

Policy Title:	Voluntary Custody Agreement – OAR			
Policy Number:	I-B.1.3 413-020-0000 thru 0050		Effective Date:	03-20-2007

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- ORS 418.015, Custody and Care of needy children by office; placement
- ORS 419B.476, Permanency Hearing Required, court determinations
- PL 95-608, Indian Child Welfare Act of 1978
- PL 105-89, Adoption and Safe Families Act

Form(s) that apply:

- CF 304, "Service Application"
- CF 333e, "Family Support Services Case Plan – Substitute Care"
- CF 498, "Parental Request for Continuation of Voluntary Agreement"
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0498.doc
- CF 1005, "Voluntary Custody Agreement"
http://dhsresources.hr.state.or.us/WORD_DOCS/CE1005.doc
- DHS 415H Medical Resource Report
<http://dhsforms.hr.state.or.us/Forms/Served/DE0415H.pdf>

Rules:

413-020-0000

Purpose

These rules, OAR 413-020-0000 to 413-020-0050, describe:

- (1) The circumstances in which parents or legal guardians and the Department may enter into a Voluntary Custody Agreement concerning a child who is in a parent's or legal guardian's legal custody; and
- (2) The responsibilities of the parents or legal guardians and the Department in connection with these agreements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

413-020-0005

Definitions

The following definitions apply to OAR 413-020-0000 to 413-020-0050:

- (1) "Child" means a person under 18 years of age.
- (2) "Department" means the Department of Human Services, Child Welfare.
- (3) "Legal custodian" means a person, agency, or institution with legal custody of a child and the following duties and authority:
 - (a) To have physical custody and control of a child;
 - (b) To supply the child with food, clothing, shelter, and incidental necessities;
 - (c) To provide the child with care, education, and discipline;
 - (d) To authorize ordinary medical, dental, psychiatric, psychological, and other remedial care or treatment for the child, and in an emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care;
 - (e) To make such reports and to supply such information as the court may require; and
 - (f) To apply for any benefits to which the child is entitled and to use them to pay for the child's care.
- (4) "Legal custody" means a legal relationship between a person, agency, or institution and a child that imposes on the person, agency, or institution the duties and authority of the child's legal custodian.
- (5) "Legal guardian" means a person or agency that has the duties and authority of a parent with legal custody to make decisions concerning a child, including but not limited to the following:
 - (a) Authorize surgery and other extraordinary treatment for the child;
 - (b) Authorize the child to enlist in the armed forces of the United States;
 - (c) Consent to child's adoption; and
 - (d) Make other decisions of substantial legal significance concerning the child, (but a guardian is not a conservator of the child's property or estate).
- (6) "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.
- (7) "Voluntary Custody Agreement" means a written agreement between the Department and the parent or legal guardian of a child, which transfers legal custody of the child to

the Department; the Department assumes all parental authority and responsibilities that the agreement does not specifically reserve to the parents or legal guardians, as permitted by state law; and the Department provides the child substitute care or treatment, or both, if the family falls within a circumstance described in OAR 413-020-0010(2)(a) - (c).

- (8) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

413-020-0010

Voluntary Custody Agreement

- (1) Under a "Voluntary Custody Agreement", the parent or legal guardian gives the Department the legal custody of the child. The Department assumes all parental and legal responsibilities that the agreement does not specifically reserve to the parents or legal guardians as permitted under ORS 418.015 and becomes the child's legal custodian.
- (2) It is appropriate for the Department to place a child in substitute care and provide services if all of the following subsections apply:
- (a) The parent or legal guardian requests the Department take custody of the child.
 - (b) The parent or legal guardian is immediately and temporarily unable to fulfill his or her parental responsibilities.
 - (c) This inability will be alleviated with short-term placement when one of the following conditions exists:
 - (A) The child cannot remain at home due to a temporary crisis in the family, and cannot safely stay with a member of the extended family or another responsible adult who is well known to the child.
 - (B) The parent or legal guardian is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical or mental health condition.
 - (C) The child needs to be placed outside the home due to problems in the family that could compromise the safety of a family member, and a placement of limited duration in conjunction with intensive services is likely to reunite the family and reduce safety concerns.
- (3) A Voluntary Custody Agreement is not appropriate when the Department's Child Protective Services has determined, within the past 12 months, that the parent or legal guardian was the perpetrator of a founded disposition of child abuse or neglect or when the parent or legal guardian is unwilling to be a permanent resource for the child.
- (4) A Child Welfare Program Manager must approve entering into a Voluntary Custody Agreement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

413-020-0020

Legal Consent

- (1) Only a parent or legal guardian who has legal custody of the child may enter into a Voluntary Custody Agreement (CF 1005).
- (2) All persons who have legal custody of the child must sign the agreement unless one person with legal custody of the child is missing.
- (3) If one person with legal custody of the child is missing, all other persons with legal custody of the child must sign the agreement and must provide the Department the persons and places likely to have knowledge of the missing person's whereabouts. The Department must immediately begin a reasonably diligent search to find the other person with legal custody of the child to provide him or her notice of the agreement.
- (4) The parent or legal guardian must provide information to the Department about insurance and other financial resources to meet the medical, dental, and mental health needs of the child by completing a Medical Resource Report Form (DHS 415H).
- (5) If the child is an Indian child, who is an enrolled member of or may be eligible for membership in an Indian tribe, each parent or Indian custodian who has legal custody must sign the Voluntary Custody Agreement in a hearing before a judge of a court with appropriate jurisdiction. The child must be more than 10 days old. Refer to Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0240 for detailed requirements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015

413-020-0025

Developing the Family Support Services Case Plan when a Parent or Legal Guardian Enters into a Voluntary Custody Agreement with Child Welfare

- (1) The caseworker must develop a family support services case plan as described in OAR 413-030-0016 with the parent or legal guardian who signs a Voluntary Custody Agreement.
- (2) The caseworker must develop a visit and contact plan as described in OAR 413-070-0800 to 413-070-0880.
- (3) The parent or legal guardian must agree to:
 - (a) Full and ongoing cooperation in developing the family support services case plan as described in OAR 413-030-0006(2)(a)-(c) and making decisions for the child based on the child's identified needs;
 - (b) Visit and financially support the child to the fullest extent possible; and
 - (c) Work cooperatively with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-020-0040 Required Reviews

Federal and state law, including the Adoptions and Safe Families Act (Pub. L. 105-89), require review of the cases of all children placed in substitute care. The child placed by the Department with a Voluntary Custody Agreement will be scheduled for Citizen Review Board and court reviews pursuant to OAR 413-040-0100 to 413-040-0170.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015

413-020-0045 Criteria for Continuing a Voluntary Custody Agreement After a Child Reaches 18 Years of Age

- (1) The Department determines that the child will need placement services after reaching 18 years of age and continues a Voluntary Custody Agreement after the child reaches 18 years per ORS 418.027(5) if:
 - (a) One of the conditions in OAR 413-020-0010(2)(a)-(c), which led the Department to assume voluntary custody of the child, continues at the time of the child's 18th birthday;
 - (b) The young adult agrees to the Department's continued assumption of all parental and legal responsibilities that the Voluntary Custody Agreement does not specifically reserve to the parents or legal guardians; and
 - (c) The District Manager approves the continuation of the Voluntary Custody Agreement.
- (2) The court must determine continued custody is in the best interests of the young adult and approve the continuation of the Voluntary Custody Agreement every 180 days.

Stat. Auth.: ORS 418.005, 418.027

Stats. Implemented: ORS 418.015, 418.027

413-020-0050 Termination of Voluntary Agreement

- (1) Either the Department or a parent or legal guardian who signed the agreement may terminate the agreement by providing 48 hours written notice. If an agreement continues after the child reaches 18 years of age, a young adult may terminate the agreement by providing 48 hours written notice.
- (2) If a parent or legal guardian requests the termination of the voluntary agreement and there is reason to believe the child will be unsafe if returned to the home of the parent or legal guardian, the caseworker must report the information to a CPS screener.
- (3) OAR 413-070-0240(5) governs the withdrawal by a parent or Indian custodian of consent concerning an Indian child, within the meaning of the Indian Child Welfare Act, who is in substitute care and the subject of a "Voluntary Custody Agreement" with the Department. OAR 413-070-0240(5) prescribes:

- (a) That the parent or Indian custodian may withdraw consent orally or in writing at any time;
- (b) That an Indian child shall immediately be released to the parent or Indian custodian upon withdrawal of a voluntary consent; and
- (c) Notification to the court, and other actions are required when return of an Indian child to the parent or Indian custodian would place the child in imminent danger or harm.

Stat. Auth.: ORS 418.005, 418.027

Stats. Implemented: ORS 418.015, 418.027

Contact(s):

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

Policy History

- 12/29/95
- 04/01/02
- 01/07/03