Office of Colorado’s Child Protection Ombudsman

LETTER OF COMPLIANCE CONCERN

Case Number 2019-3889

Stephanie Villafuerte,
Child Protection Ombudsman
December 3, 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 - 3889

(Delivered October 16, 2019)
To: Mr. Tommy Vigil  
Costilla County Department of Social Services  
233 Main St., Suite A  
San Luis, CO 81152

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

Date: October 16, 2019

Subject: Possible Compliance Concerns, CPO Case 2019 - 3889

Dear Director Vigil,

On May 14, 2019, the Office of Colorado’s Child Protection Ombudsman (CPO) was contacted by a father who expressed concern regarding past handling of child welfare referrals and assessments by Costilla County Department of Social Services (CCDSS). He indicated that a new referral had been made and was concerned that he would have the same experience. Throughout the CCDSS assessment, the father expressed concern regarding his child not being safe and a lack of communication with the CCDSS. Additionally, the father is concerned that, approximately four months later, the assessment has not been concluded and they have not received any services or assistance to address the allegations made in the referral. The father also expressed concern that there had been turnover with the assigned caseworker and his attempts to identify the correct caseworker were unsuccessful. The CPO has reviewed the relevant Trails information regarding the family. The CPO has identified several areas in which the actions of CCDSS may not be in compliance with the requirements in Volume 7.

Case Summary

On May 14, 2019, the CCDSS received a referral alleging third-party sexual abuse, lack of supervision, failure to protect and neglect of the children. The referral was reviewed, accepted for assessment and assigned a 5-working day response for CCDSS to make contact with the victim and family. The victim was interviewed within the required timeframe of May 20, 2019. The mother was interviewed on June 5, 2019 and the father was interviewed on June 25, 2019. According to Trails documentation of the conversation with the father, the CCDSS had arranged for the victim child to be forensically interviewed and indicated that the CCDSS would be providing transportation to the interview.

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1 Trails: comprehensive child welfare information system (CCWIS)  
2 Code of Colorado Regulations, 12 CCR 2509-7  
3 See Trails Referral ID:  
4 See Trails Referral ID: Referral Acceptance  
5 See Trails Referral ID: Contacts  
6 See Trails Referral ID: Contacts
No documentation has been entered into Trails since June 25, 2019. This was last verified by the CPO on September 17, 2019.  

**Volume 7 Regulations/Children’s Code Requirements**

Volume 7 and the Colorado Children’s Code contain the minimum guiding principles and standards to which county human services departments are held in assessing and ensuring a child’s safety. The CPO finds that the following rules are the most relevant to the identified compliance concerns:

**Volume 7, 7.107.18 (A)** requires the Colorado Family Safety Assessment to be completed with household members at the time of the contact and documented in Trails no later than 14 calendar days. **(B)** requires that the Colorado Family Safety Assessment be approved by a supervisor no later than 14 calendar days from the date the victim was interviewed or observed.  

**Volume 7, 7.107.22** requires the Colorado Family Risk Assessment be completed with the family and address all areas of risk on the tool.  

**Volume 7, 7.107.24** requires the completed Colorado Family Risk Assessment be documented in Trails within 30 calendar days from the date of the referral.  

**Volume 7, 7.104.131 (A)** requires assessments be closed within 60 calendar days from the date the referral was received.  

**Volume 7, 7.104.132 (A)** requires county departments enter a finding of founded, inconclusive, or unfounded, as an outcome of all high risk and traditional assessments into Trails no later than 60 calendar days after the referral was received.  

**Volume 7, 7.104.141 (B)** requires county departments enter the findings of the assessment into Trails even if there is a criminal or civil proceeding pending against the person found responsible for the abuse and/or neglect.  

**Volume 7, 7.104.31 (A)** requires county departments to immediately forward referrals alleging abuse and/or neglect by a third-party, 10 years of age or older, to the appropriate law enforcement agency for screening and investigation.  

**Volume 7, 7.202.1 (F)** outlines the minimum requirements that county departments must follow when contacting parents and children. (1) Requires monthly face-to-face contact with children and parents to the children. (4) Requires that all case contact with parents and children by the county department be

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7 CPO review of Trails Referral ID: 9/17/2019  
8 12 CCR 2509-7, Rule 7.107.18 (A)(B)  
9 12 CCR 2509-7, Rule 7.107.22  
10 12 CCR 2509-7, Rule 7.107.24  
11 12 CCR 2509-7, Rule 7.104.131 (A)  
12 12 CCR 2509-7, Rule 7.104.132 (A)  
13 12 CCR 2509-7, Rule 7.104.141 (B)  
14 12 CCR 2509-7, Rule 7.104.31 (A)
recorded in Trails. Volume 7, 7.202.1 (G) requires the county department to document, in Trails, the reason as to why the minimum monthly contact cannot be completed.\(^{15}\)

**Volume 7, 7.301.21 (A)** requires the Family Service Plan (FSP) be completed within 60 calendar days of the referral date and be documented in Trails. The FSP is used to address the areas of need identified in the assessment.\(^{16}\)

**Volume 7, 7.301.3 (E)** requires that the Family Service Plan be reviewed every 90 days to determine whether the child, parents, family members and placement providers, if applicable, are receiving the services mandated by the Family Service Plan. Additionally, it requires services be appropriate, time frames remain current and progress is being made towards the specific objectives identified in the plan.\(^{17}\)

**Identified Compliance Concerns**

The CPO has reviewed the assessment in Trails along with the relevant rule package and sections of Volume 7. The CPO found several areas in which the CCDSS may not be in compliance with state regulations. This information was last verified by the CPO on September 18, 2019. Specifically, the CPO observed:

1. The documentation does not demonstrate that the county department completed the Colorado Family Safety Assessment. If accurate, this is a violation of 7.107.18, which requires the assessment be completed, documented and approved by a supervisor within the required timeframes.\(^{18}\)

2. The documentation does not demonstrate that the county department completed the Colorado Family Risk Assessment. If accurate, this is a violation of 7.107.22, which requires the assessment be completed and documented within the required timeframe.\(^{19}\)

3. As of September 17, 2019, the assessment has been open for 127 days. Documentation does not demonstrate that findings for the assessment have been made. If accurate, this is a violation of 7.104.131 and 7.104.132, which require both the assessment to be closed and the findings to be entered into Trails within 60 calendar days from the date the referral was received. Additionally, Volume 7, 104.41 (B) requires that the county department enter the findings regardless of any pending criminal or civil proceedings.\(^{20}\)

4. The documentation does not demonstrate that the referral alleging third-party sexual abuse was sent to law enforcement immediately upon its receipt. If accurate, this is a violation of 7.104.31 (A) which requires the referral be provided to law enforcement immediately for their screening and investigation.\(^{21}\)

\(^{15}\) 12 CCR 2509-7, Rule 7.202.1 (F)(G)  
\(^{16}\) 12 CCR 2509-7, Rule, 7.301.21 (A)  
\(^{17}\) 12 CCR 2509-7, Rule 7.301.3 (E)  
\(^{18}\) See Trails Referral ID: Assessment, Safety  
\(^{19}\) See Trails Referral ID: Assessment, Risk  
\(^{20}\) See Trails Referral ID: Assessment, Findings and Closure  
\(^{21}\) See Trails Referral ID: Law Enforcement, Notes and Contacts
5. Per practice expectations, when this assessment went past the 60-calendar day timeframe, it should have been opened into a case. This would require both parents and children to have been contacted face-to-face on a monthly basis. There is no documentation that demonstrates effort to contact either parent after June 2019. There is no documentation that the victim has been contacted since May 2019, or the siblings since June 2019. If accurate, this is a violation of 7.202.1 (F) which requires specific monthly contact for children and parents.22

6. The documentation does not demonstrate that an FSP has been created for this family. If accurate, this is a violation of 7.301.21 (A) which states that the FSP must be created within 60-calendar days of the receipt of the referral.23

7. Additionally, due to the FSP being absent from Trails, the documentation does not demonstrate that it has been reviewed within the required timeframe. The 90-day review should have occurred by August 12, 2019. If accurate, this is a violation of 7.301.3 (E), which requires the FSP be reviewed every 90 days.24

On June 14, 2019, the CPO requested the CCDSS provide an estimated timeframe for Trails documentation to be entered regarding the assessment. The CCDSS indicated that the assigned caseworker had just received Trails access and expected to have the information entered in the near future.25

The CPO followed up with the CCDSS on July 2, 2019, as it appeared documentation had not been entered. The CCDSS informed the CPO that the assigned caseworker was no longer with the agency and that the CCDSS had access to the caseworker’s notes. The CCDSS was working to have another caseworker enter the notes into Trails as soon as possible and apologized for the inconvenience. The CPO requested the name of the new caseworker in an attempt to address the father’s concern, and the CCDSS did not respond to this request.26

On September 17, 2019, the CPO made its third request to the CCDSS for documentation in regard to this family.27 In October 2, 2019, the CCDSS indicated that the documentation would be entered by October 7, 2019. A CPO review of the case on October 9, 2019, did not find updated documentation in regard to interviews.

Conclusion

Pursuant to policies 4.200 and 5.200 in the Colorado Child Protection Ombudsman’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.

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22 See Trails Referral ID: Contacts and Framework
23 See Trails Referral ID:
24 See Trails Referral ID:
25 Email between CPO and CCDSS 6/14/2019
26 Email between CPO and CCDSS 7/2/2019
27 Email to CPO from CCDSS 9/17/2019
After receiving the CCDSS response, the CPO will submit its original letter and CCDSS’ full response to the CDHS, which serves as the CCDSS’ 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 CCDSS response to the possible violations listed in this letter no later than November 6, 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
Costilla County Department of Social Services

Response Letter

Case 2019-3889

(Delivered November 6, 2019)
Volume 7, 7.108.18 (A)

The Colorado Family Assessment was completed with the mother but was not entered timely into the system. The caseworker assigned to this assessment initially was having difficulty getting into Trails and was instructed to get with the caseworker that assisted him but that never occurred.

Volume 7, 7.107.22

The Colorado Family Risk Assessment was completed with the family

Volume 7, 7.107.24

The Colorado Family Risk Assessment was completed with the family but not timely due to similar issues as the family assessment.

Volume 7, 7.104.131 (A)

Due to the caseworker initially assigned to the case being let go and no notes were entered it made it very difficult to close this assessment on the due date of 07/13/19. The agency tried to obtain notes taken and agency cell phone (to see any text messages or phone calls exchanged that pertained to this assessment) but the worker refused to provide any of those. We had to rely on the current caseworker’s memory to enter notes that she was present for since supervisor had informed initial caseworker that he had to take notes. The caseworker claimed to have lost the phone. Before the worker was let go, he was instructed to enter notes by the supervisor and again by Tommy Vigil the director and (who was covering the supervisor who was on training and annual leave for 3 weeks).

Volume 7, 7.104.132 (A) and Volume 7, 7.104.141 (B)

A finding was not able to be submitted due to losing the caseworker and trying to gather the information needed and not having a lot of support.

Volume 7, 7.104.31 (A)
Law enforcement was notified of the allegations. The caseworker currently assigned was trying to figure out what date the referral was provided to them. It has been very difficult to get return calls from the law enforcement officer involved in this case. The officer was also called to be invited to the forensic interview that was set up.

**Volume 7, 7.202.1 (F)**

Since we didn’t have an open case, we didn’t think this was required.

**Volume 7, 7.301.21 (A)**

We didn’t want to open a case without having all the information we needed.

**Volume 7, 7.301.3 (E)**

A family service plan was not completed since a case was not open at that time.

**Identified Compliance Concerns**

1. The Colorado Family Assessment was completed with the mother but was not entered timely into the system. The caseworker assigned to this assessment initially was having difficulty getting into Trails and was instructed to get with the caseworker that assisted him but that never occurred.

2. The Colorado Family Risk Assessment was completed with the family but not timely due to similar issues as the family assessment.

3. As stated above a finding was not entered due to the position we were in due to the employment termination of the initial caseworker. The agency didn’t want to just add any finding without having all the information needed. Our agency was not waiting to see if law enforcement was going to file charges. We were trying to get a hold of law enforcement since they were present when the initial caseworker interviewed perpetrator and their mother.

4. The department did provide law enforcement the referral shortly after red team but not the same day it was received. The current caseworker was trying to figure out what date the initial caseworker provided the document to law enforcement.
5. The department did not want to open a case since we did not have all the information necessary at 60 days due to the employment termination of the initial caseworker. Both father and mother were contacted after June 2019. A family engagement meeting was conducted on July 24th by director Tommy Vigil. The victim has not been contacted since the forensic interview.

6. An FSP was not created for the family since a case was not open at that time due to the agency not having the information needed.

7. A 90 day review was not completed due to a case not being opened
December 2, 2019

Dear Ms. Villafuerte:

I write this letter as a supplement to the Colorado Department of Human Services Response to Complaint 2019-3889 regarding Costilla 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 responses to the points of concern that were raised by the Office of the Child Protection Ombudsman (CPO). Please note that in some cases DCW agrees that the county has violated rule, but has found a different citation for which rule has been violated. In these cases, the violation is listed according to the rule that DCW finds the county has violated.

The county did not contest any of the findings of the CPO with regard to the referral and assessment addressed in this complaint. Similarly, DCW does not contest the CPO's findings with regard to the assessment. DCW finds that the county is in violation of 12 CCR 2509-2, 7.107.18, as the county did not document timely completion of the safety assessment tool. DCW also finds that the county did not document completion of the risk assessment tool, which is a violation of 12 CCR 2509-2, 7.107.22. The county is also in violation of 12 CCR 2509-2, 7.104.131 and 7.104.132, as the county did not document findings of the assessment or close the assessment timely. Finally, DCW finds that the county is in violation of 12 CCR 2509-2, 7.104.31(A), as the county did not document forwarding the referral to law enforcement.

As the complaint at hand is only in response to a referral and assessment, and not to an open case, DCW cannot find that the county violated any rules with regard to ongoing casework, including rules related to monthly face-to-face contacts and 90-day service plan reviews. However, DCW acknowledges that were this assessment to become an open case, the Family Service Plan (FSP) could not be created timely per 12 CCR 2509-2, 7.301.21(A), as the deadline for creating the FSP has already passed.

DCW staff are aware that the caseworker who had overseen this assessment while the assessment was still open is no longer employed with the county. DCW staff will follow up with the county to provide technical assistance around ensuring that this case and all others overseen by the worker have been appropriately transferred to other workers and worked according to prescribed timelines. DCW staff will also work with the county to ensure that all child welfare staff are aware of assessment and documentation requirements and timelines and that similar problems do not occur in the future. DCW
will continue to support and monitor the county’s work in these areas. Please let us know if you have any further concerns or questions.

Sincerely,

Kari Daggett, MSW
Deputy 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: Costilla</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Assigned (by manager): 11/7/19</td>
<td>Due Date: 12/2/19</td>
</tr>
<tr>
<td>Complaint Number: CPO 2019-3889</td>
<td>Complainant Role (Select from the following):</td>
</tr>
<tr>
<td>Comments:</td>
<td>___ Parent, Guardian, Legal Custodian</td>
</tr>
<tr>
<td></td>
<td>x Office of Colorado’s Child Protection Ombudsman</td>
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<td></td>
<td>___ Attorney</td>
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<tr>
<td></td>
<td>___ Other: Specify Role: _________________________</td>
</tr>
</tbody>
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The basis of grievance/inquiry (mark all that apply):

- Federal/State Statutory violation
- 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
- 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.

- DCW found the following violation federal/state statute and/or of the administrative rules:

- DCW found concerns with county practice, policy, procedure, etc.; specify:

7.107.18: The county did not document timely completion of the safety assessment tool
7.107.22: The county did not document completion of the risk assessment tool
7.104.131 and 7.104.132: The county did not document findings based on the assessment or close the assessment timely
7.104.31(A): The county did not document immediately forwarding the referral to law enforcement

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 support county staff in creating plans to prevent future problems related to assessment documentation in these areas and to ensure that an appropriate plan is in place to serve this family.

Other(specify):

Printed Name AND Signature of DCW County Intermediary

Printed Name AND Signature of DCW County Intermediary Supervisor

Printed Name AND Signature of DCW Unit Manager

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