Office of Colorado’s Child Protection Ombudsman

LETTER OF COMPLIANCE CONCERN

Case Number 2019-3961

Stephanie Villafuerte,
Child Protection Ombudsman

January 24, 2020
Introduction

By design, the Office of Colorado’s Child Protection Ombudsman 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 2019-3961

(Delivered December 18, 2019)
To: Donna Rohde, Director
Otero Country Department of Human Services
13 West 3rd St.
La Junta, CO 81050

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

Date: December 18, 2019

Subject: Possible Compliance Concerns, CPO Case 2019-3961

Dear Director Rohde,

On October 25, 2019, the Office of Colorado’s Child Protection Ombudsman (CPO) was contacted by a mother involved in an Otero County Department of Human Services (OCDHS) child welfare case. The mother stated that communication with the caseworker was poor, including her phone calls not being returned, and general comments from the caseworker that the mother considered unprofessional and unsupportive. The mother also stated she was aware of a possible kinship placement for the child that the caseworker was not exploring.

The CPO has reviewed the relevant case information in the state automated case management system – Trails – and has identified areas where OCDHS may not be complying with policy.

**Case Summary**

On March 11, 2019, OCDHS received a report stating that a mother had a positive urine screen for opiates and marijuana at the time she delivered her baby. 1 The baby was flown to another hospital due to concerns of drug exposure. The child’s cord blood tested positive for morphine and marijuana. Before OCDHS became involved with the family, the maternal grandparents were planning to obtain custody of the child and the mother agreed with this. In May 2019, the grandparents changed their minds. OCDHS was granted custody of the child, and he was placed with another relative. 2 After that relative was injured in a car accident, the child was placed in foster care where he remains today. The court case is currently set for a Termination of Parental Rights hearing in February 2020. 3

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1 See Trails Referral ID: [ID], Narrative
2 See Trails Assessment ID: [ID], Closure Summary
3 See Trails Case ID: [ID] and Colorado State Courts- Case: [ID]
Volume 7 Regulations/Colorado Children’s Code

Volume 7 and the Colorado Children’s Code collectively make up 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 the following Volume 7 rules as the most relevant to the possible compliance concerns: 7.104.1, 7.204, 7.202.1, 7.301.21 and 7.301.3.

Identified Compliance Concerns

The CPO has reviewed the assessment and case in Trails, relevant court documentation, and Volume 7. The CPO identified several areas of concern where OCDHS may not be complying with Volume 7 requirements.

1. The documentation in Trails is unclear as to whether the child was seen within the required three calendar day response time. On March 11, 2019 — the date the referral was received — a contact note reads “CW went to do a F/F with . He was flown out to Memorial Children’s and is currently in the NICU.” It is unclear whether the caseworker observed the child on March 11, or if the child had already been flown to another hospital prior to the caseworker’s arrival. The remainder of the contact note has a few details regarding how the child is doing, but it is not detailed enough to understand whether the child was seen by the caseworker, or if the information was coming from nurses caring for the child. The first contact note that clearly states a caseworker saw the child is on April 5, 2019. If accurate, this violates 7.104.1, which states that a child shall be seen face-to-face within the assigned response time. When a child is pre-verbal, Volume 7 still requires face-to-face observation of the child, documentation stating why the child cannot be verbally interviewed, and how the allegations were addressed during the observation of the child.

The CPO received clarification from the OCDHS that the caseworker did see the child on March 11. The OCDHS acknowledged that the contact was unclear, and they will work to improve the clarity of contact notes in the future.

2. There is no documentation in Trails of contact attempts with the presumed biological father. If accurate, this violates 7.104.1 which states that an assessment must include documentation of attempts to engage the non-custodial parent.

The OCDHS confirmed that the presumed father was later found not to be the biological father. Another potential father has not been named. The OCDHS acknowledged the lack of documentation around this issue, and the need to show search efforts in the future.

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4 See Trails Assessment ID: Interview
5 See Trails Assessment ID: Interview
6 12 CCR 2509-2, Rule 7.104.1
7 See Trails Assessment ID: Interview, Client
8 12 CCR 2509-2, Rule 7.104.1
3. Upon the CPO’s initial review of Trails documentation in the open case on October 28, 2019, no contact/visit notes had been entered. If accurate, this violates 7.204, which states that contact between county departments and the family must be documented in Trails.

After the CPO inquired with OCDHS, contact notes were added to the case spanning the dates of April 6, 2019 through October 26, 2019.

4. The Safety and Risk Assessments in Trails are not timely, up-to-date nor accurate. These assessments were completed while Assessment ID: was open; however, they do not appear in Case ID: because the case is not connected to the assessment. New Safety and Risk Assessments were created for the case that contain different information than in the assessment. If accurate, this violates 7.202.1, which states that the county department shall maintain updated Safety and Risk Assessments throughout the life of the case in accordance with the parameters outlined in 7.107.11 and 7.107.21.

5. Portions of the Family Service Plan (FSP), including the treatment plan, were not entered into Trails timely. The treatment plan was due by May 11, 2019 and was entered on October 29, 2019. If accurate, this violates 7.301.21, which states that the FSP must be entered into Trails within 60 calendar days of the referral date.

6. As of the initial CPO review on October 28, there was no 90-day review. The first 90-day review was due by August 11. There is now a 90-day review dated October 29, which is a month and a half beyond the due date. If accurate, this violates 7.301.3, which states that a review of the FSP between the caseworker and supervisor must be documented in Trails every 90 days, starting 90 days from when the initial treatment plan was entered.

Conclusion

Pursuant to policies 4.200 and 5.200 in the Office of Colorado’s Child Protection Ombudsman 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 OCDHS’s response, the CPO will submit its original letter and OCDHS’ full response to the Colorado Department of Human Services (CDHS), which serves at the OCDHS’ 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 20 business days to make its determination and

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9 See Trails Case ID: , Contacts/Visits
10 12 CCR 2509-3, 7.204
11 See Trails Case ID: , Safety Assessment and Risk Assessment
12 12 CCR 2509-3, 7.202.1(D)(E), and 12 CCR 2509-2, 7.107.11 and 7.107.21
13 See Trails Case ID: , FSP- Treatment Plan
14 12 CCR 2509-4, 7.301.21(A)(B)
15 See Trails Case ID: , FSP- Review
16 12 CCR 2509-4, 7.301.3(E)
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 OCDHS’s response to the possible violations listed in this letter no later than January 10, 2020.

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

Sincerely,

Claire Hooker
Child Protection Systems Analyst

Approved by:

Stephanie Villafuerte
Child Protection Ombudsman
Thank you again for the opportunity to respond to the complaints regarding Assessment ID [redacted] and Case ID [redacted].

Attached please find the formal response from Otero County:

The Safety and Risk Assessments in Trails are not timely, up-to-date nor accurate. These assessments were completed while Assessment ID: [redacted] was open; however, they do not appear in Case ID: [redacted] because the case is not connected to the assessment. New Safety and Risk Assessment were created for the case that contained different information then in the assessment. If accurate, this violates 7.202.1, which stated to the county department shall maintain updated Safety and Risk Assessment throughout the life of the case in accordance with the parameters outlined in 7.107.11 and 7.107.21:

The Supervisor and the assessment worker reopened the Assessment ID: [redacted] on 5/02/2019, when the grandparents backed out of the APR and the court granted the Department custody at the time. The worker and the Supervisor were unable to change the case connection since it had already been approved. Supervisor closed the assessment again and had the ongoing worker open a case manually in trails, Case ID: [redacted].

The ongoing worker did not follow up with the assessment worker, so he thought there was no Safety Assessment completed in the assessment considering they were unable to be connected. It was the ongoing workers mistake for not coming to the Supervisor or the assessment worker to
make sure there was an original Safety Assessment completed. The ongoing worker also added the wrong family’s information in the case.
Otero County disagrees with the compliance issue regarding Safety and Risk, considering Trails would not let the Supervisor, nor the assessment worker make changes on the case connection; however, we are out of compliance with the data entry error from the ongoing worker putting in the wrong family information in the Safety and Risk assessment that he added to the case in the beginning.

Portions of the Family Service Plan (FSP), including the treatment plan, were not entered in Trails timely. The treatment plan was due by May 11, 2019 and was entered on October 29, 2019. If accurate, this violates 7.301.21, which states that the FSP must be entered into Trails within 60 calendar days for the referral:
The Department tried working with the family first and helped them solve the safety concerns within the family with a safety plan during the Assessment ID: [redacted]. The family decided at the time of the hearing that they did not want to solve the problem and wanted the Department to take custody.
The ongoing worker created the treatment plan in a word document on 6/7/2019 and turned it into the courts on 7/1/2019. The court adopted into evidence on 7/5/2019. The ongoing worker did not put it into the system until 10/29/2019. Otero County agrees with the dates look when the ongoing worker created the original treatment plan we are out of compliance on 7.301.21.

As of the initial CPO review on October 28, there was no 90-day review. The first 90-day review was due by August 11. There is now a 90-day review dated October 29, which is a month and half beyond the due date. If accurate, this violates 7.301.3, which states that a review of the FSP between the caseworker and supervisor must be documented in Trails every 90 days from the when the initial treatment plan was entered.
Otero County agrees we are out of compliance with 7.301.3; the only 90-day review is hooked to the permanency plan report.
January 23, 2020

Dear Ms. Villafuerte,

We are providing this letter with the Colorado Department of Human Services Response to Complaint # 2019-3961 regarding Otero County Department of Human Services. Our office has reviewed this complaint along with Sections of 7.104.1, 7.204, 7.202.1, 7.301.21, and 7.301.3.

In their response letter to the Child Protection Ombudsman (CPO) dated December 20, 2019, Otero County agreed with administrative rule violations regarding 7.301.21 timely completion of the Family Services Plan, and 7.301.3 timely completion of Family Services Plan review. These are a violation of administrative rule.

Section 7.104.1 C(2) addresses the elements of an intrafamilial abuse and/or neglect assessment, including documentation of efforts to engage non-custodial parents. While Otero County reports the presumed father was later found not to be the biological parent, that verification did not occur until July 2, 2019 when the male party was formally dismissed from the Dependency & Neglect (D&N) court case filed on May 2, 2019. As noted in the CPO’s letter dated December 18, 2019, the original plan for the child was allocation of parental responsibility (APR) to maternal grandparents. The presumed father participated in the APR and D&N hearings up until he was formally dismissed from the D&N court case as a respondent parent after genetic testing excluded paternity. During the original assessment, and again when the county was awarded legal custody of the child, there is a lack of documentation identifying any and all attempts the county made at engaging the presumed father. The first documented contact with the presumed father is dated June 4, 2019, several months after the initial referral was accepted for assessment and at least one month after the county was awarded legal custody of the child. This is a violation of administrative rule.

Section 7.204 addresses case contact requirements. As noted in the CPO’s letter the county has since entered case notes to document their contacts with all relevant parties. The county is no longer in violation of administrative rule.

Section 7.202.1 C(4) addresses how the county department shall assure pertinent information regarding child safety is translated to the new assigned caseworker through documentation in the
state automated case management system. The Colorado Safety Assessment tools dated March 13, 2019 and May 6, 2019 in the original child protection assessment are not documented in the ongoing child welfare case. This is a violation of administrative rule.

Division of Child Welfare staff will follow up with Otero County DHS to provide technical assistance regarding timely and accurate documentation in the statewide automated case management system. 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
Deputy Director, Division of Child Welfare
<table>
<thead>
<tr>
<th>Unit/Intermediary: Yolanda Arredondo</th>
<th>County: Otero</th>
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<tbody>
<tr>
<td>Date Assigned (by manager): 12-23-19</td>
<td>Due Date: 1-23-20</td>
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<tr>
<td>Complaint Number: 2019-3961</td>
<td>Complainant Role (Select from the following):</td>
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<tr>
<td>Comments:</td>
<td>___ Parent, Guardian, Legal Custodian</td>
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<td>___ Office of Colorado’s Child Protection Ombudsman</td>
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<td>___ Attorney</td>
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<td>___ Other: Specify Role:</td>
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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:

7.104.1, 7.202.1, 7.301.21, and 7.301.3.

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.):

County department intermediary will provide additional technical assistance regarding timely and accurate documentation in the statewide automated case management system.

Other (specify):

In addition, the county department intermediary requested a priority OIT help desk ticket on January 8, 2020 to associate TRAILS assessment ID 2947188 and case ID 1896965.

Yolanda Arredondo
Helpline Administrator
1/8/20

Laura Solomon
Date

Lucinda Connelly
Date