

MASSACHUSETTS CHILD WELFARE COALITION

July 14, 2021

Dear Chair Gomez, Chair Finn, and Members of the Joint Committee on Children, Families and Persons with Disabilities,

The Massachusetts Child Welfare Coalition submits this written testimony in response to the Joint Committee's May 4, 2021 Oversight Hearing on the Office of the Child Advocate (OCA) Investigative Report into the death of David Almond. Coalition members have reviewed the Report that was the subject of that hearing, and many of us attended the hearing virtually.

Overarching Response to OCA Report and Testimony

Our overriding concern is that significant and systemic operational dysfunction at the Massachusetts Department of Children and Families (DCF) led to the tragic death of David Almond. This concern is elucidated by the OCA Report and the oral testimony before the Joint Committee.

While the OCA Report accurately identifies systemic operational dysfunction at DCF, it primarily recommends policy changes, which offer more of the same "tinkering around the edges" that the Commonwealth has been doing since the death of Jeremiah Oliver in 2014. Such minor shifts do not address the real problems that led to the terrible outcome in the Almond case and that negatively affect the lives of thousands of children and families involved with DCF on a daily basis. We profoundly understand that there are no easy fixes here, and, most importantly, that implementation of the OCA Report's recommendations is not the sole answer. We believe that Joint Committee members understand this juxtaposition and are willing to take the time to thoroughly examine our child welfare system and take bold action for the sake of more than 15,000 children and young adults in placement with DCF annually and tens of thousands more who are otherwise involved with DCF.

We urge the Joint Committee members to, at a minimum, seriously consider and address the following key issues and concerns in response to the OCA Report and subsequent Joint Committee Hearing.

Systemic Failures with DCF Operations, Accountability, and Oversight

The primary issues in the Massachusetts child welfare system, as identified by the OCA Report, are operational problems, not flawed policy or lack of training. New policies will not resolve these issues unless operational and management deficiencies are addressed. The specific operational, accountability, and oversight issues identified in the OCA Report and by the Joint Committee hearing include:

- DCF reunification policy was not followed by the staff and management involved with the Almond family.
- DCF's internal management and accountability checks and balances failed.
- DCF's internal Foster Care Review Unit failed this child six times, including prior to the COVID-19 pandemic.
- DCF social workers were not visiting children or families or homes in-person during the pandemic. Governor Charlie Baker included DCF social workers in the definition of "public agency workers" and, therefore, as "essential" workers. Once PPE and protocols were in place for the safety of all, social workers should have resumed operations in person to ensure the safety and well-being of children and young adults in DCF's care.

The issue is not that the DCF policies and review structures do not exist, but rather that they are not followed.

Our Recommendations

- Require a plan to address the DCF systemic operational issues as identified in the OCA Report, including an assessment of the senior management team (conducted by a Consultant external to DCF and the current oversight structure of EOHHS and OCA).
- Ensure the reunification process benefits from greater direct engagement of parents, children, and their attorneys in transition planning and decision-making.
- Carefully consider the implications of using predictive analytics—a highly controversial tool that may not keep children safe and can increase racial disproportionality. There is no indication that using this tool would have prevented the Almond tragedy, which resulted from a failure to follow existing policy. If used, predictive analytics require specific and enforceable safeguards, including robust oversight that, for efficacy reasons, cannot be done by the agency using the tool.
- Favorably vote on S.88/H.211 to make the foster care review process independent of DCF as one way to ensure oversight, transparency, and accountability.

- Assess the management decision regarding prescribed in-person social worker visits as compared to the requirements for “essential workers” to clarify what should have been expected and what will be mandated in future situations.

Racial Disproportionality in the Massachusetts Child Welfare System

DCF data demonstrate significant racial and ethnic disproportionality at every stage of involvement with DCF, and the OCA Report did not consider these disparate impacts in its recommendations.

Our Recommendations

- All legislative action regarding DCF must consider the existing disparities in the Massachusetts child welfare system and the potential impact of the considered policy, procedure, or operational change on those disparities.
- Support the Budget Conference Committee’s provision in section two of item 4800-0038, that requires DCF to provide a racial impact analysis and statements before implementing reforms funded by the budget, vote to maintain in the event of a Governor’s veto and support its robust implementation.
- Prior to implementation, evaluate the OCA Report’s recommendations regarding additional restrictions on reunification decisions for their potential increase in disproportionate impact on families of color.
- Analyze decision-making reports and data at various points in the DCF and court processes to understand the impact of implicit bias and disparities. Develop a plan to address bias and disparities before making further changes that will compound this ongoing problem.
- Ensure that affected families have an opportunity to provide meaningful input into any changes in child welfare policies and procedures prior to adopting them.

Limited View of the Juvenile Court’s Oversight Role in Care and Protection Proceedings

For the last twenty-five years, the Massachusetts Juvenile Court and the attorneys who practice in it have largely deferred to DCF when determining what is in the best interest of children. This

pattern of practice stems from an overly broad interpretation of two Massachusetts Supreme Judicial Court cases: *Care and Protection of Isaac*, 419 Mass. 602 (1995) and *Care and Protection of Jeremy*, 419 Mass. 619 (1995), commonly referred to as “*Isaac and Jeremy*.” We believe that the Court can and should provide more proactive oversight of DCF in individual cases, which in turn leads to the best outcomes for children and families, including ensuring that children achieve timely permanency (i.e., exit the foster care system to a safe and stable caretaker as soon as possible).

Our Recommendations

- Favorably vote on H.1787, a bill to clarify the definition of custody in care and protection of children proceedings to ensure that the court may exercise optimal oversight of such proceedings.
- Clarify, by statute, the judicial authority to act in the best interests of children throughout the pendency of the proceedings, including by making orders directed at DCF.
- Strengthen Court oversight of the federal requirement that DCF make “reasonable efforts” to keep families together or, later on, to reunify families. This requirement is a key component of child and family well-being.

Lack of Appropriate Support for Families involved with DCF and increasing the Number of Families Involved with the Child Welfare System

Many of the OCA Report’s recommendations would result in DCF casting a wider net to involve more families in the child welfare system and then keeping families in that net longer. Pushing more families into the child welfare system is not the answer when other support systems would be more appropriate and less traumatic.

More families in the system means exacerbating existing issues with poor service delivery, as evidenced by extensive waitlists for services in which family members **must** participate, according to their DCF-crafted Action Plans. Wait times are particularly stark for providers with in-demand expertise. Meanwhile, DCF does not track what services it provides or families’ utilization of those services, which present significant barriers to successful treatment, support, and reunification and to the achievement of other permanency goals for children.

There is also widespread and long-term concern regarding the low availability of DCF placements—of all types (e.g., kinship, foster care, third party, or congregate care)—and the appropriateness of placement matches.

Our Recommendations

- Examine the services DCF requires families to use and the shortages within those sectors to expand, improve, and fund services that prevent DCF involvement and ensure timely achievement of appropriate permanency plans for children and young adults already DCF-involved.
- Implement the federal Family First Act, which would provide federal funding to support Massachusetts in improving and expanding services to families that would keep more children safely at home and would limit the use of, and improve the quality of, congregate care facilities for youth in DCF custody.
- Favorably vote on H.247, which would establish a stakeholders’ committee on Family First prevention services and racial equity, so that parents and others with direct DCF experience and other experts work with DCF to ensure services meet families’ needs and reduce racial disparities in foster care.
- Fund a “pre-petition” legal advocacy program and pursue the fifty-percent federal reimbursement for such a program. A pre-petition program would provide families with access to multi-disciplinary legal service attorney teams which can help resolve legal issues that, when unresolved, often lead to DCF removing children from their homes and filing a care and protection petition. Such legal services include securing or maintaining housing, accessing public benefits, obtaining restraining orders, and creating safety plans. These programs have been very successful in other states (e.g., New Jersey, Michigan, and Iowa) with helping children remain safely in their homes by addressing systemic issues of access and poverty.

Confusion about the Role of Education and Educators for Youth Who are DCF-Involved

The OCA Report does not closely discuss whether DCF and education partners followed special education and school stability laws in the Almond case. Instead, the Report directs its attention to the responsibility of school personnel to closely (and perhaps, inappropriately) monitor family dynamics, even when DCF and the Court are involved and responsible to perform that role.

Educators keep children physically and emotionally safe by building positive, meaningful relationships with them and their families—not by surveilling and reporting them. The

importance of positive relationships between children and school personnel further underscores the need for DCF, the Massachusetts Department of Elementary and Secondary Education (DESE), and local education agencies to ensure school stability and success for youth involved with DCF.

Our Recommendations

- Ensure that the special education and school stability rights of children involved with the child welfare system are protected, particularly when a child changes home placements.
 - Favorably vote on S.99 “An Act Relative to Foster Kids”
 - File legislation that ensures kids in foster care have the right to stay in their school of origin through the end of the the school year when foster care ends (similar to the rights homeless children have under the McKinney Vento Act)
 - File legislation that ensures kids in foster care have the right to attend the next feeder school in their school district of origin (similar to the rights homeless children have under the McKinney Vento Act).
- Support DESE’s efforts to ensure that educators have the flexibility to think critically about each student’s situation and have the time and resources to build trusting, positive relationships with students. One way to do this is to provide more funding to the DESE Safe and Supportive Schools Framework and Self-Reflection Tool that focuses on creating trusting, positive relationships between schools, students, and families.

Conclusion

Our existing child welfare system presents many significant issues and challenges, and it is time to comprehensively review the successes and shortcomings of previous reform efforts. We have outlined specific issues above in response to the Almond Investigation and the Legislature’s desire to act. Clearly, the problems outlined in the Almond case call for urgent action; however, we implore you to thoroughly examine the years of policy reforms and cycles of action in response to tragedies that have resulted in little to no positive impact on the well-being of children in the Commonwealth’s custody. The OCA Report’s recommendations, as presented, do not call for the changes needed to appropriately support children and families.

Representatives of the Coalition are available to provide research and references, answer questions, and facilitate a more robust discussion on any of the issues described above. We look forward to those conversations.

Thank you for the opportunity to submit this written testimony.

Sincerely,

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On behalf of the organizations of the Massachusetts Child Welfare Coalition, a coalition of independent advocates seeking meaningful reform of the Massachusetts child welfare system:

Central West Justice Center

Children's Law Center of Massachusetts

Citizens for Juvenile Justice

Disability Law Center

Freitas & Freitas, LLP

Friends of Children

GLBTQ Legal Advocates and Defenders

Greater Boston Legal Services

Massachusetts Advocates for Children

Massachusetts Law Reform Institute

Mental Health Legal Advisors Committee

More Than Words

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