

Youth, Rights & Justice

ATTORNEYS AT LAW

March 17, 2020

Fairborz Pakseresht
Director, Department of Human Services

Rebecca Jones Gaston
Director, DHS Child Welfare

Jana McLellan
Deputy Director, DHS Child Welfare

Sherrelle Jackson
District Manager, DHS District 2

Dear Mr. Pakseresht, Ms. Jones Gaston, Ms. McLellan, and Ms. Jackson,

We are writing to urge you to take immediate action to protect the rights and well-being of children and families in the child welfare system. As Oregon's only public defender dedicated exclusively to the practice of juvenile law, we represent children and parents in the juvenile dependency system and young people in the juvenile delinquency system on over 900 open cases.

Given our experience over the last two weeks, we have significant concerns regarding the health and well-being of children and families in the child welfare system. As a result of the COVID-19 pandemic, Governor Brown has declared a State of Emergency. Schools are closed, courts have greatly restricted their dockets, and the entire community is being advised to shelter in place. We are all being asked to practice social distancing.

At this time of great uncertainty, child welfare-involved families must be a priority.

On any given day, 7500 children are in foster care in Oregon. These children have experienced traumatic events, including separation from their families, that place them at risk of negative outcomes. Trauma exposure leads to academic challenges, peer problems in childhood,

criminal justice involvement, substance use, and mental health issues. After trauma exposure, it is essential that children experience consistency and predictability to lessen further harm.¹

Most parents in the child welfare system also have histories of trauma exposure and a significant number were involved in the system as children. The impact of these traumatic experiences can be intensified by the institutional practices of the child welfare system.²

In order to mitigate further short and long-term harm to children and families in the child welfare system, we make the following recommendations:

1. **Maintain parenting time between children and parents.** Children in foster care have a right to visit their parents as often as reasonably necessary to maintain and enhance their attachment to one another.³ Ongoing family contact is critical to maintain the parent-child relationship and to provide the normalcy and consistency necessary to the well-being of children in foster care. Inadequate family time can impede parental engagement, inhibit healthy parent-child bonding, disrupt relationships, delay permanency, and perpetuate trauma for both children and parents.⁴ Additionally, consistent visitation with parents is strongly associated with family reunification and has been shown to reduce stress and anxiety for children in care.⁵ The realities of our current environment may make face-to-face parenting time challenging and may even expose children and parents to health risk. However, the negative impact to children when they don't see their parents must be balanced against the potential risk of harm.

Although its tempting to simply eliminate face-to-face contact, creative solutions can be found. In some cases, children may be able to visit their parents outdoors or in home-like settings that minimize virus exposure. If face-to-face parenting time is deemed inconsistent with the child's health and safety, video visitation through FaceTime/Skype/Zoom/etc. must be implemented. Foster parents may also obtain a free google voice phone number to dedicate to calls with parents. When supervised or facilitated family time is needed, some videoconferencing apps would allow a caseworker to initiate and supervise video family time silently, without their video

¹ See, e.g., Parenting a Child Who Has Experienced Trauma, Children's Bureau, 2014, available at <https://www.childwelfare.gov/pubPDFs/child-trauma.pdf> and Trauma: What Child Welfare Attorneys Should Know, National Child Traumatic Stress Network and ABA Center on Children and the Law, available at https://www.nctsn.org/sites/default/files/resources/trauma_what_child_welfare_attorneys_need_to_know.pdf

² Trauma: What Child Welfare Attorneys Should Know, National Child Traumatic Stress Network and ABA Center on Children and the Law, available at https://www.nctsn.org/sites/default/files/resources/trauma_what_child_welfare_attorneys_need_to_know.pdf

³ Oregon Administrative Rule 413-070-0830

⁴ Administration for Children and Families Information Memorandum , Family Time and Visitation for Children and Youth in Out of Home Care (2020) available at <https://www.acf.hhs.gov/cb/resource/im2002>

⁵ *Id.*

image turned on, but could intervene or even terminate the family time remotely if necessary.

It is our understanding that DHS is making determinations about visit eligibility based on the child's age. We encourage the agency to refrain from arbitrary determinations and assess the needs of each child independently, as required by the Oregon Administrative Rules.⁶

2. **Provide additional respite for foster parents.** Respite is a much-needed service for foster families, even more so when schools are closed and children are at home all day. Additionally, many foster families are caring for children with special physical, mental health, and developmental needs. Respite care helps avoid placement disruption and stabilizes placements when children have serious behavioral, physical or mental health needs.⁷
3. **Postpone elective or nonurgent medical procedures for children in care.** It our understanding that the agency is continuing to transport foster children to routine medical appointments. While children appear to be the age group least affected by COVID-19, exposure to medical facilities places children, and in particular those who are immunocompromised, and their caregivers at risk. Large medical providers have taken steps to postpone nonurgent appointments in order to conserve medical supplies.⁸ DHS should consult with medical professionals, in each child's case, before transporting a child to a medical facility and should act consistently with direction provided by the child's doctor.
4. **Provide timely and consistent communication to parents about how social distancing and other COVID-19 actions are impacting their children.** Parents of children in the foster care system are often marginalized, with limited access to resources and information while also struggling to overcome challenges of their own. As a result, they may not have access to current information about the severity of COVID-19 and may not have considered the many ways in which this pandemic will impact their child welfare case. In this time of uncertainty, as information becomes available systems must change and respond. However, we must not forget that our work centers on reunifying families. The Department of Human Services must immediately inform parents regarding changes

⁶ See Oregon Administrative Rule 413-070-0800 discussing the purpose of visits and family contact that is intended to be in the best interests of the child, reduce trauma to the child, and ensure safety and well-being of the child.

⁷ Adopt US Kids, Taking a Break (updated June 2013) available at <http://www.nrcdr.org/assets/files/NRCRRFAP/resources/taking-a-break-respite-guide.pdf>

⁸ Oregonian/OregonLive, Kaiser, preparing for coronavirus onslaught postpones all elective and non-urgent care (2020) available at <https://www.oregonlive.com/coronavirus/2020/03/kaiser-preparing-for-coronavirus-onslaught-postpones-all-elective-and-non-urgent-care.html>

to visitation schedules, school schedules, and medical appointments. Attorneys representing parents and children should receive copies of all notifications.

5. **Effectuate early reunification wherever possible.** Prior to reunification, DHS must develop an in-home safety plan, visit the parent(s) in their home, and then visit the child and parent once reunification has occurred.⁹ Social distancing protocols should neither inhibit nor delay reunification. Conversely, to minimize trauma and ensure family stability, DHS should make every effort to facilitate family reunification. In cases where a reunification plan is in place, the agency should proceed as planned without delay.

During these difficult times, we must continue to promote child and family well-being. Maintaining family connections, promoting placement stability, prioritizing health and safety, and ensuring clear communication are integral to a trauma-informed child welfare system. The fundamental rights of children and parents to maintain their relationship continues even during this unprecedented period.

We offer these suggestions in partnership and look forward to continuing to work together on behalf of vulnerable children and their families.

Sincerely,



Amy Miller
Executive Director

⁹ See Child Welfare Procedure Manual, Section 14 available at http://www.dhs.state.or.us/caf/safety_model/procedure_manual/Oregon-DHS-Child-Welfare-Procedure-Manual.pdf