

Policy Title:	Openness and Post Adoption Communication Through Legal Assistance Mediation Services – OAR		
Policy Number:	I-G.1.6 413-120-0600 thru 0635		Effective Date: 10-03-2003

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- ORS 109.305
- ORS 419B.517
- ORS 36.110(8)
- ORS 36.220-36.238
- OAR 410-006-0111
- Guided Assessment Process
<http://www.cwpsalem.pdx.edu/gap/>
- I-G.1.6 Chart
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-g16_chart.pdf

Form(s) that apply:

- CF 0437, Cooperative Adoption Mediation Referral
<http://dhsforms.hr.state.or.us/Forms/Served/CE0437.pdf>
- CF 0423, Adoption Placement Needs
<http://dhsforms.hr.state.or.us/Forms/Served/CE0423.pdf>
- DHS 2099, Authorization for Use and Disclosure of Information
http://dhsresources.hr.state.or.us/WORD_DOCS/me2099.doc

Rules:

Purpose

413-120-0600

The purpose of these rules OAR 413-600-0005 through 0035 is to provide guidelines for a cooperative adoption planning process, as well as procedures for developing Post Adoption Communication Agreements (PACA), funded and managed by the Department's Adoption Services Program Unit.

Definitions

413-120-0610

(1) **"Birth Relatives"** means birth parent(s), grandparents, siblings and other members of the child's birth family, pursuant to ORS 109.305.

(2) **"Child Welfare Mediator"** means a neutral third party who meets or exceeds Department qualifications to provide mediation services for mediation participants in the cooperative adoption mediation process, and has a legal assistance mediation contract with the Department.

(3) **"Department"** means the Department of Human Services.

(4) **"Legal Assistance Mediation Program"** means, for the purpose of these rules, services contracted through the Department Legal Assistance program to assist the birth family and the identified adoptive family to participate in a cooperative adoption process that may result in an Post Adoption Communication Agreement (PACA).

(5) **"Legal Assistance Referral"** means an attorney client privileged document used to prepare the termination of parental rights petition and or trial preparation work.

(6) **"Legal Assistance Specialist (LAS)"** means a central office Department staff who provides a vital link in the execution of the technical and legal processes of the alternative permanent plans for children whose best interests are not served by returning to their families of origin.

(7) **"Cooperative Adoption Mediation or Mediation"** means a process in which a trained neutral third party assists parties in voluntarily reaching mutually acceptable resolution of issues, as well as assisting the parties in establishing relationships built on mutual trust and respect. Throughout these rules OAR 413-600-0005 through 0035 "Cooperative Adoption Mediation" will be referred to as "Mediation".

(8) **"Mediation Communications"** means, as defined in ORS 36.110(8):

(a) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and

(b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.

(9) **"Mediation participants"** means persons who will be working directly with the mediator in the cooperative adoption mediation process and who will be responsible for the creation and implementation of any PACA that results.

(10) **"Parties"** means those participants whose signatures are necessary for the PACA to be implemented and are subject to enforcement of ORS 109.305.

(11) "Post Adoption Communication" means the manner and frequency of contact and communication between the birth family and the child and/or the birth family and the adoptive family.

(12) "Post Adoption Communication Agreement (PACA)" means a written agreement for post-adoptive communication, signed by birth parent(s) and adoptive parent(s) and is based on an informed decision-making process by the mediation participants. The content of the agreement is based on the best interest of the child.

Values

413-120-0620

(1) Support and Safe Communication: Every healthy family requires support. Families created through adoption have different support needs than biological families in that the child is connected to more than one set of parent(s). One important aspect is the need for continued safe connection and communication between biological and adoptive families, to the extent that it is consistent with the health and safety needs of the child.

(2) Collaboration: The child and their families benefit when the significant adults in their lives work collaboratively to identify and respond to the individual needs of the child. The significant adults for a child in foster care may include, but are not limited to: biological parent(s), prospective adoptive parent(s), child welfare workers, CASA, attorneys, and others.

(3) Empowered, Informed Decisions: Families, and individuals within them, are capable of making decisions about their lives. They should be empowered to make those decisions that affect the cooperative nature of an agreement for post adoption communication, whenever possible. In order for their decisions to be effective, they may need to be informed by a wide range of people and sources about a variety of adoption related issues.

(4) Mediation as Tool: Mediation is a process that can play an important role in developing effective communication between those families seeking to participate in a cooperative adoption planning process. Qualified mediators can provide assistance in the cooperative adoption planning process by providing a safe and constructive atmosphere for effective communication.

(5) Voluntary Commitment to Cooperate/Participate: Mediation is most successful when the adoptive parent(s) and biological parent(s) participate voluntarily. Their commitment to a cooperative planning process to support the lifelong safety and well-being of their child is an essential aspect of this success. It is these parent(s) who are the ultimate decision makers about this agreement and are responsible for maintaining the agreement throughout the life of the child.

(6) No Coercion: The cooperative adoption mediation process is meant to be a tool that is used to achieve a result that is in the long term best interest of the child. It is not meant to be used coercively for unilateral gain.

(7) Flexibility: PACAs should be flexible in responding to the child's maturity and developmental needs, or changes in the lifestyles of the birth and adoptive parent(s). Flexibility in these agreements will support the on-going nature of the cooperative relationship that is formed and fostered through the cooperative adoption process.

(8) Benefits of the PACA for the **child** may include, but are not limited to:

- (a)** Having knowledge and information about his/her birth family,
- (b)** Having an ability to maintain birth family identity,
- (c)** Having a good model of effective communication,
- (d)** Having a realistic understanding of the circumstances of the birth parent(s),
- (e)** Having a sense of well-being fostered by adoptive and birth parent(s) working collaboratively to support the needs of the child,
- (f)** Having a better ability to process important life transitions as the child grows into an adult,
- (g)** Having an opportunity to appropriately grieve the loss of the birth family, and
- (h)** Having the permission of the birth parent(s) to become a member of the adoptive family.

(9) Benefits of the PACA for the **adoptive parent(s)** may include, but are not limited to:

- (a)** Having an understanding of who the biological family is,
- (b)** Having an exchange of on-going information such as medical and other important life information,
- (c)** Supporting the child's need to be connected to the birth family,
- (d)** Having the sense of accomplishment that is associated with positive cooperative relationships,
- (e)** Helping the child to appropriately grieve the loss of the birth family, and
- (f)** Having the permission and the support of the birth parent(s) to help the child to become a member of the adoptive family.

(10) Benefits of the PACA for the **birth parent(s)** may include, but are not limited to:

- (a)** Knowing their child is in a safe and secure environment,
- (b)** Having a better ability to process loss of a child and the transition to a new family,
- (c)** Having an exchange of on-going information such as medical and other important life information,
- (d)** Having the sense of accomplishment that is associated with positive cooperative relationships,
- (e)** Being able to get on-going information about the life of the child,
Having a sense of closure related to the loss of the child, and
- (g)** Having assisted their child to successfully become a member of the adoptive family.

Roles And Responsibilities

413-120-0625

(1) Child's caseworker: The child's caseworker represents the custodian of the child and assesses the appropriateness of mediation for cooperative post adoption planning for the children on their caseload. The child's caseworker consults with the supervisor and LAS, and seeks input from other interested persons. The decision to refer a case to mediation is based on the best interest of the child and whether the child's safety and permanency needs will be met with post adoption communication. The child's caseworker consults with an adoption worker, if assigned, or the identified adoptive parent(s) and the birth parent(s) about willingness to participate in the cooperative adoption mediation process. The child's caseworker initiates the referral to mediation and is the primary contact for the contract mediator.

(2) Adoption worker: The adoption worker connects to the cooperative adoption mediation process, selected adoptive parent(s) (including preliminary current caretaker families) of children who may benefit from post adoption communication. The adoption worker collaborates with the child's worker to identify benefits of the cooperative adoption mediation process and documents safety concerns to be communicated on the Mediation Referral Form.

(3) LAS:

(a) The LAS ensures that legal assistance mediation or cooperative adoption mediation services are included in the discussions of the plan to free the child for

adoption (by relinquishment or termination of parental rights.) The LAS determines, in consultation with the child's worker and the legal assistance attorney, whether cooperative adoption mediation planning meets the child's best interest post adoptively. If the referral is appropriate the LAS approves the Referral for Mediation (CF 0437). The LAS confers with the child's caseworker when the caseworker determines that the PACA may not meet the safety concerns of the child. The LAS advises the child's caseworker on additional requirements related to Indian children.

(b) The outcome of the procedures to terminate parental rights shall not be the basis of ending the cooperative adoption mediation process.

(4) Contract Mediator: The contracted mediator for the cooperative adoption mediation process assists mediation participants in clarifying issues and stating expectations. The mediator is a neutral third party who assists the mediation participants in exploring options and empowers the mediation participants to make decisions through the confidential cooperative adoption planning process. The mediator will not make or impose decisions about the final outcome of the PACA.

Criteria For Using The Cooperative Adoption Mediation Process 413-120-0628

(1) The fundamental criteria for referring a child for a cooperative adoption mediation process is the best interest of the child's well-being, permanency and safety. It is the responsibility of the department to determine if a referral for mediation is appropriate in accordance with the criteria of OAR 413-120-0628(1) through (3).

(2) Parent(s) who actively chose adoption for their child through voluntary relinquishment of parental rights and who do not present a danger to their child or to an adoptive family, may be most appropriate to participate in a cooperative adoption mediation process. However, parent(s) who have an adversarial relationship with the Department may be able to work cooperatively with a mediator and the adoptive family in a cooperative adoption mediation process.

(3) The decision of a birth parent(s) to relinquish parental rights or a Department decision to proceed to a termination of parental rights trial must be made independent from the Department's decision to refer a case for cooperative adoption mediation. One decision must not be conditioned upon the other.

(a) Relinquishment or termination of parental rights resolves the child's legal status;

(b) The cooperative adoption mediation process is not a means to avoid a termination of parental rights trial. At no time shall a voluntary relinquishment be conditioned on the willingness of the birth parent(s) and/or adoptive parent(s) to enter into a cooperative adoption mediation process;

(c) Caseworkers may not guarantee a certain level of openness in adoption nor make any promises regarding the cooperative adoption mediation process to convince a parent(s) to voluntarily relinquish the child for adoption.

POST ADOPTION COMMUNICATION AGREEMENTS (Pacas)

413-120-0630

(1) The cooperative adoption mediation process allows the mediation participants to make an informed and self-determined decision after exploring the full range of options available to them. These decisions may be memorialized in a PACA. Post Adoption Communication Agreements make the most sense in situations where birth parent(s) are working with the agency to plan adoption, and where voluntary relinquishment of parental rights will be the mechanism to free the child for adoption rather than termination of parental rights. Parents who actively choose adoption for their child, and who do not present a danger to their child or to an adoptive family, are appropriate for a Post Adoption Communication Agreement.

(2) The PACA must address the safety concerns listed in the Mediation Referral Form.

(3) The PACA must not condition the terms of agreement upon the decision of the birth parent(s) to relinquish parental rights.

(4) Informed decision making in mediation involves giving the participants the opportunity to make self-determined decisions after exploring options that may impact the terms of their final agreement. The following characteristics should be considered in forming a PACA:

(a) It is based on the individual needs of the child and capable of meeting the child's developmental needs over time;

(b) reflects the intent of relationship building in order for the adoptive parent(s) to meet the needs of the adopted child through growth and development;

(c) It is clear and can be understood by the mediation participants;

(d) It addresses how contingencies will be handled. For example: failure to adhere to the terms of the agreement by any mediation participant; requests for informal changes to the terms of the agreement, etc.

(e) It includes a procedure for modifying the agreement to meet the changes of the child through growth;

(f) It addresses how costs to support the agreement, such as transportation, counseling, supervision of visits, and letter and picture exchanges will be met.

Cooperative Adoption Planning Through Legal Assistance Mediation Services 413-120-0635

(1) Department will provide information on an ongoing basis to birth and adoptive families, Department staff, and other interested persons in the child's life: Information regarding the value and benefits of cooperative adoption planning; the use of mediation as a tool to achieve a cooperative adoption; and, the roles of all mediation participants in the cooperative adoption process. This concurrent planning education will take place early and often throughout the case. *(See Flow Chart Box 1 & 2)*

(2) The birth parent(s), identified adoptive parent(s), CASA, child, attorneys of record, Citizen Review Boards and other persons interested in the child's need for permanency, safety and well-being may request that the case be referred for cooperative adoption mediation services. *(See Flow Chart Box 3.)*

(3) The Department will obtain input from interested persons, prior to or during the cooperative adoption planning process, regarding the appropriateness of cooperative adoption planning to address the child's permanency, safety and well-being. *(See Flow Chart Box 4.)*

(4) On an ongoing basis, Department staff will explore the willingness of the birth and adoptive parent(s) to engage in the cooperative adoption planning process through mediation. *(See Flow Chart Box 5.)*

(5) A Mediation Referral Form must not be submitted until a committee has selected the adoptive parent(s) for a child, either at the preliminary current caretaker or adoption committee, and until the case has been staffed and approved for mediation by a LAS. See OAR 413-120-0500 through 0540 (1-G.1.1 Non relative Current Caretaker Adoption Planning), and OAR 413-120-0000 through 0080 (1-G.1.5, Adoption Placement Selection.)

(6) To support the development of a cooperative adoption planning process through mediation, the Department must have the following responsibilities:

(a) After a Legal Assistance Referral has been approved, the caseworker must consult with the LAS and the assigned legal assistance attorney. Consultation must address whether the birth parent(s) present a continuing threat to their child and/or adoptive parent(s), and whether a plan for openness in adoption will meet the individual needs of the child;

(b) If parent(s) want to plan cooperatively and there is no approval for a legal assistance referral an exception can be made to allow for a referral for mediation using the criteria provided in OAR 413-600-0068.

(c) The child's caseworker must obtain from the birth parent(s) and from the adoptive parent(s), if no adoption worker is assigned, a signed DHS 2098 Authorization for Use and Disclosure of Non-Health Information and DHS 2099 Authorization for Use and Disclosure of Health Information to the mediator;

(d) To request mediation services funded through the Legal Assistance program, the child's caseworker, or in some cases, the adoptive parent(s)'s worker must make referrals for cooperative adoption mediation on the CF 0437 Mediation Referral Form. The child's caseworker, in consultation with the adoptive parent(s) worker, if assigned, must list on the Mediation Referral Form, benefits specific to the individual case and safety concerns that, if an agreement is reached, must be met in a written PACA. The form should be prepared with the understanding that the birth parent(s) and adoptive parent(s) will be receiving a copy of the form.

(e) The child's caseworker, and in some cases, the adoptive parent(s)'s worker, must provide to the mediator, on the CF 437b Contact Information Form, information of the mediation participants, and other collateral resources when applicable.

(7) In order to allow for informed decision-making by the adoptive parent(s) in the cooperative adoption mediation process, the adoption worker must:

(a) Provide the adoptive parent(s) with the case materials itemized on the Form CF 963;

(b) Review with the adoptive parent(s) the statement of benefits to the child for cooperative adoption planning listed on the Cooperative Adoption Mediation Referral Form CF 0437;

(c) Obtain from the adoptive parent(s) a signed Authorization of Use and Disclosure of Non-Health Information Form DHS 2098 and a signed Authorization for Use and Disclosure of Health Information Form DHS 2099 authorizing release of information to the mediator;

(d) Be responsible to contact the mediator if the adoption worker is assigned after the cooperative adoption mediation process has already begun.

(8) The Cooperative Adoption Mediation Referral form must be forwarded to the central office LAS assigned to the local Department office for approval of funds disbursement. If funds are approved, Central office staff must notify the mediator that funds have been approved and that the mediation service may begin. (See Flow Chart Box 6.)

(9) A child welfare mediator contracted to provide cooperative adoption mediation must have the following responsibilities:

(a) The mediator must keep confidential all mediation communications. (ORS 36.220-25.238 and OAR 410-006-0011);

(b) The mediator must accept referrals from the Department on the Cooperative Mediation Referral Form CF 0437;

(c) Within two weeks of receiving the CF 0437, the mediator must contact the child's worker and the adoption worker of the selected adoptive family for additional information on the case and further discussion of the Department's safety concerns, if needed (*See Flow Chart Box 7.*);

(d) After contacting the child's worker and the adoption worker, but within the two week of receiving the CF 0437, the mediator must contact the birth parent(s) and adoptive parent(s) to begin mediation services,

(e) The beginning of the mediation process, the mediator must inform the mediation participants about the mediation process, explain their role and responsibilities during the process, provide them with a copy of ORS 109.305, review the mediation referral form with the mediation participants and provide them with a copy, and if the mediation participants choose to continue in mediation, obtain their signature on the Agreement to Mediate Form (*See Flow Chart 8a.*);

(f) The mediator must make collateral contact with professionals involved in the case including, but not limited to, children's attorney, CASA, and birth and adoptive parent(s)' attorneys. If requested, the mediator must also keep informed, the Assistant Attorney General or Deputy District Attorney assigned to the case;

(g) If the mediation participants reach agreement and the mediation participants desire it, the mediator must draft a PACA. The PACA must address the mediation participant's issues and the documented safety concerns as set forth in the Mediation Referral Form (*See Flow Chart 9.*);

(h) The mediator must provide the draft PACA to the mediation participants and must encourage the mediation participants to review the draft with legal counsel;

(i) Once the mediation participants have approved the draft, the mediator must provide the child's worker with the proposed PACA for the review and concurrence that it meets the safety needs of the child.

(10) The Department has the following additional responsibilities:

(a) The child's caseworker must review the draft PACA solely for the purpose of assessing whether it will meet the safety needs of the child, as set forth in the Mediation Referral Form (*See Flow Chart Box 9.*);

(b) If the child's caseworker concludes that the PACA meets the safety needs of the child, the child's caseworker or other agency representative must sign the final PACA. (*Flow Chart Box 11(b).*)

(c) If the child's caseworker concludes that the PACA may not meet the safety needs of the child, the child's caseworker must notify the LAS. The LAS must inform the

mediation participants in the form of written communication sent to the mediator (“LAS Notice”). The LAS Notice must state the continued safety concerns for the child. (See *Flow Chart Box 11(a)*.)

(11) A contracted mediator has the following additional responsibilities:

(a) If the mediator is informed through a LAS Notice (*see Flow Chart, Box 11*) that the PACA does not meet the safety needs of the child, the mediator must set another mediation session with the mediation participants, and an agency representative, if requested by the mediation participants. The mediator may consult with the child’s caseworker for clarification about the LAS Notice before setting the additional mediation session.

(b) If the additional mediation session results in a revised draft PACA, the mediator will repeat the processes outlined in (9)(g) through 10(c) in this rule.

(c) After the Department determines that the revised draft PACA meets the safety needs of the child, the mediator must arrange for the mediation participants and an agency representative to sign the agreement (*See Flow Chart 11(b)*);

(d) If no agreement can be reached, the mediator must send a letter summarizing the situation to Central Office with the final invoice.

Contact(s):

- **Name:** CAF Reception; **Phone:** 503-945-5600

Policy History

- 09/17/96