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CHILDREN'S OMBUDSMAN

Maine

CHILD WELFARE SERVICES OMBUDSMAN

2ND ANNUAL REPORT • 2004



PHOTO BY HOLLY VALERO

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I am honored to present the 2nd Annual Report for the Maine Child Welfare Services Ombudsman. The Maine Children's Alliance is pleased to manage the Ombudsman Program, as we believe it to be a critical part of establishing a more effective system for children and their families.

As a person who has worked in and with the child welfare system for over thirty-five years, I can say that the last year has been one of the most exciting. From Governor Baldacci's commitment to improve the system for children and families to his selection of Jack Nicholas to lead reform of child welfare, I have seen many reasons to be confident of a better future for our most vulnerable children and their families.

The vision being put forward by Commissioner Nicholas and his staff for a system that values family and community is energizing and hopeful. Administrative and policy changes already being made show commitment to improved efficiency, more effective services and a focus on consumers that goes beyond rhetoric.

Continuing the momentum we began this year in the face of huge budget issues and other legislative priorities will require focused advocacy for children and families. It has been a pleasure to work with colleagues from every facet of human services, and I am confident we will continue that most important work through the coming legislative session and beyond!

Yours truly,



Dean Crocker
Child Welfare Services Ombudsman

Do not train a child to learn by force or harshness; but direct them to it by what amuses their minds, so that you may be better able to discover with accuracy the peculiar bent of the genius of each.

— PLATO

What is the Maine Child Welfare Services Ombudsman?

Maine's Child Welfare Services Ombudsman is contracted directly with the Governor's office and is overseen by the Department of Administrative and Financial Services.

The Ombudsman is enabled in 22 MRSA § 4087-A to set priorities for opening cases for investigation. All calls requesting information are answered to the best of the Ombudsman's ability. The Ombudsman may open cases based on the following:

1. The involvement of the Ombudsman is expected to benefit the child(ren) who are the subject of the inquiry/complaint in some demonstrable way.
2. The case appears to contain a policy or practice issue, whose resolution may benefit other children and families.

MIRRIAM-WEBSTER ONLINE defines an *Ombudsman* as:

- 1: a government official (as in Sweden or New Zealand) appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials
- 2: one that investigates reported complaints (as from students or consumers), reports findings, and helps to achieve equitable settlements

Circumstances under which a case may not be opened:

1. The case is in Due Process (Court or Department of Health and Human Services (DHHS) Administrative Review or Hearing). Information will be provided as requested.
2. The complaint is against a DHHS staff person and no specific child is alleged to have been harmed by the worker's action or inaction.
3. An investigation may not be opened when, in the judgment of the Ombudsman:
 - The primary problem is a custody dispute between parents
 - The caller is seeking redress for grievances that will not benefit the subject child
 - Opening an investigation may jeopardize a child's emotional well being

You can find more information about the Ombudsman by looking at our website at:
<http://www.mainechildrensalliance.org/am/publish/ombudsman.shtml>

Policy and Procedure within the Bureau of Child and Family Services

The Child Welfare Services Ombudsman identified several policy and procedure areas within the Bureau of Child and Family Services (BCFS) that require further development. As a result, the Ombudsman made recommendations to BCFS in the following topic areas: BCFS Policy and Procedure, Kinship Care, Medicaid Compliance, Statute, Transition Plan Compliance, and Training. Upon sharing these recommendations, the Ombudsman learned that BCFS is in the process of making several changes to their policies and procedures. Some of these changes are highlighted here within the text of Ombudsman recommendations.

BCFS POLICY AND PROCEDURE

- Caseworkers use providers credentialed through the Child Abuse and Neglect Evaluators Project (CANEP) for completing parental capacity evaluations. The resulting assessments are adequate from a forensic point of view, but are not strength based. Forensic evaluations should be managed through the court system, while the children's mental health system and related assessment programs should be utilized for gathering parent and family strengths. The BCFS relies on forensic Parental Capacity Evaluations too heavily without a balancing assessment and acknowledgement of parental strengths. While they are appropriate to cases in which legal action is being taken, forensic evaluations provide a less positive basis for a helping relationship.
- The Ombudsman strongly encourages eliminating BCFS's policy of providing services only after substantiation of abuse and/or neglect. This would allow services to be provided in order to prevent children being placed in Department of Health and Human Services (DHHS) custody.
- A financing system should be developed within DHHS, in which payments of services is transparent to the consumer.
- Policy and procedural requirements for a single comprehensive assessment and treatment plan need to be established to require providers to work from the same plan.
- The BCFS should utilize funds from MaineCare Benefits Manual, Chapter III-Allowances for Services, Section 65-Mental Health Services, Subsection G-Children's Family and Community Support, to fund reunification services including structured visits and transportation.
- As a general principle, siblings should only be separated for compelling safety reasons and not for treatment reasons. Siblings have a right to clinical intervention that will enable them to remain together.

THE BUREAU OF CHILD AND FAMILY SERVICES SHARED WITH THE OMBUDSMAN THAT...

...it is moving toward a strength based and solution focused model. The BCFS recognizes the importance of acknowledging family and parent strengths while ensuring the safety and well being of the children they serve.

...it is utilizing assistance from Muskie's Child Welfare Institute and the National Resource Center regarding their substantiation process. The BCFS is working toward increasing family continuity by making adjustments to the current substantiation process.

...it is developing a comprehensive assessment tool with help from all levels of BCFS staff. This assessment tool will not only allow, but will require, service providers to work from one case plan.

...it is changing its policy to increase the use of Family Team Meetings (FTMs). The FTMs will be used to preserve placements and reunify families with permanency being the top priority.

...it recognizes the importance of changing current policies and procedures to a model in which the family is given more of a hand in creating their case plan.

- Caseworkers need to be more accepting of the parent's or relative's choice of mental health providers. Caseworkers' requests for the parent or relative to see a different provider or to go elsewhere for assessment are often a barrier to establishing a working relationship.
- A structured process for changing placement determinations is needed between units. The new unit should be required to provide supporting information based on a current assessment when changing a placement.
- The practice of helping significant relatives become a positive, on-going presence in a child's life should be standard practice even when they are not kinship care providers. This includes the provision of and/or arrangement for rehabilitative services.
- Staff must increase the number of children referred for substance abuse assessments and treatment to reflect more accurately the needs of the population. Policy and procedure does not appear to be clear regarding expectations of caseworkers. There is adequate information to support increasing the priority to address substance abuse.
- Guardian ad Litem (GAL) reports should be considered as important as receiving reports from clinicians. We recommend caseworkers obtain GAL reports on a more consistent basis.
- The new Child Abuse Prevention and Treatment Act (CAPTA) requirement regarding referrals to Child Development Services (CDS) should be implemented. The Ombudsman recommends clarifying in policy that children can have CDS, children's mental health services, and child welfare case managers when appropriate.
- Clarification of policy is needed regarding the coordination between caseworkers and surrogate parents because it is not clear how caseworkers participate in Pupil Evaluation Team (PET) decisions. In addition, BCFS should clarify with the Department of Education (DOE) that having a surrogate parent does not negate the role of the caseworker.
- Intake staff needs to be consistently completing assessment tools in support of family involvement. Tools like a Sociogram would provide structure, as required by policy, to identify those who might support the child and family.

- Referral guidelines need to be clarified for child welfare staff that have clients who need to be referred for mental health treatment. It should be the responsibility of staff to make sure that clients or callers are connected with the services they need.

KINSHIP CARE

The home study process for kinship homes should be revised to allow more children to go directly into relative placements. The Ombudsman recommends the establishment of a separate licensing process for kinship homes that allows placements to occur in very short periods of time. In addition, when possible, caseworkers should begin the process with kinship applicants before the child comes into state custody.

THE BUREAU OF CHILD AND FAMILY SERVICES SHARED WITH THE OMBUDSMAN THAT...

...it is aggressively seeking to increase the number of kin placements by implementing policy that requires caseworkers to ask both parents and children prior to removal if there are any relatives the child could safely stay with. The BCFS will also state in policy that placement will not be delayed due to barriers that can be resolved quickly.

MEDICAID COMPLIANCE

- Family support plans need to outline behaviorally specific objectives for clients and providers.
- The Case Plan/Family Support Plan requirements need to be clearly stated in policy. Additionally, these plans must be revised to assure Medicaid compliance. Teamwork will be better supported by the development of a format that is commonly understood across all disciplines.
- The date a Case Plan is completed should be printed on the form allowing for more accurate monitoring of Medicaid compliance.

STATUTE

- The statute should be amended to clarify standards regarding the determination for “threat of harm” as a basis for BCFS action. Caseworkers should not make findings of “threat of emotional abuse” without clinical training or the benefit of a psychological or other mental health assessment.

THE BUREAU OF CHILD AND FAMILY SERVICES SHARED WITH THE OMBUDSMAN THAT...

...it believes that current policy revisions will effectively resolve the issues regarding safety assessments and substantiations. Additionally, the policy revisions will eliminate the need for amendments to statute in this area.

...The Institutional Abuse Unit does not have the capacity to investigate complaints regarding school personnel. The BCFS agrees that a review of current procedures is warranted regarding how school personnel complaints are handled.

- The Ombudsman recommends amending the law to give DOE formal responsibility over investigations of school personnel. In addition, the Ombudsman recommends a review of current procedures regarding how school personnel complaints are handled.

TRANSITION PLAN COMPLIANCE

- Transition Plans from adolescence to adulthood must be consistent. The Ombudsman recommends reviewing the Memorandum of Understanding (MOU) between child welfare services and children's mental health services to ensure that all mandates are met for the Individuals with Disabilities Education Act and the Adoption and Safe Families Act. In addition, the Ombudsman recommends an evaluation of the MOU between BCFS and DOE regarding the role of guardians and surrogate parents.

THE BUREAU OF CHILD AND FAMILY SERVICES SHARED WITH THE OMBUDSMAN THAT...

...it has received funds through the Annie E. Casey Foundation to support effective transitions for state wards as they move from childhood to adulthood.

- The way in which children in custody with special needs are identified results in misidentification of children who need services. The current estimate of children in custody identified with special needs is 41%. The BCFS relies on special education identification, which does not include children in custody that have disabilities but have not been identified for special education services. The Ombudsman recommends several steps:

1. Use the Maine Automated Child Welfare Information System (MACWIS) to cross reference wards on several factors such as approval for services, prescriptions approved, and other factors that might be associated with disabilities.
2. Review the case files of children in custody with apparent disabilities, but who are not identified for special education services.
3. Train and empower foster parents to advocate for identification of children for special education.
4. Revise caseworkers' three month review checklist to include a disability assessment.

TRAINING

- Foster parents need to be better prepared for their role as surrogate parents in the special education of state children in custody.
- As policies, procedures and interagency agreements or protocols are developed or changed, caseworkers and supervisors should receive mandatory training.

Case Examples

KINSHIP CARE

Mrs. M initially contacted the Child Welfare Services Ombudsman and stated that she was concerned because her daughter who has a serious mental illness was going to have a baby. Mrs. M stated that the Bureau of Child and Family Services (BCFS) agreed that her daughter is not able to safely raise the baby on her own, but did not involve Mrs. M in safety decisions prior to the birth. The Ombudsman gave suggestions in support of her involvement.

Subsequently, Mrs. M filed a complaint with the Ombudsman because BCFS did not begin the process of approving her as a kinship provider until the baby was born, nor was the biological father involved prior to the birth. After obtaining a case history through the intake process, the Ombudsman:

- Referred the case to BCFS for internal review.
- Reviewed the information provided by BCFS, which indicated that after some initial reluctance, the father had agreed to accept responsibility. It was decided that placement would be made with him and Mrs. M was to be involved in the child's care.

This case highlights the need for BCFS to, whenever possible, begin the process of approving kinship placements prior to bringing the children into custody. In this case, since the mother did not agree to placement with Mrs. M, if the father had not changed his mind, the infant would have been placed in a non-relative foster home while Mrs. M worked on becoming licensed.

SUBSTANTIATION

Mrs. F contacted the Ombudsman to voice her concern that she was substantiated for abuse while she was in the process of establishing a provider network for her son who has numerous mental health needs. After referring this case to BCFS, the Ombudsman learned that:

- The BCFS had substantiated for neglect and emotional and physical abuse, and then referred Mrs. F to a Community Intervention Program (CIP).
- Mrs. F had appealed the substantiation but it was upheld at the case review hearing.
- The CIP agency had found Mrs. F to be cooperative and anxious to find solutions to her son's challenging behavior.

- Mrs. F had contacted Sweetser Children's Services on her own and they also had found her to be cooperative and anxious to find solutions.
- Providers did not concur with BCFS's finding of abuse and neglect.

This case highlights the need for a program and funding that provides services designed to prevent child abuse and neglect rather than substantiate child abuse and neglect with a family who is willing to accept services. It is the opinion of the Ombudsman that this family would have accepted help without being substantiated for abuse or neglect. In addition, the circumstances of the case were caused by the special mental health needs of the child rather than an uncaring or unresponsive parent.

TRANSITION PLANNING

A group home provider contacted the Ombudsman regarding a client who would soon be leaving BCFS extended care because she was nineteen years old. This young lady has multiple disabilities including a closed head injury and an IQ of approximately 72. The provider informed us that their client was referred to the Division of Behavioral and Developmental Services (DBDS) a year earlier and was asked by the Regional DBDS to re-refer three to four months before she graduates from high school. This client was referred again, only to be found ineligible for the adult mental health system and the mental retardation system. After reviewing the information in this case, the Ombudsman learned that:

- An independent living assessment and transition plan were not completed by BCFS as required by the Chaffee Amendments.
- A Transition Plan was not completed by the Department of Education (DOE) as required under the Individuals with Disabilities Education Act (IDEA).
- The Memorandum of Understanding between BCFS, Adult Protective Services (APS), and DBDS regarding transitioning this client into adult mental health services was not implemented as agreed.

This case highlights the need for department staff to complete their respective transition plans on every child in care beginning at age fourteen. In addition, this case highlights the need to clarify the referral process, and the individual and mutual responsibilities of BCFS, DBDS, APS and DOE for clients as they transition from childhood to adulthood.

Recommendations for Statutory Changes to Improve the Functioning of the Child Welfare Services Ombudsman

The drafters of the statute that established the Child Welfare Services Ombudsman Program recognized that the Ombudsman would be most effective as an informal dispute resolution mechanism for Maine citizens. That informal, non-adversarial system has not only enabled the Ombudsman to resolve disputes in individual cases, but it has also been effective in identifying policies and practices in need of improvement.

After two years of experience, the Ombudsman recommends the following changes in the statutes in order to improve the effectiveness and efficiency of the Ombudsman.

1. Amend the section of the law which establishes the Ombudsman (22 MRSA § 4087-A (2)) to allow the Ombudsman to propose child welfare services system changes as well as promote the interests of individual children. The Ombudsman statute was amended by P.L. 2003, c 20, § EEE-1 to require that case-specific advocacy is the first priority of the Ombudsman. Systems advocacy should be adjunctive to case advocacy. While the majority of program resources are directed toward case advocacy, it is clear that advocacy for improvement in policies, procedures and resources is in the best interest of children and families served by the child welfare program and state government.
2. Amend the section of the law (22 MRSA § 4008 (3)) that determines access to Department of Health and Human Services (DHHS) records to provide for mandatory disclosure of relevant electronic and paper records to the Ombudsman.
3. Currently, the Ombudsman only has access to the records of agencies contracted to provide services to child welfare clients, but not to the staff providing these services. Amend the law establishing the Ombudsman providing for “Access to persons, files and records” (22 MRSA § 4087-A (5)) to include staff of agencies providing services to child welfare clients through contract with DHHS.
4. Clarify the provisions of confidentiality of the Ombudsman records and reports (22 MRSA § 4087-A (6)) by making them not subject to Discovery.
5. Amend the law providing for guardian ad litem’s (GAL) (22 MRSA § 4005(1)) to permit the GAL of a child who is the subject of a complaint to provide information to the Ombudsman.
6. Amend the statute establishing the Ombudsman (22 MRSA § 4087-A (4)) to authorize preparation of individual case reports, which would provide the basis for the Ombudsman to more effectively communicate with DHHS.

Child Welfare Services Ombudsman Data

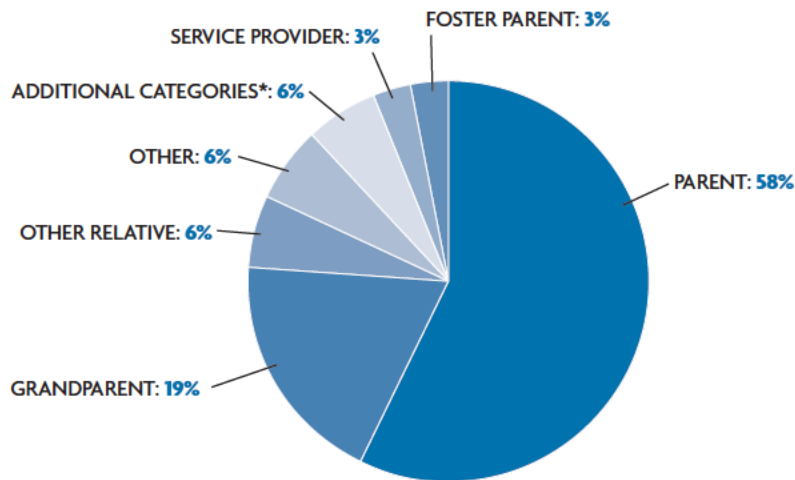
Each contact to the Child Welfare Services Ombudsman gives us the opportunity to respond to requests for information and to complaints about the Bureau of Child and Family Services (BCFS). In addition, each contact allows the Ombudsman to identify recurring problems in Maine's child welfare system and to make recommendations for systemic change. This portion of the Annual Report describes the calls made by individuals to the Ombudsman between December 5, 2003 and October 31, 2004.

Please note:

The sum of the percentages in the following tables and graphs may not equal 100% due to rounding.

WHO CONTACTED THE CHILD WELFARE SERVICES OMBUDSMAN?

During the eleven month reporting period a total of 191 individuals contacted the Ombudsman. Parents and relatives of children involved with DHHS filed the majority of complaints (82%).

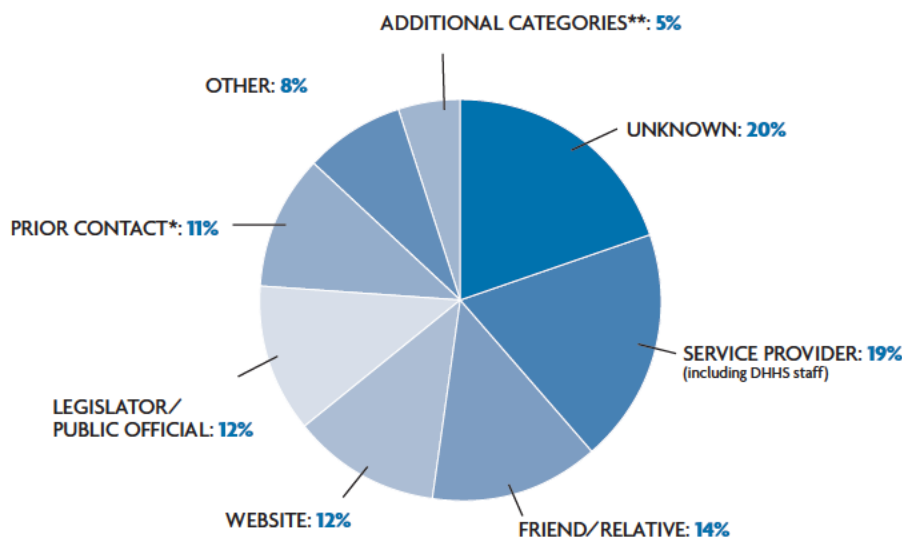


*ADDITIONAL CATEGORIES INCLUDES:
Friend, Unknown, Legislator, Child, School Staff, and No Child Involved.

Source: Maine's Child Welfare Services Ombudsman, November 2004

HOW DID INDIVIDUALS LEARN ABOUT THE CHILD WELFARE SERVICES OMBUDSMAN?

The largest category for Source of Referral is Unknown (19.9 %). This can be attributed to individuals being unclear regarding how they learned about the Ombudsman Program. A new process for more accurately collecting this data is currently in place.



*Prior Contact with the Ombudsman.

**ADDITIONAL CATEGORIES INCLUDES:

Attorney, People who read the Ombudsman Brochure, Public Legal Aid and Health Care Provider.

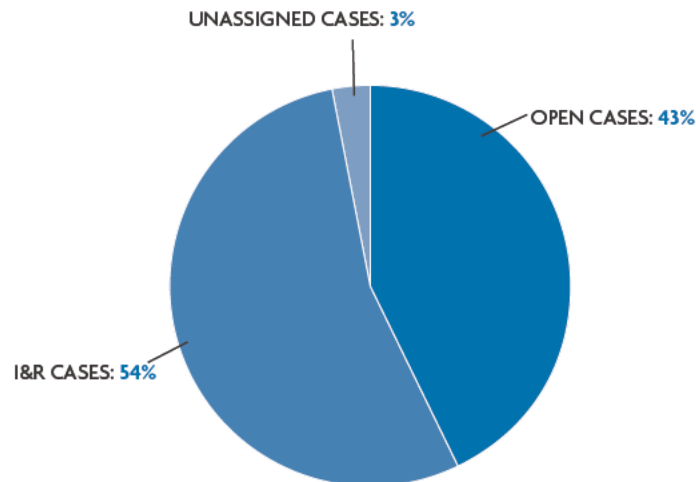
Source: Maine's Child Welfare Services Ombudsman, November 2004

HOW DOES THE CHILD WELFARE SERVICES OMBUDSMAN DOCUMENT CASES?

The Ombudsman documents cases as one of three categories: Unassigned, Information and Referral (I&R) or Open. Initially, all cases are documented as Unassigned while the Ombudsman gathers information on the complaint.

Once the information has been gathered, the case is then documented as either I&R or Open. Cases are documented as I&R when an individual requests information or calls with a complaint or concern that does not meet the Ombudsman's criteria for opening a case.

Cases are documented as Open when involvement of the Ombudsman would benefit the well-being of the child or children involved in the complaint. These cases may have several complaints and may involve the Child Protective Services Unit, the Children's Services Unit and/or the Adoption Unit.



Source: Maine's Child Welfare Services Ombudsman, November 2004

[Data Regarding Open Cases]

HOW MANY CASES WERE OPENED IN EACH DHHS DISTRICT?

DISTRICT #	OFFICE	CASES	DISTRICT		CHILDREN	
			NUMBER	% OF TOTAL	NUMBER	% OF TOTAL*
1	Biddeford	5	7	9%	14	9%
	Sanford	2				
2	Portland	5	5	6%	9	6%
3	Lewiston	13	14	17%	30	20%
	South Paris	1				
4	Augusta	14	14	17%	16	11%
5	Rockland	3	15	18%	26	17%
	Skowhegan	12				
6	Bangor	7	7	9%	17	11%
	Dover-Foxcroft	0				
7	Ellsworth	6	12	15%	20	13%
	Machias	6				
8	Caribou	2	8	10%	17	11%
	Houlton	4				
	Fort Kent	2				
TOTAL			82	100%	149	100%

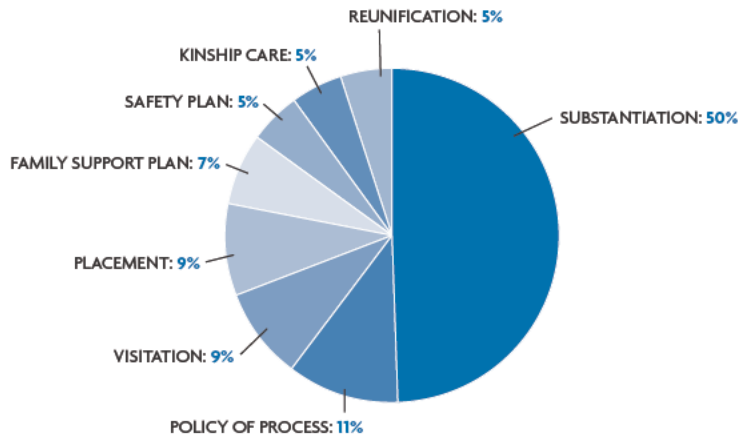
*Percent of children involved in Open Cases

Source: Maine's Child Welfare Services Ombudsman, November 2004

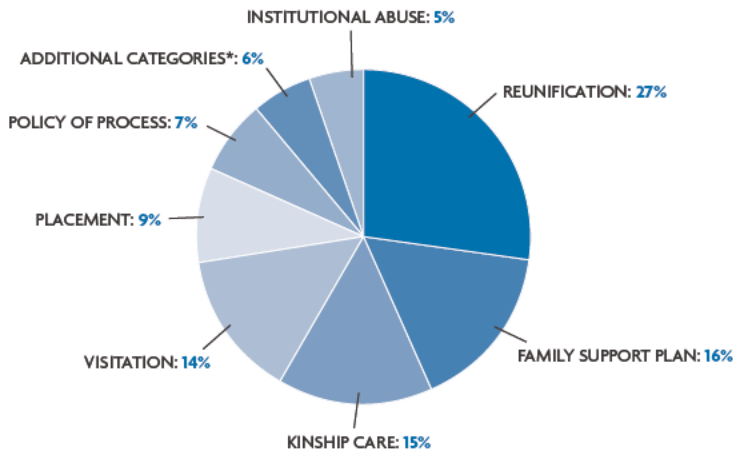
WHAT ARE THE MOST FREQUENTLY IDENTIFIED COMPLAINTS?

Between December 5, 2003 and October 31, 2004, 82 cases were opened with a total of 137 complaints. There were 44 complaints regarding the Child Protective Services Unit, 85 complaints regarding the Children's Services Unit, and 8 complaints involving the Adoption Unit. Each complaint was summarized according to the specific issues of the complaint.

Area of Complaint: CHILD PROTECTIVE SERVICES UNIT



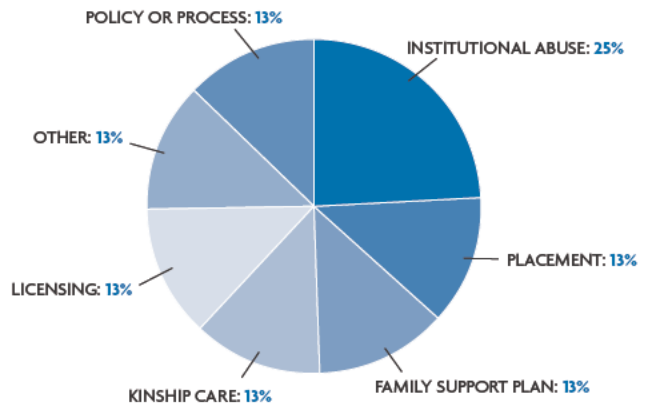
Area of Complaint: CHILDREN'S SERVICES UNIT



*ADDITIONAL CATEGORIES INCLUDES:
Safety Plan, Parent Involvement, and Transition Plan

Source: Maine's Child Welfare Services Ombudsman, November 2004

Area of Complaint: ADOPTION UNIT

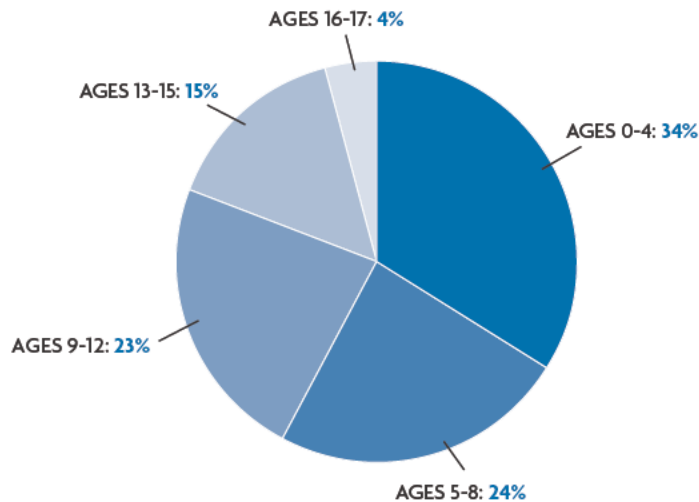


WHAT ARE THE AGES AND GENDER OF THE CHILDREN INVOLVED IN OPEN CASES?

The Ombudsman collected age and gender information for all children involved in Open Cases.

The majority of children involved in complaints to the Ombudsman were eight years old or younger and more than one third were four years old or younger.

Of the children involved in Open Cases, 50% were female and 50% were male.



A total of 149 children represent those involved with 82 Open Cases.

Source: Maine's Child Welfare Services Ombudsman, November 2004

"A person's a person, no matter how small."

– DR. SEUSS

HOW WERE OPEN CASES RESOLVED?

When closing a case, Ombudsman staff document each complaint as Valid and either Resolved or Not Resolved or Not Valid based on the Ombudsman's review.

A Valid complaint is a complaint that falls within the Ombudsman's mandate. That is, the complaint involves one or more units within BCFS and the Ombudsman believes investigating the complaint will positively affect the well-being of a child.

A Resolved complaint is a complaint that the Ombudsman has investigated and has determined that BCFS is following policies and procedures and is working in the best interest of the child or children involved in the complaint.

During the eleven month reporting period, 7% of complaints were considered Valid/Not Resolved at the time the Ombudsman closed the case. This occurs when the Ombudsman has worked with BCFS staff on how to best resolve an individual's complaint but reaches an impasse and must close the case.

53% of complaints were found Not Valid by the Ombudsman.

An Ongoing complaint is one that the Ombudsman is currently investigating.

RESOLUTION	CHILD PROTECTIVE SERVICES UNIT	CHILDREN'S SERVICES UNIT	ADOPTION UNIT	TOTAL
Valid/Resolved	9	12	1	22
Valid/Not Resolved	1	8	0	9
Not Valid	24	45	6	75
Ongoing	10	20	1	31
TOTAL	44	85	8	137

Source: Maine's Child Welfare Services Ombudsman, November 2004

Children have never been very good at listening to their elders, but they have never failed to imitate them.

— JAMES BALDWIN

Looking Forward to 2005

The Child Welfare Services Ombudsman has several goals for 2005. The following is a list of some of the activities the Ombudsman will continue to do in the coming year:

- Advocate for better outcomes for youth transitioning to adulthood, and will work with the Department of Health and Human Services (DHHS) to improve compliance with federal mandates for assessment and transition planning for state wards.
- Advocate for a stronger focus on family support and kinship care.
- Work to improve the effectiveness and efficiency of mental health services available in the child welfare system.
- Support advocacy for children in the State's care and custody to have the same normalizing opportunities as other children, including the right to ongoing and safe relationships with their siblings and relatives.
- Continue a dialogue with Maine's court system on how the Court can support improvement in the child welfare system.
- Work with the Bureau of Medical Services to secure financing under Medicaid for the work the Ombudsman does regarding planning and quality assurance for child welfare services.
- Continue as a member of the Commissioner's Implementation Advisory Team (CIAT) Workgroup on Integrated Services.

The Ombudsman will continue to collaborate with the people and groups that are working toward making Maine more supportive of our families and a safer place for our children. The Ombudsman looks forward to working with the Governor, the Legislature, DHHS and all other stakeholders in Maine's child welfare system.

Children are our most valuable natural resource.

– HERBERT HOOVER

ACKNOWLEDGMENTS

As we celebrate our second year of work to improve child welfare outcomes for Maine's most vulnerable children, we naturally have twice as many people to thank as we did last year.

NAME	ORGANIZATION
JACK NICHOLAS	Commissioner, Department of Health and Human Services <i>For his leadership and support for improvements in child welfare</i>
JIM BEOUGHER	Bureau Director, Bureau of Child and Family Services, DHHS <i>For bringing a new perspective to his position</i>
CHRIS BEERITS	Deputy Director, Bureau of Child and Family Services, DHHS <i>For his support while acting as Bureau Director</i>
PATRICK ENDE	Senior Policy Advisor, Office of the Governor <i>For his advocacy for low income people while at the Maine Equal Justice Project</i>
KIM MOODY (And her staff)	Executive Director, Disability Rights Center <i>For the Center's collaboration and consultation on cases</i>
CARRIE HORNE	Assistant Director, National Alliance for the Mentally Ill - Maine <i>For her collaboration with the Ombudsman Program and her consultation on policy issues</i>
BARBARA KATZ	Director, Family Connections, Families and Children Together (FACT) <i>For her leadership of the Relatives As Parents Project and her contribution to our understanding of the issues facing people who care for their relative's children</i>
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