

Changing the Plan to Adoption: Legal Assistance Staffings in DHS Child Welfare

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What is a Legal Assistance Staffing?

- Internal DHS staffing to determine whether it is possible and appropriate to pursue Adoption through Termination of Parental Rights or Probate Guardianship.

Cases to staff

- Child in DHS custody (Temporary Commitment) and substitute care
- Services have not resolved safety and permanency issues and an in-home safety plan is not possible
- Child unlikely to return home within a “reasonable time”

Cases to staff (continued)

- Adoption is the most appropriate plan
- Identified resource for the child, or recruitment is likely to be successful
- Assistance is required to legally free the child
 - termination
 - probate guardianship

When does a Legal Assistance Staffing take place?

For most cases:

- After it appears that efforts have been made to provide services designed to eliminate or reduce safety threats to all parents with legal standing and it appears that no in-home safety plan can be accomplished in a reasonable time.
- Approximately 8-11 months after a child has been in substitute care, but prior to the Permanency Hearing (Permanency Hearings are occasionally set early).

When does a Legal Assistance Staffing take place? (continued)

For some cases:

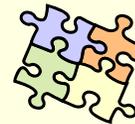
- In rare cases, where there are aggravated circumstances (prior Termination of Parental Rights or extreme conduct toward children), the staffing should occur prior to Jurisdiction/Disposition.

Who is at a Legal Assistance Staffing?

- Assistant Attorney General (AAG), or in Multnomah County, Deputy District Attorney (DDA)
- Legal Assistance Specialist (LAS)
- Caseworker
- Supervisor

What is the role of the LAS?

- Provide technical assistance
- Assure consistency across Oregon
- Financial oversight



What is the role of the AAG/DDA?

Role of the AAG/DDA:

Determine legal sufficiency of case

- Conduct or condition
- Serious detriment to child
- Reasonable time
- Best interests of child – Is adoption in the best interest of the child?

Evaluate evidence to support case

- Documents
- Witnesses
- Child-specific evidence
- Anticipate arguments of opposing counsel

Role of AAG/DDA continued

Represent the agency in court



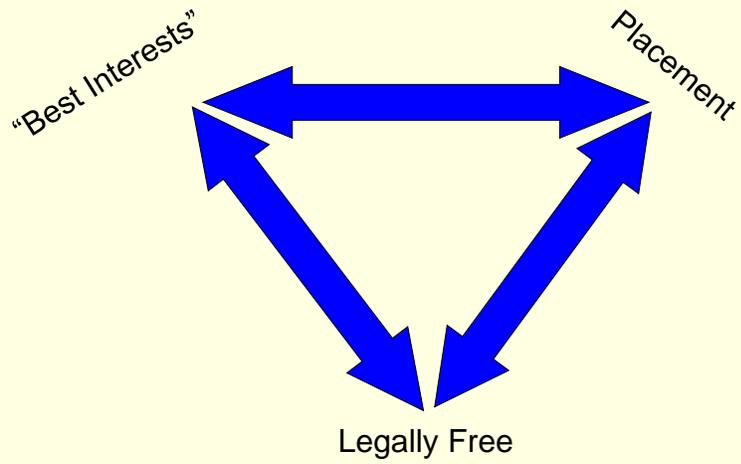
What is the role of the worker?

- Present the case
- Be the agency expert on the family/child(ren)
- Answer questions if asked
- Find documents if asked
- Write down and follow any recommendations from the staffing
- Work with the supervisor to schedule any “re-staffings”
- If the case is approved, update the legal assistance attorney with any changes in the case
- If the case is approved, provide requested materials by the date due on the approval form

What is the role of the Supervisor?

- Staff with the worker to determine/approve if the case is appropriate to schedule for an LAS staffing
- Assist and support the worker in presenting the case (fill in any holes)
- Be knowledgeable about branch procedures for getting work accomplished
- Keep notes about recommendations and monitor any follow up needed from the staffing
- If the case is approved, assure that the worker updates the legal assistance attorney with any changes
- Prior to authorizing cases for a re-staffing ensure that critical recommendations from the last staffing are followed

Components of an Adoption Case



DETOUR

Avenues to Adoption

- Release and Surrender
 - Voluntary action by parent
 - Parent grants DHS the right to consent to the adoption and placement of child
 - Waives the right to appear and notice in the adoption
 - Parent can “revoke” until “child is placed for the purpose of adoption”, or until the adoption is finalized, if ICWA applies
 - Parents retain their party status, but the court frequently ends their attorney appointments

Avenues to Adoption

- Judgment Terminating Parental Rights (TPR)
 - Can be voluntary (Stipulated / “Stip”) or involuntary (TWOP/Prima Facie, or Contested Trial)
 - Involuntary TPR - Court judgment, can be appealed or at circuit court level, “set aside,” but parent can not “revoke”
 - Voluntary TPR (Stip) – Not generally subject to an appeal, but the party can move to set aside based on fraud, duress, neglect, etc.
 - Court orders the child permanently committed to DHS and grants us the right to consent to the adoption

Avenues to Adoption

- Probate Guardianship
 - All parents with legal standing are deceased
 - Includes “ICWA dads” and “Stanley-type” fathers
 - ALL cases handled by DOJ
 - Court Judgment granting DHS guardianship and custody and the right to consent to the adoption

**Now Back to Our
Regularly
Scheduled Slide
Show**

Who NEEDS to attend?

- Branch
 - Caseworker
 - Caseworker's supervisor

- Attorney
 - Assistant Attorney General
 - Deputy District Attorney (Multnomah)

- Central Office
 - Legal Assistance Specialist



What do we look at in a staffing?

- We ask workers to bring the entire case file
 - Birth Certificates
 - 1270-ICWA Verification form for each parent with legal standing/correspondence with claimed Tribes
 - 418 Father(s) Questionnaire

- Legal Assistance Staffing Form for branch Staffing Form, if applicable

- Any items requested at previous staffing



What is discussed?

100% likely that the worker will be asked:

- Has the court ordered DHS to file a TPR or changed the plan? **We ask workers to tell us this right away!**

- LANDMINES!!!
 - Are Dad's identified correctly?
 - Do we have jurisdictional allegations against all parents with legal standing?
 - Have we determined ICWA status?



More Discussions

- What are the circumstances of current removal?
- Family's prior involvement with DHS? Have these children been in care before? When? Where?
- What is the jurisdictional basis for our involvement? What date did the court order jurisdiction?
- What has the court ordered this family to do (disposition)?

And yet more discussion....

- What are the children's special needs? Behavioral issues? Early Intervention/ Special Education? Medical needs or diagnosis?
- Provider reports, especially psych evals, substance abuse evals and reports, FSAT, IFS, etc...
- What are we asking the parent to do?
 - Action Agreements
 - Letters of Expectations

We're not done yet!

- Oregon Safety Model questions:
 - "Conditions for return"?
 - "Protective capacity"?
 - Current safety threats?
- How are the visits?
 - How often?
 - attendance?
 - quality?
- What is our placement plan?
 - The adoptive placement can be designated (Legal Risk) prior to the child being legally free, but after the court has changed the plan to adoption.



And even more discussion...

- Is the diligent relative search completed? Has the branch assessed all relatives needing assessment, and what is the status? Were they denied, did they withdraw, were they referred to ICPC? Are children already placed with birth relatives?
- Siblings?
- Is ANYBODY else suggesting another plan? (e.g. guardianship) Why won't that plan work?
- How has the parents behavior (conduct or conditions) harmed the child (detriment)?

NEXT?

The results of the staffing may be one of the following:

- Case could be "mauved"/approved to pursue a Termination of Parental Rights. Petitions will not be filed until the court changes the plan.
- The worker could get a "to-do" list and asked to restaff.
- In some cases there might be unusual directions such as:
 - Recruit, and return for staffing if the worker has located suitable resources
 - The worker may be asked to re-examine the appropriateness of adoption as a plan.

DHS pays the Multnomah District Attorney's Office, and the Oregon Department of Justice for Attorneys.

TIME IS MONEY.

We try to work with the branches to use this time wisely by being prepared to discuss their cases.

What can CRB members do to move cases forward?

- Verify ICWA status
 - Review ICWA verification forms for all parents
 - Ensure that they are complete and signed
 - Ensure that an ICWA search has been completed if necessary

What can CRB members do to move cases forward?

- Jurisdiction for all legal parents
 - Ensure that there are allegations adjudicated for all legal parents.
 - Determine if there are safety issues that have been identified but were not reflected in the dependency petition (as opposed to dismissed).

What can CRB members do to move cases forward?

Diligent Relative Search (finding #2)

Ensure that a diligent relative search is initiated at the beginning of the case and is documented in the Child Specific Case Plan.

Inquire as to any additional information or efforts to identify relatives since the initial search.

Initiate ICPC home study requests in a timely manner.

What can CRB members do to move cases forward?

- Finding #3 (safety, health and well-being)
- Inquire about and document assessments and services to children and special needs.
- Inquire about and document visitation between the parents and children and the quality of visits and reaction to visits by the children.

What can CRB members do to move cases forward?

- Reasonable Efforts (finding #4)
 - Make detailed inquiry and findings regarding DHS efforts to make it possible for the children to safely return home.
 - Action Agreements for every case, updated every 90 days.
 - Inquire with parent's attorneys (and parents) if there are any concerns regarding DHS efforts.

What can CRB members do to move cases forward?

- Concurrent Planning (finding # 7)
 - Birth records obtained.
 - Medical records obtained.
 - Diligent relative search.
 - Current foster family potential long term resource.
 - Has the case been staffed for moving to the concurrent plan?

What can CRB members do to move cases forward?

- Permanent plan most appropriate (finding #9)
 - Does it appear likely that the child will be able to safely return home in a reasonable amount of time? (reasonable time is determined on a case by case basis)

What can CRB members do to move cases forward?

- Recommendations
 - DHS complete and/or address any concerns or deficiencies noted in any of the findings noted above.
 - DHS staff the case for moving to the concurrent plan.
 - DHS convene a Permanency Committee or initiate an LAR referral.

Practical application

- Please answer the questions provided to you in the next five minutes.
- We will then have time for some questions and answers.

Thank you for attending the LAS
training and for your work on
behalf of children and families!!!