



1101 Connecticut Avenue, NW  
Suite 450  
Washington, DC 20036  
[www.dckincare.org](http://www.dckincare.org)

**Testimony Before the Council of the District of Columbia  
Committee on Facilities and Family Services**

**Performance Oversight Hearing  
Office of Ombudsperson for Children  
February 21, 2024**

**Stephanie McClellan  
Deputy Director, DC KinCare Alliance**

Good afternoon, Chairperson Lewis-George and Members of the Committee on Facilities and Family Services. My name is Stephanie McClellan, and I am the Deputy Director of DC KinCare Alliance. Our mission is to support the legal, financial, and related service needs of relative caregivers who step up to raise children in their extended families in times of crisis when the children's parents are not able to care for them due to hospitalization, mental health and substance use disorders, incarceration, death, abuse and neglect, and/or deportation. In the six years since our founding, we have helped over 800 relative caregivers raising more than 1,000 DC children in more than 1,000 legal matters. DC KinCare Alliance is a member of the Fair Budget Coalition, and we support budget priorities and policies that alleviate poverty in the District of Columbia.

Today I am testifying regarding the Office of the Ombudsperson for Children. As you may know, DC KinCare Alliance was one of the original proponents of this Office and we are pleased that the Office has been established and staffed by highly competent and thoughtful professionals. We believe that having accountability and oversight of the DC Child and Family Services Agency by a truly independent body is essential to ensure the safety and well-being of DC's children and families. We are grateful to the Office for their hard work handling constituent complaints, reviewing systemic issues with child welfare, and making recommendations.

We want to provide commentary on the some of the case summaries discussed in the Office's FY 23 Annual Report – specifically, Case Summaries B and C, which are both cases of kinship diversion, also known as hidden foster care. CSFA calls it safety planning or informal family planning arrangements. Kinship diversion occurs when a child has been abused or neglected, and CFSA is involved in planning for the child to live with a caregiver who is not a

parent or legal guardian. We have testified many times about the serious safety concerns and legal issues around this practice and how it oftentimes sets families and children up for failure. These case summaries underscore the problems inherent therein.

### **Case Summary B**

With respect to Case Summary B, the Office explains that six children were diverted to live with relatives after the homicides of both parents. The father died first after he was shot by the 16-year-old child's boyfriend in the home where five children were present, including the 16-year-old's 1-year-old child. Presumably, the children then lived with their mother until her homicide less than a month later. The Report states that an emergency family team meeting (FTM) was held, at which time the children did not enter foster care; rather four were diverted to live with the maternal grandfather in another city and three (including the 16-year-old and her child) were diverted to live with the maternal grandmother. The paternal relatives voiced concerns about the maternal grandmother's mental health status. Thirteen days after the FTM, CFSA closed its case. Less than a month later, the Office received a constituent concern about a screened-out call to the CPS hotline about the maternal grandmother's alleged mental health status and stated unwillingness or inability to care for one of the children.

This case was designated as an Informal Family Planning Arrangement (IFPA), rather than a safety plan. According to CFSA's IFPA Administrative Issuance, an IFPA can occur when the family develops their own plan, CFSA identifies and offers immediate support and services, and no further CFSA involvement is needed.<sup>1</sup> No safety check, background check, child protection register check, or other assessment of the parental or potential caregivers' homes are

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<sup>1</sup> CFSA Administrative Issuance 22-2, Informal Family Planning Arrangements (July 18, 2022), *available at* [https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/AI\\_Informal\\_Family\\_Planning\\_Arrangements\\_Process\\_July2022\\_Final.pdf](https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/AI_Informal_Family_Planning_Arrangements_Process_July2022_Final.pdf).

conducted, nor is there any determination of whether the caregiver has the mental or physical ability to care for the children. Correspondingly, CFSA's Response to Pre-Hearing Question Number 122 provides that, "Since the family makes the decision regarding the care of their children, parental consent is required for all IFPAs. CFSA has made an exception for the need for parental consent in the case of the unexpected death of a parent."<sup>2</sup>

There was no parent to consent to this IFPA because they were both dead. As the DC Council knows, the definition of a "neglected child" does not require fault, just the inability to care for the child.<sup>3</sup> Accordingly, when the children were left without any parent, they were "neglected" children as there was no one in the home to care for them. It is still unclear to DC KinCare Alliance and other child welfare advocates when and why CFSA utilizes an IFPA versus a safety plan to live with relatives, and why in one case there are safety checks done of the parental and caregiver home and in another there is not. Either there is abuse or neglect and the child can remain in their parental home with or without the provision of services, or there is no abuse or neglect and the agency should not be involved with the family. Here, we know there was neglect and the agency was involved in arranging for the children to live somewhere other than their parental home without any legal authority to do so.

Indeed, here where there was no parent, either some other family member and/or CFSA decided where these children should live, neither of which have the legal right to do so. CFSA indicates that they contacted the maternal grandmother "as she was identified as the family's contingency plan in a prior investigation." Such a contingency plan is not a will, power of attorney or standby guardianship designation that could legally transfer parental rights to another

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<sup>2</sup> CFSA FY23 Performance Oversight Pre-Hearing Questions and Responses (Jan. 25, 2024), *available at* <https://lims.dccouncil.gov/Hearings/hearings/253>.

<sup>3</sup> DC Code §16-2301(9)(A).

person. It is just a statement made by the parent during a specific time with respect to a specific issue prior to the current situation, and is not required to be memorialized or signed by the parent.

The Report goes on to detail various issues around lack of support services or follow up for this family and recommends a “kinship care assessment,” which is not defined. In this regard, the Office seems to be recommending that services and supports be provided to families after an IFPA, but CFSA has consistently represented that IFPAs occur when no follow up services are needed. Even if CFSA were to agree that they should provide services in this instance, there was little they could do when a caregiver lives in another jurisdiction as the maternal grandmother did, and it would be unusual for CFSA to assist caregivers to apply for benefits such as TANF, Medicaid, SNAP, housing, and other types of assistance that are run by other DC government agencies and for which someone typically needs legal authority and/or legal documentation to do so. As a result, many kinship families who take in children in these circumstances do not have the wherewithal, knowledge, resources, documents or legal authority to provide for the basic needs of these children.

On a final note, we do not know from the Report whether the mental health needs of the children were met, which would seem particularly relevant after both parents were killed, and many of the children witnessed their father’s murder. Presumably CFSA did not assist with these services because the case was closed shortly after the diversion. Moreover, as we know, no legal rights are bestowed on the caregivers from the IFPA,<sup>4</sup> so it would be difficult if not impossible for the caregivers to obtain medical and mental health care for these children. And even if the caregivers went to court to try to have their legal rights established, it can take months for a court

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<sup>4</sup> CFSA FY23 Performance Oversight Pre-Hearing Questions and Responses, *supra*, Response to Question Number 119.

order to issue. Further, there was no discussion of whether CFSA conducted a domestic violence assessment after the teenager's boyfriend killed the father. Indeed, the father was killed by the boyfriend after the father engaged in an altercation with him about hitting the teenager.

### **Case Summary C**

Case Summary C represents a scenario we have seen many times. It is the situation where a mother leaves her newborn baby in the hospital without completing the required paperwork to name the child. As a result, the child has no official name and, under applicable law, DC Vital Records cannot issue a birth certificate.<sup>5</sup> The hospital calls the CPS hotline because the newborn has been abandoned, and CPS arranges for the child to be diverted to a relative or other caregiver. Since the mother is not present to consent to the arrangement, CPS will divert to someone based on a prior vague "contingency plan," whomever the mother may have listed as an emergency contact on her hospital paperwork, or otherwise. Significantly, CFSA's representation that they only allow an IFPA to occur without parental consent in the case of the death of the parent does not appear to be true in these cases, since there is no parent available to consent here. This raises significant concerns as newborn babies are being handed over to third parties without any definitive consent of a parent and without any determination of whether the child will be safe with that person. Indeed, some of these newborns are particularly vulnerable because they had drugs in their systems at birth and may be going through withdrawal.

Diversion of a newborn who has not been named results in a watershed event for the caregiver because they cannot get any services or supports for a newborn without a birth certificate – no social security number, no Medicaid or medical care, no TANF, no SNAP, no caregiver subsidy, nothing. Under applicable law, the only people with the right to name a child

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<sup>5</sup> DC Code §7-231.25(h).

are the child's parent or an individual who has been granted custody of the child as well as the right to name the child in the court order.<sup>6</sup> These provisions are both locally and federally required, since local jurisdictions cannot allow just anyone to name a child, and all records of births must be accurate for federal reporting to the CDC's National Vital Statistics System.

The Report recommends that CFSA conduct a "comprehensive needs assessment" prior to case closure and a "standard checklist to ensure all areas of need are addressed," which would include such things as medical needs, birth certificates, financial benefits etc. While these recommendations are certainly helpful, they unfortunately would not rectify the situation here since neither CFSA nor the caregiver have the legal authority without court intervention to name the child, get the birth certificate issued, obtain medical care or apply for financial benefits.

The Report notes that CFSA told the caregiver "to contact the court and obtain legal custody of the baby." Separate from concerns about CFSA giving legal advice to caregivers, simply filing for custody would not result in the caregiver being able to obtain the birth certificate. As in many cases we see, the caregiver in this case followed CFSA's instructions to file for custody and was granted custody, but because a custody order does not grant the right to name the child, she still could not obtain the birth certificate. Further, even if a caregiver were to know to ask for the right to name the child in her motion for custody, it can take months to get an order because she may not have standing to file for custody and she will likely have to serve the parent(s) with her complaint and motion for custody and wait for an initial hearing. Judges in custody matters may be uncomfortable granting someone the right to name a child if they do not have the consent of the parent(s) in the court record, especially if there is no evidence that the parent(s) have been served or knows that the caregiver is caring for the child.

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<sup>6</sup> See D.C. Regulations 29-2817.3(b) and 29-1818.3(e).

By contrast, if CFSA had removed the child at the time of the call to the hotline, it would have been required to engage in a diligent search to find the mother and have her complete the paperwork to name the child. If that was not possible, the neglect case would come before a judge within 72 hours, and that judge could authorize naming of the child and issuance of the birth certificate for the child immediately. The caregiver could be licensed as a foster parent for the child, and receive the foster care subsidy to help support the child, and a social worker would be assigned to help the caregiver get appropriate supports and services. This was particularly critical in this case where the child had a birth injury and the caregiver needed to get immediate and continuing medical care for the child.

The Report also identifies another issue with respect to this case. It details a call to the hotline by the hospital during the pregnancy reporting concerns that the mother had no prenatal care, was under the influence of substances, and was hitting her stomach. This raises questions about CFSA's policies regarding involvement with pregnant mothers after a report is made to the hotline of serious mental health or substance abuse impacting their prenatal care, and how we may be able to do better to help these mothers and their unborn babies to have better outcomes.

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Thank you for the opportunity to testify today. I am happy to answer any questions.