BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF FAMILY AND COMMUNITY SERVICES

In the Matter of	)	
	)	
L. D.	)	OAH No. 25-1615-CHC
	)	

DECISION

I. Introduction

The Office of Children's Services ("OCS") pays foster parents a daily stipend to compensate them for the time and expense of caring for children in OCS custody. This rate is set through regulations adopted by the Department of Family and Community Services ("DFCS").

Foster parents who take on the added responsibility of caring for children with more complex medical or behavioral needs may also receive "augmented rates" that can significantly increase this daily stipend. To qualify for these augmented rates, foster parents must request an assessment of the child in their care. Since early 2025, these assessments have been performed by a centralized OCS augmented-rate review team. By regulation, the assessment must be performed utilizing a specific evaluation form. This form sets out a list of ten potential "problem areas" for which a level of severity – either low, moderate, or high – can be assigned. If a child has multiple problem areas that are assigned a combination of moderate and severe level ratings, a foster parent is entitled to a "Level 3" augmented rate. But for medically fragile children, who are governed under a separate regulation, this is the highest augmented rate available under OCS's applicable regulations.

Ms. L. D. has cared for her foster daughter E. since March 2022.[1] From August 2024 through March 31, 2025, she was granted a Level 3 augmented rate for her foster daughter's care. The augmented rate is subject to review every six months. For the six-month period beginning April 1, 2025, OCS's centralized rate-review staff reduced Ms. D.'s augmented rate to Level 1, believing E.'s conditions and their impacts on Ms. D. had vastly improved. It did so without conducting a formal foster-parent interview, reviewing past statements to the child's OCS case worker, or informing Ms. D. of what information might meaningfully support her

[1] Ms. D. has since informed the Office of Administrative Hearings and the rate-review team that she has formally adopted her foster child, E.

request to retain a Level 3, or even a Level 2, augmented rate. It also did so without using the evaluation form required by DFCS's own regulations.

Ms. D. appealed the April 2025 rate reduction. A first-level rate review and then a contested hearing before the Office of Administrative Hearings (OAH) followed. As detailed below, OCS conducted the April evaluation, and a September 2025 reassessment, without conforming to Alaska regulation. When the proper evaluation form is utilized in concert with the information Ms. D. provided at hearing – all of which was available to OCS had it properly interviewed her – Ms. D. qualifies for the Level 3 augmented rate. Accordingly, OCS's refusal to grant a Level 3 augmented rate beginning with the April 2025 rate review is REVERSED.

II. Legal Background

Pursuant to 7 Alaska Administrative Code ("AAC") 53.030(a), OCS is required to "pay a base rate for foster care for a child placed by the department."[2] Consistent with this obligation, OCS pays a daily stipend to foster parents that is intended to compensate them for the "care and supervision of children in foster care."[3] Depending on the age of the child, this stipend can vary between $34.01 and $40.73 per day under a rate schedule adopted by OCS in 2024 and effective July 1, 2024.[4]

For children who have physical disabilities, ongoing behavioral issues, or complex medical conditions, foster parents may request an "augmented rate" under 7 AAC 53.060 that is intended to compensate them for the extra time and expense of caring for these children.[5] The regulation specifies three levels of augmented rates. Foster parents who qualify for a Level 1 augmented rate receive an additional $19.50 on top of the regular daily stipend. Those qualifying for a Level 2 augmented rate receive an additional $39.00 per day. The Level 3 augmented rate, which is intended for children with particularly acute needs, increases the daily stipend by $78.00.[6]

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[2] As noted in *Heitz v. State, Dep't of Health & Soc. Servs*., 215 P.3d 302, 306 (Alaska 2009) (foster parents have "a protected property interest" in foster care reimbursement payments).

[3] 7 AAC 53.030(a).

[4] *See* Foster Care Reimbursement and (Difficulty of Care) Augmented Rates, accessible at: https://dfcs.alaska.gov/ocs/Documents/FosterCare/Foster-Care-Reimbursement-and-Augmented-Rates.pdf.

[5] 7 AAC 53.060 (augmented rates are available for a child whose "needs are at a level that exceeds the basic care provided in a licensed foster home").

[6] *See* footnote 4, *supra*. Foster parents caring for a medically fragile child, who would likely qualify for a Medicaid waiver, may alternatively be eligible for an intensive augmented rate under 7 AAC 53.061. That is not at issue here.

Under 7 AAC 53.060, OCS must perform an augmented rate assessment upon the request of a foster parent.[7] If an augmented rate is approved, it must be reviewed through a new assessment performed every six months.[8] This is in part because "children in care are expected to improve with the provision of foster care services."[9] The regulation goes on to provide the following guidance on how these assessments and reassessments are to be conducted:

> [F]or children in the custody of the department who are receiving services from the departmental office that oversees children's services under AS 47.10, that office shall conduct an assessment that determines the child's needs in the foster care placement and the role and level of responsibility of the foster parent in meeting the child's existing needs; the office shall conduct the assessment using the *Augmented Care Worksheet* in the Office of Children's Services *Child Protection Services (CPS) Policy Manual, Chapter 6. Administration, Section 6.2.2.2.A. Difficulty of Care Augmented Rates*, revised as of July 1, 2022, and adopted by reference. . . [10]

The current text of this regulation was proposed in 2022 and adopted with an effective date of February 23, 2023.[11] When this regulatory language was filed with the Office of the Lieutenant Governor for formal adoption, it was submitted with two documents that figure prominently in this appeal: (1) the specific version of Section 6.2.2.2.A of the CPS Manual that was incorporated by reference into the regulation; and (2) an "Assessment of Difficulty of Care" worksheet that is set out that within that section of the CPS Manual.[12] Any doubt that this form itself was incorporated by reference into 7 AAC 53.060(f)(1) is dispelled by text at the bottom of its pages which provides: "OCS Difficulty-of-Care Augmented Rates. *Adopted by Reference*. Augmented Care Worksheet. 01.27.2022."[13] Additionally, this form was provided to the public – along with the proposed regulatory text – in the notice of proposed rulemaking that was issued to the public on July 20, 2022.[14]

This regulatory text, in combination with the incorporated documents that were filed with it, created procedures for conducting augmented rate assessments that could not be modified by

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7 7 AAC 53.060(b).
8 7 AAC 53.060(d)
9 *Id.*
10 7 AAC 53.060(f)(1) (italics in original).
11 *See* Alaska Administrative Code Register 245, effective February 23, 2023 (available online at https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=209632).
12 *Id.* (emph. added).
13 *Id.*
14 *See* Notice of Proposed Changes on Child Foster Care Augmented Rates for Difficulty-of-Care (available online at https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=207471). Notably, in this notice the form was identified as a document that would be adopted by reference in the proposed regulation.

OCS absent a corresponding amendment to 7 AAC 53.060 that was also adopted in compliance with the rulemaking requirements established by the Alaska Administrative Procedure Act (the "APA").[15] This prevents OCS from revising those procedures by unilaterally modifying Section 6.2.2.2.A of the CPS Manual, or changing its internal policies and procedures. Were it otherwise, OCS could circumvent the important notice and public comment requirements imposed by the APA and achieve self-executing, unilateral amendment to its regulations – a result that would be plainly inconsistent with Alaska law.[16]

6.2.2.2.A Difficulty of Care augmented Rate Policy permits OCS to assess difficulty of care when a child's specific needs may require more intensive care and supervision beyond those covered by the foster care base rate.[17]

The Assessment of Difficulty of Care Form incorporated into 7 AAC 53.060 – which will be referred to below as the "Original Assessment Form" – sets out a matrix with ten different "problem areas" listed on the left side of the form. For each problem area there is a corresponding space for identifying that problem as having low, moderate, or high severity. Examples of issues that qualify as low, moderate, or high for a given problem area are listed within the form, as shown in this excerpt from that form:

The Values Listed below were identified through the assessment process as critical needs/behaviors that are present in the last six months. The frequency and severity of problems and the role and level of responsibility of the resource parent in meeting the child's existing needs determines the augmented foster care rate.

Problem Area	Low	Moderate	High
DJJ/Law Enforcement Involvement	Misdemeanors Status Offenses	Property crimes two or more Curfew Violations Chronic Runaway Stealing from foster parents on weekly basis	Felony Offense Fire setting Sexual Perpetrator (Multiple victims or Predatory)
Self-Regulation	Short attention span Over 4 years old - enuresis several times a week	Poor frustration tolerance Over 4 years old - enuresis daily	Behavioral response limits/prohibits day to day functioning

[15] *See* AS 44.62.180 - .290.

[16] *Stefano v. Dep't of Corr.*, 539 P.3d 497, 501 (Alaska 2023); *Muni. of Anchorage v. Dep't of Revenue,* 2026 WL 1042357 *13 *(*Alaska 2026).

[17] Agency Ex. 3.

The eight remaining problem areas to be evaluated include: (1) Developmental Delay/Intellectual Disability; (2) Education Issues; (3) Impulsive/Oppositional Behavior; (4) Therapeutic Intervention/Mental Health; (5) Aggression/Victimization; (6) Medical/Physical; (7) Self Harm/Suicide; and (8) Substance Abuse. As above, examples of issues that qualify for a low, moderate, or severe score are included for each of these categories. Six such categories will come into play when reviewing the augmented-rate assessments performed for E.

In addition to the form, Policy 6.2.2.2.(A) includes its own table that does not completely conform to the worksheet but is also useful in determining severity levels for the 10 problem areas.[18]

As for the period of time that is evaluated for each of these problem areas, the scoring sheet expressly states: "The Values listed were identified through the assessments process as critical needs/behaviors *that are present in the last six months*."[19] At the bottom of the form, the following instructions are provided for identification of the assessed child's eligibility for augmented rates:

Determination of Level of Care

Basic:	**Level 1:**	**Level 2:**	**Level 3:**
Does not meet criteria of other rates based off determination	Three or more boxes checked in the low column	1 or more boxes checked in the low column and two or more in the moderate column	1 or more boxes checked in the high column AND three or more in moderate
	Two boxes check in the moderate column	Two boxes or more check in the high column	2 or more boxes checked in moderate, and 2 or more boxes checked in high
	One box checked in the high column	Four or more boxes checked in the moderate column	Four or more boxes checked in the high column
		One box checked in the high column and two in moderate column	

Thus, a foster child would qualify for a Level 3 augmented rate, if she exhibited (1) one severe problem area and three moderate problem areas; (2) two or more severe problems and two or more moderate problem areas; or (3) four or more severe problems.

[18] Agency Ex. 3. at 4-5.
[19] *Id.* (emph. added)

At some later point that is not clearly established in the record, OCS unilaterally revised the Original Assessment Form. OCS's testifying representative stated it did so to capture more problem areas,[20] but the matrix that the revised form required for evaluating qualifying conditions, greatly limited resulting scores. While this "Revised Form" utilizes the same basic matrix of problem areas and severity ratings, it revised the Original Assessment Form by changing the way assessments were scored. This was accomplished by assigning a point value to the three severity levels, as shown below:[21]

The values listed below were identified during the assessment as having been present within the last six months. Each problem has a level of severity. The severity of each problem, the number of problems identified, and the foster parent's role and level of responsibility in meeting the child's existing needs determine the augmented foster care rate.

AUGMENTED RATE ASSESSMENT

Problem Area	Low Severity (1 point)	Medium Severity (2 points)	High Severity (3 points)
Aggression/Victimization		Superficial injury caused to others	
Developmental Delay/Intellectual Disability	Diagnosed mild developmental delays	Suspected FASD	
DJJ/Law Enforcement Involvement			

At the bottom of the Revised Form, a new "scoring tool" was added, as shown here:[22]

AUGMENTED RATE SCORING TOOL

Augmentation Score	Augmentation Level
0 to 4 points	Basic
5 to 9 points	Level 1
10 to 13 points	Level 2
14 + points	Level 3

[20] Ms. Clapp-Damerow Testimony (1:34:00 – 1:34:20 Timestamp ("the new application is more expansive than our policy").

[21] Agency Ex. 4. pp. 4-5.

[22] *Id.*

The scoring system in the Revised Form had the effect of making it more difficult for foster parents to qualify for augmented rates. For example, under the Original Assessment Form a foster parent would qualify for a Level 3 augmented rate if there was one box was checked in the "high" category, and three or more boxes checked in the "moderate" category. Under the Revised Form, that same foster parent would be awarded nine points – which would only entitle her to a Level 1 augmented rate.

Moreover, in utilizing the Revised Form OCS has adopted a policy under which behaviors that create issues for foster parents in multiple problem areas are awarded points in only one problem area.[23] This remains true regardless of how severely foster parents are impacted by these issues. Thus, for example, a child with serious developmental delays that also gave rise to high severity problems in the categories of education, aggression/victimization, and medical/physical would be awarded points in only one of those four categories – even though the foster parent was severely impacted by educational struggles, continual outbursts of aggression, and the need to take the child to multiple appointments for counseling, medical treatment and therapy each week.

These changes were implemented by OCS without any corresponding amendment to 7 AAC 53.060.[24]

III. Facts

L. D. is a licensed foster care provider who has cared for E. since March 2022, when E. was just six months old. E. will turn five in September.[25] A neuropsychological assessment of E., conducted on May 5 and 19, 2025, is in the agency record.[26] According to that assessment, E. has a history of "neglect, abuse, trauma, and developmental delays."[27] She is documented as suffering from adverse childhood experiences, oropharyngeal dysphagia, mixed receptive-expressive language disorder, chronic lung disease, left-sided hemiplegic cerebral palsy, and obstructive sleep apnea.[28] Documented behavioral concerns in April 2025, the timeframe of OCS's reassessment, included:

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23 Ms. Clapp-Damerow Testimony (12:00 – 12:30 Timestamp).
24 The text of 7 AAC 53.060(f) has not been modified since the current language was adopted in 2023.
25 Agency Record at 78.
26 Agency Record at 78 - 85.
27 Agency Record at 78.
28 *Id.*

> Dysregulation screaming, running, hitting, kicking, pinching in crowds, noisy environments, with unexpected noise (dog shaking, garbage disposal, cough/sneeze) worse when sick, tired, hungry, in pain, or with change in school caregiver or increased emotional distress. Inattention more than peers, easily distracted, difficulty in busy school setting. Sleep disorder, sleep study at Peak called it sleep fragmentation and mild apnea. Repeat study 5/5/25 s/p tonsillectomy 10/24. Still wakes every 2 hours all night long. Occasional stretch of 3-4 hours.[29]

The earliest rate assessment for E. referenced in the agency record was performed by OCS employee Richard Blomquist on October 15, 2024.[30] While the worksheet for that assessment is not included in the agency record, Mr. Blomquist's activity notes describe E. as suffering from numerous medical conditions, including a head injury inflicted when someone stepped on E.'s head as a newborn, blood on the brain, left-sided weakness, cerebral palsy, a swallowing disorder, chronic lung disease due to prematurity, a significant sleep disorder, and chronic constipation.[31] He recorded E. as requiring physical therapy, occupational therapy, and speech therapy, with gymnastics as a substitute for physical therapy. Including these therapy sessions, the assessment further documented 179 medical or behavioral health appointments over a 31-month period, nine emergency room visits, sedation for teeth removal, and a tonsillectomy. He further documented E. as seeing a general practitioner, a pulmonologist, a gastroenterologist, an orthopedist, a cardiologist, a neurologist, and a counselor.[32]

Whether Mr. Blomquist's assessment was performed using the Original Assessment Form, or the Revised Form, is not clear from the record. He did, however, score E. as qualifying for a Level 3 augmented rate.[33] This augmented rate was intended to compensate for the additional and frequent attention Ms. D. needed to provide E. when she could not sleep through the night, when she required constant hand holding or carrying in public places to prevent running off, or to comfort her to such a level that she would stop hitting, punching, or biting Ms. D. or their family dog.[34]

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29 *Id.*

30 Agency Record at 5.

31 Agency Record at 1-2.

32 *Id.*

33 Were Mr. Blomquist have scored her utilizing the correct scoring sheet, his activity notes document E. has having qualifying factors for at least six problem areas (self-regulation, developmental delay/intellectual disability, impulsive/oppositional, therapeutic intervention/mental health, aggression/victimization, and medical and physical problem areas). Were he using the Revised Form, his activity notes would support findings in 5 problem areas (aggression/victimization, developmental delay, educational, impulsive, and medical/physical subject areas).

34 Agency Record at 71-72; Ms. D. Testimony (1:53:00 – 2:18:00 Timestamp).

Perhaps in preparation for the next six-month review, OCS employee Sarah Abramczyk emailed several OCS employees, including Mark Colavechchio, on February 28, 2025, stating:

> Hello. I reviewed the ORCA documentation for E. Mark, thank you for your thorough caseworker visit and medical notes. From what I have read it looks like E. has made some progress, especially after her tonsil surgery and ceasing dairy intake. I also saw that many of her medical appointments have moved to every six months. Many of her therapies are provided at the preschool. Based on this review I don't think she qualifies for a level 3 augmented rate any longer. As you complete this review, please keep in mind that Difficulty of Care Augmented rates are meant to be temporary. They are also based on the impact to the foster provider.[35]

Notably, the guidance offered by Ms. Abramczyk omitted any reference to the regulatory standards that are supposed to guide augmented rate assessments, and the conclusions she offered were reached without any type of input from Ms. D. Nor did Ms. Abramczyk attach any scoresheet (be it the correct or incorrect one) to her email. Her email instead reflected OCS's new practice of having only a centralized team prepare rate assessments to avoid overscoring and prevent foster parents from intentionally or inadvertently manipulating the case workers and supervisors who previously performed these assessments.[36]

Based on Ms. Abramczyk's email, Mr. Colavecchio was effectively tasked to formalize conclusions that had already been reached by someone with only limited knowledge of the challenges Ms. D. faces in caring for E.[37] Consistent with this approach, Mr. Colavecchio did not interview Ms. D. as part of this reassessment. Nor is there any record of him reviewing Ms. D.'s statements to E.'s past or current case workers. Based on this abbreviated assessment, OCS issued Ms. D. a Notice of Augmented Foster Care Rate Assessment on April 1, 2025, which advised that she was only being approved for a Level 1 Augmented Rate.[38]

Attached to that Notice was the revised scoring worksheet OCS now used, filled out to address perceived issues with E. It scored her as follows:

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35 Agency Record at 4.

36 Ms. Clapp-Damerow Testimony (06:50 – 07:40 Timestamp) (stating, some Protective Services staff member "have said they did not want to make foster parents mad or felt bad for the foster parent. And that could result in them choosing areas that didn't actually apply").

37 Agency Record at 5. The record is unclear on whether he or Ms. Abramczyk completed it.

38 Agency Record at 7.

AUGMENTED RATE ASSESSMENT

Problem Area	Low Severity (1 point)	Medium Severity (2 points)	High Severity (3 points)
Aggression/Victimization		Verified physical or sexual abuse youth as victim with services	
Developmental Delay/Intellectual Disability		Mod. impairment in communication, condition, or expression of affect	
DJJ/Law Enforcement Involvement			
Education Issues			
Impulsive/Oppositional Behavior			
Medical/Physical			Needs supervision to ensure meds are taken routinely and appropriately
Self-harm/Suicide			
Self-Regulation	Short attention span		
Substance Use			
Therapeutic Intervention/Mental Health	Suspected but undiagnosed mental health issues		

Without any explanation as to what in the record supported this new assessment, E. was awarded only one point for therapeutic intervention/mental health based on suspected mental health issues. She was awarded two points for aggression/victimization for verified physical or sexual abuse, and two more points for developmental delay due to moderate impairment in communication, condition, or expression. Finally, she received a high severity score of three points in the medical/physical problem area because of the supervision she needs taking medications. Together her accumulated score was 9, qualifying Ms. D. to receive solely the Level 1 Augmented Rate.

Here it is worth addressing OCS testimony regarding the manner in which points are awarded in given problem areas during these assessments. Ms. Clapp Damerow, the Program Coordinator for OCS's rate-review team, candidly testified that OCS uses "problem area definitions which are not public," and that OCS does not "want to make them public."[39] OCS's

[39] Ms. Clapp-Damerow Testimony (11:00:00 – 11:10:00 Timestamp).

sole justification for this secrecy is to prevent foster parents from manipulating the information they provide in order to obtain higher augmented rates. When asked whether the failure to provide these definitions deprived foster parents of the opportunity to meaningfully challenge an OCS rate assessment, and whether the failure to provide those definitions to a reviewing ALJ deprived that judge of the ability to determine whether the OCS rate assessment was properly scored, OCS's representative was unable to offer answers.[40]

There are two dates on Ms. D.'s appeal of OCS's augmented-rate determination: April 9, 2025, and May 15, 2025.[41] Following the first date, April 9, 2025, Ms. D. still engaged in written discussions with OCS employee Davin Smith. She wrote Mr. Smith that she did not believe E.'s conditions "were so improved to warrant a reduction from Level 3."[42] Relying on the Revised Assessment Form that OCS had relied upon and provided to her, she explained in writing that E. had significant issues in the problem areas of aggression, education, impulsive behaviors, medical/physical issues, self-regulation, and therapeutic intervention/mental health needs. Lacking any knowledge of the precise information that might assist in retaining the Level 3 augmented rate (or even obtaining a Level 2 rate), Ms. D. generally described E.'s "additional needs and behaviors." Ms. D. documented an enhanced need for supervision to stop E. from kicking, pinching, and biting people and her dog. She further documented how E. continued to run away in parking lots, in crowds, in gymnastics, and at physical therapy appointments to a frequency of two to three times a week. She described a painstaking sleep disorder, in which E. woke every two hours and needed Ms. D.'s support to go back to sleep. She explained that as of that date (in early April), E. had already had 22 medical appointments in 2025 alone. This did not include the weekly gymnastics E. attended at her physical therapist's orders to supplement or substitute for physical therapy sessions. She further referenced documents that would be helpful to OCS's re-evaluation, including E.'s occupational therapy treatment plan, individualized education plan ("IEP), and a behavioral health analysis (likely the neuropsychological assessment contained in the Agency Record) that verified E.'s child abuse and attachment disorder.[43]

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40 *Id.* (48:00 – 58:00 Timestamp). It should be noted that OCS's practice of applying secret standards that are not even disclosed to either foster parents or reviewing ALJs is a highly unusual practice that does not appear consistent with fundamental principles of due process.

41 Agency Record at 45.

42 Agency Record 34-35.

43 *Id.*

Other than informing her he would investigate the matter, Mr. Smith did not reply to Ms. D.'s emails for five weeks.[44] Lacking that response, Ms. D. renewed her hearing request. The matter was finally referred to OAH on May 23, 2025.

In advance of the hearing, OCS requested Ms. D. to join them and their legal counsel in a mediation session that occurred on August 28, 2025. Without Ms. D.'s direct knowledge, OCS considered that mediation session an interview with the foster parent for purposes of performing the next six-month reassessment, governing the time period October 1, 2025 through February 28, 2026.[45] If the activity notes Ms. Clapp-Damerow authored for this meeting are comprehensive, Ms. Clapp-Damerow told Ms. D. at this meeting that she would conduct a "first-level review" of OCS's prior April evaluation. The notes reflect that Ms. D. continued to assert that E. required higher than a Level 1 augmented rate. She explained how E. ran away in public, had excessive tantrums, and an extremely disruptive sleep schedule. Ms. D. again described E.'s highly aggressive behavior, including kicking, hitting, biting, pinching, damaging furniture and toys, and harming their dog that occurred at least twice a week. For its part, OCS viewed these descriptions of routine violence and aggression as evidence that E.'s behavior was somehow improving. [46]

While it is unclear of whether these were subjects of direct conversation, the activity notes referenced E.'s educational issues, suspected but undiagnosed mental health issues, physical abuse as an infant, the number of medical appointments per week, the need to supervise E.'s daily medication, and her need for complex medical regiment and monitoring – all findings the OCS evaluator relied upon in the April evaluation. However, the activity notes show that Ms. Clapp-Damerow gave credit to none of them, stating:

> Ms. D. continues to assert that E. has multiple medical appointments but does not appear to understand that only medical appointments for the timeframe 3/1/25-present will be accounted for. From 3/1/25 to current she has had 11 OT appointments. However, per K. L., beginning in January all of these occurred at the child's daycare. She has had 4 dental appointments on 3.5.25, 3.26.25, 4/8/25, and 5/23/25. Caregivers are expected to take children to the dentist and follow up with dental recommendations and appointments.[47]

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[44] Agency Record at 31.
[45] Ms. Clapp-Damerow Testimony (2:26:40 – 2:26:50 Timestamp); Ms. D. Testimony (2:18:20 – 2:18:40 Timestamp).
[46] Agency Ex. 6.
[47] *Id.*

The information Ms. D. provided to Ms. Clapp-Damerow after this combined mediation/reassessment was similarly discounted. This included Ms. D.'s April 16, 2025, email to Davin Smith that was described above, and a comprehensive summary and spreadsheet of all medical and behavioral health appointments E. had from the date of her placement forward. Ms. Clapp-Damerow testified that she would not rely on any information in the log, unless she found a corresponding Medicaid record for them.[48] Because Ms. D. was never told that Medicaid records were Ms. Clapp-Damerow's sole guide in this regard, Ms. D. never had an opportunity to explain that she had carried E. under her private insurance since January 2025, which means that treatment provided after that date would not appear in any Medicaid records. Moreover, as Ms. D. explained, there would be no record of any Medicaid co-pay, because E.'s medical care was so complex that she quickly met the private insurer's full deductible.[49]

Because Ms. D. was never advised of the information that might be relevant to the undisclosed standards that OCS was applying, she was unable to explain that she attended many of E.'s in-school therapy sessions to get guidance on the home exercise she should provide. Nor was Ms. D. able to provide information regarding the gymnastics classes and swimming lessons that Ms. D. attended with E. as therapist-ordered substitutes for physical therapy. While this reduced the number of formal physical therapy sessions that Ms. D. attended with E., from an overall perspective it did nothing to reduce the attendant burden on Ms. D.[50] However, Ms. Clapp-Damerow only considered the reduced formal physical therapy sessions as indicating that E.'s physical impairments were improving.

Quite simply, Ms. Clapp-Damerow disregarded any medical or behavioral health appointment that was not reflected in Medicaid records. Notably, there is nothing in the governing regulation that directly or implicitly suggests that augmented rate assessments should only consider medical or behavioral health appointments that are documented by Medicaid. The net result of this was to significantly minimize the severity of E.'s issues, and the resulting impact of those issues on Ms. D.

Ms. Clapp-Damerow also testified that ORCA, the only database she relied upon to document or verify past abuse, did not have access to the filings in D.'s companion child-in-

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48 Ms. Clapp-Damerow Testimony (32:25 – 34:10 Timestamp).

49 Ms. D. Testimony (2:16:35 – 2:17:35 Timestamp).

50 *Id.* (1:54:35 - 1:56:10 Timestamp). PT-ordered gymnastics was identified in the October assessment as one reason for qualifying E. for two-or-more medical appointments a week. Agency Record at 1-2.

need-of-aid case. Nor did she review the April 2025 neuropsychological assessment to verify E.'s substantiated physical abuse.[51] The record and hearing testimony both point to the conclusion that Ms. Clapp-Damerow performed this augmented rate assessment without awareness of the vital information that (1) E. suffered a traumatic brain injury with related cranial bleeding as an infant due to having her head stepped on; and (2) she will face a litany of long-term medical and behavioral issues as a result of that injury.

Ms. D. appears to have left the August 28th meeting still believing additional information she might provide would impact on OCS's first-level review of the April decision. In an email to Ms. Clapp-Damerow dated August 29, 2025, and again using the incorrect scoring sheet that OCS provided her with as her guide, Ms. D. wrote:

> Here's all the information I can provide about the amount of critical needs/behaviors that are present currently and historically. I just saw your other questions in my personal email. I will reply to those questions here, some of the details are already in my table at the bottom of this email.
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> IEP Progress: Running away; when not in school she will run away.
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> - At PT Appts – down the hall and around the corner out of sight Lickety split, about 2x during the 1 hour appt. Appts have changed frequency from every other week to quarterly starting May 13th appointment.
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> - At church – lost her once in the building this year, but found by other parents after 10 minutes, down a nursery school hallway. Runs down the halls, into empty classrooms or the gym exploring. Mitigate by holding her hand being picked up for more than a few minutes.
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> - In parks/parking lots: needs firm unrelenting hand holding in parking lots, will run to the car when she sees it, will bolt if she hears a loud noise…In parks will run away more than 50 yd. I choose parks that do not have hazards nearby, coax her back, but she is chasing something and hard to get her attn, inconsistently responds to "stop." If I yell it then she is scared and can bolt further away.
>
> IEP self regulation:
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> - Difficulties at home: throwing tantrums with kicking hitting biting pinching me, furniture/toys, or the dog about 2x/week when not getting her way mostly during transitions from something fun (listening to audiobooks) to something less fun (leaving the house, going to bed, dinner

[51] Agency Record 52-77.

> time). Improved from daily. Improvements related to OT interventions & at home practice of identifying emotions, practicing self-regulation strategies, bought a visual timer to give 5 & 2 min warnings so the warnings come from a neutral source, bought an app on my phone for task completion which she uses to check off tasks with transitions, bought pillows and created a cozy corner for her to use before she escalates to help her calm down. Bought books about self regulation and feelings that we can rotate through. We finished mental health appts in January which were very helpful for guiding me in how to implement these principles.
>
> Appts: there's a long list. If you need more detail I can forward all of the emails about appts to you or the whole sheet from my spreadsheet. There were only 2 well child appts in 2024-2025, of the 142 appts. One was a 3yo appt in Sept 2024, and upcoming in September is a 4yo appt.
>
> As you're aware I looked into Medicaid waiver…E. is not impaired enough to meet the waiver, so I did not pursue it further.
>
> If the date range assumption I made below is correct, I've provided you with all the information to easily due the math to find out the average appt rate for the timeframe you need. I'm assuming the 6 month lookback is October 1, 2024 – March 30 2025, since the rate change occurred in early April 2025 and the rate change was based on the prior 6 mos. [52]

Ms. Clapp-Damerow completed her first-level review of the April assessment following the August 28 meeting and the receipt of Ms. D.'s further communications. While Ms. Clapp-Damerow disagreed with many of the April assessor's factual findings, she still concluded its Level 1 Augmented Rate decision was correct.[53] Moreover, without informing Ms. D. that this was her intent, Ms. Clapp-Damerow used the mediation session and the information Ms. D. provided following that meeting to justify a Level 1 Augmented rate for the next six-month reassessment, effective October 1, 2025 through February 28, 2026.[54] Her scoring, on the updating scoring sheet, is shown below:[55]

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52 Agency Record 71-72.
53 Ms. Clapp-Damerow Testimony (40:45 – 48:05, 2:24:03 Timestamp).
54 *Id.* (2:26:30 – 2:26:50 Timestamp); Ms. D. Testimony (2:18:15 - 2:19:08 Timestamp).
55 Agency Ex. 5.

The values listed below were identified during the assessment as having been present within the last six months. Each problem has a level of severity. The severity of each problem, the number of problems identified, and the foster parent's role and level of responsibility in meeting the child's existing needs determine the augmented foster care rate.

AUGMENTED RATE ASSESSMENT

Problem Area	Low Severity (1 point)	Medium Severity (2 points)	High Severity (3 points)
Aggression/Victimization			
Developmental Delay/Intellectual Disability		Diagnosed moderate developmental delays Mod. impairment in communication, condition, or expression of affect	
DJJ/Law Enforcement Involvement			
Education Issues			
Impulsive/Oppositional Behavior	Occasional behavior difficulties when prompted or redirected Excessive tantrums/crying		
Medical/Physical			
Self-harm/Suicide			
Self-Regulation		Poor frustration tolerance	
Substance Use			
Therapeutic Intervention/Mental Health			

AUGMENTED RATE SCORING TOOL

As a result, Ms. D. qualified solely for a Level 1 augmented rate going forward.

Ms. Clapp-Damerow's last review provides an additional opportunity to identify the many irregularities between the instructions included in this updated scoring sheet and how OCS instructs its augmented-review staff to determine whether an augmented rate is justified. The first – OCS's secret definitions for purposes of scoring and its failure to provide parents and reviewing judges any meaningful review of OCS's conclusions – has already been discussed. So too is the second irregularity best exemplified by Ms. Clapp-Damerow's testimony that a specific

conduct, such as excessive crying, cannot be used to support more than one problem area, even if it supports more than one problem area.[56] There is no identifiable regulatory basis for this limitation.

A third irregularity already discussed is how far OCS can look back to determine whether a child's augmented rate shall continue with each six-month review. According to Ms. Clapp-Damerow, this is a forward-looking analysis and is dependent on what the foster parent and the record show are presently occurring.[57] This contrasts with the very scoring sheet that Ms. Clapp-Damerow used. It stated, "The values listed below were identified in the assessment *as having been present in the last six months*."[58]

There are two more irregularities with the evaluation not previously discussed. The first of the two remaining issues is best exemplified by Ms. Clapp-Damerow's conclusion in the September reassessment that only 3 of the 10 problem areas should receive an enhanced score, because these were the only categories in which E.'s behavior financially impacted Ms. D.[59] According to Ms. Clapp-Damerow, because "we are giving them money…it needs to offset a cost."[60] This is contrary to even the Revised Assessment Form, which nowhere references financial impact as the sole common denominator for the ten different problem areas. Instead, to determine whether a problem area is of low, medium, or high severity, the scoring tool states:

> Each problem has a severity. The severity of each problem, the number of problems identified, *and* the foster parent's role and level of responsibility in meeting the child's existing needs determine the augmented foster care rate.[61]

The last irregularity is OCS's choice of which information it would use used to validate Ms. D.'s statements and evidence. As Ms. Clapp-Damerow testified, OCS must "trust but verify" that evidence.[62] Nevertheless, OCS appears to pick and choose what information it considered reliable. Here, OCS relied on (1) ORCA records and protective service reports, but not case records in Alaska Cares notes or in the corresponding child-in-need-of-aid court action; (2) Medicaid payment records, but not Ms. D.'s spreadsheet of medical appointments and availability of Aetna private insurance records; (3) IEP's, but not the comprehensive

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56 *Supra* footnote 20.
57 Ms. Clapp-Damerow Testimony (47:15 – 47:45 Timestamp).
58 Agency Ex. 5 (emph. added).
59 Ms. Clapp-Damerow Testimony (1:20:00 to 1:23:00 Timestamp).
60 *Id.* (1:19:30 -1:26:10 Timestamp).
61 Agency Ex. 5 (emph. added).
62 *Id.* (1:15:04 Timestamp).

neuropsychological assessment on which that IEP is based; and (4) statements in Ms. D.'s most recent communications with Mr. Smith and Ms. Clapp-Damerow, while excluding information provided by E.'s caseworker, E.'s guardian ad litem, or the superior court judge presiding over E.'s child-in-need-of-aid court case.[63]

Against this backdrop, Ms. D. testified before OAH to the numerous additional reasons why a Level 1 Augmented Rate did not reflect E.'s needs or the financial impact of those needs on Ms. D. She stated that the record she submitted in April to the present still showed an average of 2.7 medical appointments per week, with 1.3 of them occurring, on average, in preschool. However, even if sessions occurred at school, Ms. D. explained they still had an impact on her, because she would at times leave work to attend those sessions so she could learn the home exercises to perform. Even when she did not attend the sessions, Ms. D. explained she was regularly interrupted at work with phone calls or texts explaining the session and what home exercises were needed in follow-up. She reiterated how E. attends swimming lessons and gymnastics to substitute for previously weekly physical therapy sessions, all applying the physical therapist's orders that group sessions like these improved E.'s physical deficiencies.

Ms. D. described all the communications OCS ignored in its April and then September evaluations, including her notes to Mr. Davin Smith, her spreadsheet of all E.'s appointments, her monthly communications with E.'s case worker, and statements from E.'s GAL and the superior court judge presiding over the CINA case. Specifically, here, she quoted these individuals as stating:

> [E.] is child who is high risk for unstable placement due to the complexity of her needs. And if [Ms. D.] had not continued to persevere in caring for her, she would have had multiple placement changes.[64]

Ms. D. additionally criticized Ms. Clapp Damerow's conclusion that E. should not receive points because of the toll caused by providing medication to E. daily. In Ms. Clapp-Damerow's estimation, all three-year-olds need to be supervised when they are given medication so no points should be awarded for this alleged problem area.[65] Ms. D. explained that few three-

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63 Ms. Clapp-Damerow Testimony (14:00 – 31:30 Timestamp); Ms. D. Testimony (1:53:00 – 2:21:00 Timestamp).

64 Ms. D. Testimony (2:15:45 – 2:16:00 Timestamp).

65 Ms. Clapp-Damerow testimony (36:10 – 36:35 Timestamp).

year-olds require 4 medications twice daily and two more once daily and that getting E. to take that medication either delayed her sleep at night or made her late for school in the morning.[66]

Ms. D. further testified to how frightening it is when E. bolts away from her in public locations. Although fortunate to be improving, she testified E. still runs away, reacts to loud noises, and "requires constant supervision and safety planning."[67] As to sleep, Ms. D. candidly stated how refreshing it was for E. to go to sleep and not wake up for four-to-five hours. However, following that initial sleep, she explained that E. still wakes up every two hours terrified and needing Ms. D.'s comfort. She offered as analogy:

> I don't know if anyone else has had the experience of like the first nine months of somebody's life... [For E., the challenge] has continued. Honestly, it's really hard. ….Waking up every two hours, I'm really tired., and she's really tired. And it does not help her self-regulation or mine. We're both doing the best we can, but she's like a teenager wanting to sleep in in the morning... It's really hard to wake her up when she's that tired… She really does want to sleep at night. My perception is she wakes up scared, scared of being alone… We've gone to mental health counseling, and I have strategies to use for day-time distress. It's really heartbreaking the support that she needs. Her family says that she's always been afraid of the dark... I think there is a lot of trauma just in that area about what happened to her in the dark as an infant. She's really upset when she wakes up and she needs support. And if I try to implement typical strategies for sleep training, it is traumatizing type behavior, trauma behavior that I see exhibited.[68]

Accepting for purposes of argument the only reason that a problem area would be scored if it had a financial impact on Ms. D., Ms. D. compared the person she was before fostering E. to the person she was on the date of the evidentiary hearing:

> I'm really typically a pretty sharp person. I'm rather organized. I'm really tired at work all day, and I don't think as quickly. My processing speed is slower. My recall is slower. I have to use lots of notes, I have like L.'s-brain-type notes. And prior to taking care of E., I was receiving top marks at my job and getting the

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66 E. takes gabapentin, melatonin, two different kinds of magnesium, erythromycin, iron supplements, and fiber supplements, all of which are prescribed by either E.'s general practitioner, gastroenterologist, or neurologist. In addition, Ms. D. must follow respiratory and digestive protocols to reduce the frequency of E.'s respiratory and digestive concerns. Ms. D. Testimony (2:00:15 – 2:02:25 Timestamp). This cannot be analogized to the troubles parents occasionally face getting a young child to take a single medication for a routine medical condition such as an ear infection or bout of the flu.

67 Id. (2:05:10 – 2:05:12 Timestamp). On one occasion, following a medical appointment, E. bolted down a hallway thirty yards and was close to reaching a door that exited into a public parking lot. Ms. D. explained how this and other times her three-year-old foster child ran into danger absolutely terrified her (2:05:50 – 2:06:20 Timestamp)

68 *Id.* (2:08:20 – 2:10:30 Timestamp).

> highest raises annually, and I have not been getting those since. So, it is impacting my performance at work.[69]

Ms. D. concluded her direct testimony by pointing out that all of her testimony was supported by the record. Moreover, she opined that she was not asking for an entitlement. Instead, she was "asking for a rate that reflects the reality of caring for a child with complex medical needs."[70] Cross-examination unsuccessfully rebutted Ms. D.'s statement that she was never provided the knowing opportunity for an interview before the April or October reassessments.[71] The uncontested record establishes she was not.[72]

IV. Discussion

A fundamental principle of administrative law is that an agency such as OCS must comply with its own regulations.[73] This remains true even if an agency believes that adherence to its regulation might lead to unsettling results. An agency's remedy in such situations is to pursue an amendment of its regulations utilizing the rulemaking procedures set out in the Administrative Procedure Act (APA). Alaska law does not permit administrative agencies to simply ignore their own regulations because a sound rationale can be offered for doing so.

Here, OCS attempted to offer logical justification for its decision to effectively scrap the Original Assessment Form in that it allegedly could capture more conduct qualifying as problem areas. The reality, however, was otherwise, because OCS in turn adopted an alternative scoring methodology that made it more difficult for foster parents to qualify for augmented rates. In doing so, it appears that OCS acted under the mistaken assumption that it could revise the Original Assessment Form on its own initiative.

As explained above, the Original Assessment form was plainly incorporated by reference into 7 AAC 53.060(f) and thus cannot be modified by OCS absent formal rulemaking. This conclusion is compelled by the manner in which the Original Assessment Form was (1) provided to the public and identified as a document that would be incorporated by reference into the proposed text of 7 AAC 53.060(f) in the notice of proposed rulemaking that was issued in July 2022; and (2) thereafter filed with the Lieutenant Governor's Office as a document incorporated

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69 *Id.* (2:10:35 – 2:11:25 Timestamp)
70 *Id.* (2:17:54 – 2:17: 57 Timestamp).
71 *Id.* (2:18:15 – 2:19:10 Timestamp).
72 *Supra* footnote 54.
73 *United States v. RCA Alaska Communications, Inc*., 597 P.2d 489, 498 (Alaska 1978); *Jager v. State*, 537 P.2d 1100, 1108 (Alaska 1978) ("[o]ne indication whether an agency has proceeded in the manner required by law is compliance with its own regulations").

by reference into the final adopted regulation. Quite simply, the Original Assessment Form is as much a part of 7 AAC 53.060(f) as the regulatory text itself.

Accordingly, OCS's failure to submit the Revised Form to formal rule-making procedures invalidates the April and even the October assessment results for E. that are being challenged here. It further nullifies OCS's current policy of awarding points in only one problem area for behaviors that give rise to issues in multiple problem areas. This policy is entirely inconsistent with the Original Assessment Form and finds no support in the text of 7 AAC 53.060.[74] While OCS may well have legitimate concerns regarding the Original Assessment Form, it cannot act on those concerns by unilaterally adopting new forms and procedures that disregard the requirements imposed by 7 AAC 53.060(f).

OCS's regulatorily incorporated scoring sheet further nullifies OCS's policy of only considering financial impact of a problem area on a foster parent. The scoring sheet is silent on that factor altogether. It also expressly nullifies OCS's argument that only current symptoms as of the date of evaluation support an augmented rate decision. Again, the codified scoring tool instructs:[75]

> The Values Listed below were identified through the assessment process as critical needs/behaviors that are present in the last six months. The frequency and severity of problems and the role and level of responsibility of the resource parent in meeting the child's existing needs determines the augmented foster care rate.

The manner in which OCS is basing augmented rate assessments based on secretive standards that are not disclosed to foster parents for fear that they might somehow skew the information they provide is contrary to Alaska law. As the Alaska Supreme Court noted in a past case involving OCS:

> Due process requires that benefit recipients be given timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend before their benefits are reduced or terminated, in order to afford them protection from agency error and arbitrariness.[76]

Here, Ms. D. was presented with an administrative agency that dramatically cut the compensation she received for taking a severely troubled special needs child into her home based on standards that were not only kept secret from her, but that completely departed from the

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[74] As covered in the notes to 7 AAC 53.060, the regulation has not been amended since the adoption of the current text for section .060(f) in 2023.

[75] Attachment.aspx

[76] *Heitz v. State, Dep't of Health & Soc. Servs*., 215 P.3d 302, 306 (Alaska 2009) (internal quotes omitted).

requirements set out in 7 AAC 53.060. It is impossible for private citizens to protect themselves from "agency error and arbitrariness" in a setting where an agency has secretly adopted standards that are applied in contravention of clear and unambiguous regulatory requirements.

This leads to the final question of whether Ms. D. would have continued to qualify for the Level 3 augmented rate had OCS utilized the Original Assessment Form that is incorporated into 7 AAC 53.060(f). Based on the record here, that question is answered in the affirmative.

The April 2025 assessment is still of use, because the OCS evaluator identified five problem areas on the Revised Assessment Form that are also on the Original Assessment Form. These are aggression/victimization; developmental delay/disability; medical/physical; self-regulation; and therapeutic intervention/mental health.[77] Based on the record, other available problem areas that could be marked included education issues and impulsive/oppositional behavior. No secret definitions for scoring E.'s acuity were ever introduced into evidence by OCS. As such, this analysis proceeds with the understanding that these undisclosed definitions cannot guide either this tribunal's, the DFCS Final Decisionmaker's, or any appellate review of this decision. Instead, utilizing the "severity" descriptors provided on the correct worksheet, with some guidance from the problem area table provided in OCS Policy 2.2.2.A -- as applicable -- the preponderance of the evidence on the record available to OCS at the time of its April evaluation supports the following problem areas and levels of severity:

Problem Area	Level of Severity	Conduct Identified in Scoresheet	Supporting Evidence
Self-Regulation	High	Behavioral response limits/prohibits day to day functioning	Inability to sleep Fatigue Impulsivity Damage/harm to people, pets, and property
Developmental Delay/Intellectual Disability	Moderate	Diagnosed moderate developmental delays Moderate impairment in communication,	Necessity for IEP Oropharyngeal dysphagia

[77] Agency Ex. 4.

		condition or expression of affect	Mixed receptive-expressive language disorder left-sided hemiplegic cerebral palsy
Education Issues	Moderate	Weekly Intervention Unable to maintain appropriate behavior in school (IEP/504 plan in place) Foster parent tutors' youth for two or more hours per night	IEP for running away and self-regulation – Foster parent provides audiobooks and other soothing activity for child, constant supervision and holding in public places to avoid running away Per psychoneurological assessment Inattention more than peers, easily distracted, difficulty in busy school setting
Impulsive Oppositional Behavior	High	Frequent behavior difficulties when prompted or redirected	Running away at times into danger React to loud noises

		Frequently defies authority	Will not respond to stop Needs constant supervision and safety plan
Therapeutic Intervention/Mental Health	Moderate	Therapeutic intervention required three times or more a week; Routinely refused to take medications (needs daily monitoring)	Documented attachment disorder and childhood adverse experiences Significant sleep disorder, fear, and abandonment concerns Supervision twice daily for resisted medication
Aggression/Victimization	Moderate	Verified physical or sexual abuse youth as victim with services being provided Cruelty to animals Property Destruction Superficial injury caused to others	Head stepped on as infant Resulting brain bleed kicking, pinching, and biting people and her dog Damage to furniture and toys.
Medical/Physical	Moderate	2 medical appointments per week	Average of 2.7 medical appointments per

		Limited daily living and self-care Prescribed medication needs frequent prompting to take	week; even discounting 1.3 appointments at school, credit to foster parent for attending at-school sessions, receiving instructions and providing home exercises, substituting physical therapy with therapist-ordered gymnastics

Tallying this information, the preponderance of the evidence supports two problem areas as scoring high and four more as scoring moderate. Utilizing the score sheet scoring criteria below:

Determination of Level of Care

Basic:	Level 1:	Level 2:	Level 3:
Does not meet criteria of other rates based off determination	Three or more boxes checked in the low column	1 or more boxes checked in the low column and two or more in the moderate column	1 or more boxes checked in the high column AND three or more in moderate
	Two boxes check in the moderate column	Two boxes or more check in the high column	2 or more boxes checked in moderate, and 2 or more boxes checked in high
	One box checked in the high column	Four or more boxes checked in the moderate column	Four or more boxes checked in the high column
		One box checked in the high column and two in moderate column	

Accordingly, E. and Ms. D. qualified for Level 3 Augmented Rate from April 1, 2025, through September 30, 2025.

There is a last issue of whether the Augmented Rate evaluation OCS conducted and deemed valid for the six-month period beginning October 1, 2025, is appropriately before this

tribunal. Ms. D.'s appeal was not updated to include it. However, Ms. Clapp-Damerow's findings and her testimony regarding those findings were fully explored in the hearing before OAH. So too were Ms. D.'s objections to it. She also testified to E.'s ongoing health and behavioral issues and the daily impact of those issues on Ms. D.'s life.

The only apparent improvement since April 2025 is that, with gabapentin, E. initially sleeps for four to five hours, instead of just two. She does, however, continue to wake up every two hours afterward. And she does continue to require Ms. D.'s consoling to fall back asleep. E. and Ms. D. continue to wake fatigued. The problems with impulsiveness, harm, and property destruction continue to occur at least twice per week. Medication refusal continues. Ms. D. still brings E. to an excess of appointments not required of the typical three-to-four-year-old and continues to provide the daily intervention E. requires. While bolting still occurs, at least one improvement is that for E. bolts more often in Ms. D.'s direction.[78] That improvement, however, does little to mitigate the constant monitoring and constant supervision E. requires when in public or surprised by unexpected sounds.

Again, utilizing the Original Assessment Form and the applicable problem area descriptions in OCS Policy 2.2.2.2.A, there is no vast improvement in any of the above summarized categories to decrease E.'s resulting scores. Given the traumatic brain injury E. suffered as an infant, this is not surprising. Regardless, the preponderance of the evidence still shows two problem areas as scoring severe, and four as scoring moderate. As such, for the period September 1, 2025, through February 28, 2026, E. and Ms. D. qualified for a Level 3 Augmented Rate.

Until such time as 7 AAC 53.060(f) is revised to incorporate an updated form, any future assessments of E. should be conducted using the Original Assessment Form – without reference to any OCS policies that are inconsistent with that form. [79]

V. Conclusion

While OCS's goal of tightening the standards for augmented foster care rates may carry merit, the agency cannot violate its own regulations to achieve that end. Since the Original Assessment Form was clearly incorporated into 7 AAC 53.060(f) by reference, OCS cannot

[78] Ms. D. Testimony (2:05:50 – 2:06:20 Timestamp).

[79] This should also apply to any adoption subsidy awarded to Ms. D. That subsidy should also be increased to reflect this Decision's October 2025 scores, applicable at the time of E.'s adoption.

depart from that form until the DFCS amends the regulation through formal rulemaking. Such rulemaking would achieve a laudable policy goal of its own, for it would provide affected members of the public fair notice and opportunity to comment on proposed standards that would reduce the augmented rates paid to foster parents who take on the burden of caring for special needs children *before* those standards took effect. It would also help ensure that OCS does not adopt secret standards that are deliberately withheld from foster parents who take on the substantial burden of caring for special needs children in OCS custody.

Accordingly, OCS's determination that E. did not qualify for a Level 3 augmented rate in the assessments performed in April and September 2025 are REVERSED.

Dated: May 5, 2026.

By: *Signed*
Signature
Max D. Garner
Name
Administrative Law Judge
Title

Adoption

The undersigned, by delegation from the Commissioner of Family and Community Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of June, 2026.

By: *Signed*
Signature
Chrissy Vogeley
Name
Senior Policy Advisor
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]