case file.

CCLS Hildreth's case notes documenting the interview show that he asked the Foster Mother about discipline in the foster home. The Foster Mother said that she used the "discipline cores" suggested by Denali Family Services. Primarily, she used the "123 Magic" counting method followed by time out or the loss of privileges if the behavior did not stop. She said that "no one is spanked" in her home. The Foster Mother indicated that time out in the garage had been suggested to her by the children's therapist, Mary Lou Vanairsdale. She noted that the garage was furnished. However, the Foster Mother said that she had not used this discipline practice for seven or more months. She also said that she did not recall the "rice incident" in which she had allegedly slapped Z.B.'s hand for spilling a bowl of rice.

OCS concluded the licensing investigation in mid-November 2010 and found that the Foster Mother had violated three licensing regulations.

The "Report of Investigation" written by CCLS Hildreth was issued on November 15, 2010. The report, a typed document that summarized the licensing investigation and findings, was contained in the Licensing case file. The report read:

BACKGROUND INFORMATION

The Department of Health and Social Services, Office of Children's Services, Foster Care Licensing ("Department") is the agency responsible for licensing Respondent. After receiving complaints(s) regarding Respondent, the Department initiated an investigation. This Report contains the results of that investigation. Pursuant to AS 47.32.140, Respondent may submit a written response to the Report of Investigation.

INVESTIGATION

A. Allegations

The Department conducted an investigation regarding the following allegations:

Allegations received September 4, 2009:

"Reporter states that [L.B.] informed them that [the Foster Mother] squeezes me a lot when I do something bad. [L.B.] described the squeeze to be on her ear lobe. [A.B.] stated this to be true as well. [A.B.] states that [the Foster Mother] does not squeeze her but squeezes her chin when she is in trouble."

Allegations received on October 27, 2009:

"Reporter has witnessed [the Foster Mother] telling the kids they are asking stupid questions. Reporter also verifies the info below about [L.B.], and what she has reported. Essentially, [the Foster Mother] is making the kids sleep on the floor, even though there are beds available. Parents are buying the kids stuff, clothes, backpacks, shoes, etc., and [the Foster Mother] is not letting them have it. [The Foster Mother] is refusing to be flexible in scheduling visits."

B. Summary of Investigation

the Foster Mother is licensed as a Foster Home and has been licensed since October 23, 2008. The Foster Mother is currently licensed through Denali Family Services as a Therapeutic Foster Home with a capacity of three. The current Biennial License expires October 22, 2011.

Ms. Dolores Branin, Children's Services Specialist II (CSS II), and Mr. Hildreth, Community Care Licensing Specialist I (CCLS I), interviewed [L.B.], [A.B.], [School Principal] and the Foster Mother on October 30, 2009.

[L.B.], foster child age 7, described sleeping arrangements in their bedroom as they have bunk beds but they are only allowed to sleep on the floor but the Foster Mother's biological daughter sleeps on the bed. [L.B.]'s bio-mom gave the Foster Mother a mattress but the Foster Mother said [A.B.] and [L.B.] don't need them. [L.B.] described sleeping on the floor as scratchy. [L.B.] also receives clothes, shoes, etc. from her bio-mom but the Foster Mother puts the belongings under the house. [L.B.] stated a lot of boxes in the crawl space are the foster kids'. [L.B.]'s bio-dad also gave backpacks but [L.B.] has not seen [them] for a long time. [L.B.] described the punishments and squeezes given by the Foster Mother as the three strikes before she goes to the corner. The Foster Mother also grabs her ear lobe and squeezes really hard but the last time was last year. [The Foster Mother] does talk smoothly and doesn't yell. [L.B.] said her sister [Z.B.], foster child age 2, gets time outs for peeing her bed. [L.B.] said "sometimes [the Foster

Mother] talks about her parents and does not say nice things.” [L.B.] stated that [the Foster Mother]’s children are not nice to her; they tease her and are mean to her. [L.B.] is too shy to tell [the Foster Mother]. [L.B.] feels like she is in-between [the Foster Mother] and her bio-mom.

[A.B.], foster child age 8, described visits with bio-parents as receiving a lot of stuff, including candy, clothes, stuffed animals, backpacks, but they are put in boxes under the house. [The Foster Mother] says they have enough junk but will allow stuff out sometimes. [The Foster Mother] has threatened to garage sale the foster children’s stuff. [L.B.] doesn’t do chores so [the Foster Mother] restricts her or takes privileges away. [A.B.] said her and [L.B.] have slept on the floor for about a year. There are bunk beds but [the Foster Mother] doesn’t want the kids to sleep on them. [A.B.] and [L.B.] have asked several times but [the Foster Mother] says no. [A.B.] doesn’t want to sleep on the floor because it is cold. They do have blankets and sleeping bags. [A.B.] says [the Foster Mother] uses three strikes then time-out for discipline. [The Foster Mother] has also grabbed [A.B.] by the ear lobe but it is not hard. Three days ago, [the Foster Mother] grabbed the ear lobes of [L.B.] when disciplining her, and had grabbed [A.B.]’s ear lobes 2 months prior when disciplining. [The Foster Mother]’s kids sometimes are not nice to [L.B.] but it is because [L.B.] gets mad about the boys taking her stuff. [A.B.] said that [the Foster Mother] has stated their bio-mom does drugs and smokes. [The Foster Mother] does not like to take the children to visits. [The Foster Mother] does not like going to Palmer when their bio-mom does not show up and is a waste of time and too much gas is used.

[The School Principal] . . . stated that [the Foster Mother] has talked negatively about the bio-mom of [A.B.] and [L.B.] with him but the children were not present. [The Foster Mother] is very active with the educational needs of the children at the school.

Ms. [Foster Mother] was interviewed at her home by CSS II Branin and CCLS I Hildreth. [The Foster Mother] describes the foster children are constantly blaming each other when they get in trouble. [L.B.] is constantly throwing fits. [The Foster Mother] describes she uses the 1-2-3 method then time-outs that are controlled by the timer on her stove. [The Foster Mother] said that both [L.B.] and [A.B.] when being confronted do not look directly at [the Foster Mother] when she directs “eyes on me” to the girls. [The Foster Mother] says she will put her hand on the girls’ chin and turn their face to have their eyes on [the Foster Mother]. [The Foster Mother] denied grabbing [L.B.] and [A.B.]’s ear lobes when disciplining as [the Foster Mother] said [L.B.] has ear infections. [The Foster Mother] is also careful about jewelry worn in the ear lobes as well. [The Foster Mother] has continued concerns about the girls sleeping on the beds that are provided as they do not belong to [the Foster Mother]. Both [L.B.] and [A.B.] have bedwetting issues and [the Foster Mother] has made them sleep on the floor outfitted with blankets and sleeping bags for bedding. CSS II Branin and CCLS I Hildreth said that plastic mattress covers can be purchased which are very inexpensive that would allow [L.B.] and [A.B.] to sleep on the mattresses. [The Foster Mother] did refuse an air mattress that the bio-mother was trying to provide for [L.B.] and [A.B.] to sleep on. [Z.B.] sleeps in a bedroom by herself. [Z.B.] is provided a playpen to sleep in and the bedroom is also furnished with a regular bed. [The Foster Mother] also stated [Z.B.] wets the bed. During the interview, [the Foster Mother] disclosed that [Z.B.] had spilled a bowl of rice and [the Foster Mother]

had slapped [Z.B.]’s hand. [Ombudsman note: The collective OCS case records reflect that it was one of the Foster Mother’s biological sons, not the Foster Mother, who disclosed the rice/hand-slapping incident to OCS in an interview with CSS Branin on March 17, 2010. CCLS Hildreth documented on November 12, 2010, that the Foster Mother told him that she did not recall the “rice incident” in which she allegedly slapped [Z.B..]

The Foster Mother also described and showed examples of the clothing that was provided by the bio-mom. The clothing was not new, was soiled or even when washed appeared to be soiled and there was so much clothing provided that there was not enough room in the dresser for the clothing. The dressers in the bedroom were overflowing with clothing. The excess clothing not used was placed in boxes and put in a storage area of the home. Additional items provided by the bio-mom such as stuffed animals, toys, etc. that could not be kept in the bedroom were also placed in storage but are made available to the children. [The Foster Mother] denied any plans to have garage sales to dispose of clothing or property of the foster children. [The Foster Mother] described how her own children have been inconvenienced by having to wait for more than 45 minutes at school for a ride while transporting and waiting for the foster children’s bio-mom at visitations. The visits are important said [the Foster Mother], but when the bio-mom who lives across the street from [the Foster Mother] fails to show up and is still home when they arrive back home, it is disappointing. [The Foster Mother] denied making any derogatory comments about the bio-mom in the presence of the children.

[Z.B.], foster child age 2, was not interviewed as part of this investigation due to her age.

On March 1, 2010, CSS II Branin interviewed [the Foster Mother’s] bio-child age The interview did not reveal information that was related to the allegations.

On March 17, 2010, CSS II Branin interviewed [the Foster Mother’s teen-aged sons] together. The interview supported [the Foster Mother] slapping [Z.B.]’s hand as a form of punishment. In addition, it was reported that [the Foster Mother] grabs [L.B.]’s wrist. [The Foster Mother] doesn’t tell the foster children their bio-mother is a horrible person, just that she is doing things that are not good.

CSS II Branin closed the PSR dated October 27, 2009, as not substantiated as there was no evidence to support the allegations of neglect or physical abuse against [the Foster Mother].

In summary, the Department finds [The Foster Mother] denied the foster children the use of appropriate sleeping arrangements even when the children’s mother offered to provide air mattresses and beds were available in the room. In addition, CSS II Branin and CCLS I Hildreth discussed the use of inexpensive mattress covers to protect the mattresses with [the Foster Mother]. [The Foster Mother] disclosed the use of corporal punishment which was also collaborated during the interview with J.D. and J. D.

C. Findings

Based on the aforementioned investigation, the Department has reasonable cause to believe that Respondent violated the following applicable statutes and/or regulations:

1. 7 AAC 50.435(c)² and 7 AAC 50.435(d)(3)³ as evidenced by [the Foster Mother] not allowing the foster children to sleep on beds provided for them due to incontinence at night; and
2. 7 AAC 50.435(f)⁴ as evidenced by [the Foster Mother] disclosing the use of corporal punishment.

ENFORCEMENT ACTION

Based upon the foregoing, the Department will not take any enforcement actions against Respondent.

Also on November 15, 2010, CCLS Hildreth issued a "Notice of Violation – Investigation" to the Foster Mother. The notice informed the Foster Mother of the licensing investigation findings, the requirement that she submit a Plan of Correction to the Department, and appeal rights. A copy of the notice was contained in the Licensing case file. The notice read in part:

BACKGROUND INFORMATION

After receiving complaints(s) regarding Respondent, the Department initiated an investigation. The results of this investigation are outlined in the Report of Investigation attached hereto and incorporated herein by reference...

Based upon its investigation, the Department has reasonable cause to believe that Respondent violated applicable statutes and regulations as identified in the Report of Investigation.

PLAN OF CORRECTION

Pursuant to AS 47.32.140, **Respondent must submit a Plan of Correction to the Department for approval no later than December 17, 2010.** Respondent's Plan of Correction must comply with the provisions of 7 AAC 10.9600. Once Respondent has cured the violations referenced in the Department's Report of Investigation, Respondent shall submit to the Department an allegation of compliance describing the action taken by Respondent to correct each violation and the date each violation was corrected. The Department may conduct a follow-up investigation or inspection to determine compliance. The Department may take enforcement action against the Respondent regardless of whether Respondent cures the violations referenced in the Report of Investigation.

ENFORCEMENT ACTION

² 7 AAC 50.435(c) reads, "A facility may not use discipline or a behavior management technique that is cruel, humiliating, or otherwise damaging to the child."

³ 7 AAC 50.435(d)(3) reads, "A child in care may not be punished for bedwetting or actions in regard to toileting or toilet training."

⁴ 7 AAC 50.435(f) reads, "Corporal punishment may not be used on a child in care." Regulation at 7 AAC 50.990(15) defines corporal punishment as, "[T]he infliction of bodily pain as penalty for a disapproved behavior; it includes shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling, or any other action that seeks to induce pain."

Based on the foregoing, the Department will not take any enforcement action(s) against Respondent.

APPEAL RIGHTS

Respondent may appeal the Department's decision to impose the above-referenced enforcement actions by filing a written request for a hearing on the Report for Hearing Form attached hereto and incorporated herein by reference within 15 days of receipt of this Notice.

On November 17, 2010, OCS sent the Report of Investigation and Notice of Violation to the Foster Mother via certified mail.

OCS Licensing Policy and Procedure at 590.4, Length of Investigation, states that the agency "will attempt to conclude" licensing investigations within 30 days. However, policy allows that complex investigations may exceed 30 days. The circumstances that may delay the completion of an investigation include involvement of CPS or law enforcement; multiple alleged violations; multiple alleged perpetrators; rural locations; unwillingness of a sexual abuse victim to disclose or identify a perpetrator; out-of-state witnesses; multiple victims or witnesses; need to conduct a physical examination; need to consult with experts or health care professionals; need to consult with the Attorney General's Office or the District Attorney's Office; and finally, conflicting workload priorities "as in a one-person office."

OCS initiated the licensing investigation of the protective services report in October 2009. The Licensing Unit did not take any further actions to investigate the report during the 12-month period of November 2009 through October 2010. OCS conducted a final interview with the Foster Mother and completed the licensing investigation in mid-November 2010, more than year after it had received the initial report.

OCS Form Does Not Include Notice of the Foster Parent Grievance Process

Alaska Administrative Code at 7 AAC 54.228, Foster Parent Grievances, and OCS CPS Policy and Procedure at 6.1.5, Grievance Procedure, provides that a foster parent may grieve a decision by the agency to remove a foster child on a non-emergency basis by submitting a written request to the Regional Children's Services Manager (CSM) that the child not be removed from the foster home until the grievance is resolved.

The Notice of Non-Emergency Placement Change (Form 06-9762) is the form letter used by OCS to notify foster parents and case parties of a proposed non-emergency placement change.

On October 30, 2009, OCS sent the Foster Mother and the case parties the Notice of Non-Emergency Placement Form notifying them of the agency's intended removal and placement change for the children. The notice did not include information regarding the foster parent grievance process.

In the investigation of this complaint, the ombudsman investigator contacted the Policy and Program Section at OCS Central Office and requested a copy of the standard Notice of Non-Emergency Placement Change (Form 06-9762) (See Appendix A) for review. Social Services Program Coordinator Gudrun Bergvall provided a copy of the standard form.

The boilerplate text in the standard form did not include notice of a foster parent's right to grieve the agency's removal decision using the foster parent grievance process. The investigator

confirmed with Social Services Program Coordinator Bergvall that this Form 06-9762 is the form letter used statewide by all agency staff to notify foster parents and case parties of a non-emergency placement change.

OCS Fails to Provide the Biological Parents with Notice of Change in Placement and Right to Request a Court Review Hearing

On December 16, 2009, CSM Bolles wrote an e-mail to GAL Bobbi Jones and AAG Shanna Johnston notifying them that OCS had decided to place the children back in the Foster Mother's foster home. CSM Bolles explained in the e-mail that OCS wanted to make the placement prior to Christmas and said the agency was willing to waive the 10-day notice period provided "there is agreement by all parties."

The OCS case records show that CSM Bolles notified the Foster Mother of the agency's decision that same day.

On December 17, 2009, OCS case records show CSM Bolles notified the children's current foster parent that the agency had decided to transfer the children back to the Complainant's foster home. OCS case records also indicate that CSM Bolles tried unsuccessfully to contact the children's biological mother.

The ORCA records do not reflect that OCS issued a Notice of Non-Emergency Placement Change on this occasion notifying all of the required individuals of the change of placement decision. The CPS and Licensing case files also do not contain a copy of any such notice.

The individuals that were given verbal notification of the agency's placement decision – the GAL and AAG - apparently did not oppose it and agreed to waive the 10-day notice period.

However, there is no evidence in the collective OCS case records showing that the agency notified the parents, either verbally or in writing, of its decision to place the children back in the Foster Mother's foster home prior to the actual placement change.

In fact, an ORCA case note written by Children's Services Specialist Kiplynn Roundtree on December 22, 2009, indicates that the parents were not notified of the children's change in placement until the day after it had occurred. The ORCA case note read:

This worker supervised a visit between [the Biological Mother] and her minor children. At the beginning of the visit, [the Biological Mother] was not aware that the children were returned to the prior foster parent, [the Foster Mother]. [The Biological Mother] was visibly upset. This worker had to remind [the Biological Mother] to remain calm for her visit and this worker would address the situation with the supervisor. The supervisor, Ms. Gardner, did address the situation with [the Biological Mother] and stated that her boss is the one who changed the placement back with the prior foster home and that decision would have to be addressed with Mr. Bolles. . . . The visit ended with the children going out to the lobby and Mr. Bolles meeting with [the Biological Mother] to address the placement concerns.

Alaska Statute requires that OCS provide advance notice of a non-emergency placement change to the child's parents or guardian, the other parties to the case, as well as to the child's foster parents or out-of-home caregiver and the child's tribe. AS 47.10.080, Judgments and Orders, at subsection (s) states:

The department may transfer a child, in the child's best interests, from one placement setting to another, and the child, the child's parents or guardian, the child's foster parents or out-of-home caregiver, the child's guardian ad litem, the child's attorney, and the child's tribe are entitled to advance notice of a nonemergency transfer. A party opposed to the proposed transfer may request a hearing and must prove by clear and convincing evidence that the transfer would be contrary to the best interests of the child for the court to deny the transfer. A foster parent or out-of-home caregiver who requests a nonemergency change in placement of the child shall provide the department with reasonable advance notice of the requested change.

The Alaska Rules of Court Child in Need of Aid Rules of Procedures defines a case party as “the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child's tribe which has intervened, and any other person who has been allowed to intervene by the court.” OCS uses the same definition in its policies and procedures.

Similarly, OCS CPS Policy and Procedure at 3.7, Change or Termination of a Placement/Trial Home Visit/Return Home, requires that the agency provide advance verbal notice to the child's parents or guardian, the other parties to the case, as well as to the child's foster parents or out-of-home caregiver and the child's tribe of a non-emergency placement change. In addition, policy requires that OCS provide advance written notice by sending out Form 06-9762 to the case parties and the foster parent and tribe. The policy states that OCS “will make every effort to provide notification at least 10 working days prior to the intended transfer.”

OCS Fails to Make Required Minimum In-Home Visits with Foster Children

OCS assumed emergency custody of the three children in fall of 2008. The ORCA and CPS case file records show that following their placement in foster care, OCS had in-home face-to-face contacts with the children on the following dates:

- December 1, 2008
- January 14, 2009
- March 12, 2009
- May 28, 2009
- July 27, 2009
- August 27, 2009
- October 30, 2009
- January 31, 2010
- November 12, 2010

OCS did not document any other face-to-face or home visits with the children in ORCA or the CPS and Licensing case files.

OCS CPS Policy and Procedure at 3.2.1, Minimum Contact Standards, requires the agency to conduct in-home visits with children placed in out-of-home care at least once every two months. The policy also requires agency staff to record all contacts in ORCA as a “Visitation Activity Note” on the date the visit is completed. If the required contact standards cannot be met, agency staff is then required to document the reasons why in ORCA.

During October 2008 through December 2010, OCS was required to visit the children in the home at least 12 times. Instead, the OCS case records show that the agency made only nine home visits with the children in that 25-month period.

STANDARDS

The ombudsman reviewed the following Statutes, Administrative regulations, and OCS policy and procedure. The full text of these standards is printed in Appendix A at the end of this report.

Alaska Statute (excerpts)

AS 47.10.080. Judgments and Orders Section (s)

AS 47.14.100. Powers and Duties of Department Over Care of Child

Alaska Administrative Codes (excerpts)

7 AAC 54.228. Foster Parent Grievances

(a), (b), (c)

Alaska Rules of Court

Child in Need of Aid, Rule 2(l) defines “party”:

OCS Policies and Procedures, Child Protective Services Manual (excerpts)

OCS Policy 2.2.5 Conducting an Investigation; Assessing for Safety

OCS Policy 2.2.9 Assessment of Protective Capacities, Needs, and Future Risk of Abuse and Neglect.

OCS Policy 3.7 Change or Termination of a Placement/Trial Home Visit/Return Home

OCS Policy 6.1.5 Grievance Procedure

OCS Policies and Procedures, Licensing Manual (excerpts)

CHAPTER 500 COMPLAINT INVESTIGATIONS

OCS Policy 510 RECEIVING AND RECORDING THE COMPLAINT

OCS Policy 510.1 Receiving the Complaint:

OCS Policy 530 DETERMINING THE INVESTIGATOR OR INVESTIGATION TEAM

OCS Policy 530.1 Joint Investigation of Reports of Harm in Licensed Facilities:

OCS Policy 540 PLANNING THE INVESTIGATION

OCS Policy 540.1 Requirements:

OCS Policy 550 NOTIFICATION OF FACILITY

OCS Policy 550.1 Required Notification:

OCS Policy 550.2 Coordination:

OCS Policy 550.3 Timing Factors:

OCS Policy 590 INVESTIGATION PROCEDURES

OCS Policy 590.1 OCS Policy

OCS Policy 590.2 Sources of Information.

OCS Policy 590.4 Length of Investigation

OCS Policy 595 DISPOSITION OF THE COMPLAINT

OCS Policy 595.1 Results of Notification Required.

OCS Policy 595.2 Actions.

OCS Policy 595.3 Complaint Investigation Report.

OCS Policy 595.4 Scale of Proof

- 100% COMPLETE, UNDISPUTED EVIDENCE
- BEYOND REASONABLE DOUBT
- CLEAR AND CONVINCING
- 50% PREPONDERANCE OF EVIDENCE
- PROBABLE CAUSE
- CREDIBLE EVIDENCE
- 0% NO EVIDENCE

ANALYSIS AND PROPOSED FINDINGS

AS 24.55.150 authorizes the Office of the Ombudsman to investigate administrative acts that the ombudsman has reason to believe might be contrary to law; unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unsupported by an adequate statement of reasons; performed in an inefficient or discourteous manner; or otherwise erroneous.

The ombudsman may investigate to find an appropriate remedy.

Under 21 AAC 20.210 the ombudsman evaluates evidence relating to a complaint against a state agency to determine whether criticism of the agency's actions is valid, and then makes a finding that the complaint is *justified*, *partially justified*, *not supported*, or *indeterminate*. A complaint is *justified* "if, on the basis of the evidence obtained during investigation, the ombudsman determines that the complainant's criticism of the administrative act is valid." Conversely, a complaint is *not supported* if the evidence shows that the administrative act was appropriate. If the ombudsman finds both that a complaint is *justified* and that the complainant's action or inaction materially affected the agency's action, the complaint may be found *partially justified*. A complaint is *indeterminate* if the evidence is insufficient "to determine conclusively" whether criticism of the administrative act is valid.

*

The ombudsman investigated the following allegations:

Allegation 1: Unfair – The Office of Children’s Services removed foster children from the complainant’s home without considering all relevant factors.

Allegation 2: Unreasonable – The Office of Children’s Services failed to notify the complainant of the administrative grievance process available to her to contest the non-emergency removal of foster children from her home.

Allegation 3: Contrary to Law – OCS failed to provide the parents of children in state custody with advance notice of a non-emergency placement change and their right to request a court review hearing on the decision in accordance with AS 47.10.080.

Allegation 4: Unfair – OCS failed to provide the parents of children in state custody with advance written notice of a non-emergency placement as required by policy.

Allegation 5: Unreasonable and Performed Inefficiently – OCS failed to conduct thorough and timely child protective services and licensing investigations.

Allegation 6: Performed Inefficiently – OCS failed to meet the required minimum contact standards established in policies and procedures for home visits with children in foster care placement.

The Ombudsman Policies and Procedures Manual at 4040(3) discusses and defines “unfair”:

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;
- ...
- (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;
- ...
- (F) the agency applied standards or principles inconsistently in making a decision.

*

The Ombudsman Policies and Procedures Manual at 4040(2) states an administrative act is “unreasonable” if:

- (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.

*

The Ombudsman Policies and Procedures Manual at 4040(1) defines "contrary to law." The relevant portion of the definition is:

- (A) Failure to comply with statutory or regulatory requirements.

*

The relevant portions of the Ombudsman Policies and Procedures Manual at 4040(14) discuss the statutory phrase "performed inefficiently":

"Performed inefficiently" generally covers instances of unreasonable agency delay and ineffectual performance.

- (A) The timeliness of an administrative act is sometimes an issue. An agency performed inefficiently when an administrative act exceeded:
 - (a) a limit established by law (statute, regulation, or similar enacted source) or
 - (b) a limit or a balance established by custom, good judgment, sound administrative practice, or decent regard for the rights or interests of the person complaining or of the general public.

* * *

PROPOSED FINDING ON ALLEGATION 1

Allegation 1: Unfair – The Office of Children's Services removed foster children from the complainant's home without considering all relevant factors.

Alaska Statute empowers OCS with the duty and responsibility of determining the placement of a child in state custody. This authority includes the discretion to transfer a child from one placement setting to another, provided the placement change does not appear to be contrary to the best interests of the child.

OCS CPS Policy and Procedure at 3.7, "Change or Termination of a Placement / Trial Home Visit / Return Home," establishes guidelines for decision-making and implementing placement changes. The policy states that moving a child from one caregiver to another should only be explored "when it appears that the placement is not meeting the child's needs or when the care provider requests the child's removal." When change to a child's placement is being considered or is required, policy provides the following instructions:

1. When possible, a team conference between the worker, the care provider, and the social work supervisor is to be held to discuss why moving the child is being considered. (The child and other relevant persons, i.e., parents, guardians ad litem, treatment professionals, tribe, may be included if appropriate).
2. During the team conference, other actions and options that could be taken to prevent the movement of the child will be explored and considered.

3. If no other option can be found, the child and the care providers are prepared for the move as described in procedure A of this section, and procedures A and C of section 3.6.1 Placement Preparation.
4. The child, the child's parents or Indian custodian or guardian, and the child's foster parents or out-of-home caregiver, GAL, attorney, and tribe are entitled to advance notice of a non-emergency transfer. The worker will notify the parties by sending out a Notice of Non-Emergency Transfer (Form 06-9762), and will make every effort to provide notification at least ten working days prior to the intended transfer.
- ...
6. The worker will document in a case note in ORCA:
 - a. the reasons for the move;
 - b. what other options were considered; and
 - c. which parties were notified and the notification dates.

Based on the ombudsman's review, OCS failed to follow policy guidelines in the placement change decision-making process. OCS did not convene a team conference of the relevant individuals to discuss the underlying issues and explore options to prevent the removal of the children from the foster home. OCS also did not hold a face-to-face meeting between the Foster Mother and the assigned workers and supervisors to address the issues and mitigate the reasons for the proposed placement change.

The collective OCS case records also show that the children's GAL and therapist both opposed the decision of the agency to remove the children from the the Complainant's foster home.

The evidence suggests that CSS Branin unilaterally made the final decision to remove the children from the Complainant's foster home on a non-emergency basis and transfer them to another foster home. CSS Branin made the decision on the same day that she initiated the CPS investigation and prior to thoroughly investigating the allegations. At the conclusion of the CPS investigation, OCS did not substantiate the allegations of mental injury of the foster children by the Foster Mother.

After CSM Bolles investigated the complainant's grievance, he told the ombudsman investigator that the OCS concerns and the issues it had identified did not warrant a change in placement. CSM Bolles stated that OCS did not carefully consider all relevant information in making the decision prior to implementing the placement change. He also acknowledged that OCS failed to adequately investigate the protective services report.

CSM Bolles reversed the decision and OCS placed the children back in the the Foster Mother's foster home. CSM Bolles' statements, the fact that the agency placed the children back in the home within one month of their removal, as well as opposition of the children's GAL and therapist to the removal further support that the OCS decision was flawed and the agency mishandled the decision-making process.

It is disconcerting that OCS also seemed to give no consideration to the potential emotional impact on the children associated with a change in placement. These children had been diagnosed and were being treated for Severe Emotional Disturbance (SED). Separation from an attachment figure and changes in placement for any child, especially a child with SED, are

traumatic and may have serious negative consequences for the child's sense of safety and well-being as well as their ability to form future relationships. Under the circumstances of this case, OCS had a responsibility to attempt to stabilize and preserve the placement prior to making the decision to remove the children from their long-term foster care provider. Yet, there is no evidence in the collective OCS case records that the agency made any such efforts.

The ombudsman recognizes that OCS has the statutory discretion to determine the placement of a child in state custody. What the ombudsman reviewed in this case was the process by which OCS made the change in placement decision, the soundness of that decision, and whether the agency followed policy guidelines in the decision-making process.

The ombudsman also recognizes that the allegations made in the protective services report were concerning to OCS and required investigation. However, the allegations did not indicate a risk of imminent harm to the children's safety, and OCS screened it as priority 3, the lowest priority.

Based on the evidence, OCS failed to follow best practice and policy guidelines in making the placement change decision. There is no indication in the case records that OCS held a team conference of all the relevant individuals prior to making the decision. OCS also did not allow the foster care provider a reasonable opportunity to respond to the allegations prior to implementing the placement change. In addition, OCS apparently disregarded the opinions of both the children's GAL and their therapist about the proposed change in placement.

There also is no indication in the case records that OCS considered or made attempts to preserve the placement, or took action to prevent the placement disruption. OCS clearly mishandled the decision-making process in this case. This was especially evidenced by the admissions made by CSM Bolles to the ombudsman investigator and the fact that OCS reversed its original decision and placed the children back in the home.

Under ombudsman standards, an administrative act was unfair if a person with an interest in the decision is not given an opportunity to be heard, if the decision was not made on the record, if the decision failed to take into account all the available evidence, or if the agency applied its standards inconsistently. Each of these criteria can be applied to the evidence bearing on this allegation. For these reasons, the ombudsman proposed to find this allegation justified.

AGENCY RESPONSE TO FINDING ON ALLEGATION 1

OCS Response: The Office of Children's Services did not dispute the finding in Allegation 1.

Because OCS did not dispute the finding in Allegation 1, this allegation will be closed as justified.

* * *

PROPOSED FINDING ON ALLEGATION 2

Allegation 2: Unreasonable – The Office of Children's Services failed to notify the complainant of the administrative grievance process available to her to contest the non-emergency removal of foster children from her home.

Alaska Administrative Code at 7AAC 54.228 "Foster Parent Grievances," and OCS CPS Policy and Procedure at 6.1.5 "Grievance Procedure," provide that a foster parent may grieve a decision by the agency to remove a foster child on a non-emergency basis by submitting a written request

to the Regional Children's Services Manager [CSM] and that the child not be removed from the foster home until the grievance is resolved.

The Notice of Non-Emergency Placement Change (Form 06-9762) is the form letter used by OCS to notify foster parents and case parties of a proposed non-emergency placement change.

On October 30, 2009, OCS sent the Foster Mother and the case parties the Notice of Non-Emergency Placement Form notifying them of the agency's intended removal and placement change for the children. The notice did not include information regarding a foster parent's right to grieve a decision by OCS to remove a foster child from a foster on a non-emergency basis.

The ombudsman investigator confirmed with the Foster Mother that OCS had not given her verbal notice of the foster parent grievance process either. She only became aware of the process through discussion with the Office of the Ombudsman.

The ombudsman investigator also confirmed with the OCS assigned worker, CSS Branin, that she had not provided notice of the foster parent grievance process to the Foster Mother. In fact, CSS Branin acknowledged in an e-mail to the ombudsman investigator that she had no knowledge of the process. The e-mail read in part:

The letter does not mention that a foster parent can grieve a change in placement, and I was not aware of that procedure, so no, the foster parent was not informed by me of the right to grieve the decision.

Likewise, Supervisor Jones also indicated that she was not aware of the grievance process for foster parents challenging a non-emergency removal of foster children.

CSM Bolles acknowledged that OCS did not provide notice of the foster parent grievance process to the Foster Mother. In speaking with him, CSM Bolles surmised that the worker and supervisor in this case were not aware of the process because the agency has only rarely initiated non-emergency removals of children from foster homes.

The standard Notice of Non-Emergency Placement Change (Form 06-9762) (See appendix) contains boilerplate text that does not include notice of the foster parent grievance process. Social Services Program Coordinator Bergvall stated that Form 06-9762 is the standard form letter used by all agency staff throughout the state to notify foster parents and case parties of a non-emergency placement change.

The Notice of Non-Emergency Placement Change, however, does state that case parties, adult family members, or adult family friends have a right to request a review hearing if they oppose a change of placement proposed by the department. In an effort to determine whether the review hearing process applied and was available to foster parents, the ombudsman investigator reviewed relevant Alaska law.

AS 47.10.080 "Judgments and Orders" at subsection (s) requires OCS to provide advance notice of a non-emergency placement change to the child's parents or guardian, to the other parties to the case, as well as to the child's foster parents or out-of-home caregiver and the child's tribe. The statute stipulates that "a party" opposed to the proposed transfer by the Department may request a review hearing. The statute reads in part:

The department may transfer a child, in the child's best interests, from one placement setting to another, and the child, the child's parents or guardian, the child's foster parents

or out-of-home caregiver, the child's guardian ad litem, the child's attorney, and the child's tribe are entitled to advance notice of a nonemergency transfer. *A party opposed to the proposed transfer may request a hearing* and must prove by clear and convincing evidence that the transfer would be contrary to the best interests of the child for the court to deny the transfer. A foster parent or out-of-home caregiver who requests a nonemergency change in placement of the child shall provide the department with reasonable advance notice of the requested change. [Emphasis added]

Similarly, the Alaska Court Child in Need of Aid (CINA) Rule 19.1 also states that “a party” opposed to the proposed transfer by the Department may request a review hearing. The rule reads:

(b) **Placement Transfer.** At any time in a proceeding, *a party* who is opposed to the Department transferring a child from one placement to another may move the court for a review hearing at which the requesting party must prove by clear and convincing evidence that the transfer would be contrary to the best interests of the child. In the case of an Indian child, the court must consider the placement preferences as set forth in 25 U.S.C. § 1915 [emphasis added].

The Alaska Court CINA Rules of Procedures defines a case party as “the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child's tribe which has intervened, and any other person who has been allowed to intervene by the court.” OCS adopted the same definition in its policies and procedures.

Alaska CINA statutes use the terms “adult family member” and “family friend” when discussing out-of-home placement preferences for children in state custody.

AS 47.14.100 “Powers and Duties of Department Over Care of Child” at subsection (e) states that when a child is removed from a parent’s home, the department shall place the child, in the absence of clear and convincing evidence of good cause to the contrary, in the following order of preference:

- (A) an adult family member;
- (B) a family friend who meets the foster care licensing requirements established by the department;
- (C) a licensed foster home that is not an adult family member or family friend;
- (D) an institution for children that has a program suitable to meet the child’s needs.

Subsection (m) of this statute provides that if the department denies the request of an adult family member or family friend for placement of a child in their home, then the department must inform the family member or family friend of the basis for the denial and the right to request a review hearing of the decision.

AS 47.10.990, Definitions, defines “adult family member”:

- (1) "adult family member" means a person who is 18 years of age or older and who is
 - (A) related to the child as the child's grandparent, aunt, uncle, or sibling; or
 - (B) the child's sibling's legal guardian or parent;

AS 47.14.100 describes a “family friend” as an adult who is a friend of the child’s family and meets the foster care licensing requirements established by the department. Alaska CINA statutes

do not define the term “family friend.” The term is found only in AS 47.14.100 and is used in discussing out-of-home placement preferences for children in state custody.

Based on the ombudsman’s reading of relevant Alaska law, a foster parent is not a “case party” or “legal party” to a CINA case. A foster parent may only achieve “party” status by moving to intervene in the case and by the court allowing the intervention. Therefore, as a non-party, a foster parent is not entitled to the right to request a review hearing to oppose a placement change proposed by the agency. Under normal circumstances, the only redress available to a foster parent to contest the non-emergency removal of a foster child from their home is through the foster parent grievance process. Alternatively, the court in its discretion may grant a foster parent’s request for a review hearing if they petitioned the court as a non-party.

In the investigation of this complaint, the ombudsman investigator contacted Community Relations Manager Mike Lesmann to discuss the information provided in the notice section of the Notice of Non-Emergency Placement Change (Form 06-9762). Specifically, the ombudsman investigator questioned the appropriateness of the referral for foster parents to the review hearing process and omission of information regarding the foster parent grievance process. Mr. Lesmann replied:

Foster parents are not parties to a case and as such don’t have an independent right to contest a placement change. However, the notice contemplates a situation where an adult family member or ‘family friend’ may request placement of children after they have already been transferred from that home. Adult family members and family friends that request placement and are denied, do have a right to a hearing. So adult family members and family friends are included in the notice to avoid a situation where children are removed from a home, then a hearing is held on a denial of a request for placement and the court finds that the children should return to the placement. As we know, this foster parent is not a relative to these children; whether or not she [the Foster Mother] would constitute a family friend would be an issue for the parties and the court at a hearing.

Therefore, the information contained in the Notice of Non-Emergency Placement Change (Form 06-9762), is erroneous in that it misdirects foster parents to the review hearing process and altogether omits information about the foster parent grievance process.

This is indicative of a systemic problem within OCS. By failing to provide proper notice to affected foster parents statewide of their right to contest an agency decision to remove a foster child from their home on a non-emergency basis using the administrative grievance process, OCS has effectively deprived these foster parents of the opportunity to be heard.

The ombudsman investigation revealed that OCS failed to notify the Foster Mother of the administrative grievance process available to her to contest the non-emergency removal of foster children from her home.

In addition, the Notice of Non-Emergency Placement Change Form (06-9762) used routinely by the agency statewide to notify case parties and foster parents of a non-emergency change in placement does not include information regarding the foster parent grievance process. This suggests that OCS has routinely failed to provide notice to foster parents statewide of their grievance rights.

Based on the evidence, the ombudsman proposed to find the allegation that OCS failed to notify the complainant of the administrative grievance process justified.

AGENCY RESPONSE TO FINDING ON ALLEGATION 2

OCS Response: The Office of Children's Services did not dispute the finding in Allegation 2.

Because OCS did not dispute the finding in Allegation 2, this allegation will be closed as justified.

* * *

PROPOSED FINDINGS ON ALLEGATIONS 3 AND 4

Allegation 3: Contrary to Law – OCS failed to provide the parents of children in state custody with advance notice of a non-emergency placement change and their right to request a court review hearing on the decision in accordance with AS 47.10.080.

Allegation 4: Unfair – OCS failed to provide the parents of children in state custody with advance written notice of a non-emergency placement as required by policy.

As discussed above, Alaska Statute 47.10.080 "Judgments and Orders," at subsection (s) requires that OCS provide advance notice of a non-emergency placement change to the child's parents or guardian, the other parties to the case, as well as to the child's foster parents or out-of-home caregiver and the child's tribe.

The Alaska Court Child in Need of Aid Rules of Procedures defines a case party as "the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child's tribe which has intervened, and any other person who has been allowed to intervene by the court." OCS uses the same definition in its policies and procedures.

Similarly, OCS CPS Policy and Procedure at 3.7 "Change or Termination of a Placement/Trial Home Visit/Return Home," requires that the agency provide advance verbal notice to the child's parents or guardian, the other parties to the case, as well as to the child's foster parents or out-of-home caregiver and the child's tribe of a non-emergency placement change. In addition, policy also requires that OCS provide advance written notice by sending out OCS Form 06-9762 to the case parties and the foster parent and tribe. The policy states that OCS "will make every effort to provide notification at least ten working days prior to the intended transfer."

On December 16, 2009, CSM Bolles wrote an e-mail to GAL Bobbi Jones and AAG Shanna Johnston notifying them that OCS had decided to place the children back in the Foster Mother's foster home. CSM Bolles explained in the e-mail that OCS wanted to make the placement prior to Christmas and said the agency was willing to waive the 10-day notice period provided "there is agreement by all parties."

The OCS case records show that CSM Bolles notified the Foster Mother of the agency's decision that same day.

On December 17, 2009, the OCS case records show that CSM Bolles notified the children's current foster parent that the agency had decided to transfer the children back to the the Foster Mother's foster home.

Also that day, the OCS case records indicate that CSM Bolles tried unsuccessfully to call the children's biological mother.

There is no evidence in the collective OCS case records showing that the agency provided advance verbal notice to the children's biological parents of its decision to place the children

back in the Foster Mother's foster care prior to the actual change in placement, as required by policy and statute. In addition, there is no evidence that OCS provided advance written notice by sending Form 06-9762 to the biological parents, as well as the other case parties and the foster parent, of the placement change, as required by policy.

In fact, an ORCA case note written by Children's Services Specialist Kiplynn Roundtree on December 22, 2009, reveals that the parents were not notified of the children's placement change until the day after it had occurred. The ORCA case note read:

This worker supervised a visit between [the Biological Mother] and her minor children. At the beginning of the visit, [the Biological Mother] was not aware that the children were returned to the prior foster parent, [the Foster Mother]. [The Biological Mother] was visibly upset. This worker had to remind [the Biological Mother] to remain calm for her visit and this worker would address the situation with the supervisor. The supervisor, Ms. Gardner, did address the situation with [the Biological Mother] and stated that her boss is the one who changed the placement back with the prior foster home and that decision would have to be addressed with Mr. Bolles. . . . The visit ended with the children going out to the lobby and Mr. Bolles meeting with [the Biological Mother] to address the placement concerns.

The ombudsman recognizes the special circumstances that prompted Mr. Bolles to approve the speedy change of placement for the children after he determined their removal from the complainant's home had been inappropriate. He wanted to return them prior to the Christmas holiday and return them to some normalcy.

However, the ombudsman investigation revealed that OCS acted contrary to statute and policy in failing to provide the required advance verbal and written notice to the biological parents of the children's non-emergency placement change. In failing to provide proper notice, OCS denied the biological parents' right to be heard and participate in the decision-making process as well as their right to contest the placement change.

Therefore, the ombudsman proposed to find allegations 3 and 4 justified.

AGENCY RESPONSE TO FINDINGS ON ALLEGATIONS 3 AND 4

OCS Response: The Office of Children's Services did not dispute the findings in Allegations 3 and 4.

Because OCS did not dispute the findings in Allegations 3 and 4, these allegations will be closed as justified.

* * *

PROPOSED FINDING ON ALLEGATION 5

Allegation 5: Unreasonable and Performed Inefficiently – OCS failed to conduct thorough and timely child protective services and licensing investigations.

OCS policies and procedures establish guidelines for investigating reports of suspected child abuse or neglect. OCS CPS Policy and Procedure at 2.2.5 "Conducting an Investigation; Assessing for Safety," stipulates that investigations "must be completed within 30 days of assignment."

Similarly, OCS Licensing Policy and Procedure at 590.4 “Length of Investigation,” states that the agency “will attempt to conclude” licensing investigations within 30 days.” The policy allows that complex investigations may exceed 30 days under certain circumstances.

OCS received the protective services report on October 27, 2009. The CPS and licensing investigations were initiated on October 30, 2009. On that day, CSS Branin and CCLS Hildreth conducted face-to-face interviews with the children, the Foster Mother, and the School Principal as a collateral contact. On November 4, 2009, CSS Branin contacted collateral witness Mary Lou Vanairsdale, the children’s therapist, as part of the CPS investigation.

In December 2009, OCS removed the children from the Complainant’s foster home. OCS then received a foster parent grievance from the Complainant contesting the agency’s decision to remove the children from her home. In response, OCS initiated an internal review of the agency’s removal decision and placed the children back in the Foster Mother’ home later that month.

In the meantime, OCS did not take any additional actions in the CPS investigation until early March 2010 when CSS Branin conducted interviews with the Foster Mother’ biological children. Interviews by OCS with other children living in the home during the early stages of an investigation are necessary to assess child safety as well as to gather information needed to determine the validity of the allegations. OCS delayed nearly five months in interviewing the foster children.

OCS concluded the CPS investigation of the protective services report in late March 2010 and did not substantiate the allegation of mental injury of the foster children by the Foster Mother. The OCS CPS investigation remained open for more than five months. OCS clearly failed to conclude its CPS investigation within the 30-day time frame required by policy.

OCS also did not take any additional actions in the licensing investigation until much later. On November 12, 2010, CCLS Hildreth went to the Foster Mother’ home and again interviewed her regarding the protective services report allegations.

OCS concluded the licensing investigation in mid-November 2010, nearly 13 months after it received the protective services report, and found that the Foster Mother had violated three licensing regulations. OCS clearly failed to conclude the licensing investigation within the 30-day time frame established by policy. Although policy allows for complex investigations to exceed 30 days under certain circumstances, the ombudsman has determined that the conditions provided for in policy that would allow for an extension of the 30-day timeframe did not apply in this case.

CPS Policy and Procedure 2.2.5 “Conducting an Investigation; Assessing for Safety,” also requires the completion of safety assessment activities in the course of investigating a protective services report to determine if present danger exists. After a worker makes initial contact with the alleged perpetrator and children, the worker is required to complete the Safety Assessment Form.

The purpose of the initial safety assessment is to evaluate whether the child is in immediate danger that calls for protective intervention, and to determine what interventions may be necessary to assure the child’s safety. The safety assessment is made after conducting interviews with the child, caregivers, and collateral sources in order “to make an accurate assessment of the child’s safety.” The safety assessment involves several steps including identifying the behavior

or conditions that may be associated with a child being in danger of serious harm, determining if protective interventions are necessary, and then assessing this information to determine if the child is in present or impending danger. The safety assessment information, activities, and decisions must then be documented in ORCA by completing the Safety Assessment Form.

There is no evidence in the collective OCS case records showing that the agency conducted a safety assessment of the children or completed the Safety Assessment Form during the course of the CPS investigation, as required by policy.

The ombudsman investigation revealed that OCS failed to conduct thorough and timely CPS and licensing investigations. OCS also failed to conduct a safety assessment of the children and to complete the Safety Assessment Form. This was inefficient, no doubt, but it also undermined the purpose of investigating reports, namely, to ensure that children are living in safe conditions. It also subjected the alleged perpetrator to the unnecessarily prolonged stigma of being subject of an investigation long after it should have been concluded. Therefore, the ombudsman proposed to find this allegation justified.

AGENCY RESPONSE TO FINDING ON ALLEGATION 5

OCS Response: The Office of Children's Services did not dispute the finding in Allegation 5.

Because OCS did not dispute the finding in Allegation 5, this allegation will be closed as justified.

* * *

PROPOSED FINDING ON ALLEGATION 6

Allegation 6: Unreasonable and Performed Inefficiently – OCS failed to meet the required minimum contact standards established in policies and procedures for home visits with children in foster care placement.

OCS policies and procedures establish standards for worker home visits with children placed in foster care. OCS CPS Policy and Procedure at 3.2.1 "Minimum Contact Standards," requires the agency to conduct in-home visits with children placed in out-of-home care at least once every two months. Regular home visits by workers with children are critical to ensuring child safety and well-being and sufficiently monitor the stability of the placement.

The policy also requires agency staff to record all contacts in ORCA as a "Visitation Activity Note" on the date the visit is completed. If the required contact standards cannot be met, workers are required to document the reasons why in ORCA.

In this case, OCS assumed emergency custody of the children in the fall of 2008. The ORCA and CPS case file records show that following their placement in foster care, OCS had in-home face-to-face contacts with the children on the following dates:

- December 1, 2008
- January 14, 2009
- March 12, 2009
- May 28, 2009
- July 27, 2009
- August 27, 2009
- October 30, 2009

- January 31, 2010
- November 12, 2010

OCS did not document any other face-to-face or home visits with the children in ORCA or the CPS and Licensing case files.

During October 2008 through December 2010, OCS was required to visit the children in the home at least 12 times. Instead, the OCS case records show that the agency made only nine home visits with the children in that 25-month period. Even more troubling is the fact that OCS made only two home visits with the children after it had received protective services reports alleging abuse of the children by the foster parent.

The ombudsman investigation revealed that OCS failed to comply with the standards for worker home visits with children placed in foster care as established in policies and procedures. In addition, OCS did not document the reasons why the contact standards were not met in this case, as required by policy. In other circumstances this might have prolonged the children's exposure to risk.

For these reasons, the ombudsman proposed to find this allegation justified.

AGENCY RESPONSE TO FINDING ON ALLEGATION 6

OCS Response: The Office of Children's Services did not dispute the finding in Allegation 6.

Ombudsman Response: Because OCS did not dispute the finding in Allegation 6, this allegation will be closed as justified.

* * *

The ombudsman proposed to find each allegation to be justified and the agency did not object to the proposed findings; therefore this complaint will be closed as justified.

* * *

Similar OCS Complaint

In addition to this complaint, the Office of the Ombudsman also recently received a similar complaint from a foster parent that included the failure of OCS to provide notice of the foster parent grievance process, which is further indication of a systemic problem within the agency. A summary of that OCS complaint is as follows:

A2010-0530

Allegation: The Office of Children's Services (OCS) failed to provide the complainants notice of a non-emergency placement change for a foster child in their care and also did not advise the complainants of their right to contest the removal decision as foster parents using the administrative grievance process.

Closing Summary: OCS failed to notify the complainants within the required timeframes of the non-emergency change of placement of a foster child in their care.

Alaska Statute requires advance written notice to foster parents of the placement change. OCS policy states that the worker will make every effort to provide notice at least 10 working days prior to the intended transfer.

OCS did not mail the notice to the complainants until 12 calendar days *after* the change of placement had occurred.

Additionally, the Notice of Non-Emergency Placement Change did not inform the complainants of the agency's foster parent grievance process as provided for in OCS policy to grieve the agency's decision to remove the foster child.

Ombudsman review showed that in this case, that not only did OCS *not* mail the notice timely, but the complainants *never received* the notice because OCS mailed the notice to their physical address instead of their mailing address. The notice was returned as "no mail receptacle" and it appears that OCS did not make any further effort to resend the notice. The correct mailing address for the complainants was in the ORCA system.

Ultimately, OCS *never* provided the complainants with notice of a change of placement.

PROPOSED RECOMMENDATIONS

Under AS 24.55.150(b), "The ombudsman may investigate to find an appropriate remedy."

Based on the findings of fact in this investigation, the ombudsman proposed the following recommendations to the Office of Children's Services:

Recommendation 1: The Office of Children's Services should issue a written directive to all agency staff reminding them of the provisions in Alaska Administrative Code 7AAC 54.228, Foster Parent Grievances, OCS CPS Policy and Procedure 6.1.5, Grievance Procedure, that grant a foster parent the right to contest a decision by the agency to remove a foster child on a non-emergency basis using the foster parent grievance process.

Recommendation 2: The Office of Children's Services should immediately revise Notice of Non-Emergency Placement Change (Form 06-9762) to include a description of the foster parent grievance process.

Recommendation 3: The Office of Children's Services should conduct training for all agency staff regarding the foster parent grievance process.

Recommendation 4: The Office of Children's Services should revise OCS CPS Policy and Procedure 3.7, Change or Termination of a Placement/Trial Home Visit/Return Home, to include information regarding a foster parent's right to contest a decision by the agency to remove a foster child on a non-emergency basis using the foster parent grievance process.

Recommendation 5: The Office of Children's Services should improve its oversight and more effectively monitor the investigation process to ensure workers are conducting timely and thorough investigations.

Recommendation 6: The Office of Children's Services should consider revising policies and procedures to require that investigations of protective services reports include contacts and interviews with the reporter, all witnesses to the alleged abuse or neglect incident, and age appropriate children living in the home.

Recommendation 7: The Office of Children's Services should conduct training for all agency staff regarding evaluation of evidence in investigations and evidential requirements for standards of proof.

Recommendation 8: The Office of Children's Services should issue a written directive to all agency staff reminding them that ORCA is the agency's system of record and stressing the importance of documenting all case information, activities, and decisions in ORCA in a timely and thorough manner.

Recommendation 9: The Office of Children's Services should take steps to ensure that team conferences are held for all non-emergency placement change decisions prior to any change in placement in an effort to increase accountability and promote best interest decisions for children.

Recommendation 10: The Office of Children's Services should conduct training for all agency staff regarding change of placement decision-making and protocol. This training should stress the importance of placement continuity and sensitivity to the potential harmful effects of placement disruptions.

On September 20, 2011, OCS Director Christy Lawton responded to the ombudsman's proposed recommendations. Ms. Lawton wrote:

The report reveals that the investigation provides the Ombudsman's office with sufficient evidence to find the above allegations 1-6 ***justified***. Based on the investigation and findings, ten recommendations were made to OCS for consideration as to how to remedy and improve practice such that the chance of these types of allegations arising again is reduced.

At this time OCS intends to **accept/not accept** the proposed recommendations. The following clarifies our position and plans to move the recommendations forward. While the majority of the recommendations seem to be directed the division of Children's Services as a whole it is clear that they would benefit the Wasilla office as well.

....

The Office of Children's Services responses to the recommendations are quoted below.

Recommendation 1: The Office of Children's Services should issue a written directive to all agency staff reminding them of the provisions in Alaska Administrative Code 7AAC 54.228, Foster Parent Grievances, OCS CPS Policy and Procedure 6.1.5, Grievance Procedure, that grant a foster parent the right to contest a decision by the agency to remove a foster child on a non-emergency basis using the foster parent grievance process.

OCS Response: The Office of Children's Services ***partially agreed*** with this recommendation.

OCS will send an all staff e-mail reminding all agency staff of the provisions of rights to foster parents, as listed in recommendation one.

OCS Action Plan: The Office of Children's Services plans to complete this action by October 31, 2011.

Ombudsman Comment: While the OCS response appears to satisfy this recommendation, the ombudsman is concerned that a one-time e-mail will be of little use to caseworkers who join OCS after the e-mail is issued. The Ombudsman believes that a director's directive has more

power for changing agency action than a single e-mail, especially given the high employee turnover that OCS experiences. This portion of the recommendation is *partially justified*.

Recommendation 2: The Office of Children's Services should immediately revise Notice of Non-Emergency Placement Change (Form 06-9762) to include a description of the foster parent grievance process.

OCS Response: The Office of Children's Services *partially agreed* with this recommendation.

OCS does not agree with this recommendation and does not wish to revise the form at this time. There are a number of things being worked on right now within OCS due to pending litigation a contractor to do some business analysis of how we do all things related to noticing and due process advisement is under way [sic]. Many changes will likely be recommended stemming from this effort. OCS does not wish to make any changes now that may need to change again soon.

Ombudsman Comment: The ombudsman concluded that OCS failed to notify the Foster Mother of the administrative grievance process available to her to contest the non-emergency removal of foster children from her home.

As the investigative report stated, OCS CPS Policy and Procedure at 3.7, Change or Termination of a Placement/Trial Home Visit/Return Home, *requires* the agency to provide the case parties with advance written notice of the non-emergency change in a child's placement. The Notice of Non-Emergency Placement Change (Form 06-9762) is the standard form letter used by OCS staff statewide to notify foster parents and case parties of a proposed non-emergency placement change. However, the notice altogether omits information about a foster parent's right to grieve a decision by OCS to remove a foster child from a foster on a non-emergency basis.

The ombudsman recommended that OCS immediately revise the computer-generated Notice of Non-Emergency Placement Change (Form 06-9762) to include a description and information regarding the foster parent grievance process.

Although OCS indicated that it "partially agreed" with this recommendation, Ms. Lawton's written response read, "OCS does not agree with this recommendation and does not wish to revise the form at this time."

In failing to provide proper written notice to affected foster parents statewide of their right to contest an agency decision to remove a foster child from their home on a non-emergency basis using the administrative grievance process, OCS is effectively depriving these foster parents of their due process rights.

The ombudsman questions how difficult an undertaking it would be for OCS to add a simple paragraph to an already existing computer-generated form.

The intent of this recommendation was that OCS take seriously its obligation to provide proper written notice to foster parents of their due process rights. Amending the form is the easiest way for OCS to *ensure* that agency staff notify foster parents of their rights. Ms. Lawton's response suggests that OCS is not committed to complying with policy and providing foster parents with notice of their rights.

The recommendation will stand as written and the record will show that OCS rejected this recommendation.

Recommendation 3: The Office of Children's Services should conduct training for all agency staff regarding the foster parent grievance process.

OCS Response: The Office of Children's Services ***agreed*** with this recommendation and stated:

OCS will remind all licensing staff of the grievance procedures for foster parents via an e-mail.

OCS Action Plan: The Office of Children's Services plans to complete this action by October 31, 2011.

Ombudsman Comment: Again, while the OCS response partially satisfies this recommendation, the ombudsman is concerned that a one-time e-mail will be of little use to incoming caseworkers after the e-mail is issued. The Ombudsman believes that a director's directive coupled with training has more power for changing agency action than a single e-mail, especially given the high employee turnover that OCS experiences. This portion of the recommendation is **partially rectified**.

Recommendation 4: The Office of Children's Services should revise OCS CPS Policy and Procedure 3.7, Change or Termination of a Placement/Trial Home Visit/Return Home, to include information regarding a foster parent's right to contest a decision by the agency to remove a foster child on a non-emergency basis using the foster parent grievance process.

OCS Response: The Office of Children's Services ***agreed*** with this recommendation and stated OCS will revise the policy accordingly in the next year.

Ombudsman Response: While the ombudsman is concerned about the length of time it will take to include basic information about a foster parent's appeal rights, the OCS response fulfills the intent of the ombudsman's recommendation. The ombudsman will routinely monitor OCS to ensure the policy is amended. This recommendation will be considered to be **rectified**.

Recommendation 5: The Office of Children's Services should improve its oversight and more effectively monitor the investigation process to ensure workers are conducting timely and thorough investigations.

OCS Response: The Office of Children's Services ***agreed*** with this recommendation and stated:

OCS will continue to endeavor to improve this oversight through supervision, supervisory staffing notes and Continuous Quality Improvement focused case reviews.

Ombudsman Response: While the ombudsman is concerned about the lack of details in the OCS response, the OCS response fulfills the intent of the ombudsman's recommendation. The ombudsman will routinely monitor OCS on this issue. This recommendation is **rectified**.

Recommendation 6: The Office of Children's Services should consider revising policies and procedures to require that investigations of protective services reports include contacts and interviews with the reporter, all witnesses to the alleged abuse or neglect incident, and age appropriate children living in the home.

OCS Response: The Office of Children's Services *disagreed* with this recommendation.

OCS policy for conducting investigations and receiving a Protective Services Report already includes guidance for consulting with the reporter, talking to collaterals that have information about the alleged maltreatment and interviewing alleged victims and non-victims in the home.

Ombudsman Comment:

The intent of this recommendation was for OCS to provide additional guidance and clarification in policy regarding contacts with collateral sources in the investigation of a Protective Services Report. At present, policy does not discuss follow-up contacts and interviews with reporters, if the report was not anonymous. Policy also does not specifically state that all identified witnesses to an alleged abuse or neglect should be interviewed or that other foster children living in the home should be interviewed.

Because the ombudsman recommended that OCS *consider* revising policy to provide additional guidance, the recommendation will stand as written and this recommendation will be closed as **not rectified**.

Recommendation 7: The Office of Children's Services should conduct training for all agency staff regarding evaluation of evidence in investigations and evidential requirements for standards of proof.

OCS Response: The Office of Children's Services *disagreed* with this recommendation, saying only:

Current practice and policy is sufficient.

Ombudsman Comment: A basic part of an OCS caseworker's job is obtaining and assessing evidence to determine if allegations of abuse or neglect are valid. OCS accepted the findings in this investigation which indicated that the caseworker did not critically evaluate the evidence; therefore the ombudsman recommended increased training. OCS responded, without supporting information, that current practice and policy is sufficient. The ombudsman is surprised that an agency which is empowered to remove children from their homes is unwilling to train its staff on how to critically evaluate evidence used in the removal. This recommendation is **not rectified**.

Recommendation 8: The Office of Children's Services should issue a written directive to all agency staff reminding them that ORCA is the agency's system of record and stressing the importance of documenting all case information, activities, and decisions in ORCA in a timely and thorough manner.

OCS Response: The Office of Children's Services *partially agreed* with this recommendation.

OCS will issue an all staff e-mail reminding them that ORCA is the system of record and that it is important that case information be documented in a timely manner.

OCS Action Plan: The Office of Children's Services plans to complete this action by October 31, 2011.

Ombudsman Comment: Again, as stated in our comments in Allegations 1 and 3, the OCS response appears to satisfy this recommendation, but the ombudsman is concerned that a one-time e-mail will be of little use to incoming caseworkers after the e-mail is issued. OCS has admitted to an annual employee turnover rate of about 30 percent. The Ombudsman believes that a director's directive has more power for changing agency action than a single e-mail, especially given the high employee turnover that OCS experiences. This portion of the recommendation is partially rectified.

Recommendation 9: *The Office of Children's Services should take steps to ensure that team conferences are held for all non-emergency placement change decisions prior to any change in placement in an effort to increase accountability and promote best interest decisions for children.*

OCS Response: The Office of Children's Services *disagreed* with this recommendation.

Team conferences are already held in offices that hold TDM's (Fairbanks, Anchorage, and Wasilla). These are the offices that hold the majority of the cases statewide.

Ombudsman Comment: Ms. Lawton's reason for disagreeing with this recommendation was because "team conferences are already held in offices that hold TDM's [Team Decision Making meetings] (Fairbanks, Anchorage, and Wasilla)." Yet, this case was a Wasilla Office case and OCS did not convene a team conference or TDM meeting to discuss the underlying issues and explore options to prevent a change in placement prior to the children's removal from the foster home.

The collective OCS case records show that the children's GAL and therapist both did not support the decision of the agency to remove the children from the Complainant's foster home. The evidence suggests that the caseworker unilaterally made the final decision to remove the children from the foster home on a non-emergency basis and transfer them to another foster home. Further, the evidence shows that Wasilla Office supervisors and the children's services manager were well aware that the children would soon be changing placement but they failed to ensure that policy was followed and a team conference or TDM meeting was held prior to their removal.

According to policy, a TDM meeting or team conference should have been held in this case. The ombudsman is aware that the Wasilla Office routinely holds TDMs. However, that did not occur in this case. As a result, the children were placed back in the Foster Mother's home a month later only after they needlessly experienced the trauma of an unnecessary change in placement.

The recommendation will stand as written and the record will show that OCS rejected this recommendation. This recommendation is not rectified.

Recommendation 10: *The Office of Children's Services should conduct training for all agency staff regarding change of placement decision-making and protocol. This training should stress*

the importance of placement continuity and sensitivity to the potential harmful effects of placement disruptions.

OCS Response: The Office of Children's Services *partially agreed* with this recommendation.

OCS will work with the Child Welfare Academy to ensure that training regarding the importance of placement continuity is stressed. However, it should be noted that OCS has improved its placement stability significantly in the last year. . . . evidenced by our recent federal data profile.

OCS Action Plan: The Office of Children's Services plans to complete this action by October 31, 2011.

Ombudsman Comment: The Child Welfare Academy provides ongoing training to current and incoming workers. The OCS response appears to satisfy this recommendation. This recommendation is rectified.

* * *

All allegations were found to be justified; therefore this complaint will be closed as justified. OCS agreed to implement Recommendations 3, 4, and 5. OCS partially agreed to implement Recommendations 1, 2, 8, and 10 and declined to implement Recommendations 6, 7, and 9.

The ombudsman did not accept the agency's rationale for not implementing the other recommendations; therefore this complaint will be closed as partially rectified.

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APPENDIX A

STANDARDS

Alaska Statute (excerpts)

AS 47.10.080. Judgments and Orders

(s) The department may transfer a child, in the child's best interests, from one placement setting to another, and the child, the child's parents or guardian, the child's foster parents or out-of-home caregiver, the child's guardian ad litem, the child's attorney, and the child's tribe are entitled to advance notice of a nonemergency transfer. A party opposed to the proposed transfer may request a hearing and must prove by clear and convincing evidence that the transfer would be contrary to the best interests of the child for the court to deny the transfer. A foster parent or out-of-home caregiver who requests a nonemergency change in placement of the child shall provide the department with reasonable advance notice of the requested change.

AS 47.14.100. Powers and Duties of Department Over Care of Child

[T]he department shall arrange for the care of every child committed to its custody by placing the child in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

Alaska Administrative Codes (excerpts)

7 AAC 54.228. Foster Parent Grievances

(a) If a complaint involves the actions of a foster parent, the department will notify the foster parent if the department intends to remove a child on a non-emergency basis. The department will issue the notice at least 48 hours in advance of the intended removal. A foster parent may grieve a decision to remove a foster child from the foster home by submitting a written request to the regional administrator that the child not be removed from the foster home until there is a final resolution of the grievance under 7 AAC 54.210 - 7 AAC 54.240.

(b) The regional administrator will grant the request made by a foster parent unless the regional administrator issues a written decision that finds that

- (1) removal is in the best interests of the child;
- (2) the child is being returned to the legal parent or guardian;
- (3) removal is in response to an allegation of abuse or neglect in the foster home; or
- (4) removal is ordered by a court.

(c) A grievance under this section will be processed under 7 AAC 54.230.

Alaska Rules of Court (excerpts)

Child in Need of Aid, Rule 2(l) defines "party":

“Party” means the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child’s tribe which has intervened, and any other person who has been allowed to intervene by the court.

OCS Policies and Procedures, Child Protective Services Manual (excerpts)

2.2.5 Conducting an Investigation; Assessing for Safety

PURPOSE: To collect sufficient information regarding the allegations contained in the report to complete an investigation and to collect sufficient information to form an assessment of the family which will then inform decisions and guide effective safety interventions.

BACKGROUND INFORMATION:

A. Federal Law: In order to receive funding under the Child Abuse Prevention and Treatment Act, each state is required to operate a statewide program, relating to child abuse and neglect, that includes:

1. procedures for reporting known or suspected instances of child abuse and neglect and procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports;

...

B. State Law:

1. The department (OCS) is required to investigate reports of child abuse or neglect 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.

...

POLICY:

A. 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.

B. An investigation involves making contact within the assigned response timelines in order to:

1. Gather safety-related information (6 Questions);
2. Determine present and impending danger (15 threats);
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.

C. The investigation must be completed within 30 days of assignment.

D. All documentation must be entered into ORCA within 15 days of the completion of the investigation.

E. Supervisors must approve the investigation or recall/return to the worker within 7 days of receiving the investigation in ORCA.

PROCEDURES: The required investigation and safety assessment activities are outlined below. The activities are described in a logical order in these procedures, but the actual order in which they occur is controlled by the specific circumstances in a given case.

...

C. Contact Collateral Sources:

1. The worker shall contact collateral sources (people who may have significant information about the alleged incident, past incidences, or general family functioning, including adult and child functioning) who can clarify or supplement the information in the referral and in records already reviewed.
2. Collaterals may include but are not limited to:
 - a. Extended family members;
 - b. Child care providers;
 - c. Next door neighbors;
 - d. Doctors;
 - e. Teachers, school principals, school nurse;
 - f. Community health aides;
 - g. VPSO, ICWA workers, TFYS workers
3. The worker will gather information from collateral sources throughout the investigation.

F. Initial Contact:

1. The worker will meet face-to-face with, and interview, the alleged victim, his or her siblings, and other children living in the home.
 - a. The worker will clearly identify themselves, clearly explain the purpose of the interview and show identification if requested.
 - b. The purpose of the face-to-face interview is to determine:
 - 1) whether or not the child has been abused or neglected;
 - 2) child vulnerability;
 - 3) child's immediate safety;
 - 4) child functioning and family functioning;
 - 5) assess for impending danger
 - c. The worker will make diligent efforts to contact the child at home, school, childcare, or any other place where the worker believes the child may be found.

...

1. If it is not possible for the worker to make a face-to-face contact within the timeframes, the worker will document why contact was not made.

...

- n. The supervisor must approve any delays in making face-to-face contact with the alleged victim, his or her siblings, and other children living in the home.

...

2. The worker will meet face-to-face with, and interview, the non-offending parent or caregiver.
 - a. The purpose of this face-to-face contact and interview is:
 - 1) To gather information related to the safety of the child;
 - 2) determine what the non-offending parent or caregiver knows about the alleged child abuse or neglect;
 - 3) gather information to determine protective capacities;
 - 4) gather information to determine if the parent or caregiver can or cannot and will or will not protect the child;
 - 5) gather information for adult and family functioning;
 - ...
5. The worker will meet face-to-face with, and interview, the alleged perpetrator.
 - a. If the alleged perpetrator lives in the home, the purpose of this face-to-face contact and interview is to:
 - 1) find out what the alleged perpetrator knows about the alleged child abuse or neglect;
 - 2) gather information related to the safety of the child;
 - 3) gather information for adult, child and family functioning;
 - 4) assess for domestic violence.
 - b. At the time of the initial contact with the alleged perpetrator, the worker will advise the alleged perpetrator of the allegation(s).

...

G. Determine if Present Danger Exists:

1. To determine if present danger exists, the worker will analyze the information gathered and conclude whether:
 - a. A specific, observable, describable family behavior, condition, or circumstance is present; and
 - b. Severe harm or threat of severe harm is occurring to the child in the present thus requiring an immediate protective action.
2. If the worker determines that there is present danger to the child, an immediate protective action will be taken to ensure the child is safe. The worker must then continue gathering information required to sufficiently complete information collection and the investigation.
3. If the worker determines during the initial contact that there is no present danger and the child is safe, the worker will continue to gather information required to complete the investigation.

H. Child Safety Documentation:

1. After the worker completes their initial contacts and makes a determination of present danger, the worker will complete the Safety Assessment Form, marking the box "Initial Contact".

- a. If all fifteen safety threats are checked “no,” the initial safety assessment is complete. Proceed to the Safety Assessment Conclusion. If one or more safety threats are checked “yes,” proceed to Child Vulnerability.
- b. Child Vulnerability:
 - 1) If the worker determines the child is not vulnerable, then the child is safe, and the worker will proceed to the safety assessment conclusion, indicating that the caregiver can and will protect.
 - 2) If the worker determines the child is vulnerable, the worker will proceed to the “Caregiver Can and Will Protect” section.
- c. Determine whether the “Parent or Caregiver Can or Cannot and Will or Will Not Protect” the child:
 - 1) If the worker determines that the parent or caregiver can and will protect the child, then the child is safe, and the form is complete.
 - 2) If the worker determines that the parent or caregiver cannot or will not protect the child, the worker must initiate a protective action, which will include establishing an initial safety plan.
2. The worker will document the information they gathered from their interviews, home visits, and other contacts in investigations notes in ORCA.

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J. Determine if Impending Danger Exists (the six questions):

1. The worker will gather relevant information and facts through interviews and observations, (while being sensitive towards the family’s culture and ethnic background) in the following areas:
 - a. The extent of the maltreatment:
...
 - b. The circumstances surrounding the maltreatment:
...
 - c. Child functioning; (*with multiple children, identify each child and the age of each child in your answers*):
...
 - d. Adult functioning:
...
 - e. Parenting practices and approach (*with multiple parents, identify each parent in your answers*):
...
 - f. Disciplinary practices and approach (*with multiple parents, identify each parent in your answers*):
2. In order to obtain the above information, the worker will interview the following family members, (separately whenever possible):
 - a. Alleged victim;
 - b. Siblings and other children in the home;
 - c. Non-offending parents and caregivers, including all of the non-offending adults in the home;
 - d. Non-custodial legal parent;
 - e. Alleged perpetrator.

3. In addition, the worker will conduct interviews with persons who may provide additional information in determining child safety and completing the safety assessment, including but not limited to:
 - a. Physicians;
 - b. Mental health providers;
 - c. School employees;
 - d. Tribal social service providers;
 - e. Neighbors and family friends;
 - f. Anyone else that may have additional information.
- K. Determining Child Safety Based upon the Impending Danger Assessment: Once the worker obtains all necessary information to assess for impending danger, the worker will complete the Safety Assessment Form, marking the box "During/Conclusion of Initial Assessment":
1. If all fifteen safety threats are checked "no," the safety assessment is complete. Proceed to the Safety Assessment Conclusion. If one or more safety threats are checked "yes," proceed to Child Vulnerability.
 2. Child Vulnerability:
 - a. If the worker determines that the child is not vulnerable, then the child is safe, and the worker will proceed to the safety assessment conclusion, indicating that the caregiver can and will protect.
 - b. If the worker determines that the child is vulnerable, the worker will proceed to the "Caregiver Can and Will Protect" section.
 3. Determine Whether the Parent or Caregiver Can or Cannot and Will or Will Not Protect the Child
 - a. If the worker determines that the parent or caregiver can and will protect the child, then the child is safe, and the worker must continue the activities required to sufficiently complete the assessment.
 - b. If the worker determines that the parent or caregiver cannot or will not protect the child, the worker must initiate a protective action.
 - c. Documentation of Whether the Parent or Caregiver Can or Cannot and Will or Will Not Protect the Child. The worker must document and explain the basis for the determination.
- L. Determining Future Risk and Needs (FRAN):
1. Determine future risk of abuse and neglect by completing FRAN. Use overrides when appropriate.
 2. This risk assessment will be used to help determine if the case should be closed or opened for ongoing services.
- M. Finalizing the Investigation when the Child is Safe and the Risk Level is Low/Medium: If the worker finds the child is safe, there is no present or impending danger and the risk level is low or medium, the worker will:
1. Identify in ORCA whether the finding is substantiated, not substantiate, or closed without a finding.
 2. Refer the child to Early Intervention services for a developmental screening if the report was substantiated and the child is under the age of 3 years.

3. Review the investigation safety assessment and disposition with the supervisor.
 4. Send the investigation to the supervisor for approval.
 5. If there is no currently open case, upon receiving approval, the worker will submit the case for closure.
- N. Finalizing the Investigation when the Child is Unsafe and/or the Risk Level is High: If the worker finds the child is unsafe, there is present or impending danger, and/or the risk level is high, the worker will:
1. Identify in ORCA whether the finding is substantiated or not substantiated.
 2. Refer the child to Early Intervention services for a developmental screening if the report was substantiated and the child is under the age of 3 years.
 3. Complete any documentation needed.
 4. Review the investigation and disposition with the supervisor.
 5. Establish a Continuing Safety Plan:
 - a. Re-evaluate the current safety plan to determine if it is still appropriate and sufficient.
 - b. Re-confirm all commitments with the current safety plan participants.
 - c. Revise/ update the existing plan based on the re-evaluation.
 - d. Document the new continuing safety plan on the Safety Analysis and Safety Plan form, checking the "Continuing Safety Plan" box.
 - e. On the continuing Safety Plan form the worker will:
 - 1) Summarize the safety threats;
 - 2) Complete the safety analysis section;
 - 3) Identify the safety management actions, tasks, and services;
 - 4) Obtain signatures from parents/caregivers, workers, supervisor and all safety plan participants.
 6. Send investigation to the supervisor for approval; opening the case with or without custody as appropriate.

DEFINITIONS

Collateral Contact: A person who may have significant information about the alleged incident, past incidences, or general family functioning (e.g. teachers, neighbors, service providers, tribal staff, etc.). Contacting Collaterals is one of the most critical components of the information collection process.

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Impending Danger: Refers to a family circumstance where a child is living in a state of danger, a position of continual danger. Danger may not exist at a particular moment or be an immediate concern (like in present danger), but a state of danger exists.

Initiation: Initiation is achieved by conducting a face-to-face contact with the alleged victim for the purpose of assessing their safety.

Not Substantiated: Refers to a finding where, based on the available facts, a worker is unable to determine if a child suffered harm as a result of abuse or neglect, or where there are no facts to support the allegation that a child suffered abuse or neglect.

Present Danger: Immediate, significant and clearly observable severe harm or threat of severe harm is occurring to a child in the present requiring an immediate protective action.

Protective Action: A protective action occurs the same day that it is determined the child is unsafe and provides a child with responsible adult supervision and care. Typically a protective action will include a straightforward immediately achievable arrangement such as: arranging and confirming that the parent or caregiver who is the alleged perpetrator will leave and remain away from the home; arranging for a parent or caregiver who is not the alleged perpetrator to leave home with the child; using people and resources available to the family to immediately protect the child; or placing the child in a relative placement, foster care, or appropriate temporary shelter facility.

Protective Capacities: Personal and parenting behavioral, cognitive and emotional characteristics that specifically and directly can be associated with being protective of one's young.

1. Behavioral Protective Capacity is specific action, activity, performance that is consistent with and results in protective vigilance.
2. Cognitive Protective Capacity is specific intellect, knowledge, understanding and perception that result in protective vigilance.
3. Emotional Protective Capacity is specific feelings, attitudes, identification with a child and motivation that results in protective vigilance.

Safe: Children are considered safe when there are no present danger or impending danger threats, or the caregivers' protective capacities control existing threats.

Safety Threat: Refers to specific conditions, behavior, emotion, perceptions, attitudes, intent, actions or situations within a family that represent the potential for severe harm to a child.

Safety Analysis: An examination of safety intervention information; safety threats (concerned with impending danger threats) as identified by the safety assessment; and parent/caregiver protective capacities. The purpose of a safety analysis is to determine if a child is unsafe and to determine the necessary level of intrusion and level of effort required to assure child safety.

Safety Assessment: This term refers to an actual documentation tool entitled, "Safety Assessment" whereby the worker indicates if there are safety threats present or not. This term also refers to a philosophy of intervention and a process to which we go about our work and the information collection process during the investigation.

Safety Plan: Refers to a written arrangement between parents/caregivers and OCS that establishes how safety threats (impending danger threats) will be managed. The safety plan is implemented and active as long as impending danger threats exist and caregiver protective capacities are insufficient to assure a child is protected.

Substantiated: refers to a finding where the available facts indicate a child suffered harm as a result of abuse or neglect as defined by AS 47.17.290.

Unsafe: Children are considered unsafe when they are vulnerable to present or impending danger and caregivers are unable or unwilling to provide protection or lack the protective capacities to ensure the child will be safe.

Vulnerable Child: A child who is unable to protect him/herself because of age or other reasons and includes a child who is dependent on others for protection. Vulnerability is judged according

to age; physical and emotional development; ability to communicate needs; mobility; size and robustness and dependence and susceptibility.

2.2.9 Assessment of Protective Capacities, Needs, and Future Risk of Abuse and Neglect.

POLICY

At close of investigation the worker will use structured decision-making methods to assess protective capacities, needs, and future risk of abuse and neglect, except foster home investigations. The purpose of the assessment is to determine if the case should be closed or opened for ongoing services and to provide information which is used to focus the case plan.

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PROCEDURE

After reaching an investigation finding at close of investigation, the worker will do an assessment.

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3.2.1 Minimum Contact Standards

PURPOSE

To establish minimum standards for frequency of caseworker contacts with children and families.

POLICY

Parents and children must be seen once every 30 days. Certain cases will require higher levels of contact, which is determined by many factors including case status, age of the child, parent's protective capacity, identified safety threats and risk factors, client need, and best practice standards.

PROCEDURE

- a. Contacts will be recorded in ORCA visitation activity notes by the date they are completed.
- b. Intake/Investigation Standards (see investigation section): Minimum contact is one face-to-face with parents or caretaker and one face-to-face with child(ren) victim. In addition, as appropriate, one face-to-face contact with other children in the home.
- c. On-Going (In-home or Out-of-home):
 1. All Children in State: Minimum contact with any child with an open case who is placed either in his or her own home or in an out-of-home placement is once a month by an OCS worker. This contact must occur in the home in which the child resides at least once every other month. The contact may occur in an alternate setting (examples include school, during a transport, in the office) every other month. Regardless of setting, the contact must allow for discussion with the child regarding their current placement, activities on the case plan, and any safety or well being issues that have been identified.
 - A. All foster homes and unlicensed relative homes where children are in care will be contacted at least monthly by the worker assigned to the children placed. This contact will be directed at meeting any needs of the substitute care provider as they pertain to the children placed in their home as well as the individual needs of the child(ren).
- ...
- f. If the required contact standards cannot be met, the worker must document the reasons why in the ORCA case file.

3.7 Change or Termination of a Placement/Trial Home Visit/Return Home

PURPOSE: To provide change of placement protocol.

BACKGROUND INFORMATION:

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B. State Law: Placement Changes

1. When OCS has custody of a child, OCS has the authority to transfer the child from one placement setting to another, assuring it is in the child's best interest.
2. The child, the child's parents or Indian custodian or guardian, and the child's foster parents or out-of-home caregiver, GAL, attorney, and tribe are entitled to advance notice of a non-emergency transfer.
3. A party opposed to the proposed transfer may request a hearing and must prove by clear and convincing evidence that the transfer would be contrary to the best interests of the child.
4. A foster parent or out-of-home caregiver who requests a non-emergency change in placement of a child is required to provide OCS with reasonable advance notice of the requested change.

POLICY: Services provided during the transition period are designed to prepare all parties for the separation and help them cope with their feelings about it.

- A. Placement Changes:** Moving a child from one full time care provider to another full time care provider is only explored when it appears that the placement is not meeting the child's needs or when the care provider requests the child's removal.

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PROCEDURE:

- A. Changes or Termination of a Placement/Trial Home Visit/Return Home:** The worker should take the following steps to prepare the child, the parent or Indian custodian, and the provider at least two weeks prior to any change in placement, termination of a placement, or trial home visit/return home:
1. Explain and discuss the reasons and circumstances for the intended move.
 2. Acknowledge and provide help for any conflicting feelings about the change which the child or provider may have.
 3. Include the out-of-home care provider in planning for the child's departure (not only the physical departure but preparation for the emotional separation that will occur).
- B. Placement Changes:** The worker will use the following guidelines when a child's placement is changed:
1. When possible, a team conference between the worker, the care provider, and the social work supervisor is to be held to discuss why moving the child is being considered. (The child and other relevant persons, i.e., parents, guardians ad litem, treatment professionals, tribe, may be included if appropriate).
 2. During the team conference, other actions and options that could be taken to prevent the movement of the child will be explored and considered.

3. If no other option can be found, the child and the care providers are prepared for the move as described in procedure A of this section, and procedures A and C of section 3.6.1 Placement Preparation.
4. The child, the child's parents or Indian custodian or guardian, and the child's foster parents or out-of-home caregiver, GAL, attorney, and tribe are entitled to advance notice of a non-emergency transfer. The worker will notify the parties by sending out a Notice of Non-Emergency Transfer (Form 06-9762), and will make every effort to provide notification at least ten working days prior to the intended transfer.

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6. The worker will document in a case note in ORCA:
 - a. the reasons for the move;
 - b. what other options were considered; and
 - c. which parties were notified and the notification dates.

6.1.5 Grievance Procedure

PURPOSE: To provide a dispute resolution process by which individuals involved in a dispute with OCS can voice their concerns and reach a fair resolution agreeable to all.

POLICY:

- a. When it is evident that a formal organized approach to resolving concerns would be beneficial to enable two parties to reach a resolution, the grievance procedure contained in the Alaska Administrative Code should be offered. Unless such an approach is necessary, less formal, alternate resolution processes should be used.
- b. A grievance may be filed based on the grievance procedure in the Administrative Code on the following grounds:
 1. to challenge an application of an OCS policy or procedure; or
 2. to challenge an action or failure to act by the OCS; or
 3. to challenge a licensing investigation completed by OCS.
- c. The grievance procedure is not available:
 1. to appeal:
 - A. a decision or action taken by the department that is reviewable by the court under AS 47.10, or AS 47.14;
 - B. a decision or action taken by the department that occurred more than twelve months after the complainant had actual notice of the decision or action;
 - C. late payments or to contest base foster care rates paid;
 - D. a decision regarding grant programs that may be appealed under 7 AAC 78.310; or
 - E. a decision regarding civil rights actions covered under the department's civil rights complaint procedures;
 2. to complain of child placement or child removal decisions of the department as a result of intervention under AS 47.10;

3. to a state employee unless the employee is also a client of the department, a client's parent or guardian, or a service provider by the department;
4. for contract services disputes.

d. Meetings and Reviews in the Grievance Process

1. Informal meeting: Held as a result of a written complaint (see b. above).
2. Review by the Regional Children's Services Manager (CSM): Can be requested by a complainant to discuss the supervisor's proposed decision that is based on the informal meeting.
3. Review by a Regional Appeal Panel: This process is provided for
 - A. a complainant who is not satisfied with the CSM's review of the complainant's grievance; or
 - B. a complaint that involves an action by an OCS staff member who is directly supervised by a CSM; or
 - C. a foster parent grievance as described in section g. below.

e. Regional Appeal Panel

1. Appointed by the CSM in another region than where the complaint was submitted. The panel consists of the CSM or designee, a staff manager, and a private citizen who has expertise in the provision or administration of a human services program. The CSM may select a program specialist from the OCS to serve on the panel in place of the CSM or staff manager.
2. The findings, recommendations, and proposed resolution issued by the regional appeal panel is a final administrative decision and may be appealed to the superior court under the Alaska Appellate Rules of Procedure.

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g. Foster Parent Grievances

1. If a complaint involves the actions of a foster parent and the OCS decides to remove the child from the foster home on a non-emergency basis, the OCS will notify the foster parent of the intent at least 48 hours in advance of the intended removal. A foster parent may grieve a decision to remove a foster child from the foster home by submitting a written request to the CSM that the child not be removed from the foster home until there is a final resolution of the grievance.
2. The CSM will grant the request made by the foster parent unless the CSM issues a written decision that finds that
 - A. removal is in the best interests of the child;
 - B. the child is being returned to the legal parent or guardian;
 - C. removal is in response to an allegation of abuse or neglect in the foster home; or
 - D. removal is ordered by a court.
3. A foster parent grievance will be reviewed by a regional appeal panel.

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PROCEDURE:

- a. When a complainant contacts the worker by phone or letter, the worker should examine closely the concerns expressed. If it is an area that the worker can immediately be responsive to, then that response should be offered to the complainant. This can be an explanation for actions that have been taken on a case or the provision of something (such as a clothing voucher) the complainant needs immediately. These actions may bring immediate closure to the complaint. The contacts and actions should be recorded in the case record chronological history.

If the initial complaint comes to the supervisor, the supervisor follows the same steps. An additional step may be making an agreement with the complainant that the worker will contact the complainant to respond to their concern.

- b. If the worker or supervisor is not able to offer a response that will resolve the complaint, the complainant should be offered the use of the grievance procedure, unless it is clear that another process is indicated (see the policy section above).
1. Offering use of the grievance procedure includes giving a verbal description of the grievance procedure and providing a copy of the Complaint Form (06-9538) and a copy of the grievance procedure regulation, 7 AAC 54.205 - 7 AAC 54.240.
 2. Information provided to the complainant will include the requirement that the completed complaint form be submitted to the supervisor of the person whose actions are the subject of the grievance.
 3. If the complaint involves an action by an OCS staff member who is directly supervised by the CSM, the complainant should submit the written complaint to the CSM.

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- e. Upon receipt of a complaint form, the supervisor (or CSM, if applicable) will:
1. provide a copy of the procedure in 7 AAC 54.210-240 to the complainant unless a copy already has been provided;
 2. within three working days of receiving the complaint, determine the nature of the complaint, and whether use of the regulatory grievance procedure is applicable.
 3. If the grievance procedure is not applicable, the supervisor will notify the complainant and the Children's Services Manager in writing, describing the reasons why the grievance procedure does not apply and informing the complainant that the supervisor's decision may be appealed to the CSM.
 4. If the grievance procedure is not applicable and the CSM made the initial decision that the grievance procedure does not apply, the CSM will inform the complainant that he/she may appeal to the regional appeal panel.
- f. If the supervisor determines the complaint should be processed under the grievance procedure, the supervisor will contact the complainant to arrange an informal meeting with the complainant and the involved OCS staff. The meeting will be conducted within ten working days after receipt of the complaint unless the complainant or involved department staff is unable, for good cause shown, to attend within that period. The person unable to attend shall submit the reasons in writing and the supervisor will schedule the meeting to be held as soon as the person is available.

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- h. In conducting the informal meeting, each party will be given the opportunity to state their understanding of the facts at issue and make suggestions for resolution. If necessary, more than one informal meeting may be held. At the conclusion of the meeting, the supervisor will complete a Grievance Procedure Meeting Summary Form (06-9486) and include the action that is or will be taken. If the supervisor and the parties agree with the summary of the meeting as described on the form, each person will sign the form, and will receive a copy of the form.

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OCS Policies and Procedures, Licensing Manual (excerpts)

CHAPTER 500 COMPLAINT INVESTIGATIONS

POLICY

Investigation of complaints alleging violation of the licensing statute or regulations is a primary licensing responsibility to adequately reduce predictable risk to persons in care.

510 Receiving and Recording the Complaint

510.1 Receiving the Complaint:

The licensing worker receives and accurately records as much information as possible when the complainant originally contacts the department. Division staff elicits the exact nature of the complaint. The worker will ask if the complainant's name may be used. If not, the worker will advise that the complainant's name will be protected until the investigation is completed but may need to be disclosed at a later date to support enforcement action. The worker will ask if the complainant wants a copy of the final report. Anonymous complaints are accepted.

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530 Determining the Investigator or Investigation Team

530.1 Joint Investigation of Reports of Harm in Licensed Facilities:

- (1) When a report of harm alleges that abuse occurred in a facility licensed by the division, the worker immediately notifies the CPS and licensing supervisor. Jurisdiction for the investigation is Child Protection (AS 47.17), however the investigation may be completed by a CPS worker and/or a licensing worker as determined by the supervisor(s). In locations where the CPS and licensing worker are the same person, no supervisor determination is needed.
- (2) In locations where the CPS worker and licensing worker are not the same person, the CPS worker provides a copy of the Report of Harm and any supporting documentation to licensing within 24 hours of the report for concurrent or further action under Licensing Complaints (AS 47.35).
- (3) In making a determination regarding substantiation of the allegation for licensing purposes, the worker will use a preponderance of the evidence as the standard of proof or more reason to believe it happened than not.
- (4) If the reporter expresses concerns that do not meet the statutory definitions of abuse or neglect, then the report is forwarded through the CPS intake supervisor to licensing for evaluation under AS 47.35.105

540 Planning the Investigation

540.1 Requirements:

Prior to direct contact with the facility, the worker, in consultation with the supervisor and Attorney General, develops a plan for the investigation. In areas where there is no licensing worker, the social worker and supervisor will involve the licensing supervisor or regional licensing staff. At a minimum, the following is involved in developing the plan:

- (1) Review of the complaint allegations.
- (2) Tentative identification of statutes or regulations involved.
- (3) Review of information from the facility record to identify:
 - (A) the type of facility;
 - (B) date and finding of last visit to the facility; and
 - (C) a review of any previous complaints.
- (4) Contact with placement workers and guardians ad litem of children in care to see if they have noticed problems or have concerns. Placement workers should be advised of the current issues.
- (5) Request for information and assistance from the Department of Law, protective services, police, and experts such as the fire marshal or sanitarian where appropriate.
- (6) Determination of other calls or contacts that may be needed prior to visiting the facility to verify information or to gain additional information.
- (7) Planning for tentative investigative techniques to be employed, including the possible need for two workers or other safety issues and whether to involve staff from the Child Placement Agency or other agency if the licensing investigation was not conducted by the division.
- (8) Timing of first planned contact with the facility.
- (9) Where there is reason to believe that persons in care may be in immediate danger, planning for:
 - (A) placing a hold on all future placements pending the outcome of the investigation,
 - (B) the possible of removal of children in care and alert placement workers
 - (C) the possible removal of the alleged perpetrator, if any; or
 - (D) suspension of the license may become immediately necessary until the investigation is concluded. Refer to Enforcement Action in Chapter 100.
- (10) Planning for notification to the facility and, when appropriate, to the facility employee who is the alleged perpetrator.
- (11) Where a licensee is directed to remove an employee from contact with children pending investigation, determination of the date the investigation is expected to be complete.

550 Notification of Facility

550.1 Required Notification:

An applicant or licensee will be notified by means of a Notice of Complaint (Form D084-LIC-14) or other approved documentation when a complaint is being investigated except as noted below.

550.2 Coordination:

The timing of this notification is coordinated with protective services staff or police, if they are involved in the investigation. However, when children not in state custody or care are involved

and considered at risk, action to notify parents or guardians must be taken as soon as possible. Ensuring the safety of persons in care overrides delaying notification for investigation reasons.

550.3 Timing Factors:

Timing of notification to the facility will depend on the complexity of the complaint and continuing risk to persons in care. Early notification of Priority 1 or Priority 2 complaints may occur within hours or days, but this may not be appropriate with police involvement and the need to obtain adequate evidence. A facility should be notified of Priority 3 complaints within 14 days of receipt, if possible.

590 Investigation Procedures

590.1 Initial Investigation Contact

- (1) Initial contact with the facility is usually unannounced, depending on the allegations, but initial telephone contact may at times be appropriate. The licensing worker may contact the complainant before visiting the facility to request any additional information needed or to clarify details of the complaint. A Notification of Complaint (Form D084-LIC-14) will be used to notify the facility. A copy is hand-delivered to the facility, and the worker may ask for a signature on the original to document delivery.
- (2) The licensing worker may not be required to make a visit if a telephone contact or review of the facility record resolves the complaint. See Disposition of the Complaint, 595.
- (3) The licensing worker will complete the Notification of Complaint (Form D084-LIC-14).
 - (A) The initial allegations are recorded and handed to the facility administrator or person in charge.
 - (B) The purpose for using the form is to cause the applicant/licensee to focus on the allegations.
- (4) The licensing worker advises the facility administrator or person in charge of the purpose of the visit and the general nature of the complaint, or hands the person the Notification of Complaint.

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590.2 Sources of Information.

As the investigation proceeds, the licensing worker may have to contact persons not identified in the tentative plan. These contacts may include, but are not limited to:

- (1) References.
- (2) Neighbors.
- (3) Fire, health and law enforcement officials.
- (4) Staff of other agencies (city zoning, etc.).
- (5) Parents and other relatives of children in care.
- (6) Children in care, present and past, but children no longer in custody may not be contacted without approval of the parent or guardian.
- (7) Facility staff, present and past.
- (8) Persons mentioned by director, staff, neighbors, parents, complainant, etc.
- (9) Physicians, hospital staff, and other health agency staff.

- (10) Identified witnesses.
- (11) Other department staff.

590.4 Length of Investigation

- (1) The division will attempt to conclude most licensing investigations within 30 working days, but complex investigations may exceed 30 days. Circumstances which may delay completion of an investigation include:
 - (A) involvement of protective services or police,
 - (B) multiple alleged violations or additional violations alleged or observed,
 - (C) multiple alleged perpetrators,
 - (D) rural locations, multiple locations,
 - (E) reluctance or unwillingness of a child sexual abuse victim to disclose abuse or identify a perpetrator,
 - (F) essential out-of-state witnesses,
 - (G) numerous witnesses or victims,
 - (H) need to conduct physical examinations
 - (I) a need to consult with health care professionals or other experts,
 - (J) a need to consult with an AG or DA, or
 - (K) conflicting workload priorities as in one-person offices.
- (2) The licensing worker shall periodically contact protective services or police to ensure investigation progress and conclusion and report progress to supervisor.
- (3) Other factors to be considered include whether a criminal proceeding or investigation will prevent completion of the licensing investigation, or whether facts not presently available to the division are likely to be determinative.
- (4) The worker will inform the facility if the completion of the investigation will be delayed.

595 Disposition of the Complaint

595.1 Results of Notification Required.

The applicant/licensee is to be notified of the results of the investigation of the complaint, including all the allegations(s), citation of standards evaluated, noncompliance, corrections needed, and time limit for corrections, if any.

595.2 Actions.

The licensing worker disposes of complaints alleging violation of statutes or regulations depending on findings and risk to persons in care. With supervisory approval, and the advice of the Attorney General, the licensing worker will take one or more of the following actions:

- (1) Write a Complaint Investigation Report, including the results of the investigation of any additional violations alleged or observed.
- (2) Recommend revocation of a license or denial of an application in accordance with Chapter 100.

- (3) Make a request of injunctive relief to the local district attorney, or the attorney general, in conjunction with item 2 above, or with regard to an operating unlicensed facility.

595.3 Complaint Investigation Report.

The licensing worker includes the following in a letter of findings:

- (1) The purpose of the visit(s) or telephone call(s) and the date(s) are stated. The name of the person(s) conducting the investigation and the person in charge at the facility is stated. A statement that the allegation(s) involves possible violations of the applicable (type of facility) standards or licensing law is included.
- (2) The results of the investigation are described including:
 - (A) each allegation of a violation of regulations;
 - (B) numerical citation of each standard evaluated, (the entire text is not required unless considered helpful);
 - (C) findings;
 - (D) corrections needed and time limit set for corrections (a Noncompliance and Plan of Correction Form 06-9452 may be utilized); and
 - (E) a statement that monitoring will occur, if applicable.
- (3) Findings are limited to the following:
 - (A) Substantiated – there is a preponderance of evidence to support the determination that a statutory or regulatory violation occurred.
 - (B) Not Substantiated – there is no evidence to support a determination that the alleged violation of a statute or regulation occurred; or, there is insufficient evidence to determine that a statutory or regulatory violation occurred.
- (4) Reported expressions of concern which are not in violation of regulations may be included and consultation offered. However, there must be clarity that this is consultation and not required.
- (5) The cover letter must inform the licensee that the licensee may respond to conclusions in the report, and the response will be filed in the facility file.

595.4 Scale of Proof

- | | |
|------|--|
| 100% | COMPLETE, UNDISPUTED EVIDENCE
BEYOND REASONABLE DOUBT
CLEAR AND CONVINCING |
| 50% | PREPONDERANCE OF EVIDENCE
PROBABLE CAUSE
CREDIBLE EVIDENCE |
| 0% | NO EVIDENCE |