

Mr. Chairman, members of the Committee, I am Dede McCrary from Hobbs. For 23 years I have been a member of the Citizen Review Board (CRB) and have reviewed hundreds of cases of children in custody of Children, Youth and Families Department (CYFD). During that time I served as Chairperson of the State Advisory Committee (SAC), Chairperson of my local board, and am currently a member of the State Advisory Committee (SAC).

My primary reason for addressing you is to stress that 80% of our” foster children are currently being systematically denied their statutory right to an independent Citizen Review hearing and subsequent report to the court.

I was trained that the original CRB legislation established a guarantee for children in custody of the Human Services Department (now CYFD) to have their custody and permanency plans independently reviewed by a CRB who then filed their recommendations in a report to the court.

From 1983 until September 2013, for 30 years, all contractors managing the statewide Citizen Review Boards endeavored to provide a permanent system for the independent and objective monitoring of all children placed in the custody of CYFD from either the Initial Judicial Review or the Initial Permanency Hearing until the resolution of the children’s case.

New Mexico State University (NMSU) and the current State Advisory Committee are systematically denying that right to the majority (approximately 80%) of children in custody of CYFD without due process. In September 2013, when NMSU entered into an Intergovernmental Agency Agreement with DFA to run the statewide CRB system, NMSU decided the statute language stating that “prior to **any** judicial review by the court the local substitute care review board shall review any dispositional order and the department’s progress report on the child and submit a report to the court” does not mean “prior to every judicial review” but really means before **selected** judicial reviews. According to NMSU, the CRB reviews are “just another status review or staffing” and unnecessary other than “to gather information for SAC to identify recommendations made annually concerning child welfare policies and procedures in New Mexico”.

To understand the consequences of this action taken by NMSU and inaction by SAC one only has to compare the prior 15 year average of 2,700 reviews annually with the 245 reviews in FY 14 by NMSU. Budget implications aside, the fact that of the 245 cases reviewed in FY14, only 431 children were reviewed (the total may include the same children counted each more than once if their case was reviewed more than once). CYFD reported that on 6/30/14 there were 2,249 children in custody.

I must provide a brief context for my recommendations for the Committee to consider.

In addition to reviewing only “selected” cases, NMSU is allowing CYFD to “select” the few cases to review in addition to several other unilateral changes regarding the functions and procedures of the local CRBs. There was no consensus among the members of SAC concerning the shift away from the historical statutory interpretation or changes to the conduct of CRBs at the November 2013 or the January 2014 SAC meetings.

Despite the New Mexico Attorney General advising SAC in January, 2014 that they “retain control over the contractor by establishing rules relating to the functions and procedures of the local substitute care review boards that the contractor must follow in order to maintain and operate the local boards”, SAC has failed the children not afforded CRB reviews by their continued (dithering) inaction to reign in the contractor changes. Many CRB and SAC members have resigned as a result of these changes. SAC membership has declined from 22 at the November 2013 meeting to 10 members at the November 2014 meeting. DFA finally filled the three long vacant Public Member SAC positions in late July, 2014, but two of those members had already resigned prior to the November 2014 SAC meeting.

As it now stands, the Department of Finance and Administration (DFA) and New Mexico State University, with assistance from the SAC Chairperson have usurped all SAC’s statutory authority. The Chairman has consistently failed to follow the SAC Bylaws, Roberts Rules of Order and the Open Meetings Act, misusing and enforcing some portions of each only when it furthers his personal agenda and in violation of his duty to be impartial and objective.

I will use the presentation made on September 10, 2014 to this Committee by Shelly Bucher, NMSU, and Jack Carpenter, SAC Chairperson, entitled “Citizen Review Board Update FY 15” to demonstrate this serious malfeasance, at least by the SAC Chair:

- Shelly Bucher, Jack Carpenter, and Luci Kelly (DFA) all attended the National CAPTA Conference in Atlanta, GA in May, 2014. SAC was not consulted prior to the conference regarding the trip or material to be presented at the conference as an update the New Mexico CRB. SAC was not provided a report of the trip and the information presented or learned at the conference by any of the three when they presented the Chairman’s, Contractor or DFA reports at the SAC meeting following the trip.
- SAC has never been informed of the September presentation to this Committee, or provided the opportunity to contribute or review the contents. The presentation was solely that of Jack Carpenter and Shelly Bucher, and contained much of the same material presented at the CAPTA Conference.

- The September presentation of proposed changes to the Statute had not been approved by SAC. A majority of the remaining 10 members of SAC did endorse the changes at the November SAC meeting, without bothering to even read the complete document of proposed changes to the statute. These facts are a clear indication that SAC does not consider their current statutory role important to the foster children they serve.
- The proposed changes to the statute that were presented to this Committee were developed by the Chair, Jack Carpenter, in concert with Shelly Bucher and Luci Kelly of DFA and recommended and proposed to SAC by the Chair. **The changes seek to legitimize actions already implemented that many believe are in violation of the law.**
- While the bulleted changes in the presentation might appear reasonable, details of the actual change include “prior to **selected** (remove any) judicial reviews by the court pursuant to Section 32-4-23 [32A-4-25] NMSA 1978, the local substitute care review board **may** (remove shall) review case information; elimination of all SAC control by changing SAC to serve as **advisor to the contractor** in establishing best practice for local board operation; the contractor shall appoint members to local boards following criteria established by the state advisory committee in collaboration with the DFA and the contractor and DFA will serve as the confirming body for the state advisory committee and provide oversight and maintain the contract; and the contractor (not the CRB) shall submit a report to the court for each case reviewed, and to the maximum extent possible, shall represent the conclusions of the local board review (now it is no longer the CRB report, but the contractor’s report). It is doubtful that these high impact changes were adequately explained to the Committee.
- The SAC has never formally adopted the Vision provided to the Committee, and this Vision does not include visionary statements regarding CITIZEN REVIEWS OF CHILDREN IN CARE OF CYFD.
- The SAC approved mission that was not presented to the Committee is: “The mission of the New Mexico Child Abuse and Neglect Citizen Review Boards is to conduct reviews of children and youth in substitute care and to advocate for change to improve the child welfare system in New Mexico.”

Therefore, it is my recommendation that the legality of the current two year contract DFA entered into with NMSU needs to be clarified immediately. The State Auditor does not recognize NMSU as a non-profit organization, and has referred a letter to the Legislative Finance Committee regarding this contract.

It took over two years to get clarification from the Attorney General on the role of SAC. We cannot wait two more years for clarification on whether the Intergovernmental Agency Agreement between DFA and NMSU is a legal contract (NMSU not being a not-for-profit organization and the contract having never been put out for an RFP). The Attorney General took a position on all children being entitled to a citizen review hearing when he joined in the lawsuit against the former contractor, which held an average of 2,700 reviews a year.

I would recommend rescinding the current contract/contractor immediately. The current contract requires a CRB hearing “prior to any judicial review”. DFA is paying NMSU for satisfactory performance when NMSU is not fulfilling approximately 80% of reviews of children in custody.

It would make sense to have an impartial assessment prepared that examines the current foster care review system in New Mexico and other states known for exemplary systems upon which to base legal changes. (Oregon would be a good example.) The assessment should seek to answer the following questions:

- How has the CYFD system changed since the mid 1980’s, when many of the current review mechanisms were put into place under the aegis of a federal consent decree?
- What impact have the changes had on child protective services with regard to the need for a citizen review system?
- Is there a need to have a citizen review board system and if so, what features of the current review system should be retained or modified to provide a balanced, coordinated and effective review system?
- Should the role that volunteers play in the current review system of local review board members as well as SAC members be maintained or revised?
- What role, if any, should an independent citizen review system play in the efforts of coordinating the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA) Panels?
- What budget is needed to sustain any identified citizen review board capacity?

Thank you for considering the above recommendations. I can be reached at 575-318-3044 if any questions arise, or if you wish documentation on any of the information contained in this presentation, or other documentation pertaining to the CRB/SAC program.

