

DEPARTMENT OF HUMAN SERVICES
OFFICE OF CHILD WELFARE PROGRAMS

CHAPTER 413
DIVISION 10

CLIENT RIGHTS

Updated 08/06/2019

TABLE OF CONTENTS

Definitions	2
Confidentiality of Client Information	12
Rights of Children and Young Adults.....	24
Protecting Rights of Children (Interrogations, Interviews, Polygraphs).....	29
Rights of Relatives.....	33
Complaint Review	36
Contested Case Hearings.....	40
Notice and Review of CPS Founded Dispositions.....	52

Definitions

413-010-0000

Definitions

(Technical Amended 08/06/2019)

Unless the context indicates otherwise, the following definitions apply to OAR chapter 413, division 10.

- (1) "Adoption assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with adopting and meeting the ongoing needs of the child or young adult. "Adoption assistance" may be in the form of payments, medical coverage, reimbursement of nonrecurring expenses, or special payments.
- (2) "Adoption records, papers, and files" means all documents, writings, information, exhibits, and other filings retained in the court's record of an adoption case pursuant to ORS 109.319 and includes but is not limited to the Adoption Summary and Segregated Information Statement described in ORS 109.317 and exhibits attached to the statement, the petition and exhibits attached to the petition pursuant to ORS 109.315, and any other motion, judgment, document, writing, information, exhibit, or filing retained in the court's record of the adoption case.
- (3) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the *child* who joined the family through a judgment of the court.
- (4) "Adult" means a person 18 years of age or older.
- (5) "Base rate payment" means a payment to the foster parent or relative caregiver at a rate established by the Department for the costs of providing the *child* or *young adult* with the following:
 - (a) Food, including the special or unique nutritional needs of the *child* or *young adult*;
 - (b) Clothing, including purchase and replacement;
 - (c) Housing, including maintenance of household utilities, furnishings, and equipment;
 - (d) Daily supervision, including teaching and directing to ensure safety and well-being at a level appropriate for the chronological age of the *child* or *young adult*;
 - (e) Personal incidentals, including personal care items, entertainment, reading materials, and miscellaneous items; and

- (f) Transportation, including gas, oil, and vehicle maintenance and repair costs for local travel associated with providing the items listed above, and transportation to and from extracurricular, child care, recreational, and cultural activities.
- (6) "Case plan" means a written, goal oriented, and time-limited individualized plan for the child and the child's family, developed by the Department and the parents or guardians, to achieve the child's safety, permanency, and well-being.
- (7) "Central Office CPS Founded Disposition Review" means a process wherein a *Central Office CPS Founded Disposition Review Committee* reviews a founded disposition, makes recommendations to the CPS Program Manager or designee, and the CPS Program Manager or designee makes a decision to uphold, overturn, or change the abuse type of the founded disposition.
- (8) "Central Office CPS Founded Disposition Review Committee" means a group of two child welfare employees who make a recommendation or recommendations to the Child Protective Services Program Manager or designee regarding the CPS founded disposition. No one may serve on the "Central Office CPS Founded Disposition Review Committee" who participated in or observed the *Local Child Welfare Office CPS Founded Disposition Review* or had a role in the CPS assessment, including having participated in a staffing, that resulted in the CPS founded disposition under review. Further requirements of the "Central Office CPS Founded Disposition Review Committee" are found in OAR [413-010-0745](#) and [413-010-0746](#). The two child welfare staff on the committee must include any two of the following:
 - (a) Either the Program Manager for CPS or a designee;
 - (b) A CPS program coordinator;
 - (c) A CPS consultant; or
 - (d) A Department supervisor.
- (9) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific *relative caregiver* home, child-specific foster home, pre-adoptive home, or a regular foster home.
- (10) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.
- (11) "Child" means a person under 18 years of age.
- (12) "Child-caring agency" has the meaning given to it in ORS [418.205](#) as amended by Oregon Laws 2017 chapter 244, and means a "child-caring agency" that is not owned, operated, or administered by a governmental agency or unit.

- (13) "Child protective services" (CPS) means a specialized social service program that the Department provides on behalf of children or, when applicable, young adults who may be *unsafe* after a *report of abuse* is received.
- (14) "Client" means any individual receiving services from the Department, including the *parent* or legal *guardian* of a *child* or *young adult*, or the custodian of an unemancipated minor client.
- (15) "Client file" means an electronic or paper file that the Department marks with the names of one or more clients, into which the Department places all of the named clients' records. A "client file" may contain *confidential information* about other clients and persons who are not clients.
- (16) "Client information" means *confidential information* about a *client* or identified with a *client*.
- (17) "Client record" means any *record* that includes *client information* and is created, requested, or held by the Department. A "client record" does not include general information, policy statements, statistical reports, or similar compilations of data which are not identified with an individual *child*, family or other recipient of services.
- (18) "Confidential information" means information that is unavailable to the public by statute, rule, or court order.
- (19) "Contract Provider" means any individual or organization that provides services to a Child Welfare *client* pursuant to a contract or agreement with Child Welfare.
- (20) "Court Appointed Special Advocate (CASA)" means a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the *child* pursuant to ORS 419A.170.
- (21) "CPS Disposition" means a determination that completes a CPS assessment. Dispositions are discussed in OAR 413-015-1000 and include founded, unfounded, and unable to determine.
- (22) "Department" means the Oregon Department of Human Services.
- (23) "Department adoption records" means all documents, writings, and information required to be retained in the Department's Central Office adoption file including, but not limited to:
 - (a) Adoption records, papers, and files;
 - (b) Records and information created, generated, produced, or submitted for purposes of selecting the *adoptive family* for the *child*;

- (c) Documents, writings and information obtained, created, or submitted by the Department Child Permanency Program staff for the purposes of finalizing the child's adoption;
 - (d) Records and information obtained or created by the Department for the purposes of determining eligibility or making payment for *adoption assistance*;
 - (e) Any medical, psychiatric, or psychological records of the *child* received by the Child Permanency Program staff for retention as part of the Child Permanency Program adoption file of the *child*;
 - (f) The names, address, or other identifying information of the *adoptive family* of the *child*; and
 - (g) The birth certificate of the *child*.
- (24) "Discipline" means a training process a family uses to help a child or young adult develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.
- (25) "Disclose" means reveal or provide *client information* to a person, agency, organization, or other entity outside of the Department of Human Services. Disclosing includes, but is not limited to:
- (a) Showing or providing a *client record* or copy of a *client record*; and
 - (b) Orally transmitting *client information*.
- (26) "Foster child" means a *child* who is in the *legal custody* of the Department pursuant to the provisions of ORS chapter 418 or 419B and who is placed in *substitute care*, including but not limited to care with a *foster parent* or a *child-caring agency* as defined in ORS 418.205.
- (27) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated *child* or *young adult* placed in the home by the Department.
- (28) "Guardian" means an individual who has been granted guardianship of a *child* through a judgment of the court.
- (29) "Guardianship assistance" means assistance provided by the Department to the *guardian* on behalf of an eligible *child* or *young adult* to offset costs associated with meeting the ongoing needs of the *child* or *young adult*. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

- (30) "Indian child" means an unmarried person who is under 18 years of age and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.
- (31) "Juvenile" means a person younger than the age of 18 years who is identified as a perpetrator. OAR 413-010-0716 provides specific requirements regarding application of these rules to juveniles.
- (32) "Legal custody" means that a person or agency has legal authority:
- (a) To have physical custody and control of a *child*;
 - (b) To supply the *child* with food, clothing, shelter and other necessities;
 - (c) To provide the *child* with care, education and discipline;
 - (d) To authorize ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the *child*, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and
 - (e) "Legal custody" includes temporary custody of a *child* under an order of a court.
- (33) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of a CPS founded disposition.
- (34) "Legal proceeding" means a court or administrative proceeding that may result in a legal finding.
- (35) "Legally emancipated " means a person under 18 years of age who is married or has been emancipated by the court in accordance with the requirements of ORS 419B.558.
- (36) "Level of care payment" means the payment provided to an approved or *certified family*, a *guardian*, a *pre-adoptive family*, or an adoptive family based on the need for *enhanced supervision* of a *child* or *young adult* as determined by applying the CANS algorithm to the results of the CANS screening.
- (37) "Level of personal care payment" means the payment to a qualified provider for performing the personal care services for an eligible *child* or *young adult* based on the child's or young adult's need for personal care services as determined by applying the personal care services algorithm to the results of the personal care services rating scale.
- (38) "Licensee" means a *child-caring agency* that holds a license issued by the Department.

- (39) "Local Child Welfare Office CPS Founded Disposition Review" means a process wherein a Local Child Welfare Office CPS Founded Disposition Review Committee reviews a founded disposition, makes recommendations to a Child Welfare program manager or designee, and the Child Welfare program manager or designee makes a decision to uphold, overturn, or change the abuse type of the founded disposition.
- (40) "Local Child Welfare Office CPS Founded Disposition Review Committee" means a group of two child welfare employees who make a recommendation or recommendations to a Child Welfare Program Manager or designee regarding a CPS founded disposition. One of the members must be a manager and one must be staff trained in CPS assessment and dispositions. No one may serve on the "Local Child Welfare Office CPS Founded Disposition Review Committee" in the review of an assessment in which he or she had a role in the CPS assessment, including having participated in a staffing, that resulted in the CPS founded disposition under review. Further requirements of the "Local Child Welfare Office CPS Founded Disposition Review Committee" are found in OAR 413-010-0735 and 413-010-0738.
- (41) "Parent" means the biological or adoptive mother or the legal father of the *child*. A legal father is a man who has adopted the *child* or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an *Indian child* under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes 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 unless a court finds that the putative father is not the legal father.
- (42) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.
- (43) "Party" means a person entitled to a contested case hearing under these rules.
- (44) "Perpetrator" means the person the Department has reasonable cause to believe is responsible for child abuse in a CPS founded disposition.
- (45) "Person Requesting Review" or "Requestor" means a perpetrator, his or her attorney, or, if a juvenile is identified as the perpetrator, the person who may request a review on behalf of the juvenile, who requests a review of the founded disposition.
- (46) "Potential guardian" means an individual who:
- (a) Has been approved by the Department or *participating tribe* to be a child's *guardian*; and
 - (b) Is in the process of legalizing the relationship to the *child* through the judgment of the court.
- (47) "Pre-adoptive family" means an individual or individuals who:

- (a) Has been selected to be a child's adoptive family; and
 - (b) Is in the process of legalizing the relationship to the *child* through the judgment of the court.
- (48) "Record" means a record, file, paper, or communication and includes, but is not limited to, any writing or recording of information including automated records and printouts, handwriting, typewriting, printing, photostating, photographing, magnetic tapes, videotapes, or other documents. "Record" includes records that are in electronic form.
- (49) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with ORS 106.300 to 106.340.
- (50) "Relative" means any of the following:
- (a) An individual with one of the following relationships to the *child* or *young adult* through the *parent* of the *child* or *young adult* unless the relationship has been dissolved by adoption of the *child*, *young adult*, or *parent*:
 - (A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.
 - (B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great. Individuals with one common biological parent are half-blood relatives.
 - (C) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.
 - (D) A spouse of anyone listed in paragraphs (A) to (C) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the *child* or *young adult* must have had a relationship with the spouse prior to the most recent episode of Department custody.
 - (b) An individual with one of the following relationships to the *child* or *young adult*:
 - (A) A *sibling*, also to include an individual with a sibling relationship to the *child* or *young adult* through a putative father.
 - (B) An individual defined as a relative by the law or custom of the tribe of the *child* or *young adult* if the *child* or *young adult* is an *Indian child* under the Indian Child Welfare Act or in the legal custody of a tribe.
 - (C) An individual defined as a relative of a refugee child or young adult under OAR 413-070-0300 to 413-070-0380.

- (D) A stepparent or former stepparent if the *child* or *young adult* had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.
 - (E) A *registered domestic partner* of the *parent* of the *child* or *young adult* or a former *registered domestic partner* of the *parent* of the *child* or *young adult* if the *child* or *young adult* had a relationship with the former domestic partner prior to the most recent episode of Department custody.
 - (F) The adoptive parent or an individual who has been designated as the adoptive resource of a *sibling* of the *child* or *young adult*.
 - (G) An unrelated legal or biological father or mother of a half-sibling of the *child* or *young adult* when the half-sibling of the *child* or *young adult* is living with the unrelated legal or biological father or mother.
- (c) An individual identified by the *child* or *young adult* or the family of the *child* or *young adult*, or an individual who self-identifies, as being related to the *child* or *young adult* through the *parent* of the *child* or *young adult* by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (C) of subsection (a) of this section unless the relationship has been dissolved by adoption of the *child*, *young adult*, or *parent*.
- (d) An individual meeting the requirements of at least one of the following:
- (A) An individual not related to the *child*, *young adult*, or *parent* by blood, adoption, or marriage:
 - (i) Who is identified as a member of the family by the *child* or *young adult* or by the family of the *child* or *young adult*; and
 - (ii) Who had an emotionally significant relationship with the *child* or *young adult* or the family of the *child* or *young adult* prior to the most recent episode of Department custody.
 - (B) An individual who has a blood relationship to the *child* or *young adult* as described in paragraphs (A) to (C) of subsection (a) of this section through the birth parent of the *child* or *young adult*, but the prior legal relationship has been dissolved by adoption of the *child*, *young adult*, or birth parent, and who is identified as a member of the family by the *child* or *young adult* or who self-identifies as a member of the family.
- (e) For eligibility for the guardianship assistance program:
- (A) A stepparent is considered a *parent* and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment,

dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the *child* has been terminated by divorce or death.

- (B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:
- (i) There is a compelling reason why adoption is not an achievable permanency plan;
 - (ii) The foster parent is currently caring for a *child*, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;
 - (iii) The foster parent has cared for the *child* for at least 12 of the past 24 months; and
 - (iv) The Department or tribe has approved the foster parent for consideration as a guardian.
- (51) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.
- (52) "Request for a Central Office CPS Founded Disposition Review" means a written request for a *Central Office CPS Founded Disposition Review* from a *requestor* who has received a Local Child Welfare Office CPS Founded Disposition Review Decision (Form CF 314) to retain a founded disposition. The specific requirements for a request for review by Central Office are described in OAR 413-010-0740.
- (53) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.
- (54) "Service" means assistance that the Department provides clients.
- (55) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:
- (a) By blood or adoption through a common *parent*;
 - (b) Through the marriage of the legal or biological parents of the children or young adults; or
 - (c) Through a legal or biological parent who is the *registered domestic partner* of the legal or biological parent of the children or young adults.

- (56) "Substitute care" means the out-of-home placement of a *child* or *young adult* who is in the legal or physical custody and care of the Department.
- (57) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a *child* or *young adult* in the legal or physical custody of the Department.
- (58) "Visit" means planned, in-person contact between the *child* or *young adult* and one or more family members.
- (59) "Voluntary services" means services that the Department provides at the request of a person or persons and there is no open and related juvenile court proceeding.
- (60) "Young adult" means a person 18 through 20 years of age.

Stat Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.225, 419A.255, 418.200, 418.606-418.609

Confidentiality of Client Information

413-010-0010

Purpose

(Amended 08/04/15)

The purpose of OAR 413-010-0010 to 413-010-0075 is to describe circumstances in which the Department may and may not *disclose client information* without a court order.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.225, 419A.170, 419A.255

413-010-0030

Protection of Information

(Amended 01/01/14)

In the interest of family privacy and to protect children, families, and other recipients of services, except as provided by Oregon statutes and these rules (OAR 413-010-0010 to 413-010-0075):

- (1) *Client information* is confidential.
- (2) Client records are not available for public inspection.
- (3) Oregon statutes, OAR 407-014, and these rules regulate the Department's disclosure of *client information* by prohibiting disclosure of some *client information*, mandating disclosure of some information, and giving the Department discretion to *disclose* some information, as provided in OAR 413-010-0035, 413-010-0045, 413-010-0055, 413-010-0065, and 407-014.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.225, 419A.255, 419B.035

413-010-0035

Prohibited Disclosures

(Amended 03/08/17)

- (1) If a court order or a specific statute requires the Department to *disclose* information that this rule protects, the Department must *disclose* the information.
- (2) The Department may not *disclose client information*:

- (a) For purposes not directly connected with the administration of child welfare laws;
or
- (b) When disclosure is not required nor authorized by:
 - (A) ORS 419B.035 (governing confidentiality of child abuse records), set out in section (11) of this rule;
 - (B) ORS 419A.255 (governing confidentiality of juvenile court records) set out in section (12) of this rule; or
 - (C) Another statute.
- (3) The Department may not *disclose* investigatory information compiled for criminal law purposes, including the record of an arrest or a report of a crime, unless:
 - (a) The Department determines after consultation with law enforcement or a prosecutor that the information can be disclosed without interfering with an ongoing law enforcement investigation or prosecution of a case; or
 - (b) The Department determines that disclosure is required by ORS 419B.035(1)(i) because a child, as the result of abuse, died or suffered serious physical injury taking into account the factors listed in ORS 419B.035(2)(a).
- (4) Department employees may not *disclose* the information described in section (3) of this rule unless authorized to do so by the branch manager or designee.
- (5) A person authorized to review client records may not review the complete case file if the complete file contains *confidential information* about other persons, including, but not limited to other clients, ex-spouses, battering partners, housemates, and half-siblings unless the other person provides written consent that meets the requirements of OAR 413-010-0045(2)(a).
- (6) The Department may not *disclose* the records of a patient at a drug and alcohol abuse treatment facility to any person without the consent of the patient.
- (7) The Department may not *disclose client information* contained in a *record* sealed by a court order of expunction or any part of the expunged *record*.
- (8) Department Adoption Records.
 - (a) The Department must seal *Department adoption records* in its possession consistent with ORS 109.319.
 - (b) The Department may not access, use, or *disclose Department adoption records* in its possession except as provided in ORS 109.319.

- (c) Subject to subsection (d) of this section, the Department may, without a court order, access, use, or *disclose Department adoption records* in its possession for the purpose of providing adoption services or administering child welfare services that the Department is authorized to provide under federal or state law.
 - (d) The Child Permanency or Post-Adoption Program Manager, or their designee, must authorize the unsealing of and access to, use of, or disclosure of *Department adoption records* by other Department employees.
 - (e) The Department may, upon request and if available, *disclose* the county in which an adoption was finalized and the case number of the adoption proceeding as provided in section 6 of HB 2365 (2015).
- (9) Reporter of Abuse. The identity of the person making a report of suspected child abuse, and any identifying information about the reporting person, must be removed from the records or shielded from view before records are viewed or copied. The name, address or other identifying information may only be disclosed to a law enforcement officer or district attorney in order to complete an investigation report of child abuse.
- (10) Reports and Records Compiled Pursuant to the Child Abuse Reporting Law.
- (a) Each report of suspected child abuse must be immediately reported to a law enforcement agency.
 - (b) The Department must assist in the protection of a *child* who is believed to have been abused or neglected by providing information as needed to:
 - (A) The juvenile court;
 - (B) The district attorney;
 - (C) Any law enforcement agency or a child abuse registry in another state investigating a child abuse report;
 - (D) Members of a child protection team or consultants involved in assessing whether or not abuse occurred and determining appropriate treatment for the *child* and family;
 - (E) A physician who is examining a *child* or providing care or treatment, and needs information about the child's history of abuse; and
 - (F) A non-abusing parent, foster parent, or other non-abusing person responsible for the care of the *child*.
 - (c) A report, record, or findings of an assessment of child abuse may not be disclosed until the assessment is completed, except for the reasons stated in paragraphs (e)(A) and (B) of this section. An assessment will not be considered completed

while either a protective service assessment or a related criminal investigation is in process. The Department determines when the protective service assessment is completed. The district attorney determines when a criminal investigation is completed.

- (d) *Records* or findings of completed child abuse assessments must be released upon request to the following:
 - (A) Attorneys of record for the *child* or child's *parent* or *guardian* in a juvenile court proceeding for use in that proceeding; and
 - (B) A citizen review board established by the Department or by a juvenile court to review the status of children under the jurisdiction of the court for the purpose of completing a case review. Before providing information to a citizen review board, the Department must assure that the board has informed participants of their statutory responsibility to keep the information confidential, and will maintain records in an official, confidential file.

- (e) *Records* or information from *records* of abuse and neglect assessments may be disclosed to other interested parties if the Department determines that disclosure to a person or organization is necessary to:
 - (A) Administer child welfare services and is in the best interests of the affected *child*. When disclosure is made for the administration of child welfare services, the Department will release only the information necessary to serve its purpose; and
 - (B) Prevent abuse and neglect, assess reports of abuse or neglect, or protect children from further abuse or neglect.

- (11) Juvenile Court Records in Department Files.
 - (a) The Department may not *disclose records* and information in its possession that are also contained in the juvenile court's record of the case or supplemental confidential file, defined in subsections (b) and (c) of this section, except as provided in ORS 419A.255 and other federal and state confidentiality laws pertaining to *client records*.

 - (b) Record of the Case.
 - (A) The juvenile court's "record of the case", as defined in ORS 419A.252, includes but is not limited to the summons, the petition, papers in the nature of pleadings, answers, motions, affidavits, and other papers filed with the court, orders and judgments, including supporting documentation, exhibits and materials offered as exhibits whether or not received in evidence, and other records listed in ORS 419A.252.

- (B) The record of the case is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.
- (c) Supplemental Confidential File.
 - (A) The juvenile court's "supplemental confidential file", as defined in ORS 419A.252, includes reports and other material relating to the child's history and prognosis, including but not limited to reports filed under ORS 419B.440, that are not or do not become part of the record of the case and are not offered or received as evidence in the case.
 - (B) The supplemental confidential file is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.
 - (C) The Department is entitled to copies of material maintained in the supplemental confidential file and if such material is obtained, the Department must ensure the confidentiality of that material as provided in ORS 419A.255.
- (d) Reports and other materials relating to the child's history and prognosis in the record of the case or in the supplemental confidential file are privileged and except at the request of the *child*, are unavailable for public inspection but are open to inspection and copying as provided in ORS 419A.255.
- (e) When the Department inspects or obtains copies of reports, materials, or documents pursuant to ORS 419A.255(4), the Department may not use or *disclose* the reports, materials, or documents except as provided in ORS 419A.255.
- (12) Records Received from the Oregon Youth Authority or the Juvenile Department. The Department must preserve the confidentiality of reports and other materials it receives from the Oregon Youth Authority or the juvenile department relating to the *child*, ward, youth or youth offender's history and prognosis, as provided in ORS 419A.257.

Stat. Auth.: ORS 409.050, 418.005, 418.340

Stats. Implemented: ORS 109.319, 109.329, 109.331, 192.501, 409.010, 409.194, 409.225, 418.005, 419A.102, 419A.252, 419A.255, 419A.263, 419B.035, 432.420

413-010-0045

Mandatory Disclosure

(Amended 01/01/14)

- (1) The Department must *disclose client information* if disclosure is required by ORS 419A.255 or ORS 419B.035.

- (2) Unless a *client record* is exempt from disclosure under the Public Records Law, ORS 192.410 through 192.505, the Department must *disclose* the *client record* in the circumstances described below:
- (a) If the *client* is 18 years or older or *legally emancipated*, the Department must *disclose*, upon request:
 - (A) The client's records to the *client* if no court order prohibits the disclosure; or
 - (B) The client's records to a third party if no court order prohibits the disclosure and the *client* has authorized the Department in writing to *disclose* the records to the third party.
 - (b) Upon the request of a child's parent or *guardian*, the Department must *disclose* a child's *client records* to the parent or *guardian* if the *child* is receiving *voluntary Department services*.
 - (c) Upon the request of a child's parent or *guardian*, the Department must *disclose* a child's *client records* to the *parent* or *guardian* if the *child* is or has been in the Department's custody unless:
 - (A) The *child* objects;
 - (B) Disclosure would be contrary to the best interests of any *child*; or
 - (C) Disclosure could be harmful to the person caring for the *child*, including, but not limited to, foster parents, treatment providers and relatives other than the child's *parent* or *guardian*.
 - (d) The Department must *disclose* a child's *client record* to the juvenile court in juvenile proceedings, including tribal proceedings regarding the *child*;
 - (e) The Department must *disclose* a child's *client records* to an attorney who identifies himself or herself as the child's attorney if the juvenile court confirms that he or she is the attorney of record in a juvenile proceeding.
- (3) Information related to the Department's activities and responsibilities in child abuse or neglect cases. Upon request, the Director or the Director's designee must review the information related to the Department's activities and responsibilities:
- (a) When child abuse or neglect causes the death or near death of a *child* or an *adult* is charged with a crime related to child abuse or neglect; and
 - (b) Unless the information is exempt from disclosure under other law, the Director or the Director's designee must determine an appropriate time for disclosing the information and that determination must depend on, among other things, the

status of any child abuse or criminal investigations and the privacy interests of the victims.

- (4) Disclosure to Court Appointed Special Advocate (CASA):
- (a) Access to information. Upon presentation of the order of appointment by the court, a CASA, without the consent of the *child* or children or parents, may inspect and copy any *records* relating to the *child* or children involved in the case held by the following entities:
 - (A) The Department, the state courts, and any other agency, office or department of the state; and
 - (B) Hospital, school organization, division, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic.
 - (b) All records and information acquired or reviewed by a CASA during the course of official duties are confidential;
 - (c) When a CASA is also the guardian ad litem pursuant to federal law, this rule governs the guardian ad litem's access to information.
- (5) If, in the professional judgment of the caseworker, information about a *child* indicates that the *child* presents a clear and immediate danger to another person or entity, the Department must *disclose* the information to the appropriate authority and to the person or entity in danger. The decision to release information in these circumstances will be made in consultation with a supervisor.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 192.410-192.505, 409.225, 419A.170, 419B.035

413-010-0055

Mandatory Disclosure if in the Child's Best Interest

(Amended 01/01/14)

- (1) Unless *client information* is exempt from disclosure under another provision of law, and if disclosure is in the child's best interest, the Department will *disclose client information records* to the following persons:
- (a) Employees of the Department of Human Services to the extent necessary to perform their official duties, determine the child's or family's eligibility for services, or provide services to the *child* or family;

- (b) The Division of Child Support of the Department of Justice, when information is needed in order to locate children or absent parents, and to establish support for children in *substitute care*; and
 - (c) Treatment providers, foster parents, adoptive parents, school officials or other persons providing services to the *child* or family to the extent that such disclosure is necessary to provide services to the *child* or family. Such services include, but are not limited to, those provided by foster parents, child care centers, private child caring agencies, treatment centers, Indian social service or child welfare agencies, physicians and other health care providers, mental health professionals, volunteers, student interns, and child protection teams.
- (2) Sensitive Review Committee.
- (a) The Director of the Department of Human Services (Director) may choose to convene, either on the Director's own motion or upon a request of the President of the Senate or the Speaker of the House, a sensitive review committee for the purpose of reviewing the actions of the Department, in order to improve the quality of and strengthen child welfare practice in future cases. If the Director convenes a committee at the request of the President or the Speaker, then the Director must submit the final written report containing the findings, conclusions, and recommendations of the committee to the President and the Speaker no more than 180 days after receiving the request from the President or the Speaker.
 - (b) Unless *client information* is exempt from disclosure under ORS chapter 192 or another provision of law, and if disclosure is in the child's best interest, the Director or the Director's designee must direct disclosure of relevant *client information* to persons appointed to a sensitive review committee convened by the Director.
 - (A) Any record disclosed to the committee members must be kept confidential by the members of the committee and must be used only for the purpose for which the record was disclosed.
 - (B) Any records disclosed to the committee members must be returned to the Department upon completion of the review.

Stat. Auth.: ORS 409.050, 409.194, 418.005

Stats. Implemented: ORS 409.010, 409.194, 409.225, 418.005

413-010-0065

Discretionary Disclosure

(Amended 01/01/14)

- (1) The Department may *disclose client information* when disclosure is required or authorized by:

- (a) ORS 491B.035 (governing confidentiality of child abuse reports and records), set out in OAR 413-010-0035(11); or
 - (b) ORS 419A.255 (governing confidentiality of juvenile court records) set out in OAR 413-010-0035(12).
- (2) The Department may *disclose client information* for purposes directly connected with the administration of child welfare laws including, but not limited to:
- (a) Disclosure to employees of the Secretary of State's Office, the Department of Administrative Services, the Department of Health and Human Services, and the Department who require information to complete audits, program reviews and quality control;
 - (b) Disclosure to law enforcement officers and district attorneys' offices needing information for child abuse assessments, criminal investigations, civil and criminal proceedings connected with administering the agency's child welfare programs; and
 - (c) Disclosure to the public if a *child* in the Department's legal custody has been abducted or is missing and believed to be abducted, and is in danger of harm or a threat to the welfare of others. The Department may *disclose* limited information to the extent necessary to identify, locate, or apprehend the *child*, including the child's name, description, and that the *child* may pose a threat to the public or himself or herself.
- (3) The Department may *disclose* general information including, but not limited to policy statements, statistical reports or similar compilations of data which are not identified with an individual *child*, family or other recipient of services, unless protected by other provisions of law.
- (4) Presumed Waiver of Protection of ORS 409.225(1). The Department may *disclose* the information described in section (5) of this rule if the Director or the Director's designee determines that all of the following circumstances are present:
- (a) An *adult client* is the subject of *client information* made confidential by ORS 409.225(1);
 - (b) The Public Records Law does not exempt the information from disclosure;
 - (c) The *adult client* has publicly revealed or caused to be revealed any significant part of the *confidential information* and thus is presumed to have voluntarily waived the confidentiality protection of ORS 409.225(1);
 - (d) Disclosure is in the best interest of the *child*; and

- (e) Disclosure is necessary to the administration of the child welfare laws.
- (5) If disclosure is authorized under section (4) of this rule, the Department may *disclose* information about the person making or causing the public disclosure, not already disclosed, but related to the information made public.
- (6) Review of Department records for research purposes. The Director or the Director's designee may authorize a person or organization to review Department records for research purposes. The Department may not approve the request until the researcher has agreed, in writing, to maintain the confidentiality of individual clients, not to copy the Department records, and not to include identifying information about any *client* in the report or reports of the research.
- (7) Investigation of Other Crime:
 - (a) Except as authorized by subsection (2)(b) of this rule, and ORS 409.225, Department employees may not *disclose* to law enforcement *client information* obtained from client records, conversations with clients or other sources if the employee or employees acquired the information because a person is or has been a *client* of the Department;
 - (b) A manager or the manager's designee may *disclose* to law enforcement a client's current address when:
 - (A) The law enforcement officer provides the name and social security number of the *client*; and
 - (B) The officer satisfactorily demonstrates that the *client* is a fugitive felon (as defined by the state), the location or apprehension of such felon is within the law officer's official duties, and the request is made in the proper exercise of those duties.

Stat. Auth.: ORS 418.005, 419B.035

Stats. Implemented: ORS 409.225, 409.230, 419A.225, 419B.035

413-010-0068

Disclosure of Information Exempt Under the Public Records Law

(Amended 01/01/14)

Unless required by court order or specific statute, the Department may not *disclose* information in a *client file* if the information is exempt under the Public Records Law.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 192.410-192.505, 418.005

413-010-0075

Disclosure Procedures

(Amended 01/01/14)

- (1) The manager or the manager's designee must supervise access to *records*.
- (2) The manager or manager's designee must approve in writing the disclosure or redisclosure of *client information* in the following circumstances:
 - (a) The Department currently is the child's legal custodian or *guardian* or the Department was the child's legal custodian or *guardian* when the Department authorized services;
 - (b) The Department currently is serving the *child* pursuant to an Interstate Compact or other interstate agreement; and
 - (c) The *child* is or was evaluated or provided services in conjunction with the Department assessment following a protective service report, regardless of the child's legal status at the time.
- (3) The Department may require a reasonable period of time to prepare a client's record for review at the branch or disclosure by mail.
- (4) The Department may require that a person who seeks to review *client records*, review the *records* at an appointed time.
- (5) Except as provided in OAR 413-010-0065(6), (access to records for research purposes), a person authorized to review the Department record may copy the record.
- (6) Any record disclosed must be kept confidential by the person to whom the *record* is disclosed and must be used only for the purpose for which disclosure was made.
- (7) To redisclose lawfully, the person must obtain, before the redisclosure, the written consent of the branch manager or the branch manager's designee.
- (8) All social service agencies, courts, foster parents, *service* providers (including medical providers), or agents of the Department providing services to the Department's *client* at the request of the agency are subject to the Oregon statutes and the Department rules governing disclosure of *client information*.
- (9) The Department may not permit a person authorized to review a particular client's file to review the complete file if the file includes information about any other *client*. The Department must permit review of the particular client's *records*.
- (10) When copies of *confidential information* are released, the material must be stamped: "Confidential not to be redisclosed".

- (11) When confidential *records* and information are part of the record in an administrative hearing before the Department, the Department and all participants in the hearing must take all reasonable measures to maintain the confidentiality of the information.

Stat. Auth.: ORS 418.005, 419B.035

Stats. Implemented: ORS 418.005, 419A.255

Rights of Children and Young Adults

413-010-0170

Purpose

(Technical Amended 08/06/2019)

The purpose of OAR 413-010-0170 to 413-010-0185 is to:

- (1) Describe the rights and protection each *child* and *young adult* in the legal custody of the Department is entitled to receive from the Department;
- (2) Establish the Oregon Foster Children's Bill of Rights, as provided in ORS 418.200 to 418.202; and
- (3) Establish the Oregon Foster Children's Sibling Bill of Rights, as provided in Oregon Laws 2017 chapter 36.

Stat. Auth.: ORS 418.005, 418.202

Stats. Implemented: ORS 418.005, 418.201, 418.202, 419B.343, 418.606-418.609

413-010-0175

Definitions

(Amended 08/04/15)

Definitions for OAR 413-010-0170 to 413-010-0185 are in OAR 413-010-0000.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0180

Rights of Children and Young Adults in the Legal Custody of the Department

(Technical Amended 08/06/2019)

- (1) Every *child* and *young adult* in the *legal custody* of the Department has rights, including but not limited to the right:
 - (a) To be placed in the least restrictive environment that appropriately meets individual needs;
 - (b) To be provided basic needs such as adequate food, clothing, and shelter;

- (c) To receive appropriate care, supervision, and *discipline*, and to be taught to act responsibly and respect the rights of others;
 - (d) To be provided routine and necessary medical, dental, and mental health care and treatment;
 - (e) To be provided with free and appropriate public education;
 - (f) To be protected from physical and sexual abuse, emotional abuse, neglect, and exploitation;
 - (g) To be provided services designed for reunification with the *parent* or *guardian* except when there is clear evidence that the *parent* or *guardian* may not protect the child's or young adult's welfare;
 - (h) To be provided services to develop a safe permanent alternative to the family, when family resources are not available;
 - (i) To be accorded the least restrictive legal status that is consistent with the need for protection, to have the Department present its position on best interests to the court, and to attend court hearings and speak directly to the judge;
 - (j) To receive respect, be nurtured, and attend activities in accordance with his or her background, religious heritage, race, and culture within reasonable guidelines as set by the *case plan*, the visitation plan, and the court;
 - (k) To visit and communicate with a *parent* or *guardian*, siblings, members of his or her family, and other significant people within reasonable guidelines as set by the *case plan*, the visitation plan, and the court;
 - (L) To be involved, in accordance with his or her age and ability and with the law, in making major decisions that affect his or her life, to participate in the development of his or her *case plan*, permanency plan, and comprehensive transition plan and to discuss his or her views about the plans with the judge;
 - (m) To receive encouragement and be afforded reasonable opportunities to participate in extracurricular, cultural, and personal enrichment activities consistent with his or her age and developmental level; and
 - (n) To earn and keep his or her own money and to receive guidance in managing resources to prepare him or her for living independently, including receiving assistance from the Department to establish a savings account as provided in ORS 418.708.
- (2) This section establishes the Oregon Foster Children's Bill of Rights. In addition to the rights listed in section (1) of this rule, every *child* and *young adult* in the legal custody of the Department who is or was in *substitute care* has the following rights, as provided in ORS 418.201:

- (a) To have the ability to make oral and written complaints about care, placement, or services that are unsatisfactory or inappropriate, and to be provided with information about a formal process for making complaints without fear of retaliation, harassment, or punishment.
- (b) To be notified of, and provided with transportation to, court hearings and reviews by local citizen review boards pertaining to the child's or young adult's case when the matters to be considered or decided upon at the hearings and reviews are appropriate for the *child* or *young adult*, taking into account the age and developmental stage of the *child* or *young adult*.
- (c) To be provided with written contact information of specific individuals whom the *child* or *young adult* may contact regarding complaints, concerns, or violations of rights, that is updated as necessary and kept current.
- (d) When the *child* or *young adult* is 14 years of age or older, to be provided with written information within 60 days of the date of any placement or any change in placement, regarding:
 - (A) How to establish a bank account in the child's or young adult's name as allowed under state law;
 - (B) How to acquire a driver license as allowed under state law;
 - (C) How to remain in foster care after reaching 18 years of age;
 - (D) The availability of a tuition and fee waiver for a current or former *foster child* under ORS 351.293;
 - (E) How to obtain a copy of the child's or young adult's credit report, if any;
 - (F) How to obtain medical, dental, vision, mental health services, or other treatment, including services and treatments available without parental consent under state law; and
 - (G) A transition toolkit, including a comprehensive transition plan.
- (e) With respect to a child's or young adult's rights under the federal and state constitutions, laws, including case law, rules, and regulations:
 - (A) To receive a document setting forth such rights that is age and developmentally appropriate within 60 days of the date of any placement or any change in placement;
 - (B) To have a document setting forth such rights that is age and developmentally appropriate posted at the residences of all foster parents, child-caring agencies, and independent resident facilities; and

- (C) To have an annual review of such rights that is age and developmentally appropriate while the *child* or *young adult* is in *substitute care*.
 - (f) To be provided with current contact information within 60 days of placement or change in placement, for adults who are responsible for the care of the *child* or *young adult* and who are involved in the child's or young adult's case, including but not limited to caseworkers, caseworker supervisors, attorneys, foster youth advocates and supporters, court appointed special advocates, local citizen review boards, and employees of the Department that provide certification of foster parents, child-caring agencies, and independent resident facilities.
 - (g) To have a hotline phone number that is available to the *child* or *young adult* at all times for the purposes of enabling the *child* or *young adult* to make complaints and assert grievances regarding the child's or young adult's care, safety, or well-being.
- (3) This section establishes the Oregon Foster Children's Sibling Bill of Rights. A *sibling* who is a *foster child* has rights, including but not limited to the right:
- (a) To obtain *substitute care* placements with siblings (pursuant to OAR 413-070-0600 to 413-070-0645), whenever it is safe and appropriate;
 - (b) To *visit* and maintain contact with siblings who are placed in *substitute care*, and those who are not, whenever it is safe and appropriate. This contact includes but is not limited to face-to face, telephonic, letters and electronic communication;
 - (c) To have a sibling visit and contact plan that has been developed as a result of the active engagement and participation of siblings, updated at least annually, and complied with as part of any *substitute care* placement;
 - (d) To be provided with an explanation in an age-appropriate manner if placement or contact with a *sibling* is denied or prohibited;
 - (e) To be provided with transportation to *visit* and maintain contact with siblings;
 - (f) To be placed with a foster parent or relative caregiver who has been provided with training on the importance of *sibling* relationships;
 - (g) To be assigned to a caseworker who has been provided with training on the importance of *sibling* relationships;
 - (h) For contact with siblings to be encouraged in any adoptive or guardianship placement, whenever such contact is safe and appropriate;
 - (i) To have more private or less restrictive communication with siblings as compared to communications with others who are not siblings, whenever it is safe and appropriate;

- (j) To be immediately and timely notified of the placement or placement change of a sibling who is in the *legal custody* of the Department, as is safe and appropriate; and
- (k) To be immediately and timely notified of a catastrophic event or an emergency affecting a sibling, as is safe and appropriate;
- (L) To request that the foster child's attorney advocate on behalf of the *foster child* for contact and visits with siblings:
 - (A) While the *foster child* is in foster care;
 - (B) When the court is considering whether to order visitation between the *foster child* and the foster child's siblings under ORS 419B.367; and
 - (C) When decisions are made regarding post-adoption or post-guardianship contact between the foster child and the foster child's siblings.
- (4) With respect to the rights in section (3) of this rule, a foster child has the right:
 - (a) To receive a document setting forth such rights, and a verbal explanation of those rights, that are age and developmentally appropriate, within 60 days of the date of any placement or change in placement;
 - (b) To have access to the document described in (4)(a) of this rule at the residence of all foster parents and child-caring agencies at which the *foster child* receives care;
 - (c) To have the document described in (4)(a) of this rule on each occasion the child's case plan is considered and reviewed pursuant to OAR 413-040-0100;
 - (d) To be informed by the Department of the rights in section (3) of this rule at least annually; and
 - (e) To have these rights apply regardless of whether the parental rights of one or more of the foster child's parents have been terminated.
- (5) A *child* or *young adult* in the *legal custody* of the Department may have other rights not specified in this rule as appropriate to the child's or young adult's age and developmental stage.

Stat. Auth.: ORS 418.005, 418.202

Stats. Implemented: ORS 418.005, 418.200, 418.201, 418.202, 418.606-418.609

413-010-0185

Department Responsibilities

(Technical Amended 08/06/2019)

- (1) The Department will develop information and materials to be provided to each *child* and *young adult* in the legal custody of the Department who are or were in *substitute care* regarding their rights under OAR 413-010-0180. The Department will review and update the information and materials periodically, and may develop other information and materials it determines will be helpful in informing children and young adults about their rights and how to assert and protect them.
- (2) The Department will make training available to caseworkers and other employees who will provide the information and materials specified in section (1) to children and young adults, to ensure the information and materials are provided in a manner that is timely and appropriate to age and developmental stage.
- (3) The Department will make training available to caseworkers and other employees about the Department's obligations under ORS 418.201, Oregon Laws 2017, chapter 36, OAR 413-010-0180 and this rule, to ensure the obligations are carried out in a manner that is timely and appropriate to age and developmental stage.
- (4) The Department will develop information and materials and make training available to substitute caregivers regarding their obligations to ensure the children and young adults in their care are informed of their rights under OAR 413-010-0180 in a manner that is timely and appropriate to age and developmental stage.
- (5) The Department will develop and publish a process for children and young adults in the legal custody of the Department who are or were in *substitute care* to make complaints regarding their care. The process will include a phone number that is available at all times.

Stat. Auth.: ORS 418.005, 418.202

Stats. Implemented: ORS 418.005, 418.201, 418.202, 418.606-418.609

Protecting Rights of Children (Interrogations, Interviews & Polygraph Tests)

413-010-0200

Purpose

(Adopted 12/29/95)

These rules establish guidelines for Child Welfare staff and agents to follow to assure that the rights are maintained.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0210

Department Responsibilities

(Adopted 12/29/95)

The Department through staff, contracted providers of care and other agents, will assert and protect the rights of children in the legal custody of the Department by fulfilling the following responsibilities:

- (1) Developing and implementing service plans and agreements that address the needs, rights, and best interests of the *child*;
- (2) Advocating for the child's rights when family members, community institutions (such as school/law enforcement), or the Department administrative practices appear to encroach upon the child's rights; and
- (3) Arranging for a guardian ad litem or a court appointed special advocate to represent a child when the Department cannot freely or objectively advocate for the child's rights.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0220

Interrogation/Polygraph

(Adopted 12/29/95)

When a law enforcement agency (LEA) asks to interrogate or conduct a polygraph examination for a *child* suspected of violating the law or having knowledge of a law violation, Child Welfare staff and/or the child's physical custodian will:

- (1) Assure the officer has proper identification.
- (2) Determine if the officer has a warrant. If there is a warrant, Child Welfare will assist the LEA officer insofar as such assistance does not infringe upon the child's right to remain silent and to have legal representation present.
- (3) Advise the officer that no mechanical or electronic recording may be made of the interview.
- (4) If the LEA does not have a warrant, make sure:
 - (a) The child's legal guardian consents to the interrogation and/or polygraph (see I-B.1.4, Responsibility of Staff to Secure a Legal Consent); and
 - (b) The child's attorney, a staff person or the child's custodian is present during the interview, and ensures that the interview is terminated if there is any indication of improper conduct on the part of the interrogator.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0230

Attorney Interview

(Adopted 12/29/95)

When an attorney asks to interview a child, the following shall apply:

- (1) An attorney of record representing the child may interview the child privately. However, if the attorney or the child requests, a Child Welfare staff member shall be present during the interview.
- (2) An adversarial attorney shall not be permitted to interview a *child* unless the child's legal guardian consents to the interview and the child's own attorney is also present.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0240

Other Interviews

(Adopted 12/29/95)

When a request to interview a child is received from representatives of the Social Security Administration, Veteran's Administration, Department of Revenue, insurance representatives, etc., staff and/or custodians will:

- (1) Ensure that the requestor has proper identification;
- (2) Determine if the interview is related to pending litigation or the child may be a party to or a witness to an incident related to a litigation;
- (3) Determine whether or not the *child* should have legal counsel during the interview;
- (4) Set the time and place of the interview; and
- (5) Inform the interviewers that no mechanical or electronic recording will be made of the interviews.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Rights of Relatives

413-010-0300

Purpose

(Amended 01/01/14)

The Department recognizes the importance of preserving the family ties and relationships of a *child* or *young adult* who is placed in the legal custody of the Department. These rules, OAR 413-010-0300 to 413-010-0340, describe the rights of relatives and the responsibilities of the Department regarding involvement of a *child* or young adult's relatives in a child welfare case.

Stat. Auth.: ORS 109.119, 418.005

Stats. Implemented: ORS 109.119, 418.005

413-010-0310

Definitions

(Amended 08/04/15)

Definitions for OAR 413-010-0300 to 413-010-0340 are in OAR 413-010-0000.

Stat. Auth.: ORS 109.119, 418.005, 419A.004

Stats. Implemented: ORS 109.119, 418.005, 419A.004

413-010-0320

Relative Involvement in Case Planning and Court Hearings

(Amended 01/01/14)

- (1) The Department may involve a *relative* as a *safety service provider* after the assessment that determines the individual is a safe and appropriate resource for involvement in managing a child's safety as required under Child Welfare Policy I-AB.7, "Assessment of an Individual as a Safety Service Provider", OAR 413-015-1200 to 413-015-1230.
- (2) The Department must consider a family decision-making meeting as described in ORS 417.365 and when the family decision-making meeting is held, the Department may include any family member as defined in ORS 417.371(4)(a) or *relative* in this meeting under Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan", OAR 413-040-0008.
- (3) The Department must provide notice of a court hearing to --
 - (a) A *relative* who is currently providing *substitute care* for a *child* in the legal custody of the Department pursuant to juvenile court jurisdiction as set forth in ORS 419B.875(6); and

- (b) A grandparent of a *child* or *young adult* in the Department's custody, as required by ORS 419B.875(7). For purposes of this subsection, "grandparent" means the legal *parent* of the *child* or young adult's legal parent, as defined in ORS 109.119.
- (4) A *relative* who expresses to the Department an interest in a *child* has a right to provide information about the child's background and to provide input on the safety, attachment, and permanency needs of the *child*.
- (5) Unless an exception to contact is provided by the child welfare program manager or designee under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0072(1) or an order of a court, under 42 USC 671(a)(29) the Department must provide notice, within 30 calendar days after the removal of a *child* from the custody of the *parent* or parents of the *child*, to all grandparents and other *adult* relatives of the *child* known to the Department, that complies with all of the following subsections:
 - (a) Specifies that the *child* has been or is being removed from the custody of the *parent* or parents of the *child*;
 - (b) Explains options under federal and state law to participate in the care and placement of the *child*;
 - (c) Describes the requirements the individual must meet to become a *relative caregiver* and the services and supports available for a *child* placed with a *relative caregiver* under federal and state law; and
 - (d) Describes the eligibility criteria for and availability of Guardianship Assistance benefits when all Guardianship Assistance eligibility criteria are met under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to OAR 413-070-0974.
- (6) An exception to contact by the Child Welfare program manager or designee under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0072(1) does not relieve the Department of its obligation to provide notice of court hearings to grandparents under subsection (3)(b) of this rule.

Stat. Auth.: ORS 109.119 - 109.123, 417.365, 417.371, 418.005, 419B.875

Stats. Implemented: ORS 109.119 - 109.123, 417.365, 417.371, 418.005, 419B.875

413-010-0330

Communication and Visitation

(Amended 01/01/14)

A *relative* has the right to communicate and visit with a *child* or *young adult* in the Department's legal custody when such communication or contact is set forth in:

- (1) The *child* or young adult's visitation plan developed under Child Welfare Policy I-E.3.5, "Visits and Other Types of Child and Family Contact", OAR 413-070-0800 to 413-070-0880;
- (2) The opportunities for ongoing connection and support developed under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087 and approved by the caseworker; or
- (3) An order of a court.

Stat. Auth.: ORS 109.119, 418.005

Stats. Implemented: ORS 109.119, 418.005

413-010-0340

Department Responsibility to Make Diligent Efforts to Place a Child or Young Adult with Relatives

(Amended 01/01/14)

The Department must:

- (1) Make diligent efforts to place a *child* or *young adult* in substitute care with a *relative* or person who has a caregiver relationship, as defined in ORS 419B.116, to the *child* pursuant to ORS 419B.192(1).
- (2) Make diligent efforts to place a *child* or *young adult* in *substitute care* with his or her siblings so long as placement with the siblings is in the best interests of the *child* or *young adult* and the *child* or young adult's siblings pursuant to ORS 419B.192(2).
- (3) In making the diligent efforts described in sections (1) and (2) of this rule, the Department must consider the factors set forth in ORS 419B.192(3) and follow the assessment process described in Child Welfare Policies I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087 and II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents, Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0270 to 413-200-0296.

Stat. Auth.: ORS 109.119, 418.005, 419B.116, 419B.192

Stats. Implemented: ORS 109.119, 418.005, 419B.116, 419B.192

Complaint Review

413-010-0400

Purpose

(Amended 12/01/07)

These rules (OAR 413-010-0400 to 413-010-0480) prescribe the standards and procedures for reviewing and resolving complaints about Child Welfare.

Stat. Auth.: ORS 409.194, 418.005

Stats. Implemented: ORS 409.192, 418.005

413-010-0410

Definitions

(Amended 08/04/15)

Definitions for OAR 413-010-0400 to 413-010-0480 are in OAR 413-010-0000.

Stat. Auth.: ORS 409.194, 418.005

Stats. Implemented: ORS 409.192, 418.005

413-010-0420

Right to Review

(Amended 12/01/07)

- (1) An individual may receive a review of any action or decision of Child Welfare.
- (2) In addition to the review provided under section (1) of this rule, a *contract provider* (defined in OAR 413-010-0000) may receive a review of any action or decision of Child Welfare that violates a condition or term of the contract or agreement.
- (3) When a client or family member of a *client* notifies the Department that the client or family member has a complaint, the *client* or family member will be assisted in setting a meeting with a caseworker and the caseworker's supervisor (see DHS Form 0170, section about Resolving Complaints Informally).
- (4) An individual or *contract provider* may file a written complaint or report of discrimination by completing DHS Form 0170. The complaint or report of discrimination may be sent to the Governor's Advocacy Office, 500 Summer Street NE, Salem, or submitted as provided on DHS Form 0170.

- (a) When an individual or *contract provider* submits a written *customer service complaint* (defined in OAR 407-005-0105), Child Welfare will follow the procedures set out in OAR 407-005-0100 to 407-005-0120.
 - (b) When a *client* submits a report of discrimination arising from his or her disability, the formal complaint review must comply with OAR 407-005-0030.
 - (c) When a *client* with a disability requests a reasonable modification (see OAR 407-005-0025) or requests auxiliary aids, auxiliary services, or alternative format communication (see OAR 407-005-0005 and 407-005-0010), the initial decision must comply with OAR 407-005-0000 to 407-005-0030 and Department Policy DHS-010-0005, "Non Discrimination on the Basis of Disability for Programs, Services and Activities."
 - (d) When an individual or *contract provider* submits a written complaint, which does not fall within subsections (a) to (c) of this section, Child Welfare will follow the procedures set out in Department Procedure DHS-010-005-01, "Filing a Client Complaint or Report of Discrimination".
- (5) No individual or *contract provider* shall be subjected to a reprisal for seeking review of a complaint.
 - (6) The complaint review shall be administered in a manner that protects the confidentiality of client records to the extent prescribed by Child Welfare Policy I-A.3.2 "Confidentiality of Client Information", OAR 413-010-0010 to 413-010-0075.
 - (7) If an individual or *contract provider* or any agent of the individual or *contract provider* chooses to disclose his or her version of case information to the media or community members who would otherwise not be involved, the local Child Welfare program manager must consult Administrative Procedure DHS-120-003-01, "Sensitive Issues" and may, as allowed by OAR 413-010-0000 to 413-010-0140, disclose information from the case record that is not third-party information to respond to the statements of the individual or *contract provider* by providing the Department's understanding of the facts.
 - (a) Third-party information includes but is not limited to psychological and psychiatric evaluations, police reports, references, alcohol and drug evaluations or reports, and reports from mental health professionals.
 - (b) Third-party information may be disclosed only if the individual or *contract provider* has signed a release of information, and the third-party that provided the confidential information has approved the disclosure.
 - (8) At any time, the parties may agree to resolve the complaint through an alternative dispute resolution procedure.

Stat. Auth.: ORS 409.194, 418.005

Stats. Implemented: ORS 409.192, 418.005

413-010-0430

Complaints Not Subject to These Rules

(Amended 12/01/07)

- (1) Except as provided in section (2) of this rule and in OAR 413-010-0440(1) and (2), complaint review procedures in these rules (OAR 413-010-0400 to 413-010-0480) are not required in each of the following situations:
 - (a) The individual or *contract provider* (defined in OAR 413-010-0000) has requested a contested case hearing.
 - (b) The matter, which would be the subject of the complaint review, is presently the subject of a juvenile court proceeding.
 - (c) The individual or *contract provider* has initiated court action.
 - (d) The subject matter of the complaint has been reviewed by a judge.
 - (e) A term or condition in a *contract provider's* contract or agreement provides for a different process.
 - (f) The complainant has requested review of a Child Protective Services (CPS) disposition, under OAR 413-010-0700 to OAR 413-010-0750 (Review of Founded Dispositions), that is the subject matter of the complaint.
 - (g) The complainant has requested review of an Adoption Committee Decision, under OAR 413-120-0060 (Review of Adoption Committee Decision), that is the subject matter of the complaint.
- (2) A complaint about a "*reasonable modification*" (see OAR 407-005-0005(10)) or a report of discrimination arising from the disability of a *client* (see OAR 407-005-0005(6)) is handled as described in these rules, in OAR 407-005-0025 and 407-005-0030, and in Department Policy DHS-010-0005, "Non-Discrimination on the Basis of Disability for Programs, Services and Activities."

Stat. Auth.: ORS 409.194, 418.005

Stats. Implemented: ORS 409.192, 418.005

413-010-0440

Informal Complaint Review

(Amended 12/01/07)

- (1) A *client*, family member of a *client*, or *contract provider* (defined in OAR 413-010-0000) may request an informal complaint review if no written complaint is submitted and the

client, family member, or *contract provider* informs the caseworker or the caseworker's supervisor of the request.

- (2) Within one week of the caseworker or caseworker's supervisor receiving the request for an informal complaint review, the *client*, family member, or *contract provider* will be contacted to schedule a meeting at an agreed-upon time involving the caseworker, the supervisor, and the *client*, family member, or *contract provider*. The focus will be defining the problem, identifying the desired outcome, and establishing a plan for resolution. Every effort will be made to resolve the complaint through this informal discussion. In some local Department offices, the supervisor and the program manager may be the same individual.
- (3) If the matter has not been resolved and the program manager did not participate in the informal complaint review, the program manager shall participate in an additional discussion with the client or *contract provider* to attempt to resolve it. This discussion will be scheduled as soon as possible at a mutually agreed-upon time.
- (4) If the *client*, family member, or *contract provider* remains dissatisfied following discussion with the program manager, the program manager will give the *client* or *contract provider* a written decision regarding the subject of the complaint within five working days. If OAR 413-010-0430 does not make the matter ineligible for review, the written decision shall include information about the steps necessary to file a written complaint or report of discrimination (Form DHS 0170 and Department Procedure DHS-010-005-01, "Filing a Client Complaint or Report of Discrimination").

Stat. Auth.: ORS 409.194, 418.005

Stats. Implemented: ORS 409.192, 418.005

413-010-0480

Judicial Review

(Amended 12/01/07)

These rules (OAR 413-010-0400 to 413-010-0480) do not create a contested case, as defined by ORS 183.310, subject to judicial review under ORS 183.482.

Stat. Auth.: ORS 409.194, 418.005

Stats. Implemented: ORS 409.192, 418.005

Contested Case Hearings

413-010-0500

Purpose, Right to Request Hearing, Applicable Rules, and Computation of Time

(Amended 12/01/16)

- (1) The purpose of these rules (OAR 413-010-0500 to 413-010-0535) is to--
 - (a) State the rights of individuals and entities to request a contested case hearing when the Department takes certain actions; and
 - (b) Set forth rules governing some aspects of the contested case hearings process.
- (2) The individuals and entities described below have the right to request a contested case hearing under ORS Chapter 183. In order to exercise the right to a hearing, the individual or entity must submit and the Department must receive a hearing request which complies with OAR 413-010-0505 within the timeframes described in that rule.
 - (a) A *child* or *young adult* placed in *substitute care* by the Department may request a hearing in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights that:
 - (A) Reduces or terminates the *base rate payment*;
 - (B) Determines, denies, reduces or terminates a *level of care payment*;
 - (C) Determines, denies, reduces or terminates a *level of personal care payment*;
 - (D) Denies eligibility under Title IV-E of the Social Security Act when such denial impacts a benefit;
 - (E) Denies, reduces or terminates the *base rate payment* made on behalf of the child's or young adult's minor *child* when the minor *child*:
 - (i) Lives with the *child* or *young adult* in *substitute care*; and
 - (ii) Is not in the legal custody of the Department.
 - (F) Denies eligibility for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility," (OAR 413-100-0400 through 413-100-0610) when such denial impacts assistance.

- (G) Denies prior authorization for the BRS Program under Child Welfare Policy I-E.5.1.1.1, "Behavior Rehabilitation Services Program," (OAR 413-090-0075(2)(b)).
- (b) Unless an *adoption assistance* agreement automatically expires, a *pre-adoptive family* or an *adoptive family* applying for or receiving *adoption assistance* under Child Welfare Policy I-G.3.1, "Adoption Assistance," (OAR 413-130-0000 to 413-130-0130) may request a hearing in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights and:
- (A) Denies Title IV-E *adoption assistance* benefits;
 - (B) Denies *adoption assistance* from state funds;
 - (C) Reduces *adoption assistance* payments or terminates *adoption assistance* without the concurrence of the *adoptive family*;
 - (D) Reduces *adoption assistance* payments or terminates *adoption assistance* for a reason other than a *child* turning age 18 or a *young adult* turning age 21 when an extension has been granted; or
 - (E) Offers the family a specific amount or type of *adoption assistance* when the Department and the *adoptive family* or *pre-adoptive family* are unable to reach agreement through a negotiation or renegotiation under OAR 413-130-0070 or 413-130-0075.
- (c) Unless a *guardianship assistance* agreement automatically expires, a *potential guardian* or a *guardian* applying for or receiving *guardianship assistance* payments under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance," (OAR 413-070-0900 to 413-070-0974) in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights and:
- (A) Denies Title IV-E *guardianship assistance* benefits;
 - (B) Terminates, reduces, or otherwise changes *guardianship assistance* payments without the concurrence of the *guardian*;
 - (C) Terminates *guardianship assistance* for a reason other than a *child* turning age 18 or a *young adult* turning age 21 when an extension has been granted; or
 - (D) Offers the family a specific amount or type of *guardianship assistance* when the Department and the *guardian* or *potential guardian* are unable to reach agreement through a negotiation or renegotiation under OAR 413-070-0917, 413-070-0939, or 413-070-0969.

- (d) An applicant for a *Certificate of Approval* or a *certified family* may request a hearing in the manner set forth in OAR 413-010-0505 when the Department denies the application or revokes a certificate under Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents, Relative Caregivers, and Approval of Potential Adoptive Resources," (OAR 413-200-0301 to 413-200-0396).
 - (e) An applicant for a license to operate a *child-caring agency* or a *licensee* may request a hearing in the manner set forth in OAR 413-215-0121 when the Department denies, suspends, revokes, or places conditions on a license or imposes a civil penalty.
 - (f) An applicant to adopt or an applicant for a *Certificate of Approval* may request a hearing in the manner set forth in OAR 413-010-0500 when the Department determines that the applicant is unfit based on the criminal offender information or a false statement regarding criminal offender information of the applicant or of another individual in the household of the applicant under Child Welfare Policy I-G.1.4, "Criminal Records Check Requirements for Relative Caregivers, Foster Parents, Adoptive Resources, and Other Persons in the Household," (OAR 413-120-0400 to 413-120-0475).
- (3) A person may request a hearing in the manner set forth in OAR 413-010-0505 when that person has the right to a contested case hearing under a statute concerning Child Welfare Programs or a rule in Chapter 413.
- (4) These rules (OAR 413-010-0500 to 413-010-0535), apply to contested cases arising from the properly made hearings requests described in sections (2) and (3) of this rule. The following other rules do or do not apply as noted:
- (a) OAR 137-003-0501 to 137-003-0700 apply to these contested cases, except to the extent that rules in Chapter 413 are permitted to and provide otherwise.
 - (b) Rules in Chapter 461 do not apply to these contested cases unless a rule in Chapter 413 expressly refers to them.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0502

Representation

(Amended 12/01/16)

- (1) When a *child* or *young adult* has the right to a hearing because the Department takes an action under OAR 413-010-0500(2)(a), the *foster parent* or *relative caregiver* may:
 - (a) Request a hearing on behalf of the *child* or *young adult*; and

- (b) Participate in the hearing as a representative on behalf of the *child* or *young adult*.
- (2) When the Department takes an action to deny, reduce, or terminate a benefit or service that is provided under Title IV-E or Title XIX of the Social Security Act, a *party* that is not an entity may be represented by an attorney, a relative, a friend, or other spokesperson as authorized by federal law.
- (3) In all other cases, a *party* may represent themselves or be represented by an attorney.
- (4) The Department, with the consent of the Attorney General, has authorized its employees to represent the Department in cases involving the actions described in OAR 413-010-0500(2)(a).
- (5) A Department employee acting as the Department's representative may not make legal argument on behalf of the Department.
 - (a) "Legal argument" includes argument on:
 - (A) The jurisdiction of the Department to hear the contested case;
 - (B) The constitutionality of a statute or administrative rule or the application of a constitutional requirement to the Department; and
 - (C) The application of court precedent to the facts of the particular contested case proceeding.
 - (b) "Legal argument" does not include presentation of a motion, evidence, examination and cross-examination of a witness, or presentation of a factual argument or arguments on:
 - (A) The application of a statute or administrative rule to the facts in the contested case;
 - (B) Comparison of a prior Department action when handling a similar situation;
 - (C) The literal meaning of a statute or administrative rule directly applicable to an issue in the contested case;
 - (D) The admissibility of evidence; and
 - (E) The correctness of a procedure being followed in the contested case hearing.
- (6) The Department may be represented in any contested case proceeding by the Department of Justice.

- (7) Contested cases under these rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of each *party* and the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0505

Hearing Requests

(Amended 12/01/16)

- (1) To request a hearing under OAR 413-010-0500(2)(a):
- (a) The *party* or the party's representative must complete and sign a hearing request form approved by the Department; and
 - (b) The form must be received by the Department not later than 30 days following the mailing date or date of personal delivery of the notice.
- (2) Requests for a hearing under OAR 413-010-0500(2)(b)-(d) and (f)-(g) must be in writing and must be postmarked or received by the Department by the date specified in the Department's notice or the applicable rule setting a hearing request deadline, whichever is later.
- (3) In the event a request for a hearing is not timely, OAR 137-003-0528 applies, except to the extent provided otherwise in section (5) of this rule.
- (4) If a contested case notice was sent by regular mail, and the *party* or party's representative indicates that neither the *party* nor the party's representative received or had actual knowledge of the contested case notice, the Department must advise the *party* or party's representative of the right to request a hearing under section (5) of this rule.
- (5) When the Department receives a hearing request that is not filed within the timeframe required by section (1) or section (2) of this rule but is filed no later than 60 days after a notice becomes a final order under OAR 413-010-0510(3):
- (a) If the Department finds that the *party* and party's representative did not receive the written notice and did not have actual knowledge of the notice, the Department refers the request for a hearing to the Office of Administrative Hearings (OAH) for a contested case hearing on the merits of the Department's action described in the notice.
 - (b) The Department may refer the request for a hearing to the OAH for a contested case proceeding to determine whether the *party* or party's representative received the written notice or had actual knowledge of the notice. At the hearing, the

Department must show that the *party* or party's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the *party* or party's representative.

- (6) Upon receipt of a hearing request that is not described in OAR 413-010-0500(2), the Department may enter an order that the hearing request is not eligible for referral to OAH. Alternately, the Department may refer a hearing request to OAH for a decision on the question of whether there is a right to a contested case hearing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 411.103, 418.005

413-010-0510

Notice

(Amended 12/01/16)

- (1) When the Department takes any of the actions described in OAR 413-010-0500(2), the Department issues a written notice to the person that has the right to a contested case hearing.
- (2) When the Department takes any of the actions described in OAR 413-010-0500(2)(a)-(c), the written notice must:
- (a) Specify the date the notice is mailed or personally delivered;
 - (b) Specify the action the Department intends to take and the effective date of the action. If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department, it is sufficient to meet this requirement that the notice state all of the following:
 - (A) The general nature of the change.
 - (B) Examples of how the change affects the benefits of the group of affected clients.
 - (C) The month in which the change will take place.
 - (c) Specify the circumstances under which payments or benefits are continued if a hearing is requested and whether continued payments or benefits may be subject to recovery by the Department if the Department's action is upheld; and
 - (d) If the Department intends to terminate benefits or payments because the individual is ineligible for the benefits or payments or the program is terminated,

state that the individual may reapply for assistance if circumstances affecting the eligibility of the individual change.

- (3) Department notices indicate that the Department designates the record of the proceeding, including information in the Department's file or files and materials added by a *party*, as the record upon default. When the Department issues a notice to which OAR 137-003-0672 applies, unless another rule in OAR chapter 413 provides otherwise, the Department's notice becomes a final order:
 - (a) The day after the date prescribed in the notice as the deadline for requesting the hearing if the *party* fails to request a hearing; or
 - (b) The day the Department or OAH mails an order dismissing the hearing request because the *party* withdraws the request or fails to appear on the date and at the time set for the hearing.
- (4) When the Department terminates or reduces benefits or services under subsections (2)(a) through (2)(c) of OAR 413-010-0500, the Department must send the notice:
 - (a) At least 10 calendar days before the effective date of the action, except as provided in subsection (b) of this section.
 - (b) When the Department changes a benefit standard that results in the reduction, suspension or closure of a grant of public assistance:
 - (A) At least 30 days before the effective date of the action; or
 - (B) At least 10 working days before the effective date of the action when the Department has fewer than 60 days before the effective date to implement the proposed change.
 - (c) For purposes of this rule, the term "changes a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0515

Continuation of Benefits

(Amended 11/04/11)

- (1) Except as otherwise provided in this rule, a recipient of benefits is entitled to receive continuing benefits when the Department takes any action to suspend, reduce, or

terminate benefits or services as described in subsections (2)(a)(A)-(F), (2)(b), or (2)(c) of OAR 413-010-0500, and the Department has:

- (a) Provided at least 10 days notice of such action as required by OAR 413-010-0510;
 - (b) Received a request for a hearing from the recipient not later than 30 days following the mailing date or date of personal delivery of the notice, whichever is earlier; and
 - (c) Received such request prior to the effective date of the action.
- (2) Any continuing benefits authorized by this rule are subject to recovery by the Department to the extent that the Department's action is sustained or otherwise upheld.
- (3) Continuing benefits may not be provided:
- (a) When the recipient specifically requests that he or she not receive continued assistance pending a hearing decision;
 - (b) After a final order is issued by the Department;
 - (c) After a change affecting the recipient's grant, as described in subsections (2)(a)(A), (B), (D), and (E), (2)(b) or (2)(c) of OAR 413-010-0500, occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change; or
 - (d) After a determination is made at a hearing that the sole issue is one of state or federal law or policy or change in state or federal law and not one of incorrect grant computation.
- (4) Except as otherwise provided in this rule, if the Department provides less than 10 days notice of an action to suspend, reduce, or terminate benefits or services as described in subsections (2)(a)(A), (B), (D), and (E), (2)(b) or (2)(c) of OAR 413-010-0500, a recipient of benefits is entitled to receive continuing benefits if the Department:
- (a) Receives a request for a hearing from the recipient within 10 days of the mailing of the notice of the action; and
 - (b) Determines that the action resulted from other than the application of federal or state law or policy or a change in state or federal law.
- (5) Except as otherwise provided in this rule, if the Department provides less than 10 days notice of an action to suspend, reduce, or terminate benefits or services as described in subsection (2)(a)(C) or (F) of OAR 413-010-0500, or 5 days notice in cases of probable fraud as described in 42 CFR 431.214, a recipient of benefits is entitled to receive continuing benefits if the Department:

- (a) Receives a request for a hearing from the recipient within 10 days of the mailing of the notice of the action; and
- (b) Determines that the action resulted from other than the application of federal or state law or policy.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0520

Informal Conference

(Amended 11/04/11)

- (1) The Department representative and the *party* or party's representative may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(4). The informal conference also may be used to:
 - (a) Provide an opportunity for the Department and the *party* to settle the matter;
 - (b) Ensure the *party* understands the reason for the action that is the subject of the hearing request;
 - (c) Give the *party* an opportunity to review the documents that are the basis for that action;
 - (d) Give the *party* an opportunity to review the rules that support the Department's action;
 - (e) Give the *party* and the Department the chance to correct any misunderstanding of the facts; and
 - (f) Give the Department an opportunity to review its action.
- (2) The *party* may, at any time prior to the hearing date, request an additional informal conference with the Department representative.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0525

Burden of Proof

(Amended 12/01/16)

In any contested case covered by these rules (OAR 413-010-0500 to 413-010-0535):

- (1) The Department has the burden of proof for the revocation of a certificate of approval, the suspension or revocation of a license, or the imposition of a civil penalty.
- (2) In cases not covered by section (1) of this rule, the *party* has the burden of proof.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0530

Withdrawals and Dismissals

(Amended 11/04/11)

- (1) Withdrawals.
 - (a) A *party* or party's representative may withdraw a request for a hearing orally or in writing at any time before a final order has been issued on the contested case.
 - (b) Following a withdrawal under subsection (a) of this section, the Department or OAH sends an order dismissing the hearing request to the party's last known address. The *party* may cancel the withdrawal if a request to cancel the withdrawal is received by the Department representative up to the tenth work day following the date such an order is sent. If the *party* withdrew the hearing request in writing, the Department must receive a timely written request to cancel the withdrawal.
 - (c) The Department may withdraw any pending referral from OAH at any time before a final order is served when:
 - (A) The Department provides to the *party* the relief sought; or
 - (B) The Department and the *party* reach an agreement under ORS 183.417(3).
- (2) Dismissals. An order dismissing a hearing request is issued when the *party* or the party's representative does not appear at the time and place specified for the hearing.
 - (a) The dismissal by order is effective on the date the order is issued.
 - (b) The Department may reconsider and cancel the dismissal under OAR 137-003-0675 on request of the *party* on a timely showing that the *party* was unable to

attend the hearing and unable to request a postponement for reasons beyond party's reasonable control. The Department may refer the reconsideration decision to OAH.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0535

Proposed and Final Orders

(Amended 12/01/16)

- (1) When the Department refers a contested case under these rules (OAR 413-010-0500 to 413-010-0535) to OAH, the Department indicates on the referral whether the Department is authorizing:
 - (a) A proposed order;
 - (b) A proposed and final order (OAR 137-003-0645(4); or
 - (c) A final order.
- (2) During or after a contested case hearing, when it is determined that the correct application of OAR 413-020-0230, 413-090-0133, or 413-090-0150 requires the consideration of facts that differ from the facts on which the Department made a decision to deny, reduce, or terminate either a *level of care payment* or a *level of personal care payment*, the Department will reapply OAR 413-020-0230, 413-090-0133, or 413-090-0150 based on new or different facts.
- (3) When the Department authorizes either a proposed order or a proposed and final order:
 - (a) The *party* may file written exceptions and written argument to be considered by the Department. The exceptions and argument must be received at the location indicated in the order, and postmarked or received not later than the tenth day after service of the proposed order or proposed and final order.
 - (b) If the *party* does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the eleventh day after service of the proposed and final order unless the Department has issued a revised order or has notified the parties and the administrative law judge that the Department will issue the final order.
 - (c) When the Department receives timely exceptions or argument, the Department issues the final order, unless the Department requests that OAH issue the final order under OAR 137-003-0655.

- (4) A request by a *party* for reconsideration or rehearing must be filed with the person who signed the final order within the time limits of OAR 137-003-0675.
- (5) A final order should be issued or the case otherwise resolved no later than 90 days following the receipt of the request for a hearing.
- (6) A final order is effective immediately upon being signed or as otherwise provided in the order.
- (7) The Department reserves the right to withdraw or amend any final order issued by OAH or the Department at any time permitted by law.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Notice and Review of CPS Founded Dispositions

413-010-0700

Purpose

(Amended 04/04/12)

- (1) The purpose of these rules (OAR 413-010-0700 to 413-010-0750) is to establish procedures for ensuring the rights of individuals to receive notice and the opportunity to request a review when a Child Protective Services (CPS) assessment results in a CPS founded disposition.
- (2) The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires child protective service agencies to provide notice to individuals identified as responsible for child abuse or neglect and to provide individuals with an opportunity to request and have a review of the disposition.

Stat. Auth. ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0705

Definitions

(Amended 08/04/15)

Definitions for OAR 413-010-0700 to 413-010-0750 are in OAR 413-010-0000.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0710

Required Forms

(Amended 04/04/12)

Several Department forms are referred to by form number in these rules. The forms are available at the Department's website. When use of a form is required by these rules, the current version of the form must be used.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0714

Department Employee - Application of Department Employee Policies

(Amended 04/04/12)

When the *perpetrator* is a Department employee, the Department will follow the Department employee policies (see Child Welfare Policy III-E.4.8.12, "Review of Founded CPS Disposition for Child Welfare Employees").

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0715

Providing Notice of a CPS Founded Disposition

(Amended 04/04/12)

- (1) The local Child Welfare office must deliver a "Notice of a CPS Founded Disposition" (Form CF 313 or CF 319 as appropriate) to the person identified as the *perpetrator* in the CPS founded disposition, except as provided in section (2) of this rule. If the *perpetrator* is a *juvenile*, notice must be provided as required by OAR 413-010-0716. If the *perpetrator* is not a *juvenile*, the notice must be delivered as follows:
 - (a) By certified mail, restricted delivery, with a return receipt requested to the last known address of the *perpetrator*; or
 - (b) By hand delivery to the *perpetrator*. If hand delivered, the notice must be addressed to the *perpetrator* and a copy of the notice must be signed and dated by the *perpetrator* to acknowledge receipt, signed by the person delivering the notice, and filed in the child welfare case file.
 - (c) If subsection (2)(b) of this rule does not apply, the method or process for providing notice of a CPS founded disposition when domestic violence has been identified should maximize the safety of the child, the adult victim, and Department employees. The Department will not use the adult victim to deliver the notice.
- (2) A "Notice of a CPS Founded Disposition" (Form CF 313) is not required if:
 - (a) The CPS founded disposition was made prior to August 4, 2000. Notice will be given on CPS founded dispositions made prior to August 4, 2000 as provided in OAR 413-010-0717.
 - (b) Domestic violence has been identified and if providing the notice would increase the risk of harm to a child, adult victim, or Department employee. This exception may only be made with Department management approval based on documentation of risk.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005

413-010-0716

Providing Notice of a CPS Founded Disposition and Other Documents to a Juvenile

(Amended 04/04/12)

- (1) The local Child Welfare office that determines a *juvenile* is the *perpetrator* must deliver the "Notice of CPS Founded Disposition" (Form CF 313) to one of the following persons who may act on behalf of the *juvenile* in submitting a request for review based on having legal custody of the *juvenile*:
 - (a) The juvenile's parent; or
 - (b) The juvenile's guardian.
- (2) If the *juvenile* is in the legal custody of the Department or the Oregon Youth Authority, the notice must be sent to both of the following:
 - (a) The juvenile's attorney; and
 - (b) The juvenile's parent, unless there is cause to believe such communication will be detrimental to the *juvenile* (see OAR 413-020-0170(3)(c)).
- (3) If the *juvenile* is in the legal custody of the Department and is unrepresented, the Department will ask the juvenile court to appoint an attorney for the *juvenile*.
- (4) The "Notice of a CPS Founded Disposition" (Form CF 313) must be delivered by certified mail, restricted delivery, with a return receipt requested to the last known address of each mandatory recipient identified in sections (1) and (2) of this rule.
- (5) Any other notices or documents that must be provided to perpetrators pursuant to these rules must be delivered to the appropriate persons as outlined in this rule if the *perpetrator* is a *juvenile*.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419.370

413-010-0717

Inquiry about a Review When a CPS Founded Disposition Was Made Prior to August 4, 2000

(Amended 04/04/12)

- (1) The Department will not deliver a "Notice of Founded CPS Disposition" (Form CF 313) to a person identified as a *perpetrator* in a CPS founded disposition completed prior to August 4, 2000, unless a person makes an inquiry to the Department about an opportunity for review and qualifies for a review as described in section (2) of this rule.
- (2) An individual identified as a *perpetrator* in a CPS founded disposition completed prior to August 4, 2000 may contact any Child Welfare office and inquire about a review of the disposition. If a complete record of the incident, including a complete copy of the CPS assessment and documentation collected during the CPS assessment, is still available, the Department proceeds in accordance with OAR 413-010-0718. If a complete record of the incident is no longer available, the Department will not conduct a review but will provide notice to the individual that a review will not be conducted and the reasons for that determination.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0718

Inquiry about a Review of a CPS Founded Disposition When a Person Believes They Have Not Received a Notice

(Amended 04/04/12)

If a person believes he or she is entitled under these rules (OAR 413-010-0700 to 413-010-0750) to a "Notice of CPS Founded Disposition" (Form CF 313) but has not received one, the person may contact any Child Welfare office to inquire about a review of the disposition.

- (1) If the local Child Welfare office determines that the person making the inquiry has been identified as a *perpetrator* in a CPS founded disposition since August 4, 2000, staff must determine whether a "Notice of CPS Founded Disposition" (Form CF 313) was delivered to the *perpetrator* or the *perpetrator* refused the delivery of the notice, as evidenced by the returned receipt.
- (2) If a notice was delivered to the *perpetrator* or the *perpetrator* refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review of the CPS founded disposition has expired, the local Child Welfare office must either prepare and deliver a "Notice of Waived Rights for Review" (Form CF 316) or inform the *perpetrator* by telephone of the information required in the "Notice of Waived Rights for Review" and document the telephone notification in the child welfare case file.

- (3) If the *perpetrator* is a *juvenile*, the local Child Welfare office must prepare and deliver a "Notice of Waived Rights" to the appropriate persons identified in OAR 413-010-0716.
- (4) If no returned receipt exists or if it appears that notice was not properly provided, the local Child Welfare office must deliver a "Notice of CPS Founded Disposition" as provided in OAR 413-010-0720 or, if the *perpetrator* is a *juvenile*, as provided in OAR 413-010-0716.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0720

Information Included in the "Notice of a CPS Founded Disposition" (Form CF 313)

(Amended 11/29/2018)

The "Notice of a CPS Founded Disposition" (form CF 313) must include all of the following:

- (1) The case number and assessment completed date for the CPS assessment that resulted in the CPS founded disposition.
- (2) The full name of the individual who has been identified as responsible for the child abuse as it is recorded in the case record.
- (3) A statement that the *CPS Disposition* was recorded as "founded" including a description of the type of child abuse or neglect identified.
- (4) A description of the CPS assessment that briefly explains how the CPS founded disposition was determined.
- (5) A statement about the right of the individual to submit a request for review of the CPS founded disposition.
- (6) Instructions for making a request for review, including the requirement that the *requestor* provide a full explanation why the *requestor* believes the CPS founded disposition is in error.
- (7) A statement that the person waives the right to request a review if the request for review is not received by the local Child Welfare office within 30 calendar days from the date of receipt of the "Notice of CPS Founded Disposition," as documented by a returned receipt.
- (8) A statement that the local Child Welfare office will consider relevant documentary information contained in the Department's case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police

reports, medical reports, and information submitted with the request for review by the *person requesting review*.

- (9) A statement that the review process will not include re-interviewing the victim; interviewing or meeting with the person requesting a review, with others associated with the *requestor*, or with others mentioned in the assessment; or conducting a field assessment of the allegation of child abuse.
- (10) A statement that the local Child Welfare office will send the *requestor* a "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) within 30 days of receiving a request for review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0721

Making a Request for a Review of a CPS Founded Disposition

(Amended 04/04/12)

A person requesting a review must use information contained on the "Notice of CPS Founded Disposition" to prepare a written request for review. The written request for review must be delivered to the local Child Welfare office within 30 calendar days of the receipt of the Notice of CPS Founded Disposition and must include the following items:

- (1) Date the request for review is written;
- (2) Case number and sequence number found on the "Notice of CPS Founded Disposition;"
- (3) Full name of the person identified as responsible for abuse or neglect in the CPS founded disposition;
- (4) A full explanation, responsive to the information provided in the Department's notice, explaining why the person believes the CPS founded disposition is in error and providing any additional information and documents the person wants considered during the review;
- (5) The person's current name (if it has changed from the name noted in section (3) of this rule);
- (6) The person's current street address and telephone number; and
- (7) The person's signature.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0722

Determining When Legal Findings Preclude a Right to Request a Review and Providing Notice of Legal Proceeding (Form CF 317)

(Amended 04/04/12)

- (1) The Department does not conduct a review when there is a *legal finding* consistent with the CPS founded disposition. In that case, a "Notice of Legal Finding" must be provided as provided in OAR 413-010-0723.
- (2) If the Department is aware that a *legal proceeding* is pending, the local Child Welfare office will not review the CPS founded disposition until the *legal proceeding* is completed.
- (3) If the Department is aware that a *legal proceeding* is pending, the local Child Welfare office must prepare and deliver a notice of legal proceedings (CF 317) within 30 days after receipt of a request for review. This informs the *requestor* that the Department will not review the disposition until the *legal proceeding* is completed and will take no further action on the request.
- (4) The *requestor* may, at the conclusion of the *legal proceeding*, again submit a request for review within 30 days.
- (5) The *requestor* retains the right to request a review for 30 days following resolution of the *legal proceeding*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0723

Providing a Notice of Legal Finding (Form CF 318)

(Amended 04/04/12)

If a *requestor* inquires about a review of a CPS founded disposition and there is a *legal finding* consistent with the CPS founded disposition, the local Child Welfare office staff must prepare and deliver a "Notice of Legal Finding" (Form CF 318) that informs the *requestor* that the Department will not review the disposition.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0732

Local Child Welfare Office Responsibilities Related to Notices and Reviews

(Amended 04/04/12)

- (1) If an individual asks to review Department records for the purpose of reviewing a CPS founded disposition, state and federal confidentiality law, including OAR 413-010-0010 to 413-010-0075 and OAR 413-350-0000 to 413-350-0090 govern the inspection and copying of records.
- (2) The local Child Welfare office must maintain records to demonstrate the following, when applicable:
 - (a) Whether the Department delivered a "Notice of CPS Founded Disposition;"
 - (b) Whether or not the Notice of CPS Founded Disposition was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period provided by the United States Postal Service;
 - (c) The date a Request for a *Local Child Welfare Office CPS Founded Disposition Review* was received by the local Child Welfare office;
 - (d) If a review is conducted by a local Child Welfare office, whether the "Notice of the Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) was received by the addressee as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period as provided by the United States Postal Service; and
 - (e) The date a request for review by Central Office was received by the Department.
- (3) The Child Welfare supervisor in each local Child Welfare office or designee must maintain a comprehensive record of the reviews completed by the local Child Welfare office on CPS founded dispositions arising out of the local Child Welfare office to which the supervisor is assigned. The record must include the date, case number, sequence number, and the decision for each review completed by the local Child Welfare office.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0735

Local Child Welfare Office Review of CPS Founded Dispositions

(Amended 04/04/12)

- (1) The local Child Welfare office must conduct a review and issue a "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) to the

requestor within 30 days from the date the local Child Welfare office receives a request for review of a CPS founded disposition.

- (2) If the request for review was delayed because a *legal proceeding* was pending as provided in OAR 413-010-0720(6), or the proceeding has been completed without a *legal finding* that would preclude a review, the review must occur within 30 days from the date the local Child Welfare office receives a new request for review.
- (3) The *Local Child Welfare Office CPS Founded Disposition Review* must occur as follows:
 - (a) The review may not include re-interviewing the victim; interviewing or meeting with the person requesting a review, with others associated with the *requestor*, or with others mentioned in the assessment; or conducting a field assessment of the allegation of child abuse or neglect.
 - (b) The review must be based on current child welfare practice and definitions of child abuse. Procedural rules in place at the time the CPS assessment was completed also must be considered.
 - (c) The following must be considered by the *Local Child Welfare Office CPS Founded Disposition Review Committee* members and the Child Welfare Program Manager or designee:
 - (A) Relevant documentary information contained in the Department's child welfare case file including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the *person requesting review*;
 - (B) Whether there is reasonable cause to believe that child abuse occurred;
 - (C) Whether there is reasonable cause to believe that the *person requesting review* is responsible for the child abuse; and
 - (D) Whether there is reasonable cause to believe that the type of abuse for which the CPS assessment was founded is correctly identified in the assessment.
 - (d) The *Local Child Welfare Office CPS Founded Disposition Review Committee* must:
 - (A) Make recommendations as follows:
 - (i) Retain the founded disposition;
 - (ii) Change the disposition to unfounded or unable to determine;

- (iii) Change the type of abuse (see OAR 413-015-1000(3) for a list of the types of abuse) for which the *CPS Disposition* was founded.
- (B) At the conclusion of the Review Committee, each committee member must make his or her respective recommendations known to the Child Welfare Program Manager or designee.
- (e) The Child Welfare Program Manager or designee must:
 - (A) Observe the Review Committee;
 - (B) Ask questions of the committee members as needed for clarification;
 - (C) Consider the committee's recommendation or recommendations and the basis for the recommendation or recommendations; and
 - (D) Make one of the following decisions:
 - (i) Retain the founded disposition.
 - (ii) Change the disposition to unfounded disposition or unable to determine.
 - (iii) Change the type of abuse (see OAR 413-015-1000(3) for a list of the types of abuse) for which the *CPS Disposition* was founded.
- (f) The decision and the basis for the decision must be documented.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005

413-010-0738

Notice of Local Child Welfare Office CPS Founded Disposition Review Decision

(Amended 04/04/12)

- (1) The Child Welfare supervisor or designee must prepare a "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) as described in OAR 413-010-0738.
- (2) The "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) must include the following:
 - (a) Whether there is reasonable cause to believe that child abuse occurred;

- (b) Whether there is reasonable cause to believe the person requesting the review was responsible for the child abuse;
 - (c) The decision resulting from the *Local Child Welfare Office CPS Founded Disposition Review*;
 - (d) If the CPS founded disposition is changed, whether it will be changed to "unable to determine" or to "unfounded;"
 - (e) If the *Local Child Welfare Office CPS Founded Disposition Review* results in a decision that the CPS founded disposition should be retained but that the type of abuse for which the disposition was founded should be changed, the type of abuse that should be founded and the reason for this change;
 - (f) If the CPS founded disposition is retained but the type of abuse is changed, notice that the person requesting the review has the right to request a new *Local Child Welfare Office CPS Founded Disposition Review* of the change;
 - (g) A summary of the information and reasoning of the *Local Child Welfare Office CPS Founded Disposition Review* upon which the decisions were based;
 - (h) If a CPS founded disposition is determined to be "unable to determine" or "unfounded," notice that the change will be noted in the CPS assessment narrative;
 - (i) If the founded disposition is retained, a statement about how to request a review by Central Office, as described in OAR 413-010-0740.
- (3) The local Child Welfare office must place the request for review and a copy of the "Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) in the child welfare case file. A change may not be made in the existing written child welfare case file except to add the determinations.
- (4) The Department must send the "Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) by certified mail, restricted delivery, with a return receipt requested, to the *person requesting review* within 30 days of the request for review.
- (5) When as a result of a *Local Child Welfare Office CPS Founded Disposition Review*, a decision is made to change a CPS founded disposition, the Child Welfare supervisor or designee must assure the revised disposition is reflected in the Department's information system. The Child Welfare supervisor or designee forwards the necessary information (Form CF 322) to the Department's Office of Information Services (OIS) Service Desk.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0740

Requesting a Central Office Review

(Amended 04/04/12)

- (1) A person entitled to the notice described in OAR 413-010-0738 may, within 30 days of receipt of the notice, request a *Central Office CPS Founded Disposition Review*.
- (2) A person requesting a *Central Office CPS Founded Disposition Review* may use a copy of the request for local Child Welfare office review or prepare a new request for Central Office Review, following the requirements outlined in OAR 413-010-0721.
- (3) A person requesting a *Central Office CPS Founded Disposition Review* must deliver the request to the local Child Welfare office within 30 days of the date the "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) was received by the *requestor*, as evidenced on a United States Postal Service return receipt.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0743

Local Office Responsibilities in a Request for Central Office CPS Founded Disposition Review

(Amended 04/04/12)

Within 10 calendar days after receiving a *request for a Central Office CPS Founded Disposition Review*, the local Child Welfare office must forward the following documents to the Department's Central Office CPS Program Unit:

- (1) The request for review; and
- (2) A copy of the child welfare case records pertinent to the CPS founded disposition, including the information reviewed as part of the *Local Child Welfare Office CPS Founded Disposition Review*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0745

Central Office Review of CPS Founded Dispositions

(Amended 04/04/12)

- (1) Central Office must conduct a review and issue a "Notice of Central Office CPS Founded Disposition Review Decision" (Form CF 315) within 60 days from the date Central Office receives a request for a review.
- (2) The *Central Office CPS Founded Disposition Review* must occur as follows:
 - (a) The CPS program office schedules a review of the CPS founded disposition when a written request for review and case file information is received from the local Child Welfare office.
 - (b) The review may not include re-interviewing the victim; interviewing or meeting with the person requesting a review, with others associated with the *requestor*, or with others mentioned in the assessment; or conducting a field assessment of the allegation of child abuse or neglect.
 - (c) The review must be based on current child welfare practice and definitions of child abuse and neglect. Procedural rules in place at the time the CPS assessment was completed also must be considered.
 - (d) The following must be considered by the *Central Office CPS Founded Disposition Review Committee* members and the CPS Program Manager or designee:
 - (A) Relevant documentary information contained in the Department's child welfare case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the *person requesting review*;
 - (B) Whether there is reasonable cause to believe that child abuse or neglect occurred;
 - (C) Whether there is reasonable cause to believe that the *person requesting review* is responsible for the child abuse or neglect; and
 - (D) Whether there is reasonable cause to believe that the type of abuse is correctly identified in the assessment.
 - (e) The *Central Office CPS Founded Disposition Review Committee* must:
 - (A) Make recommendations as follows:
 - (i) Retain the founded disposition;
 - (ii) Change the disposition to unfounded or unable to determine;

- (iii) Change the type of abuse (see OAR 413-015-1000(3) for a list of the types of abuse) for which the *CPS Disposition* was founded.
- (B) At the conclusion of the Review Committee, each committee member makes his or her respective recommendation known to the CPS Program Manager or designee.
- (f) The Central Office CPS Program Manager or designee must:
 - (A) Observe the Review Committee;
 - (B) Ask questions of the committee members as needed for clarification;
 - (C) Consider the committee's recommendation or recommendations and the basis for the recommendation or recommendations; and
 - (D) Make one of the following decisions:
 - (i) Retain the founded disposition.
 - (ii) Change the disposition to unfounded or unable to determine.
 - (iii) Change the type of abuse (see OAR 413-015-1000(3) for a list of the types of abuse) for which the *CPS Disposition* was founded.
- (g) The decision and the basis for the decision must be documented.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0746

Notice of Central Office CPS Founded Disposition Review Decision

(Amended 04/04/12)

- (1) Within 60 calendar days of the date Central Office receives the request for review from the local Child Welfare office, a CPS Program Coordinator or designee prepares and sends to the *requestor* by certified mail, restricted delivery, with a return receipt requested, a "Notice of Central Office CPS Founded Disposition Review Decision" (Form CF 315) that includes the following information:
 - (a) Whether there is reasonable cause to believe that child abuse occurred;
 - (b) Whether there is reasonable cause to believe that the *person requesting review* was responsible for the child abuse;

- (c) The decisions resulting from the *Central Office CPS Founded Disposition Review*;
 - (d) If the CPS founded disposition is changed, whether the change will be to "unable to determine" or to "unfounded disposition;"
 - (e) If the *Central Office CPS Founded Disposition Review* results in a decision that the CPS founded disposition should be retained but the type of abuse for which the disposition was founded should be changed, the new type of abuse and the reason for this change;
 - (f) If the CPS founded disposition is retained but the type of abuse or neglect is changed, notice that the person requesting the review has the right to request a new *Central Office CPS Founded Disposition Review* based on the change;
 - (g) A summary of the information used as part of the *Central Office CPS Founded Disposition Review* and the reasoning for reaching the decision; and
 - (h) If a CPS founded disposition is changed to "unable to determine" or "unfounded," notice that the change will be made to the CPS assessment narrative.
- (2) A "Notice of Central Office CPS Founded Disposition Review Decision" (Form CF 315) is sent to the *person requesting review*, the local Child Welfare office for filing in the child welfare case record, the CPS worker, and the supervisor involved in the initial CPS assessment and determination of disposition.
- (3) The CPS Program Office maintains a comprehensive record of the reviews of CPS founded dispositions conducted by Central Office. The record includes the date of the review, case number, sequence number, a copy of the materials used in the review and the decision that resulted from the review for each review conducted by Central Office.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0748

Review Initiated by the Department

(Amended 04/04/12)

The CPS Program Manager may direct that either the local Child Welfare office or Central Office review a founded disposition if there is good cause to do so, such as a determination that there is a *legal finding* that contradicts the CPS founded disposition.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0750

Revising Founded Child Abuse Dispositions in the Department's Electronic Information System

(Amended 04/04/12)

When as a result of a *Central Office CPS Founded Disposition Review*, a decision is made to change a CPS founded disposition, the CPS Program Coordinator or designee forwards the necessary information (Form CF 322) to the Department's Office of Information Services (OIS) Service Desk or other appropriate organizational unit to make changes in the Department's Electronic Information System.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005