

**OPEGA
INFORMATION
BRIEF**



INFORMATION BRIEF

**Child Protective Services
Reunification**

February 2024

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prepared for the
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OPEGA Information Brief: Child Protective Services Reunification

About Reunification

Reunification in child welfare is a system of parallel processes in the District Courts and the Department of Health and Human Services (DHHS) Office of Child and Family Services (OCFS) designed to find permanent homes for children in state custody, with a preference for returning children to their biological parent(s). Federal law prioritizes reunifying families as the best outcome, if the circumstances that jeopardize the child's health or welfare can be alleviated. The courts—through the work of judges, attorneys for parents and for OCFS, and child representatives—ultimately decide what parents need to do to reunify with their child and whether to restore parental custody or find another form of permanency like adoption. With respect to reunification, OCFS arranges foster placements for the child, supports resource families and kinship placements that provide foster care, provides social work to help children recover from maltreatment and prepare to return to their biological parent, and identifies needs and arranges services to help the parent alleviate the conditions that led to the child's removal. OCFS also has responsibilities for achieving other methods of permanency for the child when reunification is no longer an option.

Our Approach

For this report, OPEGA: (1) examined relevant Maine statutes, federal law, agency rules, and OCFS policies; (2) conducted a total of 58 interviews with OCFS staff members, stakeholders in the court process, biological and resource parent representatives, and others; and (3) assessed OCFS reunification work by analyzing existing quality assurance data. OPEGA examined the 235 case reviews conducted from April 2017 to March 2023 that had reunification as the child's permanency goal.

OPEGA identified four cross-cutting challenges that are prevalent in reunification casework.

1. Caseworker practices concerns
 - Assessment of parent's substance use: Many cases did not meet the federal standard for regularly assessing parents' substance use. OCFS staff named caseworker inexperience and issues with drug screening as challenges contributing to this concern.
 - Caseworker engagement with family: Casework tended to fall short of expectations on assessments of caseworker conversations with parents about their needs and case planning goals, as well as facilitation of family team meetings. Staff said that inadequate training and job shadowing contribute to this deficiency.
2. High workloads impacting safety, permanency, and well-being outcomes
 - Permanency caseworker vacancies: OCFS has struggled with high staff turnover and inability to fill vacant positions, with some district offices experiencing especially high vacancy rates. This causes high workloads and means that staff are relatively inexperienced, which contribute to many of the identified challenges.

- Lack of support staff: Frontline staff reported that inadequate support with administrative and legal tasks exacerbates the challenge of high workloads and has a negative impact on casework quality.
 - Lack of visitation supervisors and transportation for families: OCFS contracts with agencies to provide supervision for parent and child visits, as well as transportation for families. Staff and parent representatives reported high demand and lack of availability of these crucial services.
3. Waitlists for evaluations and treatment: Case reviews and staff interviews suggest that progress toward reunification is often hindered by long waitlists for parents' required mental health evaluations, mental health treatment, and for substance use disorder treatment.
 4. Timeliness of termination of parental filings and other legal concerns: Case reviews identified challenges with timeliness of filing termination of parental rights, leading to delays in permanency for children. Several factors may contribute to delays, including caseworker workload and the backlog of cases in the judicial system delaying hearings necessary for timely reunification.

Acknowledgements

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Table of Contents

INTRODUCTION	1
PART 1: THE PROCESS OF REUNIFICATION	1
Initial State Actions	2
Placement Options	3
Court Appointments	3
The Parent’s Attorney and Initial Court Hearings	4
Role of the AAG in Child Protection Cases	4
Case Management Conference	5
Early Planning	6
Preliminary Reunification and Rehabilitation Plan	6
The Child Plan	7
The Visit Plan	7
Concurrent Planning	7
Ongoing Monitoring and Assessment, and Provision of Services	7
The Rehabilitation and Reunification Plan (R&R Plan)	9
Jeopardy Hearing and Jeopardy Order	9
Parental Rights and Responsibilities Order	10
Permanency Review Team	11
SDM Reunification Assessment Tool	11
Judicial Reviews	11
Permanency Planning Hearing	12
Successful Rehabilitation and Reunification Efforts	13
Changes to Visitation	13
Custody of the Child Returned to Parent(s)	15
Unsuccessful Rehabilitation and Reunification Efforts	16
Adoption	16
Termination of Parental Rights (TPR)	16
Permanency Guardianship	18
Cease Reunification Order	19
Other Planned Permanent Living Arrangement (OPPLA)	19
PART 2: OPEGA’S ANALYSIS OF OCFS PERFORMANCE IN REUNIFICATION CASES	21
The Child and Family Services Review and OCFS Quality Assurance (QA) Program	21
OPEGA’s Analysis of Case Review Results	21
Structured Interviews and Identifying Potential Challenges	21
Summary of OPEGA’s Results	22

Challenge 1: Caseworker Practice Concerns	22
Challenge 2: High Workloads Impacting Safety, Permanency, and Well-Being Outcomes	23
Challenge 3: Waitlists for Evaluations and Treatment	26
Challenge 4: Timeliness of TPR Filings and Other Legal Concerns	26
Conclusion	27
Scope and Timing of this Information Brief	28
APPENDIX A. AGGRAVATING FACTORS	29
APPENDIX B. METHODOLOGY	30
Case Reviews	30
Other Stakeholder Perspectives	33

Acronyms Used in This Report

AAG	assistant attorney general
CASA	court appointed special advocate
CFSR	Child and Family Services Review
CMC	case management conference
CODE	court ordered diagnostic evaluation
CPS	Child Protective Services
DHHS	Department of Health and Human Services
FTM	family team meeting
GAL	guardian ad litem
GOC	Government Oversight Committee
ICPC	Interstate Compact on the Placement of Children
ICWA	Indian Child Welfare Act
MCILS	Maine Commission on Indigent Legal Services
OAG	Office of the Attorney General
OCFS	Office of Child and Family Services
OPEGA	Office of Program Evaluation and Government Accountability
OPPLA	Other Planned Permanent Living Arrangement
OSRI	Onsite Review Instrument and Instructions
PPO	preliminary protection order
QA	quality assurance
R&R	rehabilitation and reunification
SDM	Structured Decision Making
TPR	termination of parental rights

Introduction

In August 2021, the Government Oversight Committee (GOC) approved an OPEGA review of Child Protective Services (CPS). The project included three components: 1) Oversight of CPS; 2) CPS Investigations; and 3) CPS Reunification. The first two were completed in the first quarter of 2022, and OPEGA began preliminary research on CPS Reunification in April 2022. The project was paused by the GOC in September 2022 for a new project: CPS Case File Reviews on safety decisions and actions taken on a series of high-profile child deaths in Maine. OPEGA resumed work on CPS Reunification in March 2023, alongside the prioritized CPS Case File Reviews.

This report is an OPEGA Information Brief that describes the reunification process, the primary challenges within that process, and some of the factors contributing to those challenges. We have chosen to provide an information brief due to the desire of the GOC for accelerated action in their efforts to reform the child protective system and the short duration of the second legislative session. The Brief is in two parts. Part 1 describes the process of reunification and the roles of the Department of Health and Human Services (DHHS) and the Maine Judiciary. Part 2 examines data on Office of Child and Family Services (OCFS) performance against federal performance standards to further define the challenges to be met and provides information on the varied perspectives of Department personnel as well as parents and their representatives.

Part 1: The Process of Reunification

The Due Process Clause of the U.S. Constitution grants parents the fundamental rights of care, custody, and control of their children, and the Supreme Court has affirmed this right so long as a parent adequately cares for their children. Alongside this constitutional foundation, one of the widely accepted principles of child welfare policy and practice has been that for children removed from the care and custody of their parents, the best outcome is to be reunified with their parents—but only if safe to do so. This particular principle is reinforced throughout federal law¹ and is reflected in each state’s relevant child welfare laws. Maine’s Child and Family Services Child Protection Act (22 M.R.S. §§ 4001 to 4099-P)² establishes the statutory framework for child protective services provided by the state through the DHHS and the OCFS. The Act specifically requires that “reasonable efforts be made to rehabilitate and reunify families as a means of protecting the welfare of children, but prevent needless delay for permanency plans for children when rehabilitation and reunification is not possible (§ 4003(3)).”

¹ References emphasizing reunification can be found in the Adoption Assistance and Child Welfare Act (1980) Public Law 96-272, the Adoption and Safe Families Act (1997) Public Law 105-89, and the Families First Prevention and Services Act (2018) Public Law 115-123.

² <https://legislature.maine.gov/legis/statutes/22/title22ch1071sec0.html> (last visited Feb. 12, 2024).

Reunification is a complex process in which a child’s needs for safety, well-being, and permanency are continually assessed. The process involves case planning, the identification of services to address the conditions that led to the removal of the child from the home, the availability and provision of those services, parental engagement in the process and services, regular parental visitation with the child, the caseworker’s ongoing assessment of the family’s progress, and concurrent planning if reunification efforts are unsuccessful—all of which is overseen through an established court process in which parents are entitled to counsel to represent their interests, the state’s interests are represented by an Assistant Attorney General (AAG), and the child’s interests are represented by a guardian ad litem (GAL). The ultimate goal is for a child to achieve permanency: a legally permanent, nurturing family in the form of reunification with a parent or other relative, to a legally finalized adoption, or to a legal guardian.

In the following sections, we provide a basic overview of the general reunification process when reunification is warranted, the various parties to the process, the parties’ roles and responsibilities, and the various considerations that are made throughout the process.

Initial State Actions

During a child protective investigation, if the Department believes a child is in circumstances of jeopardy³ to their health or welfare, they will file a petition for a child protection order with the court (also known as a jeopardy petition).⁴ The petition will contain the allegations necessitating court action and a request for specific court action. These requests may include ordering the parents to participate in services deemed necessary to address child safety concerns or ordering the child into state custody. Once the petition is filed, the court will schedule a case management conference during which the parties will plan for the jeopardy hearing which is held within 120 days of the petition being filed. During this time, the child remains in the care and custody of their parents.

Jeopardy is defined in Maine statute as serious abuse or neglect, as evidenced by:

- Serious harm or threat of serious harm;
- Deprivation of adequate food, clothing, shelter, supervision, or care;
- Deprivation of necessary health care when the deprivation places the child in danger of serious harm;
- Truancy;
- Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or
- End of voluntary placement, when the imminent return of the child causes a threat of serious harm

However, if the Department believes that there are one or more safety threats that indicate the child is at immediate risk of serious harm, they will also file a request for a preliminary protection order (PPO) when they file the petition for a child protection order. More often than not, the Department requests custody of the child in a PPO. The Department may also request, among other dispositions, that a perpetrator of violence leave the home or that the family engage in specific services identified to mitigate

³ Defined in 22 M.R.S. §4002(6)

⁴ See OPEGA’s March 2022 *Child Protective Services Investigations* report for a description of this process.

the immediate risk. If a judge grants custody to the Department, the child is immediately removed from the home and enters state custody until a summary preliminary hearing (also known as a C-1 hearing) can be held within seven to fourteen days of the filing of the PPO.

Placement Options

Once a child is in the custody of the Department, a safe, temporary placement for that child must be secured. Placement decisions are made with input from the parent(s), other significant adults in the child's life, the caseworker, and, when appropriate, the child. There are multiple placement options for the Department, as described below in order of statutory preference:

- **Kinship Placement.** A placement in which the child is cared for by an individual who is related to the child by blood, marriage, or adoption, or through close family relationships (“fictive kin”) that are acknowledged by the child's parents. Statute requires that the Department place children with an adult relative when possible⁵ and that the Department shall give preference to an adult relative over a nonrelated caregiver when determining placement for a child, as long as the adult relative meets all relevant state child protection standards.⁶
- **Resource Home.** Commonly referred to as a “foster home,” a placement in which a child is cared for by unrelated person(s) in that person's private home. These homes are licensed by the Department, and, as such, caregivers have completed and passed a background check, a home inspection, a home study, and pre-service training.
- **Children's Residential Care Facilities.** In some cases, a child with behavioral health or physical health needs will be placed in a children's residential care facility. A contracted agency oversees MaineCare eligibility for these placements, which, depending on the child's specific treatment needs and the availability of specific services, may be located in or out of Maine. Placements outside of Maine are subject to the Interstate Compact on the Placement of Children (ICPC), which is a statutory agreement among Maine, all 49 other states, the District of Columbia, and the U.S. Virgin Islands, that provides the requirements that must be met before a child can be placed out of state.⁷
- **Emergency Placement.** This is not a placement per se, but rather a situation in which a child who is in immediate risk of serious harm has been removed from their home, but an appropriate placement given the child's needs is not readily available. In these cases, the child may be temporarily cared for and supervised by OCFS caseworkers in a hotel.

Court Appointments

All parents are entitled to legal counsel in child protection proceedings, and, upon receipt of the petition(s), the court will appoint an attorney to each parent.⁸ These attorneys are rostered with the

⁵ § 4003(3-A)

⁶ § 4005-G(1)

⁷ Under the ICPC, both the sending state and the receiving state cooperate with each other so that each child will receive the maximum opportunity to be placed in a suitable environment and with persons or institutions that have appropriate qualifications and facilities. The ICPC ensures prospective placements are safe and suitable before approval.

⁸ Exceptions are a request for a PPO or a petition for a medical treatment. Parents are, however, entitled to legal counsel in hearings on these orders (§ 4005(2)).

Maine Commission on Indigent Legal Services (MCILS) and have been approved by MCILS to accept child protective assignments.⁹

The court will also appoint a Guardian ad Litem (GAL) to gather information and make recommendations to the court about what is in the child’s best interest. In child protection cases, the GAL must be either a licensed Maine attorney or a Court Appointed Special Advocate (CASA). A GAL or CASA will meet with and interview the child on a regular basis¹⁰, interview those caring for or treating the child, access and review all records and reports relevant to the case, file their own reports with the court, and participate in hearings by giving testimony, presenting evidence, being cross-examined by the parties, and protecting the child as a witness.¹¹

The Parent’s Attorney and Initial Court Hearings

Once assigned a case, the parent’s attorney will contact their client (which, in itself, may prove challenging as the parent may not have a phone or permanent address) to first hear from the parent’s perspective what has occurred, what they believe the issue(s) to be that resulted in the petition(s) being filed, and what the parent’s goals are. During this initial contact, the attorney will also explain the petition, the court process, what the parent can expect, and the parent’s rights.

The parent attorney will also contact the Department through either the caseworker or AAG to request discovery—i.e. the Department’s evidence and supporting documentation for the petition(s).

Continuing their work with the parent, the attorney will propose a strategy for court to the parent in advance of the parent’s first court hearing. Additionally, the attorney may play a role in advising the parent on what services they will likely need to complete to regain custody of their child as quickly as possible—either through contesting the Department’s actions in court, or through alleviating the immediate risk of serious harm that led to a PPO—and promptly engaging in services.

The attorney may continue to represent the parent during meetings with the Department, in the development of various service plans for the parent and family, and during court hearings—among the earliest of which are the Summary Preliminary Hearing, and the Case Management Conference.

Role of the AAG in Child Protection Cases

The AAGs of the Child Protection Division represent the Department in all child protection litigation throughout the state. AAGs represent the interest of the state, as the state fulfills its statutory obligation to protect abused and neglected children. The Division’s trial AAGs generally become involved in child protection cases once Petitions for Child Protection Orders are filed with the court, but are frequently

⁹ All parents are initially appointed an MCILS attorney and the costs of any initial work performed on a case are borne by MCILS. However, parents are then required to complete a financial affidavit to determine their eligibility for continued representation at state expense. If a parent is found ineligible (or does not complete the affidavit), the parent may keep their appointed attorney, but do so at their own expense. According to interviews, the overwhelming majority of parents qualify for an attorney at state expense.

¹⁰ GALs must meet with the child every three months. CASA GALs must meet with the child monthly.

¹¹ The GAL or CASA GAL will advocate for the best interest of the child in court hearings when the child is called to testify. This includes special procedures to protect the child witness from unnecessary psychological harm resulting from the child’s testimony.

consulted on the law by OCFS staff prior to the filing of the petitions. AAG's are responsible for developing litigation strategy, managing dockets, preparing caseworkers and other witnesses for trial, admitting record evidence, and other related court activities. They also communicate and interact with OCFS caseworkers, supervisors, and program administrators; as well as parents' attorneys and GALs throughout the course of a child protection case. The Division's appellate attorney handles Appeals to the Law Court and administrative appeals to the state's Superior Courts.

Summary Preliminary Hearing (C-1 Hearing)

As noted previously, the Summary Preliminary Hearing (also called a C-1 Hearing) occurs within seven to fourteen days of granting the PPO. The purpose of this hearing is to ensure that the Department proves its case, that the child is in immediate risk of serious harm to a judge.

There are two options for the parent at the Summary Preliminary Hearing:

- The parent can waive the hearing, and, instead, agree to have the PPO remain in effect until the next stage of the case, which allows the Department to continue to have custody of the child, if that is what was initially requested and granted; or
- The parent can require the Department to prove its case at a hearing where the Department's case will be presented by the AAG to the judge and the parent's attorney will present the parent's case. The court may limit testimony to that of the caseworker, parent, custodian, legal guardian, the GAL, and relatives or foster parents caring for the child, and may admit evidence, including reports and records that would otherwise be inadmissible as hearsay evidence. At the contested hearing, if the court has found that returning the child to their home would place the child in immediate risk of serious harm, the court will either continue the order (with the child remaining in their foster placement) or amend the order—for example, the child can return to their home, but the court requires the parent to engage in services and cooperate with the Department and the GAL. If the court does not find that the child is in immediate risk of serious harm, the order is vacated and the child returns home to their parent without conditions.

Case Management Conference

If the Department did not ask for a PPO, the Case Management Conference (CMC) will be the first time a parent meets with a judge. The CMC is used to plan for the jeopardy hearing, including how many witnesses are likely to testify, whether there will be expert witnesses, how many days will be needed for trial, which docket to put the trial on, when the GAL report is due, whether there will be a settlement conference, whether there are any issues that need to be resolved before trial, such as whether the Indian Child Welfare Act (ICWA)¹² applies, whether the appropriate parties have been served, and whether parentage has been established. The parents, the parents' appointed attorneys, the GAL, and the AAG

¹² ICWA establishes minimum federal standards for the removal of American Indian and Alaska Native children from their families, delineates the roles of state and Tribal governments in child welfare cases, establishes preference for placement with family and Tribal members, and institutes protections for parents regarding the termination of parental rights. Child protective cases subject to ICWA differ in several ways from those cases not subject to ICWA, including (but not limited to) placement considerations, the required burden of proof, and active vs. reasonable efforts by the Department to engage the family.

representing the Department all attend the CMC. If a PPO was granted, the CMC is often held at the same time as the Summary Preliminary Hearing.

Early Planning

Regardless of whether a child enters state custody as the result of a PPO or a finding of jeopardy (as described later in this brief), the responsibility for rehabilitation of the family and reunification is, by statute, shared between the Department and the child’s parents.¹³ Specifically, the Department must develop and execute a plan for reunification in concert with the parent, and the parent is responsible for addressing the issues that prevent the return of the child to their home. Upon removal of the child from the home—and absent any aggravating factors¹⁴—the caseworker begins developing this and other related plans.

Preliminary Reunification and Rehabilitation Plan

To start this process, the caseworker will convene a Family Team Meeting (FTM) to discuss the identified safety threats and develop a Preliminary Reunification and Rehabilitation Plan (Preliminary R&R Plan) with the family and other team members.¹⁵ The resulting Preliminary R&R Plan will include the following components:

- a statement of the safety concerns and risks to the child;
- the preliminary reunification services needed by the family to eliminate the safety concerns and risks to the child;
- an outline of the Visit Plan; and
- relative resources and use of kinship support to include placement, visit supervision, in-home support, or respite care.

Family Team Meeting (FTM)

Family Team Meetings are coordinated and facilitated by OCFS caseworkers for the purpose of collaboratively identifying and developing strengths to support the family in making necessary changes to increase the child’s safety, permanency, and well-being. The team may consist of the parents, family members, resource parents, service providers, Tribal partners, GALs, parent attorneys, visit supervisors, and other formal and informal supports.

Aiding the caseworker in the development of the Preliminary R&R Plan is the Structured Decision Making (SDM) Case Plan Tool¹⁶, which evaluates the strengths and needs of the family and outlines effective services that address the behavioral changes necessary to increase safety for the child.

¹³ § 4041(1)

¹⁴ Aggravating factors are circumstances that increase the severity of an allegation or finding of abuse or neglect. These circumstances are described in § 4001(1-B), and can be found in Appendix A.

¹⁵ A family’s team members may include the parents, the child, that parents’ attorneys, the GAL, resource parents, formal and informal supports, and service providers, and Tribe.

¹⁶ Maine has several Structured Decision Making (SDM) tools designed to improve the consistency and validity of decisions.

The Child Plan

Another plan that is developed shortly after a child enters state custody (and is also informed by the SDM Case Plan Tool) is the Child Plan. The Child Plan reflects the child’s perspectives about the reunification process and the child’s needs related to school, placement, and their physical, emotional, and mental health. The purpose of this plan is to document how the child’s needs will be met during the next six months.

The Visit Plan

For children in foster care, visitation strengthens the relationship between the child, their parents, and their siblings, as well as providing the Department the opportunity to ensure the child’s safety while gathering information to assess a parent’s readiness for change, and to evaluate the quality of the parent-child relationship.

In addition to scheduling visitation for the child, their parents, and their siblings within seven days of the issuance of a PPO, the caseworker also must engage the family in developing the Visit Plan. At an FTM with the family, the caseworker will discuss the timing, length, and frequency of visits, the level of supervision that will be provided (supervised, monitored, or unsupervised), and the necessary steps to complete to move to unsupervised visits—all of which is documented in the Visit Plan. (See page 13 for more on Changes to Visitation).

Concurrent Planning

While planning and undertaking efforts to safely reunify a child with their family, caseworkers also engage in concurrent case planning in which a secondary permanency goal, such as adoption or a permanency guardianship, is established in the event reunification efforts are unsuccessful. Concurrent case planning acknowledges a child’s need for a timely, safe, and appropriate permanent placement, and may begin as early as when a child is first being considered for placement outside of their home and will continue throughout the life of the case.

The family’s team members may all participate in this process as the caseworker discusses with parents the purpose and importance of a secondary permanency goal. The caseworker will encourage parents to identify possible alternative permanency options, such as appropriate relatives. Caseworkers are to make every effort to reach agreement with parents regarding the secondary permanency goal. If agreement cannot be reached, the caseworker, in consultation with their supervisor, AAG, and the GAL, is responsible for determining the secondary permanency goal.

Ongoing Monitoring and Assessment, and Provision of Services

The caseworker’s involvement with a family extends well beyond the initial planning efforts as they continually monitor and assess the family’s needs, goals, and progress; the child’s needs for safety, well-being, and permanency; and coordinate and facilitate the provision of services, visitation, and all necessary transportation. This work includes the following components and requirements:

- Monthly contacts with the child to assess their needs for safety, well-being, and permanency, as well as determining other services or supports the child may benefit from, and reviewing and updating their Child Plan.
- Monthly contacts with the parent(s) to review the Preliminary R&R Plan, assess progress made and barriers to achieving goals, determine other services or supports the parent(s) may benefit from, and engage in building solutions with the family. Caseworkers are to also have discussions with the parent(s) about visitation, including the quality of visits, concerns, and progress toward reunification.
- Monthly contacts with resource parents to assess their needs related to caring for the children in their home and determine if other services or supports are needed. Caseworkers are to also have discussions with resource parents regarding how visits are progressing.
- Coordinate and facilitate FTMs in such a manner that the family and team collaboratively identify and develop strengths to support the family in making the changes necessary for reunification.
- Contacts with collateral persons and service providers to verify parent progress in services.
- Ensuring that the parent(s), child, and resource parents receive appropriate referrals for services.

Provision of Services. Among many statutory responsibilities, the Department shall make reasonable efforts to rehabilitate the family when a child has been removed from the home (unless otherwise relieved of that responsibility by the court). The rehabilitation of a family is primarily achieved through the provision and completion of services relevant to the identified needs of the family and parent(s).

Such services are not directly provided by the Department, but instead through referrals made by the Department on behalf of the parent(s) to third-party providers. Referrals may be made for (but not limited to) the following services:

- case management;
- mental health evaluation and treatment;
- court ordered diagnostic evaluation¹⁷;
- counseling;
- parenting classes;
- daily living skills classes;
- substance use testing, evaluation, and treatment;
- in-home behavioral health services; and
- domestic violence treatment and intervention programs.

Caseworkers will also refer parents to other resources that may help address other issues facing the family, such as housing assistance programs.

¹⁷ A Court Ordered Diagnostic Evaluation (CODE) is a comprehensive psychological evaluation, to better understand a parent's mental health concerns, cognitive abilities, and parental capacity.

The Rehabilitation and Reunification Plan (R&R Plan)

As the case nears the jeopardy hearing, the caseworker will develop the Rehabilitation and Reunification Plan, and is to do so with input from the parent(s), family team members, and service providers; and through the use of the SDM Case Plan Tool.

The R&R Plan outlines safety threats, behavioral changes and required services to increase child safety and reduce risk to the child. The R&R Plan specifically includes the following components:

- reasons for the child’s removal from the parents’ home;
- behavioral changes required by the parent(s) in order to eliminate jeopardy concerns;
- services that the parents must satisfactorily participate in before the child can be returned home;
- rehabilitation and reunification services to be provided by the Department, either through caseworker services or referrals to service providers;
- methods by which behavioral change will be measured;
- outline of the visit plan;
- relative resources and use of kinship support to include placement, visit supervision, in-home support, or respite care;
- timeframe for reunification reasonably calculated to meet the child’s needs; and
- financial responsibility of the parents during reunification.

The caseworker will circulate the R&R Plan to the parents’ attorneys and the GAL at least ten days prior to the jeopardy hearing, and the caseworker will file the plan with the court at the hearing.

Draft Jeopardy Order

As the jeopardy hearing approaches, the AAG representing the Department in the case will draft a proposed jeopardy order that outlines the reasons for a finding of jeopardy. In many instances, the proposed order will also list the services that each parent must engage in to be successfully reunified with their child.

The draft order is circulated by the AAG to the parents’ attorneys and the guardian ad litem to see if an agreement can be reached as to the contents of the order. The parties will provide their feedback—including suggested changes to the services requested by the Department—to the AAG. In consideration of the law, the facts of the case, and the goals of the Department, the AAG may accept and integrate the proposed changes into the draft order and present it to the court as an agreement. If the proposed changes are inconsistent with the Department’s position or facts of the case, the AAG will communicate to the court and to the parties that a trial will have to be held.

Jeopardy Hearing and Jeopardy Order

The jeopardy hearing, which is held within 120 days of the filing of the petition for a child protection order, is the point at which the court may hear evidence to determine whether it is more likely than not that the child is in circumstances of jeopardy to their health or welfare by either returning to or remaining in the home.

At the outset of the hearing, the AAG will state whether there is an agreement to the proposed jeopardy order. If there is an agreement, the court will inquire of the parties about the process of reaching the agreement and then “put the agreement on the record” with the AAG describing the agreement in general terms. The judge will then ask the other party questions about the order to ensure the parent understands the order and that the parties do in fact agree. If the court is convinced the agreement is sound, the draft order is signed by the judge and it becomes the court’s jeopardy order.¹⁸

If there is no agreement, the parties proceed to trial. At the contested jeopardy hearing, the Department carries the burden of proof. The AAG will present witnesses and exhibits to prove its case. Witnesses may include the parents, caseworker, GAL, foster parents, law enforcement, doctors, therapists, teachers—anyone with relevant and admissible evidence relating to whether the child is in jeopardy. Evidence may include medical records, mental health assessments, photographs, videos, recordings, diagnostic evaluations, and other relevant documentation. If the court finds that the child is not in jeopardy, the case is dismissed and the child returns to, or remains in, the parent’s custody.

If the court determines that jeopardy exists, the judge can either consider the evidence already presented during the jeopardy hearing to craft a disposition, or can hear additional evidence to determine the appropriate disposition relating to the child.¹⁹ The principles upon which the court will determine the disposition of the child are listed in statute in order of priority:

1. protect the child from jeopardy to their health or welfare;
2. give custody to a parent if appropriate conditions can be applied;
3. make disposition in the best interest of the child; and
4. terminate Department custody at the earliest possible time.

Based on those principles and the evidence and recommendations presented during the hearing, the court will determine the disposition of the child, which is incorporated into the court’s jeopardy order.

Parental Rights and Responsibilities Order

In some cases, the court may determine that there is jeopardy as to one parent and not the other. When this happens, the court and the parties may create a Parental Rights and Responsibilities Order, which will determine who the child resides with (even a formerly non-custodial parent), how contact with each parent will or will not occur, and how important decisions for the child will be made.²⁰ In most cases, when a Parental Rights and Responsibilities Order is established, the child protective case is dismissed, although the Department may remain involved with one or both parents in a service case.

¹⁸ Occasionally, a judge will disagree with the agreed upon terms, and, instead, incorporate their desired conditions into the order.

¹⁹ A disposition is the court-ordered action or outcome. § 4036 lists twelve such dispositions, which include (but are not limited to) the changes in the custody of the child, removal of the perpetrator from the child’s home, and the provision of necessary emergency medical treatment for the child when the custodians are unwilling or unable to consent to that treatment.

²⁰ A change in parental rights and responsibilities may occur whenever the court determines there is jeopardy as to one parent but not the other – and it may also occur for other reasons as part of the family court process.

Continued Rehabilitation and Reunification Efforts

After a jeopardy order is issued by the court, the caseworker’s involvement with the family continues as before: ensuring appropriate referrals for required services are made; making monthly contacts with the child, parent(s), and resource parent(s) to assess needs and barriers to progress, and to monitor progress; contacting collaterals and service providers; coordinating and facilitating F’TMs; and updating all applicable tools and plans.

However, as the reunification case continues and time passes, other specific actions, tools and hearings occur to increasingly consider the child’s need for permanency.²¹

Permanency

In the context of child welfare, permanency is defined as a legally permanent, nurturing family. A child in foster care is determined to have achieved permanency when they are either:

- reunified with their family,
- discharged from foster care to a legally finalized adoption, or
- discharged from foster care to the care of a legal guardian.

Permanency Review Team

Once a child has been in foster care for at least six months, an OCFS permanency review team will begin reviewing the child’s permanency goals on a weekly basis. Within each Child Protective Services District, there are one or two permanency review teams made up of a program administrator and/or assistant program administrator, children’s behavioral program coordinator, district clinical consultant, resource supervisor, and a notetaker and facilitator (usually these roles are performed by other supervisors not overseeing the reviewed cases), who meet weekly with the caseworker and the caseworker’s supervisor. During these meetings, case-specific information and tasks already completed are discussed and considered to assist in the development of action steps that will promote and support the achievement of permanency in a timely manner.

SDM Reunification Assessment Tool

When a child is being considered for return home, and before or at six months in care when considering reunification, termination of parental rights, or other permanency options, the caseworker must complete the SDM Reunification Assessment Tool. This tool is used to evaluate risk, visitation compliance, and safety issues. The results guide placement recommendations and decisions regarding whether to reunify a child with their parent(s).

Judicial Reviews

Following the issuance of a jeopardy order, the court must review the case once every six months (or sooner if requested by the child’s parent(s), AAG, or GAL) in what is called a judicial review. Prior to this review, the Department and AAG will circulate a draft order to the parties who discuss potential

²¹ Permanency definition from OCFS Child Welfare Policy Manual Glossary, www.maine.gov/dhhs/ocfs/about-us/policy-rules

changes to the proposed judicial review order. If the parties agree on the status of the case and the next steps, the judicial review serves as more of a status update meeting. At that review, the contents of the order will be discussed on the record, as well as what has occurred in the case since the last court date (such as the GAL’s contact with the child and case members, the child’s well-being, the progress the parent(s) have made toward the goals of the R&R Plan, and the efforts the Department has made to provide the parent(s) with the services necessary for reunification).²² Based on what has occurred, the court may make changes to what the parent(s) or Department is required to do.

If there is no agreement between the parties, however, a case management conference will be held on the date of the judicial review where the disputed facts may be discussed and a contested judicial review hearing will be scheduled.

At the contested judicial review hearing, evidence and testimony is presented by the AAG, the parent’s attorney, the GAL, and others. The court will then consider the original reasons for the jeopardy finding and the disposition of the child, the events that have occurred since those findings, and the respective efforts of the parent and the Department in working toward reunification. The judge then makes the following determinations for the judicial review order:

- the safety of the child in their current placement;
- the continuing necessity and appropriateness of the child’s placement;
- the effect of a change in custody on the child;
- the extent of the parties’ compliance with the case plan and the extent of the progress that has been made toward alleviating or mitigating the causes necessitating placement in state custody;
- a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship; and
- if the child is 16 years of age or older, whether or not the child is receiving instruction to aid the child in independent living.²³

It is important to note that most child protective cases have more than one judicial review before the case is resolved.

Permanency Planning Hearing

Within 12 months of the child being brought into foster care, a permanency planning hearing will occur. Typically held at the same time as a regularly scheduled judicial review, the permanency planning hearing follows the same process as that for judicial reviews. A draft permanency planning order (which is a component of the Office of the Attorney General’s (OAG) standardized judicial review order) is circulated by the AAG to the parties. The draft order will contain the Department’s proposal for achieving permanency for the child. If the parties agree with the order, it will be reviewed in court at the hearing and signed by the judge. If the parties do not agree, a contested hearing will be scheduled. At this hearing, the parties provide testimony and evidence and then the court decides what is in the long-term

²² Additionally, for children in residential care facilities, the court will determine the appropriateness of that placement within 60 days of the child entering the program and at each subsequent judicial review and permanency hearing (§ 4038(8)-(9)).

²³ § 4038(5)

best interest of the child, including whether the child should be cared for by a permanency guardianship, placed with a fit and willing relative, placed for adoption, placed in another planned permanent living arrangement, or returned to the child's parent(s).

Successful Rehabilitation and Reunification Efforts

Reunification of a parent with their child is heavily dependent upon the following factors:

- the parent's engagement and progress in court-ordered services (such as participating in a substance use disorder treatment program or attending counseling sessions);
- the parent's demonstrated behavioral changes and appropriate protective capacity;
- the parent's compliance with court-ordered conditions (such as passing random drug screens or removing unsafe people from the home); and
- the parent's consistent attendance at scheduled visits with the child.

If a parent demonstrates consistent compliance with these components of their R&R Plan, the Department will provide the parent with greater opportunities to demonstrate that they have alleviated the threats and conditions that led to the removal of the child from the home, and that they can safely parent their child. Two such opportunities may occur in the forms of changes to visitation with the child and a trial home placement.

Changes to Visitation

As a parent progresses through their R&R Plan and demonstrates safe and appropriate parenting during visitation with their child, the level of visit supervision required for future visits will be reevaluated by the caseworker and their supervisor, with input provided by the parent, GAL, AAG, and other family team members.

Per OCFS policy, there are three levels of visit supervision:

- Supervised. These visits will only occur when there is a safety concern that would cause the child to be unsafe should the visits occur without constant eyes-on supervision. When a visit needs this level of supervision, the person supervising the visit will remain in the room at all times during the visit between the parent and the child. This supervision is primarily provided through contract agencies. Prior to the visit(s), the caseworker should contact the visit supervisor to review the specific safety concerns, the level of supervision required, the behavioral changes required of the parent to address safety concerns, and how progress will be measured. Following the visit, the visit supervisor will document how the visit went, any concerns that came up, as well as any questions asked by the parent or the child.
- Monitored. These visits will occur when the parent's behavior does not compromise the child's safety, but there continues to be a need for support during the visit. Monitored visit supervision requires the visit supervisor to check in at the start of the visit to ensure the parent and child are prepared and able to have the visit, and then to periodically check in throughout the visit. At the end of each visit, the visit supervisor will do a check in with the parent and child to discuss how

the visit went, any questions or concerns the parent or child might have, and to document the visit.

- **Unsupervised.** These visits will occur when the parent’s behaviors do not compromise the child’s safety and the parent has shown the ability to provide consistent safe care for the child. These visits will be coordinated at an FTM and include input from the parent, child (if age appropriate), and resource parents to discuss how these visits are going. Unsupervised visits with the child may include overnights and weekends with the parent(s).

The parent’s progression of visitation through these levels of supervision helps pave the way for a trial home placement.²⁴

Trial Home Placement

One of the final steps taken in the successful reunification of a family is the trial home placement, which is a period of time in which the child resides with the parent while the family is subject to ongoing monitoring and contact with the caseworker and service providers, but the child remains in the legal custody of the Department.

According to OCFS policy, the trial home placement is an opportunity for the parents to demonstrate the behavioral changes they have made to resolve child welfare concerns, support the child’s transition into the home and to coordinate services and supports for long-term safety, well-being, and stability. OCFS supports trial home placement at the earliest possible time—as long as the child’s safety can be ensured in the placement and is in the child’s best interest.

When a trial home placement is being considered, the caseworker will complete the SDM Reunification Assessment Tool to evaluate risk, visitation compliance, and safety issues—all of which are reviewed by the caseworker’s supervisor—with the results guiding the Department’s permanency placement recommendations and the determination of whether or not to reunify the child with their parent.

If the Department determines that reunification remains the appropriate permanency goal for the child and that the safety threats that led to the removal of the child from the home have been ameliorated (or, if not entirely ameliorated, can be mitigated with safety interventions as part of an in-home safety plan)²⁵, the caseworker will proceed to schedule an FTM with the family and their team to develop a plan for trial home placement.

At that meeting, the caseworker outlines the expectations regarding their contact (including unannounced visits) with the child and parent during the trial home placement, as well as other logical considerations of the placement. These include the following topics:

- financial considerations of the family, such as additional costs for food and childcare;

²⁴ Alternatively, the caseworker may temporarily suspend or reduce visitation if at any time there is sufficient evidence that visitation is detrimental to the child, the parent does not attend visits, or there are frequent cancellations. According to the OAG’s Child Protection Division, these decisions are made in consultation with the GAL.

²⁵ In such cases, a safety plan is used for the first thirty days of the trial home placement. During that 30-day period, an FTM must be scheduled to ensure the plan is being followed and the child continues to remain safe with the parent. Safety plans are to only be in place for 30 days and a case cannot be closed with a safety plan in place.

- educational needs of the child, which may include registering the child in a new school;
- the plan to meet the child’s medical and dental needs, which may include establishing a new primary care physician and dentist for the child; and
- the services that need to be in place to ensure a successful reunification, per the parent and child’s existing service providers.

The caseworker is expected to aid in the transition of the child from foster care to trial home placement by notifying the child’s school and providers that the child is in trial home placement, assisting in the transfer of records to new providers, and coordinating needed services in advance of the trial home placement to ensure support is available for the family.

Perhaps most importantly, the caseworker is also responsible for ongoing contacts with the family over the duration of the trial home placement, which is primarily driven by the needs of the child and the family, but not to exceed six months.²⁶ The frequency and type of contact are prescribed in OCFS policy and become less frequent over the duration of the trial home placement:

- Week 1: minimum of one phone call and one home visit with family
- Weeks 2-6: weekly face-to-face contact with the parent and child with one unannounced home visit per month²⁷
- Weeks 7-12: biweekly face-to-face contact with the parent and child with one unannounced visit per month
- Weeks 13-24: monthly face-to-face contacts with the parent and child

Additionally, the caseworker will contact the family’s service providers and other collateral contacts at least twice a month to ensure the family’s participation in services and determine whether the family’s needs are being met in a way that supports reunification.

Custody of the Child Returned to Parent(s)

If the caseworker, supervisor, and program administrator agree that the trial home placement is successful and the child can safely be returned to the parent’s custody, the caseworker will contact the assigned AAG. The AAG will draft a motion to dismiss the case and file it with the court. If the court agrees and the Order Dismissing Child Protection Proceeding is signed by the judge, custody of the child reverts to the arrangement that was in place prior to the child protection case.

However, if the Department believes the underlying custody arrangement is unsafe, the Department will ask the parents prior to the dismissal of the child protection case to amend the existing custody arrangement in some fashion so that an order reflecting a safe arrangement survives beyond the case.²⁸

²⁶ Pursuant to 45 CFR 1356.21 (e), the court must find that there is a sufficient factual basis to extend the trial home placement beyond a six-month period and make specific findings in support of that.

²⁷ If the child is school-aged and in school, the caseworker will visit every other week, as long as the child’s teacher and appropriate school administrators have been notified that the child is in a trial home placement.

²⁸ For example, if there was a Parental Rights and Responsibilities Order in place prior to the child protection case that specified the child’s primary residence was with the child’s father, but the father is the person who created the circumstances of jeopardy for the child.

Additionally, if there was no Parental Rights and Responsibilities order in place and the parents became joint custodians of the child once again, the Department would request that the parents enter into an order that provides for the safety of the child.

Unsuccessful Rehabilitation and Reunification Efforts

During the course of a reunification case, the Department expects the parent to make efforts to engage in services, make sufficient progress in those services, attend and engage in quality visits with the child, and meet certain conditions in order for reunification to continue as the child’s primary goal for permanency. However, when parents do not meet these expectations—particularly in the latter stages of a case when the child has spent a longer time in foster care and the child’s need for permanency becomes a greater consideration—the Department will consider the individual facts of the case to determine whether a change in the child’s primary goal for permanency is warranted. Sometimes—even beyond the one-year mark of a child being in foster care and when the permanency hearing occurs—reunification will remain the child’s primary goal, particularly if an otherwise engaged parent cannot access a required service (i.e. they remain on a waitlist), or the Department believes that although the parent may not be ready to reunify at that moment, the parent will be able to in a reasonable amount of time. Other times, the Department will determine that a change in the child’s permanency goal is appropriate, and, if the court agrees, the Department will begin pursuing one of three alternative placement options for the child—adoption, permanency guardianship, or other planned permanent living arrangement—each of which has its own requirements and processes that are described below.

Adoption

Adoption is a legal process through which the parenting of a child and all rights and responsibilities for the child are transferred from the child’s birth parents to the child’s adoptive parents. Adoption represents a lifelong commitment to a child, and is the Department’s preferred permanency option when reunification is not successful, as it creates a permanent legal relationship between the child and the adoptive parents. Adoption also requires the termination of the birth parents’ parental rights.

Termination of Parental Rights (TPR)

Once reunification efforts are determined to be unsuccessful, the caseworker will file a petition asking the court to permanently end the legal rights of the biological parent(s) to the child by issuing an order terminating the parents’ parental rights, which, in turn, frees the child for eventual adoption. In that petition, the Department will document the facts that they believe constitute the basis for the request, as well as an allegation that is sufficient for termination, and a statement of the effects of a termination order.

The specific time at which the petition is filed can vary. Statute does not preclude filing a termination petition earlier in the case if reunification is determined to be unsuccessful, but does specify three timeframes and conditions under which the Department is required to file the termination petition:

- before the end of the child’s 15th month in foster care when that child has been in foster care for 15 of the most recent 22 months;

- within 60 days of a court finding that there is an aggravating factor and an order to cease reunification on both parents; and
- within 60 days of a court finding that the child has been abandoned.

However, statute also includes exceptions to these requirements:

- when a child has been in foster care for 15 of the most recent 22 months, the Department does not need to file the petition if the Department is required to undertake reunification efforts and the Department has not provided the family the services determined by the court to be necessary for the safe return of the child to the child's home consistent with the time period in the case plan;
- the Department does not need to file a termination petition if the Department has chosen to have the child cared for by a relative; and
- the Department does not need to file a termination petition if the Department has documented to the court a compelling reason for determining that filing such a petition would not be in the best interests of the child.²⁹

These exceptions provide the Department with the latitude to file the termination petition at the most appropriate time based on the facts and circumstances of the individual case (for example, current parent engagement and progress, the availability of services, and the trajectory of the case) rather than a set time for all cases (for example, the child's 15th month in foster care), and, especially, if a compelling reason exists.

Once the petition is filed, the court sets a date and time for a hearing and the petition is served by the Department on the parents and the guardian ad litem for the child at least 10 days prior to the hearing date. The Department also provides written notice of the hearing to foster parents, pre-adoptive parents, and relatives providing care to the child.

At the hearing, parents have the right to participate, testify, and present evidence. The parents' attorneys may call witnesses to support the parents' case and may question or cross-examine the Department's witnesses as well as the GAL, who will also submit a report to the court with recommendations concerning the child.

The court may order the termination of parental rights if the parent consents to the termination after a judge has fully explained the effects of a termination order, and the parent's consent is written, voluntary, and happens in court before a judge.

If a parent does not agree to the TPR order, the court will only terminate parental rights if it makes two findings. First, the court must first find clear and convincing evidence that the parent is unfit; to do so, the court considers whether one or more of the following factors exist:

²⁹ Statute does not specify how the Department is to document the compelling reason to the court. Current practice is to capture that reason in the draft orders submitted to the court at the regularly scheduled hearings and judicial reviews within the existing court process. As such, there are no standalone filings of the compelling reason at the specific timeframes described in statute.

- the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child’s needs³⁰;
- the parent has been unwilling to or unable to take responsibility for the child within a time which is reasonably calculated to meet the child’s needs;
- the child has been abandoned; or
- the parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to § 4041 (Departmental responsibilities for family reunification).

If the court finds one of those factors exist, the court must secondly³¹ determine whether the termination of parental rights is in the best interest of the child.

When the court finds both standards to be met, the court will issue an order terminating parental rights. The parents then have no legal rights or obligations to the child, including custody, visitation, or any decision-making authority. The parents also have no right to object to the child’s subsequent adoption or participate in those proceedings.³²

If the court denies the TPR because the Department has not proved parental unfitness and the child’s best interest by clear and convincing evidence, the child will remain in the Department’s custody, and, typically, the parent(s) will be given more time to resolve the circumstances of jeopardy. Occasionally, the judge will deny the TPR and decide a different permanency plan is appropriate and then issue an order moving the case in that direction.

Permanency Guardianship

If reunification or adoption are not suitable permanency options for a child, the Department may pursue a permanency guardianship for the child, which must be determined by the court to be in the best interest of the child. In a permanency guardianship, a person is established by the court to be the legal guardian for a child and that guardian will have the rights of a parent in day-to-day matters.³³ To be a permanent guardian, a person must:

- have the ability to provide a safe home for the child,
- have a reciprocally close emotional bond with the child,
- be willing and able to make a long-term informed commitment,
- have the skills to care for the child, and
- be finger-printed for a national criminal history records check.

³⁰ §4055 (1-A) specifies five circumstances which the court can infer to meet this standard.

³¹ Although Title 22 § 4055 (1)(B)(2) lists the two findings necessary for a termination of parental rights in a different order (first being best interest of the child and second being parental unfitness), the U.S. Constitution requires that a trial court must first find parental unfitness before it proceeds to consider the best interest of the child.

³² § 4059 provides for a process by which the Department may petition the court to reinstate the parental rights of a parent whose parental rights have been previously terminated by the court.

³³ A permanency guardian is given all the powers and duties of a guardian of a minor which are specified in 18-C M.R.S. §§ 5-207 to 5-208.

The child’s parent(s) may petition the court to terminate the permanency guardianship annually if they believe there is a change of circumstances regarding the child’s welfare. As this potentially introduces some continued uncertainty regarding the child’s permanency, it is believed that permanency guardianship is better suited for older children. This is reflected in OCFS practice that permanency guardianships are generally reserved for children over the age of 12.

Prior to establishing a permanency guardianship, a cease reunification order regarding both of the child’s parents is required. According to the OAG’s Child Protection Division, often, the cease reunification and the permanency guardianship orders are entered contemporaneously.

Cease Reunification Order

If issued by the court, a cease reunification order allows the Department to discontinue its reunification effort with regard to one or both of a child’s parents.

Prior to requesting a cease reunification order, the caseworker will complete the SDM Reunification Assessment Tool and consult with their supervisor and AAG to determine whether such an action is appropriate. If the decision is made to seek a cease reunification order, the caseworker must send written notice of that decision to the parent.³⁴ The caseworker is also expected to continue engaging with the parent(s) in identifying possibly alternative permanency options (such as relatives and fictive kin), and to have meaningful contact with the parent at least every three months to update them about the child’s safety, permanency, and well-being. Visitation between the parent and child also continues regardless of whether there is a cease reunification order in place unless there is a specific determination that continued visitation would be detrimental to the child’s best interest.

Once the request is made to the court, the court can order that the Department cease reunification if the court finds at least one of the following:

- the existence of an aggravating factor; or
- that continuation of reunification efforts is inconsistent with the permanency plan for the child.³⁵

Other Planned Permanent Living Arrangement (OPPLA)

OPPLA is a permanency option for children aged 16 or older and for whom reunification, adoption, and permanency guardianship have been ruled out. In this arrangement, children generally continue to live with a resource parent while the Department maintains custody of the child, and has a responsibility for the care and supervision of the child. As this arrangement provides a lesser degree of permanency, it is

³⁴ Per policy, this written notice must include the specific reasons the decision to seek a cease reunification order was made, the specific efforts OCFS has made in working with the parent, and a statement of the parent’s rights under § 4038.

³⁵ § 4041(2)(A-2)(2) references two situations in which there may be a finding that the continuation of reunification efforts is inconsistent with the permanency plan for the child: when two placements with the same parent have failed and the child is returned to the custody of the Department, and when the permanency plan provides for a relative or other person to have custody of the child and the court has ordered custody of that child to that relative or other person. There may also be other situations warranting a finding that continued reunification would be inconsistent with the child’s permanency plan.

the Department’s least preferred permanency option, and, as such, changing a child’s case goal to OPPLA requires a court order.

OCFS casework activities for a youth with a case goal of OPPLA focuses on preparing the young person for success in adulthood. To that end, the caseworker is to have monthly contact with the youth and resource parents to assess safety, permanency, and well-being; ensure that the youth and resource parents receive appropriate referrals for services; and facilitate ongoing FTMs to assess progress, identify barriers toward achievement of goals, and work on solutions with the youth and their team.³⁶

³⁶ OCFS Permanency Policy, July 2022

Part 2: OPEGA’s Analysis of OCFS Performance in Reunification Cases

In order to assess various aspects of OCFS’s practice and performance in reunification cases, and to ultimately identify potential challenges and the factors contributing to those challenges, OPEGA employed a methodology that leveraged the structure, sampling, and rigor of the federal government’s Child and Family Services Review (CFSR) and OCFS’s existing quality assurance results to inform structured interviews with those most closely involved with the reunification process.

The Child and Family Services Review and OCFS Quality Assurance (QA) Program

The CFSR is the U.S. DHHS’s oversight mechanism for examining state conformity with federal child welfare expectations and promoting continuous improvement, and relies upon the sampling and review of individual cases to assess performance. Every six months, 65 cases are selected for review in accordance with a federally established sampling methodology.

These case reviews are conducted through OCFS’s established QA Program in which OCFS QA Specialists conduct detailed assessments in accordance with the federal Onsite Review Instrument and Instructions (OSRI), which contains 18 “Items” that reflect federal expectations for caseworker practice. These assessments include examining electronic case records and conducting interviews with children, parents, foster parents, caseworkers, and other professionals involved with the case. QA Specialists rate each case either Strength or Area Needing Improvement on every applicable item, and provide narrative rationales for those scores in each case.

OPEGA’s Analysis of Case Review Results

While the OSRI contains 18 Items that span the entirety of the larger child protective process, our scope was specifically focused on reunification, and, as such, OPEGA selected the six Items that were most applicable to reunification. (See Appendix B, Table B.1).

For those six items, we requested QA results data for the ten most recent reporting periods (April 2017 to March 2023) from OCFS QA staff. We received 400 records and identified 235 cases that had reunification as a goal at any point during the life of the case, and would be subject to further review. For any of those 235 cases in which one of the six selected Items was scored as an Area Needing Improvement, we reviewed the QA Specialists’ narrative rationales and coded the underlying reasons for the score and potential challenges.

Structured Interviews and Identifying Potential Challenges

To further explore the most common potential challenges identified in our analysis of the case review results, we selected a random sample of permanency caseworkers and supervisors representing all district offices to interview. In these interviews, we explored what factors may impede reunification and potential reasons why casework may not meet federal expectations. Additionally, we interviewed parent attorneys and representatives of groups that work with biological and resource parents to obtain their perspectives.

We also reviewed recent OCFS federal annual reports to compare our issues to OCFS's assessments, goals and strategies, and interviewed OCFS management about these issues. Taken together, this work revealed four cross-cutting challenges most prevalent in reunification casework. (See Appendix B for full methodology).

Summary of OPEGA's Results

Challenge 1: Caseworker Practice Concerns

A. Assessment of parents' substance use

The federal review expectation is for caseworkers to conduct an initial and ongoing assessment that accurately identifies the parents' needs. In OPEGA's analysis of the cases rated Area Needing Improvement for this Item, we found that the majority of cases (54% or 94 of 175 cases) specifically mentioned inadequate assessment of substance use by parents.

In interviews with caseworkers and supervisors, OPEGA explored factors that make assessing substance use challenging. The most commonly cited challenge was caseworker inexperience. Permanency supervisors and OCFS management reported that new caseworkers may be less likely to confront substance use directly with parents. Interviewees explained that caseworkers' comfort with looking through parents' homes for evidence of substance use, and being frank and direct in speaking with parents about the sensitive topic of substance use, generally improves with more time and experience in the job.

Caseworkers and supervisors explained that drug screening is the most commonly used tool to assess substance use. They noted the following challenges with drug screening:

- Logistics of screening: difficulty scheduling random tests around parent's work schedule; lack of drug testing resources or convenient locations available; difficulty scheduling transportation, especially for random screens; and difficulty documenting test results in Katahdin (including being less likely to document negative results).
- Test results: difficulty interpreting test results; delayed test results; alcohol and certain street drugs not included in standard test; false positives, especially with rapid tests; difficulty determining abuse of prescription medication; and difficulty understanding prescribed vs. illicit drugs in results. Those interviewed noted a lack of available staff expertise in this area.

We asked representatives working with biological parents for their perspectives on substance use assessments. They said that parent experiences with drug screens vary widely by district office and by caseworker. Those interviewees representing parents believe that substance use assessment during reunification should address whether the parent is impaired and if substance use is affecting their parenting. They assert that drug screens are not effective in helping caseworkers answer those questions, and that other assessment skills like observing parent behaviors and speaking with parents' treatment providers should be given more weight rather than relying solely on drug screens.

B. Caseworker engagement with family

Two of the Items in the CFSR that we focused on for this review have an emphasis on caseworker engagement with parents. Federal expectations associated with this topic include the agency making concerted efforts to engage the family in case planning on an ongoing basis and visits with the family are expected to occur at a frequency and quality to sufficiently ensure safety, permanency, well-being, and achieve case planning goals. In OPEGA’s analysis of these cases rated Area Needing Improvement, we found themes related to lack of parent engagement, described below.

For the Item related to case planning, OPEGA found:

- lack of discussion with parents on goals and services and/or parents not feeling listened to by caseworkers including at family team meetings (63% or 133 of 211 cases)

For the Item related to caseworker visits, OPEGA found:

- inadequate conversations with parents about case planning (67% or 152 of 227 cases); and
- meeting in environments not conducive to case planning (58% or 131 of 227 cases).

Interviews with permanency supervisors identified caseworker inexperience as a potential cause for this concern, specifically:

- a lack of training and shadowing with senior workers to learn how to have difficult and honest conversations with parents;
- challenges related to facilitating family team meetings, including focusing on a family’s case plan and goals, and performing a dual role as a facilitator and active participant in the meeting; and
- a lack of use of strategies to engage with domestic violence-involved families, such as finding ways to separate parents to have confidential interviews without the abusing partner present.

Biological and resource parent representatives report concerns with caseworkers not giving parents the opportunity to participate in developing the reunification plan and a lack of communication with parents on the requirements in their plan. They reported that some caseworkers do not engage with parents regularly and are not responsive to parent concerns, such as required treatment not being available and insufficient opportunities to visit with their children.

Biological and resource parent representatives agree that family team meetings are often not productive because caseworkers fail to address the key question of what the parent is doing or needs to do to move closer to alleviating jeopardy. They feel caseworkers should be trained or mentored more extensively to improve facilitation of family team meetings.

These interviews also suggested a potential cause of lack of time to adequately engage with families with case planning, due to high workloads. (See Challenge 2).

Challenge 2: High Workloads Impacting Safety, Permanency, and Well-Being Outcomes

The CFSR process focuses on achieving outcomes in safety, permanency, and well-being for children and families. In order for these outcomes to be reached, caseworkers need sufficient time and resources. We

found three interrelated factors contributing to a strong theme from interviews about high workloads: caseworker vacancies, lack of support staff, and lack of visitation supervisors and transportation for families. Together, these factors increase the workload of permanency caseworkers, contribute to not meeting federal expectations, including potentially lengthening the time to permanency for children.

A. Permanency caseworker vacancies

Several of the federal review expectations involve thoroughness of casework to ensure safety, permanency, and well-being of children. To be thorough in all aspects of permanency casework, caseworkers need sufficient time and resources. In our interviews with permanency caseworkers and supervisors, a strong theme emerged around workloads that are unreasonable for CPS staff. Interviewees consistently mentioned the number of vacancies within their districts and related impacts of vacancies on the workloads of the remaining caseworkers.

As of January 31, 2024, the overall vacancy rate for permanency caseworkers, specifically, was just under 18% and varied significantly among districts. Table 1 shows this variability - where District 2 and District 8 had no vacancies; while District 7, Ellsworth & Machias, showed a 42% vacancy rate. Interviews with caseworkers and supervisors also reported that caseworkers in the Permanency unit may be assigned investigations when there are staffing shortages in the Investigations unit, further increasing the workload for permanency caseworkers.

Table 1. Permanency Caseworker Vacancy Rates		
District	Vacancy Rate	Total Permanency Caseworker Positions
1 – Biddeford & Sanford	29%	21
2 – Portland	0%	24
3 – Lewiston	39%	33
4 – Rockland	19%	13
5 – Augusta & Skowhegan	11%	37
6 – Bangor	7%	27
7 – Ellsworth & Machias	42%	12
8 – Caribou & Houlton	0%	15
Total	18%	182
Source: OPEGA Analysis of OCFS Organization Charts updated January 2024. https://www.maine.gov/dhhs/ocfs/about-us		

Biological parent and resource parent representatives interviewed reported the observations of permanency caseworker workloads being too high and believe that this has a negative effect on caseworkers’ ability to respond timely and address issues with parents and foster families during reunification. Parent attorneys reported that high workloads impede caseworkers’ ability to thoroughly and timely prepare for court hearings and to work consistently on addressing parent needs.

B. Lack of support staff

Interviews of permanency caseworkers and supervisors identified a lack of support staff as a challenge to thoroughness of casework to ensure safety, permanency, and well-being of children. In particular, lack of case aides, legal aides, and clerical staff were cited throughout interviews. Caseworkers reported the need to spend work hours on tasks that could be assigned to support staff, such as scanning and uploading documents, faxing referrals, making records requests, and scheduling transportation. Caseworkers described the challenge of fitting these tasks into their workweek, with the need to prioritize monthly contacts with parents and children to assess for risk and safety throughout the case.

We note that the Governor’s Biennial Budget Change Package (P.L. Chapter 412), which took effect October 25, 2023, reorganized the Customer Representative Associate II - Human Services position into the CPS Case Aide position, which included a pay grade increase. We also note that five Legal Administrative Professionals were recently added to five district offices, while the three remaining district offices do not have these positions allocated at this time.

C. Lack of visitation supervisors and transportation for families

Interviews with permanency caseworkers and supervisors, as well as with representatives of biological and resource parents, described challenges with access to particular contracted services: visitation supervision and transportation. Lack of supervised visitation and transportation to required services may have negative impacts, including increasing the workload of permanency staff and potentially lengthening the time to reunification.

As described on pages 13-14, parents in the process of reunification are often required by the Department to have supervision when they visit with their child. These visits may be supervised by staff who are contracted by OCFS. Parents and children may need transportation to the services indicated in their Reunification and Rehabilitation plan. The Department assists families by contracting with transportation agencies to provide rides to counseling, drug screenings, and other appointments. Those interviewed by OPEGA described a shortage of supervised visitation staff and transportation staff, resulting in OCFS case aides and caseworkers taking on these roles.

Those interviewed representing both biological and resource parents identified access to supervised visitation and transportation to be a challenge. Parent attorneys stressed the critical importance of frequent visitation for biological parents to maintain relationships with their children during reunification and to demonstrate their ability to safely parent. Transportation was described by several parent representatives as a major challenge with frequent last-minute cancellations or no-shows by the transportation agency. Interviewees estimate that well over one-half of biological parents engaged in reunification need transportation services.

Challenge 3: Waitlists for Evaluations and Treatment

The federal review expectation is for the agency to make concerted efforts to assess the needs of, and provide services to parents to achieve case goals and the address issues relevant to the Department’s involvement with the family. In OPEGA’s analysis of these cases rated Area Needing Improvement, we found that in the majority of cases (70% or 148 of 210 cases), the needs of parents were not adequately assessed and services were not adequately provided. Specifically, we found that mental health evaluations and treatment, as well as substance use disorder treatment, were not satisfactorily provided, creating potential delays in reunification.

A. Mental health evaluations and treatment

Interviews with permanency caseworkers and supervisors, parent attorneys, assistant attorneys general, court representatives, and representatives of biological parents, all identified chronic issues with waitlists for mental health services for parents in the reunification process. Caseworkers and supervisors reported that waitlists for mental health evaluations, in particular, are several months long. Those interviewed expressed that these long waits for the assessment and treatment of mental health may delay reunification, as parents often must be assessed and complete treatment in order to alleviate the circumstances associated with jeopardy to their child’s welfare.

B. Substance use disorder treatment

Interviewees reported similar concerns related to long wait lists for substance use disorder services. They noted that substance use is a factor in many reunification cases, and that many parents have to wait for a provider to be available in order to begin to receive treatment for their substance use. Parents may need to satisfactorily participate in substance use disorder treatment before their child can reunify and return to the home. Waitlists for these services may contribute to delays in permanency for the child.

Challenge 4: Timeliness of TPR Filings and Other Legal Concerns

The federal review expectations include establishing permanency goals timely that are appropriate for the child’s needs and the circumstances of the case, and, if reunification efforts are not successful, filing a termination of parental rights (TPR) petition in a timely manner. Both federal and state statute require OCFS to seek termination of parental rights when the child has been in foster care for 15 of the most recent 22 months. Exceptions to this requirement include: when the Department has not provided services; the child is cared for by a relative; and the Department documented a compelling reason that a TPR is not in the best interest of the child. (See page 17). In OPEGA’s analysis of the cases rated Area Needing Improvement, we found that in the majority of cases reviewed (62% or 91 of 146 cases), reunification remained the goal too long, and about one-half of the cases reviewed (51% or 74 of 146 cases identified) had delays in TPR filing.

We interviewed permanency caseworkers and supervisors to understand what factors may contribute to reunification remaining a child’s goal for too long. We heard that the backlog of cases in the judicial system causes delays in scheduling and holding court hearings that are necessary for judicial decisions to

cease reunification efforts. Interviewees reported that TPR hearings have low priority in the trailing docket³⁷ hearing prioritization process, and may be delayed for months. Hearings early in the case may be delayed if there is not an attorney available to represent the parent, and hearings throughout the case may also be delayed due to scheduling conflicts with a smaller number of parent attorneys assigned to a large number of cases.

Some permanency staff explained that reunification efforts can stall when parents have to wait for diagnosis and treatment, and that judges are unlikely to agree to TPRs if parents are not provided services in a timely manner.

Caseworkers and supervisors reported that TPR petitions may not be filed timely due to workloads. Some caseworkers said that writing TPR petitions is time-consuming, cumbersome, and difficult to accomplish timely given other priorities, such as ensuring children are safe in placements and assessing whether parents have alleviated circumstances of jeopardy. [See Challenge 2].

Biological parent representatives described challenges with parents getting timely legal representation and the quality of their legal representation. They said that it is not uncommon for parents to meet their court-appointed attorney for the first time at the first court hearing, with no opportunity for advance planning. They further stated that parents may be advised to not contest a jeopardy hearing by an attorney who knows very little about their situation. Parent representatives also note that GALs are required to meet with the child and the resource parent but not the biological parent before making recommendations to the court.

Conclusion

Reunification is a complex process in which a child's needs for safety, well-being, and permanency are continually assessed while the parent attempts to address the concerns and conditions that resulted in their child being removed from the home. This continual assessment, and, subsequent decision-making, rely upon the caseworker's ability to conduct thorough and comprehensive casework. However, high workloads driven by caseworker vacancies, a lack of support staff, and a lack of visitation supervisors and transportation for families, all place additional burdens on caseworkers which can adversely impact all parts of practice. One such practice challenge we noted was the inadequate assessment of parents' substance use, reportedly due to caseworker inexperience and challenges with the logistics and results of drug screens. Another practice challenge was caseworker engagement with the family, particularly with inexperienced caseworkers employing specific strategies to engage parents. Both of these practice challenges are further impacted by high workloads.

³⁷ For each month, the court has a list of cases that are ready for a contested hearing. This is called a "trailing docket." In assigning trial dates, it prioritizes cases with upcoming statutory deadlines. If there is not sufficient trial time to accommodate all cases, lower priority hearings such as TRPs are set as backup cases to the priority cases, meaning the case will be heard in place of a case that settles without a hearing at the last minute. This ensures that trial time is not wasted, but if the court does not designate enough trial time for each trailing docket, cases can be delayed to the next month or beyond. The FFY23 Annual Progress and Services Report notes: "The key to the success of the trailing docket is for the court to effectively predict case surges to expand court trial time accordingly and thereby improve date certainty for litigants" (p. 138).

Relatedly, successful reunification requires the parent addressing the concerns that led to their child being brought into state custody, which is dependent upon the availability and access to required services. We noted two such service types with waitlists were related to assessing and treating mental health issues, and treating substance use disorders.

When reunification efforts stall or are otherwise unsuccessful, the permanency goal for the child may change, and, often, a petition for a termination of parental rights is appropriate. However, we noted that the Department was frequently cited for reunification remaining a child's permanency goal for too long and/or not filing a TPR in a timely manner, both which may be partially impacted by the prioritization of TPR hearings in the court, the lack of available parent attorneys on child protective cases, high caseworker workloads, and waitlists for mental health and substance use disorder services.

We note that the aforementioned challenges are broadly known by the OCFS management, and to various extents are addressed in the most recent FFY24 Maine Annual Services and Progress Report.

Scope and Timing of this Information Brief

Given the GOC's stated timeline and interest in potential legislative action this session, we have adjusted the scope and timing of our deliverable accordingly. In the interest of timeliness, we have opted to issue an information brief now that describes the reunification process, the primary challenges within that process, and some of the factors contributing to those challenges, rather than a full report requiring additional fieldwork to develop issues and recommendations that would not be completed in time for the current Legislative session. We believe our chosen approach will allow the results of our work completed to date to be considered by both the GOC and the Department as they undertake reform of the child protective system.

Appendix A. Aggravating Factors

Table A.1. Aggravating Factors (22 M.R.S. §4001(1-B))	
A.	The parent has subjected any child for whom the parent was responsible to aggravated circumstances, including, but not limited to, the following:
1.	Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, sexual exploitation of a minor, sex trafficking or aggravated sex trafficking, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society.
A-1.	The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child.
B.	The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent:
1.	Murder;
2.	Felony Murder;
3.	Manslaughter;
4.	Aiding, conspiring or soliciting murder or manslaughter;
5.	Felony assault that results in serious bodily injury;
6.	Any comparable crime in another jurisdiction.
C.	The parental rights of the parent to a sibling have been terminated involuntarily.
D.	The parent has abandoned the child.
Source: https://legislature.maine.gov/legis/statutes/22/title22ch1071sec0.html (last visited Feb. 14, 2024).	

Appendix B. Methodology

Preliminary research for the reunification portion of OPEGA’s Child Protective Services review began in April 2022. The Government Oversight Committee then directed OPEGA to pause work on reunification in September 2022. In March 2023, the GOC approved OPEGA staff to return to this work.

The preliminary research conducted in 2022 included collection and analysis of data from various sources. To understand the legal and policy framework for child protective services, OPEGA examined relevant state statutes, agency rules, and OCFS policies, particularly those governing permanency of children in state custody. We also reviewed federal and state statutes governing OCFS, including but not limited to the Child and Family Services and Child Protection Act (22 M.R.S. §§ 4001 to 4099-P)³⁸

OPEGA interviewed a range of stakeholders. To understand key aspects of OCFS policy and expectations in family reunification, OPEGA interviewed 9 OCFS staff members. We had a series of meetings with the OCFS Director and Assistant Director. We then interviewed several district office staff members (program administrators, supervisors, and caseworkers) to learn more about OCFS practice and current conditions. We sought to understand the perspectives of other stakeholders in reunification by conducting a total of 21 interviews with:

- Maine Child Welfare Services Ombudsman;
- Judges;
- Guardians ad Litem (GALs) and Court Appointed Special Advocates (CASAs);
- Assistant Attorneys General in the Child Protection Division (who represent OCFS);
- Defense attorneys (who represent biological parents);
- Organizations that support and advocate for biological and resource parents involved with CPS; and
- Service providers.

Case Reviews

In order to assess the thoroughness of reunification casework, and to identify any specific practice concerns and the extent to which those are occurring, OPEGA analyzed data from the agency’s internal quality assurance (QA) program. OCFS uses the federal government’s Child and Family Services Review (CFSR) model to evaluate child welfare practice. The CFSR is the U.S. Department of Health and Human Services oversight mechanism for examining state conformity with federal child welfare expectations and promoting continuous improvement.

Every six months, OCFS QA randomly selects a sample of cases for review. QA reviews are conducted by a team of nine QA Specialists who typically have experience as OCFS caseworkers or supervisors. QA Specialists conduct detailed assessments that include examining electronic case records and conducting interviews with children, parents, foster parents, caseworkers, and other professionals involved with the case.

³⁸ <https://legislature.maine.gov/legis/statutes/22/title22ch1071sec0.html> (last visited Feb. 12, 2024).

QA reviews are structured around the federal Onsite Review Instrument and Instructions (OSRI). The OSRI contains 18 areas or “Items” for review, and QA Specialists rate each case either *Strength* or *Area Needing Improvement* on every applicable Item. The performance standards for a *Strength* rating are very high, and may exceed the expectations set forth in OCFS policy. For this evaluation, OPEGA selected the six OSRI Items most central to reunification work, including safety assessment throughout the case, effectiveness of work to achieve permanency for the child, and several aspects of casework with parents, since resolving jeopardy caused by parents is essential for reunification. The following table lists each Item we analyzed and its guiding questions.

Table B.1. Child and Family Services Review (CFSR) Onsite Review Instrument and Instructions (OSRI): Items Examined in OPEGA Analysis	
CFSR Item	Specific Questions Pertinent to OPEGA Analysis
Item 3: Risk & safety assessment and management	
	Did the Agency accurately assess all risk and safety concerns for the child in foster care and any children remaining in the home?
	Was there a safety concern during visitation with parent(s) or other family members?
Item 5: Permanency goal for child	
	Were permanency goals established in a timely manner?
	Were permanency goals appropriate to the child’s needs and circumstances of the case?
Item 6: Achieving reunification or other form of permanency	
	Did the agency and courts make concerted efforts to achieve permanency timely?
Item 12B: Needs assessment and services to parents	
	Did the agency conduct a comprehensive assessment that accurately assessed the parent(s)’ needs?
	Did the agency provide appropriate services to meet identified needs?
Item 13: Child and family involvement in case planning	
	Did the agency make concerted efforts to involve the parent(s) in case planning?
Item 15: Caseworker visits with parents	
	Was the frequency of caseworker visits with parent(s) sufficient to (1) address child’s safety, well-being, and permanency and (2) promote achievement of case goals?
	Was the quality of caseworker visits with parent(s) sufficient to (1) address child’s safety, well-being, and permanency and (2) promote achievement of case goals?
Source: US Department of Health and Human Services, Administration for Children and Families, https://www.acf.hhs.gov/cb/report/cfsr-r4-osri	

OPEGA requested QA results data files from the ten most recent reporting periods, from April 2017 to March 2023.³⁹ As expected, we received a total of 400 foster care case records. Of those 400 foster care cases, only 235 cases (68%) had reunification as a goal at any point during the case. We focused our review on those 235 cases. For each Item, we carefully reviewed narratives on the cases that were rated *Area Needing Improvement*. All 235 reunification cases were rated Area Needing Improvement on at least one of the six Items. The narrative rationales provided by QA staff explain both the expectations of the reviewers and how the casework did not meet expectations. OPEGA developed a coding scheme to categorize and quantify deficiencies that led to Area Needing Improvement ratings. We then identified the practice concerns and casework deficiencies that occurred in the majority of reviewed cases.

Staff Interviews

After identifying the top reasons casework did not meet the federal expectations, we sought to understand the perspectives of front line OCFS staff about the reasons for these common shortcomings. The QA data files do not include identifying information about which staff worked on the cases. OPEGA decided to interview a randomly selected 10% of permanency staff. We requested a list of all permanency caseworkers and supervisors from OCFS, including data on their district office and tenure working for the agency. The staff list included 132 caseworkers and 34 supervisors. We used a random number generator to identify caseworkers and supervisors to contact. We compared the resulting sample to the overall distribution of staff experience and by district office, and determined that the sample contained a reasonably representative group.

OPEGA ultimately interviewed 13 permanency caseworkers and 5 supervisors, including at least one staff person from each district office. Our sample included caseworkers from every district, with an average tenure working at OCFS of three years and a range of less than one year to seven years. Supervisors interviewed are from four districts and have worked with OCFS for an average of 13 years, ranging from seven to 24 years.

Table B.2. OCFS Permanency Staff, July 2023		
Role	Total	OPEGA Interviews
Permanency Caseworkers	132	13
Permanency Supervisors	34	5
Total	166	18

The interview questions explored staff perspectives about the themes we identified, whether staff consider QA expectations reasonable, factors that may impede reunification, and reasons for the most common areas where casework does not meet federal expectations. We also interviewed the

³⁹ OPEGA's initial data request included nine reporting periods. When we resumed work in 2023, OCFS informed us that there was one more recent reporting period's data available (October 2022 – March 2023), and we added those records to the analysis.

Quality Assurance manager and a QA reviewer to ask specific questions about the case rating process.

OPEGA reviewed recent OCFS federal annual reports to compare our identified themes to the agency's assessments, goals and strategies. We developed a list of resulting questions, and interviewed OCFS management about their awareness of the deficiencies and what actions they are taking to address them.

Other Stakeholder Perspectives

OPEGA also interviewed 17 stakeholders outside OCFS to hear their perspectives on the specific themes we identified in the case review analysis. We spoke with a parent attorney and representatives of six groups that work with biological and resource parents. The interview discussions explored recent experiences, potential reasons for OCFS practice deficiencies, and suggestions for improvement.