CRB Reviews of Voluntary Cases
Myths vs. Facts

This technical assistance guide is intended to dispel some commonly held myths about reviewing cases of children who are in foster care under a voluntary agreement between a parent or legal guardian and the Department of Human Services (DHS). Each myth is organized under the most applicable finding. A separate technical assistance guide will be created for young adults age 18 or older who enter into a Voluntary Custody Agreement with DHS.

INTRODUCTION

Myth: ***Under Basis of Jurisdiction, boards need only confirm that the child is in foster care under a voluntary agreement.***

Fact: There are two types of agreements a parent or legal guardian may enter into with DHS to have a child voluntarily placed in foster care.

1. A Voluntary Placement Agreement is used when the sole reason for placement is to obtain services for a child's emotional, behavioral, or mental disorder or developmental or physical disability (OAR 413.020.0070(1)).

2. A Voluntary Custody Agreement is used when a parent or legal guardian is immediately and temporarily unable to fulfill his or her parental responsibilities (OAR 413.020.0010(2)).

In both types of agreements, all persons who have legal custody of the child must sign the agreement unless one of those persons is missing. If a person is missing, the one who signs the agreement must provide DHS the persons and places likely to have knowledge of the missing person's whereabouts. DHS must immediately begin a reasonably diligent search to find the missing person to provide him or her notice of the agreement (OAR 413-020-0020(2), (3) and 413-020-0075(2), (3)). OAR 413-020-0065(4) defines "legal custody" as a legal relationship between a person, agency, or institution and a child that imposes on the person, agency, or institution the duties and authority of the child's legal custodian.

When reviewing a voluntary case, boards should confirm the following under Basis of Jurisdiction:

1. Whether the agreement is a Voluntary Placement Agreement or a Voluntary Custody Agreement,
2. The date the agreement was signed,
3. Who signed the agreement, and
4. Whether there is a person with legal custody of the child who did not sign the agreement and, if so, what efforts DHS has made to provide that person with notice of the agreement.

Myth: ***The Indian Child Welfare Act (ICWA) never applies in voluntary cases.***

Fact: ICWA can apply to a child voluntarily placed in foster care. DHS policy states that if a child is an Indian child who is an enrolled member of or may be eligible for membership in an Indian tribe, each parent or Indian custodian who has legal custody of the child must sign the Voluntary Custody Agreement or Voluntary Placement Agreement in a hearing before a judge of a court with appropriate jurisdiction (OAR 413-020-0020(5) and 413-020-0075(4)).

When reviewing a voluntary case, boards should confirm the following:

1. Whether each parent or legal guardian completed a Verification of ICWA Eligibility form (if it is a first review and the forms were not included in the case material, ask to see the signed forms during the review);
2. The status of the ICWA investigation if American Indian or Alaskan Native Ancestry is claimed or a parent or legal guardian did not complete the form; and
3. If ICWA applies, whether the voluntary agreement was signed during a court hearing before a judge.

Myth: ***The CRB reviews cases subject to ICWA in which the tribal court has jurisdiction.***

Fact: Periodically, tribes will enter into a voluntary agreement with DHS so that a child under tribal court jurisdiction can get specific services provided by the state of Oregon. The CRB does not review these cases unless specifically requested by DHS.

It is important to note the distinction between cases in which the tribe has intervenor status in a state court case versus those cases in which the tribal court has jurisdiction. The CRB reviews all cases subject to state court jurisdiction, including when the tribe has intervenor status. The CRB also reviews all voluntary cases that are not otherwise subject to tribal court jurisdiction.

FINDING #1 DHS made reasonable/active efforts to prevent or eliminate the need for removal of the child from the home.

Myth: ***When reviewing voluntary cases, boards must make detailed findings about efforts to prevent or eliminate the need for removal.***

Fact: Finding #1 is "YES" by default in voluntary cases. Federal law states an agency is in compliance with removal and foster care placement requirements if reasonable efforts to prevent or eliminate removal have been made, or the removal is in accordance with a voluntary agreement entered into by a parent or legal guardian (42 USC 672(a)(2)(A)).

A brief summary of the circumstances and/or precipitating placement history can be noted.

FINDING #2 DHS has made diligent efforts to place the child with a relative or person who has a caregiver relationship.

Myth: ***DHS does not need to conduct a relative search in voluntary cases.***

Fact: The child's level of supervision and treatment needs may very well require a higher level of care than what can be provided in a relative foster care setting, however, DHS is still required to conduct a relative search in voluntary cases (OAR 413-070-0069(1)(b)). Not all children in voluntary placements end up going back home, so a relative search at the beginning of the case is important. Relatives are also needed to gather family information and history, to develop and maintain the child's family relationships and cultural connections, and/or to engage extended family in managing the child's safety.

Efforts made to conduct a relative search and to establish family connections is also a consideration of Finding #3 and Finding #7.

Myth: ***DHS is only required to ask the parents or legal guardians to identify a child's relatives or persons with a caregiver relationship.***

Fact: OAR 413-070-0069(2)(b) also requires DHS to communicate with the child or young adult, whenever possible, to identify relatives or persons with a caregiver relationship. Particularly when parents refuse to provide relative information, boards should confirm whether DHS has asked the child to identify relatives or persons with a caregiver relationship.

FINDING #3 — DHS has ensured that appropriate services are in place to safeguard the child's safety, health, and well-being.

There are no commonly held myths related to Finding #3 in voluntary cases.

Emphasis is to be given to educational supports, verification of access to available services and appropriateness of placement.

FINDING #4 — DHS made reasonable/active efforts to provide services to make it possible for the child to safely return home.

Myth: ***Finding #4 only applies when the permanency plan is Reunification (i.e., Return to Parent).***

Fact: In voluntary cases, boards should also make this finding when the permanency plan is return to a legal guardian.

Myth: ***In voluntary cases, DHS doesn't have to provide services to the parents because it is the child's own behavior that necessitated placement.***

Fact: The DHS case plan in a voluntary case, known as a Family Support Services Case Plan, addresses the service needs of the family, not just the child (OAR 413-030-0009(k) and 413-030-0016(c)). At a minimum, DHS should be trying to engage parents in case planning for the child, and should be arranging for visitation. Additional services such as family counseling or parenting classes that address the special needs of the child may also be appropriate.

If a parent has not received a service the board feels is critical to reunification, it could be the basis for a negative finding and/or a recommendation that the Family Support Services Case Plan be revised.

FINDING #5 — DHS made reasonable efforts in accordance with the case plan to place the child in a timely manner, and to complete the steps necessary to finalize the permanency placement, including an interstate placement if appropriate.

Myth: ***A court can implement the concurrent plan without taking jurisdiction on a dependency petition.***

Fact: Before a court can implement a concurrent plan, it must find that DHS has made reasonable/active efforts to reunify the family, the parents have not made sufficient progress to make it possible for the child to safely return home, and there are no further efforts that would make it possible for the children to safely return home within a reasonable time (ORS 419B.476(2) and (5)). Oregon's Court of Appeals has determined that these findings must be based on the allegations on which the court has

taken jurisdiction. In voluntary cases, there are no allegations.

If a board is reviewing a voluntary case in which the court has implemented the concurrent plan, boards are to recommend that a dependency petition be filed.

FINDING #6 The parents have made sufficient progress to make it possible for the child to safely return home.

Myth: ***This finding does not apply if placement is due solely to the child's own emotional, behavioral, or mental disorder or developmental or physical disability.***

Fact: This finding must always be made for each parent or legal guardian who signed the voluntary agreement when the permanency plan is reunification. This finding should also be made when the permanency plan is return to a legal guardian.

Myth: ***In voluntary cases, DHS cannot require the parents to engage in services if there are no allegations against the parents on which the court has taken jurisdiction.***

Fact: In both Voluntary Placement Agreements and Voluntary Custody Agreements, the parent or legal guardian must agree to:

1. Full and ongoing cooperation in developing the family support services case plan and making decisions for the child based on the child's indentified needs;
2. Visit and financially support the child to the fullest extent possible; and
3. Work cooperatively with the Department (OAR 413-020-0025(3) and 413-020-0080(4)).

If a parent is not cooperating with DHS or no longer wants the child returned home, the board should consider under Finding #9 whether or not the voluntary agreement is still appropriate and should consider recommending that a dependency petition be filed.

Myth: ***A negative finding cannot be made for Finding #6 if the parents are complying with DHS expectations.***

Fact: This finding asks whether parents have made sufficient progress to make it possible for the child to safely return home, not whether the parents are complying with DHS. Sometimes the circumstances of a case are such that a child is unlikely to ever return home, regardless of the level of parental engagement in case planning (e.g., sexual abuse case involving siblings who still reside in the home).

Boards should feel compelled to make a negative finding if the parents have not made sufficient progress to make it possible for the child to safely return home or there is nothing the parents can realistically do to make it possible for the child to safely return home. An explanation of the basis of a negative finding must be noted.

FINDING #7 DHS has made sufficient efforts in developing the concurrent permanency plan.

Myth: ***DHS does/does not have to identify or develop a concurrent plan in voluntary cases.***

Fact: DHS is required to identify and develop a concurrent plan when the child is placed pursuant to a Voluntary Custody Agreement because DHS has both legal and physical custody of the child. Concurrent planning is NOT required when a child is placed pursuant to a Voluntary Placement

Agreement (ORS 418.312 and 419B.476(4)(f), OAR 413-070-0500 and 413-070-0512) because DHS has only physical custody of the child. Boards may, however, recommend that DHS begin concurrent planning in these types of cases if the board believes it would be appropriate given the circumstances of the case (ORS 419A.116(1)(h)).

FINDING #8 DHS is in compliance with the case plan and court orders.

Myth: ***Boards should assume that by the first CRB review, the court has made the required 180-day best interest finding.***

Fact: Federal and state law require the juvenile court to make a judicial determination that the placement is in the best interest of the child within 180 days of a voluntary placement or custody agreement (42 USC 672(d) and (e), ORS 418.312(1), and OAR 413-040-0170). If the finding is not made within the 180-day timeline, the case does not qualify for federal Title IV-E dollars. In most counties, the finding is made at a court hearing requested by DHS. DHS is responsible for filing the request for judicial determination with the court and, where appropriate, requesting the court hearing.

At the first CRB review of a voluntary case, boards should ask participants whether or not the court has made the 180-day best interest finding. If not, boards should recommend that DHS file the request for judicial determination and, if necessary, request a court hearing be scheduled.

Myth: ***Boards should assume that the court has held a required permanency hearing.***

Fact: Federal and state law require the juvenile court to hold a permanency hearing no later than 14 months after the child's original voluntary placement and at least once every 12 months thereafter until the child leaves substitute care (42 USC 672(d) and (e), ORS 418.312(1), and OAR 413-040-0170). Most courts rely on DHS to schedule these hearings.

In voluntary cases, at the CRB review held 12 months after the child entered care, the board should ask participants whether the 14-month permanency hearing has been scheduled. If not, boards should recommend that it be scheduled. At every CRB review thereafter, boards should determine when the last permanency hearing was held, when the next one is scheduled, and make an appropriate recommendation to ensure that the next permanency hearing is within the timeline.

Myth: ***The court does not need to be notified when a guardian enters into a voluntary agreement with DHS.***

Fact: Pursuant to ORS 419B.365, when a guardian is appointed the court maintains jurisdiction of the child and has the authority to review, modify, or vacate the guardianship on its own motion or upon the motion of a party; therefore, the court must be notified anytime a guardian enters into a voluntary agreement with DHS. It is also important that DHS' central office be notified if the guardian has been receiving guardianship assistance as a voluntary agreement may change the amount of that assistance. At the first CRB review of a voluntary case involving a guardianship, boards should ask participants whether or not the court has been notified of the voluntary agreement, and, if there is guardianship assistance, whether DHS' central office has been notified. If not, boards should recommend that DHS make these notifications.

FINDING #9 The permanency plan is the most appropriate plan for the child.

Myth: ***Boards can recommend moving to the concurrent plan without recommending that DHS file a dependency petition.***

Fact: A dependency petition must be filed before a court can move to the concurrent plan. When a board finds that a plan of reunification is not the most appropriate plan for the child, it should recommend that a dependency petition be filed. See additional explanation under Findings #5 and #6.

Myth: ***The "15 of 22 months" finding does not apply in voluntary cases.***

Fact: Even in voluntary cases, DHS is required to file a petition to terminate parental rights if the child has been in substitute care for 15 of the most recent 22 months unless the child is being cared for by a relative and that placement is intended to be permanent, or there is a compelling reason that filing such a petition would not be in the child's best interest (42 USC 675 (E) & (F), ORS 419B.498(1) and (2)). If DHS has not filed a petition to terminate parental rights for a child that has been in care 15 of the most recent 22 months, and the reason is because it would not be in the child's best interest, boards should verify that the compelling reason is documented in the case plan. Compelling reasons not to file a petition to terminate parental rights include, but are not limited to:

1. The parent is successfully participating in services that will make it possible for the child to safely return home within a reasonable time;
2. Another permanent plan is better suited to meet the health and safety needs of the child, including the need to preserve the child's sibling attachments and relationships; or
3. The court or CRB in a prior hearing or review determined that while the case plan was to reunify the family the department did not make reasonable/active efforts to make it possible for the child to safely return home.

Keep in mind that the state may not file a petition to terminate parental rights until DHS has filed a dependency petition, the court has established jurisdiction, and the court has changed the permanency plan to adoption ORS 419B.498(3).

FINDING #10 There is a continuing need for placement.

There are no commonly held myths related to Finding #10 in voluntary cases. Board members should be aware that voluntary agreements can be terminated at any time by DHS or the parent or legal guardian. Voluntary Placement Agreements must end when a child reaches 18 years of age. Voluntary Custody Agreements, on the other hand, can continue after a child reaches 18, but the young adult may terminate the agreement at any time (OAR 413.020.0050 and 413-020-0090).