

# ADOPTION: WHY, WHEN, AND HOW?

Core Competencies II

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## PERMANENCY OPTIONS

Remain Home/  
Return Home

Allocation of  
Parental  
Responsibilities  
(APR)

RGAP

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

OPPLA/  
Emancipation

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## 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!

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## 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?

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## 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).

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## 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.

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## 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).

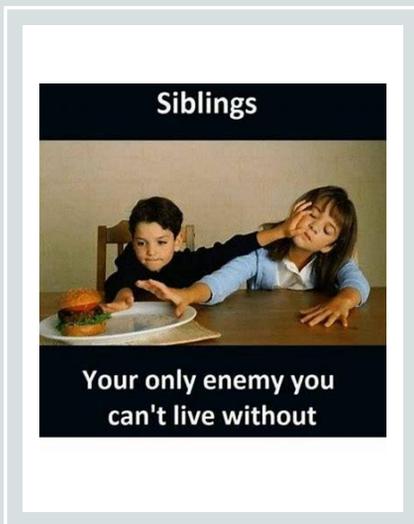
DHS must make thorough efforts to locate a joint placement for all children in the sibling group who are available for adoption.  
C.R.S. § 19-5-207.3(2)-(3).

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).

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## 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.

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## 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.

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## SUBSIDY NEGOTIATIONS

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

Subsidy covers the needs of eligible children whose special needs create a barrier to adoption. C.R.S. 26-7-105(I). 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.



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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/>

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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.

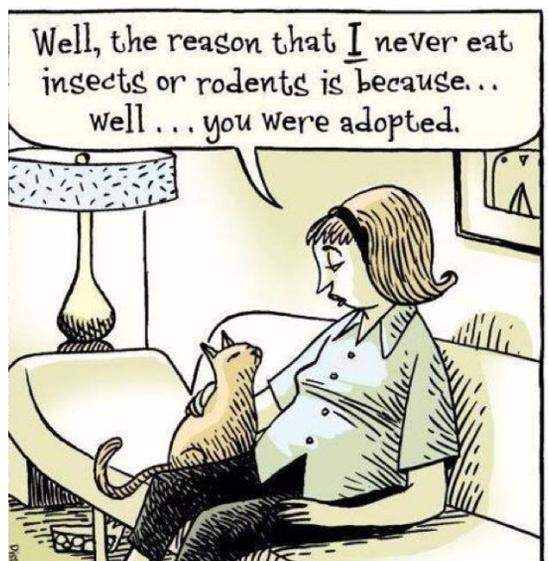
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PARTING THOUGHTS ON ADOPTION...

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QUESTIONS?



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