MEETING SUMMARY
April 13, 2022

Call to Order
The Chair, Sen. Libby, called the Government Oversight Committee to order at 3:00 p.m.

ATTENDANCE


Other Legislators: Sen. Claxton (HHS)

Legislative Officers and Staff: Matt Kruk, Principal Analyst, OPEGA
Amy Gagne, Senior Analyst, OPEGA
Scott Farwell, Senior Analyst, OPEGA
Jennifer Henderson, Senior Analyst, OPEGA
Joel Lee, Analyst, OPEGA
Sabrina Carey, Secretary, OPEGA, GOC Committee Clerk

Others: Jeanne Lambrew, Commissioner DHHS
Introduction of Committee Members

The members of the Committee introduced themselves.

New Business

- OPEGA Report - Child Protective Services Investigations
- Work Session

Rep. Stover thanked all of the members for being there to continue their conversation on the evaluative report that OPEGA prepared. She stated that everyone shares concern about the loss of any child. She stated they should look toward what in the report can they look at, can they find systems of improvement? She concluded that it was important to recognize that they are all deeply concerned and distraught when anything happens to a child in the state.

Director Nixon noted that there was a Public Hearing the week prior where the GOC received comment from a variety of perspectives. There was also an initial Work Session where the GOC vote to endorse the OPEGA Report, in accepting the report, that it met the standards and expectations for what OPEGA was assigned to do. What remains for the committee, in regard to the report, is to consider whether there is any additional information needed or work assignments that could be created or any potential legislation. OPEGA provided multiple documents for the committee to review; a 5-page memo from director Nixon, a letter from the Joint Standing Committee on Health and Human Services to the Department of Health and Human Services requesting certain follow-up information from DHHS for the HHS Committee’s June 9th Meeting, a memo from the Office of Child and Family Services to OPEGA which is in response to questions that were asked of the department at the last meeting, a copy of the redesigned curriculum for the foundations training which was requested, and an updated chart of the pending CPS legislation and where that stood after the session that morning.

In the memo provided by Director Nixon, it outlined the key issues and areas for further consideration that OPEGA identified coming out of the report. It noted the three issues found, the four areas that were identified of concern and then two other issues that came up from testimony and discussion at the April 8th GOC meeting.

Sen. Deschambault asked where the new foundations training curriculum came from and what it is providing the committee? Director Nixon answered that there was a series of five or six questions that GOC members had for DHHS at the last meeting and one of the requests was for information on the curriculum.

Sen. Keim asked about the comments and suggestions that the GOC had been given during the last meeting and where she would find that information. Director Nixon answered that it was emailed at the end of that meeting, and that hard copies would be printed and distributed as they spoke.

Sen. Timberlake brought up a previous question where they asked Dr. Landry if there were any restrictions that would restrict him from hiring weekend or night workers. He stated that there are 50 open caseworker positions that they are looking for employees for. He did not understand what they meant by removing 15 caseworkers from the ongoing work to create a new after hours and weekend unit. He believed that could be detrimental to the impact of the remaining caseworkers. He asked if the department can hire those positions, or if they can’t, or just opted not do so. Director Nixon answered that question would be better answered by the Department.
Sen. Libby stated that there was a suggestion made in the previous meeting that the GOC could establish a new task force that would dig into details of OCFS operations, and progress that has been made in the last several years since GOC and OPEGA engaged in working with the office. There may not be a lot of support for that suggestion because a new task force would have to sort of start from scratch and establish a baseline understanding of all that has happened over the decades and in particular, the last several years. In lieu of that, there may be interest in having the committee meet on a more aggressive schedule through the summer and fall with a fairly focused charge. Put forth a number of questions that this committee would like the department to answer on a regular basis with up-to-date information. There may be more questions that are generated as the series goes on. The findings of the OPEGA Report are numerous and would require more attention to dig into details. The idea would be to work with OCFS over the summer and fall, to get a better understanding of things and help support the department as they undergo those tasks, and continue to surface the challenges and deficiencies that are being identified by the committee, the constituents, stakeholders and the community. Sen. Libby then asked what the other committee members thought of that idea.

Sen. Timberlake answered that he would agree, and asked how often Sen. Libby was thinking of meeting. Sen. Timberlake stated that he would like to meet as much as is necessary for the questions to be answered, as he thought there should be urgency to this. Sen. Libby clarified that he has suggested meeting monthly which would be the typical GOC schedule for the interim.

Sen. Deschambault asked if there was any planning of another Public Hearing, and about the idea of having subcommittees. She stated she was particularly interested in casework management. Sen. Libby answered that they would have another Public Hearing after they receive the third phase OPEGA Project. He stated that should be something of discussion, what, if any, adjustments or amendments do they way to make to that project? He stated that he had not considered subcommittees but that could potentially be part of the framework for how the analysis work can be done. Sen. Deschambault then asked if there was any time that the GOC could have an Executive Session Meeting. She noted that other committees in the legislature can use that if they are discussing appointments and nominations. Director Nixon answered that in terms of executive session, there are provisions in the statute as to what can be discussed in an executive session, and there are certain matters that are authorized. The GOC or any other legislative bodies can go into executive session, but it has to be for one of a series of very specific things. Some of them are not at all related to the GOC work, but one is that they could go into executive session between a body or agency and its attorney concerning the legal rights and duties of the body or agency. For example, if the GOC wanted to get advice from the Attorney General’s Office in executive session, that could happen. Another is discussions of information contained in records made or maintained or received by a body when access to those records is prohibited by law access, but then the question becomes, what are the parameters around access to confidential information? Guidance from the AG’s office would be needed for the potential executive session.

Sen. Bennett stated that he believed the subject is something which might exceed the capacities that the GOC currently have in order to do the investigation properly and to get the needed answers. He stated there were limits to human time and functioning and would like to explore whether OPEGA is appropriately staffed for this particular exercise and what kinds of competencies they may want to engage to help the aggressive schedule on this specific subject. He stated that he was disappointed when the commissioner sent out a statement the day of the last meeting and said some lawmakers used the GOC hearing as a forum to make false claims about the department and question motives of the staff. He did not hear that. There were lots of difficult questions raised, but they were directed at the GOC in their responsibilities as much as they were at the department. He hoped that they can move past that and not have defensiveness during difficult questions. He supported meeting as frequently as necessary to get the job done and to staff the project as effectively as possible.
Sen. Keim stated that she would like to find a way past the fact that they are so limited in what they can find out. She understood the privacy issues, but stated that it tends to block the ability to really understand what is going on behind the scenes, which may be why they can’t get a handle on things as an oversight committee.

Sen. Timberlake wondered what the power and authority of the committee is. He had numerous calls from people who want to remain anonymous because they are scared of retaliation. He stated he did not get an answer to his previous question from the meeting before about a whistleblower program. He asked how they could talk to people where they feel safe telling their story? He asked if there was a provision out there that allowed them to do that. He thought that having another public hearing before September would be appreciated. How would they let people who work with the department every day tell their story?

Director Nixon answered that there are protections in statute for individuals to come and share information with OPEGA confidentially. Legislators have also received information and provided it to us saying that the person wants to remain anonymous and protected. The office would take in that information and hold it confidential. It is not the same as it all going to a public entity such as the Government Oversight Committee, but there is a mechanism and protections in statute for individuals to provide that type of information in a protected manner to help the OPEGA staff.

Sen. Timberlake asked if there could be something written out so that when people contact the members, they can share that information of who to contact and how to remain anonymous.

Director Nixon added that for OPEGA to be able to use the information, it would have to be pertinent to something that OPEGA is working on, something that relates to what the GOC asked OPEGA to do. It can be made clear on how to provide that.

Sen. Timberlake asked how would the GOC get that information after OPEGA processes it?

Director Nixon answered that they would not see the information directly, or with any identifying information. It would be used in the process as part of the study, but it would not be direct because of the nature of which it came to OPEGA and it is treated as confidential and anonymous.

Sen. Bennett asked if it was possible that the chairs would be able to review that information directly and then they could decide if it is relevant for the committee to hear with some mechanism of listening to that individual directly, maybe have them testify anonymously.

Sen. Timberlake stated that if it goes to OPEGA and it never gets to the committee, then they do not ever get the story. He asked if there was any way that people can be able to tell their story, and it could be transcribed anonymously so that the committee can hear what the complaints are. He thought that hearing concerns is the important thing. How would the committee know what they told OPEGA? He stated that it does not do any good for someone to tell OPEGA something if it never gets to the committee, because the committee is who are going to make a recommendation to do something or not do something. Director Nixon responded that they would convey the information in whatever manner it was asked to be shared in. It has to be with permission of that person, in whatever amount of confidentiality they ask for. Anything that did end up going to the GOC would become a public document and public record.

Sen. Bailey asked for clarification on how they could break through that firewall and get the confidential information because it seemed like OPEGA can get some confidential information but the GOC can’t.

Director Nixon answered that the questions about confidentiality and release of information are very complex and there may be legal questions that involve many different parts of the law, the freedom of access act, the GOC and OPEGA statutes, the department statutes, some of the statutes about legislative bodies, joint standing committees, investigate committees. Director Nixon suggested talking to different people from the AG’s office, legal counsel to the department, to discuss the release of that information. There are provisions in the OPEGA statute about receiving anonymous information or information from someone that asks for their identity to be protected which is different than what the GOC could get that is held confidential by the department, which is not in the statutes. It is a tricky issue that needs more thought.
Rep. Arata stated that the next stage questionnaire questions and surveys should include recent, and current foster parents and kinship parents. She hoped that surveys will ask about retaliation and will include mandated reporters in the next phase. She also stated that there was a really good letter from HHS about recruiting more candidates. She stated that she understood that a lot of the candidates do not have a qualifying degree. Would a retired teacher who wanted to work part-time as a caseworker would have to go back to school and get a new four-year degree in order to do that, or could that person simply take the foundations course and get training, which could alleviate the workforce shortage. Do they need a degree in social work to become a caseworker? She asked if changing legislation would help allow them to get more caseworkers. She asked if it would help if information shared by health care providers was mandated to be timely. She thought it would be important to look at another proper public hearing.

Director Nixon pointed out that there is a list of remaining work that the GOC has already assigned OPEGA, which was to focus on the reunification and permanency planning process, specifically how those assessments are done. The shift is to children who are in the system and the focus is around the roles and coordination of key parties during the reunification or permanency process. If there are other areas of interest, it would be important for the committee to look at what has been assigned and consider whether those ideas would fit in the next report. Are they general DHHS questions or is it enough to create a new piece of work to assign to OPEGA. Director Nixon directed the committee to the memo she provided (A copy can be found here: https://legislature.maine.gov/doc/8543) where it tries to identify information that the GOC may additionally want outside of the Reunification and Permanency Planning to assign OPEGA as another Review. She mentioned that the Health and Human Services Committee asked for follow-up information that they will be receiving in June from OCFS. She asked the committee to think about what they would want it to focus on if they wanted another survey of mandated reporters. What is the question, is it related to permanency? What is the GOC looking for, and how are those things going to be prioritized and the timeline for this new potential work?

Sen. Bailey asked the Chair (Sen. Libby) if it was his intention to come up with some kind of work plan going forward? She suggested that they should go through the document and discuss the different items if so. Sen. Libby suggested that they could task chairs and leads to work with staff to develop a draft work plan, with all of those questions that they want regular updates on. It would be shared with committee members and could change through the summer as questions get answered or new questions come up.

Rep. Arata stated that it looks as though the root of a lot of the problems is the inability to hire enough staff. If they have enough staff, maybe the 35-day limit wouldn’t be such a big deal and there would be a higher quality with less stress.

Sen. Bennett stated that one area that they have talked about a lot is communications. And the last item touches on confidentiality and transparency. He wanted to focus at the question of how does communication actually flow? Who is involved in decision making, what kind of resources do they have, when is the community involved in decisions? He stated that they have heard from a lot of people that communication is not there. He stated that his local Child Health Office reports things of concern to the hospital, the school district, the people who are dealing with that situation in real time that are usually in touch with the family, they can be part of the solution. He thought they could be engaged in the process better.

Sen. Libby stated that he would like discuss how to deal with an agency that is challenged in meeting its public charge. The memo on the caseworker front, stated there were 41 resignations and 10 transfers, with only 24 replacements. The current challenge is to be able to evolve this project towards the direction of how does OCFS become a leader in Child Protective Services in the state. Where OCFS is a leader in resource deployment and training and collaboration with the health system and the educational system and law enforcement are all working as a unified force to protect children.
Sen. Deschambault stated that they have talked about many issues that seem very black and white, but the death of children is not so. She stated that she still did not know how many of them were in DHS custody or not. She stated that she thought they need to move forward and not just concentrate on death, but concentrate on the office of child and family services, and talk about the services the families need or trying to keep the family together. She thought that they should be focusing on the big umbrella of DHHS and OCFS. She wanted to know what motivates them to go to work, what frustrates them, what would they like to see changed. She wanted to have honesty, including some confidential information or a subcommittee. When are decisions made and where do they lead?

Sen. Timberlake stated that he wanted to hear from the people that are dealing with DHHS every day to hear what they see as a problem. He wanted to make sure that they take in clues and evidence from the people that are working with the department every day. He stated that he spent some time looking into the State of Minnesota’s foster and adoptive families who have started a new program, because they have a similar problem, that creates a 1-800-HOTLINE. He asked if they could get some information back to the committee to take a look at that, it could maybe be another tool in the toolbox.

Rep. O’Neil stated she would like to emphasize that they should build services and prevention into the discussion conversations.

Rep. Millett stated that they have a unique opportunity, role and responsibility to hear the outrage, to listen to it, hear it, understand it and allow the behavior to change so that action can be taken. How can they do something to prevent this from occurring? He stated that it translates into an action plan, it is built on communications and commitment of roles and responsibilities. He reminded of the six bills in the HHS committee that could be a focus of action. Two have already been adopted. He stated that they have given the ombudsman more authority, improved the relationship between the department and the HHS Committee. He agreed that getting progress reports (from the department) and follow up hearings to get more people the opportunity to reach out. He stated that they are searching for solutions, there is a series of action steps that could play out over time.

Sen. Keim wondered what the next steps are going to be. She asked if they should go over what they have tasked OPEGA to do in the third part of the report (CPS). She stated it would be good to go over the plan for the third report as the plan could be shifted.

Sen. Libby asked if the description of the third phase of the CPS Reports was available for the committee to view.

Director Nixon responded that it may not be in front of them but that she could read it to them. She explained that the remaining piece of work, was assigned to understand how reunification and permanency assessments are designed and conducted, including the legal and policy framework and priorities overtime. Evaluate how well reunification assessments are performed and understand the roles and coordination between key parties, including OCFS, the courts, the assistant attorney general, attorneys, families, and guardian’s ad litem. During this phase of the child being in care, there is a lot more court involvement and decisions about permanency placement and considering the perspectives of the OCFS staff and stakeholders around permanency and reunification. She stated that there is some ongoing interest in work/issues that have emerged from the investigations project and report that OPEGA just delivered that may not be focused on reunification and permanency questions, but may be more related to services for families and prevention, OCFS staffing challenges and things that would not directly link to the reunification. She stated that it had been suggested to keep a list and prioritize what needs to come next and what are their top priorities for the next report and what resources are necessary to do that.

Sen. Libby suggested that members think about what new components they might want to ask OPEGA to analyze in a potential fourth phase of the CPS Project for the next meeting.
Sen. Bennett asked about when the next meeting would be. He stated he was focused on making sure that there are resources for the staff. He stated he didn’t want to lose out on the opportunity they have between then and the 20th (April) to resource properly. Sen. Libby confirmed that they have 5 business days left (of the Legislative Session) to have conversations and gather information, but he did not think they would meet again in that time frame. Sen. Libby proposed setting a regular interim schedule, suggesting Wednesdays as they had done in the previous year. He suggested the third Wednesday of every interim month.

Director Nixon jumped in to remind the committee that they still needed to vote on the Research and Development Tax Credit Report, and then they could wrap that up and transmit it to the taxation committee. She also brought up the multi-year project working on the Maine Commission on Indigent Legal Services, where in the last year they had requested quarterly report backs from MCILS. She suggested May or June as potential dates for that.

Sen. Bennett stated that he was concerned about Lucia leaving the director position and what would be happening in the interim.

Director Nixon responded that senior staff in the office will serve an interim role, so there will be seamless support for the committee during the interim. Some of the members are on the hiring committee, chairs and leads, will be involved in the interview process for the permanent replacement. Sen. Bennett stated that staff resource for this project is heightened given those tensions and transitional questions.

Sen. Libby asked if the staff could collect all the question over the last 12-month period involving OCFS and put them into a document that could help them craft the work plan. Director Nixon clarified that they wanted all of the questions and answers to and from the department put into one document, including the things noted in the memo and additional follow-up from that and the HHS committee questions that are answered. She agreed they could put that all in one place for the committee.

- Conversation with Commissioner Lambrew

Sen. Timberlake brought up the 50 open positions at the department. He recalled Dr. Landry told the committee that part of the problem is that some people only want to work the weekends or evenings. He asked if there was something that stops the department from currently hiring somebody to be an employee that just works nights and weekends.

Commissioner Lambrew answered that there were a few reasons why they can’t do that. It is a different type of work. It is not the usual type of case investigation at night and on the weekends of calling sources and checking with providers. She stated that they are also exploring whether there needs to be any sort of pay differentials or other different changes to the agreements with the unions for that type of work. She stated that moving someone from the needed case work during the day, to nights and weekends is not adding to the department work or the ability to process cases. It is diminishing it because there are fewer new cases on nights and weekends. That is why the additional positions are in the budget. She stated that they provided some background to the committee that looks at the trends for the past five years and it is notable that they do have a high vacancy rate. She mentioned that it is not far off other vacancy rates of other offices. She stated that when they actually look at the number of caseworkers who are working, putting aside vacancies, how many are currently active in the department, that the number is 16% higher in February 2022 than February 2018. There are 51 more caseworkers actively working now than before. She continued by explaining that they still wish they had more so they can keep up with their caseload to address some of the concerns that the OPEGA Report highlighted. She stated that with the extra 16 positions for nights and weekends, they can keep caseworkers who are working the day who now won’t have to work at night and over the weekend because they now have staff dedicated for that time.

She stated that the recruitment is aggressive and they laid out the strategies in the memo they had provided for the meeting. (A copy can be found here: https://legislature.maine.gov/doc/8546) The department is hopeful...
that they might also see a new crop of college graduates that will want to come work for The State of Maine. They are optimistic that they can reduce their vacancies.

Sen. Timberlake asked if that meant that they do not need to change any laws to allow them to do that. Commissioner Lambrew stated that she would not be able to speak to whether any laws need to be changed or not, but that she had just explained the process that they are working through because those jobs are different than the day jobs.

Commissioner Lambrew asked to address the comments she had heard that regard to the department. Sen. Libby agreed. Commissioner started with retaliation. She stated that their policy is the opposite of retaliation as they welcome the input and the criticism because they cannot identify problems and challenges without it. They strongly encourage their workers to express their concerns. That is why they are implementing the science safety program so that they can create that kind of culture. She stated that they were proud to see that there was unanimous support to strengthen the child welfare ombudsman program. The Ombudsman will have more staff to be able to help investigate complaints about cases, that is always a limitation of when complaints come outside of the ordinary process. She stated that the Ombudsman is a great resource for people who may be listening. She reminded that the department gets about 26 thousand intake calls a year. They are grateful to the people of Maine who call the numbers when they see something that concerns them about child abuse or neglect, every call gets treated with respect. They look to see if it should be investigated and begin that process to make sure they are deploying all the tools out there.

Rep. Arata asked if they became aware of a pattern of poor behavior by one of the employees of the department with regard to retaliation, how hard it is to remove that person from a position in light of their membership in the union. Commissioner answered that she would not give a detailed answer because they have statewide policies with regard to disciplinary actions and progressive steps for discipline. They follow those with the child welfare workers as well. She noted that their engagement with the union has been positive. She stated they are respectful of the importance and high priority in protecting children in Maine that the workers are trusted with. There is a fair amount of agreement on the actions that can be taken if there is concern about somebody’s individual behavior. They take this responsibility very seriously while trying to implement this culture, learn from mistakes and build on them. Building a system that is strong. They do not overlook the responsibility as an employer to make sure that people who work for the state of Maine are behaving properly, following the rule, and are true to the spirit of the department.

Sen. Timberlake stated that a recurring theme that they keep hearing about is communication from case worker to management. He asked the commissioner how they are handling the communication issues. Commissioner answered that there is regular communications and then there are special ones. They have made effort to set up regular times in places to engage with the different groups, including the bimonthly resource parent advisory committee meeting, where there is an open forum for the foster families to be heard. They have regular meetings with the different advisory boards. They engage a lot with the criminal action or judicial system and the engagement with the courts will be heard more about in the next OPEGA report. They want to make sure that they have an open line of communication navigating those systems. Within the department, they used meetings, surveys of supervisors and engaged activity to develop a plan. They update the plan annually. Last year in the wake of the tragic deaths of those children, they immediately engaged national experts to come and help see what went wrong, what they can get fixed in the short-term. They also started doing listening sessions with workers in small and big groups. She personally attended district offices and town hall meetings to talk to them about what was going on to make sure they had an open line of communication. She gets emails from new employees all the way up to leadership and welcome that. They welcome criticism, but want to make sure that it is based on facts so that they can give sound information while deliberating what to do next.
Sen. Bennett asked if she had numbers for what the average period of time that someone who is a caseworker actually works in that position. The Commissioner answered yes, they have those numbers but she did not know it off the top of her head.

Sen. Bennett stated that it seemed like, based on the recruitment strategies, that this is the kind of job that a lot of people get fresh out of school. He thought it would be a really tough job for someone fresh out of school. He asked if there was a way of getting more experienced people into the positions, that maybe have children of their own, as they may recognize family functionality versus dysfunction.

Commissioner Lambrew answered that they have some tenured and extraordinary individuals who are child welfare and protective services workers who have been at the department for years, people who love the challenging work. She stated that there are thousands of positive outcomes that are not seen and that they are not focused on the ability for a caseworker to work with the family to figure out what the problem was, to figure out what service needs there may be, connecting the family with the right community resources or mental health resources to keep that family together. She appreciated the question on who they hire and the credentials. They have a fairly high standard for the caseworkers. She stated that there are trainings involved, the decision tools are involved, supervisor involvement is part of the structured process for when safety decisions get made at different points. They have improved the check-ins at the beginning of open cases, and towards the end to make sure they are double checking everything.

Sen. Bennett then asked when employees leave, do they do exit interviews, who conducts them and what they do with that information? Commissioner answered that yes, they do, but that she would need to get more details on that.

Rep. Blier asked why the Commissioner’s presence had not been more readily available at meetings before this date?

Commissioner Lambrew answered that she had never been asked and declined. She also stated that she was pleased that the chairs and leads from the HHS Committee were present today. The HHS committee is the departments authorizing committee. They have spent hundreds of hours in public hearings and work sessions with much of the information they presented also presented previously as well. She stated that she will come back as needed, but that a lot of the work of child welfare is with the engagement of the HHS Committee. She stated that there have been over 20 laws signed by this Governor on child welfare. They are doing considerable amount of work. She stated that the GOC doing this work jointly with the HHS Committee might enhance that crossover knowledge because they do have many of the discussions with the HHS Committee as well.

The Chair, Sen. Libby, allowed Sen. Claxton (the Chair of the HHS Committee) to join the conversation.

Sen. Claxton stated that he did his assigned work from the last meeting to follow-up on communication, and he spoke with the Assistant Attorney General and learned that there is a group actively working to define where the edges of how much can be shared and how best to share it with all sorts of community providers. He was encouraged by that conversation and was able to identify a couple resources that might be tapped into that work. He stated that education will be rounded up and invited to that because they are mandated reporters. He stated that they invited the Assistant AG to their approved June meeting to provide an update on that work.

Sen. Bennett asked when they would get an answer from this group, would that be at their June meeting? Sen. Claxton responded that he did not think there is one answer. He stated that it is a work in progress in terms of gaining greater clarity about how much can be shared and if there is a standardized form that could be used to facilitate the exchange of information between the school and police and other care providers in the community, what are the boundaries. He stated that they found out that hospitals all have different expectations of what their staff can share. If they could get to a standard form or agreement amongst the hospitals about sharing information, that could be a piece of it. He stated that they invited the AAG to give an update in June, and that HHS had been approved for 3 more meetings during the interim.
Planning for upcoming meetings

Sen. Libby stated that the Chairs and Leads will work with the staff on the assignments for the next meeting.

Next GOC meeting date

Sen. Libby noted that the next GOC meeting is scheduled for Wednesday, May 18, 2022 at 9:00 a.m. and will be held in-person.

Unfinished Business

Adjourn