

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

In the Matter of	)	
	)	
T.N	)	OAH No. 24-0735-SAN
_____	)	

DECISION

I. Introduction

The Office of Children’s Services (“OCS”) received a report of child abuse or neglect arising from an incident on August 5, 2024, at the home of T.N and his wife, B. L. After investigation, OCS determined that Mr. N had physically abused and mentally injured E.L as defined under AS 47.10.011(6) and (8). OCS also determined that Mr. N had mentally injured C. L under AS 47.10.011(8). A hearing was held on June 10, 2026. Ms. Linda Clapp-Damerow represented OCS. Mr. N represented himself with the assistance of Ms. L.

The parties agree an incident happened on August 5, 2024, and agree on many of the details, but dispute the severity of Mr. N’s actions. For reasons discussed further below, this tribunal finds it is more likely than not that Mr. N physically abused E and that he mentally injured E and C. Therefore, the substantiated findings in this case are AFFIRMED.

II. Facts

A. Background

The following events are undisputed and are taken, unless cited otherwise, from Mr. N and Ms. L’s testimony. On August 5, 2024, Ms. L and Mr. N lived with E and C. L (twins from Ms. L’s prior marriage), their eight-year-old daughter Vera, and three-year-old son, D. That afternoon, Mr. N and Ms. L were in their bedroom with the door open. The house has an open floor plan, and from their bedroom door they can see into the kitchen and can easily hear the living room. The twins were in the living room playing virtual reality games on their Oculus headsets. The Oculus is worn like a pair of goggles. While being worn, the Oculus interferes with the wearer’s view around them. Video games with the Oculus are played with the wearers moving their entire body, often not aware of their surroundings. About three days earlier, D had just had a cast removed for a broken arm. Mr. N and Ms. L had both warned E and C that they needed to be careful of D when they were playing with the Oculus because they might hit D, and his elbow was still healing.

At about 2:00 in the afternoon, Mr. N and Ms. L heard D start to scream horribly. Mr. N went out to the living room. C was hurrying to take the two Oculus headsets to a bedroom. Mr. N confronted E. Mr. N soon had E pressed against the wall. C returned and punched Mr. N in the ear. Shortly after he was punched in the ear, Mr. N was holding up a chair between himself and the twins. Ms. L had come out of the bedroom in time to see E pinned against a wall by Mr. N, C then coming up and punching Mr. N, and Mr. N picking up a chair. Ms. L intervened and the scuffle stopped. The twins packed up belongings and, later that afternoon, left the N/L home to live with their adult sister. The twins have not lived in the L/N home since that date. The key disputed fact is, as discussed below, whether Mr. N strangled E.

A report of neglect or abuse was filed with OCS on August 7, 2024.¹ E and C, accompanied by their adult sisters O and D.L, reported the incident to the City A Police Department and the Alaska State Troopers on or about August 16, 2024.² The Alaska State Troopers charged Mr. N with a count of assault in the second degree, a Class B felony, and assault in the fourth degree, a Class A misdemeanor.³

OCS interviewed, among others, the twins,⁴ Mr. N,⁵ and Ms. L.⁶ On September 23, 2024, based on the interviews, OCS determined it was more likely than not that, while he had E pressed against the wall, Mr. N strangled him, and that C witnessed the strangling.⁷ Based on this, OCS substantiated findings of physical abuse against E and mental injury against both E and C.⁸

Mr. N requested a hearing on OCS's substantiated findings on October 18, 2024. This appeal followed but was held in abeyance until the conclusion of the related criminal proceedings against Mr. N.

On December 29, 2025, as a part of a global plea agreement, the assault charges against Mr. N were dismissed when he pled guilty to an unrelated DUI.⁹

¹ Ex. A at 1.

² *Id.*

³ R. 000018-19.

⁴ R. 000032-34 (E.) and 38-39 (C.).

⁵ R. 000036-38.

⁶ R. 000042-44.

⁷ R. 000013-15.

⁸ R. 000013.

⁹ R. 000049.

B. Evidentiary Summary

1. E and C's Reports to OCS and AST

E and C did not testify at the hearing in this matter. This tribunal relies on the testimony of Morgan Bradford, the OCS investigator who met with them and recommended substantiated findings of physical and emotional injury, the contemporaneous OCS records of interviews with E and C, AST records of the interviews with E and C, and the AST affidavit submitted in support of the criminal charges against Mr. N.

According to Ms. Bradford, E stated that D got knocked over while he and his brother were playing video games, that Mr. N came out and started yelling at him and told him to clean the kitchen and slammed E's hand in the refrigerator. The two got in a pushing match, and then Mr. N pinned E against the wall with his hands around E's neck. E could not breathe. C came into the room and punched Mr. N in the side of the head. E said that, while he was pinned against the wall, Ms. L came out and told everyone to stop fighting. E and C moved out that day.¹⁰

Ms. Bradford interviewed C on August 20, 2024. She interviewed C separately from E. C explained that D had fallen and was crying. He said Mr. N came into the room and accused the twins of hurting their younger brother. C said Mr. N told E to clean up the kitchen, and that, while cleaning up the kitchen, Mr. N slammed E's hand in the refrigerator. C said after that Mr. N tried to hit E. The two engaged in a pushing fight and he saw Mr. N try and strangle E twice. C said he saw Mr. N push E against the wall with his hands around his neck. He then reported he hit Mr. N to get him to stop hurting his brother. C said Mr. N tried to throw a chair at him and his brother, but their mother came out, intervened, and the fight stopped.¹¹

E and C, accompanied by two adult sisters, also filed a report with AST at the City A Police Department building.¹² Trooper Fischer memorialized the report he received in a sworn affidavit.¹³ According to the affidavit, Mr. N came into the living room because of D's crying and told the twins to clean. E was putting something away in the refrigerator and Mr. N closed the refrigerator door on his hand then pushed him against the wall and started to strangle him with both hands. E said he was strangled twice, once for about six seconds and once for about two seconds. C came into the kitchen and hit Mr. N, allowing E to escape. While Mr. N was

¹⁰ R. 000032-34.

¹¹ Testimony of Ms. Bradford. *See also* R. 000038-39.

¹² Ex. A.

¹³ R. 000024.

strangling him, E had a sore throat, had spots in his vision, was breathing rapidly, and felt faint and disoriented. After the assault, E experienced a persistent sore throat that reduced his voice to a whisper, tenderness in his neck, nausea, coughing, rapid breathing, and memory loss. C confirmed to Trooper Fischer that he hit Mr. N while Mr. N had his brother pinned against the wall.¹⁴

2. *B. L's Hearing Testimony*

At the hearing, Ms. L testified that at about 2:00 in the afternoon on August 5, 2024, she and Mr. N were relaxing in their bedroom. The door was open, and a fairly short hallway led to an “open concept” kitchen and living room. She and Mr. N suddenly heard D wailing horribly. She testified that Mr. N went into the kitchen to investigate. When she got up, she saw Mr. N holding E by the shirt collar against the wall. She testified that Mr. N said words to the effect of, “If you want to fight, you need to get out of here [move out].” She then saw C come up and hit Mr. N on the side of the head. Mr. N let go of E, lost his balance and put his hand on a chair to steady himself. She testified that Mr. N then picked up the chair in a defensive way and told the twins to “get out.” She then intervened, pushed the chair down, and got all three to stop fighting. She testified that she took the twins to their adult sister’s home that day.

3. *Testimony of T.N*

Mr. N also testified at the hearing. He emphasized that he had told the twins to be careful around D because he was recently out of a cast. He also emphasized that the twins would be careless while engaged in physical gameplay with the Oculus headsets. He testified that he and Ms. L were in the bedroom when they heard D start crying in extreme pain. He said he went out angrily, asked the twins about what happened, and told them they needed to clean the kitchen. E started cleaning the kitchen. At some point, the refrigerator door was ajar and it started having the light flash. He reached for it at the same time as E, and he closed it on his hand by accident, noting that the refrigerator has a soft magnetic seal. He stated that the altercation started when E tried to tackle him by the knees three or four times. After the fourth time E tried to tackle him around the knees, Mr. N said he pushed E up and held him against the wall by the lapel of his Russian-style shirt. He said C hit him in the side of the head, which caused him to grab a chair to steady himself. Mr. N said he picked up the chair to defend himself when Ms. L intervened,

¹⁴ Ex. A.

ending the melee. Mr. N testified, “if I was fighting him, he would have had a broken nose, and his teeth would have been punched out.”¹⁵

C. Tribunal Findings of Fact

Based on the competing testimony, this tribunal concludes that Mr. N pushed E against the wall and strangled him twice as described in the AST report and affidavit supporting the criminal charges. The tribunal makes that finding for several reasons.

E and C gave substantially similar descriptions of the event in separate interviews with OCS and in a joint report with AST. E gave his interview to OCS on August 7 and to AST on August 16, nine days apart. C gave his report to AST on August 16 as well and then was interviewed four days later by OCS. Throughout that time, their stories remained substantially similar.

E described Mr. N slamming the refrigerator door onto his hand, pushing him against the wall in the kitchen, and “choking” him with both hands twice—once for approximately six seconds and the second time for approximately two seconds. During the assault E reported his throat was sore, he had vision changes and saw dots, he had rapid breathing, and he felt faint and disoriented.¹⁶ E reported that after the incident his throat was still sore, he was only able to speak in a whisper, he had pain and tenderness in his neck, a headache, he coughed, felt nauseous, had rapid breathing, and experienced memory loss.¹⁷ Weighing the consistency of the children's separate accounts against the shifting and defensive explanations offered by the Respondent, the tribunal explicitly finds E’s report of the incident and subsequent physical symptoms significantly more credible than Mr. N's testimony.

Submitting a report at a police station to a uniformed officer is a situation that would impress on E and C the seriousness of what they were reporting. It is significant that E gave a detailed report of the event around the strangulation, including facts that cast him and his brother in a less favorable light. Given the detail E was able to provide, especially as to the physical symptoms he experienced during and after the strangulation, this report is given significant weight.

¹⁵ Testimony of Mr. N.

¹⁶ R. 000024.

¹⁷ *Id.* There was testimony of a photograph showing red marks on E.’s neck. That photograph was not available at the hearing. The unavailability of the photograph does not alter this tribunal’s factual findings.

The twins did not testify at this hearing. This may be because of the lapse of almost two years since the incident. They are over 18 and have now graduated from the Alaska Military Youth Academy and from high school. They have been out of the home since the incident. They may not want to relive a painful experience, alienate their mother, or cause friction in their community. Ultimately, the reason they were not called as witnesses, by either party, is not for the tribunal to decide. Instead, the circumstances around their statements, including being at the police station, and the fact that they did not recant their testimony, make their statements the kind of evidence which a reasonable person might rely on the conduct of serious affairs.¹⁸

Ms. L testified she saw E pushed up on the wall, which makes it possible she did not see where Mr. N's hands were, or mistook where Mr. N had his hands.

The tribunal finds Mr. N's tale of events unconvincing. There is no suggestion in any other statements given at, or around, the time of this assault that E tried to tackle him several times. Mr. N made statements in his testimony that "you know what would happen" if he hit E, as if to brag about his fighting skills. It is improbable that E would try to tackle him four times walking down the hallway. If that had been the case, the scuffle would have been on the floor in the hallway, not in the kitchen with Mr. N pinning E against the wall.

III. Discussion

A. The Legal Framework for Substantiation of Abuse and Neglect Proceedings

OCS maintains a child protection registry.¹⁹ The reports and substantiated findings are confidential but may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child neglect, abuse, or custody.²⁰ An individual's placement on the child protection registry because of a substantiated finding of maltreatment may limit an individual's ability to hold certain certifications and licenses, or participate in activities and business, that are regulated by the Department of Health or the Department of Family and Community Services.²¹

¹⁸ See 2 AAC 64.290 ("The administrative law judge may ... admit evidence of the type on which a reasonable person might rely in the conduct of serious affairs.")

¹⁹ AS 47.17.040.

²⁰ AS 47.17.040(b).

²¹ AS 47.05.325-.330.

Alaska’s Child Protection statute, AS 47.17, sets out a framework for OCS to receive and investigate reports of suspected child abuse or neglect.²² The child protection statute defines “child abuse or neglect” to mean “the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby[.]”²³ The statute defines “maltreatment” to mean “an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in AS 47.10.011[.]”²⁴ Some, but not all, of these component parts are then further defined. One such provision is AS 47.10.011(6), which specifies that a child may be considered a child in need of aid if the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by a parent or custodian.²⁵ Another component is AS 47.10.011(8), governing mental injury and the substantial risk of mental injury. That provision specifies that a child may be considered a child in need of aid if conduct or conditions created by the parent result in “mental injury” to the child or place the child at substantial risk of mental injury due to exposure to domestic violence.²⁶

B. Hearings on AS 47.17 Substantiated Findings

OCS may issue a substantiated finding of abuse or neglect based upon probable cause.²⁷ If a person appeals a substantiated finding, OCS has the burden of proving at an administrative hearing, by a preponderance of the evidence, that the alleged acts of abuse or neglect actually

²² Investigation reports arising out of this statute are maintained in the child protection registry. While the contents of the registry are confidential, substantiated reports of harm may be used by governmental agencies in certain contexts AS 47.17.040.

²³ AS 47.17.290(3) The statute does not separately define “sexual abuse.”

²⁴ AS 47.17.290(9).

²⁵ AS 47.10.011(6) The OCS notice of substantiated finding articulated the legal basis for its substantiated finding as “AK Child Protection Statute 47.17.290(9) as described in: AS 47.10.011 . . .” As explained in *In re DS*, OAH 21-0016-SAN (Health and Social Services 2021) at 3-5, this phrasing is misleading because AS 47.17.290(9) is not “described in” AS 47.10.011 — it is a definition for “maltreatment” in the AS 47.17 chapter. The defined term “maltreatment” in AS 47.17 appears only in AS 47.17.010, which addresses reporting requirements. Statutory definitions like AS 47.17.290(9), may assist in interpreting statutes, but do not themselves provide an independent basis for liability *See, Cent. Delta Water Agency v. Bureau of Reclamation*, 452 F.3d 1021, 1026 (9th Cir. 2006) (statutory language was “merely a definition” and therefore did not create a duty for the agency and thus plaintiffs failed to demonstrate a failure to satisfy such a duty); Inartful phrasing aside, OCS’s notice quoted the AS 47.10.011(6) physical abuse provision, and AS 47.10.011(8) mental injury provision, putting Mr. N on notice that this statute was the basis for OCS’s finding AS 47.10.011(6) and AS 47.10.011(8) were the focus of OCS’s evidence and argument.

²⁶ AS 47.10.011(8) contains multiple other conditions or conduct that can result in mental injury or substantial risk of mental injury, none are relevant here.

²⁷ *In re X.Y.*, OAH No. 10-0312-DHS (Commissioner of Health & Social Serv. 2011).

occurred.²⁸ To satisfy this burden, OCS may rely on recorded statements and other documents that would ordinarily be excludable hearsay under the Alaska Rules of Evidence so long as it meets the standard of being “evidence of the type on which a reasonable person might rely in the conduct of serious affairs.”²⁹ The rules of evidence used in the judicial system “do not apply to an administrative hearing except as a guide.”³⁰ This means substantiation hearings can, and typically are, conducted without any in-person testimony from child witnesses. Instead, to meet its burden of proof, OCS can rely upon forensic interviews, written statements and affidavits, medical records, counseling records, and photographs. Ultimately, the hearsay status of evidence can be relevant to that inquiry, but it is not dispositive. The question is whether the particular type of evidence, including particular type of hearsay evidence, is nonetheless the kind of evidence on which reasonable people might rely in the conduct of serious affairs.

C. Application of Law to the Findings

1. Substantiation of Physical Abuse Under AS 47.10.011(6)

Putting one’s hands around another person’s neck tight enough to constrict airflow constitutes an act of severe, potentially deadly, physical force. Uninterrupted strangulation can cause death or brain damage. Whatever Mr. N’s intentions in the moment, he used force on his stepson that could have been lethal or life altering.

While a parent has a statutory right to exercise “reasonable corporal discipline” over their children,³¹ force that causes substantial physical harm or creates a substantial risk of such harm crosses the line into physical abuse.³² Pinning E against a wall and strangling him to the point where his ability to breathe was obstructed—causing pain, vision dots, a sore throat, and a lingering voice whisper—is entirely incompatible with reasonable parental discipline.

In some cases, parents accused of physical abuse could rely on self-defense if they reasonably believed force was required to defend themselves or others.³³ A parent cannot rely on

²⁸ *In re K.C.G.*, OAH No. 13-1066-SAN (Commissioner of Health & Social Serv. 2013).

²⁹ 2 AAC 64.290(a)(1).

³⁰ 2 AAC 64.290(b).

³¹ AS 47.05.065(1): “[P]arents have the following rights and responsibilities relating to the care and control of their child while the child is a minor: . . . (B) . . . the right to exercise reasonable corporal discipline.”

³² *In re D.C.*, 596 P.2d 22, 23 (Alaska 1979) (upholding termination of parental rights for mother and father who repeatedly – and unapologetically – spanked their children in a manner that caused extensive bruising). *Burke P. v. DHSS, Office of Children’s Services*, 162 P.3d 1239, 1241 (Alaska 2007) (kicking, hitting, and burning a child with a butane candle lighter “went well beyond corporal discipline”).

³³ In 2013, the Commissioner held that self-defense was not available as a defense in substantiation cases. *In re UZ*, OAH Case No. 12-0422-SAN (Commissioner Health and Social Services 2013), (published at

self-defense if they are the initial aggressor or if the parent's use of force is unreasonable compared to the risk of harm. Even if, for the sake of argument, Mr. N was justified in using *some* force to defend himself, strangulation rises to the level of potentially deadly force. Mr. N cannot rely on self-defense to justify his actions when he responded to limited force with potentially deadly force.

Because Mr. N responded to a localized household dispute with potentially deadly force, he cannot claim self-defense or reasonable discipline. These actions are more than sufficient to support OCS's substantiated finding of substantial physical harm or the substantial risk of substantial physical harm within the meaning of AS 47.10.011(6).

2. *Substantiation of Risk of Mental Injury Under AS 47.10.011(8)*

The standard for substantiating a claim based on mental injury or the risk of mental injury changes fundamentally when the underlying conduct involves domestic violence. The Alaska Supreme Court has strongly emphasized that domestic violence can have a devastating impact on children.³⁴ Given this recognition of the potential impact that domestic violence can have on children, the law allows this tribunal to conclude that exposing a child to the assault against a family member puts that child at risk of mental injury.

Under AS 47.10.011(8), a child is established to be at substantial risk of mental injury when they are exposed to conduct by a household member, as defined in AS 18.66.990, against another household member that constitutes a crime under AS 11.41.100 - 11.41.220. When a child is exposed to a severe domestic violence offense committed by one household member against another, the statutory framework treats the exposure as an independent, standalone path to substantiation. Because this pathway is predicated entirely on the child witnessing a qualifying statutory crime, it requires neither a showing of a continuous "pattern" of behavior nor the clinical opinion of a qualified expert witness. A single, acute act of domestic violence falling within the cited criminal chapters satisfies the threshold.

The established facts demonstrate that Mr. N and E were household members. Mr. N's act of pinning E against a wall and strangling him tight enough to restrict his breathing constitutes

<https://aws.state.ak.us/OAH/Decision/Display?rec=5945>) However, the decision was overruled on appeal by the Superior Court in Case No. 3AN-13-09124 CI, (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5944>).

³⁴ See, e.g., *Martin N. v. State, Dep't of Health & Soc. Servs.*, 79 P.3d 50, 55 (Alaska 2003) and *Borchgrevink v. Borchgrevink*, 941 P.2d 132, 140 (Alaska 1997).

conduct that meets the statutory definitions of Assault in the Second Degree (AS 11.41.210) or Assault in the Third Degree (AS 11.41.220). C directly witnessed this severe physical assault against his twin brother and was close enough physically to intervene to stop the violence.

Because C was directly exposed to a violent household crime categorized under AS 11.41.100 - 11.41.220, the requirements of AS 47.10.011(8)(B)(ii) are fully met. As the direct victim of the strangulation, E was inherently exposed to domestic violence within his household;³⁵ similarly, by witnessing this potentially lethal assault on his sibling, C was equally exposed. Accordingly, the substantiations of mental injury risk for both children are supported by a preponderance of the evidence and are affirmed.

IV. Conclusion

For the reasons set forth above, OCS met its burden of proving that Mr. N's actions constituted maltreatment. Therefore, OCS's finding of substantiated physical injury of E.L and mental injury of E and C. L is AFFIRMED.

DATED: June 22, 2026.

Signed

Robert H. Schmidt
Administrative Law Judge

³⁵ Even if being the victim of domestic violence does not qualify as witnessing domestic violence, E. also saw the entire incident play out: Mr. N yelling at him and holding up the chair. This makes E. a witness of domestic violence. Even if it does not constitute witnessing domestic violence, there are still substantiated findings of physical and mental injury that require a substantiation of abuse and neglect.

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 23rd day of July, 2026.

By: Signed
Name: Robert H. Schmidt
Title: Administrative Law Judge

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