

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

In the Matter of	)	
	)	
T. T.	)	OAH No. 25-1997-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.

Foster parents who take on the added responsibility of caring for special needs children 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 children in their care that is performed by qualified OCS employees. By regulation, these assessments 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 severity level of moderate or high, the foster parent is entitled to a “Level 3” augmented rate, which is the highest available under OCS’s regulations.

Ms. T. is presently caring for two foster children in OCS custody that have severe behavioral and mental health issues. When Ms. T. took these children into her home in 2023, she was granted a Level 3 augmented rate for both. Thereafter, however, OCS unilaterally adopted a new evaluation form as part of revised internal policy intended to centralize and tighten the standards for awarding augmented rates. This new form contravenes the requirements of OCS’s regulations in several key respects. Based on subsequent assessments that were conducted using this new form in 2025, OCS cut the augmented rates paid to Ms. T. in half. Ms. T. has appealed those determinations in this proceeding.

As detailed below, OCS does not have the discretion to adopt a new evaluation form that differs from the one specifically mandated by its own regulations. Since Ms. T. qualifies for Level 3 augmented rates under the evaluation form that should have been used in assessing her foster children, OCS’s refusal to grant those rates 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”.¹ Consistent with this obligation, OCS pays a daily stipend to foster parents that is intended to compensate them for the time and expense of caring for the children in their care. 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 2024.²

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.³ 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 \$78.00.⁴

Under 7 AAC 53.060, OCS must perform an augmented rate assessment upon the request of a foster parent.⁵ If an augmented rate is approved, it must be reviewed through a new assessment performed every six months.⁶ The regulation goes on to provide the following guidance on how these assessments 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. . .⁷

¹ 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)

² See <https://dfcs.alaska.gov/ocs/Documents/FosterCare/Foster-Care-Reimbursement-and-Augmented-Rates.pdf>.

³ 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”).

⁴ See Footnote 2, *supra*.

⁵ 7 AAC 53.060(b).

⁶ 7 AAC 53.060(d)

⁷ 7 AAC 53.060(f)(1) (*italics in original*).

The current text of this regulation was proposed in 2022 and adopted with an effective date of February 23, 2023.⁸ 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” form that is set out that within that section of the CPS Manual.⁹ Any doubt that the 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.”¹⁰ 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, 2022.¹¹

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 OCS absent a corresponding amendment to 7 AAC 53.060 adopted in compliance with the rulemaking requirements established by the Alaska Administrative Procedure Act (the “APA”).¹² 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.¹³

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

⁸ See Alaska Administrative Code Register 245, effective February 23, 2023 (available online at <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=209632>).

⁹ *Id.* (emphasis added). An electronic version of this form was submitted by OCS as Exhibit 3.

¹⁰ *Id.*

¹¹ 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.

¹² See AS 44.62.180 - .290.

¹³ *Stefano v. Dep't of Corr.*, 539 P.3d 497, 501 (Alaska 2023).

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

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	

At some later point that is not clearly established in the record, OCS unilaterally revised the Original Assessment Form. 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:¹⁴

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:¹⁵

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

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

¹⁴ Agency Record at 4.

¹⁵ Agency Record at 5.

her to a Level 1 augmented rate. These changes were implemented by OCS without any corresponding amendment to 7 AAC 53.060.¹⁶

III. Facts

T. T. is a licensed foster care provider who has cared for two six-year-old twin boys, E. and K., since February 2023.¹⁷ The record reflects that both boys suffer from fetal alcohol spectrum disorders, and were sexually abused prior to their placement in OCS custody.¹⁸

K. has a medical history that is “significant for ADHD, oppositional behaviors with outburst of anger, and developmental delays necessitating pharmacologic and nonpharmacologic management.”¹⁹ He also suffers from speech and language deficits, as summarized in a September 2024 evaluation which concluded that “he continues to present with a severe receptive language deficit, moderate expressive language deficit, moderate expressive language deficit, moderate articulation/phonology deficit, and a pragmatic language deficit.”²⁰ As noted in OCS records, K. “has longstanding delays in global development, with delays across developmental categories including motor, language and adaptive domains.”

Ms. T. describes K.’s speech as only 60 percent intelligible, which causes her severe difficulties in communicating with him. He has impaired executive functioning skills, and requires physical assistance with dressing, brushing teeth, bathing, and using the bathroom.²¹ Despite the additional assistance provided to him under an Individual Education Plan (“IEP”), K. is repeating kindergarten due to his inability to maintain himself in a classroom environment.²² K. has been prescribed two different medications to control his ADHD and improve his sleep.²³

E. suffers from most of the same issues as his brother – including severe ADHD, lack of executive functioning and emotional control, significant speech impediments, and an inability to maintain himself in a classroom setting.²⁴ A neuropsychological evaluation performed in 2024 showed that E. has weaknesses in working memory, verbal and non-verbal reasoning, and has “prominent inattentiveness and a weakness in self-control and behavioral inhibition.” E.’s

¹⁶ The text of 7 AAC 53.060(f) has not been modified since the current regulatory language was adopted in 2023.

¹⁷ Ms. T.’ written statement.

¹⁸ Agency Record at 28-29 (E.) and 48-49 (K.).

¹⁹ T. Documentation at 21.

²⁰ T. Documentation at 32.

²¹ Agency Record at 53; Ms. T. testimony.

²² Agency Record at 54.

²³ Agency Record at 49.

²⁴ Agency Record at 33.

speech therapy plan of care states that he has “severe receptive language deficit, moderate expressive language deficit, moderate articulation deficit, and a moderate pragmatic language deficit.”²⁵ Like his brother, E. takes two different medications to control his ADHD and improve his sleep. E. is also having to repeat kindergarten due to his inability to perform work or maintain the focus required for a classroom setting despite accommodations made for his conditions under his IEP.²⁶

Augmented rate assessments performed on E. and K. in 2023-24 showed that Ms. T. was entitled to a Level 3 augmented rate for both boys.²⁷ Whether those assessments were performed using the Original Assessment Form, or the Revised Form, is not clear from the record. A regular reassessment of the boys was performed in April 2025 using the Revised Form. Based on the scoring tool included in that form, E. was assigned a score of 13 points.²⁸ K. was assigned a score of 12 points.²⁹ As noted above, a score of 14 points is required for Ms. T. to qualify for Level 3 augmented rates under the Revised Form’s scoring tool.

The April 2025 assessments are notable for two reasons. First, none of the problems that E. and K. presented were scored as “high severity,” despite the abundant documentation of their severe speech impediments and ADHD. Second, the OCS employee who performed this assessment did so without interviewing Ms. T..³⁰ Thus, the assessment disregarded the numerous weekly appointments that Ms. T. must attend for E. and K.’s speech therapy, occupational therapy, and attendance at physician recommended full-body exercise classes.³¹ Due to this lack of input from Ms. T., these assessments completely omitted any reference to these ongoing appointments.³²

Ms. T. timely appealed the results of these assessments. While that appeal was pending before the Office of Administrative Hearings, OCS agreed to conduct a re-assessment that would include an interview with Ms. T. These reassessments were conducted July 31, 2025, using the Revised Form. However, these reassessments conducted using a recently adopted “Augmented

²⁵ Agency Record at 33.

²⁶ Agency Record at 34.

²⁷ Ms. T.’ testimony.

²⁸ Agency Record at 4-5.

²⁹ Agency Record at 16-17.

³⁰ Ms. T.’ testimony.

³¹ Ms. T. acted on this recommendation by enrolling E. and K. in twice weekly jiu-jitsu classes. *See* Agency Record at 9 and 21.

³² Agency Record at 4 (E.) and 16 (K.).

Rate Assessment Tool” which calls for narrative answers to a series of question tied to the ten problem areas identified on the Revised Form. However, this Assessment Tool further restricts the ability of foster parents to qualify for augmented rates by imposing the following limitation in highlighted and bolded text:

Note: Some behaviors can be represented in multiple “problem areas”. A determination must be made by the assessor as to which “problem area” the behavior best fits and include it in that problem area only.³³

Stated differently, even if a child exhibits behaviors that create serious issues for foster parents in numerous problem areas, OCS will only award points for a single problem area under this policy. There is no identifiable regulatory basis for this limitation.

Because of this limitation, points that were awarded in several problem areas during E. and K.’s April 2025 assessments were simply disregarded by OCS in the July 2025 reassessment. However, OCS recognized that E. and K. scored as high severity in the “Medical/Physical” problem area since they both had three or more appointments per week that Ms. T. had to attend with them. Even with this change, the elimination of supposedly duplicative problem areas resulted in both E. and K. being assigned reduced scores of 11 points.³⁴ Ms. T. challenges the results of both the April and July reassessments in this appeal.

During the hearing in this matter, OCS relied primarily on the testimony of Sarah Abramczyk, an agency social services program coordinator. During her testimony, Ms. Abramczyk explained that OCS began efforts to centralize and standardize augmented rate assessments in 2023. As she explained, the Original Assessment Form was created by an outside “nurse consultant” and was perceived as inadequate because it was “being used in a way that was just a check box.”³⁵ As described by Ms. Abramczyk, this led to augmented rates being awarded to foster parents who, in OCS’s view, were undeserving of them; these concerns led to the adoption of the Revised Form.³⁶

³³ Agency Record at 32 and 52.

³⁴ Exhibit 4 at 7 (E.); Exhibit 5 at 7 (K.).

³⁵ Hearing testimony of Ms. Abramczyk, at time stamp 10:11:07. The point missed by Ms. Abramczyk is that form is explicitly intended to be used in a “check box” manner.

³⁶ *Id.*, at time stamp 10:11:52.

IV. Discussion

A fundamental principle of administrative law is that an agency such as OCS must comply with its own regulations.³⁷ 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 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 offered a logical justification for its decision to effectively scrap the Original Assessment Form by adopting an alternative scoring methodology that made it more difficult for foster parents to qualify for augmented rates. In doing so, however, 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 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 assessment results for E. and K. that are being challenged here. It likewise 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 53.060.³⁸ While OCS may well have legitimate concerns regarding the "check box" format of 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).

³⁷ *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").

³⁸ 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.

This leads to the question of whether Ms. T. would have been entitled to a Level 3 augmented rate for E. and K. under the Original Assessment Form that is incorporated into 7 AAC 53.060(f). That question is answered in the affirmative based on the record here. Notably, the April 2025 assessments of E. and K. were performed without reference to OCS's current policy of awarding points in just one problem area for a given behavior.³⁹ The problem with that assessment, however, is that it was conducted without the benefit of knowing that both E. and K. had three or more medical or physical appointments per week – a fact accurately noted in the July reassessment.⁴⁰

If that fact had been properly noted in the April assessment, both E. and K. would have qualified for a Level 3 augmented rate under the scoring methodology in the Original Assessment Form. Under that form, a foster parent is entitled to a Level 3 augmented rate if one box is checked in the “high” category, and three or more boxes were checked in the “moderate” category. Since E. and K. each had five problem areas that were identified as “moderate,” the addition of one high severity problem area would have entitled Ms. T. to Level 3 augmented rate for the children in her care under the April 2025 assessment.

Ms. T. is therefore entitled to a Level 3 augmented rate for the six-month period covered by the April 2025 assessment. Future assessments of E. and K. should be conducted using the Original Assessment Form – without reference to any OCS policies that are inconsistent with that form – until such time as 7 AAC 53.060(f) is revised to incorporate an updated form.

IV. 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 depart from that form until the Department of Family and Community Services 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

³⁹ This is demonstrated by the way points were awarded in multiple categories within the same problem area for both children. *See* Agency Record at 4-5 and 16-17. This did not occur with the July 2025 reassessment.

⁴⁰ Notably, the April 2025 assessments awarded no points in the problem areas of “Medical/Physical” despite the uncontradicted evidence that Ms. T. takes E. and K. to multiple appointments every week. *See id.* Ms. T.' point is well-taken since she was not provided a fair opportunity to communicate with the OCS employee who performed those assessments.

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.

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

Dated: April 27, 2026.

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

Adoption

The undersigned, by delegation from the Commission on Family and Community Services, under the authority of AS 44.64.060(e)(1), 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 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.]