

CRB Training Module

Permanency Planning

Learning Objectives

After studying the information in this training module, you should be able to

- Understand the concept of permanency planning
- Understand federal regulations set by the Adoption and Safe Families Act
- Identify the five possible permanency plan options
- Understand how the Indian Child Welfare Act affects permanency planning
- Understand the concept of concurrent planning

Introduction

“Permanency planning” is the process of finding a permanent home for a child in foster care. The philosophy and practice of permanency planning dramatically increases the likelihood that a child’s stay in foster care is temporary so that the child is ultimately placed in a permanent home. Permanency planning is a legally mandated concept that is enforced by the judiciary through permanency hearings.

Adoption and Safe Families Act of 1997

A federal focus on finding permanent homes for children in foster care began in 1997 with the passage of the Adoption and Safe Families Act (ASFA). ASFA shifted the federal stance on child welfare. With the passage of ASFA, reunifying children with their birthparents remained key; however, finding permanent homes for foster children in a timely manner became paramount. ASFA requires states meet certain criteria in order to receive federal funding for child welfare programs. Seventy-five percent of New Mexico’s child welfare funding is federal money; therefore, meeting ASFA requirements is key to New Mexico’s child welfare system.

ASFA requires states to make “reasonable efforts” to:

- Maintain a child in his/her family and prevent unnecessary removal, as long as the child’s safety is not endangered;
- Safely reunify a child with his/her family in situations where removal becomes necessary; and
- Create timely alternative permanency plans for the child when reunification is not possible.

When Are “Reasonable Efforts” Not Required?

States are not required to make efforts to prevent removal or reunify a child with his/her birthparents in certain circumstances. These circumstances include: the parent has been convicted of murdering or felony assault of the child or a sibling; parental rights have been terminated for sibling(s) of the child; or the child has been the victim of serious physical abuse.

ASFA Time Limits

ASFA sets time limits for the creation of a permanency plan, requiring a permanency planning hearing be held within 12 months of the child’s first entering foster care. At this hearing, the court determines which of the five possible permanency goals (discussed below) will best serve the child’s interests.

ASFA sets additional time limits for termination of parental rights (TPR). ASFA requires states file a petition for TPR if a child has been in foster care for 15 of the past 22 months. The State may elect not to file TPR in

certain circumstances: 1) the child is in the care of a relative; 2) there is a compelling reason why TPR is not in the best interests of the child (such as, the child refusing to be adopted); or 3) the state has not made reasonable efforts to return the child to the parents.

Finally, ASFA seeks to expedite the securing of adoptive homes for children not reunified with their birthparents. ASFA requires that the recruitment of an adoptive family begin when a State files a petition for TPR. For a detailed graph of the judicial timeline set by ASFA, click here: [asfa timeline.pdf](#)

Field Code Changed

Five Possible Permanency Plans

In 2003, ASFA was amended to include five possible permanency goals for children in foster care:

- 1) Reunification with parent.
- 2) Placement with a permanent guardian.
- 3) Placement for adoption after parental rights are terminated.
- 4) Placement with a “fit and willing relative” while remaining in the legal custody of the State child welfare department.
- 5) Another “planned permanent living arrangement” (PPLA) while remaining in the legal custody of the State child welfare department.

Reunification

This permanency plan involves returning a child to a previously custodial or non-custodial parent. For most children in foster care, reunification with their birth parents is their permanency goal. In 2003, 55% of children in foster care nationwide and 69% of New Mexico’s children in foster care were reunified with their parents.

Adoption

The second most common permanency plan is adoption. After the birth parents’ parental rights are terminated by the court, the child may be adopted by a relative, a foster parent, or a non-related adoptive parent. Adoption is the legal process by which another adult or adults are granted full and permanent parental rights.

In 2003, 18 percent of foster children nationwide were adopted and 16 percent of New Mexico’s foster children were adopted. New Mexico saw a decrease in the number of adoptions from foster care between 2002 and 2003 (the most recent years for which data is available). In 2002, New Mexico finalized 275 foster care adoptions, while in 2003 only 220 adoptions were finalized in the state. Most (77 percent) foster children adopted in New Mexico are adopted by nonrelatives. In New Mexico, adoption as a permanency plan is more common for children with disabilities (31 percent), while children over age 12 are less likely to have adoption as a goal (0.5 percent).

Many foster children with adoption as a permanency plan remain in foster care as “waiting children.” These children have the legal goal of adoption and their birth parent’s rights have been or are in the process of being terminated; however, these children have not yet been adopted. In 2003 and 2004 respectively, approximately 120,000 children nationwide and 635 children in New Mexico were waiting to be adopted. In 2003, between 36 percent and 41 percent of children reviewed by CRB had adoption as a permanency plan, but state data indicates less than half of those children (16 percent) were adopted that year.

Relative Care

A child may be placed in the physical custody of a relative, while the state retains legal custody over the child. In this permanency plan, the state child welfare agency continues monitoring and providing support to the child and caregiver. In 2003, approximately 11 percent of the nation’s foster children exited foster care to live with

non-parent relatives. New Mexico's percentage of children in relative care is much smaller: only 5.5 percent of children exiting foster care in the state were placed in the care of a relative.

Guardianship

Guardianship is a legal arrangement in which a child is placed in the care of an adult who is granted legal responsibility for the child. The birth parent(s)' rights are temporarily suspended by the court, but may be reinstated at a later date. The guardian may be a relative or non-relative adult. Relatively small numbers of children exit foster care to be placed with legal guardians. Only 4 percent of the nation's foster children and 3.8 percent of New Mexico's foster children had guardianship as a permanency plan in 2003.

Planned Permanent Living Arrangement (PPLA)

When none of the other permanency plans is appropriate for a foster child, PPLA can be established as the permanency plan. The State must have a "compelling reason" why none of the other permanency plans is in the child's best interests. A plan of PPLA indicates the child will remain in foster care long term. PPLA may be a plan in which the child remains in a foster home because reunification is not possible, the child has no "fit and willing" relatives, and the child does not wish to be adopted. CRB estimates that 13 percent of New Mexico foster children reviewed in the 2004-2005 fiscal year had PPLA as a permanency plan.

Some children will remain in foster care until they turn eighteen years of age, a milestone called emancipation. While emancipation (sometimes referred to as "aging out" of the system) is not a defined permanency plan in ASFA, states track emancipation rates as a separate permanency goal. In 2003, 8 percent of foster children nationwide and 1.6 percent of New Mexico's foster children emancipated out of foster care.

Indian Child Welfare Act (ICWA) of 1978

ICWA is a federal law enacted to protect the rights of Indian children in child welfare cases. ICWA affects permanency planning for Indian children by requiring states to promote the stability of Indian families and tribes. ICWA requires states to comply with the following:

- Make "active efforts" to prevent removal of an Indian child; "Active efforts" indicates states must be more persistent and active in their work with Indian families, while states are only required to make "reasonable efforts" in their work with non-Indian families.
- Make "active efforts" to reunify an Indian child with his/her parents; and
- Abide by placement preferences for Indian children in the child welfare system. When placing an Indian child in foster care, preference must be given first to family members. Placement preference must then be given to the following placements in the following order: foster homes licensed by the tribe, another Indian foster home, an institution approved by the tribe, or, as a last resort, a state-licensed foster home.

Concurrent Planning

In an effort to move foster children more quickly into permanent homes, some state child welfare agencies, including New Mexico's, have implemented "concurrent planning." This type of permanency planning emphasizes working toward family reunification while simultaneously establishing a back-up plan. This alternative (or "concurrent") plan is then ready to be implemented if the child cannot be reunified with their birth parents. CYFD uses a "Concurrent Planning Screening" tool to determine whether a child should start having a concurrent plan soon after removal from his/her home.

Concurrent planning is an alternative to traditional, sequential child welfare case planning, in which caseworkers work toward one permanency goal at a time. In traditional permanency planning, as long as

reunification was the goal, no other permanency plans would be explored. However, in concurrent planning, a back-up goal (adoption, relative care, or guardianship) is explored. For example, a child may be placed in a foster home that would be able to adopt the child if reunification failed.

Implications for CRB

CRB members play a vital role in assuring that New Mexico's foster children are returned to or placed in permanent homes. CRB has a responsibility to assure that New Mexico's child welfare system is in compliance with ASFA mandates, particularly in assuring reasonable efforts are made to reunify children with their parents and that timely and appropriate permanency plans are made for each foster child.

In reviewing a case, CRB members should ask the following questions: Are reasonable efforts being made to reunify the child with his/her birthparents? In the case of an Indian child, are active efforts being made toward reunification? What other efforts should be made by CYFD toward the goal of reunification?

CRB members should also assure the timely placement of foster children into permanent homes by assuring each child being reviewed has an appropriate permanency plan and that efforts are being made to work toward the permanency plan. Particularly in cases where PPLA is the permanency goal, CRB members should establish an opinion as to whether PPLA is the only appropriate goal or if another permanency goal should be explored.

Additionally, CRB members should keep in mind concurrent planning concepts and recommend the use of concurrent placements when appropriate. Lastly, in cases where the child has been in state custody for 15 of the past 22 months, CYFD must decide whether to file for termination of parental rights (TPR). When reviewing the case, CRB members should determine if they believe TPR is appropriate at that time and make the appropriate recommendations.

Sources: American Bar Association. (1998). *ASFA Timeline*. www.abanet.org/child/rcjji/asfa_timeline.pdf; Child Welfare League of America, National Data Analysis System. (2006). *State Data Trends for New Mexico*. http://ndas.cwla.org/data_stats/states/NM.asp; National Resource Center for Foster Care & Permanency Planning. (1998). *Tools for Permanency*. www.hunter.cuny.edu/socwork/nrcfcpp/downloads/tools/cpp-tool.pdf; New Mexico CASA Network. (2006). *New Mexico Child Abuse & Neglect Citizen Review Board 2006 Annual Report & Recommendations*; New Mexico Judicial Education Center, Institute of Public Law, University of New Mexico School of Law. (2003). *Child Welfare Handbook*. http://jec.unm.edu/resources/benchbooks/child_law/index.htm; Shaening and Associates, et al. (2005). *Preserving Native American Families in New Mexico: The Indian Child Welfare Act & The Adoption & Safe Families Act*. www.shaening.com/events.php; U.S. Department of Health and Human Services, Administration for Children and Families. (2006). *The AFCARS Report*. www.acf.hhs.gov/programs/cb/pubs/cwo03/appendix/appendix.htm; U.S. Department of Health and Human Services, Administration for Children and Families. (2003). *Child Welfare Outcomes 2003: Annual Report – Chapter VI*. www.acf.hhs.gov/programs/cb/pubs/cwo03/state_data/newmexico.htm; U.S. Department of Health and Human Services, Administration for Children and Families. (2006). *Children in the Public Foster Care System Waiting to be Adopted: Fiscal years 1999-2004*. www.acf.hhs.gov/programs/cb/stats_research/afcars/waiting2004.htm.

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