Juvenile Rights PROJECT

November 24, 2010

By Facsimile Transmission, E-Mail & U.S. Mail
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Re: Comments to Proposed Regulations

Dear Ms. Tesch:

The purpose of this letter is to provide you with several comments, on behalf of Juvenile Rights Project, Inc. (JRP), on the rule changes with regard to adoption selection and review of the selection process.

Please consider this letter and our comments at the November 22, 2010 hearing as part of your administrative record as you make your rule revisions. We have organized our comments into categories of particular concern to us, with references to specific rule provisions included in each section.

I. Current Caretaker and Relative Preference

Introduction

Embedded in hundreds of pages of repealed, amended and new rules is a fundamental shift in the way DHS would fulfill its responsibilities to the children permanently committed to its care. For example, **OAR 413-120-0541 (4)** prohibits consideration of a current caretaker as an adoptive resource, if any of the relatives specified in **OAR 413-120-0510 (15) (a) – (c)** are being identified or assessed. This prohibition exists regardless of the length of the child's placement with the current caretaker, the strength of the child's bond, the degree of risk associated with a move and the degree of relationship between the child and the proposed relative placement. While it is certainly true that many children will benefit from a permanent placement with a person who meets the state's definition of "relative," others will receive a greater benefit remaining permanently with the family they have already come to think of as their own. Rules

which prohibit the state from considering the individual needs of each child permanently committed to its care are bad public policy.

The vastly expanded definitions of "relative," combined with the absolute prohibition on consideration of a foster parent when a "relative" is suitable (no matter how long the child has been with the foster parent nor how securely the child is attached), would result in a cookie cutter approach to decision-making of extreme importance and delicacy. Rather than moving in the direction of refining and individualizing a process that results in profound and permanent life changes for all involved, DHS has created a blunderbuss approach. If a person with a blood, step, marriage, domestic partnership, adoptive or other relationship to a child, no matter how attenuated, is willing and able to adopt, the child is denied the right to have DHS even consider his or her relationship to the persons currently performing the roles of mother and father. Children being placed for adoption by DHS have already suffered more trauma and disruption than most of us ever experience. Our obligation to them should be to take infinite care in selecting their "forever home." The proposed rule changes would abdicate this responsibility.

Values

The public policy direction embodied in the proposed rules is made clear in the repeal of **OAR 413-120-0520,** which enumerated the following agency values: (1) that every child has a right to a permanent family; (2) that decision making for a child should be guided by the child's best interests and an understanding of the child's current and future needs; (3) that the psychological and emotional attachments of a child to the current caretaker are of vital consideration in determining the best interests of the child; and (4) that the best adoption placement selection decisions are always made as the result of a collaborative process.

The new rules do not substitute other values, leaving one to conclude that the values now governing DHS work in this area are: (1) that children do not have the right to a permanent family; (2) that decision making should not be guided by the child's best interests nor with an understanding of the child's current and future needs; (3) that psychological and emotional attachments are not vital considerations; and (4) that the best adoptive decisions are made by a unilateral process. It seems unlikely that DHS really means this, but the rules fail to convey the agency's "new" values.

Recommendation: Do not repeal OAR 413-120-0520.

The Proposed Rules May Adversely Affect Permanency for Children

In some cases, the absolute prohibition on adoption by the person to whom a child has formed a lasting and significant emotional attachment may result in protracted litigation and the possibility of a "less permanent" plan for the child. When child clients have significant attachments to long-term foster parents who will be prohibited from adopting, attorneys will likely (and may be ethically bound to) ask the juvenile court to approve a permanent plan of guardianship, or even "another planned permanent living arrangement," instead of adoption. This unintended but

highly likely consequence needs to be considered. The result would be that not only is the child's plan more "impermanent," but the cost to the state of litigating these matters will not be insignificant. Further, the effect of this approach on how the state will be evaluated according to federal performance measures needs to be considered.

The Proposed Rules Ignore the Developmental Needs of Some Children

The one-size-fits-all rule that eliminates the person a child thinks of as mother or father from the possibility of continuing that relationship flies in the face of both lay and expert understanding of children's development and attachment. While we recognize that the issue of foster parents' entitlement or liberty interest in their relationship with their foster child remains unsettled, the Supreme Court has recognized that "[n]o one could seriously dispute that a deeply loving and interdependent relationship between an adult and a child in his or her care may exist even in the absence of blood relationship." *Smith v O.F.F.E.R.*, 431 US 816, 844 (1977).

The Proposed Rules Unnecessarily Restrict Choice

The new rules will unnecessarily tie the agency's hands. Rather than making an individualized determination for each child, as one would hope an agency charged with protecting the best interests of children under its supervision would do, DHS will be forced (through its own doing) to place children in suitable, but, in many cases, merely satisfactory homes which are not *best* able to meet their needs. While the Oregon Court of Appeals has held that the roles of a CASA and the juvenile court are limited to ensuring that a child has merely a "suitable" adoptive home (see *State ex rel SOSCF v Mitchell*, 182 Or App 402 (2002)), DHS is not so constrained.

There can be no rational reason why an agency whose mandate is to protect children and promote their well being would voluntarily adopt a policy that precludes consideration of the child's foster parent as a current caretaker in *all* cases where a relative (no matter how remote) is suitable, even when this would not be in the child's best interests, and regardless of how long or strong the mutual relationship between the child and foster parent.

The Proposed Rules Violate the Child's Right to Due Process

OAR 413-120-0541 creates an impermissible, irrebuttable presumption that it is in the best interests of every child permanently committed to DHS to be adopted by a "relative," and not by a "non-related" caregiver, no matter how strong and enduring the emotional connection is between the child and caregiver, and no matter what evidence there may be of the harm to the child in severing that relationship.

Under the proposed policy changes, children who have lived with foster parents whom they love, rely on, and in many cases view as true parents, can be permanently separated from those parents and adopted by other parties, solely because of a conclusive or irrebuttable presumption that it is in the child's best interests for this to happen. The irrationality of this approach is clear. As the

Supreme Court said in *Stanley v Illinois,* 405 US 645, 656, 657 (1972), holding invalid a statute that presumed unwed fathers to be unfit for purposes of Illinois' dependency proceedings,

> "Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand."

The Proposed Rules May Create a Protected Liberty Interest in Relatives Seeking to Adopt

Under current law, relatives seeking to adopt a child may not prevail on either substantive or procedural due process claims. See, e.g., *Mullins v Oregon*, 57 F3d 789, 795 (9th Cir, 1995). The new regulations could change that, granting relatives a state law expectation or liberty interest sufficient to trigger a procedural due process claim.

For example, in some cases, California state law provides for the expectation that a foster parent-foster child relationship will continue and thus, that a liberty interest exists and due process protections are required. See, e.g., *Brown v County of San Joaquin*, 601 F Supp 653 (D.C. Cal. 1985)

The Proposed Rules Appear to Conflict with Recent Legislative Direction to DHS

During the 2009 Legislative session, DHS asked the legislature to amend ORS 419B.116 to provide that a "caregiver relationship" for the purposes of intervention in the juvenile court proceeding requires at least twelve consecutive months (instead of six) where the person is a "non-related foster parent." The legislature understood that this change was intended both to change the amount of time before a non-related foster parent could intervene in the juvenile court proceeding *and* permit the agency to lengthen the amount of time a child needed to be with an unrelated foster parent before that foster parent could be taken to an adoption committee as a "current caretaker."

The April 29, 2009 written testimony of Kevin George on HB 2050, before the Senate Human Services and Rural Health Committee, included a two page chart about the impact of the bill on placement preferences for relatives. The final box in the chart, relating to intervenor status, reads:

> "HB 2050 proposes to extend the time period from six-months to 12 months for the non-related person. Thereby, providing a different level of involvement early in the case for a relative and non-relative."

At the bottom of the chart there is a discussion of the relationship between the statutory change and DHS' regulations regarding current caretaker status. It reads:

> "Implications: HB 2050 supports the Legislative intentions started in the 2007 Session to align Oregon Statutes to provide a Preference for Relatives in the Child Welfare system. ORS 419B.090, 419B.185, 419B.192 all changed to provide this consistency. HB 2050 continues this consistent direction. DHS strongly believes that the OAR must be consistent with the Legislative direction (e.g. Current Caretaker Rule must align with the 'Caregiver' as defined in ORS 419B.116."

Thus, three things are clear. First, DHS "strongly believes" its administrative rules should be consistent with legislative direction. We agree. Second, the legislature authorized a change in the current caregiver definition after being told that the change would mean "a different level of involvement *early in the case* for a relative and a non-relative." Third, DHS intended to make a change in the *time it took for a non-related foster* parent to be considered a current caretaker for the purposes of adoption planning *later in the case.* Nothing in the Department's previous presentation indicated that it would, in the name of the consistent direction of relative preference, eliminate all possibility of non-relative current caretaker adoption, where a single relative is available. Nor is there anything in the legislative history to indicate legislative authorization for such sweeping changes.

Recommendation: Amend **OAR 413-120-0541** to eliminate subsection (4) and amend **OAR 413-120-0580 (1) (b) (A)** to read, "Child's relative as defined in OAR 413-120-0510 (15) (a) through (d).

The Proposed Rules Have No Provision for Waiver or Exceptions for Most Children

The proposed rules outline the following preferences for children not covered by the Indian Child Welfare Act or the Refugee Child Welfare Act for considering potential adoptive placements: 1) a relative who is related to the child by blood, marriage or adoption or a sibling placement resource, 2) a relative who is identified as a member of the child's family but is not related by blood, marriage or adoption; an individual who had an emotionally significant relationship with the child or the child's family before entering substitute care; or a foster parent who is a current caretaker, 3) a general applicant.

The law and rules governing placement preferences for Indian and Refugee children outline requirements for exceptions to the placement preferences. Specifically, for Indian children, in the absence of a court's determination that good cause to the contrary exists, the agency shall follow the placement preferences established by ICWA. See OAR 413-070-0220. For Refugee children the agency must follow the established placement preferences unless the preferences are shown to be inappropriate and inconsistent with the best interests of the child. See OAR 413-

070-0320. Further, 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 more of the following reasons: 1) the informed request of the child's parent, if the request is consistent with the stability, security and individual needs of the refugee child and 2) the safety, medical, physical, or psychological needs of the child. See OAR 413-070-0320.

The proposed rules do not allow for exceptions to the listed preferences for children who are not identified as Indian children or Refugee children.

The Proposed Rules Are Not Required by Either State or Federal Law

Nothing in the statutes cited as the statutory authority for the proposed rules *requires* the sweeping changes found in them. Neither the Adoption and Safe Families Act nor the Fostering Connections to Success and Increasing Adoptions Act mandate adoption placement with relatives. The federal statutes do not require the agency to limit its choices for an adoptive parent. In addition, the lack of individualized decision-making about a child's well-being is inconsistent with the policies and purposes of the Adoption and Safe Families Act.

Fostering Connections requires state agencies to identify relatives and to provide relatives notice that a related child has entered foster care. This identification and notification is required to occur early in the case. Oregon recently implemented the Fostering Connections requirements of identification and notification of relatives. Oregon adopted new relative search and notification rules on October 1, 2010, entitled Search for and Engagement of Relatives and numbered OAR 413-070-0060 through 0093, in compliance with Fostering Connections. Similarly, Oregon law requires the agency to make diligent efforts to place children, in need of substitute care placements, with relatives and siblings. ORS 419B.192 (1) and (2).

The Proposed Rules' Failure to Provide a Provision for Waiver or Exceptions for Most Children Is Inconsistent with Federal and State Law

Not allowing for an exception to the placement preferences is inconsistent with Oregon statutes, including ORS 419B.116, Oregon case law, and other Oregon Administrative Rules.

The agency cites the Adoption and Safe Families Act (ASFA) as authority for the rules regarding placement preferences. One principle of ASFA is promoting permanency for children. ASFA established new timelines for making permanency decisions "to ensure that the system respects a child's developmental needs and sense of time." U.S. Department of Health and Human Services, Administration for Children and Families, *Log No. ACYF-CB-PI-98-02* (January 8, 1998) (available at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/1998/pi9802.htm). ASFA also established that a child's safety is the paramount concern in making child welfare decisions. *Id.* In addition to identifying adoption as the most preferred permanent plan for children who cannot return to a parent's care, ASFA "encourages states to provide continuity for children by allowing

their foster parents to adopt them once their biological parents' rights are terminated." Joan Heifetz Hollinger and Naomi Cahn, *Forming Families by Law: Adoption in American Today,* 36-SUM Hum. Rts. 16, 18 (2009).

"The Adoption and Safe Families Act of 1997 (ASFA) recognizes a child's right to safety and stability." Linda Quigley, *The Intersection between Domestic Violence and the Child Welfare System: The Role Courts Can Play in the Protection of Battered Mothers and Their Children,* 13 Wm. & Mary J. Women & L. 867, 875-876 (2007). See also Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, Sec. 101-102, 111 Stat. 2115 (1997).

> "Like other child welfare reform efforts since the 1970's, ASFA drew heavily on the child development principles set forth in the influential work of Joseph Goldstein, Albert Solnit, and Anna Freud . . . include[ing] consideration of (1) the child's need for parental continuity--an adult who serves as the child's 'psychological parent,' (2) the importance of instilling in the child the feeling of being safe, protected and loved, and (3) the child's compressed sense of time and the concomitant urgency of resolution. Catherine J. Ross, *The Tyranny of Time: Vulnerable Children, "Bad" Mothers, and Statutory Deadlines in Parental Termination Proceedings,* 11 Va. J. Soc. Pol'y & L. 176, 195 (2004) (quoting Joseph Goldstein, Albert J. Solnit, Sonja Goldstein and Anna Freud, *In the Best Interests of the Child: The Least Detrimental Alternative,* 19, 41, 89-92 (Free Press 1996)."

Oregon law recognizes the importance of continuity of care for children in the intervention statutes. A foster parent who has cared for an unrelated child for 12 consecutive months has a caregiver relationship with that child under Oregon law. ORS 419B.116 (1)(a) and (b). A foster parent with a caregiver relationship may motion the court to intervene in the dependency proceedings as a party. ORS 419B.116 (2). After the plan is changed to a permanent plan other than return to parent, a foster parent granted intervention *may seek to be considered as a permanent placement resource*. ORS 419B.116 (10)(b) (emphasis added). Oregon law also requires the agency to make diligent efforts to place children in need of substitute care placements with persons having a caregiver relationship as defined in ORS 419B.116. ORS 419B.192 (1).

It is well established in Oregon law that "[t]he primary purpose of adoption proceedings is the promotion and protection of a child's best interest." *Department of Human Services v. Three Affiliated Tribes of Fort Berthold Reservation*, 236 Or App 535, 545, 238 P.3d 40 (2010) (quoting *P and P v. Children's Services Division*, 66 Or App 66, 72, 673 P2d 864 (1983)). The same is true of termination of parental rights proceedings. There are circumstances in which a child's best interest is not served by removal from an unrelated current caretaker for placement with a relative adoptive resource.

While Oregon law requires the agency to make diligent efforts to place children in need of substitute care placements with relatives and siblings, the law provides an exception to the stated placement preferences. ORS 419B.192 (1) and (2). The agency is required to make diligent efforts to effectuate such placements unless the court determines that such placements are not in the best interest of the child. ORS 419B.192 (4).

The agency has several considerations for assessing whether the safety, permanency and well-being needs will be meet in a potential adoptive placement. OAR 413-070-0640. Entitled Placement Assessment and Matching, OAR 413-070-0640 has a list of well thought through factors that the caseworker must consider when assessing a potential adoptive placement. There are circumstances in which a caseworker must consider a current caretaker as a potential adoptive resource, along with a relative who is related by blood, adoption or marriage, in order to adequately meet the safety, permanency and well being needs to the child. These factors should be used in determining whether an exception to the placement preference rule exists.

Recommendation: OAR 413-120-0730 (1) should be rewritten to merge subsections (a) and (b) into a single preference, or, at the very least, to insert a subsection permitting waiver or exception to the preferences in the rule and should give guidance about when an exception is appropriate.

The Proposed Rules for Indian and Refugee Children are Confusing

OAR 413-120-0730 states that potential adoptive resources for a child or identified sibling group must be assessed in a certain order of preference. Listed as fourth and fifth in the preference are requirements to comply with Placement of Indian Children policies and Placement of Refugee Children policies. Potential adoptive placements for Indian and Refugee children have their own preferences. It is confusing to include these requirements as fourth and fifth in a placement preference list.

Recommendation: Placement preferences for Indian and Refugee children should each have their own subsections.

II. The Adoption Selection Process and Appeals

Release of Home Studies

The proposed changes to rules regarding the release of Adoption Home Studies (**OAR 413-010-0081 to OAR 413-010-0085**) seem to be positive. Under amended rule **OAR 413-120-0016 (1),** the requirement that each potential adoptive resource submit to a home study and sign a release of information in order to be considered will assist the child's team in making informed decisions about a potential family's suitability for an individual child. An adoption home study in its entirety significantly facilitates informed decision-making that is in the best interests of the child.

The proposed rules limiting the release or copying of a home study, and requiring return of the home study to the Department within 7 business days after an adoption placement decision, **OAR 413-120-0016(3) and OAR 413-120-0021(16)**, are reasonable, as well as a good protection of applicants' privacy and safety.

Values

OAR 413-120-0015 should not be repealed. This rule currently states that "[t]he best adoption placement selection decisions are always made as the result of a collaborative process," and that "[a]doption selection is an important decision with a lifelong impact." It is troubling that the Department finds it necessary or advisable to delete these values from its adoption placement selection policy. Doing so would seem to establish a new presumption that adoption placement selection should not necessarily result from a collaborative process (the advisability of which is entirely suspect) and that the Department does not appreciate the significant consequences of adoption selection for those who that process affects.

Recommendation: Do not repeal **OAR 413-120-0015.**

Timely Submission and Dissemination of Information to the Committee

Several of the proposed rules deal with the information to be provided to the committee members. **OAR 413-120-0035 (2)** provides that the Department must make the home studies and the additional information identified in **OAR 413-120-0015**[1] available to the AD, committee members and persons eligible to be committee members enumerated in **OAR 413-120-0025 (4).** This is a reasonable time line, allowing each committee member ample opportunity to study the materials. The timeline in **OAR 413-120-0021 (5) (c)** is more problematic because it does not provide for enough time for committee members to review the input of the CASA, child's attorney, tribal representative or member of the RCWAC before the adoption committee meets. Also, the rule does not explicitly require the Department to disseminate the information received under this rule. It is important to ensure that the adoption committee members have *all* relevant information available to them prior to engaging in the adoption placement selection process.

OAR 413-120-0035 (4) permits the Department to receive information from other people, including the child, current or previous substitute caregiver and anyone else with significant information about the needs of the child. The proposed rule vests the Department with the sole discretion to invite the others to attend and present information to an adoption committee. Flexibility at the committee level is important, and we believe that the *committee* should have the authority to allow individuals with knowledge of the child to present information. This will ensure careful examination of the child's needs, will result in the best adoptive match, and will limit lengthy appeal of committee decisions. **OAR 413-120 -0035 (5)** allows the information to

[1] It is likely that this cross reference is a scriveners error and the actual citation should be to OAR 413-120-0016.

be presented to the committee in person, by telephone, in writing or electronically. At least with respect to the written and electronically received information, there should be a timeframe for its submission and dissemination to the committee members. It makes sense that it be submitted and disseminated on the same schedule as the input of the CASA, child's attorney, tribal representative or member of the RCWAC.

Recommendations:

OAR 413-120-0021 (5) (c) should be amended to require that the CASA, child's attorney, tribal representative or member of the RCWAC provide their "input regarding the ability of a potential adoptive resource to meet the current and lifelong needs of the child" ***at least 5 days before*** the date of the adoption placement selection to assure it will be considered, and that the committee facilitator must disseminate that information to all committee members ***at least 2 days before*** the date of the adoption committee.

OAR 413-120-0035 (5) should be amended to require any person invited to provide information to the committee, who submits that information in writing or electronically, must do so ***at least 5 days before*** the date of the adoption placement selection to assure it will be considered, and that the committee facilitator must disseminate that information to all committee members ***at least 2 days before*** the date of the adoption committee.

OAR 413-120-0035 (4) should be amended to read: "***Committee members*** may request that the Department invite the following individuals to attend and present information regarding the child's current and lifelong needs, and the Department will do so absent a showing of good cause:"

Suspension of the Adoption Selection Process

OAR 413-120-0035 (9), the agency is the sole arbiter of the termination of an adoption committee, the suspension of process, and the denial of consideration of existing adoptive resources. We believe this rule vests too much procedural discretion in the agency alone.

Recommendation: **OAR 413-120-0035** should be revised to require the Child Welfare Program Manager or designee to consult with all committee members regarding any impact on a delay in achieving permanency, as indicated in subsection (9) (b), and the determination whether it is in the child's best interest for the relative or sibling placement resource to be considered, as discussed in subsection (9) (c). We note that the proposed rule could be amended accordingly without removing too much agency discretion.

Adoption Placement Selection, Notification, and Documentation

The notification process detailed in **OAR 413-120-0057 (2) (a) and (b)** is cumbersome, and there does not seem to be any justification for a procedure that results in notification of the

adoption placement selection to some before others. The review timelines should be cross-referenced in the rule.

Recommendations:

OAR 413-120-0057 (2) should be amended to provide that once an adoption placement selection has been made, notification is issued to all parties, including all those listed in subsections (a) and (b).

OAR 413-120-0057 (4) should cross-reference the timeline to request review found in OAR 413-120-0060.

Review of the Adoption Selection

The review process under **OAR 413-120-0060** needs some additional safeguards because the decision made by the committee and on review are some of the most significant made by a government agency.

Recommendations:

OAR 413-120-0060 (1) should be amended to require that "the Adoption Program Manager or designee, upon receipt of a timely request for review must, within two business days, notify the child's attorney, CASA and selected applicant that review has been requested, and forward a copy of the request and any supporting documents to them. The child's attorney, CASA, or selected applicant may respond to the request for review. Any response must be in writing and must be received within seven calendar days of the receipt of notification and made under this subsection.

OAR 413-120-0060 (4) should be amended to require that written notice of a decision not to conduct a review shall be sent to the person requesting review and to any person who responded to the request for review.

OAR 413-120-0060 (5) should be amended to include in the notification that a review will occur, notification that additional written information for consideration on review must be received by the DHS Assistant Director for CAF or designee within 7 calendar days of the notification in order to be considered. Upon receipt of any additional information to be considered upon review, copies shall be provided to the person requesting review, to any other individual who has responded with additional information, and to the CASA, child's attorney, tribal representative or member of the RCWAC.

III. Special Immigrant Juvenile Status

A member of our staff previously commented on temporary regulation OAR 413-120-0980, which has been renumbered in the proposed permanent regulations regarding when DHS may

apply for Special Immigrant Juvenile Status (SIJS) for a child. Our concerns remain the same with regard to the renumbered rules, **OAR 413-070-0570 and 413-070-0574**.

Some of the language of the rule is obsolete or contrary to the federal law authorizing SIJS, in part because of the 2008 amendments to the federal law that authorize special immigrant juvenile status. The Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008, Pub. L. No. 110-457, 122 Stat. 544, amended the definition of special immigrant juvenile, found in 8 U.S.C. 1101(a)(27)(J). The following are the relevant sections of the temporary Oregon rule that are not in concert with current federal law:

1. No longer is there a federal requirement that the juvenile court find that the child is "eligible for long term foster care," as delineated in **OAR 413-070-0574 (1) (a)**. The TVPRA specifically eliminated this requirement for SIJS. TVPRA §(II)(A)(235)(d)(1). Although the federal regulations at 8 CFR 204.11 still include this phrase, they have not yet been amended to reflect the change in the statute, and, thus, are not controlling. *See* attached USCIS memorandum dated March 24, 2009, at 2.

2. Contrary to **OAR 413-070-0574 (1) (b)**, the child does not have to be a minor (i.e. under 18) to qualify for SIJS, but simply under 21 when the application is filed. *See* TVPRA §(II)(A)(235)(d)(6) (stating an SIJS application may not be denied based on age if it was filed while the applicant was a child); 8 USC 1101(b)(1) (defining "child" as under 21); 8 CFR 204.11(c)(1) (including "under 21" as an eligibility requirement); USCIS memorandum dated March 24, 2009, at 2–3 (attached). Limiting DHS to applying only if the child is still under 18 would have the effect of eliminating one extremely important part of permanency/transition planning for older wards, arbitrarily denying a subset of children in DHS custody their opportunity to become legal residents of the United States.

3. Similarly, contrary to **OAR 413-070-0574 (3)(a)**, the court order with the necessary findings does not need to be issued before the child is 18, but rather before the child is 21, given the deadline of age 21 to file the SIJS application. JRP has had at least one case in which the court made the required findings for an 18-year-old DHS ward after her family circumstances worsened subsequent to her 18th birthday, and USCIS later granted an SIJS application.

4. **OAR 413-070-0574 (c)** should be amended to read, "The juvenile court has determined that...." It is not the DHS determination that is relevant to the application for SIJS, but the court's determination.

Additionally, the threshold requirement in **OAR 413-070-0570** is unclear. It states that DHS will pursue SIJS only when the child "cannot be returned safely to a parent or placed in the child's

country of origin." Must it be ruled out that the child's country of origin will not accept him/her back, or is the intention to first look at relative placements in the country of origin before pursuing SIJS? We believe that the latter is the appropriate consideration, as there are no procedures in place for assuring the safety of a child simply returned to the authorities of his or her country of origin, without a designated relative placement.

Recommendation: OAR 413-120-0570 should read that SIJS should be pursued when the child "cannot be returned safely to a parent or cannot be placed safely with a relative in the child's country of origin."

IV. Intercountry Adoption Pursuant to the Hague Convention and Intercountry Adoption Act

Placement with relatives outside of the United States can be an important part of provision of the best permanent plan for a child. Because of the dramatic differences in the child welfare systems of various countries, however, it is very important that adequate investigation and supervision of the proposed placement is done by DHS, as well as the foreign authorized entity.

Recommendation: We suggest the following revisions to the proposed regulations:

1. The definition of "relative" in **OAR 413-120-0905 (16)** is unclear, and will likely cause confusion. Subsection (a) (F) states, "For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection." The rule goes on with subsections (b), (c), and (d) describing other people considered to be relatives, however, and it is unclear if subsection (a) (F) applies to the following subsections, or only subsection (a). **OAR 413-120-0905 (16)** should be amended to exclude subsections 16 (a) (E) through 16 (d), as these provisions are inapplicable to the context of intercountry placement, and unnecessary as we understand the purpose of OAR 413-120-0905 (16) to be.

2. **OAR 413-120-0025 (1) (c)** provides that the Department may pursue an outgoing Convention adoption provided that the prospective adoptive parent is a "relative." This provision does not provide for an exception based on the individual needs of the child, or for an individualized, careful examination in the case where the prospective adoptive parent is a non-"relative." **OAR 413-120-0025 (1) (c)** should be amended to provide for such an exception, if it is in the child's best interests to do so.[2]

[2] A pertinent example is that of a child who has significant attachment to, and has been living with, a non-relative in the United States for a long period of time, until that non-relative is deported. The proposed rules would preclude consideration of that non-relative as an adoptive resource, even though that same non-relative would *not* necessarily be precluded from consideration if he or she were living in the United States. If

3. **OAR 413-120-0925 (4) (C)** needs to be clarified to indicate that the "approved training" means approved by DHS.

4. **OAR 413-120-0925 (4) (E)** is too vague as to the "minimum requirements" for face-to-face visits and written reports. This rule should require the same minimum number of face-to-face visits with the child as would be required if the child remained in Oregon, i.e., monthly. OAR 413-120-0925 (3) includes that the requirements of OAR 413-120-0800-0840 (2) be met, which in turn includes the requirements of OAR 413-080-0067 be met regarding minimum contacts. The requirements for face-to-face contacts every 30 days can be waived under OAR 413-080-0067 (3), however. For outgoing international adoptions, the 30 day contact requirements should not be waivable.

5. **OAR 413-120-0925 (4) (E)** should also include a requirement that the child be seen by a medical doctor for a checkup at least once during the post-placement supervision period.

6. **OAR 413-120-0925 (4) (g)** requires that DHS "establish a direct means for the child's collateral contacts in the receiving Convention country to communicate any health or safety concerns about the child to the Department." This is a very important rule, as it provides one mode for DHS to receive information that may not be reported by the foreign authorized entity. The rule does not go far enough, however. The rule should affirmatively require DHS to contact at least the child's teacher, doctor, or other professional service provider, and one other collateral contact other than the adoptive parents at least once every 90 days. "Collateral contacts" should be defined to include relatives, service providers, school personnel, the persons who provided references for the home study, and any other persons known to DHS to play a role in the life of the child.

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in a case such as this, the non-relative is a suitable and culturally appropriate adoptive placement, the proposed rules should not eliminate him or her from consideration.

7. The rules do not provide guidance regarding what DHS should do if, after placement, DHS determines that the placement is no longer in the child's best interest. These rules should clarify what steps the agency would take during the supervisory period under these circumstances.

Thank you for your consideration of our comments and concerns.

Sincerely,

Angela Sherbo

Lisa Kay SP

Brian Baker SP

Julie Sutton SP

Christa Obold-Eshleman