

PERMANENCY HEARINGS

Oregon Mini Child Abuse and Neglect Institute

January 28-29, 2020

Purpose

- To reach a decision concerning a permanent plan for a child:
 - Reunification
 - Adoption
 - Guardianship
 - Placement with a fit and willing relative or
 - Another planned permanent living arrangement (“APPLA”).
- To review the progress of both the family and DHS and review the case plan for needed modification.
- To ensure compliance with deadlines within which final permanency decisions should be made.

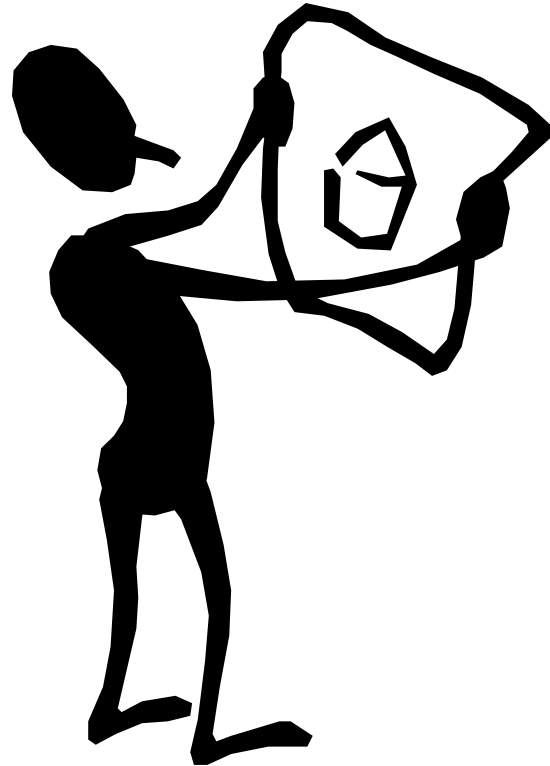


Hearing Triggers

- ◎ **Annual Review:** 12 months after jurisdictional finding or 14 months after child's placement in substitute care, or subsequent annual review. ORS 419B.470(2) and (6).
- ◎ **At the request of a party or on court's own motion.** ORS 419B.470(5).
- ◎ **Delayed initiation of adoption proceedings/placement.** Permanency hearing required every six months until child is physically placed, or adoption proceedings initiated). ORS 419B.470(4) and (7)
- ◎ **Child removed from court sanctioned permanent foster care** (hearing within 90 days). ORS 419B.470(3).
- ◎ **No reasonable efforts to reunify:** within 30 days when DHS has determined it will not provide reunification services based on a judicial finding that DHS is not required to make reasonable efforts . ORS 419B.340(5); 419B.470(1).
- ◎ **Child in substitute care 15/22 months.**
- ◎ **Parent convicted of crime listed in ORS 419B.498(1)(b)**
- ◎ **Abandoned child.** ORS 419B.498(1)

Which Model Form?

Permanency
Judgment



The Initial Hearing

“[W]hen a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier. **ORS 419B.470(2)**

NOTE: Reasonable-time considerations may require a permanency hearing sooner depending on the circumstances in a particular case.

Rules of Evidence

- Dispositional determinations.

- The court may consider testimony, reports or other material relating to the ward's mental, physical and social history and prognosis without regard to competency or relevancy for the purpose of determining appropriate disposition of the ward. ORS 419B.325(2); 419B.476(1).
- "Disposition" includes consideration of reasonable efforts to effect reunification and parental progress. *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

- Adjudicatory determinations.

- If the parent or child files a motion to dismiss jurisdiction, 419B.325 (2) does not apply to that portion of the proceeding, which is considered adjudicatory in nature. The rules of evidence apply.

Child's Right to Be Heard

- Procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to a successful adulthood, the court consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

42 U.S.C. 675(5)(C)(iii)



All About

Today's Date: _____

My name is _____ and I am _____ years old.

_____ helped me fill this out.

Stuff About Me

Draw yourself:



I do these things for fun:

My brothers & sisters are:

I am awesome at:



My Top 3 Wishes are:



You can fill out this form to help the judge make better decisions about your life. You do not have give any information if you don't want to. You can answer some questions and skip others. Please add additional pages if you have more to say.

Shared information.

Under the law, information you write here will be given to your parents if they are involved in the case, the lawyers in your case, and your caseworker. (If there is a CASA, Tribe or an intervenor in your case, they will get this information too. The district attorney and juvenile department also might see the information you write here.) If you don't want to share information with all of these people, talk to your lawyer.

You have the right to be told of your hearing dates and to be driven to your hearings. Your lawyer and your caseworker should talk to you about your rights. You may contact the Foster Care Ombudsman to report problems: 1.855.840.6036 fco.info@state.or.us.

Teen Comments for Court (Age 14 and older)

1. Your name: _____
Age: _____ Today's date: _____
Date of next court hearing: _____
Names of people who helped you fill out this form:

2. Your situation

Are you happy with where you live?
 Yes No If not, why not?

Do you feel safe where you live?
 Yes No If not, why not?

Are you getting enough to eat? Yes No

Do you have enough clothing? Yes No

Is there anything you need? Yes No

Please explain:

Child Well Being Findings

- The court must make findings of fact under ORS 419B.449(3) (same findings made at the review hearing). ORS 419B.476(2)(d).



Child Well Being

- What services and supports are in place to assess the child's well-being?
- Does DHS have child's most current health records?
- Are services tailored to the child's unique issues and trauma?
- What are the barriers to the child's progress?
What additional services will be provided to assist the child in overcoming these barriers?

Transition Planning

- When the child is age 14 and older, the court shall review the comprehensive transition plan for the child's transition to successful adulthood and determine and make findings as to:
 - Whether the plan is adequate to ensure the child's transition to a successful adulthood;
 - Whether the department has involved the child in the plan.



ORS 419B.476(3)

Process overview

- Role of caseworker versus independent living programs
- Youth engagement
- Youth assessment summary (Awareness, learning, doing)
 - Well-being and community
 - Education and employment
 - Daily living
- Comprehensive Transition Plan



Comprehensive Transition Plan

- Domains
 - Personal growth and social development
 - Family support and healthy relationships
 - Health education and risk prevention
 - Career preparation and employment
 - Money management, transportation
 - Housing and home management



Education Needs

What is the status of child's education?

- Review education records, including any IEP
- Review attendance records
- Verify child is attending school regularly and has school supplies
- Has DHS developed a plan to ensure educational stability?
- Verify that child is attending school of origin. If not, what has DHS done to ease the transition to a new school?
- How many credits does child need to graduate?

MEETING THE EDUCATIONAL NEEDS OF CHILDREN IN FOSTER CARE

Judge Paula Brownhill
Clatsop County Juvenile Court

	Questions	Answers
1	What is the child's age and grade level?	
2	What school does the child attend?	
3	When the child was placed in substitute care, what efforts were made to allow the child to remain in his or her school?	
4	Does child have sufficient clothing and school supplies?	
5	How well is the child faring academically?	
6	What are the child's medical, emotional and developmental needs that impact the child's educational performance?	
7	If the child's behavior impacts his or her educational performance, how can we address the behavior issues?	
8	Are the child's school records attached to the case plan?	
9	Is the child on an IEP or Section 504 Plan or does the child need to be evaluated for special education services?	
10	Does the child have an Educational Surrogate? If not, does the child need one?	

Requirement for Dismissal

- If youth not reunified, before court can dismiss, must find:
 - DHS has provided case planning and services that address the youth's needs and goals relating to housing, physical and mental health, education, employment, community connections and supportive relationships;
 - DHS has involved the youth; and
 - The youth has safe and stable housing and is unlikely to become homeless as a result of dismissal. ORS 419B.337(7)
- Required documents:
 - If youth was in care for at least 6 months and is aging out of foster care, DHS must provide birth certificate, Social Security card, health insurance information, medical records, driver's license (or state ID), and a copy of his or her health and education record. 42 U.S.C. 675(5)(I)

Permanency Plan Determination

- When plan is reunification:
 - Must have a rational relationship to the jurisdictional requirements. ORS 419B.343(1)(a)
 - Must provide appropriate services to allow the parent the opportunity to adjust the parent's circumstances, conduct or conditions to make it possible for the ward to safely return home within a reasonable time. ORS 419B.343(2)(a)

Reunification

- Inquiries:

- Has DHS made reasonable or active efforts to make it possible for the ward to safely return home?
- Has the parent made sufficient progress to make it possible for the ward to safely return home?

ORS 419B.476(2)

- Will further efforts make it possible for the ward to safely return home within a reasonable time?

ORS 419B.476(5)(c)

Reasonable Efforts

- Initial Considerations:
 - Fact dependent:
 - Reasonableness depends on circumstances of each case.
 - Efforts must be made for each parent.
 - Time considerations:
 - Efforts are judged over the life of the case, with an emphasis on the period before the hearing sufficient to afford a good opportunity to assess parental progress
- DHS is not excused from making reasonable efforts because a parent is incarcerated. *Dept. of Human Services v. C.L.H.*, [283 Or App 313 \(2017\)](#)

Incarcerated Parents

Whereas in 2017 the Oregon Legislature adopted an "Oregon Foster Children's Bill of Rights (ORS 418.202);

Whereas the aforementioned Foster Children's Bill of Rights provides children the right to visit and communicate with a parent or guardian, siblings, members of their family, and other significant people in their life, knowing that reasonable limits may be set by DHS and the court;

Whereas this workgroup has been charged by the Judicial Engagement and Leadership Institute to make recommendations for improving communication and services for incarcerated parents and their children; and

Whereas some parents may be inappropriate to engage with their children based on past conduct and/or criminal behavior against their children or others, or have otherwise been determined by the court to be inappropriate for contact with their children; now, therefore, be it

Resolved, that the Judicial Leadership and Engagement Institute's Incarcerated Parents Workgroup, having reviewed the law and considered the benefits and risks involved in parent/child contact when a parent is incarcerated, recommends to the Judicial Engagement and Leadership Institute that it recommend to the Chief Justice that she adopt a policy that, unless it is not in the child's best interests, Oregon courts:

- insure that adequate reunification services are provided to incarcerated parents whose children are in DHS custody;
- promote frequent and quality communications between incarcerated parents and their children who are in DHS custody through the Court's juvenile dependency oversight process; and
- require that DHS make diligent efforts to arrange for communications between incarcerated parents and their children in DHS custody.

Sufficient Progress

- What is the parent required to do and is it related to the basis for jurisdiction?
 - In determining whether a parent was on notice, court can consider petition, jurisdictional judgment and documentation attached to the jurisdictional judgment. *Dept. of Human Services v. C.E.*, [288 Or App 649 \(2017\)](#)
- If the parent has completed those items, is it safe for the child to return home?
 - It is possible that, despite a parent's progress in meeting DHS plans and goals, it will remain unlikely that a parent will be capable of making sufficient progress to allow the child to safely return home, and consequently, a parent's progress may be legally insufficient under ORS 419B.476(2). *Dept. of Human Services v. R.S.*, [270 Or App 522 \(2015\)](#)

Reasonable Time

- Defined: A period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments. ORS 419A.004(23)
 - When the court finds further efforts will make it possible for the child to be safely returned home *within a reasonable time*, the court shall include a determination of the services in which the parents are required to participate, the progress they are required to make and the time frame for doing so. ORS 419B.476(5)(c).

Reasonable Time - Evidence

- The court considers the child's particular needs and circumstances and any barriers the parents might face:
 - whether the child's placement in substitute care would be unacceptably long given her age;
 - the amount of time the child had already spent in foster care;
 - the child's unique permanency needs;
 - how long the parent would have to remain in services before the child could safely return home, and how such a delay would impair the child's best interests;
 - whether the parent suffers from drug or alcohol addiction, or that the parent has mental health issues that are too severe to alleviate within the foreseeable future; and
 - the parent's participation and progress in services at the time of the permanency hearing.

Dept. of Human Services v. D.I.R., [285 Or App 60 \(2017\)](#)

Changing from Reunification to Another Plan

- The proponent of a change in plan must show that:
 - DHS made reasonable or active efforts to make it possible for the child to safely return home; and
 - The parent has not made sufficient progress for the child to safely return home.
 - *Dept. of Human Services v. R.S.*, [270 Or App 522 \(2015\)](#).



Adoption

- If the court determines the permanency plan should be adoption, the court shall include a determination of whether one of the circumstances in ORS 419B.498(2) is applicable. ORS 419B.476(5)(d).
 - *Dept. of Human Services v. S.J.M.*, [364 Or 37 \(2018\)](#).
 - Once DHS met its burden to show that the requirements for changing the permanency plan from reunification had been met, it was the parents' burden, as the parties arguing for a compelling reason determination, to show there was a compelling reason under ORS 419B.498(2) for DHS not to proceed with petitions to terminate parental rights.

Compelling Reasons

- ORS 419B.498(2): DHS shall file TPR (15/22 m.) unless:
 - Child is being cared for by a relative (permanent)
 - There is a compelling reason that TPR not in child's BI:
 - ***The parent is successfully participating in services that will make it possible for the child to safely return home within a reasonable time;***
 - Another permanent plan is better suited to meet the child's health and safety needs, including preserving attachments.
 - There was a prior no reasonable efforts finding.
 - DHS has not provided services it deems necessary for the child to safely return home.

Guardianship and Placement with a Fit and Willing Relative

- ORS 419B.476(e) and (f):
 - Guardianship:
 - Must determine why placement with parents and adoption are not appropriate.
 - Placement with a Fit and Willing Relative:
 - Must determine why placement with the ward's parents, adoption or guardianship are not appropriate.

Guardianship Considerations

- JCIP Guardianship forms include:
 - Letter to guardian, Annual Report, Order After Guardians Report
- Guardianship assistance.
 - IVE eligible children
 - State funded guardianships available for children not IV-E eligible
- DHS orders a home study and approves the guardianship resource. What if DHS does not approve?
- If the court changes the permanency plan to guardianship, it then must receive a petition or motion for guardianship and hold a guardianship hearing.
 - ORS 419B.365 (permanent);
 - ORS 419B.366 (durable).

Guardianship Determinations

- Durable guardianship determinations (ORS 419B.366(5)):
 - The ward can't safely return home within a reasonable time;
 - Adoption is not an appropriate plan for the ward;
 - The proposed guardian is suitable to meet the needs of the ward and is willing to accept the duties and authority of a guardian; and
 - Guardianship is in the ward's best interests. In determining best interests, the ward shall consider the ward's wishes.
- Permanent guardianship (ORS 419B.365). Court shall grant if it finds, by clear and convincing evidence:
 - Grounds cited are true (same as TPR grounds)
 - It is in the best interest of the ward that the parent never have physical custody of the ward but that other parental rights and duties should not be terminated.

Guardianship

- Must comply with ICWA.
- DHS no longer a party once guardian appointed (no custody)
- As a side note....if the court later receives a....
 - Motion to vacate.
 - Must be served on DHS. ORS 419B.368(6)
 - Considerations and best interests. ORS 419B.368(3) & (5)
 - Court should provide copy of any order vacating guardianship to DHS so it can discontinue assistance payments in appropriate cases.
 - Motion to Vacate versus Motion to Terminate Wardship
Dept. of Human Services v. J.C., [365 Or 223 \(2019\)](#) (Best interest finding not required for motion to terminate wardship. Rather, court should analyze like a motion to dismiss: (1) do the original bases for jurisdiction continue to post a current threat of serious loss or injury, and (2) if so, is the risk likely to be realized?)

Placement with a Fit and Willing Relative

- Must have a relative (as defined by DHS policy) who is willing to make a long term commitment
- Wardship and legal custody with DHS continue.
- Foster parent continues to receive foster care payment.



Another Planned Permanent Living Arrangement (APPLA)

- Before the plan may be changed to APPLA:
 - Intensive DHS efforts to achieve higher plan. DHS must document intensive, ongoing efforts to return home, secure placement with a fit and willing relative (including adult siblings), a legal guardian or an adoptive parent. 42 U.S.C. §675A(a)(1)
 - Age requirement. Child must be at least 16 years of age. ORS 419B.476(5)(g)
 - Best interest and compelling reason. Court must determine why APPLA is in the ward's best interests and a compelling reason (documented by DHS) why it would not be in the child's best interest to be returned home, placed for adoption, placed with a legal guardian or placed with a fit and willing relative. ORS 419B.476(5)(g)(A).

APPLA (cont)

- DHS shall implement procedures to ensure the court asks the child about the desired permanency outcome for the child. 42 U.S.C. §675A(a)(2)(A)
 - What efforts have been made for the child to be present at the hearing?
 - Does the child understand his/her permanency options?
 - Are there alternative ways for the child to be heard?

APPLA (cont)



- The court must also determine whether:
 - DHS has taken steps to ensure that:
 - The ward's substitute care provider is following the reasonable and prudent parent standard; and
 - The ward has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities, including consultation with the ward in an age-appropriate manner about the opportunities the ward has to participate in the activities.

The Judgment

At the conclusion of the permanency hearing, the court must enter a judgment within 20 days that includes the required findings and determinations in ORS 419B.476(4) and (5).

