

# ADOPTION: WHY, WHEN, AND HOW

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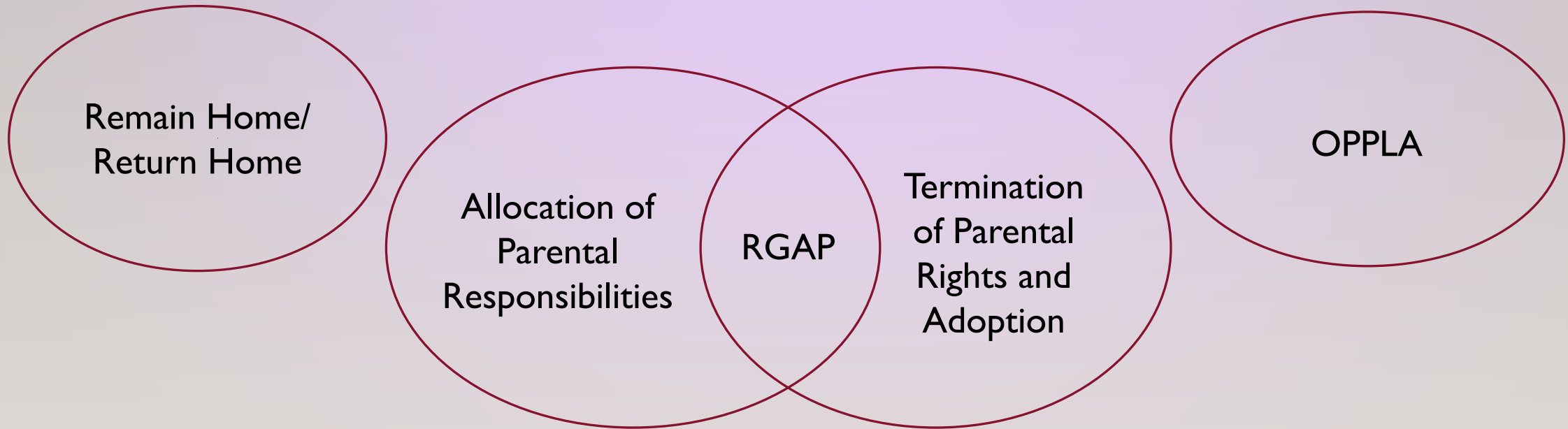
CORE COMPETENCIES II

JANUARY 27, 2022

PRESENTED BY SHIRLEY GIEN, ESQ.

# PERMANENCY OPTIONS

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## ADOPTION, APR OR RGAP?

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Is the child with a relative or in a foster home?

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Will the relative consider APR/RGAP instead of adoption?

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Is there a relationship between placement and parent(s)?

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Will the placement consent to the adoption?

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Does the child have to consent to adoption?

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Adoption can take longer – up to a year or more





- Youths over age 12 must consent to adoption. C.R.S. § 19-5-203(2): “Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is twelve years of age or older.”
- The older the child, the stronger the relationship with biological relatives, which may weigh into their decisions.
- Talk to the child about adoption vs. other options and represent their position at every permanency hearing.

## LESS DRASTIC ALTERNATIVES

- When considering termination under § 19-3-604(1)(c), the court must also consider and eliminate **less drastic alternatives** to termination. *People in Interest of M.M.*, 726 P.2d 1108, 1122 (Colo. 1986).
- Must elicit testimony at the TPR hearing that all less drastic alternatives to termination were explored and excluded
  - Was there a relative affidavit or diligent search?
  - Was everyone contacted?
- Would a less drastic alternative still afford permanency?



# INTERVENORS

- An Intervenor is an “outsider” who becomes a party to the case and “is afforded the same degree of participation as all other parties.” *A.M. v. A.C.*, 296 P. 3d 1026, 1033 (Colo. 2013).
- Relatives (generally defined as related by blood or adoption) have a right to intervene in D&N cases after adjudication, regardless of whether the child ever lived with them. C.R.S. § 19-3-507(5)(a); *In the Interest of O.C.*, 308 P.3d 1218 (Colo. 2013).
- Foster parents who have the child in their care for more than 3 months and have information or knowledge concerning the care and protection of the child may also intervene as a matter of right following adjudication, with or without counsel. C.R.S. § 19-3-507(5)(a).

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## ICWA CONSIDERATIONS

Is this an ICWA case? (Is the child is enrolled or eligible for membership?)

Is the placement a preferred ICWA placement?

- Extended family of the child;
- Other members of child's tribe;
- Other Native families;
- Non-Native home

Did the Tribe consent to adoption?

Need QEW testimony at the termination hearing.

# MULTI-ETHNIC PLACEMENT ACT

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- An adoptive placement of a child shall not be delayed or denied as a result of the racial or ethnic background, color, or national origin of the child or the prospective adoptive family. C.R.S. § 19-5-206(2)(e)(I)-(II); 42 U.S.C. § 671(a)(18).
- Under extraordinary circumstances, the placement of a child for purposes of adoption may involve consideration of racial or ethnic background, color, or national origin of the child or the prospective adoption family. C.R.S. § 19-5-206(2)(d)(I)-(II).







# SIBLING GROUPS

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Sibling Group: “biological siblings who have been raised together or have lived together.” C.R.S. § 19-1-103(98.5).



If part of a sibling group, DHS must make thorough efforts to locate a joint placement for all children in the sibling group who are available for adoption. C.R.S. § 19-5-207.3(2)-(3).



If located, that placement is presumed to be in the best interests of the children.



Permanency planning must not be delayed by consideration of placing all children as a sibling group. C.R.S. § 19-5-207.3(4).

# ADVOCACY

- Find out the steps for adoption in your county-
  - Child presentation interview MUST occur within 90 days of termination of parental rights. GALs MUST be invited. 12 CCR 2509-4-7.306.2(A)(1).
  - Denver requires legal review => child presentation => subsidy negotiation => motion for adoption => then wait for a hearing date.
- File a motion if necessary, stay in communication with your county's adoption liaison and city attorney, and be a 'polite nudge' if you have to 😊
- Manage foster home and CASA expectations.

# SUBSIDY NEGOTIATIONS

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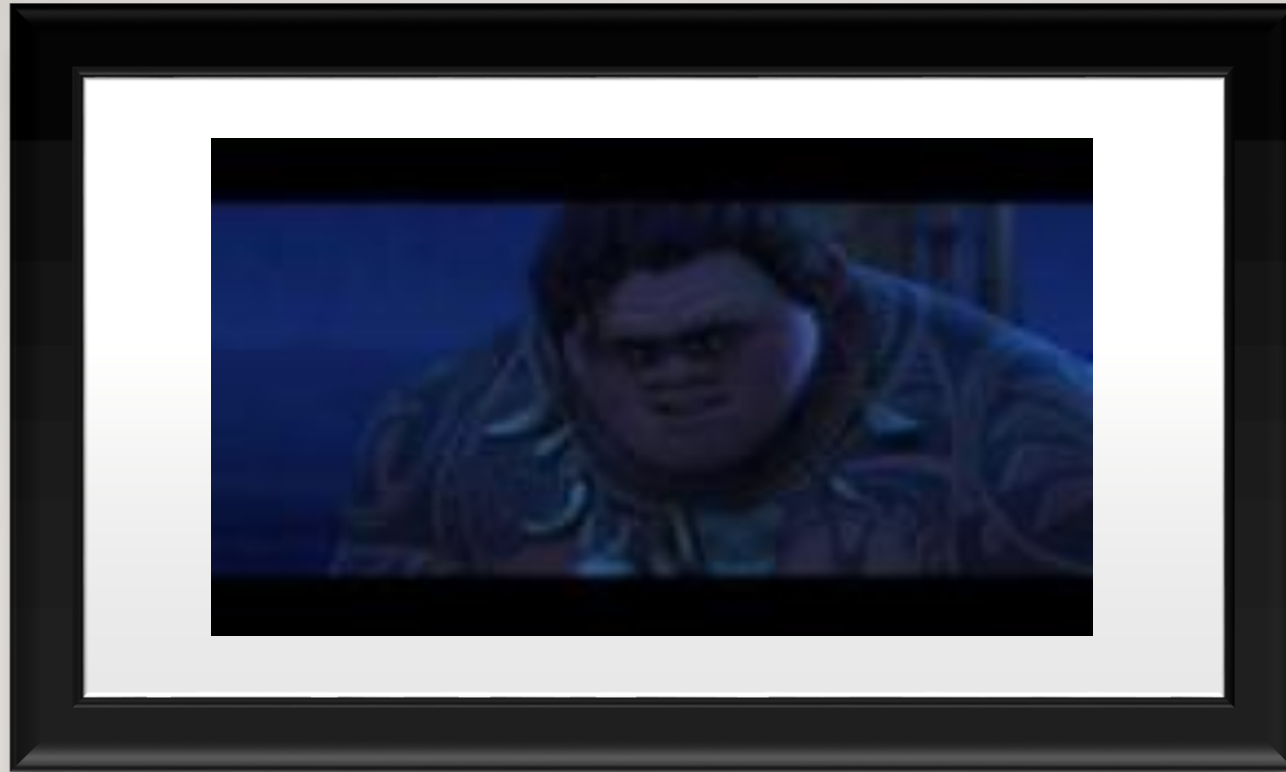
- Rules (1) require notice to the foster parents and state foster parents can invite anyone they want, including the GAL, and (2) require departments to invite the GAL to the presentation. C.R.S. § 26-7-104(1)(e).
- Adoption benefits cover the needs of eligible children whose special needs create a barrier to adoption. C.R.S. 26-7-105(1). DHS presumes adoptive parents will provide for basic needs, and they will be asked at adoption!
- Advocate for best interest of the child vs. foster parents – be careful not to give legal advice, only legal information, but set the child up for lifelong success!
- Focus on what is not covered by Medicaid – braids, wheelchair ramps, special strollers, drive time for therapies, time off work, braces, dance class? etc.
- Can renegotiate with changed circumstances, and must be reviewed and re-signed every 3 years, or risk losing funding.



# POST ADOPTION CONTACT AGREEMENT ("PACA") C.R.S. § 19-5- 208

(AKA OPEN  
ADOPTIONS)

- Only the petitioner in the adoption case may request a PACA (And the tribe if the child is a member).
- May include contact, visitation, or exchange of information.
- Children 12 & older must consent.
- Court must find it is in the best interests of the child.
- Does NOT make the parent or relative a party.
- Adoption CANNOT be set aside because of failure to comply with the PACA or any modifications.
- Disagreement or litigation about the PACA does NOT affect the validity of the adoption.
- Can be terminated with change in circumstances.
- PACA can't limit parent's ability to move out of state.
- Townhall: [Colorado Office of the Child's Representative – Town Hall October: Open Adoption & Visits Overview \(coloradochildrep.org/town-hall-October-open-adoption-visits-overview\)](https://coloradochildrep.org/town-hall-October-open-adoption-visits-overview)



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PARTING THOUGHTS ON ADOPTION...



# QUESTIONS?

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