

**MINUTES**  
**Approved by the Committee**  
**Foster Care Study Committee**  
**Monday, July 17, 2017**  
**9:00 A.M.**  
**Room EW41**  
**Boise, Idaho**

Co-chair Representative Christy Perry called the meeting to order at 9:03 a.m., and a silent roll was taken. Members present: Co-chair Senator Abby Lee and Co-chair Representative Christy Perry; Senators Todd Lakey, Mary Souza, Kelly Anthon and Cherie Buckner-Webb; and Representative Jason Monks. Absent and excused: Representatives Mike Moyle, Lynn Luker, and Melissa Wintrow. Legislative Services Office (LSO) staff present: Jared Tatro and Ana Lara.

Other attendees: Stephanie Miller, Michelle Weir, Amanda Pena, Brent King, Miren Unsworth, Chris Freeburne, Lori Wolff, Misty Myatt, and Sabrina Brown, Dept. of Health and Welfare; Brian McCauley, Foster Care Reform; Lauren Necochea, Idaho Voices for Children; Rakesh Mohan, Amanda Bartlett, and Lance McCleve, Office of Performance Evaluations (OPE); Honorable Judge Bryan Murray, Bannock County; and Michael Henderson, Idaho Supreme Court.

Note: Presentations and handouts provided by presenters/speakers are posted on the Idaho Legislature website: [www.legislature.idaho.gov](http://www.legislature.idaho.gov) and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Co-chair Perry welcomed the committee members and the public to the meeting and proceeded to address the agenda. Co-chair Lee expressed a desire to have some candid discussions throughout the meeting about the current direction of foster care and what effects have resulted from the statute changes.

**Co-chair Perry called for the approval of the minutes of November 28, 2016. Senator Buckner-Webb made a motion to accept the minutes of November 28, 2016. The motion passed unanimously.**

**Update on the State of Foster Care in Idaho - Director Rakesh Mohan, Mr. Lance McCleve and Ms. Amanda Bartlett, Office of Performance Evaluations (OPE)**

Co-chair Perry called upon Director Mohan, Mr. McCleve, and Ms. Bartlett to provide an update on the state of foster care in Idaho. Director Mohan thanked the committee for the opportunity to present to the committee and for the interest in OPE's work. He explained that they would be discussing the recommendations from the Child Welfare System Report that was completed earlier this year as well as the supplemental report that was conducted regarding the topic of 'best interest of the child.' Director Mohan expressed the difficulty they experienced in creating the Child Welfare System Report, as well as the significant amount of time spent deliberating on what to include in the report.

Best Interest of the Child - Mr. Lance McCleve

Mr. McCleve began his presentation by introducing the Best Interest of the Child Supplemental Appendix and offered an explanation of why OPE had not been able to find a good definition for 'best interest of the child' or a manner in which the term had been operationalized. He explained that what OPE had set out to do in conducting their work on the best interest of the child was to see if there was a well-defined definition that functioned well as an operational standard. OPE conducted a literature review of other states and academic research and found that there is no absolute agreed-upon operational definition of 'best interest of a child.' In most states, 'best interest of the child' is far better defined in family law for civil custody proceedings than it is for juvenile protection; there are not always consistencies or comparable events that would help best describe

what 'best interest' is in any given case. There are some common factors between family law and child protection best interest considerations, as well as across states:

- Child's preference;
- Bond between child and parents;
- Parents' ability to provide for the child's basic needs;
- Parents' and child's mental and physical health;
- Presence of domestic violence;
- Potential for permanency;
- Relationship between child and parental substitute; and
- Social, cultural, and educational needs of the child.

The rest is left for states to develop as far as what the operational process will be. The vagueness of the standard is the most persistent critique, but this vagueness also allows for judges to use flexibility in any given case.

There are three alternatives that arose from some of the critiques of best interest of child; none of these have been found to be attainable:

- Sex-based standard—found to be unconstitutional;
- Primary caretaker preference—lacks a common definition; and
- Least detrimental alternative—ambiguous and with no more determinacy than the best interest standard.

Through guidelines or statutes, most states have attempted to further define what best interest means. It's most likely more beneficial to spend policy efforts on improving the systems currently in place that interpret best interest of the child than to further define best interest of the child. Mr. McCleve further explained that efforts should be focused on the systems in place to ensure they are well equipped to make that determination (i.e., ability to obtain the necessary facts, expertise, training, etc.).

Senator Anthon asked if during OPE's research they found that biological relationships play some predominant factor in determining best interest of the child. Mr. McCleve responded that it was not uncommon to see biological families receive a significant preference, but there were no explicit standards regarding the extension of that preference. Representative Monks asked how improvements could be made to the systems that determine what the best interest of the child is, if that definition is unknown. Mr. McCleve explained that it would involve a system made up of different partners and stakeholders where each has a role in defining that term. The Legislature could develop statutes which, to some degree, could state what factors are most vital in child protection, but those statutes would need to allow flexibility so that guidelines can be interpreted to fit the facts of individual cases.

Co-chair Lee expressed interest in whether there is a difference in the manner in which the Department of Health and Welfare (DHW) reconciles best interest and the manner in which the courts do. Mr. McCleve responded that OPE did see some significant differences systemically in how the best interest is interpreted, but also in terms of how the entire child protection system functions. In their literature review and research, they confirmed that there are striking differences in the interpretation of best interest from the legal perspective, social worker perspective, and psychology perspective. Senator Souza asked if OPE had come across any guidelines for different best interest standard applications among age groups. Mr. McCleve responded that a major criticism of a standard application was that it did not provide any differentiation in terms of age and age-appropriate application of the best interest standard.

Co-chair Perry asked if OPE had found any conflicts between state and federal guidelines or an instance where federal funding was impacted due to variation among states in terms of best interest operational guidelines. Mr. McCleve responded that they found no instance of states being in

conflict with the federal guidelines for best interest of the child, but they did find a substantial amount of leeway for the states' application of the best interest standard.

### Child Welfare System Report Recommendation

Mr. McCleve emphasized that, while it is necessary for the DHW to have sufficient staff to carry its workload, recruiting more staff alone will not be sufficient to resolve all the foster care system issues. One of the substantive issues OPE found was the organizational culture within the DHW - a culture which, to a degree, has become accepting of poor performance; this has also affected accountability. He explained that what he means by accountability is not the structure or process, but the actual implementation of those structures that do not have the consistency or effectiveness.

Mr. McCleve spoke to the need for an oversight entity in the child protection system, such as a standing legislative committee. The states that have the most robust, measured efforts to provide this oversight often did so with a standing committee. He expressed his desire to focus his presentation, not on the structure of an oversight committee, but on the criteria that is important for both what is lacking in the system and things that will greatly help with issues of concern, such as the best interest of the child determinations. Some of the key points for this oversight committee are:

- It should be formally established to give it a sense of stability, commitment and authority; and
- It should be an oversight entity with a system-wide approach to provide system-wide accountability.

He emphasized that the system-wide accountability should also have visibility; this helps foster confidence in the system as well as a sense of impartial consideration to stakeholder concerns. It should also be equally accessible to all stakeholders to provide a place to express concerns and provide input. No agency or stakeholder group has sufficient authority to guide system-level policy, budget, and programmatic decisions. Such authority is important in a system that can only perform well with consistent interdisciplinary and cross-jurisdictional collaboration. An oversight entity should also have sufficient authority to receive confidential information as necessary for providing policy oversight and ensuring that all stakeholders in the system are being held to an appropriate level of accountability.

### Scope of Current Projects

Mr. McCleve described his project's theme as being how to prevent adverse outcomes for children and youth who have contact with the foster care system. In the last evaluation, OPE had looked at preventive measures to keep individuals from needing child protection, such as the use of social programs, for example. In this project, OPE is analyzing what can be done to de-escalate the situation or provide services in order to prevent children from being placed in foster care once a child protection case has been opened and the need for services has been identified.

OPE plans to provide:

- Explanations of services that Idaho uses;
- How frequently those services are used and to what extent;
- Circumstances for when the services are used; and
- Whether services are being used in all applicable cases.

The next piece OPE will be analyzing is regarding juvenile justice - specifically when youth have contact with both the juvenile system and the child protection system. They will be researching the number of youth who had contact with both systems using any data that may be available. If no data is available, OPE will try to see what data they can gather on this matter in order to have a better idea of the number of youth who have contact with both systems. They also want to see actions that would need to be taken for ongoing data to be available to understand these interactions. If able to obtain the data needed to create a good risk profile, they'll look to see if there are services in place to assist the youth who fall in this category. The last piece is analyzing youth, who have had

significant involvement in the foster care system, and who then make the transition into adulthood. OPE will be researching what services are available to this population in foster care as well as what decisions or outcomes from their time in foster care affect what services they will receive.

#### Discussion:

Senator Lakey asked, in regard to OPE's recommendation for an oversight entity, what kind of composition this entity could have and what type of authority it should be given. Mr. McCleve responded that in their research they found that many states had legislatively established committees. A common structure was a joint effort between a legislative committee specifically tasked with overseeing child protection issues and an accompanying group consisting of different stakeholders. He added that an oversight entity should have authority to review cases as necessary for accountability and oversight.

#### Guardian ad Litem - Ms. Amanda Bartlett

Ms. Bartlett explained that in performing OPE's previous report, they heard multiple concerns regarding whether the guardian ad litem (GAL) program in Idaho is sufficiently resourced. OPE will be reviewing:

- How is the guardian ad litem program structured in Idaho;
- Do we have the resources in place to meet the goal of having a guardian ad litem assigned for every child under the age of 12 in child protection cases;
- If not, what actions the state is taking to meet this goal; and
- What are the variations for child protection cases (e.g., guardian ad litem versus attorney).

Senator Buckner-Webb asked if the scope of the report included analysis for ongoing training for guardians ad litem. Ms. Bartlett responded that while both recruitment and retention are issues of concern, they will also look at what support, training, and tools are provided to support the guardians' ad litem needs. Co-chair Perry expressed interest in OPE determining whether the volunteer GAL program complies with state statutes and federal requirements.

#### **Update on Implementation of Changes to the Foster Care System - Ms. Lori Wolff and Ms. Miren Unsworth, Dept. of Health and Welfare**

Ms. Wolff introduced herself as the new Deputy Director for the Dept. of Health and Welfare (DHW) and shared Director Barron's regrets for his absence as he had a previously scheduled meeting in Washington D.C. Deputy Director Wolff expressed gratitude toward OPE for the work they did in conducting their evaluations. She added that the recommendations provided in the report guided many decisions and discussions at the DHW. She acknowledged Ms. Unsworth's new role as the Administrator for the Division of Family and Community Services, as well as Mr. Chris Freeburne, the new Regional Director for eastern Idaho.

Deputy Director Wolff provided some of her background and work experience to the committee. She acknowledged the culture change that needs to take place in DHW and the need to embrace those changes and challenges. She expressed the passion that each DHW employees has for the work they do.

Ms. Unsworth introduced herself and stated that last year's Foster Care Study Interim Committee, OPE's 2017 Child Welfare System Report, and the 2016 Federal Child and Family Service Review provided opportunities for DHW to examine their practice and areas for improvement. She proceeded to highlight the work DHW has done in the last year as well as the work still in progress.

#### **Training Accomplished:**

- Statewide training was provided to ensure staff received necessary information regarding rule and statute changes related to placement changes and notification requirements, the Reasonable and Prudent Parent Standard, and contested placement hearings;

- Revisions have been made to the Child Welfare Academy to address key components of placement change practice and notification requirements, as well as recruitment and retention of foster parents, and the Resource Parent Problem Resolution process;
- Child and Family Services (CFS) staff have received the Criminal Justice Information Services (CJIS) training;
- Online training addressing normalcy for children in foster care has been developed and rolled out to foster parents and staff to ensure understanding of statute, rule, policy, and procedure around the Reasonable and Prudent Parent Standard, and the effort to normalize the foster care experience for children and youth in foster care;
- Pre-and Post-knowledge checks for PRIDE have been developed and implemented for all foster parents completing PRIDE;
- A newly revised Leadership Academy was offered the week of May 1-5, 2017. This revised academy included 2.5 days of Family-Centered Practice for Supervisors: What's Good for Families is Good for Workers, and 2.5 days of Strengths-Based Supervision for Supervisors;
- The National Child Traumatic Stress Network (NCTSN) Child Welfare Trauma Training was offered in each hub for all new staff and community members to enhance participants' knowledge in working with children and families who have experienced trauma;
- A new in-service training titled Managing Secondary Traumatic Stress was recently rolled out across the state. This training promotes self-care strategies and techniques for staff; and
- The Ethics of Engagement in-service course was designed and provided for child welfare workers to build an understanding of the ethical practice principles related to strategies for effective family engagement, including appropriate disclosure of family and child information.

#### Training in Process:

- CFS has developed a refresher training on placement change and notification processes, as well as documentation expectations. It will be delivered to all staff across the state in the coming months;
- Several Child Welfare Academy courses are in the process of being revised (e.g., The Indian Child Welfare Act (ICWA) Academy is being revised to incorporate the newly adopted Bureau of Indian Affairs revised ICWA regulations which went into effect late 2016);
- The curricula for the Child Welfare Academy courses, Legal Perspectives and Professional Practice in Statutory Context are being revised to allow for more time in the classroom for skills development - including role playing and participation in a mock trial;
- CFS is working on implementing a PRIDE pre-service hybrid model to allow more flexibility for families;
- A training plan for client service technicians is in development to ensure consistent training is provided statewide and is based on the work duties, responsibilities, and skills necessary for the position; and
- The Annual Leadership Summit will be held in July 2017 for all child welfare supervisors, chiefs, program specialists, and managers.

#### Standard/Policy Changes Accomplished:

- Significant revisions were made to the Permanent Placement Standard (previously the Placement Selection Standard). The model was updated to reflect changes in Idaho Statute pertaining to placement priority. Other notable updates include a child's current foster parent and fictive kin/kin being presented as possible permanent placements for the child at the same time as a child's relatives, modifying the recommendation-making to include all committee members, and incorporating a discussion regarding the impact of any placement change on that child;
- Revisions to the Concurrent Planning Standard were made to clarify the prioritization of permanency goals, add information specific to practice expectations in permanency planning with older youth, identify expectations for social workers regarding relative engagement, and clarify definitions such as 'fictive kin' and 'fit and willing relative';
- Revisions to the Comprehensive Safety Assessment Standard and Priority Guidelines were made regarding screening, assessing, and providing services to children who have been victims of sex trafficking;
- A Standard for Placement of Children in Foster Care was developed and implemented to provide staff with direction regarding placement practices, notification requirements, and transition planning; and

- A Normalcy for Children in Foster Care Standard was developed and implemented to support legislative rule and statute changes regarding the Reasonable and Prudent Parent Standard for foster parents.

#### Process Improvements Accomplished:

- A Child Welfare Executive Steering Committee was developed to help ensure the completion of the Department's strategic plan initiative to transform the child welfare system to improve outcomes for children;
- Quarterly statewide all-staff video conferences, known as "fireside chats," were implemented to facilitate ongoing communication and provide feedback loops regarding important issues related to their practice;
- Revisions have been made to the written materials provided to parents who have a child placed into foster care;
- A revised Permanent Placement Review process was implemented. This process allows for a child's current foster parent, relative and/or fictive kin/kin who are considered for placement at a regional permanent placement committee to have the initial placement recommendation reviewed at a statewide level;
- An assessment of Child and Family Services' Resource Parent Resolution Process was completed and involved feedback from foster parents - modifications were made to streamline the process;
- Enhancements have been made to the program's data system to better document placement change information, as well as notification to various individuals;
- An administrative directive titled Bridging the Gap was issued. The directive focuses on strengthening relationships between leadership and foster parents;
- The letter sent to relatives to notify them of their relative child's placement in foster care was updated to request information regarding any American Indian/Alaskan Native ancestry for the child; and
- Language in the Department's foster parent recruitment marketing materials was modified to ensure messaging to the community and prospective foster and adoptive families is aligned with practice expectations related to reunification and birth family work.

#### Process Improvements in Process:

- CFS is currently in the process of completing process mapping to assess how work is completed and by whom to evaluate efficiencies and determine possible workflow modifications, as well as to inform our data system modernization efforts;
- A statewide supervisor work-group is in the process of formalizing a manual for supervisors to help provide education and support in completing day-to-day tasks;
- Continue to assess foster parent recruitment and retention plan;
- CFS is in the process of making practice and policy changes in response to a survey completed by the program of adoptive parents receiving Idaho adoption assistance benefits which identified needs for ensuring quality customer service and support services to families willing to provide permanency for children in foster care;
- CFS continues to work with our data system staff and developers to reduce system redundancies and the duplicative entry of information;
- Additional reports are being developed to enhance monitoring and ensure compliance with placement change notifications;
- During the past year, Idaho completed the federal Child and Family Services Review, which highlighted areas needing improvement within the Idaho child welfare system;
- CFS has established a multi-disciplinary work group with Medicaid, Optum, and Magellan Health Services on the use of psychotropic medication on children in foster care. The overarching goals of this work group are to increase awareness and enhance family engagement, as well as increasing child and family well-being, all while reducing the use of psychotropic medication in children and youth who are in foster care;
- CFS is beginning to implement a foster care liaison pilot project in the west hub. The liaisons will assist foster families in connecting with their worker or obtaining necessary resources;
- CFS is in the process of developing recommendations for a multi-year staffing plan and other workload supports, such as increased access to mobile technology to address some of our workload challenges; and

- CFS has been developing program direction to provide not only consistent and clear expectations related to various areas of practice, but also to outline accountability measures at all levels of the program.

#### Placement Change Data from June 1, 2016 through April 30, 2017:

- Between July 1, 2016 and April 30, 2017, 2,483 children were served in our foster care program, and of those children, 67% had no placement changes;
- 1,737 of the children served during this time frame were in a least one foster care placement for 60 or more days; of these children 78% experienced no placement changes. 387 of these 1,737 children experienced a placement change, 56% of these placement changes were unplanned and 44% of these placement changes were planned;
- Reasons for planned moves include placement with relatives, siblings, fictive kin, in pre-adoptive homes, placement in less-restrictive settings, and moves due to licensing concerns;
- 86% of the unplanned moves were at the request of the foster parents. The primary reasons for the requests include difficulty managing a child's behaviors, requests due to personal reasons, and requests due to only being a temporary placement; and
- Other reasons for unplanned moves included placements in a higher level of care or hospital settings and moves due to allegations of abuse or neglect in a foster home. 15 of the 1,737 children who had been placed in a home for 60 or more days were moved due to allegations of abuse or neglect in the foster home; these homes involved eight separate foster families. The primary reasons for these moves involved allegations of physical abuse in the foster home.

Ms. Unsworth proceeded to explain the procedures for addressing DHW staff who do not follow statute or a specific policy. She stated that each situation is assessed individually to understand the context, and more broadly understand if this is an individual worker issue or a regional issue, etc. At times, personnel or disciplinary action is required, which varies depending on the circumstance. DHW is fully aware that consistent accountability is a challenge within their program and has bred some cultural challenges. She further added that they are working on this area of focus and are taking the matter very seriously.

#### Discussion:

Co-chair Lee explained that the Foster Care Study Interim Committee was born out of hours of public testimony by foster parents who felt they were being ignored; she requested more information regarding the grievance process. Co-chair Lee asked for more information regarding how DHW is formally taking the input received from foster parents. She alluded to a specific case brought to her attention, which she had discussed with DHW, where a statute was violated, and asked for more information about the process in place to handle a case such as this one.

Ms. Unsworth responded that when a circumstance such as this arises, DHW takes it seriously and local leadership becomes engaged to review the individual situation and context. She added that this particular case should not have occurred, DHW understands how it came to happen, and they are working to find what steps need to be taken with support staff so that this does not occur again. She conceded that there will continue to be areas where mistakes are made and rectified, but they do want to promote a culture where the expectations and accountability are clear. However, they do not want to promote a culture of fear.

Senator Souza requested information on how DHW makes evaluations on homes with substance abuse. Representative Monks requested the statistics regarding placement change moves. Co-chair Perry asked for more information on what process exists for a foster parent who has a grievance. She additionally requested more information regarding what protocols exist for abuse and how they vary depending on the caretaker. Co-chair Lee requested more information regarding children that have been moved for safety concerns, but no licensure changes were made.

#### **Update on How Courts Have Responded to Statutory Changes - The Honorable Bryan Murray, Bannock County**

Judge Murray expressed his gratitude towards the committee for the work they have done. He summarized his work as a judge, which consists of juvenile justice, child protection, and mental health. In the child protection area, there are many different parties and each plays an independent and critical role. Unless the parties act in a collaborative way, problems arise. He stated that the issue of placement provided an opportunity to analyze the entire child welfare system as a whole. Judge Murray explained that the courts now have more flexibility when considering placement. Previously, when the policy was that placement priority was with family regardless of circumstances, their hands were tied and not much could be done. This policy now demands for a more collaborative effort from all parties involved to find the best placement for children. Since the policy change, Judge Murray has not seen any retaliatory placement moves from DHW.

Judge Murray added that, since the policy changes, there has been:

- Better collaboration;
- Better sharing of information;
- More knowledge regarding the foster family;
- Permanency is occurring sooner; and
- Discussions are taking place regarding the best interest of child.

Judge Murray explained that DHW does want to become a party, and recommended that counsel be provided to them as an agency. He also expressed his concern regarding the rising number of substance abuse cases affecting children, including those who are born addicted to drugs. The long-lasting effects for children born addicted to heroin are still relatively unknown. He emphasized that the other party they need at the table is education. Judge Murray stated that a child's low participation or low attendance in school is an important indicator of potential problems that may exist at home. Judge Murray stated that in child protection, guardianship is not as stable as an adopting family because parents can seek custody of their children at a later point. This might be a good option for some teenagers, but not for infants or young children.

#### Discussion:

Senator Anthon asked what new information the courts had regarding psychotropic medication since the change in legislation last year that now allows for judges to inquire about it. Judge Murray responded that they found that the percentage of children on psychotropic medication trends along the national averages. He added that some children have been prescribed psychotropic medication at a very young age when the underlying issue may be attributed to the emotional toll they experience, which could potentially be addressed with psychiatry. Senator Anthon inquired whether judges should be instructed in Title 32, Idaho Code, to consider certain factors that are not currently in Idaho code. Judge Murray responded that he would not personally be opposed to having more guidance or instruction in statute.

Co-chair Lee was informed that a policy had been interpreted to mean that only if there is a demonstrative abuse on the part of DHW could a judge make a different finding; she asked if it would be useful for the Legislature to clarify the policy in statute. Judge Murray responded that he has no issue with additional clarification, but he was not aware of any judge that follows that interpretation. He further explained that, in discussions among many of the judges, that interpretation had been rejected.

#### **Final Discussion:**

Co-chair Perry opened the final discussion portion of the meeting by requesting the committee find a possible next meeting date. After some discussion, the committee tentatively agreed on the date of August 22, 2017. She also asked the committee to review their notes and to share what items they would like the committee to address in subsequent meetings. Co-chair Lee asked the committee to work closely in the next week to create a draft agenda for the next meeting. She also expressed a desire to hear a report on the guardian ad litem program from OPE.



Co-chair Perry thanked the presenters for their time and efforts, as well as the committee members and LSO staff.

The committee adjourned at 12:10 p.m.