State of Alaska
Ombudsman

INVESTIGATIVE REPORT

J2011-0222
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF CHILDREN'S SERVICES

OFFICE OF THE ALASKA OMBUDSMAN

June 1, 2012

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INTRODUCTION

Few government agencies have greater potential power over an individual than a child welfare agency. With the exception of the criminal justice system, which may take one's money, one's freedom and, in some states, one's life, it is difficult to imagine a more fear-inspiring authority than the power to take away a person's children.

With such power, the potential for injustice and harm is great if a child protection agency makes a mistake. Nationwide, stories reporting tragic harm to children when child protection agencies fail have become a tragic part of the daily news feed. Even in the less sensational cases, a mistake that is not quickly rectified may scar a child for life.

Despite being charged with such awesome responsibilities and a delicate mission, in many or most states child protection agencies suffer from chronic underfunding, overwhelming caseloads, high staff turnover, and employee burnout. Under these circumstances, mistakes and missteps are unavoidable.

To help address these concerns, the Alaska Legislature has mandated that Alaska's child protection agency adopt a regulation providing for a grievance process so that affected individuals may obtain prompt attention when they believe something has gone wrong. Alaska's Office of Children's Services (OCS) has adopted a regulatory grievance procedure, and made forms to file grievances available in the agency's offices and on the agency Website. When OCS receives a grievance, the law requires the agency to evaluate the grievance within three working days, and if the subject of the appeal is proper, to begin efforts to resolve the matter by first scheduling an informal meeting with the grievant within ten days from the time the grievance is filed. While the process principally protects the welfare of children and the rights of families, it also serves as an important tool for the agency. Properly administered, the process provides a tool for OCS to "capture" complaints and quickly and efficiently put them to rest. It could also help agency management diagnosis problem spots and develop better training programs.

Despite OCS's legal obligation to address grievances promptly, the Ombudsman has observed that the system does not always work as it should. For example, in 2009, a child's grandfather believed that OCS actions were resulting in harm to his grandchild. As he dealt with OCS to resolve the matter, the grandfather felt that certain social workers were treating him unfairly

because of cultural bias. To remedy these problems, the grandfather obtained the proper form and filed a grievance.

In spite of its legal obligation to act within three days, OCS did not respond to this grievance at all. After more than a month and at the urging of the Ombudsman, the grandfather was able to arrange a meeting with an OCS children's services manager, at which time he presented a date-stamped copy of the grievance form he had submitted. The agency had no records of the grievance form having been received; it had apparently been lost or thrown away. The manager responded by assigning the grievance to a supervisor to review; the supervisor in turn took no action and did not respond. Three months later the grandfather filed another grievance; again, the agency did not respond or even acknowledge the grievance.

Eventually the grandfather contacted the ombudsman, who in turn confronted OCS. OCS admitted that it had not taken timely action on the grievances. To remedy the situation, the agency skipped the required informal meetings with the complainant and convened a regional panel, the final level of appeal within the agency before a case may go to court. The panel investigated and ultimately concluded that the agency had not erred in the way it had handled the grandchild's case. As to the complaint of prejudice, the panel concluded it had no authority to even consider the professional manner of an OCS worker, and it declined to even review the complaint of racial or cultural prejudice, except to make a general statement in its report that it was "supportive of continued training for all workers re: culturally appropriate language, and conduct with Alaska Native families".

The grandfather who filed this grievance never learned the outcome; more than a year and a half after the first grievance was filed, the panel sent the grandfather a brief letter saying it could not tell him the result of his complaint because he was not a party to the child's case. The letter did not inform the grandfather that he had the legal right to appeal the decision to the Superior Court. Though it was not required to, the panel sent a courtesy copy of its report to the director. The panel then disbanded, and as far as the Ombudsman can tell no action was ever taken as a result of the panel's report.

This story is not, unfortunately, an isolated fluke or rare occurrence. Summaries of complaints where OCS staff failure to respond to grievances in accordance with OCS regulations have been excerpted on Page 24 of this document. With similar anecdotes accumulating in her files, the ombudsman determined that a review of the entire OCS grievance process was in order. This investigation was undertaken in an effort to find the root causes of problems with the OCS grievance process, and to find practical suggestions to help the agency remedy these problems.

Additionally, during a 2011 management review of the Office of the Ombudsman, the OCS Director complained that the Ombudsman was not routing all OCS complainants into the agency grievance policy as the ombudsman customarily does when handling complaints against other agencies. The author of the management review stated that the Ombudsman was not affording OCS "due process" when people complained. The ombudsman's response to OCS complaints reflected more than two decades of historical ombudsman concerns about the OCS complaint and grievance process. At one point nearly 20 years ago the Anchorage DFYS manager asked that the ombudsman Anchorage Regional Director *not* route complainants into the grievance process "because it doesn't work."

Because the ombudsman's historical observations of the OCS complaint process were negative the ombudsman determined it appropriate to formally investigate the OCS grievance process to determine its effectiveness.

SUMMARY OF COMPLAINT J2011-0222

The ombudsman opened this investigation on her own motion[1] to investigate the following questions regarding the agency procedures for handling grievances against the Office of Children's Services (OCS):

- Has the OCS grievance process been carried out in a fair and efficient manner?
- Have citizens been adequately notified of the OCS grievance process?
- Have OCS personnel responded consistently to grievances filed by citizens?
- Has the agency responded to grievances in a timely or adequate manner?

Although this investigation was not prompted by a particular complaint, in order to conform to AS 24.55.150, these questions are characterized in this report as an allegation, as follows:

> ***UNREASONABLE: In the administration of the Grievance Procedure under 7 AAC 54.205 – 240, The Office of Children's Services has not carried out the grievance process in a fair and efficient manner, has not adequately notified citizens of the process, has not responded consistently to grievances filed by citizens, and has not consistently responded to grievances in a timely or adequate manner.***

Ombudsman Linda Lord-Jenkins gave written notice of investigation to OCS Director Christy Lawton on July 22, 2011, in accordance with AS 24.55.140. Assistant Ombudsman Dale Whitney investigated these allegations with the assistance of Ombudsman Intake Assistant Elizabeth Atkins and Assistant Ombudsman Beth Leibowitz.

SUMMARY OF THE OMBUDSMAN'S FINDINGS

This investigation reveals that while most personnel of OCS generally make efforts to promote fairness and efficiency in the handling of complaints, the structure of the OCS grievance procedure is so cumbersome and inherently difficult to administer that the process frequently fails to provide a fair and reasonable method of recourse to aggrieved individuals. The ombudsman provides recommendations for a thorough top-down overhaul of the system that includes re-writing applicable regulations to be easier to understand and follow, re-writing applicable policies and procedures to be clearer and to conform to the regulations, and training OCS employees at all levels.

The grievance process as it currently exists is ineffective. While it is true that in a number of cases grievances are properly heard and disposed of, the handling of grievances is inconsistent and erratic across the agency. In many cases the system is not applied at all. Complainants are often unaware of the procedure, and when formal grievances are filed, they are likely to be handled in inconsistent ways, depending on which office or even which employee they are submitted to. The process is not tracked on an agency-wide basis. There is no way for the agency

[1] AS 25.55.120.

as a whole to know how grievances have been handled, or even how many have been filed. Upper management is aware of these problems and very interested in resolving them, but there appears to be a sense of frustration at the size of the problem and the difficulty of formulating an effective method to solve it across the entire agency.

The problems with the grievance process are, for the most part, not traceable to error, neglect or malfeasance on the part of current OCS personnel. To the contrary, personnel at all levels of the agency appear to be doing their best to make the system work, and have at least given thought to possible improvements. Efforts have occasionally been made to unify and reform the system in recent years, but these have never succeeded. Efforts at system-wide reform are hampered by OCS's high turnover rate, constrained resources, and the constant press of other more urgent business. Nevertheless, at all levels of the agency there is a desire for improvement in the system and for additional training. Institutional resistance to change does not appear to be a problem in this case.

The root of all problems with the OCS grievance process is the governing regulation. Since being amended in 2006, this regulation has been defective on its face. The regulation does not provide for a true complaint resolution and decision making process. The regulation is cumbersome, convoluted, and extremely difficult to apply.

While there are also problems in the Policy and Procedure Manual and in the practical implementation of the process, these problems can all be traced to the regulation, and are not likely to be effectively solved until the regulation is amended or, better yet, replaced entirely. With no workable structure to build on, current sincere efforts to improve and reform the process are likely to end in frustration, or at best result in temporary improvements that will last only as long as current personnel remain with the agency.

INVESTIGATION:

Methodology

The investigators conducted two large surveys of individuals involved in the OCS Child in Need of Aide process: the parents, grandparents and relatives of children in custody, and the agency caseworkers and their supervisors.

The Ombudsman investigator conducted in-person or telephone interviews with supervisors and OCS Children's Services Managers as well as OCS Director Christy Lawton. The investigator also consulted with the Office of Administrative Hearings.

The Ombudsman Intake Assistant sent out more than 380 surveys to individuals who have complained to the ombudsman about OCS from 2009 through 2011.

The investigator also conducted an extensive analysis of the OCS Statutes, Administrative Code, and the OCS Policy and Procedures Manual governing grievances. The investigator also reviewed grievance regulations from other State of Alaska agencies.

The ombudsman also reviewed all ombudsman complaints where grievances were a component from 2000 to the present date.

Ombudsman's Statewide Survey of OCS Employees

The ombudsman investigator surveyed a random selection of OCS employees from all areas of the state, including 20 supervisory and subordinate employees. Each participant was asked the same questions regarding the grievance process, except that after the first five interviews a question was added about training, because nearly all of the first survey participants spontaneously mentioned a desire for additional training. The questions were as follows:

1. Are you familiar with the OCS grievance process?

Answers to this question ranged from complete ignorance to thorough knowledge of the process. Awareness of the process appeared to be closely related to the employees' experience level, with new employees less likely to be aware of the process and more experienced employees having greater knowledge.

2. What is your understanding of how the grievance process works?

Again, answers to this question showed a wide range of knowledge about the process, but in this case variation was related to the employee's level. Lower level employees often were aware of the grievance form, and knew to submit the form to a supervisor, but had little knowledge of the process beyond that. Supervisors generally had greater knowledge about the entire process.

3. Have you received any training on the grievance process? If so, what kind of training?

None of the employees surveyed reported ever having received any kind of training about the grievance process. All of the knowledge they had was acquired on the job.

4. How many grievances have you handled or dealt with? (estimate ok – provide time frame)

Answers to this question showed that grievances are uncommon, and that OCS employees spend very little time dealing with them. Supervisors generally said they dealt with about one grievance per year or less, while lower-level employees have often had no experience at all in dealing with grievances.

5. How does OCS make individuals aware of the grievance process?

Like many of the questions, the answers varied widely to this question. Employees who had never heard of the grievance process obviously could not answer the question. At the other end of the spectrum, some employees were aware that information about the process is available on the agency's Website, that brochures are available, and that the parents' rights brochure contains information about the grievance process.

6. Does your office display or provide grievance information in the office lobby?

Answers varied, but a surprising number of employees said they did not know and would have to actually go out in the lobby and check.

7. When a child is taken into custody, does the agency provide any information to the parents about the grievance process?

Answers varied depending on the employee's position. Employees who deal directly with families when children are taken into custody were aware that the parent's rights brochure contains information about the grievance process. Some employees reported that they gave

parents the brochure as the starting point of a conversation, and then discussed with parents all of their rights, including the grievance process.

8. To your knowledge, is there a process for tracking or keeping records of grievances?

Most employees did not know. Supervisors were aware that there was no formal process; once a complaint was dealt with, the matter was considered closed. Records would be kept in an individual child's or parent's file, but not in a central registry or database of grievances.

9. To the best of your knowledge, do regional and field office supervisors and managers routinely report to upper management about incoming grievances, for example with a monthly report or log summarizing complaints and results or solutions?

While many employees assumed such reports were made, none had any specific knowledge, except for supervisors who reported that there was no formal procedure for reporting to upper management about grievances. When grievances were resolved at the supervisor level, no report of any kind was made.

10. Do you think additional training on the grievance process would be valuable, or do you think it would take up time that could be better spent on other things?

This question was added after the first five surveys, because all five suggested that additional training would be helpful. With the exception of just one person who felt that time would be better spent serving families, employees unanimously agreed that more training would be valuable. Many employees cautioned that training should not be in excessive depth or unnecessarily time consuming. Some felt that training should be more extensive for supervisors and less so for field workers. However, there appears to be an almost universal desire among agency employees for training about the grievance process.

11. Do you think having specific written procedures for dealing with grievances would be helpful, or do you think written procedures would be unnecessarily burdensome?

The intent of this question was to determine whether employees saw value in having a formal process. Because of the way the question was phrased, the answers were not particularly helpful. Most employees are aware that there is a book of written procedures, and because this manual is an essential tool for most things OCS does, the respondents seemed unclear on what the question was asking.

12. Do you have any comments or observations about the grievance process you would like to share?

Most employees did not have any particular insights or comments they wanted to share. One employee suggested that in a rural office, the value of a formal grievance process was limited. According to this employee, in the village there is constant communication between the OCS employees and all members of the community and problems are discussed in and out of the office and at any hour. A formal grievance process with a panel review in a different town was likely to be seen as far less valuable than a local meeting with village leaders, family members, or elders.

Survey of OCS Clients Who had Filed Complaints with the Ombudsman

A search was performed of the Ombudsman's caseload database over the period from 2009 through November 2011 for all complaints involving OCS. Surveys were sent to 382 selected former complainants. A scant 28 people completed and returned the survey form; a 7 percent return rate. While statistically this ratio of responses does not present a complete picture of the grievance issue from the complainants' perspective, the ombudsman felt it important to include the breakdown in the text of the report. It must also be noted that not all of the answers will add up to 28 respondents; some people selected more than one response to any given question.

1. How are/were you involved with the Office of Children's Services?

10 were parents, 7 grandparents, 4 were foster parents and 4 were others.

2. What was the subject of your complaint?

Foster parent:	2
Adoptions:	1
Placement:	10
Visitation:	10
Notice:	3
Removal:	11
Breach of Confidentiality:	2
Agency Unresponsive:	8
Failure to Investigate Report of Harm:	6
Other:	6

3. Did you ever receive information about the OCS grievance process from OCS?

Yes:	5
No:	17

4. If yes, after what point in the process were you provided the information by OCS?

Initial complaint:	0
Removal:	1
Adjudication:	0
Request for Grievance:	5
Other:	5

5. What form did the grievance information come in?

Piece of Paper:	4
Packet:	0

Brochure:	1
Verbal:	3
Online:	3
Other:	3

6. Did you file a grievance with OCS before or after contacting the ombudsman?

Before:	3
After:	4
Did not file:	14

7. If you did not file a grievance, why?

Did not know about the process:	12
Confused by process:	3
Unable to obtain form:	1
Fear of Retaliation:	4
Other:	3

8. If you did file a grievance, did anyone from OCS contact you?

Yes:	2
No:	8

9. Who contacted you?

Five answers were received, saying an "OCS public relations representative," an "office worker," a specific name, and in two cases "nobody".

10. Did OCS tell you if your complaint was grievable?

Yes:	0
No:	14
Don't know:	4

11. Were you sent through the grievance process with an ungrievable complaint?

Yes:	0
No:	11
Don't Know:	0

12. Prior to contacting the ombudsman, were you aware of the OCS grievance process?

Yes:	5
No:	17

The reverse side of the survey contained two sections, one for respondents who did file a grievance, and one for respondents who did not. These questions were more open-ended, calling for narrative responses:

- If you did file a grievance:
  - Who did you contact within the agency to initiate the grievance process?
  - Who handled that complaint and at what level of management?
  - What was the outcome?
  - Did OCS respond to your complaint in writing or verbally?
  - Do you feel that the grievance process was fair?
  - Are you satisfied with the outcome?
  - Additional comments:
- If you did not file a grievance:
  - Did you attempt to resolve your complaint with OCS more informally?
  - Who handled the complaint and at what level of management?
  - What was the outcome?
  - Did OCS respond to your complaint in writing or verbally?
  - Are you satisfied with the outcome?
  - If you did not contact the agency to grieve formally or informally, why?

The answers to these questions are difficult to quantify. Because of the narrative format, many of the respondents talked about the details of their particular cases, rather than the grievance process. In many cases, the strong emotions lingering from the respondents' cases appeared to make it difficult for them to focus on the mechanics of the grievance process; they had other things they wanted to talk about. A number of respondents who did not file grievances stated that they were unaware of the process. Several answers revealed that the respondents believed, and still do, that the Ombudsman's office *is* the OCS grievance process.

The best conclusion that can be drawn from the answers as a whole is that the respondents were confused by or generally unaware of the grievance process, or if they were aware of the process, they didn't understand it.

OCS Children's Services Managers Discuss the OCS Grievance Process

The most useful and revealing element of this investigation was interviews with four Children's Services Managers covering all regions, and the Social Services Program Administrator who supervises them. As the persons responsible for convening and running regional panels and reviewing supervisor decisions, these individuals are the best-positioned people in OCS to comment on the state and workings of the grievance process. Whether through telephone interviews or e-mailed surveys, all of these individuals provided extremely candid, thorough, and thoughtful answers. While the same questions were put to each of these individuals, narrative responses, related thoughts and ideas, and discussion were encouraged.

The quotes below are excerpted from their answers to the questions, followed by some additional comments. Reading the full transcript of these interviews provides an interesting insight into how the process is actually working now across the state. The variation in style in the following quotes is explained by the fact that some of the excerpts are transcribed from recordings of spontaneous answers during telephone interviews, while others have been copied from prepared

written comments. Bulleted paragraphs represent quoted material. The different responses are divided by asterisks.

1. Based on your experience, do you have any general comments or observations that come to mind about the grievance process, i.e. how it is working, not working, needing improvement, etc.?

- . . . my general thoughts are that it's not working very well. We know that it's not working very well. There's delays that are throughout the different areas in the system, and we're well aware that it needs to be improved on numerous angles . . .
- I haven't been involved in that many of them, but our policy needs to be clarified. Our policy, I think, is kind of old. And actually, the first one that I did, really I needed to actually ask for some help on because our policy wasn't clear. That would be my big thing, is we need clearer policy on it.

*** * ***

- Since in this position, grievances have become a large piece of my job. With little direction on this topic coming in, I read through both the OCS policies and the Administrative Codes, only to feel further confused. I had to read them multiple times to have a clear understanding of the process. I then took those and rewrote them into simple step by step procedures and distributed to my supervisors and managers. Overall, the timeframes have been incredibly difficult to adhere to with the number that come in weekly in addition to regular duties

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- *From my limited experience the process seem*s to be unclear and cumbersome both from the complainant's perspective and from OCS' perspective.

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- The grievance procedures are adequate, but confusing and can be subjective at times. There are always gray areas in regards to a person's right to grieve an event that need to be discussed further. The time lines are good but there are times when a grievance requires file review which may eat away at some of that time. An example is: the grievance [Policies & Procedures] state that someone cannot grieve an event that is more than a year old. Yet, if someone was not informed of their right to grieve, they should be allowed due process regardless of the timeline. If they were informed of their right, then the timelines apply. The grievance forms do not clarify the rights of the foster parents nor does OCS Policy, which needs to be adjusted to be more inclusive. OCS employees are less familiar with administrative code than CPS policy and procedure.

  Administrative code is referenced in the grievance P&P (Policy and Procedure) and much of the [grievance] policy is built upon it, but I think that most employees would struggle to access Administrative Code and have a limited understanding of its authority in regard to CPS work. There may need to be a clearer blending of the two and more training as to how AAC applies to the work we do as well.

2. The regulations governing grievances, 7 AAC 54.205-240, refer to "regional managers" and "regional administrators." To your understanding, who are the actual people in OCS who would be considered regional managers and regional administrators under the regulations?

The respondents agreed that "regional managers" are children's services managers.

3. How many grievances have you been involved with? As best you can, please break this down into a time frame, and how many of them occurred while you were in your current position as manager and how many you were involved with in previous OCS positions you may have held.

Generally, the various Children's Service Managers said they handle what could be described as a handful of grievances per year, roughly between one and five. An extraordinary exception is Anchorage, where grievances are now being filed at the rate of about one per week. One CMS stated:

- I have been involved in several formal complaints over the past 2 years and 10 months. When I was first employed our region did not keep track of grievances or how they were dealt with. We have recently begun tracking them and I have 11 complaints logged that I have been involved in. There are still difficulties with this system and we are now developing a new protocol and training for addressing grievances. I have recently learned that not all the supervisors or previous managers understood the policy and several grievances were left in files or kept at the front desk and not fully addressed beyond informal meetings or telephone calls. All have occurred in my current position as Manager. I have been involved in several informal complaints that were resolved with communication and direction from regional management and supervisors.

4. In the grievances you have handled, would you say there was strict adherence to the procedures outlined in the regulations, or would you say there was more of an ad hoc approach made with the view of adhering to common sense and the particular needs of the people involved?

- I would say that the ones I've been involved with, I've tried to follow the regulations exactly as they, as they're put out in the, you know, they're pretty structured and within certain amount of time you'll have a face-to-face meeting and within a certain period of time you'll get the [Regional] panel together, that kind of stuff. The timelines have not always been met. But I, speaking for myself, always tried to stick as much as I could to what the grievance procedure was, and then referenced to policy.

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- I don't know what the regulations say. . . . I think our [grievance] policy is generally based on regulations and statutes, but I, I wouldn't even know where to begin to look for the regs.

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- Unfortunately, the process has been ad hoc. Some managers respond via written correspondence, while some via telephone. The Grievance Summary form is not being utilized, and nobody knew that it was in existence until I located it in review of the

grievance policies when coming into the position. While the process has been ad hoc, the decision-making has not been. Anchorage management meetings often include conversations regarding grievances under review and brainstorming on how they can be handled. There is consistent discussion amongst management regarding the decisions to overturn substantiations.

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- OCS Managers endeavor to follow procedures as much as we can, however, the volume of work can sometimes keep us from responding in a timely fashion. Overall, I believe there is a more ad hoc approach and we try to meet the needs of the family.

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- In the grievances I have handled there has not been a strict adherence to time frames, nor would I call it an ad hoc approach. Sometimes we are playing catch-up as a complaint was lost in the system or not attended to by staff. There have been times when recovering files to address the complaint has taken longer than one would think necessary and there were times when the informal meetings were held and no follow up or written documentation was made to assure that all parties were satisfied with the proposed decision, i.e. portions of the policy were followed and portions were not.

5. Alaska Administrative Code at 7 AAC 54.224 allows complainants to discuss a supervisor's decision with a regional manager, or to request review by a regional panel, or both. In your experience, how many of the grievances you have handled were discussions with regional managers, how many were appeals to regional panels, and how many were both?

- You know I can't recall giving people the option, the way that the question is I see, if I was just trying to figure it out right now I would open up the administrative code and I'd read it and try and get, and look at the technicality there. In all of the panels I did, I'm positive that we would have interviewed people because that's part of the requirements and I distinctly remember interviewing at least one gentleman, vividly, I do, and as I mentioned earlier, I do remember overturning some without a panel because I just was confident that was the thing to do.

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- I've never done a regional panel.

  *** * ***

- I have been involved in two regional panels as a Staff Manager for Anchorage cases, and one as a CSM for a Wasilla case. Since being in my current position as a CSM, I have not had to refer any case for a regional panel review as the ones that have not been overturned have opted for an Administrative Hearing.

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- It appears as if most of the time complainants have access to workers, supervisors, staff managers, and CSMs and are able to express their concerns at each level of OCS.

  *** * ***

- In my experience three grievances went to regional appeal panels. I have learned recently that there have been several grievances that were addressed at a lower level and I was not informed of the grievance.

6. When grievances were pursued as both panel reviews and manager discussions, did these two paths toward conflict resolution:

a. work together harmoniously;
b. interfere with each other;
c. render one or the other superfluous, or
d. none of the above?

- I can't even imagine them both working, in fact what I would imagine is if somebody didn't like the informal review then they would say I don't like your answer I want a panel.

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- I believe that I need a discussion to better understand this question. When cases come to my attention for review, I either overturn or they have gone further for an Administrative Hearing.

  *** * ***

- I have been involved in three grievances that involved manager discussion and regional appeals panel. All of which, I believe, were productive and achieved what is set out in policy. Once a regional appeal panel is activated the managerial discussion ceased in my experience and the appeal panel had the final say in the grievance.

Question 7. Have you ever served on a regional appeal panel? If so,

Question a: How many?

Question b: In what capacity?

Question c: How do you feel the proceedings went? Was the functioning of the panel smooth and efficient, or was it in any way awkward or cumbersome? Why or why not?

Question d: In what capacity, if any, was the director or commissioner involved in the proceedings?

Question e: As objectively as you can, how would you assess or describe the quality of the decision your panel reached?

Question f: From your experience, do you feel the panel was an effective method of handling grievances, or do you think a different kind of proceeding would have been more effective?

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- **Question a:** I had my hands full on at least three of the four panels [I was on].
  Question b: I was the chairperson on all of them, as the regional manager.

Question c: I thought they were pretty smooth, I mean, it just was a matter of having to set things up and try to stay on timelines and get all the right information, but I thought they were fine. They're not the kind of thing you could set aside and forget about it, you have to keep on it.

Question d: This is the one thing that I think changed in 2006, because the way I used to remember it was, I wrote findings for the panel, the panel all signed off on what, [the] summary of the events and the findings and then submitted it to the director or the deputy commissioner at the time. And now what it says is to just send all of the interested parties the findings. And so I think I've probably done it two ways, and I assume that it's because it changed in 2006 but I actually haven't gone back to compare what was before and what's different then, so I don't know.

Question e: I felt like in each case we took our time, we interviewed people, we read all of the pertinent information, and we often, if not every time, made unpopular decisions. So, even though we knew people wouldn't like it very much. So I kind of, I was, I always felt like I did a good job, despite the difficulty and the time that it took to invest and all that stuff, I felt like the panels always worked well.

Question f: I kind of like the panel method, for a couple of reasons. One is that you don't just leave the decision making in one person's hands; it's always good when you're making complicated decisions to get out of your own head and, you know, consider other people's perspectives. And the way the panels are built you have to have one outside person who knows about child welfare and so it's always good, too, I believe, to get some external perspective that way.

*** * ***

- **Question a:** I was on one [regional panel].
  Question b: To review a substantiated finding from a different region.

  Question c: It worked fine. It was myself and one, two other people, one was telephonic, and we had reviewed the material beforehand and it was pretty clear-cut.

  Question d: None. None that I know of.

  Question e: We overturned a substantiated finding. We seem to do that a lot. So I think that's pretty par for the course these days, overturning substantiations . . . we did [produce a good quality decision].

  Question f: I thought it went fine. I mean there was no, no-one disagreed, it was pretty quick, we got the complainant on the phone, they were happy with the outcome I believe. I mean I don't know that I have a different way of handling it.

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- **Question a:** I believe that I have only been on three panels.
  Question b: Two as a participant (Staff Manager.) The most recent panel occurred under my leadership.

Question c: I felt the process worked very well. I involved a Staff Manager, another community partner (OPA) and we met with the grievant. The result was to overturn the substantiated findings.
Question d: When complete, the written report was sent to the grievant, cc'ed to the director.
Question e: I felt confident in the decision made, mostly due to the team decision-making approach with competent professionals in child welfare.
Question f: I would recommend a grievance panel over other ways to address these issues.

*** * ***

- **Question a.** I have participated in one regional appeal panel.
  Question b. As the Review Team Leader.
  Question c. The team conducted a thorough review of the case file and ORCA record. Additionally, we were able to interview the complainant and the staff member who the complaint was about. Per policy there were two OCS employees and one community partner.
  Question d. [no response]
  Question e. [no response]
  Question f. The panel is an effective method for handling grievances. We may want to include more than one community partner in an effort to appear less OCS-heavy.

  *** * ***

  Question a: One

  Question b: I organized and acted as the CSM on the regional appeals panel

  Question c: My experience was positive and the proceedings were not cumbersome. There were some initial coordination issues especially with regards to file review but once past that it was easily done. The success of the panel depends on the people chosen to participate.

  Question d: The director was made aware of the panel's decision and I believe reviewed the decision. There was very limited involvement from the director and I do not remember any involvement from the commissioner.

  Question e: I believe the quality of the decision was high as each of the panel members came to the same conclusion independent of each other and the review and subsequent conversations reinforced the decision made.

  Question f: I believe a regional appeals panel is a productive but time-consuming manner in which to resolve the grievance at hand. I feel that having a member of the public involved, with signed confidentiality agreement, is a good way to increase objectivity.

- **8. What methods, if any, are used for tracking and keeping records of grievances? Where and in what format are records of past grievances kept? Who at OCS maintains these records?**
- I'm tracking all the ones that touch me now . . .

*** * ***

- I don't know. I would imagine that that's by region, and when I took over this job I think somewhere in this office there is a file that has the grievances in it.

*** * ***

- In Anchorage, all of the grievances are directed to the Office Assistant to the Management team. She logs each grievance and sends a copy to State Office. The response to each grievance and who is handling that grievance is also logged.

*** * ***

- I keep a file of all the grievances that I review; however, I am unsure what record-keeping mechanism is used by the Northern Regional Office Staff Managers.

*** * ***

- We have recently begun tracking these on a spread sheet simply and have begun to develop a regional protocol for action once a grievance is received. In the last two months we have identified a clerical staff member who will help track the grievances but it is ultimately the Staff Managers and CSM who have responsibility to maintain the records.

9. I am interested in the historical evolution of the current grievance procedure and regulations. Are you aware of any significant events, such as changes in state or federal law, lawsuits, or political events that may have contributed to or changed the current structure of the grievance process?

- No it's not that I'm aware of, other than the confusion between the administrative hearing and the grievance procedure like I've mentioned.

*** * ***

- I'm not aware of them, no.

*** * ***

- I can only respond to the number of grievances coming in based upon the Background Check Unit and the current interpretation of that law. Now that any substantiated finding can prevent employment in the schools, childcare, etc., there are numerous requests to review findings dated back to 1990. We are reviewing an increase in number of grievances as well as an increase the number of years back that we are looking. Those are difficult to not overturn based on the differences in practice, the lack of documentation, and the minimized chance that anyone involved is available for questioning.

*** * ***

- I have no further information on these questions [9-11]

*** * ***

- I do not have the historical knowledge on this as I have been here less than 3 years.

*** * ***

10. To your knowledge, or in your opinion, have there been any changes over the years that may have resulted in any part of the grievance process becoming obsolete or less effective, or resulted in the process working differently than intended?

- I think we're getting smarter as an organization, more on the same playing field as our mentality, in terms of the way we think about cases and things, and, I think in some ways that as that's occurred there's been stress to the system and people that don't adapt and, they don't drink the Kool-Aid so to speak, they have chosen to go away. It's gotten us more consistent in some ways, and I also think that we've gotten to a point that we recognize, many of us recognize these glitches, and we've got this whole new senior leadership team and we've said 'wow we can fix these,' instead of just being, you know, in these lower level positions where we didn't really feel like we had the ability. And so now we're in a different spot.

  *** * ***

- I can tell you right now our policy is from September 17, 2007, so that's four years old, but most of our policy is a lot newer than that. So, it's still sitting here. And it needs to be updated; it needs to be a lot clearer.

  *** * ***

- I have no further information on these questions [9-11]

  *** * ***

- Most of the grievances that I am now involved with are due to people being denied employment due to substantiated findings.

11. Finally, are there any other ideas, observations, or suggestions about the grievance process that you would offer?

- I'm hoping to beat you to the punch and that we get this thing corrected and I think all of us would love to be confident that this system is working correctly, and if people went to the ombudsman it was because they really had a fair shot at OCS, and then it didn't work out, and then take a look at it and then we can problem solve. But I can also understand how that's not been the case so far in many areas.

  *** * ***

- We need to update our policy. . . procedure-wise, and I think that…it's just a little vague.

  *** * ***

- There is not any training provided or available regarding grievance procedures. The Administrative Codes and the OCS policies need to be more clear and consistent with one another. In addition, if timeframes are set, there needs to be a system for accountability and prioritization of those. I need a better understanding of what happens to the grievances/who reviews them when they are sent to State Office. The number of grievances and the frequency per offices needs assessment to better understand the resource allocation to accommodate those needs.

  *** * ***

- I have no further information on these questions [9-11]

*** * ***

- Our region will be using a statewide supervisor and management training time to address this regionally. Further training and emphasis is needed as every office seems to have their own take on what needs to be done. I personally feel that all formal Grievances should be forwarded to the Q/A (Quality Audit for review and for subsequent direction and guidance, as they are objective in their approach and have a standardized approach that is achievable due to the size of the team there.

Miscellaneous additional comments and observations:

- Now I'm thinking of another one [regional panel] comes back to mind, that I remember doing a formal panel for another region, that, yeah, actually it's coming back to me too, we overturned findings and they were really unhappy with us. Because they really thought that they should be upheld, and this was a way that kind of put the regions against each other in some ways, because you just interpret things so differently, it really shouldn't be that way. I don't know, I don't know what the magic is, but it seems like you shouldn't really be able to interpret it so dramatically differently.
- I've never quite understood the administrative hearing method. I mean I understand it, but, it's much more technical, much more time intensive, much more legalistic than the grievance procedures. And I understand that, but it seems odd to me that we've got this very legalistic procedure and we've got this less legalistic procedure, and we offer them both to our clients on substantiated findings, and . . . this is just my personal opinion, I don't know how a parent would know the pros and cons of either track. That's one of the things that we've identified need to be fixed on the system too, of even making the offer to the parents. And I don't even know if OCS is the right people to be offering them the different ways, quite honestly, I don't know. And then you've got the court, you know, that can look at, if you've got an open case, I don't know, there's just so many avenues for, for due process, and if I was a client of ours, I would probably look at OCS like we're crazy. Like, how am I supposed to know what's better? So I think we've complicated things so much, if it's hard for the internal people to keep it straight, I just worry that our clients don't have any idea of what might be in their better interests. So it seems to me like we would have one method and it would be a really good method and everybody would know what that method is and that it would work the vast majority of the time.

*** * ***

- And since I've been doing these now, now that I've moved into my current position I still interpret it the same way, so this is like, nine plus years, that it's always interpreted that way. That being said, I don't know that I ever got any training from anyone on any of it, so if I was wrong I was doing it wrong for a long time.

*** * ***

- The underlying problem I believe, is that most of our grievances and administrative hearing requests come from a policy that describes how we substantiate or not

substantiate maltreatment, and that's where we go awry, a lot. So, again, a couple of months from now, you won't need to make any recommendations if this follows through normal procedures. But if I was you, and you still did need to make recommendations, one of my recommendations would be, you go back to the source, and you deal with the substantiation issue from a very basic level, and make sure that your definition of "substantiation" is designed in a way that can be widely interpreted the same, because while it may seem like a simple definition of what constitutes a substantiation, and what's not, it's not. It's not adequate. And, I take that back, it may be adequate, but we are not interpreting it all the same. And so the solution, there may be a lot of solutions on how you overcome that barrier to get consistency, but it seems to me that you should be able to give the same scenario to people who have been on the job at least to the journeyman level, been around a while, and give them the same facts and scenario, and they will tell you with a high level of accuracy and consistency that, whether or not the case should be substantiated or not substantiated, and that's not what you find today. You find a high rate of deviance, or deviation from, you know, depending on who you're talking to. So to me, you go back to the source and deal with that, as the primary issue, and then the secondary issue then would be 'how do you process all those things?' I mean they really are separate issues, but they're tightly interwoven.

*** * ***

- We've got our own systemic issues of how do you process these, what kind of accountability is there? what kind of training goes along with it? and it's virtually none, none, and none. And so, again, now we've got a whole new group of people in senior leadership, I'm one of them, and we know that this is the case, so you know we're committed to fixing it, it's just going to take us a little while to do it. But clearly this has been broken on numerous levels for a long time. As a regional manager I just tried to do the best I could, and follow the guidelines, you know, in policy and in the administrative code. But theoretically, each one of the CSMs could have said that, and been doing it differently, because there was not a lot of oversight, there was not a lot of training, there was no training, there was no, you know, it just kind of was what it was.

*** * ***

- When I was first employed our region did not keep track of grievances or how they were dealt with. We have recently begun tracking them and I have 11 complaints logged that I have been involved in. There are still difficulties with this system and we are now developing a new protocol and training for addressing grievances. I have recently learned that not all the supervisors or previous managers understood the policy and several grievances were left in files or kept at the front desk and not fully addressed beyond informal meetings or telephone calls. All have occurred in my current position as Manager. I have been involved in several informal complaints that were resolved with communication and direction from regional management and supervisors.

The OCS Grievance Procedure

The OCS grievance process exists to meet two legal requirements. The first is a statutory requirement for Child In Need of Aid cases. According to AS 47.10.098(a),

The department shall develop, in regulation, a grievance procedure for a parent to file a complaint based on

(1) the application of a department policy or procedure under this chapter;

(2) compliance with this chapter or a regulation adopted under this chapter; or

(3) an act or failure to act by the department under this chapter.

As a general dispute resolution process, the grievance procedures of 7 AAC 54.205 – 240 apply to both the Office of Children's Services and to the Division of Juvenile Justice. The scope of this investigation covers only OCS.

The second purpose of the grievance procedure, adopted in response to settlement of a 2006 lawsuit against OCS, is specific to OCS. The second purpose is to provide a review process of substantiated child abuse or neglect findings that have not been reviewed by a court. This second purpose of the grievance procedure provides a requisite element of due process to persons who have been found by OCS to have a substantiated instance of abuse or neglect. For substantiated finding cases, the affected individual must choose between the OCS grievance process or a hearing before the Office of Administrative Hearings. Appeals of substantiated findings of maltreatment constitute the bulk of grievances filed with OCS, and a substantial number of these findings are overturned as a result of the grievance process.

The "Purpose" section of the regulation incorrectly states that the purpose of the procedure is to provide "an informal dispute resolution process for an individual and department staff involved in a disagreement to discuss their concerns about child protection services or juvenile services verbally and in writing and attempt to reach a fair resolution agreeable to all parties." The process is actually an avenue to a *formal* process, even if the process begins less formally. While discussion and an attempt to reach a resolution that is "agreeable to all" may be a preliminary part of a grievance process, the purpose of the process is (or should be) to review complaints and make final decisions resulting in appropriate action. Part of OCS's mission is to protect children, regardless of whether the actions necessary to do so are "agreeable to all." A process that delivers nothing more than discussion and a mere "attempt to reach a fair resolution" does not constitute an honest process for hearing and making final decisions on grievances.

History of OCS Grievance Regulations

The regulation introducing the children's protective service grievance procedure was adopted in 1990 by the former Division of Family and Youth Services (DFYS) as 7 AAC 36.205 – 330. [2] At the time, DFYS served the functions now served by OCS, and the DFYS Youth Corrections Section handled matters of juvenile justice. In 1999, the Youth Corrections Section was separated from DFYS to become its own division, the Division of Juvenile Justice (DJJ). DFYS was later renamed the Office of Children's Services.

[2] The text of 7 AAC 36.205-330 which was renumbered as 7 AAC 36.205-330, is included in Appendix I on Page 46 of this report.

The original 1990 regulation introduced a relatively straightforward administrative appeal process contained in five regulatory sections supplemented by a definitions section, at a time when state administrative law was still a young concept both in Alaska and nationwide. A statement of purpose in section 205 was very similar to the current 7 AAC 54.205. Applicability and Exemption was addressed in section 210, which was similar to today's 7 AAC 54.210. Provision for an informal meeting was made in section 220. Section 330 provided for a panel review of decisions made in the informal meeting, with findings, recommendations, and a proposed resolution to be submitted to the director. Finally, 7 AAC 36.240 stated that "within 15 working days after receipt of the written report of the regional appeal panel, the director will issue a final written resolution. The director will mail a copy of the final resolution to the parties involved in the dispute."

The regulation was amended in 1994, but the changes were not very significant. References to the "field services administrator" were eliminated, apparently a response to elimination of that job title. Certain time limits were expanded by a few days, and provisions were inserted in the informal meeting and panel review sections stating that "the division will, in its discretion, grant a waiver of the procedures in this section if the division determines that a waiver will result in the division's ability to reach a more informed decision."

A minor amendment in 2000 changed the chapter number from 36 to 54 and inserted the words "or juvenile detention facility" into the subsection stating that "the grievance procedure is not available (1) to a resident of a state-operated juvenile correction facility or juvenile detention facility for which procedures developed by the superintendent under 7 AAC 52.095 apply." Because the procedure now applied to both DFYS and the new DJJ, the following definitions were inserted into section 900:

> (5) "director" means the director of the division of family and youth services, or the director of the division of juvenile justice, as appropriate in accordance with 7 AAC 54.010 and 7 AAC 54.300, in the department;
>
> (6) "division" means the division of family and youth services or the division of juvenile justice, as appropriate in accordance with 7 AAC 54.010 and 7 AAC 54.300, in the department;

Certain other minor changes to definitions reflected that the regulation now applied to two different divisions.

Major changes to the procedure were made in 2006 in the wake of the settlement of a lawsuit in federal court. In *Ruby V. Gilbertson*[3], parent Mark Ruby filed a lawsuit in U.S. District Court over his inability to appeal a substantiated finding of abuse. Ruby asserted that he had been denied due process on a number of different grounds, among them inadequate due process safeguards in the grievance process. As part of the settlement agreement, OCS agreed to adopt regulations providing greater due process, and until such regulations could be written and

[3] No. A-05-171 CI (JWS) (D. Alaska)

adopted to allow appeals of substantiated findings of maltreatment to the newly-organized Office of Administrative Hearings.

In order to address the fact that the grievance procedure did not actually contain any significant rules of procedure, particularly at the regional panel level of review, section 215 was inserted to allow grievants in cases of substantiated findings who wished to do things like call witnesses and present evidence to forgo the grievance procedure altogether, and simply take their cases to the Office of Administrative Hearings. An administrative law judge in the OAH will then hear the case, and present a proposed decision to the Commissioner of Health and Social Services for action.

The 2006 amendment did more than simply insert the option for some complainants to circumvent the process altogether and appeal to the OAH. The amendment doubled the number of sections from five to 10. Some of the new sections apply only to OCS; others only to DJJ. Some sections apply to both agencies in the entirety of the section, while other sections are divided by subsection to apply to either OCS or DJJ.

The most surprising changes were made to sections 230 and 240. In all previous versions of the regulation, section 230 provided for a regional panel to hear the case and make recommendations to the director. Section 240 provided that, within 15 days of receiving the recommendation, the director would issue a final written resolution of the case and mail it to the parties. As noted above, the "director" was either the director of DFYS, DJJ, or OCS, as appropriate. This is a very normal structure for hearings in the context of administrative law, and it predates by more than 10 years the creation of the OAH, in which administrative law judges conduct hearings and then prepare proposed decisions for action by a board or commissioner.

In the 2006 amendment still in effect, section 230, which provides for panels to review grievances, was limited to only the Office of Children's Services. The panels are still required to prepare findings, recommendations, and a proposed resolution; however, the panel no longer submits its report to the director for action. Under subsection (i), the panel simply mails its proposed resolution to the parties and then disbands. A new subsection, subsection (j), states that "the decision issued under (i) of this section is a final administrative decision and may be appealed to the Superior Court under the Alaska Appellate Rules of Procedure."

For OCS appeals, the director never sees the panel's recommendations or necessarily even knows that a panel has been convened.

Section 240, in which the director had previously acted on the panel's recommendation, is now applicable only to DJJ. After an informal meeting with a supervisor for juvenile justice and a meeting with a regional juvenile probation officer IV or a juvenile facility superintendent, grievants in DJJ cases go directly to the director for a final resolution of the case. After 2006, complainants in juvenile justice cases no longer had access to a hearing before a regional panel; on the other hand, they do get a final decision from the director. OCS complainants get a hearing before a regional panel, but ultimately they get nothing more than a recommendation from a disbanded panel, and never a final decision from the director.

The 2006 amendments to sections 230 and 240 resulted in divergent grievance processes. Previously, cases before the two agencies moved toward resolution from a lower level to a higher

level. Now, cases from OCS never get past the lower level to the director, while DJJ cases go straight to the top, bypassing review at the lower level.

Considering that the 2006 amendments doubled the amount of verbiage in the regulations and essentially created two entirely different processes for the two agencies, it is difficult to see why the drafters did not separate the process completely with separate chapters for each agency. Because neither process involves the commissioner or anyone at a department level, there should be no reason not to give full effect to the 1999 decision to separate DJJ from OCS, and give DJJ its own grievance procedure. That is, essentially, the effect of the 2006 amendments, but the differing procedures for the two divisions are so entangled that it is difficult for a reader to be sure which parts apply only to DJJ, which apply only to OCS, and which apply to both.

SAMPLE SUMMARY OF OCS GRIEVANCE COMPLAINTS

The investigator reviewed the ombudsman's caseload and summarized several OCS complaints where OCS staff failure to properly follow grievance regulations were a factor. Those summaries follow:

A2003-0107 - J2003-0118 Northern Region – Fairbanks

The custodial father of two girls in OCS custody appealed the substantiated finding of abuse against him but complained to the ombudsman that OCS failed to respond to his grievance. In a second, later complaint, he complained that OCS had failed to respond after promising the ombudsman that an agency supervisor would contact the complainant.

The ombudsman determined that OCS delayed responding to the grievance for several months. An OCS manager committed to the ombudsman that she would respond and then failed to follow through. Agency staff failed to return phone calls from the complainant and the ombudsman. The investigator wrote to the deputy commissioner who then directed staff to allow the complainant to use grievance process effectively, and to maintain a log of grievances to ensure timely responses by agency. The complainant finally met with regional review panel more than a year after he filed the grievance and was somewhat satisfied with their recommendations for action.

J2004-0016 - South-East Region -- Juneau

A parent of a child in custody complained to the ombudsman that OCS has failed to respond to a complainant's formal complaint within the time frame specified in regulation.

The OCS regional supervisor indicated that the complainant had received informal verbal response to a grievance but not a written response as required, nor had the complainant been informed of the ability to appeal a grievance decision to a regional review panel. The supervisor claimed to be confused about whether one of the complainant's issues was grievable. The investigator advised him that OCS should treat it as grievable unless clearly excluded by OCS regulation, or unless advised by the Department of Law that the issue was not grievable per regulation. OCS provided a written response to the complainant. When the OCS written response did not address one of the complainant's grievances, the ombudsman investigator re-opened the complaint, and specifically advised the complainant of his right to appeal to the regional review panel. OCS responded verbally, followed by an e-mail explaining the appeal process.

J2005-0003 - South-East Region -- Ketchikan

A parent contacted the ombudsman to complain that OCS had refused to correct a "substantiated" report that the complainant committed child abuse, even after proof that the complainant said exculpated him. He also complained that OCS did not provide a timely response to his grievance.

The ombudsman investigator found that the evidence did not establish that OCS's finding was incorrect; the evidence was ambiguous. However, the OCS field office clearly failed to comply with the OCS grievance process, and in fact the ombudsman investigator had to intervene twice before the office provided the required meeting and referral to a regional review.

A2005-0666 - South-Central Region -- Anchorage

A complainant who had adopted two siblings complained to the ombudsman that OCS supported adoption of an infant by the infant's foster parent who had no biological connection to the child while putting off the complainant, who had already adopted the child's two half-siblings and wanted to adopt the infant. The complainant grieved the OCS placement decision three months prior to contacting the ombudsman but said OCS didn't respond. Finally, the complainant alleged that OCS threatened the complainant with negative consequences if the complainant insisted on a response to the grievance.

The ombudsman was able to determine that OCS had not responded to the grievance but by that time the complainant had hired an attorney and was awaiting a court hearing on the placement issue. The complainant did not want the ombudsman to contact the agency to discuss this complaint for fear of antagonizing agency staff. The ombudsman complied with the complainant's wishes and closed this investigation.

A2008-0614 - South-Central Region -- Anchorage

The mother of a young child who was removed from her care and placed with an allegedly abusive former husband complained to the ombudsman about the removal and that OCS had failed to notify her about the statutory grievance process even when she asked about grieving the issue.

The ombudsman determined that removal was the appropriate course given the complainant's untreated mental health issues and that the agency had been working with the complainant's concerns on a limited and regular basis. The domestic partner was participating in parenting, domestic violence and couples counseling.

A2009-0691 - South-Central Region -- Anchorage

The grandparent of a child in custody complained to the ombudsman after OCS changed conditions of the complainant's visitation with her grandchildren from unsupervised to supervised visits, refused to place the granddaughter in the grandparent's home, and did not provide notice of the placement denial. The grandparent further complained OCS did not respond to her formal grievance and failed to provide her required written notice of all hearings.

The ombudsman investigator reviewed the OCS case files and asked OCS to articulate the reasons for the change in the visitation conditions. OCS then reconsidered its decision and reinstated unsupervised visits between the complainant and grandchildren.

The investigator also determined that OCS had provided written notice of denial of placement to the complainant upon the complainant's initial request for placement. The complainant then hired an attorney, requested a placement review hearing, but then later withdrew the petition. The complainant subsequently requested placement on a couple of occasions, but the complainant was ambivalent and would then tell the agency that she was satisfied and did not want placement.

The investigator found a copy of the complainant's grievance during the file review and learned that the agency had misfiled the grievance in the granddaughter's file without responding to the grievance. OCS manager assured the investigator that the agency would pull the grievance and formally respond to it.

A2009-1454 - South-Central Region -- Wasilla

A foster mother contacted the ombudsman after OCS: removed foster children from her home without considering all relevant factors and failed to notify her of the administrative grievance process available to her to contest the non-emergency removal of foster children from her home.

The ombudsman determined that OCS failed to provide notice of the grievance process and, in fact, the caseworker told the ombudsman investigator that she didn't know that she was required to provide notice of the grievance process to foster parents.

A2010-0530 - South-Central Region -- Anchorage

A foster mother complained that OCS removed a child from her care after she confronted the worker about discourteous comments made to her by the caseworkers. The foster mother also complained that OCS failed to notify her about the impending change of placement and did not advise her of her right to grieve the child's removal.

The ombudsman investigator determined that the change in placement was to move the child to an ICWA-compliant home and had been planned prior to the disagreement between foster parent and caseworker. The investigator determined that OCS had not provided notice of the planned change in placement or about the grievance process.

A2010-0964 -- South-Central Region -- Wasilla

Foster parents contacted the ombudsman to complain that OCS had not provided written response to a grievance. The foster parents filed an OCS Grievance on May 7, 2010. They said that an OCS Children's Services Manager (CSM) met with them after the grievance was filed, but they never received the written response that they requested. The OCS CSM also was non-responsive to ombudsman requests for a copy of the written response to the complainant's grievance.

It appears that the OCS CSM addressed the complainant's issues, but they wanted the information in writing, as stated in the OCS Policy and Procedure. OCS never provided the written summary and attempts by the ombudsman to provide the written summary were ignored.

A2011-1091 -- South-Central Region – Wasilla

A foster mother complained that OCS removed a child from her care without cause and failed to notify her of her administrative appeal process to contest the decision.

The ombudsman investigation revealed that OCS failed to provide the foster parent with notice of the administrative grievance process available to her to contest the non-emergency removal of the foster child from her home, in violation of state regulation and division policies and procedures.

A2011-1105 -- South-Central Region -- Kenai

A parent contacted the ombudsman after OCS staff added a finding of neglect to a report of harm after the complainant filed a grievance with the agency.

The Children Services Manager (CSM) did not know whether an additional substantiated finding could be added to the agency record during the grievance process, but commented there was nothing in the policy manual to indicate it could not be done. The CSM agreed that on its face, adding another substantiated finding at the end of the grievance process appeared retaliatory.

The CMS acknowledged OCS did not process the grievance in accordance with the agency's policy, and that OCS failed to advise the complainant that she had the right to file either a grievance with the agency or appeal the agency's original decision of a substantiated finding of mental injury to the Office of Administrative Hearings (OAH). The CMS agreed that if the agency retains the additional substantiated finding of neglect, the complainant will be provided with the necessary information to file an appeal through OAH, but only concerning the substantiated finding of neglect and not on the original substantiated finding of mental injury.

The ombudsman case was re-opened a month later because the CMS failed to follow-up with a letter to the complainant explaining her rights to appeal the new substantiated finding. After the ombudsman contacted the CSM again, OCS sent the complainant a letter explaining her rights to appeal.

ANALYSIS AND FINDING

AS 24.55.150 authorizes the ombudsman to investigate administrative acts that the ombudsman has reason to believe might be contrary to law; unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unsupported by an adequate statement of reasons; performed in an inefficient or discourteous manner; or otherwise erroneous.

The ombudsman may investigate to find an appropriate remedy.

Under 21 AAC 20.210, the ombudsman evaluates evidence relating to a complaint against a state agency to determine whether criticism of the agency's actions is valid, and then makes a finding that the complaint is *justified*, *partially justified*, *not supported*, or *indeterminate*. A complaint is *justified* if, on the basis of the evidence obtained during investigation, the ombudsman determines that the complainant's criticism of the administrative act is valid. Conversely, a complaint is *not supported* if the evidence shows that the administrative act was appropriate. If the ombudsman finds both that a complaint is *justified* and that the complainant's action or inaction materially affected the agency's action, the complaint may be found *partially justified*. A complaint is *indeterminate* if the evidence is insufficient "to determine conclusively" whether criticism of the administrative act is valid.

The standard used to evaluate all Ombudsman complaints is **the preponderance of the evidence**. If the preponderance of the evidence indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation should be found justified.

According to the Office of the Ombudsman's Policies and Procedures Manual at 4040(2) an administrative act is **unreasonable** if:

(A) the agency adopted and followed a procedure in managing a program that was inconsistent with, or failed to achieve, the purposes of the program,

(B) the agency adopted and followed a procedure that defeated the complainant's valid application for a right or program benefit, or

(C) the agency's act was inconsistent with agency policy and thereby placed the complainant at a disadvantage relative to all others

Problems with the Current Regulation:

OCS grievances are governed by 7 AAC 54.205-240. Review of the entire grievance process has shown the inherent problems with this regulation to be in some way the source of nearly every other problem with the grievance process. These regulations have been identified as being confusing, difficult to understand, and difficult to administer. The regulations are seldom consulted directly, but form the basis for the grievance section of the Policy and Procedures Manual, which is subject to the same criticism. The individual sections of the regulation are replete with identifiable problems, but the regulation on its face, when carefully reviewed, reveals the inherent problems that permeate the grievance process. The frustrations voiced by OCS personnel at all levels, and particularly by the children's services managers, confirm these problems. Following are the principle systemic problems stemming directly from the language of the regulation:

1. The regulation does not provide a true grievance process

The term "grievance procedure" originates in labor law and describes a process by which a person may contest an action and obtain resolution, much as a plaintiff may seek resolution in court. Implicit in the term is an expectation that the process will culminate in a binding decision; that one way or another, complaints will be resolved with finality.

While the OCS grievance process proceeds in a tangle of alternate paths, the culmination of the process is usually the regional appeal panel of 7 AAC 54.230. Although described in terms such as "review" and "fact-finding meeting," what the panel provides is in fact an administrative hearing for the grievant. At the conclusion of the hearing, the panel issues a "written report of findings, recommendations, and proposed resolutions." This report is the last step in the process, and is purportedly a final administrative decision that may be appealed to superior court. While copies of the report must be sent to "all parties," the regulation does not specify to whom the recommendations are directed. There is no requirement that any of the recommendations and proposed resolutions be implemented. There is no requirement that the director even be informed of the recommendations, and no guarantee that staff will adhere to any proposed

recommendations. Upon issuing its recommendation, the panel itself immediately disbands, leaving only the court as further recourse if recommendations are not abided by. While the regulation provides for appeal to the court, how a court in any given case would respond to an appeal of a mere proposal or recommendation that carries no binding legal weight is an open question. Courts review binding decisions, not suggestions.

As a practical matter, and to its credit, it appears that OCS does treat regional panel recommendations as binding orders. The children's services managers speak of panels "overturning" substantiated findings of maltreatment, and they appear to believe they have binding authority to do so. Staff naturally assumes that decisions of the panel must be obeyed and implemented, and they act accordingly. But there is nothing in the law that requires anybody to give any deference to the "recommendation" or "proposed resolution" of a regional panel. Because there is no provision in the process for issuance of a binding decision, the process cannot be regarded as a true grievance process, even if it is called that. No matter how just his cause, it is not possible for a grievant to obtain an enforceable order from the process. In that sense, the regulatory process is defective.

2. The regulation undermines the authority and leadership of the director.

One of the most curious aspects of the OCS grievance procedure is that the director not only lacks a final say in decision making, the director actually has no involvement whatsoever in the hearing of appeals. By one route, persons grieving substantiated findings may choose to take their appeal to the Office of Administrative Hearings. In that case, the administrative law judge will conduct a hearing, and prepare a proposed decision for submission over the director's head to the commissioner, who may adopt the decision or take other action on it without necessarily consulting or even informing the director. The director has no involvement in the process. If the grievant chooses the OCS grievance process, the final step is a regional panel. The panel will issue recommendations, send copies to the "parties", and then disband, after which time the matter may be appealed to court. Thus, all decisions are made by the commissioner or by a panel; in no case is the OCS director called upon to make a decision, much less participate in the process. Theoretically, important decisions involving matters of agency policy may be made without the director even knowing the issue has been raised or that the matter is being considered. While some managers provide the director with courtesy copies of panel findings and recommendations, not all do. It is likely that some panels have convened and issued recommendations without the director being aware of the matter. Although the director is generally held responsible both for individual agency actions and for the overall policy and workings of the agency, under the current law the director is not allowed to even participate in decisions that may involve important questions of policy.

The current regional panel can also lead to inconsistent results. In at least one case, there has been a conflict between two regions over how a particular kind of case should be decided, leading not only to inconsistent results but also to some degree of resentment or hard feeling between the regions. Part of the role of the director is to monitor for these kinds of differences within the agency and to provide leadership by setting policy and directing subordinate leaders. Because the current law does not allow the director to even participate in the decision-making process, the agency as a whole is deprived of the unity that good leadership provides, regardless

of the skills of any given director. In its current form, the law governing the grievance process prohibits the director from directing her agency.

3. Sharing Regulations with JJS Limits OCS flexibility to Amend the Regulation

Some of the sections in 7 AAC 54.205-240 apply only to OCS, some apply to the Division of Juvenile Justice (DJJ), and some apply to both agencies. The agencies serve different roles, and when the sections are separated by agency two very different appeal methods emerge. DJJ obviously does not deal with substantiated findings of maltreatment, and therefore has no involvement with the Office of Administrative Hearings. DJJ does not make use of regional panels; for juvenile justice cases, there is an informal meeting with the supervisor, followed by review by the director, who issues a decision that is final.

Parts of the regulation apply to both agencies. For example, 7 AAC 54.222 describes the informal meeting without distinguishing between the two agencies. If either agency wished to make any adjustment to the way informal meetings are conducted, it could not do so without affecting the other agency. Thus, making any adjustment to the regulation governing the process is even more difficult and time consuming than a standard change to a regulation. This makes it particularly unlikely that either agency will attempt to refine and perfect the process. It is hard enough for one agency to organize a change to any regulatory process; for two separate agencies to agree on their ideas for change and coordinate the effort is simply not realistic. Even if the two agencies were able to coordinate a change to the regulation, there is no reason to expect them to desire identical procedures for their informal meetings. The clients, cases, and needs of the two agencies are not the same.

The fact that the regulation addresses the two agencies and two different processes adds to the confusion of anyone trying to understand how the OCS process works. For example, a person reading 7 AAC 54.220 would find early on in subsection (c) that it applies to DJJ ("If the supervisor for juvenile justice services decides…"), but the reader would probably read the entire subsection to make sure there is not also a provision that would apply to OCS. A person may have to read all of subsection (d) before deciding whether it applies to both agencies, or whether, like the two preceding subsections, it applies to only one of the agencies:

(d) If the complaint involves an action of a department staff member who is directly supervised by a regional administrator, juvenile probation officer IV, or juvenile facility superintendent, the complainant shall file the written complaint with the regional administrator, juvenile probation officer IV, or juvenile facility superintendent for resolution under 7 AAC 54.226 or 7 AAC 54.230.

This subsection probably applies to both agencies. OCS does not actually have any employee with the title of "regional administrator," but neither does DJJ or any other department of state government. Employees of OCS assume the title refers to a Children's Services Manager or Social Services Program Administrator. While it would help to clarify if the regulation referred to employee titles that actually existed, some confusion could be eliminated if each agency had a separate chapter defining that particular agency's grievance procedure. Just the time saved in sorting through sections of regulation that do not apply would make the process easier for both employees and grievants.

4. The path toward resolution of a grievance is convoluted and confusing.

To the extent the regulation does move a complaint toward resolution, the path is complex and confusing. The language of the regulation is also confusing, with unnecessary reference to other sections and subsections that make reading the regulation an aggravating exercise in page-flipping and lost places. But if the process were diagrammed in a purely visual format, such as a flow chart or a board game, it would not be a simple picture.

Initially, it is difficult for even OCS personnel to determine whether any particular complaint is subject to the grievance process. 7 AAC 54.210 (b) allows a complainant "to challenge an application of policy or procedure, action or inaction, or a completed licensing investigation." This language is broad enough that it should cover just about anything OCS could do or not do, and yet employees often think of the grievance process as a limited remedy applicable to only certain situations. This language could be simplified to clarify that people have a right to use the process to challenge any action or inaction. Subsection (d) lists nine kinds of cases for which the grievance process is not available.

7 AAC 54.210(d) The grievance procedure under this section is not available

(1) to a resident of a state-operated juvenile correctional facility or juvenile detention facility for which procedures developed by the superintendent under 7 AAC 52.095 apply;

(2) to a state employee unless the employee is also a client of the department, a client's parent or guardian, or a service provider for the department;

(3) for contract services disputes;

(4) to appeal late payments or to contest base foster care rates paid;

(5) to complain of child placement or child removal decisions of the department as a result of intervention under AS 47.10;

(6) to appeal a decision regarding grant programs that may be appealed under 7 AAC 78.310;

(7) to appeal a decision regarding civil rights actions covered under the department's civil rights complaint procedures;

(8) to appeal a decision or action taken by the department that is reviewable by the court under AS 47.10,AS 47.12, or AS 47.14; or

(9) to appeal a decision or action taken by the department that occurred more than 12 months after the complainant had actual notice of the decision or action.

Unfortunately, it is probably necessary to keep each of these exceptions. The first exception, for "a resident of a state-operated juvenile correctional facility or juvenile detention facility for which procedures developed by the superintendent under 7 AAC 52.095 apply," is not something OCS clients or social workers should have to wade through as they try to determine whether a certain individual may file a grievance.

Once complainants have determined that they may file a grievance, they must choose among different starting points in the process. If a case involves an appeal of a substantiated finding of harm, as most grievances do, grievants must start with 7 AAC 54.215, at which point they must choose among alternate paths: either with an appeal to the Office of Administrative Hearings or

through the OCS grievance process. For a layperson with no experience in administrative process, this step alone is a complicated decision. As one CSM pointed out, it is difficult to imagine how any grievant would be able to determine which process would be more favorable for any given situation.

If the case does not involve a substantiated finding of harm, the starting point is 7 AAC 54.220, the "Grievance Procedure" regulation.

The grievance procedure regulation places the burden on the complainant to submit the grievance form to the correct person within OCS. Under subsection (a), the form must be submitted "to the supervisor of the person whose actions are the subject of the grievance." Much lower in the section, under (d), the complainant learns that "If the complaint involves an action of a department staff member who is directly supervised by a regional administrator, juvenile probation officer IV, or juvenile facility superintendent, the complainant shall file the written complaint with the regional administrator, juvenile probation officer IV, or juvenile facility superintendent for resolution under 7 AAC 54.226 or 7 AAC 54.230."

Because OCS does not employ anyone with the title of "regional administrator," the grievant would need to turn to the definition section in 7 AAC 54.900 to learn that the "regional administrator" is actually the children's services manager. The regulation does not say what will happen if the complainant submits the form to the wrong person. The regulation does not say what the complainant should do if he does not know which OCS employee committed the act, or failed to commit the act, for which he is submitting a grievance. The regulation does not say to whom the form should be submitted if the complainant is grieving an agency-wide policy implemented by the director.

Given the press of business, it is not hard to imagine that grievances go unacknowledged or are unreasonably delayed because the person to whom they have been submitted does not consider herself to be the correct person to receive the grievance under the regulation, and does not know where to send it. One of the CSMs mentioned discovering unanswered grievances sitting at the office front desk. It is difficult to see why this minute level of procedural detail must be enshrined in law, and why the burden to identify the correct employee to handle the grievance must be placed on the complainant, who is the person least likely to know who should be handling the appeal. The regulation could simply allow the complainant to submit a grievance form "to the agency" with a requirement that the process be started immediately. OCS is staffed at all levels by personnel capable of ensuring that any grievance form they receive is immediately forwarded to the correct person. The printed form itself could contain preprinted routing directions in a box at the top: "Office use only: Notify and forward immediately to supervisor or CSM." Cluttering the law with this kind of minutiae, which is more likely to hinder than advance the process, is an example of how the regulation is overly cumbersome.

The Grievance Procedure section contains an entire separate sub-process just to determine whether the grievance may be heard. This sub-process survives from the original 1990 regulation. Subsection (a) requires the supervisor, within three days, to "determine (1) the nature

of the complaint[4] and (2) whether the grievance procedure under 7 AAC 54.210 – 7 AAC 54.240 is applicable to resolve the grievance. If the procedure does not apply, the supervisor must notify the complainant and the regional administrator in writing and describe the reasons the procedure does not apply in writing. The complainant may appeal this decision to the regional administrator (after checking the definition section to learn that a "regional administrator" is a children's services manager), and if it was a regional administrator who made the decision (although the rules says it will have been a supervisor), then he may appeal to a regional panel. The regional panel is empowered to recommend that the determination of grievability be reversed, but not to enforce the recommendation. Assuming the regional administrator (AKA children's services manager) will accept the panel's recommendation, the complainant will be free to present his original grievance to the regional administrator, if he has not yet given up on the process.

There is no reason that this entire process could not be handled with a standard informal meeting, which need be nothing more than a phone conversation followed up by a decision letter.

The next step in the process is an informal meeting under 7 AAC 54.222. This is one of the more straightforward steps in the process, and it has not been significantly altered since the adoption of the 1990 regulation. The supervisor meets with the grievant, or has a teleconference, and both state their positions and suggestions for resolutions. At the end of the meeting the participants fill out and sign another form summarizing the agreement and action to be taken. If resolution is not reached:

> . . . the supervisor shall, within five working days after the final informal meeting, complete a written proposed resolution and send it to all parties. The supervisor will include the grounds for the complaint, a statement of the facts, actions taken or planned to resolve the complaint, and a statement of the complainant's right to request a review of the supervisor's proposed decision under 7 AAC 54.224 [which applies only to DJJ] or 7 AAC 54.226.

While the informal meeting section is the most straightforward and understandable part of the process, it still contains the danger that the process may be derailed. If the meeting is by teleconference, parties may sign their agreement to the form by e-mail or fax. It is unclear what would happen if the supervisor believed agreement had been reached, but the parties failed or refused to return a signed copy of the form. Completion of the form at the meeting has the virtue of requiring the parties to reduce to writing exactly what they are agreeing on. On the other hand, the process could be simplified. Currently, a form is used if there is agreement, and a letter is written if there is disagreement. The process would be simpler if in every case the supervisor sent the grievant a brief decision letter summarizing the meeting and the resolution, and informing all grievants of the right to appeal the decision using wording pre-approved by OCS. If the grievant was satisfied at that point, the process would officially terminate at the end of the appeal period. If the meeting ended with a misunderstanding or miscommunication, it would be

[4] This appears to be no more than a superfluous insult to the intelligence of the supervisor. One would hope she determines the nature of the grievance before acting on it.

clear when the summary letter arrived, and the grievant could continue the process until there was a true meeting of minds.

After the informal meeting, the appeal path diverges. A complainant "may request a meeting with the regional manager to discuss the proposed decision issued under 7 AAC 54.222 by the supervisor for child protection services." The complainant may also request review by a regional appeal panel "in addition" to the meeting with the regional manager. The term "regional manager" is not defined, and OCS does not employ anybody with that job title. The CSM's believe themselves to be the persons referred to as "regional manager." A certain difficulty arises when a person requests a panel review, because upon request of panel review "the regional manager shall provide the complainant with the name and address of the regional administrator." Because the "regional administrator" is defined elsewhere as the children's services manager, it appears the CSM is providing the grievant with the CSM's own name and address at this time.

If the complainant requests a meeting with the regional manager, a meeting must be held within 10 days. Under the regulation, this path is a dead end in the appeal process. Although a meeting must be held, the regulation does not require the regional manager to do anything as a result of the meeting. It simply allows the complainant to have a meeting. Because it is likely that a complainant could get a meeting with a regional manager without the aid of a law requiring one, this part of the law does not provide much relief. Because there are no time limits for specified action, there is no point at which OCS can be certain that the appeal process has terminated and the file may be closed.

An interesting situation arises if the complainant requests a meeting with a regional manager and, as permitted under the regulation, also requests a regional panel review with a panel chaired by a regional administrator. These two processes should theoretically be able to happen simultaneously. If the regional manager took action to overturn the decision of the supervisor on his executive authority, and the regional panel recommended affirming the supervisor, it is difficult to tell what the result would be. The regional manager has a degree of executive authority, but his decision cannot be appealed to the court. The panel's decision is merely a recommendation that purportedly can be appealed to the court. In theory, a complainant could be stuck with one binding decision that cannot be appealed, and a contrary decision that carries no authoritative weight but that can be appealed to the courts.

It is not difficult to see why the CSMs feel the process lacks clarity, and it is difficult to blame them too much for some fudging of the process as they go. In interviews and surveys with the CSMs, questions about how this process would play out if a complainant requested both options were met with confusion. None were aware of this possibility. CSMs reported that in some cases they had unilaterally reversed decisions of supervisors instead of convening a panel because they felt that the complainant was obviously correct and a panel was unnecessary. No complainant would challenge such an action, but such an action dismisses the correct grievance process. In reality, CSMs are often required to direct the procedure in some manner that is contrary to the regulation but works, makes sense, and results in a decision.

The regional panels are a somewhat unusual entity in Alaska administrative law. The regional panel is convened by a children's services manager, and consists of a "regional administrator or designee, a Social Worker V, and a private citizen who has expertise in the provision or administration of a human services program." The CSM may designate any OCS employee

"responsible for program coordination or administration" to serve in place of the CSM or the Social Worker V. At the end of the hearing, the panel disbands.

Despite other complaints about the process, the regional panels are popular with CSMs. CSMs believe that the panels provide an effective review of complaints and produce high quality decisions. CSMs report that panelists take the proceedings very seriously, carefully review documents, and listen carefully to complainants. Panelists usually vote unanimously, which is seen as an indication of a correct result. Panels are not seen as mere rubber-stamping exercises. CSMs report that lower decisions are routinely reversed, particularly in substantiated finding cases, and that as precedents, panel decisions sometimes result in practice changes in the field. The panels do appear to have the effect of influencing lower level practice, which is a measure of a successful review tribunal. CSMs also feel that the private citizen member of the panel lends credibility and perspective that would be absent in a decision made only by OCS employees. While the *Ruby* case made clear that the panels lack the necessary procedural structure to meet the due process requirements for an administrative hearing, adjusting the regulation to fix that problem would be wiser than scrapping the regional panel procedure.

5. Current Process Likely to Result in Weaker Decisions

There are two particular elements contributing to strong decisions unlikely to be reversed in the courts that, unfortunately, are generally not present at the same time under the current process. The first element is the protection of procedural due process that results in an administrative hearing conducted by an experienced hearing officer under clear, comprehensive rules of procedure and evidence. When a person appealing a substantiated finding of maltreatment elects to have the case heard by the Office of Administrative Hearings, this element is met. For cases involving actions other than substantiated findings, and substantiated findings cases in which the grievant has elected the OCS process, due process errors are a serious risk. Despite their best efforts to be fair, the members of the regional panel are not likely to have the legal training and experience necessary to spot and remedy due process problems. The regional panel regulation does not provide rules for evidence, discovery, and other normal matters of legal procedure that protect a grievant's due process rights. Because the director is no longer involved in the grievance process, she cannot consult with her attorney before issuing a decision. For all of these reasons, due process violations are likely to occasionally result in reversible decisions, even when the participants have worked hard to produce a fair and just result.

When substantiated finding cases go to the Office of Administrative Hearing, the Administrative Law Judge (ALJ) will be well-qualified to prevent due process problems. The ALJ will not, however, have any particular qualifications regarding child welfare and protections. Courts defer to agency judgment in matters that are within the special expertise of an agency. For example, if a regional panel were to make a finding of fact that a particular action was likely to result in psychological harm to a child, a court may decline to second-guess such a finding when it has been made by qualified child-protection professionals. When the same decision is made by an administrative law judge, the superior court judge is just as qualified as the ALJ in the matter and may reverse the decision. The Supreme Court, in turn, is just as qualified as the superior court judge and the ALJ, and it may consider the matter yet again.

Under the current process, it is not possible to conduct a hearing that combines the procedural expertise of the OAH with the substantive expertise of OCS. Any restructuring of the process

should seek to create a hearing procedure that combines the benefits of these two areas of expertise, thereby producing high-quality decisions that are unlikely to be reversed on appeal. Because strong decisions are less likely to be appealed to the courts, any expense involved in setting up or maintaining a new procedure could be recouped in the aversion of just one lawsuit.

6. Complexity makes it difficult to track, and manage cases and results

OCS does not track grievance cases agency-wide, a problem discussed below, but even so it should be possible to look at a file and determine whether a case is pending, awaiting further agency action, or resolved. When it is not clear whether agency action is called for, the agency is in danger of being held liable for unreasonable delay. When there is no clear point of closure, grievants may continue to resurrect old cases and force the agency to waste resources on cases that it should be able to regard as terminated and closed. The regulation should provide an easy-to-follow path for an appeal, with specific deadlines after which, absent further action from the grievant, the agency may consider the matter resolved and permanently close the matter.

As discussed in Section 4 above, the appeal process has multiple paths by which an appeal can be pursued. This makes it difficult, though not impossible, to know where the case is in the process and what the next step is. More problematical are parts of the process where it is not clear what the next step is.

In the informal meeting section at 7 AAC 54.222, the supervisor is required to complete a "grievance procedure meeting summary form." If the parties agree with the summary on the form, they are supposed to sign it and receive a copy. There appears to be an assumption that agreement with the summary implies agreement with the division's proposed resolution. The regulation does not specify that; signature on the form only confirms that the summary of what happened at the meeting and what OCS has promised to do was accurate, not that the grievant is in agreement that the supervisor's proposed solution is a satisfactory resolution of the matter. The supervisor only sends a letter to the grievant advising of the right to review by a regional panel if the supervisor determines that resolution has not been reached. If the grievant signs the form but does not agree with the result, and the supervisor concludes that the matter has been settled, a very long time might pass before the grievant begins to demand that something further be done on his grievance. It is not safe for OCS to close the file and decline to take further action on a case until a letter has been sent stating that the case has been resolved and the time to appeal is running. In many cases, this does not ever happen.

OCS is currently unable to state how many grievances have been filed in any given period, or even how many are currently pending. Grievances are handled locally by offices and nobody is able to look at the grievance caseload as a whole.

Problems with the Policies and Procedures Manual

The grievance procedure is addressed by §6.1.5 of the OCS Child Protective Services Manual, pages 423-426b. For the most part, these six pages of the manual contain paraphrases or verbatim reproductions of sections from the regulation.

Those OCS employees surveyed voiced a great deal of dissatisfaction about the written policy. CSMs find the policies confusing and difficult to understand, much less administer. However, to a large degree the policy cannot be made any clearer, because it must reflect the regulation.

When the regulation is clear and easy to understand, it will be possible to draft a policy and procedure manual that is clear and easy to understand. Ideally, the policy would be little more than the actual language of the regulation, which on its face would be so clear and logical that little or no explanation would be necessary.

In some ways, the policy does contradict the regulation. OCS P&P Manual Section 6.1.5a. states:

When it is evident that a formal organized approach to resolving concerns would be beneficial to enable two parties to reach a resolution, the grievance procedure contained in the Alaska Administrative Code should be offered. Unless such an approach is necessary, less formal, alternate resolution processes should be used.

This language suggests that the grievance process is an optional tool to be used at an OCS worker's discretion. This erroneous implication is found throughout the OCS policy and procedure statement:

> Should the complainant decline to use the grievance procedure . . . ,

When the complainant has agreed to use the grievance procedure, . . . etc.

This policy does not recognize that the Alaska Administrative Code is law. All affected individuals have the legal right to file a grievance whenever they see fit, not when a worker decides that "a formal organized approach would be beneficial." In many cases, individuals are required by law to exhaust their administrative remedies, including appealing through a regional panel, before they may file a lawsuit in court. The policy should be clear that the grievance process is a legal right not to be stifled or interfered with, and that everybody should be aware of their rights.

Training on the OCS Grievance Process

When the ombudsman investigator began interviewing OCS personnel, some of the first five interviewees spontaneously mentioned that they would welcome training in the grievance process. The survey was thereafter amended to include a question asking if training would be desirable. The question was crafted in a manner that attempted to be neutral, suggesting that additional training might take away time that could be better spent on other efforts:

10. Do you think additional training on the grievance process would be valuable, or do you think it would take up time that could be better spent on other things?

The demand for training was unanimous at all levels of the agency, with the exception of just one person, a children's services specialist in a rural office, who said that training on the grievance process would not be a valuable use of agency time. A number of respondents cautioned that the training should not be excessive, and probably would not need to take up more than an hour of time at the most. But there was a strong desire for knowledge about the process, and an understanding of what workers should do if they encounter a grievance.

The survey of CSMs reflected the views of the subordinate employees regarding training. As upper-level managers who are most actively involved with the process, one might expect the CSMs to be the sources of training and training materials. Comments of the CSMs revealed that, rather than being confidently knowledgeable and in a position to provide guidance, the CSMs themselves desire instruction in the subject. Their comments include the following:

> I don't know that I ever got any training from anyone on any of it, so if I was wrong I was doing it wrong for a long time.
>
> * * *
>
> We've got our own systemic issues of how do you process these, what kind of accountability is there? what kind of training goes along with it? and it's virtually none, none, and none.
>
> * * *
>
> As a regional manager I just tried to do the best I could, and follow the guidelines in policy and in the administrative code. But, you know, theoretically, each one of the CSMs could have said that, and been doing it differently, because there was not a lot of oversight, there was not a lot of training, there was no training, there was no, you know, it just kind of was what it was.
>
> * * *
>
> With little direction on this topic coming in, I read thru both the OCS policies and the Administrative Codes, only to feel further confused.
>
> * * *
>
> There is not any training provided or available regarding grievance procedures.
>
> * * *
>
> Further training and emphasis is needed as every office seems to have their own on take on what needs to be done.
>
> * * *

A great deal of the desire for training appears to result from the fact that the regulatory process is currently so difficult to understand on its face. If the entire regulation were rewritten in a manner that could be readily understood by a typical middle school student, a great deal of the need for training would evaporate, with the collateral effect of making the process understandable to agency clients and the public generally.

* * *

Based on the analysis of the OCS grievance regulations, the testimony of OCS employees dealing with the grievance process, and the response to the ombudsman's survey of OCS complaints and complainants, the ombudsman finds that the allegation that the OCS grievance process is unreasonably administered to be ***justified.***

This investigation of the OCS grievance process was initiated on the ombudsman's own motion after years of observing problems with the OCS grievance process, and was not prompted by any single complaint from an individual. In order to bring the investigation within the statutory and regulatory authority of the ombudsman, questions must be posed in the form of criticism, with conclusions as to whether the criticism is justified. The concerns in this case were phrased as follows:

UNREASONABLE: In the administration of the Grievance Procedure under 7 AAC 54.205 – 240, The Office of Children's Services has not carried out the grievance process in a fair and efficient manner, has not adequately notified citizens of the process, has not responded consistently to grievances filed by citizens, and has not consistently responded to grievances in a timely or adequate manner.

The investigation has shown that the allegations have not necessarily been true in every case, but they have all been true in many cases and remedial action is warranted. A detailed discussion as to whether the administration of the grievance process has been contrary to law, unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, unnecessarily discriminatory, performed in an inefficient or discourteous manner, or otherwise erroneous would not be particularly productive or useful; to some degree, all of the above apply, and the more important question is what should be done to remedy the situation.

The ombudsman sent the preliminary investigative report to OCS on March 23, 2012. OCS Director Christy Lawton responded on behalf of OCS on April 19, 2012. OCS did not dispute the ombudsman's finding.

Ms. Lawton stated in part:

> The report provides a thorough and detailed analysis of the information that was gathered during the investigatory process for the basis of the ombudsman's assertion that the allegation is justified and accurate.
>
> . . .
>
> OCS appreciates that a considerable amount of time was spent thoughtfully reviewing the OCS grievance statutes, regulations and the OCS Policy and Procedure Manual while weighing feedback from OCS staff and clients in order to fully appreciate and consider the complexity of the issue. It was concluded that one of the primary problems with OCS's ability to consistently administer the grievance process in a fair and consistent manner stems from a significantly flawed regulation.

Ombudsman Response:

Because OCS did not dispute the proposed finding, this complaint is found to be ***justified*** by the evidence.

RECOMMENDATIONS

The investigation revealed that OCS is acutely aware of the problems with the grievance process. To its credit, the agency has been discussing these issues at the highest levels of management and has been independently looking for workable solutions. Because the problems are so deeply rooted in deficiencies of the regulation itself, most of this well-intentioned effort is likely to result in frustration, or in improvements that will only last as long as current personnel remain with the agency. On the other hand, replacement of the current regulation with a lean, understandable, and logical regulation would cause a large number of existing problems to simply evaporate. Therefore, the first and absolutely most important recommendation is:

***RECOMMENDATION ONE*: Repeal and Replace Existing Regulation**

The Office of Children's Services should repeal the current regulation in its entirety to the extent it applies to OCS and adopt an entirely new regulation providing for a grievance process.

In drafting a new regulation the agency should adhere to several important points:

A. The regulation should be as clear, simple, and intuitive as possible.

A standard and well-understood format for administrative appeals across various agencies and jurisdictions consists of an initial informal meeting of some kind from which a decision letter is generated, a second more formal kind of hearing from which a written decision document is produced, and a final decision signed by the head of the agency that may be appealed to court. There is no reason to vary from this standard format, which is functional, well-understood, and familiar to courts everywhere. Cleverness, originality, and interesting ideas should be avoided to the greatest extent possible. No single word should be included in the regulation unless its presence is absolutely necessary.

B. All grievances should follow a single path in all cases.

Alternate paths towards resolution, or different procedures depending on circumstances should be eliminated. For example, after the informal meeting or conference, the procedure should be the same regardless of whether the grievant is satisfied with the decision: The person conducting the meeting writes a letter explaining the decision and the appeal process, and the grievant is then given a certain number of days to appeal. The OCS employee involved should not have to check the regulation or procedure manual more than once to know what to do. There should not be a separate process for determining whether a complaint is grievable under the law. If an action is not grievable, that will form the basis for a decision to take no action at the informal level; that decision should be appealed through the same path as any other complaint, culminating in a decision of the director that may be appealed to the courts.

Optional referral of cases to the Office of Administrative Hearings should be abolished. Either all cases should go to the OAH at a certain level, or none of them should. This recommendation will present a challenge to OCS, as OCS employees, who are generally not legally trained, will be required to meet sufficient standards for procedural due process to avoid the problems OCS faced in the *Ruby* case. However, in the context of administrative hearings, rules of procedure do not have to be so complex that they cannot be understood by a lay person. A review of appeal procedures for other state agencies with no greater legal prowess than OCS shows that this challenge can be met (see Appendix III).

Some agencies have regulations providing for appointment of a contract attorney to serve as a hearing officer. OCS may want to consider allowing for appointment of an attorney to assist with cases that become unusually complex, where the parties have lawyers, or where it is reasonably foreseeable that the case will be appealed to the court system. A lawyer in this role would not provide substantive legal advice, which is the responsibility of the attorney general, nor would the lawyer participate in decisions regarding child welfare. This attorney's role would simply be to conduct the proceedings in a manner ensuring that procedural due process requirements are met. An attorney would not be required in most cases, and the cost would probably be less than OCS currently spends to hand entire cases over to the OAH. OCS would be able to monitor and

control these costs, and all decisions would benefit from agency expertise in child welfare, which is not true currently for cases diverted to the OAH.

C. The new OCS regulation should be entirely separated from procedures of the Division of Juvenile Justice.

The current commingling of procedures for these two agencies is a useless anachronism, a vestige from more than a quarter century ago when the two agencies were one. Other than the historical ties of the two agencies, there is no benefit from these two different agencies sharing a chapter for their respective appeal procedures. The regulation is now confusing for both agencies, which must trip over each other's procedures when trying to determine which rules apply to them. Further, neither agency can adjust and refine its procedures through routine amendments to the regulation without coordinating with the other agency. This multiplies the amount of effort required for the agency wanting the change, and is a waste of time for the agency that is not interested in a change at the time.

Appendix II contains an example of a possible regulation designed to meet OCS's needs. The recommendation of this report is not that OCS necessarily adopt this particular example, but rather that the agency study this model and evaluate it as a starting point in developing a regulation that will meet the agency's needs.

OCS Response. OCS Director Christy Lawton responded on behalf of the agency on April 19, 2012: She stated:

> OCS agrees with this recommendation and intends to begin the process of drafting the new regulation in July 2012. Again, we appreciate the thorough analysis of the current regulation including identification of its potential flaws and the specific suggestions for remedy:
>
> - The regulation should be as clear, simple, and intuitive as possible.
> - All grievances should follow a single path in all cases.
> - The new regulation should be entirely separated from procedures of the Division of Juvenile Justice.
>
> With respect to the second bullet, OCS is intrigued by this idea but cannot fully commit to its implementation without further consultation with the Department of Law. In regards to the other two suggestions we will certainly make them our priority when drafting the new proposed regulation.

Ombudsman's Comments. Currently, the grievance process offers individuals contesting a substantiated finding of abuse or neglect the choice of a formal administrative hearing before an Administrative Law Judge, or a regional panel within OCS. In other words, the grievant can, literally at a coin flip, select between very different procedures. Given that most individuals are unlikely to make an informed choice, the results are likely to be arbitrary. Similarly situated grievants will receive different levels of due process. Those who choose the current regional panel review do not receive the formal procedural protections provided in an administrative hearing. On the other hand, those who choose the administrative hearing through the Office of Administrative Hearings (OAH) will have the case heard by an Administrative Law Judge who does not have any particular expertise in child welfare. Creating arbitrary differences between similarly situated individuals creates the potential for another court case.

To remove this potential problem, the ombudsman suggested moving all grievance procedures back into OCS, under a revised grievance system. However, if the *Ruby* settlement essentially requires that certain types of grievances/appeals be referable to the OAH, then the ombudsman strongly suggests that OCS direct all such cases be uniformly referred to the OAH, without a "pick one" branching of appeal routes.

***RECOMMENDATION TWO*: Track All Grievances**

> **The Office of Children's Services should adopt a uniform agency-wide computerized tracking system to maintain a record of every grievance filed.**

Even under current regulations, grievances are legal proceedings that may be appealed all the way to the Supreme Court. OCS need not be as sophisticated as the court system in the management of appeals, but some of the court's basic methodology for managing cases should be emulated to assure that minimum standards are being met. For example, every grievance that is filed should be immediately assigned a distinct case number and a file. Files should be maintained in a uniform manner across the agency. If paper files are maintained, everything in the paper file, as well as all audio recordings, should be kept in an electronic file that can be accessed anywhere in the state by OCS employees. Employees involved in grievance proceedings should be able to easily review previous cases to educate themselves and assure uniformity. More importantly, without full access to the files of all grievances, managers cannot effectively manage, the director cannot effectively direct, oversight authorities cannot oversee, and nobody can be confident that the process is being administered fairly and uniformly across the state.

The new regulation recommended above should contain a provision requiring an agency-wide computerized tracking system. An argument could be made that the tracking system should be not be included in the regulation, but is merely something the agency should do as a matter of good management. However, a computerized tracking system is more than a good idea that should be considered when the agency has spare time and resources; it is an essential part of a robust, meaningful process. If it is not required by regulation, there is a danger that with time and turnover the system will gradually be abandoned as the software ages and the demands on resources distract future employees from maintaining the database. The gravity of this concern is illustrated by the fact that no such system is currently in place, even after the Anchorage Daily News ran an embarrassing report on this topic in 2006 stating in small part:

> Just how many people has Alaska found to be abusive or neglectful over the years? No one at OCS could say. How many appealed under the grievance procedure? The agency doesn't know that either. OCS doesn't even know how many cases of child abuse it substantiated last fiscal year, which ended June 30, 2005. A case management system put into place in 2004 cannot yet produce such reports, but should be able to by March . . . [5]

[5] Anchorage Daily News, Lisa Demer, "No day in court: Once on child protection services list, name is not easily removed" (January 9, 2006).

A tracking system with complete information on every single grievance filed is important enough that the agency should impose on itself a legal obligation to maintain such a system. If the agency's ORCA system cannot be modified to provide this service, a standard off-the-shelf spreadsheet or database program should be used. Expensive custom software that is not likely to be updated by the manufacturer should be avoided. All OCS employees should have read-only access to the database.

OCS Response. Director Lawton responded:

> OCS is in full agreement that an agency-wide electronic tracking system with the capacity to track every grievance filed and that allows staff from around the state easy access to monitor and be informed of outcomes is a desired tool. OCS is committed to exploring available options and allocating resources to accomplish this goal. It should be noted that OCS has made efforts to streamline and track the complaint process in recent months by centralizing and simplifying the instructions and forms on the OCS Website; including the designation of one person for the entire agency to receive all complaints. When a complaint is received, this person records and forwards the complaint to the appropriate supervisor while notifying the Field Administrator of the complaint for ongoing monitoring.
>
> Here is the link to find these updated documents on our website:
>
> http://www.hss.state.ak.us/ocs/Publications/pdf/complaint_appeal_procedure_forms.pdf

Ombudsman's Comments. The OCS employee designated to receive all complaints, Naomi Harris, provided additional information regarding OCS's recent changes in grievance handling. Ms. Harris explained that she began coordinating grievances and appeals in November 2011. She receives grievances sent directly to her office by grievants, per the instructions on the current OCS grievance form. Ms. Harris also receives a scanned copy of any grievance form delivered to an OCS field office. Ms. Harris wrote that she enters each grievance she receives into an Excel spreadsheet:

> For each grievance I forward a scanned copy to Travis Erickson [OCS Social Services Program Administrator]. I retain a copy for my records. I record in the Excel tracking document: name, ORCA number, date received, overall grievance and action taken (i.e. who I forwarded it to and the date it was forwarded). The Field Administrator continues to track progress through weekly supervision with the Regional Children's Services Managers.[6]

Requests for an OAH hearing are also recorded in the spreadsheet:

> OCS has an internal review process with the Field Administrator and the CSM's, prior to referring to the AG's for scheduling a hearing. Appeals are also recorded in the Excel tracking document. I record the same information as with grievances.

[6] The Field Administrator is, as of the date of this report, Travis Erickson. The position involves supervision of the regional children's' services managers.

The ombudsman considers the changes OCS has made to be a partial implementation of the recommendation. Complete implementation would address the following concerns:

- Grievances are not assigned a distinct tracking number.
- Field offices cannot input grievances into the system upon receipt, so there is no tracking until the form reaches Naomi Harris in Juneau.
- The tracking system does not provide a method to trace whether action was taken on a grievance. The spreadsheet tracks referral of a grievance to the Field Administrator, but does not track resolution of the grievance; similarly it apparently does not track a request for an OAH hearing beyond referral to the "internal review process."

***RECOMMENDATION THREE*: Repeal and Replace Policies and Procedures**

> **The Office of Children's Services should repeal and replace the Policies and Procedures section for grievances.**

After repealing and replacing the regulation, revision of the policies and procedures manual will be necessary. No language in the current grievance process should be kept. The new pages should contain little more than the new regulation itself. Policy should be limited to a note that filing of a grievance is a legal right, citizens should be made aware of the right, and filing of grievances should not be discouraged. The regulation itself will provide procedure. The entire manual should be as simple and spare as possible.

OCS Response. Director Lawton wrote:

> We are in full agreement with this recommendation. OCS will create a new Policy and Procedures (P&P) that reflects the streamlined simplified regulations. We can commit to having this new P&P finalized and ready for implementation within 60 days of the new regulations being finalized.

Ombudsman's Comments. OCS has committed to implementing the recommendation for a new policy, which logically follows from creation of a new set of regulations.

If OCS retains some of the current exclusions from the grievance process, such as exclusion of "child placement or child removal decisions of the department as a result of intervention under AS 47.10," then the ombudsman suggests that OCS consider providing examples of excluded decisions in the policy. Although the procedure outlined in the policy should be "spare," the policy offers an opportunity to clarify somewhat legalistic exclusions.

RECOMMENDATION FOUR: Institute Ongoing Grievance Training

> **When OCS adopts the new grievance regulations and policy procedure, OCS should implement an agency-wide training program on the grievance process. As part of this training, OCS should create Webinar training on the agency Intranet for employees to refresh their knowledge of the subject.**

There is a widespread need and desire for training on the grievance process, and implementation of a new regulation presents a logical opportunity for training. Every employee at OCS should be familiar with the grievance process, able to describe it to an inquiring client, and know what to do when receiving a completed grievance form. A number of OCS employees cautioned that training should be adequate, but not excessive.

The difficulty of implementing a training program will be directly related to the quality of the new regulation. If the regulation is clear and readily understandable on its face, simple training across the agency will be efficient and easily accomplished. In most cases a simple reading of the new regulation, a brief explanation of what to do when a grievance is received, and a short discussion and answering of questions should be a sufficient training exercise. The more complex and convoluted the regulation becomes, the more difficult, time consuming, and expensive training will be and the less likely that employees will properly follow it. For supervisors and CSMs, a modest amount of brief training in administrative procedure and due process would be appropriate. This training should be brief and concise, and need not exceed a one hour session. All supervisors should be instructed in how to assign a case number to a new grievance and in how to enter the case into the new caseload database. Depending on how the new database is set up, this could be as simple as requesting that the person assigned to maintain the database create a new case file.

A brochure containing the regulation and a brief explanation could be created that would serve as a training tool, a refresher guide and cheat-sheet for employees confronted with a grievance request, and a complete guide for the public. Adequate training for the entire agency could be accomplished by distribution of the brochure with instructions to read it, followed by a brief discussion and question and answer session at staff meetings throughout the state. Supervisors and CSMs would probably want a bit more in-depth training, but, so long as a regulation is adopted that is clear and easy to understand, a large investment of time and resources for training should not be necessary to provide every OCS employee with a comfortable working understanding of the process.

Finally, this training must be incorporated into the orientation training provided to new OCS employees. With a 30 percent turnover in staff per year, new employees must be notified up front of their responsibilities in this area.

The ombudsman recently learned that OCS will begin offering "Webinars" on the OCS Intranet for employees who are unable to attend some special training sessions. This is an excellent use of OCS resources.

OCS Response. Director Lawton wrote:

> Again, OCS is in full agreement with this recommendation. We envision developing an interactive self-guided Web-based training which could be accompanied [by a] brochure and/or easy to use Desk Reference Guide for Supervisors/Managers on how to provide information related to the grievance process and how, if necessary, to facilitate and document an informal meeting.

Ombudsman's Comments. OCS has agreed to take actions to implement the recommendations or to satisfy the intent of the recommendations although implementation waits on development of the new regulations.

FINDING OF RECORD AND CLOSURE

This investigation is closed with the finding that the allegation was ***justified***, and ***partially rectified***.

APPENDIX I:
7 AAC 54.205-240 OCS Grievance Procedure

7 AAC 54.205. Purpose

The purpose of the grievance procedure in 7 AAC 54.210 - 7 AAC 54.240 is to provide

(1) an informal dispute resolution process for an individual and department staff involved in a disagreement to discuss their concerns concerning child protection services or juvenile justice services verbally and in writing and attempt to reach a fair resolution agreeable to all parties; and

(2) a review process of a substantiated child abuse and neglect finding that has not been reviewed by a court.

7 AAC 54.210. Applicability and exemption

(a) An individual may submit a grievance to the department under 7 AAC 54.210 - 7 AAC 54.240 concerning the units that provide child protection services or juvenile justice services.

(b) A complainant may use the informal grievance procedure under 7 AAC 54.210 - 7 AAC 54.240 to challenge an application of a policy or procedure, action or inaction, or a completed licensing investigation by a department unit concerning child protection services or juvenile justice services.

(c) The provisions of 7 AAC 54.020 - 7 AAC 54.150 and 7 AAC 54.900 regarding confidentiality of child protection files apply to the grievance procedure under 7 AAC 54.210 - 7 AAC 54.240.

(d) The grievance procedure under this section is not available

(1) to a resident of a state-operated juvenile correctional facility or juvenile detention facility for which procedures developed by the superintendent under 7 AAC 52.095 apply;

(2) to a state employee unless the employee is also a client of the department, a client's parent or guardian, or a service provider for the department;

(3) for contract services disputes;

(4) to appeal late payments or to contest base foster care rates paid;

(5) to complain of child placement or child removal decisions of the department as a result of intervention under AS 47.10;

(6) to appeal a decision regarding grant programs that may be appealed under 7 AAC 78.310;

(7) to appeal a decision regarding civil rights actions covered under the department's civil rights complaint procedures;

(8) to appeal a decision or action taken by the department that is reviewable by the court under AS 47.10, AS 47.12, or AS 47.14; or

(9) to appeal a decision or action taken by the department that occurred more than 12 months after the complainant had actual notice of the decision or action.

7 AAC 54.215. Substantiated child abuse and neglect findings

(a) If AS 47.17 does not give a complainant a right to seek a court review of a substantiated child protection finding made against the complainant by the unit in the department that provides child protection services, the complainant may have the finding reviewed by either submitting a request to the department that the appeal be

(1) heard through the Office of Administrative Hearings as provided for in AS 44.64; or

(2) reviewed as a grievance through the procedure under 7 AAC 54.220 - 7 AAC 54.240.

(b) An individual who appeals a substantiated child protection finding under (a)(2) of this section waives the right to an appeal heard by the Office of Administrative Hearings under (a)(1) of this section.

(c) An appeal referred to the Office of Administrative Hearings under (a)(1) of this section is processed under AS 44.64.060, except that the hearing is closed to the public and the administrative law judge's proposed decision and record are confidential and not public records. The administrative law judge shall serve the commissioner with the proposed decision. The commissioner will adopt, revise, modify, or amend the proposed decision, or return the proposed decision to the administrative law judge for further proceedings under AS 44.64.060. Personnel in the commissioner's office may not participate in any prior stage of an appeal brought under this section.

7 AAC 54.220. Grievance procedure

(a) A complainant may submit a written complaint on a form provided by the department that describes the specific matter being grieved and the relief sought. The complainant shall submit the complaint to the supervisor of the person whose actions are the subject of the grievance. Upon receipt of the written grievance, the supervisor shall provide a copy of the procedure in 7 AAC 54.210 - 7 AAC 54.240 to the complainant. Within three working days after receiving the complaint, the supervisor will determine

(1) the nature of the complaint; and

(2) whether use of the grievance procedure under 7 AAC 54.210 - 7 AAC 54.240 is applicable to resolve the grievance.

(b) If the supervisor for child protection services decides that the grievance procedure is not applicable, the supervisor will notify the complainant and the regional administrator in writing and describe the reasons that the grievance procedure does not apply. The complainant may appeal the supervisor's decision under this subsection to the regional administrator. If the regional administrator made the initial decision that the grievance procedure does not apply, the complainant may appeal to the regional appeal panel under 7 AAC 54.230.

(c) If the supervisor for juvenile justice services decides that the grievance procedure is not applicable, the supervisor will notify the complainant and the juvenile probation officer IV or juvenile facility superintendent in writing and describe the reasons that the grievance procedure does not apply. The complainant may appeal the supervisor's decision to the juvenile probation

officer IV or juvenile facility superintendent under 7 AAC 54.226(a). If the juvenile probation officer IV or juvenile facility superintendent made the initial decision that the grievance procedure does not apply, the complainant may appeal to the director or director's designee under 7 AAC 54.240.

(d) If the complaint involves an action of a department staff member who is directly supervised by a regional administrator, juvenile probation officer IV, or juvenile facility superintendent, the complainant shall file the written complaint with the regional administrator, juvenile probation officer IV, or juvenile facility superintendent for resolution under 7 AAC 54.226 or 7 AAC 54.230.

(e) If the supervisor decides that the complaint should be processed under 7 AAC 54.210 - 7 AAC 54.240, the supervisor shall conduct an informal meeting under 7 AAC 54.222 with the complainant and the involved department staff within 10 working days after receipt of the complaint, unless the complainant or involved department staff is unable, for good cause shown, to attend within that period. The person unable to attend shall submit the reasons in writing, and the supervisor shall schedule the meeting to be held as soon as the person is available.

7 AAC 54.222. Informal meeting

(a) The supervisor shall conduct the meeting required under 7 AAC 54.220(e) in an informal manner. Each person will be permitted to state that person's understanding of the facts at issue in the complaint and make suggestions for resolution. If the parties agree, the supervisor may use teleconferencing to conduct the informal meeting. If more than one person grieves the same matter, the supervisor may schedule more than one informal meeting or may consolidate the grievances. If more than one informal meeting is necessary, the supervisor will schedule subsequent meetings to be held as soon as possible.

(b) At the conclusion of the informal meeting, the supervisor will complete a grievance procedure meeting summary form and include the action that was or will be taken. If the supervisor and the parties agree with the summary of the meeting as described on the form, each person will sign the form and receive a copy. If the informal meeting is conducted by teleconference, the parties may sign a copy of the completed grievance procedure meeting summary form and return it to the supervisor by electronic mail or facsimile.

(c) If a resolution is not reached at the informal meeting, the supervisor shall, within five working days after the final informal meeting, complete a written proposed resolution and send it to all parties. The supervisor will include the grounds for the complaint, a statement of the facts, actions taken or planned to resolve the complaint, and a statement of the complainant's right to request a review of the supervisor's proposed decision under 7 AAC 54.224 or 7 AAC 54.226.

7 AAC 54.224. Review of decision by supervisor for child protection services

(a) A complainant may request a meeting with the regional manager to discuss the proposed decision issued under 7 AAC 54.222 by the supervisor for child protection services.

(b) The meeting must be held in the same manner and according to the same time frames as the meeting with the supervisor under 7 AAC 54.222.

(c) In addition to a request for a meeting under (a) of this section, the complainant may request a review of the supervisor's proposed decision by a regional appeal panel appointed by the regional

administrator under 7 AAC 54.230. The complainant must request the appointment of a regional appeal panel within 15 working days after the date of the supervisor's proposed decision, or the request will be denied as untimely. The regional manager shall provide the complainant with the name and office address of the regional administrator and inform the complainant of the complainant's right to include a statement and documentation for the regional appeal panel's review.

7 AAC 54.226. Review of a decision by supervisor for juvenile justice services

(a) A complainant may request a meeting with the regional juvenile probation officer IV or juvenile facility superintendent to discuss the proposed decision issued under 7 AAC 54.222 by the supervisor for juvenile justice services.

(b) The meeting must be held in the same manner and according to the same time frames as the meeting with the supervisor under 7 AAC 54.222.

(c) After the meeting under this section, the complainant may request a review of the decision by the director or director's designee under 7 AAC 54.240.

7 AAC 54.228. Foster parent grievances

(a) If a complaint involves the actions of a foster parent, the department will notify the foster parent if the department intends to remove a child on a non-emergency basis. The department will issue the notice at least 48 hours in advance of the intended removal. A foster parent may grieve a decision to remove a foster child from the foster home by submitting a written request to the regional administrator that the child not be removed from the foster home until there is a final resolution of the grievance under 7 AAC 54.210 - 7 AAC 54.240.

(b) The regional administrator will grant the request made by a foster parent unless the regional administrator issues a written decision that finds that

(1) removal is in the best interests of the child;

(2) the child is being returned to the legal parent or guardian;

(3) removal is in response to an allegation of abuse or neglect in the foster home; or

(4) removal is ordered by a court.

(c) A grievance under this section will be processed under 7 AAC 54.230.

7 AAC 54.230. Panel review and resolution of child protection services complaints

(a) The unit in the department that provides child protection services shall provide a regional appeal panel review process for

(1) a complainant who is not satisfied with the review of the complainant's grievance under 7 AAC 54.224; or

(2) a matter described in 7 AAC 54.220(d) or 7 AAC 54.228.

(b) A regional appeal panel consists of a regional administrator or designee, a social worker V, and a private citizen who has expertise in the provision or administration of a human services program. The regional administrator may select a program specialist from the unit in the

department that provides child protection services to serve on the panel in place of the regional administrator or the social worker V.

(c) As soon as possible and no later than 21 working days after receipt of a request for a panel review, the regional administrator shall appoint a regional appeal panel and provide each panel member with a copy of the complainant's grievance file.

(d) The regional appeal panel may use teleconferencing to conduct the review.

(e) The review panel shall review the grievance file and conduct a fact-finding meeting within 10 working days after receiving the complainant's grievance file unless the complainant or involved staff is unable, for good cause shown, to attend within that period. If the complainant or an involved department staff is unable to be present during the fact-finding meeting, the individual shall advise the panel in writing of the reasons the individual is unable to be present and specify a date when the individual will be available. The panel will reschedule the fact-finding meeting to be held as soon as the individual is available.

(f) If the complainant appears before the panel during the fact-finding meeting, involved department staff may also attend.

(g) The panel may request the complainant or involved staff to provide additional documentation. The complainant and involved department staff shall be allowed to review the additional documentation submitted and may supplement the record.

(h) The panel will hold a deliberation meeting within five working days after the fact-finding meeting under (e) of this section. The deliberation meeting may immediately follow the fact-finding meeting. The complainant and involved department staff may not attend the deliberation.

(i) The panel shall

(1) issue a written report of findings, recommendations, and proposed resolution to the complainant within 10 working days after the deliberation meeting under (h) of this section; and

(2) send a written copy of the report to all parties and inform the complainant of the right to appeal under the Alaska Rules of Appellate Procedure.

(j) The decision issued under (i) of this section is a final administrative decision and may be appealed to the superior court under the Alaska Appellate Rules of Procedure.

7 AAC 54.240. Resolution of juvenile justice complaints

(a) A complainant may request review of a decision related to juvenile justice services issued under 7 AAC 54.220(c) or 7 AAC 54.226. The complainant must file the request for review with the director or director's designee within five working days after the date of the decision issued under 7 AAC 54.220(c) or 7 AAC 54.226.

(b) Within 15 working days after the date of the written report issued under 7 AAC 54.220(c) or 7 AAC 54.226, the director or director's designee shall issue a final written decision. The director or director's designee shall mail a copy of the final decision to the parties and give the complainant written notice of the complainant's right to appeal under the Alaska Rules of Appellate Procedure.

(c) The decision of the director or director's designee is a final administrative decision and may be appealed to the superior court under the Alaska Rules of Appellate Procedure.

APPENDIX II: POSSIBLE NEW OCS GRIEVANCE REGULATION

This hypothetical example draws elements from the current regulation, the original 1990, regulation, and regulations from other agencies. Under this regulation, all grievances would follow a single path to resolution, and procedures would be identical in every case.

7 AAC 54.x10. Grievance Procedures

(a) A person may challenge an action or inaction, including a completed licensing action, of the Office of Children's Services by filing a grievance on a form provided by the division. The provisions of 7 AAC 54.020 – 7 AAC 54.150 and 7 AAC 54.900 regarding confidentiality of child protection files apply to grievances filed under this section.

(b) The grievance procedure under this section is not available

(1) to a state employee unless the employee is also a client of the department, a client's parent or guardian, or a service provider for the department;

(2) for contract services disputes;

(3) to appeal late payments or to contest base foster care rates paid;

(4) to complain of child placement or child removal decisions of the department as a result of intervention under AS 47.10;

(5) to appeal a decision regarding grant programs that may be appealed under 7 AAC 78.310;

(6) to appeal a decision regarding civil rights actions covered under the department's civil rights complaint procedures;

(7) to appeal a decision or action taken by the department that is reviewable by the court under AS 47.10; or

(8) to appeal a decision or action taken by the department that occurred more than 12 months after the complainant had actual notice of the decision or action.

(c) if a foster parent grieves the removal of a foster child on a non-emergency basis, the foster parent may request that the child not be removed until the issuance of a final decision by a regional panel under 7 AAC 54.x30. The request shall be granted unless a children's services manager finds that

(1) removal is in the best interests of the child;

(2) the child is being returned to the legal parent or guardian;

(3) removal is in response to an allegation of abuse or neglect in the foster home; or

(4) removal is ordered by a court.

(d) the parties to a grievance may voluntarily discuss the case informally at any time before the conclusion of a regional panel meeting. Informal discussion shall not affect the time limits in this chapter. If a resolution of the matter is reached, the grievant may withdraw the grievance in writing, at which time the case shall be closed. If the grievant has not withdrawn the grievance in

writing but it reasonably appears that the grievant intended to withdraw a grievance, or that the grievance has been abandoned, the supervisor or children's services manager may notify the grievant in writing that the division understands the grievance to have been withdrawn or abandoned and intends to close the case, in which case all other time limits will be tolled until the grievant responds. If the grievant does not respond within thirty days, the division may issue a final decision without further proceedings.

(e) Upon receipt, the division shall assign each grievance a distinct consecutive case number and enter the case into an agency-wide database accessible to agency personnel. All actions taken on the case and the current status shall be documented in the database. Electronic versions of all documents, exhibits, and audio recordings in the case file shall be preserved in the database. Copies of final decisions with all confidential information redacted shall be made available to the public on the division's Website.

7 AAC 54.x20. Informal meeting

(a) Upon receipt of a signed grievance form, Office of Children's Services Staff shall immediately forward the form to the appropriate supervisor, or to a children's services manager if the actions of a supervisor are the subject of the grievance. The supervisor or children's services manager shall conduct an informal meeting with the grievant within ten days of the time the division receives the grievance form. The informal meeting shall be conducted in person or, with the consent of the parties, by teleconference.

(b) Each person at the informal meeting shall have an opportunity to explain the person's position, and to suggest methods of resolving the dispute. If the grievance process is not available under 7 AAC 54.x10(b), the supervisor or children's services manager shall explain that fact to the grievant, provide a copy of 7 AAC 54.x10 to the grievant, and state the fact in the decision letter under (c).

(c) Within five days of the conclusion of the informal meeting, the supervisor or children's services manager shall issue a written decision letter. The decision letter shall state the material facts, summarize the grievant's position, and explain what action the division will take in response to the grievance, including times by which the action will be taken. If no action is to be taken, the decision letter shall explain why.

(d) The decision letter shall be sent to the grievant with a form to appeal the decision to a regional panel under 7 AAC 54.x30 and an explanation of the method and time limits for appealing.

7 AAC 54.x30. Regional Panel

(a) within 15 days of the issuance of an informal meeting decision letter under 7 AAC 54.x20(c), the grievant may request review of the decision by a regional panel consisting of a children's services manager or designee, a social worker V, and a private citizen who has expertise in the provision or administration of a human services program. The children's services manager may select an Office of Children's Services program specialist to serve on the panel in place of the children's services manager or social worker V.

(b) within 20 days of a request for regional panel review, the children's services manager shall appoint a regional panel and provide each member with a copy of the grievance file.

(c) the children's services manager shall chair the regional panel; however, at the request of the children's services manager, the director may at any time contract with an attorney licensed in this state to chair the regional panel, in which case the children's services manager will continue to participate as a regular member of the panel. The chair will be responsible for providing proper notices, convening and presiding over meetings, admitting evidence, preserving the record, ruling on motions, and all other procedural matters of the panel. The chair may request that the director issue subpoenas as necessary to protect the rights of the parties and to collect evidence required by the panel. An attorney appointed to serve as chair shall be present during all deliberative meetings and will assist in drafting decision documents for the signature of the panel members, but will not be a voting member of the panel. The chair may conduct preliminary conferences to resolve procedural issues.

(d) The regional panel shall conduct a fact-finding meeting within 10 days after the children's service's manager provides the panel members with copies of the grievance file, unless the grievant or involved staff is unable, for good cause shown, to attend within that period. The fact-finding meeting shall be audio recorded and the division shall preserve the recording and all exhibits and documents as part of the grievance file.

(e) the fact-finding meeting need not be conducted according to technical rules relating to evidence and witnesses; however, relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action; hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action; the rules of privilege are effective to the same extent that they are recognized in a civil action; irrelevant and unduly repetitious evidence may be excluded; the burden of proof is on the grievant; the burden of persuasion is by a preponderance of the evidence.

(f) The panel may request that the complainant or involved staff provide additional information. The panel may continue the fact-finding meeting for a reasonable period if the panel determines that additional time is necessary to gather appropriate information.

(g) The panel shall hold a deliberation meeting within five working days after the conclusion of the fact-finding meeting. The deliberation meeting may immediately follow the fact-finding meeting. The grievant and department staff may not attend the deliberation.

(h) The panel shall issue a written report of findings, conclusions and recommendations within ten days of the deliberation meeting under (f) of this section. The panel shall send copies of the report to all parties and to the director.

(i) Within ten days of receiving the panel's report in (g) of this section, the director shall

(1) adopt the report;

(2) adopt the report with additional or amended findings or recommendations; or

(3) reject the report and issue a substitute report with findings, conclusions, and recommendations.

If the director takes no action within ten days, the report shall be deemed final as issued by the panel.

(j). The division shall implement the recommendations of the report issued under (h) of this section. The report issued under (h) of this section is a final administrative decision that may be appealed to the superior court. Upon the issuance of a final report under (h) of this section, the division shall provide a copy of the report to the grievant, with notice of the grievant's appeal rights.

APPENDIX III: SAMPLE OF STATE AGENCY APPEAL PROCESSES

The variety of these regulations shows how different agencies have crafted appeal procedures to meet their various needs. Some of these procedures will be more cursory than is appropriate for OCS, while others will be more complex than is necessary. This is not an exhaustive list of appeal regulations in Alaska; many other agencies have their own regulatory procedures. In addition, many hearings are governed by the more extensive statutory procedures in the Administrative Procedures Act (AS 44.62.350-630) and the regulatory rules of procedure for the Office of Administrative Hearings (2 AAC 64.100-370).

Many of the procedures in these regulations may be appropriate for OCS to incorporate into its own regulation. Ensuring the welfare of a child is obviously different from issuing and revoking driver's licenses, posting traffic signals, or administering business grants. But the process of receiving a citizen complaint, hearing the complainant's viewpoint, analyzing the validity of the complaint, keeping a record and issuing a decision will have common elements across all state agencies.

Division of Longevity Benefits. Procedures for Appealing Denial of Longevity Benefits.

2 AAC 40.145. Administrative hearings

(a) The administrator will grant an administrative hearing to a person who has been denied benefits under this chapter and who complies with 2 AAC 40.060(b), 2 AAC 40.100(c), or 2 AAC 40.120(a)(3) and (d). A person who contacts the administrator by telephone and states an intent to request a hearing will be granted a 15-day extension in which to submit a written request confirming the call. The administrator will grant a hearing to a person who demonstrates, to the satisfaction of the administrator, that the request for a hearing was delayed by illness, prolonged absence from a usual place of residence, an inability to obtain necessary assistance in requesting a hearing, or other excusable neglect.

(b) Within 10 days after the administrator's receipt of a request for a hearing, the commissioner of administration will appoint as hearing officer a person who has not previously reviewed or acted upon the matter under consideration.

(c) The hearing officer will provide the appellant adequate opportunity to examine the contents of the case file and documents and records to be used by the hearing officer at the hearing. The identity of a person reporting information to the administrator on a confidential basis will not be provided to the hearing officer, the appellant, or the appellant's agent.

(d) A hearing will be held at a date and time mutually agreed upon between the appellant and the hearing officer. A hearing will be held by telephone unless the hearing officer determines that a telephonic hearing is inappropriate. If a hearing is not held by telephone, it will occur in a place mutually agreed upon by the appellant and the hearing officer. The appellant shall bear his or her own expenses related to attendance or representation at the hearing, except for the telephone expenses of the hearing.

(e) The hearing will be electronically recorded and the recording will be preserved until the time limit for appeal of the hearing officer's decision has expired. If the appellant requests a transcript of the proceedings, it will be prepared at the appellant's expense.

(f) The appellant bears the burden of proving that the administrator's decision was incorrect.

(g) The state is not responsible for any fees, mileage, or expenses for any representative or witness appearing at the request of the appellant.

(h) Oral evidence will be taken only under oath to be administered by the hearing officer. The hearing officer will admit evidence that is relevant and will exclude evidence that is irrelevant or unduly repetitious. The hearing officer will accord such weight to the evidence as would a responsible person in the conduct of serious affairs.

(i) The appellant, the appellant's guardian, or the appellant's designated agent under a properly executed statutory power of attorney shall be present at the hearing. The appellant may be represented or assisted by a person of his or her choice. The hearing officer will allow witnesses to testify by telephone and will provide the appellant with adequate opportunity to

(1) call witnesses;

(2) establish relevant facts and circumstances;

(3) advance arguments without undue interference;

(4) question or refute testimony or evidence; and

(5) confront and cross-examine adverse witnesses.

(j) The hearing officer will render a decision within 60 days after the date a request for a hearing is received by the administrator unless the time period is extended by mutual consent of the appellant and the hearing officer. The appellant will be notified of the decision by certified mail.

(k) An appellant may appeal the decision of the hearing officer to the superior court within 30 days after the mailing of the hearing officer's decision.

(*l*) An appellant may request that the appeal process be terminated at any time. Upon receipt of a request by an appellant to terminate the process, the hearing officer will give the appellant written notice that the appeal process is being ended at the appellant's request and that the administrator's decision will stand.

Division of Motor Vehicles Procedures for Appealing Driver's Licenses Decisions

2 AAC 93.010. Request for hearing

(a) In addition to the requirements of AS 28, a person may contest a departmental action made under AS 28, 2 AAC 90, 2 AAC 91, or 2 AAC 92, regarding motor vehicles or driver licensing, by timely submitting a written request for a hearing under this section. Unless otherwise specified by statute, to be considered timely, the written request for a hearing must be delivered to the division's main office or, if mailed, postmarked within 30 days after the date of the department's notice of intended action.

(b) A late request for a hearing will not be granted if the reason for the late request is not verified under oath and if the late request is not

(1) delivered to the hearing office or, if mailed, postmarked within seven days after the last day of the tolling circumstance or event listed at AS 28.15.166(b);

(2) delivered to the hearing office or, if mailed, postmarked within 10 days after the last day of the tolling circumstance or event listed at AS 28.15.184(b).

2 AAC 93.020. Scheduling of hearing

(a) A hearing will be scheduled to be conducted during normal business hours. A petitioner may request one change to the date or time of the hearing if the petitioner has a preexisting conflict with the hearing date set by the department. The petitioner must make the request to change the date or time of the hearing in writing explaining the nature of the conflict. The request must be delivered to the hearing officer or, if mailed, postmarked within 10 working days after the issue date of the notice of hearing. The hearing officer may grant or deny the request based on the hearing officer's scheduling considerations.

(b) A petitioner who has not been granted a scheduling change under (a) of this section may request a postponement of the hearing for good cause. The request to postpone the hearing must precisely state the reason for the request, must be verified under oath by the petitioner, if practical, and must be received by the hearing officer before the scheduled time of the hearing. The determination of good cause and the granting of a postponement due to a good cause request is solely at the discretion of the hearing officer. An avoidable scheduling conflict, including a conflict with the schedule of the petitioner's counsel, that arises after the issue date of the notice of hearing may not be considered good cause, unless the request to reschedule the hearing conforms to the time requirements of (a) of this section. For the purpose of this subsection, "good cause" includes a serious and unavoidable emergency or physical incapacity requiring hospitalization.

(c) Unless a postponement is requested by the division, or made due to a serious and unavoidable emergency or the petitioner's physical incapacity requiring hospitalization, a temporary permit issued under AS 28.15.166(c) or AS 28.15.184(c) will not be extended beyond the original date and time of the hearing. A temporary permit will not be extended to accommodate a scheduling change requested by a petitioner under (a) of this section.

2 AAC 93.030. Procedures for hearing

(a) A request by the petitioner for the hearing officer to review non-testimonial evidence, affidavits, or motions must be delivered to the hearing officer or, if mailed, postmarked at least 10 working days before the scheduled date of the hearing. A request to review an audio, video, or compact disc recording submitted as evidence by the petitioner must be accompanied by a letter explaining the contested issue and describing where the relevant evidence is located on the recording.

(b) A request by the petitioner for the hearing officer to subpoena a witness must be delivered to the hearing officer or, if mailed, postmarked at least 10 working days before the scheduled date of the hearing. A subpoena request for the participation of a peace officer must contain the officer's name and law enforcement agency. A subpoena request for an individual witness must contain the person's full name, address, and telephone number. Failure to conform to these requirements will be considered a waiver of the right to compel, with a subpoena, a witness to testify at the hearing. For witnesses other than peace officers, the petitioner is responsible for the fees, travel expenses, and per diem of witnesses.

(c) The contents of the division's hearing file may be reviewed at no charge at the hearing office during normal business hours. A copy of the hearing file may be obtained by written request and upon prepayment of reproduction costs. The written request for a copy of the file contents must be delivered to the hearing office or, if mailed, postmarked at least 10 working days after the issue date of the notice of administrative hearing. Upon receipt of the written request, the department will send a payment due letter detailing the cost of reproduction. The hearing will not be postponed to review or copy the contents of the hearing file, unless the delay in reviewing or copying is attributable to the division.

DCCED Division of Banking and Securities Appeal Process

The provisions for hearings on issues arising out of securities regulation supplement the procedural rules of the Office of Administrative Hearings, which has statutory authority to hear these cases.

3 AAC 08.930. Hearings

(a) The administrator or the administrator's designated hearing officer will hold hearings under AS 45.55.935 upon written request by any person aggrieved by any act or failure to act of the administrator or by any report, ruling, or order of the administrator. The written request for hearing must specify the grounds to be relied upon as a basis for the relief requested at the hearing. The administrator or the hearing officer will, in the administrator's discretion, hold hearings upon the administrator's own motion, under AS 45.55.935.

(b) Upon receipt of written request for a hearing, the administrator will, within 30 days from the receipt of the request, either schedule the matter for hearing or vacate in writing the order that the request concerns. The hearing shall take place no later than 90 days after the request is received by the administrator. If a delay is made necessary because of exigencies beyond the control of the parties or the hearing officer, application may be made to the administrator for an extension of time for good cause shown.

(c) At least 10 days advance notice of the hearing will be given to all persons directly affected by the hearing. In the notice of hearing the administrator will or the hearing officer shall include

(1) the time and place of the hearing;

(2) a statement of the matters to be considered;

(3) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(4) references to the particular sections of AS 45.55 or this chapter that are involved.

(d) The parties shall, no later than 20 days before the hearing, exchange those documents they intend to introduce at the hearing. A party may not obtain additional discovery, except upon a motion that demonstrates, to the satisfaction of the administrator or hearing officer, that good cause exists for additional discovery, and that additional discovery is to be limited to those areas that are relevant to the matter to be heard. Discovery must be completed at least 10 days before the hearing.

(e) Any person who is a party to the hearing before the administrator and who may be adversely affected by the order of the administrator may have subpoenas issued to any witness on that person's behalf in accordance with AS 44.62.430. The party or the party's counsel is responsible for timely service of the subpoenas.

(f) Any person affected by the hearing may appear in person or by counsel. That person or counsel may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses, and may present evidence on counsel's client's behalf.

(g) The following rules of evidence apply in hearings held under this section:

(1) oral evidence will be taken only on oath or affirmation;

(2) each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues, including matters not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut the evidence against that party;

(3) witnesses must give testimony relevant to the issue; upon objection of any party, the party calling the witness must make an offer of proof as to the witnesses' testimony and its relevance; repetitive witnesses are not allowed, unless for extraordinary good cause;

(4) if the respondent does not testify in the respondent's own behalf, the respondent may be called and examined as if under cross-examination;

(5) the hearing need not be conducted according to technical rules relating to evidence and witnesses; relevant evidence, as defined at Rule 401 of the Alaska Rules of Evidence, must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action; hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action; the rules of privilege are effective to the same extent that they are recognized in a civil action; irrelevant and unduly repetitious evidence will be excluded.

(h) A record of all hearings will be made. Upon reasonable request made by any person affected by the hearing, and at that person's expense, a full stenographic record of the proceedings will be made. When a transcription is made part of the records of the division, any person having a direct interest in it will be furnished with a copy of the stenographic or electronic record at the requestor's expense.

(i) The record in a hearing includes the following:

(1) all pleadings, motions, and intermediate rulings;

(2) all evidence received or considered, including a statement of matters officially noted;

(3) questions or offers of proof, objections, and rulings on them;

(4) proposed findings and exceptions;

(5) the proposed decision, opinion, report, or order of the hearing officer, or the decision, opinion, report, or order of the administrator, if the hearing is conducted by the administrator.

(j) If the matter is heard before a hearing officer, the hearing officer shall make recommended findings of fact and conclusions of law to be presented within 10 days of the termination of the hearing to the administrator for adoption, amendment, or rejection. The administrator shall, within 10 days of receiving the hearing officer's recommendations, make a final order or remand the matter to the hearing officer for additional findings. If the matter is heard before the administrator, the administrator shall make a final order within 10 days of the termination of a hearing. A final order will be in writing. A final order will include findings of fact and

conclusions of law. All findings of fact will be based exclusively on the evidence presented and on matters officially noticed. Findings of fact will be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of a final order will be delivered or mailed to each party affected or to that party's attorney of record within 10 days of the termination of the hearing or 10 days after the hearing officer makes the recommendation to the administrator.

(k) The administrator will, in the administrator's discretion, grant a rehearing to any aggrieved party if the party makes a written request within 10 days after the final order is mailed to the person entitled to receive it. A party requesting rehearing must set out one or more of the following grounds:

(1) newly discovered evidence or newly available evidence relevant to the issues;

(2) a need for additional evidence to develop the facts essential to a proper decision;

(3) probable error committed in the proceeding or in the administrator's decision that would be grounds for reversal on judicial review of the order;

(4) the need for further consideration of the issues and the evidence in the public interest.

(*l*) A rehearing is limited to those grounds upon which the rehearing was requested or granted. However, the administrator will, in the administrator's discretion, rehear, reopen, or reconsider any matter

(1) in accordance with other applicable statutory provisions; or

(2) on the grounds of

(A) fraud by the prevailing party; or

(B) procurement of the order by perjured testimony or fictitious evidence.

(m) An order or decision resulting from a rehearing will be delivered or mailed to each party affected and to that party's attorney of record within 10 days after termination of the rehearing.

Department of Labor and Workforce Development Appeal Process

State law prescribes requirements for wages, hours, and working conditions for public contracts. 8 AAC 30.090-110 provides a process for complaints about possible violations of these requirements.

8 AAC 30.090. Investigations, conference, and persuasion

(a) The division will investigate potential violations of AS 36 (Public Contracts), on its own motion or on the complaint of any person.

(b) If the division finds after investigation that probable cause exists for believing that a violation of AS 36.05 or AS 36.10 has occurred, it will attempt to eliminate the unlawful practice by conference and persuasion as follows:

> (1) the division will provide the respondent believed to have violated AS 36.05 or AS 36.10 with a copy of the complaint or a description of the alleged violation and inform the respondent of the results of the division's investigation; and
>
> (2) the division will provide an opportunity for an informal conference with the respondent to discuss the matter and attempt to eliminate the alleged violations.

(c) Repealed 1/2/91.

(d) If an alleged violation is not rectified by the informal conference or if the respondent fails to attend the conference without good cause, the division will refer the matter to the attorney general for enforcement under AS 36.05.030(b) or schedule a hearing.

8 AAC 30.100. Hearings

(a) Both respondent and complainant may be represented by counsel. If counsel for a party notifies the division, in writing, that counsel is appearing in the matter on behalf of the party, service of notices, memoranda, recommendations, or other papers will be considered sufficient if made on counsel.

(b) The division will give notice to the respondent and to the complainant, if any, of the time and place of the hearing on an alleged violation of AS 36.05 or AS 36.10 by certified mail, or by personal service at least 15 days before the hearing. Mailing to the last known address or the address listed with the division assigned occupational licensing for construction contractors functions in the Department of Commerce, Community, and Economic Development shall be considered valid service. The notice will contain a copy of the complaint and a description of the alleged violation which will be considered at the hearing.

(c) The location of the hearing will be designated by the division with due regard for the convenience of all persons involved. All hearings are public.

(d) The director will appoint a wage and hour investigator or contract with an attorney licensed in this state to serve as hearing officer, to preside over the hearing, and to make findings of fact and conclusions of law to be used as a basis for the director's decision. An investigator who has investigated the alleged violations or taken part in the informal conference under 8 AAC 30.090 will not be appointed hearing officer.

(e) The hearing officer has full authority to control the procedure of the hearing and to rule on all motions and objections.

(f) The hearing officer may admit any relevant evidence, regardless of the existence of any common law or statutory or court rule which might make improper the admission of such evidence over objection in civil actions, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(g) Oral evidence must be given under oath or affirmation. A record of the proceedings will be kept.

(h) The hearing officer, respondent, and complainant may

(1) call and examine witnesses;

(2) cross-examine opposing witnesses on any matter relevant to the issue at hand even though that matter was not covered in direct examination; and

(3) introduce exhibits.

(i) If the respondent or complainant does not testify in that person's own behalf, that person may be called and examined as if under cross-examination.

(j) The hearing officer may, for good cause shown, continue a hearing from day to day or recess it to a later date or to a different place by announcement at the hearing or by notice.

8 AAC 30.110. Decisions

(a) The hearing officer will prepare a written recommendation to the director containing findings of fact and conclusions of law. A copy of the recommendations will be mailed or otherwise delivered to the respondent and to the complainant, if any. The director will act upon the hearing officer's recommendation and render a final decision within 30 days.

(b) Upon making a decision, the director will serve it upon the respondent and complainant, if any, by personal service or certified mail, return receipt requested. If the director determines that the respondent has violated AS 36.05 or AS 36.10, the decision may contain such cease and desist orders and other orders and relief, including a recommendation that the respondent be placed on a list of violators who are barred from performing public contracts as provided under AS 36.05.090 and AS 36.10.090, as the director considers appropriate to correct the unlawful conduct.

(c) If, after the director's decision finding the respondent in violation of AS 36.05 or AS 36.10 is served on the respondent, the director determines that the respondent has not ceased or has failed to correct the unlawful conduct, the director will refer the matter to the attorney general for enforcement.

Fisherman's Fund Appeal Process

8 AAC 55.030 provides a very limited appeal process for fishermen who have been denied a claim for medical benefits for work-related injuries.

8 AAC 55.030. Appeals

(a) The administrator shall submit a written notice to each fisherman whose application cannot be accepted based on criteria set out in the law and regulations stating the reason why the payment cannot be made.

(b) The council shall review each application which has not been approved for payment by the administrator. Each fisherman who has an application pending before the council shall be notified in writing by the administrator of the time and place of a council session at least 10 days before the session. Each fisherman may submit additional evidence to the council in support of his claim. The evidence may be presented in writing, by personal appearance, or by both methods.

(c) The administrator shall notify, in writing, each fisherman and party with an application before the council of the council's decision on the application.

(d) A fisherman may appeal the decision of the council. The council's decision is final unless appealed to the commissioner within 45 days after mailing of the notice of the council's decision. The appeal must be in writing and must include a description of the relief sought. The commissioner's decision will be based on a consideration of the whole record and will state the facts relied upon. The decision of the commissioner is final.

Alaska Workforce Investment Board Appeal Process

8 AAC 84.090 provides a relatively cursory procedure to ensure due process in the disbursement of workforce training grants by the Workforce Investment Board.

8 AAC 84.090. Reconsideration and appeal procedures

(a) A person who receives a notice of denial of award from the department may file a written request for reconsideration under this section to the commissioner no later than 10 working days after the date of the notice.

(b) The written request for reconsideration must address the reasons the proposal was denied by the department.

(c) No later than 10 working days after receipt of the request for reconsideration, the commissioner will make and issue a written decision on the request.

(d) The commissioner may reconsider a proposal for an award if the person requesting reconsideration under this section

> (1) shows that the circumstances leading to the denial have changed substantially;
>
> (2) provides relevant information to the department that was not available when the denial was made; or
>
> (3) shows that the department relied upon a technical, legal, or administrative error or misinterpreted data to make its decision.

(e) The commissioner after reconsideration will make the decision on the award of the grant using the criteria established in the solicitation and based upon the contents of the proposal, other documentation, and any other information about the applicant that is available to the department.

(f) If the commissioner does not issue a written decision on or before the 10th working day after a request for reconsideration is received, the request is considered denied.

(g) The commissioner's decision on a request for reconsideration is the final decision of the department.

(h) If a person does not request reconsideration on or before the date established under (a) of this section, the department's decision is final.

(i) A final decision of the department is subject to judicial review under the Alaska Rules of Appellate Procedure.

Department of Natural Resources Appeal Process

While some regulations apply only to a single division of a department, 11 AAC 02.010-900 applies to all appeals of actions taken by the Department of Natural Resources. Department-wide appeal procedures are often more detailed and complex than regulations limited to a single division. An unusual feature of this regulation is 11 AAC 02.050(b), which provides that "the hearing procedure will be determined by the department on a case-by-case basis." This is an interesting method of prescribing how hearings will be conducted, but it does not lend predictability to the process and is probably not an advisable pattern for OCS to copy.

11 AAC 02.010. Applicability and eligibility

(a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.

(g) A person may not both appeal and request reconsideration of a decision.

11 AAC 02.015. Combined decisions

(a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) - (m) and this chapter applies to the combined decision.

(b) A decision of the department may include a statement that a final consistency determination under AS 46.40 (Alaska Coastal Management Program) has been rendered in conjunction with

the decision. A person may not, under this chapter, appeal or request reconsideration of the final consistency determination, including a requirement necessary solely to ensure the activity is consistent with the Alaska coastal management program as approved under AS 46.40.

11 AAC 02.020. Finality of a decision for purposes of appeal to court

(a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

(b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.

(c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under 11 AAC 02.040(c) - (e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for purposes of appeal to the superior court.

(d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court.

11 AAC 02.030. Filing an appeal or request for reconsideration

(a) An appeal or request for reconsideration under this chapter must

(1) be in writing;

(2) be filed by personal service, mail, fax, or electronic mail;

(3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;

(4) be correctly addressed;

(5) be timely filed in accordance with 11 AAC 02.040;

(6) specify the case reference number used by the department, if any;

(7) specify the decision being appealed or for which reconsideration is being requested;

(8) specify the basis upon which the decision is challenged;

(9) specify any material facts disputed by the appellant;

(10) specify the remedy requested by the appellant;

(11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or

request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;

(12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any; and

(13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing.

(b) At the time an appeal is filed, and up until the deadline set out in 11 AAC 02.040(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.

(c) If public notice announcing a comment period of at least 30 days was given before the decision, an appellant may not submit additional written material after the deadline for filing the appeal, unless the appeal meets the requirements of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

(1) comments already received from the appellant and others;

(2) whether the additional material is likely to affect the outcome of the appeal;

(3) whether the additional material could reasonably have been submitted without an extension;

(4) the length of the extension requested;

(5) the potential effect of delay if an extension is granted.

(d) If public notice announcing a comment period of at least 30 days was not given before the decision, an appellant may submit additional written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the deadline for filing the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

(1) comments already received from the appellant and others;

(2) whether the additional material is likely to affect the outcome of the appeal;

(3) whether the additional material could reasonably have been submitted without an extension;

(4) the length of the extension requested;

(5) the potential effect of delay if an extension is granted.

(e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.

(f) If the decision is one described in 11 AAC 02.060(c), an appellant may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay.

11 AAC 02.040. Timely filing; issuance of decision

(a) To be timely filed, an appeal or request for reconsideration must be received by the commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is set by statute, regulation, or existing contract. If the 20th day falls on a day when the department is officially closed, the appeal or request for reconsideration must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.030(a)(11).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

(1) when the department gives public notice of the decision; or

(2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a).

11 AAC 02.050. Hearings

(a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030(a)(13), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

(1) formal rules of evidence need not apply; and

(2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript.

11 AAC 02.060. Stays; exceptions

(a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001.

(c) Unless otherwise provided in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

(1) issue a permit that is revocable at will;

(2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or

(3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision.

11 AAC 02.070. Waiver of procedural violations

The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require.

11 AAC 02.900. Definitions

In this chapter,

(1) "appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign;

(2) "appellant" means a person who files an appeal or a request for reconsideration;

(3) "commissioner" means the commissioner of natural resources;

(4) "decision" means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;

(5) "department" means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;

(6) "request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned.

DCCED Division of Corporations, Business and Professional Licenses Appeal Process

The appeal procedures in 12 AAC 12.800-855 apply only to decisions regarding business license endorsements to sell tobacco, such as a decision to suspend an endorsement because of a sale made to a minor.

12 AAC 12.800. Applicability

The provisions of 12 AAC 12.800 - 12 AAC 12.855 apply to an administrative hearing regarding a department action under AS 43.70.075, including a notice of suspension and a refusal by the department to issue a business license endorsement

12 AAC 12.805. Request for hearing

(a) To obtain administrative review of a department action under AS 43.70.075, an aggrieved person must file with the department, in accordance with this section and 12 AAC 12.855, a request for an administrative hearing. The request must be filed within 20 days after the notice of department action is issued.

(b) A request for an administrative hearing must

(1) be in writing;

(2) be signed by the aggrieved person or the aggrieved person's attorney;

(3) be correctly addressed;

(4) set out the jurisdictional heading and case caption; the case caption must state the aggrieved person's own name; in addition, if the aggrieved person does business under another name, the case caption must state that name under a "d/b/a" designation;

(5) set out the case reference number used by the department;

(6) set out, underneath the case reference number and centered, the title of the request;

(7) specify the basis upon which the department action is being challenged;

(8) specify the relief sought;

(9) set out, at the end of the request, the

(A) signature of the aggrieved person or the aggrieved person's attorney; and

(B) date that the request was signed;

(10) include the aggrieved person's mailing address and daytime telephone number; the aggrieved person may include an electronic mail address and a telephone number for facsimile transmissions; and

(11) include a request for any special procedures to be used at the hearing, including the use of a translator.

(c) The aggrieved person is responsible for notifying the department in writing of any change in the aggrieved person's mailing address, daytime telephone number, electronic mail address, or telephone number for facsimile transmissions. For purposes of any requirement in 12 AAC 12.800 - 12 AAC 12.855 to provide the aggrieved person with a copy of filed or decisional documents, and for purposes of any other attempt to contact the aggrieved person, the

department and the hearing officer may consider current any information that the aggrieved person most recently provided with respect to the aggrieved person's mailing address, daytime telephone number, electronic mail address, or telephone number for facsimile transmissions.

12 AAC 12.810. Notice of appearance by attorney for aggrieved person

An attorney representing an aggrieved person must file with the hearing officer a notice of appearance that provides the attorney's mailing address, the attorney's telephone number, and any telephone number for the attorney to receive facsimile transmissions.

12 AAC 12.815. Time and Place of hearing

(a) Unless the aggrieved person and the department stipulate, with the hearing officer's approval, to the time and place of the hearing and to pre-hearing deadlines, the hearing officer shall conduct a telephonic pre-hearing conference to

(1) schedule the time and place of the hearing; and

(2) determine pre-hearing deadlines for the close of discovery, the exchange of witness and exhibit lists, the filing of motions, and the filing of optional hearing memoranda.

(b) The hearing shall be held in Anchorage, Fairbanks, or Juneau, whichever location is closest to the aggrieved person, unless the aggrieved person and the department stipulate, with the hearing officer's approval, to a different location for the hearing.

12 AAC 12.820. Discovery

The aggrieved person and the department may obtain discovery of unprivileged documentary evidence relevant to the issues identified in AS 43.70.075(m)(1), (2), and (3). Discovery requests and responses are not required to be filed with the hearing officer. Upon a motion with good cause shown, the hearing officer may compel discovery or issue protective orders concerning discovery.

12 AAC 12.825. Continuances

To seek a continuance in an administrative hearing, the aggrieved person or the department must file a motion that sets out the grounds for the request. The administrative hearing may only be continued for good cause shown.

12 AAC 12.830. Motions

(a) To make a motion or submit a memorandum, the aggrieved person or the department must file the motion or memorandum in writing with the hearing officer and provide a copy to the opposing party. The filing of a motion or memorandum with the hearing officer is subject to the requirements of 12 AAC 12.855, as applicable. The filing must include signed proof that a copy was provided to the opposing party, identifying the motion or memorandum provided, and setting out the date and the method by which the copy was provided. A copy to the opposing party may be provided by personal delivery, first class mail, or facsimile transmission, A copy provided by electronic mail shall not be considered to have been provided in accordance with this subsection.

(b) A written motion is subject to opposition and reply memoranda,

(1) except as otherwise set out in 12 AAC 12.800 - 12 AAC 12.855;

(2) unless the aggrieved person and the department, with the hearing officer's approval, stipulate otherwise; or

(3) unless the commissioner or hearing officer order otherwise.

(c) Unless the commissioner or hearing officer orders a different schedule for the filing of memoranda, and except as provided in (d) of this section,

(1) an opposition memorandum may be filed with the hearing officer no later than 10 days after the date the motion was provided to the opposing party; and

(2) a reply memorandum may be filed with the hearing officer no later than three business days after the date the opposition memorandum was provided to the opposing party.

(d) If a motion or memorandum is provided to the opposing party by first class mail, three days shall be added to the time for filing an opposition or reply memorandum.

12 AAC 12.835. Hearing

(a) For purposes of the preponderance of the evidence test required under AS 43.70.075(m), the department bears the burden of proof.

(b) Unless the aggrieved person and the department agree otherwise, the department will present its case first. The aggrieved person and the department each may make an opening statement and a closing argument. A closing argument may be oral or written, and with the hearing officer's approval, may be filed or take place after the final day of testimony. Each witness shall testify under oath and with an opportunity for cross-examination. An aggrieved person who is not represented by counsel may testify in a narrative form, under oath and subject to cross-examination. Upon request by the aggrieved person or the department, and with the hearing officer's approval, a witness, the aggrieved person, or the department may testify or otherwise participate in the hearing process telephonically. Any long distance charge for telephonic testimony or participation must be incurred by the party who made the request.

(c) A hearing held under this section shall be recorded and may be transcribed at the request and expense of the party requesting the transcript.

(d) After the record for the hearing is closed, the hearing officer shall issue. a written proposed decision with findings of fact and conclusions of law.

12 AAC 12.840. Evidence

(a) Oral evidence may be taken only on oath or affirmation.

(b) The aggrieved person and the department may each

(1) call and examine witnesses;

(2) introduce exhibits, with the department using numbers and the aggrieved person using letters to identify exhibits;

(3) cross-examine opposing witnesses on matters relevant to the issues, even if an issue was not covered in the direct examination;

(4) impeach a witness regardless of which party first called the witness to testify;

(5) rebut any adverse evidence; and

(6) introduce evidence to rebut or support the presumption set out in AS 43.70.075(r).

(c) If the aggrieved person does not choose to testify on direct examination, the aggrieved person may be called and examined as if under cross-examination.

(d) The administrative hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded.

12 AAC 12.845. Final decision and reconsideration

(a) For purposes of appeal to the superior court, the commissioner's decision under AS 43.70.075(n) is a final administrative order and decision on the last day when reconsideration of that decision can be ordered. The decision becomes effective 30 days after it is issued under 12 AAC 12.855(c), unless

(1) a different effective date is stated in the decision; or

(2) the aggrieved person and the department, with the approval of the commissioner, agree to a different effective date; the commissioner may delegate to the hearing officer a decision to approve a different effective date.

(b) Within no more than 20 days after the commissioner's decision is issued under 12 AAC 12.855(c), the aggrieved person or the department may file, in accordance with 12 AAC 12.830 and 12 AAC 12.855, a motion for reconsideration of the decision. The motion must set out the grounds upon which the aggrieved person or the department believes the decision to be erroneous, unlawful, or defective.

(c) Within 30 days after the commissioner's decision is issued under 12 AAC 12.855(c), the commissioner may order reconsideration on the commissioner's own motion or upon the filing of a motion in accordance with (b) of this section. Upon reconsideration, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the hearing officer for additional proceedings. If the commissioner does not act on a motion for reconsideration within the 30-day period, the motion for reconsideration is denied.

(d) The commissioner may grant, upon a motion by the aggrieved person or the department, a stay for a particular purpose at any time before the decision becomes effective or before any appeal is filed with the superior court. A motion for a stay must set out the reasons that a stay is sought. The commissioner will grant a stay only for good cause shown.

(e) Any filing after issuance of the hearing officer's proposed decision shall be made with the hearing officer. The hearing officer shall forward those filings to the commissioner.

12 AAC 12.850. Contacts with commissioner and hearing officer

An aggrieved person, the department, or a person acting on behalf of the aggrieved person or department may contact the commissioner or hearing officer concerning a matter that is the subject of a pending or in-progress administrative hearing only through the procedures set out in 12 AAC 12.800 - 12 AAC 12.855. The commissioner will not, and hearing officer may not, make a communication without both parties present concerning a matter that is the subject of a pending or in-progress administrative hearing to which the aggrieved person and the department are a party.

12 AAC 12.855. Time periods and methods for filing

(a) If a document must be filed on or before a specified date under a provision of 12 AAC 12.800- 12 AAC 12.855, the document may be filed by personal delivery, first class mail, or facsimile transmission. If the document is filed by

(1) mail, the date of filing is the date when the department receives the document; or

(2) personal delivery or facsimile transmission, the document will not be considered timely filed unless the department receives the document before the time the department closes for regular business on the specified date.

(b) If a date on or before which a document must be filed under 12 AAC 12.800- 12 AAC 12.855 is a Saturday, Sunday, or state holiday, the document must be filed on or before the next regular business day.

(c) For purposes of calculating a time period under AS 43.70.075 and 12 AAC 12.800- 12 AAC 12.855, the date when a notice of a department action is issued to an aggrieved person is the date that the department personally delivers the notice, sends it by first class mail, or transmits it by facsimile transmission, whichever occurs first. An aggrieved person represented by an attorney will be presumed to have been issued the decision if the decision is issued to the attorney by one of the means in this subsection.

(d) A document may not be filed by electronic mail or by any other electronic means except facsimile transmission.

Department of Revenue Appeal Process

The appeal provisions of 15 AAC 05.001-050 apply to appeals of actions by the Child Support Services Division, the Permanent Fund Dividend Division, and the Tax Division. Child support and PFD appeals represent a very high volume caseload, while tax cases often present very complex legal issues involving large amounts of money. The detail and complexity of this regulation probably exceeds what would be necessary and desirable for OCS. Until 2005 the commissioner of revenue employed several full-time hearing examiners to handle these cases. Revenue appeals are now heard by the Office of Administrative Hearings.

15 AAC 05.001. Application of 15 AAC 05.001 - 15 AAC 05.050

The provisions of 15 AAC 05.001 - 15 AAC 05.050 govern the procedures for all hearings relating to

> (1) tax, tax credit, and license fee matters under AS 43 except objections to assessments made under AS 43.56 which are within the jurisdiction of the State Assessment Review Board;
>
> (2) permanent fund dividend matters under AS 43.23.005 - 43.23.095 and under sec. 19, ch. 102, SLA 1982, unless 15 AAC 05.001 - 15 AAC 05.050 are inconsistent with the procedural provisions of 2 AAC 64 or 15 AAC 23; the provisions of 15 AAC 05.001 - 15 AAC 05.050 do not apply to an appeal that is subject to AS 43.062(i) and 15 AAC 23.340; and
>
> (3) child support matters under AS 25.25.101 - 25.25.903 and AS 25.27.010 - 25.27.900, unless 15 AAC 05.001 - 15 AAC 05.050 are inconsistent with the procedural provisions of AS 25.25,AS 25.27, and 15 AAC 125.

15 AAC 05.010. Request for appeal

(a) An appeal is initiated by filing a request for appeal. For the purpose of this section, "request for appeal" includes a request for a formal hearing under AS 25.25.101 - AS 25.25.903, AS 25.27.010 - AS 25.27.900, AS 43.55.013, and AS 43.56.110 but does not include a request for an administrative review under 15 AAC 125.118, 15 AAC 125.216, 15 AAC 125.222, 15 AAC 125.226, 15 AAC 125.242, 15 AAC 125.246, 15 AAC 125.252, 15 AAC 125.321, 15 AAC 125.331, 15 AAC 125.335, 15 AAC 125.410, 15 AAC 125.418, 15 AAC 125.420, 15 AAC 125.425, 15 AAC 125.440, 15 AAC 125.505, 15 AAC 125.510, 15 AAC 125.550, 15 AAC 125.560, 15 AAC 125.610, 15 AAC 125.630, 15 AAC 125.710, or 15 AAC 125.715. A request for appeal filed under this section must

> (1) state the department action to which the person objects and the relief sought;
>
> (2) state the grounds for the objection, including a brief summary of the facts at issue, the legal authority, and, if appropriate, any generally accepted accounting principles that support the request for appeal;
>
> (3) be signed
>
> > (A) by the taxpayer or the taxpayer's authorized representative or, in the case of an appeal under 15 AAC 56.015(c), by the municipality or the municipality's authorized representative;

(B) in the case of an appeal of a permanent fund dividend denial or assessment, by the adult applicant or the adult sponsor or authorized representative of the applicant; or

(C) in the case of an appeal of a child support administrative review decision or an appeal of a decision granting or denying a petition for modification, by the parent appealing or authorized representative of that person; and

(4) if the request for appeal concerns a tax, tax credit, or license fee matter under AS 43, state whether an informal conference is requested, or waived in favor of proceeding directly to a formal hearing.

(b) In order to be timely filed, a request for appeal must conform to the following requirements, as applicable:

(1) if the request for appeal concerns a tax, tax credit, or license fee matter under AS 43, except one described in (2), (3) or (4) of this subsection, the request must be filed with the appropriate division within 60 days after the mailing date of the department's notice of the action to which the person objects or within 60 days after the department's notice is delivered in person; if the request is mailed, it must be addressed in accordance with the appeal form provided by the department;

(2) if the request for appeal concerns the monthly production rate or the monthly production at the economic limit under AS 43.55.013, the request must be filed with the office of the commissioner before January 15 of the year of production or within five months after the commencement of production, whichever is later; if the request is mailed, it must be addressed in accordance with the appeal form provided by the department;

(3) if the request for appeal concerns whether property that has been assessed by the department is subject to tax under AS 43.56, the request must be filed with the appropriate division within 60 days after the date of the assessment notice; if the request is mailed, it must be addressed in accordance with the appeal form provided by the department;

(4) if the request for appeal concerns the fixing by the department of the amount of tax due under AS 43.56, which is not within the jurisdiction of the State Assessment Review Board, or the imposition of a penalty, the request must be filed with the appropriate division within 60 days after the date of the statement of the amount of tax or penalty, or within 60 days after the date of the assessment notice; if the request is mailed, it must be addressed in accordance with the appeal form provided by the department;

(5) if the request for appeal concerns a permanent fund dividend matter under AS 43.23, the request must be filed with the permanent fund dividend division within 30 days after the date of the notice of assessment or disallowance, unless the individual demonstrates a reasonable cause for the failure to file within this period; a request for appeal must be accompanied by a $25 appeal fee, if applicable; the appeal fee must be in the form of a check or money order; if the request is mailed, the appeal fee must be addressed in accordance with the appeal form provided by the department;

(6) if the request for appeal concerns a child support matter under AS 25.25 or AS 25.27, the request for appeal must be filed with the child support services agency within 30 days after the date of an administrative review decision issued under 15 AAC 125.118, 15 AAC 125.216, 15 AAC 125.222, 15 AAC 125.226, 15 AAC 125.242, 15 AAC 125.246, 15 AAC 125.252, 15 AAC 125.321, 15 AAC 125.331, 15 AAC 125.335, 15 AAC 125.505, or 15 AAC 125.710.

(c) A request for appeal is filed on the date it is personally delivered, or, if delivered to the department by United States mail, the date of the United States postmark or official postmark of a foreign country stamped on the properly addressed cover in which the request is mailed. If the postmark is not the official postmark of a foreign country or the United States Postal Service, such as that made by a private postage or mailing machine, the postmark date will be the filing date only to the extent provided for by the United States Treasury in 26 C.F.R. 301.7502-1(c)(1)(iii)(b). If the due date falls on a Saturday, Sunday, or holiday, the due date is the next working day. A current mailing address must be provided to the department with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the department immediately. If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.

(d) At an informal conference and at a formal hearing, a person may be represented by an attorney, by a certified public accountant, or by another representative. A representative, other than an attorney, must file a completed power of attorney at the time the representative enters an appearance in the proceeding.

(e) A person or a representative may review the records on file with the department that are relevant to that person's request for appeal. A review under this subsection may be conducted at the offices of the department during regular working hours. Copies of the records on file will be furnished upon receipt of the applicable copying fee.

(f) In tax and license fee matters under AS 43, if a person fails to file a request for appeal within the time specified in this section, that person has no further right of appeal until the tax, license fee, penalty, or interest is paid.

(g) In tax and license fee matters under AS 43, if a notice shows an amount due the department, the uncontested portion of the amount due, if any, must be paid within 60 days after the date of the notice. If the uncontested amount is not paid within 60 days, collection action will be taken on that amount even if the taxpayer has filed a request for appeal. Payment of the total amount due may be made at any time before the informal conference or the formal hearing. If the department has reason to believe that collection of the total amount due might be jeopardized by delay, immediate payment of the total amount will be demanded. Payment in full does not affect the taxpayer's right to an informal conference or a formal hearing.

(h) Notwithstanding the provisions of 15 AAC 05.001 - 15 AAC 05.050, to appeal a denial of a permanent fund dividend, including a related assessment, an individual must first request an informal conference and the department must issue a decision under 15 AAC 05.020 before the individual may request a formal hearing.

(*i*) Notwithstanding the provisions of 15 AAC 05.001 - 15 AAC 05.050, to appeal a child support matter, an individual shall first request an administrative review and the child support services

agency will issue a decision under 15 AAC 125.118, 15 AAC 125.216, 15 AAC 125.222, 15 AAC 125.226, 15 AAC 125.242, 15 AAC 125.246, 15 AAC 125.252, 15 AAC 125.321, 15 AAC 125.331, 15 AAC 125.335, 15 AAC 125.505, or 15 AAC 125.710 before the individual may request a formal hearing.

15 AAC 05.020. Informal conferences

(a) Upon receipt of a written request for appeal under 15 AAC 05.010 requesting an informal conference, an appeals officer will promptly schedule the informal conference. If the appeal concerns a permanent fund dividend denial, the request must be accompanied by the $25 appeal fee required by AS 43.23.015(g), except that the appeal fee is waived for an appeal brought by an agency of the state on behalf of an individual; an individual who meets the indigency waiver standard in AS 43.23.015(i) may apply for a waiver of the appeal fee on a form prescribed and furnished by the department. The informal conference will be conducted in person, through correspondence, or by telephone, audio, or video teleconference, or other electronic means. The appeals officer shall make available to the person who filed the request for appeal the relevant portion of that person's file, and shall explain at the informal conference the action taken by the department. A person who wants to present facts and information in support of its position must bring all pertinent books, records, schedules, and other documents to the conference. The appeals officer may copy any of the books, records, schedules, and other documents brought to the conference or otherwise made available to the appeals officer. The person who filed the request shall supply additional information that the appeals officer considers necessary.

(b) After considering the facts, information, and arguments presented at the informal conference, the appeals officer shall promptly render a written decision. The decision must identify the issues in controversy for purposes of further appeal. If the appeals officer believes that modification of the department's action is appropriate, modification must be made and reflected in the written decision.

(c) The decision of the appeals officer is final for purposes of appeal to a formal hearing under 15 AAC 05.030 but is not a final administrative determination for purposes of appeal to the superior court.

(d) This section does not apply to an administrative review conducted under 15 AAC 125.

15 AAC 05.025. Administrative reviews

In a child support matter under AS 25.25 or AS 25.27, an administrative review will be conducted in accordance with the procedures set out in 15 AAC 125. The review officer's decision issued under 15 AAC 125.118, 15 AAC 125.121, 15 AAC 125.125, 15 AAC 125.222, 15 AAC 125.226, 15 AAC 125.246, 15 AAC 125.252, 15 AAC 125.321, 15 AAC 125.331, 15 AAC 125.335, 15 AAC 125.505, 15 AAC 125.710, or 15 AAC 125.860 is final for purposes of appeal to a formal hearing under 15 AAC 05.030 but is not a final administrative determination for purposes of appeal to the superior court.

15 AAC 05.030. Formal hearings

(a) The department will hold a formal hearing if a request for a formal hearing conforming to the requirements of 15 AAC 05.010(a) is filed. If a request for a formal hearing follows an informal conference, it must be filed within 30 days after the date the informal conference decision is

issued, and must be filed in accordance with the appeal form provided by the department. If a request for a formal hearing follows an administrative review under 15 AAC 125.118, 15 AAC 125.216, 15 AAC 125.222, 15 AAC 125.226, 15 AAC 125.242, 15 AAC 125.246, 15 AAC 125.252, 15 AAC 125.321, 15 AAC 125.331, 15 AAC 125.335, 15 AAC 125.505, or 15 AAC 125.710, it must be filed within 30 days after the date the decision of the review officer is issued and must be filed with the child support services agency in accordance with the appeal form provided by the division.

(b) On receipt of a request for appeal requesting a formal hearing, the commissioner will appoint a hearing officer. The department will notify the person who filed the request of the appointment. Within 60 days after receipt of the request for formal hearing, the hearing officer will notify the applicant of the date of either a prehearing conference or the hearing, except in child support matters under AS 25.27.170, in which a hearing must be scheduled within 30 days of the date of service of the request for hearing on the agency. For purposes of a request for a formal hearing in a child support matter, in computing the 30-day time period for scheduling the hearing, the department will exclude a period of delay resulting from pre-hearing motions filed by the parties and the granting of continuances requested by a parent. The hearing officer may

(1) administer oaths and affirmations;

(2) issue subpoenas;

(3) order discovery by the parties and issue protective orders;

(4) receive relevant evidence;

(5) regulate the course of the hearing, including granting and denying continuances;

(6) hold prehearing conferences;

(7) dispose of procedural requests or similar matters; and

(8) exercise all other powers necessary for the orderly and expeditious conduct of the hearing.

(c) A party requesting the disqualification of a hearing officer must file a motion and a supporting affidavit within 10 days after the date of notice that the hearing officer was assigned to the appeal. The moving party has the burden of establishing that the hearing officer is personally prejudiced and would be incapable of according the party an impartial hearing or consideration of the appeal. No responsive briefing is allowed. The hearing officer shall rule on the motion after reviewing the affidavit. The ruling must be in writing and will become a part of the record. A party aggrieved by the determination of the hearing officer may file a motion for reconsideration of the ruling with the commissioner within 10 days after the ruling by the hearing officer. The commissioner will issue an order in writing either affirming or overruling the ruling of the hearing officer.

(d) A hearing officer may not communicate with a party, directly or indirectly, regarding a case unless notice and opportunity to participate is given to all parties. A hearing officer may communicate with a party without notice and opportunity for all other parties to participate if the communication involves a procedural matter and the other parties have verbally or in writing waived notice and participation. A verbal waiver may be communicated directly to the hearing

officer or through an opposing party. A party conveying a waiver of another party to the hearing officer must first declare that the subject matter of the communication was discussed with the other party and the other party expressly authorized the communication. A hearing officer who receives an ex parte communication in violation of this subsection may be disqualified if necessary to eliminate the effect of the communication.

(e) The hearing officer may order the parties to participate in a prehearing conference. The hearing officer shall set the time and place of the conference. The prehearing conference may be conducted by telephone, audio or video teleconference, or other electronic means. At the conference, the hearing officer shall determine matters promoting the orderly and prompt conduct of the hearing, including preparation of stipulations, simplification of issues, identity and limitation of the number of witnesses, objections to evidence, order of presentation of evidence and cross-examination, exchange of exhibits, issuance of subpoenas, discovery orders and protective orders, briefing schedules, the extent to which evidence will be presented in written form, and the substitution of telephone, teleconference, or other electronic means for proceedings in person. The hearing officer may issue a prehearing order incorporating the matters determined at the conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order to regulate the conduct of the proceedings.

(f) The hearing officer may give the parties the opportunity, at appropriate stages of the proceedings, to file motions and objections, briefs, and proposed findings of fact, conclusions of law and orders. A party shall serve copies of any filed item on all parties, personally delivered or deposited in the United States mail with first class postage prepaid. A motion to dismiss, motion for summary judgment, or other dispositive motion must be filed at least 15 days before the date scheduled for hearing, unless good cause is shown for filing the motion after that time. An opposition to a dispositive motion must be filed within 10 days after receipt of the motion by the opposing party, unless otherwise ordered by the hearing officer. The hearing officer may, at the request of a party, or on the hearing officer's own motion, issue a subpoena. A subpoena issued under this section must be served in accordance with the Alaska Rules of Civil Procedure or by a person designated by the hearing officer.

(g) The hearing officer shall set the time and place of the hearing and shall give reasonable notice to the parties. A request to change the time and place set for the hearing must be made at least 7 days before the date scheduled for hearing, unless good cause is shown. The hearing officer may conduct all or part of the hearing by telephone, audio or video teleconference, or other electronic means. With the consent of the parties the hearing may be conducted through correspondence. The hearing must be recorded by the hearing officer or by a person designated by the hearing officer. The parties may obtain, at cost, a copy of the recording or, if the department hires a reporter, a transcript. If the hearing officer records the hearing by tape recording and a reporter is not hired, a party may, at the party's expense, hire a reporter approved by the department to prepare a transcript from the department's recording or to record and transcribe the hearing. If the party's reporter prepares a transcript, a copy must be provided to the department at the usual cost for a copy of a transcript.

(h) A hearing is not conducted according to technical rules of evidence. Relevant evidence must be admitted if it is probative of material facts. Irrelevant and unduly repetitious evidence must be excluded. Hearsay evidence is admissible if in the judgment of the hearing officer it is the kind

of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Oral evidence may be taken only on oath or affirmation. Each party may call and examine witnesses, introduce and object to exhibits, cross-examine opposing witnesses, impeach a witness, and offer rebuttal evidence. At the hearing, the person requesting the hearing has the burden of proving that the action by the department to which that person objects is incorrect.

(i) The hearing officer may allow the parties a designated time after conclusion of the hearing for the submission of additional evidence, briefs, or proposed findings, with opportunity for objection by the opposing parties. The hearing officer shall issue a written decision containing the hearing officer's findings of fact and conclusions of law within six months after the record is closed, except in a child support matter. In a child support matter under AS 25.27.170 - AS 25.27.180, the hearing officer shall issue the written decision within 20 days after the date of the hearing, unless the hearing officer determines that it is necessary to keep the record open after the hearing in order to have a complete record upon which to base the hearing officer's decision, in which case the hearing officer shall issue the written decision within 20 days after the date the record is closed. Upon adoption by the commissioner, the commissioner's designee, or the senior hearing officer on behalf of the commissioner, the written decision shall be mailed to the parties and is the final administrative decision of the department for purposes of appeal to the superior court under 15 AAC 05.040, unless a motion for reconsideration is filed under 15 AAC 05.035.

(j) If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear.

(k) The hearing officer may waive any requirement or deadline established in 15 AAC 05.010 - 15 AAC 05.030 if it appears to the officer that strict adherence to the deadline or requirement would work an injustice; however, the hearing officer may not waive the provision in (b) of this section applying to the scheduling of a hearing or a prehearing conference, or the provision in (i) of this section requiring that a hearing decision be adopted within six months after the close of the hearing. If a written decision is not issued within six months after the record is closed, the commissioner will, within 30 days after the expiration of the six-month period, notify the parties of the reason for the delay.

15 AAC 05.035. Motion for reconsideration

(a) A party to a formal hearing may, within 10 days after the decision of the hearing officer is mailed to the party, file with the commissioner a written motion for reconsideration of that decision. The motion must state specific grounds for relief and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

(b) Within 20 days after receipt of a motion for reconsideration, the commissioner will issue an order in writing either granting or denying the motion.

(c) If the commissioner grants a motion for reconsideration, the decision will be reconsidered and any modifications to it made as promptly as possible. If appropriate, the commissioner will authorize the submission of further briefs, order the hearing reopened to receive further evidence or provide for other suitable procedures for reconsideration of the decision. After a decision has been reconsidered, the commissioner will readopt the decision with any appropriate

modifications. Upon readoption, the decision is the final administrative decision of the department for purposes of appeal to the superior court under 15 AAC 05.040.

(d) If the commissioner denies a motion for reconsideration, the hearing officer's decision becomes the final administrative decision of the department for purposes of appeal to the superior court under 15 AAC 05.040 as of the date of the commissioner's written order denying the motion.

15 AAC 05.040. Appeal of final decision of department

A person who disagrees with and wishes to appeal the final administrative decision of the department must within 30 days after the date the decision is mailed to the party, file an appeal with the superior court. In tax and licensee fee matters under AS 43, any taxes, license fees, penalties, and interest declared in the final administrative decision to be due must be paid within 30 days after the date of the decision, or a bond must be filed with the court in accordance with the Alaska Rules of Appellate Procedure.

15 AAC 05.050. Taxpayer protest when department fails to take prompt action on a refund claim or a protest

(a) If the department fails to act on a refund claim within six months from the date of filing the claim, the taxpayer may file a protest under 15 AAC 05.010. A protest filed under this section must include the date the claim was filed and the fact that the taxpayer has not received a notice of disallowance of the claim for refund or credit.

(b) A taxpayer who requested an informal conference as provided in 15 AAC 05.020 and who believes that the conference officer is unduly delaying the hearing process, may notify the commissioner and request a formal hearing under 15 AAC 05.030.

(c) The commissioner or the hearing officer will acknowledge a request for a formal hearing under 15 AAC 05.030 within 30 days. If a taxpayer who has requested a formal hearing under 15 AAC 05.030 believes that the hearing officer or other department representative is unduly delaying the hearing process, the taxpayer may notify the commissioner. If the commissioner determines that the interests of justice would be served, he or she will order that appropriate relief be granted including an order to the hearing officer to issue a decision by a date specified by the commissioner.

Department of Transportation and Public Facilities Appeal Process

While the subject matter of appeals under 17 AAC 85.010-990 is very different from the subject matter of OCS appeals, careful examination of this particular regulatory appeal process is warranted. These regulations provide a very good example of an appeal process that might be adapted to suit the needs of OCS.

17 AAC 85.010. Purpose and application

(a) The provisions of this chapter apply to decisions of the department to deny, modify, or revoke a permit or privilege under 17 AAC 10.010 - 17 AAC 10.015 (Encroachment Permits), 17 AAC 10.020 - 17 AAC 10.095 (Driveway and Approach Road Permits), 17 AAC 08 (Highway Memorial Signs), 17 AAC 15 (Utility and Railroad Permits), 17 AAC 20.015 (Highway Event Permits), 17 AAC 20.017 (Lane Closure Permits), and 17 AAC 60 (Highway Signs for the Traveling Public). The provisions of this chapter apply to decisions of the department under 17 AAC 10 (Land Disposal), except that a decision not to dispose of land under 17 AAC 10.100 or 17 AAC 10.130(a) is not subject to appeal.

(b) The purpose of this chapter is to provide a process for an aggrieved party to appeal a particular action.

17 AAC 85.020. Notice of appeal

(a) Within 30 days after receiving notification of the department's decision, an aggrieved party must submit a written notice of appeal to the regional director of the regional office where the decision was made.

(b) The notice of appeal must contain

(1) the decision being appealed;

(2) the alleged violation of statute or regulation upon which the appeal is based;

(3) the factual arguments supporting the allegation of the aggrieved party;

(4) the specific relief sought.

(c) The notice of appeal must be signed by the aggrieved party or its authorized representative.

17 AAC 85.030. Administrative review

(a) Within seven days after the receipt of a notice of appeal under 17 AAC 85.020, the regional director shall appoint an administrative review officer to make a recommended decision on the appeal. Within 14 days after appointment, an administrative review officer shall recommend a decision to grant or deny the relief sought to the regional director. Within seven days after receiving the administrative review officer's recommended decision, the regional director may adopt the administrative review officer's decision as written, revise the decision, or reach an independent conclusion. The decision issued under this section must be based upon the

(1) information provided in the notice of appeal; and

(2) records of the department produced contemporaneously with the matter under appeal.

(b) Any decision issued by the regional director under this section must be in writing and sent to the aggrieved party.

17 AAC 85.040. Hearing

(a) An aggrieved party may request a formal hearing on the decision issued under 17 AAC 85.030 if the decision does not grant the relief sought.

(b) A request for hearing must be in writing and must be received by the chief engineer no later than 15 days after the date an aggrieved party received the decision under 17 AAC 85.030. A request must set out

(1) the list of exhibits the aggrieved party intends to introduce at the hearing;

(2) names of persons to be called as witnesses at the hearing; and

(3) whether the aggrieved party will be represented by counsel.

(c) Except as provided in (k) of this section, within 10 days after receipt of the request for hearing made under (a)-(b) of this section, the chief engineer shall impanel an administrative review panel to hear the appeal. The administrative review panel consists of the chief engineer, or a designee, and the department's regional directors, or their designees, except the director of the region from which the appeal arose. The chief engineer may appoint a hearing officer, who is not an employee of the department, to hear the appeal and render a recommended decision to the administrative review panel.

(d) Except as provided in (k) of this section, within 10 days after the receipt of an appeal, the chief engineer shall establish a date by which the department will provide to the aggrieved party a list of exhibits that the department intends to introduce, a list of persons that the department intends to call as witnesses, and a date, time, and place for the hearing. Unless all parties to the appeal agree to an alternate date, the hearing will be held within 60 days after the request made under (a)-(b) of this section is received by the chief engineer. The administrative review panel may authorize formal or informal discovery if

(1) a party to the appeal requests discovery;

(2) discovery can be completed before the date of the hearing, unless all parties to the appeal agree to an alternate date; and

(3) the administrative review panel determines that discovery is necessary for the fair and orderly conduct of the hearing.

(e) The hearing shall be recorded and shall be conducted according to the following rules of evidence:

(1) oral evidence shall be taken only on oath or affirmation;

(2) each party or party's counsel, but not both, may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues even though those matters were not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut the evidence against that party;

(3) the hearing need not be conducted according to technical rules relating to evidence and witnesses; however, relevant evidence may be admitted if it is the sort of evidence on

which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action; hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action; the rules of privilege are effective to the same extent that they are recognized in a civil action; irrelevant and unduly repetitious evidence may be excluded; and

(4) the burden of proof is on the party making the appeal; the burden of persuasion is by a preponderance of the evidence.

(f) The administrative review panel shall make its decision in the form set out in AS 44.62.510 within 21 days after the close of the record of the hearing.

(g) The chief engineer shall notify an aggrieved party, within 10 days that the administrative review panel has rendered its decision, by certified mail, return receipt requested, including findings of fact and reasons for the ruling.

(h) If the chief engineer appoints a hearing officer under (c) of this section to hear an appeal, the hearing officer may only be challenged for cause by an aggrieved party. The hearing officer shall set the date, place and time of hearing, and, subject to the provisions of(d)-(e) of this section, the rules necessary for conducting the hearing, including pre-hearing discovery. A hearing must occur not more than 60 days after the date that the request is made under (a)-(b) of this section is received by the chief engineer. A hearing officer shall issue a recommended decision to the administrative review panel not more than 15 days after the hearing officer receives the transcript of the hearing or after the close of the record of the hearing, whichever occurs later.

(i) Upon receipt of a recommended decision from a hearing officer, the administrative review panel may adopt the decision of the hearing officer, modify the decision, reject the decision and render its own decision, or remand the decision back to the hearing officer with instructions for further consideration of the decision or further proceedings.

(j) Expenses incurred by an aggrieved party with respect to a hearing are the sole responsibility of the aggrieved party.

(k) The chief engineer may decide, without a hearing under this section, an appeal submitted under (a) of this section if, after reviewing the notice of appeal submitted under 17 AAC 85.020, the record developed under 17 AAC 85.030, the decision issued under 17 AAC 85.030, and the request for hearing submitted under (a) of this section, the chief engineer determines that the appeal may be decided as a matter of law, or the facts of the appeal are not in dispute. The chief engineer may request additional briefing as the chief engineer determines necessary to decide the appeal.

17 AAC 85.050. Judicial review

A decision of the chief engineer or of an administrative review panel on the merits of an appeal under this chapter is the final decision of the department. An aggrieved party may appeal a decision of the chief engineer or of an administrative review panel to the superior court in accordance with the Alaska Rules of Appellate Procedure.

17 AAC 85.990. Definitions

Unless the context requires otherwise, in this chapter

(1) "aggrieved party" means a person who

(A) has been denied a permit or privilege, objects to a condition attached to a permit or privilege, or objects to the revocation of a permit or privilege issued under 17 AAC 10.010 - 17 AAC 10.016 (Encroachment Permits), 17 AAC 10.020 - 17 AAC 10.090 (Driveway and Approach Road Permits), 17 AAC 08 (Highway Memorial Signs), 17 AAC 20.015 (Highway Event Permits), 17 AAC 20.017 (Lane Closure Permits), and 17 AAC 60 (Highway Signs for the Traveling Public); or

(B) objects to a condition attached to a land conveyance under 17 AAC 10.105 or 17 AAC 10.110;

(2) "chief engineer" means the person appointed by the commissioner to serve in that capacity for the department.

DCCED Division of Investments

The Division of Investments oversees a variety of different loan programs, each one of which has its own set of regulations. 3 AAC 80.105-160 provides appeal procedures that apply only to commercial fishing loans.

3 AAC 80.105. Request for a hearing

(a) A request for a hearing under AS 16.10.335 must be made in writing to the address of the Department of Commerce, Community, and Economic Development as set out in the notice of default and final demand for payment. The request must include a statement explaining why the debtor believes default has not occurred. The request must be postmarked within 15 days after the postmark date on the notice of default and final demand for payment. The request should include copies of any documentary evidence in the debtor's possession showing that the debtor has not defaulted.

(b) The debtor, a person on behalf of a debtor, or the debtor's estate may request a hearing.

(c) The time within which the debtor may reinstate or pay off in full a loan under AS 16.10.335, as specified in the notice of default and final demand for payment, will stop running as of the day the request for a hearing is received by the department.

(d) The commissioner may extend the 15-day period to request a hearing if good cause is shown. Good cause is defined as

(1) an illness that prevents the debtor from timely requesting a hearing;

(2) circumstances beyond the debtor's control that prevent the debtor from timely requesting a hearing; or

(3) other circumstances that the commissioner considers to constitute good cause.

(e) If the commissioner grants a request for a hearing, the time periods specified in the notice of default and final demand for payment will not resume until a final decision has been issued in accordance with 3 AAC 80.150.

(f) If the commissioner denies a request for a hearing, the time periods specified in the notice of default and final demand for payment will resume as of the day the denial is mailed.

3 AAC 80.110. Appointment of hearing officer

A hearing officer will be appointed by the commissioner. The commissioner may appoint

(1) a hearing officer by contract with another agency;

(2) an attorney by contract;

(3) an impartial individual within the department; or

(4) any other qualified individual.

3 AAC 80.120. Notice of hearing, location, and time

(a) Hearings will be held in Anchorage, Fairbanks, or Juneau, which ever is closest to the debtor's place of residence If the debtor resides outside Alaska, the hearing will be held in Juneau.

(b) If all parties agree, or upon order of the hearing officer, the hearing may be scheduled in a different location than those listed in (a) of this section.

(c) If, because of the distance involved or for other substantial reasons, it is impractical for the debtor to appear at the place of hearing, the hearing officer may schedule and conduct a telephonic hearing.

(d) The hearing officer shall notify the department and the debtor in writing of the time and place of hearing at least 30 days before the hearing date.

3 AAC 80.130. Hearing procedures

(a) Hearings will be conducted informally and in a manner that protects the rights of the parties.

(b) Oral evidence may be taken only upon oath or affirmation.

(c) The Alaska Rules of Evidence apply except when the hearing officer determines that their application is not required in order to assure fair treatment of a party and that the evidence offered is relevant and the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(d) The debtor, any other party, or the hearing officer may

(1) call and examine witnesses;

(2) introduce exhibits;

(3) cross-examine opposing witnesses on matters relevant to the issues even though the matter was not covered in the direct examination.

(e) If the debtor or any other party does not testify, the party may be called and examined by the hearing officer.

(f) The debtor bears the burden of proving by a preponderance of the evidence that a determination of the department is erroneous.

(g) AS 44.62.590, relating to contempt during proceedings before a hearing officer, applies to hearings under this chapter.

(h) If a debtor or any other party does not appear at a scheduled hearing, and good cause is not shown, the hearing officer may act upon the evidence of record without further notice to the debtor or other party.

3 AAC 80.140. Subpoenas, depositions, affidavits, and documents

(a) At the request of the debtor or any other party, for good cause shown or upon the hearing officer's own motion, the hearing officer may issue subpoenas and subpoenas duces tecum to compel testimony or other evidence at a hearing. The issuance of subpoenas will be governed by AS 44.62.430.

(b) The hearing officer may order that the testimony of a material witness be taken by deposition in accordance with AS 44.62.440.

3 AAC 80.150. Recommended and final decisions

(a) Upon conclusion of the hearing, the hearing officer shall prepare a proposed decision in writing, setting out findings of fact and conclusions of law.

(b) The commissioner may accept or reject the written recommendation of the hearing officer in its entirety or in part. The commissioner's decision will be mailed or delivered to all parties of record and will constitute a final administrative decision in the case.

3 AAC 80.160. Reconsideration

(a) The commissioner may order reconsideration of the decision upon the commissioner's own motion or upon the written request of the debtor or any other party. A request for reconsideration by the debtor or another party must set out specifically the grounds upon which the requesting party believes the decision to be erroneous and, if new evidence is being offered, identify that evidence with particularity and explain how the inclusion of the new evidence in the record would change the decision.

(b) The commissioner may reconsider a matter based on the original record, may accept additional evidence to supplement the original record, or may order the hearing officer to reopen the hearing for the taking of further evidence and issuance of a second proposed decision.

(c) The power to reconsider a decision expires 30 days after the date of the decision. If no action is taken on a request for reconsideration within the time allowed for ordering reconsideration, the request is considered denied.