

# FEDERAL OVERLAY AND INTRODUCTION TO HEARINGS

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Oregon Mini Child Abuse and Neglect Institute  
January 28-29, 2020



# Overview

- Federal Funding
- Time Standards and Periodic Reviews
- Child Education and Well-Being
- Transition Planning
- Indian Children
- Confidentiality of Records
- Oregon Juvenile Code



# Adoption and Safe Families Act

Amended IV-B and IV-E of the Social Security Act

- ❖ Set minimum standards for states to access federal money
- ❖ Set timelines for decision-making
- ❖ Required periodic reviews and permanency hearings
- ❖ Required certain findings to make child eligible for IV-E funds
- ❖ Children 14 and older must be included in development of the case plan                      42 USC §675(1)(B)

# Periodic Reviews

- The status of each child must be reviewed at least every six months 42 USC §675(5)(B)
  - Safety of the child
  - Necessity for and appropriateness of the placement
  - Extent of compliance with case plan
  - Extent of progress which has been made
  - Project a likely date by which the child will leave care
  - If APPLA, reasonable and prudent parent determination

# Citizen Review Board

- The local citizen review board shall review each case of a child or ward in substitute care as assigned by the court. ORS 419A.106(1).
  - CRB reviews case every six months, unless the court holds a permanency hearing or a full judicial review.
  - Mandated findings and recommendations. ORS 419A.116
  - Parties have right to judicial review.
  - DHS has 17 days to notify board if no intention to follow recommendation.



# System Improvement

- Model Court Teams
- Trainings
- JELI



# Model Court Teams

- Local teams led by juvenile court judge:
  - CRB
  - CASA
  - DHS
  - Attorneys (DOJ, DA, Defense)
  - Juvenile Department
- Initiatives:
  - Increase visitation time and frequency
  - Decrease time to jurisdiction
  - Reduce the number of APPLA plans
  - Trauma informed practices



# Permanency Hearings

- Required within 12 months of jurisdiction or 14 months of removal, which is first ORS 419B.470
- Permanency hearings every 12 months thereafter
  - Reasonable efforts findings are required if child is out of the home
  - If no finding, child becomes ineligible for funding until finding is made





# Termination of Parental Rights

- When a child has been in foster care for 15 of the last 22 months, DHS must file a petition to terminate parental rights. ORS 419B.498(1); 42 USC 675(5)(E)
  - Date entered care is 60 days after removal or the date of adjudication, whichever is earlier
  - Trial home visits are not included in 15 months
  - TPR petition cannot be filed until court says the permanency plan is adoption
  - There are exceptions to the 15/22 month rule in ORS 419B.498(2)

# Transition Planning

Required for children 14 years old and older by 42 USC 675(1)(D), (H), and (I)

Plan must address:

- Housing
- Health insurance
- Education
- Support services
- Work force and employment services
- Health care treatment decisions
- Credit report

# Normalcy in Foster Care

Federal requirements:

- Reasonable and prudent parent standard  
42 USC § 675(10); ORS 419B.194
  - Court is required to make findings in APPLA cases. ORS 491B.449 and 419B.476
  - DHS must ensure the child has opportunity to engage in at least one extracurricular activity.



# Sex Trafficking

- DHS is required to identify children who are, or are at risk of, being trafficked for sex – and provide services.

42 USC 671(a)(9)(C)

- DHS is required to report runaways to law enforcement and the National Center for Missing and Exploited Children
  - Notify parents
  - Determine child's experiences while absent and screen for sex trafficking

42 USC 671(a)(35)(A)

# Health and Education

- Every Student Succeeds Act of 2015
  - Foster children may stay in school of origin
- Health and education records kept as part of case plan
  - 42 USC 675(1)(B)
- Medical planning, hospitalization, mental health
  - Medical exam within 30 days of foster care
  - Dental exam within 30 days
  - CANS screening within 60 days
  - Early Intervention screening within 60 days
  - ORS 419B.346; 419B.352
- Psychotropic medications. ORS 418.517

# Indian Child Welfare Act

ICWA is federal law that governs the out-of-home placement of American Indian children. If an Indian child is involved, these protections are triggered:

- “Active” instead of “reasonable” efforts
- State or tribal court?
- Notice to tribe and right to intervene
- Expert testimony before removing child
- Placement preferences
- Burden of proof is higher

# Confidentiality of Records



- Title IV-E and CAPTA require states to ensure the confidentiality of child welfare records with some exceptions.
- ORS 419A.255 governs who may access court records
  - Access depends on one's role
  - Member of the public must file a motion
  - Court proceedings are open to the public
  - Some info in delinquency cases is not confidential (see ORS 419A.255(6) and (7))

# Oregon Juvenile Code Overview

- ORCP do not apply. See ORS 419B.800
  - Court may regulate pleading, practice, and procedures in any manner not inconsistent with ORS 419B.800 to 929.
- Consolidation is mandatory. ORS 419B.806
- Required court notices prior to default. ORS 419B.816 (jurisdiction); ORS 419B. 820 (permanent guardianship and TPR)
- Discovery is governed b ORS 419B.881
- Modifying or setting aside an order is addressed in ORS 419B.923



# Findings

- Must be based on evidence in the record
  - Sworn testimony
  - Admitted exhibit
  - Party stipulation
  - Judicial notice



# Judicial Notice and Exhibits

- Judicial notice of fact or law:
  - Facts must not be “reasonably in dispute.” ORS 419A.253(b)(A)
  - Court must attach a list to judgment with reference to source. ORS 419A.253(2)
  - Must provide the parties with an opportunity to object.
- Exhibits:
  - If there is a document the court wants to rely on that hasn’t been offered, use ORS 419A.253(1)(b)(B) process.
  - Once offered, an exhibit becomes part of the record of the case. ORS 419A.252(4)(h)

# Legal Parties (ORS 419B.875)

- Child
- Parent(s), guardian(s), Indian custodian(s)
- Putative fathers
- The state
- The juvenile department
- Court Appointed Special Advocate (CASA)
- DHS, when granted custody (represented by DOJ)
- The Tribe (after intervention)
- Intervenor who is granted intervention status

# Grandparents

- DHS must make diligent efforts to locate
- DHS must give notice of hearings
  - Court may relieve DHS of this requirement for good cause
- If grandparent is present, has right to be heard
- Required findings – ORS 419B.875(7)(d)
- Visitation: Grandparent may request at any hearing (except TPR), provided notice was given to DHS and parties at least 30 days in advance. Applies even after parents' rights terminated. ORS 419B.875(7)(f)

# Foster Parents

- No legal party status
- DHS must provide notice of hearings
- Has right to be heard. ORS 419B.875(6)
- May intervene if “caregiver relationship.” ORS 419B.116
- May qualify as a “current caretaker” under ORS 419A.004(11) and ORS 419B.349.



# Appointment of Counsel

- Appoint for parents prior to shelter hearing. ORS 419B.205
- Best practice is to appoint for child. ORS 419B.195
- Attorneys must meet minimum standards promulgated by the Oregon State Bar



# Court Appointed Special Advocates

- CASA shall be appointed in every case. ORS 419B.112
- Duties:
  - Investigate all relevant information about the case;
  - Advocate for the child, ensuring all relevant facts are brought before the court;
  - “Facilitate and negotiate” to ensure the court, DHS, and the child’s attorney fulfill their obligations to the child in a timely fashion; and
  - Monitor court orders to ensure compliance and to bring to the court’s attention any change in circumstances that may require a modification in the court’s order.

# Foster Children's Bill of Rights

- Requires notices to foster child and posting of rights in foster home. ORS 418.201
- Creates a Foster Care Ombudsman and process to make complaints.
- Requires DHS to notify and provide the child transportation to CRB and court hearings when the matters to be reviewed are appropriate for the child, taking into consideration the age and developmental stage of the child.