Office of Colorado’s Child Protection Ombudsman
LETTER OF COMPLIANCE CONCERN

Case Number 2019-3665

Stephanie Villafuerte,
Child Protection Ombudsman
September 10, 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 2019-3665

(Delivered July 26, 2019)
To: Ms. Jody Kern  
Rio Grande County Department of Social Services  
1015 6th Street  
Del Norte, CO 81132  

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

Date: July 26, 2019  

Subject: Possible Compliance Concerns, CPO Case 2019-3665  

Dear Director Kern,

On May 6, 2019, the Office of Colorado’s Child Protection Ombudsman (CPO) received an inquiry from a grandfather who articulated concerns regarding the Rio Grande County Department of Social Services’ (RGCDSS) handling of the placement involving his grandson. The CPO has reviewed the relevant Trails information involving the family. The CPO has identified several areas in which the actions of RGCDSS may not be in compliance with the assessment and ongoing case guidelines in Volume 7.

Case Summary

This inquiry concerns a 7-year-old boy who was living with his mother and her boyfriend in Rio Grande County. RGCDSS received a referral on reporting that the child disclosed not feeling safe in the home due to physical abuse. RGCDSS accepted the referral for assessment and assigned a 5-working day response. The assessment was closed as inconclusive. Due to concerns about the mother’s ability to protect the child, he was removed from her care and placed with a relative. This child was added to the family’s open child welfare court case.

In February 2019, the child was reunified with his biological father in El Paso County. The grandfather expressed concern regarding this move and indicated that RGCDSS did not assess the child’s safety prior to the transition or once the child was placed with his father.

Volume 7 Regulation/Colorado Children’s Code Requirements

Volume 7 and the Colorado Children’s Code collectively make up the minimum guiding principles and standards to which county human service departments are held in assessing and ensuring a child’s safety. The CPO finds the following rules as the most relevant in this case:

---

1 Trails is the statewide case management system.  
2 Code of Colorado Regulations, Social Services Rules, Volume 7  
3 See Trails Referral ID  
4 See Trails Referral ID Referral Acceptance and Findings  
5 See Rio Grande Court Case Minute order
Volume 7, 7.103.61 (2)(a) states that once a referral has been screened and is determined to meet the need for assessment, it is then assigned a response time in which the worker must make contact with the family. When the child may be in impending danger the required response time is 3-calendar days.6

Volume 7, 7.104.1 (C)(2) states that the assessment must include efforts to engage non-custodial parents.7 Additionally, Volume 7, 7.104.15 (B) requires county departments to notify the non-custodial parent of the outcome of an assessment.8

Volume 7, 7.301.21 (B) states that the county department must create a Family Service Plan within 60 calendar days of the date the referral was received. Additionally, Volume 7, 7.301.22 and 7.301.23 require that the plan be created in collaboration with the parents or legal guardians and address the services in place to reunify the child.9

Volume 7, 7.204 (D) states that county departments are required to have at least monthly contact with parents, and parents must be seen face-to-face every other month.10

Volume 7, 7.204 (B) states that county departments are required to see children every month face-to-face, including in the child’s placement at least every other month.11

Volume 7, 7.107.11 (B & I) states the county department shall complete the Colorado Family Safety Assessment as soon as new household members are available and whenever there is a significant change in the situation that might pose a threat to safety, and prior to reunification.12

---

6 See Volume 7, 7.103.61 (2)(a): “A three (3) calendar day response is required when a referral indicates that there may be impending danger of moderate to severe harm.”

7 See Volume 7, 7.104.1 (C)(2): “The assessment shall include, 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.”

8 See Volume 7, 7.104.15 (B): “Regardless of the outcome of the assessment and as allowable by law, county departments shall notify and document in the state automated case management system:
   1. The parent(s), guardian(s), custodian(s), or caregiver(s) of the alleged victim child(ren)/youth of the outcome of the assessments. Non-custodial parent(s) shall also be notified of the outcomes of the assessments unless
      a. Documentation supports efforts to locate the non-custodial parent were unsuccessful; or,
      b. Documentation supports that it is not in the best interests of the child(ren)/youth to give notice to the non-custodial parent.”

9 See Volume 7, 7.301.21 (B): “The Family Service Plan document must be completed Within sixty (60) calendar days of the referral date in the automated case management system for children in out-of-home placement, including those cases in which the children/youth are receiving Core Services. There may be one Family Services Plan for the family; however, discrete sections in the treatment plan and in the placement, information are required for each child/youth in placement and, Volume 7, 7.301.22 A(2): The county shall assure that the following parties participate in the development of the Family Services Plan and engagement activities – caseworker, parents or legal guardians, child/youth...” and, Volume 7, 7.301.23 A(B): “The Family Services Plan shall document: A. That services to be provided are directed at the areas of need identified in the assessment. Outcomes to be achieved as a result of the services provided will be described in terms of specific, measurable, agreed upon, realistic, time-limited objectives and action steps to be accomplished by the parents, child/youth, service providers and county staff. B. That services to be provided are designed to assure that the child/youth receives safe and proper care.”

10 See Volume 7, 7.204 (D): “While a child or youth remains in out-of-home placement, the county department shall have at least monthly contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month. Such contacts shall occur until a motion for termination of parental rights is filed, or until “Return Home “is no longer the primary permanency goal.”

11 See Volume 7, 7.204 (B): “Contact shall occur at a minimum of two face-to-face visits with the child or youth during the first thirty (30) days following the out-of-home placement, at least one of which shall be in the out-of-home placement, and a minimum of monthly face-to-face contact with the child or youth after the first month.

A portion of every face-to-face contact shall occur out of the presence of the provider for the child or youth. No less than every other month, contact shall occur in the out-of-home placement where the child or youth resides and shall include visual assessment of where the child or youth sleeps.

The majority of monthly face-to-face contacts in a year shall occur in the child or youth’s out-of-home placement. For children and youth in out-of-home placement, this is their place of residence. The child or youth shall be visited in his/her out-of-home placement during the first thirty (30) days of out-of-home placement and at least every other month while in out-of-home placement.”

12 Volume 7, 7.107.11 (B, H & I): “The Colorado Family Safety Assessment shall be completed...
Identified Compliance Concerns

In reviewing the relevant information involving the family, the CPO identified several instances within the assessment and case in which RGCDSS may not have complied with Volume 7 requirements. Specifically, the CPO observed:

- The assessment was screened and noted that the child was in impending danger, however it was incorrectly assigned a 5-working day response time instead of a 3-calendar day response time. If accurate, this is a violation of Volume 7, 7.103.61 (2)(a).\(^\text{13}\)

- There is no documentation to suggest that the child’s biological father was contacted during the assessment or notified of the outcome of the assessment. If accurate, this is a violation of Volume 7, 7.104.1 (C)(2) and 7.104.15 (B).

- The Family Service Plan (FSP) was completed 117 days after the required 60-day timeframe. The plan initially included the biological father as a member of the plan but failed to create any plan components for his participation. Additionally, there is no documentation to suggest that his participation was monitored during four required consecutive 90-day reviews. If accurate, this is a violation of Volume 7, 7.301.21 (B), 7.301.22 (A)(2), 7.301.23 (A)(B) and 7.301.3 (E).

- The child was reunified with his biological father with no documented assessment for safety in the home or documentation of progress in services. The assessment for progress and safety should have been used to determine his ability to care for the child. If accurate, this is a violation of Volume 7, 7.204 (D).

- The Trails review indicates that RGCDSS failed to document that the child had been seen by RGCDSS in the months of February, March, April and May 2019. If accurate, this is a violation of Volume 7, 7.204 (B).

- The Colorado Family Safety Assessment Tool was not completed when the biological father was located, when the child was removed from the relative or prior to reunification with the father. If accurate, this is a violation of Volume 7, 7.107.11 (B, H & I).

---

\(^{13}\) See Volume 7, 7.000.2: “Impending danger means a threat(s) to child safety not occurring at present but likely to occur in the near future and likely to result in moderate to severe harm to a child.”

\(^{14}\) See Trails Referral ID Assessment, Interviews

\(^{15}\) See Trails Case ID FSP, Reviews

\(^{16}\) Trails Case ID FSP, Reviews

\(^{17}\) See Volume 7, 7.301.3 (E) (3): “The family services plan shall be reviewed in conference with the caseworker and the supervisor. Documentation by the caseworker and approval by the supervisor shall be entered in the state automated case management system within 90 calendar days from the initial treatment plan and then within 90 calendar days from the prior review and thereafter. The court report, when entered in the state automated case management system, or six-month administrative review of children in out of home placement, may substitute for a 90-day review. The conference shall address: 3. Whether the child, parents, family members and placement providers if applicable, are receiving the specific services mandated by the family services plan, and services are appropriate, time frames are current, and progress is being made towards the specific objectives identified in the plan...”
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.

After receiving the RGCDSS response, the CPO will submit its original letter and RGCDSS’ full response to the CDHS, which serves as the RGCDSS supervising entity. (See C.R.S. § 26-1-111 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 RGCDSS response to the possible violations listed in this letter no later than August 16, 2019.

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

Sincerely,

Amanda Pennington

Amanda Pennington
Child Protection Systems Analyst

Approved by:

Stephanie Villafuerte
Stephanie Villafuerte
Child Protection Ombudsman
Rio Grande County Department of Human Services

Response Letter

Case 2019-3665

(Delivered August 16, 2019)
August 16, 2019

To: Amanda Pennington, Child Protection Systems Analyst
   Office of Colorado’s Child Protection Ombudsman
   1300 Broadway, Suite 430
   Denver, CO 80203

From: Ryan Dunn, Esq.
       Attorney for Rio Grande County
       1015 6th Street
       Del Norte, CO 81132

SUBJECT: RGCDSS RESPONSE TO POSSIBLE COMPLIANCE CONCERNS
         CPO CASE 2019-3665

Dear Ms. Pennington:

With respect to your letter dated July 26, 2019, citing a number of possible compliance concerns by the Rio Grande County Department of Social Services ("the Department"), the Department hereby offers the following responses to the identified concerns in the order in which they were presented:

I. The assessment was screened and noted that the child was in impending danger, however it was incorrectly assigned a 5-working day response time instead of a 3-calendar day response time. If accurate, this is a violation of Volume 7, 7.103.61 (2)(a).

As an initial matter the Department acknowledges that in light of the impending danger identified, the assessment should have been assigned a 3-calendar day response time. The assignment of a 5-working day response time was in error, but as a matter of fact the actual response time was within 24-hours, therefore any error was harmless error and any technical violation of Volume 7 resulted in no physical or emotional injury to the child.

The Department does however recognize the potential for harm which may arise by way of a failure to properly assign the response time for any given referral and has implemented corrective measures such as enlarged copies of the Volume 7 requirements, including the criteria.
for assignment of a response time, which are now posted on the wall in the conference room where RED team referrals are reviewed and staffed.

II. There is no documentation to suggest that the child’s biological father was contacted during the assessment or notified of the outcome of the assessment. If accurate, this is a violation of Volume 7, 7.104.1 (C)(2) and 7.104.15-(B).

The Department admits that the documentation in the Trails system is insufficient to meet the requirements under Volume 7 pertaining to notifying the child’s biological father of the assessment. Although the Department acknowledges that the regulations require documentation of such efforts in the Trails system, there is documentation of the Department’s efforts to locate, serve and notify the biological father of the outcome of the assessment. Specifically, the Department utilized efforts of the Department’s Child Support Services Unit to determine an address and phone number for the biological father. When efforts to reach the biological father by telephone proved unsuccessful a letter was mailed to the El Paso County Sheriff’s Office for service upon the biological father of the Petition in Dependency and Neglect, the caseworker’s report in support of the D&N Petition, and the Colorado Risk and Safety Assessments.

Service upon the biological father was accomplished on October 21, 2018 and the biological father appeared, with counsel, before the Court on November 6, 2018. At that time the biological father was further apprised of the outcome of the investigation and was advised by the Court as to his rights in the matter.

III. The Family Service Plan (FSP) was completed 117 days after the required 60-day timeframe. The plan initially included the biological father as a member of the plan but failed to create any plan components for his participation. Additionally, there is no documentation to suggest that his participation was monitored during four required consecutive 90-day reviews. If accurate, this is a violation of Volume 7, 7.301.21 (B), 7.301.22 (A)(2), 7.301.23 (A)(B) and 7.301.3 (E).

The Department strongly disputes the finding that the FSP was completed 117 days after the required 60-day timeframe and argues that the FSP was actually completed within the 60-day timeframe as required by Volume 7.

The development of the FSP occurred after a facilitated family engagement meeting at which time the parents were invited and allowed to offer strengths-based input on the needs of the family and services that might or might not be of benefit to the family. Additionally, a treatment plan was first discussed at the hearing on November 6, 2018 at which time the parents requested continuation of the adjudicatory hearing to review the proposed FSP prior to the entry of admissions or denials. The matter was continued to November 19, 2018. In the interim the caseworker developed the FSP based upon the needs and concerns identified during the family engagement meeting and the plan was circulated to the parents through their respective attorneys on November 16, 2018 (approximately 36 days). The FSP was not formally adopted by the Court on November 19, 2018 but was adopted as an interim treatment plan pending adjudication. This
fact is documented in the minute order from November 19, 2018 hearing which was available to the CPO Systems Analyst at all relevant times.

Following the November 19, 2018, hearing the caseworker documented in her report dated December 13, 2018, a Family Engagement meeting held on December 6, 2018, at which time the child’s biological mother and father discussed the treatment plan for the biological father and the child. The report provides in pertinent part:

“A family engagement meeting was held with [redacted] on 12/06/18. This FEM discussion was held regarding a plan to help [redacted] establish a better relationship. [redacted] stated that his ultimate goal would be to have [redacted] come with him on weekends. [redacted] agreed that it is important that [redacted] spend time together and get to know one another and is open to working with [redacted] with weekend visitations, possible holiday and school breaks. [redacted] and [redacted] had a therapeutic supervised visit with [redacted] on 12/06/18. [redacted] spoke with this worker following the visitation and stated that the visit went very well and that [redacted] had a very meaningful visit. [redacted] is scheduled to have another supervised visit with [redacted] on 12/17/18 prior to Court. This worker is working with [redacted] to help supervise visitation in the Colorado Springs area to incorporate [redacted] other children.”

The FSP was approved by the Court on December 18, 2018 and entered by default against the parents after they failed to appear at the time the hearing was called. It was subsequently brought to the Court’s attention that adjudications had not yet entered. The matter of adjudication was resolved as to the mother on January 8, 2019 and the FSP was formally adopted with respect to mother and the children on that date. The matter of adjudications remained set for trial on February 1, 2019, at which point adjudications were entered and the FSP was formally adopted for each father named in the action. Again, these facts were documented in Trails system and the Court record which were each available to the CPO Systems Analyst at all relevant times.

The adjudication with respect to the biological father was entered following biological father’s entry of a “no fault” admission which carried with it the Troxel presumption of parental fitness. The plan most certainly did not fail to create any plan components for his participation. Specifically, the plan required the following:

“3. Parent Name: [redacted]

3A Objective: Start Date: 11/19/18 Est. Compl. Date 08/19/19

[redacted] will attend supervised visitation with his son [redacted] until unsupervised visitation is deemed appropriate by the Department. [redacted] will also have supervised telephone contact with his son [redacted] until unsupervised phone contact is deemed appropriate by the Department.

Action Steps:
will actively engage in visitation with his son and will display appropriate behavior during the visitation. He will adhere to all instructions given by the supervisor surrounding visitation. He will be on time to the visit.

**Measurement of Success:**

*Reports from the visitation supervisor to the caseworker will indicate that [redacted] is engaging in healthy interactions with his child."

Although the plan did not require active participation in therapeutic services for the biological father, biological father was legally presumed to be a fit parent and the circumstances of the biological father and the child did not warrant additional objectives/components. The primary concern was developing more familiarity between father and son and the plan, as proposed and adopted by the Court, was sufficient to accomplish just that.

The Department continues to acknowledge the need for better and more timely documentation of the efforts of the Department in the automated case management system, but as a practical matter the FSP was created within the required period of time, there was more than ample evidence of the completed FSP in the electronic record available to the CPO. The investigation of the CPO Systems Analyst was, in the Department’s estimation, insufficient in this regard.

**IV.** *The child was reunified with his biological father with no documented assessment for safety in the home or documentation of progress in services. The assessment for progress and safety should have been used to determine his ability to care for the child. If accurate, this is a violation of Volume 7, 7.204 (D).*

The child’s placement with biological father came about by way of a forthwith motion by the child’s Guardian Ad Litem after the child’s maternal grandfather (kinship caregiver) repeatedly disregarded the protective orders entered by the Court. The grandfather was admonished by the Court that his failure to abide by and enforce the protective orders of the Court would result in a change of placement at hearings on November 11, 2018, January 8, 2019, and February 1, 2019. The child’s placement ultimately changed to biological father after grandfather allowed the child to have contact with the child’s stepfather. The child’s change of placement was by way of an *Ex Parte* order issued by the Court. Nonetheless, the Department disputes that the change of placement occurred without documentation by the Department of the required monthly contacts. The required monthly contacts also contain information documenting the strengthening relationship between the child and the biological father as the result of visitation pursuant to the FSP.

There is supplementary documentation of this improvement in the Court record of Rio Grande case number [redacted] as well as the circumstances of the child’s change of placement. Specifically, the Department directs the CPO to the caseworker’s report of January 3, 2019, which described the ongoing visitation between the child and the biological father as required by the FSP. The caseworker’s report also references the January 2, 2019 report of the contracted therapeutic visitation supervisor who reported as follows:
"Goals/Progress:
Because client's grandfather was not cooperating in taking client to counseling, DHS is now transporting client to his counseling sessions, as well as supervised visitation with his mother and father.
In the month of December, both MOC and FOC completed an intake and began supervised visits. Client showed and stated his excitement to see his FOC; both those visits with FOC went extremely well. Visitation with MOC also went well, and MOC followed all expectations. At this point, this therapist believes it would be beneficial for client to see his father and his family.
During one of client's individual sessions, client stated he would like to see his mom, but not with -----. "I want to see mom without ----- hitting me...", as per client. Finally, Client explained to this therapist that at times, MOC would come over to his grandfather's house to deliver groceries (at times with -----).
Because MOC is required to be supervised at this time, this therapist questions why grandfather is allowing any unsupervised contact.
Client is an excellent referral for individual counseling, as he is willing to participate and talk about his feelings and the ongoing adjustments in his life at this time."

Additionally, an email dated December 18, 2018, provides:

"> On Tue, Dec 18, 2018 at 8:45 AM ----- wrote:
> Hi -----,
> How did it go?

On 12/18/18 12:22 PM, ----- wrote:
> Hi -----,
> It went very well.
> ----- did very well following ----- 's lead and taking opportunities to talk about how he cares for him, but not in an overwhelming way.
> Honestly, I'm pretty impressed.

On Tue, Dec 18, 2018 at 12:29 PM ----- wrote:
Hi -----,
Thanks for the update. Do you feel that, given what you've seen in supervised visits, unsupervised visits are ok to start?
Best Regards,

On 12/19/18 10:05 AM, ----- wrote:
Hello!
From what I've observed, I do believe that ----- would benefit from unsupervised visits with his father; I feel very comfortable with this.
I do recommend a gradual schedule; for example, I know dad is very excited about taking ----- to Colorado Springs to visit, which would be great, however; I recommend first having longer day visits before any over nights, as this makes sense
in terms of comfort and time to transition into this new part of life of seeing dad regularly.

I would be happy to help with this in any way. So far, I am very impressed with dad’s ability to interact with [redacted] and believe this can be a wonderful thing for him. AND, it’s important to see dad have a continued investment and time for [redacted] to adjust, which a gradual schedule would allow. I’m hoping this will all work out.

Thank you, and please let me know if you have any questions or want to talk more in depth about this.”

Subsequent visitation in accordance with the FSP including expansion to overnight visitation between the child and the biological father occurred on January 4, 2019, which was documented in the Trails system. Additional contacts from February 15, 2019 document attempts by the child’s grandfather to thwart visitation between the child and the biological father as well as documentation of a weekend visitation which occurred the weekend of February 15, 2019 through February 17, 2019.

Aside from the Trails record the minute orders from the hearings on December 17, 2018 and January 8, 2019 hearings reference recommendations for increased visitation between the child and the biological father. Likewise, the minute order from the March 5, 2019 hearing (continuing legal custody of the child with the biological father following the Ex Parte removal order) referenced the child’s successful transition into his biological father’s care. All of the minute orders are available to the CPO and should have been reviewed in conjunction with the Trails’ documentation as part of a thorough investigation by the Systems Analyst.

V. The Trails review indicates that RGCDSS failed to document that the child had been seen by RGCDSS in the months of February, March, April and May 2019. If accurate, this is a violation of Volume 7, 7.204 (B).

This finding of the CPO is entirely incorrect and is not supported by the Trails record nor by the records of the Dependency and Neglect. The CPO also incorrectly applies the regulation to the facts of the case. Volume 7, 7.204(B) requires monthly face-to-face contact by the primary caseworker for each child or youth in out-of-home placement for whom the county department has responsibility and in order for a youth to be considered to be in out-of-home placement the requirement is that the youth spend more than half of the days of the month in out-of-home placement. Of the months referenced by the CPO, the only month in which the child was in out-of-home placement was February 2019.

The Department documented face-to-face contact with the child on February 8, 2019 (case aide), again on February 15, 2019 (primary caseworker), February 15, 2019 (case aide) and electronic communication with the child’s biological father on February 26, 2019 (primary caseworker).

Electronic communication occurred with the child’s biological father on March 15, 2019, March 19, 2019, March 26, 2019, and March 29, 2019, (primary caseworker). Face-to-face contact with the child occurred on March 26, 2019 (Primary Caseworker).
Electronic communication occurred with the child’s biological father on April 12, 2019 and April 26, 2019 (primary caseworker). Face-to-face contact with the child and the biological father occurred on April 17, 2019 (primary caseworker).

Electronic communication occurred with the child’s biological father on May 7, 2019, May 9, 2019, and May 10, 2019 (primary caseworker). Face-to-face contact occurred with the child and his stepmother at the child’s home on May 28, 2019 (primary caseworker).

Although the Department concedes that some of the contacts referenced above may not have been entered by the time of the May 6, 2019 inquiry, all contacts relevant to this finding were entered no later than June 11, 2019. It was also explained to the Systems Analyst by telephone contemporaneous to the inquiry, that the caseworker had made and documented the required contacts but perhaps had not entered those contacts into Trails and would do so as soon as practicable. The letter of the CPO is dated July 26, 2019. Again, a thorough review of the documented contacts would have or should have been apparent to the CPO Systems Analyst as of the date of the July 26, 2019 letter.

VI. The Colorado Family Safety Assessment Tool was not completed when the biological father was located, when the child was removed from the relative, or prior to reunification with the father. If accurate, this is a violation of Volume 7, 7.107.11 (B,H & I).

Again, the Department argues that the CPO Systems analyst misinterprets and/or misapplies the regulation as it pertains to the Colorado Family Safety Assessment Tool.

The rule does not require that the tool be completed at the time a non-custodial parent or relative of the child is located. The rule specifically requires completion of the tool as soon as “additional household members are available.” The child’s biological father was not an additional member of the household, rather he maintains a separate household. The purpose of the tool is to identify whether there are safety concerns within the household and whether those safety concerns can be mitigated by way of safety planning or if removal of the child might be warranted. Likewise, the addition of a family member may alter the circumstances of the household such that the safety concerns increase or decrease. Because the biological father was not a new member of the household, but rather a member of an entirely separate household, the rule does not require completion of the tool just because the father has been located. This might be different if that father were located and joined the household, but that is not the case here.

The rule also does not require completion of the tool when a child is removed from a Court ordered placement. Presumably the CPO Systems Analyst cites Volume 7, 7.107.11(11) in support of this finding however by it’s terms the 7.107.11(H) requires completion of the tool “Whenever there is a significant change in household circumstances or situations that might pose a new or renewed threat to the safety of child(ren)/youth.” Again, as applied to the case in question the rule pertains to the household of [REDACTED] from which the children were originally removed and completion of the tool would be required if there was a
change to the household circumstances or situations that might pose a new or renewed threat to the safety of the child(ren)/youth, such that safety concerns might be accounted for in relation to continued out-of-home placement versus reunification. Certainly, no such “significant changes” in household circumstances or situations existed and as the documentation reveals the circumstances of the mother and stepfather were essentially status quo. Again, the child’s change of placement from the grandfather to the biological father was not precipitated by action of the Department, but rather an Ex Parte order of the Court at the request of the Guardian Ad Litem. In removing the child from the care of his grandfather the Court found as follows:

“The Court has, at almost every prior hearing, admonished [redacted] not to permit contact between [redacted] and his mother or [redacted] except for that which is arranged through and supervised by the Department of Social Services. Additionally, the Court has warned [redacted] that his failure to abide by said orders would result in removal of the child from his care. The Court finds the Guardian Ad Litem’s request to be well founded and grants the Guardian Ad Litem’s motion. [redacted] is hereby dismissed from this action.”

Lastly, the child was not “reunified” with Respondent Father as the meaning is intended in relation to Volume 7, 7.701.11(I). The logical application of this rule is to reassess safety with respect to a household from which a child has been removed to ensure proper remediation of the safety concerns. As already stated herein and as is clearly set forth in the record of [redacted] the household of the child’s biological father was never in question. The father was a presumably fit parent who could have requested placement of the child at any time during the pendency of the case and the Court could have ordered such placement, with or without the consent of the Department, and with or without the completion of the Colorado Family Safety Assessment tool. Completion of the safety assessment tool would certainly be required prior to reunification with the child’s mother and stepfather, but surely not before a Court ordered change of placement to a fit parent and whose household has no known, reported or even suspected safety concerns.

Therefore, the Department argues that the CPO: Systems Analyst either misconstrues or misapplies Volume 7, 7.107.11 or at very least the rule, as written, is overly vague leading to multiple, reasonable interpretations.

Should the CPO require any additional responses or clarification to that which is provided herein please let me know.

Sincerely,

[Signature]

Ryan Dunn, Esq.
County Attorney
Colorado Department of Human Services

Response Letter

Case 2019-3665

(Delivered September 10, 2019)
Dear Ms. Villafuerte,

I write this letter as a supplement to the Colorado Department of Human Services Response to Complaint 2019-3665 regarding Rio Grande County Department of Social Services. Staff at the Division of Child Welfare (DCW) have reviewed this complaint, the county’s response, and relevant sections of the Colorado Code of Regulations (Volume 7). This letter includes a response to each of the points of concern that were raised by the Office of the Child Protection Ombudsman (CPO).

The CPO identified a violation of 12 CCR 2509-2, 7.103.61(2)(a), regarding the response time assigned to the referral by the county. The county did not contest this allegation in its response, nor does DCW. DCW is satisfied with the response that the county has taken to this issue, and will follow up with the county to ensure that measures taken to prevent such future errors remain in place and effective.

The CPO also identified concerns regarding attempts to engage and inform the child’s biological father during the assessment phase of the case, which would constitute violations of 12 CCR 2509-2, 7.104.1(C)(2) and 7.104.15(B). The county demonstrated that attempts to reach the biological father of the child had been made, but admitted that documentation of these attempts was limited. The findings of DCW align with the disposition of the county: the county met the obligation for outreach, but not for documentation. DCW will provide technical assistance to the county to improve documentation practices when the county is unable to locate noncustodial biological parents.

The CPO identified a number of concerns with regard to the Family Services Plan (FSP). DCW agrees that the plan was not created in Trails within the required 60 day time period, which is a violation of 12 CCR 2509-4, 7.301.21(B). Despite the delays this case encountered in court, the plan should have been created in Trails per this rule. However, DCW has been able to locate documentation that the biological father was included in the creation of the plan and that his participation was noted within the narrative of each subsequent review. DCW does not find any violations of rule with regard to the biological father’s inclusion in the FSP or its subsequent reviews.

The CPO twice identified concerns regarding the failure to assess for safety after the child’s move to live with his biological father. DCW agrees that the failure to complete the Colorado State Safety Assessment Tool at the time of the move constitutes a violation of 12 CCR 2509-2, 7.107.11(H), which provides that the tool must be completed “whenever there is a significant change in household circumstances or situations that might pose a new or renewed threat to the safety” of the child. The move from one household to another constitutes such a change in household circumstances. DCW did not find that the county violated 12 CCR 2059-3, 7.204(D) or 12 CCR 2509-3, 7.107.11(B) or (I).
The CPO’s office found in its review of the case that the county department did not document adequate contact with the child during the months of February, March, April, and May 2019. If accurate, this assertion would not have constituted a violation of 12-CCR 2509-3, 7.204(B). As the county points out, these rules apply to children in out-of-home placement, and the child in question was not in an out-of-home placement at the time. However, 12 CCR 2509-3, 7.202.1(F)(1)(a) would have been violated if the county had not documented face-to-face contact with the child in each of these months. As the county notes in its response to the complaint, face-to-face contact between the child and the caseworker was documented for each of these months, and DCW was able to verify this documentation and find that no violation occurred.

DCW Staff will meet with Rio Grande County to address these violations. In particular, DCW will provide technical assistance to create sustainable plans to prevent future violations. The county has already addressed issues related to referral response time, so DCW will ensure that these measures are in place and effective. DCW will support improved documentation in Trails of attempts to engage noncustodial biological parents and timely entry of the FSP into Trails. DCW will review the timing of the use of the Colorado Family Safety Assessment Tool and support the county in making sustainable plans to ensure that safety is assessed at all necessary times throughout an open child welfare case.

Thank you for bringing these concerns to our attention.

Sincerely,

Kari Daggett, MSW
Interim Director
Division of Child Welfare
Grievance/Inquiry Review Form
[To be completed by the assigned Division of Child Welfare (DCW) County Intermediary]

<table>
<thead>
<tr>
<th>Unit/Intermediary: Youth Services/S. Garrett</th>
<th>County: Rio Grande</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Assigned (by manager): 8/19/19</td>
<td>Due Date: 9/10/19</td>
</tr>
</tbody>
</table>
| Complaint Number: CPO 2019-3665             | 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):
___ 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
___ 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

Action/s taken by DCW:
___ DCW did not find a violation of federal/state statute and/or of the administrative rules, therefore, no further action will be taken by DCW.
x  DCW found the following violation federal/state statute and/or of the administrative rules:
___ DCW found concerns with county practice, policy, procedure, etc.; specify:

7.103.61(2)(a) – The county assigned an inappropriate response time to the referral
7.104.1(C)(2) and 7.104.14(B) – The county did not document attempts to locate the noncustodial biological parent during assessment
7.301.21(B) – The FSP was not created in Trails within the required time frame
7.107.11(H) – The county did not complete the Colorado Family Safety Assessment Tool after the child moved to the home of his biological father

Based upon this finding, the following action/s will be taken by DCW:
Technical assistance (TA) and/or guidance (i.e. date, actions, next steps etc.):

DCW staff will provide technical assistance to the county to ensure that referrals are assigned appropriate response times, efforts to contact biological parents are documented in Trails, FSPs are entered into Trails timely, and the Colorado Family Safety Assessment Tool is completed at every necessary step over the course of a child welfare case.

Other(specify):

Samantha Garrett
Printed Name AND Signature of DCW County Intermediary
Date: 2019.08.27 16:10:27 -06'00'

Trevor Williams
Printed Name AND Signature of DCW County Intermediary Supervisor
Date: 2019.08.27 16:58:46 -06'00'

Kristin Melton
Printed Name AND Signature of DCW Unit Manager
Date: 2019.08.27 16:04:31 -06'00'

_____ Date review form sent to county and client services  _____ (CPO Only) Date response sent