



## INVESTIGATIVE REPORT

Ombudsman Complaint A2008-0581  
Finding of Record and Closure  
March 9, 2009

*This investigative report has been edited to remove all confidential information and information that would identify the complainants in accordance with AS 24.55.160.*

### SUMMARY OF THE COMPLAINT

On April 10, 2008, an Anchorage resident complained to the Office of the Ombudsman that an Office of Children's Services (OCS) caseworker interviewed his children on school grounds in the absence of a school official in violation of Alaska Statute.

The ombudsman opened an investigation into the following allegation stated in terms that conform with AS 24.55.150.

***Allegation One: OCS interviewed the complainant's children on school grounds arbitrarily without a school official present.***

During the course of this investigation the ombudsman added the following allegation:

***Allegation Two: OCS unreasonably conducted interviews of the subjects of reports of harm in a manner inconsistent with Alaska Statute 47.17.027 and on occasion in a manner that thwarted the intent of AS 47.17.027.***

Ombudsman Linda Lord-Jenkins gave written notice of investigation to OCS Director Tammy Sandoval on July 10, 2008, in accordance with AS 24.55.140. Assistant Ombudsman Kate Shantz investigated this allegation.

### BACKGROUND

In April 2008 a mandatory reporter submitted a report of harm concerning the complainant's children to OCS. On April 9, 2008, OCS Children's Services Specialist II Lori Fitzpatrick interviewed the complainant's children, at their school.

Prior to interviewing the children, Ms. Fitzpatrick presented the school with a form letter used by OCS employees to inform the school that a report of harm had been received and that an interview on school grounds was necessary. OCS caseworkers indicate on these forms whether a school official is to be present at the interview. Ms. Fitzpatrick specified that a school official was not to be present. Ms. Fitzpatrick then interviewed both children separately, without a school official present.

After conducting the interview, Ms. Fitzpatrick notified the complainant, per OCS policy, that she had interviewed his children. According to Ms. Fitzpatrick, The father/complainant was uncooperative and would not participate in an interview. The investigation concluded with a finding of unsubstantiated neglect. OCS closed the case and notified the parents via letter.

## INVESTIGATION

AS 47.17.027(a)(3) requires that a school official be present during an interview of a child on school grounds. It states, in relevant part:

AS 47.17.027 Duties of school officials.

(a) If the department or a law enforcement agency provides written certification to the child's school officials that (1) there is reasonable cause to suspect that the child has been abused or neglected by a person responsible for the child's welfare or as a result of conditions created by a person responsible for the child's welfare; (2) an interview at school is a necessary part of an investigation to determine whether the child has been abused or neglected; and (3) the interview at school is in the best interests of the child, school officials shall permit the child to be interviewed at school by the department or a law enforcement agency before notification of, or receiving permission from, the child's parent, guardian, or custodian. A school official shall be present during an interview at the school unless the child objects or the department or law enforcement agency determines that the presence of the school official will interfere with the investigation. The interview shall be conducted as required under AS 47.17.033. Immediately after conducting an interview authorized under this section, and after informing the child of the intention to notify the child's parent, guardian, or custodian, the department or agency shall make every reasonable effort to notify the child's parent, guardian, or custodian that the interview occurred unless it appears to the department or agency that notifying the child's parent, guardian, or custodian would endanger the child. [Emphasis Added]

(b) A school official who, with criminal negligence, discloses information learned during an interview conducted under (a) of this section is guilty of a class B misdemeanor.

This statute was passed in 1990 as part of a comprehensive bill addressing child neglect and abuse reporting and investigation. The bill also implemented training requirements for those school district personnel required by law to report suspected cases of abuse or neglect.

As originally introduced, AS 47.17.027 simply required that school districts *allow* OCS (known as the Division of Family & Youth Services at the time the statute was enacted)

[Ombudsman emphasis] or law enforcement to conduct interviews of children on school grounds without prior notification of, or permission from, the child's parents.

A subsequent version of the bill provided that school officials "may" be present during an interview. The final version, passed by the Legislature and signed into law, dropped the discretionary "may" and inserted the mandatory "shall."

A review of the committee minutes pertaining to the bill indicate that this provision was intended to allow OCS access to children for the purpose of conducting an interview where the suspected perpetrator of the abuse or neglect is a person responsible for the child's welfare. It also provides protection to schools that allow the interview without first notifying, or getting permission from, the parent.

Several proponents of the provision testified about the necessity of allowing interviews on school grounds because it is a neutral, safe environment free from potential coercion by the alleged perpetrators. The earlier, discretionary version of the provision appears to have been prompted by a suggestion by Bob Weinstein, then-Superintendent of the South Island School District and chair of the Professional Teaching Practices Commission. Mr. Weinstein also testified that, in his view, it was important for school officials to be present during interviews to protect the rights of the children being interviewed; to ensure that interviews are terminated if the child decides that he or she no longer wishes to participate, for example.

Drafters changed the "may" to "shall" in response to discussion held between interested parties during a subcommittee meeting on this bill. The assistant attorney general who drafted the change later testified that it was intended to reflect "that the intent in most situations was to have the school officials be present." (*see* April 19, 1990 House Health, Education and Social Services Standing Committee minutes).

**OCS Policy and Procedure 2.2.5** addresses how OCS employees are to conduct an investigation and assess a child for safety. The relevant portions state:

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. (OCS Policy 2.2.5.f.1.C)

After a worker interviews a child, the worker will make every reasonable effort to immediately notify the child's parents, guardian, or custodian that the interview occurred unless the worker believes that notifying the parents, guardian, or custodian would endanger the child or compromise the CPS or criminal investigation. (OCS Policy 2.2.5.f.1.D)

All children will be interviewed separately and away from the alleged perpetrator and/or any other adult that could compromise the investigation process. (OCS Policy 2.2.5.f.1.G)

The OCS manual does not specifically address conducting interviews on school grounds. However, the above-referenced policy does address how its employees are to interact with other third parties, such as tribes, military personnel, law enforcement, and the Department of Law. School personnel are mentioned as sources of collateral information only.

**OCS' Standardized Form Letters**, presented to school administration staff prior to the interview, provide the statutory authority for OCS to conduct interviews on school grounds. The letter also indicates whether a school official is to be present during the interview. As part of the ombudsman investigation, the investigator contacted 28 OCS caseworkers from all regions of the state and from different offices in those regions. The investigator determined that over the years caseworkers in different offices, apparently on their own volition, have started using several variations of the letter. Some of the variations are quoted below:

In the opinion of OCS, the presence of the District/School representative WILL/WILL NOT (circle one) be detrimental to the interview.

\* \* \* \* \*

A school official shall or shall not be present during the interview. [AK. Statute Sec. 47.17.027. (a) (3)].

If a school official cannot be present during the interview, it is because the child objects or DHSS determines that the presence of the school official will interfere with the investigation.

\* \* \* \* \*

A school official  shall or  shall not be present during the interview. [AK. Statute Sec. 47.17.027 (a) (3)].

\* \* \* \* \*

If a school official cannot be present during the interview, it is because:  
 the child objects.

OR

DHSS determines that the presence of the school official will interfere with the investigation.

***Lori Fitzpatrick, Children's Services Specialist II, OCS***

On May 19, 2008, the ombudsman investigator interviewed Ms. Fitzpatrick about her investigation into the reports of harm OCS received regarding the complainant's children. She acknowledged she didn't allow school officials to be present while she interviewed the children. When asked why she excluded a school official from the interviews, Ms. Fitzpatrick initially said that the children had agreed to speak with her. After the ombudsman investigator explained that, under the statute, the children's consent to be interviewed was not an acceptable reason to exclude a school official from the interview, Ms. Fitzpatrick presented an alternate explanation. She said that, in her experience, children don't open up during interviews when school officials are present. She opined that their reluctance may stem from fear that the school official will relay the information disclosed during the interview to their parents.

In a follow-up interview on August 8, 2008, Ms. Fitzpatrick stated that she did not keep a copy of the letter she presented to the school for the OCS file and again reiterated that she believed she got better answers when officials are not present. Ms. Fitzpatrick's supervisor, Lori Kennell, was present during this interview. Ms. Kennell stated that most caseworkers indicate on the form that a school official is not to be present. She also stated that this topic had been discussed at a recent staff meeting in Anchorage (after the ombudsman served notice of investigation). Caseworkers are now being encouraged to have an official present during interviews that take place at school.

***Dr. Eileen Lally, Director, & Jay C. Bush, Program Manager, Family & Youth Services Training Academy (Academy)***

The Academy provides ongoing training and education for OCS employees in the areas of child protection services and permanency planning. The Academy conducts a two-week Training and Orientation for New Employees (TONE) course, which all new OCS social workers and children's services specialists are required to complete. This course addresses the investigation portion of a child protection case.

Dr. Lally and Mr. Bush said that FYSTA training focuses on how the OCS employee engages with people, not the procedural aspects of conducting an investigation. They stated that OCS's regional managers are to instruct employees on the procedures used when conducting interviews at schools. They also said that it would be difficult to address the procedural aspects of conducting an interview on school grounds because each school district operates differently.

***Ombudsman's Statewide Survey of OCS Employees***

The ombudsman investigator surveyed a random selection of OCS employees from each region of the state on the procedures they use when conducting interviews on school grounds. The survey was intended to determine whether OCS employees were aware of the statutory duty imposed on school officials by AS 47.17.027 and whether they are sufficiently trained to conduct interviews on school grounds.

The investigator surveyed 28 employees in July and August 2008. Both supervisory and subordinate employees were interviewed.

The ombudsman investigator interviewed the Children's Services Manager for each OCS regional office: Southeastern, Anchorage, Southcentral, and Northern. The investigator also surveyed staff from offices within each region: Juneau, Ketchikan, Sitka, Bethel, Kenai, Mat-Su, Valdez, Kotzebue, Nome, Fairbanks, and each of the Anchorage investigations units.

Each participant was asked the same questions regarding conducting interviews on school grounds. The questions are listed below, followed by a summary of the participants' responses.

**1. How, procedurally, do you conduct interviews on school grounds?**

Participants generally reported using similar procedures when conducting interviews on school grounds. Caseworkers bring their state-issued identification and the form letter explaining OCS's

authority to conduct the interview. They generally present the letter to an administrator at the front desk, who then gathers the child and finds an appropriate space for the interview. Some participants reported that they ask the child if he or she wants a third party, such as the school nurse or counselor, present during the interview.

Several supervisors expressed the opinion that caseworkers in rural areas may not use the form letter at all. The supervisors believed that this may be due to the fact that employees located in the villages may be more familiar with the school staff than those caseworkers located in urban areas of the state.

Survey respondents indicated that their training was limited to the procedures listed above. Participants also reported that, during the school year, the majority of interviews take place on school grounds.

The ombudsman investigator scheduled interviews with eight members of the Anchorage investigations units, as well as the office's Children's Services Manager, over the course of approximately two weeks. The first five respondents reported that the decision to exclude a school official was left to the discretion of the employee. The last four participants indicated that school interviews had been a topic during a recent staff meeting and that Anchorage employees are now being encouraged to have a school official present during interviews. This apparent change in policy may or may not be attributable to the notice of this investigation issued by the ombudsman's office.

## **2. Have you ever determined that a school official's presence would interfere with the interview?**

Responses to this question varied widely. Both of the Bethel respondents said they always indicate that a school official's presence would interfere and, in fact, the form letter that each submitted to the ombudsman investigator had been permanently modified to that effect. Other respondents stated that they generally indicated "shall not be present" on the form letter because the OCS manual instructs investigators to interview children alone.

Several respondents indicated that they rarely excluded school officials.

The most common reasons given for excluding an official was because that official was known to interfere, by asking leading questions or visibly reacting during disclosures of abuse. Another reason given for excluding school staff was because the topic of the interview was unusually sensitive, such as alleged sexual abuse.

Many of the respondents indicated that having a school official present can be helpful when conducting an interview, especially if the official is familiar to the child and can help the child feel at ease. Several participants indicated that they simply leave the choice to the child; if the child wants an official there then the official will be included.

The majority of participants, however, did not appear familiar with the statutory requirement that an official attend an interview unless the child objects or OCS determines that an official's presence will interfere.

One respondent stated that, if parents do not have a right to be present during an interview, he did not know why a school official would be allowed.

**3. Does your office utilize specific criteria or guidelines to assist you in making a determination that an official's presence will interfere?**

No respondent could identify an established, written policy, either regionally or statewide, that addressed conducting interviews on school grounds, including making a determination that a school official would interfere with an interview.

Several supervisors said that the decision to exclude school officials is left to the discretion and judgment of the investigators.

Several participants said the OCS manual required caseworkers to interview children alone. The ombudsman investigator presumed that these respondents were referring to OCS manual provision 2.2.5. All of these participants interpreted the provision to mean that the interview must be conducted with only the child present.

**4. If you have indicated that an official is not to be present during the interview, did you document this in the case file?**

None of the participants who have excluded school officials documented the exclusion, or the reasons for excluding, in the case file.

**5. Do you feel that your office has a good working relationship with the school districts in your region, and what contributes to the relationship?**

Participants overwhelmingly reported a good relationship with the school districts their offices cover. Participants repeatedly mentioned the same factors as contributing to a positive relationship. They mentioned the mandatory reporter training that OCS provides for district employees, maintaining open communication, maintaining a respectful attitude, and regularly keeping in contact with school staff.

However, participants also reported examples of friction between OCS and school districts. One respondent said she has experienced school personnel attempting to get faster responses from OCS by submitting exaggerated reports of harm. Several reported the belief that school personnel need additional education on OCS' purpose and authority. They specifically cited occasions where school personnel, contrary to law, notified a child's parents before allowing OCS to complete an interview. Respondents also mentioned school personnel making reports of harm for issues which, by themselves, may not be appropriate subjects for investigation such as poverty related issues like homelessness or cleanliness problems.

## **6. Would you, or your co-workers, benefit from additional guidance on how to conduct interviews on school grounds?**

Respondents generally favored the idea of a policy or procedure to address interviews on school grounds. However, one respondent stated that the OCS manual is long, caseloads are high, and employees don't have time to read policy. The same respondent stated, however, that it would probably be helpful to have a specific policy addressing school interviews because employees refer to the manual when they have questions. Several participants mentioned high employee turnover as a reason to formulate a policy regarding school interviews. One participant said that a policy would be beneficial because everyone conducts interviews a little bit differently.

Three of the four supervisory staff surveyed expressed support for a specific policy to address interviews on school grounds.

A common concern raised by participants, however, was that an additional policy would lead to additional bureaucracy for OCS staff. Others believed that another policy might be too rigid and constrain OCS caseworkers unnecessarily; they stated that, if adopted, a new policy should be phrased as a guideline, rather than as a strict requirement.

## **ANALYSIS AND PRELIMINARY FINDINGS**

The standard used to evaluate all Ombudsman complaints is the preponderance of the evidence. If the preponderance of the evidence indicates that it is more likely than not that the administrative act took place and the complainant's criticism of it is valid, the allegation is found justified.

The ombudsman investigated the following allegations:

***Allegation One: OCS interviewed the complainant's children on school grounds arbitrarily without a school official present.***

The Office of the Ombudsman's Policies and Procedures Manual at 4040(5) defines *Arbitrary* in pertinent part as:

(B) the agency's action or decision was based on a delegation of authority to the agency under inadequate standards;

(D) the agency's action or decision was not based on a conscientious consideration of all relevant factors.

***Allegation Two: OCS unreasonably conducted interviews of the subjects of reports of harm in a manner inconsistent with Alaska Statute 47.17.027 and on occasion in a manner that thwarted the intent of AS 47.17.027.***

The Office of the Ombudsman's Policies and Procedures Manual at 4040(2) defines an administrative act as 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

AS 47.17.027 requires that a school official "shall be present" at an OCS interview conducted on school grounds unless either:

(1) the child objects, or

(2) the department determines that the official's presence will interfere with the investigation.

This plain language of the statute places the duty on the school official to be present when OCS caseworkers interview children on school grounds. In order for a caseworker to exclude a school official, the caseworker must determine that the official's presence will interfere with the investigation.

Research into the legislative history of the statute revealed that the drafters intended a presumption in favor of school officials being present when children are interviewed. It would therefore negate both the intent and plain language of the statute for OCS workers to make a wholesale determination to exclude school officials from all interviews they conduct on school grounds. Individualized decision making is clearly required under the statute.

However, the statute does not supply any guidelines or criteria to consider when making a determination that an official's presence would interfere with a report of harm interview, and OCS has not created any regulatory or policy guidelines in the 18 years since this statute was implemented.

Further, the plain language of the provision requires that the child be interviewed apart from the alleged perpetrator and anyone who may "compromise the investigation process."

OCS policy 2.2.5 specifies that children are to be interviewed apart from any adult who could compromise the interview process. The manual simply does not require that children always be interviewed alone, as some survey respondents indicated. The policy also does not provide any guidelines for determining whether the presence of a third party may compromise the interview process. Furthermore, while the policy addresses interactions with other third parties, such as law enforcement, medical and military personnel, and tribes, it does not address interactions with school personnel.

Ombudsman standards at 4040(5)(B) define arbitrary, in part, as a delegation of authority under inadequate standards. Because AS 47.17.027 does not contain any standards for OCS employees to employ when making a determination to exclude a school official, it appears that OCS

employees are granted some measure of discretion when making a determination. However in the 18 years since AS 47.17.027 was enacted, OCS has not developed any policy specifically addressing interviews on school grounds. A lack of any standard whatsoever is patently inadequate and, thus, creates the potential for arbitrary actions by OCS employees.

In the complaint that triggered this investigation, the OCS caseworker presented the form letter to the school and specified that an official was not to be present. In her interview with the ombudsman investigator, Ms. Fitzpatrick gave conflicting reasons for why she interviewed the children alone. Initially, she said that the children agreed to be interviewed. She later indicated that she made the decision to exclude a school official because she believes children are more forthcoming without a member of school staff present.

Neither of Ms. Fitzpatrick's proffered reasons for excluding a school official appears to be reasonable exercises of her discretion. That the children agreed to the interview is not an acceptable reason, under the statute, to exclude a school official.

Ms. Fitzpatrick's second rationale for exclusion, that children are unwilling to make disclosures with officials present, may at times have some merit. There may indeed be occasions where children are unwilling to disclose with an official present. However, there may also be occasions where children are more likely to make disclosures when an official *is* present because the child knows and trusts that person. Thus, Ms. Fitzpatrick's second rationale for excluding school officials was not reasonable unless she explained, specifically, why she did not believe the complainant's children would make disclosure with a school official present.

Ombudsman Standards at 4040(5)(D) defines an arbitrary action as an action or decision not based on a conscientious consideration of all relevant factors.

Ms. Fitzpatrick admitted she didn't allow Anchorage School District officials to sit in on her interview with the complainant's children in accord with AS 47.17.027. She instead notified school officials that they would not be allowed in her interview with the complainant's children. The agency provided Ms. Fitzpatrick no standards upon which to base this decision. That opened the way for the caseworker to make an arbitrary decision.

Ms. Fitzpatrick did not make an individualized decision based on the all relevant circumstances of the complainant's children's situation, but rather relied on her assumption that children in general do not disclose instances of abuse when officials are present. A blanket decision to exclude school officials certainly cannot be considered the kind of individualized determination contemplated by the statute at issue. That being said, it does not appear that Ms. Fitzpatrick acted with ill will when she barred school officials from her interviews of the complainant's children.

However, the caseworker did not consider all relevant factors in *this* case involving *these* children. Her decision was arbitrary.

Therefore, the ombudsman proposes to find Allegation One that OCS interviewed the complainant's children on school grounds arbitrarily without a school official present *justified*.

***Allegation Two: OCS unreasonably conducted interviews of the subjects of reports of harm in a manner inconsistent with Alaska Statute 47.17.027 and on occasion in a manner that thwarted the intent of AS 47.17.027.***

The complaint at hand is illustrative of a larger problem. When surveyed, OCS employees from all regions of the state appeared to have no knowledge of the statutory requirement placed on school officials by AS 47.17.027.

OCS employees do not have a consistent method for making a determination to exclude school personnel from interviews. Survey respondents espoused many differing views regarding the usefulness of school personnel – some believe that a familiar face puts children at ease and facilitates disclosures while others believe that the presence of a school official prevents full disclosure. Several stated that they always exclude officials, while others said they only exclude if the child does not want an official there during the interview.

Although AS 47.17.027 requires school officials' presence, it also allows for some measure of discretion, yet there are no standards to guide OCS employees in their decision-making process. Employees are unaware of the statutory duty placed on school officials and exercise their discretion inconsistently. Left to their own devices, some have opted to disregard the intent of the statute. This is especially troublesome in light of the survey responses indicating that the majority of interviews take place on school grounds.

The Ombudsman's survey of OCS offices statewide showed that caseworkers either don't know what AS 47.17.027 requires or ignore it. Although OCS years ago issued standard language to caseworkers to help them adhere to the statute, individual offices have amended or now ignore the agency-sanctioned language. Investigation also showed that many OCS caseworkers issue blanket exclusions to school staff without considering the issue on an individual basis, in violation of the spirit of the statute. The agency has failed to establish guidelines to help caseworkers determine when excluding a school official is appropriate. The absence of a statewide policy and procedure addressing school interviews 18 years after the Legislature passed the statute is untenable. This practice is inconsistent with, and fails to achieve, the purposes of the statute. That is unreasonable.

Therefore, the ombudsman proposes to find Allegation Two that OCS unreasonably failed to conduct interviews of the subjects of reports of harm in a manner consistent with AS 47.17.027 and on occasion in a manner that thwarted the intent of the statute ***justified.***

Office of Children's Services Director Tammy Sandoval responded on behalf of the agency to the ombudsman's preliminary report. Director Sandoval stated:

**Allegation 1** indicates that OCS arbitrarily interviewed the child on school grounds without a school official present. The decision to interview the child on school grounds was not arbitrary but based on statutory requirements. The component that appears to have been arbitrary in nature was the worker's determination of whether a school official should or should not be present.

**Allegation 2** indicates that OCS failed to conduct interviews in compliance with statute and in a manner that thwarted the intent of the law. OCS concurs that staff throughout the state have not always adhered to the intent of the statute. However, it is worth noting, that these discrepancies do not generally reflect a purposeful intention to bypass the law, but more so reflect the pervasive lack of understanding on this issue.

Overall OCS concurs with the findings of the investigation and agrees with the proposed recommendations. This is a practice issue that is not sufficiently covered by our policy and procedures. The OCS philosophy supports the role of school officials in the interview process and welcomes increased participation. Additionally, we recognize that it is important to provide education to the appropriate school officials so they are aware of this statutory requirement.

## RECOMMENDATIONS

OCS, at some point, developed a form letter for its investigators to present to school administrators when conducting interviews on school grounds. The letter cites OCS's statutory authority to conduct an interview on school grounds and provides a place to make a record of whether OCS has determined that a school official will interfere with the interview.

The letter, however, appears to have been modified by the various OCS offices and several versions submitted to the ombudsman investigator no longer reflect the statutory language of AS 47.17.027. The ombudsman therefore recommends the following:

***Recommendation 1: OCS should re-standardize the letter of introduction used by caseworkers and presented to school personnel when interviewing children on school property to mirror the language of AS 47.17.027.***

OCS agreed with this recommendation.

The agency response satisfies the intent of the recommendation.

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Because multiple survey respondents indicated that a large percentage of interviews occur on school grounds, it is imperative that OCS caseworkers are adequately educated about the statutory duty of school officials to be present during interviews on school grounds. Of equal import is the need to provide caseworkers with appropriate criteria to decide if it appears that an official's presence will interfere with the protective services investigation.

The policy should address the procedure for conducting interviews, such as bringing state-issued identification and the use of the standard form letter. The policy should also address the duty of school officials to be present and include the circumstances in which it may be necessary to exclude an official.

The ombudsman recognizes that school districts operate differently. As such, it would be impossible to address the various nuances that OCS employees may encounter within each district. It is possible, however, to address those aspects of the interview process that are consistent statewide. For example, all employees are instructed to bring their state-issued identification cards and the form letter with them when conducting an interview on school grounds. Additionally, regardless of their location, school officials are required to be present during the interview, absent a finding that their presence will interfere or the child's objection. OCS should develop a policy that addresses, at minimum, these aspects of conducting an interview on school grounds.

The ombudsman also appreciates the concerns voiced by OCS caseworkers regarding the usefulness of an additional policy to address interviews on school grounds. An additional policy certainly could add unnecessary bureaucracy to the investigative process, which often requires quick decision-making. A rigid policy could constrain necessary action. For these reasons, the ombudsman recommends that OCS adopt a flexible, guideline-based policy, rather than a mandate-based policy.

For example, child protective services employees in Portland, Oregon use the following guidelines when assessing whether an official should be present during an interview:

1. The child may be disinclined to disclose the abuse in front of a school official that they see every day for fear of shame or humiliation.
2. The school official is acquainted with or has a relationship with the parent or the offending party.
3. The parent/offending party is well-known or respected within the community.
4. The child already feels "victimized" within the school system because of problems at school, such as academic or disciplinary problems.
5. The school official has a history of interference with (CPS) interviews.
6. Law enforcement is also present so there is no need for the presence of an additional party.
7. The abuse is especially disturbing and horrific and the child is too vulnerable to be aware of boundaries or privacy rights when being interviewed.
8. The case is murky or previous investigations were impossible to substantiate so accurate information is critical, and another presence may cause unintentional influence or interference.

If any of those criteria are met, the CPS employee may choose to exclude the official from the interview.

The ombudsman therefore recommends the following:

***Recommendation 2: OCS should develop a policy or procedure to specifically address interviews on school grounds.***

OCS Director Sandoval responded:

OCS will revise Policy and Procedure 2.2.5 to provide more specific and detailed guidance to workers about the statutory requirement to specifically address interviews on school grounds and will outline criteria where deviation from this requirement might be appropriate.

The agency response satisfies the intent of the recommendation

\* \* \* \* \*

By statute, a school official is required to attend protective services interviews taking place on school grounds unless the child objects or OCS determines that the official's presence will interfere. It only makes sense to document in the case file the decision to exclude, and the reasons for doing so, to ensure that the file accurately reflects all actions taken during the course of the investigation. The ombudsman therefore recommends the following:

***Recommendation 3: OCS should develop a method for documenting in the case file the reasons why a school official has been excluded from an interview.***

Director Sandoval noted:

Included in the policy revision planned as noted in 2 above, guidance will be provided on documenting the justification for why a school official was excluded from an interview.

The agency response satisfies the intent of the recommendation.

\* \* \* \* \*

Many school district personnel are not aware of the duty imposed on them to be present during child protective services interviews. As such, OCS should incorporate information regarding this duty into the training that it already provides to many school districts regarding the duties of mandatory reporters, to foster compliance with AS 47.17.027. This training should include a discussion of OCS's behavioral expectations of school officials who are present at interviews. The Ombudsman therefore recommends:

***Recommendation 4: OCS should incorporate information about the duty imposed by AS 47.17.027 into its mandatory reporter training curriculum.***

Director Sandoval stated:

OCS does not have a standardized curriculum for educating mandatory reporters about their reporting responsibilities. Every region approaches the training of their communities, schools in particular, in different ways based on that community's norms. OCS shall provide guidance to each regional Children's Services Manager (CSM) about the need to highlight 47.17.027 with the school officials in their community.

The ombudsman understands the need to tailor training to community needs, but remains concerned that allowing each region to tailor training will again end up with inconsistent practice. That reservation notwithstanding, the agency response satisfies the intent of the recommendation.

\* \* \* \* \*

Several caseworkers stated that outsiders' presence in abuse interviews negatively affect the quality of information gained. If the agency can substantiate that assertion with facts or scientific study, OCS should contact the Legislature to discuss the value of this statutory requirement. The ombudsman takes no stand on this issue other than the recommendation that OCS address the issue rather than ignore the statute. Therefore, the ombudsman recommends:

***Recommendation 5: If, after review of these findings and recommendations and its own policy and procedure, OCS believes that the presence of school officials in Report of Harm interviews on school property is detrimental to the quality of the information obtained, OCS should approach the Alaska Legislature's two HS&S committees to discuss a change in the law.***

Director Sandoval stated:

OCS does not believe that the presence of school officials is detrimental to the quality of the information obtained, barring rare circumstances. Therefore, OCS will not be advocating to have AS 47.17.027 modified.

The agency response satisfies the intent of the recommendation.

\* \* \* \* \*

The complainant's children were interviewed by an OCS caseworker without a school official present. The decision to exclude was arbitrary. AS 47.17.027 creates a presumption that school officials will be present during interviews taking place on school grounds – this is the rule, not the exception. Part of the reason this requirement was put into law was to ensure that children's rights are adequately protected during child protective services interviews. The complainant's children were not provided that protection and for that, they deserve an apology. Therefore the ombudsman recommends:

***Recommendation 6: OCS should issue a letter of apology to the complainant's and their children.***

OCS agreed with this recommendation and will issue a letter of apology. The letter of apology was sent to the complainants in January.

The agency response satisfies the intent of the recommendation

Director Sandoval concluded:

The Office of Children's Services found the Ombudsman investigation and subsequent report to be thorough and accurate overall. We appreciate the opportunity to remedy and improve practice and policy as problematic areas are

identified. These changes to practice will serve to further our efforts to standardize practice along the entire case continuum.

OCS will forward copies of the finalized P&P and a copy of the form caseworkers will be expected to use by the end of April 2009.

#### **FINDING OF RECORD AND CLOSURE**

Based on OCS's response to the proposed finding of justified, this overall complaint has been closed as *justified*.

OCS accepted Recommendation One, Two, Three and Six. The agency's response satisfied the intent of Recommendation Four pertaining to notifying school districts of their responsibilities under AS 47.17.027 but the ombudsman remains concerned that the inconsistent practice will result. In answer to Recommendation Five, OCS stated that it sees no need to seek amendment or revocation of AS 47.17.027. The agency response satisfies the intent of the recommendations.

This complaint will be closed with an overall finding of *justified* and *rectified*.