



NEWSLETTER

Practice Guidelines Are More than Mere Suggestions for Caseworker Practice

With more and more frequency, defense counsels efforts to encourage DCFS to follow its own practice guidelines is met with the claim that the practice guidelines are “suggestions not rules.” This claim is raised despite an October 19, 1999 order signed by Judge Tena Campbell, United States District Court Judge for the District of Utah, Central Division that the State of Utah implement a “business plan” to improve the child welfare system in Utah. David C. vs. Michael Leavitt, et al, Case No. 2:93-CV-206C, US Dist. Court, UT Dist, Central Div.; that DCFS claims to be in compliance with that order by developing the Performance Milestone Plan, [http://www.dcfhs.utah.gov/](http://www.dcfhs.utah.gov/reports_forms.htm)

[reports_forms.htm](http://www.dcfhs.utah.gov/reports_forms.htm), and, despite the position of the Director of DCFS, Richard J. Anderson.

Mr. Anderson has been directly involved for several years in the development and implementation of the Practice Guidelines. In order to clarify the mandatory nature of the Practice Guidelines, the Parental Defense Alliance invited Mr. Anderson to tell us, once and for all, whether the Practice Guidelines were mere suggestions or mandatory practice policies. Mr. Anderson’s response in this quarter’s Newsletter should help to address the resistance by some to enforce comply with DCFS’s own policies and procedures. The Division’s commitment to the Practice Guidelines justifies efforts by defense counsel to encour-



age DCFS caseworkers to actively fulfill its role in reuniting families and seeking permanency for Utah children, and to educate the courts as to the applicability of the Guidelines.

We appreciate Mr. Anderson’s efforts and willingness to share the Division’s perspective on the Practice Guidelines.

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Special points of interest:

- Everything in the Practice Guidelines is expected to be implemented
- DCFS has incorporated state and federal law, administrative rules, practice

Child and Family Services Practice Guidelines: Much More Than Just a List of Suggestions

Contributed by Richard J. Anderson, Director, Utah Division of Child and Family Services

As is common to the position of the director of our division, I get some very interesting and sometimes strange questions

posed to me about our work. The latest was this, “Are the division’s Practice Guidelines just suggestions or are they required of your staff?” I was tempted to ask, “Why would we invest tremendous effort, time, funding, research and planning to send out a book

load of suggestions hoping that someone might like our ideas and actually implement a few of them?” My answer was that everything in our Practice Guidelines is expected to be implemented. We have incorporated state and federal law, administrative rules, practice

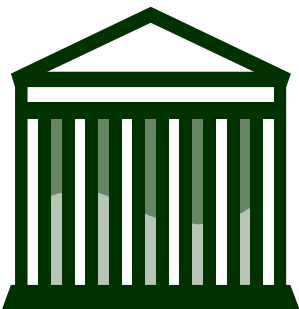
Child and Family Services Practice Guidelines: Much More Than Just a List of Suggestions, continued...



Practice Guidelines...Tools for a true professional organization

The Practice Guidelines are "clearly stated principles and explicitly designed practices."

**-Richard J. Anderson,
Director, DCFS**



practice model expectations, and protocols into the Guidelines. This contains all of the guides provided for our work. The Guidelines set forth the required behavior of someone that is a true representative of the Division of Child and Family Services. They are a protection for both those we serve and those delivering services.

Kim, our excellent administrative secretary, and I did some research into the term "guideline". We discovered the following terms used to define it: "a statement of policy of procedure", "an outline of conduct", "any guide or indication of a course of action", "as statement of other indication of policy or procedure by which to determine a course of action", "a rule or principle that provides guidance to appropriate behavior", "code of conduct", "rule", and "protocol". Now,

The Performance Milestone Plan: Purpose

According to DCFS, the purpose of the Performance Milestone Plan is to describe "in some detail how the Division will improve service to its clients in Utah. " Performance Milestone Plan ("The Plan"), Executive Summary.

The Plan is "prepared according to the September 17, 1998 order of United States District Court Judge Tena Campbell and is intended to fulfill the March 17, 1997 order of Judge David Winder." Id. P5.

The 1999 Plan demonstrates the Division's "compliance with the order of the court and the **commitment to provide quality child welfare services**. Id. at p5 (emphasis added).

there may be some that have used a pirate's definition coming from the movie entitled, Pirates of the Caribbean, where the pirate Jack is told that for what he has done there is a pirate rule that he has to walk the plank. His response is that it is not really a rule but a guideline – hinting that a guideline does not have to be followed explicitly. It's clear that Jack was trying to trick his adversaries. I have never seen a pirate using a dictionary and this may be why Jack's approach worked. If there is any question about our Practice Guidelines, don't ask Jack to clarify.

All of us have worked a long time to have the foundations of a true professional organization by having clearly stated principles and explicitly designed

practices. The requirement to be part of this professional organization is to align our daily work to those principles and practices. The outcomes for children and families have continually improved over the years that we have unified around our principles and practices. The evidence is abundant in support of that fact. We also have communities with growing trust in our services. When the public gets what we have told them they can expect, trust increases. Jack would have to walk the plank if he was a member of our team. Since we are not of the group that Jack belongs to, we don't ask anyone to walk the plank. We do ask ourselves to walk a pretty straight line of practice. Our Practice Model does allow for flexibility in practice but does not allow for breaking the rules – the Practice Guidelines.

Richard J. Anderson

The Division and Child Welfare Police and Practice Group (CWPPG) "assert that continued improvement in the Utah child welfare system will be realized when an agency with adequate resources, **operating under a clear Practice Model**, measures and achieves its outcomes and adjusts practices and resources accordingly." Id at p 7.

The Division and CWPPG claim that the Practice Model will prepare caseworkers to provide effective case support to improve outcomes for children and their families. This will occur with "the use of good practice skills that form constructive relationships, and the use of effective assessment tools, [to] lead to more and

thorough and participatory case planning, creating long-term solutions, and avoiding serial intervention that have little or no lasting effect. The Practice Model is being designed to support this level of competency." Id at p 9,10.

When DCFS caseworkers use the practices developed to implement the Plan, parents have a clear understanding of the expectations to remedy the conditions resulting in DCFS intervention, caseworkers understand the expectation for their **active** assistance to the family, and intervention is more meaningful. When DCFS use the practices, it is also clear to defense counsel when their clients are experiencing difficulty working towards reunification.

Kinship Foster Care

In most cases involving removal, kinship care is preferable to foster care. Unfortunately, the overwhelming majority of federal supportive funds is dedicated to foster care.

According to DCFS statistics, the primary reason for disruption from a kinship placement is financial difficulty.

The Child and Family Services worker may recommend to the court that temporary custody of the child be ordered to DCFS, the child be placed in

the home of a kinship caregiver, the identified kinship caregiver becomes a licensed foster care provider, and then DCFS provides out of home services. Section 510 of the Practice Guidelines, Licensed Kinship Foster Care.

DCFS is making efforts to make the licensing process for kinship foster care more practical. For example, there is an expedited licensing process (hopefully, two weeks) and non-serious offenses will be overlooked. The downside,

however, is that the child must be in the temporary custody of the Division before the child is placed with the licensed foster kinship placement. Again, the purpose of this process is to access federal foster care dollars to assist kinship caregivers financially while the child is in their care.

Defense counsel should be prepared to discuss the possibility for kinship foster care if DCFS doesn't bring it up.

Licensed Kinship Foster Care allows the State to access federal foster care dollars to provide support to kinship caregivers.



NEW FEDERAL LEGISLATION To Provide Additional Funding for Support Services

To maximize services and improve outcomes for children, the U.S. Senate has passed Senate Bill 3525, amending the Social Security Act. In general, the Amendments made by this bill take effect on October 1, 2006 and direct the Secretary of Health and Human Services to reserve a specified portion of any ap-

propriation for the Promoting Safe and Stable Families (PSSF) program for grants to improve outcomes for and the safety of children affected by methamphetamine abuse and addiction.

Additional resources are made available to the Promoting Safe and Stable Families re-

sources; reauthorizes the Safe and Stable Families Program for; includes mandatory grants of \$345 million and discretionary grants of \$200 million annually; reauthorizes \$325 million in discretionary grants for Child Welfare Services program, and reauthorizes the Court Improvement program.

Legislation provides funding for substance abuse treatment, early intervention, counseling and parenting skills training

Appellate Decisions Of Interest

In the Interest of A.F., 2006 UT App 200

Orders from permanency hearings are not final appealable orders.

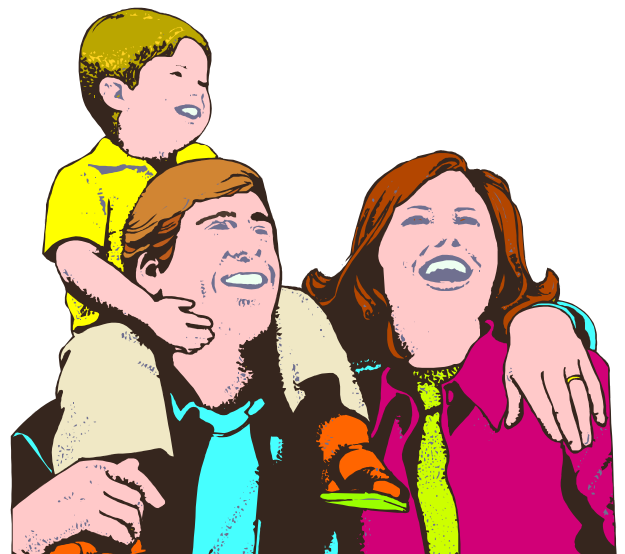
SM v. State, 2006 UT App 354

Review of the concept of Present Parenting Ability vs. Past

Conduct; Combined Permanency Hearings & TPR

In the Interest of J.C., 2004 UT App 255

Definition of "reasonable efforts" to mean "fair and serious efforts".





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“Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.”

Louis Brandeis, dissent, *Olmstead v. United States*, 277 U.S. 438, 485 (1928).

Parental Defense Attorneys: First responders in the battle to level the playing field for parents.



Parental Defense ALLIANCE OF UTAH

Reasonable Efforts Considerations At Shelter Hearing



1. What exigent circumstances of “substantial and immediate threat to the safety of a child” does the caseworker articulate?
2. If the court has issued a warrant, what circumstances does the caseworker contend constitute a substantial and immediate threat to the safety of a child?
3. If the court has issued a warrant, what REASONABLE EFFORTS to avoid removal does the caseworker contend have been made?
4. What “fair and serious efforts were made to prevent or eliminate the need for removal?”
5. Why, according to the CPS worker, will home based services be inadequate to permit the child to remain safely in their home?
6. What circumstances exist, according to CPS, that fair and serious efforts by the Division will not eliminate the need for protective custody?
7. What ongoing risk of abuse or neglect to the child does CPS articulate?
8. Is there a past history of abuse or neglect?
9. Is the family willing to accept home based services?
10. Did the Division consider:
 - Intensive Family Preservation Services (Guidelines 108.2)
 - Placement Disruption Funds (Guidelines 706)
 - Domestic Violence related home based services (Guidelines 706)
 - Housing deposit (Guidelines 706.2)
 - Utility Deposit (Guidelines 706.2)
 - Utility Bills assistance (Guidelines 706.2)
 - Automobile Repairs (Guidelines 706.2)
 - Food (Guidelines 706.2)
 - Gasoline (Guidelines 706.2)