

CHILD AND FAMILY SERVICES

State agencies battle report release

By KIANNA GARDNER | November 1, 2019

The Montana Department of Justice recently petitioned a judge to review official reports detailing incidents in which social workers with the state Department of Public Health and Human Services reportedly mishandled cases of alleged child abuse or neglect.

The petition, filed in Lewis and Clark County District Court on Oct. 24, asks Judge Mike Menahan to evaluate “findings reports,” which are investigative documents written and compiled by the justice department’s Office of Child and Family Ombudsman.

The ombudsman works specifically with cases in which children were separated from their families — a process that has brought Montana’s Child and Family Services Division under strict scrutiny in recent years by families who say their children were taken without compelling reason to do so. In a special report by the Daily Inter Lake published on Feb. 10, 2019, nearly 20 sources alleged the state’s broken system has been created by years of mismanagement stemming from the state level that also influenced a large number of unnecessary removals.

State law has tasked the ombudsman team, created in 2014, with investigating and improving services for children served by the health department’s Child and Family Services Division.

The office is an “independent, impartial and confidential resource for protecting the rights of Montana’s children and families,” according to a policy and procedures manual.

Employees are required to investigate any request for assistance. The findings, conclusions and recommendations from the ombudsman are then given to the state health department and the families who requested their case be investigated.

To date, the office has produced about 50 findings reports.

THE PETITION is part of the justice department’s lawsuit to make redacted versions of those findings reports public. Names, locations and other identifying factors of families involved in the cases would be blocked or removed from the documents prior to their release.

The Daily Inter Lake has received several unredacted findings reports from families regarding cases handled by employees at Northwestern Region VI of Child and Family Services based in Kalispell, as well as email exchanges involving social workers, Child and Family Services management, attorneys, families and others.

The Daily Inter Lake will not divulge names, locations, families or employees in the reports. However, the documents contain other compelling content that is shareable without the release of identifying information.

The following was taken verbatim from an ombudsman findings report based on one family’s case with Northwestern Region VI in Kalispell:

- The investigation did not follow policy or procedure.
- Evidence indicated multiple professionals acted outside of their scope of practice or contrary to established policy, procedure, and practice. This impacted CFSD gaining a clear assessment of the family functioning.
- No documentation on communication with the court managing the parenting plan actions was found. The active parenting plan ordered 50/50 parenting time. No court order was made or has been made to date to formalize the voluntary agreement.
- It is unclear whether CFSD testified in the court hearings or whether CFSD reports were entered into evidence without testimony.
- The chief ombudsman and deputy ombudsman reported to the acting RA (regional administrator) that the lack of documentation is a trend in Region [VI].

THE PETITION was prompted primarily by requests from two media outlets for copies of the findings reports after both publications — The Missoulian and the Daily Inter Lake — separately received unredacted reports from families.

The lawsuit states a request was received from a member of the media on or about May 2, 2019, and another request was subsequently received from a different journalist.

The request in May came from The Missoulian, which recently reported the newspaper “requested copies of the 42 reports [now about 50] that had been written in the past five years” after receiving multiple findings reports.

The subsequent request was made by the Daily Inter Lake.

In an email from the Daily Inter Lake to John Barnes of the Montana Attorney General’s Office dated June 17, 2019, a reporter requested additional information regarding unredacted findings reports the newspaper received from families and also how to gather additional data and information. At the time, Barnes said the department was currently in the process of “examining what specific information we can release under law and in what form.”

Under state law, the ombudsman is authorized to “share relevant findings related to an investigation, subject to disclosure restrictions and confidentiality requirements, with individuals or entities legally authorized to receive, inspect or investigate reports of child abuse or neglect.”

ACCORDING TO the lawsuit, after assessment and consideration of the two media requests, the Department of Justice determined “that not only the requested findings report, but also all other findings report documents can be redacted in a manner that removes any information that could potentially identify any individual involved with the subjects of findings report, and therefore not implicate any individual privacy rights.”

The department further added that when appropriately employed, redaction offers a means for disclosing relevant public information while protecting a privacy interest.

But the Department of Public Health and Human Services disagrees with the justice department’s assessment regarding “the efficacy of redaction” and views the reports “as confidential and not subject to disclosure under the Montana Constitution,” even if redacted.

According to the petition, the health department further advised it does not agree with the Department of Justice's practice of providing copies of the reports to Disability Rights Montana (DRM), an organization that advocates for people with disabilities, upon request.

However, under the Uniform Declaratory Judgments Act, the Department of Justice is entitled to see and secure a declaration from the court as to whether the redacted findings reports constitute public information and "whether DOJ is authorized to provide unredacted findings reports to DRM upon request." Therefore, the agency is asking permission to file, under seal, redacted and unredacted copies of the reports, and is then requesting the court conduct an in-camera review of the documents.

Jon Ebelt, public information officer for the Department of Health and Human Services, said via email the agency is asking the court to provide guidance on two statutes: one that governs confidentiality of Child and Family Services case records and another that subjects the ombudsman to confidentiality and disclosure restrictions.

As of today, the agency has 38 days left to respond to the lawsuit.

Reporter Kianna Gardner can be reached at kgardner@dailyinterlake.com