Office of Colorado’s Child Protection Ombudsman

LETTER OF COMPLIANCE CONCERN

Case Number 2019-3663

Stephanie Villafuerte,
Child Protection Ombudsman
October 8, 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 - 3663
(Delivered August 6, 2019)
To: Ms. Gina Montoya  
Montezuma County Department of Social Services  
109 W. Main St., #203  
Cortez, CO 81321

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

Date: August 6, 2019

Subject: Possible Compliance Concerns, CPO Case 2019-3663

Dear Director Montoya,

On May 8, 2019, the Office of Colorado’s Child Protection Ombudsman (CPO) was contacted regarding the handling of a Montezuma County Department of Social Services (MCDSS) child welfare assessment. The CPO has reviewed the relevant information in Trails and has identified several areas in which the actions of MCDSS may not be in compliance with the guidelines in Volume 7.¹

Case Summary

A report was made to MCDSS on December 27, 2018.² The reporter was concerned about the safety of four children, ages 5, 9, 12, and 13. The report stated that the home was dirty and unsafe, and that marijuana was accessible to the children. The report included concerns of neglect, specifically that the children were responsible for giving each other medications, they were not being fed and their mental health was declining. The report identified the [redacted] as responsible, given that the [redacted] was deceased.

MCDSS reviewed the report and assigned it to a caseworker. The youngest two children were interviewed on January 2, 2019 with their father present. An MCDSS interview note states that the referral was “for a dirty house” and indicated that this was the reason the children were interviewed in front of their father.³ The older two children, who lived out of home with a relative, were interviewed on January 11, 2019.⁴ No referral concerns other than “dirty house” were addressed during the assessment. The assessment was closed on February 22, 2019 as unfounded.⁵

¹ Trails: statewide case management system and Code of Colorado Regulations, Social Services Rules, Volume 7  
² See Trails Referral ID , Contact 1/2/2019  
³ See Trails Referral ID , Contacts  
⁴ See Trails Referral ID , Contacts  
⁵ See Trails Referral ID , Findings
Volume 7 Regulations/Children’s Code Requirements

Volume 7 contains 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, 7.104.1 (B)(1)(e) states that the county department shall interview the victim outside the presence of the person alleged to be responsible for the abuse and/or neglect. Additionally, 7.104.1 (C) states that the assessment shall address the allegations in the referral, the extent of abuse and/or neglect and the circumstances surrounding the abuse and/or neglect.

- Volume 7, 7.103.61 (A)(3) states that a referral which is given a 5-working day response time starts on the first business day and ends on the fifth. If the children can not be located, documented attempts must occur every subsequent five business days.

- Volume 7, 7.107.1 (A-C), states that the Colorado Family Safety Assessment shall be completed upon the initial response with the family and again as soon as household members are available.

- Volume 7, 7.107.22, 7.107.23, and 7.107.24 state that the Colorado Risk Assessment Tool shall be completed with the family and address the entire tool. Additionally, if a family scores as high risk, the MCDSS must identify a plan to decrease the risk for future child abuse and/or neglect.

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6 See Volume 7, 7.104.1 (B)(1)(e): “The assessment shall be conducted as set forth in Section 19-3-308(2),(3),(4) through 19-3-308.5, C.R.S., and the following: 1. The assessment shall include a face to face interview or observation of the alleged victim child(ren)/youth within the assigned response timeframe, according to the following procedures: e. Interviews shall be conducted out of the presence of the person(s) alleged to be responsible for the abuse and/or neglect.”

7 See Volume 7, 7.104.1 (C): “The assessment shall include:
1. Face to face interviews and/or observations with: a. All victim children/youth within the assigned timeframe, except as identified in 7.104.1(B)(1),(a),(b),(c) and (d); and, b. Household members.
2. 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.
3. The extent of child(ren)/youth abuse and/or neglect, to include, but not limited to: a. Impact to the child(ren)/youth; b. Type and severity of injuries, if applicable; and, c. Child(ren)/youth’s explanation of the abuse and/or neglect.
4. Circumstances surrounding the child(ren)/youth abuse and/or neglect, to include, but not limited to: a. Caretaker explanation of the abuse and/or neglect; b. Environmental influences; and, c. Contributory factors.

8 See Volume 7, 1.103.61 (A)(3): “A five (5) working day response is required when:
A. A referral indicates an absence of safety concerns.
B. The five (5) day count starts on the first business day following the receipt of a referral and expires at the end of the fifth business day at 11:59 PM following the receipt of the referral.
C. If the victim child(ren)/youth cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made within every subsequent five business days.”

9 See Volume 7, 7.107.11 (A-C): “The Colorado Family Safety Assessment shall be completed:
A. At the time of initial response with household members.
B. As soon as additional household members are available, each household member shall be assessed using the current or impending dangers identified in the Colorado Family Safety Assessment tool.
C. If household members are not available at the time of initial response, the Colorado Family Safety Assessment shall be completed based on the information available and based on the interview or observation of the alleged victim child(ren)/youth.”
If the county department decides to close an assessment with a high-risk family without providing services, they must document the reasoning behind this decision.\textsuperscript{10}

Identified Compliance Concerns

The CPO has reviewed the assessment in Trails and relevant sections of Volume 7. The CPO made attempts to contact the MCDSS director by email on May 20, 2019 and June 3, 2019. The CPO received no response. The CPO identified several areas of concern in which MCDSS may not be in compliance. Specifically, the CPO observed:

- MCDSS interviewed the father and two youngest children on January 2, 2019. The children were not interviewed outside the presence of the person responsible for the alleged abuse and/or neglect (PRAN).\textsuperscript{11} If accurate, this is a violation of the requirement in Volume 7, 7.104.1 (B)(1)(e); which requires victims of child abuse/neglect not be interviewed in front of the person alleged to be responsible for abusing and neglecting them.

- The interviews held with the required household members did not fully address the referral concerns. The referral alleged medical neglect, deprivation of necessities, substance use exposure, and that their home is physically unsafe. The assessment only includes concerns related to a “dirty home.” If accurate, this is a violation of Volume 7, 7.104.1 (C).

- The oldest two children were not interviewed by the required response time of January 4, 2019. They were interviewed on January 11, 2019. There is no documentation that MCDSS attempted to see these two children by the required response time. If accurate, this violates the requirement in Volume 7, 7.103.61 (A)(3).\textsuperscript{12}

- The Colorado Family Safety Assessment Tool was not completed in a timely manner. It should have been completed no later than 14 days after interviews with the children. It was completed almost eight weeks later.\textsuperscript{13} If accurate, this is a violation of the requirements in Volume 7, 7.107.1 (A-C).

- The Colorado Family Risk Assessment Tool did not use accurate information and, as a result, decreased the family’s true risk score. This score is an indicator of the family’s risk for future abuse and/or neglect. A number of factors used in the tool were inaccurate, absent or not verifiable (i.e. caregiver was not identified; relationship was inaccurate for two children; history of prior assessments is incorrect; substance abuse and education level were not discussed; and the father was reported to be receiving mental health services, however prior to closure of the

\textsuperscript{10} See Volume 7, 7.107.22, 7.107.23 and 7.107.24: "7.107.22: “Colorado Family Risk Assessment tool shall be completed with the family and shall address all areas of risk on the tool. 7.107.23: If the risk assessment score is high, the county shall document reasonable efforts to hold a family engagement meeting to discuss next steps with the family. 7.107.24: A. The completed Colorado Family Risk Assessment shall be documented in the state automated case management system within thirty (30) calendar days from the date the referral was received. B. Family Engagement Meetings shall be documented in the framework in the state automated case management system. C. If the risk assessment score is high and the county department decides to close the assessment without providing services, the county department shall document in the statewide case management system how they reached the decision."
assessment, he declined those services). Had the tool accurately reflected the family circumstances, they would have scored as high risk. Per Volume 7, 7.107.23, at the time a family scores as a high risk, the county department is to make reasonable efforts to hold a family engagement meeting and discuss next steps for the family. If accurate, this is a violation of Volume 7, 7.107.22, 7.107.23, and 7.107.24.

**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 MCDSS’ response, the CPO will submit its original letter and MCDSS’ full response to the CDHS, which serves as the MCDSS’ 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 MCDSS response to the possible violations listed in this letter no later than August 27, 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

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14 See Trails Referral ID [Assessments, Risk]
Montezuma County Department of Social Services

Response Letter

Case 2019-3663

(Delivered October 7, 2019)
October 7, 2019

TO: CPO

RE: CPO Case 2019 -3663 – MCDSS Responses

- The interviews held with the required household members did not fully address the referral concerns. The referral alleged medical neglect, deprivation of necessities, substance use exposure, and that their home is physically unsafe. The assessment only includes concerns related to a “dirty home.” If accurate, this is a violation of Volume 7, 7.104.1 (C).

MCDSS Response:

The allegations state that [redacted] left [redacted] in charge of [redacted] and [redacted] for [redacted] because of the accident and was allowing [redacted] to give the medication to [redacted]. The department knew this to not be true because [redacted] continued to be hospitalized after [redacted] was released due to her extensive injuries. [redacted] came to Cortez following his release, while [redacted] stayed in Grand Junction following [redacted] release. There was not an opportunity in which [redacted] could have been in charge of any medications for [redacted] brother.

All of the allegations in the report reference the home in which the family previously resided. The family was not allowed to return to the home upon the release from the hospital. The reporter [redacted] refused the family re-entry into the home and they had to find other living arrangements. The department did meet with the family in the residence in which they had moved into. That residence was clean, and no safety concerns were identified. There was no marijuana observed in access of the children.

- The oldest two children were not interviewed by the required response time of January 4, 2019. They were interviewed on January 11, 2019. There is no documentation that MCDSS attempted to see these two children by the required response time. If accurate, this violates the requirement in Volume 7, 7.103.61 (A)(3).
MCDSS Response:

The Department received the referral on December 27, 2018. At the time of the referral the two youngest children had recently been released from the hospital and were back in Cortez. The older two children were staying with an aunt in Grand Junction.

The Department will agree that the two oldest children were interviewed outside of the assigned time frame. They were interviewed in a different county by MCDSS staff, on the first available date to travel that became available.

- The Colorado Family Safety Assessment Tool was not completed in a timely manner. It should have been completed no later than 14 days after interviews with the children. It was completed almost eight weeks later. If accurate, this is a violation of the requirements in Volume 7, 7.107.1 (A-C).

MCDSS Response:

The Department will agree with the delayed completion of the Safety Assessment.

- The Colorado Family Risk Assessment Tool did not use accurate information and, as a result, decreased the family’s true risk score. This score is an indicator of the family’s risk for future abuse and/or neglect. A number of factors used in the tool were inaccurate, absent or not verifiable (i.e. caregiver was not identified; relationship was inaccurate for two children; history of prior assessments is incorrect; substance abuse and education level were not discussed; and the father was reported to be receiving mental health services, however prior to closure of the assessment, he declined those services). Had the tool accurately reflected the family circumstances, they would have scored as high risk. Per Volume 7, 7.107.23, at the time a family scores as a high risk, the county department is to make reasonable efforts to hold a family engagement meeting and discuss next steps for the family. If accurate, this is a violation of Volume 7, 7.107.22, 7.107.23, and 7.107.24.

MCDSS Response:

The Department would disagree that the risk assessment was not answered correctly. While it is true the caretakers are missing that would have been a computer error that has been occurring with the new TRAILS Mod. The worker must complete all those boxes before sending it for approval, which means they would have been filled in before the approval could have occurred. The Department disagrees with the Ombudsman’s report that the other areas were answered incorrectly.
October 7, 2019

Dear Ms. Villafuerte,

We are providing this letter with the Colorado Department of Human Services’ Response to Complaint #2019 -3663 regarding Montezuma County Department of Social Services. The Division of Child Welfare (DCW) has reviewed this complaint along with sections, detailed below, from Volume 7.

Concern 1: Volume 7, 7.104.1 (B)(1)(e) states that the county department shall interview the victim outside the presence of the person alleged to be responsible for the abuse and/or neglect. Additionally, 7.104.1 (C) states that the assessment shall address the allegations in the referral, the extent of abuse and/or neglect and the circumstances surrounding the abuse and/or neglect.

DCW response to concern 1: DCW is in agreement that this is a violation of 7.104.1 (B)(1)(e) and 7.104.1(C). Montezuma County documented that they did not interview the children outside the presence of the Person Responsible for Abuse or Neglect (PRAN). The original referral did indicate more concerns, including substance use, that were not identified or raised during the initial interview.

Concern 2: Volume 7, 7.103.61 (A)(3) states that a referral which is given a 5-working day response time starts on the first business day and ends on the fifth. If the children cannot be located, documented attempts must occur every subsequent five business days.

DCW response to concern 2: The CPO noted that Montezuma County had violated Volume 7, 7.103.61 (A) 3. This rule does not, however, guide response times. DCW agrees that 7.103.60 (A) (3) was violated as all children in the referral should have been seen within the five (5) working days. The correct citation for the rules regarding response times is 7.103.60.

Concern 3: Volume 7, 7.107.1 (A-C), states that the Colorado Family Safety Assessment shall be completed upon the initial response with the family and again as soon as household members are available.

DCW response to concern 3: DCW agrees with the violation of 7.107.1(A-C) as the Safety Assessment should have been completed for all children listed in the referral as victims at the time they were seen. The oldest two children were not seen until January 11, 2019, and it is unclear how the county assessed the safety of the older children.
Concern 4: Volume 7, 7.107.22, 7.107.23, and 7.107.24 state that the Colorado Risk Assessment Tool shall be completed with the family and address the entire tool. Additionally, if a family scores as high risk, the county must identify a plan to decrease the risk for future child abuse and/or neglect.

DCW Response to concern 4: DCW agrees with the violation of 7.107.22 as not all areas of the Colorado Risk Assessment Tool were completed.

The DCW has developed an action plan with the Montezuma County Department of Social Services and is working to schedule a training with the county to cover: RED Team Documentation, Assigning Response Times, & Interviews with clients and collaterals. This training will also go over 7.103.60,61 & 7.300.1, Initial Face to Face Contact 7.104, Completing Safety & Risk Assessment Tool 7.107.11 & 7.107.21. This training is anticipated by the end of November 2019. DCW will be monitoring the action plan as well as reviewing caseloads in Montezuma County weekly to address concerns. DCW is also committing that someone from the DCW team will be in the county monthly to assist with oversight.

DCW 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
Grievance/Inquiry Review Form

[To be completed by the assigned Division of Child Welfare (DCW) County Intermediary]

<table>
<thead>
<tr>
<th>Unit/Intermediary: Ongoing Services/ Kathryn Redhorse</th>
<th>County: Montezuma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Assigned (by manager): 9/18/19</td>
<td>Due Date: 10/7/19</td>
</tr>
<tr>
<td>Complaint Number: #2019-0663</td>
<td></td>
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<tr>
<td>Comments:</td>
<td></td>
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<tr>
<td>Complainant Role (Select from the following):</td>
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<tr>
<td>___ Parent, Guardian, Legal Custodian</td>
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<tr>
<td>X Office of Colorado’s Child Protection Ombudsman</td>
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<tr>
<td>___ Attorney</td>
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<tr>
<td>___ Other: Specify Role:</td>
<td></td>
</tr>
</tbody>
</table>

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
X ___ 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:

DCW found that the county was out of compliance with the following rules: 7.104.1 (B) (1) (e); 7.103.60 (A) (3); 7.107.1 (A-C); and 7.107.22-24

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.):
The Division of Child Welfare developed an action plan with Montezuma County of Social Services and will oversee and continue to check-in and provide supervision and guidance as needed.

Other(s) specify:

Kathryn Redhorse
Printed Name AND Signature of DCW County Intermediary

Jeannie Berzinskas
Printed Name AND Signature of DCW County Intermediary Supervisor

Digitally signed by Kathryn Redhorse
Date: 2019.10.02 15:20:26 -06'00'

Digitally signed by Jeannie Berzinskas
Date: 2019.10.02 15:39:00 -06'00'

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