

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services - Child Welfare Programs	413
Agency and Division	Administrative Rules Chapter Number

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Rules Coordinator	Address	Telephone

RULE CAPTION

Revising rules regarding the rights of children in the custody of the Department
Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

12-22-14 at 11:00 am	Room 257, HSB 500 Summer St. NE, Salem, OR 97301	Kris Skaro
Hearing Date & Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND: 413-010-0180, 413-010-0185

Stat. Auth.: ORS 418.005, 418.202

Other Auth.: None.

Stats. Implemented: ORS 418.005, 418.201, 418.202

RULE SUMMARY

The Department of Human Services, Office of Child Welfare Programs, is revising rules regarding the rights of children and young adults in the legal custody of the Department to expressly establish the Oregon Foster Children's Bill of Rights and to list in rule the rights of foster children specified in ORS 418.201, as required by ORS 418.202. These rule changes do not make any substantive changes to the rights of children or young adults in the legal custody of the Department. The rules are also revised to add references and clarify language.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business. A copy of the draft rules can be accessed at the child welfare policy website: <http://www.dhs.state.or.us/policy/childwelfare/drafts/drafts.htm>. To request a hardcopy, contact the Rules Coordinator.

Written comments may be submitted until 5 pm on Wednesday, Dec. 24, 2014 via email to kris.a.skaro@state.or.us, faxed to 503-373-7032, or mailed to Kris Skaro, Rules Coordinator, 500 Summer St. NE, E-48, Salem, OR 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Last Day for Public Comment: Wednesday, Dec. 24, 2014 at 5 pm

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services - Child Welfare Programs

413

Agency and Division

Administrative Rules Chapter Number

Revising rules regarding the rights of children in the custody of the Department

Rule Caption (Not more than 15 words that reasonably identify the subject matter of the agency's intended action.)

In the Matter of: Amending OAR 413-010-0180 and 413-010-0185

Statutory Authority: ORS 418.005, 418.202

Other Authority: None.

Stats. Implemented: ORS 418.005, 418.201, 418.202

Need for the Rule(s):

The Department of Human Services, Office of Child Welfare Programs, needs to revise the rules regarding the rights of children and young adults in the legal custody of the Department, OAR 413-010-0180 and 413-010-0185. These rules were amended effective January 1, 2014, to implement the Oregon Foster Children's Bill of Rights, ORS 418.200 to 418.202 (Senate Bill 123 (2013); Oregon Laws 2013, Chapter 515). These rule changes are needed to expressly establish the Oregon Foster Children's Bill of Rights; to list in rule the rights of foster children specified in ORS 418.201, as required by ORS 418.202; to add references; and to clarify language.

Documents Relied Upon, and where they are available:

April 18, 2014 letter from BeaLisa Sydlik, Deputy Legislative Counsel, Legislative Counsel Committee to Annette Tesch, Oregon Department of Human Services Rules Coordinator available from Oregon Department of Human Services, Hearings and Rules Unit, 500 Summer St. NE, E-48, Salem, OR 97301.

Fiscal and Economic Impact:

These rule changes will have no fiscal or economic impact on the Department, other state agencies, units of local government, the public, businesses, including small businesses, clients, or providers. Approximately 27 entities that provide life skills training and/or substitute care would qualify as a small business and are subject to these rules. There is no cost of compliance for small business.

How were small businesses involved in the development of this rule?

Small businesses were not involved in the development of these rule changes.

Administrative Rule Advisory Committee consulted? If no, why?:

No. A Rules Advisory Committee was consulted in August, 2013, to review and provide input on draft rules to implement the Oregon Foster Children's Bill of Rights under Senate Bill 123 (2013), which became effective January 1, 2014. These rule changes are consistent with the rules reviewed by the prior advisory committee.

Rights of Children and Young Adults

413-010-0170

Purpose

The purpose of these rules, OAR 413-010-0170 to 413-010-0185, is to --

- (1) Describe the rights and protection each *child* and *young adult* in the legal custody of the Department is entitled to receive from the Department; and
- (2) Establish the Oregon Foster Children's Bill of Rights, as provided in ORS 418.200 through 418.202.

Stat. Auth.: ORS 418.005, 418.202

Stats. Implemented: ORS 418.005, 418.201, 418.202, 419B.343

413-010-0175

Definitions

- (1) "Case plan" means a written, goal oriented, and time limited individualized plan for the *child* and the child's family, developed by the Department and the parents or guardians, to achieve the child's safety, permanency, and well being.
- (2) "Child" means a person under 18 years of age.
- (3) "Department" means the Department of Human Services, Child Welfare.
- (4) "Discipline" means a training process a family uses to help a *child* or *young adult* develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.
- (5) "Guardian" means an individual who has been granted guardianship of a *child* through a judgment of the court.
- (6) "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.
- (7) "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.

(8) "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.

(9) "Young adult" means a person 18 through 20 years of age.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-010-0180

Rights of Children and Young Adults

(1) Every *child* and *young adult* in the legal custody of the Department has rights, including but not limited to the right:

- (a) To be placed in the least restrictive environment that appropriately meets individual needs;
- (b) To be provided basic needs such as adequate food, clothing, and shelter;
- (c) To receive appropriate care, supervision, and *discipline*, and to be taught to act responsibly and respect the rights of others;
- (d) To be provided routine and necessary medical, dental, and mental health care and treatment;
- (e) To be provided with free and appropriate public education;
- (f) To be protected from physical and sexual abuse, emotional abuse, neglect, and exploitation;
- (g) To be provided services designed for reunification with the *parent* or *guardian* except when there is clear evidence that the *parent* or *guardian* may not protect the child's or young adult's welfare;
- (h) To be provided services to develop a safe permanent alternative to the family, when family resources are not available;
- (i) To be accorded the least restrictive legal status that is consistent with the need for protection, to have the Department present its position on best interests to the court, and to attend court hearings and speak directly to the judge;
- (j) To receive respect, be nurtured, and attend activities in accordance with his or her background, religious heritage, race, and culture within reasonable guidelines as set by the ~~case plan~~ case plan, the visitation plan, and the court;

- (k) To visit and communicate with a *parent* or *guardian*, siblings, members of his or her family, and other significant people within reasonable guidelines as set by the *case plan*, the visitation plan, and the court;
- (L) To be involved, in accordance with his or her age and ability and with the law, in making major decisions that affect his or her life, to participate in the development of his or her *case plan*, permanency plan, and comprehensive transition plan and to discuss his or her views about the plans with the judge;
- (m) To receive encouragement and be afforded reasonable opportunities to participate in extracurricular, cultural, and personal enrichment activities consistent with his or her age and developmental level; and
- (n) To earn and keep his or her own money and to receive guidance in managing resources to prepare him or her for living independently.

(2) ~~Every~~ This section establishes the Oregon Foster Children's Bill of Rights. In addition to the rights listed in section (1) of this rule, every *child* and *young adult* in the legal custody of the Department who is or was in *substitute care* also has the following rights specified, as provided in ORS 418.201-;

- (a) To have the ability to make oral and written complaints about care, placement, or services that are unsatisfactory or inappropriate, and to be provided with information about a formal process for making complaints without fear of retaliation, harassment, or punishment.
- (b) To be notified of, and provided with transportation to, court hearings and reviews by local citizen review boards pertaining to the child's or young adult's case when the matters to be considered or decided upon at the hearings and reviews are appropriate for the *child* or *young adult*, taking into account the age and developmental stage of the *child* or *young adult*.
- (c) To be provided with written contact information of specific individuals whom the *child* or *young adult* may contact regarding complaints, concerns, or violations of rights, that is updated as necessary and kept current.
- (d) When the *child* or *young adult* is 14 years of age or older, to be provided with written information within 60 days of the date of any placement or any change in placement, regarding:
 - (A) How to establish a bank account in the child's or young adult's name as allowed under state law;
 - (B) How to acquire a driver license as allowed under state law;

- (C) How to remain in foster care after reaching 18 years of age;
 - (D) The availability of a tuition and fee waiver for a current or former foster child under ORS 351.293;
 - (E) How to obtain a copy of the child's or young adult's credit report, if any;
 - (F) How to obtain medical, dental, vision, mental health services, or other treatment, including services and treatments available without parental consent under state law; and
 - (G) A transition toolkit, including a comprehensive transition plan.
 - (e) With respect to a child's or young adult's rights under the federal and state constitutions, laws, including case law, rules, and regulations:
 - (A) To receive a document setting forth such rights that is age and developmentally appropriate within 60 days of the date of any placement or any change in placement;
 - (B) To have a document setting forth such rights that is age and developmentally appropriate posted at the residences of all foster parents, child-caring agencies, and independent resident facilities; and
 - (C) To have an annual review of such rights that is age and developmentally appropriate while the *child* or *young adult* is in *substitute care*.
 - (f) To be provided with current and updated contact information for adults who are responsible for the care of the *child* or *young adult* and who are involved in the child's or young adult's case, including but not limited to caseworkers, caseworker supervisors, attorneys, foster youth advocates and supporters, court appointed special advocates, local citizen review boards, and employees of the Department that provide certification of foster parents, child-caring agencies, and independent resident facilities.
 - (g) To have a hotline phone number that is available to the *child* or *young adult* at all times for the purposes of enabling the *child* or *young adult* to make complaints and assert grievances regarding the child's or young adult's care, safety, or well-being.
- (3) Children and young adults in the legal custody of the Department may have other rights not specified in this rule as appropriate to the child's or young adult's age and developmental stage.

Stat. Auth.: ORS 418.005, 418.202

Stats. Implemented: ORS 418.005, 418.200, 418.201, 418.202

413-010-0185

Department Responsibilities

- (1) The Department will develop information and materials to be provided to children and young adults in the legal custody of the Department who are or were in *substitute care* regarding their rights under ~~ORS 418.201~~[OAR 413-010-0180\(2\)](#). The Department will review and update the information and materials ~~as needed~~ [periodically](#), and may develop other information and materials it determines will be helpful in informing children and young adults about their rights and how to assert and protect them.
- (2) The Department will make training available to caseworkers and other employees who will provide the information and materials specified in section (1) to children and young adults, to ensure the information and materials are provided in a manner that is timely and appropriate to age and developmental stage.
- (3) The Department will make training available to caseworkers and other employees about the Department's obligations under ORS 418.201, [OAR 413-010-0180\(2\)](#), and [this rule](#), to ensure the obligations are carried out in a manner that is timely and appropriate to age and developmental stage.
- (4) The Department will develop information and materials and make training available to substitute caregivers regarding their obligations to ensure the children and young adults in their care are informed of their rights [under OAR 413-010-0180\(2\)](#) in a manner that is timely and appropriate to age and developmental stage.
- (5) The Department will develop and publish a process for children and young adults in [the legal custody of the Department who are or were in](#) *substitute care* to make complaints regarding their care. The process will include a phone number that is available at all times.

Stat. Auth.: ORS 418.005, ORS 418.202

Stats. Implemented: ORS 418.005, 418.201, 418.202