

**Reimagining Dependency Courts:
Oregon File Review of “Long Stayers”
in the Foster Care System**

February 2017

Timothy Travis, JD

**Eveleen Henry, Sr. Judge (Lane County Circuit Court Judge,
retired)**

This project was supported by the National Center for State Courts with funding by Casey Family Programs and the Juvenile Court Improvement Program.

BACKGROUND

In 2016, the National Center for State Courts (NCSC), in partnership with Casey Family Programs, selected four states to pilot the *Reimagining Dependency Courts*, a program that focuses intensively on implementing court policies and practices that will reduce the number of children in foster care and improve permanency outcomes, with a particular focus on children in care more than two years (“long stayers”). As one of the selected four states, Oregon participated in the initial planning, visit, and assessment by the NCSC Team. A part of this effort included a file review of 200 cases across three different Oregon counties, with the goal of identifying strategies to reduce the number of children who remain in the foster care system for more than two years. The 200 cases came from Multnomah, Lincoln, and Yamhill counties and were limited to open cases of children who have been in foster care for more than two years.

The file review was conducted by two individuals with extensive experience working in Oregon’s juvenile dependency system. The file review instrument was a six page standardized document regarding case development over the life of the case. While the file review examined the entire life of the case, it also divided each case into two distinct time periods: the initial time period when the permanency plan was reunification, and the secondary time period when the permanency plan had been changed to adoption, guardianship, placement with a fit and willing relative, or APPLA. By looking at these two distinct time periods, the file reviewers were hoping to be able to ascertain patterns or commonalities in the initial time period of cases that could help identify children in danger of becoming “long stayers”, as well as identify strategies to better serve children who were spending years in the foster care system.

Specific recommendations will be discussed in detail below, but the file reviewers noted several overall issues in the case files that they reviewed. Even after reviewing the entire court case file, it was often difficult to ascertain a coherent history of the case due to the passage of time and a number of missing, out of date, or confusing documents. The most glaring of these missing or out of date documents was the DHS case plan. Of the 200 files reviewed, the case plan was missing in 19% of the cases (37 of the 200 reviewed cases). If a case plan was included, in 35% of the cases (69 of the 200 reviewed cases) it was over a year old. Taken together, the file review found that the court did not have a recent case plan in 53% of the cases reviewed (106 of the 200 reviewed cases either had no case plan or a case plan over a year old). The case plan is an agency document, mandated under both state and federal law, that DHS is obligated to create and distribute which documents how the agency is making reasonable, active, or diligent efforts. The case plan is the most complete record of agency services and forms an evidentiary basis for the court’s findings; when the case plan is missing from the record, it is

very difficult to know what efforts DHS made throughout the life of the case.

Also often missing from the record were exhibits offered to the court during hearings. Having the court ensure that all materials received as exhibits are made a part of the case record will provide a much more complete view of the case. The file reviewers found many of the court judgments to be confusing and unclear. Oregon has developed model court forms for use in juvenile dependency cases; while these model court forms ensure that all legally required findings are made, they are not designed to be used for a sibling group. When several children are included on the same judgment, the form becomes very cluttered and it is difficult to follow which specific findings or orders relate to which child. The file reviewers also found that when a court judgment was used for several siblings, it was not always filed in each child's case, meaning that some of the siblings were missing court judgments in their files.

In addition to the incomplete case files, the file reviewers were concerned about the completeness of court hearings for "long stayers." Many long stayers qualify for Developmental Disability Services (DDS) or have significant mental health needs. When looking at the court reviews for these children, the file reviewers noted that very often the hearings were brief and sparsely attended- it was common to find that the only participants at these hearings were the DHS caseworker and the child's attorney. Independent Living Program (ILP) caseworkers who are working with the teenage long stayers on their transition planning for successful adulthood seldom attend court hearings. DDS caseworkers rarely attend court hearings or prepare reports to the court on the child's treatment goals and progress. The file reviewers found that often the court does not receive any information about the child's treatment goals and progress prior to the court hearing, and due to the limited participation of people involved in the case, does not receive substantive information about the child at the hearing.

RECOMMENDATIONS FOR THE INITIAL TIME PERIOD OF A CASE

The optimum time to prevent a child from becoming a "long stayer" is during the initial period of a case. While the goal is for every child to be reunified with a parent within ASFA timelines (15 of the most recent 22 months in care), not every child in care is able to safely return home. The first permanency hearing is meant to assess whether reunification is possible and to implement a different permanency plan if timely reunification is not likely. The initial permanency hearing is held within 12 months of jurisdiction being established or 14 months after the child enters care, whichever occurs first. In Oregon, the initial permanency hearing is held within these timelines 88% of the time. Despite the timeliness of these initial permanency hearings, there are legitimate reasons why a child's permanency plan may not be changed after

the first year in care. Some parents may make uneven progress in ameliorating barriers to safe parenting, leading the court to grant the parents additional time to meet the requirements for reunification. If those efforts ultimately fail, the child may be in care for close to two years before the permanency plan is changed. Appeals can delay a change of permanency plan beyond ASFA timelines.

Even if a child’s plan is changed during a timely permanency hearing, there can be delays in finalizing the new permanency plan. ICPC processes can be drawn out, delaying finalization of out-of-state adoptions. A child’s adoptive or guardianship resource can fall through, necessitating a delay while a new resource is recruited. Some children are approved for a plan of adoption or guardianship without an identified resource, creating delays. While some of these delays may be unforeseen, the courts and DHS should be planning for the possibility that reunification may not be possible and another permanency plan should be implemented.

Recommendations for the Initial Time Period of a Case

1. Courts should ensure that DHS is performing a diligent relative search, and require documentation of the ongoing relative search at every court hearing.
2. Courts should ensure that DHS is performing meaningful concurrent planning and that it is documented in the case plan.
3. Courts should make efforts when scheduling hearings to ensure the participation of ICPC workers, Developmental Disability Services (DDS) caseworkers, and others.
4. Court reviews should always include a specific inquiry regarding the child’s services and treatment plan; DHS should expend funds for early assessments or psychological evaluations for diagnostic purposes and treatment.
5. Courts should encourage CRB and CASA participation in the case.

Diligent Relative Search

The most important aspect of concurrent planning includes a diligent relative search. DHS has a responsibility to conduct a relative search throughout the life of the case, and to present evidence of the relative search to the court. However, the file reviewers found that for the vast majority of cases reviewed, the information DHS submitted to the court about the relative search was virtually meaningless. Very often, the information DHS submitted was a “cut and

paste” format containing dated information. Courts should be requiring DHS to submit updated, thorough information about the relative search efforts at every court hearing and should be actively questioning DHS about the status of identified relatives. The efforts towards relative identification may forestall the scramble to find relatives at a later date if it appears that reunification may not be successful. It will also allow DHS to submit timely ICPC requests, rather than waiting until the permanency plan is changed.

Meaningful Concurrent Planning

Diligent relative searches go hand in hand with meaningful concurrent planning. It is not sufficient for DHS and the courts to simply identify a concurrent plan; the concurrent plan needs to be fully developed. Permanent resources, both relative and non-relative, need to be identified by DHS. If the child does not have an existing relationship with these resources, DHS needs to facilitate contact with in-person and phone visits. Reasonable efforts towards concurrent planning necessitate that DHS take every step to develop that alternate plan except for those steps that would undermine the primary plan. Concurrent planning during the initial time period of a case should be every bit as robust as the planning towards the primary plan.

Participation of ICPC workers, DDS caseworkers, and others

The file reviewers found that in the vast majority of court hearings, the DHS caseworker was the only attendee to represent the case plan, even if there were other caseworkers involved in the case. When a child qualifies for DD services, their DDS caseworker becomes the primary driver of their case plan. Despite this, it was very rare for a DDS caseworker to appear in court or submit a report prior to a hearing. When an ICPC homestudy request is submitted, that request is subsequently handled by the ICPC worker; very few ICPC workers attend court hearings. If a child has a DDS caseworker or a pending ICPC homestudy, the caseworker does not usually possess sufficient information about the ICPC homestudy progress, or even about the child’s current services and treatment plan, to be able to provide substantive and accurate information to the court. If the courts were to ensure that ICPC workers and DDS caseworkers were attending court hearings, the courts would have the necessary information to make meaningful findings and recommendations.

Early Assessment of Child's Functioning and Needs

A significant element of concurrent planning is an assessment of a child's functioning and needs. It is almost impossible to select an appropriate concurrent plan for a child without knowing the specifics of that child's strengths, wants, and needs. DHS often defaults to a concurrent plan of adoption without taking into account whether that specific plan is right for the child. Indeed, DHS often does not know exactly what plan may be best for the child because no thorough assessment has been made. The file review found that there were relatively few psychological assessments/evaluations for the child included in the files reviewed. Additionally, none of the mandatory assessments performed as part of the safety decision making at the beginning and throughout the life of the case are included in the court file. Not only are these assessments a necessary tool for concurrent planning, they are also a necessary tool for diagnosis and the development of a treatment plan. Without providing the assessments to the court, it is difficult to see how the recommendations from these assessments are integrated into the service providers' treatment plan. Good concurrent planning requires that a child will be best prepared for their permanency plan, but frequently a psychological evaluation and a treatment plan are not put in place until a permanent placement has already failed. Waiting until implementation of the concurrent plan to assess whether or not the concurrent plan is appropriate causes an unnecessary delay in permanency and unnecessary trauma to the child.

CRB and CASA Participation

Finally, the Legislature has mandated that Citizen Review Board (CRB) and CASA have important roles to play in ensuring that reasonable efforts are being made at the front end of a case. The CRB reports are standardized to track the same findings that the court must make, and the file reviewers found that the narrative in the CRB report was the best way to get a coherent feel for a child's case. The report makes findings about the diligent relative search, whether DHS is making reasonable efforts towards the permanency plan, and whether DHS is sufficiently developing the concurrent plan. These reports can serve as a valuable resource for the courts when preparing for hearings. CASAs are another great resource for the court, as they prepare full reports for each hearing and their appearance and participation at hearings contribute to a fuller court review. The courts should be encouraging compliance with the legislative mandate for the full participation of both the CRB and CASAs in each child's case.

RECOMMENDATIONS FOR THE TIME PERIOD AFTER THE PERMANENCY PLAN HAS BEEN CHANGED

Once the permanency plan for a child has changed from reunification to another plan, the focus of the case turns from efforts to reunify the family to efforts to achieve the highest level of permanency possible. For children with a new plan of adoption or guardianship, the focus turns to finalizing the plan and ensuring that the placement does not disrupt. If adoption or guardianship is achieved, the child leaves substitute care. For those children for whom adoption or guardianship cannot be achieved, or for whom another permanency plan (such as APPLA or placement with a fit and willing relative) is more appropriate, the focus of the case often turns to the challenges of maintaining a suitable placement.

Recommendations for the Time Period after the Permanency Plan Has Been Changed

1. DHS should have an internal process to designate these cases as “long stayer” and should prioritize continuity in these cases, ensuring that these children have a caseworker trained in the needs and challenges of long term foster children.
2. Courts should ensure that DHS is continually updating the diligent relative search.
3. Courts and DHS should encourage fuller child participation at hearings.
4. Courts should pay particular attention to and make specific findings about the child’s academic progress and transition services to independent adulthood. Specific information should be included in the court report and transition plans.
5. Courts should favor fewer, truly participatory hearings over more frequent hearings with limited participation.

Special Considerations for “long stayers”

For children with a permanency plan that will keep them in substitute care, it is crucial that DHS emphasize continuity for the child and ensure that the child is meaningfully involved in planning for successful adulthood. By designating children in long term foster care as “long stayers,” DHS can ensure that these children receive caseworkers with specialized training to address their particular needs and motivate their participation in school and independent living services. For children who are in DDS-certified foster homes, DHS needs to develop a long-term plan to transition the child to the adult DD system, which may require a change in housing. While it may be impossible to ensure that the child has the same caseworker for their entire time in

care, efforts should be made towards caseworker stability and continuity for long stayers.

Continuous Updating of Diligent Relative Search

Even though these children are more or less permanent wards of the court, the court is required at the annual permanency hearing to make determinations based on contemporary evidence about whether reunification or another higher level of permanency can be achieved. DHS has a responsibility to continue the diligent relative search and to continue looking for placement resources that may be able to offer the child a more permanent home. Children who are long stayers in the foster care system need assistance to maintain family connections and bonds. Even if a relative is not able to be a placement resource, that relative can still be a source of support and connection in the child's life. Sibling visits are equally important, especially to the foster youth. Often the language of "no fit and available relatives" becomes ingrained in the fabric of the case, copied and continued from one case plan to the next with no effort made to renew the search. The court must ensure that diligent efforts are continually being made by DHS.

Fuller Child Participation at Hearings

Fuller participation in their case plan is also important for children in long term foster care. It is the stated policy of DHS that children are parties who should attend their court hearings. However, the file review found that very few children attended their court hearings. Of the 200 cases reviewed, the child attended the most recent permanency hearing in 36% of the cases (71 of 200 cases reviewed). In Lincoln County, the child attended the most recent permanency hearing in 58% of the cases (29 of 50 cases reviewed). In Yamhill County, the child attended the most recent permanency hearing in 66% of the cases (33 of the 50 reviewed cases). In Multnomah County, the child attended the most recent permanency hearing in just 9% of the cases (9 of the 100 reviewed cases).

Many long stayers have special needs and their cases are co-managed with Developmental Disability Services. Yet, the file review found that it was uncommon for a DDS caseworker to attend a court hearing or submit a report. Without the voice of the child or the DDS caseworker, courts are not able to make meaningful findings. Therefore, courts should be encouraging children and DDS caseworkers, if applicable, to attend hearings and should remove any scheduling impediments to their participation.

Specific Findings about Academic Progress and Transition Services

For teenagers in long-term foster care, assistance in a successful transition to adulthood is one of the benefits to which they are entitled. Courts should rigorously enforce requirements that DHS make transition services available to children and update the transition plans. The file review noted that transition plans were frequently missing from the documents submitted for court review. Coupled with the fact that few teenagers are attending their court hearings, it is concerning that the court does not have the information necessary to make an informed finding about transition services for long stayers in the foster care system. Additionally, the file review noted that full documentation of a child’s academic progress, including their IEPs, was frequently lacking in the materials submitted to the court. Lack of documentation to the court about a child’s transition planning and educational progress prevents the court from making meaningful findings and orders for these children.

Greater Participation at Hearings

The file reviewers found that court hearings for “long stayers” were often short and formulaic with limited attendance by case participants. In fact, the caseworker was the only attendee at the most recent permanency hearing in 19% of the cases (37 of the 200 reviewed cases). An additional 20% of cases (39 of the 200 reviewed cases) had just one other participant, either a parent, foster parent, CASA, grandparent, or tribal representative. Overall, almost 40% of the most recent permanency hearings in the files reviewed had only one or two participants, a caseworker and one other party. Hearings that are conducted this way are a missed opportunity for meaningful participation and planning for the child’s future. Everyone with a voice or a role in the case should be attending court hearings. The file reviewers believe less frequent, more meaningful and participatory hearings are preferred over frequent, short, and formulaic hearings. The file reviewers also had an overall impression that the attorneys for the children adopted a passive, rather than active, role in their client advocacy. The attorneys have a duty to fully and vigorously represent their clients. For long stayer clients, this advocacy should include the discussion of transition planning, academic progress, family contact, therapeutic service needs, as well as the child’s wishes and concerns.

CONCLUSION

Reducing the number of children in foster care is a national priority. While the majority of children who enter foster care will be reunified with a parent or will achieve permanency within two years, there is a population of children who will spend the majority of their childhoods in foster care. These “long stayers,” children who have been in care for at least two years, often

have high needs and unique challenges. While it is not possible to ensure that no child will grow up in foster care, there are certain strategies that can reduce the number of long stayers in foster care, and can reduce some of the negative effects of being raised in the system. Chief among these strategies is the need for a continuous diligent relative search on the part of DHS, as well as thoughtful and substantive concurrent planning. It is not acceptable to begin this planning once the ASFA timeline has been reached; a concurrent plan, including the identification and necessary certification of any prospective permanent placement resources, should be developed and ready by the time of the first permanency hearing.

If the court is to fulfill its function of oversight and monitoring of the child welfare system, then court reviews need to be full and complete. All parties should be in attendance, including DDS caseworkers, ILP workers, ICPC workers, and the child, if appropriate. The case materials submitted to the court should include a thorough report of the diligent relative search, the therapeutic, health, and educational services to the child, and progress on both the primary and concurrent case plans. If a child has a permanency plan of adoption or guardianship, the case plan should include information about the reasonable efforts to finalize the plan and services being provided to ensure that the placement does not disrupt. If the permanency plan is APPLA or placement with a fit and willing relative, the case plan should include up to date and complete information about the child's educational progress and transition planning. The court should be making findings about these services, and should be spending more time during court hearings focusing on the planning for successful adulthood of long stayer children. Children growing up in foster care deserve no less.