

## Public Summary - Ombudsman Investigation

Office of Children's Services, Department of Family and Community Services  
A2018-1195, J2018-0419

January 4, 2023

The Ombudsman provides this public summary of the investigation of complaints A2018-1195 and J2018-0419 pursuant to AS 24.55.200 and 21 AAC 25.400(1).<sup>1</sup> This report has been redacted to remove information that would identify the complainant and members of the families involved in this investigation.

### Introduction

The Alaska State Ombudsman received two complaints in 2018 from a guardian ad litem (GAL) about the Office of Children's Services (OCS) – formerly within the Department of Health and Social Services (DHSS) and now within the Department of Family and Community Services (DFCS).<sup>2</sup> The complaints were about OCS staff's handling of two child protection cases in which the complainant had been appointed by a court to serve as the GAL. In both cases, the GAL alleged that OCS had failed to protect the health and safety of the children in custody.

In the first complaint (A2018-1195), the complainant alleged that OCS failed to protect a medically fragile infant and allowed continued maltreatment to occur to the child by leaving them in the parents' home, instead of immediately removing the child and placing them in foster care. The complainant alleged that: (1) OCS staff failed to properly investigate multiple reports of harm concerning the child; (2) OCS assigned a family services worker to the case who was inexperienced, unqualified, and untrained for child protection work; and (3) the family services worker overlooked significant information that left the child in danger of harm.

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<sup>1</sup> 21 AAC 25.400. Public documents. In order to carry out the ombudsman's duties under AS 24.55, the following are public records: (1) the ombudsman's reports and recommendations published under AS 24.55.200.

<sup>2</sup> Governor Michael Dunleavy, by [Executive Order 121](#), divided the Department of Health and Social Services into the Department of Health and the Department of Family and Community Services, effective July 1, 2022.

In the second complaint (J2018-0419), the complainant alleged that: (1) the same family services worker failed to make a protective services report about children in another case, despite receiving information that warranted the filing of a such a report; and (2) OCS failed to protect the children by not properly investigating the parents' drug use relapse and domestic violence (DV) incidents, ignoring this information for three months.

Overall, the complainant alleged that OCS staff did not follow agency policies and procedures, disregarded relevant information in their decision-making process, and did not properly address the safety threats to the children in both cases. They alleged that the family services worker assigned to the cases repeatedly failed to protect the children in OCS custody and needed additional training and education.

Assistant Ombudsman Jennifer Christensen investigated complaint A2018-1195. Former Assistant Ombudsman Beth Leibowitz investigated complaint J2018-0419.

## Allegations

AS 24.55.150 authorizes the Ombudsman to investigate administrative acts that she 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.

The Ombudsman investigated three allegations in complaint A2018-1195:

**Allegation 1: Unreasonable:** OCS failed to protect a child by not properly documenting and investigating multiple reports of harm.

**Allegation 2: Unreasonable:** OCS allowed a child to remain in the parents' home despite evidence of repeat maltreatment.

**Allegation 3: Unreasonable:** The OCS caseworker did not follow agency policy for making protective services reports so that they could be independently assessed by the OCS Intake Unit.

The Ombudsman investigated four allegations in complaint J2018-0419:

**Allegation 4: Unreasonable:** The OCS caseworker did not follow agency policy for making protective services reports so that they could be independently assessed by the OCS Intake Unit.

**Allegation 5: Unreasonable:** OCS did not reevaluate case planning for a parent after learning of their substance use disorder relapse and domestic violence.

**Allegation 6: Based on a mistake of fact:** OCS erred by finding the complainant's protective services report of maltreatment not substantiated.

**Allegation 7: Unreasonable:** OCS did not provide timely referrals for domestic violence assessments for the parents.

Investigation of Allegation 2 was discontinued when, in the course of the investigation, Alaska Court System records and transcripts showed that the court had ruled on the issue of removal (removing the matter from ombudsman jurisdiction).<sup>3</sup>

The Ombudsman issued a preliminary investigative report on October 19, 2022. Based on a preponderance of the evidence,<sup>4</sup> the Ombudsman found all of the allegations not supported by the evidence **except** Allegation 1, which she found partially justified, and Allegations 3 and 4, which

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<sup>3</sup> 21 AAC 25.130. Grounds for discontinuing investigation of a complaint. (a) The ombudsman will close a complaint without further investigation for any of the following reasons: (2) the merits of the complaint have become the subject of a court decision, such that further investigation by the ombudsman would require the ombudsman to make findings on an issue ruled upon by the court.

<sup>4</sup> The standard used to evaluate all ombudsman complaints is the preponderance of the evidence. If the preponderance of the evidence indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation is found justified.

she found justified.<sup>5</sup> The Ombudsman made one recommendation, that OCS should include specific procedures for family services workers to follow when reporting new information alleging maltreatment or risk of maltreatment in open child protection cases to the Intake Unit.

## Agency Consultation and OCS Response to the Preliminary Report

The Ombudsman held a consultation with OCS management on October 14, 2022, prior to issuing the preliminary report on October 19, 2022.<sup>6</sup> OCS Director Kim Guay provided a written response to the Ombudsman’s preliminary findings and recommendations on November 25, 2022.<sup>7</sup> OCS did not dispute the Ombudsman’s investigative findings for Allegations 1, 4, 5, 6, or 7, but disagreed with the justified finding for Allegation 3.<sup>8</sup>

One of the issues identified in the investigation was how OCS staff document and respond to drug and alcohol tests (urinalysis (UA) and hair follicle tests). During the consultation, the Ombudsman, ombudsman investigator, and OCS management discussed the agency’s tracking of test results to ensure that the family services worker assigned to a case is immediately notified of the results and considers the results when making decisions regarding a case. Director Guay shared that the agency had made several changes to improve this process during the Ombudsman’s investigation:

Your investigation and report identified other areas needing improvement. The local office has improved its documentation of substance testing to ensure that caseworkers receive timely notification of results. This includes assigned personnel and [a] dedicated mailbox to receive and process results, timely entering of the

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<sup>5</sup> 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.

<sup>6</sup> AS 24.55.180. Consultation. Before giving an opinion or recommendation that is critical of an agency or person, the ombudsman shall consult with that agency or person. The ombudsman may make a preliminary opinion or recommendation available to the agency or person for review, but the preliminary opinion or recommendation is confidential and may not be disclosed to the public by the agency or person.

<sup>7</sup> OCS Response to Preliminary Report, A2018-1195/J2018-0419 (dated November 20, 2022; received November 25, 2022).

<sup>8</sup> *Id.*

results into our database and the sharing of the results directly with the caseworker via email.<sup>9</sup>

OCS recognized the need to improve the process for recording and considering urinalysis and hair follicle test results and took initiative to fix it. For this reason, the Ombudsman did not formally recommend additional changes to the process.

OCS accepted the Ombudsman's recommendation that the agency should include specific procedures for family services workers to follow when reporting new information alleging maltreatment or risk of maltreatment in open child protection cases to the Intake Unit.

## **Relevant Statutory, Regulatory, Court Rules, and Policy Authority**

### *OCS's Statutory Obligations in a Child Protection Action*

Removal of a child from the parental home is not automatic, even if a report of harm has been substantiated by OCS. Alaska law and OCS policy mandate that OCS take immediate protective custody of a child if there is evidence that a child has been abused or neglected, and the agency is unable to ensure the safety of the child if left in the parental home. AS 47.17.030(a) states, in relevant part:

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

If OCS has evidence that a child has been abused or neglected, the agency can take emergency custody of a child for the reasons set forth in AS 47.10.011, pursuant to AS 47.10.142. Those reasons include:

(8) conduct by or conditions created by the parent . . . have (A) resulted in mental injury to the child; or (B) placed the child at substantial risk of mental injury as a result of . . . exposure to conduct by a household member . . . against another household member that is a crime . . .

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<sup>9</sup> *Id.*

(10) the parent[’s] . . . ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child; if a court has previously found that a child is a CINA under this paragraph, the resumption of use of an intoxicant by a parent . . . within one year after rehabilitation is prima facie evidence that the ability to parent is substantially impaired and the addictive or habitual use of the intoxicant has resulted in substantial risk to the child; . . .

If OCS does not believe that grounds exist for taking emergency custody of a child, but still has concerns that a child is in need of aid based on its investigation of a report of child abuse or neglect, OCS may file a petition for non-emergency custody (AS 47.10.020).

AS 47.17.290(3) defines child abuse or neglect as “the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate the child’s health or welfare is harmed or threatened thereby.”<sup>10</sup> Mental injury is defined as “an injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child’s ability to function.”<sup>11</sup> Maltreatment means “an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be in a child in need of aid, as described in AS 47.10.011.”<sup>12</sup>

A court can find a child in need of aid if it finds by a preponderance of the evidence that “conduct by or conditions created by the parent” have “resulted in mental injury to the child.”<sup>13</sup> The Alaska Supreme Court held in *Winston J. v. DHSS* that witnessing domestic violence is mentally harmful to children, and can be considered a “substantial risk of mental injury” to a child under AS 47.10.011(8).<sup>14</sup> In order to establish that a parent’s conduct placed a child at risk of mental injury, OCS must establish that the child was exposed to an act of assault or domestic violence.<sup>15</sup>

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<sup>10</sup> AS 47.17.290(3).

<sup>11</sup> *Id.*

<sup>12</sup> AS 47.17.290(9).

<sup>13</sup> AS 47.10.011(8)(A).

<sup>14</sup> *Winston J. v. DHSS*, 134 P.3d 343 (Alaska 2006).

<sup>15</sup> *See id.*

A substantiated finding is one where the facts gathered during the initial assessment of a protective services report indicates that, more likely than not, a child has been subjected to maltreatment under circumstances indicating the child’s health or welfare is harmed or threatened.<sup>16</sup>

OCS staff are required by law to file a report of harm with the OCS Intake Unit if they have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect.<sup>17</sup> AS 47.17.290 defines “reasonable cause” as “based on all the facts and circumstances known to the person, that would lead a reasonable person to believe that something might be the case.” Mandatory reporters must report suspected abuse and neglect immediately.<sup>18</sup> AS 47.17.068 imposes misdemeanor criminal penalties for a mandatory reporter who fails to report suspected abuse or neglect of a child.

### *Relevant CINA Court Rules*

OCS can take emergency custody of a child without a court order.<sup>19</sup> If OCS determines it is necessary to maintain custody for the child’s protection, OCS is required to file a Child in Need of Aid (CINA) petition with the court within 24 hours after taking emergency custody.<sup>20</sup> The court can likewise issue an order authorizing OCS to take emergency custody of a child under CINA Rule 6(b). OCS “or any other person or agency may petition the court for an order granting [OCS] emergency custody.”<sup>21</sup>

OCS can also file a petition with the court seeking temporary custody of a child on a non-emergency basis.<sup>22</sup> If the court awards temporary custody of a child to the Department, OCS may remove a child from the parental home under CINA Rule 10(c)(3) if continued placement in the

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<sup>16</sup> OCS Policy 2.2.10.1 Maltreatment Findings (Rev. 5/16/15), OCS Child Protection Manual.

<sup>17</sup> AS 47.17.020. Persons required to report. (a)(1) practitioners of the healing arts. “Practitioner of the healing arts” includes social workers per AS 47.17.290. Definitions. (14).

<sup>18</sup> AS 47.17.020(a) “persons who . . . have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department.”

<sup>19</sup> CINA Rule 6(a). The children at issue in these child protection cases were not Alaska Native or Native American, and so the standards set by the Indian Child Welfare Act (ICWA) and corresponding state law and authority do not apply.

<sup>20</sup> *Id.*

<sup>21</sup> CINA Rule 6(b)(1).

<sup>22</sup> CINA Rule 7.

home is contrary to the child’s welfare.<sup>23</sup> Any party, including the guardian ad litem, can request that the court review a temporary custody or supervision order.<sup>24</sup> Likewise, at any time during the CINA case, “the court may review matters not otherwise covered by these [CINA] rules upon motion of a party or on its own motion.”<sup>25</sup>

Before ordering a child’s removal from the home, the court should evaluate whether there are services available to the parents that would allow the child to remain safely in the home and whether the parents will voluntarily agree to participate in services offered by OCS.<sup>26</sup> If only one parent is considered to pose a risk to the child(ren), the court should also consider whether removing that parent from the home would prevent harm to the child(ren). The court must also consider whether OCS made reasonable efforts to prevent the child’s removal from the home or whether reasonable efforts were not possible under the circumstances.<sup>27</sup>

CINA Rule 11 provides for the role of a GAL in CINA proceedings. The court must appoint a GAL in all CINA cases as soon as possible after OCS files the petition for custody.<sup>28</sup> The GAL is “a party to the proceeding,” and is entitled to receive all the same notices, pleadings, papers, and materials in the case as the parents, OCS, and other parties.<sup>29</sup> The GAL has a right to appear and participate in all CINA hearings and may “engage in motion practice, conduct discovery, introduce evidence, examine and cross examine witnesses, make objections, make opening statements and closing arguments, and take or participate in an appeal.”<sup>30</sup>

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<sup>23</sup> For ICWA cases, a child may only be removed from the home by OCS if removal is necessary to prevent imminent physical damage or harm or there is clear and convincing evidence that the child is likely to suffer serious emotional or physical damage if left in the home. This requires the testimony of a qualified expert witness. *See*, CINA Rule 10(c)(3).

<sup>24</sup> CINA Rule 10(e)(1).

<sup>25</sup> CINA Rule 19.1(d).

<sup>26</sup> CINA Rule 10.1. Out-of-Home Placement-Required Findings.

<sup>27</sup> *Id.*

<sup>28</sup> CINA Rule 11(a)(1).

<sup>29</sup> CINA Rule 11(a)(4).

<sup>30</sup> *Id.*



## *OCS Policies and Procedures*

### Protective Services Reports

OCS Policy 2.1 Protective Services Reports (PSR) requires OCS staff to document reports of suspected child maltreatment in ORCA (OCS’s computerized records system). “Any OCS staff person who receives information that alleges child maltreatment will forward it to the intake unit for documentation, decision-making, and determination, making no prior judgments about whether the concerns should be assigned for initial assessment or screened out.”<sup>31</sup> As this policy notes, “There are two fundamental decisions at intake: 1. screening a new protective services report in or out for initial assessment, and 2. determining the type of alleged maltreatment and priority response needed.”<sup>32</sup>

The Procedure associated with OCS Policy 2.1 provides detailed guidance for Intake Unit staff on how to collect information from reporters, conduct additional information gathering, consider the information, and make screening decisions. It does not include instruction for when and how a family services worker or other OCS staff should convey “information that alleges child maltreatment” to the Intake Unit.

There are three types of reports to OCS: requests for information and referral, a services intake, and a Protective Services Report (PSR).<sup>33</sup> If OCS Intake is contacted about an open child protection services (CPS) case, but no maltreatment is alleged, OCS intake staff must document the call in ORCA<sup>34</sup> in an activity note and notify the assigned protective services worker by email or phone call.<sup>35</sup> However, “[a]ll allegations of child maltreatment in an open case must be documented as a PSR and screened as per the screening procedures.”<sup>36</sup>

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<sup>31</sup> OCS Policy 2.1. Policy, C. at 2 (rev. October 1, 2016).

<sup>32</sup> OCS Policy 2.1. Policy, E. at 2.

<sup>33</sup> OCS Policy 2.1. Procedure, B. Identifying Protective Services Report Type at 3.

<sup>34</sup> ORCA is the electronic case management system used by OCS.

<sup>35</sup> OCS Policy 2.1. Procedure, B. Identifying Protective Services Report Type at 3.

<sup>36</sup> *Id.*

OCS policy states that “[a]ll calls, or other contacts, where there are concerns or allegations of child maltreatment are considered PSRs.”<sup>37</sup> OCS staff are expected to respond to concerns or allegations of child maltreatment by documenting them in a PSR. “Upon receipt of a PSR, OCS shall collect, document, and analyze the reported information in order to make an appropriate screening decision. If present danger or other emergency conditions are identified, OCS must take whatever action is necessary to initiate an immediate response.”<sup>38</sup>

In response to a PSR, OCS Intake staff are expected to gather information concerning a child’s safety. This includes asking the reporter about the child’s immediate safety and the immediate safety of any other minor children in the home, present danger threats and possible emergency circumstances, and protective adults who are or may be available.<sup>39</sup> After receipt of a PSR, an OCS Intake supervisor reviews, approves, or modifies the screening decision (either screening in the report for investigation, or screening out the report for no further OCS intervention).<sup>40</sup> If a report is screened out, an OCS Intake supervisor is required to clearly document the reasons for screening it out in ORCA.<sup>41</sup>

OCS Policy 2.1.4 Repeat Maltreatment requires OCS staff to review critically any new PSRs received about a family when OCS has substantiated a prior PSR related to the family within the past six months. The critical review process entails reviewing the case history and documenting all past assessments and the findings. If the report is screened in, the worker assigned to do the assessment will review the current PSR, taking note of whether the victims, perpetrators, and allegations are new or different than in past substantiated assessments; review previous safety and risk assessments, and any care and safety plans; consider any issues associated with the past substantiation and, if needed, work with a supervisor to plan a strategy for the current assessment; and document the results of the review in ORCA.<sup>42</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> OCS Policy 2.1, Procedure, D. Screening Decision.

<sup>41</sup> *Id.*

<sup>42</sup> OCS Policy 2.1.4 Repeat Maltreatment.

If the safety appraisal indicates a risk of harm is present, the worker will develop a care and safety plan and notify the supervisor.<sup>43</sup> The worker will staff the case with a supervisor to discuss any identified harm factors from previous assessments and the associated care and safety plan, including the interventions to address the harm factors. The supervisor will assure that appropriate measures are being taken to alleviate and/or control the harm factors. Depending on the risk level, the worker and supervisor will decide whether a case should be opened for services.<sup>44</sup> They will also determine any referrals for services that are needed. The supervisor is responsible for recording the case staffing in ORCA.<sup>45</sup>

### Initial Assessment

OCS Policy 2.2.5. Conducting an Initial Assessment describes the process that OCS staff should follow when investigating a PSR. All initial assessments must be conducted by an OCS staff member who has been trained to conduct child abuse and neglect initial assessments and to assess safety.<sup>46</sup> OCS staff are expected to: (1) gather safety-related information; (2) determine present and impending danger (10 safety threats); (3) determine a child’s vulnerability; (4) determine if a parent or caregiver can or cannot and/or will or will not protect the child; (5) determine whether to substantiate child abuse or neglect; (6) determine the risk level for future abuse or neglect; and (7) determine whether a child is eligible for tribal membership.<sup>47</sup>

OCS staff must document in ORCA their contact with the alleged child victim(s), siblings, and other children in the home; the child’s caregivers; the alleged perpetrator; and any collateral contacts within five business days of contact.<sup>48</sup> OCS staff must complete an initial assessment within 30 days of assignment and enter all documentation in ORCA within 15 days of making the assessment.<sup>49</sup> OCS supervisors (Protective Services Specialists IV) “must approve the initial

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<sup>43</sup> *Id.*

<sup>44</sup> The Structured Decision Making matrix described in OCS Policy 2.2.10.2 Case Decision is used as a guideline for OCS staff when deciding whether to open a case for services, or to close it out.

<sup>45</sup> OCS Policy 2.1.4 Repeat Maltreatment.

<sup>46</sup> OCS Policy 2.2.5, Policy, A at 2.

<sup>47</sup> OCS Policy 2.2.5, Policy, C. at 2.

<sup>48</sup> OCS Policy 2.2.5, Policy, B. at 2.

<sup>49</sup> OCS Policy 2.2.5, Policy, F. and G. at 3.

assessment or recall/return to the PS Specialist within 7 days of receiving the initial assessment in ORCA.”<sup>50</sup>

### Maltreatment Findings

OCS Policy 2.2.10.1 Maltreatment Findings defines the three types of findings OCS can make when completing an Initial Assessment (IA):

- **Substantiated:** A substantiated finding is one where the available facts gathered from the IA indicate that more likely than not, a child has been subjected to maltreatment and the child’s health or welfare is harmed;
- **Not substantiated:** A not substantiated finding is one where the available facts gathered from the IA indicate more likely than not, a child has not been subjected to maltreatment;
- **Closed without finding:** the family cannot be located, a child’s safety, well-being and functioning cannot be assessed, or a Tribe has exclusive jurisdiction over the case.<sup>51</sup>

### Case Decision

OCS Policy 2.2.10.2 Case Decision provides that, after assessing the parents’ protective capacities, the child’s needs, and the future risk for abuse and neglect, OCS staff should decide whether to open an ongoing case and transfer it to a family services worker or to close the case.<sup>52</sup> Staff are required to use a matrix in their decision-making process. When the risk for future child abuse and neglect is high and parental protective capacities are low, the matrix recommends that staff open a case for family services.<sup>53</sup>

### Emergency Custody

OCS Policy 2.3.1 Emergency Custody/Decision Making describes the process OCS staff should follow when considering whether to remove a child from their home. OCS can take emergency custody of a child when staff have determined that present danger exists and that entering into a

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<sup>50</sup> OCS Policy 2.2.5. Policy, H. at 3.

<sup>51</sup> OCS Policy 2.2.10.1. Policy, B-D at 2.

<sup>52</sup> OCS Policy 2.2.10.2 Case Decision, Procedures.

<sup>53</sup> *Id.*

protective action plan with the parents is: (1) not possible because the parents are unwilling to cooperate, or (2) not appropriate due to the severity of abuse.<sup>54</sup>

### Non-emergency Custody

When OCS staff conclude that emergency custody is not appropriate, the other option is non-emergency custody as described by OCS Policy 2.4.1. OCS can seek non-emergency custody of a child when parental conduct or conditions described in AS 47.10.011 exist, but immediate removal is not required to address abandonment, neglect, sexual abuse, or to protect a child's life or to provide immediate medical attention.<sup>55</sup>

### In-home Safety Plan

OCS Policy 2.2.5.1 Present and Impending Danger and the Child Safety Plan describes the process OCS staff should follow when developing a written safety plan. Safety plans should be created in collaboration with a child's parents to ensure the child's safety while allowing the child to remain in their home. When OCS staff determine that a present or impending danger exists, and the parents can identify a protective adult who is willing to provide safety and supervision of the child, the child can remain in the home.<sup>56</sup>

To keep a child safe in their home, OCS policy requires that: a parent is residing in the home; the home is calm and predictable enough to allow for safety actions, tasks or services in the home; the parents are willing to participate in an in-home safety plan; there are resources available to manage the safety threats; the safety plan participants can be in the home safely; and the in-home safety plan is effective without professional evaluations and monitoring.<sup>57</sup> If any of these criteria are missing, OCS will determine that in-home safety plan is not appropriate.<sup>58</sup>

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<sup>54</sup> OCS Policy 2.3.1 Policy, A.2-3 at 2.

<sup>55</sup> OCS Policy 2.4.1 Policy, B. at 1.

<sup>56</sup> OCS Policy 2.2.5.1.

<sup>57</sup> OCS Policy 2.2.5.1. Procedures, F.1.b. at 4-5.

<sup>58</sup> OCS Policy 2.2.5.1. Procedures, F.1.b.7. at 4.

## Case Planning

OCS Policy 2.9 describes the process and requirements for creating case plans. OCS should develop a case plan with the parents' input within 60 days of assuming custody of a child.<sup>59</sup> Case planning is required for all families with an open CPS case, whether the child remains in-home or has been removed from the parental home.<sup>60</sup>

## Drug Testing

OCS Policy 2.2.5.5 Drug Testing states, “[w]hile drug testing is a useful tool for assessing sobriety, a positive drug test in and of itself is not the sole indicator that children are unsafe. Positive drug tests should be viewed as indicators that the treatment plan needs adjusting, rather than proof of treatment failure.”<sup>61</sup> Likewise, this policy states “negative tests are not an indicator of overall recovery.”<sup>62</sup> The result of each drug test must be documented “by placing the results into the case file or documented into ORCA.”<sup>63</sup>

## Domestic Violence

OCS Policy 2.2.6 Screening for Domestic Violence provides, “If the department determines in an assessment of abuse or neglect that the child is in danger because of domestic violence or that the child needs protection as a result of the presence of domestic violence in the family, the department shall take appropriate steps for the protection of the child.”<sup>64</sup> “Appropriate steps” include:

- Reasonable efforts to protect the child and prevent the removal of the child from the parent who is not a domestic violence offender;
- Reasonable efforts to remove the domestic violence offender from the child’s residence if it is determined that the child or another family or household member is in danger of domestic violence; and
- Services to protect the child from being placed or having unsupervised visitation with the domestic violence offender until OCS determines that the offender has met certain

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<sup>59</sup> OCS Policy 2.9. Policy, B. at 4.

<sup>60</sup> OCS Policy 2.9. Policy, A. at 4.

<sup>61</sup> OCS Policy 2.2.5.5.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> OCS Policy 2.2.6 Screening for Domestic Violence, Background Information-State Law, B. (rev. October 31, 2012).

conditions considered necessary by OCS to protect the domestic violence victim and household members.<sup>65</sup>

***Ombudsman's Note:** Information in child protection investigations and CINA cases is confidential (AS 47.10.093) and cannot be disclosed (AS 24.55.160(b)).*

## **Ombudsman Complaint A2018-1195**

Mona and Michael are the parents of Mary (born in March 2018).<sup>66</sup> Mary was born with a serious medical condition. Mona had children from a prior relationship who were the subjects of a separate CINA case. The complainant served as the guardian ad litem (GAL) for those children in that case. Mona's parental rights to her two older children were terminated in March 2018, three weeks after Mary's birth. Both parents had a history of substance use and domestic violence. This, combined with the parents' past involvement with OCS, contributed to the GAL's concerns and eventual complaint to the Ombudsman.

The ombudsman investigator reviewed applicable law, OCS policies, Alaska caselaw, Office of Administrative Hearings' decisions, agency records, documents provided by the complainant, and the CINA court case records. The ombudsman investigator listened to the audio transcript from the CINA court hearings. She interviewed the complainant and OCS staff.

### *Complainant Interview*

The complainant expressed concern that OCS management had removed a prior caseworker from Mary's case despite the prior caseworker's historical knowledge of the family. The complainant felt that the new family services worker was inexperienced and inadequately trained and had overlooked or ignored significant safety threats instead of protecting Mary.

The complainant expressed frustration that OCS was not forthcoming in providing information to them as the GAL. The complainant alleged that OCS failed to disclose to the GAL or the court

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<sup>65</sup> *Id.*

<sup>66</sup> Pseudonyms are used to protect the family's privacy.

information about the mother's positive drug test. The complainant also referenced a telephonic report of harm by a mandatory reporter that was not properly documented or investigated as a PSR. The complainant did not learn about these events until months after the fact.

The complainant alleged that infant Mary suffered mental injury in her parents' home by being exposed to domestic violence. They referenced an incident where the child's father was arrested for domestic violence. He was charged but not convicted of any crime related to this incident. When asked to describe how Mary was harmed as a result of exposure to domestic violence, the complainant provided no evidence or information of specific incidents of domestic violence in the home beyond this one. They acknowledged that following the alleged domestic violence incident, OCS required the father to move out of the home while OCS conducted its initial assessment. He was also required to have supervised visitation.

The complainant reported that they went with the family services worker to the parents' home after the father had been required to leave the home for domestic violence. The complainant did not note any concerns with the condition of the home. They saw Mary briefly at the end of the visit because the baby was sleeping when they arrived. The father arrived at the home while the GAL was present for supervised visitation by the OCS worker.

The complainant reported that Mary's medical providers had been seeing Mary regularly and that there were no noted medical concerns for her care.

The complainant confirmed that during the court hearings in the CINA case, they requested that the judge make removal findings on more than one occasion. However, the judge denied their requests.

### *Case History*

Seven days after Mary's birth, OCS requested that both parents complete a 12-panel urinalysis (UA) test and a hair follicle test. An IA worker conducted an unannounced home visit after Mona and Mary's discharge from the hospital. Four days later, OCS held a Team Decision Meeting requesting that the parents continue to submit to drug testing.



The IA worker filed a Non-Emergency Petition for Adjudication with the court, requesting temporary custody of Mary, but allowing Mary to remain in her parents' home. They did not note in the petition that a parent's drug tests were positive for multiple substances; however, OCS did not receive the test results until after the petition was filed.

### *Reports of Harm/Initial Assessments*

OCS received four documented reports of harm about this family between February 2018 and October 2018. The GAL alleged that OCS also received a fifth report of harm, in May 2018, which OCS staff failed to properly document and respond to as required by law and agency policy. OCS disputed that they received a report of harm on this date. While an OCS supervisor acknowledged that the family services worker assigned to the case received a telephone call from a mandatory reporter, there was no record of a report of harm filed with OCS.

### *Case Planning and Family Contact*

OCS created case plans for both parents. OCS required Michael to leave the family home and limited his contact to supervised visits, based on the report of domestic violence. OCS prepared a family contact plan requiring that his visitation with Mary be supervised. According to the terms of the plan, the supervision level was "Structured-Low," meaning that "family contact occurs in the presence of a designated third party who evaluates and assesses the child/youth-family interaction and/or teaches and helps parents practice parenting skills."<sup>67</sup>

### *Removal from the Family Home*

Both parents tested positive for drugs in December 2018 following a hair follicle test. The next day, OCS removed Mary from the parents' home upon discovering that Michael had been residing in the home, contrary to the safety plan requirements. OCS filed a notice of removal the following day.

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<sup>67</sup> OCS Policy 6.5.6. Family Contact for Parents, J.3 Structured Family Time, at 4.

## **Analysis and Findings — Allegation 1: Unreasonable: OCS failed to protect a child by not properly documenting and investigating multiple reports of harm.**

The Ombudsman defines “Unreasonable” as “an agency’s act was inconsistent with agency policy and thereby placed the complainant at a disadvantage relative to all others.”<sup>68</sup> AS 47.17.030(a) requires that OCS “shall, for each report received, investigate and take action, in accordance with law, that may be necessary to prevent further harm to the child or to ensure the proper care and protection of the child.”

OCS screened in the February 2018 report of harm for investigation as a Priority 3, giving OCS staff seven days to initiate the investigation per OCS Policy 2.1. The report was properly assigned for investigation on the same day and OCS staff contacted the parents the following day, well within the policy’s required timeframe. The worker completed the investigation in March 2018, timely documenting the results in ORCA.<sup>69</sup> The worker concluded there was no evidence of neglect by the parents.

In March 2018, OCS held a team decision meeting with the parents and the attendees agreed that OCS would file a non-emergency petition for custody of Mary, while allowing her to remain in her home. The worker filed the petition with the court on the following day.

While the worker was investigating the February 2018 PSR, OCS received the second report of harm in March 2018. An OCS Intake worker initially screened this report in for investigation. An OCS Intake supervisor overrode the screening decision, noting that a case was already open based on the previous PSR. According to the screening decision, the report was screened out for multiple references on the same incident. Under OCS Policy 2.1, this is a valid reason for screening out a report of harm.<sup>70</sup> As of March 2018, an OCS worker was still actively investigating the February

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<sup>68</sup> Ombudsman Policy 4040(2).

<sup>69</sup> OCS policy 2.2.5 Conducting an Initial Assessment requires that the initial assessment be completed within 30 days of assignment.

<sup>70</sup> OCS Policy 2.1.F.2. Screen-out Reasons states that one of the allowable reasons for screening a report of harm includes: “Multiple Reports on the Same Incident: When the same incident/allegations have already been reported.

2018 PSR and had several follow-up contacts with the parents and the child during the investigation. Based on this information, the Ombudsman concluded it was reasonable for OCS staff to screen out the March 2018 report of harm.

In May 2018, a mandatory reporter called the OCS family services worker to report concerns about the parents and child. Based on the documentation reviewed by the ombudsman investigator, the concerns included neglect of the newborn Mary. The OCS family services worker conducted a face-to-face visit with the parents and the child the same day the mandatory reporter contacted them to report their concerns. The complainant was present during that visit with the family.

Per OCS policy 2.1, “OCS will accept reports made by phone, letter, fax, e-mail, or in person.” This policy further states, “OCS shall document all reports of children reported to be victims of physical injury, sexual abuse, sexual exploitation, neglect, or mental injury including those [reports] that can later be determined to be screened out for assessment.”<sup>71</sup>

“Any OCS staff person who receives information that alleges child maltreatment will forward it to the intake unit for documentation, decision-making, and determination, making no prior judgments about whether the concerns should be assigned for initial assessment or screened out.”<sup>72</sup>

This policy also provides, “If contact is made with OCS Intake on an open CPS case, but no allegations of maltreatment are made, the intake worker will document the call in the ORCA case record in an Activity Note as to the nature of the report and notify the assigned PS Specialist of the contact through either an email or telephone call.”<sup>73</sup> However, the policy also clearly specifies that “All allegations of child maltreatment on an open case must be documented as a PSR and screened as per the screening procedures.”<sup>74</sup>

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The case is currently assigned for assessment or has already been assessed. The date of the previous PSR should be documented.

<sup>71</sup> OCS Policy 2.1.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

The OCS family services worker did not document in the agency's records any concerns with the parents or the child, or even reference the concerns that were expressed to them by the mandatory reporter earlier that same day. This was contrary to OCS's policy requirements.

In June 2018, OCS received an anonymous report of harm alleging drug use and neglect of Mary. It was screened out by OCS intake staff in July 2018, which was outside of the timeframe for screening a report per OCS Policy 2.1.<sup>75</sup> OCS Intake staff screened out the report based on information provided to Intake by the family services worker, the parents' negative drug tests, and ongoing visits with the family documented in supervisory notes. Accordingly, OCS Intake's decision to screen out the June 2018 report of harm does not appear unreasonable or contrary to law.

In October 2018, OCS received another report of harm that Michael had been arrested for domestic violence against another family member. The report was screened in for investigation as a Priority 3 on the same day, giving OCS staff seven days to initiate its investigation. The family services worker was assigned to investigate the October 2018 report of harm and conducted a face-to-face visit with the family and interviews the following day. However, the initial assessment was not completed until well outside the required timeframe of 30 days per OCS Policy 2.2.5.<sup>76</sup>

After OCS received the October 2018 report of harm, OCS notified the family that Michael would need to leave the home. This was appropriate and complied with OCS policy.

OCS ultimately substantiated mental injury of Mary by both of her parents for exposure to domestic violence. However, the initial assessment was not completed timely and there is no evidence in the administrative record to show why the assessment was not completed until nine months later. OCS did not remove Mary from the parents' home after this incident. OCS removed

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<sup>75</sup> OCS Policy 2.1.D. Screening Decision requires that "A screening decision must be finalized no later than 24 hours of the initial receipt of the report." That did not occur here. Instead, OCS intake staff screened the report ten days after it was received.

<sup>76</sup> Per this policy, OCS staff have 30 days to complete an initial assessment after assignment.

Mary two months later, because the father had been living in the home, contrary to the terms of the in-home safety and family contact plan.

Based on the preponderance of the evidence, the Ombudsman concludes that OCS staff properly documented and investigated the February 2018 report of harm. The Ombudsman also concludes that OCS staff properly screened out the March and June 2018 reports of harm based on the collateral information that was available at the time. However, the June 2018 report of harm was screened by OCS intake staff untimely, ten days after it was received.

The Ombudsman found that OCS failed to properly document and investigate the May 2018 telephonic report of harm made directly to the family services worker.<sup>77</sup> Likewise, while the October 2018 report of harm was properly screened in for investigation and the initial assessment started timely, it was not completed timely. For these reasons, the Ombudsman found Allegation 1 *partially justified*,<sup>78</sup> meaning that at least part of the complainant's criticism is valid, but other aspects were not supported by the evidence reviewed.

### *Agency Response*

OCS agreed with the Ombudsman's findings.

## **Analysis and Findings — Allegation 3: Unreasonable: The OCS caseworker did not follow agency policy for making protective services reports so that they could be independently assessed by the OCS Intake Unit.**

The Ombudsman found that the family services worker did not properly handle the May 2018 telephonic report of harm (as previously discussed under Allegation 1). However, the family

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<sup>77</sup> Per Ombudsman Policy 4060.3 Findings, a justified finding means that an administrative act occurred, and a complainant's criticism is considered valid.

<sup>78</sup> Ombudsman Policy 4060.03 Findings, defines a partially justified finding in a complaint having multiple allegations as concluding at least one allegation is justified and at least one allegation is not supported or indeterminate, or a finding that there is shared fault between a complainant and an agency.

services worker responded appropriately to the information, going immediately (and notably, with the complainant) to visit the family.

However, the evidence also indicated that the family services worker did not comply with OCS Policy 2.1, which requires that any OCS staff person forward information alleging maltreatment to the Intake Unit for independent review. The mandatory reporter clearly expressed concerns of neglect, but the family services worker did not document it and did not forward the PSR to the Intake Unit. Therefore, based on a preponderance of the evidence, the Ombudsman finds this allegation *justified*.

### *Agency Response to Allegation 3:*

OCS objected to the Ombudsman's findings for Allegation 3:

With respect to allegation 3, the Office of Children's Services is not in concurrence with the finding of justified for the following reason: the [mandatory reporter's] phone call on May . . . 2018, was a typical exchange of information between a caseworker and medical practitioner. The call amounted to reporting concerns of a parent's functioning and were indicative of the prior behaviors that brought them into contact with our agency in the first place. In this instance the caseworker promptly responded to . . . assess the child's safety. We concur that we lacked appropriate documentation of the phone call, but it did not amount to a call that required referral to our intake unit.

However, OCS did not object to the Ombudsman's findings for Allegation 1, which specifically concluded, in part, that OCS staff failed to properly document and investigate the phone call as a PSR.

### *Ombudsman comment:*

After careful consideration of the agency's objections to the finding for Allegation 3, the Ombudsman declines to modify it. The agency's response implies that the mandatory reporter did not allege any maltreatment of the child, but that is not what the evidence showed.

“Neglect” is defined as “the failure by a person responsible for the child’s welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.”<sup>79</sup> Similarly, child maltreatment is defined as:

an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in AS 47.10.011. . .<sup>80</sup>

Under AS 47.10.011(9), grounds for finding a child in need of aid include conduct by or conditions created by a parent that have subjected the child to neglect.<sup>81</sup>

In an analogous Office of Administrative Hearings (OAH) decision, *In the Matter of SX*,<sup>82</sup> a parent challenged OCS’s substantiation of neglect of their newborn child after a mandatory reporter shared concerns about the parent’s ability to care for the child. According to the OAH decision, the reporter “became concerned because Ms. X and Mr. N did not appear able to care for O. They had to be reminded to feed O and change her diapers, and they repeatedly asked . . . how to perform various care functions, even after being shown how to do so several times.”

OCS received a PSR about the parents and a subsequent investigation determined that Ms. X and Mr. N had a history of acting out violently when they become frustrated. OCS learned of allegations of domestic violence and unstable housing. “Based on the foregoing, OCS concluded that Ms. X and Mr. N were not able to meet O’s needs, and that she would be at high risk of maltreatment if she were left in their custody. Accordingly, OCS took emergency custody of O on June 22, 2015, and placed her in foster care.”<sup>83</sup>

In the present complaint, the evidence indicated that the mandatory reporter called OCS to report their concerns that the father was neglecting his newborn child’s care. A written report of harm is not required by OCS policy. A phone call from a mandatory reporter alleging child maltreatment must be documented as a PSR per agency policy. It is undisputed that the family services worker

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<sup>79</sup> AS 47.17.290(11).

<sup>80</sup> AS 47.17.290(9).

<sup>81</sup> See AS 47.10.011(9).

<sup>82</sup> *In the Matter of SX*, OAH No. 15-1223-SAN (November 30, 2015; adopted as final decision by DHSS on January 6, 2016).

<sup>83</sup> *Id.*

did not forward the mandatory reporter's concerns to the Intake Unit for screening, nor document the call in the agency's records.

In contrast, in the *SX* case, OCS staff accepted similar concerns expressed by a similar mandatory reporter as a PSR, ultimately substantiating the report for neglect. Both cases involved comparable maltreatment concerns regarding a parent's ability (or inability) to care for their newborn child, but with a different response by agency staff. The Ombudsman is troubled by the inconsistency in the agency's response to these reports of harm.

The Ombudsman appreciates that the family services worker immediately followed up with the concerns reported to them by going to the hospital. However, this overlooks the fact that they did not comply with OCS policy requirements. For these reasons, Allegation 3 is found justified.

## **Ombudsman Complaint J2018-0419**

Anna is the mother of three children who were determined to be children in need of aid: Amelia, Avery, and baby Andrew.<sup>84</sup> Adam is the father of Andrew.<sup>85</sup>

When Andrew was born, he tested positive for two substances. Anna tested positive for the same substances, and a third substance. OCS petitioned for and was granted legal custody, but maintained the children in the home with Anna and Adam. OCS's safety plan required that Anna be supervised whenever she was with the children and relied on Adam or other safety plan participants to supervise her interactions with the children. OCS set up drug testing for Anna.

The in-home safety plan expired in April 2018. OCS did not formally reissue it, but evidence indicated that OCS intended to continue the safety plan because the parents appeared to be making progress and the children seemed to be doing well.

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<sup>84</sup> Pseudonyms are used to protect the family's privacy.

<sup>85</sup> *Id.*



The parents engaged in two incidents of domestic violence in April 2018, related to episodes of relapse and drug use. After the second April 2018 incident, the parents separated and both agreed that the children should reside with their grandparents.

The complainant was the GAL for the children in this CINA case, which involved the same family services worker as in Mary’s case. The GAL alleged that OCS failed to protect the children after learning of the parents’ relapse and domestic violence. They alleged that the family services worker failed to make a PSR when they learned of the relapse and domestic violence, and as a result OCS did not investigate or make findings related to the report. They alleged that OCS’s decision not to restrict visitation or to seek immediate removal of the children from the parents was improper. They also alleged that OCS failed to address the parents’ domestic violence in the case planning.

### **Analysis and Findings— Allegation 4: Unreasonable: The OCS caseworker did not follow agency policy for making protective services reports so that they could be independently assessed by the OCS Intake Unit.**

A mandatory reporter is supposed to file a PSR if they have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect.<sup>86</sup> The reporter is not expected to gather additional evidence or determine the validity of the report.<sup>87</sup> The OCS Child Protective Services Manual, section 2.1, requires OCS staff to file a PSR with the Intake Unit if they receive information that alleges child maltreatment.<sup>88</sup>

Under AS 47.10.011(8), grounds for finding a child in need of aid include conduct that placed the child at substantial risk of mental injury because of exposure to domestic violence.<sup>89</sup> The OAH

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<sup>86</sup> “Who Must Report?,” Mandatory Reporter Training, Office of Children’s Services (available online at <http://training.dhss.alaska.gov/mandatoryreporter/training/multiscreen.html> (last visited November 18, 2019)).

<sup>87</sup> *See Id.*

<sup>88</sup> OCS Policy 2.1. Policy, C. at 2 (rev. October 1, 2016).

<sup>89</sup> *See* AS 47.10.011(8)(B)(ii).

has issued decisions on what constitutes exposure to domestic violence<sup>90</sup> sufficient to create substantial risk of mental injury. According to multiple OAH decisions, “exposure” occurs if the children see the domestic violence.<sup>91</sup> One decision concluded that it was sufficient exposure if the children heard the fighting and knew that it was a fight, even if they did not see it.<sup>92</sup> Regarding an infant’s awareness of the domestic violence, one decision upheld a substantiation when an infant was in the room during the domestic violence.<sup>93</sup> However, another decision overturned a substantiation in similar circumstances, ruling that OCS had not proved that exposing a five-month-old child to one incident of domestic violence created a substantial risk of mental injury.<sup>94</sup>

Between April and May 2018, the family services worker learned that the parents had been in two major fights with physical violence, domestic violence charges might be pending against Adam, and that two of the children had been in the apartment when the domestic violence took place. The family services worker also learned that Adam, whose role in the safety plan had been to protect the children from the mother’s relapse, had himself relapsed.

The information that OCS had after April 2018 was not conclusive evidence that either parent had put the children at substantial risk of mental injury through exposure to domestic violence. Unlike the OAH decisions where a parent had been convicted of a crime of domestic violence, no criminal charges were filed against either parent, nor did the family services worker have a statement corroborating Anna’s assertion that the children saw the domestic violence.

The standard for filing a PSR is only “reasonable cause to suspect” child maltreatment. The reporter is supposed to leave the evaluation of the report to the OCS Intake Unit. If the report had

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<sup>90</sup> For purposes of AS 47.10.011(8)(B)(ii), “domestic violence” means ones of the crimes listed in the statute. *See In the Matter of B.L.B.*, OAH Decision No. 17-0758-SAN at 5 (February 15, 2018) (to substantiate a report under AS 47.10.011(8)(B)(ii), OCS must establish that the conduct in question falls within one of the enumerated criminal offenses). *See also In the Matter of K.D.*, OAH Decision No. 16-0753-SAN (February 17, 2017) (holding that to substantiate the report of harm, there must be credible evidence that a crime of domestic violence was committed).

<sup>91</sup> *See e.g. In the Matter of C.L.*, OAH Decision No. 15-1246-SAN (May 25, 2016); *In the Matter of E.A.M.*, OAH Decision No. 17-0311-SAN (April 3, 2018); *In the Matter of B.S.*, OAH Decision No. 17-0457-SAN (March 12, 2018).

<sup>92</sup> *See In the Matter of C.L.*, OAH Decision No. 15-1246-SAN at 9 (May 25, 2016).

<sup>93</sup> *In the Matter of E.A.M.*, OAH Decision No. 17-0311-SAN at 6 (April 3, 2018) (OCS substantiation of risk of mental injury under AS 47.10.011(8)(B)(ii) upheld where the parent was convicted of both domestic violence assault and family violence, because the assault occurred in the presence of an infant child).

<sup>94</sup> *See In the Matter of D. and E.M.*, OAH Decision Nos. 16-1186-SAN and 16-1187-SAN (consolidated) at 9 (March 7, 2017).

been screened in, the initial assessment worker would have been responsible for the investigation and would have collected additional information.

Based on the agency's records, the family services worker had enough information to file a PSR based on both parents telling them that they had engaged in physical violence while some of the children were present in the apartment. The Ombudsman found Allegation 4 *justified*.

### *Agency Response*

OCS agreed with the Ombudsman's findings.

## **Analysis and Findings — Allegation 5: Unreasonable: OCS did not reevaluate case planning for a parent after learning of their substance use disorder relapse and domestic violence.**

OCS and the parents entered into case plans in March 2018. In April 2018, Adam told the family services worker about the domestic violence and that both had relapsed. In May 2018, the family services worker conducted a home visit of Adam's residence (with relatives) and allowed Andrew unsupervised contact with Adam. This decision was approved by an OCS supervisor.

The court granted removal of the children in May 2018. The children were placed with a relative, who supervised the mother's visitation. Both parents were participating in the activities identified in their case plans, toward their respective goals. The family services worker visited both homes where the children would be living and determined them to be safe. They continued to conduct and document home visits. Based on the foregoing – without a substantiated report of harm – it was reasonable for OCS to allow the father to have unsupervised visitation with his infant child.

The complainant made a PSR in July 2018 based on the incidents of April 2018. OCS conducted an Initial Assessment in response. An OCS staff member (not the assigned family services worker) told the Initial Assessment worker that they allowed the parents to have an unsupervised overnight visit with the children, because they believed that the father was still a safety plan participant. The Initial Assessment worker believed that neither parent should be unsupervised with the children.

As a result, in early July 2018, the family services worker told the father that there was to be no unsupervised visitation.

The information provided by the complainant in the PSR was already known to OCS and had been acted upon through removal and placement of the children and monitoring the parents' compliance with their case plans. Based on a preponderance of the evidence, the Ombudsman finds Allegation 5 **not supported**.

### *Agency Response*

OCS agreed with the Ombudsman's findings.

### **Analysis and Findings— Allegation 6: Based on a mistake of fact: OCS erred by finding the complainant's protective services report of maltreatment not substantiated.**

“Based on a mistake of fact” means “a significant part of the agency's decision was based on a misperception or misunderstanding as to the existence of relevant facts.”<sup>95</sup>

In July 2018, the complainant filed a PSR based on the documents OCS provided during discovery. It is unclear why the complainant had no knowledge of the April events referenced in the PSR prior to July, or to what degree they were conducting visits and communicating with the parents during that time.

OCS screened in the report as Priority 3. The complainant filed another PSR in July 2018 in order to submit a copy of a police report related to a domestic violence incident. The second PSR was screened out as duplicative.

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<sup>95</sup> Ombudsman policy 4040(9).

The IA worker conducted interviews with the two older children, the mother, father, and other relatives. The IA worker also observed the youngest child, Andrew, an infant too young to be interviewed. The IA worker did not contact the investigating police officer.

Based on the information acquired during the interviews, the IA worker closed the Initial Assessment in August 2018, finding the allegations of mental injury and neglect not substantiated. The IA worker described the PSR filed in July 2018 as “historical,” and emphasized the lack of current or impending danger. During the initial assessment, the IA worker’s main concern was that the relative placement had allowed the parents to have an unsupervised overnight visit with the children.

The IA worker explained to the ombudsman investigator that, to substantiate mental injury, there needs to be more than the child being in the household during a domestic violence incident. A finding of mental injury must be supported by a professional opinion.

The IA worker reached their conclusion not to substantiate the PSR based on the information and interviews normally expected to be reviewed during an initial assessment. While the IA worker did not have all of the information available related to the April incidents, they did have sufficient evidence to support their conclusion. Based on the preponderance of the evidence, the Ombudsman finds Allegation 6 *not supported*.

### *Agency Response*

OCS agreed with the Ombudsman’s findings.

## **Analysis and Findings— Allegation 7: Unreasonable: OCS did not provide timely referrals for domestic violence assessments for the parents.**

As part of an initial assessment, OCS is required by both statute<sup>96</sup> and policy<sup>97</sup> to screen for domestic violence. Because there was no initial assessment conducted when OCS first learned of the domestic violence between the parents, no such screening took place in April or May 2018.

OCS did take some steps to assure that the children remained safe. The parents separated by mutual agreement, and each lived with family who could provide a safe environment for the children. OCS removed the children and placed them with a relative a month later.

During the Initial Assessment conducted in July 2018, the IA worker learned that the parents had been unsupervised with the children. The IA worker said that neither parent should have had unsupervised visitation. A week later, the family services worker told the father that he could no longer have unsupervised visitation. This restriction was put in place even though OCS did not substantiate the maltreatment alleged in the PSR.

The procedure for screening during an initial assessment directs the worker to take actions to protect the children from domestic violence. It requires that, if OCS finds during an initial assessment that “a person is the victim of domestic violence, the department shall provide the victim with a written notice of the rights of and services available to victims of domestic violence that is substantially similar to the notice provided to victims of domestic violence under AS 18.65.520.”<sup>98</sup>

The OCS Child Protective Services Manual does not offer specific guidance regarding when family services should include a professional domestic violence assessment for parents. OCS

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<sup>96</sup> AS 47.17.035.

<sup>97</sup>OCS Policy 2.2.4 Screening for Domestic Violence, Background Information-State Law, B. (rev. October 31, 2012).

<sup>98</sup> OCS Policy 2.2.4 Screening for Domestic Violence.

Policy 3.2.4 lists assistance to address domestic violence as one of the possible family support services.<sup>99</sup> OCS does not use a decision tool to determine whether, or when, a domestic violence assessment should be included in a parent's case plan. OCS policy offers a general statement that the parents' case plans must prioritize the most important services:

To keep a case plan reasonably achievable, avoid the tendency to refer to all possible resources. The PS Specialist, family, and Tribe, where a Native child is at issue, should select the 2 or 3 services most pertinent to the identified problem and include them in the plan.<sup>100</sup>

The parents separated after the second April 2018 fight, and separately told the caseworker that they had agreed to separate but still co-parent. The mother's need for substance use disorder treatment was the primary concern, and the father was willing to engage with behavioral health services, including anger management.

The family services worker could have recommended or required that the parents undergo domestic violence assessments, but they did not. The ombudsman investigator asked what factors were considered in deciding not to pursue such assessments. Either the family services worker or their supervisor responded that they had to look at how many things the parents could do at one time, and they prioritized the issues of substance abuse and impulse control.

The complainant recommended to the court in July 2018 that the father be referred for a domestic violence assessment and the mother for domestic violence services. The complainant arrived at a conclusion that neither OCS nor law enforcement nor the prosecutor made from the evidence before them – that the father was a perpetrator and the mother was a victim, but the mother was not a perpetrator and the father was not a victim, of domestic violence. OCS did not act on the complainant's recommendation at that time, but were investigating the PSRs the complainant made days before the recommendation to the court.

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<sup>99</sup> See OCS Policy 3.2.4 Services to the Family – Children in Out-of-Home Care.

<sup>100</sup> OCS Policy 3.2.2(e)(5), Service Delivery.

In November 2018, the parents reunited. They moved into a home together in December 2018. The family services worker spoke with the mother about domestic violence classes. The complainant continued to advocate for domestic violence services.

In January 2019, OCS requested the police records related to the April 2018 domestic violence incident. OCS staff conducted assessment interviews in February 2019, and issued written assessments in March 2019. The assessor believed that there was a significant risk that Adam would commit future domestic violence. However, the assessor identified substance abuse as a primary problem for both parents.

The assessor's recommendations emphasized substance use disorder treatment and relapse prevention for both. The Ombudsman notes that substance use disorder treatment was the primary intervention required in both parents' case plans from the beginning. While the domestic violence assessments were pending, the parents had enrolled in a church-based class that included work on building healthy relationships. They both completed treatment in March 2019.

OCS records do not indicate when OCS received copies of the domestic violence assessments. However, the assessments are referenced in records from April and May 2019. In April 2019, OCS began unsupervised visits for the parents. Two of the children began a trial home visit with their parents in June 2019.

Diane Casto, executive director for the Alaska State Council on Domestic Violence and Sexual Assault (CDVSA), explained that there is not a clear-cut standard on the timing of a domestic violence assessment in case planning.<sup>101</sup> Ms. Casto explained that the model of "sobriety first" has been largely displaced by a behavioral health model that considers substance abuse, mental illness, and domestic violence as interlocking problems.<sup>102</sup> Under a behavioral health model, substance abuse and domestic violence would be assessed concurrently.<sup>103</sup> Ms. Casto noted that multiple

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<sup>101</sup> See Telephone Interview with Diane Casto, Executive Director, CDVSA (March 18, 2020). Casto also pointed out that there is no uniform standard among professionals conducting assessments as to what constitutes a thorough assessment. However, she offered the opinion that the assessment tools used by the assessor in the parents' DV assessments were well-accepted.

<sup>102</sup> See *id.*

<sup>103</sup> See *id.*



factors could have contributed to OCS not considering the DV assessments to be urgent: lack of an arrest or criminal charges; lack of medical records to document the severity of the injuries; and the lack of evidence of prior domestic violence between these parents prior to April 2018.

The ombudsman investigator asked Ms. Casto about the heightened danger when the parents separated from each other in late April 2018. Ms. Casto explained that when the victim unilaterally leaves the abuser, the risk of violence is indeed severe.<sup>104</sup> However, in this case, both parents separately told the OCS caseworker that they had agreed to separate to work on their issues, and they also remained in contact rather than one of them ending the relationship entirely. Ms. Casto did not believe this type of situation would necessarily raise the level of risk.<sup>105</sup>

OCS confirmed the parents' separation after the April 2018 domestic violence incident – and monitored for compliance. OCS restricted visitation to supervised only when the agency learned that the relative placement allowed the parents to be together and unsupervised with the children. When the parents reunited – and the chance of domestic violence occurring increased – OCS referred both parents for a professional domestic violence assessment. The recommendations of those assessments aligned with the goals and activities already required in the OCS case plans – primarily addressing the parents' substance use disorders. Therefore, based on the preponderance of the evidence, the Ombudsman finds Allegation 7 *not supported*.

### *Agency Response*

OCS agreed with the Ombudsman's findings.

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<sup>104</sup> *See id.*

<sup>105</sup> *See id.*

## Recommendations

*Recommendation 1: OCS should include specific procedures for Family Services Workers to follow when reporting new information alleging maltreatment or risk of maltreatment in open child protection cases to the Intake Unit.*

OCS should add a section to the Procedures for Policy 2.1 Protective Services Reports that provides specific direction to Family Services Workers and other OCS staff about when and how to contact the Intake Unit when they receive information that would constitute a PSR. OCS could add another section to the Procedures, such as:

### Section I. Reports by Family Services Workers and Other OCS Employees

1. If an OCS employee receives or discovers information that indicates that a child in an open CPS case is experiencing maltreatment or at risk of maltreatment, that employee must, within 24 hours, make a PSR.
  - a. The OCS employee shall make the PSR by email to [reportchildabuse@alaska.gov](mailto:reportchildabuse@alaska.gov) or by telephone to the Intake Unit and provide the following information, if known:
    - 1) an account of the concerns they have about the child(ren) and/or family;
    - 2) details of specific incidents of maltreatment, to include when, where, and what happened and who the alleged perpetrator(s) are;
    - 3) demographic information about the family including the location of the child and the alleged maltreater, identification of all individuals who have access to the child, extent of alleged child maltreatment, circumstances surrounding the maltreatment, child and adult caregiver functioning, overall parenting and disciplinary behavior;
    - 4) any other factors that could contribute to the family's circumstances and may result in the child being unsafe or at high risk of maltreatment.
2. The intake worker will review the PSR objectively and process the PSR in the same way, according to Sections A-H, as all other PSRs.

## *Agency Response*

OCS agreed with the Ombudsman's recommendation and encouraged the Ombudsman to publish a public report:

The staff at the Office of Children's Services are tasked with incredibly difficult work, ensuring the safety of some of our state's most vulnerable- children; all the while working with parents who may be struggling with addiction, mental illness, or interpersonal violence. Our charge is to always do so with respect and empathy for the people we serve. In these cases, as noted in your report, our staff worked diligently to assess and investigate reports of harm, and then refocused efforts on assisting the parents [to] navigate a myriad of issues in hopes of achieving the highest preference outcome - reunification.

As you are likely aware, child welfare agencies across the country are regarded as lacking oversight and transparency resulting from the stringent confidentiality laws surrounding child welfare cases . . . While the investigation was initiated in 2018, and closed in 2022, the report provides the public a rare opportunity to view the operations of our agency in total, including our processes, our challenges, and our staff's commitment to our mission. The public has the opportunity to do so in the light of an independent investigative body.

## **Conclusion**

The Ombudsman investigated two complaints about the Office of Children's Services made by the guardian ad litem assigned to two child protection cases. While the Ombudsman noted procedural deficiencies by the family services worker, the Ombudsman found no evidence to support the overarching allegation that the worker or OCS failed to protect the children in these cases.

The family services worker was diligent in visiting the families involved in these cases and made efforts to build rapport and support the parents in working their case plans. They identified and worked to mitigate the most significant risks to the children's health, focusing on the parents' current and ongoing needs and behaviors rather than past behaviors.

Removal of a child is in itself a trauma, so it is appropriate for OCS to make efforts to keep children safe while remaining with their families when possible. OCS did that in these cases, and acted to remove the children when it was no longer possible to ensure their safety.

The Ombudsman notes that, in the second case, the family services worker's supportive efforts probably assisted the parents to complete their substance use disorder treatment and take the steps that led to a trial home visit. While the trial home visit was not successful, and reunification did not occur, there is no evidence that domestic violence played a part in the outcome. Instead, it was the parents' substance use disorders.

The Ombudsman appreciates the assistance and cooperation of OCS staff during this investigation, as well as OCS's efforts to address the issues raised in the complaint related to tracking and documenting drug test results and how OCS staff report PSRs to the Intake Unit.