

ADOPTION: WHY, WHEN, AND HOW?

Core Competencies II

February 16, 2023

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1

PERMANENCY OPTIONS

Remain Home/
Return Home

Allocation of
Parental
Responsibilities
(APR)

RGAP

**Termination
of Parental
Rights/
Adoption
(TPR)**

OPPLA/
Emancipation

2

ADOPTION, APR, OR RGAP?

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

Will the relative consider APR/RGAP?

Do the placement and parent(s) get along?

Does the placement want to adopt?
(Will they qualify?)

Will the youth (age 12+) consent to adoption?

TPR + Appeals = Adoption takes much longer!

3

THE LEAST DRASTIC ALTERNATIVE

Under § 19-3-604(1)(c), the court must consider and eliminate **less drastic alternatives** to termination.

People in Interest of M.M., 726 P.2d 1108, 1122 (Colo. 1986).

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?
- Were all of the options evaluated?

Would a less drastic alternative still afford permanency?

4

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 (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 intervene as a matter of right following adjudication, with or without counsel. C.R.S. § 19-3-507(5)(a).

5

ICWA CONSIDERATIONS

Is this an ICWA case?

The child is (1) a member of an Indian tribe, or
(2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
(25 U.S.C. § 1903).

Is the placement a preferred ICWA placement?

- Extended family of the child (Native or otherwise);
- Member of Child's Tribe;
- Member of Other Tribe;
- Non-Native home.

Tribe **MUST** consent to adoption.

QEW (qualified expert witness) **MUST** testify at the termination hearing.

6

PLACEMENT OF SIBLING GROUPS

"Sibling group" = biological siblings. "Biological sibling" = a brother, sister, or half-sibling of a child who is being placed in foster care or being placed for adoption. C.R.S. § 19-1-103(98.5), (14).

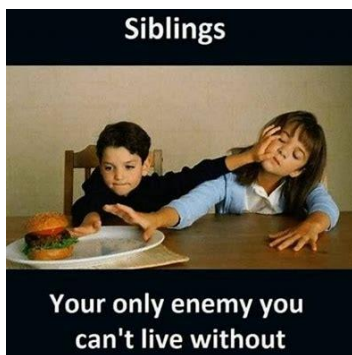
DHS must make thorough efforts to locate a joint placement for all children in the sibling group who are available for adoption.
C.R.S. § 19-5-207.3(2)-(3).

If located, that placement is presumed to be in the best interests of the children. The presumption may be rebutted by a preponderance of the evidence. C.R.S. § 19-5-207.3(2)-(3).

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

7

SIBLING BILL OF RIGHTS



- HB19-1288: Foster Youth Sibling Bill of Rights.
- Outlines protections that siblings should receive, when in the best interests of each sibling, including:
 - being placed together when appropriate,
 - having regular contact, and
 - otherwise having their relationships encouraged while in foster care.

8

ADVOCACY

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

9

SUBSIDY NEGOTIATIONS

Anyone can participate – GAL, therapists, teachers, etc. C.R.S. § 26-7-104(1)(e).

Subsidy covers 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 (not foster parents) – *don't* give legal advice, but *do* set the child up for lifelong success!

Focus on what is not covered by Medicaid – e.g. cultural concerns (braids or dance classes?) or need-based concerns (wheelchair ramps, special strollers, drive time for therapies, time off work?)

Can be renegotiated if circumstances change, and must be reviewed and re-signed every 3 years or risk losing funding.



10

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 (or 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: <https://coloradochildrep.org/training-archives/town-hall-october-open-adoption-visits-overview/>

11

THE ROLE
OF THE CFY

Discuss and explore options - TPR vs. APR vs. OPPLA - and the long-term implications of each option.

Consent for adoption is required for youths age 12 and older. C.R.S. § 19-5-203(2).

Advocate for what they want and need:

- They don't *want* to be adopted, or
- They don't want to be adopted *by this placement*, or
- They aren't ready to be adopted *yet?*
- Remember your attorney-client privilege.

Understand that adoption is complicated! It can be a tremendous loss for many youths, older youths often have more memories about family and connections to relatives, and there is a stigma attached to adoption for all children.

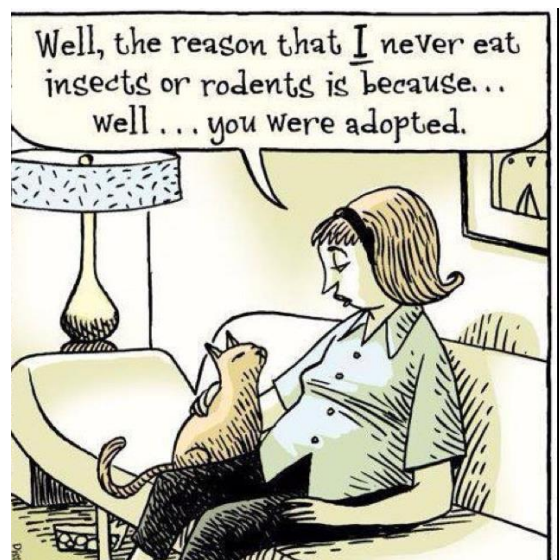
12



PARTING THOUGHTS ON ADOPTION...

13

QUESTIONS?



14