



SEN. NATHAN LIBBY, SENATE CHAIR
REP. HOLLY STOVER, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. DONNA BAILEY
SEN. RICHARD BENNETT
SEN. SUSAN DESCHAMBAULT
SEN. JEFFREY TIMBERLAKE
REP. H. SAWIN MILLETT, JR.
REP. AMY ARATA
REP. MARK BLIER
REP. JESSICA FAY
REP. MARGARET O'NEIL

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
September 21, 2022

Call to Order

The Chair, Sen. Libby, called the Government Oversight Committee to order at 9:22 a.m.

ATTENDANCE

Senators: Sen. Libby, Sen. Deschambault, Sen. Keim, Sen. Bennett, Sen. Bailey,
Sen. Timberlake

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

Legislative Officers and Staff: Peter Schleck, Director, OPEGA
Scott Farwell, Senior Analyst, OPEGA
Jennifer Henderson, Senior Analyst, OPEGA
Sabrina Carey, Secretary, OPEGA, GOC Clerk

Executive Branch Staff: Justin Andrus, Executive Director,
Maine Commission on Indigent Legal Services
Joshua Tardy, Chair, Maine Commission on Indigent Legal Services
Kirsten Figueroa, Commissioner, DAFS

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: [September 21, 2022 GOC Meeting](#))

- **Meeting Summary**

The July 2022 Meeting Summary was accepted as written.

- **Maine Commission on Indigent Legal Services (MCILS)**
(MCILS Report Back Documents can be found here: <https://legislature.maine.gov/doc/8633>
and here: <https://legislature.maine.gov/doc/8941>)

Sen. Libby invited MCILS Executive Director Justin Andrus to join the committee.

Executive Director Justin Andrus joined the committee and introduced himself. Director Andrus explained that the committee should have two set of documents from him, one that was sent back in June 2022 and an updated document with changes since the June 2022 letter. He explained that the Commission's ability to continue to evolve is impaired by resources, but they have made substantial success in a lot of areas. The new training supervision division has identified that only two hundred and thirty case appointments were facially ineligible, all of which have been addressed. The commission is no longer allowing counsel who are ineligible to serve in cases they shouldn't be working, while also working with counsel to become eligible so that the availability of resources is not limited. There had been about 105 attorneys either join the program or upgrade their participation in the program. He stated that they set up a specific telephone number that has been published and sent to the courts, prosecutors and law enforcement agencies to now have a public facing point of contact for consumers of indigent legal services to contact the staff directly. There have been six hundred and three calls to the line since it went live in February 2022. He explained that the commission is doing a great job ensuring that everyone who is eligible for counsel gets it promptly. Executive Director Andrus stated that the Audit Division reviewed every voucher that was received since the unit went live in December 2021. He stated that twenty-eight thousand vouchers have been reviewed. 4100 vouchers had calls for more information, where the vouchers are going back for the attorney to provide more information to allow the commission to make sure that the data entry is done properly. He stated that in 4100 reviews there have only been 90 instances where there was a data error, so the quality of the data entry by attorney, which was a very serious problem when MCILS first became a GOC focus, has substantially improved.

Executive Director Andrus stated that quality assurance in terms of attorney performance is training and supervision, doing reviews, evaluations, education, and mentorship, and he is doing a more in-depth investigation of where there are problems. He stated that some of those problems overlap as some evaluations become investigations. He stated that the commission is at serious risk of not being able to continue to provide quality representation due to the numbers of rostered attorneys. There are 165 attorneys that are accepting case level representation. He stated that of the 165, 53 would be over the protective caseload standard that he is required by statute to impose. Seven of those attorneys were carrying twenty five percent of all the caseload. Half of those attorneys don't do MCILS work full time, and a quarter do the MCILS work a quarter of the time. He stated that there would need to be in excess of 285 full time attorneys to serve the client load.

Executive Director Andrus added that there is another memo in the packet where it talks about the rate attorneys receive. He stated that the most junior prosecutor and a legal secretary would result in an effective hourly rate of \$132 an hour. He stated that currently, MCILS attorneys are receiving only eighty dollars per hour.

Sen. Libby asked Executive Director Andrus what is going on to address the massive shortage of attorneys within MCILS. How is MCILS recruiting and what does that recruitment process look like?

Executive Director Andrus answered that the commission is working with the Maine Judicial Branch about messaging the members of the Bar that do not participate in the program, and with the Maine Trial Lawyers Association and the Maine State Bar Association to do the same. He stated that they are working at the law school with students to try and encourage graduates to join. He explained that the commission had heard uniformly that coming out of law school today with the student loan debt and the changes in practice making it harder, that none of the students felt they could do that unless there was an institutionalized program. Those that are interested in doing public defense work are going to other states. He also answered that he works with lawyers to try and help them moderate their caseloads when they feel they cannot do as much and need to scale back.

Sen. Libby stated that he would have expected that when the increase in hourly rate for the attorneys went into effect in July 2022 that the counsel availability would stabilize, which has not happened. He stated that he understood that the negotiated rate was less than what was asked for. He asked Executive Director Andrus how much the commission was asking for attorneys to receive.

Executive Director Andrus answered that it started out asking for \$100 an hour.

Sen. Libby summarized that the commission was at \$60 an hour and were asking \$100 an hour. Executive Director Andrus answered yes. Sen. Libby then asked for confirmation that the new number the commission is requesting is \$120. Executive Director Andrus answered that they are now requesting \$150 an hour.

Sen. Bailey asked if Executive Director Andrus did exit surveys with attorneys who leave the rosters, and if so, what are the surveys showing. If the commission does not, why not?

Director Andrus stated that the commission does not do formal exit surveys but that they could start. He added that they often have an indication from the attorney of why they are leaving. He explained that they primarily hear that people are leaving because they feel overburdened, the caseloads are too high and the practice environment isn't working for them. He stated that they do not hear frequently that it was the rate of pay. He nevertheless stated that he believed that the rate is the solution to the workload problems as it allows support staff as a force multiplier for the attorney and it makes a more reasonable workload and more people are more likely to be willing to do it which will spread the workload more generally.

Rep. Stover suggested that Executive Director Andrus develop some kind of exit survey so that when the Legislature is trying to find solutions, they are actually addressing the problems. She asked if Executive Director Andrus could give the committee a short overview of the MCILS Supplemental Budget request.

Executive Director Andrus stated that the Supplemental Budget request is based on the projected cost for attorney's fees. That amount was calculated as the difference between what it would cost at \$80 an hour and what it would cost at \$150 an hour.

Rep. Stover asked if the budget goes through, if Executive Director Andrus believed that would attract more attorneys for hire.

Director Andrus stated yes, he hopes that is the case.

Sen. Timberlake asked what the average law student that passes the Bar is expected to make if they go to work at a normal law firm right out of school.

Director Andrus answered that he does not have that information as a calculated number. He stated that the last associate he hired cost him \$65,000 a year in salary, which was in 2018 or 2019. He added that demands have changed and even some of the firms are struggling to hire.

Sen. Timberlake stated that he did not think that the \$150 an hour was an over-ask, as lawyers are in demand right now, and recalled his nephew's boss telling Sen. Timberlake about the same issues within the law firm his nephew works at. Sen. Timberlake asked if Executive Director Andrus had seen that private firms were charging over \$200 an hour, and if that was part of what is contributing to the rate issue.

Executive Director Andrus stated that a new attorney's salary is about a third of the billing rate turned into a wage.

Rep. Fay asked what the difference is between billable hours and the rate and what the average age of the attorneys in the program are and if there is a comparative number for attorneys statewide.

Director Andrus answered that he cannot tell how old the average attorney is statewide, but the average attorney age in the program is a fifty-year-old male. He stated that when getting ready to decide pay, they looked at the responses to the attorney surveys, which showed that somewhere around forty percent of the attorneys do not have health insurance. He stated that the older attorneys don't have student loans whereas the younger attorneys are most likely paying thousands of dollars a month in student loan payments or are making, on average, payments that don't touch the principle or satisfy the interest. He stated that they also looked at what a prosecutor and staff cost with their benefits and time off. If it is compared, the state prosecutors are getting thirteen holidays, sick time, vacation time, personal days, all of which the MCILS attorneys do not receive.

Sen. Bailey asked about when the commission is talking with the law school, if they still have the ability for the students to practice criminal defense in school before graduating as they do practice child protective work.

Executive Director Andrus answered that it happened more in the past than currently. He shared that his first criminal cases were actually at the clinic. He stated that the clinic does not provide a continuity of counsel over the duration of a case so they often do cases like juvenile lawyer of the day directly through the court.

Sen. Bailey asked for the broken-down information in terms of criminal defense versus child protective cases.

Executive Director Andrus stated he would get that information to the committee.

Sen. Bailey stated that she had heard that attorneys who do MCILS cases are not eligible for the public service loan forgiveness and asked if that information was accurate.

Executive Director Andrus stated that it is not Federal statute that is the problem, it is the Federal regulation that is the problem. He shared that there is an effort to undertake rulemaking by his counterpart in Massachusetts.

Sen. Bailey asked if there was anything on the State Level that could be done.

Executive Director Andrus answered yes. In the upcoming budget proposal is a proposed loan abatement program that he would suggest doing if the Federal regulations do not get changed.

Sen. Libby clarified that there is a regulation in the Federal public service loan forgiveness program that prevents an attorney working for a private firm, engaging in this kind of defense work, from getting loan forgiveness.

Director Andrus stated that he would explain it slightly differently, in that the regulation appears to require any person or professional looking for public service loan forgiveness to work for the state or a qualifying non-profit.

Rep. Arata stated that in the past surveys from attorneys who work in indigent legal services, it was stated that there was a lack of respect for their time by the courts. She asked if that issue had been addressed.

Executive Director Andrus stated that he believed it had gotten better and that he had talked with the courts who are trying to make the scheduling happen, but travel time takes away from the available time which makes it hard to coordinate.

Rep. Arata noted that the state just approved and gave the courts a lot of money for technology improvements and she would like to see a return on that investment.

Director Andrus stated that he believed it could already be seen as a good return on investment as he believed the situation would be way worse if Zoom had not been made available and without the opportunity of remote filing. He stated that there was the elimination of email filing at the end of the worst part of COVID, but the court has piloted and rolled out a Share File-based product to allow remote filing.

Rep. Arata stated that it would be interesting to see how much of the budget has gone to travel time. She also added that the attorneys answered that there was a lack of respect and protection for the attorneys from difficult clients. She asked if that had been addressed.

Executive Director Andrus stated that the commission tries to ensure that an attorney's personal information is not available to clients, but sometimes the attorney may accidentally share that. He stated that when they learn of an instance where there is a document that has the potential to reveal that sort of information, they pull the documents, redact them and fix them. He stated that they try to support attorneys in getting out of cases where they feel the client relationship has reached a point that it is going to be a conflict problem or impair their ability to do the work. He stated that he has seen judges allowing attorneys to withdraw when they allege that the attorney relationship has gotten abusive.

Sen. Keim stated that she thought it might be a good idea to send a letter to Maine's Congressional Delegation to let them know that the student loan forgiveness issue needs to be addressed. She also asked if Executive Director Andrus knew how soon the five new positions would be posted and filled.

Executive Director Andrus stated that he had spoken with the representative in human resources that morning and discovered the positions could be posted at any time. He explained that there were five openings across three different position announcements and they would be posted in the next day or two.

Sen. Keim asked how the attorney pay rates can be raised before sometime in January, and suggested a possible emergency bill that goes into effect immediately, or how he saw the shortage of attorneys playing out between September 2022 and January 2023.

Executive Director Andrus answered that as a Legislature, they could come back and do this as an emergency, because he cannot fix this issue with any changes of philosophy of management, and no degree of oversight can produce the bodies needed. He stated that he did not know if an emergency bill in January would be able to bring people back to take more cases.

Sen. Keim asked if there were current cases that did not have an attorney.

Executive Director Andrus answered that he did not know of any current cases that were not staffed. He shared that in the last year and a half that he had been coming to the committee meetings, he kept stating that MCILS was still getting it done and that is not fair, as it is really that the attorneys are getting it done.

Sen. Keim asked if Director Andrus has discussed this with the Governor's office to see if there is something she could do in the interim.

Executive Director Andrus stated he had not contacted the Governor's office.

Sen. Keim asked how the shortage was impacting child protective cases.

Executive Director Andrus stated that it has been hard to staff and that they have lost a few attorneys recently. He stated that he was surprised that they are not getting more calls from courthouse clerks trying to find child protective attorneys, so they still seem to be covering cases.

Sen. Keim asked about the timeliness of a case, and a client not being able to get hold of their attorney due to them being too busy.

Executive Director Andrus stated that that was the issue with spreading the cases across the still available attorneys, as they are starting to see an increase in the number of client complaints that come through the courts. He stated that the rate at which people are complaining that lawyers are not available to them does seem to be increasing. He shared that child protective cases in particular are very involved and take up a lot of hours.

Sen. Keim stated that it speaks to the lawyer shortage in a different way. Yes, the client has an attorney, but whether that attorney actually has the capacity to take care of the client, is different. She also asked about the issue of determining partial indigency and whether there were screener openings for that or not.

Executive Director Andrus answered that they do not currently have any openings and are fully staffed in that way. He stated that he did not have information about how often the court is screening determinations of indigency. Historically, seventy percent of cases are fully indigent, twenty percent are partially indigent and ten percent who are screened are found ineligible. He stated that over the last eighteen months there had been a lot of vacancies in the court's screener positions.

Sen. Keim asked if MCILS Chair Tardy had any comment about conversations with the Governor's Office on the current situation.

Sen. Libby invited Chair Tardy into the conversation and invited him to introduce himself.

MCILS Chair Joshua Tardy introduced himself. He responded to Sen. Keim by stating that he has spoken with Jerry Reid in the Governor's Office and that the Governor is aware of the need for a supplemental appropriation and the urgency of it. He shared that they are talking about recruitment in a coordinated effort consistent with what Executive Director Andrus is engaging in. He stated that they believe that the rate is not a driving force, but it is a significant barrier for attorneys coming back or onboarding in the first place. He stated that he agreed a special session is something that the Legislature should seriously consider because the situation between now (September) and January is dire and needs to be acted upon.

Sen. Keim asked if they find a solution or remedy with the Governor's office, that they share that back with the committee.

Sen. Timberlake stated that part of the problem is that the courts are not running cases anywhere near their capacity before the pandemic and asked how that can be addressed. He stated that it is not just indigent legal cases that are taking forever to get through the court system.

Chair Tardy answered that the system is very burdened and challenged. He stated that he and Executive Director Andrus had met with the Chief Justice and the Trial Chiefs to work collaboratively in a way to help move the cases along that is lawyer friendly and sensible.

Sen. Timberlake asked if that was part of the problem that the courts have slowed down.

Chair Tardy answered that the backlog and the slowing down related to the pandemic is absolutely a contributing factor to the issues.

Sen. Libby thanked Executive Director Andrus and Chair Tardy for joining them and opened the discussion to further actions by the GOC.

Sen. Keim stated that the GOC had done their job with what it was tasked with when MCILS became a GOC matter. She stated that there were still Constitutional issues, but that those matters could reside with the Judiciary Committee. She thought there needs to still be oversight but that it could reside with the Judiciary Committee. She deferred to Sen. Bailey's opinion.

Sen. Bailey thanked Sen. Keim and stated she agreed. She remarked that MCILS had made a lot of progress and a lot of changes have been made. Sen. Bailey stated that did not think matters need to reside with the GOC any longer.

Motion: Send letter to the Congressional Delegation regarding MCILS and the Federal regulations on public service student loan forgiveness that are limiting access for Indigent Legal Defense Lawyers, and allow the OPEGA Staff to work with the commission staff to draft the letter, and ask the Judiciary Committee Chairs if they would like to join on the letter.

(Motion by Sen. Keim, Second by Sen. Timberlake, Unanimous of those present).

Motion: Send a letter to the Legislature (Presiding Officers and Members), summarizing the GOC's findings around the current issues that MCILS faces, specifically around the roster and funding

(Motion by Sen. Bennett, second by Sen. Keim, Unanimous of those present)

Sen. Libby stated he appreciated all the reports and information that the MCILS staff had provided and the substantial progress that had been made.

Sen. Keim thanked the MCILS staff for working to resolves the issues and echoed that she appreciated the MCILS staff and their work.

- **WorkDay Maine - Department of Administrative and Financial Services (DAFS)**

Sen. Libby invited the Commissioner of DAFS to join the committee.

Commissioner Kirsten Figueroa joined the committee and introduced herself. She thanked the GOC for inviting DAFS to provide an update on the state's progress on its replacement Human Resource Management System (HRMS).

(Letter read and submitted by DAFS can be found here: <https://legislature.maine.gov/doc/9047>)

Rep. Arata asked Commissioner Figueroa if the prior contract in dispute had been resolved and if she was able to publicly tell them how it was resolved.

Commissioner Figueroa stated that she had been advised by their counsel to limit their comments.

Rep. Arata stated that former Representative Justin Fecteau had reported some other allegations and asked if those had been addressed.

Commissioner Figueroa answered that yes, they took the matter very seriously. She explained that Rep. Fecteau, as part of a Supplemental Budget vote in the Joint Standing Committee on Appropriations and Financial Affairs on March 4, 2021, alleged that there had been "sexual misconduct" on the WorkDay HRMS project. Commissioner Figueroa stated that this public announcement was the first time that she had been made aware of the alleged impropriety. The Administration and DAFS takes the allegations seriously, and after learning about the public announcement, there was a full and complete independent investigation. The investigation was coordinated by the Office of the Attorney General in concert with the State Director of Human Resources and the Office of the Governor. The investigation was conducted by independent third-party legal counsel contracted by the Office of the Attorney General. The investigation was completed. Any employee action that led to the accusations were deemed to have not met the legal definition of hostile workplace and or harassment of any kind. She stated the State takes all concerns of this nature seriously, holds employees to a higher standard than required by law and takes appropriate action as warranted. She stated that they recognize the dignity of each individual and the rights of individuals to work in an environment that is free of intimidation and harassment. HR matters of this gravity are handled with the utmost professionalism and in confidence and under the full bounds of labor law, the HR employment policies, and any union agreement.

Sen. Bennett stated that he did not find it adequate or sufficient for DAFS to not disclose anything at all about the resolution of the contract dispute with WorkDay. He explained that it was a huge contract that had allegations on both sides. He stated that the Committee and the people of Maine deserve a better understanding of the resolution. He asked if Commissioner Figueroa could shed whatever light she could, particularly about the extent of any monetary payments, and to whom.

Commissioner Figueroa stated that they had been advised by counsel that the agreement is private and to comment as little as she could.

Sen. Bennett stated that there should be nothing private about the contract as it was with a public agency. He stated that he did not care what her attorneys advised. He stated he was asking for information and reiterated that the people of Maine and the Legislature have a right to know. He asked if it was the Commissioner's conclusion that this is a private matter?

Commissioner Figueroa asked for a few minutes to call her counsel and see if they can come down and help her with how to proceed.

Sen. Libby confirmed. The committee went into recess

Recess

The Government Oversight Committee recessed at 10:40 a.m. on the motion of Chair Libby.

Reconvene

Chair Libby reconvened the meeting at 10:50 a.m.

Sen. Libby brought Commissioner Figueroa back into the conversation and asked if she was going to be joined by counsel.

Commissioner Figueroa answered no. She stated that they had been asked to limit their comments. She explained that the contract is public but the settlement is not. She was not able to reach her counsel.

Sen. Libby stated that the GOC had a fair amount left to do and suggested to Table the matter unless there were any pending questions or comments for the Commissioner.

Sen. Bennett stated that he found it appalling and thought that slowly dragging this to another month was not acceptable. He suggested maybe waiting to see if later in the meeting DAFS could be forthcoming, but if not, he suggested the Committee demand the information.

Sen. Timberlake stated that he agreed with Sen. Bennett in that he would hate to see it Tabled as the Committee is running out of time with this Session. He thought it was important to discuss now. He stated that it doesn't make sense that the public doesn't get to hear the information.

Sen. Bailey asked if the Commissioner knew why her counsel was unavailable.

Commissioner Figueroa stated that she did not get the detail, but that her counsel was not in the office and she did not pick up her phone. She stated that they will try again. She explained that DAFS reached an agreement with WorkDay whereby the state will continue to use the WorkDay system, but use a different vendor for system implementation, and is moving forward, accordingly.

Sen. Libby recalled the matter had been Tabled pending the negotiation DAFS was engaged in, to provide DAFS and the AG's Office time and space to negotiate a settlement. He asked the Commissioner to make every effort to get in touch with counsel so that the Committee can have a more robust discussion later in the meeting.

Sen. Deschambault stated that the letter received was easy to read and easy to understand and thanked the Commissioner.

Rep. Fay recalled the Commissioner mentioning the complete project calendar and reengagement kickoff. She asked if there was a sense of a timeline on that and what that would look like. She also asked if there was an end date goal.

Commissioner Figueroa answered that Accenture has had all the information that had been gathered and all the work that had been done throughout the RFP and the contract negotiations, so they are not starting right from zero. She explained that they will review and develop a more filled in calendar and that the Accenture contract has a 17-month timeline. She stated that they will do the first phase and evaluate and fill the project calendar in with that 17-month timeframe in mind.

Sen. Libby thanked the Commissioner for her time and then asked OPEGA Director Peter Schleck to join the conversation.

Sen. Libby asked Director Schleck if OPEGA would be able to acquire a confidential settlement agreement with a contractor and conduct an analysis.

Director Schleck answered that he would need to carefully review it but OPEGA is built and has a specific statute for the process by which OPEGA can receive information while subject to the same restrictions that the agency would be under.

- **Annual Tax Expenditure Categorization and Schedule**

Director Schleck asked Jen Henderson, a Senior Analyst in OPEGA, could join him to help answer questions. Director Schleck explained that there is an annual process by which OPEGA assists the Committee in doing a Categorization of the Tax Expenditures that were enacted, eliminated or modified during the previous legislative session. He explained that they are categorized into 3 categories: A., Full Review, B., Expedited Review, and C., No Review. Director Schleck explained that the schedules needed to be approved to send to the Taxation Committee as part of the statutory consultation process, and will come back to the GOC only if the Taxation Committee were somehow to have some strong feelings or objections to the way they have been listed in the charts.

Director Schleck walked the committee through the document and quickly summarized the process again. (Document can be found here: <https://legislature.maine.gov/doc/8938>)

Motion: Send the Tax Expenditure Review Schedule and Categorization to the Taxation Committee for approval, and upon approval, the GOC will also consider it approved and will move forward with the schedule (Motion by Sen. Bailey, Second by Sen. Bennett, Unanimous of those present)

• Child Protective Services

Sen. Libby asked Director Schleck to review some of the materials.

Director Schleck stated that at the last GOC meeting in July 2022, the Committee voted to authorize OPEGA to work on the phase three (review), which focuses on Reunification. He explained that they are doing a systemic review of that with an eye towards understanding risk in the system and how those functions and processes are operating.

Director Schleck explained that there had been discussion on a potential phase four review of CPS. He reminded that the work would be delivered to a new committee as will phase three. He shared the potential options for a phase four review: foster parents supports, agency staffing, and availability of services, which are all areas that have fertile ground for a review.

Director Schleck suggested that OPEGA, if the committee decided, could lead a review that goes into the process of what the involvement of the child welfare agency was in the lives of the children from the beginning to their unfortunate end. He shared a description of what OPEGA did last time in the case of the two children in 2018. He suggested that OPEGA could be working on it, as they had already gotten complete commitment from the agency that there is no objection to OPEGA going directly into those records. He stated that the timing of this review could mesh with the court cases that are pending. Director Schleck reminded that as the court cases conclude, there is a statutory authority for the agency to share publicly more information on the child deaths.

Sen. Libby explained that is one scenario, but another is where the committee discusses a subpoena of records because the department responded negatively to the letter requesting the records. He asked if members had questions before he motions to enter an Executive Session to discuss subpoena options with the Committee's legal counsel.

Rep. Arata asked if the two scenarios are mutually exclusive? She asked if the Committee could do both options. Director Schleck confirmed they could do both.

Sen. Bailey asked if Director Schleck could explain the process of the review of the two children that had died in 2018.

Director Schleck explained the methodology that OPEGA took in 2018 which involved primarily looking to the DHHS records. He explained that they would also contact other types of agencies as needed, social services, law enforcement and catalog a list of everyone referenced in the records that were involved in any way with the

children of the families, a chronology of key events and communications occurring in the case, a list of potential areas of concerns, breakdowns, gaps, challenges, or barriers in the child protective system. He reminded that when presenting a report OPEGA still cannot deliver a non-public report, which means that its public product needs to be consistent with all the confidentiality provisions.

Sen. Timberlake stated that he had said this should happen back in January and they still have no answers. He stated that he wanted to know who at DHHS is responsible for letting this happen and what has been done to make sure this doesn't happen again. He asked Director Schleck to confirm that OPEGA had not received the records of the four children yet.

Director Schleck answered that OPEGA has some summaries of the cases but does not have the full case files.

Sen. Timberlake stated that he thought this had been intentionally pushed back and he did not think it was fair to the people of the State of Maine, nor the four children, that they did not know why or how this happened at the Office of Child and Family Services.

Sen. Deschambault stated that she was unaware about the 2018 report. She asked for clarification that OPEGA would look at the key events and will present a similar review with the four cases.

Director Schleck answered that yes, they would endeavor to do what was done before, but also seek to expand on that. He explained that if the court cases are resolved before OPEGA finishes the review, there is an additional opportunity in the statute to be much more specific in the public findings.

Sen. Deschambault stated that OPEGA did that four years ago, but are now doing it again and using the same methodology. She stated that she had reviewed these sorts of reports before, explaining that there would always be a control group, and another random group. She asked if DHHS had done anything different in the year and a half since the children died. She also asked if it would make sense to do a random sampling of the children who have been in custody for the past year.

Director Schleck answered that would be a logical mechanism that could be done. He stated they would catalog and identify any systemic issues in those cases and then pull the sample to compare.

Rep. Stover asked for a timeline of what the review of records and summaries would look like?

Director Schleck reminded the committee that when OPEGA does a report, they are under obligations to give the agency the opportunity to comment and review it. He stated this report would be delivered to the new committee.

Sen. Bennett recalled that the committee had asked for the case files to be delivered to OPEGA two months ago, but noted that Director Schleck stated they had not received them, but the department is not opposed to giving OPEGA the files.

Director Schleck explained that the committee had requested direct access to the files in an Executive Session.

Sen. Bennett asked if the GOC had asked for OPEGA to be given those casefiles.

Director Schleck stated that was not his understanding.

Sen. Libby clarified that on August 9, 2022, the GOC transmitted a letter requesting the case files to be delivered to the committee. The department replied, two weeks later, stating they would deliver the case files to OPEGA but not to the committee.

Sen. Bennett asked if the department had done that yet.

Sen. Libby stated that he did not know if the GOC letter specified that to do the other if one doesn't happen.

Sen. Timberlake stated that he had also been under the impression that the department had already given the files to OPEGA.

Sen. Keim asked to clarify the timeline of when the report would come before the next committee.

Director Schleck responded that it would be in January or February.

Sen. Libby asked if the committee was ready to take the conversation to the discussion with counsel. He stated that the nature of the conversation is unique and requires the committee to go into Executive Session, which is authorized by law.

Motion: The committee will proceed to room 202 for the Executive Session, along with the OPEGA Director and the committee's attorney in order to confer effectively with our legal counsel concerning potential legal remedies in retaliation to the Child Protective case files and their access that is at issue here. It is necessary to consult with counsel in Executive Session. This is permitted under § 405(6)(E) of Title 1, Maine Revised Statutes. So that the committee is not placed at a substantial disadvantage concerning legal remedies and strategies. All are advised that the context of the discussion in Executive Session must remain non-public and that the scope of the Executive Session will expressly be limited to this topic: Remedies regarding access to Child Protective case files.

(Motion by Sen. Libby, Seconded by Rep. Stover, Unanimous of those present)

Recess

The Government Oversight Committee recessed at 11:34 a.m. to go into an Executive Session.

Reconvened

The Government Oversight Committee reconvened at 1:15 p.m.

Sen. Libby stated that the committee had concluded the Executive Session with legal counsel. He suggested a motion would be in order to direct OPEGA to conduct a rapid review of the four child death cases that the committee has been concerned about and to report back to the next GOC as soon as practical. The Rapid Review would include a scope of work as follows: reviewing the list of all entities or individuals referenced in records that appear to have any knowledge or situations or interactions with children of families, a chronology of key events and communication occurring in the cases and a list of potential areas of concern, breakdown, gaps, challenges, or barriers in the Child Protective System. The second part would include a random audit of casefiles going back into the last 18 months to ensure adequacy of systems and safety of children in DHHS, OCFS custody or concern.

Sen. Bailey asked if Director Schleck would like the committee to give OPEGA a number of random sample cases to look at.

Director Schleck asked for some discretion on that to figure out what an appropriate sample would be.

Sen. Timberlake asked when OPEGA would be starting the rapid review.

Director Schleck answered that after a vote, he would leave and be requesting that records be sent from the department to OPEGA.

Motion: conduct OPEGA to do a Rapid Review of the 4 CPS Casefiles - as Sen. Libby described – including the random sample of files for comparison

(Motion by Rep. Stover, Second by Rep. Arata, Unanimous of those present)

Sen. Keim stated that she feels pushed to doing something outside of business as usual. She recalled that the earliest that the committee could see records from the department in a public manner could be anywhere from the end of October, and that is just the first trial. She stated that even after the cases are tried there still remains confidentiality of records, and the timeliness is questionable. She was concerned about setting a precedent that when the GOC requests something and subpoena records, the agency resists. She suggested that they should push forward and seek a court resolution.

Sen. Libby stated that another way to think about it is that the committee has done a fair amount of work to uncover some serious deficiencies within OCFS that range from lack in training, high caseloads, poor pay, burnout, poor communication with educators and medical professionals, issues of details falling through the cracks of the systems for tracking all the information. He stated that there had already been a substantive suite of legislation in the last session that included funding to address a lot of those issues. He reminded the committee that the role of the GOC is to task OPEGA to do high level analysis, to get records and report back those findings to a group of lawmakers who will take that information and try and enact policy changes. He stated that he did not believe that the statute provides for the confidential records to be turned over to the committee members. That is not consistent with how he understands the committee to work over the last several years he has served on the GOC. He stated that if the GOC issues a subpoena he feels that it will not be answered and that the issue may go to the courts. The legislature has the ability to change the statute to give the GOC access to confidential records. Sen. Libby stated that he would be opposing the motion.

Sen. Timberlake stated that if the committee wins, at some point they would get to sit down with the original records. He suggested that OPEGA would have gone through the records and may be able to say where to look and what there is to see. He suggested that at the end if the courts rule that the GOC cannot see the documents, then maybe next legislative session they can write a law that would give the GOC authority. He stated that he would push for the committee to meet in October and have the meeting. He stated that the people of the State of Maine expect the committee to do this and that he will be supporting the motion.

Sen. Deschambault stated that she agrees with Sen. Libby but that she will be going with what she had heard from the public.

Motion: to Subpoena the DHHS//CPS records, the casefiles of the 4 children (previously requested and denied) fatalities for the Government Oversight Committee to review in an Executive Session on October 19, 2022

(Motion by Sen. Keim, Second by Sen. Bennett, 10 yes, 1 no)

Next GOC meeting date and planning

The next Government Oversight meeting is scheduled for October 19, 2022 at 9:00 AM.

Unfinished Business

Sen. Libby rounded the conversation back to the WorkDay conversation and stated that his understanding is that if the GOC votes to request the contract, the settlement agreement, that the request will be granted.

Rep. Arata asked if the settlement agreement would be available to the public or if it would only be for the GOC's review.

Sen. Libby stated that once it is in the committee's possession, it is a public record.

Motion: request the settlement agreement from DAFS about Work Day Maine (motion by Sen. Bennett, second by Sen. Bailey, unanimous of those present)

Director's Report

Director Schleck stated that OPEGA continues to work in the third phase of the Child Protection systemic review focused around reunification and are making good progress. He stated that the office is also making good progress in the Tax Expenditure Review concerning the incentives for Visual Media Productions.

Adjourn

The Chair, Sen. Libby, adjourned the Government Oversight Committee meeting at 1:36 PM on a motion by Sen. Timberlake, Second by Rep. Blier.

Reconvened

Sen. Libby reconvened the committee at 1:37 PM to continue the committee's discussion with the DAFS Commissioner Kirsten Figueroa. He explained that she had now disseminated a document related to the WorkDay issues. The GOC had received a copy of the confidential settlement and release agreement between the state of Maine and Workday, Inc. He asked Commissioner Figueroa if she had any remarks to make about the document.

Commissioner Figueroa thanked the committee for the additional time for further consultation with the Attorney General's Office. She explained that the State is looking to move forward with the implementation of its new HRMS. Part of moving forward was finalizing the settlement agreement with WorkDay Professional Services. She stated that she had been trying to honor the agreement. Commissioner Figueroa explained that with the time, the attorney was able to review the agreement and the OPEGA document process and agreed that DAFS could meet the request, and shared the document.

(Document can be viewed here: <https://legislature.maine.gov/doc/9046>)

Sen. Bennett asked about a letter that DAFS had sent to WorkDay, with a demand of \$22 million and asked if Commissioner Figueroa could comment on the amount of money that is represented in the settlement. Commissioner Figueroa answered that there were two contracts with WorkDay. One was with WorkDay Professional Services for the implementation, which totaled \$9.2 million. DAFS paid \$7.7 million of this amount. As settlement, DAFS received the cash payment in item number two of the agreement, as well as a waiver of the remainder owed, which totals \$4.1 million, which represents approximately fifty four percent of the contracted amount for implementation. In other words, 54% percent of the contract price for implementation was waived by the vendor or returned in cash. Second is a contract for the SAS licensing in an amount of \$7.5 million, whereby DAFS has paid out \$5.4 million and item number three of the settlement agreement is a waiver of \$2.1 million, which represents twenty eight percent (28%) of that contract. The original letter that was written to WorkDay encompassed all of the costs of the program, including implementation, licensing, the maintenance and ongoing costs related to our legacy systems, our contract staff. It rolled all the costs in as a starting place for a letter.

Sen. Bennett asked about the original 22 million that was cited, and if it included the cost that the state was bearing, on its own, for the implementation and for dealing with this new contract and the inconveniences and inefficiencies and real money being paid out to people to do work which was not effectively getting the job done because of WorkDay.

Commissioner Figueroa answered that the original amount in that letter encompassed all of the expenses of the existing HRMS project and the contracts that were had with WorkDay Professional Services.

Sen. Timberlake asked for the total number that was actually paid out to WorkDay.

Commissioner Figueroa stated that it was the total of \$9.2 million dollars. She stated that if the WorkDay product can help get through an evaluation of the more complex things, then there is enough funding. If they have to buy something to add on to help DAFS, then they may have to come back to the agreement.

Sen Libby thanked Commissioner Figueroa for coming back and for attending the committee for a long period of time.

The Chair, Sen. Libby, adjourned the Government Oversight Committee meeting at 1:36 PM on a motion by Sen. Bennett, Second by Rep. Stover.