

Review Hearing

ORS 419B.449

Contents

- 1. Timing2
- 2. Purpose2
- 3. Discovery2
- 4. Evidence3
 - A. Motion to dismiss.....3
- 5. Standard of proof3
- 6. Findings and orders3
 - A. Wardship and placement.3
 - I. Judicial inquiry.3
 - II. Insufficient parental progress.4
 - III. Continued substitute care.....4
 - IV. Appropriateness of out of home placement.....4
 - V. Placement with parent.4
 - B. Reasonable or active efforts.5
 - I. When the permanency plan is reunification.5
 - II. When the permanency plan is not reunification.....6
 - C. Services to the child.6
 - D. Concurrent planning.....11
- 7. Motion to dismiss.....11
 - A. Key findings11
 - B. Burden of proof.....12
 - C. Rules of evidence12
- 8. Model forms12
 - A. Review subject to ORS 419B.44912
 - B. Short review form12

1. Timing

An agency who has been granted legal custody or guardianship of the child pursuant to court order (typically DHS) is required to provide regular court reports according to the schedule set forth in ORS 419B.440. These reports trigger discretionary and mandatory review hearings under ORS 419B.449. At a minimum, a court or CRB review is required at least every six months. ORS 419A.106; 419B.449. Most courts have developed protocols regarding their frequency of review and coordinate with the CRB to alternate reviews.

Circumstances requiring a mandatory review are outlined in ORS 419B.449(1):

- Child not placed for adoption. Parental rights have been terminated and the child has not been placed for adoption for six months. ORS 419B.449(1)(a); see also ORS 419B.470(4)(court required to hold permanency hearing at same interval).
- Upon request by the child, child’s attorney, the parents, or the custodial agency within 30 days of receipt of notice from the court that a required report was received. ORS 419B.449 (1)(b).
- Child in physical custody of parent (or guardian) and in legal custody of DHS: review required six months after placement. ORS 419B.449 (1)(c); ORS 419B.449 (1)(d).
- Child moved (or about to be moved) to a different substitute care placement and the child has lived in the foster home for 12 consecutive months or pursuant to a permanent foster care agreement. ORS 419B.449(1)(e). Hearing shall be held within 10 days of receiving report under ORS 419B.440(1)(c).

2. Purpose

The purpose of the review hearing is to:

- determine whether the court should continue jurisdiction and wardship of the child or order modifications in the care, placement and supervision of the child;
- review the progress of the family and DHS’s efforts to provide services to make reunification as safe as possible within a reasonable time;
- consider whether the services to the child are adequate to ensure health, safety and well-being;
- determine if the case plan needs to be modified;
- review the development of the concurrent plan; and
- make the required findings in ORS 419B.449.

3. Discovery

Parties are required to comply with the discovery requirements in ORS 419B.881 at least three days before the review hearing, except for information received or discovered less than three days prior to the hearing. ORS 419B.881(2)(B). DHS has an additional obligation to disclose the case plan, modifications to the case plan and any written material or information about services provided to the child or parents under the case plan. ORS 419B.881(3). Disclosure is required within 10 days of completion or modification of the plan, or receipt by DHS of written material or information about services provided under the plan.

4. Evidence

The rules of evidence apply to juvenile court proceedings. ORS 40.015(1). However, in a review hearing, the court may consider testimony, reports or other material relating to the ward's mental, physical and social history and prognosis without regarding to competency or relevance for the purpose of determining appropriate disposition of the ward. ORS 419B.325(2); ORS 419B.449(2).

A. Motion to dismiss.

If the parent of child files a motion to dismiss, the exception to the requirement of competent evidence in ORS 419B.325 (2) does not apply to that portion of the proceeding. *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

5. Standard of proof

The standard of proof is a *preponderance of the evidence*. ORS 419B.310(3); 449.449(2). If ICWA applies, the standard is *clear and convincing evidence*. 25 U.S.C. §1912(e).

6. Findings and orders

When the court holds a review hearing pursuant to ORS 419B.449, certain findings are required by ORS 419B.449 (2)-(5), explained in detail below. The court may also direct DHS to consider additional information in development the case plan or concurrent case plan. ORS 419B.449 (6).

A. Wardship and placement.

Determine whether the court should continue jurisdiction and wardship of the child or order modifications in the care, placement and supervision of the child. ORS 419B.449(1)

I. Judicial inquiry.

- *What progress has the parent made toward ameliorating the basis of jurisdiction?* The court may not continue wardship based on conditions or circumstances that are not explicitly stated or implied by the jurisdictional judgment. *Dept. of Human Services v. A.R.S.*, [256 Or App 653 \(2013\)](#).
- Why is continued substitute care necessary?
 - If there are remaining safety issues, can those be managed in the child's home with supervision or conditions?
 - Do the conditions of return adequately describe what the parent has to do in order for the child to be returned?
 - Can the caseworker explain what the parent has to do in order for the child to be returned?
- Are the child's well-being needs being met? Have any problems developed in the foster home that may lead to a placement disruption? Does the child or foster parent need additional supports to help avoid a placement disruption (ie., respite care, transportation, counseling, etc..)
- *Is the current placement in the child's best interests?* If not, the court may order DHS to remove the child from the current placement and may specify the *type* of placement to place the child, but cannot order DHS to place the child in a specific placement (unless

otherwise required by law). *See* ORS 419B.349 for placement categories. Also, the court may not direct placement if the effect would be to prevent placement with or remove the child from the final adoptive placement. ORS 419B.349(2).

- *If the child is covered by ICWA, have the placement preferences been followed?* 25 U.S.C. §1915(b); ORS 419B.192(5)). ICWA establishes the following order of preference, unless the child’s tribe establishes a different order of preference or the court finds good cause to deviate from the ICWA placement preferences. 25 U.S.C. §1915(b) & (c).
 - Indian child’s extended family;
 - Foster home (licensed, approved or specified by the child’s tribe);
 - Indian foster home licensed/approved by DHS; or
 - Institution approved by the tribe or operated by an Indian organization with a program suitable to meet the child’s needs.

II. Insufficient parental progress.

If additional progress must be made to allow the child to return home, include in the order:

- A timetable for the parent to complete necessary additional services and progress;
- What services the parent must participate in; and
- What progress the parent is expected to make.

Services ordered must be rationally related to the bases of jurisdiction. ORS 419B.343(1)(a); *See* ORS 419B.387 and 419B.337(2) for court’s authority to order parents into services.

III. Continued substitute care.

If the court finds continued substitute care is necessary, the findings shall state (ORS 419B.449(3)(a)):

- Why continued care is necessary;
- The expected timetable for return or other permanent placement;
- Whether DHS has made diligent efforts to place the child with relatives.

IV. Appropriateness of out of home placement

DHS has an ongoing responsibility to search for and place the child with relatives. ORS 419B.192. In the event the child can not be placed with relatives, consideration should be given to the ability of the foster parent to provide an environment that nurtures the customs, values and beliefs of the child’s culture and the capability to use the child’s native language in the home.

V. Placement with parent.

If the child is to be placed with a parent, but is still in the legal custody of DHS, the court must find:

- Why it is necessary and in the child’s best interest to continue the ward in the legal custody of DHS; and the expected timetable for dismissal. ORS 419B.449 (4).

B. Reasonable or active efforts.

I. When the permanency plan is reunification.

When the child is in the legal custody of DHS, the court must determine whether DHS made “reasonable efforts” (OR, if the case is subject to ICWA, “active efforts”) to allow the child to safely return home. ORS 419B.340 (1).

a. General test.

The particular circumstances of each case dictate the type and sufficiency of efforts the state is required to make and whether the types of actions it has required parents to take are reasonable. In addition, reasonable efforts are to be evaluated under a “*totality of the circumstances.*” *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#). The totality of the circumstances includes DHS efforts over the life of the case, and is not constrained to periods of time between court reviews. *Dept. of Human Services v. T.S.*, [267 Or App 301 \(2014\)](#). In making the “reasonable”/“active” efforts determination, the court must:

- Consider the child’s “health and safety the paramount concerns.” ORS 419B.340 (1).
- Consider whether referral of a child to a Strengthening, Preserving and Reunifying Families program is or was in the child’s best interest. ORS 418.595.
- Make written findings in support of the determination by briefly describing “what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family.” ORS 419B.340 (2).

In addition:

- ***Services must be related to basis of jurisdiction.*** The services provided by DHS should have a rational relationship to the basis of jurisdiction. ORS 419B.343(1)(a).
- ***Efforts must be made as to each parent, even if one is incarcerated or out of state.*** DHS cannot ignore one parent based on the rationale that the child is more likely to be reunified with the other parent. *Dept. of Human Services v. T.S.*, [267 Or App 301 \(2014\)](#). DHS’s request for a home study through ICPC did not constitute reasonable efforts to reunify when DHS had no contact with father for seven months between the filing of the petition and the dispositional hearing. *Dept. of Human Services v. J.F.D.*, [255 Or App 742 \(2013\)](#).
- ***When cost is an issue.*** If service is “key” to reunification and DHS has declined to fund the service, court must weigh the benefits of DHS providing the service and the burden of associated costs when deciding whether DHS made reasonable efforts. *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#).
- ***Active efforts is a higher standard than reasonable efforts.*** DHS is required to do more than create a reunification plan and require the parent to execute independently. DHS must assist the client through the steps. *See Dept. of Human Services v. M.D.*, [266 Or App 789 \(2014\)](#).

b. Reasonable Efforts Findings Not Required.

The court may relieve DHS from making reasonable efforts when one of the circumstances in ORS 419B.340(5) exists. These include circumstances outlined in the statute as aggravated circumstances, specific criminal convictions, and when a parent has had his or her rights terminated to another child. Note that incarceration alone does not constitute an aggravated

circumstance for purposes of ORS 419B.340(5). *See State ex rel Juv. Dept. v. Williams*, [204 Or App 496 \(2006\)](#). Also, the statute does not provide for relief from the obligation to provide active efforts, therefore ICWA cases are not subject to a finding under ORS 419B.340(5).

If DHS determines it will not make reasonable efforts following a finding under ORS 419B.340(5), the court must hold a permanency hearing within 30 days. ORS 419B.340(6).

II. When the permanency plan is not reunification.

If the permanency plan has been changed from reunification at a permanency hearing, DHS is required to make reasonable efforts to complete the steps necessary to finalize the permanent plan that was ordered by the court: adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement. The court must assess the steps DHS has taken to finalize the plan to determine whether reasonable efforts have been made. ICWA does not require active efforts to finalize the plan after it has changed from reunification.

- **Additional Resources:**

[OAR Chapter 413, Division 70](#): Substitute Care (includes rules on Guardianship and APPLA)

Adoption Process Flowchart



Adopt Proc
Flowchart '18.pdf

JELI Timeliness of Adoptions



JELITimeliness of
Adoptions.pdf

C. Services to the child.

Children who have been neglected or abused are at greater risk for medical and mental health problems. DHS is required to have the child assessed and provide appropriate follow up services to ensure the child's safety, health and well-being. The parent(s), the foster parent(s) and the caseworker may all have relevant information about the child's needs.

Practice tip: Inquire with the child, the parent(s) and the foster parents regarding whether the child's needs are being met. The caseworker should be able to report on the status of required assessments, visitation and the child's school status, as explained further below.

- **Initial inquiry:** Is the child present in court, and if not, why not?
 - DHS is required to notify and transport age and developmentally appropriate children to court hearings. ORS 418.201 (2).

- Seeing and hearing from children enhances informed judicial decision making. For specific suggestions on what to look for, and what to ask when children appear in your courtroom, refer to : [ABA Bench Cards on Engaging Children in the Courtroom.](#)
- **Has DHS ensured the child’s safety and well-being over this review period?** Consider the following:
 - Oregon Health Plan. Children in foster care are automatically enrolled in the Oregon Health Plan. *See* DHS Policy I-C.4.1 The OHP is delivered through coordinated care organizations that integrate treatment for physical, dental, mental health and addictions.
 - Assessments due at 30 and 60 days. Medical and dental assessments are required within 30 days of the child’s entry into foster care. A mental health assessment is due within 60 days for children four and up. OAR 413-015-0465. For children age 3 and younger, a developmental screening through Early Intervention is due within 30 days.
 - Ongoing medical examinations. A minimum schedule is set forth in ORS 418.325.
 - Immunizations and screenings. Within 90 days, DHS is required to ensure the child is immunized, and other screenings are completed. *See* ORS 418.325(4). Oregon law requires the case plan to include information regarding the ward’s immunizations, any known medical problems of the ward and the wards medications.
 - Treatment recommendations. It is the caseworker’s responsibility to ensure any treatment recommendations are followed in a timely manner. *See* DHS Policy I-C.4.1
- **Practice tip:** Inquire as to what the treatment recommendations were, and ask the caseworker, foster parent and children’s attorney if the recommendations have been followed.
 - Children with special medical needs: report to court. When the child is in need of medical care or other “special treatment” because of a physical or mental condition, DHS is required to prepare a plan of care within 14 days of assuming custody of the child. ORS 419B.346. A copy of the report, along with a schedule for implementation is to be sent to the court. The court may request progress reports.
 - Children age 14 years or older. ORS 418.201(4) requires DHS to give the child written information within 60 days of placement or any change of placement about how to obtain medical, dental, vision, mental health or other treatment services available without parental consent.
 - Psychotropic medications.
 - Hearing. A parent, attorney or CASA may request a hearing to object to the use or prescribed dosage of a prescribed psychotropic medication for the child. The court has the authority to order an independent evaluation and may order modification of the dosage or discontinuation of use of the drug upon a showing that either are inappropriate. ORS 418.517(5).
 - Annual review. When a child under age six is on a psychotropic medication, or any ward is taking more than two psychotropic medications, DHS is required to ensure an annual review of the medications by a licensed medical professional, a qualified mental health professional with authority to prescribe drugs, other than the prescriber. ORS 418.517(3)(d).

- Additional resources:
DHS Policy: [OAR 413-070-0400 thru 0490](#)
[Psychotropic Medication and Children in Foster Care, Tips for Advocates and Judges](#), American Bar Association

▪ **Required findings:**

- Face to face contact: whether the number of face to face contacts with the caseworker is in the best interests of the child. ORS 419B.449 (3). DHS is required to visit the child at least one time each calendar month and must have this contact with the child in the foster home every other month. OAR 413-080-0054. These contacts are essential to ensuring the child’s safety and that adequate services and care are being provided to the child.
- Education. Oregon law requires the case plan to include information regarding the ward’s school record, the grade level of the ward’s academic performance and whether the ward’s placement takes into account proximity to the school in which the ward is enrolled at the time of placement. ORS 419B.343 (4).
- Changes in placement and school.
 - Federal law requires DHS to ensure that the child stays in the school in which he or she was enrolled at the time of placement, unless it is not in the child’s best interest to do so. 42 U.S.C. §675 (1)(G)(ii).
 - Oregon law requires DHS to maintain the child in his or her “school of origin” unless the court finds it is not in the child’s best interest to continue attending the school of origin. ORS 339.133 (4).
 - Transportation. DHS is required to provide the child with transportation to and from the school of origin when the need for transportation is due to the placement by DHS. Funds have been designated for this purpose. ORS 339.133 (4)(c).
- If the child is 14 years of age or older, the court must find whether the child is progressing adequately toward graduation from high school, and if not, the efforts DHS has made to assist the child to graduate. ORS 419B.449(3)(d);
- Whether the number of schools attended is in the child’s best interests. ORS 419B.449(3)(c).
- Visitation with parent(s), sibling(s). ORS 419B.337 (3). The court may make an order regarding visitation by the ward’s parents or siblings, and DHS must develop and implement a visitation plan consistent with the court’s order.

▪ **Areas of judicial inquiry:**

- If the child is pre-school age, is Head Start an option?
- Are there any issues with school stability that need review?
- Is the child at grade level in math and reading?
- If not, has the child been evaluated for special education?
- If the child is in high school, is she or he on track to graduate?
- Does the child want to go to college, and if so, what assistance is being provided?

Practice tip: Inquire as to what the visitation plan is and determine if it is adequate to maintain the parent, child bond. Parents and children who have frequent contact are more likely to achieve reunification.

- Consider the age of the child.
 - Young children need frequent contact with the primary caregiver in order to maintain familiarity, attachment and promote healthy brain development. This may mean several visits per week or, for infants and toddlers, daily visits if possible.
 - For older children, consideration should be given to their school schedule and after school activities. In addition to regular visits, contact through programs such as Skype and telephone contact can help keep the parent and child connected.
 - *In all cases, visits should be frequent enough to maintain the parent child bond.* Research has shown that increasing contact between parent and child increases the chances of reunification and decreases a child’s stay in substitute care.
- Additional resources:
 - [OAR 413-070-0800 Visits and Other Types of Child and Family Contact](#) (DHS Policy)
 - [Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know.](#)
 - Sheryl Dicker, *Reversing the Odds: Improving Outcomes for Babies in the Child Welfare System* (2009).
- Required findings:

The number of visits the child has had with parents or siblings since being in the guardianship or legal custody of DHS and whether the frequency of these is in the child’s best interest. ORS 419B.449(3)(c).
- Transition Planning for Teens.

Beginning at age 14, DHS is required to provide case planning to address the teen’s needs and goals for a successful transition to a successful adulthood, including needs and goals related to housing, physical and mental health, education, employment, community connections and supportive relationships. ORS 419B.343 (3).

 - Court review: The court may review the adequacy of the transition plan to ensure it addresses the items necessary for the teen to successfully transition to adulthood. The court may require DHS to further develop certain areas of the plan, provide the teen with resources needed to achieve goals identified in the plan, and update the plan periodically. Although specific findings regarding the plan are only required at the time of the permanency hearing, more frequent review of DHS progress is recommended to ensure an adequate plan is developed and appropriate services are able to be provided prior to the teen’s exit from care. *See* ORS 419B.449 (findings required at review hearing); ORS 419B.476(3)(findings required regarding transition planning at permanency hearing)
 - Benchmark review: Six months prior to the teen’s 18th birthday, DHS is required to hold a meeting called a “benchmark review” to identify plans for housing,

supportive relationships, community resources, medical resources and decision making, etc., to plan for the teen’s transition out of care.

- Oregon Foster Children’s Bill of Rights requires DHS to provide teens age 14 and up with written information on how to establish a bank account, acquire a driver’s license, remain in foster care past 18, get tuition or fees waived, obtain a credit report, obtain health services without consent, and be provided the “transition toolkit” described below. ORS 418. 201 (4).

▪ Aging out and terminating wardship.

Wardship may continue until the ward reaches age 21. ORS 419B.328. Prior to that time, the juvenile court may terminate wardship upon finding that: (ORS 419B.337)

- DHS has provided case planning that addresses the ward’s needs and goals for a successful transition to independent living, including needs and goals relating to housing, physical and mental health, education, employment, community connections and supportive relationships;
- DHS has provided appropriate services pursuant to the case plan;
- DHS has involved the youth in the development of the case plan and in the provision of appropriate services; and
- The ward has safe and stable housing and is unlikely to become homeless.
- Transition toolkit required. At the time the court relieves DHS of custody, DHS is required to provide the ward with a “Transition Tool Kit” containing documents the ward will need regarding his or her medical history, for employment purposes and to continue post-secondary education. OAR 413-030-0460. It must include:
 - Family history;
 - Placement history;
 - Location, status and contact information for siblings;
 - Health and immunization records;
 - Education summary and records;
 - Original birth certificate;
 - Official proof of citizenship or residence;
 - Social security card;
 - Driver’s license or other state identification;
 - Parent’s death certificate (if applicable);
 - Written verification of placement in substitute care between the ages of 14 to 18.
- Washington County example. Judges in Washington County provide a folder in which the documents in the “transition toolkit” as well as contact information for important people in the child’s life are collected in anticipation of termination of wardship. Progress in completing the toolkit is reviewed at each hearing. Ensuring these documents are being collected by DHS in advance of the hearing to terminate wardship has improved DHS compliance with this requirement.



Teen Ward
Checklist - Final.doc

- Washington County document list:

D. Concurrent planning.

If the child is in substitute care, DHS is required to develop a concurrent plan in case the parent is not able to adjust his or her conditions or circumstances to make it safe for the child to return home within a reasonable time. ORS 419B.343(2)(b). The concurrent plan should be set forth in the DHS family report. The possible concurrent plans in order of preference are as follows:

- Adoption
- Guardianship
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (APPLA, for children age 16 and older)

Practice tip: If the concurrent plan is not adoption, DHS should provide a reason why a lesser plan is more appropriate for the child.

- **Required findings:** Determine what efforts DHS has made to develop the concurrent plan (including DHS's efforts to identify appropriate in and out-of-state permanent placement options and identification and selection of a suitable adoptive placement if the concurrent plan is adoption). Make a finding concerning whether efforts to develop the concurrent plan are sufficient. ORS 419B.449(5)
- **Concurrent planning steps:**
 - Absent parent search;
 - All legal and Stanley fathers have been filed on;
 - Letters sent to putative fathers;
 - Pending petition allegations resolved;
 - Action agreements/letters of expectation provided to parents;
 - ASFA timelines explained to parents;
 - Assessments completed on child;
 - Diligent relative search and engagement of relatives;
 - ICPC requests made on out of state relatives;
 - Siblings visit plan established if living apart;
 - Collection of birth and medical records;
 - ICWA inquiry resolved;
 - Suitability of current caretaker or relatives reviewed at staffing.

7. Motion to dismiss

A. Key findings

The juvenile court must determine whether the jurisdictional bases pose a current threat of serious loss or injury to the ward, and if so whether that threat is reasonably likely to be realized. *Dept. of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

B. Burden of proof

When the plan is reunification, the burden of proof is on DHS. If the permanency plan is something other than reunification, there is a presumption that the child cannot safely return home. DHS may invoke this presumption, requiring a parent seeking dismissal of dependency jurisdiction to prove the jurisdictional bases no longer endanger the child. *Dept. of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

C. Rules of evidence

The rules of evidence apply to the portion of the proceeding relating to the motion to dismiss. However, the court may consider testimony, reports or other material relating to the ward's mental, physical and social history and prognosis over objections of competency or relevancy for purposes of determining disposition (including reasonable effort and progress determinations). ORS 419B.325(2); *See Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

8. Model forms

A. Review subject to ORS 419B.449

Whenever a hearing is triggered under ORS 419B.449(1), the court has to make the findings required by ORS 419B.449(3) to (5). A model form with the required findings is provided on the [JCIP Model Forms webpage](#).

B. Short review form

If a full review hearing is not triggered under ORS 419B.449, the court may use an abbreviated form that is also located on the [JCIP Model Forms webpage](#).