

IN THE OHIO SUPREME COURT

STATE, ex rel. THE CINCINNATI  
ENQUIRER, a Division of GANNETT  
SATELLITE NETWORK, INC.,

Case No. 06-2239

Relator,

vs.

HELEN JONES-KELLEY, DIRECTOR  
OHIO DEPARTMENT OF  
JOB AND FAMILY SERVICES,

Respondent.

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NOTICE OF FILING OF DEPOSITION TRANSCRIPT OF  
HELEN JONES-KELLEY

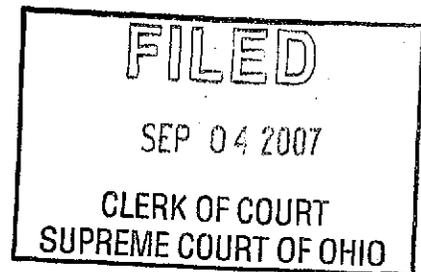
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ENQUIRER, a Division of GANNETT  
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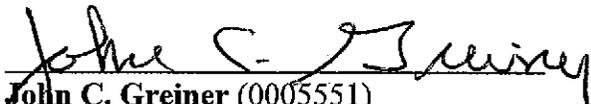
**NOTICE OF FILING OF  
DEPOSITION TRANSCRIPT  
OF HELEN JONES-KELLEY**

The Cincinnati Enquirer, by and through counsel, hereby gives notice of the filing of the deposition transcript of Helen Jones-Kelley in this matter.

Respectfully submitted,

*Of Counsel:*

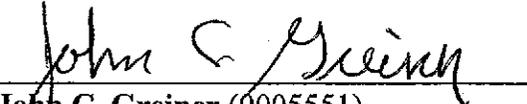
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served by regular U.S. Mail, postage prepaid, this 31<sup>st</sup> day of August, 2007, upon the following:

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Columbus, OH 43215

  
**John C. Greiner** (0005551)

IN THE SUPREME COURT OF OHIO

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State ex rel., The :  
 Cincinnati Enquirer, :  
 A Division of The :  
 Gannett Satellite Network, :  
 :  
 Petitioner, :  
 :  
 vs. : Case No. 06-2239  
 :  
 Helen Jones-Kelley, :  
 Director of Ohio Department :  
 of Job and Family Services, :  
 :  
 Respondent. :

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DEPOSITION OF HELEN JONES-KELLEY

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Tuesday, August 28, 2007  
 3:00 o'clock p.m.  
 30 West Broad Street  
 32nd floor  
 Columbus, Ohio 43215

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SUSAN L. COOTS, RPR  
 REGISTERED PROFESSIONAL REPORTER

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20 On behalf of the Defendant.

21 ALSO PRESENT

22 Ms. Randi Gelfant Lewis  
23 Mr. Lewis C. George  
24 Mr. Jesse A. Cantrell  
Mr. Ramesh Thambuswamy

1 TUESDAY AFTERNOON SESSION  
2 August 28, 2007  
3 3:00 o'clock p.m.

4 - - -

5 STIPULATIONS

6 - - -

7 It is stipulated by and between counsel  
8 for the respective parties herein that this  
9 deposition of HELEN JONES-KELLEY, a Witness herein,  
10 called by the Plaintiff under the statute, may be  
11 taken at this time and reduced to writing in  
12 stenotypy by the Notary, whose notes may thereafter  
13 be transcribed out of the presence of the witness;  
14 and that proof of the official character and  
15 qualifications of the Notary is waived.

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WITNESS PAGE

HELEN JONES-KELLEY

Cross-Examination 6  
(By Mr. Greiner)  
Redirect Examination 61  
(By Mr. Appel)  
Recross-Examination 85  
(By Mr. Greiner)

EXHIBITS MARKED

Jones-Kelley Exhibit No. 1 15  
(Letter dated 9-15-06)

Jones-Kelley Exhibit No. 2 18  
(Affidavit of Gregory Korte in  
Support of Complaint for Writ of Mandamus)

Jones-Kelley Exhibit No. 3 19  
(Letter dated 1-18-07)

Jones-Kelley Exhibit No. 4 29  
(Public Records and Confidentiality Laws)

Jones-Kelley Exhibit No. 5 33  
(Package of forms)

Jones-Kelley Exhibit No. 6 47  
(Preservice Training for Foster,  
Adoptive, Kinship Parents and Caregivers)

Jones-Kelley Exhibit No. 7 58  
(Ohio's Child Protective Services  
Worker Manual and CAPMIS Field Guides)

Defendant's Exhibit A 71  
(Assessment for Child Placement)

Defendant's Exhibit B 71  
(Application for Child Placement)

1 Index, continued.

2 EXHIBITS

MARKED

3 Defendant's Exhibit C  
4 (Child Characteristic Checklist  
5 for Foster Care and/or Adoption)

71

6 Defendant's Exhibit D  
7 (Safety Audit of a Foster Home)

71

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1 P R O C E E D I N G S

2 - - -

3 HELEN JONES-KELLEY,

4 being by me first duly sworn, as hereinafter  
5 certified, deposes and says as follows:

6 EXAMINATION

7 BY MR. GREINER:

8 Q. Would you state your name and spell it for  
9 the record, please?

10 A. Sure. Helen Jones-Kelley. H-E-L-E-N,  
11 J-O-N-E-S, K-E-L-L-E-Y.

12 Q. Ms. Jones-Kelley, my name is Jack Greiner,  
13 and I represent the Cincinnati Enquirer. As you  
14 know, we filed a lawsuit regarding the production of  
15 certain what we consider public records in this  
16 action.

17 Have you given a deposition before?

18 A. It's been a long time ago.

19 Q. Okay.

20 A. At least 20 years.

21 Q. Okay. Well, the process is I'm just going  
22 to ask you a series of questions. We'll go over some  
23 documents. If at any time you need me to rephrase a  
24 question, or if I'm not being clear, would you please

1 stop me and ask me to rephrase or repeat the  
2 question. Okay?

3 A. Sure.

4 Q. And try to give verbal responses as best  
5 you can for purposes of the court reporter.

6 A. Okay.

7 Q. Your position currently is what?

8 A. Director of the Ohio Department of Job and  
9 Family Services.

10 Q. And how long have you been in that  
11 position?

12 A. Since January 8 of 2007.

13 Q. And how were you employed prior to  
14 January 8th of '07?

15 A. I was employed as the Director of the  
16 Montgomery County, Ohio Department of Job and Family  
17 Services.

18 Q. And for how long had you been in that  
19 position?

20 A. I had actually been in that position for  
21 about nine months. Prior to that, I was the Director  
22 of the Mongtomery County Ohio Department of Children  
23 Services. I merged the two departments as part of my  
24 responsibilities.

1 Q. How long were you in the position of  
2 Director of Children Services of Montgomery County?

3 A. I think I went into that position in 199  
4 -- it's either December of '94 or '95.

5 Q. Okay.

6 A. Quite some time.

7 Q. Could you explain for me, because I don't  
8 quite understand, what is the relationship between  
9 the Ohio Department of Job and Family Services and  
10 the various departments of Job and Family Services  
11 that exist in 88 counties?

12 A. Ohio is unique. It is one of 13 states  
13 which operates as a state-supervised and  
14 county-administered system, meaning that the state  
15 department sets the policy and has fiscal  
16 responsibility. The county departments are able,  
17 under the rule of home rule, to set their own  
18 programs and objectives as long they're in line with  
19 the state's policies.

20 Q. Okay. What are your duties in your  
21 current position?

22 A. I'm the Director of the department, so I  
23 have about 12 direct reports. I'm responsible  
24 basically for overseeing the \$18 billion budget which

1 includes Medicaid programs, child support, child  
2 welfare, some of our public assistance and as well as  
3 Workforce programs. It's an administrative  
4 responsibility for the department reporting to the  
5 Governor's office.

6 Q. Is that \$18 billion with a "B"?

7 A. With a "B."

8 Q. Okay. You used the term public  
9 assistance. What do you understand that term to  
10 mean?

11 A. It used to be the welfare department.  
12 It's public assistance; cash assistance programs that  
13 support the cash assistance programs in the State of  
14 Ohio.

15 Q. Is that Aid to Families with Dependent  
16 Children?

17 A. Uh-huh.

18 Q. Are there other programs within that?

19 A. Well, there is ADC. Now a lot of those  
20 programs are interspersed with our Workforce  
21 Development programs, job skills training, and the  
22 kinds of programs that get people from welfare to  
23 work.

24 Q. And we'll talk in much more detail, but I

1 just wanted to ask a quick question while it was on  
2 my mind. Obviously the department of -- the Ohio  
3 Department of Job and Family Services oversees the  
4 foster care program in Ohio, correct?

5 A. That's correct.

6 Q. Foster care providers are paid; is that  
7 correct?

8 A. They're reimbursed for the services of  
9 caring for children.

10 Q. Okay. That's not considered public  
11 assistance, is it?

12 A. No, it's not.

13 Q. What involvement, if any, do you have with  
14 respect to the Department of Job and Family Services  
15 response to public records requests?

16 A. I'm not sure I understand the question.

17 Q. Okay. I assume that -- obviously, the  
18 Cincinnati Enquirer has made a public records request  
19 to the Department of Job and Family Services. That's  
20 why we are here. You're aware of that request,  
21 correct?

22 A. Yes.

23 Q. Okay. And I take it the department gets  
24 other public records requests from other entities.

1 We are not the only one.

2 A. That's correct.

3 Q. Okay. So when a request comes into the  
4 department, would you, in your position as Director,  
5 have much of anything to do with the department's  
6 response to that request?

7 A. I would have ultimate responsibility for  
8 the response to that request. We have a process by  
9 which they come into the department.

10 Q. Okay. Can you kind of describe the  
11 process?

12 A. It comes in typically to our  
13 communications department which then works with the  
14 appropriate departments for response. There is a  
15 process.

16 Q. Okay. And would it be safe to assume that  
17 on what might be considered routine requests, you  
18 might not even see it?

19 A. That's true. I might not.

20 Q. Okay. And so if it's a little more  
21 involved, or less routine, it might come to you for  
22 your review?

23 A. That is correct.

24 Q. Have you had any training in the area of

1 the public records law?

2 A. I have.

3 Q. Okay. Can you just tell me what kind of  
4 training you've had?

5 A. I am an attorney, so I have sat through  
6 some of the public records training in the past as  
7 part of my C.L.E.s.

8 Q. Okay. Do you recall the last?

9 A. Oh, gosh. I think it was through the  
10 department, maybe six or seven years ago.

11 Q. Okay.

12 A. I'm sorry. I'm looking at Randi because I  
13 think it was a state offering.

14 Q. Okay. Was it Lisa Wufate, by any chance?

15 A. The name sounds awfully familiar. Yeah.

16 Q. What is the definition of foster care?

17 A. The definition of foster care. When  
18 children cannot be -- and I'm just answering this  
19 very quickly. When children cannot be safely cared  
20 for in their own homes, we look to -- and when I say  
21 we, I mean the system looks to other caregivers who  
22 can provide a safe home and attend to their sense of  
23 well-being and safety.

24 Q. Now, I take it individuals can provide

1 foster care, correct?

2 A. That's correct.

3 Q. And can institutions provide foster care?

4 A. Institutions can provide foster care.

5 Yes.

6 Q. The reason I ask is because I think I saw  
7 in some of these materials the use of that term. Can  
8 you give me an example of an institution that might  
9 provide foster care?

10 A. Well, primarily residential centers. An  
11 Adriel, for example. There are places that provide

12 --

13 Q. I'm sorry. What was that?

14 A. Adriel. It's a home for children.

15 Q. Is it age?

16 A. A-D-R-I-E-L.

17 Q. Okay. I'm sorry.

18 A. They provide services for children who are  
19 not safely maintained within a family environment.  
20 The first look is always at a family environment for  
21 children. But when that can't be accomplished, there  
22 might be a need for more intensive services; a child  
23 may be placed in a residential facility.

24 Q. Okay. And I don't know if it's correct to

1 call that -- refer to that as a group home, but --

2 A. Well, there are distinctions. That would  
3 be a residential facility. A group home is more of a  
4 home which provides for a group of children to remain  
5 safely with a little less supervision than they would  
6 in a residential center.

7 Q. Okay. And the Adriel --

8 A. Is the most intense and most expensive  
9 form of out-of-home care for children.

10 Q. But that is not a residential, or that is  
11 residential?

12 A. That is residential.

13 Q. In the sense that the kids live there?

14 A. Right.

15 Q. Got ya. But you would not call that a  
16 group home?

17 A. No.

18 Q. In order to provide foster care in the  
19 state of Ohio, an individual or institution has to be  
20 certified by the Department of Job and Family  
21 Services; is that correct?

22 A. Licensed by the department. Yes.

23 Q. Licensed is the proper term?

24 A. Uh-huh.

1 Q. Okay. In order to become licensed, the  
2 institution or individual needs to provide certain  
3 information to the Department of Job and Family  
4 Services, correct?

5 A. That's correct.

6 Q. Okay. Included in that information would  
7 be the name and the address for the individual, for  
8 example?

9 A. Yes.

10 Q. And the Department of Job and Family  
11 Services maintains a record of those names and  
12 addresses, correct?

13 A. Yes.

14 Q. And maintaining that record of names and  
15 addresses of foster care providers is part of the  
16 Department of Job and Family Services' duty to  
17 certify foster -- or to license foster caregivers,  
18 correct?

19 A. Yes.

20 - - -  
21 And, thereupon, Jones-Kelley Exhibit No. 1  
22 was marked for purposes of identification.

23 - - -

24 Q. Let me ask you to take a look at what we

1 have marked as Exhibit 1. Can you identify Exhibit 1  
2 for me?

3 A. It's a letter to Barbara Riley, the  
4 previous Director of the department requesting under  
5 the Public Records Act an electronic copy of the  
6 department's database with foster associations, and  
7 institutions, or homes.

8 Q. And the letter came from Gregory Korte,  
9 who is a staff writer of the Cincinnati Enquirer,  
10 correct?

11 A. That's what it looks like here. It wasn't  
12 signed, but the name appears --

13 Q. Just for purposes of the record, I don't  
14 think there's any dispute about this, but the  
15 Department of Job and Family Services did receive  
16 Exhibit 1 on or about September 15 of 2006, correct?

17 A. That's the date on the letter.

18 Q. But you acknowledge that the department  
19 received it on or about that time, correct?

20 A. I can't acknowledge that. I'm not Barbara  
21 Riley. I wasn't in the position then.

22 Q. Okay. Are you familiar with Ramesh  
23 Thambuswamy?

24 A. Yes.

1 Q. As of September 2006, to the best of your  
2 knowledge, was he employed by the Department of Job  
3 and Family Services?

4 A. I'll have to assume so because I wasn't.

5 Q. That was before your time?

6 A. Yes. That is correct.

7 Q. What is Mr. Thambuswamy's position with  
8 the Department of Job and Family Services?

9 A. He works in our legal office.

10 Q. Okay. Is he an attorney?

11 A. He is an attorney in our legal office.

12 Yes.

13 Q. And he was in that position at the time  
14 you assumed your role as director?

15 A. That is correct.

16 Q. Okay. And at least to the best of your  
17 knowledge, he had been in that position for some  
18 period of time before January 2007, correct?

19 A. I believe so.

20 Q. And I recognize you were not here in  
21 September. You were not with the Ohio Department of  
22 Job and Family Services in September 2006. But at  
23 least currently in his position as an attorney, is  
24 Mr. Thambuswamy authorized to speak on behalf of the

1 Department of Job and Family Services?

2 A. Through his chief legal counsel. Yes.

3 - - -

4 And, thereupon, Jones-Kelley Exhibit No. 2  
5 was marked for purposes of identification.

6 - - -

7 Q. Let me ask you to take a look at what we  
8 have marked as Exhibit 2, please. Have you had a  
9 chance to look at Exhibit 2, ma'am?

10 A. Yes.

11 Q. I will represent to you that Exhibit 2 is  
12 an affidavit of Gregory Korte that was filed with the  
13 mandamus action in this matter. And again, bearing  
14 in mind that you assumed your role as Director in  
15 January of 2007, I want you to take a look  
16 specifically at Paragraph 3 of the affidavit. And I  
17 would like to know if, to the best of your knowledge,  
18 there is anything stated in Paragraph 3 that is  
19 inaccurate as far as you know?

20 A. Not as far as I know.

21 Q. Okay. Again, to the best of your  
22 knowledge, does Paragraph 3 accurately state the  
23 position of the Ohio Department of Job and Family  
24 Services with respect to the requested records at

1 issue in this matter?

2 A. Yes, it does.

3 - - -

4 And, thereupon, Jones-Kelley Exhibit No. 3  
5 was marked for purposes of identification.

6 - - -

7 Q. Okay. Let me ask you to take a look at  
8 what we have marked as Exhibit 3, please. Just go  
9 ahead and take a minute to look through that.

10 MR. APPEL: Can we go off the record for a  
11 second.

12 (Discussion off the record.)

13 BY MR. GREINER:

14 Q. Ms. Jones-Kelley, I'll represent to you  
15 that Exhibit 3 is the answer that was filed on behalf  
16 of the Ohio Department of Job and Family Services in  
17 this mandamus action. Just a couple of things.  
18 Obviously pleadings tend to be drafted by counsel, so  
19 if I say your answer, we'll both understand that that  
20 doesn't mean that you wrote it. No doubt your  
21 attorneys drafted the answer. So there are no  
22 misunderstandings here.

23 I also, just for the record, want to ask  
24 you to look at page 3. I just noted there is a

1 handwritten asterisk on the right-hand margin of  
2 Paragraph 7. I put that on there inadvertently and  
3 included that in the copy I made. It obviously was  
4 not part of the original file. So I apologize for  
5 that.

6 I want you to direct your attention to  
7 Paragraph 7 of the answer.

8 A. On page 3?

9 Q. Yes, ma'am. It says here on October 2nd,  
10 2006, Carmen Stewart, then with ODJFS' communication  
11 office, provided Margret McGurk with a list of  
12 private agencies certified to perform foster-related  
13 functions as of September 2006.

14 Could you just tell me what are private  
15 agencies certified to perform foster-related  
16 functions, if you know?

17 A. Private agencies are non-profit agencies  
18 which hold a -- they hold their own list of foster  
19 homes and contract for services with the county  
20 agencies to provide out-of-home placement for  
21 children.

22 Q. Would I know that -- at least down in  
23 southwest Ohio, there's been a lot of publicity about  
24 Lifeway?

1 A. That would be an example of a private  
2 agency.

3 Q. Okay. Paragraph 7 goes on to say,  
4 "Respondent admits the allegation that ODJFS has not  
5 provided a list of foster homes to petitioners."

6 Just so we understand, what is your  
7 understanding of the term foster homes as it's used  
8 in Paragraph 7 there?

9 A. I would take that to read individual  
10 homes.

11 Q. Okay. Do you know why the decision was  
12 made to produce a list of private agencies but not a  
13 list of foster homes?

14 A. I do not. I was not here at the time.

15 Q. Okay. Let me ask you just to skip back a  
16 few pages back to page 6. It's the Seventh Defense.  
17 It's numbered Paragraph 23, which says in the second  
18 sentence, "The Respondent has duties under state  
19 and/or federal law to maintain the confidentiality of  
20 records regarding placement of foster children,  
21 adoption, and other records in databases involved in  
22 the process." I have a couple questions about that.

23 Do you agree that the records that are at  
24 issue in this mandamus action are simply the names

1 and addresses of individuals whom the Department of  
2 Job and Family Services has licensed to provide  
3 foster care?

4 MR. APPEL: I'm sorry. Would you read  
5 that back?

6 (Record read.)

7 Objection. Calls for a legal conclusion,  
8 but you may answer.

9 THE WITNESS: I was going to ask the  
10 question anyway that you asked. I guess I'm thrown  
11 by the word simply. Simply names and addresses, I  
12 don't know that.

13 BY MR. GREINER:

14 Q. Okay. Assume if you would that, in fact,  
15 the request is for the names and addresses of  
16 individuals who are licensed to provide foster care  
17 in the State of Ohio. And I would stipulate that  
18 that's what's involved, if your counsel cares to.

19 But in any event, assume that that is the  
20 request that's at issue. The names and addresses of  
21 individuals licensed to provide foster care in the  
22 State of Ohio does not in and of itself disclose the  
23 identities of any children placed in foster care,  
24 does it?

1 A. In and of itself, not necessarily.

2 Q. Okay. What do you mean by not  
3 necessarily?

4 A. Because in small counties, disclosing the  
5 name and address of a foster care parent can, indeed,  
6 disclose the placement of a child.

7 Q. Outside of that scenario, however, if I  
8 look at the names and addresses of individuals who  
9 have been licensed by the Department of Job and  
10 Family Services, I am not going to know the  
11 identities of children in the foster care system?

12 A. I can't say that absolutely.

13 Q. Let me try it this way. If those names  
14 and addresses were put on a piece of paper, simply  
15 from the piece of paper itself, there are -- let me  
16 rephrase that.

17 That piece of paper that contains the  
18 names of the foster care providers licensed by the  
19 Department of Job and Family Services and the  
20 addresses would not contain any names of children,  
21 correct?

22 A. Simply put, just the names and addresses  
23 without the names of children. That's correct.

24 Q. Okay. If you were to give -- again, stick

1 with that list for a minute. There's nothing about  
2 that or there's nothing on that list that concerns  
3 adoption, is there?

4 A. There could be.

5 Q. In what respect?

6 A. Because the practice is to place children  
7 in foster care with an eye towards that foster parent  
8 possibly becoming the adoptive parent. And anything  
9 that connects it back to the Ohio Department of Job  
10 and Family Service foster parent list could infer  
11 that a child has been adopted by that home or that  
12 there are some other relationships with children.

13 Q. Okay. And then going back to sort of the  
14 similar question; that list, if it is simply -- if it  
15 is a list of the names and the addresses of  
16 individuals licensed to provide foster care, that  
17 piece of paper will not disclose information about  
18 adoption?

19 A. As long as it is not connected to the  
20 header a list of foster homes for the Ohio Department  
21 of Job and Family Services. Just a list of names and  
22 addresses, no problem. But the minute you put that  
23 header on it, it begins to create a scenario that  
24 could become problematic.

1 Q. If I have that list, and it says -- if the  
2 piece of paper says these are the names and addresses  
3 of the persons -- the individuals licensed to provide  
4 foster care in the State of Ohio, I would need to at  
5 least go for some more information to tie anything  
6 having to do with adoption to that piece of paper,  
7 correct?

8 A. You would have to take another step.

9 Q. Okay. Just going back to numbered  
10 Paragraph 23 where it says, "Respondent has duties  
11 under state and/or federal law to maintain the  
12 confidentiality of records regarding placement of  
13 foster children, adoption, and other records and  
14 databases involved in the process." I wasn't clear  
15 what involved in the process refers to. I was  
16 wondering if you could help me out.

17 A. I take that to read involved in the  
18 process of adoption or foster placement or other  
19 activities that are related to the protection of  
20 children across the state-wide system.

21 Q. Okay. Just kind of cutting through the  
22 verbiage of the answer for a minute. Is it your  
23 belief that the Department of Job and Family Services  
24 is prohibited by state and/or federal law from

1 turning over the list of names and addresses of  
2 licensed foster care providers?

3 MR. APPEL: Objection. Calls for a legal  
4 conclusion. You may answer.

5 THE WITNESS: Could you repeat the  
6 question?

7 (Record read.)

8 THE WITNESS: Yes.

9 BY MR. GREINER:

10 Q. We had sent a written interrogatory that  
11 essentially asked which state and/or federal laws  
12 prohibited the Department of Job and Family Services  
13 from turning over the names and addresses of licensed  
14 foster care providers. We did get an answer.

15 I'm not looking for you to give me a legal  
16 conclusion. What I'd like to do is just hand you a  
17 copy -- I'm not going to mark this as an exhibit.  
18 But I want to hand you a copy of the response and  
19 have you look at it. I guess if you see anything  
20 missing that you believe would also apply, let me  
21 know. I will not assume that the fact that -- you  
22 know, I don't want to hold it against you -- give you  
23 your Miranda warnings here. I won't hold that  
24 against you -- lock you into that.

1 I'm curious. As you sit here today, I'm  
2 just trying to get a handle on being as comprehensive  
3 as I can. If there is anything, any state or federal  
4 law that you feel is not included in here, again,  
5 that is not to lock you into that, but as you sit  
6 here today, I'd like you to identify that. That's a  
7 long question.

8 MR. APPEL: I'm going to object as to  
9 request for a legal conclusion.

10 MR. GREINER: I understand.

11 MR. APPEL: What her opinion as to what  
12 the law is is not relevant, not pertinent. But she  
13 may answer.

14 BY MR. GREINER:

15 Q. Okay.

16 A. Frankly, I would have difficulty just  
17 looking at the list of Revised Code Sections and  
18 identifying what is or isn't --

19 Q. Fair enough.

20 A. -- included there. I don't pull that kind  
21 of information from my memory bank.

22 Q. Okay. The Eighth Defense, Paragraph 24 of  
23 the answer, in the second sentence of Paragraph 24,  
24 it says, "Respondent has the authority to investigate

1 licensures of those involved in the foster care  
2 process."

3 MR. APPEL: I'm going to interrupt for  
4 just a second. The Eighth Defense was related to the  
5 Bell records, and we have settled that.

6 MR. GREINER: Oh, okay.

7 MR. APPEL: That was the defense aimed at  
8 the Bell records.

9 MR. GREINER: Great. Okay.

10 BY MR. GREINER:

11 Q. All right. Let me ask you, though, the  
12 Department of Job and Family Services performs  
13 background checks on any person who seeks to be  
14 certified as a foster care provider, correct?

15 A. That's correct.

16 Q. Okay. Is that done at the county level?

17 A. It's primarily performed at the county  
18 level. Yes.

19 Q. But not subject to the supervision of the  
20 Ohio Department of Job and Family Services?

21 A. That is correct.

22 Q. Okay. Now, I assume that the Department  
23 of Job and Family Services could not begin the  
24 background check until it has obtained at least the

1 name and address of the applicant, correct?

2 A. That's correct.

3 Q. And the Department of Job and Family  
4 Services does not commence this background check  
5 because the applicant is suspected of any wrongdoing,  
6 correct?

7 A. It is performed on all applicants.

8 - - -

9 And, thereupon, Jones-Kelley Exhibit No. 4  
10 was marked for purposes of identification.

11 - - -

12 Q. Let me ask you to take a look at what we  
13 have marked as Exhibit 4, please. Just for the  
14 record, because Exhibit 4 is fairly voluminous, I  
15 have put what we call Bates stamps on some of these  
16 records just so we keep better track of them.

17 Exhibit 4 starts at Bates No. 004 and goes  
18 to 0056. Can you just make sure the last page there  
19 at least is 0056.

20 A. Uh-huh.

21 Q. Okay. Can you identify Exhibit 4, please?

22 A. It is the Ohio Department of Job and  
23 Family Services Public Record and Confidentiality  
24 Laws, easy for me to say -- I don't know; handbook.

1 Q. Are you familiar with this document?

2 A. Not really.

3 Q. It appears like it was prepared in January  
4 of 2006, which would have predated your tenure as  
5 Director by about a year.

6 A. That's correct.

7 Q. To the best of your knowledge, is Exhibit  
8 4 the most up-to-date version?

9 A. I don't know.

10 Q. Okay.

11 A. The correct answer to that --

12 Q. And you've not read this document?

13 A. No, I have not.

14 Q. Let me just ask a couple questions, and  
15 you may not be able to answer, but let's give it a  
16 shot. If you look at page no. 0053 -- feel free to  
17 take the clip off.

18 A. Okay.

19 Q. The second full paragraph, I want to  
20 direct your attention to. It's about halfway down  
21 the page. Just for background, the section of 0053  
22 is discussing a case called the McCleary case that  
23 was a public records decision from the Ohio Supreme  
24 Court.

1                   And again, I don't know if you're going to  
2                   be able to answer this or not, but it says -- the  
3                   third sentence of the second full paragraph begins,  
4                   "ODJFS had previously treated records ..." do you see  
5                   where I am?

6                   A.               Yes.

7                   Q.               " ... had previously treated records  
8                   containing foster care parent information compiled by  
9                   ODJFS and other licensing information concerning  
10                  employees at daycare centers as public record  
11                  information in the past."

12                  Is this consistent -- is that sentence  
13                  consistent with your understanding of the previous  
14                  practice of ODJFS with respect to foster care parent  
15                  information?

16                 A.               I'm sorry. I can't answer that question.  
17                 It really predates my --

18                 Q.               Did you ever have any involvement with  
19                 that issue in Montgomery County?

20                 A.               With?

21                 Q.               With any request for information regarding  
22                 a foster parent?

23                 A.               Yes.

24                 Q.               And how did you handle it at the

1 Montgomery County level?

2 A. We handled it at the county level.

3 Q. I understand. So my question is when you  
4 were employed by the Montgomery County Job and Family  
5 Services --

6 A. Did we release?

7 Q. Yes. Did you release?

8 A. No.

9 Q. Do you recall what your reason was for not  
10 releasing?

11 A. To protect the identity and the children  
12 that were placed with foster parents.

13 Q. Okay. Was it based on a specific statute  
14 or case holding?

15 MR. APPEL: Objection. Calls for a legal  
16 conclusion. You may answer.

17 THE WITNESS: I didn't operate as the  
18 attorney for the agency. I was the Executive  
19 Director.

20 BY MR. GREINER:

21 Q. Okay. I'm a bit at a disadvantage here  
22 because of your fairly recent succession to the  
23 position. So let me just ask, with respect to the  
24 material that is set forth in Exhibit 4, do you have

1 any reason to believe that any portion of this  
2 material is not accurate?

3 A. I don't have any reason to believe that.

4 Q. Okay. Are you aware of any federal or  
5 state laws enacted after the McCleary decision in the  
6 Ohio Supreme Court, which was in or about 1989, that  
7 would prohibit production of the record of the names  
8 and addresses of individuals licensed to provide  
9 foster care in the State of Ohio?

10 MR. APPEL: Objection. Calls for a legal  
11 conclusion. Go ahead and answer.

12 THE WITNESS: No, I'm not.

13 BY MR. GREINER:

14 Q. Okay. Do you know if the Ohio Department  
15 of Job and Family Services has ever sought an opinion  
16 from the Ohio Attorney General as to whether the  
17 names and addresses of licensed foster care providers  
18 are subject to the Public Records Act?

19 A. No, I don't.

20 - - -

21 And, thereupon, Jones-Kelley Exhibit No. 5  
22 was marked for purposes of identification.

23 - - -

24 Q. I'm going to ask you to look what we have

1 marked as Exhibit 5. Again, just so we are all on  
2 the same page, Exhibit 5 is Bates numbered, begins at  
3 0217, and it goes all of the way through to 0345. I  
4 received this in a clipped fashion, so I believe it  
5 is a single document of some sort.

6 I guess my first question to you would be  
7 can you identify it and tell me what it appears to  
8 be?

9 A. Well, it appears to be -- well, from the  
10 title Notification of Denial of Initial  
11 Certification, Recertification or Revocation of a  
12 Foster Home Certificate, it's the ODJFS forms.

13 Q. Let me ask you --

14 MR. APPEL: I'm going to state as an  
15 officer of the court that those are actually a bunch  
16 of documents that just happened to be clipped  
17 together for convenience.

18 MR. GREINER: Fair enough. Then we'll  
19 treat them as such. I think with the Bates numbers,  
20 it makes it easier to work our way through it.

21 Q. Let me ask you to take a look at Bates  
22 Nos. 0221 and 0222. To the best of your knowledge,  
23 are the documents marked 0221 and 0222 a single  
24 document?

1 A. Yes, I believe so.

2 Q. And that appears to be a recommendation  
3 for transfer of a foster home?

4 A. Yes.

5 Q. What is a transfer of a foster home?

6 A. Sometimes foster homes -- all foster homes  
7 are connected to a public childrens service agency or  
8 one of the private providers, and occasionally, a  
9 foster family will transfer their license from one of  
10 those entities to another.

11 Q. That doesn't mean they move -- that they  
12 moved to a new house; it just means that they are  
13 under a different --

14 A. It can mean all of that. It can mean they  
15 moved to a new house. It can mean they are moving to  
16 a new organization.

17 Q. Okay. Why don't you take a look at page  
18 0222 there. At the bottom of the form, it says --  
19 there's a disclaimer that says, "Names and addresses  
20 of foster/adoptive parents and the children placed  
21 with them are confidential and can only be released  
22 for the purposes of administration of child welfare  
23 related programs or pursuant to Court order." It  
24 appears that that form was revised in September of

1 2006, based on the little notation in the left-hand  
2 corner of page 0222.

3 Do you know if that disclaimer was added  
4 on or about September of 2006?

5 A. I don't know.

6 Q. Do you know why this disclaimer was -- if  
7 this disclaimer was added -- well, you don't know.

8 Let me ask, are you familiar with any  
9 discussion about the language in this disclaimer?

10 A. No, I'm not.

11 Q. Do you have any understanding of why that  
12 disclaimer was included on this particular form?

13 A. No, I don't.

14 Q. I'm going to ask you to take a look at  
15 page 0234, please. And if you could, tell me what  
16 0234 is, please.

17 A. This is one of the forms used in the  
18 semi-annual review process. This one is the Family  
19 Decision Making Information.

20 Q. Can you tell me just how that's used by  
21 the department?

22 A. Semi-annual reviews are required by law  
23 for children who are in care, and this would look at  
24 the level of the family's involvement in the planning

1 for the child's services with the agency.

2 Q. How is this form completed?

3 A. How is it completed?

4 Q. Yes.

5 A. It's completed as part of the review  
6 process with the family and the -- well, in most  
7 cases, it's either a social worker or whoever the  
8 convenor is for that particular group.

9 Q. So it's sort of an interview?

10 A. It's a planning meeting.

11 Q. I guess my only question is is the  
12 employee of the Department of Job and Family Services  
13 filling this form out based on information gathered  
14 from the family?

15 A. This is done at the county level by the  
16 people who are providing direct services.

17 Q. Okay. But I guess my only question is is  
18 this -- is the information that is ultimately put on  
19 this form put there by some employee of some agency,  
20 as opposed to the foster home filling it out  
21 themselves?

22 A. The foster home does not fill it out  
23 themselves typically.

24 Q. Okay. Very good. On page 0234, about

1 halfway down, there's a heading called Type of  
2 Placement Codes.

3 A. Uh-huh.

4 Q. Do you see that? One of the I guess type  
5 of placement codes is F.H., which is Certified Foster  
6 Home. Do the names and addresses of individual  
7 foster care providers that we've been discussing thus  
8 far, would they fall under the certified foster home  
9 heading?

10 A. To be honest, I'm not sure if that would  
11 be the individual names or the name of the network  
12 that has responsibility for the child; the placing  
13 agency.

14 Q. Okay. Let me ask you about the Child's  
15 Legal Status Code. There's something called Court  
16 Ordered Protective Supervision, and the code seems to  
17 be PSUP.

18 A. Uh-huh.

19 Q. Actually let me back up for one minute.  
20 I'm sorry. We'll get to that.

21 I'm curious. Temporary Custody, with the  
22 code TC. Do you see that?

23 A. Yes.

24 Q. What is Temporary Custody?

1 A. A child is temporarily placed in the  
2 custody of the public agency by the Court.

3 Q. What is Permanent Custody?

4 A. That is a child whose parental rights have  
5 been severed.

6 Q. And I suppose in either case, Temporary  
7 Custody or Permanent, the custody that's referred to  
8 there is with the appropriate agency on the local or  
9 county level?

10 A. That's correct.

11 Q. And then within that, that child could be  
12 in an institution or in a residential home; is that  
13 correct?

14 A. That's correct.

15 Q. And that's whether they are in Temporary  
16 or Permanent Custody, correct?

17 A. That's correct.

18 Q. All right. Then with respect to Court  
19 Ordered Protective supervision with the code of PSUP,  
20 what is Court Ordered Protective Supervision?

21 A. That's where a child remains in their own  
22 home, but the Court has instructed the agency to  
23 provide services to that family usually to prevent  
24 that child from coming into out-of-home care.

1 Q. What are the types of circumstances that  
2 would result in Court Ordered Protective Supervision?

3 A. Mom leaves the child in a car on a  
4 90-degree day. There have been no other indications  
5 that mother can't provide appropriately for the  
6 child. Rather than bring that child into care, the  
7 Court might order the agency to provide services to  
8 assist mom with her parenting skills for a period of  
9 time.

10 Q. Are there situations where there is  
11 concern that the natural parent might be a threat  
12 to -- an active threat to the safety of the child?

13 A. Absolutely.

14 Q. Okay. And what happens in those  
15 situations?

16 A. I need a little bit more in terms of the  
17 question. I'm sorry.

18 Q. Well, I suspect there's some sort of  
19 intervention. Let's assume that there is some  
20 intervention that's been brought to the attention of  
21 the appropriate agency.

22 A. Okay.

23 Q. And there is probably a dependency  
24 proceeding, say, in the Juvenile Court, I suspect,

1 right?

2 A. This case could go a variety of ways.

3 Q. I guess what I'm wondering about is if  
4 there is a need to -- if there is a perceived need to  
5 keep the child or I guess keep the parent or guardian  
6 or whomever is perceived as the threat away from that  
7 child. Okay. What is the method or methods used to  
8 effectuate that?

9 A. The public agency would receive the  
10 referral and would petition the Court for the ability  
11 to bring that child into care, if that parent is such  
12 a threat to the child.

13 Q. Okay. And is that Court Ordered  
14 Protective Supervision?

15 A. That would rarely be Court Ordered  
16 Protective Supervision because you're seeking to  
17 bring the child into care in order to protect them  
18 from a violent parent. That would more likely be  
19 Temporary Custody.

20 Q. To the best of your knowledge, if you have  
21 that scenario, in all likelihood, where would -- what  
22 type of facility would that child go to?

23 A. The least restrictive setting that meets  
24 that child's unique needs. In most cases, that would

1 be a family foster home.

2 Q. A family foster, like an individual?

3 A. Uh-huh. An individual home.

4 Q. And could that be any individual home, or  
5 are there in those circumstances where the need is,  
6 you know -- where there is a perceived need to keep  
7 the child away from a natural parent or guardian who  
8 is a threat, would there be foster caregivers that  
9 are specifically trained for those types of  
10 circumstances?

11 A. Not necessarily. The least restrictive  
12 setting is for the child is what is considered. It  
13 is law enforcement's job to keep the parent away. So  
14 the child would be placed with a family that would  
15 have the ability to provide for that child's needs in  
16 terms of getting them to school or whatever the  
17 child's needs might be.

18 Q. Okay. And you rely on the police to  
19 provide protection?

20 A. That is correct.

21 Q. In that setting where the child is deemed  
22 at risk because of a parent or guardian who is deemed  
23 as a threat, would you still attempt to keep that  
24 child in the same school that they were in?

1 A. Not if the family knows where that child  
2 goes to school. No. You would probably make a  
3 decision to remove the child from the school, unless  
4 the parent that you're trying to protect the child  
5 from is incarcerated. If that's the case, then you  
6 would let the child continue his or her normal  
7 routine as much as possible so as not to penalize the  
8 child.

9 Q. Let me ask you to take a look at page  
10 0259, please. Now, it appears to me that page 0259  
11 is page 1 of an 11-page document. I say that only  
12 because of what's printed up in the top right-hand  
13 corner.

14 A. Uh-huh.

15 Q. Could you tell me what then page 0259  
16 through page 0269 is?

17 A. It is the set of forms for Family Decision  
18 Making. Family Group Decision Making, we call it.

19 Q. And how is that form used?

20 A. Where there are families that don't  
21 provide a severe risk of harm to children, they are  
22 included in the planning process for that child's  
23 welfare in working with the public and private  
24 agencies.

1 Q. And that would be the child's, just for  
2 lack of a better term, natural family, you mean, when  
3 you say natural family?

4 A. Natural family. Natural family  
5 environment. Natural family group.

6 Q. Let me ask you to take a look at page  
7 0268, please. About midway down that page under  
8 Subsection D, it says here, "Explain how the  
9 placement is in close proximity to the parent,  
10 guardian, custodian. What transportation problems  
11 might create obstacles to visitation? How will the  
12 agency resolve these obstacles?"

13 The questions there that are part of  
14 Subsection D, who are those questions directed to?

15 A. To the team that's working together to  
16 plan for this child's services from the agency.

17 Q. Now, who would that team typically  
18 include?

19 A. In this particular model, it would include  
20 the social workers, any community helpers who have  
21 been involved with the child, and the child's family,  
22 however the family is defined.

23 Q. And it could be a foster family?

24 A. It could also be a foster family that's

1 worked with the family before.

2 Q. Well, this seems to suggest that there is  
3 going to be some sort of placement outside of the  
4 natural family?

5 A. Yes. This is the ideal situation.

6 Q. What do you mean the ideal situation?

7 A. This is where a child is able to be placed  
8 with the family being part of that decision making  
9 for the child's own best interests. The family works  
10 with the foster family either for reunification or  
11 for eventual termination of rights, but still having  
12 the family involved in that child's life. That's  
13 when there's no risk of harm to the child.

14 Q. And outside of the scenario where there is  
15 risk of harm to the child, is it the policy of the  
16 Department of Job and Family Services to encourage a  
17 placement that is in close proximity to the natural  
18 family?

19 A. Yes.

20 Q. And again, outside the scenario where  
21 there's a risk of harm to the child, is it the policy  
22 of the Department of Job and Family Services to  
23 encourage ongoing interaction with the natural family  
24 while the child is in foster care?

1 A. Yes.

2 Q. If the child is place with an extended  
3 family member, is that considered foster care?

4 A. Only if that extended family member is  
5 licensed as a foster parent.

6 Q. Okay. Is there another -- is there a  
7 kinship care?

8 A. Kinship care is another option.

9 Q. And that could be a placement -- that  
10 placement with an extended family member who is not a  
11 licensed foster home?

12 A. That is correct.

13 Q. Okay. Subsection D on page 0268 -- did I  
14 say D? I meant E. I'm sorry. Subsection E on page  
15 0268 says, "When selecting a substitute care  
16 placement setting, describe how the agency considered  
17 proximity to the school in which the child was  
18 enrolled prior to placement." Again, this question  
19 is directed to the team as you described?

20 A. Uh-huh.

21 Q. Correct?

22 A. Yes.

23 Q. And it is the Department of Job and Family  
24 Services' goal, again except for the circumstances

1 where there is a risk to the child, to keep the child  
2 in the same school, if at all possible?

3 A. Yes.

4 Q. And given the desire to keep the child in  
5 the same school to place that child in a location  
6 that is in close proximity -- in as close proximity  
7 to the school as possible, correct?

8 A. In those ideal situations. Yes.

9 - - -

10 And, thereupon, Jones-Kelley Exhibit No. 6  
11 was marked for purposes of identification.

12 - - -

13 Q. Let me ask you then to take a look at what  
14 we've marked as Exhibit 6. Exhibit 6, again, for  
15 record purposes, is a document that begins with  
16 Bates No. 1066 and ends at Bates No. 1392.

17 A. Yes.

18 Q. Okay. Can you identify Exhibit 6, please?

19 A. This is the curriculum utilized by the  
20 Institute of Human Services for Preservice Training  
21 for Foster, Adoptive, Kinship Parents, and  
22 Caregivers.

23 Q. So any licensed foster caregiver will have  
24 gone through training that is consistent with what is

1 set forth in Exhibit 6; is that correct?

2 A. This is the preservice training. Yes.

3 Q. To the best of your knowledge, is Exhibit  
4 6 the most recent version of the manual?

5 A. I'm sorry. I can't answer that for sure.  
6 I don't know.

7 Q. Let me ask you to take a look, please, at  
8 the page that is Bates No. 1075. And if you would  
9 look the heading not quite halfway down that says  
10 Foster Care. Do you see that?

11 A. Yes.

12 Q. Take a look at that, if you would, just  
13 for a second. Does the paragraph there under the  
14 heading Foster Care accurately reflect the Ohio  
15 Department of Job and Family Services' position on  
16 the goals of foster care?

17 A. Yes.

18 Q. Please take a look on that same page near  
19 the bottom under the heading Legal Risk Adoption. Do  
20 you see that?

21 A. Yes.

22 Q. Could you just briefly explain what Legal  
23 Risk Adoption is?

24 A. Well, as it's explained here, there may be

1 a situation where a child is placed for adoption  
2 based upon a set of circumstances, such as the parent  
3 abandoning them in the hospital. The legal risk is  
4 borne by the potential foster parent because the  
5 parent may come back and rehabilitate themselves in  
6 that relationship, and the adoption might not be  
7 finalized with those foster parents.

8 Q. Now, are all foster caregivers eligible to  
9 participate in a Legal Risk Adoption?

10 A. I'm not sure how to answer that question.

11 Q. Is there a separate and distinct process  
12 that a person needs to go through to be an adoptive  
13 parent?

14 A. Yes.

15 Q. So the mere fact -- strike that.

16 The fact that you are licensed to be a  
17 foster care provider does not in and of itself make  
18 you eligible to be an adoptive parent; is that  
19 correct?

20 A. Not automatically. That is correct.

21 Q. Let me ask you to take a look, please, at  
22 page 1076. The first full paragraph on 1076 says,  
23 "However, in the vast majority of case situations,  
24 the agency will make sincere and reasonable efforts

1 to strengthen the child's own family and reunite the  
2 child with his or her family prior to filing for  
3 permanent custody."

4 Does that statement accurately reflect the  
5 policy of the Ohio Department of Job and Family  
6 Services?

7 A. It reflects the law.

8 Q. Okay. Take a look at the heading on that  
9 same page, 1076, towards the middle that says, "To  
10 promote team building among the foster parent, birth  
11 parent, adoptive parent, agency staff, and community  
12 resources." It indicates child welfare is a team  
13 effort.

14 Is it the policy of the Ohio Department of  
15 Job and Family Services to promote a concept of team  
16 building among the foster parent, the birth parent,  
17 adoptive parent, the agency staff, and community  
18 services?

19 A. Absolutely. In those ideal situations,  
20 absolutely.

21 Q. If you would, please, take a look, still  
22 in Exhibit 6, at page no. 1313. Page 1313 appears to  
23 be part of a section of the training that is I guess  
24 Session VII. I'm going back just for a minute to

1 page 1311.

2 A. Okay.

3 Q. I think that it looks to me from going  
4 through this that there are different sessions that  
5 are part of this preservice training; is that your  
6 understanding?

7 A. That's right. Yes.

8 Q. Okay. And it looks like Session VII sort  
9 of focuses on primary families. Again, I'm just  
10 looking at page 1311.

11 A. Yes.

12 Q. And we have used the term here this  
13 afternoon in the last 20 minutes or so "natural  
14 families." Would primary family be sort of  
15 synonymous as we've been using natural family?

16 A. Yes, it would.

17 Q. And then on page 1313, it looks to me like  
18 there are at the top some instructions for the  
19 trainer. Is the trainer someone that is either  
20 employed by the Department of Job and Family Services  
21 or contracted with the Department of Job and Family  
22 Services to provide this training?

23 A. With the county department. Yes.

24 Q. It says here under Trainer Instructions,

1. "trainer should begin by collecting homework  
2 assignments." Then the next sentence says, "The  
3 trainer should stress that adoptive, foster, and  
4 kinship caregivers must acknowledge and fully  
5 understand the importance of birth families to  
6 children in care."

7 Do you agree that this statement  
8 accurately reflects Ohio Department of Job and Family  
9 Services' policy?

10 A. Yes.

11 Q. Let me ask you to take a look at page  
12 1317, please. There appears to be a set of Myths and  
13 Realities laid out actually beginning on page 1316  
14 and carrying over to page 1318.

15 Would you agree that at least based on  
16 these training materials that the Ohio Department of  
17 Job and Family Services characterizes the following  
18 as a myth: "Most parents are violent, dangerous  
19 people who pose a threat to the foster family's  
20 caring for their children"?

21 A. Yes. That's true.

22 Q. That would be a myth?

23 A. That would be a myth.

24 Q. And you would agree then that the

1 Department of Job and Family Services considers the  
2 reality to be the following statement: "Some birth  
3 parents have a history of violence or mental health  
4 problems that indicate risk for caregivers. Most  
5 birth parents, however, can build a collaborative  
6 relationship with foster or kinship parents that can  
7 be invaluable in the rapid reunification of the  
8 family." You agree that that is reality?

9 A. That is reality.

10 Q. Okay. Please take a look at page 1318.  
11 Would you agree that the following statement reflects  
12 the reality, at least for purposes of the Ohio  
13 Department of Job and Family Services, and that is,  
14 "Foster families are expected to communicate with the  
15 birth parents of all children," correct?

16 A. Correct.

17 Q. Now, if you jump ahead here to page 1345,  
18 please, if I am reading page 1345, the description of  
19 1345, this appears to be a handout that is given as  
20 part of Session VII. Is that your understanding?

21 A. That's what it says here on the sheet.

22 Yes.

23 Q. Okay. This handout, 1345, apparently, and  
24 it's hard to read the copy; it didn't come out great.

1 It looks to be a Continuum of Contact for Foster  
2 Parents. It seems to suggest different things that  
3 foster parents are expected to do; is that correct?

4 A. It does for Cuyahoga County. Yes.

5 MR. APPEL: I'm sorry. Where are you  
6 seeing Continuum Contact on this page?

7 MR. GREINER: If you look under the  
8 bridge.

9 MR. APPEL: Okay. Thank you.

10 BY MR. GREINER:

11 Q. You pointed out that is prepared at least  
12 by the Cuyahoga Department of Children and Family  
13 Services. But is there anything on here, and please  
14 take a minute to look at that, that from your  
15 position as Director of the Ohio Department of Job  
16 and Family Services that you would disagree with?

17 A. Not in the ideal situation, no. I  
18 wouldn't disagree.

19 Q. Are you aware of instances where foster  
20 parents have been threatened or harassed by natural  
21 parents or other family members?

22 A. Yes.

23 Q. Are you aware of instances where foster  
24 parents have reported to the Ohio Department of Job

1 and Family Services incidents of threats or  
2 harassment?

3 A. To the department, I don't know.

4 Q. Okay. If those instances were to be  
5 reported, would you anticipate that they might be  
6 reported to the county level?

7 A. Yes.

8 Q. Would the county then make any kind of  
9 report to the Ohio Department of Job and Family  
10 Services of those instances?

11 A. I believe so, but I don't know. It  
12 depends upon where it comes into the county because  
13 they come in sometimes to the local police  
14 departments and not to the county agency.

15 Q. Okay. It sounds to me, though, that  
16 certainly there could be a report that if the county  
17 Department of Job and Family Services receives some  
18 sort of report of a situation where a primary family  
19 is threatening or harassing a foster parent, that  
20 that information would be passed onto the Ohio  
21 Department of Job and Family Services?

22 A. Yes.

23 Q. And would the Ohio Department of Job and  
24 Family Services create and maintain a record of such

1 a report?

2 A. Yes. I believe so.

3 Q. And to the best of your knowledge, how  
4 long has the practice of maintaining a record of such  
5 a report been in place by the --

6 A. I'm sorry. I don't know the answer to  
7 that.

8 Q. -- by the Ohio Department of Job and  
9 Family Services?

10 As part of the training process, does the  
11 Ohio Department of Job and Family Services encourage  
12 foster care providers to let the Ohio Department of  
13 Job and Family Services know if they are threatened  
14 or harassed by natural parents?

15 A. I don't know.

16 Q. If you in your position as director  
17 requested that the County Department of Job and  
18 Family Services share with you information of reports  
19 of threats or harassment, would you expect that those  
20 would be provided to you?

21 A. To the extent that they have them, yes.  
22 They would not necessarily have those. They are  
23 reported directly to the police department.

24 Q. All right. But that would be, based on

1 your understanding and sort of the organizational  
2 structure, it would be your understanding that, in  
3 fact, a County Department of Job and Family Services  
4 who had information regarding a threat of some sort  
5 of harassment that they would provide that to you  
6 upon request, correct?

7 A. Yes.

8 Q. And would be obligated to do so?

9 A. I don't know if they are obligated to do  
10 so, but I would expect upon request they would  
11 provide that information.

12 Q. Okay. We had asked as part of some  
13 interrogatories that we sent -- or rather it was a  
14 document request for the following: "Produce all  
15 documents relating to any instances of stalking,  
16 threats, or other inappropriate behavior committed by  
17 natural parents or relatives thereof towards any  
18 foster caregiver for the year 2000 to the present."

19 Do you know what efforts were undertaken  
20 to locate any such documents in response to that  
21 document request?

22 A. I imagine we sent out the request as  
23 requested by you. When was it requested?

24 Q. It was requested on June 28th of this

1 year.

2 A. Okay.

3 Q. That's as much as you know about it?

4 A. I'm assuming that we followed up on the  
5 request, if that came directly from you. Yes.

6 - - -

7 And, thereupon, Jones-Kelley Exhibit No. 7  
8 was marked for purposes of identification.

9 - - -

10 Q. Let me ask you to look at Exhibit 7,  
11 please. Again, just for record purposes, Exhibit 7  
12 is a document that begins with Bates No. 0662.

13 MR. APPEL: Actually if we're going to  
14 another exhibit, I would like to take a five-minute  
15 break.

16 (Recess taken.)

17 BY MR. GREINER:

18 Q. This is Exhibit 7, and it begins on page  
19 0662 and ends at 0928, correct?

20 A. Yeah.

21 Q. Could you identify Exhibit 7, please.

22 A. This is the field guide that's used for  
23 the direct service workers.

24 Q. How is that used? Can you just explain

1 that a little bit more?

2 A. This is used for their training for how to  
3 do the job basically.

4 Q. Okay. And again, it's used by field  
5 workers?

6 A. Yes. Social workers.

7 Q. Okay. Including social workers who might  
8 interact with foster caregivers and foster families?

9 A. Yes.

10 Q. Let me just ask you to take a look at the  
11 page marked 0853. Can you identify -- and again,  
12 0853 looks to be one of an eight-page form of some  
13 sort. Could you just tell me what then 0853 through  
14 0860 is? What is that form?

15 A. This is what is called euphemistically the  
16 CAPMIS form. This is the assessment that's done to  
17 determine the level of service that family and child  
18 will need.

19 Q. So this may be -- the result of this  
20 assessment may be that the child remains in the home  
21 with some support services or may be placed out of  
22 the home?

23 A. That's correct.

24 Q. And if placed out of the home, could be

1 placed in some sort of foster care?

2 A. Yes.

3 Q. And let me just ask you to take a look at  
4 page 0857, please. If you would look at Section 5,  
5 which is Appropriateness of Placement, I take it that  
6 the social worker who is using this form, under  
7 Section 5, there appears to be some questions. I  
8 take it the social worker will need to answer these  
9 questions as part of the decision-making process; is  
10 that correct?

11 A. Yes.

12 Q. Okay. Question 3 says, "Explain how the  
13 placement is in close proximity to the parent,  
14 guardian, custodian. What transportation problems  
15 might create obstacles to visitation? How will the  
16 agency resolve these obstacles?"

17 We talked about this before. But this  
18 question reflects the ODJFS policy to encourage  
19 interaction between the foster child and the primary  
20 family wherever possible, correct?

21 A. Yes.

22 Q. And then if you look at 0858, Question 4,  
23 says, "When selecting a substitute care placement  
24 setting, describe how the agency considered proximity

1 to the school in which the child was enrolled prior  
2 to placement."

3 This question reflects the ODJFS policy to  
4 retain the child in the same school after placement  
5 wherever possible, correct?

6 A. Again, yes. In that ideal setting, yes.

7 MR. GREINER: Okay. I have no further  
8 questions.

9 Are you going to ask questions?

10 MR. APPEL: Yes.

11 - - -

12 REDIRECT EXAMINATION

13 BY MR. APPEL:

14 Q. Ms. Jones-Kelley, what is the difference  
15 between a County Department of Job and Family  
16 Services and the Ohio Department of Job and Family  
17 Services?

18 A. The Ohio Department of Job and Family  
19 Services is the administrative arm that implements  
20 the federal rules and guidelines, sets policy, and  
21 passes and monitors federal funding for the county  
22 departments. The County Departments of Job and  
23 Family Services are supervised by the Boards of  
24 County Commissioners within those 88 counties, and

1 they actually implement programs based upon local  
2 rule.

3 Q. Does ODJFS directly supervise the county  
4 departments on an individual basis?

5 A. No.

6 Q. Is there a hierarchical relationship  
7 between the county departments and ODJFS?

8 A. Only to the extent that ODJFS has  
9 responsibility for reporting back how the federal  
10 funding is tracked by the county departments.

11 Q. How often does the county -- let me  
12 rephrase that.

13 On the individual care of a specific  
14 child, does ODJFS have any role?

15 A. It is primarily the county's role. ODJFS  
16 doesn't provide direct services.

17 Q. Not to foster care?

18 A. No.

19 Q. During the questioning by opposing  
20 counsel, I heard you say several times about the  
21 goals of ODJFS and foster care. I heard you use the  
22 term "in ideal circumstances." What do you mean by  
23 ideal circumstances?

24 A. Ideal circumstances are those

1 circumstances in which the child's caregivers and/or  
2 family don't pose a risk of harm to the child that  
3 would require the department to take extraordinary  
4 prevention measures.

5 The ideal circumstances where the foster  
6 family and the birth family can work together with  
7 the child to provide a circle of support for that  
8 child. The child doesn't have to be moved; can  
9 remain within his circle, a family, school,  
10 neighborhood; all the ideal circumstances that don't  
11 have a child feel as if they've done something wrong  
12 to create the set of circumstances that have brought  
13 government into their lives.

14 Q. Are there occasions where there are less  
15 than ideal circumstances?

16 A. Yes, there are.

17 Q. Is that a very rare event or -- let me  
18 rephrase. How common is it to have less than ideal  
19 circumstances?

20 A. Unfortunately, it happens often. The less  
21 than ideal set of circumstances aren't all posed by  
22 the child's family. They may be posed by another  
23 perpetrator who has had access to that child.

24 Q. Can you give us some examples?

1 A. A child who has been sexually abused by  
2 someone outside of the child's immediate family  
3 circle may be placed in care in order to protect that  
4 child from further access from that individual who  
5 may not be related to that child in any way.

6 Q. Are there instances where the county  
7 departments are keeping the location of a foster  
8 child secret from the biological family?

9 A. Yes, there are.

10 Q. What sort of instances will trigger that  
11 secrecy?

12 A. Where a child is believed to be at a risk  
13 of harm -- severe risk of harm by that family member,  
14 requiring that child's location to be undisclosed.

15 Q. Would that also extend to where the  
16 biological parent can't be trusted not to disclose  
17 that information to other third parties who might  
18 pose a threat to the child?

19 A. That's correct, too.

20 Q. What kind of reasons would trigger that  
21 need for secrecy; any specifics?

22 A. An example might be where there is a  
23 child, a young woman, who was harmed by mother's  
24 boyfriend or previous boyfriend, and because mother

1 has some mental health issues or other kinds of  
2 issues, she can't protect that child from the  
3 boyfriend. She won't keep the boyfriend away. She  
4 might bring the boyfriend to visit, or she might give  
5 him the information about where the child is located.  
6 So in that case, in order to protect the child from  
7 further harm, you don't give mom the information  
8 about where the child is.

9 Q. In general, when a child is removed from a  
10 home, the family, has there been a determination that  
11 there's a risk of harm to the child?

12 A. Absolutely. That is always the last set  
13 of circumstances. In all ideal cases, you want to  
14 keep the child with the family to the extent that  
15 it's possible.

16 Q. Is there a high risk of harm to the child  
17 from the biological families if they remain in the  
18 home?

19 A. Could you restate that?

20 Q. I'm going to ask a second question. Let's  
21 compare that with the risk of harm among foster  
22 families. In your experience, is there a significant  
23 risk of harm from foster parents towards their  
24 biological children?

1 A. That's very rare. There's a balancing act  
2 that takes place, but it's very rare when you have a  
3 risk from the foster family themselves.

4 Q. Have there been any instances where foster  
5 children have been kidnapped by biological parents?

6 A. Oh, there have been. Yes.

7 Q. Have there been any instances where  
8 biological parents or any individuals have attempted  
9 to sway the testimony of children?

10 A. Yes.

11 Q. Could you give any examples of what kind  
12 of things would occur in that situation?

13 A. Oh, that's where the family might take the  
14 child out on visitation and/or come in to the foster  
15 home and spend time with the child and basically tell  
16 the child what they need to say. Mom might convince  
17 the daughter to drop her charges against the  
18 boyfriend, for example. We've had situations like  
19 that, even in my experience as a county director,  
20 where the parent tried to influence the child to get  
21 them to recant their stories.

22 Q. And when there is that danger, how does  
23 contact between the birth family and the child occur?

24 A. When there's that danger?

1 Q. Yes. Or when there's a belief that  
2 there's a substantial likelihood of that sort of  
3 improper influencing going on.

4 A. That's when the visitation is either  
5 curtailed or supervised by one of the professionals.

6 Q. And what kind of -- how does the  
7 supervised visitation work in the counties?

8 A. Typically it occurs at the agency. The  
9 child is either picked up by the caseworker or  
10 dropped off by the foster parent. The caseworker  
11 sits with the family and supervises the interaction  
12 between the child and the family.

13 Q. How about if there's danger that the -- a  
14 belief that the biological parents may attempt to  
15 harm the children? Assuming there was visitation,  
16 would there be -- how would the visitation occur  
17 there?

18 A. I'll give you my experience. We had  
19 another location where the visitation took place, if  
20 the visitation were to continue. Typically it would  
21 be curtailed until that fear was gone. But if it was  
22 still to occur, it would occur at a particular place  
23 we called Erma's House. There would be a higher  
24 level of supervision with that family. There might

1 be a court ordered visitation supervised by an  
2 officer of the court or maybe two people observing  
3 all the time.

4 Q. In your experience, have there been  
5 occasions where biological parents have threatened  
6 the foster parent?

7 A. Yes.

8 Q. How did this happen? Could you please  
9 elaborate?

10 A. My experience was one particular case  
11 where the biological parents wanted to regain  
12 physical control or custody of their child from the  
13 foster parent, and they threatened the foster parent  
14 to the extent that the foster parent was fearful of  
15 bringing the child for visitation. She began to  
16 drive different cars when she would bring the child.  
17 She would bring the child early and deliver the child  
18 to another staff member so that she wouldn't be seen  
19 delivering the child, to the point where we ended up  
20 having to make a change.

21 Q. Are all of the locations of all foster  
22 children kept secret from the biological parent?

23 A. Not all. No.

24 Q. Why is the location revealed to those

1 parents?

2 A. Ideally, the foster parents can be a  
3 resource for the biological parents. They can  
4 provide respite. They can help them develop their  
5 parenting skills. That's where we have those family  
6 group decision making meetings where we talk about  
7 what's in the best interest of the child and what the  
8 foster parent can assist the family with so that even  
9 after the agency's no longer involved when the  
10 child's reunified, the foster parent may continue to  
11 be a resource for the biologic family. Those are the  
12 ideal settings where those kinds of things occur.  
13 That's what we want to have happen.

14 Q. Who makes the decision as to whether it's  
15 the ideal situation or a less than ideal or far from  
16 ideal situation?

17 A. That's part of the assessment process when  
18 the child comes to the attention of the agency.  
19 There are a variety of things that are looked at.  
20 There are police records, what brings the child to  
21 the agency's attention because of the allegations  
22 from the family. There are a variety of factors that  
23 are taken into consideration.

24 Q. You've spoken earlier about the

1 relationship between adoptive and foster children.  
2 Or I'm sorry. Adoptive and foster parents. Is there  
3 a correlation between parents who are foster parents  
4 and parents who are seeking to adopt children?

5 A. There may be. When a child comes into  
6 foster care, the plan for that child is that the  
7 child will be reunified with his own family, if at  
8 all possible.

9 But in the alternative, should that not be  
10 able to occur, the thought is then that we need to  
11 move a child once, if we can. So the plan is that  
12 you bring them into a foster home that may become an  
13 adoptive placement for them, if they are not able to  
14 be successfully returned to their own family.

15 Q. Opposing counsel mentioned if ODJFS  
16 created a list of foster parent names and addresses,  
17 and you spoke about that. Do you recall those  
18 questions?

19 A. I do recall the questions. Yes.

20 Q. Would that list of foster parents contain  
21 the names of any adoptive parents?

22 A. It could potentially. Many of our foster  
23 parents are also adoptive parents.

24 Q. Is it a very high percentage or a very low

1 percentage or somewhere in between?

2 A. It's a very high percentage.

3 Q. Can you estimate the percentage?

4 A. Oh, gosh. I would be giving you a wrong  
5 number. But just based on --

6 Q. If you're not certain, then we'll go on.

7 A. I'm not certain, so I don't want to throw  
8 you a wrong number.

9 - - -

10 And, thereupon, Defendant's Exhibits A,  
11 B, C, and D were marked for purposes of  
12 identification.

13 - - -

14 Q. I'm going to show you some exhibits. I'm  
15 handing you what's been marked as Defendant's Exhibit

16 A.

17 A. Okay.

18 Q. Can you identify this document?

19 A. It is the home study that's used for -- it  
20 says here Assessment for Child Placement.

21 Q. What is the form number on this document?

22 A. The form number?

23 Q. Yes.

24 A. JFS01673.

1 Q. And what does that number mean, if  
2 anything?

3 A. I'm sorry. I can't answer that.

4 Q. That's quite all right.

5 What is this document used for?

6 A. To assess how a child should be placed.  
7 In terms of the home itself, what are the special  
8 needs of the child. If it's a child that can't be  
9 around cigarette smoke, those kind of things.

10 Q. Could you please look at the very first  
11 page; page 1 of 9.

12 A. Sure.

13 Q. And on the second block, it says Applying  
14 To. What are the two blocks that has available to  
15 mark?

16 A. This is where the family is interested  
17 either in fostering and/or adopting a child.

18 Q. So this form is used for both foster  
19 parents and adoptive parents?

20 A. That's correct. Yes.

21 Q. Who fills this document out?

22 A. The worker that's taking the initial  
23 information. It's usually the foster care worker, in  
24 my former county anyway.

1 Q. If this was a -- if the foster care home  
2 was supervised by a private agency, who would fill  
3 out this form?

4 A. In my former agency, it was a group of  
5 workers who actually did the forms and then sent them  
6 off to the private agency.

7 Q. Okay. Let's turn to page 9. There's a  
8 heading that says Disposition of Adoption  
9 Application. Do you see that?

10 A. Uh-huh.

11 Q. I'll ask this as an open question. Is  
12 there an indication on this page whether or not an  
13 adoption application was approved or denied?

14 A. Yes.

15 Q. And on this page is also a statement  
16 whether or not the foster care application is  
17 approved or denied?

18 A. That's correct.

19 Q. Let's look at Exhibit B. Can you identify  
20 that document?

21 A. This is the Application for Child  
22 Placement.

23 Q. I'll try to go a little quicker here.  
24 Time's running short. Is this form separate -- this

1 form for adoption, foster care, both, or neither?

2 A. It's for both. Forms are now set up as  
3 concurrent forms.

4 Q. What is the form number on this?

5 A. This is form no. JFS01691.

6 Q. And how is it indicated on here whether  
7 somebody is applying to be a foster care parent,  
8 adoptive parent, or both?

9 A. It's a check-off of blocks.

10 Q. So there's a block that says -- next to it  
11 it says foster, and there's a block next to it that  
12 says adopt?

13 A. Right.

14 Q. I'm handing you what's been marked as  
15 Exhibit C. What's the form number on this one?

16 A. This is JFS form 01673-A.

17 Q. And what is the title of this document?

18 A. This is the Child Characteristics  
19 Checklist for Foster Care and/or Adoption.

20 Q. And could you please turn to page 5.

21 There are several signature blocks --

22 A. Yes.

23 Q. -- for the parents?

24 How are those listed on the signature

1 blocks?

2 A. Well, they are listed as the  
3 adoptive/foster parent signature.

4 Q. So this is a document that would be used  
5 for both foster parents and prospective foster  
6 parents and prospective adoptive parents?

7 A. That is correct.

8 Q. And I'm going to show you what has been  
9 marked as Defendant's Exhibit D. What form number is  
10 that, please?

11 A. This is JFS form 01348.

12 Q. What is this document?

13 A. This is the Safety Audit Form.

14 Q. And what is the title of this document?

15 A. It is Safety Audit of a Foster Home, which  
16 is also used for adoptive homes.

17 Q. All right. When someone is applying to be  
18 an foster parent, are they typically marking both  
19 boxes both for adoption and foster care?

20 A. Yes.

21 Q. Is a person frequently denied to be a  
22 foster parent or adoptive parent, but not -- if  
23 someone applies to both be a foster parent and an  
24 adoptive parent, are they typically approved for only

1 one or the other?

2 A. That's hard for me to answer in terms of  
3 typically.

4 Q. How often does -- if someone applies to be  
5 a foster parent or adoptive parent with ODJFS, and  
6 they get approved to be a foster parent, is it likely  
7 that they are going to be denied to be an adoptive  
8 parent?

9 A. No.

10 Q. Let's say it the other way around.  
11 Someone applies to be an adoptive parent. Is it  
12 likely they're going to be denied to be a foster  
13 parent?

14 A. No.

15 Q. Are the standards for determining whether  
16 a person is appropriate to be a foster parent similar  
17 to the standards to be an adoptive parent?

18 A. They are similar standards. In fact, in  
19 the State of Ohio, now what we try to utilize are  
20 foster parents who are willing to become the adoptive  
21 parent for the children they foster.

22 Q. Why?

23 A. Because it creates less trauma for  
24 children. Every time we make a decision to remove

1 the child, to move the child, we are making a  
2 decision to cause that child further trauma because  
3 they think it's something that they did as they get  
4 further and further from what they are familiar with.

5 Q. You were talking about less than ideal  
6 parenting situations. Is there any way of knowing at  
7 any given time how many foster parents have children  
8 in their care that are in those less than ideal  
9 circumstances?

10 A. Only to the extent that there is something  
11 that comes up in a background check or --

12 Q. Let me put it another way. If today you  
13 know that certain people have in their care children  
14 whose birth parents are not allowed to know their  
15 location, do you know that those foster parents'  
16 homes are going to be -- well, I'm sorry.

17 I have trouble articulating. I'm going to  
18 come up with this correctly.

19 You know that sometimes there are going to  
20 be foster homes in Ohio at any given day where there  
21 are children where the birth parents aren't allowed  
22 to know the location, correct?

23 A. That's right.

24 Q. Are those going to be the same foster

1 parents day to day?

2 A. Not always. You don't know when someone's  
3 going to snap, for lack of a better term. We don't  
4 know when something is going to create a situation  
5 that's going to create a risk of harm.

6 Q. Is there any way of knowing ahead of time  
7 whether there will be a placement that will require  
8 that sort of secrecy?

9 A. Sometimes, but not always.

10 Q. But in terms of a -- in terms of looking  
11 from ODJFS' position that all 88 counties and all of  
12 the foster parent homes?

13 A. No. All 88 counties and all foster parent  
14 homes, no.

15 Q. Is there any way to figure out which of  
16 these foster parents are going to have these less  
17 than ideal circumstances a week from now?

18 A. Oh, no. No. There's no way.

19 Q. How about a month away?

20 A. You can't predict that.

21 Q. What is SACWIS?

22 A. SACWIS is the State Automated Child  
23 Welfare Information System.

24 Q. That's the acronym. But what is SACWIS?

1 A. It is a computer system which has been  
2 rolled out to counties. It's in the process of being  
3 rolled out to the last couple of counties now. It  
4 will allow the state to have state-wide data at its  
5 fingertips in realtime, which gives us information  
6 about all the children in care, all of the systems  
7 that are operating with those children and families.

8 Q. Prior to the rollout of SACWIS, did ODJFS  
9 have information at their fingertips?

10 A. Not at their fingertips in realtime.

11 Q. If ODJFS wanted to get information about a  
12 specific foster home, how would they have to get  
13 that?

14 A. They got that information from the  
15 counties.

16 Q. So prior to the rollout of SACWIS, would  
17 ODJFS know if there had been an incident of violence  
18 against a foster parent?

19 A. Only if the county reported it to the  
20 department.

21 Q. And it was my understanding that you said  
22 earlier that ODJFS does obtain information about  
23 those -- about those incidences. Is that only --  
24 were those occurring when there was -- when the

1 county reported it, or did ODJFS automatically know  
2 about it?

3 A. There would have been no way for ODJFS to  
4 automatically know because there was not a state-wide  
5 system to which ODJFS had immediate access to  
6 information.

7 Q. Do you know for certain whether there was  
8 a requirement for the counties to inform ODJFS about  
9 instances of violence by a biological parent against  
10 a foster parent?

11 A. No. I don't know that for certain.

12 Q. Who would know that better?

13 A. Who would know that better?

14 Q. Who at ODJFS -- is there an individual at  
15 ODJFS who would be able to answer that question with  
16 greater certainty?

17 A. I don't know who that person would be  
18 within the department.

19 Q. Perhaps Tom Roelant.

20 A. Perhaps.

21 Q. Would you please look at Plaintiff's  
22 Exhibit 2. Would you please turn to Paragraph 3.

23 A. Okay.

24 Q. There's referenced a phone call, correct?

1 A. Yes.

2 Q. Were you present during that phone call?

3 A. No, I was not.

4 Q. Do you know with any certainty what was  
5 said?

6 A. No.

7 Q. What is the -- what are the private  
8 agencies that do adoption foster care in Ohio?

9 A. By name?

10 Q. Not by name, but what do they do? What  
11 are their duties?

12 A. That do foster care and adoption, or just  
13 adoptive?

14 Q. Let's start with foster care.

15 A. Foster care. They contract with the  
16 county departments to provide services for child  
17 placement and working with families when children  
18 have to be in out-of-home care.

19 Q. Do they recruit foster parents?

20 A. Yes, they do.

21 Q. Do they do home studies for foster  
22 parents, or do you know?

23 A. I don't know that for a fact.

24 Q. Okay. There was some talk about

1 institutions and foster homes. Are most kids in Ohio  
2 in foster care homes -- in foster homes or in  
3 institutions that are in the foster care system?

4 A. Most kids in Ohio are in foster homes.  
5 That's the preferred option.

6 Q. Would you say that is a -- it's the  
7 majority, but is it the overwhelming majority are in  
8 foster homes?

9 A. An overwhelming majority. Yes.

10 Q. And how would you characterize the  
11 children who are in institutions?

12 A. Those are the children who cannot safely  
13 be in foster homes for behavioral or other reasons.

14 Q. Let's turn to page 1313 of Plaintiff's  
15 Exhibit 6. Actually we're going to turn to page  
16 1317. Do you have that page?

17 A. Yes.

18 Q. You read the myth that says, "Most birth  
19 parents are violent, dangerous people who pose a  
20 threat to the foster parent." Do you remember that?

21 A. Yes.

22 Q. Do you remember reading part of the  
23 reality paragraph there?

24 A. Yes.

1 Q. Did you read that entire paragraph, or was  
2 the entire paragraph read to you?

3 A. I skimmed it. It was not read to me.

4 Q. You recall indicating that -- you were  
5 asked if, you know, most birth parents, however, can  
6 build a collaborative relationship with foster or  
7 kinship parents that can be invaluable in the rapid  
8 reunification of the family. Do you recall that?

9 A. Yes.

10 Q. Do you agree with that sentence?

11 A. That most birth parents can build a  
12 collaborative relationship? Yes.

13 Q. Can you read the sentence that follows  
14 that in that paragraph?

15 A. Out loud?

16 Q. Out loud.

17 A. "When the case worker or foster parent is  
18 unsure about the level of risk posed by the birth  
19 family, relationships should be built with deliberate  
20 care along a continuum of openness with the safety of  
21 the foster caregivers of paramount concern."

22 Q. Do you agree with that last sentence?

23 A. Yes, I do.

24 Q. Would that continuum sometimes require

1 that the birth parent have no contact with the foster  
2 parent?

3 A. Absolutely.

4 Q. And let's look at page 1318. Do you  
5 recall reading the sentence, "Foster families are  
6 expected to communicate with the birth parents of all  
7 children"?

8 A. Yes.

9 Q. Could you read the next sentence?

10 A. "That communication may take many  
11 different forms, depending on the characteristics of  
12 the birth family, the wishes of the foster family,  
13 and the stage of the developing relationship between  
14 the foster and birth families."

15 Q. All right. We're going to stop there. Do  
16 you agree with that sentence as well?

17 A. Yes.

18 Q. Sometimes will the communication have to  
19 go through a third party?

20 A. Oh, yes. It does sometimes.

21 Q. And how would that third-party  
22 communication work?

23 A. Often the third party is the caseworker or  
24 the agency representative because the communication

1 between the birth family and the foster family is  
2 either not safe or is broken down.

3 Q. So in fact, a foster family could write a  
4 letter to the birth family and have it passed  
5 anonymously through the caseworkers?

6 A. That happens very often. Yes.

7 MR. APPEL: Could I have just a moment or  
8 two?

9 MR. GREINER: Yes.

10 (Recess taken.)

11 MR. APPEL: All right. We have nothing  
12 further.

13 MR. GREINER: I have two more questions in  
14 follow up.

15 - - -  
16 RECROSS-EXAMINATION

17 BY MR. GREINER:

18 Q. Is there any prohibition on placing a  
19 child out of the county, if need be? In other words,  
20 in a situation where there may be a risk to that  
21 child, if necessary, could that child be placed in a  
22 facility out of that child's county?

23 A. That is correct. That could happen. Yes.

24 Q. Do you know -- or how many licensed foster

1 care providers are there currently in the State of  
2 Ohio?

3 A. I don't know the number off the top of my  
4 head.

5 Q. Would you be able -- I mean, is it -- can  
6 you give me a reasonable estimate?

7 A. No. I'm sorry. I couldn't. Not for the  
8 entire state.

9 Q. How many, if you know, for example,  
10 were -- how many licensed foster care providers were  
11 there in Montgomery County at the time you were in  
12 that position?

13 A. I would be guessing. I have a general  
14 idea, but I can't give an exact figure.

15 Q. What was the general idea?

16 A. Somewhere in the vicinity of 3,700.

17 Q. In Montgomery County?

18 A. Well, see, all of the licensed foster  
19 parents with an agency don't necessarily live in that  
20 county; they live maybe in contiguous counties. So  
21 Montgomery County Children Services has licensed  
22 foster parents connected with them who live in Greene  
23 County or Miami County, or other areas of the state.

24 Q. Would there be a -- that you're aware of,

1 would there be a resource that I could check to see  
2 the number of licensed foster caregivers?

3 MR. APPEL: I'll interrupt real briefly.  
4 As a professional courtesy -- I just whispered to my  
5 client, and we're going to see if we can get you  
6 that. Obviously without identifying information,  
7 we'll try to get you the number of foster parents.

8 THE WITNESS: In the state?

9 MR. APPEL: Yeah.

10 THE WITNESS: We have that.

11 MR. GREINER: All right. That's all the  
12 questions I have.

13 Thank you for your time.

14 THE WITNESS: You're very welcome.

15 MR. APPEL: We don't waive signature.

16 (Signature not waived.)

17 - - -

18 And, thereupon, the deposition was  
19 concluded at approximately 5:00 p.m.  
20  
21  
22  
23  
24

1 State of Ohio :  
2 County of Franklin: SS:

3 I, HELEN JONES-KELLEY, do hereby certify  
4 that I have read the foregoing transcript of my  
5 deposition given on August 28, 2007; that together  
6 with the correction page attached hereto noting  
7 changes in form or substance, if any, it is true and  
8 correct.

9

10

HELEN JONES-KELLEY

11

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20

Notary Public

21

My commission expires \_\_\_\_\_

22

23

24

CERTIFICATE

1 State of Ohio :

2 SS:

3 County of Franklin:

4 I, Susan L. Coots, Notary Public in and  
5 for the State of Ohio, duly commissioned and  
6 qualified, certify that the within named HELEN  
7 JONES-KELLEY was by me duly sworn to testify to the  
8 whole truth in the cause aforesaid; that the  
9 testimony was taken down by me in stenotypy in the  
10 presence of said witness, afterwards transcribed upon  
11 a computer; that the foregoing is a true and correct  
12 transcript of the testimony given by said witness  
13 taken at the time and place in the foregoing caption  
14 specified.

15 I certify that I am not a relative,  
16 employee, or attorney of any of the parties hereto,  
17 or of any attorney or counsel employed by the  
18 parties, or financially interested in the action.

19 IN WITNESS WHEREOF, I have set my hand and  
20 affixed my seal of office at Columbus, Ohio, on this  
21 29th day of August, 2007.

22 \_\_\_\_\_  
23 SUSAN L. COOTS, Notary Public  
24 in and for the State of Ohio  
and Registered Professional  
Reporter.

My Commission expires January 10, 2009.



# Public Records and Confidentiality Laws

Ohio Department of Job and Family Services  
Office of Legal Services

January 2006

<b>EXHIBIT</b>	
tabbles	<u>4</u>

0004

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# I. THE OHIO PUBLIC RECORDS ACT

When responding to a request for records, an analysis of whether the requested records may be released, must be released or cannot be released begins with an analysis of pertinent law contained in RC Chapter 149. RC §149.011(G) sets out the definition of "records" subject to public records laws. This definition includes:

**"any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."**

[Two recent cases analyzing what is and is not a "record":

**State ex rel. Dispatch Printing Co. vs. Johnson**, 106 Ohio St. 3d 160 (2005), held that home addresses of state employees are not records under RC 149.011(G) and RC 149.43, because they do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

**State ex rel. Cranford vs. City of Cleveland**, 2004 Ohio 633 (affirmed by 103 Ohio St. 3d 196), held that personal notes are not records, if kept solely for personal convenience. Case Facts: Notes were taken by an employee during a dismissal hearing and were the employee's personal notes. Therefore, the court held that the city and employees had no duty to comply with a request to provide the notes.]

RC 149.43 is known as the "Public Records Act" and is the general records law governing the status of state and local government records when requested by a third party. The statute previously contained language applying its guidelines only to records required to be kept by any public office. The required to be kept language was removed from the statute by the legislature which means that this statute applies to virtually any record kept by any state or local governmental agency, in any form (but it must be a "record" under the definition contained in Section 149.011(G) of the Revised Code).

RC §149.43(B) mandates that all public records held by state or local government entities be maintained "... in a manner that they can be made available for inspection in accordance with.." the statute. Therefore, when new computer systems or storage strategies are formulated for information management purposes, access for purposes of public records laws must be considered.

RC §149.43(B) requires that all **public** records "...be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." The statute gives the state or local agency a reasonable period of time to produce the requested public records. This does not mean at the state or local agency's convenience. A "reasonable period of time" includes the time it takes to locate the record, determine if the requested record is a **public** record and secure it from where it is stored. If the record is at hand and is clearly a **public** record, it must be released immediately. The courts have ruled in most cases that the requestor of records need not identify themselves, put their request in writing or provide a reason for requesting the information. The courts make it very clear that refusing to release records for any of the aforementioned reasons, is improper despite any type of state or local agency internal policy. However, if the request for public records is by a person who is incarcerated due to a criminal conviction or juvenile adjudication and who is the subject of the records and the requested access is for public records concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution, access is restricted to circumstances wherein a judge determines that the records sought are necessary to support what appears to be a justiciable claim of the person.

Any state or local agency that receives the public records request is required to give the person

requesting the public record the option of receiving a copy of the public record requested "...upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record."

State and local agencies, upon request, must mail public records to requestors, although the state or local agency can limit the number of records mailed to ten per month if the requestor is requesting the records for commercial purposes (commercial purposes do not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities for government, or nonprofit educational research).

Upon receiving a request for records and in deciding whether to release a record, the person receiving the request must first determine whether the record being requested is a public record. RC §149.43(A)(1) defines a public record as:

**...records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for profit entity operating such alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following.**

The statute then sets out twenty-two specific exceptions and one general exception. Thus, virtually all records held by any public office are "public records" which must be released to anyone upon request unless the record fits within one of the exceptions set out in the statute. The exceptions are listed in RC §149.43(A)(1) as follows:

- a. **Medical records** - See RC 149.43(A)(3) for definition of "Medical Record": any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is **generated and maintained in the process of medical treatment.**
- b. **Records Pertaining to Probation and Parole Proceedings or to proceedings related to the imposition of community control sanctions (as defined under RC §2929.01) and post release control sanctions (as defined under RC §2967.01).**
- c. Records pertaining to actions under sections 2151.85 and 2919.121(C) of the Revised Code and to appeals of actions arising under those sections. Both sections make reference to **Juvenile Abortion Permission Records.**
- d. Records Pertaining to Adoption Proceedings, including the contents of an adoption file maintained by the department of health under RC § 3705.12.
- e. **Information In a Record Contained in the Putative Father Registry** - established by RC §3107.062, regardless of whether the information is held by the Department of Job and Family Services or, pursuant to RC §3111.69, the division of child support in the department or a Child Support Enforcement Agency.
- f. **Adoption Records** - Records listed in RC §3107.42(A) or specified in RC §3107.52(A).
- g. **Trial Preparation Records** - Any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or

proceeding, including the independent thought processes and personal trial preparation of an attorney.

- h. Confidential Law Enforcement Investigatory Records** - any record that pertains to a law enforcement matter of a criminal, quasi criminal, civil, or administrative nature, **but only to the extent that the release of the record would create a high probability of disclosure of the identity of a suspect who has not been charged with the offense to which the record pertains; an information source or witness to whom confidentiality has been reasonably promised; information which would tend to disclose the identity of a source or witness if confidentiality was reasonably promised; specific confidential investigatory techniques or procedures or specific investigatory work product; and information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.**
- i. Records containing information that is confidential under RC §2317.023 (Mediation—This section will be repealed effective 10/29/05 and replaced by RC 2710.03, which is captioned “Mediation Communications Privileged”) and RC §4112.05 (Ohio Civil Rights Commission Investigations).**
- j. DNA Records Stored In the DNA Database Pursuant to RC §109.573.**
- k. Inmate Records** released by the Department of Rehabilitation and Correction to the Department of Youth Services or a court of record pursuant to RC §5120.21(E).
- l. Records Maintained by the Department of Youth Services** pertaining to children in its custody released by the Department of Youth Services to the Department of Rehabilitation and Correction pursuant to RC §5139.05.
- m. Intellectual Property Records** - a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published or patented.
- n. Donor Profile Records** - all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.
- o. Records Maintained by the Department of Job and Family Services Pursuant to RC §3121.894** (new hire and rehire reporting for child support by employers).
- p. Peace Officer, Firefighter, or EMT Residential and Familial Information (PFE)** - Peace officer has the same meaning as in RC §109.71 and also includes the superintendent and the troopers of the highway patrol. Peace officer for the purpose of this exception excludes county sheriffs or supervisory employees who take over for county sheriff in his/her absence. A “firefighter” means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village. “EMT” means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. “emergency medical service organization,” “EMT-basic,” “EMT-I” and “paramedic” have the same meanings as in RC § 4765.01.

Information contained in records containing the following are not considered public

records: (i) the address of the actual personal residence of a PFE except for the state or political subdivision in which the peace officer resides; (ii) information compiled from referral or participation in an employee assistance program; (iii) the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to a PFE; (iv) the name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a PFE by the PFE's employer; (v) the identity and amount of any charitable or employment benefit deduction made by the PFE's employer from the PFE's compensation unless the amount of the deduction is required by state or federal law; (vi) the name, residential address, the name of the employer, the social security number, the residential telephone number, any bank account, debit card charge care, or credit card number, or the emergency telephone number of the spouse, a former spouse or any child of a PFE, (vii) any record that identifies a person's occupation as a PFE other than statements required to include the disclosure of that fact under the campaign finance law.

However, this exception does not apply to journalists (defined as a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information to the general public) who may access a PFE's personal residence address or the employer address of the PFE's spouse, former spouse or child if any of them are employed by a public office. The request from the journalist shall be in writing, contain the journalist and his/her employer's name and state that release of the information is in the public interest.

[But see *State ex rel. Plain Dealer vs. City of Cleveland*, 106 Ohio St. 3d 70 (August 2005), which held that peace officer photos met the exception to public records set forth in RC 149.43(A)(7)(b), and therefore did not have to be released to the public or press. Photos would have identified persons as peace officers.]

- q. **In the case of a County Hospital Operated Pursuant to RC Chapter 339, or a Municipal Hospital operated pursuant to RC Chapter 749, Information that Constitutes a Trade Secret, as defined in RC §1333.61.**
- r. **Information pertaining to the recreational activities of a person under the age of eighteen.** This means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses: the address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person; the social security number, birth date, or photographic image of a person under the age of eighteen; any medical record, history, or information pertaining to a person under the age of eighteen; any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.
- s. **Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under RC Sections 307.621 to 307.629, other than the report prepared pursuant to RC §307.626.**
- t. **Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to**

RC § 5153.171 other than the information released under that section.

- u. **Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under RC § 4751.04 or contracts under that section with a private or government entity to administer.**
- v. **Records the Release of Which is Prohibited by State or Federal Law - see Parts III, IV, and V of this memorandum.**
- w. **Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under RC §150.01.**
- x. Information reported and evaluations conducted pursuant to RC §3701.072, which pertains to **Trauma Center Preparedness**. (Sentence was added effective 02/12/04)
- y. **Financial Statements and data any person submits for any purpose to the Ohio house finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency (This paragraph will take effect 07/01/05).**

A record falling within one of these exceptions is not required to be released but may be released at the discretion of the state or local governmental agency that holds the records unless release would violate guidelines or restrictions set out in federal or state statutes, regulations or rules. If a record contains some information that falls within an exception, the state or local governmental agency may or must (depending upon the exception) edit (redact) the excepted information and release the public record portion.

Paragraph B of RC §149.43 allows agencies that provide public records to third parties pursuant to the statute to charge "cost" to the requestor. The term "cost" is not defined in the statute. The courts have found that \$.25 per paper copy or less is acceptable. However, it is ODJFS policy to charge \$.05 per paper copy. Other acceptable costs include but are not limited to actual mailing costs for copies, actual cost of computer discs, or actual costs for computer time. **The courts do not allow costs to include the hourly wages of employees who secure or copy the information pursuant to the request.** If the request reasonably requires the use of a contractor, that cost can be charged to the requestor. This type of cost should be agreed upon between the parties before charged. The courts allow delay in providing requested records if the agency requires payment prior to release. ODJFS may allow waiver of costs for release of records. Whether to waive costs should be decided on a case-by-case basis by the area providing the records.

Failure to release public records by an agency subject to RC §149.43 could result in a mandamus action being filed by the requestor. Mandamus is a special legal writ which can be filed in state common pleas, appellate or the supreme court. The writ asks the court to order the agency to do something that the agency is required to do by law. If a requestor prevails in the mandamus action requiring the agency to release the records at issue the court may also require the agency to pay attorney fees related to the mandamus action. This could result in thousands of dollars in costs borne by the agency. A mandamus action also requires large investments of time and representation for the agency by its own legal counsel. **It is, therefore, important to consult with the ODJFS Office of Legal Services whenever there is doubt as to whether a record is a public record or falls within one of the exceptions.** County agency employees should consult with their county prosecuting attorney regarding legal decisions on public records or confidentiality.

RC §149.433 defines "infrastructure record" and "security record," and excludes them from treatment as public records. This section is useful for protecting data obtained from surveys and

audits, when the data is obtained to improve infrastructure/ security.

## II. OHIO'S PERSONAL INFORMATION SYSTEMS ACT

RC Chapter 1347 "The Ohio Personal Information Systems Act", also known as the "The Ohio Privacy Act." This chapter regulates the use of personal information maintained by state and local governments as well as establishing an **additional right of access** to personal information (RC §1347.08) by the person who is the subject of the information, the subject's guardian or an attorney with written authorization from the subject. Therefore, this chapter must be analyzed when a record is sought by a person who is the subject of the information, the subject's guardian or an attorney with written authorization from the subject but the document is not a "public record" pursuant to RC §149.43 of the Revised Code. **OAC rule 5101:9-22-15** (OAC rule 5101-22-15 was rescinded June 1, 2004) is the ODJFS internal management rule related to RC Chapter 1347.

Personal information systems subject to RC Chapter 1347 are any collection or group of related records kept in an organized manner manually or electronically stored which contain information describing anything about a person or concerning acts of a person or that indicate that a person possesses certain personal characteristics. This information must have the capacity to be retrieved from the system by a name, identifying number, symbol or other identifier assigned to a person. The state or local agency must have ownership, control over, responsibility for, accountability for, or be required by law to keep the information (see RC §1347.01).

RC §1347.04(A)(1) sets out exemptions to the provisions of RC Chapter 1347. They include:

- a. Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;
- b. The criminal courts;
- c. Prosecutors;
- d. Any state or local agency or part thereof that is a correction, probation, pardon, or parole authority; and
- e. Personal information systems that are comprised of investigatory material compiled for law enforcement purposes by agencies that are not described in divisions (A)(1)(a) and (d) of this section. A part of a state or local agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws is not exempt under this section.

Section 1347.04 of the Revised Code also makes it clear at section (B) that RC Chapter 1347 cannot be construed to prohibit the release of public records required to be released by RC §149.43 nor will proper release of public records pursuant to RC §149.43 be considered an improper use of personal information under RC Chapter 1347.

Most county departments of job and family services, public children services agencies, county child support enforcement agencies, workforce development agencies, and one-stops retain client information which is not public record pursuant to RC §149.43 (due to state and federal laws) and are part of personal information systems pursuant to RC Chapter 1347, but do not fall within any of the exemptions contained in RC §1347.04. RC §1347.08 gives rights to inspection of this information to the person who is the subject of the personal information system, his/her guardian, or an attorney with written permission from the subject. Any person who wishes to exercise a right provided by this section

may be accompanied by another individual of his choice. RC §1347.08(D) allows each state and local agency to establish reasonable fees for the service of copying records pursuant to the statute. Limitations on this right to inspection include:

1. **Medical, Psychiatric or Psychological Information** - A physician, psychiatrist or psychologist may determine for the agency that disclosure of the information is likely to have an adverse affect on the person who is the subject of the information. If this is the case, the information must be released to a physician, psychiatrist or psychologist designated by the subject of the information in question (see RC §1347.08(C)(1)).

Upon the signed written request of either a licensed attorney at law or a licensed physician designated by the inmate, together with the signed written request of an inmate of a correctional institution under the administration of the department of rehabilitation and correction, the department shall disclose medical information to the designated attorney or physician as provided in division (C) of RC §5120.21.

2. **Confidential Law Enforcement Investigation Records** - The same definition as contained in RC §149.43. (See Part I of this memorandum & RC §1347.08(E)(2))
3. **Trial Preparation Records** - The same records as covered under RC §149.43. (See Part I of this memorandum & RC §1347.08(E)(2))
4. **Contents of Certain Adoption Files Maintained by the Ohio Department of Health** - This exemption refers to contents of adoption files maintained by the department of health pursuant to RC §3705.12. (See RC §1347.08(F)(1))
5. Information contained in the Putative Father Registry established by RC §3107.062, regardless of whether the information is held by ODJFS or, pursuant to RC §3111.69, the ODJFS Office of Child Support or a County CSEA. (See RC §1347.08(F)(2))
6. **Other Adoption Records** - Adoption records covered by RC §3107.17, §3107.42(A) and §3107.52(A). (See RC §1347.08(F)(3) and (F)(4))
7. **Records Related to Investigations of Complaints about Nursing Homes and Rest Homes maintained by the Ohio Department of Health** are confidential, pursuant to RC §3721.031(A)(1) through (C), and can only be released pursuant to court order, written permission of the complainant or for administrative purposes. (See RC §1347.08(F)(5))
8. **Records of Investigations of Long-Term Care Facilities by the Ohio Department of Health** -- may be expunged/destroyed when the alleged abuse/neglect or misappropriation of property of the resident is unsubstantiated (RC §3721.23(D)(1)), and **Records regarding the Identity of Complainants Maintained by the Dept. of Health** -- cannot be disclosed, except pursuant to court order, written permission of the complainant or for admin. purposes (§3721.25(A)(1)). (See RC §1347.08(F)(6) and (F)(7))
9. **Identities and Records of Nursing Facility residents, those who file Complaints against Nursing facilities, and those who provide Information about Nursing facilities** -- cannot be released by ODJFS pursuant to RC §5111.61(A)(1)). (See RC §1347.08(F)(8))
10. Test materials, examination, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under RC §4751.04 or contracts under that section with a private or government entity to administer. (See RC §1347.08(F)(9))

Each state and local agency may establish reasonable fees for the service of copying, upon request, personal information that is maintained by the agency and required to be provided under the statute.

In reviewing RC §149.43 and RC Chapter 1347, with respect to a accessibility of records by members of the public, Ohio law recognizes four distinct classes of records:

1. Records pertaining to confidential law enforcement investigations and trial preparation are not subject to release under RC §149.43 or RC §1347.08 but may be released at the discretion of the agency that has the records. However, release of the records through this discretion, in some cases, may result in a waiver of the confidentiality of the records;
2. Records pertaining to adoptions, some medical, psychiatric or psychological information, certain records containing information related to long term care residents, and child abuse and/or neglect records under RC §2151.421 are not subject to disclosure to the public at large pursuant to RC §149.43 or to the person who is the subject of the information pursuant to RC §1347.08. Specific statutes or rules set out under what circumstances these records may be released.
3. Records that fit within the exceptions in RC §149.43 but are subject to the provisions of RC §1347.08. Release of these records to the general public cannot be enforced through mandamus actions under RC §149.43(C) but the state or local governmental agency may choose to release the records at their discretion, unless release of the records is specifically prohibited by state or federal law. However, the information must be released upon request to the subject of the information, the subject's legal guardian, or an attorney with written permission from the subject; and
4. "Public records" which must, upon request, be disclosed to any member of the public who need not express or disclose a reason why the inspection is being requested.

### **III. FEDERAL & STATE CONFIDENTIALITY STATUTES AND REGULATIONS**

As stated in Part I of this memorandum, any record identified as a "public record" must be released upon request. RC §149.43(A)(1) excepts records from being designated as "public records" when there is a federal or state law which prohibits the release of the record or labels it as confidential. The following is a list of federal and state laws which make certain records or information confidential or prohibit their release. The federal and state statutes have been grouped according to program or subject matter.

#### **SOCIAL SECURITY NUMBERS**

As a result of growing problems of identity theft and intrusions on personal privacy, this section on social security numbers has been added to the Manual, as a reminder to all government employees of the importance of safeguarding the confidentiality of all social security numbers in the possession of state and local government. Unless specifically authorized by law, there should be no public disclosure of SSN#s of government employees, public assistance applicants/recipients, child support clients, unemployment insurance claimants/recipients/participants, workforce development participants, private sector employers/businesses/contractors, and participants in any other program administered by ODJFS or a county DJFS which collects and maintains social security numbers and related data. The

Internal Revenue Code, 26 USC 6109(d), states that an SS# is issued to an individual for tax identification purposes.

**5 USC § 552** (public information) and **5 USC § 522a** (the Privacy Act of 1974) are the federal counter-parts of the Ohio public information and privacy laws.

**5 USC § 552(a)** Speaks to the release of Social Security numbers. This statute does not prohibit release of the Social Security numbers but creates an individual expectation of privacy by requiring that any federal, state or local government agency that requests an individual to disclose his Social Security number shall inform that individual whether that disclosure is mandatory or voluntary, under what authority the number is solicited, and what use will be made of it. Please note that public assistance, child support and children services records and portions of daycare records are not public records pursuant to other federal and state statutes. Social Security numbers would also not be public records under those laws. Social Security numbers contained in personnel files have been determined by the Ohio Supreme Court to not be public records pursuant to a Constitutional right of privacy (see page 36 of the memorandum). Requests for release of Social Security numbers in other situations (eg. provider information) should be analyzed on a case by case basis. Also cited as Sections 7(a) and (b) of the Privacy Act of 1974.

**7 USC 2011-2036, Section 1137(a) of the Social Security Act, 42 CFR 435.910**, authorize the collection and use of SS#s in the Food Stamp program. (See also OAC Rules 5101:1-1-03 and 5101:1-3-09). SS#s can be used to determine eligibility and verify information.

**29 USC 2871(f)(3)**, the Workforce Investment Act (WIA), requires compliance with 20 USC 1232g, the Family Education Rights and Privacy Act of 1974 (FERPA), which was enacted to protect student privacy rights in education records, and applies to all public and private educational institutions that receive federal educational funds. FERPA requires safeguards to protect against the disclosure of personal identifying data regarding students, which includes SS#s. Under FERPA, schools can only give info to the Dept of Education, not the Dept of Labor, making cross-matching of SS#s problematic. A state educational authority may obtain state unemployment insurance (UI) wage record data from the state UI agency and conduct the computer match through its employees or contractors under its direct control in order to determine the employment status of students. Additionally, educational agencies and institutions may disclose information from the student's education records, such as the SS#, if the student is an "eligible student" (student over the age of 17, or a student who is attending a postsecondary institution at any age) and has provided prior written consent for the disclosure. (See January 30, 2003 Key Policy Letter signed by Sec. of Education).

**20 CFR 603.7:** Requires state unemployment compensation (UC) agencies to establish procedures to protect the confidentiality of information against unauthorized access, disclosure or redisclosure. 20 CFR 603.5 authorizes state unemployment compensation agencies to share wage and claim data with certain requesting agencies, but only for the purpose of verifying eligibility for, and the amount of, benefits. Both these provisions apply to the Wage Record Interchange System (WRIS), which is an interstate data exchange system that facilitates the exchange of UC wage records for use by participating states in assessing and enhancing the performance of various programs identified in the workforce investment act (WIA).

In 2005 Michigan became the first state in the nation to enact legislation requiring that every employer maintain a policy for safeguarding employee social security numbers. During the same time frame, the Michigan Court of Appeals became the first appellate court to allow victims of ID theft to recover damages (totaling \$275,000) from an organization that failed to adequately safeguard personal information that was subsequently used for ID theft.

## UNEMPLOYMENT COMPENSATION BENEFITS, TAX AND WAGE RECORDS

## Federal Statutes And Regulations:

**42 USC § 503(a)(1) and (8):** Require that state law provide for such methods of administration as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due and restricts expenditure of all moneys received by the State through the Unemployment Insurance Agent to be used solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such law.

These sections have been interpreted by the Department of Labor to provide that employer, wage and claim information collected and maintained for the administration of the unemployment compensation program are confidential and, with a few exceptions, not subject to disclosure (see U.S. Department of Labor Unemployment Insurance Program Letter No. 34-97). This confidentiality requirement pertains to information required from individuals and employers or employing units for the purposes of administration of the revenue and benefit provisions of state UC laws.

**42 USC §1320b - 7(a)(5) and (a)(6):** Requires the establishment of an Income and Eligibility Verification System (IEVS) between listed programs with adequate safeguards to assure that information is made available only to the extent necessary to assist in the valid administration of the programs, information exchanged is adequately protected against unauthorized disclosure, notification to applicants and recipients that information in the system may be shared with other agencies, and reimbursement to agencies providing the information.

**20 CFR §603.2:** Defines terms used with regard to IEVS including "wage information," "claim information," and "requesting agency."

**20 CFR §603.7:** Requires state unemployment compensation (UC) agencies to establish procedures to protect the confidentiality of information against unauthorized access, disclosure or redisclosure. The state unemployment compensation agency must require requesting agencies to comply with the following measures to protect the confidentiality of the information against unauthorized access or disclosure: 1) information shall be used only to the extent necessary to assist in the valid administrative needs of the program receiving such information; 2) The requesting agency shall not use the information for any purposes not specifically authorized under an agreement that meets the requirements of section 603.6; 3) information shall be stored in a physically secure place; 4) electronic information shall be secured from unauthorized access; 5) requesting agencies shall instruct all personnel of the confidential nature of the information. Unemployment Insurance Procedure Letter (UIPL) 23-96 - Requirements for disclosure of wage record information to private entities. 20 CFR 603.5 authorizes state unemployment compensation agencies to share wage and claim data with certain requesting agencies, but only for the purpose of verifying eligibility for, and the amount of, benefits. Both CFR provisions apply to the Wage Record Interchange System (WRIS), which is an interstate data exchange system that facilitates the exchange of UC wage records for use by participating states in assessing and enhancing the performance of various programs identified in the workforce investment act (WIA). These regulations also set forth provisions which must appear in the Agreement between the state unemployment compensation (UC) agencies and the requesting agency with respect to the release of Income and Eligibility Verification System (IEVS).

**20 CFR § 609.13:** Addresses confidentiality of information related to the Unemployment Compensation for Federal Civilian Employee program (UCFE) administered by the state unemployment agency.

**20 CFR § 614.14:** Addresses confidentiality of information related to the Unemployment Compensation for Ex-Service Members (UCX) administered by the state unemployment agency.

## State Statutes And Rules:

**RC §4141.162:** Requires the establishment of IEVS, specifies the programs to be included in the system, and provides that the requirements of RC § 4141.21 and any sanctions imposed for improper disclosure of such information apply to the redisclosure of information under this section. The section also requires the adoption of rules to include specific requirements including notification to applicants and recipients that information in the system may be shared with other agencies, that information is made available only to the extent necessary to assist in the valid administration of the programs, and that information is adequately protected from unauthorized disclosures.

**RC § 4141.21:** Except as provided in RC§4141.162(IEVS), and subject to RC § 4141.43 (cooperation with certain state, federal and other agencies), information maintained by or furnished to the director of ODJFS by employers or employees pursuant to RC Chapter 4141 (employment services law) is for the exclusive use and information of ODJFS in the discharge of its duties and is not open to the public and can not be used in any action or proceeding or be admissible in evidence in any action other than one arising under RC Chapter 4141 or RC §5733.42 (RC §4141.16 and RC §4141.161 were both repealed). All of the information and records necessary or useful in the determination of any particular claim for benefits or necessary in verifying any charge to an employer's account under RC sections 4141.23 to 4141.26, shall be available for examination and use by the employer and the employee involved.

**RC § 4141.22:** No person shall disclose any information maintained by or furnished to the director of ODJFS by employers or employees unless such disclosure is permitted by RC §4141.22.

**RC § 4141.43:** Provides the director of ODJFS with discretionary authority to disclose information to various agencies, including but not limited to the bureau of workers compensation, United States IRS, United States employment service, and the railroad retirement board.

**RC §5733.42(E):** Financial statements and other information submitted by an applicant to ODJFS for an employee training tax credit, and any other information taken for any purpose from such statements or information, are not public records subject to RC §149.43. However, ODJFS, the tax commissioner, or the superintendent of insurance may make use of the statements and other information for purposes of issuing public reports or in connection with court proceedings concerning tax credits allowed under this section and RC §5725.31, RC §5729.07, and RC §5747.39.

**OAC rule 4141-43-01:** Governs the exchange and disclosure of wage, claim, employer, employment and training, and other confidential information to state departments, other governmental agencies, or service providers, and certain nongovernmental agencies for research and for the purpose of providing and improving employment and training services. This rule strictly prohibits redisclosure of the information received. (Rule has been redrafted, but changes in (C)(3), (C)(6) and (E)(5) are minor).

**OAC rule 4141-43-02:** Allows the sharing of wage, claim and/or employment and training information furnished to or maintained by ODJFS pursuant to RC Chapter 4141 with county departments of job and family services, state and county child support enforcement agencies, and governmental agencies administering employment and training and public assistance programs. The rule also allows the sharing of this information with certain civil and criminal prosecuting authorities for use in discharge of their official public duties. (Rule has been redrafted. Paragraphs (H) and (I) in the proposed draft are new provisions and authorize information disclosure to all public officials and their agents, as well as the wage record interchange, for the purpose of evaluating public assistance and employment and training programs).

## **EMPLOYMENT SERVICES ( INCLUDING WAGNER - PEYSER)**

**20 CFR § 658.413:** The identity of complainants and any persons who furnish information relating to or assisting, in, an investigation of a job services complaint to ODJFS shall be kept

confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. Requires that copy of completed Job Services Complaint/Referral Form be given to the complainant(s) and the appropriate state Job Services official.

**RC § 4141.21:** Except as provided in RC §4141.162(IEVS), and subject to RC § 4141.43 (cooperation with certain state, federal and other agencies), information maintained by or furnished to the director of ODJFS by employers or employees pursuant to RC Chapter 4141 (employment services law) is for the exclusive use and information of ODJFS in the discharge of its duties and is not open to the public and can not be used in any action or proceeding or be admissible in evidence in any action other than one arising under RC Chapter 4141 or RC §5733.42 (RC §4141.16 and RC §4141.161 were both repealed). All of the information and records necessary or useful in the determination of any particular claim for benefits or necessary in verifying any charge to an employer's account under RC sections 4141.23 to 4141.26, shall be available for examination and use by the employer and the employee involved.

**RC § 4141.43:** Provides the director of ODJFS with discretionary authority to disclose information to various agencies, including but not limited to the bureau of workers compensation, United States IRS, United States employment service, and the railroad retirement board.

**OAC rule 4141-43-01:** Sets guidelines for the use and disclosure of wage information, claim information, employment and training information, and employer information. (Rule has been redrafted, but changes in (C)(3), (C)(6) and (E)(5) are minor).

## THE WORKFORCE INVESTMENT ACT (WIA)

**20 USCA § 9274:** Nothing in WIA should be construed to supercede the privacy protections afforded parents and students under section 444 of the General Education Provisions Act (20 U.S.C. 1232g), as added by the Family Educational Rights and Privacy Act of 1974 or FERPA (section 513 of Public Law 93-80; 88 Stat. 571).

**29 USC 2871(f)(3),** the Workforce Investment Act (WIA), requires compliance with 20 USC 1232g, the Family Education Rights and Privacy Act of 1974 (FERPA), which was enacted to protect student privacy rights in education records, and applies to all public and private educational institutions that receive federal educational funds. FERPA requires safeguards to protect against the disclosure of personal identifying data regarding students, which includes SS#s. Under FERPA, schools can only give info to the Dept of Education, not the Dept of Labor, making cross-matching of SS#s problematic. A state educational authority may obtain state unemployment insurance (UI) wage record data from the state UI agency and conduct the computer match through its employees or contractors under its direct control in order to determine the employment status of students. Additionally, educational agencies and institutions may disclose information from the student's education records, such as the SS#, if the student is an "eligible student" (student over the age of 17, or a student who is attending a postsecondary institution at any age) and has provided prior written consent for the disclosure. (See January 30, 2003 Key Policy Letter signed by Sec. of Education).

**29 USC§2935(a)(4):** Part (A) of this section requires certain WIA records maintained by ODJFS available to the general public. Part (B) excepts requirement of public access to information, the disclosure of which would constitute clearly unwarranted invasion of personal privacy and trade secrets, or commercial or financial information, that is obtained from a person and is privileged or confidential.

**20 CFR 603.7:** Requires state unemployment compensation (UC) agencies to establish procedures to protect the confidentiality of information against unauthorized access, disclosure or redisclosure. 20 CFR 603.5 authorizes state unemployment compensation agencies to share wage and claim data with certain requesting agencies, but only for the purpose of verifying eligibility for, and

the amount of, benefits. Both these provisions apply to the Wage Record Interchange System (WRIS), which is an interstate data exchange system that facilitates the exchange of UC wage records for use by participating states in assessing and enhancing the performance of various programs identified in the workforce investment act (WIA).

**29 CFR §37.37:** Requires each WIA recipient to collect data and records which show that the recipient is in compliance with the non-discrimination and equal opportunity provisions of WIA. Any of this data and records that contain information on applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment are considered confidential and can only be used for purposes of record keeping and reporting to the Department of Labor, determining eligibility, and determining compliance with non-discrimination requirements. Each WIA recipient must also keep logs of complaints alleging discrimination in relation to providing services under WIA. Any of these logs that contain identifying information of a particular individual must be kept confidential and may be shared only with the Department of Labor and the Governor.

**34 CFR § 99.30(a):** This is a FERPA regulation and provides that with certain exceptions, "The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records." Personally identifiable information includes but is not limited to: the student's name; a personal identifier, such as a student's social security number; and other information that would make the student's identity easily traceable (34 CFR § 99.3).

**RC § 307.983:** Each board of county commissioners is required to establish a plan of cooperation among county workforce development agencies specifying how such agencies will exchange information and coordinate and enhance services and assistance to individuals and families.

**OAC rule 4141-43-01:** Allows the use and disclosure of wage information, claims information, employment and training information and employer information maintained by ODJFS for the purpose of providing or improving employment and training program as well as research for certain specified purposes. (Rule has been redrafted, but changes in (C)(3), (C)(6) and (E)(5) are minor).

**OAC rule 4141-43-02:** Sets out under what circumstances wage, claim and/or employment and training information maintained by ODJFS can be shared with county departments of job and family services, state and county child support enforcement agencies, and governmental agencies administering employment and training and public assistance programs. (Rule has been redrafted. Paragraphs (H) and (I) in the proposed draft are new provisions and authorize information disclosure to all public officials and their agents, as well as the wage record interchange, for the purpose of evaluating public assistance and employment and training programs).

**Workforce Investment Act (WIA) Section 136(f)(2):** In measuring the progress of the state on state and local performance measures, a state shall utilize quarterly wage records, consistent with state law. The secretary shall make arrangements, consistent with state law, to ensure that the wage records of any state are available to any other state to the extent that such wage records are required by the state in carrying out the state plan of the state or completing the annual report described in 9(d) [performance reports]. (See also **20 CFR 666.150**, "What responsibility do states have to use quarterly wage record information for performance accountability," which does authorize limited use of SS#s; **20 CFR 663.540**; **WIA Section 122(d)(1)**, "Performance and cost information;" and **WIA Section 136(f)(3)**).

## LABOR MARKET INFORMATION

Information maintained or furnished to the director of ODJFS under RC Chapter 4141 as Labor Market Information is governed by the same laws and regulations that govern the underlying confidential

information. Labor Market Information may also be subject to confidentiality requirements of the US Bureau of Labor Statistics Commissioner's Order 3-93.

**CASH ASSISTANCE PROGRAMS**  
**including Ohio Works First, Refugee Cash Assistance, Disability**  
**Financial Assistance and Prevention, Retention, and Contingency**

Programs established in Ohio under Title IV-A include all programs that are funded in part with the federal Temporary Assistance for Needy Families (TANF) block grant established by Title IV-A of the Social Security Act, 110 Stat. 2113 (1996), 42 U.S.C. 601, as amended. These programs include Ohio Works First (OWF) established and administered in accordance with Chapter 5107 of the Revised Code, the Prevention, Retention, and Contingency (PRC) Program established and administered in accordance with Chapter 5108 of the Revised Code, and any other program established by the General Assembly or Executive Order issued by the Governor that is administered or supervised by ODJFS pursuant to section 5101.801 of the Revised Code. Other cash assistance programs for which ODJFS is responsible include Disability Financial Assistance (DFA) and the Refugee Cash Assistance (RCA) program.

## **Federal Statutes And Regulations:**

**42 USC § 602(a)(1)(A)(iv):** Requires the states under TANF to take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

**42 USC § 608(a)(9)(B):** Requires the states to furnish a federal, state or local law enforcement officer, upon the request of the officer, with, at least, the current address of any TANF recipient if the law enforcement officer needs information that is necessary for the officer to conduct the officer's official duties and the location or apprehension of the recipient is within such official duties; or the officer furnishes the state agency or county agency with the name of a recipient fleeing to avoid prosecution, or custody or confinement after conviction, under laws of the place from which he flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey is a high misdemeanor; or a recipient is violating a condition of probation or parole imposed under federal or state law.

**45 CFR § 205.50:** Use or disclosure of information concerning applicants and recipients of financial assistance under Title IV-A (funded with TANF) is limited to purposes directly connected with: (1) administration of the plan or program; (2) investigations, prosecutions, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs; (3) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; (4) information to the Employment Security Agency as required by law; (5) audits conducted in connection with the administration of any such plan or program, by a government entity authorized by law to conduct such audits; (6) administration of a state unemployment compensation program; and (7) reporting to the appropriate agency or official information on known or suspected child abuse, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

Information to be safeguarded includes at least: (1) names and addresses of applicants and recipients; (2) information related to a person's economic and social conditions; (3) evaluation of information concerning a particular individual; and (4) medical data. Release or use of information concerning applicants or recipients is restricted to those persons who are subject to standards of confidentiality comparable to those of the agency administering the financial assistance program. Generally, notice and consent of an individual is required to release information to an outside source. Courts must also be informed of statutory provisions, rules, and policies against disclosure when a recipient or applicant information is subpoenaed. This provision also applies to IV-E information.

## **State Statutes And Rules:**

**RC § 307.983:** Each board of county commissioners is required to establish a plan of cooperation among county family services agencies specifying how such agencies will exchange information and

coordinate and enhance services and assistance to individuals and families.

**RC § 307.987:** To the extent permitted by federal law and regulations and state law and rules, contracts entered into by the board of county commissioners, plans of cooperation, regional plans of cooperation, and procedures established for providing services to children who are frequently relocated shall permit the exchange of information to improve services and assistance to individuals and families and the protection of children. Any private or government entity receiving such information shall be bound by the same standards of confidentiality as the entity that provides the information.

**RC § 4123.27:** Allows the sharing of recipient specific information related to OWF, PRC, Medicaid and DA with the Bureau of Workers Compensation for matching purposes. The statute precludes the Bureau of Workers Compensation from sharing public assistance recipient information with anyone or other agencies except the State Auditor, Governor, Attorney General and select or standing committees of the general assembly.

**RC § 5101.181:** As part of the procedure for the determination of overpayments charged to a recipient of public assistance, the director of ODJFS shall furnish quarterly the name and Social Security number of each individual who receives public assistance to the Director of Administrative Services, the Administrator of the Bureau of Workers Compensation, and each of the state's retirement boards. These entities will in turn notify the state auditor as to whether such individual is receiving wages or benefits, and the amount. The Auditor of State and the Attorney General or their designees may examine any records whether in computer or printed format, in the possession of the Director of ODJFS or any CDJFS director. Safeguards restrict access to such records to purposes directly connected with an audit or investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of the programs and compliance with rules of ODJFS restricting the disclosure of information regarding recipients of public assistance is required. The state auditor then determines whether an overpayment of public assistance occurred and thereafter notifies ODJFS.

**RC § 5101.182:** For purposes of determining overpayments, the statute requires ODJFS to report recipient names and SS #s to the tax commissioner, who then reports to the state auditor which recipients filed tax returns, and how much gross income the recipients received. The director of ODJFS, directors of CDJFS, county prosecutors, Attorney General, Auditor of State, or agent or employee of those officials having access to tax returns, or reports of amounts of federal adjusted gross income, names or addresses or other tax information of recipients of public assistance furnished by the tax commissioner for investigatory purposes under this section, shall not divulge or use any such information except for the purpose of determining overpayments of public assistance, or for an audit, investigation, or prosecution, or in accordance with a proper judicial order.

**RC § 5101.26:** Sets out definitions of terms for confidentiality purposes.

**RC § 5101.27:** Sets out confidentiality requirements for all public assistance programs including OWF, Medicaid, DA medical, DA financial, Food Stamps, PRC, and other Title IV-A programs.

**RC § 5101.271:** Sets out the required elements to be contained in a consent form allowing the release of public assistance recipient specific information to third parties.

**RC § 5101.28:** Requires CDJFS and ODJFS to share info regarding recipients of OWF, DFA and PRC (but not medical assistance or services) with law enforcement agencies as defined in RC § 5101.26, for the purpose of investigations, prosecutions and criminal and civil proceedings that are within the scope of the law enforcement agency's official duties, as well as to the State Auditor's Office for statutory audit purposes.

**RC § 5101.30:** Gives ODJFS authority to adopt rules in accordance with Chapter 119 of the

Revised Code implementing sections 5101.26 to 5101.30 of the Revised Code and governing the custody, use and preservation of the information generated or received by ODJFS, county agencies, other state and county entities, contractors, grantees, private entities, or officials participating in the administration of public assistance programs.

**RC § 5101.80:** ODJFS is the single state agency for the administration and supervision of the administration of all Title IV-A programs. No county or state agency administering a Title IV-A program may establish, by rule or otherwise, a policy governing a Title IV-A program that is inconsistent with a Title IV-A program established, in rule or otherwise, by ODJFS.

**OAC rule 5101:9-22-15** (this rule replaces 5101-22-15, which was rescinded 06/01/04): this is the ODJFS internal management rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

**OAC rule 5101:1-1-03:** Disclosure of recipient information, Nondiscrimination, and treatment of information received from the IRS and SSA: addresses the release of OWF, PRC, TANF and DFA information held by ODJFS or a CDJFS specific to an applicant, recipient or former recipient. This is an extremely important rule and should be consulted when this type of information is requested by any third party. The rule describes under what general circumstances the information can be released, exceptions to the general requirements, what is required in information releases, and procedures to follow if information is requested through court process. Also contains provisions on the use, protection and redisclosure of client-specific data received by ODJFS and CDJFS from the SSA and IRS.

**OAC rule 5101:1-1-36(G):** Requires that ODJFS supplement IEVS, which it has done by creating CRIS-E, which allows ODJFS to obtain information from its own program liaison bureau, the IRS and the SSA. Match information for IEVS which contains federal tax data must be protected from disclosure to unauthorized person. The rule states that computer screen printouts or copies of letters mailed or received regarding Federal Tax Information must be safeguarded. The rule requires that IRS Federal Tax Information not be commingled within the assistance group case record. The rule then sets out under what circumstances and to whom the Federal Tax Information can be released.

**OAC rule 5101:1-3-10:** Requires the CDJFS to collect and report various types of data regarding an assistance group to the CSEA.

## **OHIO HEALTH PLANS** **including Medicaid, Disability Medical Assistance, CHIP I and II,** **and Refugee Medical Assistance.**

### **Federal Statutes And Regulations:**

**42 USCA § 1396r-8(b)(3)(D):** Information disclosed by manufacturers or wholesalers in relation to the best price for outpatient drugs is confidential and shall not be disclosed by the Secretary of HHS or ODJFS in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except as the Secretary of HHS determines to be necessary to carry out related regulations, and to permit the Comptroller General and Director of the Congressional Budget Office (CBO) to review the information.

**42 CFR § 2.1:** Sets out circumstances under which a patient's drug abuse and or treatment information can be released and prohibitions against redisclosure.

**42 CFR § 431.300:** Access to, and use and disclosure of, Medicaid information of applicants and recipients must be safeguarded by the state, so that it is restricted to purposes directly connected with the administration of the Medicaid program.

**42 CFR § 431.302:** Says that purposes directly related to state plan administration of the Medicaid program include: (1) establishing eligibility; (2) determining the amount of medical assistance; (3) providing services for recipients; and (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.

**42 CFR § 431.305:** Specifies the types of Medicaid information that must be safeguarded, including: (1) names and addresses; (2) medical services provided; (3) social and economic conditions or circumstances; (4) agency evaluation of personal information; (5) medical data, including diagnosis and past history of disease or disability; (6) any information received for verifying income eligibility and amount of medical assistance payments (income information received from the SSA or IRS must be safeguarded according to the requirements of the agency that furnished the data); and (7) any information received in connection with the identification of legally liable third party resources under RC '433.138.

**42 CFR § 431.306:** Requires ODJFS to establish rules governing the release and use of Medicaid information and persons who receive the information must be subject to a confidentiality standard comparable to those of the state. These regulations require notification and the obtaining of permission from the subject of the information before responding to a request for information from an outside source unless there is an emergency situation wherein the subject of the information must be notified immediately after the release, or the information is used to verify income and determine eligibility. Section (f) requires that, pursuant to a court subpoena of a person's Medicaid information, the court must be informed of applicable statutory provisions, policies, and regulations restricting disclosure of information. Section (g) and (h) requires intra agency agreements if information is shared in certain situations.

**42 CFR § 435.945:** Requires ODJFS to verify Medicaid eligibility and the amount of medical assistance payments. Requires that the eligibility and medical assistance payment information be supplied to other agencies in the state, agencies in other states and to federal programs for programs listed in 42 CFR §435.948(a)(6) (AFDC, Medicaid, State-administered supplementary payment programs under Section 1616(a) of the Act, SWICA, Unemployment compensation, Food Stamps, and any state program administered under a plan approved under Title I, X, or XIV); child support enforcement program under Title IV-D; SSA for old age, survivors and disability benefits under title II; and in relation to SSI benefits under Title XVI. The regulation requires that applicants and persons being redetermined for eligibility be informed in writing how the information collected will be used. This regulation also requires written agreements with other agencies before releasing data or requesting data from other agencies and sets out what must be in those agreements.

**42 CFR § 483.315(i):** Specifies under what circumstances data from the federal Resident Assessment Instrument (RAI/MDS+) for long term care facilities can be released.

**45 CFR § 160 Subpart A, B and C:** These are the general provisions of the Health Insurance Portability and Accountability Act (HIPAA) which define certain terms, speak to applicability of the Act and relationship of the Act to state laws. The definitions include Medicaid as subject to the Act. (However, the term "HIPAA" probably is not used anywhere in the CFR).

**45 CFR § 164 Subpart A and E:** These are the security and privacy regulations concerning HIPAA. (See Part IV).

## **State Statutes And Rules:**

**RC § 173.20:** Gives the Department of Aging Long Term Care Ombudsman, under certain circumstances and unless prohibited by law, access to any records, including medical records of a nursing facility resident that are reasonably necessary for investigation of a complaint.

**RC § 173.22:** Makes the investigation files of the Department of Aging Long Term Care Ombudsman confidential and allows disclosure of the records only at the discretion of the state ombudsman, the regional program maintaining the records, or by court order.

**RC §§ 2305.24 and 2305.251:** Concerns confidentiality of information furnished pursuant to hospital utilization review, peer review & quality assurance review. These statutes may be marginally relevant if ODJFS obtains these records through Medicaid related reviews and subpoenas are issued which may encompass this information.

**RC § 3701.243:** Prohibits state or local governments that acquire certain AIDS related information while providing any health care services from disclosing or compelling another to disclose the information unless the release falls within exceptions contained in sections 3701.243 or 3701.248. The information protected under Section 3701.243 is: the identity of a person on whom an HIV test is performed; the results of an HIV test that would identify a person or the identity of a person who has been diagnosed with AIDS or an AIDS-related condition.

**RC § 3701.028:** No person or government entity receiving certain information from the Health Department relating to the program for medically handicapped children and of programs funded with funds received from the "Maternal and Child Health Block Grant" Title V of the "Social Security Act," 95 Stat. 818 (1981), 42 U.S.C.A. §701, as amended, may release that information without the consent of the subject of the information or the subject's guardian (if the subject is a minor) except as necessary to administer the program for medically handicapped children or other programs funded with money received from the "Maternal and Child Health Block Grant," coordinate the provision of services under the programs with other state agencies and city and general health districts, or coordinate payment of providers. The records that are subject to this statute are: records that pertain to medical history, diagnosis, treatment, or medical condition; reports of psychological diagnosis and treatment and reports of social workers; and reports of public health nurses.

**RC § 4123.27:** Allows the sharing of information about recipients of OWF, PRC, Medicaid and DA with the Bureau of Workers Compensation for matching purposes. The statute precludes the Bureau of Workers Compensation from sharing public recipient information with anyone or other agencies except the State Auditor, Governor, Attorney General and select or standing committees of the general assembly.

**RC§ 5101.26:** Sets out definitions of terms for confidentiality purposes.

**RC § 5101.27:** Sets out confidentiality requirements for all public assistance programs including OWF, PRC, Food Stamps, DFA, DMA, refugee medical assistance (RMA), Children's Health Insurance Program (CHIP I and II), and Medicaid. [RMA & CHIP are non-medicaid PA]

**RC § 5101.31:** States that information shared with ODJFS by drug companies in relation to determining drug rebates are not public records, and shall be treated as confidential by the Dept.

**RC § 5101.271:** Sets out the required elements to be contained in a consent form allowing the release of public assistance recipient specific information to third parties.

**RC § 5101.572:** Third party insurers or insurance programs which may be liable to pay all or part of the medical costs of a Medicaid applicant/recipient may give or receive confidential information regarding such applicants/recipients, upon request of ODJFS. ODJFS must limit its use of information gained from such third parties to purposes directly connected with the administration of the Medicaid program. No third party may disclose to other parties or make use of any information regarding

recipients of OWF or medical assistance that the third party receives from ODJFS.

**RC §§ 5110.55 through 5110.59:** Makes confidential Best RX and trade secret information.

**RC § 5111.01:** ODJFS is the single state agency for the supervision of the administration of the Medicaid program. ODJFS rules are binding on all state and county agencies that administer components of Medicaid. No state or county agency may establish a policy that is inconsistent with a Medicaid policy established, by rule or otherwise, by ODJFS.

**RC §5111.61:** Provides that, without a court order, ODJFS and any contracting agency shall not release the identity of any resident of a nursing facility; the identity of any individual who submits a complaint about a nursing facility and has requested confidentiality; or any information that would reasonably tend to disclose the identity of any individual described previously and that records containing information concerning the aforementioned persons are non-public records under RC §149.43.

**RC § 5112.21** (This section will be repealed 10/06/05): Except as specifically required by RC §5112.01 to RC '5112.19 of the (Hospital Care Assurance Program), information filed under those sections shall not include any patient-identifying material. Information that includes patient-identifying material is not a public record under section 149.43 of the Revised Code, and no patient-identifying material shall be released publicly by the department of Job and Family Services or by any person under contract with the department who has access to such information.

**OAC rule 5101:9-22-15** (this rule replaces 5101-22-15, which was rescinded 06/01/04): this is the ODJFS internal management rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

**OAC rule 5101:1-37-01.1:** Addresses the release of medicaid, DA medical, refugee medical program and CHIPS I and II recipient specific information held by ODJFS or a CDJFS. This is an extremely important rule and speaks to contractor situations and provides additional authority to release information beyond those circumstances set out in RC 5101.27. It also requires nondiscrimination in the delivery of medical assistance programs and sets out certain safeguards and security for information received from the social security administration.

**OAC rule 5101:1-38-05(L):** Allows the sharing of names of children identified with high lead levels with the Ohio Department of Health.

**OAC rule 5101:1-39-06:** Cites federal law requiring the Social Security Administration to share resource transfer information of individuals applying for Supplemental Security Income. The rule then allows ODJFS to share this information with the CDJFS within which county the subject of this information resides.

**OAC rule 5101:3-1-08(D):** Requires notification to the third party tort unit or third party subrogation contractor when financial information related to medical services from a Medicaid provider is requested by a Medicaid recipient or the Medicaid recipient's attorney. The rule requires the Medicaid provider to put specific language on any records released to the Medicaid recipient or the recipient's attorney.

**OAC rule 5101:3-26-03.2** (This section was repealed 10/01/03): Rule addressed the sharing of drug and alcohol screening information by prenatal medical service providers (PMSP) in mandatory managed care counties who screened pregnant women for possible abuse of alcohol and/or other drugs.

**OAC rule 5101:3-26-08.2(B)(7):** No information or text that identifies the addressee as a medicaid recipient may appear on the outside of any managed care plan (MCP) or MCP subcontractor mailing.

**OAC rule 5101:3-30-05:** Addresses the sharing of information between an Alcohol and other Drug provider (AOD) and a prenatal medical services provider (PMSP) or CDJFS in mandatory managed care counties wherein pregnant women are assessed and referred after screening for alcohol or other drug treatment.

**OAC rule 5101:3-40-01 Appendix C:** Requires that HCBS Waiver VI recipient information be held in confidence.

**OAC rule 5101:3-41-01 Appendix C:** Requires that HCBS Waiver VII recipient information be held in confidence.

**OAC rule 5101:6-50-07:** Allows, when a RC Chapter 119 hearing has been requested, discovery of any matter which is not privileged or confidential except in cases involving actions under RC chapters 5103 and 5104 (child day care licensing and children's residential licensing).

## FOOD STAMPS

### Federal Statutes and Regulations:

**7 USC 2020(e)(8):** Sets out requirements for states in releasing applicant, recipient and former recipient's Food Stamp information.

**7 CFR § 272.1(c):** Restricts the release of information obtained from Food Stamp applicants/recipients to specific persons and situations. They are: (1) persons directly connected with the administrative enforcement of the Food Stamp Act; (2) persons connected with other federal assistance programs providing assistance on a means tested basis to low income individuals; (3) general assistance programs which are subject to the joint processing requirements in 7 CFR §273.2(j)(2); (4) persons connected with the administrative or enforcement of the Income Eligibility Verification System (IEVS); (5) persons directly connected with IV-D child support; (6) employees of Federal Health and Human Services to verify eligibility or benefits; (7) employees of federal comptroller for audit purposes; (8) local, state or federal law enforcement officials in connection with Food Stamp Act violations (must be in writing and contain identity of individual requesting information, authority to do so, violation being investigated, and identity of person investigated); and (9) written request from food stamp recipient or authorized representative except for information concerning the status of a pending investigation or the identity of informants. It should also be noted that the persons receiving the information must protect the information from unauthorized disclosure to other persons. General information which does not identify specific food stamp recipients are "public records" and must be made available to the general public upon request.

**7 CFR § 273.2:** Language has been deleted from the previous version of this regulation which required oral or written notification to a Food Stamp recipient when a third party collateral contact was made by an agency for eligibility purposes.

### State Statutes And Rules:

**RC §5101.26:** Sets out definitions of terms for confidentiality purposes.

**RC §5101.27:** Sets out confidentiality requirements for all public assistance programs including OWF, PRC, Medicaid, DA medical, DA financial, Refugee Cash, CHIP I and II, Refugee Medical and Food Stamps. Specific Food Stamp confidentiality requirements are set out in detail in the OAC rules.

**RC§5101.271:** Sets out the required elements to be contained in a consent form allowing the release of public assistance recipient specific information to third parties.

**OAC rule 5101:9-22-15** (this rule replaces 5101-22-15, which was rescinded 06/01/04): this is the ODJFS internal management rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

**OAC rule 5101:4-1-13(A)(8)**: Governs the disclosure of Food Stamp information. This section reflects RC Chapter 1347 and 7 CFR §272.1.

**OAC rule 5101:4-2-09(K)**: States that a release signed by a Food Stamp applicant or recipient is not necessary when a CDJFS is attempting to secure verification from collateral sources for Food Stamp eligibility purposes. References OAC rule 5101:4-1-13 as governing the release of IEVS information.

**OAC rule 5101:4-3-08**: Requires the reporting of illegal aliens who apply for Food Stamps to the Citizenship and Immigration Services (CIS -- formerly known as INS).

**OAC rule 5101:4-3-22(F)**: Sets out the acceptable purposes for utilizing a FS recipient's social security number.

**OAC rule 5101:4-7-09(H)**: Requires the safeguarding of all IEVS information used for FS purposes.

**OAC rule 5101:4-8-30(R)**: Requires safeguarding of tax information used for the FS Treasury Offset Program.

## CHILD SUPPORT ENFORCEMENT

### Federal Statutes and Regulations:

**42 USC§ 653**: Addresses confidentiality of the Federal Parent Locator System and to whom the information may be released (authorized person defined in the statute).

**42 USC§ 654(26)**: Requires the state to protect confidential child support information.

**42 USC§ 654 Part D, Paragraph (26)**: Addresses security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

**45 CFR § 235.70**: Allows county Job and Family Services departments to send a copy of the ADC case record and other relevant information to a CSEA.

**45 CFR § 303.15**: Allows use of the Federal Parent Locator Service (FPLS) for enforcing any state or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination. This information is given to the IV-D agency and pursuant to an agreement between the FPLS. Access to the FPLS information shall be restricted only in connection with child custody or parental kidnaping cases. After information is requested from FPLS and then sent to a requestor, the IV-D agency must destroy any confidential records and information related to the request.

**45 CFR § 303.30**: Allows access by IV-D to obtain IV-A or IV-E information not supplied by the agencies holding the information and allows the obtaining of medical support information with the consent of a non-recipient and without the consent of a Medicaid applicant or recipient.

**45 CFR§ 303.70**: Makes parent locator information confidential.

**45 CFR§ 307.13**: Addresses security and confidentiality for computerized support enforcement

systems in operation after October 1, 1997. Requires that information contained in SETS be confidential and be released only in connection with the IV-D (child support), IV-A (TANF), and Title XIX (Medicaid) programs.

## **State Statutes And Rules:**

**RC §149.43 (A)(1)(e):** Excludes information contained in the putative father registry from being considered as public record when held by ODJFS or a CSEA.

**RC § 149.43(A)(1)(o):** Excludes new hire and rehire records provided by employers to ODJFS for child support purposes from being considered as public records. Section refers to RC '3121.894 (new hire directory), which was amended effective 03/21/05.

**RC §3107.063:** Sets forth the procedure to be used by a biological mother or adoption attorney for requesting that ODJFS search the putative father registry to determine whether a man is registered as the minor's putative father.

**RC § 3121.76:** Limits the use of information received by ODJFS from a financial institution through an agreement pursuant to the statute to purposes of establishment, modification or enforcement of a child support order. Such information is not a public record.

**RC § 3121.84:** Sets out the types of matches that must be done with the case registry of all child support orders and to what governmental entities the matches should be shared.

**RC Sections 3121.89 through 3121.8911:** Replaces RC '5101.312.

**RC §3121.898** (new version takes effect 03/21/05, but few substantive changes were made): New Hire data shall only be used for the purpose of locating individuals for purposes of establishing paternity; establishing, modifying and enforcing support orders; and verifying eligibility for Title IV-A programs (like OWF and PRC), medicaid, Unemployment Compensation (UC), Food Stamps (FS) and employment security programs administered by ODJFS.

**RC § 3121.899:** New hire information shall not be considered as public record information pursuant to RC §149.43 and shall be used for the purpose of locating individuals for purposes of establishing paternity; establishing, modifying and enforcing support orders; and to detect fraud (verify eligibility) in any program administered by ODJFS. The new hire information shall also be shared with the Employment Services units of ODJFS and the Bureau of Workers Compensation.

**RC §3123.92:** Requires any CSEA administering a court or CSEA enforceable finding of default against an obligor to contact at least one consumer reporting agency in the State and provide to the consumer reporting agency the obligor's name, address, and social security number or other identification number and any other identifying information concerning the obligor.

**RC §3123.93:** Allows credit reporting agencies access to a new case registry ODJFS is required to establish and maintain pursuant to RC § 3121.81.

**RC § 3123.95 et seq.** Authorizes and sets forth requirements for the establishment and use by ODJFS of a poster program, to display photos of obligors who are delinquent in their support payments, for purposes of increasing collections. (Enacted many years ago, but included for first time in this Manual).

**RC §3125.49:** Precludes ODJFS Office of Child Support or any CSEA from using social security numbers made available from the local registrar of vital statistics for any purpose other than child support enforcement.

**RC § 3125.16:** Allows each obligor and obligee under a support order to review all records related to support orders held by CSEA's and any other information maintained by the CSEA, except to the extent prohibited by state or federal law.

**RC § 3125.50:** Authorizes release of information concerning applicants for and recipients of child support services by CSEA's only under rules promulgated by ODJFS. This statute also precludes release of information collected from any officer or entity of the state or any political subdivision of the state that would aid the CSEA in locating an absent parent; any information concerning the employment, compensation, and benefits of any obligor or obligee subject to a support order; name and address of any obligor or obligee subject to a support order and the obligor's employer in the customer records of a public utility; and the Department of Taxation except as provided by rules promulgated by ODJFS.

**RC § 3125.08:** Sets out limits for access and use of SETS information.

**RC § 3123.954:** Precludes a CSEA from providing the address or other identifying information of an obligee to the ODJFS Office of Child Support Enforcement when the CSEA submits the name of the obligor to be included on a poster. See also RC 3123.95 et seq. , RC 3123.957 and OAC rule 5101:1-30-90, for provisions regarding the office of child support's poster program.

**OAC rule 5101:9-22-15** (this rule replaces 5101-22-15, which was rescinded 06/01/04): this is the ODJFS internal management rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

**OAC rule 5101:1-1-03:** Disclosure of recipient information, Nondiscrimination, and treatment of information received from the IRS and SSA: addresses the release of OWF, PRC, TANF and DFA information held by ODJFS or a CDJFS specific to an applicant, recipient or former recipient. This is an extremely important rule and should be consulted when this type of information is requested by any third party. The rule describes under what general circumstances the information can be released, exceptions to the general requirements, what is required in information releases, and procedures to follow if information is requested through court process. Also contains provisions on the use, protection and redisclosure of client-specific data received by ODJFS and CDJFS from the SSA and IRS.

**OAC rule 5101:1-29-071:** Generally addresses the confidentiality of obligor, obligee and child, and child support information. Contains some guidelines which are reflected in RC §149.43 and RC §1347.08.

**OAC rule 5101:1-29-072:** Outlines the procedures for the safeguarding and security of information contained in SETS for use by private vendors who contract with CSEA's to secure child support on the CSEA's behalf.

**OAC rules 5101:1-29-341 and 5101:1-29-342:** Allows CSEA's to give out certain information concerning an obligor of child support to a consumer reporting agency.

**OAC rule 5101:1-29-96** Requires that certain paternity and child support information be shared with a CDJFS.

**OAC rule 5101:1-30-01:** Permits access to the Ohio Parent Locator Service for the purpose of establishing paternity, securing child support and medical support, and for cases involving custody, visitation or parental kidnapping.

**OAC rule 5101:1-30-03:** Requires child support agencies that wish to utilize the "Federal Parent Locator Service" to submit a certification that, among other things, information received from the service will be treated as confidential, its use will be limited to locating absent parents and the CSEA is aware that unauthorized use or disclosure of federal tax or other information obtained from the service

could result in criminal penalties. (This Rule and 5101:1-30-65 soon to be replaced by OAC Rule 5101:12-10-25.4 "Safeguarding of Participant Information").

**OAC rule 5101:1-30-04:** Allows use of Ohio Parent Locator Service to assist in enforcing the law with respect to the unlawful taking of a child or establishing or enforcing a child custody determination. The release of the information is authorized to release the information upon receipt of a local court request or a written request from law enforcement with a missing child report.

**OAC rule 5101:1-30-12(J) & (K):** Sets out for what purposes new hire information can be used. New hire reports are not public records. This rule used to track the language in RC '5101.312, which has been repealed and replaced with RC '3121.89 through '3121.8911.

**OAC rule 5101:1-30-13 (This rule was repealed):** The rule set forth what had to be contained in agreements between CSEA's and financial institutions including a statement that information received was not considered a public record pursuant to RC '149.43.

**OAC rule 5101:1-30-14(E)(1):** Any information obtained from a financial institution for multi state financial data matches is not considered a public record pursuant to RC '149.43.

**OAC rule 5101:1-30-58.6(C):** When an obligee or obligor seeks issuance or modification of a support order or paternity, certain information must be supplied to the tribunal addressing the issues. The rule allows a tribunal to order that the address of a child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under UIFSA if a tribunal has made a finding, that may be made ex parte, that the health safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of the identifying information.

**OAC rule 5101:1-30-65:** Sets out restrictions and safeguards with which county CSEAs must comply, with respect to information obtained from the IRS. (This Rule and 5101:1-30-03 soon to be replaced by OAC Rule 5101:12-10-25.4 "Safeguarding of Participant Information").

**OAC rule 5101:1-30-90:** Authorizes and sets forth requirements for Office of Child Support to implement poster program, displaying photos of delinquent obligors, to increase collections. (Enacted many years ago, but included for first time in this manual).

**OAC rule 5101:1-37-01.1(C)(7):** Allows the sharing of Medicaid, DMA (disability medical assistance), CHIP I and II, and Refugee Medical Services recipient information with ODJFS's office of child support or county CSEA's, when release is for the purpose of securing child support.

**OAC rule 5101:12-10-25.4 (New proposed rule soon to replace OAC rules 5101:1-30-03 and 5101:1-30-65).**

## CHILDREN SERVICES AND CHILD DAY CARE

### Federal Statutes and Regulations:

**42 USC §671(a)(8):** Requires that all state plans involving foster care and adoption assistance provide safeguards which restrict the use or disclosure of information concerning the programs under IV-B.

**42 USC §5106a(b)(2)(A)(viii):** Federal grants for child protective services require a state plan coordinated with a state plan under part B of title of the Social Security Act including an assurance (among other assurances) that the state has developed methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians. The methods

to preserve the confidentiality can include that reports and records made and maintained pursuant to the purposes of this Act only be made available to individuals who are the subject of the report; federal, state, or local government entities, or any agency of such entities having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect; child abuse citizen review panels; a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grant jury; and other entities or classes of individuals statutorily authorized by the state to receive such information pursuant to a legitimate state purpose. It should be noted that ODJFS has taken the position that the list of permissible circumstances under which abuse and neglect information can be released is permissive and that Ohio can be more restrictive with information than what is set out in this statute.

**42 USC §5106a(b)(2)(A)(x):** The state plan required by 42 USC 5106(b)(2)(A) also must include provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.

**42 USC §5106a(c)(4)(B)(i):** Members and staff of a citizen review panel related to child abuse and neglect, child fatalities or foster care shall not disclose to any person or government official any identifying information about any child protective case with respect to which the panel is provided information and shall not make public other information unless authorized by state statute.

**42 USC §5106a(c)(5)(A):** Requires that each state that establishes a citizens panel provide the panel access to information on cases that the panel desires to review if such information is necessary for the panel to carry out its functions.

**42 USC §5106a(c)(6):** Requires that each citizen panel prepare and make available to the public, on an annual basis, a report containing a summary of the activities of the panel.

**45 CFR §1340.14(i):** This regulation requires that the State provide by statute that records concerning reports of child abuse and neglect be confidential and that their disclosure be a criminal offense (reference RC §2151.421). This regulation specifies certain circumstances where release of the records would be acceptable but only if the state authorizes it through statute.

**45 CFR §1355.21:** Requires that each state plan for IV-E and IV-B provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act, as well as the provisions set out in 45 CFR §1355.30.

**45 CFR §1355.30(p)(3):** Requires that safeguarding of IV-E and IV-B information adhere to restrictions set out in 45 CFR §205.50.

**45 CFR §205.50:** The restrictions set out in this regulation were the same ones that restricted the release of Aid for Dependent Children applicant, recipient and former recipient information. This regulation requires that the State plan for financial assistance under Title IV-A restrict the use and disclosure of information concerning applicants and recipients, to purposes directly connected with: (1) the administration of the plan or program; (2) investigations, prosecutions, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs; (3) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; (4) information to the Employment Security Agency as required by law; (5) audits conducted in connection with the administration of any such plan or program, by a government entity authorized by law to conduct such audits; (6) administration of a state unemployment compensation program; and (7) reporting to the appropriate agency or official information on known or suspected child abuse, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

Information to be safeguarded includes at least: (1) names and addresses of applicants and recipients; (2) information related to a person's economic and social conditions; (3) evaluation of information concerning a particular individual; and (4) medical data. Release or use of information

concerning applicants or recipients is restricted to those persons who are subject to standards of confidentiality comparable to those of the agency administering the financial assistance program. Generally, notice and consent of an individual is required to release information to an outside source. Courts must also be informed of statutory provisions, rules, and policies against disclosure when a recipient or applicant information is subpoenaed. This provision also applies to IV-E information.

## State Statutes and Rules:

**RC §121.37(A)(2)(c):** Records identifying individual children maintained by the Family and Children First Cabinet council are confidential and shall be disclosed only as provided by law.

**RC §149.43 (A)(1)(e):** Excludes information contained in the putative father registry from being considered as public record.

**RC §307.627:** Allows child fatality review boards access to summary information from PCSA's, PCPA's, agencies that provide services specifically to a child or family, law enforcement agencies, or other public or private entity that provided services to a child whose death is being reviewed by the Board. The Board also can access confidential abuse and neglect investigatory records. The Board must preserve the confidentiality of any records received pursuant to this statute. If the death of a child is being investigated or the prosecutor is seeking to prosecute someone for causing the death of a child, the Board is not entitled to the prosecutor's information unless the prosecuting attorney agrees to provide it.

**RC § 307.628:** Immunizes from civil liability an individual or public or private entity providing information, documents, or reports to a child fatality review board for any injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing the information, documents, or reports to the review board.

**RC §1347.08(E)(2) & (F)(2):** Excludes access to the putative father registry by the subject, the subject's guardian, or an attorney with written permission from the subject.

**RC §2151.141:** States that if a complaint is filed with respect to a child pursuant to Section 2151.27 which alleges that a child is abused, neglected, or dependent, any individual or entity listed in RC 2151.14(D)(1), that is investigating the abuse, neglect or dependency, has custody of the child, is preparing a social history for the child, or is providing any services for the child, may request records concerning the child from a PCSA, PCPA, probation dept., law enforcement agency or prosecuting attorney. Any individual or entity receiving a records request under this statute must provide them, unless release of the information is prohibited by law. If the individual or entity receiving the records request determines that it cannot release the requested information, it must file a motion in the court where the complaint was filed setting out its reasons for not complying with the request, so that the court can rule on whether or not the records can be disclosed.

**RC §2151.142:** Makes confidential the residential addresses of each office or employee of a public children services agency or a private child placing agency who performs official responsibilities or duties described in RC §2151.14, RC §2151.141, RC §2151.33, RC §2151.353, RC §2151.412, RC §2151.413, RC §2151.414, RC §2151.415, RC §2151.416, RC §2151.417, or RC §2151.421 or another section of the Revised Code and to the residential address of persons related to that officer or employee by consanguinity or affinity. Any such addresses must be redacted if contained in records containing information subject to release under RC §149.43. The residential address must be disclosed to a journalist if certain requirements are met.

**RC §2151.421:** Certain professionals (listed in the statute) must report, and others may report, cases of child abuse/neglect to the County Children Services Board or CDJFS that exercises the children services function. The County Children Services Board or CDJFS must investigate any reports made pursuant to this statute. Any report made under this section is confidential. Paragraph

(M) allows sharing of specified information from an investigation (eg. allegations, alleged perpetrator and disposition) with designated officials of an out of home care entity when the abuse and neglect is alleged to have occurred in that entity. In 2004 County Mental Retardation Board employees were added to the list of required reporters. In 2005, references were added to child advocacy centers (CACs) and interagency agreements between PCSAs and CACs regarding abuse investigations.

**RC §2151.86:** Requires that the appointing authority or hiring officer of any entity that employs any person responsible for a child's care in an out-of-home care setting have a criminal BCI check completed on all prospective employees. The statute requires a criminal BCI check on all prospective adoptive parents and prospective foster parents. The report of any criminal records check conducted by BCI pursuant to this statute is not a public record for the purpose of RC §149.43 and shall not be made available to any person other than the applicant, prospective adoptive parents, or prospective foster parents who is the subject of the criminal records check or his representative; the entity requesting the criminal records check or its representative; the state department of Job and Family Services or a county department of Job and Family Services; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant or the denial of consideration as an adoptive parent or foster parent.

**RC §3107.063:** Sets forth method of disclosing data located in the putative father registry.

**RC §3107.17:** No person or governmental entity shall knowingly reveal any information contained in a paper, book, or record pertaining to a placement under RC 5103.16 or to an adoption that is part of the permanent record of a court or maintained by the department of job and family services, an agency, or attorney without the consent of a court. The section also prescribes ODJFS' authority to regulate the adoptive parent's or adoptive child's access to biological information of the natural parent.

**RC § 3107.42:** Declares certain specific adoption records non-public records under RC §149.43. This statute should be considered in conjunction with RC §3107.17 when adoption records are requested.

**RC § 3109.051(H):** Sets out under what circumstances a keeper of a record related to a particular child may preclude access to the record when access is requested by a non-custodial parent.

**RC § 3705.09(G):** Provides that when a birth certificate is changed to add a father's name once paternity is established, the old birth certificate and supporting documentation which prompted issuing the new birth certificate is sealed and cannot be released without a court order. All copies of the previous birth certificate held by a vital statistics registrar must be destroyed.

**RC § 3705.12:** Sets out guidelines for having the department of health prepare a new birth certificate for an individual that is adopted. The statute states that upon the issuance of the new birth record, the original birth record and any index references shall cease to be a public record.

**RC § 3705.23:** Makes information contained in the "information for medical and health use only" portion of the birth certificate confidential, and only allows release of this information pursuant to court order, or for statistical or research purposes under requirements set out by the Ohio Department of Health pursuant to rule.

**RC § 5101.27:** Sets out confidentiality requirements for all public assistance programs.

**RC § 5101.29:** When contained in a record held by ODJFS or other state or local entity responsible for enforcing Chapter 5104, names and other identifying information regarding children enrolled in or attending a child day-care center or home subject to licensure, certification, or registration are excluded from being considered as public records pursuant to RC §149.43. This statute also excludes names and other identifying information regarding a person who makes an oral or written complaint regarding a child day-care center or home subject to licensure, certification, or registration to the state department or other state or county entity responsible for enforcing Chapter

**RC § 5104.011(B)(7):** Administrators of each child day-care center shall prepare at least once annually and for each group of children attending the center and upon request shall furnish the roster for each group to the parents, custodians, or guardians of the children in that group. The administrator may prepare a roster of names and telephone numbers of all parents, custodians, or guardians of children attending the center and upon request shall furnish the roster to the parents, custodians, or guardians of the children who attend the center. The administrator shall not include in any roster the name or telephone number of any parent, custodian, or guardian who requests the administrator not to include his name or number and shall not furnish any roster to any person other than a parent, custodian, or guardian of a child who attends the center.

**RC § 5104.011(C)(2):** The administrator of each child day-care center shall maintain enrollment, health, and attendance records for all children attending the center and health and employment records for all center employees. The records shall be confidential, except as otherwise provided in division (B)(7) of this section and except that they shall be disclosed by the administrator to the director of ODJFS upon request for the purpose of administering and enforcing this chapter and rules adopted pursuant to this chapter. Neither the center nor the licensee, administrator, or employees of the center shall be civilly or criminally liable in damages or otherwise for records disclosed to the director of ODJFS by the administrator pursuant to this division. It shall be a defense to any civil or criminal charge based upon records disclosed by the administrator to the director of ODJFS that the records were disclosed pursuant to this division.

**RC § 5104.012(A) and (D):** Requires a criminal BCI check of all applications for employment at type-A and type-B daycare homes. The report of the criminal BCI check is not a public record for the purposes of RC §149.43 and is not to be made available to any person other than the applicant who is the subject of the criminal records check or his representative; the center, type-A home, or certified type-B home requesting the criminal records check or its representative; the state department of Job and Family Services or a county department of Job and Family Services; and any court, hearing, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant.

**RC § 5104.013(A) & (F):** Requires ODJFS as part of licensure of child day-care centers and type-A family day-care homes to conduct criminal BCI checks on owners, licensees or administrators of the day-care center; any owner, licensee, or administrator of a type-A family day-care home, and any provider of type-B family day care; and, any person eighteen years of age or older who resides in a type-A or type-B family day-care center. Any criminal BCI report completed pursuant to this statute is not a public record under RC §149.43 and shall not be made available to any person other than the person who is the subject of the criminal records check or his representative, the director of Job and Family Services, the director of a county department of Job and Family Services, the center, type-A home, or type-B home involved, and any court, hearing officer, or other necessary individual involved in a case dealing with a denial of licensure or certification related to the criminal records check.

**RC § 5153.111(A) & (D):** The executive director of a PCSA is required to have a criminal BCI check done on all prospective employees applying for employment with the agency which require the employee to be responsible for the care, custody, or control of a child. The report of any criminal BCI check pursuant to this statute is not a public record under RC §149.43 and cannot be made available to any person other than the applicant who is the subject of the criminal records check or his representative, the public children services agency requesting the criminal records check or its representative, and any court, hearing officer, or other necessary individual involved in a case dealing with the denial or employment to the applicant.

**RC § 5153.17:** County children services boards or county department of Job and Family Services performing the children service function, must keep records of investigations and all other records required to be kept by ODJFS Services confidential. These records, however, shall be open to inspection by the Ohio Department of Job and Family Services, the director of the county department

of job and family services, and other persons upon written permission of the executive secretary.

**RC § 5153.171:** Requires the Director or Executive Secretary of a public children agency to confer with the county prosecutor in relation to a request for information about a child who was under eighteen years of age, who was a resident of the county served by the agency at the time of the child's death and whose death may have been caused by abuse, neglect, or other criminal conduct. If the county prosecutor intends to prosecute a person for causing the child's death, the prosecuting attorney decides what information may be released, if any. The prosecutor is required to notify the PCSA Director or Executive Secretary of the intent to prosecute and the determination of what information may be released. The Director or Executive Secretary may only release the information designated by the prosecutor. If the prosecutor does not intend to prosecute a person for causing a child's death, the prosecutor shall notify the Director or Executive Director of the PCSA who shall release the information described in RC § 5153.172, except as provided in RC § 5153.173. This statute shields the Director or Executive Secretary of a PCSA from civil or criminal prosecution if the Director or Executive Secretary of the PCSA, in good faith, released information authorized in accordance with RC §5153.171.

**RC § 5153.172:** Notwithstanding RC §2151.421, RC §3701.243 and RC §5153.17 or any other section of the Revised Code pertaining to confidentiality and unless precluded by RC § 5153.173, the PCSA Director shall disclose about a deceased child: the child's name, summary report of abuse or neglect reports made pursuant to RC §2151.421 of which the child was subject, final disposition of the report or status of the investigation, services provided to or purchased for the child by the PCSA, actions taken by PCSA in response to the report of child abuse and neglect. Names of the parties who reported the abuse/neglect, names of parents and siblings of the child; contents of psychological, psychiatric, therapeutic, clinical or medical reports or evaluations regarding the child; witness statements; police or other investigative reports; or any other information other than stated in this statute are prohibited from being released pursuant to this statute.

**RC § 5153.173:** A common pleas court can provide an order to stop the release of information required to be released pursuant to RC §5153.172 upon a motion by the PCSA which alleges that disclosing this information would not be in the best interest of a deceased child's sibling or another child residing in the deceased child's household.

**OAC rule 5101:9-22-15** (this rule replaces 5101-22-15, which was rescinded 06/01/04): this is the ODJFS internal management rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

**OAC rule 5101:2-5-09.1(M):** Sets out to whom a Bureau of Criminal Identification and Investigation (BCII) report completed for Private Children Placing Agency (PCPA) or Public Children Services Agency (PCSA) employment purposes or for foster caregiver applicants seeking certification may be made available.

**OAC rule 5101:2-7-04:** A foster caregiver must maintain a record on each foster child and the rule specifies what must be included in these records. The rule then goes on to preclude the foster caregiver from knowingly allowing the disclosure of any information regarding the foster child or the foster child's family to persons not directly involved in the foster child's care and treatment on an official basis.

**OAC rule 5101:2-12-08(C) & (G):** Requires ODJFS to keep copies of all complaint disposition reports related to licensed child day-care centers. The complaint disposition records with confidential information deleted shall be released to anyone who requests it in writing.

**OAC rule 5101:2-12-32** (replaces OAC rule 5101:2-12-54, which was repealed effective 04/01/03. See also RC 5104.011(B)(7)): Governs disclosure of names and telephone numbers of parents, custodians or guardians of children attending a child day care center contained on rosters which are required to be kept.

**OAC rule 5101:2-12-59 (Repealed 04/01/03):** Made enrollment, health, and attendance records maintained by a day care center, confidential. This rule referred to records kept under Chapter 5104 and requirements of RC chapter 1347.

**OAC rule 5101:2-13-08(C) & (G):** Requires ODJFS to keep copies of all complaint disposition reports related to licensed type A family day-care homes. The complaint disposition records with confidential information deleted shall be released to anyone who requires it in writing.

**OAC rule 5101:2-13-26(J):** Requires employees of type A daycare homes to receive a BCII check. Record check results are not public record and shall not be made available to any person other than the person who is the subject of the records check or his representative, the type A home administrator, owner, owner's designee, or ODJFS.

**OAC rule 5101:2-13-32:** Each type A daycare home is required to have a roster of parents and guardians but allow parents or guardians to opt out of the roster. The roster will only be made available to the parents or guardians with children enrolled in the type A daycare home or ODJFS.

**OAC rule 5101:2-13-37(C):** Medical records required to be kept by type A daycare centers shall be confidential, except they shall be available to ODJFS.

**OAC rule 5101:2-14-03(C) & (D):** Requires that complaint investigations of Type-B family child care homes and in-home aides be kept by director of the CDJFS in that county and, with confidential information removed, released to anyone upon written request.

**OAC rule 5101:2-14-11(D), (E), (P) & (T):** Requires BCII checks for type B home providers or in home aides. Record check results are not public record and shall not be made available to any individual other than the person who is the subject of the records check or his representative, ODJFS or a CDJFS.

**OAC rule 5101:2-14-26(D):** Sets out what must be in children's records at type B family day-care homes. The rule allows release of the records only to the director of the CDJFS in that county, the provider or to a person who provides written authorization from the child's parent/caretaker. Emergency transportation authorization and health records may be disclosed in an emergency or substitute situation to the emergency or substitute provider or to a health professional administering emergency care to the child.

**OAC rule 5101:2-14-62:** Sets out what type of information related to a certified child care provider cannot be released by a CDJFS. This rule requires sharing of this information with ODJFS and a PCSA or law enforcement agency as needed when there is an allegation of child abuse and/or neglect.

**OAC rule 5101:2-34-38:** Sets out specific guidelines and parameters concerning the release of child abuse and neglect information held by PCSAs pursuant to records and investigations under Section 2151.421. **This rule is extremely important as it severely limits disclosure of this information and is very specific in delineating to whom and under what circumstances this information may be released. It must also be noted that it is a criminal offense to release this type of information in violation of the rule.**

**OAC rule 5101:2-34-381:** Provides guidelines for the release of information contained in the Ohio central registry of child abuse and/or neglect.

**OAC rule 5101:2-39-51:** Requires PCSAs to share certain PCSA information upon request by a CDJFS to: assess, plan and provide coordinated services to children families and adults receiving services from the PCSA and the CDJFS; assist the CDJFS in establishing best interest statements from minor parents who are participating in OWF; and assist OWF families already receiving PCSA services in implementing the provisions of their family assessment appraisal and self-sufficiency contract. This

rule also sets out what type of abuse and neglect information may be released to the CDJFS and safeguarding of that information by the CDJFS.

**OAC rule 5101:2-42-90:** Allows the release by PCSAs or PCPAs of certain records to potential care givers prior to placing a child in a substitute care setting.

**OAC rule 5101:2-48-19:** Governs the release of adoptive home studies by PCSAs, PCPAs, or PNAs.

**OAC rule 5101:2-48-20:** Governs the release of birth parent and sibling identifying or non-identifying information to an adopted person or the adoptive parents.

**OAC rule 5101:2-48-21:** Allows a child study inventory to be shared with a public children services agency, private child placing agency, or private non-custodial agency assisting in an adoption placement of a child or serving as the adoptive family serving agency.

**OAC rule 5101:2-48-22:** Sets out what must be included by a PCPA, PCSA or PNA in an adoptive family case record.

**OAC rule 5101:2-48-23:** Governs the preservation of adoptive child case records and sets out under what circumstances the record can be released or reviewed.

**OAC rule 5101:6-50-07:** When an RC Chapter 119 hearing has been requested, allows discovery of any matter which is not privileged or confidential, except in cases involving actions under RC chapters 5103 and 5104 (child day care licensing and children's residential licensing), in which instances no discovery is permitted.

## REFUGEE SOCIAL SERVICES

### State Rules:

**OAC rule 5101:1-1-03:** Disclosure of recipient information, Nondiscrimination, and treatment of information received from the IRS and SSA: addresses the release of OWF, PRC, TANF and DFA information held by ODJFS or a CDJFS specific to an applicant, recipient or former recipient. This is an extremely important rule and should be consulted when this type of information is requested by any third party. The rule describes under what general circumstances the information can be released, exceptions to the general requirements, what is required in information releases, and procedures to follow if information is requested through court process. Also contains provisions on the use, protection and redisclosure of client-specific data received by ODJFS and CDJFS from the SSA and IRS.

**OAC rule 5101:2-49-10(A)(14):** Makes the providers contracting with the Refugee Resettlement program subject to confidentiality. (This rule is scheduled to be rescinded in 2005 and replaced by OAC rule 5101:1-2-40.2(D)(4), which says that the refugee social services program must comply with the confidentiality provisions of RC 5101.27)

**OAC rule 5101:2-49-24:** Governs confidentiality of applicant and/or recipient specific information gathered for the refugee resettlement program. This rule appears to reflect OAC rule 5101:1-1-03. (OAC rule 5101:2-49-24 is scheduled to be rescinded in 2005 and replaced by OAC rule 5101:1-2-40.2(D)(4), which says that the refugee social services program must comply with the confidentiality provisions of RC 5101.27)

## TITLE XX

### State Statutes:

**RC 5101.46(D):** Requires ODJFS to prepare a report every fiscal year related to the use of Title XX funds which will be available for public inspection.

## ADULT SERVICES

### State Statutes:

**RC §3722.15:** CDJFS employees designated by the CDJFS director to implement RC §5101.60 to RC §5101.71 must be given access to, and the right to copy, any record of an adult care facility including resident's records. In turn, the CDJFS employees cannot release the resident specific records accessed under this section without consent of the resident or a court order.

**RC §3724.11:** Allows the Director of Health to share reports of licensing violations concerning community alternative homes (this includes adult foster care facilities) with a government agency responsible for enforcing laws governing them.

**RC §5101.61(F):** Written and oral reports of suspected abused, neglected or exploited adults, and subsequent investigatory records, are not considered public records pursuant to RC §149.43. The information may only be made available to the adult who is the subject of the report upon request, to agencies authorized by the department to receive information contained in the report, and to legal counsel for the adult.

## STATE HEARINGS

### Federal Regulations:

**7 CFR 273.15:** Requires that hearing decisions related to Food Stamps be made available to the public with identifying information of the Appellant being kept confidential. This regulation also requires that the Food Stamp assistance group or its representative be given access to all documents and records to be used at the state hearing at a reasonable time prior to the state hearing as well as at the state hearing.

**45 CFR 205.10(a)(19):** Requires that hearing decisions related to IV-A be made available to the public with identifying information of the IV-A assistance group kept confidential.

### State Rules:

**OAC rule 5101:9-22-15** (this rule replaces 5101-22-15, which was rescinded 06/01/04): this is the ODJFS internal management rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

**OAC rule 5101:6-5-01(E) & (F):** Allows an Appellant requesting a state hearing and/or his/her authorized representative access to his/her case record or other relevant agency records for purposes of preparing for a state hearing. This rule also sets out the procedure for subpoenas in the state hearing process.

**OAC rule 5101:6-7-01(G):** Allows inspections of state hearing decisions subject to applicable disclosure guidelines. The implication of this rule is that an Appellant's identity is not subject to

disclosure but the decision itself (with identifying information of Appellant deleted) is available as a public record upon request.

**OAC rule 5101:6-8-01(K):** Allows inspections of administrative appeal decisions subject to applicable disclosure guidelines. The implication of this rule is that an Appellant's identity is not subject to disclosure but the decision itself (with identifying information of Appellant deleted) is available as a public record upon request.

**OAC rule 5101:6-20-16(H):** Allows inspections of administrative disqualification decisions subject to applicable disclosure guidelines. The implication of this rule is that an Appellant's identity is not subject to disclosure but the decision itself (with identifying information of Appellant deleted) is available as a public record upon request.

**OAC rule 5101:6-50-07:** Allows when RC Chapter 119 hearing has been requested, discovery of any matter which is not privileged or confidential except in cases involving actions under RC Chapters 5103 and 5104 (child daycare licensing and children's residential licensing).

## OHIO'S BEST Rx PROGRAM

In December 2003, the Ohio's Best Rx Program was created by Am. Sub. H. B. 311. The Ohio's Best Rx Program is a program to provide low-income families and people age 65 and older with a method to purchase drugs at a discounted price. The program is established in Chapter 5110 of the Revised Code and will be administered by ODJFS. The Ohio's Best Rx Program will be implemented later in 2004. Am. Sub. H. B. 311 is available at:

[http://www.legislature.state.oh.us/bills.cfm?ID\\$125\\_HB\\_311](http://www.legislature.state.oh.us/bills.cfm?ID$125_HB_311)

**RC §5110.55:** Makes information confidential when transmitted for any purpose related to the Ohio best Rx program to: drug manufacturers, terminal distributors of dangerous drugs, the Ohio best Rx program administrator, ODJFS, DAS, state retirement systems, state health benefit plan or state retirement system health benefit plan, Ohio's best Rx program participants, and any other government entity or person.

**RC §5110.56:** Except as provided by RC §5110.57 all the following are trade secrets, are not public records for the purposes of RC §149.43 and shall not be used, released, published, or disclosed in a form that reveals a specific drug or the identity of a drug manufacturer. The statute then lists the following: the amounts determined under RC §5110.17; information disclosed in a rebate agreement or in communications related to a rebate agreement; information that the department of administrative services and state retirement systems submit to ODJFS under RC §5110.25(A)(3) and (A)(4); the elements of the computations under RC §5110.21(C) and under RC §5110.27 and any results of those computations that reveal and could be used to reveal the drug pricing or rebate information and amounts used to make the computations; and no person or government entity shall use or reveal any information specified in the statute except as required for the implementation of RC Chapter 5110.

**RC §5110.57:** Allows ODJFS to disclose information necessary for the implementation of RC Chapter 5110, including the Ohio's best Rx program price to participating terminal distributors or the Ohio's best Rx program administrator under RC §5110.29.

**RC §5110.58:** No person or government entity may sell, solicit, disclose, receive, or use identifying information or knowingly permit the use of identifying information (information that identifies or could be used to identify an Ohio's best Rx program applicant or participant) except that ODJFS and the Ohio's best Rx program administrator may solicit, disclose, receive or use identifying information or knowingly permit the use of identifying information: (1) for a purpose directly connected to the administration of the Ohio's best Rx program, including disclosing and knowingly permitting the use of identifying information included in a claim that a participating manufacturer audits pursuant to RC §5110.21,

contacting Ohio's best Rx program applicants or participants regarding participation in the program, and notifying applicants and participants regarding participating terminal distributors; (2) to the extent required by federal law; and (3) to an applicant or participant who is the subject of that information or to the parent, spouse, guardian, or custodian of that applicant or participant. This statute allows a participating terminal distributor or the Ohio's best Rx administrator to solicit, disclose, receive, or use identifying information or knowingly permit the use of identifying information to the extent required or permitted by an agreement the distributor enters into under RC §5110.12 or a contract the administrator enters into under RC §5110.10. The statute also allows a participating manufacturer to solicit, disclose, receive, or use identifying information contained in an Ohio best Rx claim for the purpose of auditing claims pursuant to RC §5110.21(D).

**RC §5110.59:** ODJFS and the Ohio's best Rx program administrator shall use and preserve records regarding the Ohio best Rx's program in accordance with rules adopted under RC §5110.35. This statute applies to ODJFS's or the administrator's use and preservation of records received or generated by ODJFS, any other government entity, or any person.

## MISCELLANEOUS

### Federal Statutes And Regulations:

**29 CFR § 825.500(g):** Records and documents relating to medical certifications, recertifications or medical histories of employees or employee's family members, created for purposes of the Family Medical Leave Act (FMLA) shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the Americans With Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements except: (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee necessary accommodation; (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment and (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

**29 CFR § 1630.14(c) and (d):** This is a part of the regulations related to the Americans with Disability Act and addresses medical examination information received from employees, either voluntarily as part of an agency health program or mandatory examinations needed due to business necessity. This section requires that employers keep this information in separate medical files and keep them confidential. This regulation allows the release of this information to: supervisors and managers in relation to necessary restrictions on the work or duties of the employee and necessary accommodations; first aid and safety personnel, when appropriate, if the disability might require emergency treatment; and government officials investigating compliance with the regulation.

### State Statutes:

**RC §9.01:** Sets out the standards for copying records for specified purposes onto different format or medium. Gives the copies the same effect at law as the original record(s).

**RC § 9.312:** A state agency may request additional financial information from a low bidder on a contract (in addition to a surety licensed to do business in Ohio). This additional financial information to show financial responsibility is confidential except under proper order from the court, and is not a public record under RC §149.43.

**RC § 145.27:** Sets out what information held by PERS is confidential.

**RC § 149.431:** Makes financial records required to be kept by any governmental entity or agency

and any nonprofit corporation or association (except a charitable trust corporation organized under Chapter 1719 of the Revised Code) related to contracts or agreements with the federal government, unit of state government, or a political subdivision or taxing unity of the state, public records as defined in division (A)(1) of RC 149.43 and subject to the requirements of division (B) of that statute. The statute also states that information directly or indirectly identifying a present or former individual patient or client or his diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for mental retardation or a developmental disability, treatment for drug abuse or alcoholism, or counseling for personal or social problem is not a public record. It states that release of the financial records can be deferred for a reasonable amount of time if at the time a request for release is made a patient or client whose confidentiality might be violated by the release of the records is being provided confidential professional services. The statute also does not require a governmental entity or agency and any nonprofit corporation or association to keep financial records as public records related to private funds expended in relation to the performance of services pursuant to a contract or agreement.

**RC § 149.433:** Any record held by a public office which discloses the configuration of that office's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water and plumbing systems, security codes or the infrastructure or structural configuration of the building in which a public office is located is not a public record. This statute also excludes from being a public record any records that contain information directly used for protecting or maintaining the security of a public office against attack, interference or sabotage; records assembled, prepared, or maintained by a public office to prevent, mitigate, or respond to acts of terrorism, including any portion of a record containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel; specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies; and national security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

**RC § 1306.23:** Records that would disclose or may lead to the disclosure of records or information that would jeopardize the state's continued use or security of any computer or telecommunication devices or services associated with electronic signatures, electronic records, or electronic transactions are not public records for purposes of section 149.43 of the Revised Code.

**RC § 1333.61:** Defines and precludes the release of trade secrets. This may become relevant if information contained in RFP's or ITB's is requested by a third party (see #9 in Issues of Interest).

**RC § 2317.023 (This section will be repealed effective 10/29/05):** Communication made in the course of a mediation wherein the mediator is appointed in writing by a court, administrative agency or other public body is confidential and shall not be disclosed in a civil or administrative proceeding except: when all parties to the mediation and the mediator consent to the disclosure; when disclosure is by a person other than the mediator when all parties consent to the disclosure; disclosure of a mediation communication is permissible if the mediation communication was made in furtherance of the commission of a criminal offense or as part of a plan to commit an offense; and when disclosure of a mediation communication is ordered by a court after a hearing wherein the court determines that disclosure does not circumvent the rules of evidence. The statute does not prevent or inhibit the disclosure, discovery, or admission into evidence of a statement, document, or other matter that is a mediation communication but that, prior to its use in a mediation proceeding, was subject to discovery or admission under law or a rule of evidence or was subject to disclosure as a public record pursuant to section 149.43 of the Revised Code.

**RC § 3701.041:** Records of the identity, diagnosis, prognosis, or treatment of any person that are maintained in the connection with the employee assistance program (EAP) are not public records under Section 149.43 and shall be disclosed without written permission of the subject of the record

only to medical personnel to the extent necessary to meet a bona fide medical emergency or to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but the personnel shall not directly or indirectly identify any person who is the subject of the record in any report of the research, audit, or evaluation or in any other manner. Records may also be disclosed pursuant to court order, if good cause is shown and certain safeguards are in place.

**RC § 3701.74:** Provides the subject of medical records or their representatives the right to access their medical records from a hospital or health care provider. In the event that a health care provider denies the subject of the record access to his/her own medical records, this section also allows the subject or their representative to initiate a civil action against the health care provider, to obtain the medical records.

**RC § 4701.19:** Makes statements, records, schedules, working papers, and memoranda made by certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity, except report submitted by the accountant to the client, not a public record under RC §149.43.

OAC 5101:9-9-38: Pertains to county electronic data usage. Except when specifically authorized by division (B) of this Rule, a county agency shall obtain the written approval of ODJFS prior to performing or authorizing any person or entity to perform any download, match, scraping or extraction of data from ODJFS systems that is migrated to a computer system, data base or application not under the control of ODJFS. The rule also sets out the procedure for obtaining ODJFS approval. Division (B) states that a county DJFS, CSEA, PCSA, WDA or other county entity may download, match, scrape or extract data from ODJFS systems, including but not limited to SETS, CRIS-E, SIS, SACWIS, SCOTI, ICMS, MAPS and MMIS, if it is (1) directly related to a county employee's job duties, (2) directly related to the administration of the program by a person under contract with the county agency, or (3) for the purpose of providing data to law enforcement, or a state or federal auditor, and is not in conflict with state or federal confidentiality laws.

## **IV. HIPAA: Health Insurance Portability and Accountability Act**

HIPAA is a federal law addressing many issues in the area of medical services. One portion of the Act addresses the privacy of certain medical, eligibility and claims information (protected health information). The final privacy regulations for HIPAA were implemented by ODJFS prior to the April 14, 2003 federally required implementation date. ODJFS is considered a "covered entity" as a Health Plan for the Medicaid program, the Disability Medical Assistance (DMA) program, the Children Health Insurance Programs (CHIP) and the Refugee Medical Program (RMP). Essentially, HIPAA restricts the release of Protected Health Information (PHI) possessed by covered entities including ODJFS to third parties and requires covered entities under most circumstances to release PHI to the subject of the PHI or his/her guardian upon request.

HIPAA assesses criminal and civil penalties for failure to protect PHI from improper release and civil penalties for failure to release PHI to the subject of the PHI or guardian of the subject of the PHI. HIPAA also precludes release of PHI to third parties without an authorization signed by the subject or the subject's guardian unless release is allowed pursuant to exceptions set out in the regulations. The regulations set out an extensive procedure for documentation of certain types of release requests and responses; requires that privacy notices be provided to all participants in each health plan; require a privacy official be designated; require that a complaint, accounting for release and a restriction request procedure be set up by the Health Plan; and requires training for all employees of the Health Plan in relation to privacy policies.

By statute and rule, ODJFS is requiring each CDJFS to comply with certain portions of the HIPAA privacy requirements since these agencies have access to eligibility information (PHI) for the medical programs cited above. It should be noted that HIPAA is preempted by any federal or state law that has more restrictive privacy requirements. The Medicaid federal regulations and state law are more restrictive towards release of Medicaid PHI than HIPAA. ODJFS has brought CHIPS I and II, DMA and RMP under the same restrictions as Medicaid through a change in RC §5101.27 and the enactment of RC §5101.271.

The federal government also published the final HIPAA security regulations. These regulations apply only to the electronic transmission of PHI but also affect privacy. Implementation of these regulations by ODJFS will affect several of ODJFS's statewide automated systems. Deadline for implementation of the HIPAA security regulations by ODJFS is April 21, 2005.

For a summary of all the HIPAA Privacy regulations and links to the actual regulations you can go to:<http://hipaa.ohio.gov/privacyrule/guideindex.htm>

## V. PENALTIES FOR WRONGFUL WITHHOLDING OR DISCLOSURE

In many cases, state and federal laws set out explicit penalties for violation of specific duties with respect to confidentiality. The following is a list of federal and state laws that impose liability for violating various confidentiality laws or public records laws.

### Federal Statutes And Regulations:

It is likely that some of the following penalties apply to federal government agencies and employees only, See 1981 Op. Atty. Gen. No. 81-051; however, should a state agency which administers programs (such as ODJFS) violate both state and federal confidentiality laws, it is not unlikely that some federal penalty may attach.

**5 USC § 552a(g)(1):** A person may bring a civil action for damages against any agency of the U.S. Government which violates the provisions of the Federal Privacy Act pertaining to release of information to the person who is the subject of the record, or failing to maintain an accurate record. Criminal penalties may be assessed to a person who intentionally discloses confidential information. The penalty is a fine of not more than five thousand dollars (\$5,000).

**5 USC §552a(B)(3)(A):** A complainant may seek an injunction to enjoin an agency from withholding agency records and to order the production of any records improperly withheld. The court may assess the government reasonable attorney fees and costs.

**5 USC § 552(4)B):** A complainant may seek an injunction to enjoin an agency from withholding agency records and to order the production of any records improperly withheld. The court may assess the government reasonable attorney fees and costs.

**42 USC § 1320d-5:** Imposes up to a \$100 penalty for each HIPAA violation, except that the total amount imposed per year for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000. Penalty can be waived if Secretary finds that failure to comply was not due to willful neglect and to the extent that the payment of such penalty would be excessive relative to the compliance failure involved.

**42 USC § 1320d-6:** A person who knowingly and in violation of HIPAA uses or causes to be used a unique health identifier; obtains individually identifiable health information relating to an individual or discloses individually identifiable health information to another person can face up to a \$50,000 fine or imprisoned for up to one year or both. The fine goes to \$100,000 and five years in jail if done with false pretenses. If it is done with intent to sell, transfer, or use the information for commercial advantage, personal gain, or malicious harm up to \$250,000 and up to 10 years in jail.

**42 USC § 5106a(c)(4)(B)(ii):** Requires each state to establish civil sanctions for violation of confidentiality by members and staff of child abuse and neglect, child fatalities and foster care citizen review groups.

## State Statutes And Regulations:

**RC § 149.43(C):** A person aggrieved by a violation of Division (B) of this Section by a failure to promptly prepare and make records available for inspection at all reasonable times during business hours; upon request, make copies available at cost within a reasonable time; or aggrieved by a governmental unit's failure to maintain public records in such a manner that they can be made available for inspection at all reasonable times during regular business hours; may commence a mandamus action to compel compliance, and receive reasonable attorneys fees.

**RC § 307.629(C):** Whoever permits or encourages the unauthorized dissemination of any information, document, or report presented to a child fatality review board, any statements made by review board members during meetings of the review board, and any work products of the review board, other than the report prepared pursuant to RC §307.626 is guilty of a misdemeanor of the second degree.

**RC § 1347.10:** A person who is harmed by the use of personal information that relates to him or her, and that is maintained in a personal information system, may recover damages in a civil action from the person who intentionally maintains inaccurate, irrelevant, incomplete or untimely information; supplies false information; intentionally uses or discloses the personal information in a manner prohibited by law; or denies to the subject of the system the right to inspect and dispute the information at a time when inspection or correction might have prevented harm. A person who is harmed may also seek an injunction to prevent the harm, either in his/her own behalf or through the attorney general or any prosecuting attorney.

This section seems to impose personal liability on public employees who intentionally violate RC Chapter 1347. In addition, a case decided in 1983 indicated that negligent release of confidential information by a state agency resulting in damages, is the basis for a claim under Section 1347.10. This is true notwithstanding the fact that the statute requires intent. Petrie v. Forest Hills School Dist. Bd. of Education, 5. O App. 3d 115, 5 OBR 231, 449 NE2d 786 (1983).

**RC § 1347.99:** A public official, public employee, or other person who maintains, or is employed by persons who maintain, personal information systems for a state or local agency, who purposely refuses to: (1) inform the person who is asked to supply personal information whether the person is required to or may refuse to supply the information; (2) assure that the information is accurate, relevant, timely, and complete; (3) take reasonable precautions to protect the information from unauthorized use; (4) collect, maintain and use only necessary information; (5) inform a person supplying information of the other agencies or organizations that have access to information in the system; (6) provide the subject of the system access to her own information subject to certain exceptions; (7) withhold information when a physician, psychiatrist or psychologist determines that disclosure would have an adverse impact on the subject of the information; (8) or investigate any disputed information and delete information found to be inaccurate, is guilty of a minor misdemeanor.

**RC § 2151.99:** Whoever violates the non-disclosure provisions of RC §2151.421(H)(1), which prohibits the unauthorized disclosure of the contents of reports of child abuse or neglect, is guilty of a

misdemeanor of the fourth degree. This statute also makes improper retention or use of fingerprints or photographs of children (out of compliance with RC §2151.313) a fourth degree misdemeanor. A misdemeanor of the fourth degree is punishable by fine of not more than two hundred fifty dollars (\$250) or imprisonment for not more than thirty (30) days, or both (RC §2929.24). ~~This statute also provides for a penalty (minor misdemeanor) to any entity subject to RC § 2151.62 who fails to provide to foster caregivers certain information required by the statute.~~ (this language was deleted effective 01/01/02).

**RC § 2921.14:** Knowingly making or causing another person to make a false report of child abuse and/or neglect to a PCSA (pursuant to RC § 2151.421(B)) is a first degree misdemeanor.

**RC § 3107.43:** Makes unauthorized release of information regarding the birth name of an adopted person or the identity of an adopted person's biological parents or biological siblings a minor misdemeanor.

**RC § 3121.99:** Whoever improperly provides financial information obtained from a financial institution pursuant to an account information access agreement for child support purposes is subject to six months in jail or a five hundred dollar fine or both. This statute also provides a fifty dollar fine for a first offense of failing to report to a CSEA certain information (eg. new employment, change in income, name of new employer, business address of new employer, telephone number of new employer, change of account wherein deduction is coming, change of personal address, change of name, phone number, etc), one hundred dollars for a second offense and no more than five hundred dollars for subsequent offenses. The statute also provides for a five hundred dollar fine for any employer terminating, imposing disciplinary action or refusing to hire an individual because the employer receives a notice to withhold wages for child support purposes.

**RC § 3125.99:** Whoever violates RC § 3125.50 (which prohibits disclosure of information concerning applicants for and recipients of Title IV-D support enforcement, as well as certain obligor and obligee data) shall be fined not more than \$500 or imprisoned not more than six months or both.

**RC § 3701.244:** A person or agency that knowingly violates RC 3701.243 (confidentiality of HIV testing info) may be found liable in a civil action brought the individual harmed by the disclosure, and may be ordered to pay compensatory damages and attorney fees. (Old statute, but appearing for first time in this Manual).

**RC § 4141.22:** Sets a penalty for individuals who disclose UC & employment services information not in compliance with RC Chapter 4141. The penalty is disqualification from holding any appointment or employment with ODJFS, a county job and family services agency or a workforce development agency.

**RC § 4141.99:** Whoever violates the disclosure restrictions set out in RC § 4141.22 is subject to a fine of not less than \$100 nor more than \$1,000 or imprisonment of not more than one year, or both.

**RC §5101.181 and RC §5101.182:** State that the director of Job and Family Services, district director of Job and Family Services, county director of job and family services, county prosecutors, attorney general, auditors of state or any agent or employee of those officials having access to information or documents received as a result of a social security number match of public assistance recipients and Ohio income tax records, workers compensation records, state retirement records, and state personal records may not divulge information from these matches except to determine overpayments, audits, investigations, prosecution, or in accordance with a proper judicial order. Any person violating these sections shall be disqualified from acting as an agent or employee or in any other capacity under appointment or employment of any state or county board, commission, or agency.

**RC § 5101.28(D):** Precludes civil liability of ODJFS and CDJFS for damages when either agency provides information to law enforcement agencies pursuant to division A, B, and C of RC §5101.28.

**RC § 5101.99:** Whoever violates the provisions of RC § 5101.27(A) (release of public assistance information without authorization under the statute) or RC § 5101.61(A) is guilty of a first degree misdemeanor.

**RC §5110.99:** Whoever violates RC §5110.58(B) (Ohio's best Rx confidentiality requirements) is guilty of a first degree misdemeanor.

**OAC rule 4141-43-01:** Permits the director of ODJFS to prohibit future exchange or disclosure of information to any employee or employees of a one stop system partner, state department, governmental agency, or other requesting party if the director finds that wage, claim, employment and training, or employer information in the custody of the employee or employees is redisclosed without authorization.

**OAC rule 5101:12-10-40.3 (new proposed child support rule):** Imposes penalty for failure to meet child support reporting requirements.

## VI. FREQUENTLY ASKED QUESTIONS

### (1) May County Commissioners Have Access to Client Case Files and Other Confidential Information at the CDJFS ?

While the CDJFS and its director are under the control and direction of Board of County Commissioners, neither the CDJFS nor its director is free to follow directives of the Board of County Commissioners if such directives are in conflict with ODJFS rules or other applicable law. Furthermore, the Board of County Commissioners is not involved in the day-to-day operation of the CDJFS which is vested in the CDJFS director (1983 Op. Atty. Gen. No. 83-023). The director of the CDJFS and the CDJFS employees may share all public assistance applicant, recipient, and former recipient records so long as a access to these records are for the purpose of administration of the public assistance programs. Since the Board of County Commissioners, pursuant to Section 329.01 of the Revised Code, is responsible to appoint the CDJFS director but delegates authority for running the CDJFS to the director, it is the opinion of this office that the Board of County Commissioners may only access public assistance applicant, recipient or former recipient information if release is authorized pursuant to RC §5101.26, RC §5101.27, RC §5101.28 or RC §5101.30.

### (2) What Protections Exist For Data Instruments ?

Records as defined in RC §149.011 include records in any form. Computer information that can be downloaded, magnetic tapes, micro-fiche, video tape or other types of data collection instruments are considered records for the purpose of RC §149.43. However, the Ohio Supreme Court case of Scanlon v. Deters, 45 Ohio St. 3d, 376 indicates that information held within a computer system or systems which can be accessed only through the creation of a new computer program are not records under RC §149.011 or a personal information system under RC Chapter 1347. This means that if the information requested cannot be downloaded, it is not a record under RC §149.011.

This guideline should not be confused with a situation wherein information is requested which can be downloaded but information in the downloaded data contained some information that is confidential and cannot be released. Public records case law requires that when there is information contained in a record which is public record under RC §149.43 but also within that record there is some information which is not public record pursuant to RC §149.43 or some other state or federal law, the governmental agency with custody of the record must edit out (redact) the information which is not a public record and release the information which is public record. In this situation, sometimes the only practical method to redact the non-public record information is to create a computer program that redacts the non-public record information. Although there does not appear to be any case law regarding this issue yet, the prevailing opinion appears to be that the governmental agency that has custody of the record must generate a computer program to extract the non-public record information from a computer data base despite the fact that the request for information cannot be met through simply downloading the information (Scanlon v. Deters). The thinking behind this view is that RC 149.43(B) requires governmental units to maintain public records in a manner in which they can be made available for inspection in accordance with RC §149.43. Therefore, it is reasoned that if the agency is in violation of RC, it cannot assert the Scanlon finding to avoid releasing the requested information.

To determine if data from data collection instruments must be released upon request, the following process should be utilized. First, determine if a new program must be written to extract the requested data. If not, then determine whether the information is public record and, if so, release it. If a new program must be written to extract the entire information being requested, it is not a record and need not be released (Scanlon v. Deters). If the records in the data base can be downloaded but the downloaded material contains some information that is confidential and some that is not, the agency

must redact the non-public record information by hand or by a computer program which will extract it.

**(3) May The Subjects of Child Abuse And Neglect Investigatory Records, Maintained by PCSA's Pursuant to RC §2151.421, Have Access to These Records Under RC §1347.08 ?**

An Ohio Supreme Court Decision (State, ex rel. Renfro v Cuyahoga Cty. Dept. of Human Serv. 54 Ohio St. 3d 25 (1990)) determined that records of an investigation of abuse and neglect held by a PCSA which was completed pursuant to RC §2151.421 was not accessible under RC §149.43, RC §1347.08, or RC §5153.17 if the person or persons seeking access to the information do not need the information in order to support a right to a fair trial or release of the record was not authorized by OAC rule 5101:2-34-38.

The court stated that RC §2151.421(l) (now h) made records of investigations and reports confidential and precluded unauthorized dissemination of the records. The court concluded that this section "clearly" removed child abuse and neglect investigatory reports compiled under RC §2151.421 from the mandatory disclosure provision of RC §149.43 (exception concerning state laws which preclude release of information) and the PCSA is obligated to follow OAC rule 5101:2-34-38 in determining when release of this information is authorized.

The court looked at RC Chapter 1347 and determined that this chapter does not apply to investigations and reports compiled by PCSA's pursuant to RC §2151.421. This conclusion was reached due to their finding that these personal information system records were exempt under RC §1347.04(A)(1)(e) which exempts personal information systems that "...are comprised of investigatory material compiled for law enforcement purposes by agencies..." but are not agencies whose principal function relates to the enforcement of criminal laws, criminal courts, prosecutors, correction, probation, parole or pardon authority. This portion of the decision specifically put the court in accord with a 1989 Ohio Atty. Gen. Op. No. 89-084.

The court then looked at RC §5153.17 and again concluded that this section requires the PCSA to keep records confidential and reiterates that, absent involvement of a person's right to a fair trial, RC §5153.17 allows PCSA's to refuse release of the information.

**(4) Are ODJFS Employee Personnel Files Held by ODJFS Subject to Inspection by The General Public Upon Request ?**

To answer this question RC §149.43 must be analyzed as well as an Ohio Supreme Court decision. In State ex rel. Fant v. Enright (1993) the court looked at RC §149.43 and acknowledged that all public records must be released upon request and that personnel files do not fit within any of the exceptions contained in the statute. However, the court looked at the definition of record contained in RC §149.011(G) which states that a "record" is something that is "created or received by or coming under the jurisdiction of any public office...which serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the office." The court then stated: "(T)o the extent that any item contained in a personnel file is not a "record" i.e., does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed." The court then goes on to say: "To the extent that an item is not a public record and is "personal information" as defined in RC §1347.01(E), a public office "would be under an affirmative duty, pursuant to RC §1347.05(G) to prevent disclosure." The court then ordered that the requestor in this case be allowed to examine the personnel file in question except for any items of "personal information" which were to be redacted. "...but only if those items are not "public records." This decision has muddied the waters on the personnel files issue. It appears that records of personnel actions and specific forms would be considered records and public records under the court's analysis as they serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of ODJFS. However, the decision requires that other information contained in the

personnel file be analyzed separately to determine if the information meets the definition or is a protected piece of personal information which cannot be disseminated. Another Ohio Supreme Court case (State ex rel. Dispatch Printing Co. v. Wells (1985), 18 Ohio St. 3d 382) states that the court will be the final arbiter as to whether the personnel information must be released under Section 149.43 of the Revised Code. A new case has muddied the waters further (State ex. rel McCleary v. Roberts (2000)), see Question #10 of this section.

Another case from the Ohio Supreme Court speaks to the issue of Social Security numbers contained in personnel files. This case (State ex. rel. Beacon Journal v. City of Akron (1994)) finds that RC §149.43 does not mandate that governmental agencies disclose employee Social Security numbers. The court found that disclosure of the Social Security numbers would violate the federal constitutional right of privacy (federal law which precludes release). The court used a balancing test of individual's interest in avoiding disclosure against the government's interest in disclosing the information and found that the individual's interest prevailed in connection with Social Security numbers. This case may only apply to Social Security numbers contained in personnel files (so far) or may be narrowly construed in favor of releasing other types of information from personnel records. The court, in a subsequent case (Thomas v. Ohio State University see next paragraph) ruled that the government's interest in disclosure prevailed when the balancing test was argued in relation to certain personal information of Ohio State University researchers when requested by animal rights activities.

The November 1994 decision Thomas v. Ohio State University, 71 Ohio St. 3d, 245 may have provided a little more guidance regarding what information in personnel files are not records under RC §149.011(G). This case concerned the efforts of an animal rights organization to secure information on animal researchers from Ohio State University. The plaintiffs requested addresses as well as other information from the University. The court found that much of what was requested was public record. However, the court ruled that release of the researcher's business addresses met the plaintiff's request. Although this court did not specifically exclude home addresses as public records in personnel files, the court in State ex rel. Dispatch Printing Co. v. Johnson, 106 Ohio St. 3d 160 (2005), held that state employee home addresses in personnel files are not records under RC §149.011(G). This recent case helps answer some of the questions regarding what portions of a state and local government employee's file should be maintained as confidential, and what portions can be disclosed.

Although the Department of Administrative Services had previously taken the position with the support of the Attorney General's Office that home addresses for public employees who are not covered by specific statutory exemptions (eg PCSA caseworkers and law enforcement personnel) are public record, this policy will have to be amended, based on the court's ruling in State ex rel. Dispatch v. Johnson. When in doubt contact the Office of Legal Services.

**(5) Does the Death of a Person End the Confidentiality of Information Held by ODJFS, CDJFS, or PCSA ?**

The Ohio Attorney General, in a 1990 opinion (OAG 90-007) found that "(W)here state law prohibits the release of information in a record kept by ODJFS, a county department of Job and Family Services or a children services board, such prohibition remains effective despite the death of the subject of the record. HIPAA regulations (see question #12) also state that protected health information subject to HIPAA continues to be subject to HIPAA privacy regulations after a person is deceased. The HIPAA regulations set out under what circumstances this information may be shared.

**(6) Must Public Assistance Records Be Released to Law Enforcement Agencies When Requested ?**

The answer to this question is dependent upon which public assistance program's records are being requested and for what reason.

RC §5101.26 defines law enforcement agency to include the State Highway Patrol, an agency that employs peace officers as defined in RC §109.71, the Adult Parole Authority, a County Department of Probation, a Prosecuting Attorney, the Attorney General, similar agencies, and Postal Inspectors including the peace officers and other law enforcement officers employed by the agency.

RC §5101.27 allows law enforcement agencies to access public assistance applicant, recipient or former recipient information from any public assistance program if the law enforcement agency is accessing the information for the purpose of any investigation, prosecution, or criminal or civil proceeding directly related to the administration of a public assistance program.

RC §5101.28 allows access to OWE, PRC and non-medical DA, applicant, recipient or former recipient information for the purpose of investigation, prosecutions, and criminal or civil proceedings that are within the scope of the law enforcement agencies' duties. However, ODJFS or a CDJFS releasing information under this section of the Revised Code cannot be held liable in a civil action for any injuries, death or loss to a person or property that allegedly arises from the release of the information.

Law enforcement agencies may not access applicant, recipient or former recipient Medicaid, Children Health Insurance program, DA medical or refugee medical program information unless it is received for the purpose of any investigation directly related to that program.

Law enforcement agencies may access applicant, recipient or former recipient food stamp information if needed for the purpose of any investigation directly related to the food stamp program. Law enforcement agencies may access the address, social security number, and photograph (if available) of a food stamp recipient if the law enforcement agency furnishes the recipient's name and notifies the CDJFS that the recipient is fleeing to avoid prosecution or custody or confinement after conviction for a felony (high misdemeanor in New Jersey) or violation of a condition of probation or parole imposed under state or federal law so long as it is within the official duty of the law enforcement agency to apprehend the recipient.

## **(7) Does The Format of a Record Have Any Effect Upon Whether It Is a Public Record ?**

For the purposes of public record law (RC §149.43) RC §149.011(G) defines a record as

..any document, devise, or item regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

This is an extremely broad definition and there has been little litigation clarifying whether certain types of records held by state agencies or political subdivisions are records under RC §149.011. ODJFS' position is that all memoranda, letters, and other working papers that serve to document the functions of ODJFS are records for the purpose of public record law. Correspondence with the other individuals at ODJFS or outside of ODJFS when a person is acting in his/her capacity as an ODJFS employee should be considered records. It does not matter whether the memoranda or correspondence is handwritten, typed or printed. As long as it documents the organization, functions, policies, decisions, procedures, operations or other activities of the office, it is a record for the purpose of public record law.

Previously, it was unclear whether draft materials and personal notes were considered public record. There was no case law on the subject and treatment of the materials were dependent upon each agency's interpretation of the definition of records ( RC §149.011). However, a 1995 case (State

ex. rel. Dist. 1199 v. Gulyassy (1995), 107 Ohio App. 3d, 729) from the Franklin County Court of Appeals has shed some light on the subject. This is not an Ohio Supreme Court case but is significant enough authority to be the current prevailing and controlling view. The plaintiffs were several unions that have collective bargaining agreements with the state. The unions requested all drafts of proposed changes to RC Chapter 4117 which had either been prepared by the Office of Collective Bargaining in the Department of Administrative Services (OCB), or had been prepared for OCB by other state agencies, by other entities or by other individuals. The records requested were not related to issues being collectively bargained but the records requested included drafts of documents which were never implemented or put into final form for distribution. The court found that the records were "records" under RC §149.011 and were governed for release by RC 149.43. The court rejected an argument that the drafts should be exempt due to a "deliberative privilege" since the legislature had not acknowledged "deliberative privilege" as an exemption in state law. It should be noted that any records destroyed pursuant to properly promulgated agency retention schedules are not available when requested through a public records request.

This case is also important in that it set up a distinction as to whether personal notes are records for the purpose of RC §149.43. The court stated that personal notes are not considered records for RC §149.43 purposes unless the notes are shared with other individuals in the agency or outside the agency for the purpose of affecting policy.

Messages sent on E-mail may be records under the public records law depending on what information is being sent. If the information sent documents the organization, functions, policies, decisions, procedures, operations, or other activities of ODJFS, it is a record and public records requests for records would include E-mail messages if they are public records. The case of State ex. rel. v Sheriff's Department, 82 Ohio St. 3d 37 ruled that racist e-mail messages sent by employees to another employee were not public records as they did not document the organization, functions, policies, decisions, procedures, or other activities of the public agency. It should be noted that ODJFS is developing a policy regarding E-mail in terms of retention (when the E-mail may be deleted without keeping a hard copy of it or downloading it to disk so it would continue to be available for public records purposes).

#### **(8) How Is Information Obtained in the Procurement Process Handled When Requested by a Third Party Pursuant to RC §149.43?**

Some areas that are involved in the contracting process have run into situations wherein certain bidders for contracts provide information to ODJFS in response to a Request for Proposal (RFP) or an Invitation to Bid (ITB). Once RFP or ITB information have been accepted by ODJFS pursuant to the contracting process, requests for the information from other companies have been received by ODJFS. These requests have to be treated as any other request for records (analyze RC §149.43 as to how it applies). Generally, the information contained in the RFP or ITB are not excluded by any of the specific exemptions set out in RC §149.43. As of the date of issuance of this memorandum, we are not aware of any specific federal or state statute which, specifically, precludes the release of RFP or ITB records received by ODJFS. However, RC §1333.61 precludes the release of trade secrets. The statute sets out a two pronged test to determine if information is or is not considered a trade secret. To determine if RFP or ITB information contain trade secrets, ODJFS must rely on the company that submitted the information.

A suggested procedure when RFP or ITB information is requested by a third party is as follows. First, contact the company whose information is being requested, inform it of the request and ask if any of the information received is considered by the company to be trade secrets. If the company says no, then release the records pursuant to RC §149.43. If the company states that some of the information is considered a trade secret, have the company provide ODJFS a letter identifying the information it considers to be trade secret and how the information meets the two pronged test set out in RC §1333.61. If the company provides this letter to ODJFS, the letter and the information requested pursuant to RC §149.43 should be provided to the Office of Legal Services for review and a

determination whether the explanation meets the two pronged test (If it is a trade secret and is released, ODJFS can be sued for releasing the information under RC §1333.61. If it is not a trade secret and ODJFS does not release it, ODJFS can be sued in mandamus for failure to release public records pursuant to RC §149.43). Once the Office of Legal Services makes its findings then the records will be handled accordingly.

The Office of Legal Services will be happy to work with any area during any part of this process. If anyone is aware or becomes aware of any state or federal legislation passed which relates to the procurement process addressing the issues of release of procurement records, please contact the ODJFS Office of Legal Services.

**(9) Must Public Records be Mailed to a Requestor Upon the Requestor's Request?**

RC §149.43(B)(3) requires that public agencies provide public records to a requestor by mail, if so requested. The public agency may require payment of the cost of postage and other supplies used in the mailing prior to mailing the records. A public agency may adopt a policy for providing public records through the mail. The policy may limit the number of records mailed out to ten per month unless the requestor certifies to the public office in writing that the requestor does not intend to use or forward the requested records, or the information contained in the requested records for commercial purposes. Commercial purposes does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

If the requestor is incarcerated pursuant to a criminal conviction or a juvenile adjudication, records concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject was an adult, need not be released unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under RC §149.43 and the judge who imposed the sentence or the judge's successor in office finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

**(10) What effect does the Supreme Court decision in State ex rel. McCleary v. Roberts have upon release of information?**

State ex rel McCleary v. Roberts, 88 Ohio st. 3d 365 (May 12, 2000) is a nearly unanimous Ohio Supreme Court Case which appears to significantly change the way that the Supreme Court had previously analyzed public records law. We anticipate that it will take subsequent litigation to fully clarify the implications of this decision.

The facts of this case are that the City of Columbus implemented a photo identification program for its Recreation and Parks Department (Department) primarily to combat increased incidence of violent behavior and vandalism at City swimming pools. The Department required parents of children who used the city swimming pools to provide personal information regarding their children including the children's names, home addresses, family information, emergency contact information, and medical history information. In exchange, the children received photo ID's allowing access to the city pools. It appears that the program was effective and achieved the desired effect. In November of 1996 a community activist made a public records request for the Department's data base containing this information. The city refused to release the information and the requestor filed a mandamus action in common pleas court to force the city to comply. The common pleas court ruled that the information requested was not public record pursuant to RC §149.43. The requestor appealed the decision to the Court of Appeals and that court ordered the trial court to order the city to release the requested information. The city appealed to the Ohio Supreme Court which reversed the Court of Appeals.

The court found that the requested information was under the control of a public office but ruled that the information requested was not a "record" pursuant to the definition contained in RC §149.011(G). The Ohio Supreme Court ruled that the information at issue, "Standing alone, ...i.e., names of children, home addresses, names of parents and guardians, and medical information, does nothing to document any aspect of the City's Recreation and Parks Department. "The court went further to support a U.S. Supreme Court statement that "\*\*\*\* a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy \*\*\*." The court also supported language from the U.S. Supreme Court decision which stated: "(I)n this case and presumably in the typical case in which one private citizen is seeking information about another the requestor does not intend to discover anything about the conduct of the agency that has possession of the requested records. Indeed response to this request would not shed any light on the conduct of any Government agency or official."

The Ohio Supreme Court found that the existence of the Department's data base was well documented and there was no secret as to why it was initiated, how it operated, and the effect it had in making the city swimming pools safer in their operation. The court stated that it "...fails to see how release of the requested information to appellee, or anyone else, would provide any further insight into the operation of the Department's photo identification program than that already available." The court then attempted to distinguish personal information related to the personnel files of public employees and information in files on private citizens created by the government. The court then found that the city data base information was not a record as defined under RC §149.011(G) and stated: "(W)e, therefore, find that personal information of private citizens, obtained by a public office," reduced to writing and placed in record form and used by the public office in implementing some lawful, regulatory policy is not a "public record" as contemplated by R.C. §149.43."

This is an interesting interpretation of the public records law for two reasons. First, the court appears to require that a public agency receiving a public records request look at the intent of the requestor in requesting the information. This is a major departure from previous rulings which precluded questioning of the reasons for the request. Second, the ruling appears to exempt private citizen information compiled for regulatory purposes from release as a public record. ODJFS had previously treated records containing foster care parent information compiled by ODJFS and other licensing information concerning employees at daycare centers as public record information in the past. It is now unclear whether this information remains public record and whether ODJFS is under some type of duty not to release this information. The case also cites a previous Ohio Supreme Court decision (see question #4 of this section which cites State ex. rel. Fant v. Enright) to show that certain personal information is not a record under RC §149.011(G) and must be protected but then attempts to distinguish information contained in public employee personnel files from private citizens information held by public offices. What is ironic about this holding is that the previous Ohio Supreme Court case cited by this court related to a request for information contained in personnel files of a public employee. Thus, how this ruling relates to personnel information is not clear and subsequent court decisions may be needed to clarify this ruling.

The court goes on in the decision to state that even if the data base information met the definition of record pursuant to RC §149.011(G), it would not be considered a public record under RC §149.43. The court found that the city met its burden in showing that the information requested was exempted from disclosure due to a U.S. Constitution right of privacy. The court ruled that the release of this information by the Department in this matter places those who are the subject of the records request at risk of irreparable harm, albeit not necessarily by Appellee. Furthermore, any perceived threat that would likely follow the release of such information, no matter how attenuated, cannot be discounted." The court stated that there was no evidence presented that suggested that the requestor was any threat to the children but found that due to technological advancements, including the Internet, this information could be transmitted to millions of people and some of those people could pose a threat to the children. Based upon the above reasoning, the court reversed the appellate court's decision.

This language is quite puzzling as any public records release of personal information can be placed on the Internet and put any individual at risk. Also, couldn't this same risk be inherent when personal information is released to a media outlet who can broadcast or circulate this information to a wide audience? Again, the question arises whether personal information in ODJFS personnel files (e.g. names of employees' children, home phone, spouse names, home address, etc.) retain this constitutional right to privacy and can be redacted when there is a public records request.

Again, this Ohio Supreme Court ruling is not clear on all points. However, it appears that release of children's names held by ODJFS may be precluded from release pursuant to a public records request under the ruling. Consultation with the Office of Legal Services is crucial when any public records requests are made regarding children or private citizens who are regulated by ODJFS (e.g., employees at daycare centers, foster parent names) or non-work related information contained in personnel files of ODJFS employees. To date, there have been no further reported decisions citing this case so its precedential affect appears to be minimal.



**Ohio Department of Job and Family Services**

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**Columbus, Ohio 43215-3414**

**Telephone: 614-466-4605**

**FAX 614-752-8298**

**e-mail: [legal@odjfs.state.oh.us](mailto:legal@odjfs.state.oh.us)**

**Internet: <http://jfs.ohio.gov>**

**InnerWeb: <http://10.1.7.11/ols/>**



**Ohio Department of Job and Family Services  
Recommendation for Transfer of a Foster Home**

FOSTER HOME INFORMATION	
Caregiver #1 (Last Name)	Caregiver #1 (First Name)
Caregiver #2 (Last Name)	Caregiver #2 (First Name)
Street Address	
City, State, Zip	
Date of Current Certificate: From	To:

**NOTE: TRANSFERS ARE NOT ALLOWED DURING THE LAST 30 DAYS OF A CAREGIVER'S CERTIFICATION PERIOD**

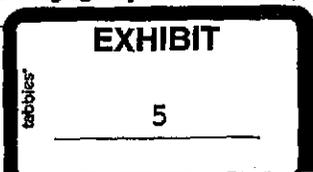
SENDING AGENCY			
Name of Agency		Street Address	
City	State Ohio	Zip Code	Phone Number ( )
Current FACSIS resource ID # for this foster home assigned by sending agency or, if converted to SACWIS, the current SACWIS ID #. Appropriate box must be checked to indicate foster home type.	FACSIS # _____ 01 _____		
	SACWIS # _____		
Check Appropriate Box	<input type="checkbox"/> Family Foster Home (3)		<input type="checkbox"/> Treatment Foster Home (4)
	<input type="checkbox"/> Medically Fragile Foster Home (5)		<input type="checkbox"/> Pre-adoptive Infant Foster Home (2)

RECEIVING AGENCY			
Name of Agency		Street Address	
City	State Ohio	Zip	Phone Number ( )
New FACSIS Resource ID # for this foster home assigned by receiving agency.	Agency ID# _____ 01 _____		
	Receiving agency must enter foster home information into FACSIS (SIS). Most private agencies use JFS 01639 to submit information to FACSIS (SIS).		
Check Appropriate Box	<input type="checkbox"/> Family Foster Home (3)		<input type="checkbox"/> Treatment Foster Home (4)
	<input type="checkbox"/> Medically Fragile Foster Home (5)		<input type="checkbox"/> Pre-adoptive Infant Foster Home (2)

**To be completed by receiving agency.**

- A copy of the complete foster home record has been received by the receiving agency.  Yes  No
- The foster home record has been reviewed and a recommendation to accept the transfer has been made by an assessor.  Yes  No
- New satisfactory references have been received.  Yes  No
- A new criminal records check has been satisfactorily conducted for all persons subject to a criminal records check who reside in the home.  Yes  No
- A safety audit of the caregiver's home has been conducted and the agency agrees with the transfer.  Yes  No

SENDING AGENCY APPROVAL		
Typed Name of Sending Agency Representative	Signature	Date
Signature above of authorized representative of sending agency indicates all the complete records of the foster caregiver have been sent to the receiving agency.		



<b>FOSTER CAREGIVER(S) APPROVAL</b>			
We (or I) agree with the transfer of our (or my) Foster Home Certificate from _____ <span style="float: right;">(Sending Agency)</span>			
to _____ <span style="float: right;">(Receiving Agency)</span>			
Signature of Caregiver # 1			Date
Signature of Caregiver # 2			Date
<b>RECEIVING AGENCY APPROVAL, CUSTODIAL AGENCY AGREEMENT (IF NECESSARY)</b>			
Typed Name of Receiving Agency Representative		Signature	Date
Signature above of authorized representative of receiving agency indicates acceptance of transfer and responsibility for making all future recommendations for recertification and planning for use of this foster home.			
Typed Name of Custodial Agency Representative, if applicable		Signature	Date
Signature above of custodial agency representative indicates custodial agency agreement with this transfer and agreement that after the effective date of the transfer, payment for care of any foster children placed in the foster home will be sent to receiving agency. If there is more than one custodial agency, attach additional copies of this form indicating custodial agency agreement. <b>This form is not a contract between the custodial agency and the receiving agency.</b>			
<b>Recommended effective date of transfer:</b>		Month	Day
			Year

**Names and addresses of foster/adoptive parents and the children placed with them are confidential, and can only be released for the purposes of the administration of child welfare-related programs or pursuant to court order.**

## Family Decision Making Model Part III: Semiannual Administrative Review (SAR)

**A: Complete on all Cases for all SARs**

Required participants were notified by U.S. Mail

**Section 1: Identifying Information**

Case Name	Court I.D. Number	Agency I.D. Number	Last Review Date	Today's Review Date
-----------	-------------------	--------------------	------------------	---------------------

Original Complaint Date \_\_\_\_\_ Or Date of Placement \_\_\_\_\_ Or Date of Court Ordered Protective Supervision \_\_\_\_\_ Or  
For No Court Orders ONLY: Date of Agency Worker Signature on Family Decision Making Model, Part II: Case Plan \_\_\_\_\_

Names of children in household: list children chronologically from oldest to youngest (star children that are new to family system).

Child's Name	Date of Birth	Child's Permanency Goal	Current Legal Status Code	Date of Most Recent Placement	Type of Placement
A					
B					
C					
D					
E					
F					
G					
AA					

(OH) Own Home (CAR) Certified/Approved Relative (FH) Certified Foster Home (IL) Independent Living (AH) Adoptive Placement		<b>Type of Placement Codes</b> (GH) Certified Group Home (MH) Licensed Maternity Home (ESC) Certified Emergency Shelter Care Facility (CRC) Certified Children's Residential Center		(MEF) Licensed Medical/Educational (DET) Detention Facility (AWOL) Absent Without Leave Other (Specify): _____
		<b>Child's Legal Status Codes</b> Temporary Custody TC Permanent Custody PC No Custody NC		
		Court Ordered Protective Supervision PSUP Agreement for Temporary Custody ATC Planned Permanent Living Arrangement PPLA		Permanent Surrender PS Other (Specify): _____

**Section 2: Placement/Legal Status Changes**

Number of Placement changes during review period \_\_\_\_\_

CHILD'S CODE	FROM	TO	DATE

Number of Legal Status changes during review period \_\_\_\_\_


**Section 3: Safety Plan For Children Review**

Not Applicable

If there is a current safety plan for children, describe what safety interventions will be continued or initiated, and how these interventions will protect the child from immediate danger or serious harm.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 4: Family Risk Assessment Matrix Update and Review**

- N/A (Explain reason for N/A below)
- The Family Risk Assessment Matrix and subsequent updates were reviewed. The following changes noted here are from factors I through VII of the Family Risk Assessment Matrix:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 5: Case Plan Review**

Ensure that Section 2B of the Case Plan has been completed and attached to this form before continuing.

- Section 2B of the Case Plan is attached

**NOTE:** If the levels of risk have not been reduced by the services provided during the review period, consideration should be given to amending or changing the case plan or changing the permanency goal.

Enter any additional comments not covered in the above information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 6: Signatures**

Signatures of Participants		Relationship to Child	
Caseworker Signature		Date	
Supervisor Signature		Date	

If Case is NOT Court Involved, add reviewers comments and recommendations and STOP HERE

**Family Decision Making Model  
Part III: Semiannual Administrative Review (SAR)**

**B: Custody and Court Ordered Protective Supervision Cases**

**Section 1: Education and Health Issues**

- The ODJFS 01443 Child's Education and Health Information Form was reviewed and discussed for each child on this form.
- N/A - Child in Protective Supervision

**Section 2: Independent Living**

**FOR CHILDREN 16 YEARS OF AGE OR OLDER (5101:2-42-19) INDEPENDENT LIVING SERVICE PROVISIONS ARE REQUIRED TO BE A PART OF THE CASE PLAN (PL 96-272).**

- Not Applicable
- Child in Protective Supervision
- All Children Are Under 16 Years of Age

Child's Name and Letter ☆	Date Life Skills Assessment was Completed	Discuss Progress in Detail

☆ Letter by which child is identified should correspond with the letter on page 1 of the Family Risk Assessment Matrix.

**Section 3: Placement/Protective Supervision Issues**

This review panel has determined that the children's current placement is safe and is an appropriate placement for the child. Explain:


The need for placement or protective supervision must continue or be terminated due to the following reasons:


Review of the out-of-state placement indicates that an annual visitation was conducted by the agency:  YES  NO

**Section 4: Permanency Planning**

The estimated date each child may be returned home, protective supervision may be terminated, or permanent placement may be made, or case may be closed. Indicate if amendments were made as a result of this review.

Child's Name	Permanency Goal	Estimated Date	Amendment Made	
			Yes	No
A.				
B.				
C.				
D.				
E.				
F.				
G.				
AA.				

Enter agency's recommendation regarding the child's custody arrangement for the next six months.

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Enter agency's recommendation regarding: (1) maintaining the child in a planned permanent living arrangement; or (2) proceeding to file a motion with the court to obtain permanent custody of the child. If the decision is for the child to remain in a planned permanent living arrangement, document the compelling reason for not proceeding with the termination of parental rights.

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Enter agency's recommendation regarding the termination of parental rights for the child who has been in the temporary custody of an agency for twelve (12) or more of the past twenty-two (22) consecutive months. If the agency is not recommending termination of parental rights, state the compelling reason and what the permanency plan will be for the child.

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Enter the agency's progress in meeting the needs of the child who is in a planned permanent living arrangement.

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Enter the agency's efforts in locating an adoptive placement or a planned permanent living arrangement for a child who is in the permanent custody of the agency. Include information on child-specific recruitment activities and what outcomes have been achieved.

---

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---

Enter whether agency should develop a supplemental plan for the child.

---

---

Enter the agency's progress toward implementing the supplemental plan when one has been prepared and whether any amendments are needed.

Three horizontal lines for text entry.

Enter any additional comments or recommendations not covered in the above information.

Two horizontal lines for text entry.

**Section 5: Participants**

Identify all participants in this semiannual administrative review:

Three required panel members' signatures:

Caseworker

Person not responsible for Case Management or Service Delivery

Other Panel Member

Signatures of Other SAR Participants	Relationship to Child

## INSTRUCTIONS

### FAMILY DECISION MAKING MODEL, PART II(A) AND (B): CASE PLAN

#### CASE PLAN - PART II(A) & (B)

Ohio Administrative Code (OAC) rules 5101:2-39-08 and 5101:2-39-081 require public children services agencies develop and complete a written case plan when: (1) in-home supportive services are provided to the child and his parent/guardian/custodian or prefinalized adoptive parent with or without court-ordered protective supervision; or (2) the child is placed in an out-of-home care setting and supportive services are provided to the child and his parent/guardian/custodian or prefinalized adoptive parent. The case plan is orientated toward long-term risk reduction and the resolution of identified problems that create risk. It should be considered that elements on the Family Risk Assessment Matrix (Matrix) with a score of 3 or higher have an objective on the case plan. Note: Objectives need not be listed for unknowns until more information is gathered to determine whether there is high risk.

#### GENERAL INSTRUCTIONS

Persons completing the case plan should utilize the Family Risk Assessment Matrix and be as clear and concise as possible. Additional pages may be attached if space provided on one page is not sufficient. While not required, it is recommended that the case plan be typed in order to provide clarity for all persons needing to read or follow case plan content.

**CASE PLAN - PART II(A)** must be completed on all non-custody and custody cases.

**CASE PLAN - PART II(B)** is to be completed on all custody and out-of-home care placement cases in which the agency is involved.

**CASE PLAN - PART II(B) SECTION (4)** is to be completed for all children who have been in the temporary custody of an agency for 12 or more of the past 22 consecutive months.

**CASE PLAN - PART II(B) SECTION (5)** is to be completed for all children in permanent custody with a goal of adoption or a planned permanent living arrangement.

The Amended Case Plan Cover Sheet must be completed each time there is a change to the case plan resulting in a new case plan. This would apply to both cases involving: (1) the provision of in-home supportive services to the child and his parent/guardian/custodian or prefinalized adoptive parent with or without court-ordered protective supervision; or (2) the child is placed in an out-of-home care setting and supportive services are provided to the child and his parent/guardian/custodian or prefinalized adoptive parent.

#### CASE PLAN PART II(A):

##### Identifying Information:

##### Family Name

Enter the family name used by the agency to identify the case. The family name used should be consistent throughout.

**Agency Name**

Enter your agency's name. Do not use an acronym (e.g., FCCS). Some county agencies have the same acronym.

**Agency Case #**

Enter the number the agency uses to identify the case. This number may be your FACSIS identification number.

**Agency Worker**

Enter the name of the agency worker completing the case plan.

**Agency Telephone Number**

Enter the telephone number of the agency, including the area code.

**Date Plan Signed**

Enter the date the case plan was completed and signed by the agency representative.

**OWF Worker**

Enter the name of the county Department of Human Services Ohio Works First agency caseworker assigned to the family, if applicable.

**OWF Case Number**

Enter the number the CDHS uses to identify the OWF case, if applicable.

**Child's Name(s)**

Enter the first and last name of each child belonging to the family unit who are or will be receiving supportive services.

**Date of Birth**

Enter the date of birth (month, day and year) for each child listed above.

**Type of Placement**

Enter the type of placement for each child.

OH	-	OWN HOME
CAR	-	CERTIFIED/APPROVED RELATIVE
FH	-	CERTIFIED FOSTER HOME
IL	-	INDEPENDENT LIVING
AH	-	AGENCY APPROVED ADOPTIVE HOME
GH	-	CERTIFIED GROUP HOME
MH	-	LICENSED MATERNITY HOME
ESC	-	CERTIFIED EMERGENCY SHELTER CARE FACILITY
CRC	-	CERTIFIED CHILDRENS RESIDENTIAL CENTER
MEF	-	LICENSED MEDICAL/EDUCATIONAL FACILITY
DF	-	DETENTION FACILITY
OTHER	-	(SPECIFY)

**CHILD'S PERMANENCY GOAL**

Enter the written goal for each child identified. Goals selected should relate to identified concerns/needs. Permanency planning goals to use include the following:

- **Goal: Maintain child(ren) in his/her own home; prevent removal.** (Could include a child in legal custody of a relative and receiving protective supervision in the relative's home.)
- **Goal: Return the child(ren) to his/her parent/guardian/or custodian.**
- **Goal: Placement of child(ren) in a planned permanent living arrangement, excluding adoption.**  
**NOTE: IF THIS GOAL IS CHOSEN, COMPLETE PART B, SECTION 5 DOCUMENTATION OF EFFORTS FOR PERMANENCY**
- **Goal: Independent Living.**
- **Goal: Adoption.**  
**NOTE: IF THIS GOAL IS CHOSEN, COMPLETE PART B, SECTION 5 DOCUMENTATION OF EFFORTS FOR PERMANENCY**

**Name(s) of Parent/Guardian/Custodian/GAL or Other(s)**

Enter the first and last name(s) of the parent/guardian/custodian, prefinalized adoptive parent, relative providing care for the child, guardian *ad litem* or other(s) who will be a party to the case plan. Other(s) could include relatives, non-relatives or substitute caregiver.

**Relationship to Child/ren**

Identify the relationship of the person named above to the child(ren) identified in the family unit. For example, step-parent, biological parent, grandmother, aunt, guardian *ad litem*, substitute caregiver.

**Check Boxes:**

Check box if a court ordered protective supervision, in-home case - no custody. If the box is checked, document the court number in the space provided.

If there is insufficient information to complete any element of the ODJFS 01444 within 30 days as required, check the box.

**NOTE:** If the box is checked, it must be documented in the case plan, the additional information that is required to complete any missing element and the steps that the agency will take to obtain the needed information.

**SECTION 1: STRENGTHS AND CONCERNS****A. List The Family Assessment Strengths:**

Identify the main strengths of the family which will aid in the development of the case plan and enable the family to meet the goals of the case plan. This information should be taken from Step 1 of the Structured Decision Making component of the Family Risk Assessment Matrix i.e., Strengths.

**B. List The Family Assessment Concerns:**

Identify the main concerns/needs of the family which need to be addressed in the case plan. This information should be taken from Step 1 of the Structured Decision Making component of the Family Risk Assessment Matrix i.e., Concerns.

**SECTION 2A: EXPECTED CHANGES/SERVICES**

This section will be completed for each concern listed in Section 1 (B) - Family Assessment Concerns

**What is The Concern?**

Identify the family concerns/needs listed in Section 1 (B) - Family Assessment Concerns and number the concerns chronologically as listed in Section 1 (B).

**1. What Behavior Will Change This Concern to Reduce Risk and Address Safety Issues of the Child(ren)?**

Provide a corresponding description of the behavioral changes of the family which would need to occur to resolve the concerns identified and meet the needs of the family unit.

**2. What Activities do Family Members Need to do to Make This Change (attempt to utilize and build on family strengths when planning service provision)?**

Provide a corresponding description of the activities for the family which would help the family change behaviors to resolve the concerns identified and meet the needs. Every attempt should be made to utilize and build upon family strengths when planning the provision of services.

The following should be addressed:

**Service/Activity**

For each expected change in concern identified above, state all supportive services and activities planned that will assist in resolving the concern/need. Also indicate: (1) who will be involved in providing the service and/or completing the activity and (2) how the service and/or activity is expected to help resolve the concern/need. Following is a list of the supportive services to be offered or delivered:

Counseling	Diagnostic
Emergency Shelter	Information and Referral
Therapeutic	Crisis Services
Emergency Caregiver	Employment and Training
Environmental Management	Homemaker/Home Health Aide
Parent Aide	Case Management
Protective Day care	Parent Education
Crisis Nursery	Day Treatment
Volunteer	Adoption
Substitute Care	Community Education
Unmarried Parent	Independent Living Assessment
Other (Explain)	

**How will this be done? (Assurances)**

For each supportive service/activity listed, state: (1) where and when the service/activity/will be provided/accomplished; and (2) what the social worker/agency will do to assist in providing or accomplishing the service/activity.

**3. How Will The Social Worker and/or Service Team Help The Family Make The Change?**

Describe how the social worker will help the family meet the behavioral and physical changes which are necessary to address and resolve the family concerns identified and which will meet the needs of the family.

**4. How Will The Family's Progress Be Measured?**

Explain to the client/family what criteria will be used to evaluate the changes needed for each concern. Demonstrate behavior changes that have occurred or must occur.

**5. When Will The Family's Progress Be Reviewed?**

Enter the expected completion date for each activity listed above when the concerns/needs of the family unit will be met. You may enter the month, day, and year when the family's progress will be reviewed. Also identify any other points in time where the family's progress will be measured. Family progress should be reviewed frequently to establish whether progress towards meeting the concerns/needs is being made. This should be carried out by continually assessing the risk factors. It is critical that the social worker informs the family when their progress will be reviewed.

**SECTION 2B: REVIEW OF EXPECTED CHANGES/SERVICES - To be used for both formal and informal reviews**

**Concern # (From Section 1B)**

Identify the number for the specific concern being addressed here.

**Date of Review**

Enter the date of the review. (Month, Day, Year)

**Start Date of Services**

Enter the date that services to the client/family were started. Enter (Month, Day, Year)

**Next Review Due By**

Enter the date the next review is due to be conducted. Enter (Month, Day, Year)

**1. Discuss Progress in Detail**

Document what progress, or lack thereof, has been made by the client/family for the specified concern i.e., has the risk to the child been reduced through the provision of the service or not and how has the safety of the child been ensured?

**2. If Services Did Not Reduce Risk, Describe Reasons (What Are Barriers?)**

Document what the barriers to risk reduction are if there has been no reduction of risk to the child for the specified concern. Discuss how the safety of the child is being ensured.

**NOTE:** Each page of the "Review of Expected Changes/Services" is provided for one concern. Therefore, for each concern, there is space on each page for up to four reviews (four boxes).

**SIGNATURES**

**Name(s) of Parent/Guardian/Custodian/GAL or Other(s)**

Enter the first and last name(s) of the parent/guardian/custodian, prefinalized adoptive parent, guardian *ad litem* or other(s) who will be a party to the case plan. Other(s) could include relatives, non-relatives, or substitute caregiver.

**Signatures**

For each person listed above, obtain his or her signature.

**Participated in Plan?**

Identify whether each person listed participated in the development of the case plan by checking either "Yes" or "No".

**Agreed with Plan?**

Identify whether each person listed is in agreement with contents of the case plan.

**Date of Signature**

Enter the month, day and year when the above signatures were obtained.

**Date Copy of Plan Given to Client and/or GAL**

Enter the month, day and year that a copy of the plan was given to the client and/or GAL.

**Agency Representative**

Enter the name of the agency worker responsible for developing and completing the case plan here.

**Representative Signature(s)/Date**

The agency worker responsible for developing and completing the case plan must sign here. If required by the agency, the worker's supervisor should sign the second line provided.

**Date**

The agency worker responsible for developing and completing the case plan and the supervisor, if required by the agency, must enter the date (Month, Day, Year) here that they signed the case plan.

**If any required persons did not participate in, or disagreed with the plan, state who and explain:**

If required person(s) parent, guardian, custodian, prefinalized adoptive parent, guardian *ad litem*/ CASA did not participate in the case plan development and/or did not agree with the contents of the case plan, state the individual's name. Check the reason why the required person did not participate in the plan, i.e., unable to locate/not available; disagreed with plan; and other. If other, provide an explanation.

**NOTE:** Upon journalization of the case plan by the court, all parties, including the parents, guardian, or custodian of the child, are bound by the terms of the journalized case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

This only applies to court involved cases.

**CASE PLAN  
PART II(B)**

**Identifying Information:**

**Family Name**

Enter the family name used by the agency to identify the case. The family name used should be consistent throughout.

**Agency Name**

Enter your agency's name. Do not use an acronym (e.g., FCCS). Some county agencies have the same acronym.

**Agency Case Number**

Enter the number the agency uses to identify the case. This number may be your FACSIS identification number.

**Court I.D. Number**

If there is court involvement, enter the number assigned by the court to identify the case. If unknown at the time the case plan is filed with the court, enter "UNK" (unknown).

**Court Magistrate/Judge**

If there is court involvement, enter the name of the court magistrate/judge.

**Date Plan Signed**

Enter the date the case plan was completed and signed by the agency representative.

**Child's Name(s)**

Enter the first and last name of each child belonging to the family unit who are or will be receiving supportive services.

**Current Legal Status Code**

Enter the legal status of each child. The following chart lists the legal status options and codes that are to be used:

PSUP	-	COURT ORDERED PROTECTIVE SUPERVISION
TCC	-	TEMPORARY COURT CUSTODY
PPLA	-	PLANNED PERMANENT LIVING ARRANGEMENT
PCC	-	PERMANENT COURT CUSTODY
ATC	-	AGREEMENT FOR TEMPORARY CUSTODY
PS	-	PERMANENT SURRENDER
OTHER (SPECIFY) _____		

**Medicaid Eligible**

If the child(ren) are Medicaid eligible, identify by checking the "Yes" or "No" column as appropriate.

**Medicaid Number**

If "Yes" was checked for the child(ren) for Medicaid eligibility, enter the Medicaid number for the eligible child(ren).

**SECTION 1: CIRCUMSTANCES REGARDING REMOVING THE CHILD FROM HOME:**

- (1a) **Court Ordered Removal: PCSA was not involved, prior to removal, in an investigation/assessment, or the provision of supportive services, and therefore had no option to offer in-home services. Which children?**

Check (a) if any children listed in Part II (A) of the case plan were removed under a court order where the PCSA was not involved prior to removal, in an investigation/assessment, or the provision of supportive services, and therefore no option was available to offer in-home services. Enter the name(s) of the child(ren) for whom this applied.

- (1b) **Child(ren)'s parent/guardian/custodian's identity and/or whereabouts unknown: Therefore, parent/guardian/custodian cannot be located or offered services. Which child(ren)?**

Check (b) if any child(ren) listed in Part II (A) of the case plan were removed and at the time of removal their parent/guardian/custodian's identity was unknown and therefore could not be located or offered services. Enter the name(s) of the child(ren).

**Explain what efforts have been made to locate the parent/guardian/custodian**

If (b) was checked, explain what efforts have been made to locate the parent/guardian/custodian.

**(1c) PCSA Received Custody: (e.g., ATC, Ex parte, Emergency Custody Order, TCC, PCC)**

**Explain why the risk of harm to the child(ren) was greater than the emotional trauma and other harm potentially caused by the removal of the child(ren) from his home. Which child(ren)?**

Provide an explanation of why the risk of harm would exceed the harm which would be caused by removal of the child from his own home. Identify, by name, the child(ren) being addressed here.

**State the reasonable efforts which have been made to prevent removal and/or to make it possible for the child(ren) to return to his/her home. Which child(ren)?**

Describe what services were provided to prevent removal and what is being done or will be done to safely return the child(ren) to his own home. Identify by name, the child(ren) being addressed here.

**OR**

**The court has made a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home for the following reasons: Which child(ren)?**

Describe the reasons the court determined were present that precluded the agency from making reasonable efforts to prevent the removal, eliminate the continued removal or return the child home.

**SECTION 2: PLACEMENT/VISITATION PLAN:**

**(a) Child**

Enter the first and last name of each child placed in an out-of-home care setting.

**(b) Date Placed**

Enter the month, day and year the child was placed in the current out-of-home care setting.

**(c) Type of Placement**

Enter the type of placement for each child placed in an out-of-home care setting by utilizing the following codes.

- OH - OWN HOME
- CAR - CERTIFIED/APPROVED RELATIVE
- FH - CERTIFIED FOSTER HOME
- IL - INDEPENDENT LIVING
- AH - AGENCY APPROVED ADOPTIVE HOME
- GH - CERTIFIED GROUP HOME
- MH - LICENSED MATERNITY HOME
- ESC - CERTIFIED EMERGENCY SHELTER CARE FACILITY
- CRC - CERTIFIED CHILDRENS RESIDENTIAL CENTER
- MEF - LICENSED MEDICAL/EDUCATIONAL FACILITY
- DET - DETENTION FACILITY
- AWOL - ABSENT WITHOUT LEAVE
- OTHER- (SPECIFY) \_\_\_\_\_

**(d) Restricted Visitation?**

State either "Yes" or "No". "Yes" should be stated if there have been any restrictions made on: (1) location of visits; (2) the frequency of visitation; or (3) duration of visits. Additionally, if "Yes" is stated, (j) must be completed.

**(e) Supervised Visitation?**

State either "Yes" or "No". If "Yes" is stated, (j) must be completed.

**(f) Who May Visit?**

List all persons permitted to visit the child.

**(g) Where? (Location)**

For each person listed in (f), identify all locations where visits may occur.

**(h) How Often? (Frequency)**

For each individual listed in (f), indicate how many times he can visit the child.

**(i) How Long? (Duration)**

For each person listed in (f), state the duration of the visits.

**(j) State the Restrictions on Visitation and/or Supervision. Explain the Reasons for any Restrictions on the Location, Frequency and Duration of Visitation and/or the Need for Supervised Visitation.**

If (d) was stated "Yes", state the restrictions on visitation and the reasons for restrictions on: (1) location of visits; (2) frequency of visits; and/or (3) duration of visits. If (e) was stated "Yes", explain the need for supervised visits and the reason(s) visits are to be supervised.

**(k) Other Approved Communications**

State what other forms of regular communication (telephone, mail etc.) will occur between the parent/guardian/custodian or prefinalized adoptive parent, or other person(s) and the child. If no forms of communication are permitted, explain.

**SECTION 3: APPROPRIATENESS OF PLACEMENT:**

Complete this section for each child in placement. Even though data may be different, entries below may be made for more than one child by identifying each child by name along with that child's specific data.

Entries for each child and data for that child must be clearly identified by anyone reading this section. When such clarity can not be provided on one page, attach additional pages, as necessary, to maintain clarity.

If data is the same for all children, simply indicate "all children" and enter the data on one page.

**(a) If the child is placed other than in a relative home, explain WHY EACH LESS RESTRICTIVE SETTING WAS NOT SELECTED.**

Refer to "Type of Placement Codes" for the rank-ordered list of substitute care settings.

Explain why the placement will meet the child's needs more effectively than a relative home or more family-like setting.

- (b) **For the placement selected, discuss how you determined this was a safe and appropriate environment for the child.**

***A STATEMENT MUST BE INCLUDED, INDICATING HOW THIS SETTING WILL PROVIDE A SAFE ENVIRONMENT FOR THE CHILD.*** For example, "A family foster home trained and equipped to work with physically and emotionally disabled children is an appropriate placement setting for a wheelchair-restricted, emotionally disturbed child. Relatives were unwilling and unable to meet the child's physical or emotional needs.

- (c) **Explain how the placement will meet the BEST INTERESTS AND SPECIAL NEEDS OF THE CHILD AND ACHIEVE CASE PLAN GOALS.**

- i) **BEST INTERESTS:** Identify the supportive services which will be provided in the placement to address the child's best interests.
- ii) **SPECIAL NEEDS:** Identify the supportive services which will be provided in the placement to address the child's special needs.
- iii) **ACHIEVE CASE PLAN GOALS:** Identify the supportive services which will be provided in the placement to achieve the case plan goals.

- (d) **Explain how the placement is in CLOSE PROXIMITY to the parent, guardian, custodian. What transportation problems might create obstacles to visitation? How will the agency resolve these obstacles?**

State the approximate distance between the child's substitute care placement setting and the child's parent, guardian, or custodian's residence. Identify any transportation problem(s) and state how the agency intends to solve the problem(s). If the child's placement is not in close proximity to the residence of the child's parent, guardian, or custodian, describe why it was not possible to place the child in a setting that was closer to the parent, guardian, or custodian. For example, the substitute care placement setting is five miles away from the parent. The parent does not have access to public transportation or other forms of transportation for visitation. The agency has made arrangements with a volunteer for transportation. No other appropriate placement setting for the child could be located which was closer to the parent.

- (e) **When selecting a substitute care placement setting describe how the agency considered PROXIMITY TO THE SCHOOL in which the child was enrolled prior to placement.**

When placing a child in an out-of-home care setting, explain how the agency considered a placement that was in close proximity to the school in which the child was enrolled prior to placement.

- (f) **For a child who is age sixteen or older in custody, independent living service provisions are required to be part of the case plan (OAC 5101: 2-42-19, PL 96-272). Identify programs and life skill services which will assist the child to prepare for transition from substitute care to independent living.**

Describe the independent living program and life skill services which will be provided to a child who is age sixteen or older in a substitute care setting. If no such programs are available, describe the specific life skill services that will be offered to the child which will prepare him for independent living.

- (g) **List the Services Being Provided to Substitute Caregivers**

List the services that the agency will provide to the substitute caregiver that will assist the child in reaching his goals.

- (h) **Is this an out-of-state placement?**

Check either "Yes" or "No".

If the "No" box was checked, stop here.

If the "Yes" box was checked, indicate who will conduct, or who has conducted the annual out-of-state placement visit.

If the "Yes" box was checked, enter the date (month, day, and year) that the annual out-of-state placement visit will be, or was, conducted.

**SECTION 4: DOCUMENTATION OF EXCEPTIONS TO FILING A MOTION FOR PERMANENT CUSTODY**

**This section will not be completed for all cases. COMPLETION OF THIS SECTION REQUIRES AN AMENDMENT TO THE CASE PLAN**

This section must be completed for all children who have been in the temporary custody of an agency for 12 or more of the past 22 consecutive months where a decision has been made by the agency not to file a motion with the court to terminate parental rights. Complete either part a **OR** part b.

- a. Describe the reasons for arriving at a decision not to proceed with the termination of parental rights. Indicate why it has been determined that it would not be in the best interests of a child to have his/her parent(s) rights terminated.
- b. Describe the reasons why the agency would not proceed to file a motion to terminate parental rights because the agency has not provided services, identified in the case plan, which would assist the child to safely return to his/her own home.

**SECTION 5: DOCUMENTATION OF EFFORTS FOR PERMANENCY**

**This section will not be completed for all cases. COMPLETION OF THIS SECTION REQUIRES AN AMENDMENT TO THE CASE PLAN**

This section must be completed for all children in custody with a goal of adoption or planned permanent living arrangement.

- a. Identify the steps taken to identify an adoptive home, relative home, legal guardian or other permanent placement for a child in custody.
- b. Describe all child-specific recruitment activities taken and the outcome of the efforts to find a permanent home for the child.
- c. Check the box beside recruitment efforts identified in (b).

- OAPL** - Ohio Adoption Photo Listing Book
- AdoptOHIO Website** - The electronic photo listing operated by ODJFS
- Interested nonrelative** - An individual identified by the family or child who has a familiar and long standing relationship with the child and/or the family.



**Preservice Training for  
Foster, Adoptive, Kinship  
Parents and Caregivers**

**Revised 2005**

**This curriculum was developed by the  
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**The Ohio Department of Job  
and Family Services**

**EXHIBIT**

tabbles

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1066

participants to care for children; and (3) to begin to develop a team approach between caregivers and the agency.

**Section III.**

**15 minutes**

**Goals of Preservice Training**

**Use: Handout #1**

**Trainer Instructions: The trainer should distribute Handout #1, *Goals of Preservice Training*, and briefly outline the following goals of Preservice Training.**

***To promote awareness and self selection based on realistic criteria, and to begin educating prospective parents and caregivers about what they can expect from foster or adoptive parenting***

Prospective parents and caregivers need considerable information before they can make an informed decision about whether to parent a child not born to them. Are they able to parent a child who has been traumatized by maltreatment and separation? What age child could they be most successful in parenting? Should they consider foster care, kinship care, adoption, or legal risk adoption? Prospective parents should fully understand the various options, and be given opportunities to explore their expectations of themselves, their spouses, their "permanent" children, and their extended families. Prospective parents also need to know what they can expect from the children in care, their birth families, the agency, and the community.

***To promote an atmosphere for mutual assessment and exploration of each prospective parent's values, strengths, and needs***

Each participant will have to determine whether they have, or can develop, the necessary skills and attributes to meet the challenge of providing foster care, adoption, or kinship care. The caregivers or parents must also decide if any aspects of the current child welfare system are in sufficient conflict with their personal value system that they will not be comfortable working within the system. As an example, some foster caregivers believe that spanking is an appropriate form of child management. However, in child welfare, corporal punishment is not permitted for several reasons, which will be more fully discussed in a later session. Therefore parents and caregivers must decide whether they can be comfortable working within the rules and policies set by the child welfare system.

If prospective parents or caregivers decide to withdraw from the foster care or adoption process, they will not be negatively judged or labeled. Trainees are not "bad people" for coming to this decision; they are just honest and willing to accept their own personal limitations and the realities of the foster care, adoption, or kinship care system.

***To create an awareness of the commonalities and differences between fostering, adopting, and providing kinship care services***

Parents and caregivers might consider the job of caregiving for a variety of personal reasons. Prospective parents and caregivers may have room in their home for another child and want to offer it to a child in need. They may have wanted a larger family and see this as a way to achieve this need; or parents and caregivers may want to help maltreated children. There is nothing wrong with any of these motives. Prospective parents and caregivers should be encouraged to consider which of the options will best help them achieve their personal goals.

Each type of caregiving is unique, even though they have similarities. Let's briefly explore these commonalities and differences.

***Foster Care:*** The job of foster caregiving has some very specific requirements. Foster caregivers provide temporary care for children whose families are experiencing a crisis. Most often, the goal of foster care is to reunify (or reunite) children with their families. The foster parent will be expected to work jointly with the agency to achieve this goal. For instance, the foster caregiver may be asked to transport the child for visits with the birth family, attend planning sessions with the child's family, or teach and mentor birth parents in parenting skills. These activities help strengthen families, and maintain the birth parent/child relationship, both of which support rapid reunification.

***Adoption:*** Adoption is the creation of a permanent, emotional, and legal parental relationship between a child and person(s) to whom the child was not born. The adoptive parent has full, permanent responsibility for the child, and the relationship is legally identical to the relationship with a child born to the family. Adoption can only occur after a juvenile court judge has permanently terminated the rights of the child's biological parents and given the agency custody and legal authority to place the child for adoption.

***Legal Risk Adoption:*** Some caregivers may be interested in foster-to-adopt or "legal risk" adoption. This arrangement is relatively new in the field of child welfare. In some situations, the agency may seek placement for children who will likely become, but are not yet, legally free for adoption. There may be several reasons the agency believes permanent custody is likely. For example, the child may have been abandoned. The birth parents may have previously lost permanent custody of another child. Or, there may have been extreme sexual or physical abuse by the parent, indicating it is unlikely that the child will go home. If the child can be placed in a foster-to-adopt home, when permanent

custody is granted, the child will not have to move again. This greatly reduces separation trauma.

However, in the vast majority of case situations, the agency will make sincere and reasonable efforts to strengthen the child's own family and reunite the child with his or her family, prior to filing for permanent custody. The caregiver will often be asked to participate in this effort. This places caregivers in a potentially stressful situation, one which can be emotionally draining for them and their families. There is never a guarantee that the child will remain in the caregivers' home, nor that they will proceed to adoption. However, the stability afforded a child in a foster-to-adopt home is the primary concern.

***Kinship Care:*** Kinship care provides care and safety for children, as well as support for their families, within the context of extended family relationships. The goals of kinship care are similar to those of foster care. A child in kinship care could also come into permanent custody and become legally free for adoption. Hence, kinship providers also have the potential to become adoptive parents. Kinship care promotes continuity for the child, reduces stress associated with separation and placement, sustains cultural identity, and minimizes the number of changes to which a child must adjust.

These similarities and differences will be explored throughout the Preservice sessions.

***To promote team building among the foster parent, birth parent, adoptive parent, agency staff, and community resources***

Child welfare is a team effort. As is true of any team, each member has defined roles and responsibilities. If team members don't understand their own and each others' roles, the entire team is hampered. Preservice training promotes understanding by various team members of the roles and responsibilities of the other members. Without this empathetic understanding, services will not be well planned and coordinated. It is easy for persons involved with the child to blame one another for resulting problems. Thus, children in care may be further damaged by ineffective service provision.

***To assure safety and improve the quality of care provided to children who live in foster, adoptive, or kinship homes***

Preservice training classes are designed to help improve the care received by children who are in foster, adoptive, or kinship homes by preparing caregivers to meet these children's special needs. Most caregivers and parents will need ongoing training to achieve this goal. Children also have an absolute right to safety and nurturance while in placement. To this end, it is necessary to perform such safeguards as family assessments, records checks, references, safety inspections, and finger printing of applicants. Preservice will help caregivers better understand these requirements and their rationale.

***To reduce the number of moves for children in foster care, kinship care, and adoption***

Children are generally placed in foster and adoptive homes because of prior abuse or neglect. Additionally, each time a child is moved from one home to another, the child can be further damaged. As a result, many children in care are angry, anxious, and depressed, and they may act out their feelings. Children who need foster or adoptive homes also have challenging behaviors that will be directed at the caregivers or new parents. Caregivers must be prepared to understand and deal with these behaviors in a constructive manner that also meets the child's developmental and emotional needs. Research shows that in adoptive families, the behavior of the child usually does not determine the success of the placement. It is the *preparation* of the caregiver or parent to deal with the behavior, as well as supportive services to the caregiver, are the primary factors determining the success of the placement (Goodman, 1991). Thus, preparation and training are essential if we are to prevent placement disruption, and promote stability for children in care.

***To initiate and promote the establishment of a support system for parents and caregivers within the foster care, adoption, or kinship care system***

When applicants express their goals or dreams of becoming foster, adoptive, or kinship care providers, their extended family and friends do not always agree with or support this decision. Some applicants respond with indifference, believing they can manage without family support. However, caregiving can be very stressful. A dependable system of emotional support is vital for those involved.

Parents and caregivers should have regular contact with other foster and adoptive parents who share the same issues, questions, and concerns. Preservice sessions will offer trainees opportunities to meet others who have similar interests. Trainees should take time to introduce themselves to others and discover if any of their fellow trainees live near their neighborhoods. This is their first opportunity to begin building a network of support for their new endeavor.

***To promote child advocacy and develop more advocates for children***

Individuals in this class can learn to be strong advocates for children, even if they ultimately decide not to become foster or adoptive parents. Children need advocates at every level. Trainees may decide to become active in their church to recruit foster and adoptive parents. They may decide to form an adoption support group in your local community. They may volunteer as family advocates or as Big Brothers or Big Sisters. They may consider providing respite care to other families raising children. Or they may decide to become foster or adoption speakers, providing educational services to local community groups such as Lions Clubs or Professional Women's Groups. All of these are valuable contributions to the field of child welfare.

- Mental health providers who work with families, teens, or children
- Support groups or associations for foster and adoptive families, or for parents with children who have special needs
- Health providers in the community (particularly those who accept medical cards)
- Substance abuse counseling programs
- Parent education programs
- Visitation centers in the community
- Other resources available to families with children who have special needs

### **What's Wrong With This Picture?**

**25 minutes**

**Use: Handout #6**

**Trainer Instructions:** The trainer should divide participants into small groups and distribute Handout #6, *Case Study*. The case study includes obvious breakdowns in the team process. The small groups should be directed to read the study and find "what's wrong with this picture?" Trainees should underline problems with team functioning in the case study and, as a group, develop "corrective action plans" (see italicized example below in parentheses). After ten minutes of small group work, the trainer should ask each small group to share one or two problems with team work that they identified, and their plans to correct those problems.

### **Case Study**

Alice Turner, a 26-year-old single mother, has six children, ages two to ten. The five youngest children are in two foster homes, and the oldest child is in a residential treatment facility for emotionally disturbed children.

The children entered foster care four months ago because the mother, who suffers from anxiety and depression (*the caseworker should refer Alice for mental health evaluation and services*), chronically neglected the children and left them with no adult supervision.

The 10-year-old, Billy, sees a psychiatrist bi-weekly; Billy is destructive and hyperactive. He has significant learning problems and is in a special education class at school. Billy is making poor progress academically, but the caseworker, mother, and psychiatrist have not met with the school personnel to adjust his Individualized Education Program. (*The parent, residential institution's social worker, caseworker, and therapist should meet with the school staff to share information and adjust the plan.*) Furthermore, the psychiatrist provides monthly written reports to the caseworker about Billy's progress in counseling, but Alice has never met with the psychiatrist. (*If the plan is reunification, and Billy has ongoing visitation with his mother, Alice must be involved in the counseling.*)

The court ordered supervised visitation because Alice has made threats to "kidnap" the children from placement. - Since the children have been in placement, they have visited

intermittently with their mother at the agency (a case aide from the agency transports the children and supervises the visits), but visits have never been coordinated so that the children can see each other. *(The children will grieve for each other and need to visit each other and talk with each other regularly.)* The children have not telephoned each other, and they frequently ask the caseworker about their brothers and sisters. One foster parent has decided that Alice should be able to see her children more often and has dropped three of the children off at Alice's home twice "for the afternoon." The caseworker and the court do not know about these "extra" visits. *(Visitation plans must be made by the agency in accordance with the court orders. The foster parent who violates a court order creates liability for herself and the agency.)* The two sets of foster parents have not talked with each other *(foster parents should have regular communication with one another),* and one foster family has not met or talked to Alice. *(Alice does not present a threat to the foster family, as she has never been violent. The foster family, even though uncomfortable with sharing their address and phone number, could call Alice to report progress and meet with the birth mother at the agency during supervised visitation.)* The mother, in fact, does not know where her two youngest children are in placement. *(Even if the mother does not have the address, she should, at the very least, have the opportunity to talk with the people who are caring for her children.)* The foster mother for the two youngest children has identified some developmental delay in one of the children. Agency staff have not talked with her about her concerns, and no services to address these delays have been added to the case plan. *(The foster mother should inform the caseworker of her concerns so that an assessment can be made and needed services delivered.)*

The caseworker has developed the case plan without input from the mother or the foster families. *(The caseworker must consult both the birth and foster parents in developing the case plan.)* The semi-annual administrative review of the case plan will be held in a few weeks, but the caseworker has forgotten to invite the foster parents. *(Foster parents are an important part of every semi-annual administrative review and should make every effort to attend, offer feedback, raise concerns, and build relationships with the agency and with the birth family.)*

A great aunt Wanda cared for the children on and off for many years when the mother was unable to manage them. The children talk about her all the time. The caseworker does not seem to be aware of her importance to the children. *(The caseworker should be talking with the mother and the children about kinship support systems, for potential placement options or for support to the children or parent. In the absence of the caseworker's knowledge, the foster parents should inform the agency about the relationship the children have with Aunt Wanda.)*

The Court Appointed Special Advocate (CASA) for the six Turner children believes that the agency should pursue adoption planning in this case. The caseworker and her supervisor are planning to reunify the Turner family. There is significant disagreement between the CASA and the caseworker about the minimum standard for reunification. *(The CASA and caseworker should meet to discuss their thinking.)* Finally, Alice's case plan says that she must locate suitable housing; but she has been too depressed to follow through with a plan to

find housing she can afford. (the caseworker should assist Alice with referral to a low-income housing program so that she has the tools to be successful in completion of her case plan) particularly since her TANF benefits were cut off 90 days after the removal of the children. (Alice may need a referral for job counseling so that she can support herself while she works toward reunification.)

Questions:

1. Who are the team members?

*Response:*

- Alice Turner
- Caseworker and supervisor
- Two sets of foster parents
- Residential institution staff, including social worker, in-patient counselors, and child care staff
- Case aide
- Billy's psychiatrist
- Great Aunt Wanda
- CASA
- School personnel for all school-age children

Auxiliary team members:

- Mental health board, to provide evaluation and treatment for Alice
- Housing program staff
- Department of Job and Family Services job counselors for Alice

2. What's wrong with this picture? Underline problem areas of team functioning in the case study.

3. What would you do to correct ineffective team functioning for the benefit of the Turner children?

## Handout #1

### Glossary

#### ABUSE

A legal term defined in the *Ohio Revised Code* Section 2151.031, which refers to a child who is endangered; who exhibits evidence of any non-accidental injury, trauma, or death which is at variance with the history of the event; or is the victim of sexual activity.

#### ADJUDICATION

The initial phase of the court proceeding, wherein the court must find, by clear and convincing evidence, that the child is an abused, neglected, or dependent child. Only if the court so finds does it have the power to change custody or to order the parents to participate in services.

#### ADOPTION

The creation of parental rights and responsibilities by a probate court after the termination of all rights and responsibilities of the birth parents or any other person holding legal rights to the child. Children become available for adoption in the United States through one of two routes: parental rights are terminated by the court due to abuse, neglect, or dependency adjudication, and permanent custody is given to an agency who is then responsible to find a permanent family for the child; or the individual holding parental rights of a child signs a permanent surrender to an agency without adversarial proceedings. In Ohio, the court must approve of the signing of a voluntary surrender for children over the age of six months.

#### ADOPTIVE SEARCH

A process by which adoptees, adoptive parents, or birth parents secure information about each other and the circumstances surrounding the adoptive process. While some adoptees search for information about birth parents, searches for siblings are even more common. Ohio legislation was passed in 1996 regulating what information can be released prior to the adoption, and what can be gained at various times in the future.

#### APPEAL

The legal process by which a party who has lost her or his case at trial level petitions a higher court for a review of the case, claiming that a lower court erred in its judgment. Following a decision by the court to terminate parental rights, the parent has thirty days to file an appeal with the District Court of Appeals, requesting a reversal of the lower court's decision. Children placed with an adoptive family during the appeal process are said to be in a legal-risk placement. This implies that the child could be returned to the birth family based on the court's decision.

### **CASA (Court Appointed Special Advocate)**

A volunteer child advocate appointed by the court to act as Guardian ad Litem for a child who is the subject of a dependency, neglect, or abuse complaint. The CASA is responsible for conducting an independent investigation of the case, and for presenting the court with reports and recommendations concerning the course of action they believe to be in the best interest of the child.

### **CASE PLAN**

A written document that is designed collaboratively by all parties, including the caseworker, the supervisor, the parent, the child, the CASA or Guardian ad Litem and the kinship or foster caregiver. The case plan is filed with the court as evidence of the agreement between all parties. Evidence that the following items are addressed must be in the plan: assessments, services, time frames, visitation arrangements, contact with the caseworker and the foster parent or kinship care provider, permanency goals, and level of financial support (as applicable).

### **CULTURE**

A system of values, beliefs, attitudes, traditions, and standards of behavior that govern the organization of people into social groups and regulate both group and individual behavior. Culture is created by groups of individuals to assure the survival and well-being of group members. Culture is learned and is more complex than either ethnicity or race.

### **DEPENDENCY**

A legal term, defined in *Ohio Revised Code* Section 2151.04, which refers to the status of a child who is homeless, destitute, or without proper care of support, through no fault of the parents, guardians, or custodians; who lacks proper care or support due to the mental or physical condition of the parents, guardians, or custodians; or whose condition or environment is such as to warrant the state assuming custody.

### **DISPOSITION**

The second phase of the court proceeding, which follows the adjudication, and which focuses on the issue of custody and the best interest of the child.

### **EMERGENCY DETENTION HEARING**

May be the first court hearing held in an abuse, neglect, or dependency case. The county agency files a complaint in juvenile court asking for emergency custody of a child who is alleged to be in imminent danger of physical or emotional harm if not removed from his or her home environment.

## **EX PARTE COMMUNICATIONS**

Literally means "one side only." This term refers to discussion held between a party (or interested individual) in a court proceeding and the judge or referee, when the other party is not present. Such communications are often considered unfair, and for this reason judges and referees avoid discussing a pending case with any of the interested parties except in a court proceeding where all interested parties are present. However, ex parte placement orders are considered appropriate in the most extreme circumstances, such as abandonment, severe medical conditions of a parent, or other incapacitation of the parent.

## **FAILURE TO THRIVE SYNDROME**

A serious medical condition usually seen in children under one year of age. The child's height, weight, and motor development fall significantly short of the average growth rates of normally developing children. In the majority of cases, no medical cause can be found in children with this syndrome. The syndrome appears to be caused by a disturbed parent/child relationship which results in the parent being unable to meet his or her child's emotional and physical needs, including, most often, failure to feed the infant.

## **FINALIZATION OR LEGALIZATION**

Court hearing at which the probate court terminates custody by the agency and awards full custody, including all parental rights and responsibilities, to the adoptive family. Under Ohio law, finalization can take place after the child has resided with the prospective adoptive family for six months.

## **GUARDIAN AD LITEM or GAL**

A special guardian appointed by the court to represent the best interest of the child. In some counties a GAL may be either an attorney or a Court Appointed Special Advocate (CASA). A GAL must be appointed to every case alleging abuse, neglect, or sexual abuse.

## **HOME STUDY**

- A) Process: Also called "family assessment." A process through which potential foster or adoptive parents educate themselves about the rewards and challenges of foster or adoptive parenting, and through which they make a decision about the types of children they feel they can parent. The process through which individuals, with the help of an assessor or social worker, look at their skills, life experiences, strengths, and limitations to determine if foster care and adoption are right for them. It is also the assessor's responsibility to determine basic child safety will be assured in the home—through collection of police checks, references, physical examination reports, and home safety audits.
- B) Document: The written document on which all information gathered throughout the homestudy process is recorded. This document will also indicate the status of the application to foster or adopt (pending, approved, denied). The completed

homestudy document is often used for matching approved or licensed families with children in need of placement. Court personnel sometimes see this document.

### **INDEPENDENT LIVING**

An arrangement in which a child of 16 years or older resides independently and is partially or fully responsible for his individual living environment. An "independent living arrangement" is any living environment provided by an agency which includes service programs and activities to assist youth 16 years of age or older to make the transition from substitute care to independent living.

### **LEGAL RISK PLACEMENT**

This is usually the placement of a child into a dually approved (foster or adoptive) home. The child enters the home officially as a foster child. However, certain clinical factors at the time of placement lead the agency to believe that reunification of the child and birth parent is unlikely and that the child will at some future point be in need of an alternative permanent placement (adoption). The placement into a "legal risk" family indicates the agency's and family's intent to have that foster family adopt the child in question should parental rights be terminated. (Sometimes parental rights have been terminated, but the case is under legal appeal.)

### **LIFEBOOK**

A scrapbook, diary, or log kept for or by the child, which recreates the child's personal history, including birth, placements, important persons in his or her life, personal achievements, and information about the child's experiences in foster care and adoption.

### **MINIMUM COMMUNITY STANDARDS**

Developed by the juvenile court and the county agency with input from other community sources. These state the minimum level of acceptable child care practices in that particular community. The standards should take into account cultural norms and practices, as well as accurate information about child development. The standards are used to make decisions about what constitutes sufficient risk to warrant CPS (Child Protective Services) agency involvement. Standards may also affect placement decisions. This is not the same standard as "the best interest of the child."

### **NEGLECT**

A legal term defined in *Ohio Revised Code* Section 2151.03, which refers to a child who is abandoned; or who lacks proper parental care and support because of parental faults or habits; or whose parents neglect or refuse to provide him or her with proper education, or medical care; or whose parents neglect or refuse to provide the child with the special care required because of a psychological condition.

## **NEXT FRIEND REPORT**

A written report prepared by a social worker for the Probate Court which recommends the finalization of the adoptive placement.

## **OBJECTION (TO THE DECISION OF A REFEREE OR MAGISTRATE)**

A legal action by a party who has lost a case in juvenile court which was heard by a referee or magistrate. This party may then file an Objection with the juvenile court judge, arguing that the judge should overrule the recommendation made by the magistrate or referee who decided the case.

## **OPEN ADOPTION**

The practice of providing information to a child's birth parents, adoptive parents, or the child as he or she child matures. Most adoptions in the United States have some degree of openness, from very little written information to full disclosure and face-to face-contact before, during, and after the adoption. Ohio law defines open adoption as a "voluntary agreement" that cannot be enforced under the Ohio Revised Code after the adoption is finalized.

## **PARTIES**

Those persons who are deemed necessary by law to be participants in a court action. In a dependency, neglect, or abuse case, the parties include the child, legal parents or guardians, and any other individual who appears to the Court to be proper or necessary to the court proceedings. All parties are entitled to legal representation at all stages of the proceedings, and if indigent, are entitled to a court-appointed attorney.

## **PERMANENT CUSTODY**

A legal status created by the court, granted to a county child protection agency following the termination of all parental rights, privileges, and obligations from the birth or custodial family or guardian. This gives the agency full authority and responsibility to provide a permanent, safe, and nurturing family for the child.

## **POST LEGAL SERVICES**

Services offered to an adoptive family following legalization of the adoptive placement. Many adoptive families of children with special needs require continued support and services from the agency. Examples of these services are information and referral, education, group counseling, respite care, residential treatment, parent support groups, and advocacy.

## **PRE-PLACEMENT VISITS**

In either foster care or adoption, a series of visits are made by the child to the prospective home, in order to prepare the child for the eventual move and lessen the trauma to the child. In foster care, one visit, at a minimum, must occur prior to the final move into the home. In all adoptive placements and, where possible in foster care, there should be a series of visits designed to familiarize the child with the home, family, and surrounding community. The younger the child, the more frequent the

visits and the quicker the move; the older the child, the slower and longer the pace of the visits. However the pace and frequency vary from case to case and must take into consideration the child's needs and developmental level.

### **PRE-TRIAL**

An informal hearing which is scheduled as soon as possible after an emergency detention hearing. All the parties involved in the court action discuss the case in an effort to agree on issues of adjudication (whether the case is dependency, neglect, or abuse) and the disposition (custody, case plan contents, visitation, criminal prosecution, etc.). In some instances, the case is settled at this point and court involvement may end.

### **PRIMARY FAMILY**

The persons with whom the child welfare system is working to reunify a child. This may include birth parents, extended family members, or others with whom the child has strong prior attachments. The child's family should help determine who is included in their "family," and the child welfare system should respect this determination.

### **REFEREE OR MAGISTRATE**

The referee (also called a magistrate) is an attorney assigned by a judge to hear cases on the judge's behalf. A decision by a referee is finalized when the judge signs the recommendation.

### **REFEREE'S RECOMMENDATION**

The decision of a referee following a court hearing. The decision becomes final only when the judge signs the order, signifying his or her approval of the decision. A hearing is held by the judge only if one of the parties files an objection to the recommendation of the referee.

### **SERVICE OF PROCESS**

Service of process is the delivery of legal documents to a person who is a party to a legal action. Service must furnish reasonable notice to the person of the pending legal action, and afford the person the opportunity to prepare a case and to appear and be heard before the court. Every party to a dependency, neglect, or abuse case must be served with a copy of the complaint, which is filed by the county agency with the court.

### **SEXUAL ABUSE**

Sexual activity where the victim is a minor. The perpetrator may be an adult or a minor. Sexual abuse may include fondling, intercourse, oral sex, child pornography, forcing the child to watch others engage in sexual activity, watching the child masturbate, or inappropriate kissing.

## **SPECIAL NEEDS**

In child welfare, a child with special needs has at least one of the following needs or circumstances that present barriers to his placement in a family: is part of a sibling group who should be placed together; is a member of a minority or ethnic group; is six years old or older; has waited for a permanent placement for more than one year; has a medical condition, physical impairment, mental retardation, or developmental disability; has an emotional disturbance or behavioral problem; has a social or medical history or background which places the child at risk of acquiring a medical condition, or a physical, mental, or developmental disability or disorder; or has experienced multiple placements.

## **SUPPLEMENTAL PLANNING (SOMETIMES CALLED CONCURRENT CASE PLANNING)**

The process of developing a contingency, back-up plan for permanency for a child in case efforts for reunification with the birth family fail. Many agencies develop supplemental plans for cases in which the likelihood of the child's return home is poor. Birth parents are notified, either through the case plan or through a supplemental plan notification form, of the agency's intent to secure permanency for the child if reunification is not possible.

## **TEMPORARY CUSTODY**

A legal status created by court order which grants a county child protection agency the right and responsibility to provide physical care and control of a child: to determine where and with whom the child shall live; to protect, train, and discipline the child; and to provide food, clothing, shelter, education, and medical care. This status may be terminated at any time by the court.

## **VOLUNTARY AGREEMENT FOR CARE (VAC)**

A voluntary agreement between the county service agency and the parents, under which the county accepts temporary custody of a child without court involvement, for a relatively brief and specified period of time. Parents entering into a VAC agreement are generally cooperative and willing to work with the agency to complete the case plan. Some families may need to use a VAC during a period of serious illness of the only parent in the family, or by a young parent who is contemplating making an adoption plan for her child.

## **VOLUNTARY SURRENDER**

A voluntary surrender is a legal document signed by parents to transfer custody of a child to an agency for purposes of adoption.

## **Handout #6**

### **Case Study**

Alice Turner, a 26-year-old single mother, has six children, ages two to ten. The five youngest children are in two foster homes, and the oldest child is in a residential treatment facility for emotionally disturbed children.

The children entered foster care four months ago because the mother, who suffers from anxiety and depression, chronically neglected the children and left them with no adult supervision.

The 10-year-old, Billy, sees a psychiatrist bi-weekly; Billy is destructive and hyperactive. He has significant learning problems and is in a special education class at school. Billy is making poor progress academically, but the caseworker, mother, and psychiatrist have not met with the school personnel to adjust his Individualized Education Program. Furthermore, the psychiatrist provides monthly written reports to the caseworker about Billy's progress in counseling, but Alice has never met with the psychiatrist.

The court ordered supervised visitation because Alice has made threats to "kidnap" the children from placement. Since the children have been in placement, they have visited intermittently with their mother at the agency (a case aide from the agency transports the children and supervises the visits), but visits have never been coordinated so that the children can see each other. The children have not telephoned each other, and they frequently ask the caseworker about their brothers and sisters. One foster parent has decided that Alice should be able to see her children more often and has dropped three of the children off at Alice's home twice "for the afternoon." The caseworker and the court do not know about these "extra" visits. The two sets of foster parents have not talked with each other, and one foster family has not met or talked to Alice. The mother, in fact, does not know where her two youngest children are in placement. The foster mother for the two youngest children has identified some developmental delay in one of the children. Agency staff have not talked with her about her concerns, and no services to address these delays have been added to the case plan.

The caseworker has developed the case plan without input from the mother or the foster families. The semi-annual review of the case plan will be held in a few weeks, but the caseworker has forgotten to invite the foster parents.

A great aunt, Wanda, cared for the children on and off for many years when the mother was unable to manage them. The children talk about her all the time. The caseworker does not seem to be aware of her importance to the children.

The Court Appointed Special Advocate (CASA) for the six Turner children believes that the agency should pursue adoption planning in this case. The caseworker and her supervisor are planning to reunify the Turner family. There is significant disagreement between the CASA and the caseworker about the minimum standard for reunification. Finally, Alice's case plan says that she must locate suitable housing; but she has been too depressed to follow through with a plan to find housing she can afford, particularly since her TANF benefits were cut off 90 days after the removal of the children.

**Questions:**

1. Who are the team members?
2. What's wrong with this picture? Underline problem areas of team functioning in the case study.
3. What would you do to correct ineffective team functioning for the benefit of the Turner children?

## SESSION VII

### PRIMARY FAMILIES

#### **Competencies**

- The parent or caregiver knows the types of individual, family, social, and environmental problems that can contribute to risk of abuse and neglect of children and teens, and the types of family resources and strengths that can mitigate risk.
- The parent or caregiver understands the destructive consequences of stereotyping birth families.
- The parent or caregiver can recognize strengths and positive attributes of birth family members, and can talk with children about their parents in a fair, understanding, and realistic manner.
- The parent or caregiver recognizes the value of a child's positive feelings toward his or her birth parents, siblings, and extended family members.
- The parent or caregiver understands the grief process of a birth parent whose children have entered substitute care.
- The parent or caregiver understands the importance of involving the birth family in case planning, daily decision-making, and other activities to support reunification.

#### **Agenda**

- I. Introduction
- II. Exploring Our Own Issues
- III. The Losses Experienced by Families with Children in Care
- IV. Substance Abuse Issues Among Primary Parents
- V. A Continuum of Contact
- VI. Will the Real Birth Parent Please Stand Up?

## **Sources**

*Portions of this curriculum have been adapted and reproduced, with permission, from the following source:*

Rycus, J.S., & Hughes, R.C., (1998). "The Emotional Impact of Placement on Family Members." In the *Field Guide to Child Welfare*. Washington, DC: Child Welfare League of America.

## **Handouts**

- #1 Benefits and Challenges
- #2 Myths and Realities
- #3 Guidelines to Produce Positive Outcomes for Children and Their Families
- #4 Anticipated Behaviors of Parents Whose Children Come into Care
- #5 Symptoms of Chemical Use Progression
- #6 Chemical Abuse vs. Dependency
- #7 Bridging the Gap

## **Overheads**

- #1 Losses Experienced by Families with Children in Care

**Section I.**

**5 Minutes**

**Introduction**

**Trainer Instructions:** The trainer should begin by collecting homework assignments and answering any questions posed by participants.

The trainer should stress that adoptive, foster, and kinship caregivers must acknowledge and fully understand the importance of birth families to children in care. The goal of this session is to help caregivers begin to understand placement from the birth family's point of view and to explore issues related to continuity and identity for the child. In addition, since birth families are part of the child welfare services team, particularly when the case goal is reunification, caregivers may have direct contact with birth family members in a variety of ways. We recognize that many adoptive and foster families may be ambivalent or unsure about having direct contact with birth families. The purpose of this session is to fully explore their concerns and feelings, and help them feel more comfortable, both in collaborating with birth family members and in communicating about them in a positive, constructive, and empathetic manner to the child.

**Section II.**

**40 Minutes**

**Exploring Our Own Issues**

**Use: Handout#1  
Handout #2  
Handout #3**

**Trainer Instructions:** The trainer should set up a "Walk Around" exercise. The trainer should prepare flip charts and post them on the walls of the training room. Each flip chart should include one of the following statements written at the top.

- When caregivers have a positive relationship with birth family members, the best possible outcomes for the child are...
- The best possible outcomes for birth families are....
- The best possible outcomes for foster, adoptive, or kinship parents are...
- The worst possible outcomes (for all involved parties) are...
- My greatest concern about having direct contact with birth parents is...

**On one flip chart, the trainer should draw a very large line figure of a person, with most of the white space on the flip chart contained within the outline. The figure should be labeled "Birth Parent." Trainees should be directed to write, within the figure, an adjective or descriptive phrase they have heard that describes attributes or qualities of birth parents, or that they themselves believe is true of birth parents. Trainees should be instructed to be honest about their own and other people's stereotypic perceptions of birth parents. The goal will be to sort out the stereotype and the reality.**

**Trainees should be given markers and instructed to walk around the room, read each statement, and write their own responses to the statements on the flip charts. At the completion of the walk around, the trainer should reconvene the group and generate discussion, making sure the following points are covered. The trainer should distribute Handout#1, *Benefits and Challenges*.**

### **Potential Responses:**

#### **Child: Best Possible Outcomes**

- Child's experience of loss is greatly reduced.
- Child's anxiety about separation is reduced.
- Continuity can be maintained for child.
- Problems with divided loyalties are reduced.
- Consistency in caregiving is encouraged, reducing stress for the child.
- Child is less confused about changes.
- Visitation is greatly facilitated.
- Child receives "permission" from birth family to succeed in placement.
- Much of the grieving process is prevented, since loss is minimized.
- Reunification and permanence for the child are facilitated.

#### **Birth Family: Best Possible Outcomes**

- Visitation and reunification are greatly facilitated.
- Total amount of time child spends in temporary care may be reduced.
- Birth parents feel trusted, empowered, and important in parenting role.
- Self-esteem is enhanced.
- Birth parents are less threatened by foster or adoptive parents, and less threatened by the unknown.
- Birth parents are less concerned about the care their child is receiving.
- Respective roles and responsibilities can be clearly defined and understood.
- Birth parents can learn constructive parenting and child care strategies from caregivers.
- Caregiving family may become support system for birth parent.

## **Foster or Kinship Family: Best Possible Outcomes**

- Continuity is maintained in educational planning, medical treatment and care, discipline, and other child care needs; child's developmental needs are better met.
- Caregiving family is a full member of the services team.
- Caregiving family can get complete and accurate information about the child and his or her history and needs from the birth family.
- Stress is reduced for family; if child is less anxious and distressed, caregiving family is often less anxious and distressed.
- Caregiving family's ability is increased to accurately and empathetically help child deal with issues and feelings about his or her birth family.
- Ease and effectiveness of foster-to-adopt or open adoption (where this is the most appropriate plan for the child) may be enhanced.
- Visitation planning is simplified.
- Caregiver can learn culturally specific child care strategies from birth family members and can enhance child's cultural identity.

## **Worst Possible Outcomes:**

- Roles will not be clear; caregiver will be expected to serve as caseworker or therapist to birth family.
- Birth families will spend excessive time at the foster, adoptive, or kinship home.
- Child will never settle into care because of continual contact with birth family.
- Child will always be upset.
- Child will be abused again or neglected when in presence of birth family.
- Birth family will feel they can't compete, and will give up.

## **My Greatest Fears:**

- Birth parents will be constantly calling and asking for rides, advice, money, or assistance.
- Birth parents will place my own family at risk of violence or harm.
- Birth parents will kidnap the child from my home or neighborhood.
- Birth parents will continue to perpetrate physical or sexual abuse on the child, if they have access to the child.
- Birth parents will be angry and resentful toward me and constantly engage me in confrontations.
- I will not be able to protect the child in my care.
- Birth parents will come to my home drunk or drugged.
- Birth parents will bring other people to my house uninvited.

### Create a Stereotype of Birth Parents:

- Don't value their children
- Are selfish, meet own needs at the expense of the child
- Lack parenting skills
- Don't really love their children or they wouldn't treat them this way
- Can't control their own behavior
- Are promiscuous
- Are irresponsible
- Live in poverty
- Don't take advantage of services that are available
- Lack values
- Are lazy
- Have criminal records
- Exhibit violent behavior
- Are uncooperative

**Trainer Instructions:** The trainer should help the group examine the stereotypes and share experiences from professional practice that challenge these myths. During this discussion the trainer must be careful to avoid making judgments of prospective caregivers who hold these stereotypes. They cannot be blamed for having these perceptions. The trainer should assure that the points covered in Handout #2, *Myths and Realities*, are fully discussed.

### Myths and Realities

Myth	Reality
Birth parents who abuse, neglect, or relinquish their children do not care about them.	Birth parents do not plan to abuse or neglect children. Maltreatment of children usually occurs following times of overwhelming stress. Parents who maltreat their children may, in fact love their children dearly, but may not be able to cope with circumstances or may not know how to parent successfully. Furthermore, parents who voluntarily relinquish their children usually do so with tremendous ambivalence; they do not walk away from these relationships without significant, lifelong grief.

Myth	Reality
<p>Most birth parents are violent, dangerous people who pose a threat to the foster families caring for their children.</p>	<p>Some birth parents have a history of violence or mental health problems that indicate risk for caregivers. Most birth parents, however, can build a collaborative relationship with foster or kinship parents that can be invaluable in the rapid reunification of the family. When the caseworker or foster parent is unsure about the level of risk posed by the birth family, relationships should be built with deliberate care along a continuum of openness, with the safety of the foster caregivers of paramount concern.</p>
<p>Foster families are expected to function as caseworkers or therapists for birth families.</p>	<p>Foster families may serve in key roles as mentors with birth families. When foster and birth families develop a partnership, this will be part of a total intervention plan developed by the child welfare team. The intervention planning will involve the foster parent and will spell out the expectations for the foster parents, when those interventions will occur, and how they can improve the outcomes for the child.</p>
<p>The agency is "setting up" foster families to be hurt by dangerous birth parents.</p>	<p>The agency will not expect foster families to place themselves at risk in working with birth families. The agency will always consider risks when developing a partnering plan for birth and foster families, and foster families will be involved in the development of the plan. Communication between foster and birth families may, at times, need to occur through an agency intermediary, usually the caseworker, to protect the safety of the child and the foster family.</p>

## Myth

Foster families are expected to work with all birth families of children who come into foster care.

Foster parents will be responsible for caring for the birth parents as well as the child.

## Reality

Foster families are expected to communicate with the birth parents of all children. That communication may take many different forms, depending on the characteristics of the birth family, the wishes of the foster family, and the stage of the developing relationship between the foster and birth families. Relationships may begin with a journal of the child's progress, move into telephone calls between the birth and foster parents, meetings during supervised visits at the agency, and eventually evolving into unsupervised visits at the foster or birth home prior to reunification.

The role of the foster parent is to provide a safe, temporary home for children who are unable to remain in their birth homes. Foster parents are part of a team whose primary goal is reunification. Visitation and communication are essential to achieving that goal. However, caring for the birth parent is *not* an expectation of the foster parent; it would, in fact, be counterproductive to the development of adult, responsible behavior by the birth parent.

**Trainer Instructions:** At the conclusion of the discussion about myths and realities, the trainer should distribute Handout #3, *Guidelines to Produce Positive Outcomes for Children and Their Families*.

***The Losses Experienced by Families with Children in Care***

**A. Awareness of the Losses**

**Use: Overhead #1**

**Trainer Instructions:** To develop empathy for the feelings of a birth parent who has had children removed, the trainer should take the purse of one of the participants (without asking permission) and place the purse in the back of the training room. When the participant protests, the trainer should tell the participant, "Work with me. You may have your purse back when you have completed a case plan. I will decide when you are ready to have your purse back." The participant will probably display some degree of outrage or resistance, and the trainer can use this brief exercise to draw parallels with the angry feelings of a birth parent who has lost something of much greater significance than a purse.

The trainer should deliver the following information using a combination of guided group discussion and mini-lecture. The trainer may ask the large group to brainstorm the losses experienced by families whose children enter care, and expound, using the following content, on each of those losses. The trainer should use Overhead #1, *Losses Experienced by Families with Children in Substitute Care*, to reinforce key points.

Families typically experience extreme psychological distress or crisis when children are removed and placed.

Most families experience pervasive and painful feelings of loss when their children are removed. Parents may also experience psychological threats to their self-esteem and to their identity as competent parents. They may lose their sense of purpose and direction, particularly if they have been full-time parents whose daily activities have revolved around their children. Separation usually threatens the family's identity, sense of belonging and togetherness, and feeling of security.

Parents whose children are removed are often subjected to criticism and blame from extended family members, neighbors, and friends. They may lose an acceptable social identity, and the respect and esteem of important others. Strong cultural values about family unity and competent parents may exacerbate this loss for many families, particularly if the child is placed with strangers outside the immediate community. The removal of the children may even threaten the esteem and respect children have for their parents, and birth families may feel judged and blamed, not only by the agency, courts, and community, but by the children, themselves.

Finally, removal of the children may reduce the family's income and financial security. When a family's primary source of income is public assistance, the removal of the children often results in a cut in their subsidy. They may have to move, and they may lose other supportive services, such as food stamps, medical care, and day care.

### **Implications for the Child Welfare System**

The multiple losses inherent in child placement can precipitate a crisis for families. When in crisis, family members are often immobilized and emotionally disabled by overwhelming distress. Families who have children removed may have difficulty just getting by, much less finding the stamina to make the changes necessary to have their children returned.

Some families served by child welfare agencies have a history of marginal adaptive behavior. They may have psychological and emotional problems, may be in dire poverty, may have substance abuse problems, and may have limited coping ability. Some parents have had consistently painful experiences in their interpersonal relationships, and in contacts with social institutions, and they may not trust the agency or the caseworker. They may have limited sources of emotional support. Negative life experiences may also contribute to a general perception of futility and helplessness, and some families may be without hope that their children will ever be returned. This is exacerbated by the serious, sometimes permanent damage that separation inflicts on parent-child attachment. Families may give up, withdraw from agency contact, grieve their loss, and resign themselves to life without their children. This seriously compromises the likelihood of successful reunification.

The degree of loss and threat experienced by family members can be minimized if the parents can be involved in planning for their children and be empowered during all phases of the placement process. Partnering between foster or kinship parents and the birth parents can achieve several objectives:

- ❖ Maintaining and strengthening the relationship between the parents and the child
- ❖ Developing and strengthening the parents' parenting skills
- ❖ Helping the parents work to create a safe home environment for their children and, in doing the above...
- ❖ Reducing the traumatic effects of placement for children and families

This can promote reunification, or can provide the worker with essential information with which to conclude that the child cannot go home, thus enabling workers to direct their efforts toward placing the child in an alternative permanent family in a timely manner.

## **B. The Grieving Parent: Typical Responses to Loss**

Use: Handout #4

**Trainer Instructions:** The trainer should encourage participants to remember the information they received in *Separation, Loss and Reunification*, Session IV. The trainer should briefly review the stages of grief and loss with the group. The trainer should ask the large group to brainstorm the typical behaviors of a parent who has children in care. The trainer should elaborate on the effects of grieving on birth families, the behaviors expected, and the impact of these behaviors on case planning and reunification.

At the conclusion of this discussion, the trainer should distribute Handout #4, *Anticipated Behaviors of Parents Whose Children Come into Care*.

Certain behaviors typify family members' responses to the losses and threats experienced during placement. If a foster or kinship caregiver does not properly interpret the meaning of these behaviors and fails to recognize them as symptoms of grief and stress, the caregiver may respond in nonproductive and unsupportive ways. For example, the stunned immobilization of a parent in shock could be misinterpreted as a lack of motivation, or as being in agreement with the placement. Depressive withdrawal could be misinterpreted as a lack of desire to work with the agency toward reunification or as disinterest in the child.

There are many differences in people's expressions of loss and grief. However, many behavioral responses to the placement of children are predictable, and can be interpreted as normal manifestations of the stages of grieving [Kubler-Ross, 1972; Fahlberg, 1979].

### ***Shock or Denial***

- ❖ Parents may exhibit a robot-like, stunned response at the move. They may be immobilized. A characteristic response of people in emotional shock is, "This can't really be happening!"
- ❖ Parents may be very compliant and may express little emotion or affect. They may appear bland, uncaring, or uninvolved.
- ❖ Parents may deny that there is a problem or deny that the agency can remove the children. They may insist that the children will be home in a day or so, or that "No court will ever give you custody."
- ❖ Parents may avoid the caseworker and deny the need to be involved with the agency.

### ***Anger or Protest***

- ❖ Parents may threaten court action or may contact an attorney to fight the agency.
- ❖ Parents may behave in a contrary and oppositional manner by refusing to let the caseworker visit the home or refusing to talk with the caseworker or kinship or foster caregiver.
- ❖ Parents may refuse to participate in developing a case plan or in making decisions about the child's welfare.
- ❖ Parents may become demanding, sometimes making irrational demands on the worker or caregiver.
- ❖ Parents may blame the agency, the worker, the caregivers, the court, the system, the complainant, or others, for the existence of the problem. They may vehemently reject any need to change.

### ***Bargaining***

- ❖ Parents may become semi-responsive to the overtures of the caregivers or worker and may behave more compliantly.
- ❖ Parents may make broad promises such as, "It will never happen again," "I'll ask my boyfriend to leave," or "If I go to all my parenting classes, will I get my children back?"

### ***Depression***

- ❖ Parents may forget or miss appointments, or may fail to attend scheduled visits with the children.
- ❖ Parents may exhibit little initiative or follow-through in visitation, or in other activities designed to promote reunification.
- ❖ Parents may display futility and a loss of hope that their children will ever be returned home. Some parents even move away or disappear, and the agency loses contact with them.

### ***Resolution***

- ❖ Parents may emotionally begin to restructure their lives without their children.

- ❖ Parents may move away without notifying the agency, may become involved in new relationships, may have other children, or otherwise “get on with life.”
- ❖ Parents may not respond to agency efforts to work with them.
- ❖ Parents may stop visiting their children.
- ❖ Parents may not protest court action for permanent custody and may not attend permanent custody court hearings.

### **Implications for Child Welfare**

Clearly, the child welfare goal is to support family members and employ strategies that maintain the family’s integrity while the child is in placement. This reduces the losses and threats experienced by the family and subsequently prevents the need to grieve. The extent to which family members experience placement as a loss depends largely on the agency’s ability to keep them actively involved with their child and involved in collaborative reunification planning while their child is in placement.

This also implies that caseworkers and caregivers must actively engage families of children currently in placement as quickly as possible. Caregivers will likely have to deal with anger and hostility, depression, and sorrow. This however, is preferable to allowing the grief to be fully resolved. Once parents have completed the grieving process, it becomes increasingly difficult to re-engage them.

### **Section IV.**

**20 minutes**

### **Substance Abuse Issues Among Primary Parents**

**Use: Handout #5  
Handout #6**

**Trainer Instructions:** The trainer should acknowledge that many parents who maltreat their children do so because they are addicted to alcohol or other chemicals. The trainer should distribute Handouts #5, *Symptoms of Chemical Use Progression*, and #6, *Chemical Abuse vs. Dependency*, to reinforce learning.

**A Continuum of Contact**

**Use: Handout #7**

**Trainer Instructions:** The trainer should deliver the following content in a mini-lecture. The trainer should distribute Handout #7, *Bridging the Gap*, and use the handout to demonstrate a continuum of contact to maintain attachment, speed reunification, reduce stress and anxiety, promote the development of a positive identity for the child, and, wherever appropriate, contribute to the growth and development of birth parents. The handout will give caregivers concrete suggestions on ways to partner with birth parents to achieve these many ends.

**Content**

Relationships between members of the child's immediate and extended birth families and foster, adoptive, or kinship families includes a wide range of activities. These may be placed on a continuum, with, at one end, very limited, highly structured or supervised contact (such as anonymous letters, or contact only with the agency or caseworker as an intermediary) and, at the other end, regular, frequent, and unsupervised face-to-face contacts between birth and caregiving family members for a variety of purposes.

It is important to understand that both the *nature* and the *intensity* of the family-to-family relationship will differ from case to case, depending upon:

- ❖ The needs of the child
- ❖ The degree to which the birth parents can be engaged as constructive collaborators in the case plan
- ❖ The goal of casework--that is, reunification, open adoption, or other permanent alternative
- ❖ The nature of the parent-child relationship at the time of placement
- ❖ The degree to which the safety of all parties can be assured
- ❖ The training and skill of the caregiving family

In many situations, foster, adoptive, or kinship care families can become an important support system for members of the child's family. When such relationships exist, birth parents are empowered and helped to maintain active and constructive involvement in their children's lives, while they are resolving the problems or issues that led to placement. Foster and kinship caregivers can also serve as mentors to birth families, which promotes the development of the birth parents' personal and parenting skills.

Collaborative relationships help strengthen and maintain children's attachments. In open adoptions or adoptions by foster caregivers, members of the child's birth family may continue to have contact with the child and family after the adoption has been finalized. When children in care are reunified with their families, they can often maintain their attachments to their foster or kinship caregivers, preventing separation trauma. Prior caregivers can also provide respite care when needed, thus continuing in a supportive role to the birth family.

While such collaborative family relationships can have many benefits for all parties, they must be developed over time. Trust and confidence can only evolve through positive interactions. As in any new relationship, there will be periods of testing, disagreement, tension, and skepticism, as well as periods of success and collaboration. All parties must expect this developmental process, recognize it as normal, and be able to work through it, with the help of the agency, the worker, or other caregivers, when needed.

There are several potential barriers to the beginning of a relationship between birth families and caregivers:

- ❖ The families may know little to nothing about each other at the beginning; they may lack information on which to even begin a relationship.
- ❖ They may have significant misinformation about each other or hold stereotypes of each other, which will interfere with their ability to get to know one another as individuals.
- ❖ Birth and caregiving families may feel threatened by one another. Birth parents may be threatened by the child's affection for the caregiving family, the socioeconomic status of the caregiving family, or their success in parenting and in managing their lives. Caregiving families may feel threatened by the child's loyalty to the birth family, by the birth family's behavior, or by the birth family's expressed anger and dislike of them.
- ❖ Significant cultural differences and misinformation between birth and caregiving families may lead to misassumptions and poor communication.

Caregivers who will work directly with birth family members should be trained in strategies for engaging birth parents, to help them work through these issues and to help promote their personal development and parenting skills. These special skills make caregivers highly valued contributors to the child welfare service team.

**Will the Real Birth Parent Please Stand Up?**

**Trainer Instructions:** A personal presentation by one or two birth parents, reflective of the population served by the agency, should complete the session. The purpose of the presentation is to “de-villainize” birth parents by giving them an opportunity to present themselves as real people with feelings, strengths, and challenges. An alternative panel that includes a birth parent and a foster parent, who have worked well together, may present their experiences and talk about how they worked together to meet the needs of children and to work toward reunification. It is not necessary to have model birth parents; however, highly dysfunctional birth parents may serve to strengthen rather than contradict trainees’ stereotypes. It is appropriate to pay the families for their time and travel. A suggested rate is \$25.00 to \$50.00 per session per family.

Each panel will be different, depending on the individuals who are presenting. Some suggested guidelines to provide structure and assure success include:

1. The trainer should schedule a practice session with the panel members prior to the actual training and give them sample questions. This will increase panel members’ comfort with the situation.
2. The trainer should set the ground rules with the group and introduce the panel members, using first names only. It may be difficult for some families to share their personal stories. This is a teaching and learning environment; information shared in this session should be kept confidential.
3. The panel members may pass if they do not want to answer a question. The trainer may also pass for the panel member if he or she feels that a question is too intrusive or inappropriate.
4. The trainer should stress that this is information from the perspective of the family that had children in care.

**Trainer Instructions:** The trainer should conduct a brief introduction of each panel member, followed by a brief interview of the family members. Sample interview questions are listed below.

Tell us how your children came into care. What was your life like at the time?

What were your feelings at the time your children came into care? How did you react during the first days and weeks after removal?

What was it like to tell your family, friends, and others that your children no longer lived with you?

What contact did you have with the foster families caring for your children? What things were helpful? What was not helpful? What was the most difficult thing you experienced involving a foster parent? The best thing?

What was the resolution of your case? How are you dealing with parenting your children on an ongoing basis? How are you dealing with your losses? What times of the year are particularly difficult for you? What makes things better or worse? Do you have any contact with your children now? Do you get information? How?

What is your community's perception of the children's services agency?

**Trainer Instructions:** The trainer should conclude the session by thanking the participants for coming to the session and inviting everyone to remain for refreshments. It is important that this be done, so participants can process their emotions and feelings about the presentation. This will also give participants an opportunity to interact with the presenters on a different level and deepen the learning process. The trainer should remind all involved that they are still under the same ground rules during the informal processing time. The trainer should monitor the conversations to assure everyone's comfort.

If it is not possible to conduct the presentation, an alternative activity should be provided. However, alternatives which do not require a birth parent presentation are less valuable in providing insight and empathy for prospective foster and adoptive parents.

#### **Alternative Activities (Only if Birth Parent Presentation Cannot Be Done)**

**Trainer Instructions:** The trainer should lead the group in a large-group brainstorm or in three small groups (depending on time frames) addressing the question, "What could you do to work with the child's family in this stage of the case plan?" The trainer should ensure that the following points are covered in the discussion.

#### **Preplacement**

- Meet the child's family (or previous foster family if adoptive placement) prior to the placement.

- Ask the parent for information regarding the child's schedule, food likes, activities the child enjoys, and allergies or other medical concerns. This helps maintain continuity for the child, and is reassuring to the birth parent.
- Invite the child's family to come to your home for a preplacement tour. While there will be a few birth families for whom this is not appropriate, in general there are significant benefits to both the child and the birth family in reducing anxiety and preventing separation trauma.
- Assure the parents that you will support and help them in any way you can to achieve the case plan.

### **During Placement**

- Encourage the children to call their birth parents "Mom" or "Dad" and adopt another name or title for yourself ("Aunt Jean," "Grandma Lee," etc.).
- Assure the parents that their feelings associated with grief and loss are normal and expectable, and that you understand how they feel. Provide reassurance and empathy. Do not lash back when they demonstrate anger or forget an appointment.
- Call the parents as soon as the children are settled in to reassure them that the children are safe.
- Let the parent help the child unpack. Encourage the parent to give the child an article of clothing that the parent has worn. Having the parent's smell on the clothing can be reassuring to the child.
- Ask the parent to accompany you to enroll the child in school, to go to doctor's and counseling appointments, and to go to the child's school or sports events.
- Save the child's report card to be opened at the next visit. Collect a file of schoolwork, pictures, and cards that the child has made. Share them at the visit.
- Ask the school to let the child make two Mother's or Father's Day cards.
- Encourage children to talk about their family. Show respect when you talk about them.
- Work on the Life Book with the child and involve parents in making the Life Book during family visits.
- Provide transportation to and from visits.

- As you develop a relationship with the parents, invite them to call their children on the phone. With agency permission, you can also encourage parents to pick up the children at your home for visits or hold the visits in your home.
- Provide modeling of child care and child management techniques during visits. Facilitate visits! If a goal is that the mother will play and appropriately interact with her nine-month-old, get down on the floor, play peek-a-boo, patty cake, and build towers together with the mom and baby.
- Keep parents informed about the child's development.
- Solicit the parents' input and opinions regarding decisions about the child. For example, ask the parent what kind of clothing to buy for the child, or when possible, take the parent with you and shop together with the child.
- Arrange alternate holiday celebrations with the child's family if the child cannot go home for special occasions.
- Jointly plan and host a birthday party for the child.
- Let the birth mother have the center seat at "Parents Night" activities.

#### **Post-Reunification or Post-Adoption**

- Help the child move. Be supportive and encouraging.
- Let the child know that you will continue to be a part of his or her life, and make plans for contact. Give the child preaddressed and stamped note cards to send to family and friends.
- Plan a "Moving On" party. Invite the child's family or foster family.
- Help the child say good-bye to friends at school. Make a photo address book.
- Visit the child, especially for the few weeks immediately after the move.
- Encourage the parents. Assure the parents that you will be available to talk with them and, where appropriate, to help them if they need it.

## Pre-Training Handout

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### Competencies

- The parent or caregiver knows the types of individual, family, social, and environmental problems that can contribute to risk of abuse and neglect of children and teens, and the types of family resources and strengths that can mitigate risk.
- The parent or caregiver understands the destructive consequences of stereotyping birth families.
- The parent or caregiver can recognize strengths and positive attributes of birth family members, and can talk with children about their parents in a fair, understanding, and realistic manner.
- The parent or caregiver recognizes the value of a child's positive feelings toward his or her birth parents, siblings, and extended family members.
- The parent or caregiver understands the grief process of a birth parent whose children have entered substitute care.
- The parent or caregiver understands the importance of involving the birth family in case planning, daily decision-making, and other activities to support reunification.

## Handout #1

### Benefits and Challenges

*Benefits that are likely to result when birth families and foster, adoptive, or kinship families work together in a collaborative manner:*

- ❖ Separation trauma and anxiety are greatly reduced.
- ❖ Continuity of care and attachments are maintained for the child in care.
- ❖ Planning and implementing visits are simplified, making it possible to visit more frequently, and helping to assure more productive visits.
- ❖ Reunification can occur more quickly, or an alternative plan for permanence can be made in a timelier manner.
- ❖ The birth family can use the caregiving family as a role model and can be mentored to make changes that enhance their personal development and parenting skills.
- ❖ When the two families work collaboratively, loyalty issues for the child are reduced, and the child is less likely to create divisiveness and resentment between the two families.
- ❖ Caregiving families can maintain contact with the child after reunification, which prevents additional separation trauma.
- ❖ Caregivers can become a permanent support system for the child and family.

*Challenges that are likely to result when birth families and foster, adoptive, or kinship families work together in a collaborative manner.*

- ❖ Families may have different values, backgrounds, cultures, parenting styles, beliefs, knowledge, and skills. This may create disagreements, particularly on the best means of caring for the child. These disagreements may need to be negotiated before the families can work together successfully.
- ❖ The families may not like one another. This may interfere with the establishment of a relationship. In some cases, unresolved disagreements may lead to distance in the relationship.

- ❖ The caregiving family may be fearful of birth family members. Some families who have had their children removed may behave in a hostile, sometimes irrational manner. Birth parents may at times have substance abuse problems or mental illness, which may make it difficult to predict their behavior. Parents may have been convicted of serious offenses or crimes. It may be difficult for caregivers to discern when birth parents are simply acting out their anger or frustration, or are dangerous. This must be fully discussed with the caseworker.
- ❖ The birth family's presence may, at times, interfere with the caregiving family's schedule, habits, traditions, or decisions. This may increase the difficulty of caregiving and contribute to disruption.
- ❖ The birth family may be jealous of the foster family and may believe the foster family can offer their child more than they can. The family may feel embarrassed and ashamed, and may worry that the children may not want to return home. They may respond by competing with the foster caregivers for the children's attention and affection.

**Handout #2**

**Myths and Realities**

<b>Myth</b>	<b>Reality</b>
<p>Birth parents who abuse, neglect, or relinquish their children do not care about them.</p>	<p>Birth parents do not plan to abuse or neglect children. Maltreatment of children usually occurs following overwhelming stress. Parents who maltreat their children may, in fact, love their children dearly, but may not be able to cope with circumstances or may not know how to parent successfully. Furthermore, parents who voluntarily relinquish their children usually do so with tremendous ambivalence; they do not walk away from these relationships without significant, lifelong grief.</p>
<p>Most birth parents are violent, dangerous people who pose a threat to the foster families caring for their children.</p>	<p>Some birth parents have a history of violence or mental health problems that indicate risk for caregivers. Most birth parents, however, can build a collaborative relationship with foster or kinship parents that can be invaluable in the rapid reunification of the family. When the caseworker or foster parent is unsure about the level of risk posed by a birth family, relationships should be built with deliberate care along a continuum of openness, with the safety of the foster caregivers of paramount concern.</p>
<p>Foster families are expected to function as caseworkers or therapists for birth families.</p>	<p>Foster families may serve in key roles as mentors with birth families. When foster and birth families develop a partnership, this will be part of a total intervention plan developed by the child welfare team. The intervention planning will involve the foster parent and will spell out the expectations for the foster parents, when those interventions will occur, and why they are planned to improve the outcomes for the child.</p>

Myth	Reality
<p>The agency is "setting up" foster families to be hurt by dangerous birth parents.</p>	<p>The agency will not expect foster families to place themselves at risk in working with birth families. The agency will always consider risks when developing a partnering plan for birth and foster families, and foster families will be involved in the development of the plan. Communication between foster and birth families may, at times, need to occur through an agency intermediary, usually the caseworker, to protect the safety of the child and the foster family.</p>
<p>Foster families are expected to work with all birth families of children who come into foster care.</p>	<p>Foster families are expected to communicate with the birth parents of all children. That communication may take many forms, depending on the characteristics of the birth family, the wishes of the foster family, and the stage of the developing relationship between the foster and birth families. Relationships may begin with a journal of the child's progress, move into telephone calls between the birth and foster parents, meetings during supervised visits at the agency, and eventually evolve into unsupervised visits at the foster or birth home prior to reunification.</p>
<p>Foster parents will be responsible for caring for the birth parents as well as the child.</p>	<p>The role of the foster parent is to provide a safe, temporary home for children who are unable to remain in their birth homes. Foster parents are part of a team whose primary goal is reunification. Visitation and communication are essential to achieving that goal. However, caring for the birth parent is <i>not</i> an expectation of the foster parent; it would actually be counterproductive to the development of adult, responsible behavior by the birth parent.</p>

## Handout #3

### Guidelines to Produce Positive Outcomes for Children and Their Families

**Respect for one another**—The primary team members must recognize that each member brings individual viewpoints, values, and culture to the team process. The primary care team should seek to utilize diversity to achieve benefits for the child.

**Seek conflict resolution**—The primary care team must be committed to resolving differences of opinion regarding the case plan or intervention strategies. Differences of opinion that do not affect the case plan are irrelevant to the case planning process.

**Permission for honesty**—The primary care team needs to set an atmosphere of honesty with one another regarding case goals and planning. Each member needs to be honest regarding the actual agenda for the case process. There must be freedom for members to explore the meaning of behaviors and words with one another.

**Focus on the best interests of the child**—The primary care team must agree to act in a manner that helps children. The primary care team must keep revisiting what is best for the children.

**Communication**—The primary care team must have established channels of communication that provide information in a timely and efficient manner.

The primary care team should:

- ❖ Be committed to using effective methods of communication
- ❖ Communicate their expectations through a well-written case plan
- ❖ Communicate clearly and document progress through the use of monthly reports
- ❖ Use journals that can be passed between the foster parent and the primary family to prevent miscommunication (these journals need to have some structure so they can be useful--materials concerning journaling are available at your local Regional Training Center).

Should the goal of the case plan change, the primary care team continues to plan for the best interest of the child. The actual caregiver may change as in situations of adoption and kinship care, but the primary family can remain involved in the planning process.

## Handout #4

# Anticipated Behaviors of Parents Whose Children Come Into Care

### *Shock or Denial*

- The parent acts in a robot-like fashion, and does not display feelings.
- The parent agrees with the agency.
- The parent denies the need for services or evaluations.
- The parent avoids the agency professional or caseworker.
- The parent believes the paramour over the child's allegations of abuse.

### *Anger or Protest*

- The parent is verbally aggressive to agency caseworker, foster parents, or related professionals, and appears irritable when dealing with the system.
- The parent writes letters to the editor complaining about Children's Services.
- The parent gets an attorney.
- The parent threatens to sue the agency caseworker or foster parent.
- The parents threaten to hurt the agency caseworker or foster parent.
- The parent tries to get the child to recant, sometimes using threats to the child or others in the primary family.
- The parent tells the child the placement is his or her fault.
- The parent criticizes the way the child is dressed.
- The parent destroys property of the child, foster parent, or agency.
- The parents tell the child not to listen to the foster parent.
- The parent complains about the agency.

### *Bargaining*

- The parent promises to do anything necessary to get the children back.
- The parent promises to stop drinking or using drugs, or to get rid of a perpetrator in order to have the children returned.
- The parent is basically compliant.
- The parent requests more visits in exchange for completing part of the case plan.
- The parent calls the foster home at 2 a.m. to ask the foster parent the time of the visit the following day.
- The parent tells the child that he has to get better grades and do his chores before he can come home.

- The parent buys the child elaborate gifts.
- The parent promises unrealistic things to the child upon returning home.
- The parent compares himself to other parents to prove that they are not as bad as the other parents, or makes statements that the foster family does improper things and that they get paid to take care of the children.

### ***Depression***

(The following are symptoms of depression, whether the depression is caused by grief or other sources, such as chemical imbalances in the brain.)

- The parent forgets appointments or visits.
- The parent acts whiney or helpless.
- The parent exhibits little initiative or ambition.
- The parent sees everything as futile.
- The parent resumes or begins using alcohol or drugs (note: this behavior could appear at other stages).
- The parent seems to have unresolved or undiagnosed "somatic" complaints.
- The parent seems to take unnecessary risks or reverts to earlier harmful patterns of behavior, such as prostitution.
- The parent spends much energy that is misdirected or diffused.
- The parent begins steps to complete tasks but does not complete them.
- The parent seems irritable and may make suicidal gestures.

### ***Resolution and Acceptance***

- The parent fails to respond to the team after a period of apparent cooperation.
- The parent stops visiting.
- The parent does not show up for court or does not offer defense in court.
- The parent voluntarily moves to a home with too few bedrooms for the children.
- The parent sells the children's beds or possessions.
- The parent gets pregnant.
- The parent marries someone with children.
- The parent makes statements such as "The children would be better off without me," or "Look what an adoptive family can offer her."

## Handout #5

### Symptoms of Chemical Use Progression

#### 1. Experimentation

- Users learn that chemicals make them feel good.
- The degree of the good feeling is controlled by the amount of substance the users consume.
- Users form "friendships" or "love relationships" with the chemical.

#### 3. Misuse and Abuse

- Users' tolerance increases (more chemical is needed to feel any positive effects).
- The emotional price for chemical use is increasing.
- Users often use to relieve feelings of guilt, fear, and anxiety (originally brought on by chemical use).
- External consequences often follow an episode of using.
- Deterioration in many areas of life (socially, physically, intellectually, and spiritually) although the users may not recognize the changes.
- Users are preoccupied with the next chemical use (may spend more time obtaining, using, and maintaining supply).
- Users begin to break promises and compromise morals (loss of control begins).
- Users rationalize use by blaming others, having excuses and alibis, and by being defensive about use.
- Users believe own excuses "next time will be different."

#### 2. Seeking the Mood Swing

- Users begin to look forward to the next time they can use.
- Overall, users' behavior is still appropriate; there are embarrassing moments but, compared to the high, "it was worth it."
- Users may experience a few hangovers.
- Users would not be overly disappointed if a situation arose in which chemicals were unavailable.
- If anyone raises concerns about their use, users rationalize the concerns away.

#### 4. Addiction and Chronic Dependency Stage

- Users are depressed nearly every day, chemical use no longer makes them feel high.
- All of the symptoms and feelings in the harmful stage are intensified.
- Use is necessary to feel normal.
- Users may have physical problems related to chemical use.
- Users are emotionally, physically, and spiritually sick (may have faulty memory and impaired judgment).
- Urgency to use chemicals is increased.
- Chemical tolerance may go down (due to deterioration of the body).
- Users often have paranoid thinking (high anxiety, feels hopeless, isolated).
- Users experience a complete loss of control.

## Chemical Abuse vs. Dependency

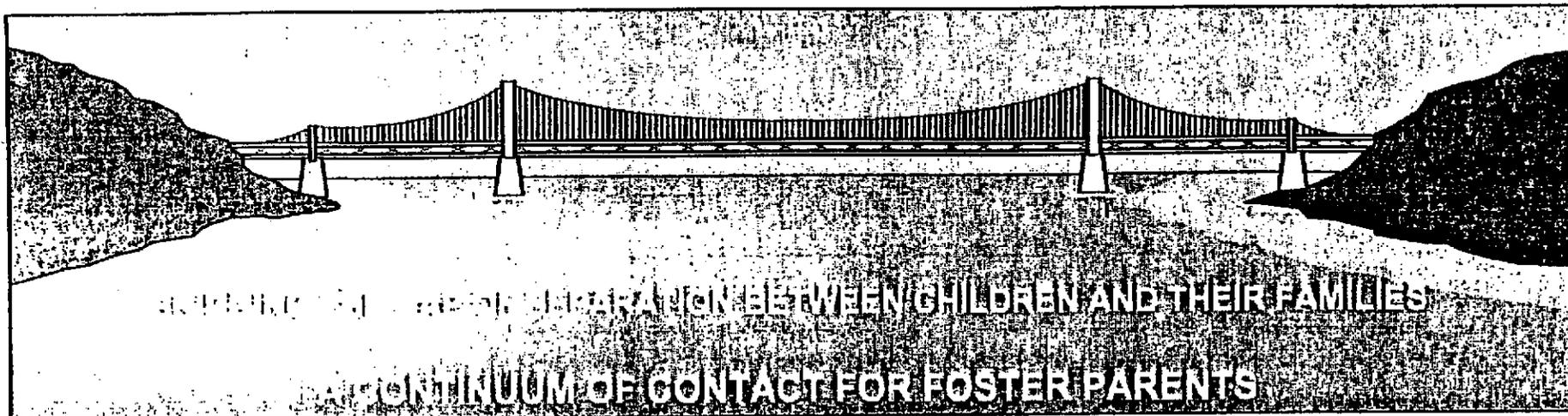
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**Social use** – The use of any drug or combination of drugs in social situations, or for social reasons. If such social use causes harm, physical or otherwise, to the user or others, it is also considered abuse.

**Binge drinking** – Periodic heavy use of alcohol (five or more drinks consumed on the same occasion, at least one day in the past 30).

**Substance abuse** – The characteristic feature of abuse is the presence of dysfunction related to the person's use of alcohol or other drugs. According to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) produced by the American Psychiatric Association for diagnosing substance abuse and mental health disorders, substance abuse is a "maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of a variety of possible symptoms or impairment, including failure to fulfill major role obligations, recurrent use in physically hazardous situations, substance related legal problems, continued substance use despite having persistent or recurring social or interpersonal problems related to substance abuse." (DHHS 1999, pp. 11-12, DSMIV pp. 182-183).

**Addiction or chemical dependency** – A disease in which the substances have caused changes in the person's body, mind, and behavior. The DSM-IV distinguishes dependence from abuse primarily by the presence of more abuse symptoms (three or more, rather than at least one), and the possible presence of tolerance (needing more of the substance for the same intoxicating effect) or withdrawal (physical symptoms when the substance is not used) (DHHS 1999, p. 12).



- EXCHANGE LETTERS WITH CHILD'S FAMILY VIA SW
- CALL CHILD'S PARENTS ON PHONE
- REQUEST PICTURES OF CHILD'S FAMILY TO DISPLAY IN CHILD'S ROOM
- GIVE PARENTS PICTURES OF CHILD
- SHARE COPIES OF HOMEWORK & REPORT CARDS WITH FAMILY
- HAVE POSITIVE VIEW ABOUT BP
- TALK OPENLY ABOUT FAMILY TO CHILD
- SEND SNACK OR ACTIVITY FOR VISIT
- PRAISE PARENTS' PROGRESS
- DRESS CHILD UP FOR VISITS
- PROVIDE WRITTEN REPORT FOR SAR
- SHARE MONTHLY PROGRESS REPORTS
- HOST/ARRANGE SIBLING VISITS
- BRAG TO PARENT ABOUT CHILD
- REQUEST CULTURAL INFORMATION FROM BP

- TRANSPORT CHILD TO VISIT
- TALK WITH PARENT AT VISIT
- ENCOURAGE PARENT TO PHONE CHILD
- MEET CHILD'S FAMILY AT PLACEMENT
- NON THREATENING ATTITUDE
- REFER TO CHILD AS "YOUR CHILD" TO BP
- SHARE PARENTING INFORMATION
- ATTEND STAFFINGS, SARs, REVIEWS
- HELP BP FIND COMMUNITY RESOURCES
- ENCOURAGE AND REASSURE REUNIFICATION
- SHARE CHILD'S LIFE BOOK WITH PARENTS
- ATTEND TRAINING TO LEARN HOW TO WORK DIRECTLY WITH PARENT
- LEARN ABOUT, UNDERSTAND, AND RESPECT BIRTH PARENT'S CULTURE

- TRANSPORT CHILD TO AND FROM PARENT'S HOME
- REVIEW CHILD'S VISITS WITH PARENTS
- GIVE PARENTS VERBAL PROGRESS REPORTS
- ASK PARENT TO COME TO APPOINTMENTS
- FP TRANSPORTS BP TO MEETINGS
- INVITE CHILD'S FAMILY TO ATTEND SCHOOL PROGRAMS
- ASSIST IN PLANNING CHILD'S RETURN TO BIRTH HOME

- WELCOME CHILD'S PARENTS INTO YOUR HOME
- ATTEND PARENTING CLASSES WITH PARENTS
- SERVE AS SUPPORT TO FAMILY FOLLOWING REUNIFICATION
- FOSTER PARENT PROVIDES RESPITE CARE
- INCLUDE BP IN FAREWELL ACTIVITIES

1345

# Losses Experienced by Families with Children in Care

*Control over day-to-day decisions*

*Self esteem*

*Sense of purpose and direction*

*Their role/ identity as parent*

*Respect of community*

*Respect of extended family, possibly the child*

*Income and related benefits*

*Support of the child in day-to-day living*

## SESSION VIII

### THE EFFECTS OF CAREGIVING ON THE FAMILY

#### **Competencies**

- The parent or caregiver recognizes the potential effects on the caregiving family of parenting children and teens who have experienced maltreatment, separation, and loss.
- The parent or caregiver can recognize signs of family stress, knows how stress can affect family members' behavior, knows effective coping strategies, and knows the importance of developing and using support systems to help manage stress and prevent family crisis.
- The parent or caregiver understands the procedures that are required if and when allegations of maltreatment are made against the caregivers, and knows strategies for coping with the stress of a third-party investigation.
- The parent or caregiver can identify signs and symptoms of illness and contagious conditions, and knows health, hygiene, and nutrition practices that prevent or reduce the likelihood of illness in children and teens.
- The parent or caregiver knows strategies for preventing sexually transmitted diseases (STDs) and can recognize signs and symptoms of STDs.
- The parent or caregiver knows the Ohio statutes and rules regarding disclosure of information about foster or adopted children to be placed with the foster caregiver or adoptive parent.

#### **Agenda**

- I. Introduction
- II. Stressors Faced by All Families
- III. Coping Mechanisms
- IV. Unique Stressors of Being a Foster, Adoptive, or Kinship Parent
- V. Preventing a Family Crisis
- VI. Special Situations and Recurring Themes
- VII. Developing a Survival Plan

## **Handouts**

- #1 Information that Must Be Provided to Foster Parents
- #2 Questions for Prospective Foster or Adoptive Parents to Ask
- #3 Creating a Pre-Placement Survival Plan
- #4 Bibliography

## **Overheads**

- #1 Positive and Negative Coping
- #2 Homeostasis and Crisis
- #3 Splitting  
Millionaire Game Questions (6 slides)

## **Section I.**

**5 minutes**

### **Introduction**

**Trainer Instructions:** The trainer should open the session with an activity designed to review and reinforce learning developed during earlier sessions. Trainees may pair off and share something that has impressed them about previous sessions--something specific they have learned about foster care, adoption or kinship care, or something they learned about themselves as a result of training. The trainer might ask that trainees share some of what they have discussed with the entire group.

As an alternative, the trainer might use a child's baton, a telescoping pointer, or some other object that resembles a wand, encouraging large group brainstorming. The trainer could say that this "magic wand" makes people think harder or brings ideas to mind more easily. The trainer should select a person to share an idea with the group. After having done so, that person should use the wand to select a second trainee to share a thought with the group. The activity can be continued until all trainees have had a chance to participate.

**Stressors Faced by All Families**

**Trainer Instructions:** The trainer should ask participants to call out the types of stressful demands encountered routinely by most families. The trainer should list responses on a flip chart pad and should prompt the participants to list both positive and negative stressors.

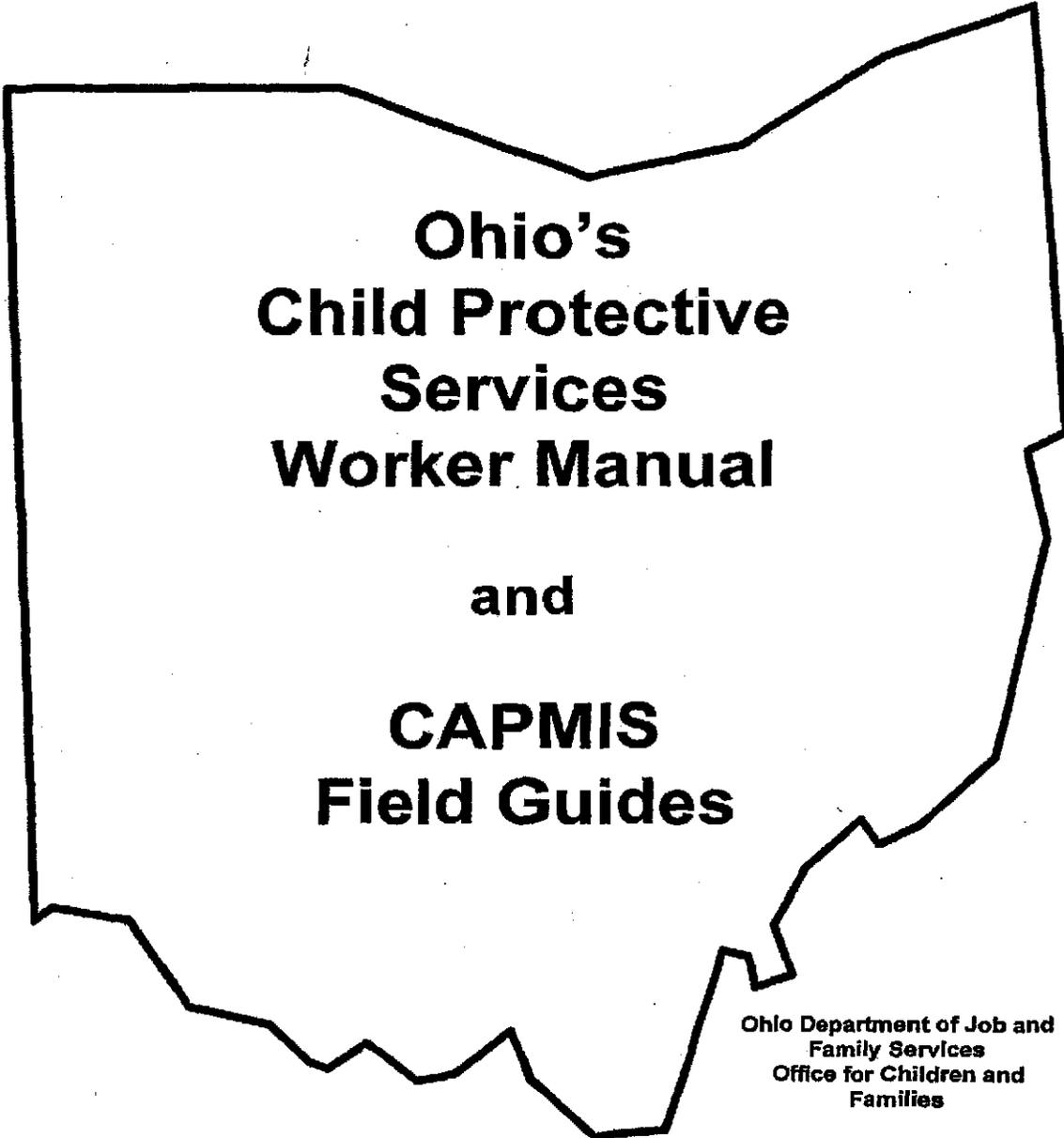
Participants' responses will vary, but will likely include the following components:

Insufficient time	Household repairs
Insufficient money	Relatives
Schoolwork	Visits from relatives
Extracurricular activities	Building an addition onto a house
Housework	Getting ready for a vacation
Chores for the children	Ongoing education of adults in home
Holidays	Bosses' expectations
Starting a new job	Children's behaviors
Death	Illness
Cars breaking down	Marriage
Bills due	Unemployment
Pregnancy or a new child	Children leaving home
Divorce or separation	Elder care

**Trainer Instructions:** The trainer should prompt participants to think of stressors that may occur as a result of foster, adoptive, or kinship care. The trainer should add these stresses to the list, using a marker of a different color. If adding a child *increases* an existing stressor (not enough time, school problems) the trainer should simply circle or underline the stressor on the flip chart.

Additions to the list are likely to include the following items:

- ❖ More children needing attention and time
- ❖ More children to use the space in the home, less privacy
- ❖ Moving or sharing bedrooms
- ❖ More children, little or no more money
- ❖ Sharing existing toys
- ❖ More appointments
- ❖ A stranger living among those who know each other
- ❖ Changing living patterns, such as who uses the bathroom when?
- ❖ Change in "birth" order



**Ohio's  
Child Protective  
Services  
Worker Manual**

**and**

**CAPMIS  
Field Guides**

Ohio Department of Job and  
Family Services  
Office for Children and  
Families

**EXHIBIT**

**7**

0662

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

**COMPREHENSIVE ASSESSMENT PLANNING MODEL – I.S.  
CASE PLAN INSTRUCTIONS**

**GENERAL INFORMATION**

A case plan is developed when: (1) in-home supportive services are provided to the child and his parent/guardian/custodian or pre-finalized adoptive parent with, or without, court-ordered protective supervision; or (2) the child is placed in an out-of-home care setting and supportive services are provided to the child and his parent/guardian/custodian or pre-finalized adoptive parent. Services and activities are designed to address the causal and/or contributing factors identified in the Family Assessment.

**CASE PLAN INSTRUCTIONS**

**General Instructions**

- Family Name** Enter the family name used by the agency to identify the case. The family named used should be consistent throughout the case.
- Agency Case Number** Enter the number the agency uses to identify the case.
- Caseworker** Enter the name of the agency caseworker completing the case plan.
- Agency** Enter the agency's name. Do not use an acronym.
- Agency Phone Number** Enter the telephone number of the agency, including the area code.

**Identifying Information**

List each child in the family from oldest to youngest.

*(Table 1)*

- Child Name** Enter the name of each child in the family from oldest to youngest.
- Agency's Legal Status** Enter the current legal status type for the agency regarding the child, if applicable.
- Child's Legal Status** Enter the current legal status type for the child.
- Type and Date of Placement** Enter the type of placement for each child, if applicable. Enter the date the placement began for each child.
- Child's Permanency Goal** Enter the case plan goal for each child.
- Court Case #**  
**Court I.D. #** If there is court involvement, enter the number assigned by the court for each child. (The court case number is the identifying number for the family and may be assigned to multiple children. The court I.D. number is the identifying number assigned by the court for each child; each child has a unique number. )

(Table 2)

- Child Name** Enter the name of each child in the family from oldest to youngest.
- Age** Enter the age of each child.
- Date of Birth** Enter the date of birth (mm/dd/yyyy) of each child.
- Adult Name and Relationship to Child** List the names of the parent(s), guardian, or custodian of each child and their relationship to the child.
- Check if child is protected under ICWA** Check the box if the child is protected under the Indian Child Welfare Act.
- Tribal Affiliation** Enter the name of the child's tribal affiliation if the child is protected under the Indian Child Welfare Act.

- Check if sufficient information is not available to complete any element of the JFS 01410 within 30 days.**  
Check if more information must be obtained in order to complete any element of the JFS 01410.

**NOTE:** If this box is checked the additional information that is required to complete the missing element(s) and the steps that the agency will take to obtain the missing information must be documented in the corresponding sections of the case plan.

### **Section 1. Strengths**

**List and describe the identified strengths for this family.**

Identify the main strengths of the family which will aid in the development of the case plan and enable the family to meet the goals of the case plan. The family's strengths should be identified and taken from the Family Assessment (JFS 01400).

### **Section 2. Concerns/Expected Changes/Services**

**What is the concern?**

Enter a family concern identified from the Family Assessment (JFS 01400).

**What behavior will need to change to reduce risk and address safety issues of the child (ren)?**

Describe the expected behavioral changes of the individuals that will contribute to reducing risk and keeping the child safe as it relates to the identified concern. Describe for the family what behaviors would alleviate the agency's concern.

**Services Identified:**

**Names** Lists the individual's name for which a service has been identified regarding the identified concern.

**Service Category/Type** For each expected change/concern identified, list all of the supportive services and activities planned to assist in resolving the concern/need.

**Effective Date** Enter an effective date reflecting when the service was identified for the individual.

**Status** Enter the status of the service: planned, provided, terminated.

**Provider Name** Enter the name of the agency and/or person that is providing the service.

**Service Begin Date** Enter the date the service begins to be provided to the individual.

**Family Activities:**

**Service Category/ Type**

List the services identified in the service category/type identified above that will be completed by family members.

**Activity family member needs to complete this change?**

Identify the specific activity the family member needs to complete for each service category/type.

**Family Member responsible for the activity.**

Enter the individual who is responsible for completing the identified activity.

**Expected Completion Date**

Enter an expected date for the individual to complete each activity.

**Caseworker/Service Team Activities:**

**Service Category/ Type**

List the service identified in the Services Identified section with which the caseworker or service team will be assisting the family.

**How will the caseworker or service team help the family make this change?**

Explain the activity the caseworker and/or service provider(s) will complete in order to assist the family in receiving the identified services and making behavior changes related to the identified concern.

**Identify Person Responsible for the activity.**

Enter the caseworker, or individual from the service team, who is responsible for completing the identified activity.

**Expected Completion Date**

Enter an expected date for the individual to complete each activity.

### **How will the family's progress be measured?**

Detail the criteria that will be used to evaluate the changes needed for each concern. Provide a description for the client/family of the behavioral actions that will be measured by the agency. Focus on behaviors that are positive, concrete, and measurable.

### **When will the family's progress be reviewed?**

Explain when the family's progress will be measured and reviewed. Family progress should be reviewed frequently to establish whether progress towards making behavior changes is being made. This should be carried out by continually assessing safety and risk factors. It is critical that the caseworker informs the family when their progress will be reviewed, e.g., during home visits with the family, at the three month (90 day) Case Review, at the six month (180 day) Semiannual Administrative Review.

### **Section 3. Visitation Plan**

SACWIS will pre-fill this section with the visitation plan. This section will provide the following information about visitation: Person(s) permitted to visit each child, frequency, duration, location, supervised and/or restricted, and other approved communications.

### **Section 4. Circumstances regarding removing the child from their home.**

#### **A. Court Ordered Removal**

Check if any child(ren) listed on the case plan was removed under a court order where the PCSA was not involved in an assessment/investigation or the provision of supportive services, prior to the removal and therefore no option was available to offer in-home services.

**The PCSA was not involved prior to removal, in an investigation/assessment, or the provision of supportive services, and therefore had no option to offer in-home services. Which children?**

Enter the name of each child for whom this applies.

#### **B. Parent/Guardian/Custodian Identity/Whereabouts are unknown.**

Check if any child listed on the case plan was removed and at the time of the removal the parent/guardian/custodian's identity or whereabouts were unknown and therefore could not be located or offered services.

#### **Which Children?**

Enter the name of each child whom this applies.

**Explain what efforts have been made to locate the parent/guardian/ custodian.**

Detail the efforts that have been made to identify any unknown parent/guardian/custodian of each child. Describe all activities made to locate the parent/guardian/custodian of each child.

#### **C. The PCSA received custody through a court order.**

Check if the agency received custody.

**Explain why the safety threat(s) and/or risk to the child(ren) made it necessary for the removal. Which Child(ren)?**

Provide an explanation of why the safety threat(s) were not able to be controlled without a legally authorized placement or the risk of harm would exceed the harm that would be caused by the removal of the child from his own home. Enter the name of each child for whom this applies.

**State the reasonable efforts made to prevent the removal and/or make it possible for the child(ren) to return home safely. Which child(ren)?**

Describe what services were provided to prevent removal and what is being done, or will be done, to safely return the child(ren) to his own home. Enter the name of each child for whom this applies.

**State the reasons the court made a decision that the agency does not have to make reasonable efforts to prevent removal of the child(ren) from the child(ren)'s home, and return the child(ren) to the child(ren)'s home. Indicate which applies to each child.**

Describe the reasons the court determined were present that precluded the agency from making reasonable efforts to prevent the removal, eliminate the continued removal, or return the child home. Enter the name of each child for whom this applies.

### **Section 5. Appropriateness of Placement**

Complete this section for each child in placement. Data may be different for each child so the information needs to be child specific according to his/her placement.

- 1. If the child is not placed with a relative, explain why each less restrictive setting was not selected. If permanent custody has been granted, an adoptive home is considered least restrictive.**

Describe for each child why each least-restrictive setting was not selected, if applicable. Explain why the placement selected will meet the child's needs more effectively than the least restrictive settings, if applicable.

- 2. For the placement selected, discuss how you determined this was a safe and appropriate environment for the child.**

Describe for each child how the placement setting will provide a safe environment for the child. For example, "A family foster home trained and equipped to work with physically and emotionally disabled children is a safe and appropriate placement setting for a wheelchair-restricted, emotionally disturbed child. Relatives were unwilling and unable to meet the child's physical or emotional needs."

- 3. Explain how the placement is in CLOSE PROXIMITY to the parent/guardian/custodian. What transportation problems might create obstacles to visitation? How will the agency resolve these obstacles?**

For each child, state the approximate distance between the child's placement and the child's parent, guardian, or custodian's residence. Identify any transportation problem(s) and state how the agency intends to resolve the problem(s). If the placement is not in close proximity to the residence of the child's parent, guardian, or custodian, describe why it was not possible to place the child in a setting that was closer to the parent. For example, "The substitute care placement is five miles away from the parent. The parent does not have access to public transportation or other forms of transportation for visitation. The agency has made arrangements with a volunteer

for transportation. No other appropriate placement setting for the child could be located which was closer to the parent."

4. **When selecting a substitute care placement setting, describe how the agency considered PROXIMITY TO THE SCHOOL in which the child was enrolled prior to placement.**

When placing a child in an out-of-home care setting, explain how the agency considered a placement that was in close proximity to the school in which the child was enrolled prior to placement.

5. **Explain how the placement will meet the BEST INTERESTS AND SPECIAL NEEDS OF THE CHILD AND ACHIEVE CASE PLAN GOALS.**

- (i) **Best Interests:** Identify the supportive services which will be provided during the placement to address the child's best interests.
- (ii) **Special Needs:** Identify the supportive services which will be provided in the placement to address the child's special needs.
- (iii) **Achieve Case Plan Goals:** Identify the supportive services which will be provided during the placement to achieve the case plan goals.

6. **Is this an out-of-state placement?**

Check either "Yes" or "No".

**If the "Yes" box was checked, indicate who will conduct the annual out-of-state placement visit and the date the visit will be conducted.**

Enter the name of the caseworker responsible for conducting the annual out-of-state placement visit. Enter the date (month, day, year) the annual out-of-state placement visit will be conducted.

7. **List the services being provided to the substitute caregiver(s).**

**Services:**

List the services that the agency will provide to the substitute caregiver(s) that will assist the child with reaching his goals.

**Date the Individual Child Care Agreement has been given to the substitute caregivers:**

Provide the date the Individual Child Care Agreement was given to the substitute caregiver according to rule 5101:2-42-90 of the Administrative Code.

8. **For children 16 years of age or older in custody, independent living service provisions are required to be part of the case plan. Identify programs and life skill services which will assist the child to prepare for the transition from substitute care to Independent living.**

Describe the independent living program and life skill services which will be provided to a child who is age sixteen or older in a substitute care setting. If no such programs are available, describe the specific life skill services that will be offered to the child which will prepare him for independent living.

**Section 6. Documentation of Exceptions to Filing a Motion for Permanent Custody.**

*This section will not be completed on all cases.*

**For a child who has been in the temporary custody of an agency for 12 or more of the past 22 consecutive months and a determination is made by the agency that parental rights shall not be terminated, the agency must document the reasons for arriving at this determination. Complete part a. or part b.**

This section must be completed for all children who have been in the temporary custody of an agency for 12 or more of the last 22 consecutive months where a decision has been made by the agency not to file a motion with the court to terminate parental rights. Complete either Part a OR Part b.

- a. Document the compelling reason for determining that termination of parental rights would not be in the best interests of the child.**

Describe the reasons for arriving at a decision not to proceed with the termination of parental rights. Indicate why it has been determined that it would not be in the best interests of a child to have his or her parent(s) rights terminated.

OR

- b. Document the reason for determining that termination of parental rights shall not be pursued because the agency has not provided the child's parent, guardian, custodian, or the child with services outlined in the case plan which were deemed necessary for the safe return of the child to the child's home.**

Describe the reasons why the agency would not proceed to file a motion to terminate parental rights because the agency has not provided services, identified in the case plan, which would assist the child to safely return to his/her own home.

**Section 7. Documentation of Efforts for Permanency**

*This section will not be completed on all cases.*

This section must be completed for all children in custody with a goal of adoption or planned permanent living arrangement.

- a. Document steps taken to find an adoptive home, relative, legal guardian, or other permanent placement for the child.**

Identify the steps taken to identify an adoptive home, relative home, legal guardian, or other permanent placement for a child in custody.

- b. Describe the child-specific recruitment activities taken by the agency and the outcomes.**

Describe all child-specific recruitment activities taken and the outcome of the efforts to find a permanent home for the child.

- c. Check the recruitment activities taken by the agency and the outcomes.**

Check the box beside the recruitment efforts listed identified in (b).

**SIGNATURES OF PARENT/GUARDIAN/CUSTODIAN, OTHER PARTIES AND AGENCY REPRESENTATIVES**

**Name** Enter the first and last name(s) of the parent/guardian/custodian, prefinalized adoptive parent, guardian *ad litem*, or other(s) who are a party to the case plan. (Others may include relatives, non-relatives, or substitute caregivers.)

**Relationship** Enter the relationship of the individual to the child.

**Signature** Obtain the individual's signature on the line that corresponds with his/her entered name.

**Date** Enter the month, day, and year (mm/dd/yyyy) the signatures were obtained.

**Date Copy of Plan Provided** Enter the month, day, and year (mm/dd/yyyy) that a copy of the case plan was given to the individual.

**Describe how the Parent/Guardian/Custodian and child (if appropriate) were given an opportunity to participate in the development of the case plan.**

Explain how the family was encouraged by the caseworker to participate with the development of the case plan. Provide a brief description how the parent/guardian/custodian participated in the case plan development.

**If any required person did not participate, or disagreed with the plan, state who and check the box for the reason why:**

**Name**

If the required person(s) parent, guardian, custodian, prefinalized adoptive parent, guardian *ad litem* /CASA did not participate in the case plan development and/or disagree with the contents of the case plan, state the individual's name.

**Unable to Locate/Unavailable**

Check if the required person did not participate in the plan development because he/she was unable to locate or was unavailable.

**Disagreed with Plan**

Check if the required person did not participate in the plan development because he/she disagreed with the plan.

**Other**

Check if the required person did not participate in the plan development due to a reason not listed above. State the reason.

**If any party did not sign the case plan or disagreed with the case plan, explain below.**

Provide a detailed explanation why an individual did not sign the case plan, Explain why an individual did not agree with the case plan.