Issues and Recommendations

In addition to conducting investigations, the Ombudsman is required by state law to develop recommendations for improving the child protection and welfare system.[1] The recommendations in this section are based on Ombudsman analysis of information derived from investigations, surveys, and research. They are aimed at strengthening the state's protection and care of vulnerable children.

The Ombudsman developed recommendations in the following areas:

- ✓ Reducing caseloads
- ✓ Increasing opportunities for caregivers to be heard
- ✓ Providing relatives with ongoing contact

The Ombudsman identified areas for reform based on recurring issues that are brought to OFCO in complaints from a broad spectrum of individuals: parents, children, relatives, foster parents, and community professionals including DCFS employees, Guardians ad Litem, service providers, and attorneys. These are significant issues that either compromise the safety or welfare of children, or lead to inconsistent or inequitable outcomes for children and families. Adopting these recommendations will promote equity among stakeholders in dependency cases, and make it more likely that children, and the individuals who care for them, are given equal and consistent treatment around the state.

Recommendation 1: Reduce Caseloads of Caseworkers and Supervisors

- **Direct DSHS to develop and submit a proposal to the state Legislature that would create a method for reducing caseloads and keeping them at a level that is consistent with standards established by the Child Welfare League of America (CWLA)[2] or the Council on Accreditation of Services for Families and Children (COA).[3]**

Background

State law sets forth a goal for DSHS CA to complete accreditation of its children's services by an independent entity in order to meet nationally recognized standards of practice in child welfare by July

[1] RCW 43.06A.030. Additionally, in 2005, SHB 2156 created the Joint Task Force on Child Safety for children receiving services from child protective services and child welfare services. OFCO is a designated member of this task force and is charged with making recommendations to the Legislature and the Governor to improve the health, safety, and welfare of children. Chapter 430, 2005 Laws, effective 5/13/05.

[2] The Child Welfare League of America (CWLA) is the nation's oldest and largest membership-based child welfare organization. Its goals, in part, are to develop policies and practice standards as benchmarks for high-quality services to promote the well-being of children, youth, and their families. http://www.cwla.org/whowhat/mission.htm.

[3] The Council on Accreditation of Services for Families and Children (COA) is "an international, independent not-for-profit organization. COA accredits approximately 1400 programs that provide child welfare services, behavioral healthcare services, and financial management/debt counseling services in the United States and Canada." It develops standards of best practice and a program of provider accreditation. http://www.coanet.org.

2006.[4] As of June 2005, eighteen DCFS offices across the state, in addition to Children's Administration Headquarters, had earned national accreditation status from COA.[5] Accreditation, which includes voluntary peer review and a 4-year certification process,[6] means in part that the caseloads of workers in these qualifying offices met the standards set out by COA.

In reviewing complaints to the office, the Ombudsman has identified a pattern of CPS and CWS caseworkers and DCFS supervisors carrying caseloads that exceed standards established by the COA or the CWLA. COA recommends a ratio of cases to worker based on the type of service a worker is providing. A CPS worker's caseload, for instance, is not to exceed between 15 to 30 cases, depending on the complexity of the case.[7] CWLA recommends a caseload of 12 to 15 cases per caseworker and a maximum of 12 for an investigative worker.[8] Caseload ratios vary for different categories of workers. According to CWLA, its caseload standards are "based on the field's consensus of what constitutes best practice. They're also supported by the findings of caseload and workload studies and by projects that show particular success in reaching agency goals."[9]

Although CA successfully reduced caseloads to a level consistent with best practice at the time of accreditation, once accreditation was achieved, there has not been careful monitoring to ensure that caseloads remain at accreditation levels. This concern is based on the Ombudsman's periodic and random checks of caseloads across the state.

For example, in a random review of caseloads in December 2005, the Ombudsman reviewed an accredited office with three units handling primarily CPS cases. In one unit, 80 % of the workers had caseloads exceeding 25; another had 57 % exceeding 25 cases; and the third had 25% of the workers exceeding 25 cases.[10] Thus, accreditation alone is not a guarantee that caseloads will be held to a manageable level. A mechanism must be put in place to ensure that even after specific offices have been accredited, caseloads will be maintained at this accreditation standard.

Rationale

Our investigations reveal that high caseloads result in incomplete abuse and neglect investigations, inconsistent monitoring of the safety and welfare of children, poor follow through on offering services

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[4] RCW 74.13.017.

[5] In 2001, the state Legislature enacted SSB 1249—Chapter 265, which directed the Children's Administration to undertake the process of accreditation, with the goal of completion by July 2006. RCW 74.13.013; 74.13.017. The following offices have met accreditation standards: CA Headquarters, Wenatchee, Walla Walla, Moses Lake, Omak, Vancouver, South Bend, Long Beach, Sunnyside, Ellensburg, Kent, Bremerton, Shelton, Centralia, Tumwater, Aberdeen, Long Beach, South Bend, Colfax and Clarkston. http:www1.dshs.wa.gov/mediareleases/2005/pr05141.shtml.

[6] See http://www.coanet.org/Files/GAOReport.pdf.

[7] For a more in depth discussion of COA standards, see http://www.coanet.org.

[8] See http://www.cwla.org/programs/ standards/caseloadstandards.htm.

[9] http://www.cwla.org/programs/standards/caseloadstandards.htm.

[10] The Ombudsman relies on CAMIS, the agency's own computerized information system, to extract this data. Caseload numbers can be affected by many factors: whether the case counts reflect every child, or simply the family (in general CWS counts cases by the number of children); whether the case is listed as inactive or shows that services are pending. Our calculation includes all cases listed for a worker. Even accounting for cases listed as "services inactive," caseloads of several workers exceeded COA standards.

to families, and delayed permanence for children. We have also found excessive caseloads to be a contributory factor in several of the high profile child fatalities over the past several years that we have either independently reviewed or have knowledge of from reviewing DSHS' reviews of these cases.[11] The conclusions of the Ombudsman are consistent with research done in other jurisdictions.[12]

In addition to compromising child safety, high caseloads and excessive workload[13] lead to caseworker burnout. In a 2003 report to the U.S. Congress, the United States General Accounting Office (GAO)[14] found that "high caseloads [along with] administrative burdens, limited supervision, and insufficient time to participate in training reduce the appeal of child welfare work, making it difficult for staff to stay in their positions."[15] This, in turn, leads to even more excessive caseloads as staff turnover continues.

Despite what appears to be broad recognition by child welfare professionals that high caseloads have a deleterious effect on the quality of caseworker practice, which compromises child safety, high caseloads still appear to be the norm. In its May 2001 report, the American Public Human Services Association (APHSA) reported that, based on a survey mailed to all state public child welfare agencies and a sample of county agencies, caseloads for individual child welfare workers ranged from 10 to 110 children, with workers handling an average of about 24 to 31 children each.[16]

Some states have responded to the problem of high caseloads with promising legislative solutions.[17] In 2000, the state of Delaware enacted a law that requires the Department of Services for Children, Youth and Families (Delaware's equivalent of Washington's DCFS) to project the number of child abuse and neglect cases and the number of child care facilities to be licensed and monitored in the upcoming fiscal

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[11] High caseloads or excessive workload were identified as factors in the following fatalities: Eli Creekmore (1986); Lauria Grace (1995); Zy'Nyia Nobles (2000); Champagne Loup (2003); Justice & Raiden Robinson (2004); and Sirita Sotelo (2005). Copies of OFCO's fatality review reports on Sirita Sotelo and Justice and Raiden Robinson may be accessed from our website at: http://www.governor.wa.gov/ofco/reports.htm. Further discussion of the Sotelo and Robinson fatalities is also within this annual report.

[12] A March 2003 report by the General Accounting Office states that "[a] 1998 study of New York's child welfare services found that high workload resulted in incomplete abuse and neglect investigations, an inability of workers to regularly monitor clients, and prolonged permanency decisions for children." (State of New York Comptroller, Division of Management Audit. [1998]. Caseworker Deployment in Selected Child Welfare Programs Report (96-S-52). U.S. General Accounting Office, (March 2003) *Child Welfare HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff*. Available at http://www.gao.gov/cgi-bin/getrpt?GAO-03-357.

[13] Workload may include non-case related time spent performing tasks not directly related to services for the child and family, such as administrative documentation, training, and participation in task forces.

[14] The General Accounting Office is the arm of the federal government that conducts audits, investigations, and research studies.

[15] General Accounting Office, (March 2003) *Child Welfare HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff*. Retrieved from http://www.gao.gov/cgi-bin/getrpt?GAO-03-357.

[16] Forty-three states (84%) completed the survey. American Public Human Services Association. *Report from the Child Welfare Workforce Survey: State and County Data and Findings,* May 2001. Retrieved from http://www.aphsa.org/Policy/Doc/cwwsurvey.pdf.

[17] In addition to Delaware, several other states have established caseload standards, or established work groups to study such a proposal, through legislation. Arizona—Protective Services Caseload Standards Advisory Committee; California—Assembly Bill 364 (2002) Work group to recommend minimum caseload standards; Delaware—State law requires CWLA caseload ratios +2. Funding tied to increases in caseloads greater than 10 %; Florida—Legislation prohibits caseloads from exceeding CWLA standards by more than 2 cases; Indiana—Statewide caseload standards established through legislation; Maryland—Maryland-specific caseload ratios based on CWLA consultation. Retrieved from http://www.cwla.org/conferences/2004nationalrecapday.ppt.

year. Based on these projections, the law requires the Delaware Legislature to fund, subject to a specific appropriation, adequate worker positions to ensure that their caseloads do not exceed, by more than two, those caseload levels recommended by CWLA. If caseloads exceed these standards by more than 10% during any fiscal year, the state budget office must authorize, "to the extent monies are available," casual seasonal positions as a temporary mechanism to keep caseloads within these standards.

Other states have addressed caseload and practice standards as a result of settlement agreements or court orders that have arisen from litigation.[18] In Washington state, the work of the Braam panel in overseeing a settlement agreement reached after six years of litigation over the state's foster care system will influence caseloads and caseworker practice.[19] The Braam Panel requires DSHS CA to develop a plan to reduce caseloads to COA standards and to submit the plan to the Panel for review by June 30, 2005. CA did not submit a "plan" to the Panel until November 7, 2005 stating it was delayed "due to the need to allocate new positions funded under the 2005-2007 biennium budget." CA states that:

> it will submit its decision package through the regular budget process related to the development of the 2007-09 biennium budget. The decision package will include the cost to phase in the required resources over the 2007-09 biennium period. The intent, subject to budget approval, would be to have the resources required to meet COA out of home caseload standards by June 2009-the end of the biennium period. [20]

The 2006 Supplemental Budget Request (to the 2005-07 budget) unveiled by Governor Gregoire in December 2005 proposes additional funding to address safety issues related to children under state supervision. The Governor recommends funding to support a safety package so that front-end investigations can be conducted more quickly and regular health and safety checks of dependent children are done every 30 days. A benefit of this safety plan will be to reduce caseloads.[21] According to Children's Administration officials, the safety plan is a two-year phased-in effort.

The Ombudsman recognizes that DSHS CA is making efforts to reduce caseloads. This effort is critical because by removing this variable from the equation, we will have a better understanding of other, perhaps subtle, issues that may be compromising a child's safety or a family's chance at reunification.

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[18] In Alabama, a 1998 ruling in a federal lawsuit required DHS to comply with standards established in a 1991 consent decree. In Connecticut, a 1999 court order regulates caseloads. In Colorado, there was a 1994 settlement agreement with the Colorado Lawyer's Committee. In Kansas, there was a 1992 settlement agreement. Day, Pamela. *Size Matters: Achieving Optimal Caseloads for Child Welfare Workers.* Available at www.cwla.org/conferences/2004nationalrecapsize.htm.

[19] Braam v. State, 150 Wn.2d 689, 81 P.3d 851 (2003); http://www.wsipp.wa.gov/braampanel/.

[20] The Braam panel directed CA to establish a workgroup to develop the plan and estimate costs and resources and then have CA Management review and approve the plan. *Proposed Plan for Achieving Council on Accreditation (COA) Caseload Standards.* Document sent from DSHS to Braam Panel on November 7, 2005. Moreover, CA indicates in a year end status update report submitted to the Panel to show the status of action steps in the Braam Settlement Agreement, that "[a] revised plan is being developed and will be submitted to the Panel in January 2006." *Update Report of Braam Settlement Items* (12.31.2005).

[21] DSHS Children's Administration 2006 Supplemental Budget. Available at http://budget.dshs.wa.gov/index.asp. See also McGann, Chris, "Gregoire blends spending, savings in new budget plan." Seattle Post-Intelligencer. December 21, 2005.

Recommendation 2: Provide Caregivers with a Greater and More Consistent Opportunity to be Heard

- **Direct the Washington State Institute for Public Policy (WSIPP)[1] to study and propose improved procedures for providing caregivers of dependent children a greater and more consistent opportunity to be heard in court hearings related to dependency cases.**
- **Require DSHS to survey foster parents and relative caregivers as to how consistently they are notified of hearings, the manner of notification, whether notification was timely, and what it means to "be given an opportunity to be heard" (written input to the court, in person presentation), and what changes, if any, could improve the notification process (e.g. access to online form for providing written input).**
- **Require DSHS to modify and improve its procedures for providing caregivers of dependent children a greater and more consistent opportunity to be heard in dependency court hearings, taking into account the results of the survey and implementing the recommendations for improved procedures and best practices recommended by WSIPP.[2]**

Background

Congress recognizes that "as the child's primary caregivers, foster parents and relatives caring for the child often have information about the child that is relevant to placement proceedings."[3] This recognition led to the enactment in 1997 of the Adoption and Safe Families Act (ASFA).[4] This law requires that, as a condition of receiving federal foster care funds, states must provide caregivers with the opportunity to be heard in juvenile court hearings regarding the children in their homes. Under ASFA, any foster parent, pre-adoptive parent, and any relative providing care for a child must be given "notice of, and an opportunity to be heard, in any review or hearing to be held with respect to the child" in their care.[5] Federal law, however, does not require that foster parents, preadoptive parents, or relatives providing care for the child be given

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[1] WSSIP was established by the Legislature in 1983 "to carry out practical research, at legislative direction, on issues of importance to Washington State." http://www.wsipp.wa.gov.

[2] The Braam Panel has addressed the need to improve notice to foster parents and relative caregivers. The Braam settlement requires the department to both provide written notification to licensed foster parents and relative caregivers and to provide support to increase their participation in meetings, staffings, and hearings involving planning for children in their care. CA reports that "significant work" has been done on this action step: "The Administration of Courts (AOC) has sent a notice to all Juvenile Court Judiciary indicating the need to determine if foster parents are present at each court hearing and to provide [an] opportunity for foster parents' views to be heard. At the February 2006 Management meeting, a proposed policy will be presented requiring CA send caregivers a separate notice inviting them to participate in staffings and hearings. In addition to the policy, social workers will also receive a template for sending notice to the caregivers." *Update Report of Braam Settlement Items. Foster Parent Training and Information, Item #3* (12.31.05).

[3] H.R. Rep. No. 105-77. 1st Sess. (1997) p. 14.

[4] Adoption and Safe Families Act (ASFA), Pub.L.No. 105-89, (Nov.19, 1997), 111 Stat. 2115 (codified as amended in 42 U.S.C.); the federal regulations also make clear that the notice and opportunity to be heard applies to six-month review and permanency planning hearings. 45 C.F.R. § 1356.21(o) (2000).

[5] 42 U.S.C. § 675(5)(G). Care providers may be allowed to attend and be heard at a review or permanency planning hearing or be allowed to provide written input for the judge to consider.

standing as a party to the juvenile court action.[6] Prior to ASFA, foster parents and relative caregivers were routinely denied access to hearings about the foster child, as the proceedings were closed to maintain confidentiality.

But, federal law does not specify the manner in which notice and an opportunity to be heard is to be implemented. This is left to the discretion of each individual state. Thus, although a state must provide notice of court hearings to the individuals caring for the child, the manner in which notice is provided, and how an individual is heard by the court, varies.

The state of Washington, incorporated ASFA's notice provisions by mandating that "[t]he supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard."[7] Children's Administration incorporates this legal notice requirement into state policy.[8] State policy also makes clear that the manner in which a care provider is permitted to give input to the court is determined by local jurisdictions.[9] This flexibility under the law results in regional differences and even differences from case to case within the same county. Certainly, there are some cases where the court has granted party status to relatives or foster parents, but this is on quite a limited basis.[10]

Several states have expanded the rights of foster parents and relative care providers beyond the federally recognized rights.[11] This expansion of rights reflects an increasing recognition on the part of legislators, policy makers, and other child welfare stakeholders that foster parents and relative care providers hold vital information about the child that can inform the court in a meaningful way and result in better case outcomes.

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[6] 42 U.S.C. § 675(5)(G); 45 C.F.R. part 1356.21(o) (2000) clarifies that the federal law does not grant a right to standing as a party to the case. A "party" to a proceeding is entitled, not only to be notified and to be heard, but to other rights such as the right to initiate a legal proceeding, introduce evidence, cross-examine witnesses, and examine court records. The Adoption and Safe Families Act: Foster Parent Notice and an Opportunity to be Heard, by Madelyn Freundlich, Policy Director, Children's Rights.

[7] RCW 13.34.138(1).

[8] DSHS policy requires licensed foster parents to be notified of court hearings through a copy of the ISSP. CA Practices and Procedures Guide § 43091. The ISSP provides the date and time of the hearing.

[9] CA Practices and Procedures Guide § 43021 provides that "[t]he court will make the final decision about whether and how the caregiver will provide input at the hearing."

[10] Intervention typically grants individuals party status. Intervention of right is provided for in civil cases only if the intervening party claims "an interest relating to the property or transaction which is the subject of the action". State v. Bianchi, 92 Wn.2d 91, 593 P.2d 1330 (1979); In re Dependency of J.H., 117 Wn.2d 460, P.2d 1380 (1991) (the meaning of "interest" is broadly and flexibly interpreted by the court on a case-by-case basis, taking into account the concerns of the prospective intervenor, the concerns of the original parties to the lawsuit, and the public's interest in the efficient resolution of controversies). Washington Superior Court Civil Rule 24 (a) (intervention of right) & (b) (permissive intervention).

[11] Note, however, that according to the National Conference of State Legislatures (2002), Washington is one of six states which have enacted laws that establish the rights of foster parents. This refers to state law prohibiting foster parent retaliation, RCW 74.13.333. See OFCO Annual Report section on foster parent retaliation for a greater discussion of those rights.

States have taken a variety of approaches to broaden the ability of foster parents and relative care providers to participate in the process.[12] Some expand the types of hearings for which foster parents are entitled to have notice and an opportunity to be heard.[13] Others confer the right of participation to previously appointed care providers, as well as current ones.[14] Still other states grant care providers the right to intervene as a party in the legal proceedings.[15] A few states even authorize foster parents to initiate a petition to terminate parental rights.[16]

Failure to Inform Relative Caregiver of Court Hearing

A grandparent who was in the process of adopting two eight-year-old grandchildren called the Ombudsman's office because of the length of time it was taking the agency to finalize the children's adoption. During OFCO's investigation, the grandparent was not informed about a dependency review hearing. The grandparent was angry about the agency's failure to notify her about this hearing. She felt that her absence at the hearing and lack of input to the court could affect the outcome of the case. As a relative caregiver in the process of adopting the children, she believed it was important to demonstrate her commitment, care, and concern about the children to the Judge. By not being informed about the court hearing, she was deprived of this opportunity. The grandparent worried that the Judge might conclude she was not doing a good job of parenting the children, and that this would put the adoption at risk.

The adoption process can be precarious. There is no certainty to the outcome until the adoption is finalized. A misperception by the caseworker, court, GAL, or other decision maker could shift the permanent plan and the children could be moved. In this situation, the grandparent's fears were not unreasonable, as the adoption process had languished with a change in caseworkers and from complications with the adoption support paper work. Although those issues were eventually resolved and the children's adoption was finalized, the Ombudsman documented the failure by the agency to give appropriate notice to the caregivers of dependency hearings, as required by the law. Moreover, OFCO found the actions of the agency had an adverse impact on the relatives as they were subjected to unnecessary delay and anxiety.

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[12] See Freundlich, M. *The Adoption and Safe Families Act: Foster Parent Notice and An Opportunity to be Heard*. Children's Rights.

[13] Maine and Minnesota extend the right of foster parents, pre-adoptive parents, and relative caregivers to be notified and heard to any review or hearing. See 22 Me. Rev. Stat. Ann. Secs. 4005-C; Minn. Stat. Sec. 260C.152. See also Wisconsin law at WI Acts sec. 48.62[2] (right to be heard includes hearings of a termination of parental rights petition and may be through a written or oral statement); North Carolina at N.C. Gen Stat sec.7B-506, 7B-907, 7B-908 (notice and opportunity to be heard extends to post-termination hearings and must be given 15 days or more in advance).

[14] See Illinois law at Ill. Comp. Stat. Ann. Secs. 405/1-5[2][a], 405/1-5[2][d]. Illinois also provides that if a foster parent is denied the opportunity to be heard, they may file a legal action against the court or the public agency to enforce their right to be heard. Id.

[15] New Mexico law provides that the court may permit foster parents, pre-adoptive parents, and relative caregivers to intervene as a party at any stage of the proceeding if it is a foster parent with whom the child has resided for a period of at least 6 months; a relative within the fifth degree of consanguity with whom the child has resided; a stepparent with whom the child has resided; or a person who wishes to become the child's permanent guardian. See N.M. Stat. Ann. 32-A-4-27; Oregon law provides, in part, that the court may grant intervention to an individual who has a "caregiver relationship" with the child if it is in the child's best interest and the existing parties cannot adequately protect those interests. ORS 419B.116(1)-(11); in California, some counties appoint and fund an attorney for care providers who have been granted "de facto parent status," that state's equivalent of party status in dependency cases.

[16] Michigan law allows a foster parent to file a termination petition as a "concerned person" (1) if they have specific knowledge of the parent's behavior as a basis to terminate; and (2) they have contacted the child welfare agency and other specified parties and is satisfied that none of those parties intends to file a petition. See Mich. Stat. Ann. Sec.712A.19b. New Hampshire provides a similar right, but only after the child has lived continuously with the foster parent for 24 months. See N.H. Stat. Ann. sec.170-C 4. New Mexico also allows foster parents to initiate termination proceedings, but there are clear requirements that the foster parent must give notice to the child's current foster parents and any other foster parents with whom the child has lived for 6 of the previous 12 months. The law gives parties served an opportunity to file a written response to contest the petition. See N.M. Stat sec.32A-4-29.

Rationale

Foster parents, and relative care providers are a critical source of in depth knowledge about the child in cases where there has been high turn over in caseworkers. The Ombudsman finds that foster parents and other care providers are not consistently informed of review hearings as required by state and federal law. This is consistent with the findings of the federal Child and Family Services Review (CFSR) for the State of Washington:

> The CFSR found that the State conducts 6-month and 12-month permanency reviews in a timely manner. However, the CFSR also found that foster parents and other caretakers are not informed about these hearings on a consistent basis, or when they are informed, are not routinely given an opportunity to be heard during the proceedings.[17]

The Ombudsman has observed that significant changes in a case plan typically occur when a case is transferred from one caseworker to another. Continuity of information and institutional knowledge are vital. The longer a care provider has a child, the more knowledgeable they are likely to be. Consequently, states are more inclined to grant party status to individuals who have cared for the child for an extended period of time, or have demonstrated a permanent commitment to the child where reunification with the parent is not possible.

In meetings the Ombudsman had with foster parents in both Eastern and Western Washington, they cited the agency's failure to inform them of review hearings as a chronic source of dissatisfaction and frustration. In some instances, this led foster parents to stop providing care for children because foster parents did not feel they could meet the children's needs without being better informed and providing valuable input to the court. Foster parents also reported that because they did not have an effective and consistent means of providing information to the court about the child, they felt their role in the case was marginalized. It made them less inclined to take future children into their homes.

Foster parents also cited poor communication and a lack of responsiveness by the caseworker and even the supervisor. These complaints ranged from the agency not informing them of unusual medical or behavioral needs in advance of the foster parent taking the child into care to significant changes in the permanent plan that were not told to the foster parent in a timely manner. At times, critical decisions were made about the child that the care provider sometimes learned months after the fact or indirectly from parties other than the caseworker. In one complaint handled by the Ombudsman, the foster parents who hoped to adopt a 2-year-old child they had had in their care since 6 months of age, were informed by e-mail that the child was being permanently moved out of state.

DCFS must make additional efforts to inform care providers of their right to be heard in court, provide training to prepare them to contribute more fully in the juvenile court process, and communicate clearly and compassionately about case planning so that expectations are managed. The goal of such efforts must be to guide caregiver input so that it enhances judicial decision-making and leads to improved outcomes for children in care.[18]

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[17] U.S. Department of Health and Human Services Administration for Children and Families (February 2004) *Washington- Child and Family Services Review*, p.8.

[18]OFCO wishes to acknowledge the helpful assistance of Regina Deihl, J.D. Ms. Diehl is currently the director of a non-profit organization in California, Legal Advocates for Permanent Parenting (LAPP) which has done a substantial amount of work on foster caregiver issues. She is also an author of the book: *CAREGIVERS AND THE COURTS: Improving Court Decisions Affecting Children in Foster Care:* Judicial Council of California, Administrative Office of the Courts, and the Center for Families, Children & the Courts (January 2002).

Recommendation 3: Provide Relatives who have an Established Relationship with a Child, Ongoing Contact after the Child has been Placed Out of the Home Pursuant to a Dependency Action

- **Direct DSHS to facilitate regular and consistent contact between dependent children and their relatives with whom they have a relationship.**

Background

Although Washington state and Federal law create a preference for placement of children with relatives where out of home placement is necessary,[1] state law does not create an explicit right for relatives to have contact with dependent children if they are not caring for them. This contact is left to the discretion of the court and may occur if Children's Administration facilitates visitation at the request of the relatives and with agreement of the parties.

Some states have adopted laws that specify the factors a court should consider in determining whether to allow visitation, such as the prior relationship between the relative and the child, the mental and physical health of the parties, and the preference of the child, if the child is old enough to express a preference.[2]

In the Office of the Family and Children's Ombudsman's 2003 Annual Report, the Ombudsman recommended that CA identify relative/kinship placement resources even before the actual need for out of home care arises for families involved with CPS. The Ombudsman, based on its review and investigation of complaints into the office, now recognizes a need to improve ongoing contact between dependent children and the relatives with whom they have a relationship, even where the relative cannot be a placement resource.

Rationale

Although CA, over the past two years, has been making greater efforts to identify relatives and kin earlier in the process and to engage them in case planning,[3] there has been no similar move toward establishing regular visitation between relatives and dependent children. In fact, visitation in general, including parent-child contact, has been curtailed by budget cuts.

The Ombudsman is frequently contacted by relatives who are upset and perplexed that they are not allowed to have contact with their grandchildren, nieces and nephews once these children are placed out of the home in foster care and become dependent. They express the belief that during a vulnerable time the children, more than ever, would benefit from the comfort and support of seeing their relatives. In many complaints that the Ombudsman reviewed, these relatives, prior to dependency, had cared for these children off and on through voluntary arrangements with the parents. These relatives may no longer be a placement resource because of restrictions imposed by their health, finances, or work obligations. Nonetheless, they wish to continue to have contact with these children and to maintain an important relationship.

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[1] RCW 13.34.060(1)(a); RCW 13.34.130(1)(b)(2); RCW 13.34.130(2); and RCW 74.13.600. Additionally, Children's Administration Practices and Procedures Guide § 4251 B. 2 lists relatives as a least restrictive placement option which is favored under the law.

[2] See RCW 26.09.240.

[3] In 2003, the Legislature granted relatives the right to attend court hearings, even when the public is excluded, based on a finding of best interest of the child. RCW 13.34.115(3)(a). See also footnote 2 under Recommendation 2 of this Annual Report for additional information on CA's proposed policy to enhance the involvement of relative care providers by providing them with a separate notice inviting them to participate in staffings and hearings.

Washington should recognize that even when a relative is not a placement resource for a child, there can be significant value to maintaining the relationship. The relative can serve as a source of emotional support and may give the child a greater feeling of being anchored in the world. The relative may also help provide stability to the child's foster care placement by providing respite to the foster care placement.

Certainly, there are many cases where DCFS arranges relative-child contact and permits the relative to provide respite care for a child in foster care placement. The CA Practices and Procedures Guide contemplates this.[4] However, the Ombudsman has found that whether a relative is permitted contact with the child can be unpredictable and somewhat arbitrary. It appears that contact is often influenced by the relationship between the relative and the caseworker, rather than by the best interest of the child.

The Ombudsman has also received complaints from relatives who desire visits with a child who has been adopted. An adoption cannot occur until a parent's rights are terminated. This removes all rights and responsibilities of the parent to the child.[5] In some instances, relatives may have visitation if provided for in an open adoption agreement between the adoptive parents and the biological parents. Current Children's Administration policy states that "the rights of the affected relatives of specified degree do not extend beyond adoption of the child except through an open adoption agreement as described in RCW 26.33.295."[6] However, the policy further states: "Children's Administration acknowledges a continuing relationship between relatives of specified degree and children whose parental rights have been terminated in those cases where the relatives choose to continue a relationship with the child and the continuing relationship is in the best interest of the child. This acknowledgment applies to all legally free children in the custody of the department."[7]

The State, through law, agency policy and practice, should further support established, positive relationships between dependent children and their relatives. Increased relative contact will drive a culture shift that places greater priority on the importance of maintaining family connections.

[4] Children's Administration Practices and Procedures Guide § 43023 provides the "child's social worker will discuss the monitoring of the child's contact with parents and relatives with the out-of-home care provider and ensure that the child's right to privacy regarding private telephone calls and uncensored mail is maintained."

[5] RCW 13.34.200(1).

[6] Children's Administration Practices and Procedures Guide § 4350 E. Furthermore, in 1998, Congress passed the Visitation Rights Enforcement Act, which mandates that a visitation order granted to a grandparent in one state be recognized in any state where the grandchild is living. 28 U.S.C.1738A.

[7] Children's Administration Practices and Procedures Guide § 4350 A.

Additional Issues of Concern

In addition to the above recommendations, OFCO has identified the following areas of concern. These are issues that are either currently in a state of transition due to pending legislation, or DSHS CA efforts to resolve administratively; or are issues that warrant further review and investigation by the Ombudsman to determine if a recommendation by the Ombudsman is necessary.

Concern # 1:

Inadequate recruitment, licensure, and retention of foster homes: There is a critical shortage of foster homes for all children throughout the state, not only for those segments of the population that have traditionally been underserved, such as adolescents, children with behavioral problems, and those living in rural areas. This crisis has been identified by numerous DSHS employees who have contacted the Ombudsman confidentially. They attribute this shortage primarily to the Division of Licensed Resources' licensors who, as a result of high caseloads, are not able to screen and license prospective foster homes in a timely manner. Prospective foster parents have also complained of unreasonable delays in the licensing process. The agency's inability to recruit and retain foster homes also contributes to this problem. The concerns of the Ombudsman are consistent with the Federal review of Washington's child welfare program.[1] The lack of foster homes has resulted in sibling groups being separated and sent to different regions, even in the case of young children. This complicates casework and reunification efforts because visitation involves time consuming travel over long distances. In some cases, the agency has been unable to provide necessary foster homes altogether. **The Ombudsman recently reviewed a case in which two siblings, a 3 and 5 year old, had to spend the night in a motel with the caseworker because there were no foster homes available. They were then placed in weekend respite care and a subsequent foster home, which failed after a few days. The children are now in a temporary placement.**

Concern #2:

Inadequate screening of individuals who provide care to dependent children and youth under the supervision of the state as well as non-dependent children in licensed day care: The public assumes that an employee working in a licensed day care, group home, or residential treatment facility, has been thoroughly screened for any criminal history or a history of child abuse and neglect as recorded in CAMIS.[2] Unfortunately, this is not always the case. Background checks about prospective care providers lack uniformity in terms of the type of information provided to employers and fail to adequately identify individuals who may have a history of committing child abuse or neglect. The public has a right to expect that licensed homes and facilities are safe for children and youth, and that they are not coming into contact with individuals who may harm them willfully or through neglect. The Ombudsman's concerns arise from investigating complaints and/or receiving information from employers of day cares, group homes, and residential treatment facilities. Our concerns also

[1] Stakeholders who were interviewed by the Federal review team cited placement instability as attributable to: "(1) a lack of appropriate matching of foster parent and children; (2) poor relationships between foster parents and the agency; (3) a lack of adequate resources, particularly for children with emotional or behavioral problems; (4) lack of adequate training of foster parents; (5) insufficient respite care in some areas of the State [the Ombudsman has received reports from foster parents that the system for obtaining respite is unclear and unreliable and that in some DCFS offices there is a culture that discourages the use of respite even when foster parents are requesting it within the provisions of established policy]; and (6) lack of support for unlicensed relative foster care providers." Washington--Child and Family Services Review (Final Report February 2004) U.S. Department of Health and Human Services, Administration for Children and Families, at 16-17.

[2] CAMIS (Children's Administration Care Management Information Systems) is CA's computerized information system in which the agency documents activity on each case, such as the social worker's contact with the children, family, and service providers.

result from reviewing the death of 4-year old, Sirita Sotelo.[3] The Legislature has initiated hearings and convened a task force to study background checks for all care providers in conjunction with the enactment of SSB 5899, which went into effect on July 24, 2005. This law requires broader disclosure by applicants and employees to entities that provide care to children and other vulnerable adults of convictions of any crime and finding in civil adjudications involving domestic violence, abuse, sexual abuse, neglect, exploitation, or financial exploitation of a child or vulnerable adult.[4]

Concern #3:

Failure of the Division of Children and Family Services to encourage the maximum parent and child and sibling contact possible, consistent with existing law. [5] RCW 13.34.136 (b) (2) provides that "[v]isitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare." Over the past year, the Ombudsman has found instances in which DCFS has failed to abide by the terms of court orders setting forth the conditions of visitation. DCFS employees, in Region 4 in particular, have conceded to OFCO that they have not provided visitation to the degree ordered by the court, even in cases where the parent is in substantial compliance with court ordered services and contact would not jeopardize the child's health, safety, or welfare, due to budgetary restrictions.[6] They state that budget cuts have made professional visitation supervisors less available and that the cuts have stalled the implementation of contracts providing for such supervision. The courts have found the agency in contempt and imposed sanctions in some of these cases.[7] Efforts by OFCO to have the agency make up visits for these families have been largely unsuccessful.

Failure to Provide Parents with Court Ordered Visitation

A parent contacted the Ombudsman with concerns about DCFS failing to provide court ordered supervised visitation with their two dependent children. The children had been in foster care for 7 months and the court had ordered twice-weekly supervised visits of two hours each. Over the course of 15 weeks, DCFS did not provide visits between the parent and the children.

Upon investigation, the Ombudsman discovered that DCFS was not providing visitation due to budgetary constraints in the region where the family lived. Although DCFS explored a number of avenues to provide professional supervised visits for this family, lack of funding proved to be a roadblock. DCFS also considered other family members as supervisors, but concluded this was not feasible.

After the children had been in care for nearly 8 months, the parent's visitation with the two children was occurring consistently, but at a lesser frequency than ordered by the court. Although the siblings expressed a desire to see one another, DCFS failed to establish consistent contact between them for many months.

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[3] The Ombudsman recommended that there be improved assessment of adult caregivers, in addition to the biological parent, in the home. The stepmother who was responsible for the death of Sirita was not evaluated and it appears that her CPS referral history may not have been fully considered prior to Sirita being placed in the home. This is discussed in more detail in the section of this report entitled: Two Reviews of Child Fatalities: Justice and Raiden Robinson and Sirita Sotelo.

[4] Final Bill Report SSB 5899. http://apps.leg.wa.gov/billinfo.

[5] This was identified as an area needing improvement by the Federal audit of the state's child welfare system. U.S. Department of Health and Human Services Administration for Children and Families (February 2004) *Washington-Child and Family Services Review, at* 27.

[6] DCFS Region 4 formally implemented changes to its visitation program, effective October 1, 2005, when new contracts were being issued. These changes include: requiring parents to come to the children, rather than children going to the parents; holding visits where the greatest number of children reside (the Ombudsman received a complaint from a parent who was required to travel to three different locations to visit her children. She reported that she suffered from a social anxiety disorder, did not own or drive a car, and that this was a hardship on her); restricting visits to the child and the persons with whom the child is reunifying; and invalidating visits after three "no shows" or cancellations in a six month period, until a new court order reschedules visits. September 29, 2005 memorandum from Jacquelyn Buchanan, RA DCFS Region 4 to DCFS R All Staff re: Changes in Parent Child Visitation Program.

[7] See Rowe, Claudia. "Social workers can't keep up with child-welfare visits." Seattle Post-Intelligencer. November 22, 2005. http://seattlepi.nwsource.com/local/249280_visitation22.html (states that the agency "has defended itself against 13 motions for contempt, three of which have been founded.").

Concern # 4:

Removal of children from long term foster care pre-adoptive placements. DCFS' decision to remove children from foster parents who have grown attached to them after months, or even years, of caring for them are among the most emotionally charged complaints OFCO receives. As noted in last year's report, at times the Ombudsman receives complaints from competing parties involved in the same case. Conflicting policies govern placement of children. The guiding principle under the law is supposed to be the best interest of the child, but this concept is viewed differently by different individuals, some of whom place more priority on the attachment the child has formed to a foster parent in the first few years of life; others who think placement with relatives is paramount regardless of when it occurs. Moving children long after they have bonded in a secure nurturing environment is disruptive, can be emotionally damaging, and possibly traumatizing in the long term. DCFS can assure better outcomes by identifying relatives earlier in the process and making such moves early on; managing foster parent and relative expectations by communicating clearly and consistently about expected outcomes; and by articulating in advance the rationale for any change in placement, such as a significant change in circumstance.

Failure to Establish Early Permanence

A foster parent contacted the Ombudsman with concerns about DCFS' plan to remove two foster children, ages 2 and 4. The children were half-siblings whom DCFS intended to place with a relative of the older child. The relative resided out-of-state. The relative had visited the children as arranged by DCFS in anticipation of the move; other than this, the children did not have a relationship with the relative.

The younger child had lived with the foster family since he was 6 months of age. The foster family accepted placement of the child with the goal of providing him a permanent home.

The older sibling was originally placed with a relative within Washington State. This was a failed placement due to several factors including medical neglect, which contributed to developmental delays. The older sibling was then moved to the foster family at age 3 to live with his half-sibling. DCFS informed the foster parents that this older child had a relative who resided out-of-state who might be a placement resource for him. The foster parents recognized it was possible this older child could be removed from their home to be placed out-of-state with his relative. They expected, however, that if this was the plan, it would be implemented as soon as the relative was approved for placement.

Placement of the oldest child out-of-state was approved through an interstate compact placement agreement. However, due to the parties' concerns about separating the siblings, the move was delayed and the case was staffed by a Diversity Child Protection Team (DCPT). It recommended keeping the children together in the foster home rather than sending the child to relatives he had not, at that time, ever met.

The foster parents underwent an adoptive home study, which they passed. They were informed over the course of several months that DCFS' case plan was to maintain both children with the foster parents.

The case plan was changed approximately 15 months after the youngest child had been placed with the foster parents. The new plan was to move both children out-of-state to the oldest child's relative.

The foster parents requested that a bonding assessment be done by a professional so that it could be considered in determining what would be in the children's best interest. DCFS would not agree to this, citing budgetary constraints; delays that would result from such an assessment; and the fact that the decision to move the children was unlikely to be reversed.

Both children were removed from the foster parents' home—the youngest one 21 months after being placed with the foster parents; the oldest one 19 months after placement with the foster parents and 11 months after interstate compact approval of the out-of-state relative.