



# **WELL BEING: THE SHORT LEG OF THE ASFA STOOL**

**Hon. Pamela L. Abernethy (Ret.)  
Judge in Residence, JCIP  
Portland Mini CANI, January 2014**



“To the world you may be only one person but to one person you are the world”



**OUT OF HOME PLACEMENT: WE JUST TOOK THAT  
WORLD AWAY**



## WHAT IS “REASONABLE” ????????

- Judge Michael Key’s definition:
- *Doing for the families and children we serve that which we would want others to do for us and our families if we found ourselves in a like circumstance.*



## **CHILD WELL BEING: AN IMPERATIVE INQUIRY FOR THE INQUIRING MAGISTRATE**

- **WHAT IS REASONABLE TO DO DEPENDS IN PART ON WHAT ONE IS EXPECTED TO DO AND THEREFORE PRESUMED CAPABLE OF DOING.**
- **IF YOU KNOW WHAT DHS EXPECTS OF CASEWORKERS YOU CAN HOLD THEM TO THAT EXPECTATION IN APPROPRIATE CIRCUMSTANCES.**



**BUT AS HAROLD HILL WOULD SAY “YOU GOTTA KNOW THE TERRITORY”**



# SOURCES OF INFORMATION

- OARs  
[E.g. Visits OAR 414-0-0800 to 413-070-0880;  
Child Welfare Policy I-E.3.5.;  
Child Well Being OAR 413-080-0059]
- Child Welfare Procedure Manual
- Child and Family Service Plan/Review  
CFSP/CFSR
- Annual progress and services report APSR



## A FEW TERMS YOU MIGHT NEED TO KNOW

- *Oregon Child Safety Model*
- *Statewide children's Wraparound Initiative*
- *In-Home Safety and Reunification Services (ISRS) formerly known as Family Based Services*
- *Differential Response*



## A FEW TERMS CONT.

- *Senate bill 964: Strengthening, Preserving, Reunifying Families Program (10 counties)*
- *Intensive Family Services IFS*
- *Intensive Home Based Services IHS*
- *Family Sex Abuse Treatment FSAT for victim and non-abusing parent/ siblings*
- *Parent Training Services PTS*
- *Subsidized guardianships*



# REMEMBER No IV-E

## MONEY FOR THE ENTIRE STAY ...

- If you don't think efforts are reasonable to **prevent removal.**
- Or if you fail to **make a finding** of such efforts or that such efforts not required.



# WHAT IS THE FINANCIAL IMPACT OF A "NO" FINDING???

- **FIRST FINDING at SHLETER CRITICAL:**
  - *"Contrary to the welfare/best interest of the child finding"* must be in the Shelter Order/Judgment - If the finding is not made in the first court order/judgment about the removal, the child is **not eligible for IV-E payments for the entire foster care episode.**
  - Judicial finding regarding whether *"reasonable efforts were made, or were not required, to prevent the removal "* must be made no later than 60 days from the date the child is removed from the home if the finding is not made the child is **not eligible for title IV-E payments for the entire foster care episode.**
- **FINDINGS AT PERMANANCY – MUCH LESS IMPACT IF FIXED:**
  - Judicial finding at Permanency Hearings of *"reasonable efforts to finalize a permanency plan"* (reunification, adoption, guardianship, placement with a fit and willing relative, or APPLA) within 12/14 months and at least once every twelve months while the child is in foster care.
  - If the finding is not made, or the agency receives a no finding, the child becomes **ineligible for IV-E at the end of the month in which the judicial finding was required/made and remains ineligible until the beginning of the month that DHS receives a yes finding.**
  - FOR EXAMPLE - if a judge fails to make a reasonable efforts to reunify finding on April 2, 2014, the child becomes ineligible for IV-e on May 1, 2014. If the court conducts another hearing on May 29, 2014 and DHS gets a Yes that reasonable efforts were made to reunify, the child is eligible for all of May... essentially the agency is able to claim the child for the entire time - and is not financially penalized for the negative finding.



## INQUIRY AT SHELTER

- Was there first a differential response?
- Was a safety plan made?
- Who was involved?
  
- **SEE**
  - Assessment of a Safety Service Provider
  - [http://www.dhs.state.or.us/policy/childwelfare/manual\\_1\\_1/i-ab7.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1_1/i-ab7.pdf)



## DID DHS SEARCH FOR RELATIVES DURING CPS ASSESSMENT

- **Required if out of home placement necessary. OAR 413-070-0069(1).**
- *During the course of a CPS assessment, if a protective action needs to be taken, always consider whether persons in the family system can participate in managing child safety within the home. Ask the parents/child/other family members for family members' names and contact information and contact them right away. Follow the procedures for assessment of safety service providers.*
- OAR 413-070-0060, 413-070-0066; DHS Child Welfare Rules, Policies and Procedures Chapter 4, Section 3 p.10



## SHELTER REASONABLE/DILIGENT EFFORTS TO PLACE WITH RELATIVES

- **OAR 413-070-0066(2): DHS required to look for and place with relatives first.**
- *When child is entering substitute care. Use the Child Specific Expedited Certification procedures as described in Chapter 7 whenever possible in order to avoid the child going to the home of an adult unknown to them or to their family. Administrative rule allows for the emergency certification and placement with any relative or person with a caregiver relationship who is assessed to meet certification requirements and be able to meet the child's need prior to searching for and contacting all relatives.*
- *Id.*



# ALL HEARINGS: ARE THERE CONTINUED EFFORTS TO FIND 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.*
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- DHS Child Welfare Rules, Policies and Procedures Chapter 4, Section 3 p.4-5



## RELATIVES CONTINUED

- A relative is defined in OAR Rule 413-070-0063(10).
- I-A.4.5 Rights of Relatives  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-a45.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a45.pdf)
- I-E.1.1 Search for and Engagement of Relatives  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-e11.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e11.pdf)



# GRANDPARENTS

- Effective Jan. 1, 2014 ORS 419B.875 provides new grandparent rights
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- Requires the Department to make diligent efforts to identify and obtain contact information for grandparents of a child in the Department's custody and give the grandparents notice of hearings concerning the child. Grandparents no longer have to request notice of hearings in writing and provide a mailing address.
- Gives the grandparents the opportunity to be heard at hearing. Court can relieve DHS upon finding of 'good cause.'
- Provides that grandparents may ask for court-ordered visitation or other contact with the child.
- The new law defines "grandparent" as the legal parent of the child's legal parent.
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- ORS 419B.875; DHS Child Welfare Rules, Policies and Procedures Chapter 4, Section 3 p.6



## DISPOSITION: DID CASEWORKER LOOK FOR WAYS TO INVOLVE RELATIVES?

- *Look for ways a relative can be involved with the child? Can the relative attend school functions, religious or sporting activities or events? Can the relative offer transportation to visits? Are there opportunities for visitation, phone, email, or other contact? Can the relative offer resources in other ways such as providing family history information, on family medical or cultural practices, family mementos and other important connection with a child's history, music lessons or sporting equipment, mentoring, vacations, or other types of family connectedness?*
- DHS Child Welfare Rules, Policies and Procedures Chapter 4, Section 3 p.9-10



## WERE RELATIVES INVOLVED IN SAFETY AND CASE PLANNING?

- *In the development of the ongoing safety plan by inviting their participation in a Child Safety Meeting and stressing the importance of their input.*
- *In the development of the child's case plan by inviting their participation in an Oregon Family Decision Meeting and during the development of concurrent permanency plan options.*
- *During the 90-day case plan review.*
- *When a child who is in substitute care must move.*
- *When the Department is considering reunification.*
- *When the Department is considering recommendation of moving to the concurrent plan other than return home.*
- *At all critical junctures in the case plan and in the child or young adult's life.*
- *Id.*



## SPECIFIC QUESTIONS THE JUDGE CAN ASK (BECAUSE THIS IS WHAT THE SUPERVISORS ARE TOLD TO ASK)

- Has the worker asked all known family members for the names of more relatives?
- In what ways has the worker included the family members in decisions and case planning?
- In what ways has the worker incorporated the family's input into the case plan?
- Are there family members that could assist in managing child safety in an In Home safety plan?
- Are there family members that could assist in facilitating visitation for the child, siblings, and parents?
- Are there other times relatives can be allowed to visit?
- What efforts are currently being made to place the child with a relative when a child is not currently with a relative?
- How have relatives who can't or won't be placement resources been included in case planning? Have relatives been asked for names of additional relatives? Have they been invited or offered ways to provide family history, or to maintain connections for the child?



## SPECIFIC QUESTIONS CONT.

- If the child is currently placed with a relative, in what ways is that relative meeting the child's needs for safety, well being and permanency? What supports may the relative need? How is the Department supporting the relative's new role in the family?
- If alternate relatives have been identified as permanent placement resources but not for substitute care, such as a relative living in another state/country, what efforts are being made in assessment of these relatives for the purposes of permanency and what arrangements have been made for ongoing contact and relationship-building?
- If there was a relative or person with a caregiver relationship that previously was not allowed to have contact with the child/young adult, have the circumstances surrounding that decision changed and if so, how might the child benefit from contact with that person now?
- What external resources, searches have been tried? What degree of success resulted from these efforts?
- DHS Child Welfare Rules, Policies and Procedures Chapter 4, Section 3, p.9-10



# DISPOSITION/REVIEW : INQUIRING MAGISTRATE REVIEWS HEALTH

- Was child referred for a mental health assessment within 21 days and did the child receive the assessment within 60 days?
- If under 3, was the child referred to Early Intervention?
- Was the child referred for medical and dental check-up within 30 days of entering care? Did the caseworker gather all available medical records?
- Is the child on psychotropic medication? If so who is monitoring that and how often?
- Has the child experienced many moves and trauma? Has the care provider taken “Trauma Informed Care” training provided by PSU/DHS?



## REVIEW: INQUIRING MAGISTRATE APPLIES OAR/POLICY STANDARDS RE CASE PLAN FOR VISITATION

- The child or young adult, the parent or guardian, and each sibling have a **right to visit** as often as reasonably necessary to develop and enhance their attachment to each other. **OAR 413-070-0830**
- **New visitation policy I-E.3.5 Handout**



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- Former OAR 413-080-0059(2) required a very long list of things the caseworker was supposed to do when monitoring well being in an out of home plan.
- Current OAR 413-080-0059(2) –revised Jan. 2014 - no longer uses the term “well being” in the title and consists of one sentence: *“The caseworker must determine that the child is safe.”*
- Handout: New and Old Standards for Monitoring



## RESOURCES

- DHS policy link:  
[http://www.dhs.state.or.us/policy/childwelfare/cross\\_index.htm](http://www.dhs.state.or.us/policy/childwelfare/cross_index.htm)
- **NCJFCJ RESOURCE GUIDELINES**
- **NCJFCJ CHECKLISTS**

