

Foster Care Services: Legal

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LEGAL

Legal Services are provided to county departments by Special Assistant Attorneys General (SAAG) appointed by the Law Department. The expertise of the SAAG in representing the county department, researching legal questions, consulting on a case, preparing staff to testify, etc., is essential for the Case Manager to effectively perform his/her roles, especially in relation to deprivation and termination proceedings. A good attorney-agency relationship should be established and maintained through such activities as periodic meetings, information sharing and cross training. The Case Manager must be knowledgeable of child welfare laws and other legal issues in order to provide helpful information to and documentation for the SAAG.

ATTORNEY - CLIENT RELATIONSHIP

1013.1

Requirement

Whenever a birth parent is represented by an attorney, the county department shall recognize the implications of the attorney - client relationship.

1013.1 PRACTICE ISSUES

1. The Case Manager needs to ensure that the SAAG is informed of the attorney representing the parent.
2. The parent's attorney may review portions of the case record and any agency-generated reports provided that a **release is signed by the parent**. The provisions outlined in Requirement 1013.2 are followed in determining the releasable portions. If the parent does want his/her attorney to see the case record, the parent may either refuse to sign the release or may revoke the release the parent has already signed.
3. The parent may bring an attorney as his/her representative to any conference or review held at the county department or other location.
 4. If the parent's attorney is appointed by the court, the attorney cannot be relieved of responsibility until the court issues an order indicating that he/she is no longer the attorney of record. If an attorney has entered an appearance in the juvenile court, he/she remains the parent's attorney for the matter until the court has permitted the attorney to withdraw by appropriate order.

CLIENT ACCESS TO RECORDS

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The right of a parent to have access to information in the case record is one of the provisions outlined in a Federal consent order signed as a result of the **J.J. v. Ledbetter** class action suit. If any conflict exists between this Manual section and the Federal consent order, the provisions contained in Appendix P shall control.

1013.2

Requirement

Any parent/guardian of a child for whom Department has placement authority, is entitled to receive copies, upon request, of all the following portions of the case record pertaining to the parent/guardian and the child:

44688. Contact sheets summarizing information observed or given orally by parents and others to the Case Manager except as expressly prohibited (see below).

44689. Family Assessment, 30-Day Case Plan (Form 389), Case Review (Form 390), Written Transitional Living Plan (Form 391), Social Services - Case Plan (Form 387), Case Plan: Goals and Steps (Form 388), Case Review Summary.

44690. Other summary reports prepared by county department staff.

44691. Court petitions and orders.

44692. Service plans, goals and objectives, and service agreements other than those in 2 above.

44693. Pictures of abuse and neglect (pictures may be viewed by the client and/or his attorney at reasonable times arranged with the Case Manager).

The following portions of the case record **shall not be released** to the parent/guardian by the county department:

1. Any initial or corroborating reports of child abuse and neglect or information in the case record quoted from third parties constituting a direct report of child abuse or neglect.
2. Medical records (e.g., hospital records or physicians', psychologists', psychiatrists' evaluation and treatment summaries).
3. School records.
4. Information from other public and private agencies, including other DHR agencies.
5. Reports, correspondence, or verbal quotes from privileged sources, such as psychologists,

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psychiatrists, ministers, etc.

6.Information from or about a spouse or other adult family member without a written authorization from the person(s) involved.

All other information in the case file **not excluded by this section** will be released to the parent/guardian or legal representative of the parent/guardian upon presentation of a duly signed authorization.

1013.2 PROCEDURES

44824.Give the parent the form, "**Information Which May Be Maintained in Case Records by County Department of Family and Children Services,**" when the case is opened (See Appendix P).

44825.Explain this form to the parent, preferably during a face-to-face contact. Otherwise, provide a written explanation.

44826.Document on the Form 452 that the form and the explanation have been given to the parent.

44827.Remove or obliterate any information that cannot be released by the county department prior to the parent or the parent's attorney seeing the case record or receiving copies of releasable portions.

44828.Provide free of charge copies of the 30-Day Case Plan, Family Assessment, Case Review, Written Transitional Living Plan, Social Service - Case Plan, Case Plan: Goals and Steps, Case Review Summary, and any document other than the above which constitutes a case plan or service agreement generated by the county department when requested by the parent or attorney.

44829.Provide all other releasable material at a cost of no more than .25 cents a page, advising the parent in advance of the cost. Establish procedures in the county department to ensure the accountability for any funds collected.

44830.Provide the releasable material to the parent within ten working days of the receipt of the oral or written request. Provide a general statement if any of the information cannot be released, informing the parent of the type of information being withheld and why.

44831.Provide a list of primary sources and a general statement of the type of information each source produced if the parent requests to review or have copies of information the county cannot release. Give the form, "**Non-Objection to Subsequent Release of Information by Primary Sources**" to the parent (See Appendix P).

44832.Obtain a written authorization from each adult family member before releasing information about him or her.

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ADMINISTRATIVE HEARINGS

As a result of the **J.J. v. Ledbetter** class action suit, parents of children in DFCS custody are provided due process rights of appeal. (See Appendix P for details regarding the suit and the provisions of settlement.) Specifically, a parent may request a hearing whenever there is disagreement with an agency decision to “deny, reduce or terminate a social service or visitation.” The appeal process for the parent is handled by an Administrative Law Judge (ALJ) with the Office of State Administrative Hearings (OSAH). The ALJ conducts the hearing and issues a decision that is binding upon DFCS. If the parent is not satisfied with the initial decision, the parent may appeal to the DHR Legal Services Office for a final administrative decision. Further appeal rights are afforded parents through a separate legal action outside of the Department of Human Resources.

Special Note: **When a parent disagrees with a decision or a service which is part of a court-ordered Case Plan (or a Plan being submitted to become an order of the court), the appeal rights of a parent are exercised through juvenile court, rather than through an administrative hearing process.** While the number of administrative hearing requests are few in Placement cases, other programs such as Adoption Assistance and Child Care, follow the same hearing procedures outlined in this section. If any conflict exists between this Manual section and the Federal consent order in Appendix P, the terms of the consent order shall control.

1013.3

Requirement

The county department shall not limit or interfere with the parent's freedom to request an administrative hearing when the parent disagrees with any of the following decisions:

44892.A social service is denied, reduced or terminated;

44893.Visitation (or transportation to visitation) is being denied, reduced or terminated;

44894.A determination is being made that the parent must participate in a service as outlined in the Case Plan (not court-ordered);

44895.The county department has failed or is unable to provide/arrange certain services and supports as specified in the Case Plan (not court-ordered); or

44896.A change in the Case Plan (not court-ordered) is being made.

1013.3 PRACTICE ISSUES

44960.Counties should develop procedures to resolve differences without a hearing. The procedures

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should include how the county department will take prompt action to resolve complaints, beginning with the Case Manager reviewing the situation with the parent.

44961.If the issue is not resolved locally and/or if the parent requests an appeal, the request should be processed in a timely manner in accordance with the outlined procedures.

3. With respect to the “denial, reduction or termination of a social service” as a basis of appeal, the “services” are those which may be requested by or previously received by the parent. They may be provided directly by DFCS staff or purchased/paid for by the county department.

NOTICE TO THE PARENT

1013.4

Requirement

The parent shall be informed in writing at the time of any agency action denying, reducing or terminating social services or reasonable visitation (See Requirement 1013.3). The written notice includes: the parent's right to appeal the change or decision within 30 days; information on how to obtain a hearing and how to be represented by legal counsel, a friend or other spokesperson.

1013.4 PROCEDURES

45028.Provide notice to the parent with the form, “**Notification Form for Change in Case Plan/Services - Placement**” (See Appendix P).

45029.Maintain a copy of the completed form in the case record for documentation purposes.

45030.Implement the agency's decision if the parent formally accepts the proposed change and waives his/her right to a hearing by signing the “**Waiver of Administrative Hearings - Placement**” (See Appendix P).

45031.DO **NOT** IMPLEMENT the agency's decision/proposed change if the parent requests a hearing (See 1013.5 for procedures).

REQUESTING A HEARING

1013.5

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Requirement

The county department shall have the responsibility to assist the parent, as needed, in requesting an

administrative hearing. This includes: providing the necessary form, explaining the time factors and, if necessary, facilitating the completion of the written request.

1013.5 PROCEDURES

45096. Accept the oral or written request from a parent for an administrative hearing which may be made to DFCS or to the DHR Legal Services Office within 30 days of the date of the "Notification Form."

45097. Explain to the parent that oral requests for an administrative hearing must be followed by a written request within 15 days from the date of the "Notification Form".

45098. Use the form, "**Request for Administrative Hearing - Placement**," as the written request (See Appendix P).

45099. Stop any planned change or decision whenever a hearing is requested until the entire appeal process has been completed.

EXCEPTION: Should an emergency threaten a child's health or safety, emergency action may be taken to protect the child. The County Director/designee must approve the emergency action within two (2) working days. The parent must be provided written notice of the emergency action and the reasons for it, including information about the parent's right to appeal. Such notice must be mailed to the parent within three (3) working days of the action.

45100. Accept a request for appeal when the parent believes a change or a decision has been made by the agency without following the required procedural guidelines.

PROCESSING THE REQUEST for a HEARING

1013.6

Requirement

The county department shall submit the following forms and supporting documents to the DHR Legal Services Office within three working days of receiving the parent's written request for a hearing:

- OSAH Form 1 * (cover sheet)
- Subpoena Requests *

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- Request for Administrative Hearing - Placement *
- Notification Form for Change in Case Plan/Services *
- Form 450 (current)

- Relevant Form 452
- Family Assessment
- Case Plans and Case Reviews
- Court Orders
- Copies of Foster Care policies/ procedures relied upon in reaching the action taken
- Any other pertinent case material

* See Appendix P for forms that can be reproduced in the county department.

1013.6 PROCEDURES

The county department must:

45164. Submit an original package of the above forms/documents and two collated copies to:

DHR Legal Services Office
ATTN: Appeals Reviewer
2 Peachtree Street, NW
Room 29.231
Atlanta, Georgia 30303-3142

45165. Contact the DFCS Legal Services Officer to coordinate the legal representation for the county department.

45166. Determine (in consultation with the DFCS Legal Services Officer) who should be present as witnesses at the hearing and what evidence, including documents, are needed to support the case.

45167. Complete the subpoena forms for all witnesses/documents and attach to the OSAH Form 1 when submitted to the DHR Legal Services Officer.

45168. Make available any materials submitted to OSAH should the parent and/or the parent's authorized representative request to see them. Obtain a "Release of Information" for non-agency material to be shared; (e.g., psychologicals, medical reports, etc.).

45169. Prepare and edit Form 452 so that only the material releasable to the parent can be read.

~~45170. Follow Requirement 1013.2 should the parent and/or authorized representative~~

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request to examine the case record.

45171. Arrange for the parent and/or the authorized representative to have transportation to the hearing.

45172. Maintain contact with the parent and promptly report any changes in the parent's circumstances or any requests for postponement/continuance to the DHR Appeals Reviewer.

1013.6 PRACTICE ISSUES

The DHR Appeals Reviewer is responsible for the following:

45232. To review the hearing request and determine if the issue is appropriate for appeal by OSAH

45233. To respond in writing to the requestor if the appeal will not be processed any further.

45234. To forward to OSAH the materials submitted by the county department if an administrative hearing needs to be held.

The OSAH Administrative Law Judge is responsible for the following:

41052. To sign the subpoena(s) in advance of the hearing and return them to the county department for service (personal or by certified mail). See Appendix P for subpoena forms and instructions.

41053. To deny or dismiss a hearing request for the following reasons:

- It has been withdrawn by the parent.
- It has been abandoned. (Abandonment may be considered if the parent or the authorized representative, without good cause, fails to appear at a scheduled hearing.)

41054. To provide the parties with written notice regarding the time, date, place and nature of the hearing.

41055. To inform the parties of the right of any party to subpoena witnesses and documentary evidence through the OSAH Administrative Law Judge.

41056. To grant the request of the parties to postpone or continue the hearing or change the time and place of a hearing.

41057. To exercise discretion during the conduct of the hearing if it appears that the issue involved in the hearing is different from the original issue for which the hearing was requested. In such case, the hearing may be continued so that all concerned may prepare additional evidence.

7. To share any material submitted by the county department during the hearing with the parent and/or authorized representative.

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WITHDRAWAL OF THE HEARING REQUEST BY THE PARENT

1013.7

Requirement

Should the parent elect to withdraw the request for an administrative hearing, the withdrawal shall be in writing. It may be submitted to the county department or directly to the DHR Legal Services Office.

1013.7 PROCEDURES

41096. Forward immediately any request for withdrawal to the DHR Legal Services Office, ATTN: Appeals Reviewer.

41097. If the parent withdraws the request within the initial three work days given the county department to forward the completed "**Request for Administrative Hearing - Placement**" to DHR Legal Services, forward both the form and the withdrawal statement to DHR Legal Services.

41098. If the parent withdraws the request after it has been submitted by DHR Legal Services to OSAH, forward a summary to DHR Legal Services which explains fully why the request is being withdrawn and how the agency will proceed.

CONDUCTING THE ADMINISTRATIVE HEARING

1013.8

Requirement

The county department shall adhere to established OSAH hearing procedures for presenting all pertinent facts and circumstances and advancing any arguments in support of the agency action/decision being appealed by the parent.

1013.8 PRACTICE ISSUES

41164. The parent may have an authorized representative such as legal counsel, relative, friend, or other spokesperson, or he may represent himself at the hearing. The parent and/or his authorized representative should have an adequate opportunity to:

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- Examine the releasable contents of the case record and all documents and records to be used by DFCS at the hearing at a reasonable time before the date of the hearing and/or at the hearing.
- Present the case and establish all pertinent facts and circumstances.
- Bring witnesses.

- Advance any arguments without undue interference.
- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

41165. The Administrative Law Judge (ALJ) will have the role/responsibility to:

- Consider the evidence and other materials introduced at the hearing and issue an initial decision within 30 days of “closing” the ALJ’s case. Note: The entire period of time from receiving the hearing request in the county department to issuing an initial decision must not exceed 90 days.
- Notify the parent (and DFCS) in writing of the decision.
 - If the decision is favorable to the parent, the decision becomes effective immediately.
 - If an adverse initial decision is issued, then the parent will be informed of his/her right for further appeal through the DHR Legal Services Office. A request for review must be submitted within 30 days of the initial decision. If either party makes no request for further review, the decision becomes effective within 30 days.
 - If the parent is not satisfied with the final administrative decision of the DHR Legal Services Office, a separate legal action may be filed.

TERMINATION OF PARENTAL RIGHTS

Termination of parental rights is the most serious legal action a county department can initiate upon the parent/child relationship. An order terminating the parental rights of a parent is without limit as to duration. In effect, it terminates the parent’s rights and obligations with respect to the child and all rights and obligations of the child to parent, including the rights of inheritance.

GROUNDINGS FOR TERMINATION OF PARENTAL RIGHTS

1013.9

Requirement

The department’s evidence must support its petition for termination of parental rights. The burden of proof is on DFCS to prove the facts by clear and convincing evidence that the child is deprived and that grounds for terminating the parent’s parental rights exist.

1013.9 PRACTICE ISSUES

41166. In considering termination of a parent’s rights, the following factors are considered by the court:

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- o *Standard of Evidence*

There must be clear and convincing evidence of parental misconduct or inability to care for the child; and

- o *Best Interest of the Child*

If the standard of evidence can be satisfied, then the court must determine that termination is in the best interest of the child. To make this determination, the court must weigh the physical, mental, emotional and moral condition and needs of the child, including the need for a secure and stable home.

2. The court may terminate the parental rights of a parent with respect to the parent's child if one or more grounds are satisfied:

Parental Consent

Parental consent refers to the written consent of the parent acknowledged before the court or, if the parent voluntarily surrenders his/her rights by use of a valid surrender, such acknowledgment is not necessary. Since Georgia has a ten-day revocation period, voluntary surrenders are accepted as valid on the eleventh day without court action.

Parental Failure to Provide Support

Parental failure to provide support requires that the parent must have been ordered to support the child; an order was given by a court of competent jurisdiction of this or another state; the parent "wantonly and willfully" failed to comply (parent had the resources to pay); and the failure to comply with an order lasted for a period of 12 months or longer.

Parental Abandonment

Parental abandonment requires an actual desertion of the child and the intent to disclaim all parental obligations and forego all parental duties indefinitely. Abandonment can occur when a child is left under circumstances that the identity of the parent is unknown and cannot be ascertained despite diligent searching. If the parent has not come forward to claim the child within 3 months following the finding of the child, the abandonment ground can be pursued as the basis for terminating parental rights.

Parental Misconduct or Inability

(A). "Parental misconduct or inability" is the most frequently cited ground for termination action. The court determines parental misconduct or inability by finding that:

- (i) The child is a deprived child (as defined in Code Section

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15-11-2).

- (ii) The lack of proper parental care or control by the parent in question is the cause of the child's status as "deprived;"
- (iii) Such cause of deprivation is likely to continue or will not likely be remedied; and
- (iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional or moral harm to the child.

(B). In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

- (i) A medically verifiable deficiency of the parent's physical, mental or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional or moral condition and needs of the child;
- (ii) Excessive use of or history of chronic, unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional and moral condition and needs of the child;
- (iii) Conviction of the parent of a felony and imprisonment, which has a demonstrable negative effect on the quality of the parent-child relationship;
- (iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally or sexually cruel or abusive nature;
- (v) Physical, mental or emotional neglect of the child or evidence of past physical, mental or emotional neglect of the child or of another child by the parent; and
- (vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(C). In addition to the considerations in (B), the court shall consider, without being limited to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to filing the petition for termination of parental rights:

- (i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;

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(ii) To provide for the care and support of the child as required by law or judicial decree; and

(iii) To comply with a court-ordered plan designed to reunite the child with the parent(s).

1013.9 PRACTICE ISSUES

1. Following an order terminating the parental rights of a parent (and there is no parent having rights), the court must determine the placement that is most appropriate for and find that it is in the best interests of the child. The following dispositions of the court are given in the order considered:

FIRST PRIORITY: Place with a person related to the child by blood or marriage or with a member of the child's extended family if:

- (a) the person is willing and after study, is found to be qualified to care for the child; and
- (b) the family member being given permanent custody or who is granted adoption, agrees to abide by the terms and conditions of the order.

SECOND PRIORITY: Commit the child to the custody of DHR or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption.

THIRD PRIORITY: Commit the child to a suitable individual on the condition that the person becomes the guardian of the person of the child.

FOURTH PRIORITY: Commit the child to the custody of DHR or to a licensed child-placing agency willing to accept custody for the purpose of placing the child in a foster home.

FIFTH PRIORITY: Commit the child to the custody of an agency or organization authorized by law to provide care for children that is operated in a manner similar to a family home as defined in the court's order.

NOTE: If the court, in considering 1 through 5 above, effects no placement of the child, the court may take other suitable measures for the care and welfare of the child.

2. The court transmits a copy of its final order terminating parental rights of a parent to the Office of Adoptions within 15 days of the filing of the order.
3. The juvenile court judge has a continuing obligation to review the circumstances of the child when:
 - A. **The child was placed for adoption, but a petition seeking adoption of the child is not filed within a year of the disposition order...**
 - *The court shall then, and at least yearly thereafter as long as the child remains unadopted, review the circumstances of the child to determine what efforts have been made to assure that the child will be adopted.*
 - *The court may then enter any order it deems necessary to further the adoption, including, but not limited to, another placement. (See 1002.13 for the responsibility of DFCS when the court has committed the child to*

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the custody of DHR.

- B. **The child was placed with an individual on the condition of becoming the child's guardian of person...**
- *The guardian must report to the juvenile court as ordered.*
- C. **The child was placed in the custody of an agency or organization...**
- *The court shall at least yearly and as long as the child remains subject to the jurisdiction of the court, review the circumstances of the child to determine that placement in the family home-like setting continues to be in the child's best interest.*

MANDATORY FILING REQUIREMENTS

1013.10

Requirement

According to the Adoption and Safe Families Act (PL 105-89) and Section 15-11-41(n) of the Juvenile Court Code, a termination of parental rights petition must be filed (except as defined in 1013.11) when:

- The child has been in foster care for 15 out of the most recent 22 months (See 1002.11);
- The child is an "abandoned" infant as defined in Georgia law (See 1013.9); or
- The court has determined that the parent has:
 - committed murder of another child of the parent;
 - committed voluntary manslaughter of another child of the parent;
 - aided or abetted; attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or
 - committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent.

(See Requirement 1002.15 regarding how DFCS must become "joined" as a party to a termination petition which has already been filed by another party on the child's behalf.)

EXCEPTIONS TO MANDATORY FILING REQUIREMENTS

1013.11

Requirement

Exceptions to the mandatory requirement to file a termination of parental rights action are:

- The child is in the care of a relative;
- The Case Plan documents a "compelling reason" for determining that filing such a petition would not be in the best interest of the child; or
- DFCS has not provided to the family of the child, consistent with the time period in the Case Plan, such services as deemed necessary for the safe return of the child to the home.

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SPECIAL DOCUMENTATION REQUIREMENTS

1013.12

Requirement

The SSCM is responsible for accurately and thoroughly documenting the case record to reflect the practice principles outlined in Chapter 80, Documentation in Social Services (Rev. 8/02).

1013.12 PROCEDURES

1. Document when parent/child visits are scheduled, whether or not each visit occurs, why the visit did not occur, etc. Document the quality and quantity of interaction between parent and child during visits; the degree of understanding and acceptance shown by the parent toward the child; the child's reaction to the parent. Include the foster parent's description of the child's reaction upon returning to the foster home after parent/child visits.
2. Document and monitor all referrals to other agencies; document missed appointments and reasons.
3. Document all telephone and face-to-face contacts with the foster parent, the parent, other relatives, etc. Include the major issues discussed and decisions reached.
4. Document all efforts made by the Case Manager and other DFCS staff, to fulfill the Case Plan or reach out to the parent having difficulties following the Case Plan.
5. Ensure that the Termination Packet (see 1013.14) is thoroughly and accurately documented when submitted to the agency SAAG.
6. Check the Putative Father Registry that is maintained by Vital Records to determine if the father is listed. If so, the man who believes he may be the biological father of a child will have the right to be notified of the termination action. (See Office of Adoptions Manual, Appendix H).

DFCS DECISION TO FILE A TERMINATION PETITION

1013.13

Requirement

The decision to file a petition to terminate parental rights must be approved and confirmed in writing by the County Director/designee. Granting such approval is based on the circumstances of the case, documentation of evidence and the goal of adoption being a viable permanent plan.

| REFERRAL TO SAAG VIA TERMINATION PACKET

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1013.14

Requirement

Within 30 days of the approval to file (see 1013.13), the SSCM is responsible for preparing the Termination Packet for submission to the agency SAAG. (See Addendum to this Section.) The information provided should be accurate and sufficient in detail for the SAAG to determine if (1) the evidence will satisfy the grounds for terminating parental rights; and (2) the preparation of the petition can proceed.

1013.14 PRACTICE ISSUES

1. The Termination Packet is designed to expedite the process of moving children to permanency.
2. While the agency SAAG may request other documents and/or case information than those items listed below, the "Packet" usually includes:
 - All court orders (including ten day hearing or adjudicatory orders; review orders, orders extending custody, etc.);
 - All case plans for the prior 18 months and supplemental orders making the case plans the order of the court;
 - A copy of the child's birth certificate; and
 - A completed Termination Questionnaire.

CONSULTATION WITH THE SAAG

1013.15

Requirement

The SSCM may be requested to meet with the SAAG in advance of the hearing and review the evidence, chronology of case events, major points to be brought out in testimony, witness list, etc.

1013.15 PRACTICE ISSUE

The SAAG will usually be able to prepare the termination petition within 30 days of the receipt of the "Packet" and have it ready for verification and filing. If there are delays in meeting this benchmark, it may be advisable to meet with the SAAG. If the county department finds that there are repeated delays in the preparation of petitions, the State Legal Services Office should be notified. (The Termination Packet Reporting Form and instructions are included in the Addendum to this Section.)

THE TERMINATION HEARING PROCESS

1013.16

Requirement

The Case Manager shall carry the major responsibility for introducing the pertinent facts. Other witnesses will basically verify the testimony of the Case Manager with the exception of

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qualified professionals testifying as expert witnesses.

1010.16 PRACTICE ISSUES

41436.The SAAG will conduct the direct examination, primarily using open-ended questions.

41437.These guidelines should be followed during direct examination:

- Be professional, but not cold.
- Speak clearly and distinctly.
- Give spoken answers to questions so that the answer can be recorded.
- Use ordinary language; if technical terms are introduced, explain them.
- Answer only what is asked, but introduce the major points essential to the case.
- If the answer is not known, do not guess.
- Maintain eye contact.
- Be exact, using dates and time of day and numbers.

41438.Cross-examination is conducted by the attorney for the parent and will be designed to uncover lies, mistakes, inaccuracies or weaknesses in the testimony given.

41439.The attorney for the parent may attempt to show the following:

- The competency of the Case Manager is questionable.
- The county department has not provided adequate or appropriate services to the parent.
- There are discrepancies between the case record and the Case Manager's testimony or between statements made in direct examination and cross-examination.
- The Case Manager made statements outside of court, usually to the parent, which are inconsistent with statements made in court.

41440.The attorney for the parent is not making a personal attack on any witness, but must attempt to show that termination is not justified.

41441.The following tactics are often utilized by attorneys to discredit testimony:

- Confuse the witness.
- Anger the witness.
- Have the witness say or agree to statements the witness does not mean.
- Intimidate a witness by a disrespectful attitude, an abrasive tone of voice, repetitious questioning and indications of disbelief.

41442.These guidelines should be followed during cross-examination:

- Answer the question in the shortest possible way.
- Give a complete answer; if the question calls for a yes or no answer that could be misleading, state the question cannot be answered without an explanation.
- Ask the attorney to rephrase a question that is not understood.

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- Stay calm and patient when the cross-examination is fast-paced; if the answer to one question is interrupted by another question, complete the answer to the original question.
- Never argue with an attorney or a judge. Pause slightly before answering to allow the SAAG to enter protective objections.
- Never speculate although the question may call for speculation; say the answer is unknown.

TERMINATION DECISION AND APPEAL PROCESS

1013.17

Requirement

The parent shall have 30 days from the termination decision in which to appeal. If no appeal is filed within the time frame, the decision stands indefinitely.

1013.17 PROCEDURE

If the Notice of Appeal is filed, the Juvenile Court order stands until the appeal is resolved. The county department continues with the legal right to the care and control of the child.

1013.17 PRACTICE ISSUES

41504.If a Notice of Appeal is filed, the Juvenile Court termination is appealed to the Court of Appeals and may later be appealed to the Supreme Court of Georgia. Both courts do not take testimony, but render their decision on review of the court hearing. This is the reason it is critical to enter all the major points to support termination during the hearing; no new evidence may be entered when the case is under appeal.

41505.If the termination decision is overturned:

- A. The Court of Appeals can determine who should have custody of the child when the court gives its decision. If the appellate decision is for the parent to have custody, this would supersede the temporary custody order of the Juvenile Court.
- B. A Juvenile Court judge can change the temporary custody order in response to an overturn by the Court of Appeals. The person or agency having custody of the child would depend upon wording of the changed order.

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SERVICES TO PARENTS DURING THE APPEAL

1013.18

Requirement

If termination of parental rights is granted and the parent files an appeal, brief supportive services may be offered to the parent and referrals made to other agencies for ongoing support. Parent/child visitation may continue unless the court order states otherwise or professional opinion provides documentation of the detrimental effects on the child.

1013.18 **PROCEDURE**

41640.If possible, assist the parent in participating in adoption planning by:

- Giving family background information;
- Assisting in the development/update of the Life Book through information or pictures;
- Selecting a family memento for the child to take into the adoptive placement; and
- Supporting the parent in telling the child good-bye when termination occurs.

ATTORNEYS AND GUARDIANS AD LITEM

In a termination of parental rights proceeding, the court **must** appoint an attorney to represent the child as his counsel and may appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child's counsel.

In any other proceeding, the court shall "appoint a guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or if the interests of the parent, guardian or custodianconflict with the child's interests or in any other case in which the interest of a child requires a guardian." In deprivation cases, an attorney or court appointed special advocate (See CASA - 1013.20), or both, **may** be appointed as the child's guardian ad litem.

1013.19

Requirement

The Case Manager shall cooperate with a guardian ad litem appointed by the court to represent a child.

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1013.19 PROCEDURES

1. If requested, arrange for the guardian ad litem to interview the child and to have pertinent information from the DFCS case record. (Note: The names of reporters should be removed.)
2. Provide copies of all Case Plans to the appointed guardian ad litem and invite him/her to participate in all case reviews.

COURT APPOINTED SPECIAL ADVOCATE (CASA)

The Georgia CASA Program utilizes volunteers who are screened, trained and supervised in their role of protecting the best interests of a child involved in deprivation proceedings. About one-third of all Georgia counties have local CASA programs. Appendix V contains the "Mutual Agreement of Understanding" between DFCS and Georgia CASA, which was effective February 1, 1999. This protocol is designed to promote mutual cooperation and coordination in working together around the needs of deprived children.

A CASA is appointed by the judge as an officer of the court and is sworn to confidentiality. The judge will be interested in CASA's independent and objective information regarding a child's status. The CASA will be required to make recommendations about the needs of and plans for the child, including permanency.

1013.20

Requirement

The Case Manager shall cooperate with the CASA volunteer appointed by the court to represent the best interest of a child.

1013.20 PROCEDURES

41776.If requested, arrange for the CASA volunteer to interview the child and all parties having knowledge of the child's situation.

41777.If requested, make the DFCS case record available for the CASA's review with the exception of the names of reporters, which shall be removed.

1013.20 PRACTICE ISSUES

41844.A CASA's responsibilities to the court are:

- To review all relevant records to ascertain the facts and circumstances of the child's situation;

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- To interview appropriate parties involved in the case, including but not limited to the child, parents, the Case Manager, foster parent, teacher, doctor, etc.;
- To provide a written report of findings and recommendations to the court at each hearing to assure all relevant facts are before the court;
- To attend all court and citizen panel review hearings to represent the child's best interests;
- To explain the court proceedings to the child, when appropriate;
- To request that clear, specific orders are entered for evaluation, assessment, services, placement and treatment for the child and the child's family;
- To advocate for the implementation and achievement of court orders and a permanent plan for the child and family;
- To inform the court and DFCS promptly regarding new developments, violations of orders, etc.;
- To seek cooperative solutions which will best serve the child's best interests;
- To remain actively involved in the case as ordered by the court; and
- To maintain strict confidentiality of all information related to the case.

2. The Case Manager's responsibilities to the CASA volunteer are:

- To arrange for the CASA to interview the child and all parties having knowledge of the child's situation;
- To inform the foster parent or facility staff person that a CASA has been assigned to the child as soon as the identity of the CASA is known;
- To immediately inform the CASA of the child's change in placement or any other significant change which could impact the CASA's role or decision;
- To share pertinent information with the CASA in a timely manner; at a minimum, contacts between the CASA and DFCS need to occur on a monthly basis;
- To make the DFCS case record available for the CASA's review in the DFCS office (the Case Manager will need to remove the name(s) of reporters);
- To provide written notification for the CASA to attend and participate in Case

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Plan meetings and reviews;

- To provide copies of all current Case Plans;
- To share and discuss with each other case specific recommendations, written suggestions and findings that will be included in reports to be submitted to the court (reaching consensus is not required);

3. The DHR Personnel Policy Manual prohibits DFCS employees from serving on the Board of Directors of any agency that receives funds under a contract with the state. This prohibition applies to local CASA programs since the state organization has a contract with DHR. However, DFCS staff may serve in an advisory capacity of "liaison" to the Boards and Advisory Boards should there be such a position. The liaison will not be a voting Board member.

OTHER AGENCY/FOSTER PARENT ACCESS TO RECORDS

State law mandates that "any child-caring agency, child-placing agency, or identified foster parent shall have reasonable access to **non-identifying information** from the placement or child protective services record.....with respect to any child who has been placed in the care or custody of such agency or foster parent or for whom foster care is being sought....."

Child-caring and child-placing agencies are those listed in Appendices G, H and I or approved by the Treatment Services or Foster Care Unit.

Foster parents include those affiliated with:

- DFCS, DJJ, MH/MR/SA;
- Those agencies listed in Chapter 1004 as approved placement resources or in Appendix G; and
- Those agencies in Appendix I with a foster care component.

1013.21

Requirement

If access to the case record is requested by a child-caring/child-placing agency or identified foster parent, the Case Manager shall make available non-identifying information in the Placement and CPS records including:

- Reports of abuse of the child
- Family Assessment

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- Medical history of the child, including psychological or psychiatric evaluations
- Educational records of the child

1013.21 PRACTICE ISSUES

41912.Any agency or identified foster parent who is granted access to a child's record shall be subject to penalties under law for unauthorized access to or use of such records.

41913. Identifying information is generally defined as information giving the name and location of the person (address, telephone number, place of business, name of town, well-known landmarks, etc.). Non-identifying information can apply to the child, birth family and/or provider. **The county department has discretion in determining whether the information will be released as identifying or non-identifying.**

WRITTEN REQUEST FOR ACCESS

1013.22

Requirement

The child-caring/child-placing agency or the identified foster parent must submit a written request for access to a child's record. The county department shall respond within 14 calendar days of the receipt of the request. To the extent possible, the county department must accommodate the needs of the other agency/foster parent in exercising their legal right to access a child's record.

1013.22 PROCEDURES

45952. Assist any DFCS foster parent with preparing a written request, if needed. (Foster parents from other agencies should be assisted by staff from those agencies, if needed.)

45953. Respond to the written request within a 14 calendar day time frame as specified in the law. Make available the case record within 5 working days of the request in order to expedite the placement of the child. (The scheduling of the actual review of the record may go beyond 14 calendar days if it is to accommodate the other agency/foster parent.)

45954. Make arrangements for the review of the actual case record in the county department whenever possible. (The County Director in the legal county must give written authorization if the record or copies of the record are to be reviewed at a location other than the legal or boarding county.) Consider travel time in deciding where the record will be made available for review. If the record is to be mailed, send a copy of the releasable portions by certified mail to the nearest county DFCS. Arrange for agency staff to be present when the record is reviewed. Security destruct the copy made of the record after its review.

45955. Arrange for a DFCS staff person to be present when the other agency staff or foster parents access the record information. Have a staff person be able to personally discuss DFCS policies and procedures and/or answer other questions about the case record

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contents or be able to locate another DFCS staff person able to do this.

45956. Always remove the name and location of the reporter or of others corroborating the report of abuse or neglect.

45957. Remove or obliterate any identifying information that will not be released prior to the information being reviewed by administrative or clinical agency staff.

PROSPECTIVE FOSTER PARENT

(A prospective foster parent is one to whom the agency has presented information on a child for the purpose of placing the child in the home of the foster parent.)

1013.23

Requirement

If the foster parent requests to review the child's record before making a final decision about accepting the child for placement, the Case Manager shall make the record available, ensuring that identifying information (for example, the reporter's name, the names and location of extended family members, the names of schools, hospitals or doctors, etc.) is removed or obliterated.

RECORD ACCESS BY CURRENT FOSTER PARENT

1013.24

Requirement

If the current foster parent of a placed child requests to review the child's record, the Case Manager shall determine what identifying information may be shared with foster parent. (The name and location of the reporter or of others corroborating the initial report must never be released.)

ACCESS TO CPS HISTORY BY A PRIVATE AGENCY or COURT INVESTIGATOR

1013.25

Requirement

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In accordance with O.C.G.A., Section 49-5-41, the county department may permit access to records concerning reports of child abuse and may release information from such records to the following persons or agencies:

- A licensed child-placing agency; *
- A licensed child-caring institution of this state which is assisting DFCS by locating or providing foster or adoptive homes for children in the custody of the department; * or
- An investigator appointed by a court of competent jurisdiction of this state to investigate a pending petition for adoption. *

****A signed release of information from the applicant must accompany the request.***

1013.25 PRACTICE ISSUES

46348.The authority to access and share information regarding CPS history of a prospective provider provides additional safety assurances for children in foster and adoptive placements.

46349.Policy already requires that the Protective Services Data System (PSDS) be checked for applicants applying to be DFCS foster and/or adoptive families. (See Section 1014.45.J.) Since this is an internal procedure, no release of information is required.

46350.When the PSDS is accessed, the following information (if known) would be indicated: the report, the date of such report, what was substantiated, the case determination, etc. The PSDS may indicate that information is available in the county's closed files and/or the closed files of another county DFCS office or state. If a CPS history is indicated, the SSCM may need to review the local county record and/or request that the other county or state do the same.

46351.The PSDS may not be used by day care providers, schools or anyone else requesting background checks and information for employment purposes, even when a signed release of information is provided.

OPEN RECORDS ACT AND CHILD DEATH CASES

1013.26

Requirement

In accordance with O.C.G.A. 49-5-41, the county department shall make available upon request by any citizen, the child abuse and deprivation records of **any child who dies while in DFCS custody**. Such records shall not be confidential and shall be subject to the open records.

1013.26 PROCEDURES

1. Accept the request (preferably made in writing) to inspect the case record of a deceased child. (Confirm in writing whenever a request to review the record is made verbally.)

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2. Notify the County Director and county SAAG as soon as the request is received. (The County Director shall immediately notify the state DFCS Legal Services Officer at this point.)

3. Provide only the information applicable to the deceased child (who died while in DFCS custody).

4. Respond within three business days of receipt of the request. Provide a written response to the person making the request indicating how arrangements may be made to view the records.

5. Attempt to notify the deceased child's family of the request for information, if deemed appropriate.

6. Charge .25 cents per page for copying.

7. Release the name of the reporter if it appears in the records.

8. Release reports received from other sources (e.g., psychologicals, medicals, etc.). **Exception:** Alcohol and drug abuse information obtained from a person or organization providing a substance abuse diagnosis, treatment or referral for treatment, **cannot** be released. (A non-redisclosure notice should have accompanied this information.)

PROTECTIVE ORDERS

1013.27

Requirement

The county department may request the court to issue a separate order restraining or otherwise controlling the conduct of a parent/relative. The protective order may require the parent/relative:

- To stay away from the home or the child;
- To permit a parent to visit the child at stated periods;
- To abstain from offensive conduct against the child, his parent or any other person to whom custody of the child is awarded;
- To give proper attention to the care of the home;
- To cooperate in good faith with an agency to which custody of a child is entrusted by the court or with an agency or association to which the child is referred by the court;
- To refrain from acts of commission or omission that tend to make the home not a proper place for the child;
- To ensure that the child attends school pursuant to any valid law relating to compulsory attendance;
- To participate with the child in any counseling or treatment deemed

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necessary after consideration of employment and other family needs; and

- To enter into and complete successfully a substance abuse program approved by the court.

1013.27 PRACTICE ISSUES

2. The parent/relative against whom the protective order is directed, is afforded due notice and an opportunity to be heard before such an order is granted by the court.
3. Protective orders may be modified, extended or terminated by the court as deemed necessary and in the best interest of the child. Such orders are also enforceable by the court.
4. The county department, in consultation with the SAAG, needs to determine if a separate order (other than the court-ordered Case Plan) is necessary.