

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
K D. C) OCS No.
) OAH No. 13-0456-SAN
_____)

DECISION

I. Introduction

This is an appeal under 7 AAC 54.215 from a substantiated finding of child abuse by K D. C, issued by the Office of Children’s Services (OCS). OCS’s finding was that there was credible evidence that Mr. C had sexually abused his daughter, Z, when he had custody of her in Kentucky from June 2006, through February 2008.¹

Mr. C filed an appeal and the assigned administrative law judge conducted a telephonic hearing August 8, 2103. Mr. C represented himself and Assistant Attorney General Megyn Greider represented OCS. OCS elicited testimony from U G (Z’s maternal grandmother), N P and L H of OCS, K Q (a child abuse evaluator), Dr. N K (Z’s pediatrician) and Det. M U of the Alaska Police Department. Mr. C cross-examined those witnesses, testified, and was cross-examined. He elicited testimony from his companion, M M.

OCS’s substantiated finding is sustained.

II. Facts

K C was born in 1976. He has two daughters, Z and Y, who were born in 00/00/1999, and 00/00/2000, respectively.² The girls’ living situation as infants and toddlers was unstable,³ and in June 2004, their mother, L G, died of a cocaine overdose.⁴ At that time, the girls had been living with their mother in Alaska, but Mr. C was living in Kentucky. After L’s death Z remained in Alaska, where she lived with her maternal grandmother, U G, and Y went to live with Mr. C in Kentucky.⁵ In June 2006, after Mr. C started living with M M, who had a three-year old daughter, he brought Z to Kentucky to live with them as well.⁶ Both of Mr. C’s

¹ R. 1-4.
² See, e.g., R. 51, 112.
³ See generally, R. 89-103.
⁴ R. 3, 12, 134.
⁵ R. 19, 34, 134.
⁶ R. 19.

daughters remained in Kentucky with him, Ms. M and her daughter until February 2008,⁷ when he moved back to Alaska with his daughters.⁸

After Mr. C moved back to Alaska, for a time he and Ms. G shared custody of the girls.⁹ During Mr. C's time in Alaska, OCS received multiple reports of harm to Z and Y, none of which resulted in a finding of abuse, including allegations of neglect of Z and Y by Mr. C (00/00/08 & 00/00/08) and sexual (00/00/08) and physical (00/00/09) abuse of Z by Ms. G.¹⁰ In late July 2008, after Mr. C was arrested on theft charges, the girls moved in with Ms. G.¹¹ Ms. G obtained a domestic violence protective order against Mr. C that effectively barred him from seeing the girls,¹² and he had no further contact with them for some time.¹³ For the next year and a half he was in and out of jail¹⁴ and had no regular place of abode.¹⁵

On October 19, 2009, OCS received a report from a mandatory reporter that Y had disclosed that while living in Kentucky she had been sexually abused by an acquaintance of Mr. C.¹⁶ According to the report, Y told her father this had occurred, he spoke with the perpetrator, and the abuse stopped.¹⁷ Sometime that fall or winter, Z wrote a letter to her day care provider (her maternal great aunt, D, Ms. G's sister), asserting that Mr. C had sexually abused her in Kentucky when he was drunk.¹⁸ D thought that Ms. G was aware of the nature of Z's allegations

⁷ R. 2, 12.

⁸ R. 134.

⁹ See R. 134 (K. C timeline: "January, 2008 Me and the kids move back to AK and because our living quarters me and U Agreed that Z could stay with her and on the weekends with me.").

¹⁰ R. 3, 57.

¹¹ See R. 3 ("In 2008, he dropped both girls off with U G...and asked her to care for them.") (Investigation Summary).

¹² R. 3 (7/23/08); 135. See also R. 41 ("U put a restraining order on him & his mom and took the girls."); R. 134 -135 (K. C timeline: "June, 2008...U...put a restraining order on me and judge granted her temporary custody of the girls then 90 days later she renewed it for a year not one day after that she renewed it one more time in 2009.")

¹³ See R. 3, 19, 56.

¹⁴ See R. 62, 68-69 (probation revocation arrest 00/00/09, released 00/00/09; probation revocation arrest 0/00/10, released 00/00/10); R. 71-75 (30 days to serve for failure to stop conviction, 00/00/09); R. 76-88 (180 days to serve for attempted forgery conviction, 00/00/08).

¹⁵ See R. 69.

¹⁶ R. 57; Testimony of F. T #5 0:01. The report was characterized by OCS as of fondling and penetration. R. 57. According to Ms. T, the reporter stated that Z had stated that she was "touched down there."

¹⁷ Testimony of F. T #5 0:01. Ms. T testified that the Kentucky child protection agency was informed of the report.

¹⁸ U. G Testimony #1 0:06; R. 12, 17, 37, 44. D was providing day care. If she did so as an unpaid family member, and was not a child care provider for compensation, then she was not a mandatory reporter and thus was likely not the person who made the report regarding Z to OCS on October 19. See AS 47.17.020(a)(5) (child care providers must report suspected abuse); AS 47.17.290(0) ("child care provider" means an adult individual, including a foster parent or an employee of an organization, who provides care and supervision to a child for compensation or reimbursement.").

and did not speak to her about them, and lost track of the letter.¹⁹ All that Ms. G was aware of, however, was that one of the girls had told her that she had been touched on the butt by a friend of her father's.²⁰

In March 2010, Mr. C briefly stayed in Alaska with his mother, E B, after he was released from jail following a probation violation.²¹ Y was admitted to No Name Hospital from April 14-25, after threatening to kill herself.²² On April 22, while Y was still hospitalized, Ms. G learned of the letter Z had written accusing her father of molesting her, and she asked Z about it.²³ Z told Ms. G that her father had molested her.²⁴

On April 23, Ms. G reported what she had learned to Z's pediatrician, Dr. N K, who, as required by law, filed a report of abuse with OCS.²⁵ Ms. G brought the girls to a counselor, and Z continues to receive counseling.²⁶ On May 24, both Z and Y were interviewed at Alaska CARES.²⁷ Y was interviewed by M E, and she did not report any sexual abuse (notwithstanding that she was reported to have disclosed abuse in 2009).²⁸ Detective M U conducted the interview of Z, with audio and video observation by K Q, a licensed family nurse practitioner (FNP), and H O, a family care coordinator, of Alaska CARES.²⁹ Z, then aged 11, stated that her father had first sexually assaulted her at the family's home in Kentucky one summer, when he was drunk.³⁰ She stated that one night, while Ms. M was out of the house, her father took her into his bedroom, told her to take her clothes off, and assaulted her. She stated that on ten or

¹⁹ R. 17, 37.

²⁰ R. 17, 37, 44. These documents assert that Z had stated that a friend of her father's had touched her butt, without indicating when she made that statement. It is unclear whether the October 19 report (abuse of Z) and the disclosure described by Ms. G (abuse of Z) refer to separate incidents, or to a single incident with one being mistaken as to the identity of the alleged victim.

²¹ See R. 60.

²² R. 3, 37, 44.

²³ R. 17, 44.

²⁴ U. G Testimony #1 0:06. Ms. G testified that Z "never said she was penetrated." U. G Testimony #1 0:17. See also R. 12 (Ms. G stated "Z said she was touched on the butt by a friend of her dad's" and that "Z said her dad patted her on the butt.") (H. O note, 5/24/2010). However, FNP Q's note states that when Ms. G brought Z in to be interviewed, she said that "Z said every time her dad got drunk he made her pull her pants down and he put his penis in her." R. 17. See also R. 44 ("Z - dad having sex w/her in Kentucky[.]; Z "said it happened every time he got drunk he raped her[.]") (M. E note); R. 56 (describes report of penetration) (Initial Screening Report, R. J); R. 37 ("U said...she found out [K] was having sex with Z in Kentucky."); "The letter said every time he got drunk he would rape her") (M. E case note, 5/24/2010).

²⁵ R. 25-26.

²⁶ U. G Testimony #1 0:09; R. 37, 44.

²⁷ R. 2, 12-15. The interview was rescheduled from an earlier date due to a scheduling mix-up. See R. 39.

²⁸ R. 159-160; 163-164. See notes 16-17, *supra*.

²⁹ R. 12.

³⁰ Video Recording. See R. 13.

twelve occasions after that, also in the family home, at times with Ms. M also in the house, he had penetrated her mouth, vagina and anus with his penis and with an object that she described as red, long and bumpy.³¹ She stated white liquid came out from his penis.³² After the interview, FNP Q conducted a physical examination of Z, which was indeterminate: Z's hymen was intact, but that is not unusual in cases involving sexual penetration of a young child, and she had a lesion consistent with a herpes infection, which could have been caused by sexual contact or by her own conduct.³³

Kentucky police were informed of the Alaska investigation and Mr. C took a lie detector test, which he passed, in June 2010.³⁴ In September 2010, Mr. C began calling Ms. G, asking if he could contact the girls.³⁵ Ms. G did not want him contacting the girls, and she sought but was unable to obtain a court order to forbid it,³⁶ notwithstanding that OCS supported her effort.³⁷ As of late November 2010, OCS still had an open file on the sexual abuse allegation and had not closed out its investigation.³⁸ In March 2011, Mr. C contacted OCS, upset that the agency was not investigating Z's allegation of abuse, because, he asserted, the Kentucky authorities had strong evidence that she had been abused and "someone else must have done it and we need to find out who. He wanted us to find out who did this and open our case."³⁹

In 2010 and 2011, Y exhibited substantial emotional and behavioral problems leading to multiple admissions into No Name Hospital.⁴⁰ In September 2011, Y was again admitted for a time to No Name.⁴¹ In October 2011, Mr. C was in text contact with Z and Ms. G.⁴² By this time, Z had told Ms. G that rather than her father, a friend of her father had molested her.⁴³ Ms. G wrote to Ms. M that she felt that it was important for Mr. C to "come clean" regarding his drug

³¹ Video Recording. *See* R. 13-15.

³² *Id.*

³³ K. Q Testimony #2 0:07-0:10. FNP Q stated the lesion was located adjacent to the hymen. Dr. K testified she performed an external examination of Z in August, 2010, she found a cyst inside the labia. N. K Testimony #2 0:34-0:35. Dr. K testified cysts are common and the cause is unknown. *See id.*

³⁴ *See* R. 41.

³⁵ R. 3, 37, 42. *See* R. 9-10 (October emails).

³⁶ *See* R. 3, 37.

³⁷ *See* R. 27 (9/17/2010 letter).

³⁸ R. 36 (11/26/2010 Activity Note).

³⁹ R. 35 (3/17/2011 Activity Note).

⁴⁰ *See* R. 32-35, 44, 131.

⁴¹ R. 33.

⁴² R. 137-156.

⁴³ U. G Testimony #1 0:18. *See* R. 9 (10/15/11).

use and abandonment of the girls.⁴⁴ This led to an exchange of messages between Z and her father. Z's messages to her father were affectionate but cautious. She wrote, "I want a relationship with [you] but if there[']s no trust involved then what[']s the point," to which he responded, "[I]m sorry for not being there when [you] needed most."⁴⁵ Z asked, "[S]o where were [you] w[h]en grandma took us?" and Mr. C replied, "I was at a hotel. This is something that [I] would rather di[s]cuss with [you] over the phone and I know [you] don[']t want to talk to me right now and [I] understand." Z responded:

[I']m afraid. [N]ot ready to talk yet. [T]hat's why [I] chose face book please[e] write to me....[D]ad please take the time to do this so we can move past this [I] need to know that you[']re gonna open up to me about your past so we can get past this. [I] some day want you in my life but [I] need to know my dad can admit his wrong so [I]'m able to do the same....[I] would rather know there was a reason than to think you left because you didn't care.^[46]

On November 25, 2011, Ms. G and Mr. C emailed each other regarding their mutual plan to have the girls go to live with him at the end of the school year.⁴⁷

In December 2011, OCS took temporary custody of Y and filed a CINA petition to take her into state custody,⁴⁸ planning on placing her in a residential treatment center in Texas.⁴⁹ After the CINA proceeding was initiated, Mr. C attempted to obtain approval from Kentucky authorities to take custody of Y, and to bring her to the house in Kentucky that he shared with his mother, E B, and Ms. M and her daughter.⁵⁰ The Kentucky authorities denied the request for approval because of the Alaska substantiated finding regarding Z.⁵¹ Mr. C filed a request for a hearing on March 7, 2012, and the matter was referred to the Office of Administrative Hearings on April 9, 2013.

⁴⁴ R. 9 ("[W]hat I would like to see happen is first for him...to be honest with these kids. [T]hey know he was missing in action for a reason. [I] know the reason because he was in and out of jail....[H]e's not willing to come clean of his using....[W]hen these kids tell me my dad use to leave me alone for 2 and 3 days at a time and they had to take care of themselves [I] know that to be true...because users of drugs do dumb shit...") (10/15/11).

⁴⁵ R. 143 (10/20/11).

⁴⁶ R. 144. *See also* R. 40.

⁴⁷ *See* R. 155-156.

⁴⁸ *See* R. 32-35.

⁴⁹ R. 131.

⁵⁰ *See* R. 131.

⁵¹ L. H Testimony #1 0:50. The date on which OCS issued the substantiated finding is unknown. The record includes a letter dated May 5, 2010, purporting to notify Mr. C of the substantiated finding. R. 1. This reflects a long-standing practice by the Office of Children's Services to issue back dated documents. *See, e.g., In Re M.M.*, OAH No. 08-0531-DHS (Commissioner of Health and Social Services 2009, at 1, n. 2); *In Re John Doe*, OAH No. 06-0112 (Commissioner of Health and Social Services 2007), at 7 n. 48. In this case, the record includes a January 27, 2012, letter from OCS stating that "[t]he department substantiated sexual abuse by Mr. C in December of 2010". R. 131.

III. Analysis

A. Applicable Law

AS 47.17.290(2) states in part that “‘child abuse or neglect’ means the...sexual abuse...of a child....” The term “sexual abuse” is not defined in AS 47.17, but it is defined in AS 47.10.990(31) to mean the conduct described in AS 11.41.410-.460. Among the conduct described in those provisions is sexual contact by an adult with a minor under age 13.⁵² Sexual contact includes knowingly touching, directly or through clothing, the minor’s genitals, other than contact that may reasonably be construed as normal caretaker contact.⁵³ For purposes of this proceeding, these definitions will be applied.

OCS’s written policy is to issue a substantiated finding when “the available facts indicate a child suffered harm as a result of abuse or neglect as defined in AS 47.17.290.”⁵⁴ A finding will be sustained following a hearing if the preponderance of the evidence supports the finding issued by OCS.⁵⁵

B. Evidence of Sexual Abuse

1. *Behavior Consistent With Abuse*

Ms. G testified that after Z returned from Kentucky, she engaged in behaviors that she considered disturbing: being found in a closet at school inappropriately touching a friend, accessing pornography, and dressing inappropriately.⁵⁶ Ms. M testified that beginning a month or so after Z arrived in Kentucky, she found her masturbating on more than one occasion, and that Z reported kissing another child in Alaska and was later found kissing one of Ms. M’s cousins.⁵⁷ Ms. M testified she discussed Z’s masturbation with Ms. G, who told her Z had done it before and it was normal.⁵⁸ Ms. H, testifying as an expert, testified that the cluster of

⁵² AS 41.440(a)(1).

⁵³ AS 11.81.900(a)(58)(A)(i), (B)(i).

⁵⁴ CPS Manual §2.2.10.1 (*rev.* 6/1/2004) (“Policy: ...A substantiated finding is one where the available facts indicate a child suffered harm as a result of abuse or neglect as defined by AS 47.17.290.”); §2.2.4, p. 17 (*rev.* 3/13/2009) (“Substantiated: refers to a finding where the available facts indicate a child suffered harm as a result of abuse or neglect as defined in AS 47.17.290.”).

⁵⁵ See generally, e.g., In Re K.S., OAH No. 07-0600-DHS (December 3, 2007) (available online at www.state.ak.us/officeofadminhearings).

⁵⁶ U. G Testimony #1 0:08, 0:22 (touching another child); 0:03, 0:10, 0:20 (accessing pornography), 0:23 (provocative behavior or dress).

⁵⁷ M. M Testimony #3 0:30-0:32; 0:43, 0:47.

⁵⁸ M. M Testimony #3 0:32.

behaviors exhibited by Z after her return to Alaska were consistent with sexual abuse.⁵⁹ However, Ms. M's testimony suggests that some of the behaviors identified by Ms. H had occurred before Z left Alaska.⁶⁰ Both Mr. C and Ms. M⁶¹ believe that Z was abused, although by another person.

2. *Disclosure to D*

Ms. G testified that Z had written a letter to her great-aunt D describing sexual abuse by her father. She testified that D believed that Ms. G already knew about the matters disclosed, and so she did not tell her about it and she lost the letter.

OCS did not call D as a witness. Absent testimony from the only person who actually read the letter, Ms. G's testimony as to its contents is not the type of evidence that a reasonable person would rely on in the conduct of serious affairs.⁶² The disclosures allegedly made by Z in the letter to D will be disregarded for purposes of establishing the truth of the matters asserted in the letter.

3. *Disclosure to Ms. G*

After she learned that Z had disclosed abuse to D, Ms. G asked Z what had happened. Ms. G's description of what Z told her, as set forth in her testimony and in the documents in the record, is somewhat confusing: it is not clear when she is describing what Z told her, as compared with what she understood Z to have said in her letter to D.⁶³ While it is not clear exactly what Z told Ms. G, Ms. G testified that Z confirmed that her father had molested her.

4. *Alaska CARES Interview*

Z was interviewed by Det. M U of the Alaska Police Department at Alaska CARES on Mary 24, 2010. A video recording of that interview is in the record.

At the time of the interview, Z was eleven years old. She was describing events that had occurred, she stated, when she was in Kentucky, when she would have been seven to nine years old. The time that had passed was not over long, and Z's age at the time of recollection and at the time of the event was, in common experience, sufficient to provide reasonable detail of a recollected event. Moreover, in common experience, an eleven year old child is of sufficient

⁵⁹ L. H Testimony #3 0:07-0:08 (guilt, self-hatred, self-harming, loss of trust, weight gain, early sexualized behavior), 0:20-0:23 (sexualized acting out), 0:26-0:27 (provocative dressing, accessing pornography, self-harm).

⁶⁰ See *supra*, notes 57, 58.

⁶¹ M. M Testimony #3 0:36.

⁶² See 2 AAC 64.290(a)(1).

⁶³ See notes 20, 24, *supra*.

maturity to understand that to maintain an allegation of sexual assault in the context of an interview of the nature she was provided was a serious matter, in which telling the truth was important.

Z stated that the abuse occurred in a bedroom at Mr. C's residence and on three occasions in the interview she mentioned events occurring outside the bedroom, downstairs. Mr. C and Ms. M testified that Mr. C's residence in Kentucky was on a single floor. Z's description of the location where the abuse occurred is inconsistent with their testimony.

However, the details provided by Z regarding the sexual assault included specific information, such as that white liquid came from the penis and that the penis looked big, that is consistent with having observed an erection and climax. Her responses to questions appeared direct, unstudied and prompt, rather than vague, rehearsed, or hesitant. She described actions by Mr. C that are consistent with an adult male engaging in sexual contact, such as rubbing her vagina with his hand and moaning while penetrating her.

The use of a dildo, as Z appeared to describe, coupled with oral, anal and vaginal penile penetration, is conduct that a reasonable person might view as more likely to be associated with a pornographic representation of sexual activity than with an intoxicated father's assault on his seven to nine year old daughter. Z denied having viewed pornography, from which such details might have been gleaned, but Ms. G testified that prior to Z's allegations she had discovered that Z had been accessing pornographic sites online, and Z had told Dr. K of accessing pornography on one occasion.⁶⁴

Even if her relatively fulsome description of sexual activity, and the associated details, might have been gleaned from viewing pornography, Z's description of her own response to abuse is consistent with the response that would be expected from a young girl who has been subjected to sexual abuse: physical pain, crying and feelings of helplessness.

In summary, Z's description of what occurred was plausible (albeit perhaps more suggestive of a pornographic representation than a parental assault), coherent, consistent during the interview, and contained appropriate detail. Viewed in isolation, Z's statements are plausible. While it does appear that Ms. G questioned Z at least once about her disclosures, the record does not indicate that Z was repeatedly asked to reprise her allegations, and in light of the detail and content of her statements in the interview and the absence of any indication of

⁶⁴ R. 18 ("She looked at lesbian.com on school computer a few years ago with a classmate.").

prompting or suggestion, her allegations appear to have been spontaneous, untainted, and self-directed rather than the product of manipulation or rehearsal.

C. Identity of Perpetrator

The preponderance of the evidence, discussed above, is that Z was sexually abused. Mr. C also believes that she was abused. He argues, however, that another person was the perpetrator and that Z identified him rather than the actual perpetrator because she was upset that he had, in her view, abandoned her after he and his daughters returned from Kentucky in 2008, and that she was influenced by Ms. G to identify him as an abuser because Ms. G did not want him to have custody of his daughters.⁶⁵

In support of his argument that Z did not truthfully identify him as the perpetrator, Mr. C cites to the messages they exchanged in the fall of 2011, after she had told Ms. G that it was not her father, but one of his friends, who had abused her. In the context of a discussion regarding Mr. C's absence, Z described a loss of trust in her father. She wrote:

[I']m afraid. [N]ot ready to talk yet. [T]hat's why [I] chose face book please[e] write to me....[D]ad please take the time to do this so we can move past this [I] need to know that you[']re gonna open up to me about your past so we can get past this. [I] some day want you in my life but [I] need to know my dad can admit his wrong so [I]'m able to do the same....[I] would rather know there was a reason than to think you left because you didn't care.^[66]

Mr. C would characterize Z's comment "I need to know my dad can admit his wrong so I'm able to do the same" as an admission that she had untruthfully identified him. But Z's statement in its entirety is highly ambiguous, and it does not include any specific statement exonerating Mr. C. Was she afraid and not ready to talk because she had falsely accused her father, or because she had truthfully accused him? Did she recant her initial accusation because it was untrue, or in an attempt to maintain a relationship with her father?⁶⁷ Z's comments provide no answers to these questions.

As to Ms. G's influence, it is true that at the time of the initial disclosure and interview, Ms. G did not want Mr. C to have custody of the children: she had obtained a protective order forbidding him to have contact with her. A year later, in 2011, Ms. G had, by her own account, tired of the responsibilities and demands of caring for the two girls and she was willing to send

⁶⁵ K. C Testimony #3 0:50.

⁶⁶ R. 144. *See also* R. 40.

⁶⁷ According to the testimony at the hearing, it is not unusual for a child to recant such an allegation in an attempt to maintain a relationship with the accused family member. L. H Testimony #3 0:05-0:06.

both girls to live with their father. At that time, Z recanted her earlier identification of her father as the perpetrator. In light of the timing of the initial identification and its subsequent withdrawal, it is plausible that Ms. G influenced Z's identification: pointing to her father when Ms. G did not want him to have custody, and pointing to another person when Ms. G wanted him to have custody. But to focus on Ms. G's possible influence is to disregard the fact that Z had already identified Mr. C as the perpetrator before she spoke with Ms. G, in her letter to D.⁶⁸ Z's identification of her father as the perpetrator in that letter was not prompted by Ms. G.

Regarding the possibility that a person other than Mr. C was the perpetrator, Z's living circumstances as a toddler, before she went to live with her father in Kentucky, exposed her to maltreatment. Leaving aside the possibility of an unreported sexual assault, the record includes evidence that apart from Mr. C, Ms. G and an unknown acquaintance of Mr. C were also identified as having sexually abused Z.⁶⁹ There is no evidence in the record as to the source of the allegation of sexual abuse by Ms. G. As to a third party, Mr. C did not identify any other person as the abuser, even though he was reported to have spoken with a person whom Y had accused of abuse.⁷⁰

IV. Conclusion

The preponderance of the evidence is that Z has been sexually abused. The evidence as to the identity of the abuser consists of Z's identification on the one hand, and Mr. C's denial on the other.

In considering whether to sustain the substantiated finding, it is important to recognize that the record in this case has significant gaps. This hearing was conducted under 7 AAC 54.215, which does not provide for subpoenas,⁷¹ and there was no pre-hearing discovery. The record does not include any evidence regarding the other instances of reported sexual abuse,⁷² any information obtained in investigations conducted in Kentucky (where the abuse is alleged to

⁶⁸ The letter to D has been disregarded for purposes of establishing the truth of the matters asserted in the letter. However, it will be considered for purposes of rebutting an inference of subsequent fabrication, that is, the inference that Ms. G influenced Z to identify Mr. C as having abused her.

⁶⁹ See *supra*, notes 10 (Ms. G); notes 16, 20, 43 (third party).

⁷⁰ See F. T Testimony #5.

⁷¹ 7 AAC 54.215 has been repealed, effective September 7, 2013 (Register 207). Hearings to contest a substantiated finding issued under AS 47.10 or 47.17 are currently conducted under 7 AAC 54.255(b)(7). Hearings under 7 AAC 54.215 are distinct from hearings conducted under 7 AAC 10.955(i), which concern the information to be placed on the registry maintained under AS 47.05.330. See generally, *In Re B.N.M.*, OAH No. 12-0361-SAN (Commissioner of Health and Social Services 2013). There is subpoena authority for hearings conducted under 7 AAC 10.955(i). See AS 44.62.430.

⁷² See *supra*, note 69.

have occurred),⁷³ or any corroborative testimony from D, Z's school teachers, or Z's mental health counselor, who has continued to treat her for several years. The record that has been provided is sufficient for purposes of this proceeding, which concerns only the information to be placed on the registry maintained under AS 47.17.040. However, it is not necessarily sufficient (and does not necessarily preclude revisiting factual issues) for purposes of other administrative or judicial proceedings.⁷⁴

In light of the limited record presented, Z's interview is credible. It is plausible that the sexual activity described occurred, notwithstanding the absence of physical evidence and the possibility that the description reflects a pornographic depiction rather than an assault on Z.⁷⁵ It is plausible that assaults of the nature described could have occurred and yet escaped notice by Ms. M. That at one point Z told Ms. G that it had been a friend of her father, rather than her father, who had abused her is not inconsistent with him actually having been the perpetrator,⁷⁶ and there is no evidence that Z, who is in counseling, has continued to point to another person as the perpetrator. Notwithstanding Mr. C's suggestion that Z was influenced by Ms. G to identify him, there is no evidence that Ms. G had any influence on Z's initial identification in her letter to D. The motive for untruthfulness that Mr. C ascribed to Z (hurt that he had abandoned her in 2008)⁷⁷ does not explain why she would have identified him when she did (some two years later).⁷⁸ Most importantly, Mr. C has never identified any other person as a possible perpetrator, even though he reportedly confronted a friend after Y reported abuse by a friend of her father's in 2009, and even though Z at one point told Ms. G that a friend of her father had abused her.

⁷³ According to the witnesses' testimony, Kentucky police conducted an investigation of Z's 2010 report, but the Kentucky child protection agency did not. Whether Z's 2009 report investigated is unknown. According to Mr. C, the Kentucky authorities had strong evidence regarding abuse of Z. *See supra*, note 39.

⁷⁴ *See, e.g., Matanuska Electric Association v. Chugach Electric Association*, 152 P.3d 460, 468 (Alaska 2007).

⁷⁵ As previously observed, Z's statement in the interview that she had not viewed pornography was untruthful. *See supra*, note 64.

⁷⁶ *See supra*, note 67.

⁷⁷ *See R.* 144.

⁷⁸ Expert testimony at the hearing provided a reason for the delayed disclosure, however, in that victims commonly do not disclose abuse for a lengthy period of time, after they feel safe. *See L. H Testimony #3 0:14.*

The preponderance of the evidence in the limited record presented supports the finding issued by the Office of Children's Services. The substantiated finding is therefore sustained.

DATED April 10, 2014.

Signed
Andrew M. Hemenway
Administrative Law Judge

NOTICE AND TRANSMITTAL OF FINAL AGENCY DECISION

The final decisionmaker did not take action on this matter within the time allowed by AS 44.64.060(e). At the direction of the final decisionmaker, the administrative law judge's proposed decision is therefore deemed the final agency decision by operation of law, pursuant to AS 44.64.060(f). A copy of the final agency decision is attached.

Judicial review of this final decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

DATED June 3, 2014.

By: Signed
Office of Administrative Hearings

[This document has been modified to conform to the technical standards for publication.]