

Supplement to the Oregon Children's Justice Act

Task Force Judicial Guide to

Working with Relatives in Juvenile Court

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Supplement to the Oregon Judicial Guide to Working with Relatives in Juvenile Court

1. INTRODUCTION AND INSTRUCTIONS FOR USING THE JUDICIAL GUIDE

This supplement discusses the law and practice related to working with relatives of children in Oregon's foster care system. It is a supplement to the *Oregon Judicial Guide to Working with Relatives in Juvenile Court (Guide)*. The Guide will help judges make diligent efforts findings about child welfare caseworker's attempts to place children in substitute care with siblings and other relatives. The Guide includes summaries and citations to the primary statutory and administrative rules related to working with relatives. The administrative rules and DHS practice guidelines are discussed more detail in this supplement. Full copies of the administrative rules and relevant sections of Oregon's Child Welfare Practice Manual are included as appendices to this supplement.

The Guide is organized by issue rather than stage of the proceeding because the issues described may arise at any time during a child's involvement with juvenile court. It is recommended that the court review the DHS report or reasonable efforts affidavit; identify the statement in the left hand column of the Guide that best describes how relatives are incorporated into the DHS case plan (no relatives identified, relatives identified but children are not placed with them, etc.) and use the questions related to each statement to determine whether DHS is making diligent efforts. The supplement provides additional information about each area in the Guide.

2. QUESTIONS THE COURT SHOULD ALWAYS ASK BEFORE MAKING A DILIGENT EFFORTS FINDING.

Recommendation

If the answer to any of the following questions is “no”, the court should make further inquiry:

- Are the children placed with relative and are siblings placed together?
- Is there a network of caring adults who are not paid to care about them surrounding the children you will be discussing?
- Has DHS provided specific information about activities related to searching for relatives that have occurred since the last hearing?

Determining whether children are placed with relatives and connected to adults who will care about them after the court and DHS close their files will help the judge determine how much time to devote to diligent efforts findings in court. Additionally, the court should develop protocols to determine whether relatives are attending court hearings and solicit their input in the hearing. Identifying relatives available in the courtroom allows the judge to get information directly from the relative about the case.

Oregon statutory law and DHS policy require that, wherever possible, children who cannot be cared for by their parents be placed together with relatives or people who have served as their caregivers. ORS 419B.192(1) and (2). DHS shall make diligent efforts to place with a relative and report to the court on those efforts. *Id.* DHS policy expects that caseworkers seek out relatives so that they can serve as long or short term foster care placements, supports for parents to allow children to safely remain at home,

life long family and cultural connections for children in foster care and the experts on family and medical history. OAR 413-070-0060. In order to accomplish this, DHS must do 3 things: locate relatives, assess them as placement resources for children, and engage the extended family in the process of safely caring for children.

Oregon's law and policy is supported by a growing body of research that demonstrate that relatives can mitigate some of the trauma associated with removal from the family home. Relative foster placements tend to be safe and stable and increase the likelihood that children will remain connected with siblings, schools, their culture and communities. Connection or reconnection with relative can be a critical support for children in long term foster care and for those aging out of the system. See Appendix C for a full discussion of the research about the benefits of relative placements.

3. IDENTIFYING AND LOCATING RELATIVES. QUESTIONS TO ASK IF DHS REPORTS THAT THERE ARE NO SUITABLE RELATIVES AVAILABLE.

An assertion by a caseworker that they have been unable to locate relatives should be scrutinized closely. The obligation to locate relatives and people with caregiver relationships begins at the time the caseworker determines a child is unsafe and must be removed from their parents' care. The obligation remains throughout the life of the case. OAR 413-070-0081. "Relatives" are defined broadly. OAR 413-010-0310. Consequently, caseworkers should cast a wide net for families, caregivers or other people important to the child or family.

A. Has DHS asked the family about the right people?

Recommendation

The court should make sure that DHS has inquired about the full range of relatives on both the mother's and father's sides of the family as well as persons with a caregiver relationships.

OAR 413-010-0310 identifies many people who qualify as relatives that DHS for should consider for placement or supportive relationships for children in foster care:

OAR 413-010-0310 Relatives include people related by blood or marriage as well as non-related individuals who are connected to the family through culture or important relationships:

(a) An individual with one of the following relationships to the child or young adult through the child or young adult's parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the child or young adult's tribe if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(E) The registered domestic partner of the child or young adult's parent or a former registered domestic partner of the child or young adult's parent if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(F) The adoptive parent of a child or young adult's sibling.

(G) The unrelated legal or biological father or mother of a child or young adult's half-sibling when the child or young adult's half-sibling is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the child or young adult's family, or an individual who self-identifies, related to the child or young adult through the child or young adult's parent by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage, identified as:

(A) A member of the family by the child or young adult or the child or young adult's family; and

(B) Who had an emotionally significant relationship with the child or young adult or the child or young adult's family prior to the time the Department placed the child in substitute care.

DHS's definition of "person with a caregiver relationship" is identical to the definition in ORS 419B.116(1)(a):

(1)(a) As used in this section, "caregiver relationship" means a relationship between a person and a child or ward:

(A) That has existed:

(i) For the 12 months immediately preceding the initiation of the dependency proceeding;

(ii) For at least six months during the dependency proceeding; or

(iii) For half of the child or ward's life if the child or ward is less than six months of age;

(B) In which the person had physical custody of the child or ward or resided in the same household as the child or ward;

(C) In which the person provided the child or ward on a daily basis with the love, nurturing and other necessities required to meet the child or ward's psychological and physical needs; and

(D) On which the child depended to meet the child or ward's needs.

(b) "Caregiver relationship" does not include a relationship between a child or ward and a person who is the nonrelated foster parent of the child or ward unless the relationship continued for a period of at least 12 consecutive months.

B. Have questions about locating relatives been asked in a way the parents or children are likely to answer?

Recommendation

The court can reinforce DHS's message to parents that relatives can assist with reunification and support for children. If the court is convinced that DHS has used a

variety of strategies to encourage the family to discuss relatives to no avail, the court may consider ordering the parents to identify relatives who may assist the child.

Parental resistance to providing information can be a barrier to engaging relatives. Parents may not respond to questions about relatives for a variety reasons. Cultural or language barriers may prevent a family from providing accurate or any information at all. The court should make sure that DHS has inquired about relatives in a language and at an educational level that the parents can understand. Caseworkers, CASAs or advocates could engage families (including children when there are able to communicate) in questions about lineage or daily activities as a way to identify relatives. For instance, “what is your mother’s name and what is her phone number?” is much more likely to generate valuable information from a reluctant parent than, “do you have family who can care for your children?” Similarly, asking a child who is important to them, where they spend holidays, and where they feel safe may generate a more useful set of contacts than asking if they have relatives.

In addition to attentive questioning, there are many written tools caseworkers, court staff or advocates can use to that can help generate relative contacts. Spending time with parents creating a family tree may help parents think about relatives and assist the parties to have a full picture of relative support. See, Appendix D for a variety of documents that can be used in conversations with parents or children about relatives

Many parents want to hide DHS involvement from their families, even when their children could benefit. In some instances, families are reluctant to involve their

families either out of fear or embarrassment. DHS should continue to ask parents to identify relatives, even if they have initially refused. Requests for information should be accompanied by an explanation of the benefits to their children and some assurance that the parents' privacy will be protected. DHS's Practice Manual outlines this strategy:

In those instances where the family is initially unwilling to provide contact information for possible relative resources, explain to the family the reasons why identifying a child's relatives is important both to support the parents and to support the child during a difficult time. Explain that.. the best way to connect a child with his/her family is by gathering family information from the parent and/or child themselves. Furthermore, assure them that you will keep them informed of all relatives that you contact unless doing so would compromise the safety of another person. Share with the parents the benefits to children and young adults of permanent connections with and support from relatives. Explore with the parent the reasons for unwillingness to share family information and whether they can be assisted in overcoming any barriers they feel exist.

Possible barriers may include:

1. Do they feel embarrassment or shame about child welfare involvement?
2. Are they concerned about how much information will be shared with
3. Are they concerned about particular relatives being contacted for safety reasons?
4. Do they believe the family will not be supportive?

DHS Child Welfare Procedure Manual Ch. 4, sec. 3, p.5, @ http://www.dhs.state.or.us/caf/safety_model/procedure_manual/index.html

C. Has DHS asked everyone about relatives?

Recommendation

The court should ensure that DHS has thoroughly explored collateral contacts and alternate search methods, particularly when they report that there are no available relatives.

The DHS caseworker must ask parents, legal guardians and children capable of communicating about relatives. OAR 413-070-0069(2). The caseworker may use collateral contacts like teachers, neighbors or other people they interviewed as part of their investigation as well as the Internet and other resources available in the community to identify relatives. 413-070-0069(3). While the Internet and government data bases provide helpful information, there is no replacement for direct contact with those who know the family. “Experienced searchers report that their best leads about relatives and their whereabouts come directly from the parents, the child, and other people who know them. One personal contact often leads to more interested kin, and the circle expands rapidly.” *Child Focus, Making “Relative Search” Happen: A Guide to Finding and Involving Relatives at Every Stage of the Child Welfare Process*, p. 29 (2007).

The DHS practice manual instructs caseworkers to take the following steps when searching for relatives:

Use the contacts with family members and others who have a significant relationship to the family as an opportunity to continue to search for and identify relatives and persons with an emotionally significant relationship with the child or the child’s family. Information can be gathered through the following contacts or activities:

1. Parents.
2. Children.
3. Other family members.
4. During various family meetings or the Oregon family decision-making meeting.
5. School teachers or other school staff.
6. Persons participating in the shelter hearing.
7. Day care or other child care providers.
8. The family’s spiritual or church leaders.
9. Search of previous child welfare records.
10. Search of other state database records such as Self Sufficiency records, vital statistics, Department of Motor Vehicles, or Support Enforcement records which are available to the Department.

11. Internet Search Engines such as Intelius / Accurint.com, Family Finders / US. Search.com, Ancestry.com and/or Daplus.us.

DHS Child Welfare Procedure Manual Ch. 4, sec. 3, p.4.

http://www.dhs.state.or.us/caf/safety_model/procedure_manual/index.html

4. WORKING WITH IDENTIFIED RELATIVES. QUESTIONS TO ASK WHEN RELATIVES HAVE BEEN LOCATED BY CHILDREN ARE NOT PLACED WITH THEM.

Recommendation

If DHS reports that relatives have been identified and contacted but children are not placed with them, the court should find out why placement has not occurred and what is being done to eliminate barriers to placement with a relative.

DHS is obligated to contact identified relatives or caregivers within 30 days of the child's placement to let them know the child is in care and about "opportunities and requirements associated with being a safe and appropriate safety service provider [or]...a relative caregiver." 413-070-0072(2)(a) and (b). While making the contact, DHS is also required to request names of other relatives. DHS is required to assess relatives who present themselves as a placement or safety service resource at any time during the proceeding. 413-070-0078 DHS has a variety of form letters designed to do initial relative notification. See, Appendix A. When a relative presents themselves to the agency. The caseworker is obligated to respond as soon as possible (within 15 days at the latest) in person or by telephone. 413-070-0072

A. Certification issues with relative foster parents.

Delay or denial of certification is frequently identified as a reason children are not placed with their families.

1. Child Specific Expedited Certification.

Recommendation

The court should be familiar with the process their local DHS branch uses to conduct child-specific expedited certification and, particularly at the shelter hearing, inquire about barriers to quickly placing children with relatives.

Every DHS branch has the capacity to quickly certify relatives. 413-070-0078(5).
Branches may have different processes for conducting child-specific expedited certification:

“A child-specific expedited certification can be used to assess the person. This is an expedited process to certify a relative or unrelated adult to provide the least restrictive environment to meet the child’s needs, avoid substitute care placement with persons unknown to the child, and minimize trauma to the child.

Begin the child-specific certification assessment on initial contact with the person who is being considered for child-specific certification. In some local offices, assessment and certification responsibilities remain solely in the certification units. In other local offices, a CPS worker performs these functions during the CPS assessment.***The expedited certification process can be accomplished in one working day with the assistance of others.*** (emphasis added)

DHS Child Welfare Procedure Manual Ch. 4, sec. 3, p.12.

http://www.dhs.state.or.us/caf/safety_model/procedure_manual/index.html

2. Criminal or Child Welfare History Requiring an Exception to Certification Standards

Recommendation

Reports from caseworkers that relatives cannot be certified because of criminal or child welfare histories or that the caseworker is awaiting an exception should include clear descriptions of the basis for seeking the exception, barriers to certification, who is responsible for determining whether an exception can be made and when a decision is expected.

If criminal or child welfare checks reveal a history that may raise safety issues, caseworkers need to obtain an exception to certification rules from another level of management within DHS before a child can be placed with relative. See OAR 413-120-0400 thru 0470. How far up the chain of command a caseworker needs to climb to obtain approval for an exception depends on the seriousness and recentness of the history.

3. Other certification barriers.

Recommendation

When certification has been denied for reasons other than criminal or child welfare history, The court should be clear why certification was denied and satisfied that there is no support DHS could offer to allow certification.

If certification has been denied necessitating placement with a non-relative, the barriers may involve physical or other limitations that may be able to be remediated. When a relative or caregiver has asked to care for a child, it is up to DHS to determine if the placement will meet the child's needs. In addition to safety and well being needs, the caseworker must assess the "individual's willingness to cooperate with restrictions on contact between the child....and others...[and] the individual's ability to support the Department's implementation of the permanent plan..." OAR 413-070-0078(3)(a),(c).

Assessing an individual's ability to support the plan leaves much room for personal judgment. Relatives bring a commitment and understanding of the children in care but not necessarily system savvy or the best interpersonal skills. Hostility towards DHS or other government functions, concerns about alliance with unsafe parents may make it difficult for caseworkers, attorneys or judges to work with family around placing children. DHS recognizes this as a barrier to working with relatives:

Family members may approach contact with the Department with sense of distrust of the Child Welfare system or of government agencies in general. It is important to recognize this distrust as a normal reaction to a large government agency intervening in a family's life. If a family's response to the Department's intervention is perceived by child welfare workers as uncooperative or resistive, the perception may negatively impact the caseworker's goal to build a partnership with the family. DHS Child Welfare Procedure Manual Ch. 4, sec. 3, p.8.

http://www.dhs.state.or.us/caf/safety_model/procedure_manual/index.html

The Practice Manual suggests a variety of strategies to engage families including persistence, attention to family culture, acknowledgement of imperfections in the child welfare system and including the relatives in case planning. *Id.* The judge can play an important role in making sure that DHS and other court participants do not discount

family members who are suspicious or even hostile towards DHS. Acknowledging the shortcomings of the child welfare system (perhaps even the judicial system) and continuing to invite relative participation, even when it is initially rejected, may eventually create trust with a suspicious family.

4. Relatives who cannot be a placement for any reason.

Recommendation

If DHS reports that relatives have been identified but are unwilling to provide placements, the court should to inquire if they have been given the opportunity to assist in other ways.

While OAR 413-070-066 directs the caseworker to search for relatives who are available as placements, the administrative rules clearly contemplate relatives serving other support functions as well. 413-070-0060. Relatives who cannot be certified to provide placement or cannot, at the time, provide care can continue to serve valuable roles in case planning and in supporting children in foster care. A family member may be able to provide family history, a connection to other family resources or have valuable insight into case planning. The DHS practice manual suggests a variety of ways a family member can engage in the process:

Consider ways in which the relative or person with a caregiver relationship can support the child and the existing placement through activities such as:

1. Respite care.
2. Transportation for the child to visits with parents, siblings or other family members.
3. Transportation to services or extra-curricular activities.

4. Regular contact through phone calls, mail, or e-mail.
5. Regular visits with the child.

Consider ways in which the relative or person with a caregiver relationship can support the child and the existing placement through providing other resources such as:

1. Monetary support for extra-curricular activities.
2. Mentoring.
3. Providing family history, family photos, or family mementos.
4. Financial support for particular items or activities.
5. Access to special family events, holidays, religious or cultural ceremonies or other rites of passage. DHS Child Welfare Procedure Manual Ch. 4, sec. 3, p.14. http://www.dhs.state.or.us/caf/safety_model/procedure_manual/index.html

B. RELATIVES WHO CANNOT BE A PLACEMENT AT THE TIME THE INITIAL PLACEMENT IS MADE.

Recommendation

When relatives are identified who live too far away to be the initial placement, the court should ensure that the case plan includes strategies to maintain a connection between the family member and the children. Efforts to locate, develop or maintain relative connections should be evaluated as part of diligent efforts at review or permanency hearings as well as at Citizen Review Board hearings

Relatives should be given the opportunity to be short term or long-term placements. The family choice for a permanent placement may live too far away to be the best placement while DHS works with a parent on reunification. The relatives who is the best option for placement may initially be reluctant to provide care but if adoption becomes the plan, wishes to be considered. Regardless of when they express interest, DHS policy requires that all relatives that present themselves be assessed for placement

before the agency considers designating a foster parent with a caregiver relationship as a current caretaker (and an applicant for adoption). OAR 413-120-0541(4)(b).

Consequently, it is critical for the court to assess the agency's efforts to maintain connections between relatives living far away from the child both as part of the diligent efforts finding as well as part of the reasonable efforts finding related to concurrent planning. ORS 419B.449(5). Strategies for maintaining contact may include facilitating face to face visits, communication between the foster parent or caseworker and the relative, phone calls, Skype, FaceBook or other ways for children to maintain contact with their relatives.

5. REVISITING RELATIVE PLACEMENTS. – CHILDREN IN APPLAs OR IN TRANSITION

Roughly 2/3s or Oregon's foster children live with unrelated caregivers.

Dashboard Report on CAF measurements, July 2010,

<http://www.oregon.gov/DHS/data/>. Other children move between foster homes or different levels of care and treatment without a plan to return to a parent or other family. Until July 2010, DHS's obligation to search for and engage relatives was limited – often times to the first 6 months a child entered foster care. For many children who are wards of the juvenile court, contact with relatives is now being revisited sometimes for the first time in years.

A. Children in APPLAs or in Transition.

Recommendation

If DHS reports that relatives have been ruled out in the past, the court should require that family connections, including parents, be revisited. Efforts to locate, develop or maintain relative connections should be evaluated as part of diligent efforts at review or permanency hearings as well as at Citizen Review Board hearings.

Contact with relatives, whether it results in a change in placement or not, is an important connection for children in foster care. DHS caseworkers are required to review contacts with relatives after the first 30 days a child has been in care and after 90 days. The worker should also review efforts to identify relatives at Family Decision Meetings, when children need to change placements, when the current placement is not meeting the child's safety or well being needs, and -at a minimum – annually if a child is in a placement designated as APPLA. Caseworkers should be reviewing safety issues that prevented placement with parents or relatives and questioning whether they are valid given the child's and family's current circumstances.

DHS Child Welfare Procedure Manual Ch. 4, sec. 3, p.16.

http://www.dhs.state.or.us/caf/safety_model/procedure_manual/index.html

Search for relatives for children in long-term foster care may look similar to searches conducted at the beginning of a case – inquiries about family trees, review of significant people. Relatives who have been contacted in the past should also be recontacted. Relative's circumstances as well as the child's may have changed since the

last time a placement decision was made. Because of the length of time spent in care, the search will likely be much more in depth. Judges should be familiar with resources within their community – both through DHS and the Commission on Children and Families – that can assist with the searches for relatives, particularly when they have not been conducted for some time. See , Appendix D for tools to assist with relative searches.

B. IDENTIFYING RELATIVES FOR YOUTH AGING OUT OF DHS CUSTODY.

Recommendation

The court should review efforts to connect youth with family and other important adults as part of transition planning for independent living pursuant to ORS 419B.343(3)

For youth aging out of the system, relative connections are even more important. Effective transition planning for youth should include assistance developing connections with caring adults who can support youth once they leave foster care. Because young adults need relationships, not simply names and addresses, the work of identifying and developing those connections should be underway well before youth turn 18. Tools like the Casey Permanency Pact can help youth and relatives define what their role will be as the youth emancipates. See Appendix E.

C. When DHS is recommending a move to relatives.

Recommendation

When DHS recommends that a child move to a relative placement particularly after an extended period of time in another placement, the court should require careful documentation that the move will best serve the child's safety, well-being and education interests.

If relatives present themselves as placement resources, DHS is required to assess them even if the children are already placed with relatives or they have been in their current placement for a long time. The obligation is ongoing throughout the life of the case. OAR 413-070-0081. If more than one relative asks to be considered for placement, caseworkers are directed to assess the relatives in the following order:

1. Relatives as defined in OAR 413-070-0063(10)(a-c): blood or legal relatives related through the child's parent or through the child.
2. Relatives as defined in OAR 413-070-0063(10)(d): persons related by the family or the child as a relative.
3. Persons with a caregiver relationship.
4. Persons known to the child or family.
5. Foster Parents unknown to the child or family when none of the above is available or able to meet the child's needs.

OAR 413-070-0625.

The administrative rules also direct the caseworker to assess relatives based on their ability to meet children's safety and well-being needs including their needs for educational continuity, *Id.* If more than one relative requests placement, the caseworker should consider which individual has the closest relationship to the child. OAR 413-070-0078(3)(d).

The mandates to select the relative with the closest blood relationship may conflict with the direction to consider actual relationship and ability to best able to meet the child’s needs. Will an aunt or uncle from another state who can marginally meet the child’s safety and well being needs who the child has never met be the preferred placement over the former spouse of a parent who has safely parented the child in the past and lives within the child’s current school district? It is also unclear how the expanded definition of relative placement effects the court’s ability to oversee moves to relatives. The court has the ability to specify the type of placement under ORS 419B.349. If individuals with caregiver relationships and others with significant relationships with children are now defined as relatives, does the distinction between relative and other placements lose its meaning?

6. DILIGENT EFFORTS FOR CHILDREN ALREADY PLACED WITH RELATIVES.

Recommendation

The court should continue to inquire about efforts to identify and engage relatives, even if a child is currently placed with family.

Continuous engagement of family is important even when children are placed with relatives. Other relatives can be available to support the primary placement; be available to assume responsibility for the children if the current relative provider is not able to care for them and provide other important connections to family.