DEPARTMENT OF HUMAN SERVICES
OFFICE OF CHILD WELFARE PROGRAMS

# CHAPTER 413
# DIVISION 70

# SUBSTITUTE CARE

*Effective 01/01/17*

## TABLE OF CONTENTS


**Definitions** ..... **2**

**Multiethnic Placements** ..... **17**

**Search for and Engagement of Relatives** ..... **20**

**Placement of Indian Children** ..... **28**

**Placement of Refugee Children** ..... **48**

**Psychotropic Medication Management** ..... **54**

**Legal Permanency, Concurrent Planning, Use of Permanency Committee** ... **62**

**Another Planned Permanent Living Arrangement** ..... **73**

**Special Immigrant Juvenile Status** ..... **84**

**Placement Matching** ..... **86**

**Guardianship as a Permanency Plan** ..... **94**

**Visits and Other Types of Child and Family Contact** ..... **99**

**Guardianship Assistance** ..... **106**

**Placement with a Fit and Willing Relative** ..... **130**

# Definitions

## 413-070-0000
## Definitions
*(Amended 10/06/15)*

The following definitions apply to OAR chapter 413, division 70.

(1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.

(2) "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.

(3) "Affected family members" means biological and legal parents, extended family members, and any person within the fifth degree of consanguinity to the *child*.

(4) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a *child* or *young adult*, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific *child* or *young adult*, activities or items that are suitable for the *child* or *young adult* based on the developmental stages attained by the *child* or *young adult* with respect to the cognitive, emotional, physical, and behavioral capacities of the *child* or *young adult*.

(5) "Antipsychotic medication" means a medication, specified in class 28:16:08 by the American Hospital Formulary Service, used to treat psychosis and other conditions.

(6) "APPLA" means Another Planned Permanent Living Arrangement, a *permanency plan* for a stable secure living arrangement for a *child* who has reached the age of 16 or *young adult* that includes building relationships with significant people in the child's life that may continue after *substitute care*. APPLA is the least preferred *permanency plan* of the five permanency plans for a *child* or *young adult* and is appropriate only after the

permanency plans of reunification, *adoption*, guardianship, and placement with a *fit and willing relative* have been determined not in the best interests of a *child* or *young adult*.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(7) "Assessment" means the determination of a *child* or young adult's need for mental health services through interviewing the *child* or *young adult* and obtaining all pertinent medical and psychosocial history information from the individual, family, and collateral sources. The "assessment" --

(a) Addresses the current complaint or condition presented by the *child* or *young adult*;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(8) "Base rate payment" means a payment to the *foster parent* or *relative caregiver* for the costs of providing the *child* or *young adult* with the following:

(a) Food, including the special or unique nutritional needs of the *child* or *young adult*;

(b) Clothing, including purchase and replacement;

(c) Housing, including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision, including teaching and directing to ensure safety and well-being at a level appropriate for the age of the *child* or *young adult*;

(e) Personal incidentals, including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) Transportation, including gas, oil, and vehicle maintenance and repair costs for local travel associated with providing the items listed above, and transportation to and from extracurricular, child care, recreational, and cultural activities.

(9) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a *child* or *young adult* for one or more of the following purposes:

(a) To identify case planning, service planning, and supervision needs of the *child* or *young adult* in *substitute care* with a certified family;

(b) To determine the *level of care payment* while in *substitute care* with a certified family; and

(c) To determine the *level of care payment* included in an adoption assistance agreement or *guardianship assistance agreement*.

(10) "Caregiver relationship" means a relationship between a person and a *child* or *young adult* that meets all of the following requirements:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A "caregiver relationship" does not include a relationship between a *child* or *young adult* and a person who is an unrelated *foster parent* of the *child* or *young adult* unless the relationship continued for a period of at least twelve consecutive months.

(b) The person had physical custody of the *child* or *young adult* or resided in the same household as the *child* or *young adult* and provided the *child* or *young adult* on a daily basis with the love, nurturing, and other necessities required to meet the psychological and physical needs of the *child* or *young adult*.

(c) The *child* or *young adult* depended on the relationship to meet the needs of the *child* or *young adult*.

(11) "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 419B.112.

(12) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific *relative caregiver* home, child-specific foster home, pre-adoptive home, or a regular foster home.

(13) "Child" means a person under 18 years of age.

(14) "Child-family contact" means communication between the *child* or *young adult* and family and includes, but is not limited to, visitation with the *child* or *young adult*, participation in the *child* or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.

(15) "Child's home" means the home from which the *child* is removed under the provisions of ORS 419B.150.

(16) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.

(17) "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.

(18) "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.

(19) "Cultural heritage" means the language, customary beliefs, social norms, and material traits including, but not limited to, the dress, food, music, and dance of a racial, religious, or social group that are transmitted from one generation to another.

(20) "Current caretaker" means a *foster parent* who:

(a) Is currently caring for a *child* in the care and custody of the Department and who has a *permanency plan* or *concurrent permanent plan* of *adoption*; and

(b) Has cared for the *child* or at least one *sibling* of the *child* for at least the past 12 consecutive months or for one-half of the child's or sibling's life if the *child* or *sibling* is younger than two years of age.

(21) "Department" means the Department of Human Services, Child Welfare.

(22) "Designee" means a person who the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.

(23) "Diligent search" means that, at a minimum, there will be contact with the child's tribal social service program, a search of all county or state listings of available Indian homes, and contact with local, regional, and national Indian programs that have placement resources available for Indian children.

(24) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the *child* or *young adult* when the *child* or *young adult* qualifies for a *level of care payment*.

(25) "Entity" means any organization or agency including, but not limited to a private child placing agency, that is separate and independent of the Department, performs functions pursuant to a contract or subcontract with the Department, and receives federal funds.

(26) "Extended family" has the meaning given by the law or custom of the *Indian child's tribe*. In the absence of law or custom, "extended family" means a person 18 or over who is the Indian child's *grandparent*, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(27) "Extended family member" means a person ordinarily recognized as the refugee child's *parent* by the custom of the child's culture, or a person 18 years of age or older who is the child's *grandparent*, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(28) "Family member" means any person related to the child or young adult by blood, marriage, or *adoption*, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, and great-grandparents. "Family member" also includes the *registered domestic partner* of a person related to the *child*, a *child* 12 years of age or older, and when appropriate, a *child* younger than 12 years of age. Under the Indian Child Welfare Act (ICWA), "family member" has the meaning given by the law or custom of the child's tribe.

(29) "Fit and willing relative" means an individual who meets the eligibility criteria in OAR 413-070-1010.

(30) "Foster care agency" means a private child-caring agency that offers to place children by taking physical custody of and then placing the children in a home certified by the agency.

(31) "Foster care placement" means any action removing, or which could result in the removal of, a *child* from his or her *parent* or *Indian custodian*, such as court-ordered supervision in the home, for placement in foster care, with a *guardian*, or in an institution where the *parent* or *Indian custodian* cannot have the *child* returned upon demand, but where parental rights have not been terminated.

(32) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated *child* or *young adult* placed in the home by the Department.

(33) "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*.

(34) "Grandparent" for purposes of visitation, contact, or communication ordered by the court under ORS 419B.876 means the legal parent of the *child* or young adult's legal parent, as defined in ORS 109.119.

(35) "Guardian" means an individual who has been granted guardianship of a *child* through a judgment of the court.

(36) "Guardianship assistance" means assistance provided by the Department to the *guardian* on behalf of an eligible *child* or *young adult* to offset costs associated with meeting the

ongoing needs of the *child* or *young adult*. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(37) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* or *guardian* setting forth the assistance the Department is to provide on behalf of the *child* or *young adult*, the responsibilities of the *guardian* and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(38) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* or *guardian* of an eligible *child* or *young adult*, when the *potential guardian* or *guardian* is not receiving a *guardianship assistance payment* or medical coverage at the time of the agreement but may request it at a later date.

(39) "Guardianship assistance base rate" means the portion of the *guardianship assistance payment* that is negotiated with the *potential guardian* or *guardian* and cannot exceed the amount of the Oregon foster care *base rate payment* for the *child* or young adult's age.

(40) "Guardianship assistance payment" means a monthly payment made by the Department to the *guardian* on behalf of the eligible *child* or *young adult*.

(41) "Guardianship Assistance Review Committee" means a committee composed of local and central office Department staff with expertise in the area of guardianship.

(42) "ICWA" means the Indian Child Welfare Act.

(43) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. A threat to a *child* that is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family function.

(44) "Incapacity" means a physical or mental illness, or impairment that reduces substantially or eliminates the individual's ability to support, care for, or meet the needs of the *child* and is expected to be permanent.

(45) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is at least 16 years of age and is in the care and custody of the Department and living independently.

(46) "Indian" means any person who is a member of or eligible for membership in an *Indian tribe* or who is an Alaskan native and a member of a Regional Corporation as defined in 43 USC section 1606.

(47) "Indian child" means an unmarried person under 18 years of age who is either a member of a federally-recognized *Indian tribe* or is eligible for membership in a federally-recognized *Indian tribe* and who is the biological child of a member of an *Indian tribe*.

(48) "Indian Child Welfare Act Manager" ("ICWA Manager") means staff who monitors Department policy and procedures towards compliance with the Indian Child Welfare Act; investigates complaints of non-compliance from tribes; provides consultation to caseworkers relating to law and administrative rules; and provides ICWA materials and training.

(49) "Indian child's tribe" means the *Indian tribe* in which an *Indian child* is a member or eligible for membership. In the case of an *Indian child* who is a member or eligible for membership in more than one *Indian tribe*, it is the *Indian tribe* with which the *Indian child* has the most significant contacts.

(50) "Indian custodian" means any *Indian* person who has legal custody of an *Indian child* under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the *parent* of such *child*.

(51) "Indian organization" means any group, association, partnership, corporation, or legal entity owned or controlled by Indians or a majority of whose members are Indians, such as an Indian Child Welfare Committee.

(52) "Indian tribe" means any "Indian tribe", band, nation, or organized group or community of Indians who are recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in 43 USC section 1606, and any tribe whose federal relationship has been terminated by congressional action.

(53) "Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996" ("IEPA") means section 1808 of the act which is entitled "Removal of Barriers to Interethnic Adoption", and affirms and strengthens the prohibition against discrimination in *adoption* or foster care placements, and is codified in 42 USC section 671(a)18.

(54) "Involuntary proceeding" means any action removing a *child* from a *parent* or *Indian custodian* and such *parent* or *Indian custodian* cannot have the *child* returned upon demand.

(55) "Judicial hours" means the number of hours a court is available to hold a hearing. Legal holidays and weekends do not count as "judicial hours".

(56) "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.

(57) "Level of care payment" means the payment provided to an approved or certified family, a *guardian*, a pre-adoptive family, or an adoptive family based on the need for *enhanced supervision* of a *child* or *young adult* determined by applying the CANS algorithm to the results of the *CANS screening*.

(58) "Licensed medical professional" means an individual who meets the criteria of both of the following subsections:

(a) The individual holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician assistant licensed to practice in the State of Oregon.

(b) The individual's training, experience, and competence demonstrate expertise in children's mental health, the ability to conduct a mental health *assessment*, and the ability to provide *psychotropic medication* management for children and young adults.

(59) "Medically accepted indication," defined in ORS 418.517, means any use for a covered outpatient drug that is approved under the Federal Food, Drug and Cosmetic Act, or recommended by the Pharmacy and Therapeutics Committee, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

(a) American Hospital Formulary Services drug information;

(b) United States Pharmacopoeia drug information or any successor publication;

(c) The DRUGDEX Information System; or

(d) Peer-reviewed medical literature.

(60) "Multiethnic Placement Act of 1994" means federal statutes which prohibit discrimination based on *race*, color, or national origin as considerations in *adoption* and foster placements.

(61) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* of an eligible *child* for a one-time payment to reimburse the *guardian* for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(62) "Nonrecurring guardianship expenses" means a one-time payment of up to $2,000 per *child* that the Department will make to a *guardian* to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible *child*.

(63) "Office of Developmental Disabilities Services" means the Department of Human Services, Office of Developmental Disabilities Services.

(64) "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.

(65) "Participating tribe" means a federally-recognized *Indian tribe* in Oregon with a Title IV-E agreement with the Department.

(66) "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*.

(67) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the *child* or *young adult*. 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 responsibility for the *child* or *young adult* during the remaining years of dependency and be accessible and supportive to the *child* or *young adult* in adulthood.

(68) "Permanent foster care" means the out of home placement of a *child* or *young adult* in which there is a long-term foster care agreement between each *substitute caregiver* and the Department approved by the juvenile court under which the *substitute caregiver* commits to raise a *child* in *substitute care* until the age of majority and be accessible to and supportive of the *child* into adulthood, until the court determines that APPLA - "permanent foster care" is no longer the appropriate *permanency plan* for the *child* or *young adult*.

(69) "Potential guardian" means an individual who:

(a) Has been approved by the Department or *participating tribe* to be the *guardian* of a *child*; and

(b) Is in the process of legalizing the relationship to the *child* through the judgment of the court.

(70) "Provider" means an individual approved by a licensed private child-caring agency to provide care for a *child* or *young adult*, or an employee of a licensed private child-caring agency approved to provide care for a *child* or *young adult*.

(71) "Psychotropic medication," defined in ORS 418.517, means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(72) "Qualified mental health professional" means an individual who meets the requirements of both of the following subsections:

(a) Holds at least one of the following educational degrees:

(A) Graduate degree in psychology;

(B) Bachelor's degree in nursing and is licensed by the state of Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational, art, or music therapy; or

(F) Bachelor's degree in occupational therapy and is licensed by the State of Oregon.

(b) Whose education and experience demonstrates the competencies to --

(A) Identify precipitating events;

(B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;

(C) Assess family, social, and work relationships;

(D) Conduct a mental status examination;

(E) Document a multiaxial DSM diagnosis;

(F) Develop and supervise a treatment plan;

(G) Conduct a mental health *assessment*; and

(H) Provide individual, family, or group therapy within the scope of his or her practice.

(73) "Race" means American *Indian* or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White.

(74) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(75) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a *child* or *young adult* while encouraging the emotional and developmental growth of the *child* or *young adult*, that a *substitute care* provider shall use when determining whether to allow a *child* or *young adult* in *substitute care* to participate in extracurricular, enrichment, cultural, and social activities.

(76) "Refugee child" has the meaning given the term in ORS 418.925.

(77) "Registered domestic partner" means an individual joined in a domestic partnership that is registered by a county clerk in accordance with ORS 106.300 to 106.340.

(78) "Relative" means any of the following:

(a) An individual with one of the following relationships to the *child* or *young adult* through the *parent* of the *child* or *young adult* unless the relationship has been dissolved by *adoption* of the *child*, *young adult*, or *parent*:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great. Individuals with one common biological parent are half-blood relatives.

(C) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(D) A spouse of anyone listed in paragraphs (A) to (C) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the *child* or *young adult* must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the *child* or *young adult*:

(A) A *sibling*, also to include an individual with a *sibling* relationship to the *child* or *young adult* through a putative father.

(B) An individual defined as a relative by the law or custom of the tribe of the *child* or *young adult* if the *child* or *young adult* is an *Indian child* under the Indian Child Welfare Act or in the legal custody of a tribe.

(C) An individual defined as a relative of a *refugee child* or *young adult* under OAR 413-070-0300 to 413-070-0380.

(D) A stepparent or former stepparent if the *child* or *young adult* had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(E) A *registered domestic partner* of the *parent* of the *child* or *young adult* or a former *registered domestic partner* of the *parent* of the *child* or *young adult* if the *child* or *young adult* had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(F) The adoptive parent or an individual who has been designated as the *adoptive resource* of a *sibling* of the *child* or *young adult*.

(G) An unrelated legal or biological father or mother of a half-sibling of the *child* or *young adult* when the half-sibling of the *child* or *young adult* is living with the unrelated legal or biological father or mother.

(c) An individual identified by the *child* or *young adult* or the family of the *child* or *young adult*, or an individual who self-identifies, as being related to the *child* or *young adult* through the *parent* of the *child* or *young adult* by blood, *adoption*, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (C) of subsection (a) of this section unless the relationship has been dissolved by *adoption* of the *child*, *young adult*, or *parent*.

(d) An individual meeting the requirements of at least one of the following:

(A) An individual not related to the *child*, *young adult*, or *parent* by blood, *adoption*, or marriage:

(i) Who is identified as a member of the family by the *child* or *young adult* or by the family of the *child* or *young adult*; and

(ii) Who had an emotionally significant relationship with the *child* or *young adult* or the family of the *child* or *young adult* prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the *child* or *young adult* as described in paragraphs (A) to (C) of subsection (a) of this section through the birth parent of the *child* or *young adult*, but the prior legal relationship has been dissolved by *adoption* of the *child*, *young adult*, or birth parent,

and who is identified as a member of the family by the *child* or *young adult* or who self-identifies as a member of the family.

(e) For eligibility for the *guardianship assistance* program:

(A) A stepparent is considered a *parent* and is not a "relative" for the purpose of eligibility for *guardianship assistance* unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the *child* has been terminated by divorce or death.

(B) A *foster parent* may only be considered a "relative" for the purpose of eligibility for *guardianship assistance* when:

(i) There is a compelling reason why *adoption* is not an achievable *permanency plan*;

(ii) The *foster parent* is currently caring for a *child*, in the care or custody of the Department or a *participating tribe*, who has a *permanency plan* or *concurrent permanent plan* of guardianship;

(iii) The *foster parent* has cared for the *child* for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the *foster parent* for consideration as a *guardian*.

(79) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related *child* or *young adult* placed in the home by the Department.

(80) "Relative search" means the efforts of the Department to identify, locate, and document the contact with a *child* or young adult's relatives.

(81) "Reservation" means Indian country as defined in 18 USC section 1151, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any *Indian tribe* or individual or held by any *Indian tribe* or individual subject to a restriction by the United States against alienation.

(82) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(83) "Secretary" means the Secretary of the Interior.

(84) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

(a) By blood or *adoption* through a common *parent*;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the *registered domestic partner* of the legal or biological parent of the children or young adults.

(85) "Special immigrant juvenile status" means a legal process to obtain lawful permanent resident status for a *child* who does not have lawful permanent resident status because he or she entered the United States without inspection and who meets the other criteria required by federal law.

(86) "Substitute care" means the out-of-home placement of a *child* or *young adult* who is in the legal or physical custody and care of the Department.

(87) "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.

(88) "Successor legal guardian" means an individual who has been named in the *guardianship assistance agreement*, including any amendments to the agreement, as a replacement legal *guardian* in the event of the death or *incapacity* of the *guardian*.

(89) "Supervised visit" means a *child-family contact* that includes a designated third party to protect the emotional and physical safety of a *child* or *young adult*.

(90) "Termination of parental rights" means an action which results in the termination of the parent-child relationship.

(91) "Title VI of Civil Rights Act of 1964" prohibits discrimination on the basis of *race*, color or national origin under programs receiving federal assistance through the United States Department of Health and Human Services.

(92) "Tribal court" means the court which holds jurisdiction over Indian child custody proceedings and is either a Court of Indian Offenses, a court established and operated under code or custom of an *Indian tribe*, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(93) "Urgent medical need" means the onset of psychiatric symptoms requiring professional attention within 48 hours to prevent a serious deterioration in a *child* or young adult's mental or physical condition.

(94) "Visit" means planned, in-person contact between the *child* or *young adult* and one or more family members.

(95) "Voluntary proceeding" means any action in which a *parent* or *Indian custodian* has voluntarily given custody of his or her *child* to another and such voluntary action does not prohibit the *parent* or *Indian custodian* from regaining custody of the *child* at any time.

(96) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419A.004

# Multiethnic Placements

## 413-070-0010
## Purpose and Applicability
*(Amended 07/17/15)*

(1) OAR 413-070-0010 to 413-070-0030 implement the *Multiethnic Placement Act of 1994*, which applies to all activities of the Department and to all private child placement and adoption agencies who directly or indirectly receive federal funds.

(2) The purpose of OAR 413-070-0010 to 413-070-0030 is to:

(a) Decrease the length of time a *child* waits to be adopted;

(b) Prevent discrimination in foster care and *adoption*; and

(c) Promote the recruitment of ethnic and minority families that reflect the children in the child welfare system. These rules establish a policy of non-discrimination in the practice of foster and adoptive placement of children, and in the recruitment and selection of family resources.

(3) OAR 413-070-0010 to 413-070-0030 do not apply to the placement of children pursuant to the Indian Child Welfare Act. In the case of an *Indian child*, the Department and *entity* follow the Indian Child Welfare Act and OAR 413-070-0100 to 413-070-0260.

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

## 413-070-0015
## Denials or Delays of Placement Based on Race, Color or National Origin Prohibited
*(Amended 07/17/15)*

(1) In making placement decisions, the Department and *entity* must be guided by the best interest of the *child*. Placements must be made in the context of an individualized assessment of the needs of the *child*, and an assessment of the ability of a potential foster or adoptive family to meet those needs.

(2) Except as provided in section (3) of this rule the Department and *entity* may not delay or deny the placement of a *child* for *adoption* or into foster care on the basis of the *race*, color, or national origin of the adoptive or *foster parent* or the *child* involved or consider the *race*, color, or national origin of a *child* or of a prospective adoptive or *foster parent* as factors in making adoptive or foster placement decisions.

(3) The Department and *entity* may only consider the *race*, color, or national origin when an individualized assessment of the *child* identifies compelling special circumstances, such as an older child's statement of preference, and consideration of *race*, color, or national origin in the placement decision is the only way to achieve the best interest of that *child*.

(4) The Department and *entity* may consider the needs of a *child* related to *cultural heritage*, such as specific language needs, when making individualized placement decisions. However, the Department and *entity* may not use routine *cultural heritage* assessments as a substitute for considering *race*, color, or national origin or otherwise considering the *cultural heritage* needs of a *child* in a manner that would circumvent the general prohibition against considering the *race*, color, or national origin of a *child* when making placement decisions.

(5) The Department and *entity* may not honor the request of birth parents to place their *child* who was either voluntarily or involuntarily removed, with adoptive or foster parents of a specific racial, ethnic, or cultural group, except as provided in section (2) of this rule.

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

## 413-070-0020
## Denial of Opportunity to Be an Adoptive or Foster Parent Based on Race, Color, or National Origin Prohibited
*(Amended 07/17/15)*

(1) Except as provided in section (2) of this rule, the Department and *entity* may not deny to any individual the opportunity to become an adoptive or *foster parent* on the basis of the *race*, color, or national origin of the individual or the *child* involved, nor may the Department and *entity* use *race*, color, or national origin to screen or assess prospective foster or adoptive applicants.

(2) The Department and *entity* may consider the willingness and ability of the prospective foster or adoptive parent to care for a *child* of a different *race*, color, or national origin as a factor when placing a *child*.

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

## 413-070-0030
## Recruitment and Staff Training
*(Amended 07/17/15)*

(1) The Department and *entity* must have an active recruitment program to recruit and retain foster and adoptive parents who reflect the ethnic and racial diversity of children for whom foster and adoptive homes are needed, and who can meet the needs of children awaiting placement.

(2) The Department must train staff to assure compliance with the *Multiethnic Placement Act of 1994*, and Title VI of the Civil Rights Act of 1964.

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

# Search for and Engagement of Relatives

## 413-070-0060
## Purpose
*(Amended 07/17/15)*

OAR 413-070-0060 to 413-070-0087 describe the Department's responsibility to search for and engage a *child* or young adult's relatives and persons with a *caregiver relationship* for one or more of the following purposes:

(1) To manage the safety of the *child* or *young adult*;

(2) To provide a *substitute care* resource;

(3) To provide a permanent placement resource;

(4) To develop and maintain family relationships and cultural connections with the *child* or *young adult* in *substitute care*; and

(5) To gather family information and family history to plan for meeting the needs of the *child* or *young adult*.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

## 413-070-0069
## Identification of Relatives and Persons with a Caregiver Relationship
*(Amended 07/17/15)*

(1) The Department must begin the search for relatives or persons with a *caregiver relationship*:

(a) During a CPS assessment when the Department has determined that a *child* is unsafe and an individual other than the *parent* or *guardian* is required to manage a child's safety; or

(b) When a *parent* or *guardian*:

(A) Is requesting the voluntary placement of the *child*; or

(B) Is voluntarily giving custody of the *child* to the Department.

(2) The Department may use, but is not limited to using, the following resources to identify or locate a *child* or young adult's relatives, the parents of a *sibling* of a *child* where the *parent* has custody of the *sibling*, and persons with a *caregiver relationship*:

(a) An individual identified as a *relative* by the *child* or *young adult* or the family of the *child* or *young adult*;

(b) An individual thought or known by the Department to be a *relative* of the *child* or *young adult*;

(c) Oregon data information systems available to the Department;

(d) The Internet;

(e) Collateral contacts; and

(f) Other community resources available to search for the identity and contact information of relatives or persons with a *caregiver relationship*.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

## 413-070-0072
## Contact with Relatives or Persons with a Caregiver Relationship
*(Amended 07/17/15)*

(1) Unless a child welfare program manager or *designee* approves no contact, or a court orders no contact, with an identified individual because contact may compromise the safety of a *child* or *young adult* or another individual, the Department must make diligent efforts to contact the following individuals as soon as reasonably possible and no later than 30 calendar days after a child's initial removal from the custody of a *parent* or *guardian*, or placement in *substitute care* through a voluntary placement agreement or voluntary custody agreement:

(a) The *child* or young adult's parents or legal guardians, grandparents, parents of a *sibling* of a *child* where the *parent* has custody of the *sibling*, adult relatives, and persons with a *caregiver relationship*;

(b) When the *child* or *young adult* is a refugee, other individuals identified in OAR 413-070-0300 to 413-070-0380; and

(c) When the *child* or *young adult* is an *Indian child*, the tribe, pursuant to OAR 413-070-0100 to 413-070-0260.

(2) During the contact required under section (1) of this rule, the Department must:

(a) Provide notice in the individual's primary language that specifies:

(A) Whether the *child* or *young adult* has been removed from the custody of a *parent* or *guardian* to manage child safety or has been placed in *substitute care* through a voluntary placement agreement or voluntary custody agreement;

(B) Whether the *child* or *young adult* is currently residing with a *relative*;

(C) The opportunities and requirements associated with being assessed as a *safety service provider*;

(D) The opportunities and requirements associated with being assessed to become a *relative caregiver*; and

(E) The rights of relatives set forth in OAR 413-010-0300 to 413-010-0340, and the statutes governing intervention, limited participation, and post-adoption communication agreements.

(b) Request the names of other relatives not previously identified.

(3) The Department must document in the Department's information system:

(a) The approval not to contact an individual under section (1) of this rule;

(b) The name of each individual with whom the Department attempted or made contact;

(c) The individual's relationship to the *child* or *young adult*;

(d) The type of contact;

(e) Each individual's response to the notice required in subsection (2)(a) of this rule when a response is received; and

(f) The individual's contact information.

(4) The Department must respond to inquiries from a *relative* in person or by telephone as soon as reasonably possible and no later than within 15 business days. When a telephone number or opportunity to meet in person has not been provided, the Department must contact the individual by other means, including by mail or electronic mail.

(5) The caseworker may utilize any meeting or other contact with the family to identify and communicate with relatives for the purposes set forth in OAR 413-070-0060.

(6) Whenever the Department is provided the name of a *relative* or person with a *caregiver relationship* previously unknown to the Department, the Department must:

(a) Document the name and contact information in the Department's information system;

(b) Attempt to contact the individual as soon as reasonably possible and no later than within 15 business days; and

(c) Provide notice as required by sections (1) and (2) of this rule.

(7) When the Department is unable to locate contact information for an identified *relative* or person with a *caregiver relationship*, the Department must document the efforts to obtain contact information in the Department's information system.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

## 413-070-0075
## Assessment of a Relative or Person with a Caregiver Relationship for Involvement in Safety Management
*(Amended 07/17/15)*

(1) The Department must assess an individual identified as a *child* or young adult's *relative* or person with a *caregiver relationship* prior to engaging the individual to assist in safety management as a *safety service provider* under OAR 413-015-1200 to OAR 413-015-1230.

(2) The Department must document each decision regarding the involvement of a *relative* or person with a *caregiver relationship* as a *safety service provider* in the Department's information system.

(3) The Department may make a decision to engage an individual as a *safety service provider* prior to contacting all known relatives.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

## 413-070-0078
## Consideration of a Relative or Person with a Caregiver Relationship as a Substitute Care Resource
*(Amended 07/17/15)*

(1) The Department is responsible for the selection of and placement with a *substitute caregiver* who best meets the safety, permanency, and well-being needs of the *child* or *young adult*.

(2) The Department considers as a *substitute care* resource an individual described in OAR 413-070-0000(78)(a) - (c) prior to considering an individual described in OAR 413-070-0000(78)(d).

(3) Whenever possible, the Department must seek the input of the *child* or *young adult* and the parents or guardians of the *child* or *young adult* regarding their preferences of which relatives to assess for the purposes of placement.

(4) When a *relative* or person with a *caregiver relationship* has been identified for consideration as a *substitute caregiver*, the Department must consider:

(a) The individual's ability to provide safety for the *child* or *young adult*, including the individual's willingness to cooperate with restrictions on contact between the *child* or *young adult* and others and to prevent anyone from influencing the *child* or *young adult* on the allegations of the case;

(b) The individual's ability to meet the *child* or young adult's physical, emotional, and educational needs, including the need to continue in the same school or educational placement;

(c) The individual's ability to support the Department's implementation of the permanent plan;

(d) When more than one individual requests to have the *child* or *young adult* placed with them, which individual has the closest existing relationship with the *child* or *young adult*; and

(e) When a *child* or young adult's siblings are also in need of *substitute care* or continuation in *substitute care*, the individual's ability to provide *substitute care* for the *child* or young adult's siblings.

(5) The Department must continue efforts to contact other individuals identified in the search efforts described in OAR 413-070-0069 for the purposes of assessment as a *substitute caregiver* when the initial efforts described in this rule did not result in the identification and certification of a *relative caregiver* for the *child* or *young adult*.

(6) The Department may place a *child* in *substitute care* with a *relative* prior to contacting all known relatives.

(7) When a *child* or *young adult* must be placed in *substitute care* and the Department is unable to place the *child* or *young adult* with a *relative* at the time of initial placement, the Department must determine the *substitute care* placement in the order of preference in OAR 413-070-0625.

(8) When the Department is considering placement with an individual who lives in a state other than Oregon, OAR 413-040-0200 to 413-040-0330 apply.

(9) At each court hearing, the Department must report to the court the diligent efforts the Department has made to place a *child* or *young adult* with relatives and to place siblings together.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

## 413-070-0081
## Review of a Child or Young Adult's Substitute Care Placement
*(Amended 07/17/15)*

(1) The Department must review the efforts to place a *child* or *young adult* with a *relative* or person with a *caregiver relationship*:

(a) No more than 30 calendar days from the date of the *child* or young adult's initial placement in *substitute care*;

(b) When the family of a *child* or *young adult*, through a family meeting, has recommended *substitute care*, permanency, or concurrent permanency with a *relative* who is not the current substitute care resource and has not yet been assessed;

(c) When it appears a *child* or *young adult* is likely to experience or experiences a change in *substitute caregiver*;

(d) When the *child* or young adult's *substitute caregiver* does not meet the safety, permanency, and well-being needs of the *child* or *young adult*;

(e) During every regular case review described in OAR 413-040-0000 to 413-040-0032; and

(f) No more than 30 calendar days prior to a court or administrative review hearing.

(2) As part of the review in section (1) of this rule, the Department must determine:

(a) Whether the *child* or *young adult* and his or her siblings, if the siblings are also in *substitute care*, have been placed with a *relative* or person with a *caregiver relationship*;

(b) If placement has not occurred, the current efforts to identify a *relative* or person with a *caregiver relationship* able and willing to provide *substitute care*;

(c) The additional contact with and assessment of identified relatives necessary to achieve placement with a *relative*; and

(d) When a *child* or *young adult* is placed with a *relative* or person with a *caregiver relationship*, whether the *substitute caregiver* is able to best meet the safety and well-being needs of the *child* or *young adult* as described in OAR 413-070-0600 to 413-070-0645.

(3) The caseworker must document in the Department's information system:

(a) The date of the review required under section (1) of this rule;

(b) The names of each individual who participated in the review;

(c) Whether and how the placement of a *child* or *young adult* with a *relative* or person with a *caregiver relationship* has been met and whether siblings have been placed together; and

(d) Recommended actions, including any additional actions the Department will take to place a *child* or *young adult*, and his or her siblings, if the siblings are also in *substitute care*, with a *relative* or person with a *caregiver relationship* in a placement resource that meets the safety, permanency, and well-being needs of the *child* or *young adult*.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

## 413-070-0087
## Opportunity for Ongoing Connection and Support
*(Amended 07/17/15)*

(1) The caseworker must assess a relative's interest and appropriateness in maintaining family relationships and cultural connections with a *child* or *young adult* when the *relative* is not a placement resource, based on the relative's ability to:

(a) Meet the safety, permanency, and well-being needs of the *child* or *young adult*; and

(b) Provide appropriate ongoing support.

(2) When a *relative* or person with a *caregiver relationship* meets the criteria described in section (1) of this rule, the caseworker must provide the *child* or young adult's *relative*, including a *relative* who resides outside the state of Oregon, with ongoing opportunities to develop and maintain family relationships and cultural connections with the *child* or *young adult* that support the safety and well-being needs of the *child* or *young adult* while the *child* or *young adult* remains in *substitute care*.

(3) The parameters of a relative's contact with and support of the *child* or *young adult* are documented in the Department's information system.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

# Placement of Indian Children

## 413-070-0100
## Policy Statement and Purpose of Rules
*(Amended 01/01/02)*

(1) On November 8, 1978, under its power over Indian affairs and its "responsibility for the protection and preservation of Indian tribes and their resources," Congress enacted the Indian Child Welfare Act (the Act or ICWA) of 1978. The Act was passed because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children" by courts and welfare departments and placed in non-Indian homes and institutions.

(2) The Act sets forth that it is the policy of this nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families. Further, placement of such children will be made in foster or adoptive homes which will reflect the unique values of Indian culture.

(3) This remedial aspect of the Indian Child Welfare Act establishes the manner in which the administrative rules will guide the Department of Human Services (DHS) in adhering to the letter and spirit of the Act.

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

## 413-070-0130
## Applicability
*(Amended 07/17/15)*

(1) General:

(a) The Indian Child Welfare Act affects all placements of Indian children taking place after May 8, 1979, and also applies to changes or possible changes in placement of Indian children already under DHS authority as a result of a proceeding prior to May 8, 1979.

(b) The Act does not cover the full range of procedures involved in a juvenile court proceeding; where it is silent, the usual state court procedure should be followed. Under constitutional law, the federal Act takes precedence where it conflicts with state law. When the state law affords a higher standard of protection of the rights of the parents or *Indian custodian*, it applies.

(2) Exceptions. Child custody proceedings not covered by the Act are:

(a) An award of custody to one of the parents in a divorce proceeding; and

(b) A placement based upon an act which, if committed by an adult, would be a crime (unless the juvenile delinquency proceeding results in the termination of a parental relationship).

(3) Although initial placements of an *Indian child* based upon a law violation may not be covered by the Act, subsequent placements resulting from petitions alleging dependency, or status offenses that can only be committed by a minor, such as runaway or beyond control, are covered by the Act.

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

## 413-070-0140
## Department Authority
*(Amended 07/17/15)*

Once it is found that an *Indian child* is involved, and the tribe or tribes who have an interest have been determined, the authority of the Department must be established. In some instances, the Department will have no authority to become involved in the case:

(1) Exclusive Tribal Jurisdiction. Indian tribes have exclusive jurisdiction over child custody proceedings involving children who reside or have a permanent home on an Indian *reservation*. The only exception is where Congress has transferred jurisdiction over family welfare matters to a state and the tribe in that state has not completed an administrative process to reassume exclusive jurisdiction.

(2) Tribal Court Ward. The Department has no authority in cases involving an *Indian child* who is a ward of a *tribal court*. Department staff must ask the child's parents or *Indian custodian* if the *child* is a ward of the *tribal court*. If there is reason to believe that the *child* has previously resided or been domiciled on the *reservation*, the caseworker must contact the *tribal court* to determine whether the *child* is a ward of that court. If so, except as follows, the Department has no authority over the *child*.

(3) Emergency Removal-Limited Authority. Notwithstanding sections (1) and (2) of this rule, if an *Indian child* who resides or has a permanent home on any Indian *reservation* is off the *reservation* and is in danger of suffering imminent physical damage or harm, the Department has authority to take custody regardless of whether the *child* is a ward of the *tribal court* or the tribe has exclusive jurisdiction. This authority is subject to the requirements set forth in OAR 413-070-0150.

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

## 413-070-0150
## Emergency Removals
*(Amended 07/17/15)*

(1) The Department may take emergency protective custody of any *Indian child* who resides or is domiciled on a *reservation*, but who is temporarily located off the *reservation*, regardless of the jurisdictional status of his or her tribe as long as the following criteria are met:

(a) The *child* is not located on a *reservation* where the tribe has exclusive jurisdiction over child custody matters; and

(b) The *child* is in danger of imminent physical damage or harm.

(2) Whenever a *child* is taken into protective custody, Department staff must inquire as to the child's racial or ethnic background, unless circumstances do not permit such routine inquiry. In such cases, Department staff must determine racial or ethnic background as described in OAR 413-070-0170(1).)

(3) If there is reason to believe the *child* may be *Indian*, and in order to determine if the tribe has exclusive jurisdiction, Department staff must immediately inquire as to the child's residence or domicile (since the *child* may be a resident of or domiciled on a *reservation* but is temporarily off the *reservation*). If the *child* is believed to be an *Indian child*, efforts must be made to place the *child* during emergency custody in a setting which follows the placement priorities established by the Indian Child Welfare Act or the tribe and set forth in OAR 413-070-0220.

(4) Emergency custody must be terminated when:

(a) Emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the *child*; or

(b) The appropriate tribe exercises jurisdiction over the case.

(5) In order to terminate an emergency removal or placement, the Department must return the *child* to his or her *parent*, or the caseworker must initiate an expeditious transfer of jurisdiction to the appropriate *Indian tribe*. If termination of an emergency removal or placement is not possible, the Department must obtain a court order authorizing continued protective custody within 24 *judicial hours* of the removal or placement. The petition filed in such proceeding must contain the following, in addition to that information required by state law:

(a) The name, age, tribal affiliations and last known address of the *Indian child*;

(b) The name and address of the child's parents and Indian custodians, if any, and tribe. If unknown, the Department must provide a detailed explanation of efforts made to locate them;

(c) If known, whether the residence or domicile of the parents, Indian custodians, or *child* is on or near a *reservation*, and which *reservation*;

(d) A specific and detailed account of the circumstances which led the Department to conclude that the *child* would suffer imminent physical damage or harm;

(e) A specific plan of action the Department is following, including services provided, to restore the *child* to the child's *parent* or *Indian custodian*, or to transfer the *child* to the jurisdiction of the appropriate *Indian tribe*.

(6) Where the danger to the *Indian child* persists and the child's tribe does not have exclusive jurisdiction and will not request transfer of the case to its court, the caseworker must, in consultation with the child's parents and tribe, if known, explore available placement resources which meet the placement requirements in OAR 413-070-0220.

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

## 413-070-0160
## Remedial Services
*(Amended 07/17/15)*

(1) Subsequent to an investigation and prior to a determination of the need for out-of-home placement services, the caseworker must offer the provision of services of a remedial nature designed to rehabilitate and prevent the breakup of Indian families to the same extent that they are available to non-Indian families when eligible.

(2) To reduce the potential for cultural bias when evaluating home and family conditions and making decisions affecting Indian children and families, the Department must involve Indian tribes and organizations at the earliest possible point in intervention. Services in the community specifically designed for Indian families are to be used where available, including resources of the *extended family*, the tribe, urban Indian organizations, tribal family service programs and individual Indian caregivers. Individual Indian caregivers may include medicine men and other individual tribal members who may have developed special skills that can be used to help the child's family succeed.

(3) Prior to initiating a petition before a state court for *foster care placement* or *termination of parental rights*, the caseworker must undertake active efforts to provide remedial services and rehabilitative programs to the family designed to prevent its breakup.

(4) In order to demonstrate that active efforts have been made, the caseworker must:

(a) Assure that due consideration has been given to the cultural needs and values of the family and that resources have been diligently sought to provide family services. Such assurances may be demonstrated by the following:

(A) Making direct contacts with the family, including the *parent* or *Indian custodian*, the *child* and members of the *extended family*, if known or available;

(B) Making an evaluation of the circumstances of the family taking into account the prevailing social and cultural conditions and way of life of the child's tribe and the Indian community;

(C) Intervening in the parent-child or Indian custodian-child relationship only when intervention is supported by relevant prevailing Indian social and cultural standards regarding intervention into familial relationships by nonfamily members;

(D) Providing a plan formulated with direct collaboration of the *parent* or *Indian custodian*, taking into account prevailing social and cultural conditions, designed to effectively address and eliminate problems destructive to the family involving:

(i) Extended family members;

(ii) Tribal social service programs;

(iii) Tribal organization programs aimed at preventing family breakup;

(iv) Traditional tribal community therapy practices, administered by Indian practitioners, where available and applicable. This includes spiritual leaders, medicine men, and other individual tribal members who have developed special skills that can be used to help the child's family succeed.

(E) Providing time and resources in prevention of family breakup in equal measure to time and resources devoted by the Department to all families;

(F) Assuring that while efforts at prevention of family breakup are proceeding, the *parent* or *Indian custodian* and the *child* are encouraged to maintain an ongoing familial relationship in ways that are socially and culturally compatible with the values of the child's Indian community;

(G) Having a plan that encourages maintenance of the *Indian child* in the familial residence of the *Indian child* except when to do so would result in serious physical or emotional harm; and

(H) Providing that where the *Indian child* is of sufficient age, the *Indian child* is involved in the design and implementation of the plan to prevent family breakup.

(b) Demonstrate to the court that such efforts were made prior to the filing of the petition, including an account of the efforts made and why they failed.

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

## 413-070-0170
## ICWA Procedures at Initial Contact
*(Amended 10/01/15)*

This section presents the initial steps to follow in providing services and taking legal action for child custody proceedings covered by the ICWA.

(1) Determination of Indian Status:

(a) Oral inquiry must be made in every case which involves or could involve changes in custody to determine whether the case involves an *Indian child*. Department staff must routinely request racial or ethnic data of parents or *guardian* by reading aloud from the intake form the racial and ethnic categories for the client's self-identification. If the child's parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their *child*, Department staff must consider:

(A) All documentation in the file, including contact with previous caseworkers, if any;

(B) Close observation of the physical characteristics of the *child*, parents, and other siblings or relatives accompanying the *child*;

(C) Consultation with relatives and collateral contacts providing information which suggests the *child* or *parent* may be *Indian*; and

(D) Examination of any other information bearing on the determination of the child's Indian heritage, such as communication from other sources including Indian tribes and organizations.

(b) If, in following the above steps, information obtained suggests the *child* may be of Indian heritage but the tribe cannot be determined, staff must contact the Department ICWA Manager to determine if:

(A) The birth place of the *child* or *parent*, or the current or former residence of the *child* or *parent* is known to be a common residence of Indian families; and

(B) The surname of the *child* or *parent* is one which is known to be common among members of Indian tribes.

(2) Determination of Indian Tribe. If it appears the *child* is of Indian heritage, the caseworker must determine the tribe in which the *child* is a member or eligible for membership. Department staff must ask the *parent* or custodian of the *child* about the tribe with which the *child* may be affiliated. If this inquiry does not provide the necessary information, Department staff must, at a minimum, contact the following:

(a) Relatives and extended family members.

(b) Indian tribes and organizations in Oregon, such as the Commission on Indian Services.

(c) The appropriate Bureau of Indian Affairs (BIA) Office.

(3) ICWA Eligibility. For a *child* to be considered an Indian under ICWA, the *child* must be:

(a) An unmarried person under the age of eighteen; and

(b) A person who is either a member of a federally-recognized *Indian tribe* or eligible for membership in a federally-recognized *Indian tribe* and the biological child of a member of an *Indian tribe*;

(c) In order for the worker to determine if the *child* is a tribal member or eligible for membership, the tribe or possible tribes identified must be contacted.

(4) Tribal Membership:

(a) A tribal determination of membership is conclusive because each tribe defines the criteria for membership in the tribe and determines who meets those criteria. Inquiries to the tribe must be sent "Return Receipt Requested" to a membership committee, an enrollment clerk, or individual who is accustomed to responding to questions about tribal membership.

(A) If the tribe does not respond, Department staff must contact the tribe by telephone. If the tribe cannot be reached by phone, the caseworker must contact the local Bureau of Indian Affairs Area Office and the ICWA Manager for assistance.

(B) The caseworker must request that all information given be treated confidentially.

(b) If the *child* is a member of one tribe and eligible for membership in others, the tribe of actual membership is the child's tribe. If the *child* is not now a member of a tribe, the caseworker must ascertain whether the *child* is eligible for membership and is the biological child of a member of a federally-recognized *Indian tribe*. To do this, the caseworker asks:

(A) The *child*, when the *child* is old enough to respond;

(B) The parents or relatives, including in-laws, as appropriate; and

(C) The tribe.

(5) Out-of-State Tribes. When an *Indian child* is a member of or eligible for membership in a federally-recognized tribe located in another state, the Act applies and all applicable provisions, including provisions governing notification of the tribe, must be followed.

(6) Multi-Tribal Membership:

(a) The *child* may be eligible for membership in more than one tribe. In that case the *Indian child's tribe* is the tribe with which the *child* has the most significant contacts. In considering with which tribe the *child* has the most significant contacts, the caseworker shall investigate:

(A) The length of residence on or near the *reservation* of each tribe and the frequency of contacts with each tribe;

(B) The child's participation in activities of each tribe;

(C) The child's fluency in the language of each tribe;

(D) Whether there has been a previous adjudication with respect to the *child* by a court of one of the tribes;

(E) Residence on or near one of the tribes' *reservation* of the child's relatives;

(F) Tribal membership of custodial *parent* or *Indian custodian*; and

(G) Interest asserted by each tribe in response to the notice specified in OAR 413-070-0210.

(b) Documentation of such investigation shall be submitted to the court so that it can consider the comparative interests of each tribe in the child's welfare in making its decision on the matter.

(7) Enrollment of Indian Clients. If the *child* is not a member of the child's tribe, but is applying to become a member, the caseworker must proceed as though the *child* is a member and follow the requirements of the Act. Department staff must assist the family in filling out and returning required paperwork to the appropriate tribe and, as necessary, counsel parents hesitant to enroll a *child* by emphasizing the positive benefits of tribal enrollment and membership.

(8) ICWA Not Applicable. Once determined, tribal status must be clearly documented in the case record, along with the date and source of documentation. An *Indian child* who is officially determined by the tribe not to be a member of nor eligible for membership is not subject to the requirements of the Indian Child Welfare Act. In such cases, Department staff must:

(a) Document in the case record steps taken to determine the child's Indian or tribal ancestry and the tribe's written statement declaring the *child* ineligible for membership; and

(b) Incorporate in any court hearing the tribe's written statement declaring the *child* ineligible for membership.

(9) Cultural Heritage Protection. In instances where the ICWA does not apply, but the *child* is biologically an *Indian* or considered an *Indian* by the Indian community, the Department must respect the child's right to participate in the culture of origin in case planning, particularly if the *child* is identifiably Indian by physical features or social relationship.

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

## 413-070-0180
## Tribal-State Agreement
*(Amended 07/17/15)*

These rules may be superseded by an agreement signed between the state and a particular tribe. Such agreement must be available in the Assistant Director's Office of Child Welfare Programs.

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

## 413-070-0190
## Documentation of Serious Emotional or Physical Damage to Child Prior to Removal
*(Amended 07/17/15)*

(1) Prior to removal of the *child* from a parent or *Indian custodian* and initiation of court proceedings, Department records must contain documentation demonstrating that:

(a) It is likely that the conduct or condition of the parents will result in serious physical or emotional harm to the *child*; and

(b) If it is likely that such harm will occur, efforts have been made to counsel and change the behavior of the *parent* or *Indian custodian* and have not worked.

(2) In making such a determination, Department staff must relate indications of the likelihood of serious emotional or physical damage to particular conditions in the home, showing a causal relationship between the conditions and the serious damage which is likely to result to the *child*. For example, it is not adequate to show that the *parent* abuses alcohol. It is necessary to show how, because of alcohol abuse, the *parent* may cause emotional or physical damage to the *child*.

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

## 413-070-0200
## Element of Proof
*(Amended 07/17/15)*

(1) Foster Care Placement. In order to ask the court to authorize the placement of the *child* in foster care, the Department must demonstrate to the court by clear and convincing evidence, including the testimony of one or more qualified expert witnesses as defined in section (3) of this rule, that continued custody of the *child* with the *parent* or *Indian custodian* is likely to result in serious emotional or physical damage to the *child*.

(2) Termination of Parental Rights. In order to ask the court to terminate parental rights, the Department as petitioner must show the court by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses as defined in section (3) of this rule, that continued custody of the *child* by the *parent* or *Indian custodian* is likely to result in serious emotional or physical damage to the *child*.

(3) Qualified Expert Witnesses. The following individuals are most likely to meet the requirements of a qualified expert witness for purposes of Indian child custody proceedings:

(a) A member of the *Indian child's tribe* who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;

(b) A lay person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the *Indian child's tribe*; or

(c) A professional person having substantial education and experience in the area of his or her specialty along with substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.

(d) This list is not meant to be exhaustive or limited in any fashion. The caseworker should enlist the assistance of the *Indian child's tribe* or the ICWA Manager in locating persons qualified to serve as expert witnesses. The BIA is also required to provide this assistance.

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

## 413-070-0210
## Involuntary Proceedings
*(Amended 07/17/15)*

(1) Notice. Except for emergency placements made pursuant to OAR 413-070-0150, Department staff must not request a court proceeding to authorize *foster care placement* of an *Indian child* until the following time frames have been met:

(a) Not less than ten days after receipt of notice by the *parent* or *Indian custodian*, or thirty days after receipt of notice by the *parent* or *Indian custodian* if an additional twenty days has been requested by the *parent* or *Indian custodian* to prepare for the proceeding;

(b) Not less than ten days after the *Indian child's tribe* has received notice, or thirty days after the *Indian child's tribe* has received notice if an additional twenty days has been requested to prepare for the proceeding; and

(c) Not less than fifteen days after the receipt of the notice by the Secretary of the Interior.

(2) The caseworker is responsible for providing notice to the parties listed below, notifying the court of Department requirements, and requesting a hearing not be scheduled until the time limits in section (1) of this rule have been met:

(a) Notice to Parent or Indian Custodian. The *parent* of an *Indian child* must always receive notice. An *Indian custodian*, if any is involved, should also receive notice;

(b) Notice to Tribe. When an Indian child's *parent* or *Indian custodian* are entitled to notice, the tribe is also entitled to notice. The tribe entitled to notice is the tribe in which the *child* is a member or eligible for membership. If the *child* is affiliated with or eligible for membership in more than one tribe, notice must be sent to all potential tribes since the court may permit intervention by more than one tribe; and

(c) Notice to BIA. If the identity or location of a potentially interested Indian party to the proceeding cannot be determined, Department staff must notify the local Bureau of Indian Affairs Office which has fifteen days to locate and notify that party.

(3) Service of Notice. Notice may be given by personal service by handing it directly to the person, if possible, but must always be given by registered mail, return receipt requested.

(4) Form of Notice:

(a) If a tribe has declined jurisdiction, it still retains the right to participate as an interested party or to intervene at any point in the proceeding. If the tribe intervenes, it is a party to the proceeding and has the same rights to notice of every proceeding affecting the tribe's member, including, but not limited to, hearings and motions the right to participate fully in such hearings and assert its interest, the right of access to court records, the right to retain counsel if it chooses, and the right to appeal. Therefore, even if a tribe has declined jurisdiction, notice to the tribe's designated agent or, if no agent has been designated, to the *tribal court*, of every proceeding affecting the tribe's member must be given. Notice must contain, at a minimum:

(A) The name of the *Indian child* and his or her tribal affiliation;

(B) A copy of the petition, complaint, or other document by which the proceeding was initiated;

(C) The name of the petitioner and the name and address of the petitioner's attorney, if any;

(D) A statement of the right of the biological parents or *Indian custodian*s to participate and the *Indian child's tribe* right to intervene in the proceeding;

(E) A statement that if the *parent*s or *Indian custodian*s are unable to afford counsel, counsel may be appointed by the court to represent them;

(F) A statement of the right of the biological parent or *Indian custodian* and the *Indian child's tribe* to have, on request, twenty days to prepare for the proceedings;

(G) The location, mailing address, and telephone number of the court;

(H) A statement of the right of the *parent*s or *Indian custodian*s or the *Indian child's tribe* to petition the court to transfer the proceeding to the Indian child's *tribal court*;

(I) The potential legal consequences of an adjudication on future custodial rights of the *parent* or *Indian custodian*; and

(J) A statement that tribal officials must keep the information contained in the notice concerning the particular proceeding confidential and may only reveal it to individuals who need the information in order to exercise the tribe's rights under the Act.

(b) Department staff must file with the court a copy of each notice sent pursuant to this section together with any return receipts or other proofs of service.

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

## 413-070-0220
## Placement of Indian Children
*(Amended 07/17/15)*

(1) General. Department staff must make a diligent attempt to find a suitable placement within priorities described in this rule before considering a non-preference placement. A *diligent search* for an appropriate placement includes, at a minimum, contact with the child's tribal social services department, a search of Oregon state and county listings of available Indian homes, and contact with other Indian tribes and Indian organizations with available placement resources.

(2) Tribal Placement Priorities. In determining the appropriate placement for an *Indian child*, the caseworker must contact the child's tribe to see if the tribe has established by resolution an order of placement preference or has placement resources different from those described in this rule.

(3) Foster or Pre-adoptive Placements:

(a) In any foster care or pre-adoptive placement of an *Indian child*, the *child* must be placed in the least restrictive setting which most approximates a family and in which the child's special needs, if any, can be met. The *child* shall also be placed

in reasonable proximity to his or her home, except as provided in subsection (7)(b) of this rule;

(b) In considering foster placement for a *child*, Department staff must follow the placement priorities in this subsection unless the *Indian child's tribe* changes the order of preference by resolution; or, in absence of such tribal resolution, the court modifies the order of preference by a showing of good cause:

(A) A member of the Indian child's *extended family*.

(B) A foster home licensed, approved, or specified by the *Indian child's tribe*.

(C) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) An institution for children approved by an *Indian tribe* or operated by an *Indian organization* which has a program suitable to meet the Indian child's needs.

(4) Adoptive Placements. Where no different order of preference has been established by the child's tribe for adoptive placement, the Department must, in the absence of the court's determination that good cause to the contrary exists, give preference to placing the *child* with:

(a) A member of the child's *extended family*;

(b) Other members of the *Indian child's tribe*; or

(c) Other Indian families.

(5) Change of Placement. If an *Indian child* in a foster or pre-adoptive placement is to be moved from one placement setting to another; or, if the foster family moves and requires a change in placement, the placement preferences outlined in this rule must be followed, unless the *child* is returned to the *parent* or *Indian custodian* from whose custody the *child* was originally removed. The caseworker must notify the *parent*, *Indian custodian*, and the child's tribe in writing prior to a change in placement or before the foster family moves.

(6) Disrupted Adoptive Placements. If a final decree of adoption is vacated or set aside or the adoptive parents voluntarily consent to the *termination of parental rights*, a biological parent or prior *Indian custodian* may petition for a return of custody. In voluntary relinquishments, the caseworker must notify the *parent* and *Indian custodian* by registered mail at their last known address of the disruption in the *adoption* and the right to petition for a return of custody. The notification to the *parent* or *Indian custodian* of the right to petition must include a statement that the petition will be granted unless it is established by a court of law that return of custody is not in the best interest of the *child*.

In the event that custody is not returned to the *parent* or *Indian custodian* or prior to such return of custody, any subsequent placements follow the placement priorities outlined in sections (3) or (4) of this rule, as appropriate. In instances where parental rights have been terminated and the *adoption* has been disrupted, the Department may elect to notify the *parent* and *Indian custodian* of their right to petition the court for a return of custody.

(7) Records of Placement:

(a) The Department must maintain a written record of each placement of each *Indian child* and of efforts to comply with the preferences listed above. This record must be maintained on forms separate from the court report and must contain, at a minimum, the petition or complaint, all substantive orders entered during the proceeding, and the complete record of the placement determination; and

(b) Where the placement does not meet the preference priorities set out above, the efforts to find suitable placement within those priorities must be recorded and documented in detail. Documentation must also be provided showing that the placement chosen is in the least restrictive setting possible, meets the child's special needs, and as much as possible, in cases of *foster care placement*, is close to the child's own home.

(c) At any time, upon the request of the *Indian child's tribe* or the Department of the Interior, the Department must make available records of every foster care, pre-adoptive, and adoptive placement of each *Indian child* maintained by the Department.

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

## 413-070-0230
## Adult Adoptees
*(Amended 07/17/15)*

(1) An adopted *Indian* person who is age eighteen or older may apply to the court that entered the final adoption decree for information on the tribal affiliation of the biological parents of the person and any other information necessary to protect any rights flowing from the tribal relationship.

(2) An adopted *Indian* person may also request from the Secretary of the Department of Interior any information necessary for enrollment in the person's tribe or for information determining any rights or benefits associated with tribal membership. Where the Secretary has an affidavit requesting anonymity from the biological parents of the *Indian* person, the Secretary certifies whether the person is entitled to enrollment under criteria established by the tribe.

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

## 413-070-0240
## Voluntary Proceedings
*(Amended 07/17/15)*

(1) Department May Accept Voluntary Placements. The Department may accept voluntary custody of any *Indian child* based upon consent of the Indian *parent* or *Indian custodian*, but may not accept such consent unless:

(a) The *child* is more than ten days old;

(b) The voluntary consent is given in writing and recorded before a judge in the appropriate jurisdiction;

(c) The consent is accompanied by a judge's certificate which meets the requirements listed in section (2) of this rule; and

(d) The Department files a petition with the juvenile court pursuant to ORS 419B.100.

(2) Court Hearing on Consent. The caseworker must request a hearing in circuit court to obtain a voluntary consent. The caseworker must assure before the proceeding occurs that the court hearing will be recorded and that the written consent of the *parent* or *Indian custodian* is accompanied by a certificate signed by the judge ensuring that the terms and consequences of the consent were:

(a) Fully explained in detail and fully understood by the *parent* or *Indian custodian*; and

(b) Fully explained in English, or interpreted into a language understood by the *parent* or *Indian custodian*.

(3) Content of Consent Form. The consent form signed by a *parent* or *Indian custodian* who voluntarily agrees to placement must, at a minimum, contain:

(a) The name and birthdate of the *Indian child*;

(b) The name of the child's tribe;

(c) The child's enrollment number or other indication of the child's membership in the tribe;

(d) The name and address of the consenting *parent* or *Indian custodian*;

(e) The name and address of the prospective parents, if known, for *substitute care* placements; and

(f) The name and address of the person or Department through which placement was arranged, if any, for adoptive placement.

(4) Request for Anonymity. If a *parent* who has voluntarily given custody of his or her *child* to the Department requests anonymity, the caseworker must discuss the situation with the *parent* and describe the advantages of working cooperatively with the tribe. If the *parent* still evidences a desire for anonymity, the caseworker must contact the ICWA Manager who must:

(a) Contact the tribe to determine if a tribal system exists for keeping child custody matters confidential;

(b) Meet with the *parent* and caseworker to document the parent's reasons for requesting anonymity and to explain the Act's requirement for contacting the tribe in order to learn if there are tribal placement preferences and resources; and

(c) If a *parent* still request anonymity, the ICWA Manager or caseworker must tell the *parent* that the Department may not be able to guarantee that the request will be followed, but that it will be taken into consideration. The caseworker must then document the parent's request for anonymity and advise the court that such request must be provided when the child's *adoption* records are mailed to the Secretary of the Interior.

(5) Voluntary Foster Care:

(a) Placement Preferences to Follow. Indian children who have voluntarily come into *substitute care* must be placed according to the preference priorities outlined in OAR 413-070-0220.

(b) Withdrawal of Consent. The *parent* or *Indian custodian* may withdraw consent either orally or in writing at any time. If consent is withdrawn no reason needs to be stated, no evidence needs to be produced, and no hearing needs be conducted. The caseworker must:

(A) Except as provided in subsection (c) of this rule, immediately return the *child* to the *parent* or *Indian custodian*; and

(B) Notify the court that consent has been withdrawn and the *child* has been returned to parental custody.

(c) Initiation of Protective Service Custody. If the caseworker believes that returning custody of the *child* to the *parent* or *Indian custodian* would place the *child* in imminent danger or harm, the following must occur:

(A) The caseworker immediately initiates further proceedings before the juvenile court and secures an order from the court authorizing the Department to retain custody of the *child*;

(B) Where court proceedings for protective custody are initiated and the *child* is not returned to a *parent* or *Indian custodian* upon withdrawal of consent, the caseworker notifies the child's tribe of this decision; and

(C) All rules regarding involuntary proceedings are followed.

(d) Changes in Placement Must Follow ICWA. Whenever an *Indian child* is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive, or adoptive placement, such placement must be in accordance with the ICWA unless the *child* is being returned to the *parent* or *Indian custodian* from whose custody the *child* was originally removed.

(6) Voluntary Adoptive Placement:

(a) Voluntary Termination of Parental Rights or Relinquishment. If the *parent* of an *Indian child* wants to consent to the *termination of parental rights*, and free the *child* for *adoption*, the caseworker must:

(A) Arrange to have relinquishment documents signed which meet the requirements of sections (1), (2), and (3) of this rule; and

(B) Ensure that the relinquishment is fully understood by the *parent* and that it is not taken when the *parent* is under duress since the relinquishment and the *adoption* may be set aside if the court finds the relinquishment was obtained through fraud or duress.

(b) Placement Preferences to Follow. Placement preferences outlined in OAR 413-070-0220 must be followed in the voluntary adoptive placement of an *Indian child*.

(c) Withdrawal of Consent. A voluntary consent to *termination of parental rights* or to the *adoption* of an *Indian child* may be withdrawn for any reason at any time

prior to the entry of the final decree of termination or *adoption*, as the case may be. No reason or evidence is needed. The placing agency, when notified, must return the *child* to the *parent* or *Indian custodian* as soon as practicable. Where no placing agency is involved, the court is responsible for notifying the family with whom the *child* has been placed that consent was withdrawn and the *child* must be returned to the *parent* or *Indian custodian*.

(d) Protective Service Custody. If the *parent* voluntarily withdraws consent to *termination of parental rights*, and the Department believes the *child* should not be returned to parental custody, the caseworker may initiate a protective service custody proceeding with the court in order for the Department to retain custody of the *child*.

(e) Disruption of Foster Care Placement. When a *foster care placement* is changed prior to a termination or relinquishment, the Department must notify the *parent* or *Indian custodian* and the tribe.

(f) Adoption Vacated or Set Aside. When a final decree of adoption has been vacated or set aside, or the adoptive parent has voluntarily consented to the termination or relinquishment of parental rights, Department staff must send a registered letter to the *parent* or *Indian custodian* stating the *parent* or *Indian custodian* may petition the court for return of the *child*. The tribe shall also be notified of such changes or disruptions in adoptive placements.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.100

## 413-070-0250
## Invalidation of State Court Action
*(Amended 12/29/95)*

Any *Indian child* who is the subject of any action for *foster care placement* or *termination of parental rights* under state law, any *parent* or *Indian custodian* from whose custody such *child* was removed, and the *Indian child's tribe* may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated provisions of the Act.

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

## 413-070-0260
## Full Faith and Credit
*(Amended 12/29/95)*

The United States, every state, every territory or possession of the United States, and every *Indian tribe* shall give full faith and credit to the public acts, records and judicial proceedings of any *Indian tribe* applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to Indian tribes.

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

# Placement of Refugee Children

## 413-070-0300
## Purpose
*(Amended 07/17/15)*

The purpose of OAR 413-070-0300 to 413-070-0380 is to prescribe conditions that must be met for the Department to remove a *refugee child* from home. These rules also establish the Refugee Child Welfare Advisory Committee (*RCWAC*) and set the criteria for its operations and duties.

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

## 413-070-0320
## Placement of Refugee Children
*(Amended 07/17/15)*

(1) When it appears that a *child* who may be taken into custody under ORS 419B.150 or ORS 419C.080 by the Department is a *refugee child*, the Department will make oral inquiry of the *child* or the *parent* concerning national origin and ethnic and cultural information relative to the child's status as a *refugee child*. For purposes of determining the child's status as a *refugee child*, the Department may consider information, including, but not limited to, information from the following sources:

(a) Any *extended family member*;

(b) Refugee community resources including, but not limited to, any group, association, partnership, corporation, or legal entity whose purpose is to represent the interests of a particular group or groups of refugees who have the same ethnic or minority heritage;

(c) The *RCWAC*;

(d) Federal immigration agencies;

(e) Refugee agencies; and

(f) Department records.

(2) As required by ORS 418.937, the Department may not remove a *refugee child* pursuant to ORS 419B.150, 419C.080, or 419C.088 unless:

(a) The Department has determined there is a safety threat and removal is necessary to prevent imminent serious emotional or physical harm to the *child*; and

(b) The provision of remedial or preventive services cannot manage the child's safety in the home.

(3) The Department must follow ORS 418.937 in making placement decisions for refugee children:

(a) The Department will consider the child's culture and tradition.

(b) Unless shown to be inappropriate and inconsistent with the best interests of the *child*, the Department will place the *child* with one or more of the following persons, listed in order of preference:

(A) Biological and legal parents.

(B) Extended family members who are 18 years of age or older.

(C) Members of the same *cultural heritage*.

(D) Persons with knowledge and appreciation of the *cultural heritage* of the *child*.

(4) The determination that one of the preferred placements is inappropriate and inconsistent with the best interests of the *child* must be based on one or both of the following reasons:

(a) The informed request of the child's *parent*, if the request is consistent with the stability, security, and individual needs of the *refugee child*.

(b) The safety, medical, physical, or psychological needs of the *child*.

(5) When the Department has taken a *refugee child* into custody under ORS 419B.150, the Department will make diligent efforts to locate the child's *affected family members* for the purposes of placing the *child*, if possible, in one of the preferred placements.

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

## 413-070-0340
## Petition
*(Amended 05/01/07)*

As required by ORS 418.930 and 418.933:

(1) Within one working day of the removal of a *refugee child* from the *child's home*, the Department must file a petition with the juvenile court.

(2) In addition to the material required under ORS 419B.809 or 419C.255, the Department must include the following items in its petition:

(a) A specific and detailed account of the circumstances which led the Department to conclude that the *child* was in imminent danger of serious emotional or physical harm;

(b) Specific actions the Department is taking or has taken to alleviate the need for removal;

(c) Assurance that the Department has complied with the placement preferences of ORS 418.937; and

(d) Assurance that the Department is making or has made diligent efforts to locate and give notice to all *affected family members* and to the Refugee Child Welfare Advisory Committee of the pendency of the petition.

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

## 413-070-0345
## Notice
*(Amended 05/01/07)*

(1) When a *refugee child* is removed from home, in addition to the notice provided by the court of a hearing, the Department must notify all *affected family members* and the Refugee Child Welfare Committee of the pendency of the petition described in OAR 413-070-0340.

(2) The notice will be written in language understandable to the recipient.

(3) The notice will contain the child's name; the reason a petition was filed; and the time and place that the juvenile court will be considering the petition.

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

## 413-070-0350
## Judicial Determination
*(Amended 07/17/15)*

As required by ORS 418.933(1), a *refugee child* may not remain out of the *child's home* for longer than five days unless there has been a judicial determination supported by clear and convincing evidence that:

(1) Preventive or remedial services provided by the Department have failed to alleviate the need for removal; and

(2) Return to the home will likely result in psychological or physical harm to the *child*.

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

## 413-070-0360
## Record of Care
*(Amended 07/17/15)*

The Department must maintain a case record for each *refugee child* in its care containing:

(1) The name, age, residence from which the *child* was removed, legal status, sex, and *race* of the *child*, and the accumulated length of time the *child* has spent in *substitute care*;

(2) The child's health and education records;

(3) The name, former residence, and health history of each *parent* and other information relating to the ability of the *parent* to care for the *child* in the parent's home;

(4) The date of the child's intake and placement in *substitute care* and the name, *race*, occupation, and residence of the person with whom the *child* is placed;

(5) If applicable, the date of the child's *adoption* and the name, *race*, occupation, and residence of each adoptive parent;

(6) The date of the removal of the *child* to another home and the reason for removal;

(7) The date of termination of guardianship, if applicable;

(8) The history of the *child*, based on information that is known to the Department, until the *child* reaches 18 years of age, is legally adopted, or is discharged from the legal custody of the Department according to law;

(9) Documentation of the reasonable efforts made by the Department to reunite the *child* with his or her family, to comply with the placement preferences of ORS 418.937, to place the *child* in the least restrictive setting possible, and to place the *child* close to the *child's home* and school;

(10) Documentation of the child's status as a *refugee child*, including the source of information concerning the child's refugee status and the date the information was received by the Department;

(11) Any required demographic information; and

(12) Other documentation as required by Child Welfare Policy I-I.2, "Narrative Recording".

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

## 413-070-0370
## Annual Report of Care
*(Amended 07/17/15)*

(1) As required by ORS 418.943, the Department will publish annually a report on refugee children in its care. The report must include statewide and county information on legal status, living arrangement, age, sex, *race*, accumulated length of time in foster care, and other demographic information deemed appropriate. The report will also state the extent to which the Department has complied with ORS 418.925 to 418.945 and descriptions of the methods of compliance.

(2) The annual report must be sent to all members of the *RCWAC* no later than March 1 of each year.

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

## 413-070-0380
## Refugee Child Welfare Advisory Committee
*(Amended 05/01/07)*

(1) As required by ORS 418.941, the Department will establish an advisory committee known as the Refugee Child Welfare Advisory Committee (*RCWAC*). The *RCWAC* will perform the following tasks:

(a) Advise the Department on its implementation of ORS 418.925 to 418.945;

(b) Advise the Department in the identification, development, and certification of foster parents who meet requirements of ORS 418.925 to 418.945 for placement of refugee children, placing a special emphasis on locating homes maintained by refugees; and

(c) Advise the Department in developing training programs to insure the availability of culturally sensitive social work.

(2) Each person appointed to the *RCWAC* is subject to all confidentiality requirements and penalties as are employees of the Department.

(3) In addition to records of the juvenile court under ORS 418.941(3), members of the *RCWAC* have access to Department records that ---

(a) Are pertinent to the care of an individual *refugee child* who is receiving care from the Department under the provisions of OAR 413-070-0300 to 413-070-0380; and

(b) The Department is authorized by law to provide to the *RCWAC*.

(4) The Department will work jointly with the *RCWAC* in the development and implementation of written bylaws or procedures that will specify all local procedures, duties, and tasks necessary for the *RCWAC* to fulfill the purpose described above.

(5) A maximum of 14 members will be appointed for a two-year renewable term and will serve at the pleasure of the Assistant Director for the Office of Child Welfare Programs.

(6) The *RCWAC* will meet at least once every three months. Special meetings may be held to carry out required tasks.

(7) Members of the *RCWAC* receive no compensation for their services. Members of the *RCWAC* other than members in full-time public service may be reimbursed by the Department for their travel and necessary expenses incurred in the performance of their duties according to rates and procedures established by state management service cost reimbursement policy.

Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 to 418.945

# Psychotropic Medication Management

## 413-070-0400
## Purpose
*(Amended 07/17/15)*

The purpose of OAR 413-070-0400 to 413-070-0490 is to describe the responsibilities of the *substitute caregiver* and the Department when a *child* or *young adult* placed in *substitute care* by the Department is prescribed or administered *psychotropic medication*.

Stat. Auth.: ORS 418.005, 418.517
Stats. Implemented: ORS 109.640, 109.675, 418.005, 418.517

## 413-070-0430
## Department Records, Medication Review, and Consent and Authorization Requirements
*(Amended 07/17/15)*

(1) The Department must keep the *medical and mental health records* of any *child* or *young adult* in *substitute care*. As used in this section, "medical and mental health care records" includes a *child* or young adult's records of medical and mental health care, including, but not limited to, the names of former and current health providers, medical services and diagnoses, evaluations, immunizations, and prescribed medications.

(2) The caseworker must support timely exchange of medical and mental health care information for a *child* or *young adult* in *substitute care* unless:

(a) A *child* or *young adult* has the authority to consent to his or her own health and mental health care; or

(b) The *parent* or legal *guardian* of the *child* or *young adult* retains authority to consent to health care decisions through a Voluntary Custody Agreement or Voluntary Placement Agreement.

(3) The caseworker must:

(a) Provide records of previous mental health assessments and *assessment* updates, including multiaxial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services to the *licensed medical professional* prior to the medical appointment or no later than the time at which the *licensed medical professional* examines the *child* or *young adult* when a *child* or *young adult* may be receiving a prescription for a *psychotropic medication*.

(b) Document and timely inform the *substitute caregiver* of the *child* or young adult's known health information, including information regarding any prescribed and administered *psychotropic medication*:

(A) At the time of placement; and

(B) When new or updated health information becomes known to the Department.

(4) To keep accurate medical records and documentation for a *child* or young adult's medical and mental health history record, the caseworker must:

(a) Retain copies of all medical and mental health records received by the Department in the medical section of the case file of the *child* or *young adult* in *substitute care*.

(b) Document and update records of known health conditions, services, and supports of the *child* or *young adult* in *substitute care* when developing the case plan and at each case plan review.

(c) Receive and review monthly the medication log of the *child* or *young adult* in *substitute care* and retain a copy in the medical section of the case file of the *child* or *young adult* and the Department's electronic information system.

(d) Document the medical information of the *child* or *young adult* in the Department's electronic information system.

(5) The Department must inform the *substitute caregiver* of the *child* or *young adult* that written authorization, as set forth in subsections (a)-(e) of this section, is required prior to filling a prescription for a new *psychotropic medication* unless there is an *urgent medical need*, in which case prior written authorization is not required.

(a) Unless an exception in subsection (d) of this section applies, the Child Welfare Program Manager or *designee* must provide written authorization prior to the administration of any new prescription of *psychotropic medication* to a *child* or *young adult* in *substitute care* when the requirements of at least one of the following paragraphs applies:

(A) The Department is the legal *guardian* of the *child* or *young adult*;

(B) Parental rights have been terminated and the court has ordered permanent commitment of the *child* or *young adult* and placed the *child* or *young adult* in the legal custody and guardianship of the Department; or

(C) A *child* or young adult's parents have signed a Release or Surrender Agreement giving the Department guardianship and control over the *child* or *young adult*.

(b) When the authority to provide authorization for *psychotropic medication* is not given to the Department in the Voluntary Placement Agreement or Voluntary Custody Agreement, the Department must obtain the written consent of a *child* or young adult's *parent* or legal *guardian* for the administration of *psychotropic medication*.

(c) A *child*, 15 years of age or older, or a *young adult* may provide written consent for *psychotropic medication* under ORS 109.640.

(d) Written authorization of the Child Welfare Program Manager or *designee* is not required prior to the administration of any new prescription of *psychotropic medication* to a *child* or *young adult* in *substitute care* when the requirements of at least one of the following paragraphs applies:

(A) A change in the delivery system of a previously prescribed medication;

(B) A change in the dosage of a previously prescribed medication;

(C) A change in medication within the same drug classification;

(D) A one-time medication given prior to a medical procedure; or

(E) An anti-epileptic medication prescribed for a seizure disorder.

(6) After the caseworker has obtained the written authorization for *psychotropic medication* required under section (5) of this rule, the caseworker must do all of the following:

(a) Complete the notifications required under OAR 413-070-0480 and 413-070-0490.

(b) Ensure a report has been made to the prescribing *licensed medical professional* when the condition of the *child* or *young adult* in *substitute care* is not improving, is deteriorating, or when the *child* or *young adult*, caseworker, *substitute caregiver*, or other individual has observed suspected side effects of the medication.

(c) Request and receive updated health information about the *child* or *young adult* in *substitute care* and the effects of the prescribed *psychotropic medication* therapy from the *substitute caregiver* during the monthly contact with the *substitute caregiver* required under OAR 413-080-0054.

(7) Prior to authorization and administration of a new prescription for more than one *psychotropic medication* or any *antipsychotic medication*, the Department must ensure a

*child* or *young adult* in *substitute care* has received an *assessment* from a *qualified mental health professional* or *licensed medical professional* unless:

(a) A medication was prescribed for an *urgent medical need*; or

(b) The prescription is described in paragraphs (5)(d)(A) to (E) of this rule.

(8) The *assessment* required under section (7) of this rule either must --

(a) Have been completed within the three months prior to the prescription for *psychotropic medication*; or

(b) Be an update of a prior *assessment*, which focuses on a new or acute problem, and information from the *assessment* must be communicated to the *licensed medical professional* prior to the issuance of a prescription for *psychotropic medication*.

(9) The Department must ensure the requirements of both of the following subsections are met:

(a) An annual review of psychotropic medications, by an individual other than the prescriber when:

(A) A *child* or *young adult* has more than two prescriptions for psychotropic medications; or

(B) A *child* under six years of age has a prescription for *psychotropic medication*.

(b) The annual review required under subsection (a) of this section must be conducted by one of the following:

(A) A *licensed medical professional*;

(B) A *qualified mental health professional* with the authority to prescribe drugs; or

(C) A licensed pharmacist with the Drug Use Review Program under the Oregon Health Authority, Division of Medical Assistance Programs OAR 410-121-0100.

Stat. Auth.: ORS 418.005, 418.517
Stats. Implemented: ORS 109.640, 109.675, 418.005, 418.517

## 413-070-0450
## Disclosure Requirements for a Child or Young Adult in Substitute Care
*(Amended 10/01/15)*

Pursuant to ORS 109.675, a *child* 14 years of age or older or *young adult* in *substitute care* may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder, or a chemical dependency, excluding methadone maintenance, by a licensed physician, licensed physician assistant, licensed psychologist, registered nurse practitioner, licensed clinical social worker, licensed professional counselor or marriage and family therapist, or a community mental health program established and operated pursuant to ORS 430.620. However, when a *child* 14 years of age or older or *young adult* is in *substitute care*, and the *substitute caregiver* or the Department has knowledge of any prescription, the notification requirements of OAR 413-070-0470, 413-070-0480, and 413-070-0490 apply.

Stat. Auth.: ORS 418.005, 418.517
Stats. Implemented: ORS 109.640, 109.675, 418.005, 418.517

## 413-070-0470
## Substitute Caregiver Responsibilities
*(Amended 01/01/15)*

(1) The *substitute caregiver* must:

(a) Notify the Department within one business day after receiving a new prescription or knowledge of a new prescription for *psychotropic medication* for a *child* or *young adult*; and

(b) Obtain authorization from the Department prior to filling a prescription for and administering a new *psychotropic medication*.

(2) The *substitute caregiver* must provide written or verbal notification to the caseworker or caseworker's supervisor within one business day when a *licensed medical professional* prescribes a change in dosage, suspension, or discontinuation of the current *psychotropic medication*.

(3) The *substitute caregiver* must keep current medical and mental health care records and medication logs of a *child* or *young adult* in the care or custody of the Department. The records must include all of the following:

(a) Medical and mental health appointments for the *child* or *young adult* in *substitute care*.

(b) Medical and mental health appointment follow-up reports provided to the *substitute caregiver*.

(c) Any record of any immunization obtained while in the care of the *substitute caregiver*.

(d) A record of all prescribed medications administered to the *child* or *young adult* in *substitute care*.

(4) A *substitute caregiver* certified by the Department must keep a current medication log on a form approved by the Department. A *provider* must keep a current medication log either on the form approved by the Department or on a form provided by the private child-caring agency. The medication log record must include all medications administered to the *child* or *young adult* in *substitute care* and must include all of the following:

(a) The name of the *child* or *young adult* in *substitute care*.

(b) The brand or generic name of the medication, including the prescribed dosage and prescribed dosage administration schedule.

(c) Times and dates of administration or monitored self-administration of the medication.

(d) The name or initials of the *substitute caregiver* administering the medication or monitoring the self-administration.

(5) The *substitute caregiver* must provide completed medication logs and any medication records obtained during medical visits and records of appointments to the Department at the end of each month. This must include logs of all medication administered to the *child* or *young adult* at school or in settings other than the home of the *substitute caregiver*.

(6) The *substitute caregiver* must keep all psychotropic medications properly stored and must:

(a) Ensure the *psychotropic medication* specifies the dosage and prescribed dosage administration schedule of the *licensed medical professional* for the *psychotropic medication*; and

(b) Ensure the *psychotropic medication* is stored in a safe manner and as prescribed. *Psychotropic medication* requiring refrigeration must be safely stored under refrigeration.

(7) The *substitute caregiver* may not discontinue, change, or otherwise alter the prescribed administration of a *psychotropic medication* for a *child* or *young adult* in *substitute care* without direction from the *licensed medical professional*.

(8) The *substitute caregiver* may not use alternative medications intended to alter or affect mood or behavior, such as herbal supplements, nutritional supplements, or homeopathic

remedies, without direction and supervision of a *licensed medical professional*, and must notify the Department when any such alternative medication is directed.

Stat. Auth.: ORS 418.005, 418.517
Stats. Implemented: ORS 109.640, 109.675, 418.005, 418.517

## 413-070-0480
## Notification Timelines for Psychotropic Medication Therapy
*(Amended 01/01/15)*

(1) The Department must provide written notification to the parties identified in section (2) of this rule within a timely manner, not to exceed ten business days after:

(a) The Department receives notice that a *psychotropic medication* has been prescribed for a *child* or *young adult* in *substitute care*; or

(b) Either of the following changes occur in the treatment of a *child* or *young adult* in *substitute care*:

(A) The prescribed dosage of a *psychotropic medication*; or

(B) Discontinuation of existing *psychotropic medication* therapy.

(2) When a *child* or *young adult* is in *substitute care*, written notification is provided to:

(a) The *parent* or legal *guardian*, unless a *parent* has relinquished parental rights or had parental rights terminated;

(b) The attorney of the *parent* or legal *guardian*;

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

(d) The court appointed special advocate of the *child* or *young adult*, if one has been appointed;

(e) Any other legal parties to the case; and

(f) The *substitute caregiver*.

Stat. Auth.: ORS 418.005, 418.517
Stats. Implemented: ORS 109.640, 109.675, 418.005, 418.517

## 413-070-0490
## Notification Content for Psychotropic Medication Therapy
*(Amended 01/01/15)*

The notification described in OAR 413-070-0480 must contain all of the following:

(1) The name and contact information of the prescribing *licensed medical professional*.

(2) The diagnosed condition of the *child* or *young adult* for which the medication was prescribed.

(3) The name of the prescribed *psychotropic medication*.

(4) The prescribed dosage.

(5) The dosage recommended pursuant to a *medically accepted indication*.

(6) The reason the medication was prescribed.

(7) The expected benefit of the medication.

(8) The side effects of the medication.

(9) Notice of the right to petition the juvenile court for a hearing if there is an objection to the use of the prescribed medication or prescribed dosage.

Stat. Auth.: ORS 418.005, 418.517
Stats. Implemented: ORS 109.640, 109.675, 418.005, 418.517

# Legal Permanency, Concurrent Planning, and Use of Permanency Committee

## 413-070-0500
## Purpose
*(Amended 07/17/15)*

The purpose of OAR 413-070-0500 to 413-070-0519 is to 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

## 413-070-0510
## Obligation to Seek Legal Permanency
*(Amended 10/01/15)*

(1) Except when a *parent* has subjected a *child* or *young adult* to aggravated circumstances as defined in ORS 419B.340, the Department must make reasonable efforts to preserve and reunify families by:

(a) Establishing *conditions for return* described in OAR 413-040-0006 when a *child* or *young adult* is removed; and

(b) Implementing a *permanency plan* to make it possible for the *child* or *young adult* to safely return home.

(2) The Department must also make reasonable efforts to achieve the *concurrent permanent plan* for permanency through *adoption*, guardianship, placement with a *fit and willing relative*, or APPLA.

(3) The Department must seek approval of the court 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 Permanency Plan and Concurrent Permanent Plan
*(Amended 10/01/15)*

(1) When developing the *permanency plan* and *concurrent permanent plan*, the caseworker must complete all of the following actions:

(a) Develop a *permanency plan* and a *concurrent permanent plan* for each *child* or *young adult* in the Department's custody within 60 days of the placement of the *child* or *young adult* into *substitute care*.

(b) Review the plan every 90 days, pursuant to OAR 413-040-0005 to 413-040-0032.

(c) Involve a team of individuals knowledgeable about the needs of the *child* or *young adult* in the development and ongoing assessment of the most appropriate *permanency plan* and *concurrent permanent plan* for the *child* or *young adult*. The team must include all of the following:

(A) The parents, unless a supervisor approves not including a specified *parent* because the contact may compromise the safety of a *child* or *young adult* or another individual; parental rights have been terminated; or the *parent* has signed a release and surrender agreement.

(B) The attorney of the parents, unless parental rights have been terminated or the *parents* have signed a release and surrender agreement.

(C) The *child* who has attained 14 years of age or *young adult* and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c).

(D) The CASA.

(E) The attorney of the c*hild* or *young adult*.

(F) A tribal representative if the *child* or *young adult* is an *Indian child*.

(G) A member of the *RCWAC*, if the *child* is a *refugee child*.

(H) The team may include any of the following:

(i) The *child* at any age, whenever developmentally appropriate.

(ii) The *substitute caregiver* of the *child* or *young adult*.

(iii) The substitute caregiver's certifier.

(iv) The relatives of the *child* or *young adult*.

(v) Persons with a *caregiver relationship*.

(vi) Other individuals with involvement in the life of the *child* or *young adult*.

(vii) Individuals with expertise in permanency.

(d) Use ongoing contacts with the individuals in subsection (c) of this section to:

(A) Monitor the progress toward achieving the *permanency plan*.

(B) Provide the *child* or *young adult*, and the parents of the *child* or *young adult*, 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 preference for continued contact with the *child* or *young adult*.

(E) Identify and consider which *concurrent permanent plan* best meets the current and lifelong safety, permanency, and well-being needs of the *child* or *young adult* in the following preferential order:

(i) *Adoption*.

(ii) Guardianship, which may be considered only when there are compelling reasons why *adoption* cannot be achieved.

(iii) Placement with a *fit and willing relative*, which may be considered only when there are compelling reasons why *adoption* or guardianship cannot be achieved.

(iv) If the *child* has reached the age of 16, Another Planned Permanency Living Arrangement, which may be considered only when there are compelling reasons why *adoption*, guardianship or placement with a *fit and willing relative* cannot be achieved.

(e) Determine the Department has taken action on the potential permanency resources identified by the *child* or *young adult*, the family of *child* or *young adult*, a member of the team of the *child* or *young adult*, or the Department.

(f) Determine which *permanency plan* best meets the safety, permanency, and well-being needs of the *child* or *young adult* and provides the *child* or *young adult* with support and connection in adulthood, and document the basis for the determination.

(g) Submit a recommendation to the *permanency committee* as required in OAR 413-070-0516.

(h) Obtain the approval of a *legal assistance specialist* before recommending a change of *permanency plan* to *adoption*.

(2) Participants in the development and review process must be informed of all of the following:

(a) The purpose of permanency and concurrent planning.

(b) The timelines under which the Department pursues permanency pursuant to federal and state law.

(c) The resources which may be available to relatives when *adoption* or guardianship is a *permanency plan*.

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

## 413-070-0514
## Use of Permanency Committee
*(Amended 10/01/15)*

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

(1) A caseworker recommends a change in *permanency plan* to guardianship, *fit and willing relative*, or APPLA.

(2) A caseworker is considering a separation of siblings in *adoption* under OAR 413-110-0132.

(3) A caseworker requests a *permanency committee* review the relationship between a *general applicant* and a *child* whose *permanency plan* is *adoption* under OAR 413-120-0750.

(4) A *current caretaker* or *relative caregiver* requests consideration as a potential *adoptive resource* and the adoption home study regarding the *child* or *sibling* group has not been completed.

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

## 413-070-0516
## Composition, Scheduling, Responsibilities, and Recommendations of the Permanency Committee
*(Amended 01/01/17)*

(1) A *permanency committee* is composed of 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 OAR chapter 413.

(ii) Individuals are informed of the responsibilities of the committee and the confidentiality of information presented during the meeting.

(iii) Committee recommendations are thoroughly and accurately documented.

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

(C) The individuals in this subsection must meet the following requirements:

(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) 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 recommendation or 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) Each individual attending a *permanency committee* is bound by Oregon statutes regarding confidentiality and OAR 413-010-0010 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 clarification of information presented, and may 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* as follows:

(A) When the caseworker recommends 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 subject to OAR 413-070-0518.

(B) When the caseworker recommends a change in *permanency plan* to placement with a *fit and willing relative*, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-1020 subject to OAR 413-070-0518.

(C) When a caseworker recommends a change in *permanency plan* to APPLA, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-0550(1).

(D) When a caseworker considers the separation of siblings in *adoption* under OAR 413-110-0132, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-110-0132(2).

(E) When 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(6)(b).

(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.

(7) For the purpose of OAR 413-070-0514(4), a *current caretaker* or *relative caregiver* request for consideration as an *adoptive resource*, the following also apply:

(a) The *permanency committee* is composed of the individuals in sections (1) and (3) of this rule, and:

(A) The assigned certifier for the *current caretaker* or *relative caregiver*.

(B) The assigned adoption worker for the *current caretaker* or *relative caregiver*.

(b) The *current caretaker* or *relative caregiver* of the *child* or *sibling* group under consideration for *adoption*, 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 present information to the *permanency committee*, but is excused after presenting information and responding to questions.

(c) The *permanency committee* must review the following:

(A) The safety, attachment, and well-being needs of the *child* or *sibling* group under consideration for adoption together and how the *current caretaker* or *relative caregiver* has met those needs to date*;*

(B) The current caretaker's or relative caregiver's history of meeting the standards of certification pursuant to OAR 413-200-0301 to 413-200-0396;

(C) Any child abuse and neglect reports made to the Department that were assigned for assessment, closed at screening, or documented in the Department’s paper or electronic information system;

(D) Recommendations for continued contact with birth parents, birth family, or other significant persons for the *child* or *sibling* group under consideration for *adoption*; and

(E) Any other information pertinent to the evaluation of the ability of the *current caretaker* or *relative caregiver* to meet the lifelong safety, attachment, and well-being needs of the *child* or *sibling* group under consideration.

(d) The *permanency committee* must document and provide to the assigned adoption worker any specific information they determine must be explored in the adoption home study for the *current caretaker* or *relative caregiver*.

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

## 413-070-0518
## Approving a Permanency Plan Prior to a Resource Being Identified
*(Amended 01/01/17)*

(1) A permanency plan may be changed to guardianship or placement with a *fit and willing relative* prior to a resource having been identified when:

(a) The court changes a *permanency plan* for a *child* or *young adult* before the Department makes a recommendation pursuant to OAR 413-070-0512 to 413-070-0516; or

(b) The Department must make a recommendation to change the permanency plan for a *child* or *young adult* to guardianship or placement with a *fit and willing relative* because a *child* or young adult's current *permanency plan* is no longer in the best interest of the *child* or *young adult*.

(2) When subsection (1)(a) of this rule applies, the caseworker does the following:

(a) If the new *permanency plan* for the *child* or *young adult* is guardianship:

(A) Change the *permanency plan* to guardianship;

(B) Diligently recruit and identify a *potential guardian* resource for the *child* or *young adult*; and

(C) Approve the *guardian* for the *child* or *young adult* as outlined in OAR 413-070-0665 and 413-070-0670.

(b) If the new *permanency plan* for a *child* or *young adult* is placement with a *fit and willing relative*:

(A) Change the *permanency plan* to placement with a *fit and willing relative*;

(B) Diligently recruit and identify a potential *relative* resource for the *child* or *young adult*; and

(C) Approve the r*elative* for placement with a *fit and willing relative* as outlined in OAR 413-070-1020.

(3) After complying with OAR 413-070-0512 to 413-070-0516, if the Department recommendation is something other than the court-approved *permanency plan*, the Department must schedule a judicial review of the *permanency plan* of the *child* or *young adult*.

(4) When subsection (1)(b) of this rule applies, the caseworker must comply with the following requirements:

(a) If the recommendation is to change the *permanency plan* to guardianship:

(A) Comply with OAR 413-070-0660;

(B) Schedule a permanency committee and comply with the sections of OAR 413-070-0670 that pertain to approving the *permanency plan* of guardianship; and

(C) Diligently recruit and identify the substitute caregiver as a potential guardian as outlined in OAR 413-070-0665.

(b) If the recommendation is to change the *permanency plan* to placement with a *fit and willing relative*:

(A) Comply with the sections of OAR 413-070-1000 that pertain to considering the *permanency plan* of placement with a *fit and willing relative*;

(B) Schedule a permanency committee and comply with the sections of OAR 413-070-1020 that pertain to approving the *permanency plan* of placement with a *fit and willing relative*;

(C) Diligently recruit and identify the proposed *fit and willing relative* resource that meets the eligibility as outlined in OAR 413-070-1010; and

(D) Schedule a second permanency committee and comply with the sections of OAR 413-070-1020 that pertain to approving the proposed resource as a *fit and willing relative*.

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

## 413-070-0519
## Decision and Notice
*(Amended 10/01/15)*

(1) Except when a *permanency committee* is scheduled for the purpose of a *current caretaker* or *relative caregiver* request to be considered as a potential *adoptive resource*, 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) 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) The attorney of each *child* or *young adult*, if one has been appointed;

(c) The CASA of each *child* or *young adult*, if one has been appointed;

(d) The tribal representative of each *child* or *young adult*, 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) The *substitute caregiver* of each *child* or *young adult*.

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

# Another Planned Permanent Living Arrangement

## 413-070-0520
## Purpose
*(Amended 10/01/15)*

The purpose of OAR 413-070-0520 to 413-070-0565 is to describe the responsibilities of the Department in case planning and the appropriate use of APPLA as a *permanency plan* for a *child* or *young adult*.

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

## 413-070-0532
## APPLA
*(Amended 10/01/15)*

The caseworker considers one of the following types of APPLA when considering APPLA as a *permanency plan* for a *child* who has reached the age of 16 or *young adult*:

(1) APPLA - permanent foster care. APPLA - *permanent foster care* is a plan in which the *child* or *young adult* remains in a *substitute care* placement with a *substitute caregiver* who has:

(a) Committed to the care and well-being of the *child* or *young adult*; and

(b) Entered into a *permanent foster care* agreement.

(2) APPLA - permanent connections and support. An APPLA - permanent connections and support plan is a plan in which:

(a) A c*hild* or *young adult* is in *substitute care* living with a *substitute caregiver* or living independently and receiving an *independent living housing subsidy* and the plan focus is not only on the educational, vocational, health, and treatment needs of the *child* or *young adult*, but also on the needs of the *child* or *young adult* to develop or maintain relationships with adults, including relatives and persons with a *caregiver relationship*, who can play a significant role in the life of the *child* or *young adult* after the *child* or *young adult* leaves *substitute care*; or

(b) A *child* or *young adult* is in a psychiatric residential facility, developmental disabilities placement, or residential treatment facility and is not going to be discharged from the facility while the Department maintains legal custody of the *child* or *young adult*.

Stat. Auth.: ORS 418.005
Stats Implemented: ORS 418.005, 419A.004

## 413-070-0536
## Consideration of APPLA as a Permanency Plan
*(Amended 10/01/15)*

(1) Department consideration of APPLA as a *permanency plan* must be based on the individual safety, permanency, and well-being needs of a *child* who has reached the age of 16 or *young adult*. The age or disability of a *child* or *young adult* is never a disqualifier for a more preferred *permanency plan*.

(2) The Department may only consider APPLA as a *permanency plan* for a *child* who has reached the age of 16 or *young adult* only if the Department has determined it is not in the best interests of the *child* or *young adult* to implement one of the following preferred permanency plans:

(a) Placement with a *parent*;

(b) Placement in an adoptive home;

(c) Placement with a legal *guardian*; or

(d) Placement with a *fit and willing relative*.

(3) Prior to consideration of a *foster parent* as the APPLA resource, the caseworker and his or her supervisor must:

(a) Review the diligent efforts of the Department to place a *child* or *young adult* with relatives and to place siblings together as required under OAR 413-070-0060 to 413-070-0087.

(b) Confirm there are no current Department actions to identify or assess a *relative* of a *child* or *young adult* who has expressed an interest in being a permanency resource.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 109.328, 409.010, 418.005

## 413-070-0540
## Determination of APPLA as a Permanency Plan
*(Amended 10/01/15)*

(1) When the Department is considering a change in the *permanency plan* of a *child* or *young adult*, the Department makes the determination pursuant to OAR 413-070-0500 to 413-070-0519.

(2) Prior to the *permanency committee*, when APPLA - *permanent foster care* is being considered as the most appropriate *permanency plan* for a *child* or *young adult*, the caseworker must:

(a) Meet with the *substitute caregiver* to:

(A) Assess interest in and commitment to a *permanent foster care* agreement with each *substitute caregiver* as long as APPLA - *permanent foster care* is the *permanency plan* for the *child* or *young adult*; and

(B) Review the requirements, responsibilities, and approval process for the *permanent foster care* agreement with each *substitute caregiver*.

(b) Meet with the *child* or *young adult*, as developmentally appropriate and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* to assess interest in APPLA - *permanent foster care* as the *permanency plan*.

Stat. Auth.: ORS 418.005
Stats Implemented: ORS 418.005, 418.937, 418.941, 419A.004

## 413-070-0550
## Approval and Implementation of an APPLA Permanency Plan
*(Amended 10/01/15)*

(1) The *permanency committee* must consider the best interests of the *child* who has reached the age of 16 or *young adult* and each of the following factors when developing a recommendation regarding APPLA to the Child Welfare Program Manager or *designee*:

(a) The safety, permanency, and well-being needs of the *child* or *young adult*.

(b) The opportunities the Department has provided the *child* or *young adult* and the parents of the *child* or *young adult* to identify permanency resources.

(c) The parents' acceptance of APPLA as a *permanency plan* and their preference for continued contact with the *child* or *young adult*.

(d) The ability of the *substitute caregiver* to meet the needs of the *child* or *young adult* pursuant to OAR 413-070-0640.

(e) The compelling reasons reunification, *adoption*, guardianship, or placement with a *fit and willing relative* cannot be achieved.

(f) The sufficiency of the plan for continued contact with siblings.

(2) The Child Welfare Program Manager or *designee* must consider all of the following when making the decision regarding APPLA:

(a) The considerations in section (1) of this rule.

(b) The information presented to the *permanency committee*.

(c) The recommendation of the *permanency committee*.

(3) Within 30 days of the Department's decision to approve an APPLA *permanency plan* under OAR 413-070-0519, the caseworker must request a permanency hearing before the court.

(4) The caseworker must encourage the *child* or *young adult* to attend the APPLA permanency hearing, offer to provide transportation, and request the court inquire with the *child* or *young adult* about his or her desired permanency outcome.

(5) At the hearing, the caseworker must provide the court:

(a) The intensive, ongoing efforts by the Department to achieve reunification, *adoption*, guardianship, or placement with a *fit and willing relative*;

(b) The compelling reasons reunification, *adoption*, guardianship, and placement with a *fit and willing relative* would not be in the best interests of the *child* or *young adult*;

(c) A recommendation that the court issue an order approving the APPLA plan;

(d) The steps the Department has taken to ensure the *foster parent* applies the *reasonable and prudent parent standard* and provides opportunities for the *child* or *young adult* to engage in *age-appropriate or developmentally appropriate activities*;

(e) A timetable for placement of the *child* or *young adult* in another planned permanent living arrangement;

(f) The reasonable services the Department may offer each *parent* to meet the best interests of the *child* or *young adult* until a more preferred *permanency plan* is

achieved, the *child* reaches the age of majority, reaches independence, or the juvenile court relieves the Department of *legal custody* of the *child* or *young adult*; and

(g) The type and amount of contact and involvement between the *parent* and *child* or *young adult* and between the *sibling* and *child* or *young adult* until a more preferred *permanency plan* is achieved, the *child* reaches age of majority, reaches independence, or the juvenile court relieves the Department of *legal custody* of the *child* or *young adult*.

(6) When the Department recommends contact be limited or prohibited between a *parent* and *child* or *young adult* or between a *sibling* and *child* or *young adult*, the caseworker must make the request to the court, and include the reasons contact should be limited or prohibited.

(7) Within 30 days of the Department or court decision not to approve the APPLA plan the caseworker must:

(a) Inform the *child* or *young adult* and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c), the substitute caregivers, parents, attorney, and court appointed special advocate of the *child* or *young adult*, and other persons with significant involvement in the life of the *child* or *young adult*; and

(b) Consult with the team to reconsider other permanency options for the *child* or *young adult*.

Stat. Auth.: ORS 418.005
Stats Implemented: ORS 418.005, 419A.004

## 413-070-0551
## Contents of an APPLA Case Plan
*(Effective 02/01/16)*

(1) When APPLA is the *permanency plan* for a *child* or *young adult*, the caseworker must address each of the following in the case plan of the *child* or *young adult*:

(a) Family composition, which includes the identifying information of each *parent*, except when parental rights have been terminated, *guardian*, and *sibling*.

(b) Except when parental rights have been terminated, the identified impending danger safety threats.

(c) Except when parental rights have been terminated, the ongoing safety plan as described in OAR 413-015-0400 to 413-015-0485 and recorded in the electronic information system of the Department.

(d) A description of how the Department determined the APPLA is the most appropriate *permanency plan* for the *child* or *young adult*, and each *compelling reason* why the more preferred *permanency plan* options were not selected for the *child* or *young adult*.

(e) The steps the Department has taken to ensure the *substitute caregiver* is applying the *reasonable and prudent parent standard* and the *child* or *young adult* has regular, ongoing opportunities to engage in *age-appropriate or developmentally appropriate activities*.

(f) A description of how the attachments and relationships of the *child* or *young adult* with each *parent*, *sibling*, other *family member*, advocate, *substitute caregiver*, and other person who provides continuity, belonging, stability, support, nurturing, and caring relationships and cultural connections for the *child* or *young adult* may be developed while the *child* or *young adult* is in *substitute care* and maintained when the *child* or *young adult* reaches the age of majority or the juvenile court relieves the Department of *legal custody* of the *child* or *young adult*. When appropriate, the description may include the following:

(A) A description of how each *parent* and *sibling* of the *child* or *young adult* may participate actively in the life of the *child* or *young adult*.

(B) For each existing relationship the *child* or *young adult* has with a permanent adult caregiver or adult parental figure who is capable of sustaining a significant relationship with the *child* or *young adult*, a description of how the relationship may be maintained.

(C) A description of how relationships with relatives and other persons involved in the *child* or young adult's life may be developed and maintained.

(D) Current placement information including the location of the *child* or *young adult* when the *substitute caregiver* authorizes release of the address, except when doing so would jeopardize the safety of the *child*.

(E) The record of visits between the *child* or *young adult* and his or her parents or siblings.

(g) When applicable, a description of the plan to transition a *child* or *young adult* with intellectual or developmental disabilities to an appropriate program for adults with intellectual or developmental disabilities.

(h) The comprehensive transition plan described in OAR 413-030-0400 to 413-030-0460 for any *child* 14 years of age or older or *young adult* and services that prepare the *child* or *young adult* to transition to successful adulthood.

(i) A description of the reasonable efforts made by the Department to put the services and structures described in this rule in place to meet the needs of the *child* or *young adult* and to enhance the stability of the living arrangement of the *child* or *young adult* when the *child* or *young adult* is not living with a specified adult.

(j) A description of the services the Department must provide to ensure the emotional, medical, educational, cultural, and physical needs of the *child* or *young adult* are being met, including:

(A) The health information of the *child* or *young adult*, which documents the specialized medical, dental, and mental health services of the *child* or *young adult*; and

(B) The education services of the *child* or *young adult*, including the school or educational placement history of the *child* or *young adult*, high school credits earned for a *child* over 14 years of age or *young adult*, and any special educational needs.

(k) The services required to prepare the *child* or *young adult* to live in the least restrictive setting possible at the most appropriate time.

(l) The services that may make it possible to achieve a more preferred *permanency plan* listed in OAR 413-070-0536(2) for the *child* or *young adult*.

(m) The services the Department may continue to make available to the parents of the *child* or *young adult*, upon request, that continue to be in the best interests of the *child* or *young adult*.

(n) For any *child* who has attained 14 years of age or *young adult*, the documents described in OAR 413-040-0010(1)(j)(A) and (B).

(2) Except when parental rights have been terminated or the Department is unable to obtain the signature of the *parent* or *guardian*, the case plan must include the signature of the caseworker, the supervisor, and each *parent* or *guardian* as described in OAR 413-040-0010.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 419A.004

## 413-070-0552
## Ongoing Department Responsibilities When APPLA is the Permanency Plan
*(Amended 10/01/15)*

(1) When APPLA is the court-approved *permanency plan* for a *child* or *young adult* in the Department's legal custody, the caseworker must do all of the following:

(a) Discuss the needs of the *child* or *young adult* with the *substitute caregiver* and the *child or young adult* during face-to-face and other contacts, and routinely discuss needs, benefits, barriers, and solutions towards achieving a more preferred permanency option.

(b) Have contact with the *child or young adult*, with the *substitute caregiver*, and monitor *child* or *young adult* safety as described in OAR 413-080-0040 to 413-080-0067.

(c) Provide timely assessment and services for identified needs of the *child* or *young adult* and the *substitute caregiver* or the parents of the *child* or *young adult*.

(d) As soon as possible after the *child* reaches 14 years of age initiate comprehensive transition planning as described in OAR 413-030-0400 to 413-030-0460.

(e) Ensure an annual review of Department efforts to identify and contact relatives of a *child* or *young adult* and efforts to place with or develop and maintain a *child* or young adult's connection and support with relatives is completed.

(f) Monitor the case plan and complete the required case plan reviews.

(g) Submit to the court and to the citizen review board the case plan updates required in Child Welfare Policy I-I.2, "Narrative Recording" and, when the APPLA plan is APPLA - *permanent foster care*, submit a copy of the *permanent foster care* agreement.

(2) In addition to the requirements of section (1) of this rule, when the *child* or *young adult* has an approved APPLA - *permanent foster care* plan:

(a) The Department must continue to assess requirements for certification of a foster home pursuant to OAR 413-200-0270 to 413-200-0296; and

(b) The *substitute caregiver* must--

(A) Maintain a current *Certificate of Approval* and follow the requirements of the Department pursuant to OAR 413-200-0301 to 413-200-0396;

(B) Follow the requirements of the Department regarding education, medical care, mental health care, and other services requested by the Department to meet the needs of the *child* or *young adult*;

(C) Maintain residence in the state of Oregon unless the ICPC referral has been submitted to the receiving state and approval to move has been obtained from the Department and the court prior to the move outside of Oregon; and

(D) Maintain residence in the ICPC approved state if the *substitute caregiver* lives in another state.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 419A.004

## 413-070-0556
## APPLA Permanency Plan Reviews
*(Amended 10/01/15)*

(1) The caseworker must review the APPLA case plan at least every six months and the review must occur prior to a review by the court or citizen review board as required by ORS 419B.470 and 419A.106(1) respectively.

(a) The review must take place in a face-to-face meeting with the *child* or *young adult*, and may include members of the team of the *child* or *young adult*.

(A) When appropriate, the meeting may include a *parent* or *guardian*, unless the *parent* or *guardian* is not available for the review. When a *parent* or *guardian* is unavailable, the caseworker must document the reason the *parent* or *guardian* was unavailable and the efforts made to involve the *parent or guardian*.

(B) During the meeting the caseworker must consider input received from the *child* or *young adult* and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c), other participants in the meeting, and other information received from service providers, substitute caregivers, an attorney of the *child* or *young adult*, a court appointed special advocate of the *child* or *young adult*, the tribe if the *child* is an ICWA *child*, persons with significant attachments to the *child* or *young adult*, and relatives of the *child* or *young adult*.

(b) After the meeting described in subsection (a) of this section, the caseworker must document in the case record:

(A) Whether the current placement continues to be the least restrictive setting available to meet the safety and permanency needs of the *child* or *young adult*; or

(B) Whether a more permanent *permanency plan*, such as reunification, *adoption*, guardianship, or placement with a *fit and willing relative* is more appropriate for the *child* or *young adult*.

(2) When an APPLA has been approved by the court as the *permanency plan* for a *child* or *young adult* in the legal custody of the Department, the Department must notify the court and request a review or permanency hearing:

(a) No less frequently than once every 12 months while the *child* or *young adult* remains in *substitute care* in accordance with ORS 419B.470(2).

(b) Unless good cause is shown, at any time upon the request of the Department, a *substitute caregiver* directly responsible for the care of the *child* or *young adult*, a *parent* of the *child* or *young adult*, an attorney for the *child* or *young adult*, a court appointed special advocate, a citizen review board, or a *tribal court* in accordance with ORS 419B.470(5).

(c) By the citizen review board no less frequently than every six months in accordance with ORS 419A.106(1)(a) unless the court has relieved the citizen review board of its responsibility to review a case in accordance with ORS 419A.106(1)(b).

(d) Within 90 days of a change of *substitute care* placement.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 419A.004, 419B.470

## 413-070-0565
## Termination of APPLA
*(Amended 10/01/15)*

(1) The APPLA - permanent connections and support must be terminated when:

(a) Court wardship is terminated;

(b) The court relieves the Department of legal custody of the *child* or *young adult*; or

(c) The court determines that APPLA - Permanent Connections and Support is no longer the appropriate *permanency plan* for the *child* or *young adult*.

(2) The APPLA - *permanent foster care* plan and agreement must be terminated when:

(a) The *child* reaches the age of majority as provided in ORS 419A.004(17);

(b) Court wardship is terminated;

(c) The court determines that APPLA - *permanent foster care* is no longer the appropriate *permanency plan* for the *child*;

(d) One of the more preferred permanency plans described in OAR 413-070-0536(2) is achieved;

(e) The Department and the *substitute caregiver* mutually consent to termination;

(f) The *foster parent* or *relative caregiver* fails to maintain a current *Certificate of Approval* in accordance with OAR 413-200-0301 to 413-200-0396 and OAR 413-200-0270 to 413-200-0296, including when the certificate has been revoked or denied;

(g) The *child* or *young adult* is removed from the *substitute caregiver* by the Department; or

(h) The *child* or *young adult* requests, and a Child Welfare Program Manager approves, termination of the agreement because of serious or extraordinary circumstances.

(3) The Department must provide written notification to the court of any change in the placement of the *child* or *young adult*.

(4) If a *child* or *young adult* is removed from court-approved APPLA - *permanent foster care*, the caseworker must request a permanency hearing within 90 days after the date of the change in placement to review the *permanency plan* for the *child* or *young adult* under ORS 419B.470(3).

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 419A.004, 419B.470

# Special Immigrant Juvenile Status

## 413-070-0570
## Purpose
*(Amended 07/17/15)*

The purpose of OAR 413-070-0570 to 413-070-0574 is to describe when the Department will consider and pursue *special immigrant juvenile status* for a *child* or *young adult* who was brought to the United States by a *parent* or legal *guardian* not for the purpose of *adoption*, does not have lawful permanent resident status, cannot be returned safely to a *parent* or placed in the country of origin of the *child* or *young adult*, and should remain in the United States pending finalization of a permanent plan other than return to *parent*.

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

## 413-070-0574
## Special Immigrant Juvenile Status
*(Amended 07/17/15)*

(1) The Department may apply for *special immigrant juvenile status* for a *child* or *young adult* in the legal and physical custody and guardianship of the Department if all of the following requirements are met:

(a) The juvenile court has determined that --

(A) The *child* or *young adult* is a dependent ward;

(B) The *child* or *young adult* cannot be returned to a *parent* due to abuse, neglect, abandonment, or similar circumstance; and

(C) It is not in the best interests of the *child* or *young adult* to return to the child's, young adult's, or parent's country of nationality or country of last habitual residence.

(b) The *permanency plan* for the *child* or *young adult* has been changed by the court from return to *parent* to another permanent plan.

(c) The *child* or *young adult* is not a United States citizen and does not have lawful permanent resident status.

(d) The *child* or *young adult* is unmarried and under 21 years of age.

(2) Department staff must consult with and obtain approval from the Department of Human Services' International Case Consultant before applying for *special immigrant juvenile status* for a *child* or *young adult* in the legal and physical custody and guardianship of the Department.

(3) To apply for *special immigrant juvenile status*, before the 21st of the *child* or *young adult* the Department must:

(a) Obtain a court order from the juvenile court that makes the necessary findings to support an application for *special immigrant juvenile status*; and

(b) Complete and submit all necessary U.S. Citizenship and Immigration Service forms and applications for *special immigrant juvenile status*.

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

# Placement Matching

## 413-070-0600
## Purpose
*(Amended 07/17/15)*

The purpose of OAR 413-070-0600 to 413-070-0645 is to:

(1) Describe the requirements for assessing the needs of the *child* or *young adult* when the Department places the *child* or *young adult* in *substitute care* to assure the child's safety;

(2) Identify the most appropriate available *substitute caregiver* who can meet the needs of the *child* or *young adult*; and

(3) Describe the requirements for assessing and matching a potential caregiver's ability to meet the current and lifelong needs of the *child* or *young adult* for safety, permanency, and well-being.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.192

## 413-070-0625
## Identifying and Assessing the Needs of the Child or Young Adult When Placement in Substitute Care Is Required
*(Amended 10/01/15)*

(1) To select a *substitute care* placement that will meet the safety, permanency, and well-being needs of the *child* or *young adult*, the caseworker must:

(a) Involve the *parent* or *guardian* of the *child* or *young adult* and the *child* or *young adult* as developmentally appropriate in identifying *substitute care* placement resources whenever possible.

(b) Assess the ability of each potential *substitute caregiver* to provide safety for the *child* or *young adult*.

(c) Assess the potential *substitute care* placements in the order of preference under OAR 413-070-0220 and 413-070-0320, when the *child* or *young adult* is an *Indian child* or *refugee child*.

(d) Except as provided in subsection (c) of this section, assess the potential *substitute care* placements in the following order of preference:

(A) A *relative* of the *child* or *young adult* who can be certified by the Department.

(B) A person who has a *caregiver relationship* with the *child* or *young adult* and can be certified by the Department.

(C) A *foster parent* who is certified by the Department, or a *provider* who is approved through a licensed child-caring agency.

(e) Consider the use of a family meeting to seek the placement preferences of the family if more than one person requests to have the *child* or *young adult* placed with them; and

(f) Consider whether the potential *substitute care* placement --

(A) Has the ability to provide safety for the *child* or *young adult* and, when there are one or more siblings, each of the siblings;

(B) Is willing to cooperate with any restrictions placed on contact between the *child* or *young adult* and others;

(C) Has the ability to prevent anyone from influencing the *child* or *young adult* in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the *child* or *young adult*;

(E) Has the ability to meet the physical, emotional, and educational needs of the *child* or *young adult*, including the need of the *child* or *young adult* to continue in the same school or educational placement; and

(F) Has the ability to support the interests of the *child* or *young adult* to participate in *age-appropriate or developmentally appropriate activities*, including extracurricular, enrichment, cultural, and social activities.

(g) Ensure that the *substitute care* placement is the most home-like, least restrictive available to meet the needs of the *child* or *young adult*.

(h) Assure that the *race*, color, or national origin of the *child* or *young adult* or *substitute care* placement is not a consideration when assessing a *substitute care* placement.

(2) When a *child* or *young adult* is placed in *substitute care* and has a *sibling* who is currently in or also needs *substitute care*, the caseworker must make diligent efforts to place siblings together unless placing the siblings together is not in the best interests of the *child* or *young adult* or the *sibling* of the *child* or *young adult*.

(3) Within one month of the placement of the *child* or *young adult* in a *substitute care* setting, the caseworker must reconsider whether the *substitute caregiver* is able to meet the requirements in subsection (1)(f) of this rule and assess whether the following placement considerations are met:

(a) The placement is in close proximity to the parents or guardians of the *child* or *young adult*;

(b) The placement is in close proximity to the community of the *child* or *young adult*;

(c) If in the best interests of the *child* and siblings as set forth in section (2) of this rule, the siblings are together in placement; and

(d) The culture and family identity of the *child* or *young adult* are supported by the placement.

(4) After consultation with the supervisor, when the caseworker determines the *substitute care* placement does not meet one or more of the placement considerations in subsection (1)(f) or section (3) of this rule, the caseworker must:

(a) Determine whether remaining in the *substitute care* placement is in the best interests of the *child* or *young adult*;

(b) Work with Department staff to secure another *substitute care* placement for the *child* or *young* adult when appropriate; and

(c) Document the basis for the determination and subsequent actions in the information system of the Department.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 419B.192

## 413-070-0630
## Monitoring the Ongoing Substitute Care Placement Needs of the Child or Young Adult
*(Amended 10/01/15)*

(1) The caseworker must monitor the *substitute care* placement of the *child* or *young adult* and determine whether the *relative caregiver*, *foster parent*, or *provider*:

(a) Meets the placement considerations of OAR 413-070-0625; and

(b) Manages the supervision needs of the *child* or *young adult* as identified in the *CANS screening* and other current assessments or evaluations of the *child* or *young adult*.

(2) The caseworker must assess the ongoing and permanency needs of the *child* or *young adult*:

(a) For physical and emotional safety;

(b) To promote and preserve existing attachments to family;

(c) For continuity and familiarity;

(d) For appropriate educational, developmental, emotional, and physical support;

(e) For stability and permanency;

(f) For maintaining his or her identity and cultural and religious heritage; and

(g) For opportunities to participate in *age-appropriate or developmentally-appropriate activities*, including extracurricular, enrichment, cultural, and social activities.

(3) During the required face-to-face contacts with the *child* or *young adult*, the caseworker must:

(a) Confirm that the *substitute caregiver* can maintain the safety and well-being of the *child* or *young adult*;

(b) Develop and maintain a good working relationship with the *child* or *young adult*;

(c) Observe the *child* or *young adult* in an age-appropriate and comfortable setting;

(d) Gather updated information on the physical and mental health as well as educational, behavioral, and developmental progress of the *child* or *young adult*;

(e) Share updated information about the case plan and *permanency plan* for the *child* or *young adult* with the *substitute caregiver* and as permitted by state or federal law; and

(f) Document the date, time, and location of the contact, observations, and update information in the Department's information system.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 419B.192

## 413-070-0640
## Placement Assessment and Matching
*(Amended 01/15/13)*

(1) The caseworker must assess the extent to which the ongoing needs of the *child* or *young adult* for safety, permanency, and well-being--

(a) Are currently met in *substitute care* at each 90 day case plan review; and

(b) Will be met with a potential *adoptive resource* or *potential guardian* during the permanency planning process.

(2) *Physical* and emotional safety. To determine the extent to which the placement, potential *adoptive resource*, or *potential guardian* meets the needs for physical and emotional safety of the *child* or *young adult*, the caseworker must determine whether the following conditions exist in the home.

(a) The *substitute caregiver*, potential *adoptive resource*, or *potential guardian* has the skill level or willingness to acquire the skills necessary to meet the physical, emotional, and supervisory needs for the *child* or *young adult*;

(b) The *substitute caregiver*, potential *adoptive resource*, or *potential guardian* has the skill level to care for this *child* or *young adult* given the age, number, and gender of all other children or young adults in the home;

(c) The behavioral characteristics of children or young adults currently in the placement are such that the *substitute caregiver*, potential *adoptive resource*, or *potential guardian* can protect the *child* or *young adult* from further victimization and from harming self or others;

(d) The *substitute caregiver*, potential *adoptive resource*, or *potential guardian* has the ability to protect the *child* or *young adult* from inappropriate contact with those who may harm the *child* or *young adult*; and

(e) The physical layout of the home permits the *substitute caregiver*, potential *adoptive resource*, or *potential guardian* to safely supervise the children or young adults in the home.

(3) Attachment to family. To determine the extent to which the placement, potential *adoptive resource*, or *potential guardian* meets the need of the *child* or *young adult* to promote and preserve attachment to his or her family, the caseworker must consider whether:

(a) The family of the *child* or *young adult* has expressed a preference in placement;

(b) The *child* or *young adult* has requested a particular placement;

(c) The *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* demonstrates the ability --

(A) To promote and support the attachment of the *child* or *young adult* through visitation and other types of contact with the family of the *child* or *young adult*;

(B) To accommodate the placement of the siblings of the *child* or *young adult* in the home;

(C) To accommodate regular contact between the *child* or *young adult* and his or her siblings when the *child* or *young adult* is not placed with his or her siblings and regular contact is in the best interests of the *child* or *young adult*; and

(D) To provide mutual care when both the *child* and *parent* require placement. As used in this rule, "mutual care" means the out-of-home placement of a *parent* and *child* together where one or both are in the legal custody of the Department.

(4) Continuity and familiarity. To determine the extent that the placement, potential *adoptive resource*, or *potential guardian* meets the need of the *child* or *young adult* for continuity and familiarity, the caseworker must consider:

(a) The extent of the pre-existing relationship of the *child* or *young adult* with the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian*;

(b) The proximity of the placement to the neighborhood, school, or educational placement of the *child* or *young adult*, and *parent* or *guardian*; and

(c) Whether the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* can provide a permanent home or facilitate transition to a permanent home for the *child* or *young adult*.

(5) To determine the extent that a particular placement, potential *adoptive resource*, or *potential guardian* meets the need of the *child* or *young adult* for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(a) Whether the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* demonstrates competency in meeting the specific and unique needs of the *child* or *young adult* or is acquiring the skills necessary to meet specific and unique needs of the *child* or *young adult*;

(b) Whether the ability of the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* to meet the specific and unique needs of the *child* or *young adult* is influenced by the number and type of children in the home; and

(c) Whether the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* is willing and able to assist with, participate in, and act as an advocate for the *child* or *young adult* in his or her education and treatment plan.

(6) Permanent family relationships. To determine the extent that a potential *adoptive resource* or *potential guardian* meets the need of the *child* or *young adult* for a current and lifelong family relationship, the caseworker must consider:

(a) Whether the potential *adoptive resource* or *potential guardian* can permanently integrate the *child* into the family during childhood.

(b) Whether potential *adoptive resource* or *potential guardian* will be accessible and supportive to the *child* in adulthood.

(7) Stability. To determine the extent to which the placement, potential *adoptive resource*, or *potential guardian* meets the need of the *child* or *young adult* for stability, the caseworker must consider:

(a) Whether the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* has expressed a desire to provide permanency for a particular *child* or *young adult*;

(b) Whether the ability of the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* to provide support and to nurture the *child* or *young adult* is influenced by the number of children or young adults in the home; and

(c) Whether the capacity of the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* to recognize the needs of the *child* or *young adult*, and build on the strengths of the *child* or *young adult*, is sufficient to meet the long-term or lifelong placement needs of the *child* or *young adult*.

(8) Identity, development, cultural, religious, and spiritual background and connections. To determine whether the placement, potential *adoptive resource*, or *potential guardian* can support the identity, development, and cultural and religious or spiritual background and connections of the *child* or *young adult*, the caseworker must consider:

(a) Whether the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* has the ability to appreciate, nurture, support, and

reinforce the identity, development, cultural, religious and spiritual background and connections of the *child* or *young adult*;

(b) Whether the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* has the ability to support the development of the *child* or *young adult*, and help the *child* or *young adult* with problems that the *child* or *young adult* may encounter;

(c) Whether the *relative caregiver*, *foster parent*, *provider*, potential *adoptive resource*, or *potential guardian* has the ability to communicate effectively with the *child* or *young adult*; and

(d) Whether the *child* or *young adult* has adjusted to the placement or is able to adjust to a guardian's home or an adoptive home.

(9) After making the determinations in sections (2) to (8) of this rule, the caseworker must document the extent to which the need of the *child* or *young adult* for safety, permanency, and well-being are or can be met --

(a) In the documentation of the 90-day case plan review when the *child* is in *substitute care*; or

(b) In the documentation of the selection of a *guardian* or *adoptive resource*.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 419B.192

## 413-070-0645
## Involving the Substitute Caregiver in the Concurrent Permanency Plan
*(Amended 12/29/10)*

The caseworker must:

(1) Determine whether the *relative caregiver*, *foster parent*, or *provider* is willing to continue as the placement resource, has the skills and abilities to meet the need of the *child* or *young adult* for safety and well-being, and is willing to work with the Department while the *concurrent permanent plan* for the *child* or *young adult* is implemented by the Department; and

(2) Provide the *relative caregiver*, *foster parent*, or *provider* with the opportunity to have input into a *permanency plan*.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.192

# Guardianship as a Permanency Plan

## 413-070-0655
## Purpose
*(Amended 07/17/15)*

The purpose of OAR 413-070-0651 to 413-070-0670 is to describe the responsibilities of the Department to determine the appropriate use of guardianship, as established by the court under ORS chapter 419B, as a *permanency plan* for a *child* in the care or custody of the Department.

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

## 413-070-0660
## Consideration of Guardianship as a Permanency Plan
*(Amended 06/28/11)*

(1) The Department may consider guardianship as a *permanency plan* for a *child* in the care or legal custody of the Department based on the individual safety, permanency, and well-being needs of the *child*, when the Department has determined:

(a) The *child* is unable to safely return to the home of a *parent*; and

(b) *Adoption* is not an appropriate plan based on the best interest of the *child*.

(2) When considering guardianship as the *permanency plan*, the caseworker must:

(a) Consult with the *child* 14 years of age or older;

(b) Seek input from the *child* as developmentally appropriate, regardless of the age of the *child*;

(c) Assess the parents' acceptance of guardianship as a *permanency plan*, their desire for continued contact with the *child*, and how this will impact the plan; and

(d) Document in the Department's information system how the requirements of subsections (a), (b), and (c) of this section were met.

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

## 413-070-0665
## Consideration of a Substitute Caregiver as a Potential Guardian
*(Amended 07/17/15)*

(1) Prior to considering a *substitute caregiver* as a *potential guardian*, the caseworker and the caseworker's supervisor must comply with the requirements of both of the following subsections:

(a) Review the Department's diligent efforts to identify, contact, and place a *child* with relatives and to place siblings together as required under OAR 413-070-0060 to 413-070-0087.

(b) Confirm there are no current Department actions to --

(A) Identify a child's *relative* as defined in OAR 413-070-0000(78)(a)-(d);

(B) Assess an identified *relative* as defined in OAR 413-070-0000(78)(a)-(d) who has either expressed an interest in and needs to be or currently is being assessed as a permanency resource.

(2) In order to be considered as a *potential guardian*, the *substitute caregiver* must --

(a) Have a current *Certificate of approval* from one of the following entities:

(A) The Department under OAR 413-200-0301 to 413-200-0396.

(B) Aging and People with Disabilities, OAR 411-346-0100 to 411-346-0230.

(C) A *foster care agency* under OAR 413-215-0301 to 413-215-0396.

(D) A *participating tribe* when the *potential guardian* is currently certified as a foster home by the *participating tribe* as meeting the tribe's certification and licensing standards.

(E) Another state when the *potential guardian* is currently certified or otherwise approved by the state in which the *potential guardian* resides and approved as a placement for the *child* under the Interstate Compact on Placement of Children (ICPC).

(b) Agree with the Department that the *child* and any *sibling* under consideration, and the *substitute caregiver* can maintain a stable relationship and function effectively without Department supervision.

(c) Have an updated home study describing how the substitute caregiver's skills and abilities meet the best interests and needs for safety and permanency for the *child* and any *sibling* under consideration.

(d) Have adequate means of financial support and connections to community resources.

(e) Have a strong commitment to caring permanently for the *child* and any *sibling* under consideration for whom the *substitute caregiver* has provided care.

(3) The caseworker must complete all of the following requirements and present the results to a *permanency committee*, when scheduled:

(a) Assess the ability of the *substitute caregiver* to provide safety, permanency, and well-being for the *child* and any *sibling* under consideration.

(b) Assess with the certifier of the *substitute caregiver* the extent to which the ongoing needs for safety, permanency, and well-being of the *child* and any *sibling* under consideration are being met pursuant to OAR 413-070-0640.

(c) Assess the commitment of the *substitute caregiver* to raise the *child* and any *sibling* under consideration.

(d) Provide the *substitute caregiver* with information regarding the duties and responsibilities of a *guardian*.

(e) Agree that the *child*, any *sibling* under consideration, and the *substitute caregiver* can maintain a stable relationship and function effectively without Department supervision.

(f) Consult with the *substitute caregiver* regarding *guardianship assistance* under OAR 413-070-0900 to 413-070-0974.

(A) When *guardianship assistance* will be requested, inform the *substitute caregiver* of the eligibility, application, and ongoing requirements of *guardianship assistance* as described in OAR 413-070-0900 to 413-070-0974.

(B) When *guardianship assistance* will not be requested or may not be approved due to eligibility restrictions, ensure that the *substitute caregiver* has sufficient financial support and connections to community resources to meet the needs of the *child* and any *sibling* under consideration without this assistance.

Stat. Auth.: ORS 418.005, 419B.369
Stats. Implemented: ORS 418.005, 419B.192, 419B.369

## 413-070-0670
## Approval and Implementation of a Guardianship Permanency Plan
*(Amended 01/01/17)*

(1) Subject to OAR 413-070-0518, when the Department is considering a change in a child's *permanency plan*, the Department makes the determination pursuant to OAR 413-070-0500 to 413-070-0519, and the child's caseworker schedules a *permanency committee*.

(2) The *permanency committee* must review all of the information presented to the committee and make recommendations to the Child Welfare Program Manager or *designee* regarding:

(a) Whether guardianship is an appropriate *permanency plan* for the *child*; and

(b) Whether the *substitute caregiver* can meet the child's needs as described in subsection (3)(c) of this rule and should be considered as a *potential guardian*.

(3) The Child Welfare Program Manager or *designee* must decide whether guardianship is the appropriate *permanency plan* for the *child* based upon:

(a) How a *permanency plan* of guardianship meets the child's needs, and the requirements of OAR 413-070-0660(1) and (2) and OAR 413-070-0665(2) and (3);

(b) Whether the Department has provided the *child* and the child's parents an opportunity to identify available permanency; and

(c) Whether the *substitute caregiver* being considered as the *potential guardian* is able to meet the child's needs pursuant to OAR 413-070-0640.

(4) Following the Child Welfare Program Manager or *designee* decision to approve guardianship as a *permanency plan*, the caseworker must --

(a) Request a permanency hearing before the court within 30 days of the decision.

(b) Prior to the court hearing, provide the court with supporting written documentation regarding the Department's position that:

(A) Guardianship is in the child's best interest; and

(B) Neither placement with parents nor *adoption* is an appropriate plan.

(5) At the court hearing, the caseworker must:

(a) Recommend that the court approve changing the child's *permanency plan* to guardianship;

(b) Inform the court whether or not the *potential guardian* is applying for *guardianship assistance*; and

(c) When *guardianship assistance* is being requested, inform the court that after the Department has negotiated the amount or type of *guardianship assistance* with the *potential guardian*, a subsequent court hearing will be requested to allow the order of guardianship to be entered.

(6) Prior to the court hearing to request the final order of guardianship, the Department must document in the case record that the caseworker, supervising worker, if any, and the certifier for the *potential guardian* recommends the finalization of the guardianship.

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

# Visits and Other Types of Child and Family Contact

## 413-070-0800
## Purpose
*(Amended 10/01/15)*

The purpose of OAR 413-070-0800 to 413-070-0880 is to describe the Department's responsibilities in arranging frequent contact between the *child* or *young adult* in *substitute care* and parents or guardians of the *child* or *young adult*, siblings, and other people with whom the *child* or *young adult* has a significant connection. In all cases, the contact is intended to --

(1) Be in the best interests of the *child* or *young adult*, develop or enhance attachment with the family of the *child* or *young adult*, including siblings, and continue relationships with significant others, including siblings;

(2) Reduce the trauma to the *child* or *young adult* associated with separation from primary attachment figures; and

(3) Assure that the safety and well-being of the *child* or *young adult* are the paramount concerns in developing a *child-family contact* plan.

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

## 413-070-0830
## Visitation Rights
*(Amended 10/01/15)*

(1) The *child* or *young adult*, a *parent* or *guardian*, and each *sibling* have the right to *visit* each other while the *child* or *young adult* is in *substitute care*. The *child* or *young adult*, the *parent* or *guardian*, and each *sibling* have the right to *visit* as often as reasonably necessary to develop and enhance their attachment to each other.

(2) The Department will prohibit or cancel visits, unless otherwise ordered by the court, when:

(a) There is reason to believe acts or omissions of a *parent* or *guardian* would result in child abuse or neglect during the *visit*;

(b) The safety of the *child* or *young adult* cannot be managed by supervision;

(c) The *visit* does not meet the best interests of the *child* or *young adult*; or

(d) A court order prohibits visits.

(3) When Department resources alone cannot meet the family contact and visitation needs of the *child* or *young adult*, the caseworker must solicit help from family and community resources.

(4) If a *parent* or *guardian* objects to the contact and *visit* requirements and limitations that the Department imposes, the *parent* or *guardian* may seek juvenile court review of the requirements and limitations.

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

## 413-070-0840
## Orientation Activities
*(Amended 10/01/15)*

Prior to the first contact and after each revision of the Visit and Contact Plan developed under OAR 413-070-0860, the Department must explain the following to the family, *substitute caregiver*, and, when appropriate, the *child* or *young adult*:

(1) The rights and expectations regarding child-family visitation and contact, including its importance to the *child* or *young adult*.

(2) The reason for supervised or unsupervised visits.

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

## 413-070-0855
## Determining Priority in Visit and Contact Plans
*(Amended 10/01/15)*

(1) Unless the court has entered an order regarding visitation by the parents, guardians, siblings, or grandparents of the *child* or *young adult*, the caseworker determines a hierarchy of the attachments of the *child* or *young adult* and prioritizes visits with the parents or guardians and siblings. The caseworker may consider the preferences expressed by the *child* or *young adult*.

(2) When the *permanency plan* is reunification with a *parent* or *guardian*, the first priority of the caseworker is to provide visits with parents or guardians, siblings, and each intervenor granted visitation by the court.

(3) When the *permanency plan* is a plan other than reunification with the parents or guardians, the visitation priority of the caseworker is to preserve attachment to parents or

guardians and siblings and promote attachment of the *child* or *young adult* to the permanent placement resource.

(4) When appropriate, the caseworker may establish visits between the *child* or *young adult* and family members.

(5) When appropriate, the caseworker may establish visits between the *child* or *young adult* and non-related persons with whom the *child* or *young adult* has a significant attachment.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.876

## 413-070-0860
## Types of Visit and Contact Plans
*(Amended 07/17/15)*

(1) The Temporary Visit and Contact Plan.

(a) The caseworker must jointly develop a written Temporary Visit and Contact Plan with the parents or guardians, and may involve the *child*, family members, safety service providers and the *substitute caregiver* to participate in facilitating visitation and supporting the ongoing safety plan when the *child* first enters *substitute care* or at the time of the first court hearing required by ORS 419B.183, whichever is first. The visits must be planned to manage child safety.

(b) The court may make an order regarding visitation between the *child* or young adult's parents, siblings, or grandparents.

(c) The caseworker must arrange a Temporary Visit and Contact Plan that assures child safety.

(d) The plan must include the following:

(A) The names of each person, including the child's siblings, with whom the *child* may have contact; and

(B) A description of the contact permitted with each person that includes:

(i) The type, time of day, frequency, length, and location of the visits; and

(ii) The reason for supervised visits when supervision is required.

(e) If the first *visit* with the *parent* or *guardian* does not occur within the first week of a child's placement in *substitute care*, the caseworker must document the reason

the *visit* did not occur in case notes in the Department's electronic information system.

(f) The caseworker must provide a copy of the Temporary Visit and Contact Plan to the parents or guardians and to others participating in the Temporary Visit and Contact Plan.

(2) The Ongoing Visit and Contact Plan.

(a) The caseworker must develop an Ongoing Visit and Contact Plan with the parents or guardians within 30 days from the date that the *child* enters *substitute care*. The caseworker may involve the *child*, family members, safety service or treatment providers, and the *substitute caregiver* to participate in facilitating visitation in the development of the visit and contact plan. A copy of the written plan is given to each participant. The visits must be in the least restrictive manner in which the *child* or young adult's safety can be managed.

(b) The caseworker may involve grandparents and other relatives, as identified in OAR 413-070-0060 to 413-070-0087, in the development of the Ongoing Visit and Contact Plan.

(c) The caseworker must arrange an Ongoing Visit and Contact Plan that supports child safety, the ongoing safety plan, the best interests of the *child*, and any orders of the court regarding visitation with a *child* or young adult's parents, siblings, or grandparents.

(d) When an Ongoing Visit and Contact Plan is revised, the caseworker completes a revised Ongoing Visit and Contact Plan and provides a copy of the revised plan to each participant.

(e) A plan that prohibits a *parent*, *guardian*, or sibling's *visit* must include the reason for each prohibition and state, if applicable, the conditions under which the Department would begin or resume contact.

(f) The caseworker must document the implementation of the Ongoing Visit and Contact Plan in the case plan.

(g) The caseworker must develop the written Ongoing Visit and Contact Plan which must:

(A) Include the purpose and conditions of visits and contacts including type, time of day, frequency, length, and location;

(B) Describe the reason for supervision when supervision is required;

(C) Identify the individual who will supervise the *visit* or assist a *parent* or *guardian* in meeting the needs of the *child* or *young adult* during visitation;

(D) Support the ongoing safety plan; and

(E) Use language that parents or guardians can understand.

(h) In developing an Ongoing Visit and Contact Plan, the caseworker must --

(A) Arrange visits so that the type, time of day, frequency, length, and location of visits maximize contact between the parents or guardians and the *child* or *young adult*, support the ongoing safety plan and support the *child* or young adult's *permanency plan* as described in OAR 413-070-0855(2) and (3);

(B) Meet the unique needs of the *child* or *young adult*, especially the *child* or young adult's chronological or developmental age and sense of time as they affect the *child* or young adult's attachment to a *parent* or *guardian* and other family members;

(C) Arrange visits that do not disrupt the school schedule of the *child* or *young adult* whenever possible;

(D) Arrange additional contact such as telephone calls, e-mail, and letters, and other activities the family and *child* or *young adult* may do together that support the ongoing safety plan, such as attendance by parents or guardians at doctor appointments, school events, and church;

(E) Address barriers to visitation that must be overcome in order for the *parent*, *guardian*, *child* or *young adult* to participate in the visits, including transportation, adaptations for those traveling long distances, health care requirements, and arranging child care for a child's *sibling*;

(F) Work within each parent's or guardian's employment and treatment obligations;

(G) Ensure that the Ongoing Visit and Contact Plan considers the safety needs of any non-offending *parent* or *guardian* in cases involving domestic violence, including but not limited to different visiting schedules or arranging safe drop-off and pick-up locations;

(H) Explain to a *parent* or *guardian* the consequences of failure to attend a *visit*;

(I) Explain known or anticipated reasons for ending the *visit* (such as health or safety);

(J) Take the actions necessary to assure culturally relevant and language appropriate visitation services; and

(K) Discuss alternatives when visits are canceled due to circumstances of the *parent* or *guardian*, *substitute caregiver*, or the Department.

(3) The Ongoing Visit and Contact Plan may be reviewed or revised at any time and must be reviewed every 90 days.

(4) An Ongoing Visit and Contact Plan must comply with the Interstate Compact on the Placement of Children (see ORS 417.200 and OAR 413-040-0200 to 413-040-0330).

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.337, 419B.440, 419B.449, 419B.876

## 413-070-0870
## Supervision of Visits
*(Amended 01/01/14)*

(1) If supervision of visits is necessary to protect the *child* from harm, manage child safety, or provide therapeutic intervention, the Ongoing Visit and Contact Plan must state the reason for the supervision.

(2) When delegating supervision to a person who is not an employee of the Department, the Department will ensure that the person supervising the *visit* receives a copy of the Ongoing Visit and Contact Plan, understands the dynamics of the individual family, the purpose of supervision, the specific circumstances that require the supervision, the documentation requirements, and complies with the ongoing safety plan.

(3) When delegating supervision to other Department staff, the Department will ensure the Department employee who participates in the Ongoing Visit and Contact Plan receives a copy of the Ongoing Visit and Contact plan, understands the dynamics of the individual family, the purpose of supervision, the specific circumstances that require the supervision, and the documentation requirements of OAR 413-070-0880.

(4) The caseworker must inform the parents or guardians of the reason for the supervision of the visits or contact, and, as resources allow, all supervision should be culturally relevant and language appropriate.

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

## 413-070-0880
## Documentation of Contact
*(Amended 01/01/14)*

(1) When Department staff supervise a *visit*, documentation of the *visit* must be included in the case file and must document:

(a) The location of the *visit*, who attended, and the length of the *visit*;

(b) Activities that occurred during the *supervised visit*;

(c) The impact of the *visit* on the *child* or *young adult*;

(d) Any missed *visit* and the reasons for the missed *visit*; and

(e) Any interrupted or terminated visits and reasons for the interruption or termination.

(2) When the caseworker arranges supervision by a person other than Department staff, the caseworker must require that the person supervising the *visit* provides complete written documentation of the *visit*, as required by section (1) of this rule, to the caseworker within seven days of each *visit*.

(3) When the *child* or *young adult* is in the legal custody or guardianship of the Department, the caseworker must report to the court no less frequently than every six months, the place and date of the child's or young adult's visits with his or her parents or siblings since the *child* or *young adult* has been in the guardianship or legal custody of the Department, and whether the frequency is in the best interest of the *child* or *young adult*. Reports must be filed with the court more frequently if the court so orders.

(4) When other types of contact in addition to face-to-face visits are included in the Ongoing Visit and Contact Plan, the caseworker must request regular feedback from the participants regarding the impact of the contact on the *child* or *young adult*.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.337, 419B.440, 419B.449

# Guardianship Assistance

## 413-070-0900
## Purpose
*(Amended 01/01/17)*

(1) The purpose of OAR 413-070-0900 to 413-070-0974 is to describe Department criteria for eligibility and receipt of *guardianship assistance* for:

(a) A *child* in the care or custody of the Department or a *participating tribe*;

(b) A *young adult* on whose behalf an initial *guardianship assistance agreement* was entered into when the *young adult* was a *child* of age 16 or 17;

(c) A *young adult* who qualifies for disability services and on whose behalf an initial *guardianship assistance agreement* was entered into when the *young adult* was a *child*;

(d) A subsequent legal guardianship of a *child* in the care of a *successor legal guardian* as described in OAR 413-070-0925; or

(e) A *child* whose eligibility was determined by the Director of the Department pursuant to OAR 413-070-0917(5).

(2) *Guardianship assistance* for a *child* or *young adult* placed for guardianship in Oregon by a public child welfare agency other than the Department is not the responsibility of the state of Oregon.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0905
## Funding of Guardianship Assistance
*(Amended 10/01/15)*

(1) When grandparents or other approved relatives make a permanent commitment to and assume legal guardianship of a *child* for whom they have cared as a *substitute caregiver*, the Department provides *guardianship assistance* as described in OAR 413-070-0900 to 413-070-0974.

(2) *Guardianship assistance* for Title IV-E children and young adults is funded in part with Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

(3) A *child* who is ineligible for Title IV-E funded *guardianship assistance* may be eligible for state-funded *guardianship assistance* as described in OAR 413-070-0917(3).

(4) State-funded *guardianship assistance* is subject to the availability of funds. When all available state funds are obligated, the Department will continue to:

(a) Accept new applications;

(b) Accept requests to adjust a *guardianship assistance* payment; and

(c) Establish a waiting list.

(5) When state funds are unavailable and a new *guardianship assistance* application is received, the *guardian* may sign a *guardianship assistance agreement* only to prevent delay in finalizing the guardianship, with the understanding that *guardianship assistance* may be available at a later date.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0917
## Eligibility for Guardianship Assistance
*(Amended 01/01/17)*

(1) To be eligible for Title IV-E *guardianship assistance*, a *child* must meet all of the following:

(a) Be a United States citizen or qualified non-citizen as described in OAR 413-100-0210 and in 8 USC section 1641(b) or (c).

(b) Be placed in the United States or a possession thereof.

(c) Have resided in the home of the *potential guardian* for a period of at least six consecutive months during which the *potential guardian* was fully licensed, certified, or approved by the state or a *participating tribe* as meeting the licensure or certification requirements for a foster family home in the state where the home is located.

(d) Be placed with the *potential guardian* who meets the *relative* definition as described in OAR 413-070-0000(78)(a) to (e).

(e) Demonstrate a strong attachment to the *potential guardian*.

(f) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the *child*.

(g) Be eligible for Title IV-E foster care maintenance payments.

(h) Be in the care or custody of the Department or *participating tribe*.

(i) Have special needs or be placed with a *potential guardian* who indicates an economic need to care for the *child*.

(2) Each *sibling* of a *child* or *young adult* eligible for Title IV-E *guardianship assistance* is also eligible for Title IV-E *guardianship assistance* without meeting the eligibility requirements in subsections (c) to (g) of section (1) of this rule when:

(a) The *sibling* is placed in a guardianship with the same *potential guardian* or *guardian*, whether the siblings are placed at the same time or not; and

(b) The *potential guardian* or *guardian* and the Department or *participating tribe* agree that placing the child's *sibling* in the home of the *potential guardian* or *guardian* is appropriate.

(3) To be eligible for state-funded *guardianship assistance*, a *child* must:

(a) Be ineligible for Title IV-E funded *guardianship assistance;*

(b) Except as provided in section (5) of this rule, meet the eligibility requirements in subsections (a) to (e) and (i) of section (1) of this rule; and

(c) Except as provided in section (5) of this rule, be in the care or custody of the Department.

(4) Each *sibling* of a *child* or *young adult* eligible for state-funded *guardianship assistance* as described in section (3) of this rule is also eligible for state-funded *guardianship assistance* without meeting the eligibility requirements in subsections (b) to (f) of section (1) of this rule when:

(a) The *sibling* is placed in a guardianship with the same *potential guardian* or *guardian*, whether the siblings are placed at the same time or not; and

(b) The *potential guardian* or *guardian* and the Department agree that placing the child's *sibling* in the home of the *potential guardian* or *guardian* is appropriate.

(5) For state-funded guardianships, the Director of the Department may authorize a waiver of the eligibility requirements in subsections (1)(c) to (h) of this rule under the following circumstances:

(a) The *child* has or had an open assessment or open case with the Department;

(b) The Department recommends the guardianship be established to prevent the *child* from entering Oregon foster care or to expedite the *child* leaving Oregon foster care;

(c) Pursuant to OAR 413-120-0440 to 413-120-0475, the *guardian* and all adults living in the home of the *guardian* have been approved through a Department-approved, fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check; and

(d) The Department reviews known information regarding the *guardian* and all adults living in the home and determines they have the ability to meet the safety, well-being, and permanency needs of the *child*.

(6) For consideration of *guardianship assistance* under section (5) of this rule, the Child Welfare Program Manager must submit a written recommendation to the Child Permanency Program Manager outlining why it is in the best interest of the *child* to receive *guardianship assistance* pursuant to section (5) of this rule.

(7) When a recommendation outlined in section (6) of this rule is received, the Child Permanency Program Manager must submit it to the Director of the Department for review and consideration.

(8) The *child* must be consulted regarding the guardianship arrangement when the *child* has attained 14 years of age.

(9) In the event of the death or *incapacity* of the *guardian*, a *child* eligible for Title IV-E or state-funded *guardianship assistance* remains eligible if a *successor legal guardian* is named in the *guardianship assistance agreement*, including any amendments to the agreement, prior to the death or *incapacity* of the *guardian*, and the requirements of OAR 413-070-0925(2) are met.

(10) All of the following must be documented in the child's case plan:

(a) How the *child* meets the eligibility requirements.

(b) The steps the Department or *participating tribe* has taken to determine that return to the home or *adoption* is not appropriate.

(c) The efforts the Department or *participating tribe* has made to discuss *adoption* with the child's *relative caregiver* and the reasons *adoption* is not an option.

(d) The efforts the Department or *participating tribe* has made to discuss kinship guardianship with the child's *parent* or parents or the reasons why efforts were not made.

(e) The reason a permanent placement with a potential *relative guardian* and receipt of a kinship *guardian assistance payment* is in the child's best interests.

(f) The reasons for any separation of siblings during placement. If the child's placement with the potential *relative guardian* does not include siblings, the case plan must also include a description of the reasons the *child* is separated from siblings during placement.

(11) A *guardianship assistance agreement* must be signed by the *potential guardian* and a Department representative before guardianship has been legally established by a state or participating *tribal court*.

Stat. Auth.: ORS 409.050, 418.005, Or Laws 2015, ch 840
Stats. Implemented: ORS 409.010, 411.141, 418.005, Or Laws 2015, ch 840

## 413-070-0918
## Extension of Guardianship Assistance for a Young Adult
*(Adopted 10/01/15)*

The Department may approve an extension of a *guardianship assistance agreement* for an individual under the age of 21 when the individual meets the following criteria:

(1) An initial *guardianship assistance agreement* was entered into on behalf of the *child* and at the time of the child's 18th birthday, the *child*:

(a) Qualifies as an individual with a developmental disability as determined by the local County Community Developmental Disabilities Program in Oregon;

(b) Qualifies as an individual with a developmental disability as determined by the equivalent developmental disability program if living in a state other than Oregon; or

(c) Qualifies for Supplemental Security Income (SSI) as determined by the Social Security Administration.

(2) An initial *guardianship assistance agreement* was entered into on behalf of the *child* who is age 16 or 17, and upon reaching the age of 18, the *child* is:

(a) Completing secondary school (or equivalent);

(b) Enrolled in post-secondary or vocational school;

(c) Participating in a program or activity that promotes or removes barriers to employment;

(d) Employed for at least 80 hours a month; or

(e) Determined incapable of any of the above due to a documented medical condition, physical disability, or mental disability.

(3) In order for the extension of *guardianship assistance* under section (1) of this rule to be approved on behalf of a *young adult*, the *guardian* must submit to the Department documentation from the agency making the determination described in subsections (1)(a) to (c) of this rule.

(4) In order for the extension of *guardianship assistance* under section (2) of this rule to be approved on behalf of a *young adult*, the *guardian* must submit to the Department documentation verifying the circumstances described in subsections (2)(a) to (e) of this rule. Documentation of circumstances described in subsection (1)(e) of this rule must be from a medical or mental health professional.

(5) The Department must receive the request for extension of the *guardianship assistance agreement* and the documentation described in sections (3) and (4) of this rule:

(a) At least 30 calendar days before the individual's 18th birthday; or

(b) Before a date determined by the Department when the Department approves a request from the *guardian* to submit the documentation after the individual's 18th birthday. The Department must receive the request before the individual's 18th birthday.

(6) If the Department does not receive the documentation as required by sections (3) to (4) of this rule, the Department may not approve an extension of a *guardianship assistance agreement*.

(7) When an extension of *guardianship assistance* has been approved under section (1) of this rule, *guardianship assistance* will continue until the *young adul*t turns 21 years old.

(8) When an extension of *guardianship assistance* has been approved under section (2) of this rule, the Department will review the eligibility of the *young adult* for continued *guardianship assistance*:

(a) At least annually; or

(b) When information is received that indicates the *young adult* may no longer be eligible for *guardianship assistance* or may be eligible for *guardianship assistance* in a different amount.

(9) The *guardian* must notify the Department, orally or in writing, of any changes in circumstances that may make the *young adult*:

(a) Ineligible for *guardianship assistance*; or

(b) Eligible for *guardianship assistance* in a different amount.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0919
## Eligibility for a Child or Young Adult in the Care or Custody of a Participating Tribe
*(Amended 10/01/15)*

(1) In addition to *guardianship assistance* program criteria in OAR 413-070-0900 to 413-070-0974, the following requirements apply to a *child* in the care or custody of a *participating tribe*:

(a) The *child* must be placed in a foster home approved by the *participating tribe* that meets the certification and licensing standards of the *participating tribe*; and

(b) The *participating tribe* must document how continued placement with the *potential guardian* is in the best interests of the *child* and meets the safety and permanency needs of the *child*.

(2) The *participating tribe* must:

(a) Conduct and prepare a written home study of the *guardian*;

(b) Have a current Title IV-E agreement with the Department which includes participation in the *guardianship assistance* program;

(c) Notify the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days after reestablishing custody of a *child* or *young adult* in a guardianship placement established under OAR 413-070-0900 to 413-070-0974; and

(d) Provide the Adoption Assistance and Guardianship Assistance Unit with a copy of the court order terminating the guardianship within 30 calendar days of the termination, when applicable.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0925
## Guardianship Assistance Eligibility for Potential Guardian and Successor Legal Guardian

*(Technical Amendment 02/18/16)*

(1) The Department may approve a *potential guardian* for *guardianship assistance* when the *potential guardian* --

(a) Meets the requirements of OAR 413-070-0665(2); and

(b) Agrees to ensure that, if the *child* has attained the minimum age for compulsory attendance under the law of the state of residence but has not completed secondary school, the *child* is:

(A) Enrolled in an elementary or secondary school as determined by the law of the state of residence;

(B) Home schooled in accordance with the law of the state of residence;

(C) Enrolled in an independent study program in accordance with the law of the state of residence; or

(D) Incapable of attending school due to a documented medical condition.

(2) In the event of the death or *incapacity* of the *guardian*, before the *successor legal guardian* may receive a *guardianship assistance* payment, all of the following requirements must be met:

(a) The *successor legal guardian* must be named in the *guardianship assistance agreement*, prior to the death or *incapacity* of the *guardian*. A *successor legal guardian* may be added, removed, or replaced by amending the *guardianship assistance agreement* any time prior to the death or *incapacity* of the *guardian.*

(b) The *successor legal guardian* and the Department must negotiate and enter into a written *guardianship assistance agreement* as described in OAR 413-070-0949(2)-(4).

(c) The *successor legal guardian* and all adults living in the home of the *successor legal guardian* must have a Department-approved, fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check.

(d) The *successor legal guardian* must be granted guardianship of the *child* or *young adult* through a judgment of the court.

(3) A *guardianship assistance payment* to a *successor legal guardian* begins on the date all requirements in section (2) of this rule are met.

Stat. Auth.: ORS 411.141, 418.005
Stats. Implemented: ORS 411.141, 418.005

## 413-070-0934
## Application Requirements
*(Amended 10/01/15)*

(1) Except as described in subsections (a) and (b) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the *guardianship assistance agreement* no later than 60 calendar days after receipt of the completed *guardianship assistance* application.

(a) The Adoption Assistance and Guardianship Assistance Unit may delay negotiation of the *guardianship assistance base rate* when the *child* is due for an updated *CANS screening*, a new *CANS screening* is warranted, or a *CANS screening* is in process or completed but a decision is pending regarding the *level of care payment* under OAR 413-020-0230. The unit must begin negotiation no later than 30 calendar days from receipt of the final decision regarding the *level of care payment*.

(b) The Adoption Assistance and Guardianship Assistance Unit may delay negotiation following a request by the caseworker, *guardian*, or *potential guardian* when there are extenuating circumstances regarding the *child* or family. The unit must begin negotiation no later than 30 calendar days from notification that the extenuating circumstance causing the delay has been resolved.

(c) The Adoption Assistance and Guardianship Assistance Unit will begin negotiation with the *successor legal guardian* no later than 30 days after receipt of the Department approved fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check of the *successor legal guardian* and all adults living in the successor legal guardian's home.

(2) A *guardianship assistance* application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed application and all supporting documentation.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0939
## Guardianship Assistance Payments, Medical Assistance, and Nonrecurring Guardianship Expenses
*(Amended 10/01/15)*

(1) When a *guardianship assistance payment* or medical assistance is not being provided, a *potential guardian, guardian* or *successor legal guardian* may enter into a *guardianship assistance agreement only*.

(2) The monthly *guardianship assistance payment* may not exceed the total of:

(a) The *guardianship assistance base rate*; and

(b) When applicable, the *level of care payment* determined by the *CANS screening* conducted under OAR 413-020-0230.

(3) The monthly *guardianship assistance base rate*:

(a) Is determined through discussion and negotiation between the Department and the *potential guardian, guardian* or *successor legal guardian*.

(b) May not exceed the current foster care *base rate payment* the *child* or *young adult* would be eligible to receive in foster care as determined under OAR 413-090-0010(1)(b).

(c) Is negotiated between the *potential guardian, guardian or successor legal guardian* of a *child* or *young adult* and the Department, taking into consideration relevant factors which include, but are not limited to:

(A) The ordinary and special needs of the *child* or *young adult*.

(B) The services and goods required to meet the needs of the *child* or *young adult*.

(C) The cost of the services and goods required to meet the needs of the *child* or *young adult*.

(D) The circumstances of the *potential guardian, guardian* or *successor legal guardian* and their ability to provide the required services and goods for the *child* or *young adult*.

(E) The resources available to the *potential guardian, guardian* or *successor legal guardian* such as medical coverage, private health insurance, public education, other income sources, and community resources.

(F) A *guardianship assistance payment* may be reduced when other sources of income are received by the *potential guardian, guardian* or *successor legal guardian* or the *child* or *young adult*.

(d) Is intended to combine with the resources of the *potential guardian* or *guardian* to provide for the needs of the *child* or *young adult*.

(4) When, during negotiation of the *guardianship assistance base rate* payment, the Adoption Assistance and Guardianship Assistance Coordinator and the *potential guardian, guardian*, or the *successor legal guardian* are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator, the *potential guardian, guardian*, or the *successor legal guardian* may request a review by the *Guardianship Assistance Review Committee*. When a review is requested:

(a) An Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Prepare documentation for the scheduled *Guardianship Assistance Review Committee*;

(B) Notify the *potential guardian, guardian*, or *successor legal guardian* of the date of the committee;

(C) Notify the assigned caseworkers of the date of the committee; and

(D) Attend and participate in the *Guardianship Assistance Review Committee*.

(b) The *potential guardian, guardian*, or *successor legal guardian* may provide written documentation to the Adoption Assistance and Guardianship Assistance Coordinator for review and consideration by the *Guardianship Assistance Review Committee*.

(c) The certification worker for the *potential guardian* and the caseworker for the *child* may participate in a *Guardianship Assistance Review Committee* meeting and may present information and respond to questions. The workers may not participate in the deliberations of the *Guardianship Assistance Review Committee*.

(d) The *Guardianship Assistance Review Committee* members must:

(A) Consider written documentation provided by the *potential guardian, guardian*, or *successor legal guardian*, caseworkers, and the Adoption Assistance and Guardianship Assistance Coordinator.

(B) Review materials submitted to the *Guardianship Assistance Review Committee*, deliberate, and make one or more recommendations regarding the *guardianship assistance base rate*.

(e) At the conclusion of the *Guardianship Assistance Review Committee*, the Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Document the recommendations of the *Guardianship Assistance Review Committee*; and

(B) Submit the documentation to the Post Adoption Services Manager or *designee* within one business day of the *Guardianship Assistance Review Committee* meeting.

(f) The Post Adoption Services Manager or *designee* must complete each of the following actions:

(A) Attend the *Guardianship Assistance Review Committee* and ask any clarifying questions, but not participate in the deliberation or recommendation of the *Guardianship Assistance Review Committee*;

(B) Review and consider:

(i) The materials submitted to the *Guardianship Assistance Review Committee*;

(ii) The recommendations of the committee; and

(iii) The information presented by the *potential guardian*, *guardian*, or *successor legal guardian* under subsection (4)(b) of this rule.

(C) Make a decision within 30 calendar days of the date of the request for review; and

(D) Provide written notification to the *potential guardian*, *guardian*, or *successor legal guardian* and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision.

(5) The monthly *level of care payment*:

(a) Is determined based on the results of a *CANS screening* conducted under OAR 413-020-0230.

(b) Cannot exceed the amount of the *level of care payment* set forth in OAR 413-090-0010(2)(g).

(c) Is included in the *guardianship assistance payment* when the *child* or *young adult* qualifies for a *level of care payment* and when requested by the *potential guardian*, *guardian*, or *successor legal guardian*.

(6) When a *potential guardian*, *guardian*, or *successor legal guardian* is not satisfied with the final *guardianship assistance* offer from the Department, consisting of the *guardianship assistance base rate* and, when applicable, a *level of care payment*, the *potential guardian*, *guardian*, or *successor legal guardian* has the right to a contested case hearing under OAR 413-010-0500 to 413-010-0535.

(7) An initial *guardianship assistance payment* begins on the date the state or *tribal court* legally establishes the guardianship provided there is a written *guardianship assistance agreement* signed by the Department and the *potential guardian.*

(8) A *guardianship assistance payment* to a *guardian* for the *child* or *young adult* is inalienable, not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon, as long as the payment can be identified as a *guardianship assistance payment* and is kept separate from other money in the guardian's possession.

(9) The *guardian* may apply to be the designated payee for any benefit the *child* or *young adult* receives if the benefit program allows such application.

(10) Medical assistance and social services.

(a) A *child* or *young adult* who is the subject of a *guardianship assistance agreement* funded by Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) is categorically eligible for medical assistance through Title XIX and social services under Title XX when --

(A) The guardianship is in effect; and

(B) A *guardianship assistance payment* is being made to the *guardian*.

(b) A *child* or *young adult* who is not eligible for Title XIX medical assistance is eligible for medical assistance under OAR 413-100-0400 to 413-100-0530, when:

(A) The *child* or *young adult* resides in Oregon; or

(B) The *child* or *young adult* resides outside of Oregon but in the United States or possession thereof and is not able to obtain medical assistance in his or her place of residence.

(c) Medical assistance is not provided for a *child* or *young adult* who resides outside of the United States or possession thereof.

(11) Nonrecurring guardianship expenses.

(a) The Department will reimburse a *guardian* up to $2,000 per eligible *child* for approved *nonrecurring guardianship expenses*, including but not limited to:

(A) The cost of a home study;

(B) Court costs;

(C) Attorney fees;

(D) Physical and psychological examinations required for the guardianship; and

(E) Travel to visit with the *child* prior to placement.

(b) Payment for *nonrecurring guardianship expenses* may not duplicate expenses covered by ORS 417.200 - 417.260 or another resource available to the *potential guardian* or *successor legal guardian*.

(c) Documentation of *nonrecurring guardianship expenses* is required and must be submitted prior to execution of the *nonrecurring guardianship assistance agreement*. The *nonrecurring guardianship assistance agreement*, indicating the nature and amount of the *nonrecurring guardianship expenses*, must be signed by the *potential guardian* and a Department representative prior to the establishment of the guardianship.

(d) Payment for *nonrecurring guardianship expenses* is made when the Department receives the court order establishing the guardianship.

(12) Overpayment.

(a) If the Department issues a *guardianship assistance payment* on behalf of a *child* or *young adult* after the date the *guardianship assistance agreement* automatically expires, the Department may seek reimbursement of the overpayment and the *guardian* must repay the Department.

(b) If the *guardian* fails to comply with any provisions of the *guardianship assistance agreement*, including failing to notify the Department of any of the events or circumstances described in OAR 413-070-0964 and 413-070-0974(6) and (8), the Department may collect any *guardianship assistance payment* or medical assistance which the Department would not have provided had the *guardian* complied with the provisions of the *guardianship assistance agreement*.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0944
## Legal Expenses of a Guardian
*(Amended 10/01/15)*

The Department may not authorize payment for legal services provided:

(1) For the *potential guardian*, *guardian*, or *successor legal guardian* in connection with a contested case hearing; or

(2) To defend or retain a guardianship upon challenge by another party once a guardianship is established.

Stat. Auth.: ORS 411.141, 418.005
Stats. Implemented: ORS 411.141, 418.005

## 413-070-0949
## Guardianship Assistance Agreement Requirements
*(Amended 10/01/15)*

(1) Before a *guardian* may receive *guardianship assistance*, there must be a negotiated written *guardianship assistance agreement* between the Department and the *potential guardian* or *guardian* signed by all parties prior to the court order establishing the legal guardianship.

(2) The *guardianship assistance agreement* must include each of the following:

(a) A statement indicating that a *guardianship assistance agreement* remains in effect without regard to the state of residency of the *guardian*.

(b) The effective date of the *guardianship assistance agreement*.

(c) That the Department will pay the *nonrecurring guardianship expenses* associated with obtaining legal guardianship of the *child*, to the extent the *nonrecurring guardianship expenses* do not exceed $2,000 per *child*.

(d) That the *child* or *young adult* for whom the Department is providing a *guardianship assistance payment* remains eligible for medical assistance provided:

(A) The guardianship remains in effect;

(B) A payment is being made; and

(C) The *child* or *young adult* is placed in the United States or possession thereof.

(e) Information regarding garnishment of *guardianship assistance* payments as set forth in OAR 413-070-0939(8).

(f) That the *guardian* agrees to comply with the reporting requirements under OAR 413-070-0964.

(g) That the *guardian* understands that a *guardianship assistance agreement* may be reviewed and the *guardianship assistance* may be adjusted, suspended, or terminated under OAR 413-070-0974.

(h) A statement indicating that the *guardian* understands that the provisions of ORS 192.558 allow the Oregon Health Plan (OHP) and the OHP managed care plans without the authorization of the *guardian* or *child* or *young adult* to exchange the following protected health information for the purpose of treatment activities related to the behavioral or physical health of the *child* or *young adult* when the *child* or *young adult* is the recipient of OHP services:

(A) The name and Medicaid recipient number of the *child* or *young adult*;

(B) The name of the hospital or medical provider of the *child* or *young adult*;

(C) The Medicaid number of the hospital or medical provider;

(D) Each diagnosis for the *child* or *young adult*;

(E) Each treatment activity's date of service;

(F) Each treatment activity's procedure or revenue code;

(G) The quantity of units or services provided; and

(H) Information about medication prescription and monitoring.

(i) The amount of the *guardianship assistance* and the manner in which it is to be provided.

(j) The basis and requirements for periodic changes in the *guardianship assistance payment*, in consultation with the *guardian*, based on the circumstances of the *guardian* and the needs of the *child* or *young adult*.

(k) The additional services and assistance for which the *child* or *young adult* and *guardian* are eligible under the agreement and the procedure by which the *guardian* may apply for such services.

(L) When the Department has agreed to include such language, that the Department may continue to provide *guardianship assistance* for a *child or young adult* when the *child or young adult* moves out of the home of the *guardian* to attend college or live independently.

(3) The *potential guardian* or *guardian* may name a *successor legal guardian* in the *guardianship assistance agreement*, to replace the *guardian* in the event of the death or *incapacity* of the *guardian*.

(4) The Department must provide the *guardian* with a copy of the *guardianship assistance agreement*.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0959
## Court Order of Guardianship
*(Amended 01/01/17)*

(1) Except for guardianships established pursuant to OAR 413-070-0917(5), *guardianship assistance* may only be provided for a legal guardianship established under ORS 419B.365 or ORS 419B.366, as provided under ORS 419B.367 to 419B.369, or as provided by the statutory code or laws of a *participating tribe*.

(2) The Department or *participating tribe* may not pursue a court order establishing an assisted guardianship until a *guardianship assistance agreement* between the Department and the *potential guardian* has been signed by all parties.

(3) The Department or *participating tribe*, through counsel if the *child* is in the care or custody of the Department, must move the court for an order establishing the *guardianship* and, when the *child* is in the care or custody of the Department or *participating tribe*, directing one of the following:

(a) Termination of Department or participating tribe's care or custody and dismissal of the Department or *participating tribe* as a party to the case; or

(b) If the *child* has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the *child*.

(4) The Department may not provide *guardianship assistance* if the court establishes guardianship but orders the Department or *participating tribe* to continue supervision of the *child* or *guardian*.

(5) The *guardian* is not eligible for payments provided under OAR 413-090-0000 to 413-090-0050 and OAR 413-090-0100 to 413-090-0210 once the guardianship is effective and the Department's or participating tribe's custody of the *child* is dismissed by court order.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0964
## Required Reports and Communication
*(Amended 10/01/15)*

(1) A *guardian* receiving *guardianship assistance* must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the *child* or *young adult* or *guardian* that makes the *child* or *young adult* ineligible for *guardianship assistance* including when:

(a) The *child* or *young adult*:

(A) Is emancipated;

(B) Dies;

(C) Marries; or

(D) Is adopted.

(b) The court:

(A) Vacates the guardianship; or

(B) Terminates wardship over the *child* or *young adult*, unless the guardianship is a *tribal court* guardianship and the guardianship remains in effect under tribal law.

(2) A *guardian* receiving *guardianship assistance* must immediately report, orally or in writing, to the Department's Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the *child* or *young adult* or *guardian* that may make the *child* or *young adult* ineligible for *guardianship assistance* including when --

(a) The *child* or *young adult*:

(A) Is out of the home of a *guardian* for more than a thirty-day period or, if more than one *guardian*, is out of the home of both guardians for more than a thirty-day period;

(B) Has a change in needs including but not limited to eligibility for a change in the *level of care payment* based on a new *CANS screening*;

(C) Is placed in *substitute care*;

(D) Is no longer receiving financial support from a *guardian* or, if there is more than one *guardian*, both guardians;

(E) Is incarcerated for more than three consecutive months; or

(F) Has a change in any benefit received other than tribal dividend payments.

(b) A *guardian* is, or if more than one *guardian*, both guardians are:

(A) No longer legally responsible for the financial support of the *child* or *young adult*;

(B) No longer responsible for the *child or young adult*; or

(C) No longer providing support to the *child or young adult*.

(c) A *guardian* seeks to terminate or modify the guardianship.

(d) The court:

(A) Modifies the guardianship, or

(B) Awards child custody or guardianship to another individual.

(3) A *guardian* receiving a *guardianship assistance payment* must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit the following:

(a) When there are two guardians and one *guardian* dies, the surviving *guardian* must notify the Department.

(b) When there is a change in address.

(c) When a *guardian*, *child*, or *young adult* is planning to move from his or her state of residency.

(4) Guardians appointed under ORS 419B.367 are required to submit an annual report to the court within 30 calendar days after each annual anniversary of the court appointment of guardianship. Guardianships established under a *tribal court* may also have a requirement to send written reports to the court.

(5) The Department may:

(a) Send notification to a *guardian* of any court reports required under section (4) of this rule;

(b) Request a *guardian* to submit a copy of the court report to the Department;

(c) Notify the court or *participating tribe* of circumstances that may affect a child's eligibility for *guardianship assistance*; and

(d) Send inquiries to a *guardian* to ensure the *child* continues to be eligible for *guardianship assistance*.

(6) Guardians must respond to inquiries from the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days or as required by the unit.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0969
## Renegotiation of a Guardianship Assistance Agreement
*(Amended 07/17/15)*

(1) A *potential guardian* or *guardian* may request that the Department consider renegotiation of the *guardianship assistance agreement*. The request for renegotiation must:

(a) Be in writing in a format provided by the Department to the *potential guardian* or *guardian*;

(b) Document changes in the circumstances of the *potential guardian* or *guardian*, when applicable;

(c) Document the needs of the *child* or *young adult*;

(d) Provide information about the financial expenses of the *potential guardian* or *guardian* in meeting the needs of the *child* or *young adult*;

(e) Provide information about the expenses required to meet the needs of the *child* or *young adult*; and

(f) Provide additional documentation of the *child* or young adult's current behaviors when the *child* or *young adult* meets the eligibility requirements for consideration of a *level of care payment* under OAR 413-020-0230, and the *potential guardian* or *guardian* is requesting a *level of care payment*.

(2) Renegotiation of the *guardianship assistance base rate* will be conducted as described in OAR 413-070-0939.

(3) Referrals for CANS screenings are described in OAR 413-020-0230.

(4) The Department may require a renegotiation of the *guardianship assistance agreement* when the Department determines that the *child* or *young adult* is eligible for *guardianship assistance* in a different amount, as described in OAR 413-070-0974.

(5) A new *guardianship assistance agreement* must be signed by all parties each time a new *guardianship assistance payment* is agreed upon by the *potential guardian* or *guardian* and the Department.

(6) Unless section (7) of this rule applies, the Department may authorize a renegotiated *guardianship assistance payment* increase or decrease beginning on a date no earlier than the first day of the month in which the Department receives the written request for renegotiation.

(7) The Department may approve up to twelve months of retroactive payments unless a contested case hearing was requested and a subsequent decision necessitates a payment of more than twelve months. The decision includes any decision by the Department including:

(a) A final order;

(b) A stipulated final order;

(c) A settlement agreement; or

(d) Any other agreement resulting in withdrawal of the contested case.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0970
## Guardianship Social Support Services
*(Amended 07/17/15)*

The *guardian* or *child* in an assisted guardianship may request family support services from the Department as described in OAR 413-030-0000 to 413-030-0030.

Stat. Auth.: ORS 411.141, 418.005
Stats. Implemented: ORS 411.141, 418.005

## 413-070-0974
## Review, Adjustment, Suspension, Expiration, and Termination of Guardianship Assistance
*(Amended 10/01/15)*

(1) The Department may review a *guardianship assistance agreement* when the Department:

(a) Receives information indicating that the *child* or *young adult* may no longer be eligible for *guardianship assistance* or may be eligible for *guardianship assistance* in a different amount, including when the Department receives information regarding any of the circumstances described in OAR 413-070-0964;

(b) Determines, when the *child* or *young adult* is not residing in the home of the *guardian*, that a periodic review of the *guardianship assistance agreement* is required;

(c) Receives information that indicates a review is necessary based on a change in the needs of the *child* or *young adult* or circumstances of the family;

(d) Receives information that the *young adul*t no longer meets the requirements for continued assistance, if the Department has agreed to extend *guardianship assistance* under OAR 413-070-0918; or

(e) Determines that the *guardian* has not complied with the requirements of the *guardianship assistance agreement*.

(2) Department review of a *guardianship assistance agreement* may result in a renegotiation, suspension, adjustment, or termination of the *guardianship assistance agreement* or *guardianship assistance* payments.

(3) *Guardianship assistance* may be adjusted at any time by mutual agreement between the *guardian* and the Department.

(4) When there is an across-the-board reduction or increase in the *base rate payment* or *level of care payment* that the *child* or *young adult* would be eligible to receive if the *child* or *young adult* were in foster care, the Department may, after a case-by-case review and without concurrence of the *guardian*, adjust the monthly *guardianship assistance payment* to an amount that does not exceed the new foster care payment the *child* or *young adult* would be eligible to receive if currently in foster care, as follows:

(a) In the case of a reduction, only those payments that exceed the amount the *child* or *young adult* would be eligible for if currently in foster care would be reduced, and the reduction would only be to the amount that the *child* or *young adult* would be eligible to receive if currently in foster care.

(b) In the case of an increase, the Department, considering the needs of the *child* or *young adult* and the circumstances of the *guardian*, may increase the *guardianship assistance payment* to an amount that does not exceed the new foster care payment the *child* or *young adult* would receive if currently in foster care.

(5) If, upon review under section (1) of this rule or an adjustment under section (4) of this rule, the Department intends to adjust *guardianship assistance* without the concurrence of the *guardian*, the Department will provide the *guardian* and the *child* or *young adult* with written notice as described in OAR 413-010-0500 to 413-010-0535.

(6) Unless terminated under sections (7) or (8) of this rule, the *guardianship assistance agreement* and the Department's obligation to provide *guardianship assistance* expires automatically on the date any of the following events occur:

(a) When the *child*:

(A) Reaches the age of 18 or, when an extension has been granted under OAR 413-070-0918, no later than the date identified in the *guardianship assistance agreement*;

(B) Is emancipated;

(C) Dies;

(D) Marries;

(E) Is adopted; or

(F) No longer meets the requirements for continued *guardianship assistance* if the Department has agreed to continue *guardianship assistance* under OAR 413-070-0918.

(b) A *guardian* dies, or if more than one *guardian*, both die.

(c) The court:

(A) Vacates the guardianship order or otherwise terminates the guardianship;

(B) Terminates wardship over the *child* or *young adult*, unless the guardianship is a *tribal court* guardianship and the guardianship remains in effect under tribal law; or

(C) Appoints another individual as *guardian* of the *child* or *young adult*.

(7) *Guardianship assistance* may be suspended at any time by mutual agreement between the Department and the *guardian*.

(8) After a review and on a case-by-case basis, the Department may terminate a *guardianship assistance agreement* upon ten calendar days written notice to the *guardian* when the Department determines that --

(a) The *guardian* is no longer responsible for the *child* or *young adult*;

(b) The *guardian* is no longer providing support to the *child* or *young adult*; or

(c) The *child* or *young adult* is no longer eligible for *guardianship assistance* or is eligible for *guardianship assistance* in a different amount.

(9) If a *child* receiving *guardianship assistance* is subsequently adopted by the *guardian*, the *child* may be eligible for adoption assistance under OAR 413-130-0000 to 413-130-0130.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

# Placement with a Fit and Willing Relative

## 413-070-0990
## Purpose
*(Adopted 10/01/15)*

The purpose of OAR 413-070-0990 to 413-070-1060 is to describe the responsibilities of the Department to determine the appropriate use of placement with a *fit and willing relative* as a *permanency plan* for a *child* or *young adult* in the care or custody of the Department.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-1000
## Placement with a Fit and Willing Relative as a Permanency Plan
*(Adopted 10/01/15)*

(1) Placement with a *fit and willing relative* is a *permanency pla*n for a *child* or *young adult* in the care and custody of the Department.

(2) The Department may consider placement with a *fit and willing relative* as a *permanency plan* for a *child* or *young adult* in the care or legal custody of the Department based on the individual safety, permanency, and well-being needs of the *child* or *young adult*, when:

(a) A person who meets the requirements of OAR 413-070-1010 requests to be considered a *fit and willing relative*; and

(b) The Department has determined;

(A) The *child* or *young adult* is unable to safely return to the home of a *parent*;

(B) There are no current Department actions to identify or assess a *relative* of the *child* or *young adult* who has expressed an interest in being an *adoptive resource*, or *adoption* is not in the best interests of the *child* or *young adult*; and

(C) There are no current Department actions to identify or assess a *relative* of the *child* or *young adul*t who has expressed an interest in being a *guardian*, or guardianship is not in the best interests of the *child* or *young adult*.

(3) When considering placement with a *fit and willing relative* as the *permanency plan*, the caseworker must:

(a) Consult with and seek input from the *child* or *young adult* 14 years of age or older and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c);

(b) Consult with and seek input from the *child* or *young adult* as developmentally appropriate, regardless of the age of the *child* or *young adult*;

(c) Assess the parents' acceptance of the *fit and willing relative permanency plan*, and their preference for continued contact with the *child* or *young adult*; and

(d) Document in the electronic information system of the Department how the requirements of subsections (a) to (c) of this section were met.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 409.050, 418.005

## 413-070-1010
## Eligibility Requirements for a Fit and Willing Relative
*(Adopted 10/01/15)*

To be eligible for consideration as a *fit and willing relative*, a person must:

(1) Meet the definition of *relative*; or

(2) Meet the definition of a person with a *caregiver relationship* under ORS 419B.116(1) for a *child* or *young adult* in the care and custody of the Department and be placed in *foster care* through the Office of Developmental Disabilities Services; and

(3) Be approved by the Department as a long term resource for the *child* or *young adult* until a higher level of permanency can be achieved;

(4) Have a current *Certificate of Approval* from the Department, a licensed *foster care agency*, a *participating tribe*, or another state when the *relative* is currently certified or otherwise approved by the state in which the *relative* resides and approved as a placement for the *child* or *young adult* under the Interstate Compact on Placement of Children;

(5) Have a strong commitment to caring permanently for the *child* or *young adult* and any *sibling* under consideration; and

(6) Agree to the requirements, responsibilities, and approval process for the Placement with a Fit and Willing Relative Agreement.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 409.050, 418.005

## 413-070-1020
## Approval and Implementation of a Fit and Willing Relative Permanency Plan
*(Adopted 01/01/17)*

(1) Subject to OAR 413-070-0518, when the Department is considering a change in the *permanency plan* of a *child* or *young adult*, the Department makes the determination pursuant to OAR 413-070-0500 to 413-070-0519.

(2) The *permanency committee* must consider the best interests of the *child* or *young adult* and each of the following factors when developing a recommendation regarding placement with *fit and willing relative* to the Child Welfare Program Manager or *designee*:

(a) The safety, permanency, and well-being needs of the *child* or *young adult*.

(b) The opportunities the Department has provided the *child* or *young adult* and his or her parents to identify permanency resources.

(c) The parents' acceptance of *fit and willing relative* as a *permanency plan* and their preference for continued contact with the *child* or *young adult*.

(d) The ability of the *fit and willing relative* to meet the needs of the *child* or *young adult* pursuant to OAR 413-070-0640.

(e) The compelling reasons placement with a *parent*, *adoption*, or guardianship cannot be achieved.

(f) The sufficiency of the plan for continued contact with siblings.

(3) The Child Welfare program manager or *designee* must consider all of the following when deciding whether placement with a *fit and willing relative* is the appropriate *permanency plan* for the *child* or *young adult*:

(a) The considerations in section (2) of this rule.

(b) The information presented to the *permanency committee*.

(c) The recommendation of the *permanency committee*.

(4) Within 30 days of a Department decision to approve a *fit and willing relative permanency plan* under OAR 413-070-0519, the caseworker must request a permanency hearing before the court.

(5) At the hearing, the caseworker must provide all of the following to the court:

(a) The intensive, ongoing efforts by the Department to return the *child* or *young adult* home, or secure a placement with an adoptive parent or *guardian*.

(b) The compelling reasons it would not be in the best interests of the *child* or *young adult* to return home, be placed for *adoption*, or be placed with a *guardian*.

(c) The type and amount of parent-child and child-sibling contact and involvement until a more preferred *permanency plan* is achieved, the *child* reaches age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the *child* or *young adult*.

(d) The reasonable services the Department may offer each *parent* to meet the best interests of the *child* or *young adult* until a more preferred *permanency plan* is achieved, the *child* reaches the age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the *child* or *young adult*.

(e) The steps the Department has taken to ensure the *foster parent* is following the *reasonable and prudent parent standard*, and opportunities the *child* has had to engage in *age-appropriate or developmentally appropriate activities*.

(f) A recommendation that the court issue an order approving the placement with a *fit and willing relative permanency plan*.

(g) A timetable for placement of the *child* or *young* adul*t* with a *fit and willing relative*.

(6) When the Department recommends that contact be limited or prohibited between a *parent* and *child* or *young adult*, or between a *sibling* and *child* or *young adult*, the caseworker must make the request to the court and include the reasons contact should be limited or prohibited in the court report.

(7) The caseworker must ensure the Placement with a Fit and Willing Relative Agreement is signed by the *fit and willing relative* and the Child Welfare program manager within a reasonable time after the court has approved the *permanency plan* and the *relative* resource has been identified and approved.

(8) Within 30 days of the Department or court decision not to approve the *fit and willing relative permanency* plan, the caseworker must:

(a) Inform the *child* or *young adult* and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c), the *child* or young adult's relative caregivers, parents, attorney, court appointed special advocate, and other persons with significant involvement in the life of the *child* or *young adult*; and

(b) Consult with the child's or young adult's case planning team to reconsider other permanency options.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 409.050, 418.005

## 413-070-1030
## Contents of a Placement with a Fit and Willing Relative Case Plan
*(Adopted 10/01/15)*

(1) When a *child* or young adult's *permanency plan* is placement with a *fit and willing relative*, the caseworker must address each of the following in the *child* or young adult's case plan:

(a) Family composition, which includes the identifying information of each *parent* except when parental rights have been terminated, *guardian*, and *sibling*.

(b) Except when parental rights have been terminated, the identified impending danger safety threats.

(c) Except when parental rights have been terminated, the ongoing safety plan as described OAR 413-015-0400 to 413-015-0485 and recorded in the electronic information system of the Department.

(d) A description of how the Department determined placement with a *fit and willing relative* is the most appropriate *permanency plan* for the *child* or *young adult*, and each compelling reason why the more preferred *permanency plan* options were not selected for the *child* or *young adult*.

(e) The steps the Department has taken to ensure the *relative caregiver* is applying the *reasonable and prudent parent standard*, and to ensure the *child* or *young adult* has regular, ongoing opportunities to engage in *age-appropriate or developmentally appropriate activities*.

(f) A description of how the *child* or young adult's attachments and relationships with each *parent*, *sibling*, and other family members will be developed while the *child* or *young adult* is in a permanent placement with a *fit and willing relative*.

(g) Current placement information including the location of the *child* or *young adult* when the *relative caregiver* authorizes release of the address, except when doing so would jeopardize the safety of the *child* or *young adult*.

(h) The record of visits the *child* or *young adult* has had with parents or siblings.

(i) When applicable, a description of the plan to transition a *child* or *young adult* with developmental or intellectual disabilities to an appropriate program for adults with developmental or intellectual disabilities.

(j) The comprehensive transition plan required by OAR 413-030-0400 to 413-030-0460 for any *child* 14 years of age or older or *young adult* and services that prepare the *child* or *young adult* to transition to adulthood.

(k) A description of the services the Department must provide to ensure the emotional, medical, educational, cultural, and physical needs of the *child* or *young adult* are being met, including:

(A) The health information of the *child* or *young adult*, which documents the specialized medical, dental, and mental health services of the *child* or *young adult*; and

(B) The education services of the *child* or *young adult*, including the school or educational placement history of the *child* or *young adult*, high school credits earned for a *child* over 14 years of age or *young adult*, and any special educational needs.

(L) The services required to prepare the *child* or *young adult* to live in the least restrictive setting possible at the most appropriate time.

(m) The services that may make it possible to achieve a more preferred per*m*anency *plan* for the *child* or *young adult*.

(n) The services the Department may continue to make available to the parents of the *child* or *young adult*, upon request, that continue to be in the best interests of the *child* or *young adult*.

(o) For any *child* 14 years of age or older or *young adult*, the documents described in OAR 413-040-0010(1)(j)(A) and (B).

(2) Except when parental rights have been terminated or the Department is unable to obtain the signature of the *parent* or *guardian*, the case plan must include the signature of the

caseworker, the supervisor, and each *parent* or *guardian* as described in OAR 413-040-0000 to 413-040-0032.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-1040
## Ongoing Department Responsibilities When Placement with a Fit and Willing Relative is the Permanency Plan
*(Adopted 10/01/15)*

(1) When *placement with a fit and willing relative* is the court-approved *permanency plan* for a *child* or *young adult* in the legal custody of the Department, the caseworker must do all of the following:

(a) Have monthly contact with the *child* or *young adult*, with the *relative caregiver*, and monitor the safety of the *child* or *young adult* as described in OAR413-080-0040 to 413-080-0067.

(b) Evaluate the appropriateness of ongoing contact between the *child* or *young adult* with parents, siblings, and other people as described in OAR 413-070-0800 to 413-080-0880.

(c) Provide timely assessment and services for identified needs of the *child* or *young adult*, the *substitute caregiver*, or the parents of the *child* or *young adult*.

(d) Monitor the case plan and complete the required case plan reviews

(e) Submit to the court and to the citizen review board the case plan updates required in Child Welfare Policy I-I.2, "Narrative Recording".

(f) Continue to assess requirements for certification of the permanent r*elative caregiver* pursuant to OAR 413-200-0270 to 413-200-0296.

(g) Develop a comprehensive transition plan as required by OAR 413-030-0400 to 413-030-0460 for any *child* 14 years of age or older.

(2) In addition to the requirements of section (1) of this rule, when the *child* or *young adult* has an approved *fit and willing relative permanency plan*, the caseworker must:

(a) Routinely discuss with the *child* or *young adult* and the permanent *relative caregiver* during face-to-face and other contacts the needs, benefits, barriers, and solutions towards achieving a more preferred permanency option;

(b) Include in the case plan of the *child* or *young adult* a description of how relationships with other relatives and persons involved in the life of the *child* or *young adult* may be developed and maintained; and

(c) In the event a *relative* not previously identified as a potential adoptive or guardianship resource expresses an interest, determine whether it is in the best interests of the *child* or *young adult* to change the plan to a more preferred *permanency plan* and to assess the resource for placement.

(3) The permanent *relative caregiver* must:

(a) Maintain a current *Certificate of Approval* and follow the requirements of the Department pursuant to OAR 413-200-0301 to 413-200-0396; and

(b) Follow the requirements of the Department regarding the education, medical care, and mental health care of the *child* or *young adult*, and other services requested by the Department to meet the needs of the *child* or *young adult*.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-1050
## Placement with a Fit and Willing Relative Permanency Plan Reviews
*(Adopted 10/01/15)*

(1) The caseworker must review the placement with a *fit and willing relative* case plan at least every six months and the review must occur prior to a review by the court or citizen review board as required by ORS 419B.470 and 419A.106(1) respectively.

(a) The review must take place in a face-to-face meeting with the *child* or *young adult*, and may include members of the team of the *child* or *young adult*.

(A) When appropriate, the meeting may include a *parent* or *guardian*, unless the *parent* or *guardian* is not available for the review. When a *parent* or *guardian* is unavailable, the caseworker must document the reason the *parent* or *guardian* was unavailable and the efforts made to involve the *parent* or *guardian*.

(B) During the meeting the caseworker must consider input received from the *child* or *young adult* and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c), other participants in the meeting, and other information received from the *child* or young adult's service providers, substitute caregivers, attorney, court appointed

special advocate, tribe if the *child* is an ICWA *child*, persons with significant attachments to the *child* or *young adult*, and relatives.

(b) After the meeting described in subsection (a) of this section, the caseworker must document in the case record:

(A) Whether the current placement continues to be the least restrictive setting available to meet the safety and permanency needs of the *child* or *young adult*; or

(B) Whether a more permanent *permanency plan*, such as reunification, *adoption*, or guardianship is more appropriate for the *child* or *young adult*.

(2) When a placement with a *fit and willing relative* plan has been approved by the court as the *permanency plan* for a *child* or *young adult* in the legal custody of the Department, the Department must notify the court and request a review or permanency hearing:

(a) Not less frequently than once every 12 months while the *child* or *young adult* remains in *substitute care* in accordance with ORS 419B.470(2).

(b) Unless good cause is shown, at any time upon the request of the Department, a *relative caregiver* directly responsible for the care of the *child* or *young adult*, a *parent* of the *child* or *young adult*, an attorney for the *child* or *young adult*, a court appointed special advocate, a citizen review board, or a *tribal court* in accordance with ORS 419B.470(5).

(c) By the citizen review board no less frequently than every six months in accordance with ORS 419A.106(1)(a) unless the court has relieved the citizen review board of its responsibility to review a case in accordance with ORS 419A.106(1)(b).

(d) Within 90 days of a placement change that removes the *child* or *young adult* from the placement with the *fit and willing relative*.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-1060
## Termination of Placement with a Fit and Willing Relative Permanency Plan
*(Adopted 10/01/15)*

(1) The placement with a *fit and willing relative* plan must be terminated when:

(a) Court wardship is terminated;

(b) The court relieves the Department of legal custody of the *child* or *young adult*;

(c) The court determines that placement with a *fit and willing relative* is no longer the appropriate *permanency plan* for the *child* or *young adult*;

(d) One of the more preferred permanency plans is achieved;

(e) The Department and the *relative caregiver* mutually consent to termination;

(f) The *relative caregiver* fails to maintain a current *Certificate of Approval* in accordance with OAR 413-200-0301 to 413-200-0396 and OAR 413-200-0270 to 413-200-0296, including when the certificate has been revoked or denied; or

(g) The *child* or *young adult* is removed from the *relative caregiver* by the Department.

(2) The Department must provide written notification to the court of any change in the placement of the *child* or *young adult*.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005