DHS Policy
Oregon Department of Human Services

Children, Adults and Families

Prior Version

Policy Title:	Rights of Relatives – OAR				
Policy Number:	I-A.4.5 413-010-0300 thru 0340	Version:		Effective Date:	7/01/10

Approved By: *on file* Date Approved: 7/01/10

Reference(s):

- ASFA - Adoption and Safe Families Act of 1997, P.L. 105-89
- PL 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008
- ORS 109.119 through 109.123
- ORS 419B.875

Form(s) that apply:

- None referenced.

Rules:

413-010-0300
Purpose

The Department recognizes the importance of preserving the family ties and relationships of a *child* or *young adult* who is placed in the legal custody of the Department. These rules, OAR 413-010-0300 to 413-010-0340, describe the rights of relatives and the responsibilities of the Department regarding involvement of a *child* or young adult's relatives in a *child* welfare case.

Stat. Auth.: ORS 109.119 - 109.123, 418.005
Stats. Implemented: ORS 109.119 - 109.123, 418.005

413-010-0310
Definitions

The following definitions apply to OAR 413-010-0300 to 413-010-0340:

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

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

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

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

(5) "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 a case 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.

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

(7) "Relative" means:

(a) An individual with one of the following relationships to the *child* or *young adult* through the *child* or young adult's *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) A *sibling*, also to include an individual with a *sibling* relationship to the *child* or *young adult* through a putative father.

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

(E) A spouse of anyone listed in paragraphs (A) to (D) 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 *child* or *young adult* entering substitute care.

(F) For the purposes of an international adoption, *relative* means an individual described in paragraphs (A) to (D) of this subsection.

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

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

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(B) An individual defined as a *relative* of a refugee *child* or *young adult* under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the *child* or *young adult* had a relationship with the former stepparent prior to entering substitute care; a stepbrother; or a stepsister.

(D) The *registered domestic partner* of the *child* or young adult's *parent* or a former *registered domestic partner* of the *child* or young adult's *parent* if the *child* or *young adult* had a relationship with the former domestic partner prior to the *child* or *young adult* entering substitute care.

(E) The adoptive *parent* of a *child* or young adult's *sibling*.

(F) The unrelated legal or biological father or mother of a *child* or young adult's half-sibling when the *child* or young adult's half-sibling is living with the unrelated legal or biological father or mother.

(c) An individual identified by the *child* or *young adult* or the *child* or young adult's family, or an individual who self-identifies, related to the *child* or *young adult* through the *child* or young adult's *parent* by blood, adoption, or marriage to a degree other than an individual specified as a *relative* in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the *child* or *young adult* or the *child* or young adult's family; and

(B) An individual who had an emotionally significant relationship with the *child* or *young adult* or the *child* or young adult's family prior to time the Department placed the *child* in substitute care.

(e) For the purposes of eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a *parent* and is not a *relative* under these rules unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological *parent* has been terminated by divorce or death.

(B) A foster parent may be considered 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 legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

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

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(iv) A Permanency Committee has recommended the foster parent for consideration as a guardian.

(8) "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.

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

(10) "Sibling" means one of two or more children or young adults related:

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

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

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

(11) "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 109.119 - 109.123, 418.005, 419A.004
Stats. Implemented: ORS 109.119 - 109.123, 418.005, 419A.004

413-010-0320
Relative Involvement in Case Planning and Court Hearings

(1) The Department may involve a *relative* as a *safety service provider* after the assessment that determines the individual is a safe and appropriate resource for involvement in managing a child's safety as required under Child Welfare Policy I-AB.7, "Assessment of Individuals as Safety Service Providers" OAR 413-015-1200 to 413-015-1230.

(2) The Department must consider a family decision-making meeting as described in ORS 417.365 and when the family decision-making meeting is held, the Department may include any family member as defined in ORS 417.371(4)(a) or *relative* in this meeting under OAR 413-040-0008.

(3) The Department must provide notice of a court hearing to each party described in the following subsections when:

(a) A *relative* is currently providing substitute care for a *child* in the legal custody of the Department pursuant to juvenile court jurisdiction as set forth in ORS 419B.875(6); and

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(b) A legal grandparent requests notice in writing and provides a mailing address per ORS 419B.875(7).

(4) A *relative* who expresses to the Department an interest in a *child* has a right to provide information about the child's background and to provide input on the safety, attachment, and permanency needs of the *child*.

(5) Unless an exception to contact is provided by the *child* welfare program manager or *designee* under OAR 413-070-0072(1) or an order of a court, under 42 USC 471(a)(20) the Department must provide notice, within 30 calendar days after the removal of a *child* from the custody of the *parent* or parents of the *child*, to all grandparents and other adult relatives of the *child* known to the Department, that complies with all of the following subsections:

(a) Specifies that the *child* has been or is being removed from the custody of the *parent* or parents of the *child*;

(b) Explains options under federal and state law to participate in the care and placement of the *child*;

(c) Describes the requirements the individual must meet to become a *relative caregiver* and the services and supports available for a *child* placed with a *relative caregiver* under federal and state law; and

(d) Describes the eligibility criteria for and availability of Guardianship Assistance benefits when all Guardianship Assistance eligibility criteria are met.

Stat. Auth.: ORS 109.119 - 109.123, 417.365, 417.371, 418.005, 419B.875
Stats. Implemented: ORS 109.119 - 109.123, 417.365, 417.371, 418.005, 419B.875

413-010-0330
Communication and Visitation

A *relative* has the right to communicate and visit with a *child* or *young adult* in the Department's legal custody when such communication or contact is set forth in:

(1) The *child* or young adult's visitation plan developed under Child Welfare Policy I-E.3.5, "Visits and Other Types of Child and Family Contact" OAR 413-070-0800 to 413-070-0880;

(2) The opportunities for ongoing connection and support developed under Child Welfare Policy I-E.3.3.1, "Search for and Engagement of Relatives" OAR 413-070-0060 to 413-070-0087 and approved by the caseworker; or

(3) An order of a court.

Stat. Auth.: ORS 109.119 - 109.123, 418.005
Stats. Implemented: ORS 109.119 - 109.123, 418.005

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413-010-0340
Department Responsibility to Make Diligent Efforts to Place a Child or Young Adult with Relatives

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The Department must:

(1) Make diligent efforts to place a *child* or *young adult* in substitute care with a *relative* or person who has a caregiver relationship, as defined in ORS 419B.116, to the *child* pursuant to ORS 419B.192(1).

(2) Make diligent efforts to place a *child* or *young adult* in substitute care with his or her siblings so long as placement with the siblings is in the best interests of the *child* or *young adult* and the *child* or young adult's siblings pursuant to ORS 419B.192(2).

(3) In making the diligent efforts described in sections (2) and (3) of this rule, the Department must consider the factors set forth in ORS 419B.192(3) and follow the assessment process described in Child Welfare Policies I-E.3.3.1, "Search for and Engagement of Relatives" OAR 413-070-0060 to 413-070-0087 and II-B.1.1, "Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-adoptive Parents" OAR 413-200-0270 to 413-200-0296.

Stat. Auth.: ORS 109.119 - 109.123, 418.005, 419B.116, 419B.192
Stats. Implemented: ORS 109.119 - 109.123, 418.005, 419B.116, 419B.192

Procedure(s) that apply:

- Child Welfare Procedure Manual, Chapter 2
- Child Welfare Procedure Manual, Chapter 4

Contact(s):

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Policy History

- 12/29/95
- 12/28/11