Office of Colorado’s Child Protection Ombudsman

LETTER OF COMPLIANCE CONCERN

Case Number 2018-3401

Stephanie Villafuerte,
Child Protection Ombudsman

July 15, 2019
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)(l)(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 2018-3401

(Delivered May 6, 2019)
To: Anders Jacobson, Director  
Colorado Division of Youth Services  
4255 S. Knox Court  
Denver, CO 80236

From: Natasha Mitchell, Chief Analyst, Division of Youth Services  
Office of Colorado's Child Protection Ombudsman  
1300 Broadway, Suite 430  
Denver, CO 80203

Date: May 6, 2019

Subject: Possible Compliance Issues

Dear Director Jacobson,

On November 19, 2018, the Office of Colorado’s Child Protection Ombudsman (CPO) received an inquiry from a citizen concerned about a youth in the custody of the Division of Youth Services (DYS). The contact stated the youth was not allowed personal visits, nor were they allowed to make personal telephone calls while residing at the Marvin W. Foote Youth Services Center (MWFYSC). The CPO opened a case the same day the inquiry was received. As part of its review of the case, the CPO obtained documents detailing a history of the youth’s visits and telephone calls. The CPO also reviewed relevant DYS policies and MWFYSC rules. The CPO identified areas in which the MWFYSC’s decision to restrict the youth’s visits and phone calls may not be in compliance with DYS policies.

Case Summary

During an approved personal visit in early September 2018, a MWFYSC staff member was monitoring the youth and their visitors via the monitoring screens located in the facility’s control center. The staff member observed what appeared to be inappropriate contact between the youth and one of the visitors. Staff immediately ended the visit. The termination of the visit was in accordance with MWFYSC’s visitation rules which are posted in the facility’s lobby. The rule allows staff to terminate visits when there is a safety and security concern. An email was distributed to facility staff on the day the visit was terminated, stating that the youth’s visits were “suspended until further notice.” A second email was distributed to staff seven days later reinforcing the suspension of the youth’s visits. A review of an email distributed to facility staff confirms that the youth’s visitation privileges were reinstated nine days after the visit was terminated.

1 Per information provided by MWFYSC to the CPO, via email on September 8, 2018
2 MWFYSC visitation rule states, “Any violation of facility rules, attempts to introduce contraband to the facility or unsafe situations may result in termination of the visit.”
3 Per information provided by MWFYSC to the CPO, via email on November 17, 2018
4 Per information provided by MWFYSC to the CPO, via email on November 17, 2018
5 Per information provided by MWFYSC to the CPO, via email on November 19, 2018
A MWFYSC supervisor stated to the CPO that approximately seven days after the youth’s visits were suspended, the leadership team at the facility learned the youth had not been provided a copy of the Denial of Visitation Form. In response to the CPO’s inquiry, MWFYSC staff acknowledged the youth should have been provided a copy of the Denial of Visitation Form. MWFYSC leadership distributed information to staff detailing why the form exists, how the form should be completed and provided to the youth at the facility, as well as the requirement that a copy of the form be placed in a youth’s admissions file or in the assistant director’s box for a signature.

**Telephone Calls**

The youth stated to the CPO that facility staff denied his requests to use the phone. According to a review of the youth’s contact/visit log in the statewide database, Trails, the youth did not make any telephone calls for 30 consecutive days from October until November of 2018. However, a review of Trails demonstrated the youth’s behavior qualified them to make one to three phone calls a week during this 30-day time period. Information obtained from Trails also showed that the youth made a total of 5 phone calls during the month prior. The decline in the number of calls placed by the youth was also noted by the youth’s mother, who stated she had not heard from her son. While there was no documentation in Trails confirming MWFYSC staff were actively denying the youth access to the phone, the decreased number of calls – paired with the youth’s statements – may be evidence of a potential violation.

**Identified Compliance Concerns**

In researching the suspension of the youth’s visits and inability to make telephone calls, the CPO identified five areas where MWFYSC may not have complied with policies in the DYS Youth Handbook, the MWFYSC Level System Handbook and the MWFYSC’s visitation rules. Specifically, the CPO found:

1. **DYS Youth Visitation Policy 18.1** requires every youth be provided a copy of the Denial of Visitation Form if facility staff deny personal visits. The youth in this case reported to the CPO that they did not receive a copy of the form. The CPO’s review found that the youth neither signed the Denial of Visitation Form, nor did they refuse to sign the document.

2. The DYS Youth Handbook states that each facility is required to have procedures for denying a youth’s visit and steps youth may take to appeal denial decision. Because the youth in this case did not receive the Denial of Visitation Form the youth was unable to appeal the MWFYSC’s decision to prohibit visits.

---

6 Per information provided by MWFYSC to the CPO, via email on November 21, 2018
7 Per information provided by MWFYSC to the CPO, via email on November 21, 2018
8 Per information provided by the youth during an in-person interview on December 21, 2018.
9 See Trails Contact/Visit Log from September 1, 2018 to November 30, 2018 for youth with Trails Client ID
10 See Trails Roster Information from October 19, 2018 to November 16, 2018 for youth with Trails Client ID
11 Division of Youth Services Youth Visitation Policy 18.1(H) states, “Denial of visitation shall be made on an individual basis when an employee has reason to believe that the safety and security of the youth, employees, the general public or the youth center may be in jeopardy.” (1) “A denial of visitation decision shall be given to the youth in writing and shall include, at a minimum, the name of the restricted visitor, the time and date of the denial of visitation, the reasons for the limitation, the name of the person making the decision, and the right to appeal the decision to the youth center director.”
12 Per information provided by MWFYSC to the CPO, Division of Youth Services – Marvin W. Foote Services Center Denial of Visit (Completed form)
13 See Division of Youth Services Youth Handbook page 12
3. The MWFYSC Youth Level System Handbook does not include a procedure for denying a youth’s visits nor does it include a procedure for a youth who wishes to appeal such a decision.\(^\text{14}\) Additionally, MWFYSC visitor information does not contain language explaining the facility’s procedure for denying visits and/or the ability to appeal such decisions.\(^\text{15}\) This may be a violation of the DYS Youth Visitation Policy 18.1, which requires facilities to develop such procedures.

4. DYS Telephone Policy 18.3 promotes and encourages the youth’s ability to maintain ties with their community by having access to a telephone to make and receive personal telephone calls.\(^\text{16}\) If the youth in this case was denied the ability to use the phone during the period specified above, this may be a violation of this policy.

Conclusion

Pursuant to policies 4.200 and 5.200 in the CPO’s 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.

After receiving the DYS’ response, the CPO will submit its original letter and DYS’ full response to the Colorado Department of Human Services (CDHS), which serves as the DYS supervising entity for DYS. The CDHS will then determine whether any violations occurred and any relevant remedies. The CDHS will have 15 business day 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 youth and staff identifying information will be redacted prior to the public release.

Please provide the DYS’s response to the possible violations listed in this letter no later than Tuesday, May 28, 2019.

Sincerely,

Approved by:

Natasha Mitchell
Stephanie Villafuerte

Natasha Mitchell
Chief Analyst, Division of Youth Services

Stephanie Villafuerte
Child Protection Ombudsman

---

\(^{14}\) See Marvin W. Foote Youth Services Center Youth Level System Handbook
\(^{15}\) See Marvin W. Foote Youth Services Center Family Visitation Information
\(^{16}\) Division of Youth Services Telephone Policy S 18.3(b)(3) states, “Juveniles shall be permitted at minimum two calls per month.”
Colorado Division of Youth Services  
(Marvin W. Foote Youth Services Center)  

Response Letter  
Case 2018-3401  
(Delivered June 7, 2019)
Natasha Mitchell, Chief Analyst, Division of Youth Services  
Office of Colorado’s Child Protection Ombudsman  
1300 Broadway, Suite 430  
Denver, CO 80203  

Friday, June 7, 2019  

Dear Ms. Mitchell:  

Thank you for your letter on May 6, 2019 regarding possible compliance concerns and the opportunity to respond to your findings and questions. Regarding these findings:  

1. DYS policy 18.1 denial of visits, youth report not having the opportunity to sign the denial of visitation document nor did the youth refuse to sign the document.  
2. Youth not having the ability to appeal the decision regarding denial of visits.  
3. Marvin W Foote youth level system handbook does not include a procedure of denying visits including the procedure of appealing reflecting policy 18.1.  
4. DYS policy 18.3, denial of phone calls for youth.  

We continue to address procedures consistent with departmental policies and procedures. We have revised all internal implementing procedures to include language consistent with policy 18.1. A new youth handbook was implemented and presented to all youth and copies available to visiting areas for families. In the handbook all areas regarding visits, denial of visits and the ability to appeal the denial is addressed. This also includes language of the level system, privileges specific to levels, telephone usage and any processes regarding denials of such. Specifically to this finding, there was no documentation regarding denial of phone privileges. We will continue to work with our staff and supervisors to ensure timely documentation of such contacts and have provided appropriate oversight and monitoring.  

Please do not hesitate to contact me should you need further information or have any concerns.  

Sincerely,  

Charles W. Tyous, Jr.  
Director, Marvin W. Foote Youth Services Center
July 9, 2019

Natasha Mitchell, Chief Analyst
Office of Colorado’s Child Protection Ombudsman
1300 Broadway, Ste. 430
Denver, CO 80203

Dear Ms. Mitchell:

Thank you for your letter on June 17, 2019 regarding possible compliance concerns, and for the opportunity to respond to your findings. Regarding the compliance concerns related to Division of Youth Services policies 18.1 and 18.3, we agree with your findings and will continue to monitor all related procedural updates at the Marvin W. Foote Youth Services Center to ensure continued compliance. Additionally, the Facility Director Group will review and assess these policies in practice at their Youth Centers and Mr. Tyous will review this case with his peers to ensure consistency in practice throughout our Youth Centers.

We look forward to any opportunity to improve our policies and practices in the interest of the well-being of all of our employees and youth.

Sincerely,

Minna Castillo Cohen
Director, Office of Children Youth and Families