

West Virginia	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE ¹
<p>1. General Duties: <i>Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</i></p>	<p>- "Guardian ad Litem" means the attorney appointed to represent the child. R. of Proc. for Child Abuse & Neglect Proceedings, R. 3(k).</p> <p>- Petition to court when child believed neglected or abused--Right to counsel; improvement period; hearing; priority of proceeding; transcript.</p> <p>(a) In any proceeding under the provisions of this article, the child, his or her or parents and his or her legally established custodian or other persons standing in loco parentis to him or her shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. Counsel of the child shall be appointed in the initial order...Under no circumstances may the same attorney represent both the child and the other party or parties, nor shall the same attorney represent both parents or custodians... W.V. Code § 49-6-2.</p>
<p>2. Out of Court - Actions to be Taken: <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<p>- Initial Stages of Representation</p> <ol style="list-style-type: none"> 1. Notify promptly the child and any caretaker of the child of the appointment of counsel and the means by which counsel can be contacted. 2. Contact the caseworker and review the caseworker's file and all relevant information. 3. Contact and interview persons such as older children, caseworkers, and caretakers who may have information with respect to the child and obtain names and addresses of hospital personnel, physicians, teachers, law enforcement, and other persons who may have pertinent information regarding the child and interview them. 4. Absent extraordinary circumstances and the child is three or under: <ol style="list-style-type: none"> a. If the child is in the care of someone other than the respondent(s), conduct interviews with the child's caretakers concerning the type of services the child is now receiving and the type of services the child needs and visit the child in the caretaker's home, making observations of the child or b. If the child is in the care of the respondent(s), request from the respondent(s)' attorney interviews with the respondent(s) concerning the child's care and the type of services the child needs and visit the child in

¹ [West Virginia Benchbook](#) contains a compilation of statutes and case law to assist guardians ad litem as well.

his/her home, making observations of the child. If refused, ask for assistance of the court.

5. Absent extraordinary circumstances and the client is over three:

- a. If the child is in the care of someone other than respondent(s), conduct interviews with the child's caretakers concerning the type of services the child is now receiving and the type of services the child needs.
- b. If the child is in the care of someone other than the respondent(s), conduct interviews with the child in a manner and environment appropriate to the child's age and maturity to obtain facts concerning the alleged abuse or neglect and to determine the child's wishes and needs regarding temporary visitation and/or placement.
- c. If the child is in the care of the respondent(s), request from the respondent(s)' attorney interviews with the child out of the presence of the respondent(s) in a manner and environment appropriate to the child's age and maturity. It is essential that the guardian ad litem understand that the interview is for the purpose of gathering information not influencing information. If refused, ask the assistance of the court.

6. Provide to the child, his or her parents, and any caretaker notice of the petition and all subsequent motions.

7. Maintain contact with the child throughout the case and assure that s/he is receiving counseling, tutoring, or any other services needed to provide as much stability and continuity as possible under the circumstances. [West Virginia: Guidelines for Guardians ad Litem in Abuse and Neglect Cases \(from Appendix A to the West Virginia Supreme Court of Appeals opinion in *In re Jeffrey R.L.*, 435 S.E.2d 162, 178-80 \(W.Va. 1993\)\).](#)

- Preparation for and Representation at Adjudicatory and Dispositional Hearing

8. Pursue the discovery of evidence, formal and informal.

9. File timely and appropriate written motions such as motions for status conference, prompt hearing, evidentiary purpose, psychological examination, home study, and development and neurological study.

10. Evaluate any available improvement periods and actively assist in the formulation of an improvement period, where appropriate, and service plans.

11. Monitor the status of the child and progress of the parent(s) in satisfying the conditions of the improvement period by requiring monthly updates or status reports from agencies involved with the family.

12. Participate in any discussions regarding the proposed testimony of the child and, if it is determined that the child's testimony is necessary, strongly advocate for the testimony to be taken in a legally acceptable and emotionally neutral setting.
13. Maintain adequate records of documents filed in the case and of conversations with the client and potential witnesses.
14. Ensure that the child is not exposed to excessive interviews with the potential dangers inherent therein. Before multiple physical or psychological examinations are conducted, the requesting party must present to the judge evidence of a compelling need or reason considering: (1) the nature of the examination requested and the intrusiveness; (2) the victim's age; (3) the resulting physical and/or emotional effects of the examination on the victim; (4) the probative value of the examination to the issue before the court; (5) the remoteness in time of the examination; and (6) the evidence already available for the defendant's use.
15. Ensure that a child who is court ordered to be interviewed by a psychologist or psychiatrist is interviewed in the presence of the guardian ad litem attorney unless the court, after consulting the child's guardian ad litem, believes that the interview is best conducted without the guardian ad litem.
16. Subpoena witnesses for hearings or otherwise prepare testimony or cross-examination of witnesses and ensure that relevant material is introduced.
17. Review any predispositional report prepared for the court prior to the dispositional hearing and be prepared to submit another if the report is not consistent with all other appropriate evidence.
18. Apprise the court of the child's wishes.
19. Explain to the child, in terms the child can understand, the disposition.
20. Advocate a gradual transition period, in a manner intended to foster emotional adjustment whenever a child is to be removed from the custody of anyone with whom s/he has formed an important attachment.
21. Ensure that the court considers whether continued association with siblings in other placements is in the child's best interests and an appropriate order is entitled to preserve the rights of siblings to continued contact.
22. Ensure that the dispositional order contains provisions that direct the child protective agency to provide

periodic reviews and reports. [West Virginia: Guidelines for Guardians ad Litem in Abuse and Neglect Cases \(from Appendix A to the West Virginia Supreme Court of Appeals opinion in *In re Jeffrey R.L.*, 435 S.E.2d 162, 178-80 \(W.Va. 1993\)\).](#)

- (a) The attorney for the child shall have access to the file kept by the Department and the file kept by the attorney for the petitioner, including all information set forth in [W. Va. Code § 49-7-1](#) and the attorney may make such use thereof as may be appropriate to the case, subject to such limitations as the order of the court shall require;

(b) Unless otherwise ordered by the court pursuant to [Rule 12](#), within three (3) days of the filing of the petition, the attorney for the petitioner shall provide to counsel for the respondent(s) or to the respondent(s) personally, if not represented by counsel, the attorney for the child, and all other persons entitled to notice and the opportunity to be heard, the following information, as is within the possession, custody, or control of the attorney for the petitioner, the existence of which is known, or by some exercise of due diligence may become known, to the attorney for the petitioner:

(1) Any relevant written or recorded statements made by the respondents (or any one of them), or copies thereof, and the substance of any oral statements which the petitioner intends to offer in evidence at the trial made by the respondents (or any one of them);

(2) Copies of the respondent's(s') prior criminal records, if any;

(3) Copies of books, papers, documents, photographs, tangible objects, buildings, or places which are material to the preparation of the respondent's(s') case or are intended for use by the attorney for the petitioner as evidence in chief at the trial or were obtained from or belonging to the respondent(s);

(4) Copies of results or reports of physical and/or mental examinations, if any, and copies of scientific tests and/or experiments, if any, which are material to the preparation of the respondent's(s') case or are intended for use by the attorney for the petitioner as evidence in chief at the trial; and

(5) A written list of names and addresses of all witnesses whom the attorney for the petitioner intends to call in the presentation of the case-in-chief, together with any record of prior convictions of any such witnesses;

(c) Not less than five (5) days prior to any hearing wherein the respondent(s) intend(s) to introduce evidence, the respondent(s) shall provide to the attorney for the petitioner, the attorney for the child, and all other persons entitled

to notice and the right to be heard, the following information:

(1) Copies of books, papers, documents, photographs, tangible objects, buildings, or places which are within the possession, custody, or control of the respondent(s) and which the respondent(s) intend(s) to introduce as evidence in chief at the trial;

(2) Copies of any results and reports of physical and/or mental examinations, if any, and copies of scientific tests and/or experiments, if any, made in connection with the particular case, if any of such copies are within the possession or control of the respondent(s), which the respondent(s) intend(s) to introduce as evidence in chief at the trial or which were prepared by a witness whom the respondent(s) intend(s) to call at the trial when the results and/or reports relate to his or her testimony; and

(3) A written list of the names and addresses of the witnesses the respondent(s) intend(s) to call in the presentation of the case-in-chief.

(d) The disclosure provided for in this rule is not intended to limit the amount or nature of disclosure in these cases. This rule merely establishes the minimum amount of disclosure required.

(e) If, prior to or during any hearing, a party discovers additional evidence or material that should have been disclosed, that party shall promptly notify all other parties and their counsel, persons entitled to notice and the right to be heard, and the court of the existence of the additional evidence or material. [R. of Proc. for Child Abuse & Neglect Proceedings, R. 10.](#)

- Multidisciplinary treatment planning process.

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(b) Each treatment team shall be convened by the child's or family's case manager in the Department of Health and Human Resources or the Division of Juvenile Services if the juvenile has been ordered into its custody for examination and diagnosis pursuant to section thirteen, article five of this chapter. The treatment team shall consist of the child's custodial parent or parents, guardian or guardians, other immediate family members, the attorney or attorneys representing the child, the parent or parents of the child, the child's attorney, the guardian ad litem, if any, the prosecuting attorney or his or her designee, a member of a child advocacy center when the child has been processed through the child advocacy center program(s) and, where appropriate to the particular case under consideration and available, a court-appointed special advocate, a member of a child advocacy center, an appropriate school official and any other person or an agency representative who may assist in providing

	<p>recommendations for the particular needs of the child and family. The child may participate in multidisciplinary treatment team meetings if such is deemed appropriate by the multidisciplinary treatment team. For purposes of delinquency proceedings, the juvenile probation officer shall be a member of the treatment team. Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing: <i>Provided</i>, That a member of a child advocacy center should participate in any case when appropriate to the particular case under consideration...W.V. Code § 49-5D-3.</p> <p>- (a) <i>Convening of multidisciplinary treatment teams.</i> – Within thirty (30) days after the civil protection petition is filed, the court shall cause to be convened a meeting of a multi-disciplinary treatment team assigned to the case, said multi-disciplinary treatment team to include those members mandated pursuant to W. Va. Code § 49-5D-3, providers of services to the child and/or family, and persons entitled to notice and the right to be heard.</p> <p>(b) <i>Access to and confidentiality of information.</i> – The multidisciplinary investigative team created pursuant to W. Va. Code § 49-5D-2, the multi-disciplinary treatment team created pursuant to W. Va. Code § 49-5D-3, and the multidisciplinary community over-sight team created pursuant to W. Va. Code § 49-1-3(7) shall be afforded access to information in the possession of the Department and other agencies and the Department and other offices shall cooperate in the sharing of information as may be provided by W. Va. Code §§ 49-5D-2(d), 49-5D-3(d), 49-5D-6, 49-7-1, and any other relevant provisions of law. Any multi-disciplinary team member who acquires confidential information shall not disclose such information except as provided by statute.</p> <p>(c) <i>Responsibilities.</i> – The multidisciplinary treatment team shall submit written reports to the court as required by these rules or by the court, shall meet with the court at least every three months until permanency is achieved for the child, and the case is dismissed from the docket; shall be available for status conferences and hearings as required by the court; and shall not be abrogated by an adoption review committee or other administrative process of the Department.</p> <p>(d) <i>Scope of this rule.</i> – This rule is to be construed broadly to effectuate cooperation and communication between all service providers, parties, counsel, persons entitled to notice and the right to be heard, and the court. R. of Proc. for Child Abuse & Neglect Proceedings, R. 51.</p>
<p>3. In Court - Active Participation in Hearings: Appear in</p>	<p>- (a) <i>Restrictions on the testimony of children.</i> – Notwithstanding any limitation on the ability to testify imposed by this rule, all children remain competent to testify in any proceeding before the court as determined by the Rules of Evidence and the Rules of Civil Procedure. However, there shall be a rebuttable presumption that the potential</p>

<p><i>court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</i></p>	<p>psychological harm to the child outweighs the necessity of the child's testimony and the court shall exclude this testimony if the potential psychological harm to the child outweighs the necessity of the child's testimony. Further, the court may exclude the child's testimony if (A) the equivalent evidence can be procured through other reasonable efforts; (B) the child's testimony is not more probative on the issue than the other forms of evidence presented; and (C) the general purposes of these rules and the interest of justice will best be served by the exclusion of the child's testimony.</p> <p>(b) <i>Procedure for taking testimony from children.</i> – The court may conduct in camera interviews of a minor child, outside the presence of the parent(s). The parties' attorneys shall be allowed to attend such interviews, except when the court determines that the presence of attorneys will be especially intimidating to the child witness. When attorneys are not allowed to be present for in camera interviews of a child, the court shall, unless otherwise agreed by the parties, have the interview electronically or stenographically recorded and make the recording available to the attorneys before the evidentiary hearing resumes. Under exceptional circumstances, the court may elect not to make the recording available to the attorneys but must place the basis for a finding of exceptional circumstances on the record. Under these exceptional circumstances, the recording only will be available for review by the Supreme Court of Appeals. When attorneys are present for an in camera interview of a child, the court may, before the interview, require the attorneys to submit questions for the court to ask the child witness rather than allow the attorneys to question the child directly, and the court may require the attorney to sit in an unobtrusive manner during the in camera interview. Whether or not the parties' attorneys are permitted to attend the in camera interview, they may submit interview questions and/or topics for consideration by the court.</p> <p>(c) <i>Sealing of child's testimony.</i> -- If an interview was recorded and disclosed to the attorneys, the record of the child's testimony thereafter shall be sealed and shall not be opened unless:</p> <p>(1) Ordered by the court for good cause shown; or</p> <p>(2) For purposes of appeal.</p> <p>(d) A child subject to a case may attend all or portions of hearings, unless the court deems such attendance inappropriate, and may attend all or portions of multidisciplinary treatment team meetings, unless the multidisciplinary treatment team deems such participation inappropriate. Consideration shall be given to the child's preferences and developmental maturity. R. of Proc. for Child Abuse & Neglect Proceedings, R. 8.</p> <p>- (a) In any case governed by these rules in which a child eleven (11) years old or less is to be a witness, the court, upon order of its own or upon motion of a party, may permit the child witness to testify through live, one-way,</p>
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closed-circuit television whereby there shall be no transmission into the room from which the child witness is testifying.

(b) In any case in which a child over the age of eleven (11) years is to be a witness, the court, upon order of its own or upon motion of a party, and upon a finding of good cause, shall permit the child witness to testify through live, one-way, closed-circuit television whereby there shall be no transmission into the room from which the child witness is testifying.

(c) The testimony of the child witness shall be taken in any room, separate and apart from the courtroom, from which testimony of the child witness can be transmitted to the courtroom by means of live, one-way, closed-circuit television. The testimony shall be deemed as given in open court.

(d) The judge, the attorneys for the parties, and any other person the court permits for the purpose of providing support for the child in order to promote the ability of the child to testify shall be present in the testimonial room at all times during the testimony of the child witness. The judge may permit liberal consultation between counsel and the parties by adjournment, electronic means, or otherwise.

(e) The image and voice of the child witness, as well as the image of all other persons present in the testimony room, other than the operator, shall be transmitted live by means of live, one-way, closed-circuit television in the courtroom. The courtroom shall be equipped with monitors sufficient to permit the parties to observe the demeanor of the child witness during his or her testimony.

(f) The operator shall place herself or himself and the closed-circuit television equipment in a position that permits the entire testimony of the child witness to be transmitted to the courtroom.

(g) The child witness shall testify under oath, and the examination and cross-examination of the child witness shall, in all other respects, be conducted in the same manner as if the child witness testified in the courtroom.

(h) When the testimony of the child witness is transmitted from the testimonial room into the courtroom, the court stenographer shall record the testimony in the same manner as if the child witness testified in the courtroom.

(i) Under all circumstances, the image of the child witness transmitted shall include the entirety of his or her person ordinarily subject to observation by the human eye, subject to such limitations as may be unavoidable by reason of standard courtroom furnishings.

	<p>(j) Should it be required, for the purposes of identification that the person to be identified and the child witness be present in the courtroom at the same time, the court shall ensure that this meeting takes place after the child witness has completed his or her testimony; and this confrontation shall, to the extent possible, be accomplished in a manner that is nonthreatening to the child witness. R. of Proc. for Child Abuse & Neglect Proceedings, R. 9.</p> <p>- (2) The guardian ad litem for the children, the respondents and their counsel, and persons entitled to notice and the right to be heard, shall advise at the dispositional hearing and, where termination is sought after the court's findings on the factual issues surrounding termination are announced, whether any such persons seek a modification of the child's case plan as submitted or desire to offer a substitute child's case plan for consideration by the court. The court shall require any proposed modifications or substitute plans to be promptly laid before the court and take such action, including the receipt of evidence with respect thereto, as the circumstances shall require. It shall be the duty of all the parties to the proceeding and their counsel to co-operate with the court in making this information available to the court as early as possible. It shall also be appropriate for the court to require alternative provisions of a case plan to be submitted prior to the taking of evidence in a dispositional hearing to suit alternative possible findings of the court after evidence is taken on any contested issues. Except as to the establishment of grounds for termination and the establishment of other necessary facts, dispositional hearings are not intended to be confrontational hearings; rather such are concerned with the best interests of the abused or neglected children involved. R. of Proc. for Child Abuse & Neglect Proceedings, R. 35.</p>
<p>4. <i>Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders.</i></p>	<p>- A child, a child's parent (whose parental rights have not been terminated), a child's custodian, or the Department shall file a motion in the circuit court of original jurisdiction in order to modify or supplement an order of the court at any time; provided, that a dispositional order pursuant to W.Va. Code § 49-6-5(a)(6) shall not be modified after the child has been adopted. The court shall conduct a hearing and, upon a showing of a material change of circumstances, may modify or supplement the order if, by clear and convincing evidence, it is in the best interest of the child. Provided: an order of child support may be modified if, by the preponderance of the evidence, there is a substantial change in circumstances, pursuant to W.Va. Code § 48-11-105. Adequate and timely notice of any motion for modification shall be given to the child's counsel, counsel for the child's parent(s) (whose parental rights have not been terminated) or custodian, and to the Department, as well as to other persons entitled to notice and the right to be heard. The court may consider a stipulated modification of an order, provided that the child has not been adopted as aforesaid, if the court determines that the parties and persons entitled to notice and the right to be heard understand the contents and consequences of the stipulation and voluntarily consent to its terms, that the stipulation meets the purposes of these rules and controlling statutes, and that the stipulation is in the best interest of the child. R. of Proc. for Child Abuse & Neglect Proceedings, R. 46.</p>

<p>5. Appellate Advocacy: <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p>- Post-Dispositional Representation</p> <p>23. Inform the child of his/her right to appeal.</p> <p>24. Exercise the appellate rights of the child, if under the reasonable judgment of the guardian ad litem, an appeal is necessary.</p> <p>25. File a motion for modification of the dispositional order if a change of circumstances occurs for the child which warrants a modification or represent the child if said motion for modification is filed by any other party. West Virginia: Guidelines for Guardians ad Litem in Abuse and Neglect Cases (from Appendix A to the West Virginia Supreme Court of Appeals opinion in <i>In re Jeffrey R.L.</i>, 435 S.E.2d 162, 178-80 (W.Va. 1993)).</p> <p>- Appeals of orders under W.Va. Code § 49-6-1, et seq., are governed by the Revised Rules of Appellate Procedure. Within thirty (30) days of entry of the order being appealed, the petitioner shall file a notice of appeal, including required attachments and copies, with the Office of the Clerk of the Supreme Court of Appeals of West Virginia, with service provided as prescribed by the Revised Rules of Appellate Procedure. All parties to the proceeding in the court from which the appeal is taken, including the guardian(s) ad litem for the minor children, shall be deemed parties in the Supreme Court of Appeals, unless the appealing party indicates on the notice of appeal that one or more of the parties below has no interest in the outcome of the matter. Appeals may proceed without a transcript, as deemed appropriate by the Supreme Court of Appeals. An appeal must be perfected within sixty (60) days of entry of the order being appealed. The circuit court from which the appeal is taken or the Supreme Court of Appeals may, for good cause shown, by order entered of record, extend such period, not to exceed a total extension of two months, if the notice of appeal was properly and timely filed by the party seeking the appeal. The filing of any motion to modify an order shall not toll the time for appeal. The Supreme Court of Appeals shall give priority to appeals of child abuse and/or neglect proceedings and termination of parental rights cases and shall establish and administer an accelerated schedule in each case, to include the completion of the record, briefing, oral argument, and decision. R. of Proc. for Child Abuse & Neglect Proceedings, R. 49.</p> <p>- Appellate Duties of Guardian Ad Litem</p> <p>If a guardian ad litem did not initiate the appeal, he or she is required to file either a responsive brief or a summary response in appropriate cases. W. Va. R.R.A.P. 11(h). A guardian ad litem must also appear at any oral argument scheduled in the case, unless the Court orders otherwise. In addition, the Supreme Court, has, in case law, repeatedly emphasized the importance of the role of guardians ad litem in the appellate process. See Syl. Pt. 3, Matter of Scottie D., 406 S.E.2d 214 (W. Va. 1991). Benchbook, XIV. Appeal, B.</p>
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	<p>- (h) <i>Responsibilities of guardian ad litem</i>. The guardian ad litem for any minor child involved in an abuse and neglect appeal must file a brief—or a summary response in an appropriate case—and if argument is held the guardian must appear and present argument unless otherwise specifically ordered by the Court. W. Va. R.R.A.P. 11(h).</p>
<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<p>- Attorneys represent the child through appeals. See Benchbook, XIV. Appeal, B and West Virginia: Guidelines for Guardians ad Litem in Abuse and Neglect Cases (from Appendix A to the West Virginia Supreme Court of Appeals opinion in <i>In re Jeffrey R.L.</i>, 435 S.E.2d 162, 178-80 (W.Va. 1993)).</p> <p>- 26. Continue to represent the child until such time as the child is adopted, placed in a permanent home, or the case is dismissed after an improvement period. West Virginia: Guidelines for Guardians ad Litem in Abuse and Neglect Cases (from Appendix A to the West Virginia Supreme Court of Appeals opinion in <i>In re Jeffrey R.L.</i>, 435 S.E.2d 162, 178-80 (W.Va. 1993)).</p>
	<p>Organizational and Administrative Supports for the Child Representative</p>
<p>7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</i></p>	<p>- The court automatically appoints an attorney to represent children in abuse and neglect proceedings. W.V. Code § 49-6-2.</p>
<p>8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>- Any attorney appointed pursuant to this section shall by the first day of July, one thousand nine hundred ninety-three, and three hours per year each year thereafter, receive a minimum of three hours of continuing legal education training on representation of children, child abuse and neglect: <i>Provided, however</i>, That where no attorney who has completed this training is available for such appointment, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the child. Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia. W.V. Code § 49-6-2.</p>

	- "Guardian ad Litem" means the attorney appointed to represent the child. R. of Proc. for Child Abuse & Neglect Proceedings, R. 3(k).
9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i>	<i>No explicit legal authority or requirement.</i>
10. Caseload Levels: <i>Caseloads are of a manageable size.</i>	<i>No explicit legal authority or requirement.</i>