



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

TERMINATION OF JURISDICTION; ICWA

In re Melissa R., filed August 27, 2009, First Dist., Div. Three

Docket No. A121951

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A121951.PDF>

Melissa was a 20 year old woman with severe developmental disabilities. Throughout her young childhood, Melissa was frequently a dependent of the court. In May 1997, when Melissa was eight, the dependency case was dismissed, and Melissa was placed in her mother's care. When Melissa was sixteen, dependency was re-instated. It was discovered that mother was using drugs, and that Melissa could neither walk, speak nor use the toilet by herself. Melissa was placed in a group home, and mother was granted reunification services. At the 12-month review, the court found that mother had complied with her case plan to the best of her ability, but that return to mother would create a substantial degree of risk. The court extended reunification services for six more months. Meanwhile, Melissa made great progress at her group home. At the 18-month review, the county agency recommended that the court dismiss the dependency with a permanent living arrangement in her group home. Melissa's counsel concurred. Mother wanted Melissa returned to her care. After several continuances, the court found after a hearing that there would be a substantial risk of detriment to Melissa if she was returned to mother's care. Thereafter, the court dismissed the dependency with an order that Melissa remain at her group home. Mother appealed, on the grounds that the trial court erroneously focused on whether there would be a substantial risk of detriment of return to mother, and failed to consider whether judicial oversight was necessary to protect Melissa from a foreseeable risk of harm.

Affirmed. The trial court made clear that the first issue before it was whether returning Melissa to mother's care would require a substantial risk of detriment. The court found that there was a risk of such detriment; although mother appeals that finding, it became moot once Melissa became 18 and mother's parental rights over Melissa terminated by operation of law. As to the question whether the trial court properly terminated jurisdiction, the court applied the correct standard--whether termination would give rise to an existing or reasonably foreseeable future harm to Melissa. The court found that it would not, and so jurisdiction was properly terminated. As to the ICWA issues, although notice under the ICWA was deficient, the issue became moot once Melissa turned eighteen. (PB)

OTHER LEGAL DEVELOPMENTS

New or Revised Los Angeles County Department of Children and Family Services Policies of Significance –

For Your Information (FYIs):

09-44 Changes To Regional Center's Early Start Program Eligibility Requirements

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0944RegionalCenterEligibilityChange.doc>

This FYI is to advise staff that the Early Start program has eliminated "at risk" as an eligibility criterion. Specifically, **effective 10/01/09**, there will be no Early Start Program Services for infants/toddlers who were previously receiving, or might have in the future received such services due to the eligibility criterion of being "at risk" of having a substantial developmental disability due to a combination of biomedical risk factors. (SA)

09-45 When Is An ASFA Home Assessment Needed

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0945IsASFAassessmentNeeded.doc>

This FYI lists the circumstances when DCFS must conduct an ASFA home assessment and when DCFS does not need to conduct an ASFA home assessment. (SA)

09-46 Forms Posting Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0946FormsUpdate.doc>

This FYI is to provide staff with an update to the posting of new/revised forms to LA Kids and to the CWS/CMS (LA County specific templates) since the release of FYI 09-39 issued 08/06/09. (SA)

09-47 Policy Release Update

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0947PolicyReleaseUpdate.doc>

This FYI is to provide staff with an update to the posting of new/revised procedural guides to LA Kids since the release of FYI 09-40 issued 08/06/09. (SA)

Procedural Guides:

0070-548.02 (REV) Point of Engagement: Alternative Response Services (ARS)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054802v0909.doc>

This procedural guide was updated with instructions to direct SCSWs to obtain ARA approval for all referrals for Alternative Response Services. (SA)

0070-548.05 (REV) Emergency Response Referrals Alleging Abuse in Out-of-Home Care Regarding Children Who Are Under DCFS Supervision

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054805v0909.doc>

This procedural guide was revised to reflect the following requirements on emergency response referrals: the investigation should go beyond the narrow scope of the allegations listed on the referral, the CSW should assess if any other safety threats are present and if necessary add allegations to the referral, and all referrals with mental health concerns require a consultation with the co-located DMH staff and/or the CSAT team leads (SLS/MAT Coordinator) representing the office of the Medical Director. In addition, this procedural guide was revised to provide CSWs with a comprehensive policy on completing the initial investigation. (SA)

0070-548.06 (REV) Emergency Response Referrals Alleging Abuse of Children Who Are Under DCFS Supervision and Residing in The Home of a Parent

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054806v0909.doc>

This procedural guide was revised to reflect the following requirements on emergency response referrals: the investigation should go beyond the narrow scope of the allegations listed on the referral, the CSW should assess if any other safety threats are present and if necessary add allegations to the referral, and all referrals with mental health concerns require a consultation with the co-located DMH staff and/or the CSAT team leads (SLS/MAT Coordinator) representing the office of the Medical Director. In addition, this procedural guide was revised to provide CSWs with a comprehensive policy on completing the initial investigation. (SA)

0070-548.10 (REV) Disposition of the Allegations and Closure of the Emergency Response Referral

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054810v0909.doc>

This procedural guide was revised to reflect the following requirements on emergency response referrals: the investigation should go beyond the narrow scope of the allegations listed on the referral, the CSW should assess if any other safety threats are present and if necessary add allegations to the referral, and all referrals with mental health concerns require a consultation with the co-located DMH staff and/or the CSAT team leads (SLS/MAT Coordinator) representing the office of the Medical Director. In addition, this procedural guide was revised to provide CSWs with a comprehensive policy on completing an initial investigation on the family to determine if child abuse or neglect has occurred as well as a comprehensive policy on completing an assessment to determine what, if any, services are needed to ameliorate or prevent child abuse and neglect. (SA)

0070-580.10 (REV) Requests From Probate Court to Assess for Possible DCFS Intervention

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007058010v0909.doc>

This procedural guide notifies DCFS staff that if they investigate the wellbeing of a child under the care of a relative and determine that the child is not at immediate or future risk by the parent or current caregiver, the CSW **may not require** the caregiver to obtain Probate Court legal guardianship as a condition to closing the child abuse referral as the decision to remain an informal caregiver or obtain legal guardianship is up to the caregiver. If there are no issues that warrant DCFS intervention, CSWs shall provide the caregiver with an information sheet which includes a list of organizations that can assist the caregiver in determining if a Probate Court legal guardianship is desirable. Further, this procedural guide updated the list of referrals for assistance in obtaining probate guardianship for CSWS to provide to caregivers. (SA)

0080-502.15 (REV) Non-Related Legal Guardianship Cases from Probate Court

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050215V0909.doc>

The procedural guide was revised with instructions for CSWs to follow when the legal guardian wants to adopt the child. Further, instructions were added to clarify current procedures in the case opening process. Finally, time frames for the case opening process were added to ensure the timely processing of the funding request. (SA)

0100-520.09 (REV) Caregiver Approval: Requesting Goods and Services

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052009v0909.doc>

This procedural guide was revised to reflect that the Kinship Support Division and ASFA Division are now separate divisions. (SA)

0300-503.21 (REV) Concurrent Planning & Termination Of Parental Rights (TPR)- Related Activities

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050321v0909.doc>

This procedural guide was updated with instructions to clarify the timeframe and responsibilities of the DI when writing court reports. It was also updated to reflect revised Concurrent Planning Redesign (CPR) procedures related to situations where the DI may end date their assignment on adoption cases prior to the termination of parental rights, provided that certain tasks have been completed. (SA)

0500-504.10 (REV) Protection and Disclosure of HIV / AIDS Information

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050050410ProtecDiscloseHIVinfov0909.doc>

This procedural guide was updated to provide clarification and streamlining of instructions for CSWs and SCSWs, including updating the Rules of Court section numbers, adding a reference to WIC 827 requirements, adding an explanation of the rights of children 12 years of age and older regarding consent, and adding instructions regarding maintaining confidentiality of electronic documentation. (SA)

0600-500.00 (REV) Utilization of Medical HUBS

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050000v0909doc.doc>

This procedural guide was updated a second time with revised instruction for CSWs to follow to prevent delays in scheduling forensic evaluations. (SA)

0600-502.20 (REV) HIV / AIDS Services

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050220HIVAIDSServicesv0909.doc>

This procedural guide was updated to clarify information and instructions regarding obtaining authorization for HIV testing, clinical trial protocols, and to update titles of referenced Procedural Guides. Further, instructions were added for SCSWs to meet with CSWs to discuss DCFS protocols regarding confidentiality and the documentation of a youth's HIV/AIDS status. (SA)

0600-513.15 Requesting Non-Emergent Transportation for Children With Special Health Care Needs Under DCFS Supervision

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060051315V0909.doc>

This procedural guide informs staff that DCFS has obtained a transportation contract with INTL LIMO, INC. to provide dispatch capabilities to schedule, service, and respond to service orders 24 hours a day, seven days a week for children with special health care needs who are serviced by the Medical Case Management Services Units, Regional Emergency Response Units and the Emergency Response Command Post. (SA)

E030-0510 (REV) Initial Determination For Financial Participation

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E030/E0300510v0909.doc>

This procedural guide provides guidelines for Eligibility Workers in meeting the federal and state compliance standards, which includes accurate and timely payments to caregivers, timely referrals for issuing Medi-Cal, implementing model case format to comply with State and Federal regulations, and completing initial and yearly redeterminations. It was updated to inform CSWs that ARA approval is required when requesting an assessment for any child age 37 –59 months, when placing a third D-rate child in the home, when placing a third child with or without special needs in the home, and for an F3 or F4 rate. (SA)