Office of Colorado’s Child Protection Ombudsman

LETTER OF COMPLIANCE CONCERN

Case Number 2018-3123

Stephanie Villafuerte,
Child Protection Ombudsman
February 4, 2018
Introduction

By design, the Office of Colorado’s Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives “complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.” See C.R.S. §19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. §19-3.3-101-110, the CPO does not have the authority to:
- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

Identified Compliance Concerns

If, through the course of any case the CPO determines that an agency or provider may have violated any rules or laws, the CPO will issue a letter to the agency or provider outlining its compliance concerns. The agency or provider will be given 15 business days to provide a response to the CPO.

The CPO’s letter, and any response submitted by the agency or provider, will then be provided to the agency or provider’s supervising entity. The supervising entity will then make the final determination of whether a violation of law or rule occurred and provide any relevant remedies. The supervising entity will have 15 business days to make their determination and respond to the CPO. After the supervising entity submits its response, the CPO will post its letter, the agency or provider’s response and the supervising entity’s determination on the CPO’s website.
Public Disclosure

In meeting its statutory requirements to “improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,” as stated in C.R.S. §19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency/provider.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency/provider when reviewing and/or investigating a complaint. “In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.” See C.R.S. §19-3.3-103(1)(a)(II)(A)
Office of Colorado’s Child Protection Ombudsman

Letter of Compliance Concern

Case 2018-3123

(Delivered November 16, 2018)
To: Grant Smith, Director  
Washington County Department of Human Services  
126 West 5th Street  
Akron, CO 80720

From: Sara Embrey, Child Protection Systems Analyst  
Office of Colorado’s Child Protection Ombudsman  
1300 Broadway, Suite 430  
Denver, CO 80203

Date: November 16, 2018

Subject: Possible Compliance Issues

Dear Director Smith,

On May 31, 2018, the Office of Colorado’s Child Protection Ombudsman (CPO) was contacted by a father who was concerned the Washington County Department of Human Services (WCDHS) did not notify him after the department received a referral accusing him of abusing and/or neglecting his children. That referral led WCDHS to open an assessment. The CPO has reviewed the family’s history in Trails, analyzed other relevant documentation and interviewed collateral parties involved in the case. Through that review, the CPO has identified several areas in which the actions of the WCDHS may not be in compliance with notification guidelines in Volume VII.

Case Summary

Prior to WCDHS involvement with the family, the father was living in Kansas with his five children and the children’s mother. The children’s mother later moved to Colorado with the children. Roughly a year after the mother moved to Colorado with the five children, the WCDHS was contacted by the Kansas Department for Children and Families (KDCF) on March 12, 2018. The KDCF notified the WCDHS that a report had been filed with the KDCF regarding potential abuse by the mother and father when the family resided in the state. As a result, the WCDHS and the KDCF each opened an assessment to review the allegation. In completing its assessment, the KDCF interviewed the children’s father. A review of the case in the statewide Trails database revealed there were no documented attempts by the WCDHS to contact the father during the assessment. The WCDHS did obtain a copy of the interview transcript from KDCF’s interview with the children’s father. A WCDHS caseworker contacted the children’s mother and the children by phone and in person.

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1 The children’s father reported that he was not contacted by WCDHS when an assessment involving his children was opened. See Trails Assessment ID: [redacted].

2 Kansas Department for Children and Families, Case Findings, FACTS Event #: [redacted], Page 4

3 Trails Assessment ID: [redacted] Interview Contacts March 19, 2018, March 26, 2018, April 2, 2018, April 19, 2018
After reviewing the case and interviewing the father, the KDCF found the allegations were unsubstantiated. The WCDHS determined the allegations were founded. The father informed the CPO that the only communication he received from the WCDHS was a letter dated April 23, 2018, notifying the father that the WCDHS founded the allegations against him. Prior to receiving this letter, the father was unaware there was an open case in Colorado.

**Notification Requirements**

Volume VII and the Colorado Children’s Code collectively make up the minimum guiding principles and standards to which county human services departments are held to in assessing and ensuring a child’s safety. The two rules most pertinent to the CPO’s review of this case are:

- Volume VII 7.104.1(C)(2): County human services departments are required to engage non-custodial parents during an assessment and document attempts. The engagement of both parents during an assessment ensures that the county human service department has attempted to seek all pertinent information related to the family to complete an unbiased assessment of the allegations.

- Volume VII 7.104.1(C)(10): County human services departments are required to contact the person alleged to have caused the abuse or neglect during the assessment and shall document efforts. This affords the person alleged to have been responsible for the abuse or neglect the opportunity to respond to the allegations that have been made against them.

**Identified Compliance Concerns**

The CPO has reviewed the case in Trails, relevant sections of Volume VII and discussed the case with the Colorado Department of Human Services (CDHS) and KDCF. Based on the reviewed information, the CPO has concerns that WCDHS failed to engage the father who is the parent of children involved in an assessment of abuse and/or neglect. Failure to notify the father of the child may be a violation of Volume 7.104.1(C)(2).

Additionally, WCDHS’ reliance on the interview performed by KDCF and the department’s decision not to contact the child’s father directly may be a violation of Volume 7.104.1(C)(10).

**Conclusion**

Pursuant to policies 4.200 and 5.200 in the Colorado Child Protection Ombudsman’s (CPO) Case Practices and Operating Procedures, the CPO will notify any agency or provider if it identifies potential violations of law or rule. The CPO will NOT make a final determination of whether the violation took place. Instead, the CPO will ask the relevant agency or provider to respond to the CPO’s concerns in writing.

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4 Kansas Department for Children and Families, Case Findings, FACTS Event #: [redacted], Page 5
5 Referral/Assessment Summary, Referral ID: [redacted], Page 6
6 Volume VII- 7.104.1(C)(2)
After receiving the WCDHS’ response, the CPO will submit its original letter and WCDHS’ full response to the CDHS, which serves as the WCDHS’ supervising entity. (See C.R.S. § 26-1-11 and C.R.S. § 26-1-118.) The CDHS will then determine whether any violations occurred and any relevant remedies. The CDHS will have 15 business days to make its determination and respond to the CPO in writing. After receipt of the CDHS’ response, the CPO will post this correspondence and both responses to the CPO’s website. All child and family information will be redacted prior to the public release.

Please provide the WCDHS’ response to the possible violations listed in this letter no later than December 10, 2018.

Thank you for your time and please do not hesitate to contact me if you have any questions.

Sincerely,

Sara Embrey

Child Protection Systems Analyst

Approved by:

Stephanie Villafuerte

Stephanie Villafuerte
Child Protection Ombudsman
Washington County Department of Human Services

Response Letter
Case 2018-3123
(Delivered December 5, 2018)
December 5, 2018

Sara Embrey, Child Protection Systems Analyst
Office of Colorado’s Child Protection Ombudsman
1300 Broadway, Suite 430
Denver, CO 80203

RE: Possible compliance issue

Dear Ms. Embrey,

This letter is in response to your letter dated November 16, 2018, that I received by email on November 30, 2018. The alleged issue happened before I was hired on September 17, 2018; however I am the Director of Washington County Department of Human Services and will make every effort to satisfy the required response.

A referral was forwarded to WCDHS by KDCF about the [redacted] family due to a need for inter-agency cooperation and teamwork as abuses were being alleged in Kansas; a victim was in Kansas and Colorado, and potential perpetrators were located in Kansas and Colorado. Through staffing meetings at WCHDS and communication between WCDHS and KDCF, it was decided to collaborate efforts in interviewing the persons located in each respective state and share information. WCDHS opened, through necessity, an assessment and ultimately founded on [redacted] and inconclusive findings on [redacted] and [redacted]. The victims were not [redacted]’s children, but his girlfriend's children. [redacted] and [redacted] were never married, however together [redacted] and [redacted] had 3 boys of their own. The alleged victims were [redacted]’s older daughters, however through the interview process, it was uncovered that Dustin had been extremely inappropriate with a gun on two different occasions in or around vehicles in which all the children were present, making [redacted]’s 3 boys victims as well.

The decision to work together between WCDHS and KDCF was understood to be acceptable via Volume VII and general state practice of inter-agency cooperation. Counties throughout the state rely on law enforcement, other county DHS offices and agencies to assist in interviewing, assessing and speaking to victims, potential perpetrators and family members. Examples would include but is not limited to, police interviews and reports, home visits for out of area clients, educational and medical professional consultations and working with other DHS offices for red teams, interviews and other wise needed assistance for referral, assessment and case management.

Volume VII code referenced in 7.000.G which states: "Child Welfare Services shall be provided in collaboration with other community agencies on behalf of children, youth, and their families. Assessment tools or resources available through these community agencies shall be incorporated in the assessment, based on the culture and other needs of the family."
Additionally, WCDHS feels that in working with KDCF and [redacted] Department along with the understanding that under Volume VII 7.000.G that allows collaboration with other agencies, WCDHS did not violate Volume VII 7.104.1.C.2 and 7.104.1.C.10.

7.104.1.C.2 states: "Documentation of efforts to engage non-custodial parent(s); and other persons identified through the assessment who may have information regarding the alleged abuse and/or neglect." CPO stated in letter to WCDHS that 7.104.1.C.2 meant County human services departments are required to engage non-custodial parents during an assessment and document those attempts. Engagement of both parents during an assessment ensures that the county human service department has attempted to seek all pertinent information related to the family to complete an unbiased assessment of the allegations. WCDHS felt, understood and interpreted Volume VII that efforts to engage non-custodial parents was met, because WCDHS was working closely with KDCF. WCDHS trusted and used the information from KDCF to help determine their conclusions, as did KDCF. Important to note is that [redacted] is not a "non-custodial" parent to the initially alleged victims. KDCF contacted [redacted] and interviewed him just as WCDHS would have done for them.

7.104.1.C.10 states: "The assessment shall include documentation of efforts to interview and advise the person(s) alleged to be responsible for the abuse and/or neglect of the referral and afford such person(s) an opportunity to respond to the allegations." CPO stated in letter to WCDHS that 7.104.1.C.10 meant County human services departments are required to contact the person alleged to have caused the abuse or neglect during the assessment and shall document efforts. This affords the person alleged to have been responsible for the abuse or neglect the opportunity to respond to the allegations that have been made against them. WCDHS was working with KDCF and STPD to ensure that [redacted] was contacted, interviewed and given the opportunity to respond to the allegations against him.

In summary, I would like to point out that, the worker assigned to this case, [redacted], was relatively new in her position; but I can assure you that she was extremely conscientious and scrupulous in her attention to detail in handling this case as she is with all of the cases that are assigned. At the time of this referral, in addition to the professional level of her performance, [redacted] was being supervised by [redacted] who has twenty plus years of experience in Child Protective Services. The point being is that Washington County Department of Human Services would under no circumstance intentionally violate any of the Volume 7 or the Colorado Children’s Code regulations. I feel at a minimum the Volume 7 references were subject to interpretation, and perhaps a misunderstanding of the circumstances occurred.

Please be advised that we want to do everything that we can to cooperate to resolve your concerns and will provide you with any additional information you may need to reach your conclusion.

Respectfully,

[Signature]
Grant E. Smith
Director

Cc: [redacted]
Colorado Department of Human Services

Response Letter
Case 2018-3123
(Delivered January 10, 2019)
Grievance/Inquiry Review Form

[To be completed by the assigned Division of Child Welfare (DCW) County Intermediary]

<table>
<thead>
<tr>
<th>Unit: Ongoing</th>
<th>County: Washington</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Assigned: 12/24/18</td>
<td>Due Date: 1/11/19</td>
</tr>
</tbody>
</table>
| Complaint #: 124-2018 | Complainant Role (Select from the following):
  | _ _ Parent, Guardian, Legal Custodian
  | X Office of Colorado’s Child Protection Ombudsman
  | _ _ Attorney
  | _ _ Other, Specify Role: _____________________________ |

The basis of grievance/inquiry (mark all that apply):
  | X Federal/State Statutory violation
  | X Administrative rule violation
  | ___ Other county practice, policy, procedure, etc.; specify: _____________________________ |

DCW assessment of county disposition of grievance/inquiry:
  | ___ Agree with county disposition
  | X Disagree with county disposition

DCW assessment of action/s taken by county:
  | ___ Agree with action/s taken by county
  | X Disagree with action/s taken by county

Findings and Action/s taken by DCW:
  | ___ Unfounded, DCW found no violation of federal/state statute and/or of the administrative rules; therefore, no further action will be taken by DCW.
  | X Founded, DCW found violations of the following federal/state statute and/or of the administrative rules:
    | Volume 7.104.1(C)(2), Volume 7.104.1(C)(10), and 19-3-308(3)(a), C.R.S.

Based upon this finding, the following action/s will be taken by DCW:
  | X Technical assistance (TA) and/or guidance will be provided: TA provided to Washington County DHS on 1/9/19. The county intermediary, ongoing child protection administrator and ongoing manager were present. Washington county caseworker, supervisor, and director present. County intermediary explained that DCW concurs with the findings of the child protection ombudsman. County staff explained that after further review, they also concur that there are violations of the federal/state statute and administrative rules noted above. County intermediary explained how county staff can be in compliance with the federal/state statutory and administrative rules moving forward. County intermediary was able to clarify Volume 7.104.1(C)(2), Volume 7.104.1(C)(10), and 19-3-308(3) (a), C.R.S. through examples of ways to engage and notify clients in the future. County intermediary was also able to clarify Volume 7.000(G) and explain that while collaboration is encouraged, Volume 7.000(G) does not override Volume 7.104.1(C)(2), Volume 7.104.1(C)(10), and 19-3-308(3)(a), C.R.S.
Subsequently, Washington County DHS agrees to do the following moving forward:

- Contact county intermediary if clarification is needed on any of federal/state statute and/or of the administrative rules.
- Should a client require engagement and notification in an assessment and/or case moving forward, Washington county DHS, county staff will document their attempts to make contact and engage the client as needed.
- County intermediary will have monthly contact with Washington county DHS to provide additional technical assistance as needed.

Other; specify: 

Angela Cuellar  1/9/19

Printed Name AND Signature of DCW County Intermediary  Date

Lisa Meyer  1/9/19

Printed Name AND Signature of DCW County Intermediary Supervisor  Date

Korey Egge  1/9/19

Printed Name AND Signature of DCW Unit Manager  Date