Office of the Child Advocate
Advisory Board Meeting Minutes
October 28, 2010

Board Members or Designees Present:
Chair: Gail Garinger, The Child Advocate
Julia Kehoe (DTA)
Jane Tewksbury (DYS)
Laurie McGrath (DOR)
Barbara Leadholm (DMH)
Katharine Folger (MDAA)
Sheila Rudman (MDAA)
Georgia K. Critsley (DCJIS)
Michelle Goldman (EOPSS)
Carol Rosensweig (CPCS)
Dianne Curran (ESE)
Marilyn Chase (EOHHS)
Lauren Smith (DPH)
Nicola Pangonis (OCP)
Angelo McClain (DCF)
Sherri Killins (EEC)
Ilene Mitchell, Probate & Family Court
Anthony Barrows, Governor's Appointee
Barbara Kaban, Children's Law Center of Massachusetts, Governor's Appointee

Other Attendees:
Elizabeth Armstrong, OCA
Susan Cummings, OCA
Jenna Pettinicchi, OCA
Alyson Prahlow, OCA
Maureen Ferris, The Joint Committee on Children, Families & Persons with Disabilities

Meeting Commenced: 3:10 PM

Welcome from The Child Advocate, Gail Garinger

The Child Advocate, Gail Garinger, welcomed attendees. OCA staff, board members, and other attendees introduced themselves.

Meeting Minutes from April 8, 2010 Meeting

Garinger presented the minutes from the previous meeting of April 8, 2010. She reminded the attendees that the minutes are posted online. Board members approved the minutes.

The OCA Mission and our Mandated Functions

Mission Statement: Garinger provided the attendees with a review of the OCA mission statement. The **mission** of the OCA is to improve the safety, health and well-being of Massachusetts children by promoting positive change in public policy and practice. The **vision** of the OCA is that every child is safe and nurtured in a permanent home and that every family is supported and strengthened within the community. The **focus** of the OCA is on at-risk children who are served by the Commonwealth's child welfare and juvenile justice systems.

Responsibilities of the OCA: On a daily basis the OCA staff responds to complaints, review critical incidents and institutional reports of abuse and neglect, and engage in child welfare and juvenile justice systemic and policy work. The OCA staff provided a brief presentation on the office's complaint system, critical incident reporting processes, and a review of the policy recommendations as highlighted in the 2009 Annual Report. Institutional reports of abuse and neglect were not discussed at this meeting as they were presented during the April 8, 2010 OCA Advisory Board meeting.

Complaints: Susan Cummings, the OCA Clinical Specialist, provided an overview of the OCA complaint intake system and the types of complaints the office receives. Complaints come to the OCA via email, phone, and mail. Complaints are mainly handled by the Intake Coordinator, Jenna Pettinicchi and Susan Cummings. The complaints the OCA receives pertain to the following:

1. Probate matters as they relate to divorce cases or a child's voice in court
2. Staff who have been terminated from a program moving to another program, agency, or working with another population
3. Rolling trials
4. The "Rogers" process for anti-psychotic medication for children in state custody
5. Youth aging out of care
6. Questions about DCF processes and concerns with DCF
7. Multiple placements for children and youth in care
8. Individuals looking for legal advice or for the OCA to be an advocate for them. The OCA will often refer the individual to legal services organizations.
9. Foster parents with concerns that they have had a child in their home for a lengthy amount of time and now this child has been reunified with their biological parents.
10. Kin, such as grandparents, with questions about what their rights are and what services they are entitled to while they are raising their kin or grandchildren.

11. Placement resources: individuals with a criminal history wanting to be a placement resource for a child and have been denied as a resource by DCF.
12. Anonymous complaints about a concern for a friend or neighbor
13. Lawyers
14. Service providers
15. Issues regarding DCF Fair Hearings, including timeliness and outcomes.

The OCA receives a wide variety of complaints which help to inform the OCA and to identify trends. In the first year, from April through December of 2008, the OCA received 67 complaints. In calendar year 2009 the OCA received 235 complaints. In 2010, from January through September, the OCA has received 229 complaints. As public awareness of the OCA is growing, the office is receiving more calls and complaints. The OCA has identified a decrease in the calls received from grandparents. This could be related to such things as the release of the Grandparents Guide, which was published by the Executive Office of Elder Affairs, and the work of the Grandparents Commission. The OCA has also identified a decrease in calls from foster parents regarding children returning home after they have been in their care for a long time.

The OCA responds to complaints in a number of ways. The majority of the time callers are referred back to the agency with which they are involved and the OCA staff assist the caller with identifying the resources available to them in order to resolve their concerns.
Callers are encouraged to call the OCA back if their concerns remain unresolved and then the OCA will determine if it is appropriate to contact the agency. The OCA cannot interfere with the decisions of an agency but we can help to clarify processes. The OCA cannot provide legal advice. If callers are looking for legal advice, the OCA will suggest the caller consult with their attorney or GAL or provide the caller with legal resources. The OCA will also refer callers to community resources.

The OCA's website is an important tool for outreach efforts. The OCA is pursuing website updates to include language that is easier to follow and an online complaint form for individuals to fill out and submit directly to the OCA. The OCA has created and begun distributing a Youth Outreach Card to inform youth in care of their rights and resources that are available to them. The OCA also has a toll-free number for youth to access the office.

Critical Incident Reporting: Elizabeth Armstrong, the Deputy Director of the OCA, reviewed the OCA's Critical Incident Reporting processes. She first provided the statutory definition of critical incidents:

> "a) A fatality, near fatality, or serious bodily injury of a child who is in the custody of or receiving services from EOHHS or one of its agencies; or
> (b) Circumstances which result in a reasonable belief that an EOHHS/agency failed in its duty to protect a child and as a result the child was at imminent risk or suffered serious bodily injury."

Armstrong explained that EOHHS has its own reporting procedure for critical incidents and this pre-dated the OCA. Once the OCA was created, it was folded into the critical incident reporting process so that when there is a critical incident involving a child, the OCA receives a copy of the report. In addition to fatalities, the OCA receives reports of incidents of medical emergencies,

child abuse or neglect in the homes of parents with open DCF cases, foster parents or residential facilities, and reports of youth who have perpetrated violence or youth who have been a victim of violence. In 2009 the OCA received 116 critical incident reports from 16 agencies. Of the reports received, 36% were from DCF, 23% were from DYS, 12% were from DTA, 14% were from DMH, and 25% were from other agencies. The "other" category includes EEC, ESE, and DDS. In 2010, the OCA received 55 reports from 7 agencies. Of the reports received 35% were from DCF, 38% were from DYS, 15% were from DMH, and 12% were from other agencies. The "other" category includes Mass. Behavioral Health Partnership, Mass. Commission for the Blind, DTA, and DPH.

After the OCA receives a Critical Incident Report (CIR), the CIR is reviewed immediately. OCA staff meets weekly to determine appropriate follow up, such as contacting the agency for more information and requesting and reviewing records and investigations from agencies. In selected cases, staff attend local fatality review team meetings, go to court to obtain juvenile court records, or meet with district attorneys to learn about criminal investigations into fatalities. After any necessary information is collected the OCA provides information and feedback to the involved agency when appropriate, either in a face-to-face meeting or a written report. The OCA also writes a summary description of critical incidents received over the last year in our annual report.

The OCA welcomes any feedback or suggestions from the Board on how to break down the critical incident reporting data so that it is more useful and it reflects a fair representation of the work of the agencies. One suggestion was that data collection of critical incidents should break down the reporting of a fatality to reflect an incident that occurred in a facility or program as opposed to an incident that occurred in the streets. Another suggestion was to identify children and youth who are involved with multiple agencies.

Annual Report: The OCA filed its 2009 Annual Report on June 30, 2010. The report is available online in PDF form.

Policy Work: In the 2009 Annual Report the OCA identified several policy recommendations. These recommendations included:

1. Psychoactive Medication and the "Rogers" Process
2. Online Mandated Reporter Training
3. Expert Consultation in the Investigation of Child Abuse
4. Restraints and Seclusion
5. Use of Aversives at Judge Rotenberg Center
6. Juvenile Detention Alternative Initiative (JDAI)
7. Alternative Lock-up Programs (ALPs)
8. Competency of Juveniles in Delinquency Cases

Garinger identified Psychoactive Medication and the "Rogers" Process as well as Online Mandated Reporter Training as two of the recommendations that would be discussed further in this meeting.

Garinger brought to the attention of the Board the recent story in the news media about the death of a youth who had previously been deemed incompetent to stand trial in a delinquency case.

Garinger explained that there is no restoration of competency program in Massachusetts, and that youth can be caught in the court system in similar situations. Leadership is being provided on this issue by EOHHS Assistant Secretary Marilyn Chase, who will be convening a group to discuss how to address the needs of this population. Barbara Kaban, the Deputy Director of the Children's Law Center of Massachusetts, provided additional information to the Board regarding a recent appellate case that addressed this issue.

Psychoactive Medication and the "Rogers" Process

Overview of the Rogers process: The Rogers process was developed in Massachusetts as the method for obtaining informed consent for children who are in the custody of the state to take anti-psychotic medications prescribed for them. DCF social workers can consent to routine medical care on behalf of their child clients but cannot consent to extraordinary medical treatment, which includes psychoactive medications. This practice has been in place for 23 years and is codified in DCF regulations. When a prescriber determines the need for medication for a child in the Department's custody, consent must be sought from a judge in the court where the child's custody was transferred to DCF. The judge appoints a Rogers GAL who then looks at the issue of whether or not the medication should be given to the child. The GAL's role is to go out and gather information about the particular child and talk to key stakeholders in the process. The GAL then comes back to the judge with a recommendation as to whether or not the treatment plan should be ordered. Massachusetts is only one of two states that engage the courts in this process of obtaining consent for administration of anti-psychotic medication. Garinger explained that when we examine the issue of psychoactive medication for children in DCF custody, we must think about medication in the context of the overall behavioral health treatment plan.

The Rogers Working Group: In January 2009 a group of people began meeting to discuss the benefits, costs, and efficacy of the Rogers process. The group includes the OCA, DCF, DMH, representatives from CPCS and the Juvenile Court Administrative Office, and researchers from Tufts and Brandeis Universities The group's mission "is to ensure that meaningful, informed consent is obtained when children and youth in the custody of DCF are prescribed psychoactive medication, and to ensure that these children and youth receive psychoactive medications as part of a comprehensive behavioral health treatment plan."

Project with Northeastern University School of Law's Legal Skills in Social Context (LSSC) Social Justice Program: In August the OCA submitted a proposal to the LSSC program, which was accepted. Over the course of the academic year, there will be 15 law students under the supervision of faculty, a lawyer, and a lawyering fellow. The project has three components:

1. Explore how deeply the Rogers process is embedded in Massachusetts law; so if there were to be recommendations for changes, at what level would that have to occur.
2. Develop a strategy for enlisting input from all key stakeholders in the process. Identify individuals in different groups and create interviews, focus groups, and surveys. Determine best plan for getting information.
3. Examine four models from four different states to see how they are obtaining informed consent for children in foster care.

By April the students will provide recommendations as to whether the process should remain as is, undergo some changes, or if there should be an entirely different kind of process. Garinger encouraged Board members who may have had some involvement with the Rogers process to provide the OCA with names of stakeholders they think may be useful for this project.

Psychoactive Medication Working Group: In 2007 a working group regarding psychoactive medications and children was formed. It is co-chaired by Dr. Gordon Harper of DMH and Dr. Roger Snow of MassHealth. The working group collects data regarding polypharmacy in children ages 0-6, and meets quarterly to examine prescribing patterns of psychoactive medication for children. Members of the group include agency personnel and representatives of all managed care entities providing behavioral health services to MassHealth-insured clients. Massachusetts is one of 16 states involved in a cooperative effort to review prescribing practices for children insured by Medicaid. A recent article was published by this group, which showed that after an increase between 2001 and 2005, 40% fewer children insured by MassHealth received psychoactive medication after 2005. The working group has also conducted clinical reviews of identified cases involving polypharmacy in children 0-6.

Online Mandated Reporter Training

Background: In 2008 the child welfare law required all mandated reporters licensed by the state to receive training in mandatory reporting of child abuse and neglect. However, this law did not assign the responsibility for this training to any agency or licensing entity, and did not appropriate funds for the training. The issue of mandated reporter training has been addressed in the OCA's 2008 and 2009 Annual Reports and will also be addressed in the OCA's Comprehensive Plan. The OCA has compared the mandated reporter trainings conducted in other states and has also engaged in conversations with the secretaries and commissioners of EOHHS agencies. There is currently no standardized curriculum in Massachusetts. DCF has published a mandated reporter's guide on its website which identifies the obligations of mandated reporters and what happens when a report is filed with DCF. The Middlesex DAs Office and Child Advocacy Centers created an online mandated reporter training geared for professionals who work in Middlesex County. As of April 2010, 8,600 people statewide had participated in this training.

Update: The Executive Office of Health and Human Services agrees with the OCA that the issue of mandated reporter training is imperative and needs to be addressed. There are, however, fiscal challenges. A decision had been made to draft a curriculum based on existing training resources that exist in the human resources department of EOHHS as well as the in-person training that DCF currently provides. An online training curriculum has been devised and will be piloted first to mandated reporters within the EOHHS agencies. Once the pilot testing is complete the hope and expectation is that the training will be available to all mandated reporters in Massachusetts. Questions related to mandated reporting were raised by several Board members regarding whether underage persons engaging in consensual sexual relations requires an automatic 51A report in every instance. After discussion, there seemed to be general agreement that this issue requires legislative clarification.

The OCA's 5-year Comprehensive Plan

The OCA's Comprehensive Plan will be filed on December 15, 2010. The OCA staff have been meeting with key stakeholders to develop a framework for the overarching plan as well as addressing the 24 points enumerated in Chapter 18C, to be addressed as part of the plan. Armstrong explained that the challenge of recommending a coordinated, system-wide response to child abuse and neglect involves both response and prevention and involves governmental and nongovernmental entities. There is a component of planning that takes place at the state level, but there also must be planning and coordination at the regional and local levels. Armstrong explained that in the process of developing this plan, the OCA has been looking at the work of other people and other frameworks that have been developed for child abuse prevention. One framework in particular that the OCA has found useful is the Pathways Mapping Initiative. One of the initiatives is the Prevention of Child Abuse and Neglect, which was developed through the work of Elisabeth Schorr, a senior fellow at the Center for Social Policy and Harvard School of Medicine, and Vickie Marchand. Garinger and Armstrong have been collaborating with Dr. Schorr and Julie Boatwright Wilson of the Harvard Kennedy School of Government to adapt the Pathways Model to Massachusetts. The OCA has established working groups with many agencies in the state to help develop the plan. The OCA has been coordinating with EOHHS to examine the outcomes used by the agencies to measure their own progress. Armstrong passed out a list of the 24 points to be addressed in the plan and encouraged any Board Members to contact the OCA if they have comments or input they would like to provide.

Discussion

- DCF, DPH, EEC, and CTF just received an award from CPCS. It will go towards supporting the protective factors in the community.
- DCF restructured its field management model and subsequently reduced its regions from 6 to 4. The 29 area offices were left intact.
- DMH has also restructured and now has three areas/regions for adult services.
- There are a small number of cases that come into the Probate and Family Court that involve children in the custody of DCF. Many cases involve children who are being taken care of by other family members and these family members are looking for help. There are few resources for these children and their kinship guardians because the children are not in the custody of the state. The court is expanding its work into the area of guardianship of minors. The court is also working on a project related to special immigrant juvenile status.
- A position has been added at CPCS to monitor the in-person client contact attorneys have with their child clients. This individual would educate the attorneys on the expectations for attorney-client contact with children.
- Updates have been made to the *Grandparents Raising Their Grandchildren Guide*. The *Parents Helping Parents Guide* is now available.
- The Mothers for Justice and Equality had a forum on Tuesday. This forum was made up of mothers whose children have been victims of homicide. Their goal is to work to make sure

that both the community and the government are doing what they can to prevent youth violence and to be as responsive as possible.

- Every school district now has to have a policy on dating violence. This policy must be a written policy on what the consequences will be.
- Legislation has recently been enacted about harassment, anti-bullying and zero tolerance policies. DESE has a lot of information on its website regarding bullying. DESE has been directed by the legislature to put out a model plan so that school districts can create their own plans. The approach that is taken with the model plan is to create a safe school environment.

Meeting Adjourned: 5:10 PM