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OMBUDSMAN INVESTIGATES CHANGE OF FOSTER PLACEMENT BY OCS

August 12, 2019 Juneau – Alaska State Ombudsman Kate Burkhart recently concluded an investigation of a complaint from a licensed foster parent about the way the Office of Children’s Services (OCS) changed the placement of a toddler in foster care. The Ombudsman investigated whether OCS abused its discretion in deciding to move the child from the complainant’s home to another foster home. The Ombudsman also investigated how OCS participated in the writing of court documents opposing the foster parent’s request for a placement review hearing.

In 2018, a foster parent alleged that OCS had inappropriately removed a foster child from their home. The foster child had lived with the complainant since birth, and the foster parent had begun the process to adopt the child. During the adoption process, OCS moved the child to a different foster home. The foster parent requested a placement review hearing. OCS opposed the request, and the court overseeing the child in need of aid (CINA) case denied the request. The foster parent then made a complaint to the Alaska State Ombudsman.

The Ombudsman found the allegation that OCS had abused its discretion in changing placement of the child was not supported by a preponderance of the evidence. OCS moved the child from the complainant’s home to a foster home where the child’s sibling had been placed. OCS has statutory authority and broad discretion to determine where children in its custody will reside.

OCS must follow placement preferences outlined in statute and policy, including placing siblings together whenever possible. In this case, OCS asserted several reasons for changing the child’s placement in its opposition to the request for a placement review hearing. However, when interviewed, OCS staff emphasized that maintaining the sibling bond was the main reason for the move. Records from the CINA court hearings showed that the guardian ad litem also recommended placing the child with their sibling. Supporting continuity of the sibling bond is a legitimate consideration in what is in the child’s best interest. Therefore, OCS’s actions — while potentially disruptive for the child — were not an abuse of discretion.

After thorough review of the entire child protection file and interviews of the foster parent, OCS staff, and Department of Law staff, the Ombudsman found the allegation that OCS’s opposition to the foster parent’s request for a placement review hearing was unsupported by an adequate statement of reasons to be justified. In its pleadings, OCS asserted multiple reasons for the change of placement. Several of those assertions were misleading, and in some cases, false.

OCS’s sworn pleading to the court stated as fact that the child experienced an injury that there is no evidence occurred. The pleadings provided inaccurate information about other historic injuries.

The pleadings omitted the critical fact that OCS had either decided not to investigate reports of the child's prior injuries or had investigated and found them unsubstantiated. These pleadings painted the complainant as neglectful and provided an inaccurate picture of their performance as foster parents.

The Ombudsman and investigator met with OCS Director Natalie Norberg in April 2019 to discuss the findings. Director Norberg emphasized that this complaint arose before the passage of HB 151, which supported additional front-line staff in the office involved. OCS also reported increasing resources to prevent and mitigate caseworker errors like those in this complaint.

OCS committed to several actions to resolve this complaint:

- OCS would send a written apology to the foster family;
- OCS would file an amendment to its previous pleadings with the court, which it did on May 16, 2019, to correct facts that were inaccurate and/or misleading;
- All OCS staff would receive training on how to cultivate relationships with resource families; and
- OCS staff in the office where this complaint arose will attend training with attorneys from the Department of Law about reporting and testifying to the court in CINA cases.

The Ombudsman commends OCS for its efforts to resolve this complaint and makes two additional recommendations to OCS. The first is that OCS should host training for its attorneys from the Department of Law, to ensure that attorneys representing the agency understand OCS's values, especially regarding foster families. The second is that the Department of Health and Social Services should seek amendment of AS 47.10.080(s) to allow pre-adoptive foster parents standing, in limited circumstances, the ability to request a placement review hearing if OCS decides to change their foster child's placement. This recommendation is limited to situations involving foster children whose parents' rights have been terminated and for whom OCS has determined adoption is in their best interests.

A public report of the investigation (J2018-0209), findings, and recommendations is available at <https://ombud.alaska.gov/case-summaries>.

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