

Section 7: Other Legal Matters

A. Emancipation of a Minor

The caseworker rarely encounters the situation of a minor requesting emancipation. Since the process of emancipation is a legal process, if a youth requests information regarding the process of emancipation, the caseworker:

- Refers the youth to his or her attorney to discuss the legal process.
- Consults with his or her supervisor about the youth's request to consider whether the request is in the child's best interest.
- Consults with the youth about the feasibility of the plan for emancipation.

Role of the Supervisor

- Consult with the caseworker regarding the best plan for the youth.

Legal Reference

- ORS 419B.550

B. Criteria for Legal Review by Department of Justice General Counsel

A caseworker is able to access assistant attorney general counsel for questions related to legal issues. Assistant attorney general and paralegal support have been initiated to alleviate the caseworkers from legal responsibilities and to allow more time working directly with children and families.

DOJ general counsel attorneys advise and consult on pre-jurisdictional matters on specific issues but do not attend hearings except with DOJ and DHS Central Office approval. These attorneys do not consult on termination of parental rights cases. The following criteria for general counsel legal review of cases consist of:

- 100 percent Legal Review
 1. Disagreement of parties: Parties disagree about any law, policy, rule or uniform law and the disagreement keeps the case from moving forward.
 2. Problems with permanency plans: If no one else can facilitate the implementation, if another party opposes or offers a plan that puts a child at risk, or if there are significant legal issues that prevent the implementation of the permanency plan.
 3. Contested post-jurisdictional review hearings or permanency hearings.
 4. Contested certification and licensing actions.
- Discretionary Legal Review:
 1. Transition plan to return to parent and the child is under six years old: Where a child in foster care is under six and the plan is to return the child home to the parent when the jurisdictional basis is parental substance abuse, mental illness, domestic violence or other serious family stressor.
 2. Visitation/intervention/reasonable efforts issues: If these issues threaten child safety or prevent the case from moving forward.
 3. Certification/licensing/adoption issues: Complex legal or factual issues involving contested matters of certification, licensing and adoption.
 4. Alleged agency problems: Allegations of agency misconduct, liability or issues on the scope of agency authority. This may include sensitive cases, high profile cases, complex cases or tort claims.

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5. DHS records or information: If DHS records or information are subpoenaed or otherwise ordered or requested and DHS is unable to determine whether the disclosure or testimony is permitted by federal, state, or administrative law.

Cases not meeting the above criteria may still be referred to an assistant attorney general at the request of a caseworker with the approval of the Child Welfare program manager and DHS Central Office.

Procedures

When faced with an unresolved legal issue, the caseworker:

- Consults with his or her supervisor to request assistant attorney general consultation time.
- Meets and consults with the paralegal initially, where available, to provide specific case file information regarding the legal issue. If paralegal services are not available, provides case file information directly to the assistant attorney general.
- Meets with the assistant attorney general to consult on the legal issue.
- Follows the recommendations of the assistant attorney general following the consultation to resolve the legal issue.

Role of the Supervisor

- Consults with the caseworker to discuss the legal issue and approve use of assistant attorney general consultation.
- Accompanies the caseworker to consultation with assistant attorney general.
- Supports the caseworker in following the recommendations received from the consultation.

C. Intervenor Status

People who have established emotional ties to a child creating a child-parent relationship may qualify for standing in the juvenile court process initiated by Child Welfare on behalf of a child. Because formally establishing this relationship with the court is a legal process, when the caseworker learns this relationship may exist, the caseworker:

- Refers the person to seek legal advice about his or her rights to the proceedings.
- Consults with the supervisor and the AAG should the person file a Motion to Intervene to prepare for the hearing.

If a person files a Motion to Intervene on the case of a child in Child Welfare custody and the juvenile court grants the Motion, the person becomes a party to the case. As a party, the intervenor may request the court place the child with the intervenor and may request visitation. Other rights the intervenor has are outlined in ORS 419B.875 Parties. Once the juvenile court has allowed a person intervenor status, the caseworker:

- Meets with the intervenor to assess the intervenor's suitability if the intervenor is requesting the child be placed in his or her custody.
- Develops a visitation schedule if the intervenor is requesting visitation with the child, within reasonable guidelines set by the child's service plan and the court's order.
- Consults with the supervisor about any concerns the caseworker has about the intervenor's status and participation in the Child Welfare case plan.

Role of the Supervisor

- Consult with the caseworker regarding intervenor status and requirements listed in rules and statutes.
- Authorize AAG assistance in legal matters concerning an intervenor.

Legal References

- ORS 419B.116 Intervention; caregiver relationship
- ORS 419B.875 Parties to proceedings
- I-A.4.6 Rights of Persons Who Have a Child-Parent Relationship_
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a46.pdf

D. Rights of Grandparents

When the caseworker determines there is a present or impending danger and a protective action or safety plan is initiated, the caseworker assesses relatives, including grandparents, to be considered as participants in safety management or as a placement resource for the child. The caseworker also considers other family members, including grandparents, as a part of services and activities related to the Child Welfare case plan, which manages child safety.

The Department of Human Services is required to make diligent efforts to identify and obtain contact information for a child or young adult's grandparents, when a child or young adult is in the Department's custody. Furthermore, DHS is required to give grandparents (meaning the legal parent of a child or young adult's legal parent, as defined in ORS 109.119) notice of every juvenile dependency court hearing regarding their grandchildren from the point of shelter hearing forward, unless 1) they have been present at court and have already been notified of the date and time of hearing by the court, or 2) the court has relieved the Department of the responsibility to provide such notice, after making a finding of 'good cause'. Child Welfare recognizes the importance of preserving family ties and relationships of children in our legal custody.

Procedure

To assist with preserving these relationships and to meet statutorily required obligations (419B.875), the caseworker will:

- Diligently search for grandparents to identify and obtain their contact information.
- Notify grandparents (those who are the legal parent of the child or young adult's legal parent, as defined in ORS 109.119) of each juvenile dependency court hearing regarding a child or young adult committed to the Department's custody, from the point of the shelter hearing forward, (whenever the grandparents' contact information and identity are known, unless 1) they have been present at court and have already been notified of the date and time of the hearing by the court, or 2) the court has relieved the Department of the responsibility to provide such notice, after making a finding of 'good cause'.
- Contact grandparents who express an interest in the child to receive information about the child's background and recommendations they have about the child's future. (Note: for this and below bullet points, 'grandparents' may also include the legal parent of a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood).



Remember relatives of a Stanley putative father are not considered legal relatives in Child Welfare Administrative Rule.

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- Discuss visitation and communication with the child within reasonable guidelines set by the child's service plan and the court's order.
- Discuss placement of the child with the grandparents if the grandparents want to be a resource and are able to adequately provide safety for the child.
- Refer to Chapter IV, Sections 2 and 3 for additional procedures when working with a child's relatives, including grandparents.

Grandparents who have established emotional ties creating a child-parent relationship with a child may qualify for standing in the juvenile court process initiated by Child Welfare on behalf of a child. If the caseworker working with the family learns this relationship may exist, the caseworker:

- Refers the grandparents to seek legal advice about their rights to the proceedings regarding their grandchild.
- Consults with the supervisor and AAG should the grandparents file a Motion to Intervene to prepare for the hearing on the Motion.

Role of the Supervisor

- Consult with the caseworker regarding rules and statutes related to grandparents.
- Approve consultation time with the AAG for the worker to discuss intervention by grandparents.

Legal References

- I-A.4.5 Rights of Relatives_
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a45.pdf
- I-E.1.1 Search for and Engagement of Relatives_
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e11.pdf
- ORS 109.119 (1)-(7) Rights of Grandparent, Child-Parent Relationship, Ongoing Personal Relationship
- ORS 419B.116 Intervention; caregiver relationship
- ORS 419B.875

E. Approval Process for Legal Change of a Minor's Name Outside of the Adoption Process or Change of a Minor's Sex Designation

Legal changes of this significance should be well considered. Adoption provides a planful process for making legal name changes, and we want to ensure that legal name changes outside of the adoption process and legal changes of sex designation also follow a thoughtful process. To that end, we have established a process for these changes that incorporates the expertise and first-hand knowledge of casework staff, the support of local managers and final approval by the Child Welfare director or designee.

Please note that we must have guardianship of a child or youth before it's appropriate for us to act regarding significant legal matters on behalf of a child or youth, and legal changes of name or sex designation are among these. Also, we do not take direct actions to effect a legal change of name or sex designation for young adults even if we have guardianship of them. We can, of course, support them through the process.

How to Support

- The following are ways we can support the young adult without acting directly to effect these changes:
 1. We can have respectful conversations to ensure the young adult is making an informed decision and understands the significance of the change. A meeting with the young adult and young adult's attorney to discuss the ramifications would be prudent.
 2. We should not complete the paperwork on behalf of the young adult, but we may want to encourage the young adult's attorney to assist him or her in completing the forms and assisting the young adult through the legal process.
 3. We may want to consider filing a motion for waiver of fees on behalf of the young adult, similar to the agency's request when seeking a name change for a minor child. The motion, affidavit and order for fee waiver should be drafted and filed by the AAG on behalf of the agency as the young adult would not be in a position to seek a fee waiver without DHS, unless the young adult's attorney is willing to draft and file the pleadings.
- Consider whether it is appropriate and workable to make a practical change. For example, regarding a name change: gaining the support of foster parents, school staff and providers to call the child or youth by a different name, even though we're not changing it legally. A practical change does not require central office approval.

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Procedure

- When seeking approval for legal changes of name or sex designation of a minor, the caseworker:
 1. Consults with the supervisor to determine whether to seek central office approval for the change.
 2. Completes any prep work that's needed to respond to the questions on the *Request for Legal Change of Name or Sex Designation* form and then completes the form.
 3. Emails the completed form to the email box identified on the form with the supervisor and program manager in the Cc line.
 4. Responds to any requests from central office for additional information.
 5. Captures the email response from central office in a case note to provide case file documentation of the decision.
 6. Scans the completed request form into the statewide electronic data system.
 7. Moves forward — if the change is approved — with efforts to effect the change or notifies those concerned if the change is not approved.

S Role of the Supervisor

- Consults with the caseworker and determines whether to support the request to central office for approval of the proposed change.
- Consults with the program manager and ensures the program manager is in support of the change before authorizing the caseworker to proceed.
- Notifies the caseworker of the decision to approve or not approve the request being submitted to central office.
- Ensures the caseworker completes the process for central office approval.
- Authorizes the worker to contact DOJ for assistance, following central office approval, if the child's or youth's attorney is unable or unwilling to proceed with the change process.

Form

- [DHS 2706](#)