

32. Legal relationships to child

Whenever a child is in the legal custody of DHS, the family also is involved with the court system.

Procedure

- **Parents**

1. When legal custody of a child is has been granted to the department by the court, the parents have legal rights as parties to the case. These legal rights include, but are not limited to:
 - a. The right to notice of the proceeding and copies of the petitions, answers, motions and other documents;
 - b. The right to appear with counsel and to have counsel appointed as otherwise provided by law;
 - c. The right to call witnesses, cross-examine witnesses and participate in hearings;
 - d. The right of appeal; and
 - e. The right to request a hearing.
2. When the department is granted legal custody of a child, the parent's rights to parent the child are limited:
 - a. Within the scope of good casework practice, encourage continued parental involvement with the child within the parameters of what is reasonable and considering the best interest, safety and well-being of the child. If a caseworker has questions regarding the appropriate level of parental involvement with the child, he or she should consult with the supervisor.
3. Good case practice involves parents in the lives of their children. Since most children are returned to a parent, it is logical to continue to have the parent play a role in the child's life. Continued parental involvement also maintains the parent/child relationship and family attachment.
4. This involvement could include involvement in decisions regarding religious preferences, church attendance/involvement, and activities such as including the parents in medical and mental health care appointments and treatment decisions, educational decisions and school-related functions, or routine decisions such as consultation with the parent before the caregiver takes the child for a haircut.
5. When safety is a concern or when return home no longer is the permanency plan, parental involvement in such decisions may lessen or no longer exist.

- **Relatives**

1. Non-intervener relatives have some limited rights regarding a child who is in the legal custody of the department.
2. When a legal grandparent of a child requests information regarding a court hearing in writing and provides a mailing address, the caseworker must give the legal grand-

parent notice of a hearing concerning the child, and the court must give the legal grandparent an opportunity to be heard. (A legal grandparent is not a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.) This is governed by ORS 419B.875(6).

3. The caseworker should not consider the substitute care placement of a child with a relative as a right of a relative unless the relative has established legal rights to the child in a court of competent jurisdiction.
 - a. However, the caseworker is responsible, under law, to protect a child's right to live with his or her immediate or extended family except when there is indication that family members will not adequately provide for the child's welfare.
 - b. When determining either the temporary or permanent placement of a child, consider placement with relatives in preference to persons the child does not know if there is reason to believe the child's relatives will be able to provide appropriate care, stability and security for the child.
4. Make arrangements for visitation or contact via phone, letter, e-mail or other communication methods, as relatives do have a right to communicate and visit with a child in the legal custody of the department within reasonable guidelines as set by the child's case plan and by the direction of the court.

- **Attorneys**

1. Have on-going contact with attorneys representing different parties to a dependency case. Children/youth, parents and interveners all may have attorney representation. Others, such as grandparents or other relatives who do not have intervener status, also may have legal representation. However, they are not legal parties to the case, nor do they have the rights of legal parties.
2. Attorneys may attend family meetings, review the case plan, review the case file of the client they are representing, and meet individually with the client. Inform the attorney of any significant changes in the case such as placement moves or non-routine medical care provided to the child.
3. Inform the child's and the child's parents' attorneys when a child is prescribed or administered a psychotropic medication. Requirements regarding that notification are detailed in Child Welfare Policy I-E.3.3.1, Psychotropic Medication Management.

- **Intervener**

1. An intervener petitions the juvenile court requesting "legal party" status to the case. The intervention status is governed by ORS 419B.116.
2. The court may assign legal party status to the individual based on several judicial findings such as, but not limited to:
 - a. The person's relationship to the child and the person's involvement in the child's life;
 - b. The reason intervention is sought;
 - c. How the person's intervention is in the best interests of the child or ward;

- d. Why the existing parties cannot adequately present the case and what specific relief is being sought; and
 - e. How long the relationship to the child has been in place (six months for foster parents).
3. If you receive a notice for a motion to become intervener, consult with the supervisor regarding the implications of this motion for the child and the case plan.
 - a. Obtain assistance from the locally assigned Assistant Attorney General after he or she receives approval from the supervisor.
 4. An order granting intervention is exclusively for juvenile dependency proceedings and does not confer standing or rights of intervention in any other action. There is no intervention allowed in Termination of Parental Rights proceedings (ORS 419B.500).
 5. Persons who request intervener status for a child are most often a relative to the child, a person who has had a parent-child relationship or a foster parent. The legal status of intervener remains until the court determines otherwise. This status may continue for a foster parent even after the child no longer lives with the foster parent, or the foster parent ceases to be a foster parent.
 6. Treat an intervener as a full legal party who must receive notices of court hearings and copies of court reports. The person may request visitation and be involved in family meetings and case planning decisions.

- **Court Appointed Special Advocates (CASAs)**

A Court Appointed Special Advocate (CASA) is a volunteer who has “full legal party” status in the case in which the court appoints the volunteer (ORS 419A.170). Not all juvenile court cases will have a CASA appointed by the juvenile court.

1. The CASA volunteer is responsible for, but not limited to:
 - a. Investigate all relevant information about the case;
 - b. Advocate for the best interests of the child, ensuring that all relevant facts are brought before the court;
 - c. Facilitate and negotiate to ensure that the court, the department and the child’s attorney, if any, fulfill their obligations to the child in a timely fashion; and
 - d. Monitor all court orders to ensure compliance and to bring to the court’s attention any change in circumstances that may require a modification of the court’s order.



Identification of the roles and responsibilities for CASA volunteers and caseworkers is found in the Memorandum of Understanding between the department and the Oregon Commission on Children and Families (OCCF), which operates the CASA programs in local communities.

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2. The caseworker has specific responsibilities outlined in the Memorandum of Understanding with the state CASA organization. These responsibilities include:
 - a. Assess the safety of the child;
 - b. Access and use court services;
 - c. Develop and implement plan for safety, well-being and permanency;
 - d. Provide and obtain services; and
 - e. Recommend court appointment of a CASA, when appropriate.
3. CASA volunteers can expect that a child welfare caseworker will provide casework services throughout the life of the case that include:
 - a. Contact with the child regularly according to policy;
 - b. Receive and assess allegations of child abuse;
 - c. Develop ongoing safety plans including maintaining children safely with their families, placement of children in substitute care and accessing court services;
 - d. Engage families in Oregon Family Decision-Making Meetings to identify children's needs, family strengths and appropriate services when a child is in substitute care;
 - e. Develop, record and implement the Child Welfare Case Plan and concurrent permanency plan;
 - f. Obtain and provide appropriate services for the child or family to meet the child's safety, permanency and well-being needs;
 - g. Develop a visit and contact plan appropriate to the safety and attachment needs of the child;
 - h. Assess and monitor educational, health, mental health and dental needs;
 - i. Monitor substitute care placements;
 - j. Attend and participate in other agency meetings involving the child as appropriate; and
 - k. Make written reports and recommendations to the court.
4. Make every attempt to meet with the CASA volunteer as soon as possible when a CASA volunteer is appointed. At that meeting the CASA volunteer and the caseworker should:
 - a. Agree on a communication plan including e-mail/phone/fax preferences, long or short messages, expectations (including length of turnaround time for communications), and exchange of usual and emergency contact information.
 - b. Review the case, the history, the Child Welfare Case Plan, the permanency plan and the concurrent permanency plan.
 - c. Discuss the role of the CASA volunteer and clarify expectations regarding the ways he or she might facilitate achieving safety and permanency for the child.
 - d. Help ensure that notification is made regarding:
 - All DHS staff and family meetings relevant to the child including case plan reviews,
 - Sibling planning conferences,

- Current caretaker committee meetings, and
 - Adoption committee meetings.
- 5. Document the appointment of a CASA volunteer in the case file.
- 6. Ensure frequent updates and return e-mail/phone/fax within 48 hours.
- 7. Share court reports with an in-person meeting, if possible, prior to court presentations so there are no surprises.
- 8. Effective work of a CASA volunteer often depends on speedy access to complete information. According to ORS 419A.170, the appointed CASA volunteer must have access to information from the child's file. The full record, with the exception of the reporter's identity, may be accessed by parental release of information, court order or through the process of discovery.
 - a. DHS policy is guided by the advice of the Attorney General's Office, which states that Oregon statutes do not permit the caseworker to give CASA volunteers record information that identifies persons who have reported child abuse and neglect (Department of Justice File No. 412-100-GH0151-01).
 - b. Both DHS employees and CASA employees/volunteers carry statutory responsibility to maintain the confidentiality of records.
- 9. The local office and CASA programs negotiate agreements to:
 - a. Provide initial access to the child's file to the CASA volunteer at the child welfare office within 24 hours if possible, but not more than three working days from the request.
 - b. While keeping the burden to child welfare staff minimal, copy the portions of the file the CASA volunteer deems necessary, except for information relating to the identity of the reporter and other parts of the file that may not be opened.
 - c. Ensure that the CASA volunteer, after reading or copying case files, returns the child welfare file material in the same order as it was received.
 - d. Provide copies at no charge to CASA volunteers or programs.
 - e. Negotiate a definition of timely notification that meets the local office and CASA program needs.
- 10. Communicate cancellations and rescheduling immediately to the CASA volunteer or CASA program.
- 11. Understand the parameters of the local agreement and consult with the supervisor if the parameters of the local agreement are unclear.
- 12. The CASA volunteer needs reasonable access to the child in the home or placement, including adoptive placement.



TIP

Whenever the caseworker is in doubt regarding the role, relationship or responsibilities of the caseworker in a legal relationship, the caseworker consults with the supervisor or requests authority to consult with the Assistant Attorney General assigned to the local child welfare office.

13. The CASA volunteer needs to have private conversations with the child.
14. The caseworker actively facilitates and supports positive working relationships between biological parents, foster parents, adoptive parents and the CASA volunteer.

The Supervisor's Role

- Ensure the caseworker has a thorough understanding of the legal relationships to the child on an open case plan.
- Ensure the caseworker promotes and supports the services and working relationships with a CASA volunteer.
- Review and grant approval for consultation with the Assistant Attorney General when appropriate.

References

Legal references

ORS

- 419A.170
- 419B.035
- 419b.500

OAR

- I-A.4.5 Rights of Relatives
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a45.htm