

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

In the Matter of	)	
	)	
K AND E.S	)	OAH No. 22-0223-CHC
_____	)	

DECISION

I. Introduction

The Department of Family and Community Services, Office of Children’s Services (OCS), Foster Care Licensing section (Department) denied K and E.S’s application for a foster care license, having concluded that the S’ did not meet the necessary qualifications of foster parents. Specifically, the Department cited to the more than twenty previous years when the couple had held a foster care license, during which there were several investigations involving child discipline and behavior management that implicated possible child abuse, licensing regulation violations, and instances when the S’ demonstrated a perceived unwillingness to cooperate with the Department. The S’ requested an administrative hearing to challenge the decision not to grant them a new foster care license.

The evidence in this case shows that the child abuse allegations against the S’ were not substantiated, the licensing violations were de minimis, and the concerns and aggravations noted by the Department over the S’ long tenure as foster parents were far outweighed by the positive comments, and the historically stable, safe living environment and dedicated care the S’ provided for the multiple foster children that OCS placed in their home. The S’ met their burden of proving by a preponderance of the evidence that the decision to deny their November 2021 foster care license application was improper.¹ Therefore, the Department’s decision is REVERSED.

II. Procedural History

K and E.S submitted an application for a foster care license to the City A office of OCS on November 12, 2021. While they had previously held a license for a group home for five children ages 0-8, the current application was for a “regular home” for three children ages 0-4.² The requisite home inspection by the Department was conducted in December. The S’ were advised to attend Tribal Based Relational Intervention Training, which the couple finished in

¹ See. e.g., 2 AAC 64.290(e) (if a standard of proof is not explicitly articulated in applicable statutes or regulations, OAH applies the preponderance of the evidence standard).

² AR 180.

January 2022, and their foster care application was deemed complete.³ Then, on February 14, 2022, the Department sent the S' a letter by certified mail notifying them that due to the various child protection and licensing issues and other concerns regarding the couple during the prior years that they were licensed foster parents from 2001 through July 2021, their November 2021 foster care application was being denied.

The S' timely filed an appeal, and the case was referred to the Office of Administrative Hearings (OAH) on March 15, 2022. By statute, once at OAH this case is governed by "informal procedures." AS 44.64 and 44.62 may not be applied.⁴

Initially, the parties requested that the appeal be stayed while they attempted to resolve the matter through a mediated discussion. The case did not resolve, and the parties mutually agreed to bring the case to hearing.

Shortly thereafter OCS filed a pre-hearing brief, as well as witness and exhibit lists, including the 469-page record. Affidavits from Protective Service Specialist IV Catherine Gray, retired Protective Services Manager II Virginia Mooring, and Community Care Licensing Specialist III Christine Edwards were also submitted. The foster parents submitted witness and exhibit lists and additional exhibits.

The hearing was held on August 11 and 15, 2022. Michelle Partridge and Julie Hubbard, Community Care Licensing Specialists II, and Yurii Miller, Community Care Licensing Manager, testified on behalf of the Department. The S' testified on their own behalf.

III. Facts

The following facts were found by a preponderance of the evidence, based on testimony at the hearing and documentary evidence admitted into the record.

A. The S'

K and E.S live in Town A, Alaska.⁵ While they are both currently retired, Ms. S holds a master's degree in Special Education and previously worked for 33 years as a teacher. Mr. S spent 30 years in the military, worked 38 years as a licensed plumber and spent 10 years with the fire department. In 2021 he listed himself as the local Community Council President. They have been married for over 40 years, and they are both EMTs. They've raised three biological children and an adopted Native Alaskan son.

³ *Id.*

⁴ AS 47.32.150(b).

⁵ Agency Record, 141 -156.

B. The S' history as foster care parents

On August 1, 2001, the Department first approved the S home for a provisional foster care license for two children for an initial probationary year. The S' received OCS foster placements during the provisional period, and there were no issues or complaints. They were subsequently granted a biennial foster care license, first for three children ages 0 to 8 years old, then later for five children ages 0 to 19 years old. Their home was a foster placement for children for the next twenty years until the summer of 2021, when they decided to close their license due to plans to sell their home and relocate out of state to be closer to their children.⁶ When their home didn't sell and those plans changed, they again applied for a foster care license in November of 2021. Their application was denied by OCS due to issues raised during their prior tenure as foster parents. Below is a synopsis of the issues raised in the record.

1. The July 2008 self-reported incident regarding a runaway foster child reportedly armed with a stolen weapon

On July 1, 2008, the on-call worker in the OCS Community A field office received a call from Mr. S regarding 15-year-old S.S., who had been placed in their home without incident approximately 1.5 weeks earlier. Unbeknownst to the family or OCS, while at his prior placement S.S. had purchased an airline ticket to Idaho, where his cousins live. On July 1 while using the phone in the master bedroom in the S home, he spotted an unsecured revolver, ammunition, and a few hundred dollars in cash. He took these items and hid them in a bag, which he stashed down at the dock, near the S' home.⁷ At around 10:00 p.m. that evening he pocketed keys to the S' vehicle, stole their boat, and motored across the lake to their vehicle, which was parked on the opposite shore.

Several minutes after S.S. left the home one of the other foster children notified the S' he was gone. Mr. S noticed items missing from the home, and elected not to pursue S.S., as he knew the young man had the firearm, and wasn't sure of his mental state. Instead, Mr. S called 911 and spoke to the Alaska State Troopers (AST), asking that S.S. be removed from his home immediately (S.S. had returned to the home in the interim). However, AST refused, citing lack of clear evidence of a crime that required immediate response, and instead notified OCS.

⁶ AR 137.

⁷ At this time the S' lived in Town A, at Milepost 000 on the Highway A, 20 miles off the highway. The house was accessible by boating across a lake. AR 14.

The on-call OCS worker spoke with Mr. S, who explained that he did not feel safe having S.S. in the house with his wife and foster children, and wanted the young man removed immediately. The OCS worker first tried unsuccessfully to contact the on-call OCS supervisor, then eventually reached the employee who previously held the position.⁸ Ultimately a decision was made around 2:00 a.m. on July 2 that no one from OCS would be sent “into the brush” to the S home as it was impractical.⁹ The OCS worker communicated this decision to AST, who stated they would not be responding to the S call either. Mr. S was so informed.

As it turned out, shortly after landing on the other side of the lake S.S. realized he had taken the wrong set of keys and was unable to start the S car. He left the sack with the money, revolver, and ammunition in the vehicle, and returned to the home as he had come, via the lake in the boat. When he arrived home, Mr. S was waiting for him in the front yard. Mr. S grabbed S.S.’s shirt and began angrily confronting him about stealing from the home and running away. They moved inside the house; S.S. sat in a chair while Mr. A continued to berate him and, at one point, flicked his hat off his head. Eventually after approximately 10 hours the situation calmed, and S.S. was allowed to go to his room and sleep.¹⁰ S.S. later reported that when Mr. S was yelling at him, he experienced flashbacks to prior abuse he suffered in his biological home.

Later in the day on July 2, 2008, an OCS representative contacted Mr. S, who said that he and his wife no longer wanted S.S. removed from their home. Additionally, he acknowledged he could have handled the situation with S.S. differently – presumably referencing how he had confronted the young man after he returned home – but he had been stressed about the safety of his wife and foster children, given that he understood S.S. had a firearm in his possession. He explained that the revolver had been left unsecured as at the time it was common to have bears wander through their yard. However, he agreed the gun would be kept locked up from that point forward.¹¹

This incident involving S.S. and the S’ did not result in an investigation, but rather was characterized as a “concern” in OCS records.¹² No further action was taken.

2. The January 2009 investigation of a reported walk-away from the S home

⁸ AR 15.

⁹ AR 15-16.

¹⁰ AR 15-17; testimony of Michelle Partridge, Community Care Licensing Specialist II.

¹¹ AR 17.

¹² AR 15-16; Michelle Partridge testimony.

In January 2009 A. K., a ten-year-old foster child in the S home, was picked up by passers-by who saw him walking to Town B and took him to the OCS office in City A.¹³ He was upset, crying, and reported to the OCS worker that his foster father was mean to him and grabbed him by the neck.¹⁴

OCS investigated, speaking with A.K., meeting with the S', interviewing the other kids in the home, and then circling back to talk with A.K. again.¹⁵ The assigned OCS social workers determined that what A.K. meant by "being mean" was that on the rare occasion that he got in trouble, Mr. S would speak to him very closely. By "grabbing his neck" he meant Mr. S would put his hand on the back of his neck and pull him close when speaking to him. The boy confirmed that Mr. S had never hurt him, he was just really upset as he was homesick and missing his brothers, who were living in Town C.¹⁶

The report of physical abuse was closed as unsubstantiated. Moreover, the reporting social worker noted that the S' functioned extremely well together and were strong foster parents that provided "a stable home with love and support that children flourish in." The report stated "[t]his worker adores working with [the S']," and noted "no previous reports or issues with them in regards to parenting. No concerns in regards to discipline."¹⁷

3. The January 2010 investigation regarding the S'' alleged placement interference, reported use of a passive restraint, and reported disclosure of confidential information

On January 29, 2010, the Department received a report that the S' were failing to adhere to the permanency plans in place for three children who had been in their care for over two years.¹⁸ Mrs. S called the assigned OCS caseworker to express concerns about the transition of T.B., J.B. and A.B., ages 12, 9 and 6 respectively, to a rural pre-adoptive placement. In a detailed, three-page letter sent to the Department several days later, the S' explained their apprehensions about the transfer taking place prior to the end of the academic school year, requiring the children to be home educated by foster parents with no formal training or curriculum, and who they feared would be overly forceful in their religious convictions.¹⁹

¹³ AR 291-292.

¹⁴ AR 273, 291-296.

¹⁵ AR 290, 273-276.

¹⁶ AR 296.

¹⁷ AR 292.

¹⁸ Exh. 1.

¹⁹ AR 302.

Additionally, they were skeptical that the foster parents would ensure that the children would be taught about their Native heritage or allowed to maintain contact with their biological parents.²⁰

On February 11, 2010, two Department representatives contacted the S' to confirm prearranged plans for the children to visit their new foster home that weekend. Mr. S explained that there was a birthday party planned for T.B. in Anchorage that the childrens' relatives from the village would be attending, and that he would not be able to have the children back to the S home in Town A until Saturday evening. The N's, the potential new foster parents, were not amenable to adjusting the original visitation plan, as they had scheduled activities for the children over the entire weekend.

The S' canceled the party and complied with the original visitation plan. They were initially resistant to packing up all the children's personal belongings on such short notice, especially since they weren't sure if the adoptive family wanted all the school-related projects, but they ultimately agreed, and assisted the Department with gathering the kids' toys and bikes.

During the investigation regarding these placement disagreements, the Department became aware of several other concerns involving the S'. During a visit to the N home on March 4, 2010, T.B. reported to the two visiting OCS workers that at one point while living in the S home he "threw a fit," screaming, yelling, and kicking Mr. S. He explained this was in reaction to being assigned extra homework, and that he has anger management issues. He said Mr. S threw him on the floor and pushed on his chest, making it hard for him to breathe, and grabbed him by the chin.

J.B. was interviewed, and he remembered an incident between T.B. and Mr. S after T.B. was assigned additional homework. While T.B. was on the floor, he recalled Mr. S put his whole weight on T.B.'s chest and grabbed his mouth.

A Department representative spoke to Mr. S, who remembered T.B. becoming physically and verbally aggressive after being asked to do an additional reading assignment. T.B. was "cocked and ready to hit," was trying to bite, and was threatening to kill the S' and their dogs. Mr. S felt T.B.'s behaviors were so escalated that he posed a risk to himself and others, so Mr. S employed a passive restraint he was previously taught by OCS caseworkers. He grabbed T.B. from behind around his chest, put him on the floor, and wrapped T.B.'s arms around him. He did not remember holding T.B.'s jaw.

²⁰ *Id.*

The Department also investigated what appeared to be evidence that Ms. S had contacted the Reactive Disorder organization via email to solicit information and had mentioned foster children by name.²¹ Two OCS workers met in person with the S' to discuss this alleged breach of confidentiality, and when shown the email Ms. S acknowledged her mistake. Notes taken by the OCS workers during the conversation state: "Fine with substantiation on confidentiality/U. educate about initials/K realizes they should have used."²² Ms. S mentioned that she had previously reached out to OCS seeking additional information about behaviors involving A.K., a foster child in their care, but had not received a response.²³ The S' were then provided three pamphlets by the OCS workers.

The Department's investigation concluded:

In summary, we find that the S' were resistant to the visitation/transition plan due to how it was implemented. The S' have had the children in care for over two and a half years, developing strong bonds with the biological family as well as with the tribe. In addition, the S' had concerns for the children's educational needs and felt those concerns were being ignored. The S' are vocal advocates for children in their care. However, in their zest to advocate, they disclosed information regarding the children in care to individuals and organizations that are not party to the case.²⁴

No findings were made regarding the original January 2010 investigation involving the permanency plan concerns, nor the subsequent visitation scheduling disputes or the alleged use of a passive restraint. With respect to the email Ms. S sent that included the names of foster children, the Department determined that it had reasonable cause to find that the S' had violated 7 AAC 50.13009(d) by disclosing confidential information to a person not party to the case. No enforcement action was taken.²⁵

At the hearing in this appeal, an OCS witness testified about OCS's frustration with the S' regarding the visitation and transition plan involving the N's. The witness stated that foster parents are never to intervene with placement decisions.²⁶

Ms. S objected to this statement and testified about the numerous times OCS had sought their input regarding adoption and placement decisions during their long tenure as foster parents.

²¹ Exh. 1.

²² AR 391.

²³ It is unclear from the record if the information she was seeking from OCS regarding A.K.'s behaviors was related to the inquiry she submitted to the Reactive Disorder organization.

²⁴ Exh. 1.

²⁵ Exh. 1.

²⁶ Michelle Partridge testimony.

Over the years, she said they viewed multiple potential placement homes at the request of OCS, reported any concerns, met possible new foster parents, and on one occasion found a pre-adoptive home that was subsequently approved by OCS.²⁷

4. The June 2011 investigation of a self-reported, alleged violation of a foster care statute or regulation by allowing a biological mother to spend the night

On March 28, 2011, the S' sent an email advising OCS that they had permitted the biomother of foster children in their care to spend the previous night in their home.²⁸ They did so because they did not want her driving home to Town C that night in an unsafe car during a blizzard with temperatures reportedly dropping to 30 degrees below zero.

Months later, on June 30, 2011, the Department investigated this allegation. The S' had previously asked OCS for permission to allow the mother to spend weekend overnights at the home, as they were already facilitating daily supervised visits between the mother and the children to support the ultimate OCS goal of family reunification. The request was denied due to safety concerns surrounding the biomother. Allowing the biomother to spend the night on March 28, 2011, therefore, represented a violation of an OCS directive denying the mother permission to spend overnights with the S'.

In June 2012 the Department issued the S' a letter by certified mail stating that the allegation was not substantiated as there was no reasonable cause to believe the S' had violated any applicable statutes and/or regulations.²⁹

5. The S home inspections from 2012-2016

Between May 29, 2012, and August 30, 2016, the Department conducted three separate inspections of the S home. Each inspection resulted in no observed violations of statutes and/or regulations.

6. The September 2016 joint child protective and licensing investigation regarding a child with missing hair

²⁷ K.S testimony

²⁸ AR 453.

²⁹ *Id.*

On September 9, 2016, OCS received a report that C.P., a four-year-old foster child who had resided in the S household up until the prior week, was missing chunks of hair on the back on his head.³⁰

While largely nonverbal, the child was interviewed on September 14, 2016, by an OCS Protective Services Specialist (PSS), and through limited words and gestures indicated that “Nana” had pulled at the back of his head. He also indicated that “Nana” had slapped him in the face, and that “Nana and Papa” had both spanked him on the butt, with “Nana and Papa” being the S’. The OCS worker confirmed with the child’s treating physician that hair did appear to be missing from C.P.’s head, but the medical provider was not sufficiently concerned to make a report.³¹

Additional OCS and licensing representatives interviewed the S’, as well as the other foster children in the home. All explained that discipline in the home involved time outs and the loss of privileges, but never any spanking or hitting. C.P. and J.P. were two new nonverbal foster placements that communicated by continuously biting and hitting each other. J.P. often pulled out C.P.’s hair after C.P. bit or hit him. C.P.’s mother had been advised of the missing hair by Ms. S.

During the investigation OCS also conducted an inspection of the S home, and noticed an odor of cat urine, sufficient clutter that safety issues were implicated, and medications within reach of the children. The S’ committed to remedying the violations. On September 26, 2016, a licensing representative rechecked the home and found it to be clean, organized and the carpets freshly shampooed.

At the hearing the Department testified that it was concerning that the S’ had not reported the missing hair to OCS.³² However, the written investigation submitted at the time of the incident resulted in a finding that there was no clear evidence of corporal punishment or behavior techniques that were cruel or damaging to a child.

The Department did find by a preponderance of the evidence that the S’ had violated 7 AAC 50.210(a) due to the general condition of the home, 7 AAC 10.1035(a)(1) and (2) due to the clutter and hazards present in the house, and 7 AAC 10.1090(h)(3) due to the strong smell of

³⁰ AR 31; Michelle Partridge testimony.

³¹ AR 430.

³² Michelle Partridge testimony.

animal urine. However, as the S' voluntarily cured all the violations within 30 days, the Department took no enforcement action, and the matter was closed.

7. The April 2017 licensing investigation involving the S' alleged flouting of a Department directive

In 2017 the S' were fostering seven-year-old N.D. who had encopresis, or fecal incontinence, and was "pooping all over [his] school."³³ This was causing significant problems, including his having numerous behavioral issues in class. Ms. S represented that she reached out to the assigned OCS worker multiple times soliciting help with the situation, but never received a response.³⁴ Therefore, after speaking with N.D.'s therapist, Ms. S, a certified teacher, decided to home school N.D. until a plan could be established that provided him with a less stressful learning environment. On April 25, 2017, Ms. S sent the assigned OCS worker an email advising her of the plan, knowing that taking N.D. out of school would cause OCS to finally respond.³⁵

The following day the OCS worker sent the S' an email directing them to send N.D. back to school immediately. The S', however, continued to keep N.D. home from school.

On May 1, 2017, an OCS licensing worker interviewed N.D. and the S'. N.D. explained that he did not want to go to school, that he didn't like it, didn't care about learning, and that "he felt safe in the home with Nanny and Papa."³⁶ Ms. S represented that N.D.'s pediatric gastroenterologist had recommended that the boy not be placed in any traumatic situations (which could lead to further encopresis episodes), so for her, continuing to send N.D. to class felt like a form of child abuse. The worker also spoke with the therapist, who acknowledged that the school environment was not positive for N.D.³⁷

The S' worked to coordinate the efforts of the doctor, therapist and school staff to help organize an Individualized Education Program (IEP) meeting at the school, where all parties could be involved in crafting a plan that was better tailored to N.D.'s needs. On May 2, 2017, the S' put N.D. back in school, and later reported the IEP went very well. They notified the Department that N.D. was looking forward to upcoming programs with his classmates. Due to N.D.'s protracted absence from school (from April 17 to May 2, 2017), however, the Department

³³ K.S. testimony; *see also* AR 32, 422-423, 465-466.

³⁴ *Id.*

³⁵ *Id.*

³⁶ AR 424.

³⁷ *Id.*

noted that he narrowly avoided being disenrolled from the school by surpassing the maximum number of days out of class.³⁸

In the Report of Investigation, OCS noted that the S' "had productive ideas through the course of the investigation and demonstrated a willingness to work with the Department."³⁹ The Department also thanked the S' "for their dedication to the children in their home[,] as well as their willingness to work with the Department through the investigative process."⁴⁰ Nevertheless, the Department found that the S' violated 7 AAC 50.200(b) regarding a foster parent needing to have the necessary skills to work with agency staff due to their initial refusal to honor the PSS's directive to send N.D. back to school. As they ultimately complied, however, no enforcement action was taken.⁴¹

At the hearing in this administrative appeal, the Department referenced this situation as evidence that the S' are resistant to accepting agency directives and instead substitute their own judgment, characteristics which the Department described as "very concerning."⁴² The S' response was that their focus throughout this incident was on safeguarding N.D. from the severe emotional harm that resulted from his encopresis episodes at school.

8. The July 2021 joint child protective and licensing investigation regarding a self-reported hair pulling incident

In July 2021 Ms. S contacted AST, OCS, and the child's parent to report an incident involving J.A., an increasingly fractious 11-year-old foster child in the S' care.⁴³ She described a "scuffle" beginning when J.A. reared back, kicked his sibling, hit his head on the wall, jumped out of his chair, flung a 3-year-old foster child, and jumped on top of her, causing the girl to cry.⁴⁴ Ms. S grabbed him to pull him off the 3-year-old, and she reported that in the process, she accidentally pulled his hair. She reported that AST was called, and a trooper spoke to J.A. on the phone and directed him to walk downstairs.

OCS spoke to J.A., who reported that he had been choked by Ms. S and pulled out of bed by his hair.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ AR 466.

⁴¹ *Id.*

⁴² Michelle Partridge testimony.

⁴³ K.S testimony; *see also* AR 180. As the OCS City A office did not answer, Ms. S then called the OCS Anchorage office.

⁴⁴ K.S testimony; *see also* AR 120-122.

Two days later J.A. was interviewed again by two OCS workers and disclosed that Ms. S had pulled his hair to get his attention, but it did not hurt. He said that after he “hit his brothers and sisters,” Mr. S took him outside and threw him down on the ground. He did not mention being choked. He claimed he was only permitted one hour of screen time per day, apart from time allotted to speak with his family members.⁴⁵

At the time there were five other youths living in the home, A.J., J.W., S.T., E.T., and SA.T., ages 17, 8, 6, 5 and 3, respectively. J.W. reported that he had been punched in the stomach by J.A., so Mr. S took J.A. outside to “cool off.” Both he and E.T. state that they felt safe in the S home. The children “appeared bonded to the S’,” and they reported that J.A. is “sometimes mean to them all.” 17-year-old A.J. reported that J.A. had some negative behaviors, and that the foster parents did not use corporal punishment.⁴⁶

The OCS and Licensing workers interviewed the S’, who described J.A.’s escalating behaviors as aggressive, especially after or during contact with his biological family. When J.A. acted out or was physically inappropriate with his siblings his screen time was limited to an hour a day, excluding time spent talking to his biological family. Regarding the incident on July 7, Ms. S stated that J.A. kicked and punched his sibling, J.W., and in a momentary lapse of judgment she “softly pulled J.A.’s hair” to get his attention. Mr. S then guided J.A. down the stairs and out of the house by his arm, to prevent him from harming himself or others, but denied throwing J.A. down on the ground. The S’ denied ever choking any children.⁴⁷

The S’ also stated that prior to the July hair pulling incident, they had repeatedly reached out to OCS to ask for guidance in dealing with J.A.’s increasingly aggressive behaviors, especially given that they had three very young, vulnerable children in their home at the time.⁴⁸ They reported that the only suggestion that OCS provided was to call AST. The troopers purportedly informed the S’ that they do not respond to calls involving out of control children, and suggested returning the child to the OCS office.

The conclusion of the OCS investigation of the incident was that the evidence was inconclusive regarding J.A. being allegedly thrown to the ground. Regarding the hair pulling, however, there was a finding by a preponderance of the evidence that the S’ violated foster care

⁴⁵ AR 122.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ AR 171-173.

licensing regulation 7 AAC 50.210(b), which addresses a caregiver’s capacity to deal with children who have experienced trauma during moments of frustration and conflict. The assigned OCS worker acknowledged that OCS’s intervention in J.A.’s placement and custody had proceeded unexpectedly quickly, which could have contributed to J.A.’s aggressive behaviors. However, the Department stated that foster parents are expected to consistently demonstrate the necessary skills and insight to create a healthy home environment and clear and safe boundaries for children placed in their care, many of whom have complicated backgrounds. Therefore, the Department determined that even though Ms. S’s pulling of J.A.’s hair may have represented a momentary lapse of judgment in the heat of the moment, it still represented a mismanagement of J.A.’s aggression and a violation of 7 AAC 50.210(b).⁴⁹

In an effort to develop a plan of correction to address the concerns raised by the violation and close the investigation, the Department proposed that the S’ complete Trust Based Relational Intervention or a similar training.⁵⁰ The S’ agreed to do so.

Then, in late July 2021 Ms. S informed the Department that she and her husband wanted to close their foster care license.⁵¹ The Department accepted the request as a completed plan of correction but noted that if the S’ reapplied for a license in the future, the counsel to seek continued training was a standing recommendation.⁵²

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C. OCS’s denial of the S’ November 2021 foster care application

The S’ applied for a new foster care license on November 12, 2021. Initially they believed that their prior license could simply be renewed or “reinstated,” but this understanding was incorrect, and OCS informed them that they would have to go through the process of obtaining a new license. At the outset the processing of the license application was conducted by two OCS workers, Rodney Bettis and Sandra Carlson, the latter of whom was relatively new to licensing. Subsequently, the more experienced licensing worker Michelle Partridge was

⁴⁹ AR 123.

⁵⁰ *Id.*

⁵¹ There was scant documentation in the record regarding the circumstances surrounding the S’s surrender of the license, which Michelle Partridge attributed to significant turnover at OCS during this time. Before the first day of the hearing, however, OCS produced the S’s email requesting that their foster care license “be closed as of August 1, 2021.” AR 469.

⁵² AR 123.

assigned to take over the task. Initially her communications with the S' were very positive and encouraging. For example, in her notes of a phone interview with the S' on January 14, 2022, Ms. Partridge recorded that she "found them confident and competent" and noted that they stay in touch with children formerly placed with them as foster children.⁵³ The S' also confirmed during the conversation that they had completed the Trust Based Relational Intervention training that had been required as a result of the most recent OCS investigation (although as it turned out, there was additional paperwork they needed to submit to formally complete the training).⁵⁴ In subsequent emails, Ms. Partridge complimented the S' "patience and vulnerability" and "incredible tolerance," and stated she looked forward to "approving the license."⁵⁵

On an evaluation form filled out by Mr. Bettis or Ms. Carlson after a home inspection in December 2021, the section entitled "summarize any complaints or concerns during prior licensing period" was answered with the comment "None."⁵⁶ The section of the form stating "describe the family's intention/level of cooperation with agency to carry out the case plan for the foster children – are foster parents willing/or have they attended case review meetings?" was answered "100% yes."⁵⁷

Notwithstanding these positive comments, OCS ultimately made the determination to deny the S' license application. The March 4, 2022 notice of denial of licensure summarizes the S' history of foster care in Alaska, covering a twenty-year period of time.⁵⁸ It focuses on the investigations discussed above in this Decision, and summarizes them as follows:

Multiple investigations surrounding inappropriate discipline, even though it was throughout a long period of time, indicate the applicants are not able to deal with children who present a challenge to caregivers or express themselves negatively.^[59]

The notice of denial goes on to state that "the Department cannot license a home that refuses to cooperate with the agency," characterizing the S' communications as aggressive and the S' themselves as "difficult to work with." The notice also raises the concern that "it is unclear why the S' want to partner with the OCS."⁶⁰ The notice concludes by asserting that the S' "do not

⁵³ AR 46.

⁵⁴ *Id.*

⁵⁵ AR 46-47.

⁵⁶ AR 217.

⁵⁷ *Id.*

⁵⁸ AR 179-183.

⁵⁹ AR 181.

⁶⁰ *Id.*

take responsibility for grabbing children by the clothing, by their hair or by the arm to haul them out of the house,” and that they are “focused on their ‘right’ to have a foster home license.”⁶¹ Based on those concerns, the notice states their application is denied.

IV. Discussion

A. Evidentiary Issues

In Alaska, some administrative appeals are covered by the Administrative Procedure Act (APA) and some are not. The present case represents a denial of a new license application under AS 47.32.150(b), which means it is an informal hearing that is not subject to the APA.⁶² Therefore, there is no special restriction on the use of hearsay; the tribunal may admit and rely upon any “evidence of the type on which a reasonable person might rely in the conduct of serious affairs.”⁶³ This also means that the appellate procedures are governed by a standard of fundamental fairness. They are not restricted by procedural requirements found in the APA.

Because they are appealing the denial of an application for licensure, the S’ have the burden of proving they should have been granted a license.⁶⁴ As previously mentioned, the preponderance of the evidence standard is applied in the absence of an explicit standard set out in statute or regulation.⁶⁵

OCS has asserted in its pre-hearing brief that the S’ must show *abuse of discretion* by the Department in order to achieve a reversal here, essentially arguing that the final decisionmaker – the Commissioner – must defer to the determinations of Department staff regarding the denial of licensure. OCS’s only support for this assertion, however, is a holding from a 1985 case that is rooted in the APA, which is inapplicable here.⁶⁶ Of course the final decisionmaker, in the course of making the best decision possible, may find it appropriate to defer to judgments made by the agency staff. A commissioner or final decisionmaker in an administrative appeal is never bound to defer to staff, however.⁶⁷

⁶¹ AR 182.

⁶² The procedures in 2 AAC 64.100 – 2 AAC 64.990 are used as a guide in this matter, pursuant to the Notice of Assignment of March 17, 2022.

⁶³ 2 AAC 64.290(a)(1).

⁶⁴ 2 AAC 64.290(e); *see In re Agcaoili*, OAH No. 12-0173-ALH (Commissioner of Health & Social Services, 2013) (applicant appealing license denial has the burden of proof) (available online at [ALH120173 \(state.ak.us\)](https://alaskaopenrecords.org/ALH120173)).

⁶⁵ 2 AAC 64.290(e).

⁶⁶ *See State v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁶⁷ *See, e.g., In re Alaska Medical Development, et al*, OAH Nos. 06-0744-DHS; 06-0745-DHS; 06-0746-DHS, at p. 6 and cases cited therein (Commissioner of Health & Social Services, 2007) (available online at [DHS060744 \(state.ak.us\)](https://alaskaopenrecords.org/DHS060744)).

B. Analysis

“Each year, thousands of Alaska's children are placed in out-of-home care. Typically, it's because a child has been determined to be unsafe or at high risk of maltreatment, in their family home.”⁶⁸ As part of making these determinations regarding at-risk children and their placement with foster parents, OCS has to ensure there are sufficient licensed foster homes available throughout the state. OCS foster care licensing staff have to balance the dearth of foster homes and the demand for foster placements, with the need to keep children safe.

Foster care licensing statutes and regulations are designed to address these considerations. Under Alaska law, OCS may issue a foster-home license only to persons and facilities that meet the standards for licensure established by the department's regulations.⁶⁹ The type of review conducted by OCS in this case, i.e., examining the S'' entire prior licensing history, is specifically required by statute: “In considering whether to deny an application for . . . a license, the department shall consider the licensing history of the applicant, including any enforcement action under this chapter.”⁷⁰

Additional specific requirements for licensure as foster parents are set out in the department's regulations. These regulations allow OCS to license an applicant only if they meet the requirements that foster parents:

- understand child development and have the ability to care for children;⁷¹
- have the skills to work with children, family members, OCS staff, and community agencies;⁷²
- be a responsible individual who exercises sound judgment;⁷³
- have the capacity to deal with frustration and conflict;⁷⁴
- have the ability to work with children who express themselves negatively toward the caregiver;⁷⁵
- is able to prevent the exposure of children to high risk, including physical hazards and encounters with persons known to be a danger.⁷⁶

⁶⁸ Official notice is hereby taken of this publicly available information from OCS Foster Care's webpage at [Foster Care \(alaska.gov\)](https://www.alaska.gov/oah/foster-care). 2 AAC 64.300.

⁶⁹ AS 47.32.050(a); AS 47.32.010(b)(5).

⁷⁰ AS 47.32.070(c).

⁷¹ 7 AAC 50.200(b).

⁷² *Id.*

⁷³ 7 AAC 50.210(a).

⁷⁴ 7 AAC 50.210(b).

⁷⁵ *Id.*

⁷⁶ AS 47.32.010(a); 7 AAC 50.210(j). In 2022 the Department adopted new regulations for foster care licensing (7 AAC Chap. 67) that went into effect on July 1, 2022. However, because the Department denied the S''

In sum, in considering an application for foster care license, OCS is required to review an applicant's prior licensing history and apply the above regulatory standards, to determine if licensure should be granted. The question remains – in reviewing licensing history to determine the suitability of a family and a home for a license, what considerations should rise to the level of warranting a denial? OCS worker Michelle Partridge testified that “child safety is the main reason OCS will deny a foster care license.” Prior OAH decisions in this area also indicate that foster care licenses are typically denied or revoked for relatively egregious violations of the regulations. For example, in the case *In Re M & KC* (OAH No. 18-1260-CHC) a foster care license was revoked based on the licensees' failure to report attempted suicides by foster children and alleged sexual abuse of foster children.⁷⁷

Each of the regulatory requirements cited above involve qualifications that OCS sought to address through its presentation at the hearing in this matter. OCS attempted to demonstrate that the S' overall licensing history showed that they did not have adequate skills to care for children, to deal with frustration and conflict, to work with children who express themselves negatively toward the S', to prevent the exposure of foster children to high risk, and to work with OCS staff.

I find, however, that as to all but the final criterion, the S' in fact demonstrated that they more than adequately meet these qualifications. OCS's factual presentation essentially amounted to a short selection of difficulties encountered by the S' over the course of more than twenty years of successful foster parenting. Although the record does not include a reference for the total number of foster children placed with the S', they must have raised dozens if not well over a hundred. Each of these children likely posed significant challenges, which the S' clearly overcame in successfully caring and raising them while also encouraging and promoting, where appropriate, their continuing contacts with their biological families and tribes. They did all this while also frequently assisting OCS with potential placements or adoptions of the children.

As to the specific incidents set out in OCS's notice of denial, none of them taken alone rise anywhere near the level of concern that would warrant denial of a foster care license:

licensure prior to that date, the previous set of regulations, quoted here, governs this case. In any event, neither party cited or referred to these regulations during the hearing.

⁷⁷ *In Re M & KC*, OAH No. 18-1260-CHC at p. 19 (Comm. of Health & Social Services, 2019) (available online at [CHC181260 \(state.ak.us\)](https://chc181260.state.ak.us)).

- The 2008 self-reported incident of a runaway child reportedly armed with a stolen weapon, after the circumstances were fully understood did not even result in an investigation, and was characterized as only a “concern” in OCS records.
- The January 2009 investigation of a reported walk-away from the S’ home resulted in a non-substantiation of physical abuse allegations, and a series of positive comments in OCS records about the S’ qualities as foster parents.
- The January 2010 investigation regarding alleged placement interference resulted in a single finding of the S’ improper disclosure of confidential information, made in their effort to obtain guidance from a third-party agency regarding children’s problematic behaviors.
- The June 2011 investigation of a self-reported, alleged violation of a foster care regulation by allowing a biological mother to spend the night resulted in a certified letter from OCS stating that the allegation was not substantiated.
- The S’ three home inspections between May 2012 and August 2016 resulted in no observed violations of statutes and/or regulations.
- The September 2016 joint child protective / licensing investigation regarding a child with missing hair resulted in a finding of no clear evidence of corporal punishment or behavior techniques that were cruel or damaging to a child, and instead found violations (immediately corrected) regarding home cleanliness;
- The April 2017 investigation involving the S’ alleged flouting of an OCS directive regarding a child with fecal incontinence resulted in a finding regarding the need to be able to work with agency staff due to their initial refusal to send the child back to school; they ultimately complied and no enforcement action was taken.
- The July 2021 joint child protective / licensing investigation regarding a self-reported hair-pulling incident resulted in a plan of correction requiring that the S’ complete Trust Based Relational Intervention training, which they did.

None of these matters resulted in a finding that child safety was put at risk. None of them resulted in a finding that inappropriate corporal punishment or behavior management techniques were employed by the S’ or that the S’ otherwise abuse children in their care. In fact several of these matters arose because the S’ were working to protect foster children from abuse or emotional trauma. It is also notable that three of the seven “incidents” described above were **self-reported** by the S’.

If child safety issues are the main reason OCS will typically deny a foster care license, the hair-pulling allegation raised in July 2021 merits closer examination. This is the worst incident that OCS could cite from the S’ 20-plus years of foster parenting in the context of a potential threat to child safety. The incident, however, was self-reported by the S’, and it

indisputably occurred as a result of the S’ attempting to protect other, more vulnerable children in their care from abuse by their older sibling. It did not result in a significant proposed sanction against their license. Nonetheless, OCS witnesses implied in their testimony that the S’ request to close their license may have been a tactical maneuver to avoid the formal outcome of the investigation. This decision finds that the S’’ surrender of their license was made as part of a good faith intention to sell their home and move out of Alaska. There is no evidence that they did so with any improper intent to circumvent OCS’s investigation of the July 2021 incident.

Apparently recognizing that the individual incidents described herein fail to rise to the level warranting denial, OCS argues that the S’ overall licensing history displayed a pattern that raised concerns supporting denial. In other words, OCS argues that “the sum is greater than the parts” regarding the S’ suitability as foster parents. However, I wholeheartedly disagree. One cannot just ignore the actual facts and outcome of each incident discussed above. And if we are to examine the overall licensing history of the S’, we cannot simply focus on an alleged pattern of incidents while ignoring all of the good work that they did over the 20 years prior to their November 2021 application for licensure. Contrary to OCS’s argument, the S’ licensing history demonstrates that they are highly capable foster parents who have made significant contributions to the care and upbringing of numerous foster children.

So why was licensure denied in this case? The key to OCS’s denial of the S’’ licensure here appears to be the regulatory requirement that foster parents must “have the skills to work with . . . OCS staff . . .”⁷⁸ In this context, it cannot be disputed that the S’ at times are not easy people to deal with—they can be obstreperous, arrogant, and self-righteous. It is clear that OCS denied the S’ licensure in this case primarily because OCS managers felt the S’ had too often challenged their authority, and agency staff themselves had become frustrated in dealing with them on an ongoing basis.

First, OCS’s view of the S’ alleged inability to work with OCS ignores the fact that three of the seven incidents discussed above were self-reported by the S’. This in and of itself is an indication of their desire and intention to be good partners with the Department.

Second, the S’ problematic characteristics tend to come out when they are protecting or advocating for vulnerable children, or they believe their sincerity in advocating for children is being questioned or challenged. OCS’s condemnation of the S’ ability to work with the agency

⁷⁸ 7 AAC 50.200(b).

fails to take this into account. During the hearing, it was made clear that the S' motivations throughout all their dealings with OCS have been grounded in caring for the foster children entrusted to their care and in advocating for the children's safety and well-being. When viewed in this manner, OCS's frustrations in dealing with the S' are an insufficient ground for denying licensure, especially when weighed against the potential benefits they can still offer foster children in Alaska if granted a license.

Taking into consideration the entirety of their history of foster parenting, and the totality of the circumstances presented in each of the incidents cited by OCS as grounds for licensure denial, this decision finds that OCS's presentation of evidence constituted "cherry-picking" of negative incidents that failed to account for the many years of positive work performed by the S' with foster children. This decision further finds that even the selected negative incidents themselves failed to rise to a sufficient level of egregiousness to constitute adequate grounds for licensure denial. The S' met their burden of proving that the denial was not supported by the evidence and was therefore improper.

V. Conclusion

The Department's denial of the S' application for a foster care license is hereby reversed.

DATED: January 27, 2023.

By: Signed
Andrew M. Lebo
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Family and Community Services, adopts this Decision 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 10th day of February, 2023.

By: Signed

Name: Chrissy Vogeley

Title: Special Assistant to the Commissioner II

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