
REPORTS TO THE GENERAL ASSEMBLY

RD729 - Office of the Children's Ombudsman 2022 Annual Report

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Executive Summary:

The Office of the Children's Ombudsman (OCO) was established by the General Assembly during the 2020 Regular Session. Pursuant to Virginia Code § 2.2-439, the OCO was created "as a means of effecting changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of the Department, local departments, child-placing agencies, or child-caring institutions; and monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to child protective services and the placement, supervision, and treatment of, and improvement of delivery of care to, children in foster care and adoptive homes."

Functions of the Office of the Children's Ombudsman

The OCO receives and investigates complaints from the public about Virginia's child welfare system. Specifically, the OCO receives complaints with respect to a particular child who (i) is alleged to have been abused or neglected, (ii) is receiving child protective services, (iii) is in foster care, or (iv) is awaiting adoption. The OCO can investigate complaints that allege that administrative acts taken by the Virginia Department of Social Services, local departments of social services, or child-placing agencies were: contrary to law, rule, or policy; imposed without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds.

The OCO can recommend and advocate for changes in law, regulation, or policy to improve Virginia's child welfare system. The OCO also can assist constituents in understanding and navigating the child welfare system. The OCO operates under the guiding principles of independence, impartiality, and confidentiality in order to best serve its constituents.

First Year Activities to Establish the Office

The Director was appointed in June, 2021, and began hiring staff and developing policies and procedures to establish the Office. The OCO procured a case management system to facilitate the processing of complaints and collection of data. The OCO's website went live in May, 2022, and provides constituents information about the OCO and how to submit a complaint. Over the past year, OCO staff met with various child welfare leaders, agencies, organizations, and other stakeholders to begin building collaborative relationships. The OCO continues to participate in various committees, workgroups, and other initiatives.

Advocacy Projects

The OCO convened the Child Dependency Legal Representation Workgroup pursuant to Senate Bill 396 to consider the issues related to Virginia's model of providing legal representation in child protection and foster care cases. The workgroup recommends that Virginia increase the rate of compensation and establish performance standards for counsel appointed to represent parents.

The OCO also participated in, and continues to participate in, the Governor's Safe and Sound Task Force, which was established to address the statewide crisis of children in foster care sleeping in agency offices, hospital emergency rooms, and hotel rooms because appropriate placements were not available. The Task Force is continuing its ground-breaking work to develop strategies to prevent family disruptions, to ensure that children in foster care can be placed in family-based settings, and to build up and sustain collaborative efforts for the provision of mental health and other supportive services to strengthen families.

Case Reviews and Investigations

The OCO began receiving calls and complaints soon after the appointment of the Director in June 2021. Because this is the first OCO Annual Report, the following data was gathered from all complaints received between June 25, 2021 and September 30, 2022.

Complaint Data. The OCO received and reviewed 264 complaints between June 2021 and September 30, 2022. Of these, 171 (65%) moved beyond the intake stage to become preliminary assessments. Cases that did not move beyond intake either did not fall within our jurisdiction or we were unsuccessful in our attempts to reach the complainant to complete the intake process.

Thirteen percent (35) of all complaints received became investigations, meaning that during our preliminary assessment we identified potential violations of policy or law or found reason to believe that actions were taken based on erroneous or immaterial information, or without a stated reason.

Cases in the preliminary assessment stage that did not become investigations were closed with information or other assistance provided to the individual. This assistance includes referring them to other available remedies.

Eighty-seven of Virginia's 120 local departments of social services were the subject of the complaints we received. For cases that moved beyond the intake stage but were eventually closed out, agency directors were notified that a complaint had been received.

Investigation Data. Thirty-five of the 264 complaints received were opened as formal investigations by the OCO. Of the complaints that became investigations, 77% included issues related to Child Protective Services (CPS), 54% included issues related to foster care, 14% included issues related to adoption, and 25% included issues related to foster care diversion/alternative living arrangements. Complaints that are submitted can include one or more case type.

Significant Trends and Recurring Issues

Among the case reviews and investigations conducted by the OCO, the following trends and recurring issues were identified:

Workforce challenges. In every case reviewed by the OCO in which a local department of social services was the subject of the complaint, the local department noted challenges in the recruitment, retention, and training of family services specialists (FSS). Factors, such as compensation, the difficult nature of the work, and insufficient training contribute to local departments' challenges in maintaining a well-qualified and trained staff. These challenges affect the quality of the local department's work with families and ultimately can affect case outcomes.

The OCO recommends, in addition to appropriating sufficient funds for local departments of social services to fill staff vacancies and provide competitive pay, that state leaders support the Virginia Department of Social Services' budget requests related to workforce and the establishment of the training academy for family services staff that was recommended in the 2018 study by the University of Denver, Butler Institute for Families of Virginia's Child and Family Services training model.

Foster Care Diversion/Alternative Living Arrangements. Of the 264 complaints the OCO received, 15% of them involved "foster care diversion" cases, also called "alternative living arrangements." These are cases in which parents are asked to voluntarily place their children in the physical custody of a relative or fictive kin due to a child protective services investigation or family assessment. The local department determines that the children are unsafe in their home or their safety would be at risk if they remained in the home. Instead of the local department going to court to request custody and place the children in formal foster care, the local department asks the parents to identify a relative or fictive kin that can care for the children on an informal and temporary basis.

There are several benefits for the families and the local departments in using alternative living arrangements under a safety plan compared to having the children placed in formal foster care through court processes. In particular, the children are placed with people they know as opposed to strangers, minimizing the trauma of being removed from their home and from their parents. These arrangements also allow for some flexibility for the local departments to respond to changing circumstances and a level of autonomy for the families that would not be allowed if the children were placed in formal foster care.

However, the OCO noted a number of practice issues in the way these alternative living arrangement cases were handled by local departments. There are also some significant legal issues with the practice as the parents' constitutional rights, the right to family integrity, and children's safety are implicated when these arrangements are put in place outside of the court

process.

The OCO recommends that local departments make efforts to comply with the Virginia Department of Social Services' In-Home Services policies. The OCO also recommends that the efforts that have already begun by the Virginia Department of Social Services, the Virginia League of Social Services Executives, the OCO, and other child welfare stakeholders continue with the goal of developing strategies to resolve the issues identified with alternative living arrangements.

Foster Care Service Plans. In many cases we reviewed, we identified several areas of concern with the development of foster care services plans, which are required to be prepared for each child in foster care. Contrary to laws and policies, parents and children were often not included in the development of the plans, the services were not child- or family-specific, the plans did not describe the visitation arrangements planned for the parents and children, and some plans included inaccurate or incomplete information. The OCO recommends that local departments ensure their family services specialists are trained sufficiently to understand and comply with the requirements for foster care service plans under state laws and policies.

Visitation. The OCO identified several concerns regarding visitation arrangements for children in foster care in the cases that were reviewed. Visitation arrangements for the parents were not made in a timely manner which caused delays in the parents' initial visits with the children after the children were placed in foster care. Inappropriate restrictions were imposed that limited the duration, frequency, and location of visits. We also noted varying policies among the local departments regarding visitation arrangements for relatives. The OCO encourages local departments to consistently follow state policies regarding visitation arrangements for children in foster care.

Other issues noted by the OCO in our case reviews include the following:

- Some local departments failed to comply with state policies and procedures when changing the child's foster care placement.
- Communication issues created challenges in the relationships among therapeutic foster parents, licensed child-placing agencies, and the local departments.
- Parental substance abuse and addiction caused challenges for local departments, especially in areas lacking sufficient substance abuse treatment services and providers.
- In some cases, the family services specialists' visits with the children were not timely or documented sufficiently.
- Some local departments' interactions with families lacked trauma-informed practices and other best practices for family engagement.

Looking Ahead

The goals established for the next year reflect our commitment to helping improve Virginia's child welfare system. Our goals also reflect our commitment to improving the effectiveness, operation, and performance of the Office. In the coming year, we plan to improve our timeliness in processing complaints, improve our communication with the agencies that are subject to our case reviews and investigations, conduct outreach to more communities within the Commonwealth to spread awareness of the Office and its work, continue making connections between families and supportive resources, and engage in listening tours and roundtable discussions to learn from youth, families, and agency workers throughout the state.

