



SEN. CRAIG V. HICKMAN, SENATE CHAIR
REP. JESSICA FAY, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. MIKE TIPPING
SEN. RICHARD BENNETT
SEN. JILL C. DUSON
SEN. JEFFREY TIMBERLAKE
REP. AMY ARATA
REP. H. SAWIN MILLETT, JR.
REP. MARK BLIER
REP. ANNE MARIE MASTRACCIO
REP. MARGARET M. O'NEIL

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
November 1, 2023

Call to Order

The Chair, Sen. Hickman, called the Government Oversight Committee to order at 9:30 a.m.

ATTENDANCE

Senators: Sen. Hickman, Sen. Tipping, Sen. Timberlake, Sen. Keim, Sen. Bennett
Absent: Sen. Duson

Representatives: Rep. Fay, Rep. Millett, Rep. O'Neil, Rep. Mastraccio, Rep. Blier, Rep.
Arata

Legislative Staff: Peter Schleck, Director, OPEGA
Sabrina Carey, Secretary, OPEGA

Others:

Introduction of Committee Members

The members of the Committee introduced themselves.

New Business

(To watch this meeting - the recorded Live Stream can be viewed here: <https://legislature.maine.gov/Audio/#220>)

- **Child Protection – Committee Planning Discussion – Additional Work Sessions**

Director Schleck presented a PowerPoint related to the Child Protection work that the Committee has been working on. (A copy of the OPEGA Director's PowerPoint presentation can be found here: <https://legislature.maine.gov/doc/10376>). He explained that he had talked individually with members of the Committee to discuss what topics or things they each wanted to focus on during the Committee conversations around the Child Protective System.

Rep. Fay hoped that by working together and trusting each other the Committee will be able to come up with some recommendations for how to make the system better.

Rep. Mastraccio suggested having members of the court system join the frontline perspectives category along with the Guardians ad Litem.

Director Schleck noted the suggestion and explained that the Guardians ad Litem would be his suggested focus as they are the one person that is supposed to be there at all times advocating for the child and might be the best for understanding if there is something about the process that children need.

Sen. Timberlake asked if the Committee has the ability to talk to case workers and upper management privately in an Executive Session, without the worry of retaliation from the Department (DHHS)?

Director Schleck explained the matters permitted to be discussed within an Executive Session would need to be discussions of information contained in records made, maintained or received by a body or agency that when accessed by the general public is prohibited by statute. He suggested it may be best to wait for clarity and confirmation from the law court about whether the committee can access certain Child Protective documents. He reminded that the Maine Whistleblower Protection Act provisions may apply to anyone who decides to speak to the committee from within the Department. The Director suggested having individuals speak that would not be referencing confidential information and would be talking generally about concerns.

Sen. Hickman asked for clarification that the only reason the Committee would need an Executive Session would be to discuss confidential information.

Director Schleck confirmed yes.

Sen. Keim stated that she thought the Committee needed to hear from case workers. She noted that they are not trained to come to the Committee and talk about real perspectives of their working day without leading back to specific cases. She stated that would be the reason she thinks doing it in an Executive Session would be important so workers can speak freely without worrying about privileged information. She stated that otherwise she did not see a point in having people come unless they no longer work for the department.

Director Schleck responded with sharing other options including multiple reports of information from the Department and suggested that the Child Welfare Ombudsman may also have a perspective on some things. He reminded that in 2019 that OPEGA did a survey of all caseworkers, supervisors and up that could also be a valuable baseline of information.

Sen. Keim asked for clarity that every caseworker was included in that.

Director Schleck confirmed it was an across the board survey that went to everyone.

Sen. Hickman and Rep. Fay both noted that this topic may be able to be its own meeting discussion.

Rep. Fay suggested that any caseworker could share information with OPEGA if they were uncomfortable doing it in person to the Committee. Her suggestion included a similar format to the previous Fire Marshal's Office

survey where folks could discuss, without concern, issues within the work environment or potentially disclose identifying or confidential information.

Director Schleck confirmed that idea could be an option but stated that he would request the Committee make a vote on a process like that to make it an official step at the direction of the Committee. He noted that the survey was helpful to get a quick set of data and then move it back towards next steps.

Sen. Hickman asked if it was possible for OPEGA and maybe legal counsel to prepare a person for public testimony so that they understand what can or cannot be said in public.

Director Schleck answered that he could only counsel caution as he would not be an acting legal representative of any of the witnesses. He reminded that his role would be to get the facts for the Committee and may fundamentally be in conflict with that option. He pointed out that anyone who volunteers to testify in front of the Committee would need to understand what can or cannot be said in public so that person does not run the risk of exposing confidential information – a class E crime.

Sen. Timberlake asked if the Committee and potential caseworker being interviewed were not talking about anything case-specific but maybe more about policy or management implementation, if that changed the perspective of the conversation.

Director Schleck answered that to be authorized to go into an Executive Session, there needs to be a discussion of nonpublic information so that topic of conversation would not fit the authorized Executive Session function.

Sen. Hickman summarized that the Committee would only be able to discuss non-public information with former or present caseworkers in meeting.

Sen. Tipping wondered what exception to Maine's Public Access Laws apply to the conversations between members of the public and OPEGA.

Director Schleck noted that there was a provision in statute that states that any information that is included as part of the OPEGA confidential work papers is exempt from the Freedom of Access of public records.

Sen. Timberlake noted that one of his biggest concerns was figuring out where in the system failed the children. He worried that with people leaving, whether it be resigning, quitting or getting fired, that the Department would ask for more time to implement new decisions. He wanted to find the common denominator of the problems.

Rep. Mastraccio believed that it will be many things that rise to the surface not just one thing or one person. She emphasized wanting improvement and not to be on a decline in terms of how kids are protected. She stated that it should not matter who is in what position because there should be a system that anybody that steps into can follow through the things that policy expects them to do. She did not like the idea of blaming any one person for the problem because there is plenty of blame to share. She wanted to figure out what the problem is and added that whatever way the information is shared will be equally valuable. She was satisfied that there was a good system in place to use OPEGA for those that did not feel comfortable to speak directly to the Committee.

Sen. Timberlake stated that he agreed with Rep. Mastraccio and emphasized wanting to find the common denominator to figure out what the problem is. He worried about the Attorney General's office in the sense that they represent both DHHS and the Committee and stated his concern with them handling both sides of the case. He noted that it was his understanding that the decisions of TPRs (Termination of Parental Rights) come through the AG's office. He wanted to include all of the pieces of the puzzle.

Rep. Fay thought that Sen. Timberlake touched on the judiciary piece and how the system in court impacts children and their permanency. She thought it would be helpful to understand what that part looks like from the perspective of the families and the children's advocates.

Sen. Timberlake asked if it was fact that every executive branch agency is represented by an Assistant Attorney General.

Director Schleck answered that there is a statute that gives very limited circumstances and requires Attorney General approval to get outside or independent counsel. The current state of the law states that the Attorney General is expected to represent any Maine State interest.

Sen. Hickman asked if the Assistant Attorney Generals may give advice to agencies they oversee.

Director Schleck stated that it was fair to say that they will advise on discrete legal questions and there are divisions within the office that lets them split expertise in situations like the Committees current litigation.

Rep. Arata asked that when decisions are made, the case worker makes a recommendation to the supervisor, and the supervisor then moves the recommendation up the lines and through the courts to the judge.

Director Schleck answered there are times at the emergency level where they can wake a judge in the middle of the night on an urgent basis to say they need to take the kid right away. He added that there is an initiation point that does not always involve the approval of the Attorney General representative. He noted that the next step would be to have some kind of preliminary hearing or summary proceeding that would definitely involve the Attorney General.

Rep. Arata asked when looking for data and investigating the whole system, would OPEGA be able to flag instances where there may be a disagreement between caseworker and the AG.

Director Schleck answered that if the Committee gives authorization for him to talk to the frontline workers, there could be times where it may be expressed that there were differing opinions within the Department staff which would then be talked about. He noted that there is no process spelled out in statute that explains the procedure for the Department to explain their reasoning to not file a TPR.

Sen. Hickman asked what the balance is between when the Departments recommendations and the judges' decision don't align.

Director Schleck stated that it was his understanding that the judicial role is to be an independent check on the Department's actions and is designed to keep them accountable and protect the fair and impartial legal interest of the law. He noted that the Child Welfare Ombudsman has data from the courts about the relative rate of approval when the Department seeks a Preliminary Protection Order that shows there is almost no denials of that initial emergency petition.

Sen. Hickman emphasized these conversations should have a narrative that allows the Committee to see all of the places that may need improvement. He wondered if there may be a place for retired judges who may be willing to speak to the Committee about any shortfalls within the court system as its applied by the Department that maybe the Legislature is not aware of as the rulings are confidential.

Director Schleck noted that earlier in the legislative year there was a look at some of the communications with unrepresented parties where a retired judge provided testimony that helped towards clarity.

Rep. Fay summarized that it seems there is another bucket not on the PowerPoint that should be added.

Director Schleck stated that the judges could be included in the section of the frontline perspectives.

Rep. Millett stated that the key issue that occurred to him within the frontline perspectives would be looking back at the warning signs or risks that may be missed due to a system that was decentralized and lacked mandatory reporting and clear documentation and sharing of the information of the risks to which vulnerable children are being exposed to. He believed that bucked needed to have a strong focus on accessing information and documenting it right away. He hoped that there could be some proposals before the Legislature that assures to the maximum extent possible public access and appropriate use of that information in a prevention focus. He thought that getting the perspectives documented, shared at the appropriate level of decision making is a strong key in the Committee's platform.

Sen. Hickman agreed that the frontline perspectives should be where the Committee starts its focus.

Rep. O'Neil stated that she understood that the goal is to have fewer kids experience abuse and neglect which stems from the parents and families in crisis. She emphasized two buckets; preventing the crisis from occurring and what to do once the crisis occurs. She wanted to focus on going upstream to prevent this stuff from happening so fewer families are in crisis and fewer kids experience the trauma at risk in the first place. She noted some resources that could be brought in to talk about the prevention and hoped to find some bipartisan agreement on some really pointed goals.

Sen. Hickman stated that there are all sorts of agencies and organizations that are a safety net for the children and hoped to hear from those folks about how they cooperate or collaborate with each other and the Department and if they already have roadmaps that flag risks.

Rep. Fay noted Sen. Duson's Blue-Ribbon Commission and other groups that are examining some of these issues in their own way and hoped they could check in with those other groups to stay aware of what they are also doing. She did not want to be duplicative but wanted to stay connected.

Rep. Mastraccio asked for clarification that the frontline perspectives are the first concentration of the Committee and will drive the rest of the process of the Committee.

Sen. Hickman answered yes.

Rep. Mastraccio noted that she wanted to include mandated reporters in the frontline perspectives as she has heard dissatisfaction about how things proceed through that process. She wanted to know how mandated reporters are responded to or followed up with.

Sen. Hickman agreed that was a good place to also focus on.

Rep. Arata wanted to examine the role of drugs within these cases. She noted the tools available including drug testing and wondered if there was more information as to why hospitals cannot test for certain drugs and whether it is because there is not enough staff or if the tests are expensive. She wondered why there is so much warning before a parent gets a drug test.

Director Schleck noted that at the previous Public Hearing regarding the Hailey Goding report where the grandfather testified that as a truck driver he is expected within a very short period of time to go and take a drug test. He noted the question of whether the testing is sufficiently timed. He recalled the statute talks about substance affected babies and thought the Committee could maybe consider whether there should be a difference if it is the second or third baby being born in that situation and whether it could create a special category that required heightened observation or intervention.

Sen. Timberlake agreed and clarified that as a Class A driver he will get a phone call that says he has to stop and have a drug test. It allows him two hours to show up and get it done. He shared that he is not allowed to say that he doesn't want to take it and that process should also apply in this context. He added that parents should not have the right to say no to a look at the children and thought that there is too much leniency on whether the state can come in and do an inspection of these kids. He noted he wasn't sure what box that fit in but emphasized that they should not get as many options with their children once they have been found to have children that are at risk.

- **Child Protection – Committee Discussion of DHHS Child Protection Metrics**

Director Schleck reshared the lengthy report from the Department, the Maine Annual Progress and Service Report noting that the Department compares its yearly performance against federal benchmarks. (A copy of the DHHS Document can be found here: <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/Maine%20Annual%20Services%20and%20Programs%20FFY%202024.pdf>). He continued to use his PowerPoint to explain some of the data found within the Department's Report.

Rep. Mastraccio noted that the percentage of cases that adequately measured the risk and safety assessment and successfully managed was only thirty-five percent.

Director Schleck confirmed that information and suggested that should get the Committee's attention. He noted that if you average the last three years it is only at thirty-one percent.

Sen. Keim asked for clarity on that thirty-five percent of cases and whether that was all cases or a sample of cases.

Director Schleck answered that it was a sampling.

Sen. Timberlake asked in relation to the seventy percent listed for timeliness of initiating investigations whether there were also numbers to explain how long it took for the investigation to be completed.

Director Schleck answered that he would follow up and get that answer for Sen. Timberlake.

Rep. Fay asked if there was an understanding of the methodology of the way this data was collected and what metrics were used for each category to arrive at the listed percentages.

Sen. Hickman shared that page fourteen of the Departments Annual Progress and Service Report discusses the percentages.

Rep. Fay clarified that she did not understand how the Department was defining challenges and successes and suggested it may be a conversation for another time.

Director Schleck noted there are some frontline worker survey responses under the narrative of training that could be talked about. He noted that there are charts with vacancy rates as well.

Rep. Fay stated that she would like to have a focused meeting for the data review.

Director Schleck shared page fifty-seven of the Departments Report and noted the initial staff training was rated a strength in 2017. He mentioned that currently it is indicated that about half of the caseworkers are in their first year of social work meaning there is a new group of people who are on the frontlines. He then shared page sixty-six that shows that one hundred fifty workers enrolled in foundations training in 2022 and approximately one hundred fourteen are still employed meaning they have lost forty-one of those people. He suggested that talking with those caseworkers who maybe did not even make it the year would be an important perspective. He noted a small sample of employee survey results that noted that only nine percent came away from the foundations training feeling prepared to do the job.

Rep. Arata asked if she remembered correctly that Director Landry stated at a previous meeting that they changed the foundations training.

Director Schleck answered that yes, she recalled correctly but that he did not want to state incorrectly but this Report is only just the latest data.

Rep. Arata then asked if this was the training they get today.

Director Schleck stated he would get clarity on whether this listed training from 2022 is the same as what they get today.

Sen. Hickman stated that there was a footnote on the page that stated that not all questions in the survey were answered by everyone so the Department would redeploy it in April to collect more responses and inform future training efforts.

Rep. Mastraccio asked if the Department changes training, do they go back and bring back staff who have already done the previous training because there may have been deficiencies. She also noted that it was an eight-hour online thing and thought that might not be the best way to learn something so important. She wondered on the process for hiring supervisors if most of the staff has only been there for a couple years.

Director Schleck mentioned the org charts around staffing. He shared a public Department page that shows the entire structure of the Office of Child and Family Services. He noted various offices that have vacancies and suggested that staffing and training of the staff are vital topics. He then reshared the Department Report and mentioned the structured decision-making tools timeline of implementation and noted that the reporting on doing the job is impacting the structured decision making.

Sen. Hickman stated that having frontline workers tell the Committee their story as a starting point would allow some of the issues outlines to have experience and stories behind them. He thought the narrative can be put behind the data and then discuss them as a Committee.

Rep. Mastraccio agreed and thought the data would mean more to the Committee after hearing from frontline workers.

Motion: To allow Director Schleck/OPEGA to conduct interviews with CPS Staff about their experiences within the Department

(Motioned by Sen. Timberlake, Seconded by Rep. Arata, unanimous yes of those present)

Director's Report

None.

Next GOC meeting date and planning

The next GOC meeting will be on November 8, 2023 at 9:30 AM.

Unfinished Business

None.

Adjourn

The Chair, Sen. Hickman, adjourned the Government Oversight Committee meeting at 12:04 PM on a motion by Sen. Hickman, Second by Rep. Fay.