Office of Colorado’s Child Protection Ombudsman

LETTER OF COMPLIANCE CONCERN

Case Number 2019-3689

Stephanie Villafuerte,
Child Protection Ombudsman
September 6, 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)(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 2019 – 3689
(Delivered July 26, 2019)
To:   Ms. Jan James, Director  
   Adams County Human Services Department  
   118060 Pecos Street  
   Westminster, CO 80234

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 2019-3689

Dear Director James,

On May 21, 2019, the Office of Colorado’s Child Protection Ombudsman (CPO) received an inquiry regarding the Adams County Human Services Department’s (ACHSD) handling of a child welfare case. The contact expressed concern that the children’s educational and cultural needs were not being met. The CPO has reviewed the relevant Trails information. The CPO has identified several areas in which the actions of ACHSD may not be in compliance with the guidelines in Volume 7.

Case Summary

On [redacted], a report was made to ACHSD that three adolescents were being physically abused. The referral was assigned an immediate response and the assessment was closed as founded for physical abuse. A case was opened to provide services to the family. The children were placed together into kinship care and moved schools. On February 12, 2019, an educational surrogate was appointed for all three children. In March 2019, the three children were moved by ACHSD to a new kin placement and two of the children changed schools again; these two children have individualized education plans (IEPs) and diagnosed disabilities. At this time, the case remains open and the permanency goal is reunification with the grandfather.

Volume 7 Regulation/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: statewide case management system  
2  Code of Colorado Regulations, Social Services Rules, Volume 7  
3  See Trails Case Findings  
4  See Trails Case  
5  See Trails Case Contacts
Volume 7 requires county departments to follow a specific process regarding educational decision making for children in foster care. This process is known as a “best interest determination.” The process is intended to keep children in their home school, if it is in their best interest. The process outlines that the county must engage — at a minimum — children, parents and caregivers in this process. Specifically, Volume 7 requires that parents/caregivers be invited to, participate in and be notified of the outcome in regard to educational changes for the children, and this process must be documented in Trails.6

Volume 7, 7.301.241 (7&8) requires county departments to inform parents, guardian ad litem, and educational surrogates of the best interest determination within one day of making the determination. Volume 7 explains that that this notification will serve as the first day of the parent’s right to appeal those decisions.7

Volume 7, 7.301.242 outlines the procedures for how educational records are to be maintained. These records can be kept in Trails or the case file. The information to be kept for each child is: school name and address from removal, current school name and address, grade or class, end-of-term grades or progress reports, educational needs (special education), and needs-based plans (IEPs) and evaluations.8

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6 See Volume 7, 7.301.241 (D) (1&2): “It is presumed to be in a child/youth’s best interest to remain in the school of origin. If transportation is necessary to maintain the child/youth in the school of origin, this shall be provided in accordance with section 7.301.24, E. The county shall make a best interest determination prior to any school move resulting from a change in placements unless remaining in the school of origin poses a specific, documented threat to the child/youth’s safety. The best interest determination process is as follows:

1. The best interest discussion and determination shall occur as an in-person meeting when warranted and possible. When an in-person meeting is not warranted or not possible, or for participants unable to attend the meeting, the county department shall consult participants by other means, such as phone or email.
2. The county department shall invite the following people to participate in the best interest determination. If a participant is unavailable or cannot be located, the county shall document the various ways in which attempts were made to engage that participant.
   a. Child/youth, as described below, the county department of human services shall determine the child/youth’s wishes in a developmentally appropriate way and include the child/youth in the meeting to the extent appropriate and possible for the child/youth’s individual needs. If it is inappropriate or not possible for the child/youth to participate in the meeting, the county department shall document the reason and ascertain the child/youth’s wishes through other means.
   b. Parents, for purposes of this subsection 7.301.241, the term “parents” includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or apparent allocated parental responsibilities with respect to a child, or an adoptive parent. Parent does not include a person whose parental rights have been terminated pursuant to the provisions of Title 19 of the Colorado Revised Statutes or the parent of an emancipated minor.
   c. Caseworker or appropriate designee.
   d. Guardian ad litem, if one is appointed.
   e. Representative from the school of origin who knows the child/youth, as determined by the LEA,
   f. Educational surrogate parent, if any, and
   g. Others as relevant and appropriate as determined by the county, which may include but are not limited to future caregiver, court appointed special advocate (CASA), current caregiver, representatives from potential new school, support person for the child/youth.”

7 See Volume 7, 7.301.241 (D) (7-8): “7. The county department shall inform the parent(s), guardian ad litem, and educational surrogate parent, if any, of the best interest determination within one business day of making the determination. The notification shall serve as the first day in the dispute resolution time frames described in section 7.301.24, D, 8.
8 Disputes regarding best interest determinations shall be handled in a manner that promotes the child/youth’s safety and stability, as follows:
If the parent(s), guardian ad litem, and/or educational surrogate parent, if any, is a party to an accompanying court case and disagrees with the county department’s best interest determination, he or she must file a motion with the juvenile court to seek judicial resolution. Such a motion must be filed within three business days of the notice of the county’s determination. If the county receives such a motion, the child/youth shall remain in the school of origin pending dispute resolution, unless remaining in the school poses a specific, documented threat to the child/youth’s safety. If such parties indicate their agreement to a school move, the county need not delay the move pending the three-day appeal period.”

8 For children/youth in out-of-home placement, the county department shall maintain records within the case file and/or in the fields available in the education section of the automated system that include, but are not limited to, identification of:
A. School name and address at the time of removal from the home.
B. Current school name, address, and telephone number.
C. Grade or classroom designation.
D. Most recent end-of-term grades or other school district approved progress reporting method if grades are not issued.
E. Educational needs including, but not limited to, special education and summaries of the efforts of the county department to address the needs.
F. Educational plans based on individual needs, including an IEP and G. Educationally based evaluations.
Identified Compliance Concerns

In reviewing the case documentation, the CPO identified that ACHSD may not have complied with the best interest determination process that is outlined in Volume 7. Specifically, the CPO observed that:

- Due to the children’s change in placement twice and need to evaluate for school placement, the best interest determination process should have occurred twice. There are at least eight documented discussions between ACHSD and a parent or caregiver. However, there is no documentation to suggest that parents or caregivers were provided any information about, or engaged in, the best interest process, or notified of the decisions made, either prior to or after the appointment of the educational surrogate. At a minimum, notifications of educational decisions must be provided to parents and caregivers until their rights have been terminated. If accurate, this is a violation of requirements in Volume 7, 7.301.241.

- Parents and caregivers have a right to appeal the best interest determinations. Since parents and caregivers were not notified of the decisions, they were unable to appeal. If accurate, this violates the requirements in Volume 7, 7.301.241 (D)(8).

- The educational pages within Trails for each of the three children have not been updated as of July 26, 2019, to reflect the changes in school or their special education status. Additionally, the documentation provided from ACHSD’s case file does not correctly identify the schools. If accurate, this is a violation of requirements in Volume 7, 7.301.242, as a child’s educational record is to be kept up to date and either documented in the case file or in Trails.

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 ACHSD response, the CPO will submit its original letter and ACHSD’s full response to the CDHS, which serves as ACHSD’s 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 ACHSD 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.

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9 See Trails Case Contacts
Sincerely,

Amanda Pennington

**Amanda Pennington**
Child Protection Systems Analyst

Approved by:

**Stephanie Villafuerte**

Stephanie Villafuerte
Child Protection Ombudsman
Adams County Human Services Department

Response Letter

Case 2019 - 3689

(Delivered August 14, 2019)
August 12, 2019

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

RE: Response to Compliance Concerns Letter Issued July 26, 2019

Dear Ms. Pennington,

I am responding to the concern first raised with our department regarding case id [redacted] in early-June. This is a highly complex situation, and I will affirm that the documentation we provided to you was equally confusing in response to the question of when Best Interest Determinations occurred for these siblings. I am sorry that we did not review the summarized information from the file more thoroughly when it was sent and would have appreciated the chance to talk about it before this formal letter was sent through. I do not agree with the assertion from the OCP that the meetings did not occur as appropriate.

As a practice, we try to avoid BID meetings as our preference is to find a way to keep youth in their originating school as a best practice. In this case, we scheduled a first BID meeting on January 30th, 2019 at the request of the kinship family, after a series of transportation glitches occurred as we tried to work with the two school districts [redacted] to figure out a transportation plan that would allow us to keep the girls in their originating schools. The transportation problems were very difficult for the youth and for the family, and our goal was to support the family system during this significant time of change for the sisters. In the meeting on January 30th, the decision was made that a transition to [redacted] would be in the best interest of the girls who were expected to reside with paternal uncle and his family for a longer period of time than was originally expected given the other complexities of the case that were emerging. A follow-up meeting was scheduled for February 11th to allow the GAL to be in attendance, as she was requesting appointment by the court to serve as the educational surrogate on February 12th. The purpose of the BID meeting on February 11th was to specifically design the transition plan for each of the girls, because two of the children had special needs and required completion of IEP’s. In that meeting, a decision was made to transfer the eldest sibling to the new school in [redacted] with a planned transition date of February 26, 2019. It was also determined in that meeting that it was in the best interest of the younger siblings to delay a transition until IEP’s could be completed for each of them in an educational setting where the girls were well known to educators and staff.
The eldest sibling transitioned to [redacted] on the planned date and attended there only one day before we were notified on February 27\textsuperscript{th} by the paternal uncle (initial kinship provider) that he and his family could no longer keep the girls. As we had been working with the family system from the beginning of the case through Family Engagement Meetings, another paternal uncle and his wife were aware of the situation and immediately stepped forward to receive the girls into their home in Milliken, Colorado that same weekend. Once we learned of this move, we immediately reached out to [redacted] to set up a BID meeting, as we had already determined it was too difficult for the girls to be on transportation for such a protracted portion of their day, and Milliken was an even further distance. The BID Meeting was scheduled for March 1\textsuperscript{st} (2 days after notification by the uncle in Brighton) as the children were requested to be moved that weekend to Milliken.

By the time of this placement move, the IEP for the youngest sibling had been completed by the originating school district. As a result, it was determined that the eldest sibling and her youngest sister would be transferred to [redacted] on March 11\textsuperscript{th} to allow them the opportunity to get settled into this new home and to have the mutual support of entering a new school system. In the interim between the BID Meeting on March 1\textsuperscript{st} and school start for her siblings, the IEP was completed for the middle sibling, and it was agreed that she would start school at [redacted] on March 13\textsuperscript{th} so that all the siblings were in the same district.

From January 18\textsuperscript{th} to February 26\textsuperscript{th}, all three sisters remained in their home schools with transportation being provided by our department. On February 27\textsuperscript{th} the eldest sister transferred to [redacted] for a very short time before starting at [redacted] schools, and we continued to transport the other two siblings to their originating schools in District [redacted]. This included personal transport by the assigned to and from school from [redacted] to [redacted] (eldest sister) and [redacted] (for the other two siblings) from March 4\textsuperscript{th}-13\textsuperscript{th} until the eldest and youngest children could start school in [redacted] on March 11 (as documented in Trails), and the middle sister started there on March 13\textsuperscript{th} (also accurately documented in Trails).

While I understand the perception that we did not work with this family system in making these decisions, we held Family Engagement Meetings on 1/28/19 with Maternal Grandfather and Step-Grandmother, on 1/29/19 with those family members as well as the paternal uncle and aunt who originally received the children in their home, and then on 4/24/19. In the interim, we had ongoing conversations with the Maternal Grandfather who had been the long-time legal guardian for these children, as well as the bio-dad, who lives in the New Mexico. The father has had little contact with the girls (mom remains incarcerated).

While there are many competing needs in a case as complex as this one, the work we have done is remarkable to keep the needs and desires of the youth first, to be thoughtful and careful in the decisions about educational placements, to listen to the needs of the kinship providers who were caring for the children, as well as to listen to the desires and needs of the legal guardian (maternal grandfather), father, and step-grandmother. As a result of this strong collaborative work with the family system, by late-May we were able to return these girls to their home of many years, after the second kinship providers determined they could no longer
keep the children in their home. At the request of the maternal grandfather, we returned the girls to their home on May 24th, under the care and supervision of their Aunt. The Grandfather proposed that girls be in his home with the aunt, and he moved into her home to allow the girls to be home, until such time as the court would approve reunification. This final move occurred the last week of school. Moreover, because the eldest daughter wished to say goodbye to other students at [redacted] the caseworker honored her request and drove her back to [redacted] to do so on the final day of school.

I am pleased to report that the grandfather is now back in the home caring for the girls, and they will resume education at their schools of origin in the fall. We have plans to host a final BID meeting at the beginning of the school year to assure that we close the loop on the educational needs of these siblings and make sure that all relevant educational information can be shared by the school district that worked with these youth for the last 3 months of the school year.

As a final summary, through our conversations with you we identified a gap in our system that we have subsequently remediated. When you contacted us in early-June related to this concern, we realized that we had not been sufficiently clear with our caseworkers and Educational Liaison about who should enter notes for BID meetings into Trails. This task is now clearly assigned to the Educational Liaison. I will also add that the document we sent to you upon your initial request was compiled from a series of emails discussing the needs of these three youth. The compiled document had several errors in it that made it confusing. It has now been corrected and is in the case file in corrected form. We concur that we had not updated the IEP status for the 2 girls in Trails, but this has now been updated. As to the issue of appeal, the grandfather and father were both fully informed of our work throughout this case. While I understand the technical concern you note in your letter about the requirement of notification and right of appeal, when weighed against the equally compelling need to try to maintain educational stability, to transport the girls to and from their home schools for most of the Spring, and then promote as much stability with kin as possible to reduce trauma for these children, it seems just that—a technical detail that was not documented into Trails, and does not speak to the quality of our practice in this case.

Sincerely,

[Signature]

Janis L. James, M.Div., LCSW
Adams County Human Services Department
Deputy Department Director, Children and Family Services
Colorado Department of Human Services

Response Letter

Case 2019 – 3689

(Delivered September 4, 2019)
September 4, 2019

Dear Ms. Villafuerte,

I hope you are well. We are providing this letter with the Colorado Department of Human Services Response to Complaint # 2019-3689 regarding Adams County Department of Human Services (DHS). Our office has reviewed this complaint along with Sections 7.301.241.7-8 (12 CCR 2509-4) and 7.301.242.

Section 7.301.241.D.7-8 regarding educational requirements for students placed in out of home care. Specifically, these items lay the foundation for informing educational surrogates, parents, and others with a vested interest about educational decision-making that occurs, so that in the event of disagreement, a timely appeal can be filed.

A Family Engagement Meeting was held at Adams County DHS on January 29, 2019. Individualized Educational Plans (IEP) for two of the children/youth was discussed, including a scheduled IEP meeting the next day for one of the children/youth. The grandfather attended in person and the father of two of the children/youth was present by telephone. The guardian ad litem (GAL) for the three children/youth was present and indicated she would request educational decision-making at the next hearing.

The GAL was given educational decision-making by the court on February 12, 2019. IEPs were also discussed at a Family Engagement Meeting on April 24, 2019. The maternal grandfather was in attendance. The father of two of the children/youth did not attend.

Adams County DHS acknowledged their preference to maintain students in their schools of origin. Due to transportation issues and the hardship it was causing for the kinship caregivers, a Best Interest Determination meeting (BID) was scheduled for the oldest youth who (did not have IEP) and a transition plan was developed for transfer to the school district of the kinship caregivers’ residence. The plan was for the two siblings with IEPs to continue their school of origin until their IEPs were reviewed and transition plans were developed. One of the IEPs was updated; however the kinship caregivers gave their notice on March 27.
Due to the distance to the new school district, a (BID) meeting was held on March 1, 2019 for two of the children/youth. It is unclear who was notified of the meeting. These two siblings started on March 11, 2019, which was the beginning of the quarter. The third youth had a BID meeting on March 11, 2019 and began classes on March 13. Due to the unanticipated placement disruption, it is unclear whether the grandfather and father were notified of the BID meetings on March 1, 2019 or March 11, 2019.

This was an unfortunate unintended consequence of placement disruption and the county department acted as quickly as possible, however it was a violation of the administrative rule.

Section 7.301.242 addresses the procedures for maintaining educational records, including school name, address, and grade level, etc. Adams County DHS acknowledged they corrected the information and has placed this information in the children/ youths’ written files. The IEP status for the two siblings was updated in the Comprehensive Child Welfare Information System (CCWIS), as well as the correct schools for the three children/youth. Prior failure to complete this documentation was a violation of the administrative rule. This was an administrative function and did not have a negative impact on the case.

Adams County has clarified with their casework staff that the Educational Liaison in the county department is tasked with maintaining educational record information, updates, and documentation about BID meetings.

The Division of Child Welfare is in agreement with this plan and will oversee and continue to check in and provide supervision and guidance as needed. Please let us know if you have any further concerns or questions.

Sincerely,

Kari Daggett, MSW
Interim Director
Division of Child Welfare