

# 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 as necessary to protect the rights of the children 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. Upon reviewing a challenged DHS decision, the juvenile court should uphold the agency's decision if it is based on factual predicates that are supported by the evidence if the decision is based on carefully reasoned consideration of all the facts in light of the governing standards. These standards include the agency's own rules and policies regarding the rights of children in substitute care, the methods for selecting substitute placements, and caseworker responsibilities to monitor and provide services to children and substitute care providers. If the court concludes that an agency's decision is not based on these standards, it may make orders necessary to protect the child and the parent, including the child's right to permanency.*

The first section of the Oregon Juvenile Code dealing with dependency cases recognize s children's rights to "permanency with a safe family," ORS 419B.090(A), and protecting this right is a dominant theme of Chapter 419B (along with safeguarding parental rights). The code gives the juvenile court judge the critical role of overseeing the work of the Department of Human Services and other agencies to the end of promoting permanency for children who come before the court.

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).

In carrying out their duty to ensure that children and families receive meaningful treatment and services, juvenile courts must avoid intruding too deeply into the functions of child welfare agencies. Sound legal principles regarding the relationship between courts and administrative agencies, as well as basic tenets of constitutional law, require that courts not micromanage the work of child welfare agencies. See 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); Leonard P. Edwards, The Juvenile Court and the Role of the Juvenile Court Judge, 43 Juv. & Family Court J. 1 (1992); Leslie J. Harris,

Rethinking the Relationship Between Juvenile courts and Treatment Agencies – An Administrative Law Approach, 28 J. Fam. L. 217 (1989-1990).

While the specific circumstances in which juvenile courts may override agency actions vary to some extent among the states, Oregon’s statutes and case law provide a role for juvenile court judges that is well within the mainstream of American practice.

## I. Statutory Authority

With regard to treatment and services for children and families, 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 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.

### A. Planning Placement and Services

The allocation of responsibility between DHS and the courts is initially defined by ORS 419B.337 and 419B. 343. The court may “specify the particular type of care, supervision or services to be provided by the Department of Human Services to wards placed in the department's custody and to the parents or guardians of the wards.” ORS 419B.337 (2). However, “the actual planning and provision of such care, supervision or services is the responsibility of the department,” *id.*, and the court cannot directly commit a child placed in the custody of DHS to a particular residential facility. ORS 419B.337(4). The court may make recommendations to DHS regarding specific placements and services, which DHS must “take into consideration.” ORS 419B.343(1). The DHS plan must be reasonably related to the basis upon which the court took jurisdiction over the child and must be made in collaboration with the family. *Id.*

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.

### B. Judicial Monitoring and Review of Services

A judge (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. The purpose of the case review is to allow the court to carry out its mandate to “protect the rights of the child or ward [and those of the] child or ward’s parents or guardians.” ORS 419B.349. 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 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.

Upon receiving a report, the judge may hold a hearing to review the case, and a hearing must be held at the request of the child or ward, the child or ward's attorney, the parents, or the agency with legal custody. ORS 419B.449(1). At the conclusion of the hearing 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(2). The judge may also order DHS "to consider additional information in developing the case plan or concurrent case plan." ORS 419B. 449(4). 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).

A final section that helps define the extent of the judge's authority to review the planning and treatment decisions of DHS is ORS 419B.349. This statute makes clear that a judge has continuing authority to determine whether a child's placement is currently in the child's best interests; if it is not, the judge may order DHS to "place the child or ward in foster care, residential care, group care or some other specific type of residential placement." As at initial disposition, "unless otherwise required by law, the court may not direct a specific placement." *Id.*

## II. Cases Interpreting the Statutes

The Oregon appellate courts have decided relatively few cases interpreting the statutes on juvenile court review of DHS treatment actions, and no case has addressed this issue since the juvenile code was amended to include the detailed provisions regarding agency reporting and regular judicial reviews (ORS 419B.440, 419B.443, 419B.449). Instead, the cases all apply the older statutes concerning the court's authority to dictate a child's placement and its responsibility to protect the rights of children and their parents (ORS 419B.337, 419B.343, and 419B.349). Most of the cases concern the authority of judges to order that a child be placed in a particular facility or foster home, though several of the opinions address the juvenile court's authority to take other actions to protect the interests of parents or children.

### A. Juvenile Court's Authority over Placement

In light of the explicit statutory provisions discussed above, it is not surprising that the courts have consistently held that a juvenile judge may order the child welfare agency to remove a child from a facility that is inappropriate, but that the judge may not order the agency to place the child in a particular facility or home. *State ex rel. Juv. Dept. v. Smith*, 107Or App 129, 811 P2d 145 (1991); *State ex rel. Juv. Dept. v. Cooke*, 88 Or. App. 176, 744 P.2d 596 (1987); *Lee and Lee*, 65 Or. App. 807, 672 P.2d 399 (1983); *State ex rel. Juv. Dept. v. V.*, 62 Or. App. 293, 660 P.2d 707 (1983); *Shrewsbury v. Larson*, 52 Or. App. 81, 627 P.2d 910 (1981).

This limitation on the juvenile court's authority to order specific placements does not, however, 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, 265, 268, 546 P2d 153, 158, 160 (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. CSD 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.”

...

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.

#### B. Juvenile Court Authority to Review Other Agency Actions

The only Oregon Supreme Court case dealing with the extent of juvenile court authority vis-à-vis the child welfare agency is *State ex rel. Juv. Dept. v. Richardson*, 267 Or. 374, 517 P.2d 270 (1973), which held that the court's continuing authority to “protect the rights of the child or his parents or guardians” included the right to determine the extent of visitation between a child in the custody of the agency and the child's parents.

In *CSD v. Weaver*, 19 Or. App. 574, 528 P.2d 556 (1974), the court relied on *Richardson* 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 this 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 P2d at 558.

In *State ex rel. Juv. Dept v. Adams*, 131 Or App 396, 886 P2d 19 (1994) (en banc), the Court of Appeals held that allegations that the child welfare agency had placed a child in 10 different foster homes in one year raised a question about the adequacy of the child's care which the court should have explored under its “continuing jurisdiction to protect the rights of the child” as provided in ORS 419B.349. See also *State ex rel Juv Dept v. Rivers*, 131 Or App 512, 886 P2d 1024 (1994) (foster parents appeal from juvenile court order concluding that child's

wellbeing was not endangered by agency's adoption placement decision rejected on the basis that agency action not so inappropriate as to violate the rights of the child). (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)).

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

When a juvenile court reviews DHS 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 a court cannot take into account how decisions in one case may affect the agency's ability to provide services to all its clients, because the agency must have realm of discretion to operate effectively, and because courts do not have the time to gather and analyze the information that would be necessary for it to make decisions de novo. *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 juvenile code thus 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. 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*; *see also* Oregon Attorney General Opinion 7713, Feb. 14, 1979, (juvenile court should review actions of CSD other than visitation on the basis of abuse of discretion; if courts finds an abuse of discretion, it may order CSD to adopt a new plan which eliminates the objectionable matters and specify standards to be followed, but may not affirmatively specify a plan of treatment or placement).

A number of administrative rules adopted by DHS are relevant to the facts of this case 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.

### IV. Conclusion

The Supreme Court and Court of Appeals interpreting the governing provisions of the juvenile code, interpreted as a whole, say that a juvenile court may take the following actions in the exercise of its authority to oversee the activities of the Department of Human Services in a

particular case: 1) determine the type of facility into which a child is placed, 2) order the agency to remove the child from an inappropriate facility, 3) order the agency to provide appropriate treatment for a child or inform the court that it lacks funding to provide the needed treatment, 4) determine the specifics of parents' visitation with children in the custody of the agency, 5) order the agency to make best efforts to place a child for adoption within a specific time frame, 6) review the adequacy of the agency's decision to move a child from placement to placement frequently in a short time, and 7) take other actions necessary to protect children's rights including "the right to enjoy permanent membership in a permanent home while he is still young." *Weaver*, 19 Or App at 578, 528 P2d at 558.

These cases rely on sections of the juvenile code that were enacted before the code was amended to comply with AFSA and its predecessor, the Adoption Assistance and Child Welfare Act of 1980. The sections of code that were enacted after these cases were decided, in response to the federal requirements, give juvenile courts additional tools to carry out their responsibility to protect the rights of children and parents. They require the agency to undertake case planning and to report to the court at regular intervals on the progress in implementing the plan and success toward achieving the plan's goals, and they provide for judicial hearings to consider solutions to problems that these reports reveal.

DHS rules and policies that establish the rights of children, the goals of state intervention into families, procedures and goals for placing children in substitute care, and providing support to children and their caregivers define the agency's views of its obligations. These rules and policies, therefore, should be the starting place when a juvenile court addresses a claim that the agency has failed to discharge its duties to children and parents.

## APPENDIX – SOME RELEVANT DHS POLICIES

### I. 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;

### II. Rules regarding selection of out of home placement

**A. 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.

**B. 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.

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

**A. 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.

**B. 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.

**C. 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.

**D. 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.

**E. 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.

**F. 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.