

# Title 112 WAC

## FAMILY AND CHILDREN'S OMBUDSMAN, OFFICE OF THE

### Chapters

112-10 Agency organization.

### Chapter 112-10 WAC

#### AGENCY ORGANIZATION

#### WAC

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**WAC 112-10-010 Purpose.** The office of the family and children's ombudsman is intended to promote public awareness and understanding of family and children's services, identify systems issues, and monitor and ensure compliance with administrative acts, statutes, rules, and policies pertaining to family and children's services, including the placement, supervision, and treatment of children in the state's care, or in state-licensed facilities or residences.

[Statutory Authority: RCW 43.06A.030(8). 00-23-046, § 112-10-010, filed 11/13/00, effective 12/14/00. Statutory Authority: RCW 43.06A.030(6). 00-05-036, § 112-10-010, filed 2/10/00, effective 3/12/00; 97-21-066, § 112-10-010, filed 10/14/97, effective 11/14/97.]

**WAC 112-10-020 Definitions.** For purposes of these rules the following terms have the meanings indicated:

(1) "Administrative Act" means an act, decision recommendation, or omission made by a:

- (a) Government agency or its contracting entity; or
- (b) State-licensed, or state-certified, agency or facility, that affects:

(i) A child who was, is, or may be, in need of state protection due to child abuse or neglect;

(ii) A family who was, or is, under state supervision or receiving state services due to allegations or findings of child abuse or neglect; or

(iii) A child who was, is, or may be in need of services under RCW 13.32A.030;

(c) Provided that, an administrative act does not include a specific act, decision, recommendation, or omission made by:

(i) A judge, commissioner, administrative law judge, hearing examiner, attorney, court-appointed special advocate, guardian ad litem, or parenting investigator in a legal or adjudicative proceeding;

(ii) A law enforcement official in a criminal investigation;

(iii) A member of the legislature or the member's staff; or

(iv) The governor or the governor's staff.

(2) "Child abuse or neglect" means child abuse, neglect, or abandonment, or parental incapacity, as defined in RCW 13.34.030(4) and 26.44.020.

(3) "Committee" means the legislative children's oversight committee.

(4) "Confidential" refers to information that the ombudsman determines is protected by federal or state law from public disclosure or further dissemination.

(5) "Department" or "DSHS" means the department of social and health services.

(6) "Family and children's services" are services provided by or through the department or other government agencies, or state-licensed agencies, to:

(a) Children who are, or may be, at risk of child abuse or neglect, and their families;

(b) Children and families who are the subject of allegations or findings of child abuse or neglect; or

(c) Children who are, or may be, in need of services under chapter 13.32A RCW.

(7) "Investigative records" refers to all records generated by OFCO, confidential records obtained or held by OFCO, or materials obtained by OFCO from complainants or witnesses.

(8) "OFCO" refers to the office of the family and children's ombudsman.

(9) "Ombudsman" refers to the director of the office of family and children's ombudsman.

(10) "Secretary" means the secretary of the department.

[Statutory Authority: RCW 43.06A.030(8). 00-23-046, § 112-10-020, filed 11/13/00, effective 12/14/00. Statutory Authority: RCW 43.06A.030(6). 00-05-036, § 112-10-020, filed 2/10/00, effective 3/12/00; 97-21-066, § 112-10-020, filed 10/14/97, effective 11/14/97.]

**WAC 112-10-030 Authority.** OFCO was created and receives its authority from chapter 43.06A RCW.

[Statutory Authority: RCW 43.06A.030(8). 00-23-046, § 112-10-030, filed 11/13/00, effective 12/14/00. Statutory Authority: RCW 43.06A.030(6). 00-05-036, § 112-10-030, filed 2/10/00, effective 3/12/00; 97-21-066, § 112-10-030, filed 10/14/97, effective 11/14/97.]

**WAC 112-10-040 Duties.** OFCO shall:

(1) Provide information as appropriate on the rights and responsibilities of individuals receiving family and children's services, and on the procedures for providing these services:

(2) Investigate administrative acts alleged to be:

(a) Contrary to law, rule, or policy;

(b) Imposed without an adequate statement of reason; or

(c) Based on irrelevant, immaterial, or erroneous grounds.

(3) Monitor the procedures of the department in carrying out its responsibilities in delivering family and children's services with a view toward appropriate preservation of families and ensuring children's health and safety.

(4) Review periodically the facilities and procedures of state institutions serving children and state licensed facilities or residences.

(5) Recommend changes in the procedures for addressing the needs of families and children.

(6) Submit an annual report to the governor and the committee analyzing the work of OFCO, including recommendations.

[Statutory Authority: RCW 43.06A.030(8), 00-23-046, § 112-10-040, filed 11/13/00, effective 12/14/00. Statutory Authority: RCW 43.06A.030(6), 00-05-036, § 112-10-040, filed 2/10/00, effective 3/12/00; 97-21-066, § 112-10-040, filed 10/14/97, effective 11/14/97.]

**WAC 112-10-050 Duty to report.** When the ombudsman or the ombudsman's staff has reasonable cause to believe that any person has acted in a manner warranting criminal or disciplinary proceedings, he or she shall report the matter, or cause a report to be made, to the appropriate authorities. Reasonable cause means that the ombudsman or the ombudsman's staff has direct knowledge of the action warranting criminal or disciplinary proceedings or has determined through an investigation that the allegations or information provided by another person relating to such actions are credible.

[Statutory Authority: RCW 43.06A.030(8), 00-23-046, § 112-10-050, filed 11/13/00, effective 12/14/00. Statutory Authority: RCW 43.06A.030(6), 00-05-036, § 112-10-050, filed 2/10/00, effective 3/12/00; 97-21-066, § 112-10-050, filed 10/14/97, effective 11/14/97.]

**WAC 112-10-060 Duty to report abuse.** When the ombudsman, ombudsman's staff, or any volunteer, has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

[Statutory Authority: RCW 43.06A.030(6), 00-05-036, § 112-10-060, filed 2/10/00, effective 3/12/00; 97-21-066, § 112-10-060, filed 10/14/97, effective 11/14/97.]

**WAC 112-10-070 Implementation of duties.** OFCO fulfills its duties through the following activities:

- (1) Information and referral;
- (2) Interventions;
- (3) Systemic investigations;
- (4) Administrative investigations;
- (5) Complaint tracking and referral; and
- (6) An annual report.
  - (a) Information and referral.

(i) OFCO responds to requests for information that relates to the rights and responsibilities of a family or child who is receiving family and children's services, and the procedures for providing such services, by providing information directly to the inquiring individual.

(ii) OFCO may respond to requests for information pertaining to legal rights, responsibilities and procedures, but may not provide legal advice.

(iii) OFCO responds to requests for other information by referring the inquiring individual to the appropriate agency.

- (b) Interventions.
  - (i) OFCO may act to prevent or mitigate harm to a child or parent resulting from an administrative act.
  - (ii) OFCO interventions may be initiated when, upon investigation, the ombudsman determines that an administrative act is harming or has placed at risk of harm a particular child or parent. OFCO may not intervene until the ombudsman has made such a determination.
  - (iii) OFCO's investigations may be initiated upon receipt of a complaint or upon its own initiative.
  - (iv) OFCO may investigate only those administrative acts that meet the definition established in WAC 112-10-020(1); provided that OFCO may conduct an investigation to determine whether an alleged administrative act meets the aforementioned definition.
  - (v) OFCO may decline a request to intervene on behalf of a particular child or parent when, upon investigation, the ombudsman determines that the complaint does not meet the criteria or priorities specified in law, rule, or OFCO policy.
  - (vi) OFCO interventions include, but are not limited to, informal contacts with front-line workers and supervisors to express concerns, provide information, and explore other possible responses by the agency or facility. OFCO may also recommend a particular course of action to supervisors, managers, and administrators.

(c) Systemic investigations.

(i) OFCO may investigate potentially chronic and/or system-wide administrative acts that appear to adversely affect children and families. A systemic investigation is intended to produce information that will enable OFCO to identify systemic issues and recommend appropriate changes in law, policy, procedure, or practice.

(ii) OFCO systemic investigations may be initiated when, upon preliminary investigation, the ombudsman determines that a chronic and/or system-wide administrative practice appears to exist that adversely affects children and/or their parents. OFCO may not conduct a systemic investigation unless the ombudsman has made such a determination.

(iii) A preliminary investigation may be initiated upon receipt of a complaint requesting such an investigation or upon the ombudsman's own initiative.

(iv) OFCO may investigate only those chronic and/or system-wide administrative acts that meet the definition in WAC 112-10-020(1), and only those that the ombudsman determines are consistent with the criteria and priorities specified in law, rule, and OFCO policy.

(v) OFCO may decline a request to conduct a systemic investigation if the ombudsman determines that the request is not consistent with the criteria or priorities specified in law, rule, or OFCO policy.

(vi) The findings and recommendations resulting from a systemic investigation shall be published in a report to the governor, the committee, and the affected agency or facility.

(d) Administrative investigations.

(i) OFCO may investigate an administrative act that appears to have been seriously harmful to a child or family and:

- (A) A clear violation of law, policy, or procedure; or
- (B) Clearly unreasonable or inappropriate under the circumstances. An administrative investigation is intended to produce information that will enable OFCO to assess compli-

ance with law, policy, or procedure, and/or the need for new or modified laws, policies, or procedures.

(ii) OFCO administrative investigations may be initiated when, upon preliminary investigation, the ombudsman determines that an administrative act appears to have been harmful to a child or parent, and is:

(A) A clear violation of law, policy, or procedure; or

(B) Clearly unreasonable or inappropriate under the circumstances. OFCO may not conduct an administrative investigation unless the ombudsman has made such a determination.

(iii) A preliminary investigation may be initiated upon receipt of a complaint requesting an investigation or upon the ombudsman's own initiative.

(iv) OFCO may investigate only those administrative acts that meet the definition in WAC 112-10-020(1) and only those that the ombudsman determines are consistent with the criteria and priorities specified in law, rule, and OFCO policy.

(v) OFCO may decline a request to conduct an administrative investigation if the ombudsman determines that the request is not consistent with the criteria or priorities specified in law, rule, or OFCO policy.

(vi) The findings and recommendations resulting from an administrative investigation shall be published in a report to the governor, the committee, and the affected agency or facility.

(e) Complaint tracking and referral.

(i) OFCO shall enter each complaint it receives in an automated data base for the purpose of identifying and reporting complaint trends and patterns.

(ii) OFCO responds to complaints that are not within its jurisdiction, priorities, or resources, by referring the complainant to the governor's office, the legislative hot line, and/or the appropriate agency.

(iii) With regard to complaints that are not within OFCO's jurisdiction, but that raise child health and safety concerns, OFCO may forward the concern directly to the appropriate agency for response.

(7) Annual report. OFCO shall, at a minimum, report annually on:

(a) The number and types of complaints received by OFCO;

(b) OFCO's response to requests for interventions and investigations;

(c) The number and type of OFCO-initiated interventions and investigations, and

(d) The results of OFCO's interventions and investigations.

[Statutory Authority: RCW 43.06A.030(8). 00-23-046, § 112-10-070, filed 11/13/00, effective 12/14/00. Statutory Authority: RCW 43.06A.030(6). 00-05-036, § 112-10-070, filed 2/10/00, effective 3/12/00.]

**WAC 112-10-080 Release of OFCO investigative records generally.** (1) OFCO investigative records are confidential and exempt from disclosure under the Public Disclosure Act, chapter 42.17 RCW.

(2) Confidential records received by OFCO shall be maintained as provided for under the law.

(3) OFCO shall treat all matters under investigation and investigative records as confidential, except so far as disclosures may be necessary to enable the office to perform its duties and to support recommendations resulting from an investigation.

(4) For the purpose of enabling the committee to carry out its OFCO oversight duties, OFCO shall release relevant investigative records to the committee upon request, unless prohibited by law.

[Statutory Authority: RCW 43.06A.030(8). 00-23-046, § 112-10-080, filed 11/13/00, effective 12/14/00. Statutory Authority: RCW 43.06A.030(6). 00-05-036, § 112-10-080, filed 2/10/00, effective 3/12/00.]