



CRB GUIDE FOR VOLUNTARY CASES

TYPES: There are two types of agreements in which a parent or legal guardian may sign with Oregon Department of Human Services (ODHS) to have a child voluntarily placed in foster care. All voluntary cases must be approved by the ODHS Program Manager. There are also Voluntary Placement Agreements for young adults (ages 18-20) that do not include parental consent.

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. A voluntary placement agreement is the most common type of agreement. It is often used for purposes of securing residential placement and/or therapeutic services. Under a voluntary placement agreement, the parent retains legal authority, but the department has responsibility for the child's placement and care. OAR 413-020-070.
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. This type of agreement is less common but meant to be of limited duration and usually the result of a family crisis or the parent or legal guardian's own medical or mental health condition. In a voluntary custody agreement, the department becomes the legal custodian. OAR 413-020-0010.

LEGAL CUSTODY: In both types of voluntary cases, all persons who have legal custody of the child must sign the agreement. If one of the persons is missing, the parent or guardian who signs the agreement must assist ODHS with providing information on the other person's whereabouts. ODHS must immediately begin a diligent search to provide notice of the agreement. OAR 413-020-0020.

ORICWA/ICWA: ORICWA and ICWA apply to an Indian child voluntarily placed in foster care. As in all reviews, boards should ask the question, ***"Does any person present have a reason to know the child is an Indian child?"***

If ORICWA applies, ORS 418.323 requires the placement agreement to be executed, fully explained, and signed in a hearing before a judge of a court with appropriate jurisdiction. OAR 413-020-0020 (5) and 413-020-0075 (4)

ODHS must comply with notification requirements to the tribe of any placement or change in placement per OAR 413-115-0050(1)(d) and with Placement Preferences per OAR 413-115-0090.

Boards should confirm the following:

1. Whether each parent or legal guardian completed a Verification of ICWA Eligibility form.
2. The status of the ICWA investigation (If American Indian or Alaskan Native Ancestry is claimed or if a parent or legal guardian did not complete the form).
3. If ICWA applies, whether the voluntary agreement was signed during a court hearing before a judge and whether the tribe was notified of the voluntary agreement.

FINDING #1

Has ODHS ensured that appropriate services are in place to safeguard the safety, health, and well-being of the child?

Emphasis is to be given to safety, appropriateness of placement, access to available services, educational supports, and family time/visitation.

As in all reviews, if the child/youth is present, invite them to speak first. Also, ask parents if they are satisfied with the services and supports provided.

Child and Adolescent Needs/Strengths (CANS) screenings and supervision plans apply in voluntary cases unless a child/youth is in residential treatment. CANS must occur within 21 days of placement and can be used to identify eligibility for residential treatment in a qualified residential treatment program (QRTP).

Transition Planning (for youth 14+) requirements also apply in voluntary cases but boards may use discretion when prioritizing the youth's therapeutic needs (i.e., access to ILP in residential settings, timing of a temporary out-of-home care placement).

FINDING #2

Has ODHS taken appropriate steps to ensure that 1) the substitute care provider is following the reasonable and prudent parent standard, and 2) the child has regular, ongoing opportunities to engage in age appropriate or developmentally appropriate activities?

This finding only applies when the youth is 16 or older AND the permanency plan is APPLA. In voluntary cases, implementation of a plan other than reunification is highly unusual; therefore, **this finding is likely not applicable.**

FINDING #3

Has ODHS made diligent efforts to place the child with a relative or a person who has a caregiver relationship?

ODHS is still required to conduct a relative search in voluntary cases, but the emphasis is on family engagement. OAR 413-070-0069(1)(b).

The child/youth'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, the purpose of engaging relatives is not just for securing placement. Relatives are also needed to gather family information and history, to develop and maintain the child/youth's family relationships and cultural connections, and/or to engage extended family in managing safety.

ODHS is not required to send letters to relatives in voluntary cases, but ODHS is required to do a relative search (through internet tools, collateral contacts, and engagement with the parent(s) and child/youth).

Boards should confirm whether ODHS has asked the child/youth to identify relatives or persons with a caregiver relationship. OAR 413-070-0069(2)(a).

FINDING #4

Has ODHS made reasonable efforts (or active efforts if ICWA applies) to provide services to make it possible for the child to safely return home and to finalize the permanency plan of reunification?

Boards should confirm the following:

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.
4. Whether there is a person with legal custody of the child who did not sign the agreement.
5. If there is a person with legal custody of the child who did not sign the agreement, what efforts ODHS has made to provide that person with notice of the agreement.

The ODHS case plan in a voluntary case is known as a **Family Support Services (FSS) case plan**. The caseworker must develop a FSS case plan with the parent, guardian or Indian custodian who signs the agreement. The Family Support Services case plan addresses the service needs of the family, not just the child. OAR 413-030-0009 and OAR 413-030-0016.

The caseworker must develop a **visit and contact plan** and ensure opportunity for family connection. OAR 413-070-0800 to 413-070-0880.

Action Agreements/Letters of Expectation do not apply because parents are not required to participate in services. However, the caseworker may develop a **Service Agreement** that documents services offered and the action steps that will occur. OAR 413-030-0019.

The parent may not require specific services; however, 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 (FSS) case plan be revised.

The sub finding, “reasonable/active efforts to prevent or eliminate the need for removal of the child from the home” is not addressed 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 placement agreement entered into by a parent or legal guardian. 42 USC § 672(a)(2)(A).

FINDING #5

Has ODHS 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 permanent placement?

This finding only applies if the plan is not Reunification. In voluntary cases, implementation of a plan other than reunification is highly unusual; therefore, **this finding is likely not applicable.**

Before a court can implement an alternate plan, it must find that ODHS 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. There are no allegations or basis for jurisdiction in voluntary cases. Petitions are only filed if there are founded safety threats.

If an alternate plan has been implemented in a voluntary case, the board should verify the circumstances. On occasion, there are no safety threats determined but the parent or guardian may determine that their child's needs exceed their skill or parenting capacity. In these rare situations, ODHS is able to implement an alternate plan under a voluntary placement agreement without filing a petition. An alternate plan must be approved by the Program Manager and by Central Office ODHS to ensure continued funding.

FINDING #6

Is the parent making sufficient progress to make it possible for the child to safely return home within a reasonable time?

When the plan is reunification, this finding must be made for each parent or legal guardian who signed the voluntary agreement.

Even though there are no allegations against the parents on which the court has taken jurisdiction, and no court ordered services, **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 identified 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).

This finding asks whether parents have made sufficient progress to make it possible for the child to safely return home. 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 (i.e., sexual abuse case involving siblings who still reside in the home).

A negative finding may be appropriate:

1. If a parent is not cooperating with ODHS or no longer wants the child returned home.
2. If there is nothing the parents can realistically do to make it possible for the child to safely return home. In these situations, the board should also consider under Finding #9 whether the voluntary agreement is still appropriate.

FINDING #7**Has ODHS made sufficient efforts in developing the concurrent permanency plan?**

This finding only applies in voluntary custody agreements because the department has legal custody. ODHS is still required to conduct concurrent planning and relative search efforts; however, since there is no jurisdiction, the sufficient efforts standard can be applied with greater flexibility, particularly in a first CRB review. A positive finding is generally made if ODHS has at least completed a relative search and discussed concurrent planning with the parents prior to the review. OAR 413-070-0512(2)(a.)

ODHS is not required to develop a concurrent plan when a child is placed pursuant to a voluntary placement agreement because parents retain all authority. In voluntary placement agreements, this finding is not applicable.

FINDING #8**Is ODHS in compliance with the case plan and court orders?****Judicial Determination is required within 180 days of a voluntary placement.**

At the first CRB review of a voluntary case, boards should inquire if a judicial determination has been made. If not, boards should recommend ODHS file the request for judicial determination and, if necessary, request a court hearing be scheduled.

Pursuant to ORS 418.312(4)(a) and OAR 413-040-0170, the juvenile court shall make a judicial determination that the placement is in the best interest of the child within 180 days of a voluntary placement. A finding of reasonable efforts is not required; therefore, the judicial determination requirement may be met without a court hearing. Some counties make this determination at a court hearing while others send a letter to the court which results in an order. ODHS is responsible for filing the request for judicial determination with the court and, where appropriate, requesting a court hearing.

Initial and annual Permanency Hearings must be held in voluntary cases.

At every CRB review, boards should determine when the last permanency hearing was held, when the next one is scheduled, and make an appropriate recommendation if needed.

Children placed through a Voluntary Custody Agreement or Child Placement Agreement are subject to the same administrative review and Permanency Hearing requirements as children placed in substitute care through court order. The juvenile court shall 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. OAR 413-040-0170(2).

The court must be notified when a guardian enters into a voluntary agreement with ODHS.

At the first CRB review of a voluntary case involving a guardianship, boards should ask participants whether the court has been notified of the voluntary agreement. If not, boards should recommend that ODHS notify the court.

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.

FINDING #9**Is the permanency plan the most appropriate plan for the child?**

A positive finding is appropriate if a parent is engaged in case planning and desires reunification.

A negative finding may be appropriate:

1. In the absence of parental cooperation and/or if there are safety threats present preventing a child from returning home. The board should also recommend the agency initiate a Child Protective Services (CPS) assessment and consider filing a dependency petition.
2. If there are no safety threats and ODHS and the parent/guardian both consent to a change in plan.
3. If reunification does not appear to be a viable plan for other reasons.

FINDING #10**Is there a continuing need for placement?**

Voluntary agreements remain in effect until the circumstances of the child and/or family have been remedied, thereby allowing for the child to return home or, until the agreement is terminated.

Voluntary agreements can be terminated within 48 hours of written notice by ODHS, the parent or legal guardian. Voluntary Placement Agreements must end when a child reaches 18 years of age.

If a parent or legal guardian wishes to terminate the agreement *and* there is reason to believe the child will be unsafe if returned home, a report is made to a Child Protective Services (CPS) screener.

Voluntary Custody Agreements can continue after the age 18, but the young adult may terminate the agreement by providing 48 hours written notice. OAR 413.020.0050 and 413-020-0090

If the case involves an Indian child, the agreement can be terminated at any time, and the child must be immediately released to the parent, guardian, or Indian custodian. Additional notification requirements apply if there is reason to believe the child would be in imminent danger or harm.

Reference(s):

[Oregon Administrative Rules - Voluntary Cases](#)
[Voluntary Placements - ODHS Forms](#)

Statutes: Voluntary Placement Agreements: ORS 418.312
Voluntary Custody Agreements: ORS 418.270