

May 1, 2015

The General Appropriations Act for Fiscal Year 2015 included as line item 1599-7771 an ANF Reserve Appropriation of \$200,000 for the Office of the Child Advocate (OCA) to select an independent evaluator to assess the administrative hearing process of the Department of Children and Families (DCF). On October 31, 2014, the OCA filed an Initial Quarterly Progress Report with the Legislature indicating that the OCA had selected the Ripples Group to conduct this evaluation.

On January 30, 2015, the Ripples Group filed a Second Quarterly Progress Report and on March 16, 2015 a Preliminary Report with the Legislature. These reports summarized the activities performed by the Ripples Group from November 2014 through mid-March 2015.

Line item 1599-7771 mandates that the evaluator provide quarterly progress reports of its findings to the Legislature. On behalf of the Ripples Group, I am submitting this Third Quarterly Progress report summarizing our activities to date. This report also highlights the preliminary research and analysis findings, and outlines the next steps in the project.

During the Initial phase of the project, the Ripples Group focused on studying the DCF Fair Hearing Process (FHP), meeting with stakeholders in both the DCF Central Office and DCF Area Offices, and formulating and testing hypotheses and proof points to evaluate the timeliness, fairness, and independence of the FHP. Our main activities included:

1. Establishing a Steering Committee that includes representatives from the OCA and DCF.
2. Interviewing 20 subject matter experts from the DCF Central Office staff, various Area Office staff, Hearing Officers, and independent attorneys.
3. Reviewing all relevant documents including the DCF organizational chart, current and previous Fair Hearing regulations, DCF Fair Hearing quarterly reports, Child Welfare League of America *Quality Improvement Report* dated May 22, 2014, and The House Committee on Post Audit and Oversight and House Members of the Joint Committee on Children, Families and Persons with Disabilities *Review of the Massachusetts Department of Children and Families* dated January 13, 2015.
4. Analyzing Fair Hearing data from the DCF electronic database (FamilyNet) from 2005 to 2014 (16,473 lines of data).
5. Benchmarking the Massachusetts DCF Fair Hearing regulations, 110 CMR 10.00, against five other Northeast states (Connecticut, Rhode Island, New Hampshire, Vermont, New York).
6. Observing three Fair Hearings (two in Malden, one in Framingham).
7. Conducting a Fair Hearing Officer focus group at DCF.
8. Presenting initial observations to the Steering Committee on January 14, 2015 and then on March 11, 2015.

Since January 2015, the Ripples Group have initiated the Research and Analysis phase of the project, and started testing our hypotheses using detailed qualitative and quantitative information. Specifically, to date we have completed the following:

1. Fielded an appellant survey to 1,038 past appellants during the 2007-2014 period. This survey closed on March 12, 2015. We have received and analyzed 116 responses.
2. Studied 32 randomly selected Fair Hearing decisions and recordings from the period 2011-2014.
3. Refined our analysis of the FamilyNet data with additional fields from the database and feedback from the OCA and DCF.
4. Enhanced our benchmarking of DCF Fair Hearing regulations against five other Northeast states.
5. Presented our findings to the Steering Committee on April 22, 2015.

### **Fair Hearing Evaluation Preliminary Findings**

This report reflects our **preliminary** findings to date based on all the research and analysis steps mentioned above. It is important to emphasize that we will continue to refine our synthesis of findings in the coming weeks; therefore these preliminary findings are subject to modification in our final report.

Dimension	Key Preliminary Findings
Timeliness	<ul style="list-style-type: none"> <li>• The timeliness of the Fair Hearing Process has been improving significantly since 2010.</li> <li>• The number of backlogged cases is too high for the entire process to qualify as timely.               <ul style="list-style-type: none"> <li>○ The backlog is driven primarily by a steep increase in the number of Fair Hearing requests recently, likely due to high-profile cases, and the limited capacity of the Hearing Officers and Hearing Officer Supervisors.</li> </ul> </li> <li>• Even without the backlog, the current system (capacity and productivity) is unable to cope with incoming Fair Hearing requests; in other words, backlogs are likely to grow if precautions are not taken.</li> <li>• Timeliness mandates in regulations are not being met and are unlikely to be met in coming months and years under the current trajectory.</li> <li>• Massachusetts Fair Hearing regulations favor DCF (the agency) as compared to regulations of other Northeast states.</li> <li>• Not surprisingly, appellants and their attorneys state the Fair Hearing process is not timely.</li> <li>• DCF management systems are not supporting timeliness efforts.</li> </ul>
Fairness	<ul style="list-style-type: none"> <li>• DCF regulations place the burden of proof on the appellant whereas other states' regulations are more favorable to the appellant.</li> <li>• Procedural oversights and breakdowns are common, usually in the Area Office realm. For example, appellants are not receiving their files prior to the Fair Hearing, although they requested them. The management system does not appear to have enough checks and balances against such shortcomings.</li> <li>• The timeliness issues outlined above undoubtedly impact fairness as well.</li> <li>• Furthermore, appellants indicated they did not fully understand their Fair Hearing rights. In our observations, many appellants in fact failed to argue their positions well with supporting evidence.               <ul style="list-style-type: none"> <li>○ Having an attorney seems to lead to more frequent reversals. But we also observed that in some cases an unprepared attorney may weaken the appellant's case.</li> </ul> </li> <li>• Even appellants who had their cases reversed voiced doubts about the fairness of Fair Hearings. Most of their concerns appear to be about the original investigation carried out by the Area Office. They are more positive about Hearing Officers.</li> <li>• In our professional judgment, the Hearing Officers are qualified, experienced, well-trained, and conduct hearings in a professional</li> </ul>

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	<p>manner.</p> <ul style="list-style-type: none"><li>• There is no evidence of systemic bias or discrimination by race, gender, age, language or marital status in timeliness.</li><li>• There is no evidence of systemic bias or discrimination by race, gender, age, language or marital status in Fair Hearing reversal rates.</li><li>• Superior Court appeals have remained steady over the last ten years. It is very rare for the Superior Court to reverse the Fair Hearing decisions.</li></ul>
Independence	<ul style="list-style-type: none"><li>• The Fair Hearing Unit is under the DCF General Counsel who reports to the DCF Commissioner. Massachusetts regulations incorporate multiple Hearing Officer control measures including a required DCF Commissioner review of reversal decisions. Other Northeast states regulations give more independence to Hearing Officers.</li><li>• Not surprisingly, appellants' perception of independence is poor. Appellants clearly struggle to distinguish between the Fair Hearing Unit and DCF at large. Attorneys indicated mixed views on the independence of the Fair Hearing Officers.</li><li>• Under the regulatory framework, we have observed the Hearing Officers to act impartially and independently. Hearing Officers privately acknowledge their freedom to act independently, which is also echoed in Area Office interviews.</li><li>• Reversal rate trends further support the independence of Hearing Officers: reversals have been rising steadily since 2005 and particularly after 2010. About a fourth of cases result in a reversal of the Area Office decision.</li></ul>

In the coming weeks, we will focus our efforts on synthesizing all findings to date, distilling our recommendations to the Legislature and OCA, and updating the Steering Committee by mid-May. We anticipate filing our Final Report, including our recommendations, on June 30, 2015.

We would like to thank the Legislature and the OCA for the opportunity to carry out this important project.

Regards,

Mete Habip  
The Ripples Group