

Policy Title:	Legal Permanency, Concurrent Planning, and Use of Permanency Committee – OAR			
Policy Number:	I-E.3.6 413-070-0500 thru 0519		Effective Date:	9-19-11

Approved By: *on file*

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Policy

Procedures

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- PL 105-89, Adoption and Safe Families Act (ASFA)
- PL 95-608, Indian Child Welfare Act of 1978
- PL 110-351 Fostering Connections to Success and Increasing Adoptions Act of 2008
- Title IV-E Indian Child Welfare Act
- 45 CFR Parts 1355, 1356 and 1357, 1/25/2000
- Child Welfare Policy I-A.4.5, Rights of Relatives
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a45.pdf
- Child Welfare Policy I-E.2.1, Placement of Indian Children
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e21.pdf

Form(s) that apply:

- None referenced.

Rules:

413-070-0500

Purpose

These rules (OAR 413-070-0500 to 413-070-0519) describe the Department's responsibility to seek legal permanency for a *child* or *young adult* in the legal custody of the Department and the use of a *permanency committee*.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

413-070-0505

Definitions

The following definitions apply to OAR 413-070-0500 to 413-070-0519:

- (1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a *child* where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.
- (2) "CASA" means a court appointed special advocate: 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.
- (3) "Child" means a person under 18 years of age.
- (4) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.
- (5) "Concurrent permanent plan" means the alternate *permanency plan* whenever the child has been placed in *substitute care* when the goal of the *permanency plan* is to return the *child* to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the *child* to the parents or legal guardians.
- (6) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a *child* can safely return and remain in the home with an in-home ongoing safety plan.
- (7) "Current caretaker" means a foster parent who:
 - (a) Is currently caring for a *child* in the legal custody of the Department who has a *permanency plan* or *concurrent permanent plan* of adoption;
 - (b) Has cared for the *child* or at least one *sibling* in a *sibling* group under consideration for at least the past 12 consecutive months; and
 - (c) Has been identified by the Department as a potential *adoptive resource* for the *child* and when appropriate, the siblings in a *sibling* group under consideration for adoption in the same adoptive family.
- (8) "General applicant" means an individual who:
 - (a) Is neither a *relative* or *current caretaker*; and
 - (b) Has submitted a completed application to adopt a *child*.
- (9) "Indian child" means any unmarried person who is under age 18 and is either:
 - (a) A member of an Indian tribe; or

- (b) Eligible for membership in an Indian tribe and is the biological *child* of a member of an Indian tribe.
- (10) "Legal assistance specialist" means an Adoption Program staff member who provides consultation on the technical and legal processes to achieve a *permanency plan* for a *child* in the legal custody of the Department.
- (11) "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, ORS 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.
- (12) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a *permanency plan* or a potential permanency resource when the *child* or *young adult* likely is not returning to his or her *parent*.
- (13) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the *child*. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the *child* during the remaining years of dependency and be accessible and supportive to the *child* in adulthood.
- (14) "RCWAC" means the Refugee Child Welfare Advisory Committee.
- (15) "Refugee child" means, as defined under ORS 418.925, a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion.
- (a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.
- (b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.
- (16) "Relative" means:

- (a) An individual with one of the following relationships to the *child* or *young adult* through the *parent* of the *child* or *young adult*:
 - (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) A *sibling*, also to include an individual with a *sibling* relationship to the child or young adult through a putative father.
 - (D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.
 - (E) A spouse of anyone listed in paragraphs (A) to (D) 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 *child* or *young adult* entering *substitute care*.
 - (F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.
- (b) An individual with one of the following relationships to the *child* or *young adult*:
 - (A) 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.
 - (B) An individual defined as a relative of a *refugee child* or *young adult* under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.
 - (C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the *child* or *young adult* had a relationship with the former stepparent prior to the *child* or *young adult* entering *substitute care*; a stepbrother; or a stepsister.
 - (D) The 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 entering *substitute care*.
 - (E) The adoptive *parent* of a *sibling* of the *child* or *young adult*.
 - (F) The 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, 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 (D) of subsection (a) of this section.
- (d) An individual, although not related by blood, adoption, or marriage identified as:
 - (A) A member of the family by the *child* or *young adult* or the family of the *child* or *young adult*; and
 - (B) An individual who had an emotionally significant relationship with the *child* or *young adult* or the family of the *child* or *young adult* prior to the time the Department placed the *child* in *substitute care*.
- (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 child's adoptive or biological *parent* 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 and only when the requirements of all of the following subparagraphs are met:
 - (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 legal custody of the Department who has a *permanency plan* or *concurrent permanent plan* of guardianship;
 - (iii) The foster parent has cared for the *child* for at least the past 12 consecutive months; and
 - (iv) The Department has approved the foster parent for consideration as a guardian.

(17) "Sibling" means one of two or more children or young adults related:

- (a) By blood or adoption through a common legal *parent*;
- (b) Through the marriage of the children or young adult's legal or biological parents;
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.
- (18) "Substitute care" means an out-of-home placement of a *child* or *young adult* who is in the legal or physical custody and care of the Department.
- (19) "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.
- (20) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in *substitute care* or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

413-070-0510

Obligation to Seek Legal Permanency

- (1) Except as provided in section (3) of this rule, the Department must make reasonable efforts to preserve and reunify families--
 - (a) Prior to placing a *child* in *substitute care* to prevent or eliminate the need for removing the *child*;
 - (b) By establishing *conditions for return* described in OAR 413-040-0009 when a *child* is removed; and
 - (c) By implementing a *permanency plan* to make it possible for the *child* to safely return home.
- (2) The Department must also make reasonable efforts to achieve the *concurrent permanent plan* for legal permanency through adoption or guardianship and to complete the steps necessary to finalize permanency.
- (3) Reasonable efforts to prevent a child's placement in *substitute care* or safely reunite a *child* with the family are not required when a *parent* has subjected a *child* to aggravated circumstances as defined in ORS 419B.340.
- (4) The Department must seek the court's approval prior to changing the *permanency plan* of a *child* or *young adult*.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

413-070-0512

Development and Review of the Concurrent Permanent Plan

- (1) When developing the *permanency plan* and *concurrent permanent plan*, the Department must:
 - (a) Describe the purpose of permanency and concurrent planning to the family;
 - (b) Involve the child's or young adult's parents, identified relatives, the CASA, attorneys, the tribe when the *child* is an *Indian child*, the RCWAC when the *child* is a *refugee child*, and other service providers, as appropriate;
 - (c) Provide full disclosure of the timelines under which the Department pursues permanency pursuant to federal and state law; and
 - (d) Describe the resources which may be available to relatives when adoption or guardianship is a *permanency plan*.
- (2) The caseworker must:
 - (a) Develop a *permanency plan* and a *concurrent permanent plan* for each *child* in the Department's custody within 60 days of the placement of the *child* into *substitute care*; and
 - (b) Review the plan every 90 days, pursuant to Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan", OAR 413-040-0000 to 413-040-0032.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

413-070-0514

Working with a Child's Team Regarding a Permanency Plan and Concurrent Permanent Plan

- (1) The caseworker must consult with a team of individuals, knowledgeable about the *child* or young adult's needs, including the ongoing assessment of the most appropriate *permanency plan* and *concurrent permanent plan* for the *child* or *young adult*, throughout the course of the case.
 - (a) The team must include the following individuals to the extent required in each of the following paragraphs:
 - (A) The parents, unless a supervisor approves not including a specified *parent* because the contact may compromise a *child*, young adult's, or another individual's safety; parental rights have been terminated; or the *parent* has signed a release and surrender agreement;
 - (B) The parent's attorney, unless parental rights have been terminated or the *parent* has signed a release and surrender agreement;

- (C) The *child* or *young adult*, whenever developmentally appropriate;
 - (D) The CASA;
 - (E) A *child* or young adult's attorney;
 - (F) A tribal representative if the *child* or *young adult* is an *Indian child*; and
 - (G) A member of the RCWAC, if the *child* is a *refugee child*.
- (b) The team may include:
- (A) The *child* or young adult's *substitute caregiver*;
 - (B) The substitute caregiver's certifier;
 - (C) The child's or young adult's relatives;
 - (D) Persons with a caregiver relationship;
 - (E) Other individuals with involvement in the *child* or young adult's life; and
 - (F) Individuals with expertise in permanency.
- (2) The caseworker utilizes the ongoing contact with these individuals to --
- (a) Monitor the progress toward achieving the *permanency plan*;
 - (b) Provide the *child* or *young adult*, and the *child* or young adult's parents, the opportunity to identify available permanency resources should reunification not be achievable;
 - (c) Review the efforts to identify and place the *child* or *young adult* with a *relative* and to place siblings together;
 - (d) Consider the parents' acceptance of a plan other than reunification and their desire for continued contact with the *child* or *young adult*;
 - (e) Identify and consider which *concurrent permanent plan* best meets the *child* or young adult's current and lifelong needs for safety, permanency, and well-being in the following preferential order:
 - (A) Adoption;
 - (B) Guardianship, which may be considered only when there are compelling reasons why adoption cannot be achieved; or
 - (C) Another Planned Permanency Living Arrangement, which may be

considered only when there are compelling reasons why adoption or guardianship cannot be achieved.

- (3) After the caseworker has complied with section (2) of this rule and prior to considering a change in *permanency plan*, the caseworker must determine that the Department has taken action on the potential permanency resources identified by the Department, the *child* or *young adult*, the family of *child* or *young adult*, or a member of the team of the *child* or *young adult*; and the caseworker must review with the team of the *child* or *young adult*:
 - (a) The outcome of the assessment of potential permanency resources; and
 - (b) The Department's efforts to develop and maintain the relationship of the *child* or *young adult* with potential permanency resources.
- (4) When the caseworker determines a change in *permanency plan* should be considered, the caseworker must determine which *permanency plan* best --
 - (a) Meets the safety, permanency, and well-being of the *child* or *young adult*;
 - (b) Provides the *child* or *young adult* with support and connections in adulthood; and
 - (c) Must document the basis for the determination.
- (5) The *legal assistance specialist* must approve changing the *permanency plan* to adoption prior to the caseworker recommending adoption to the court.
- (6) The *permanency committee* must make recommendations; and
 - (a) A Child Welfare Program Manager or designee must make the decision on behalf of the Department:
 - (A) To approve changing the *permanency plan* to guardianship prior to the caseworker recommending the plan to the court; and
 - (B) To identify the *substitute caregiver* as the appropriate permanency placement resource for the plan of guardianship.
 - (b) A Child Welfare Program Manager must make the decision on behalf of the Department:
 - (A) To approve changing the *permanency plan* to APPLA prior to the caseworker recommending the plan to the court; and
 - (B) To identify the *substitute caregiver* as the appropriate permanency placement resource for the plan of APPLA.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

413-070-0516

Use of Permanency Committee

A *permanency committee* must be scheduled when any of the following sections applies:

- (1) The caseworker is recommending a change in *permanency plan* to guardianship. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-0660 and OAR 413-070-0665.
- (2) The caseworker is recommending a change in *permanency plan* to APPLA. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-0550(1).
- (3) A foster parent's request to be considered an *adoptive resource* as a *current caretaker* pursuant to Child Welfare Policy I-G.1.1, "Foster Parent Request for Consideration as a Current Caretaker", OAR 413-120-0500 to 413-120-0595. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-120-0570.
- (4) A caseworker is considering the separation of siblings in adoption under OAR 413-100-0132. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-110-0132(2).
- (5) The caseworker requests that a *permanency committee* review the relationship between a *general applicant* and a *child* whose *permanency plan* is adoption. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-120-0750(5)(b).

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

413-070-0518

Composition, Scheduling, Responsibilities and Recommendations of the Permanency Committee

- (1) Composition. A *permanency committee* includes the following individuals.
 - (a) Two individuals who have been appointed by a Child Welfare Program Manager to attend a *permanency committee*.
 - (A) A *committee facilitator*, who must be a Department staff member and who must ensure all of the following:
 - (i) The meeting is held according to the requirements of Chapter 413 of the Oregon Administrative Rules.
 - (ii) Individuals are informed of the responsibilities of the committee

and the confidentiality of information presented during the meeting.

(iii) Thorough and accurate documentation of the committee recommendations.

(B) A second individual who may be either a community partner or another Department staff member.

(C) These two individuals must meet the requirements of all of the following paragraphs:

(i) Be knowledgeable about permanency issues.

(ii) Be knowledgeable of the importance of lifelong family attachment and cultural connections.

(iii) Have no current personal or professional relationship to the *child* or a potential placement resource or potential *adoptive resource* being considered.

(b) The following members of the child's team:

(A) The caseworker of the *child* or *young adult*;

(B) The attorney of the *child* or *young adult*;

(C) The CASA of the *child* or *young adult*;

(D) A tribal representative, if the *child* or *young adult* is an *Indian child*; and

(E) A member of the RCWAC, if the *child* or *young adult* is a *refugee child*.

(2) The *substitute caregiver* of the *child* or *young adult*, or any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the *permanency committee*, may be invited to come and present information to the *permanency committee*, but is excused after presenting information and responding to questions.

(3) The Child Welfare Program Manager or designee responsible for making the decision on behalf of the Department attends the *permanency committee* and may ask clarifying questions, but does not participate in the deliberation and recommendation.

(4) Scheduling. The Department is responsible for scheduling and notifying the following individuals of the date, time, and location of the *permanency committee*.

(a) Appointed *permanency committee* members;

(b) The Child Welfare Program Manager or designee making a decision on the issue

before the *permanency committee*;

- (c) Each member of the child's or young adult's team identified in subsection (1)(b) of this rule; and
 - (d) Any other individual invited to present specific information to the *permanency committee*.
- (5) Confidentiality. Each individual attending a *permanency committee* is bound by Oregon statutes regarding confidentiality and Child Welfare Policy I-A.3.2, "Confidentiality of Client Information" OAR 413-010-0000 to 413-010-0075.
- (6) Consideration, review, and recommendation.
- (a) The *permanency committee* must consider and review the information presented by any individual invited to the *permanency committee*, whether the information is presented in person, by phone, through other electronic communication, or in writing.
 - (b) The *permanency committee* may seek clarifying and request additional information during the presentations.
 - (c) The *permanency committee* must consider the safety, permanency, and well-being needs of the *child* or *young adult* and when there are siblings, the safety, permanency, and well-being needs of each *sibling*; and make a recommendation regarding the issue brought before the committee to the Child Welfare Program Manager or designee.
 - (d) When members of the *permanency committee* have not come to consensus on a recommendation, the *committee facilitator* must document all recommendations and the basis provided by the *permanency committee* member for that recommendation.
 - (e) The *committee facilitator* must provide the written documentation of the permanency committee's recommendation or recommendations to the Child Welfare Program Manager or designee within three business days of the date on which the *permanency committee* was held.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

413-070-0519

Decision and Notice

- (1) Except to the extent that section (2) of this rule indicates otherwise, the Child Welfare Program Manager or designee must:
 - (a) Consider the recommendations of the *permanency committee*;

- (b) Make a decision within one business day following the receipt of the written recommendations of the *permanency committee*; and
 - (c) Provide written notification of the decision and the basis of the decision to the caseworker on a form approved by the Department.
- (2) When the decision of the *permanency committee* applies to changing a *permanency plan* to APPLA, the Child Welfare Program Manager must make the decision and cannot appoint a designee.
- (3) The caseworker must notify the following individuals of the decision under section (1) of this rule:
- (a) Each *child* or *young adult*, when required by law and developmentally appropriate;
 - (b) Each child's or young adult's attorney, if one has been appointed;
 - (c) Each child's or young adult's CASA, if one has been appointed;
 - (d) Each child's or young adult's tribal representative, when a *child* or *young adult* is an *Indian child*;
 - (e) The member of the RCWAC when a *child* or *young adult* is a *refugee child*; and
 - (f) Each child's or young adult's *substitute caregiver*.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Procedure(s) that apply:

- None referenced.

Contact(s):

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Policy History

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