

AUTHORITY OF OREGON JUVENILE COURTS TO REVIEW DHS ACTIONS IN CHILD DEPENDENCY CASES

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Summary

Oregon statutes and case law authorize the juvenile court to review DHS decisions in dependency cases to protect the best interests of children and the rights of their parents. As the statutes have been amended over the last 20 years, the legislature has given increasing authority to juvenile courts to determine the permanent plans for children and, in some cases, their placement and what services must be provided to them and their parents. Courts exercising this authority must give appropriate deference to agency decisions to permit the agency to manage its budget effectively and carry out its statutory duties

The first section of the Oregon Juvenile Code dealing with dependency cases recognizes children's rights to "permanency with a safe family," ORS 419B.090(2)(a)(A). A 2007 amendment to ORS 419B.909 emphasizes protection of the child's relationship with the family of origin:

It is the policy of the State of Oregon to safeguard and promote each child's right to safety, stability and well-being. The State of Oregon recognizes the importance of a child's relationships with parents, siblings, grandparents and other relatives.

ORS 419B.090(3). The code gives the juvenile court judge the critical role of overseeing the work of the Department of Human Services (DHS) and other agencies to the end of promoting permanency for children who come before the court while protecting their relationships with their families.

These goals, and the central role of the juvenile court judge in achieving them, are mandated by the federal Adoption and Safe Families Act of 1997 and are embodied in the law of all U.S. jurisdictions. As a leading student of the American juvenile court has observed, the emphasis on insuring permanency for children has substantially changed and expanded the role of juvenile court judges since the 1980s. Besides their traditional tasks of ensuring that children are protected and parents' rights are respected, judges now monitor child welfare agencies' provision of help to children and families and ensure that timely, permanent decisions are made for children. Mark Hardin, *Responsibilities and Effectiveness of the Juvenile Court in Handling Dependency Cases*, 6(3) THE FUTURE OF CHILDREN 111 (Winter 1996).

Chapter 419B provides that the juvenile court judge will determine the general type of care or services that DHS will offer. Within this general framework, DHS ordinarily has authority and responsibility to plan and provide the specifics. The judge has responsibility to review the adequacy of plans and provision of services pursuant to the plans to ensure that the rights of the child and the parents are protected. The statutory provisions regarding the child's

placement, provision of mental health services to the child, and provision of other services to the parents and child all follow this plan.

I. The child's placement and visitation with parents and siblings

When DHS is granted legal custody of a child, ORS 419B.337, 419B.343 and 419B.349 divide authority between the agency and the juvenile court over the child's actual placement. The court may "specify the *particular type of care*," ORS 419B.337(2), but "the actual planning and provision of such care... is the responsibility of the department," ORS 419B.337(2). The court may make recommendations to DHS regarding specific placements and services, which DHS must "take into consideration." ORS 419B.343(1). This allocation of authority is reinforced by the definition of legal custody. Under ORS 419B.373, the legal custodian has the duty and responsibility...1) To have physical custody and control of the ward."

This structure imposed by ORS 419B.337 and 419B.343, which places ultimate authority over placement in DHS, dates to the 1970s.¹ However, the provisions of ORS 419B.349 substantially modify the allocation of responsibility. As amended in 2007, this section now provides:

Commitment of a child or ward to the Department of Human Services does not terminate the court's continuing jurisdiction to protect the rights of the child or ward or the child or ward's parents or guardians. Notwithstanding ORS 419B.337 (5), if upon review of a placement of a child or ward made by the department the court determines that the placement is not in the best interest of the child or ward, the court may direct the department to place the child or ward in the care of the child or ward's parents, in foster care with a foster care provider who is a relative, in foster care with another foster care provider, in residential care, in group care or in some other specific type of residential placement, but unless otherwise required by law, the court may not direct a specific placement. The actual planning and placement of the child or ward is the responsibility of the department. Nothing in this section affects any contractual right of a private agency to refuse or terminate a placement.²

¹ In 1969 the language requiring the court to commit a child to the agency rather than directly to an institution was enacted, and the provision requiring the agency to "take into consideration" the court's recommendations was added in 1971.

² Several cases decided under earlier versions of this statute are no longer good law, given these amendments. *See, e.g.,* In re Marriage of Lee, 65 Or. App. 807, 672 P.2d 399 (1983), State ex rel. Juv. Dept. v. Cooke, 88 Or. App. 176, 744 P.2d 596 (1987), and State ex rel. Juv. Dept. v. Smith, 107 Or. App. 129, 811 P.2d 145 (1991), which held that a juvenile court could not order the agency to place a child in a parent's physical custody.

The predecessor to ORS 419B.349, which was designated as 419.507 until 1993, was enacted in 1973. It provided that even if a child was committed to DHS, the court had continuing jurisdiction "to protect the rights of the child or ward or the child's or ward's parents or guardians." The first case interpreting this language arose during the 1973 legislative session and involved a dispute over the juvenile court's authority to order visitation for parents of a child in the agency's custody. The circuit court and court of appeals had held that the juvenile court had no such authority under the predecessors to ORS 419B.337 and 419B.343. *State ex rel. Juv. Dept. v. Richardson*, 3 Or.App. 259, 508 P.2d 476(1973). However, the Supreme Court interpreted the new continuing jurisdiction language, which was enacted in response to the court of appeals decision, as allowing the court to determine the extent of visitation between a child in the custody of the agency and the child's parents. *State ex rel. Juv. Dept. v. Richardson*, 267 Or. 374, 517 P.2d 270 (1973).

The section was further amended in 1987 to allow a juvenile court to "direct the Children's Services Division to place the child in a specific type of residential placement" if it found that the child's current placement

Under this section, the court may require the agency to grant physical custody of a child in its legal custody to a parent, to a relative foster parent or other foster care provider, or to a residential facility simply upon a finding that this is in the child's best interest. However, the court continues to be unable to order placement in a particular residential placement. Nor can the court circumvent this rule by rejecting placements until the agency "gets it right." *State ex rel. Juvenile Dept. of Clackamas County v. Smith*, 107 Or. App. 129, 811 P.2d 145, 1147 (1991).

However, even this limitation on the juvenile court's placement authority does not preclude the court from ordering that the agency provide suitable treatment to a child within its jurisdiction. For example, in *State ex rel. Juv. Dept. v. L.*, 24 Or. App. 257, 546 P.2d 153, (1976), the court held that a juvenile court could not order that a mentally ill child be placed in a particular treatment facility but said:

The thrust of [the juvenile court's statutory scheme] is treatment. CSD³ is charged with the responsibility of securing treatment for a child and the court is positioned in a watchful, supervisory role to see that the child actually receives responsive treatment. The overall purpose of this relationship between the court and CSD is to maximize the quality of treatment afforded to such children while the baseline objective is to guarantee that each child actually receives some treatment responsive to his or her particular needs. The entire foundation of the relationship thus secured is the improvement of the child's condition. Mere custodial care which is not designed to cure or improve the child's condition falls short of the care contemplated by the statute."

. . .

was "so inappropriate as to violate the rights of the child or the child's parents or guardians." This amendment, the first that explicitly authorized the juvenile court to order the agency to move a child from an existing placement, codified the holding of the Oregon Court of Appeals in *Shrewsbury v. Larson*, 52 Or. App. 81, 627 P.2d 910 (1981). In that case, a juvenile status offender was placed by the state agency in Rosemont School in Portland. The juvenile filed a petition for writ of habeas corpus in juvenile court alleging that her placement in "a private institution operated as a training school for children requiring secure custody" was illegal. *Id.* at 80. The court denied the writ because the offender had an alternative, readily available and adequate remedy. The court held that:

[A]s a matter of law, [Shrewsbury had] a remedy by petition to the juvenile court which had, and ha, continuing jurisdiction over petitioner's wardship, with authority to order CSD to remove [her] from Rosemont, either because the placement was not authorized by law (if that is the case), petitioner is being disciplined in a manner prohibited by CSD regulations, or because it is an inappropriate placement . . .

Id. at 93 (internal citations omitted). In reaching its decision, the *Shrewsbury* Court explained that the "juvenile court is given great flexibility in the different types of dispositions it may make of a child determined to be within its jurisdiction, depending on the best interests and welfare of the child. . . . This flexibility relates not only to the original disposition of the child, but to the ongoing care and treatment through the court's continuing jurisdiction." *Id.* at 84-86. The court stressed that the legislature "intended the juvenile court to have substantial authority in its continuing jurisdiction to determine, if called upon to do so, what is in the best interest and welfare of the child." *Id.* at 94.

The section was amended yet again in 1997 to give the juvenile court even greater authority to control placement decisions. The new language allowed the court to order the agency to place a child "in foster care, residential care, group care or some other specific type of residential placement" if it found that the current placement was *not in the best interest of the child*. Or. Laws 1997, Ch. 764 § 1.

In 2007 SB 414(6) amended ORS 419B.337 to add a new subsection (3) that codifies the holding in *Richardson* and adds that the court may also order visitation for siblings. DHS is responsible to develop and implement the court's order. (Siblings include half-siblings, siblings by adoption, and stepsiblings. ORS 419A.004(27).

³ CSD (the Children's Services Division) is an earlier name for the state child welfare agency.

The court exceeded its authority, however, to the extent that CSD was ordered to provide treatment irrespective of the budgetary limitations imposed upon CSD by the legislature. We do not find it necessary to determine as a factual matter whether CSD was financially able to secure for L the needed treatment. Indeed, we are very much aware that such a determination is peculiarly a legislative function. See, e.g., *Smith v. County of Washington*, 241 Or. 380, 406 P.2d 545 (1965). It was for CSD to determine whether funding was available to it and, if it were not, to further determine whether emergency funding should be sought where, as here, an emotionally disturbed child in its custody was not receiving treatment. The judiciary is not empowered to review either of the above agency determinations or to compel an agency to expend monies it has determined are not available to it. Nevertheless, the juvenile court was empowered to render an alternative order requiring CSD to secure treatment for L or to certify to the court that it was without funding to do so. In the event that CSD certifies that it is not able to provide treatment, the court is authorized to terminate CSD's custody of the child since the statutory basis for CSD's custody no longer exists when it becomes evident that CSD will not provide a child with responsive treatment.

24 Or. App. at 265-66, 546 P.2d at 158, 160.

II. Case planning and services

As with placement, the allocation of authority and responsibility over case planning and provision of services is governed in the first instance by a statute that has been part of the juvenile code since its inception with important modifications by more recent statutes, enacted to implement permanency planning principles.

ORS 419B.337 applies to case planning as well as to placement and provides that DHS plans and provides care, supervision and services for children in its custody. As the child's legal custodian, DHS has the duty and responsibility:

- 2) To supply the ward with food, clothing, shelter and incidental necessities.
- 3) To provide the ward with care, education and discipline.
- 4) To authorize ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the ward, and, in an emergency where the ward's safety appears urgently to require it, to authorize surgery or other extraordinary care.
- 5) To make such reports and to supply such information to the court as the court may from time to time require.
- 6) To apply for any Social Security benefits or public assistance to which the ward is otherwise entitled and to use the benefits or assistance to pay for the care of the ward.

ORS 419B.373. DHS "takes into consideration" the juvenile court's recommendations regarding placements and services initially, and appellate case law confirms that the court's general continuing authority "to protect the rights of the child or ward or the child or ward's parents or guardians." ORS 419B.349.

The Court of Appeals relied on this language in *CSD v. Weaver*, 19 Or. App. 574, 528 P.2d 556 (1974), to hold that a juvenile court had authority to order the child welfare agency to make its best efforts to place a child whose parents' rights had been terminated for adoption within 90 days and to return the case for review if the adoption did not occur within that period.

(At the time the juvenile code did not explicitly grant the court authority to monitor cases after a termination of parental rights order.).

The appellate court explained, “We believe the juvenile court to now possess the authority to ‘protect’ all similar rights,’ among which is the right of a child to enjoy membership in a permanent home and family while he is still young. “ 19 Or. App. at 578, 528 P.2d at 558. The appellate court also invoked ORS 419B.349 in *State ex rel. Juv. Dept v. Adams*, 131 Or. App. 396, 401, 886 P.2d 19 (1994) (en banc), rev. denied 321 Or. 137, 894 P.2d 468 (1995), when it held that the juvenile court should have explored allegations that the child welfare agency had placed a child in 10 different foster homes in one year, which raised a question about the adequacy of the child’s care. *See also State ex rel Juv. Dept v. Rivers*, 131 Or. App 512, 886 P.2d 1024 (1994) (foster parents appeal from juvenile court order concluding that child’s wellbeing was not endangered by agency’s adoption placement decision reversed on the basis that agency action not so inappropriate as to violate the rights of the child).⁴

Newer sections of Chapter 419B, enacted originally in the 1980s, require the juvenile court to make findings about the adequacy of DHS efforts to achieve permanency for a child, require DHS to make plans for every child in its legal custody in collaboration with the family, if possible, to achieve a permanent placement for the child, and require periodic judicial review of the plans and progress toward achieving goals. These sections give the juvenile court ultimate authority over plans and services.

A. Reasonable efforts findings

From the time that a child first comes before the juvenile court, the judge must repeatedly make findings about whether DHS has, in the first instance, made reasonable efforts (or in the case of Indian children, active efforts) to prevent the need to remove the child from the parents’ custody and, later, to reunite the child and parents. E.g., ORS 419B.185 (shelter care hearing), 419B.337, 419B.340 (dispositional hearing), 419B.476(permanency hearing). If the permanent goal is not reunification, the court must make findings about the agency’s efforts to achieve the child’s alternate permanent plan. ORS 419B.476(2)(b), (4). While the reasonable efforts provisions do not grant the juvenile court authority to tell the agency what to do, its findings about why agency efforts have not been sufficient can be powerful incentives. For example, in *State ex rel Juv. Dept. v. Williams*, 204 Or. App 496, 130 P.3d 801 (2006), the Oregon Court of Appeals held that DHS had not made reasonable efforts to reunite a child with his incarcerated father. In reaching this conclusion, the court explained:

DHS could have engaged in any number of activities that it did not attempt and that might constitute reasonable efforts under some circumstances involving incarcerated parents. For example, DHS could have contacted father and investigated the history and extent of father’s relationship with the child. It could have assessed father’s parental strengths and deficiencies. It could have explored services available to father during his incarceration, incorporated those services into a service

⁴ The *Adams* court also held that the circuit had authority under ORS 183.480 of the state Administrative Procedures Act to hear a claim from foster parents that the child welfare agency had engaged in an improper decision making process regarding their request to adopt a child. *See also Graham v. CSD*, 39 Or App 27, 591 P2d 375 (1979); *Morgan v. MacLaren School*, 23 Or App 546, 543 P2d 304 (1975)).

agreement, and documented whether father participated in those services. It could have monitored father's progress through his corrections counselor or another employee of the jail. It could have looked into whether visitation at the jail was possible and appropriate. It could have compared father's release date with the dependency case time lines and child's particular needs to determine whether reunification was possible within a reasonable time and, if so, it could have inquired into father's probably post-release situation and plan. In general, DHS could have attempted to engaged and work with father. It completely failed to do so in this case.

204 Or. App. at 507.

B. Case plans and six-month reviews

DHS must create a plan for each child in its custody to the end of achieving the child's permanency goal.⁵ The juvenile court or the citizens' review board as an arm of the court must review the cases of children who are wards of DHS every six months or more often if the judge determines that this is necessary. ORS 419B.440, 419B.443, 419B.449. To facilitate this review, DHS as the child's custodian must file detailed written reports explaining what services have been provided and their effectiveness toward achieving the permanency plan for the child, as

⁵ ORS 419B.343(1) provides in relevant part: "The department shall ensure that the case planning in any case:

(a) For the reunification of the family bears a rational relationship to the jurisdictional findings that brought the ward within the court's jurisdiction under ORS 419B.100;

(b) Incorporates the perspective of the ward and the family and, whenever possible, allows the family to assist in designing its own service programs, based on an assessment of the family's needs and the family's solutions and resources for change; and

(c) Is integrated with other agencies in cooperation with the caseworkers.

(2) Except in cases when the plan is something other than to reunify the family, the department shall include in the case plan:

(a) Appropriate services to allow the parent the opportunity to adjust the parent's circumstances, conduct or conditions to make it possible for the ward to safely return home within a reasonable time; and

(b) A concurrent permanent plan to be implemented if the parent is unable or unwilling to adjust the parent's circumstances, conduct or conditions in such a way as to make it possible for the ward to safely return home within a reasonable time.

(3) Any time after a ward attains 14 years of age, if the department determines that it is appropriate, but in no case later than the date the ward attains 16 years of age, the department shall ensure that the case planning in the case addresses the ward's needs and goals for a successful transition to independent living, including needs and goals related to housing, physical and mental health, education, employment, community connections and supportive relationships.

(4) The case plan for a ward in substitute care must include the health and education records of the ward, including the most recent information available regarding:

(a) The names and addresses of the ward's health and education providers;

(b) The grade level of the ward's academic performance;

(c) The ward's school record;

(d) Whether the ward's placement takes into account proximity to the school in which the ward is enrolled at the time of placement;

(e) The ward's immunizations;

(f) Any known medical problems of the ward;

(g) The ward's medications; and

(h) Any other relevant health and education information concerning the ward that the department determines is appropriate to include in the records.

well as any proposed modifications to the plan. ORS 419B.443. The statute that deals with providing treatment for a child's special medical or other needs requires DHS to report on the child's progress at least annually or more often at the judge's request, and it requires special reports whenever the treatment is revised. ORS 419B.346. For children placed in the legal custody of DHS on or after Jan. 1, 2008, the reports must be provide specific information about "child welfare practices that have been demonstrated to have a positive impact on children and families"⁶ including

- (c) A list of all placements made since the child or ward has been in the guardianship or legal custody of an agency and the length of time the child or ward has spent in each placement;
- (d) For a child or ward in substitute care, a list of all schools the child or ward has attended since the child or ward has been in the guardianship or legal custody of the agency, the length of time the child or ward has spent in each school and, for a child or ward 14 years of age or older, the number of high school credits the child or ward has earned;
- (e) A list of dates of face-to-face contacts the assigned case worker has had with the child or ward since the child or ward has been in the guardianship or legal custody of the agency and, for a child or ward in substitute care, the place of each contact;
- (f) For a child or ward in substitute care, a list of the visits the child or ward has had with the child's or ward's parents or siblings since the child or ward has been in the guardianship or legal custody of the agency and the place and date of each visit;
- (g) A description of agency efforts to return the child or ward to the parental home or find permanent placement for the child or ward, including, when applicable, efforts to assist the parents in remedying factors which contributed to the removal of the child or ward from the home;

ORS 419B.443(1).

The report must also include a recommended timetable for dismissal of the department's legal custody of the ward and termination of the wardship; and a description of the services that the department has provided to the ward and the ward's physical custodian to eliminate the need for the department to continue legal custody. ORS 419B.343(20, (3). The court must send a copy of the report to the child's parents and notify them that a hearing will be held (if one has been scheduled) or that they may request a hearing at which they may ask for modifications in the care, treatment and supervision of the child or ward. ORS 419B.452.

At the end of a hearing on the report, the judge must make findings about the need for continuing the child in out-of-home care and the expected timetable for the child's return home or placement in another permanent home. ORS 419B.449(3). The judge must also make findings that address the special topics on which the agency must report: whether the agency made diligent efforts to place the child with relatives, "the number of placements made, schools attended, face-to-face contacts with the assigned case worker and visits had with parents or siblings since the child or ward has been in the guardianship or legal custody of the agency and whether the frequency of each of these is in the best interests of the child or ward," and "for a child or ward 14 years of age or older, whether the child or ward is progressing adequately toward graduation from high school and, if not, the efforts that have been made by the agency

⁶ Written testimony of Angela Sherbo, Senior Attorney, Juvenile Rights Project, to Oregon Senate Judiciary Committee in support of SB 282 (Feb. 19, 2007).

having custody or guardianship to assist the child or ward to graduate.” *Id.* The findings must also address whether the child should remain in the legal custody of DHS and the expected timetable for terminating custody and wardship. ORS 419B.449(4). The judge may also order DHS “to consider additional information in developing the case plan or concurrent case plan.” ORS 419B.449(6). This section contemplates that the judge may make orders specifically addressing services and goals, as the last subsection provides that “Any final decision of the court made pursuant to the hearing provided in subsection (1) of this section is appealable.” ORS 419B.449(5).

If the child requires special medical or other treatment, the juvenile court may indicate the type of care that is appropriate; in light of this indication, DHS must make a specific plan for providing the care and submit the plan, along with a timeline, to the court. ORS 419B.346.

C. Permanency hearings

After a child has been in substitute care for 14 months or 12 months after the dispositional hearing, whichever comes first, the court must hold a permanency hearing to determine the ultimate disposition of the case. ORS 419B.470(2)⁷ Permanency hearings must be held every 12 months thereafter; if the child’s parents’ rights have been terminated, a hearing must be held within 30 days and every six months thereafter. ORS 419B.470(4), (6), (7). At the close of the permanency hearing, the judge makes findings and enters orders that may include specific directions about the child’s placement and services to be provided to the child and family. ORS 419B.476(4). This sections provides in part:

If the court determines that further efforts will make it possible for the ward to safely return home within a reasonable time, order that the parents participate in specific services for a specific period of time and make specific progress within that period of time;

... Order the department to develop or expand the case plan or concurrent permanent plan and provide a case progress report to the court and other parties within 10 days after the permanency hearing;

Order the department or agency to modify the care, placement and supervision of the ward...”

The statute further provides that the court must determine the permanency plan for the child, along with services to be provided to parents when appropriate and findings about why other, more favored alternative plans are not appropriate.⁸

⁷ If the juvenile court has excused DHS from making efforts to reunite the family because of extreme circumstances, the permanency hearing must be held within 30 days of the finding. ORS 419B.470(1). If the child has been removed from permanent foster care, the hearing must be held within three months. ORS 419B.470(3).

⁸ ORS 419B.476(5)(b) provides in particular that the order must include:

The court’s determination of the permanency plan for the ward that includes whether and, if applicable, when:

- (A) The ward will be returned to the parent;
- (B) The ward will be placed for adoption, and a petition for termination of parental rights will be filed;
- (C) The ward will be referred for establishment of legal guardianship; or
- (D) The ward will be placed in another planned permanent living arrangement;

Finally, a 2007 amendment to ORS 419B.498 provides that DHS may not file a termination of parental rights until the juvenile court has determined that the child's permanency plan should be changed to adoption. ORS 419B.498(3).

III. The Role of DHS Policies and Procedures in Guiding the Juvenile Court's Reviews

When a juvenile court reviews child welfare decisions in a particular case in response to a claim that the agency's actions endanger a child's wellbeing, the court must take care not to substitute its judgment for the agency's simply because the judge believes that some action would be preferable to that chosen by the agency. Deference to agency decision making is necessary because the agency must have a realm of discretion to operate effectively and because a court does not have the time to gather and analyze the information that would be necessary for it to make decisions de novo. Deference is especially important in decision involving allocation of agency resources because a court cannot take into account how decisions in one case may affect the agency's ability to provide services to all its clients. *See* Leslie J. Harris, Rethinking the Relationship Between Juvenile courts and Treatment Agencies – An Administrative Law Approach, 28 J. Fam. L. 217 (1989-1990); Bruce A. Boyer, Jurisdictional Conflicts Between Juvenile Courts and Child Welfare Agencies: The Uneasy Relationship Between Institutional Co-Parents, 54 Md. L. Rev. 377 (1995).

The Oregon juvenile code contemplates that the juvenile court will defer to DHS but that it will exercise substantial oversight of the agency's actions to protect children and their parents and in some situations substitute its decision for that of the agency. In other contexts when a court reviews the actions of an administrative agency under such a standard, the court determines whether the factual predicates of the agency's action are supported by substantial evidence and reviews all agency determinations to ensure that they are based on a carefully reasoned consideration of all the facts in light of the governing standards. The juvenile court can take a similar approach to the review of DHS actions in dependency cases. An important source for determining whether the agency's actions have fallen below acceptable standards is the agency's own rules and regulations. *See* Harris, *supra*.

(c) If the court determines that the permanency plan for the ward should be to return home because further efforts will make it possible for the ward to safely return home within a reasonable time, the *court's determination of the services in which the parents are required to participate*, the progress the parents are required to make and the period of time within which the specified progress must be made;

(d) If the court determines that the permanency plan for the ward should be adoption, the court's determination of whether one of the circumstances in ORS 419B.498 (2) is applicable;

(e) If the court determines that the permanency plan for the ward should be establishment of a legal guardianship or placement with a fit and willing relative, the court's determination of why neither placement with parents nor adoption is appropriate;

(f) If the court determines that the permanency plan for the ward should be a planned permanent living arrangement, the court's determination of a compelling reason, that must be documented by the department, why it would not be in the best interests of the ward to be returned home, placed for adoption, placed with a legal guardian or placed with a fit and willing relative;

(g) If the current placement is not expected to be permanent, the court's projected timetable for return home or for placement in another planned permanent living arrangement. If the timetable set forth by the court is not met, the department shall promptly notify the court and parties;

A number of administrative rules adopted by DHS are relevant to this issue and provide a beginning place that the juvenile court can use to review actions of the agency. They include rules regarding the rights of children in out of home care, selection of out of home placements for a child, and caseworker contact with a child in substitute care and with the child's care provides, which are quoted in an appendix to this memo.

APPENDIX -- SOME RELEVANT DHS POLICIES

A. Rules regarding rights of children

OAR 413-010-0180 Each child placed in the legal custody of SOSCF has the following rights:

- (2) To be provided basic needs such as adequate food, clothing, and shelter;
- (4) To be provided ordinary medical, dental, psychiatric, psychological, and hygienic care and treatment when the child's condition requires it;
- (5) To be provided with free and appropriate education;
- (8) To be provided services to develop a safe, permanent alternative to the child's own family, when suitable family resources are not available;

B. Rules regarding selection of out of home placement

1. **OAR 413-070-0610** When substitute care is necessary, each child's substitute care provider should be selected in order to meet the child's immediate and long-term needs and to minimize the likelihood that the child will have to be moved. . . . The placement selected should be the least restrictive, most family-like setting available that meets the child's safety, attachment and treatment needs, and minimizes the trauma associated with substitute care placement. Whenever appropriate, placements shall be in close proximity to the child's family, with the child's siblings, with appropriate relatives and shall support the child's culture and family identity. Placement information shall be documented in the 147 series.

2. **OAR 413-070-0630(1)** At the first contact, and continuously throughout the child's involvement with the agency, the caseworker shall determine the child's needs through consultation with the family and those known to the child, (e.g. neighbors, foster parents, treatment providers, and school staff) as well as through direct interaction with the child.

C. Rules regarding contact between caseworkers, children in out of home care, and children's caregivers

1. **OAR 413-080-0045(1)** Child safety is the paramount concern guiding the minimum requirements for caseworker contact with children, their parents or legal guardians, caregivers, older youth and young adults. Having contact is one of the most important ways that the Department can: assess safety; ensure the well-being of children; provide support; assess, revise and implement service plans; and promote timely implementation of case plans for children and families served by the Department.

2. **OAR 413-080-0045(3)** Caseworkers who are assigned child welfare cases are trained to assess and review the children's safety and are considered the primary staff responsible for developing relationships with children.

3. **OAR 413-080-0055 (1)(a)** The child's assigned caseworker must have face-to-face visits with the child a minimum of once every 30 days. . . .Based on the child's needs and/or service plan, more frequent contact may be necessary for some children.

4. **OAR 413-080-0055(5) (a)** The child's assigned caseworker must have contact with the caregiver a minimum of every 30 days.

(b) The child's assigned caseworker must have face-to-face contact with the child's

caregiver in the home or facility a minimum of every 60 days.

(c) The child's assigned caseworker and the caseworker's supervisor may determine that additional contact is necessary to meet the needs of the child. If additional contact is necessary, the type and frequency of that contact must be documented in the case record.

(d) Except as provided in (b), contact may be made through visits to the home or facility, during case planning meetings or reviews, by phone or by other means consistent with meeting the needs of the child.

5. OAR 413-080-0060 (3) Exceptions: After reviewing the safety and service plan for the child, the caseworker's supervisor or manager may approve an exception, on an individual case basis, to the requirement for a child's caseworker to have face-to-face contact with the child, parents, legal guardians, caregivers, older youth or young adult. The decision to approve an exception to the face-to-face contact requirement must be consistent with meeting the needs of the child. The supervisor or manager is responsible for ensuring that documentation of the reason for the exception to the face-to-face contact, including the criteria for approving an exception and the length of time the exception will be in effect, is in the client's case file. Reasons for granting an exception to the face-to-face contact requirements may include, but are not limited to:

(a) Unavailability of the child(ren). Examples include a child on vacation with the caregiver or a child on runaway status.

(b) Permanent foster care. An exception may be allowed, if appropriate, for up to 90 days between face-to-face caseworker contact with child and caregiver.

(c) Residential Care Placement. An exception may be allowed, if appropriate, for up to 60 days between face-to-face caseworker contact with child and caregiver.

(d) A Child Placed through ICPC. The child's caseworker must request that officials in the receiving state have face-to-face contact with the child a minimum of once every 30 days. If the receiving state declines the caseworker's request for 30 day contact, this will be documented in the case file along with the type and level of contact being provided.

(e) Unavailability of the Parent(s). Examples may include a parent: who is out-of-state; whose location is unknown; who is incarcerated or enrolled in an inpatient program where contact may be limited due to facility location or treatment plan; or who has had their contact with the Department restricted in some way

(f) A documented safety risk to the caseworker or DHS staff person. In these rare circumstances, a request will be made to local law enforcement to accompany DHS staff in making contact with the child to assess safety.

6. DHS, CAF, Client Services Manual, Substitute Care, Placement Expectations Policy V.(1) Active and ongoing sharing of information with the caregiver and obtaining information from the caregiver is necessary in caring for the child. Caseworkers will share verbal and written information with the child's caregiver about each child prior to, or at the time a child is placed, on an ongoing basis throughout the time the child is placed with the caregiver.

(3) Provide support to the caregiver during transition and adjustment periods for the child's placement by involving the caregiver in case planning for the child.

(6) Medical insurance information shall be provided to the caregiver for the child on date of placement. Medical and dental needs of the child are to be addressed.

(15) Provide support to the child during the potentially difficult period of initial adjustment to a new living arrangement or during the transition between placements or on a return home.