

EVALUATING PERMANENCY OPTIONS FOR CHILDREN IN FOSTER CARE



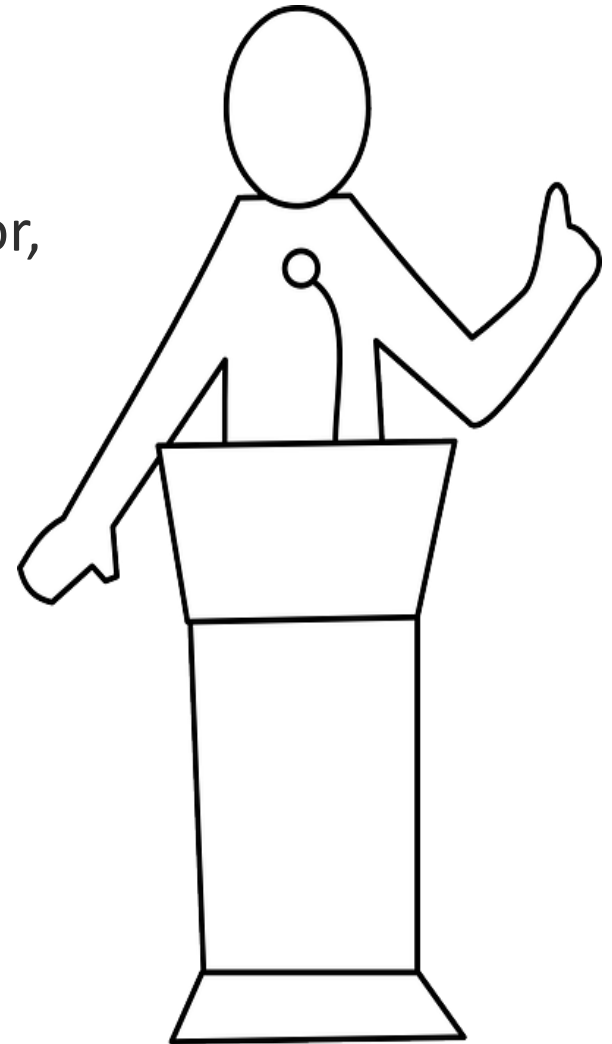
Angie Schwartz, Alliance for Children's Rights
Sue Abrams, Children's Law Center

Logistics

- Webinar will be recorded and archived at <http://kids-alliance.org/webinars/>
- All attendees will be on mute – type any questions you have into the chat box or if you experience technical difficulties email Will Smith at a.kuncz@kids-alliance.org
- A certificate of participation will be posted online after the webinar at <http://kids-alliance.org/webinars/>
- We will be answering your questions – please submit questions using the “chat” function on your GotoWebinar dashboard

Today's Speakers

- Bob Ruble, Kinship Caregiver and Director, OC Kinship
- Sue Abrams, Children's Law Center
- Angie Schwartz, Alliance for Children's Rights
- Pam Lehtonen, Kin Caregiver



BOB'S STORY

Stepping Up to Protect My Niece

**“I had assumed I had
completed my job with
the 911 call!”**



Looking Back



No Financial Support

Federal
eligibility?

ARC?

Linkage

1996
Lookback?

ASFA

CalWORKS
application

Non-
Needy
Relative
Grant?



Guardianship

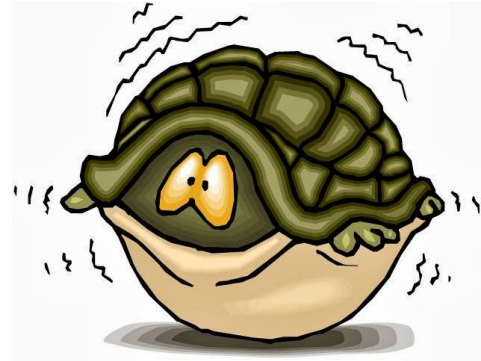


Case Closed



Out of the blue. . .

. . .after caring for my niece
for almost 10 years. . .



. . . a motion was filed to
cancel the guardianship.

Extended Foster Care



Reflections and Recommendations

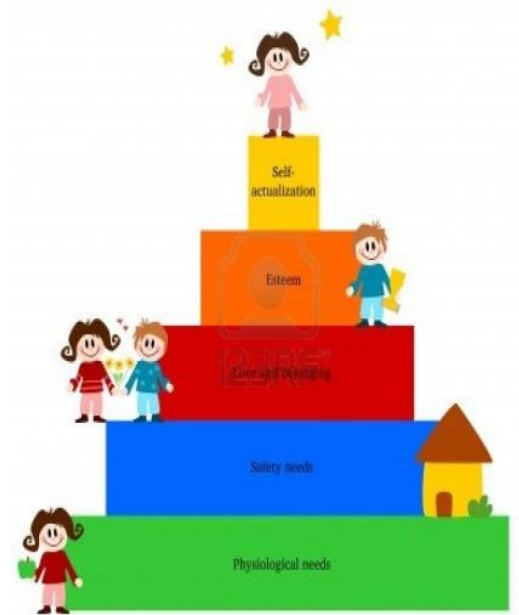


UNDERSTANDING THE LEGAL FRAMEWORK FOR PERMANENCY



The Federal and State Framework: Permanency Preferences

- Return home
- Adoption
- Guardianship
- Placement with a fit and willing relative
- Remain in foster care with a permanent plan identified
- Another Planned Permanent Living Arrangement (over 16)



The Least Restrictive Setting and Reasonable Efforts



Federal law requires that:

- Each child has a case plan that provides the least Restrictive/Most Family Like Setting.
- 42 U.S.C.A. § 675 (5)(A)
- The court must make findings at each permanency review hearing that reasonable efforts are being made to finalize the child's permanency plan.
- The finding must be case and child specific.
- A negative, late, or insufficient finding means the agency is not eligible for IV-E funds.
- 45 CFR § 1356.21 (b)(2)(i)

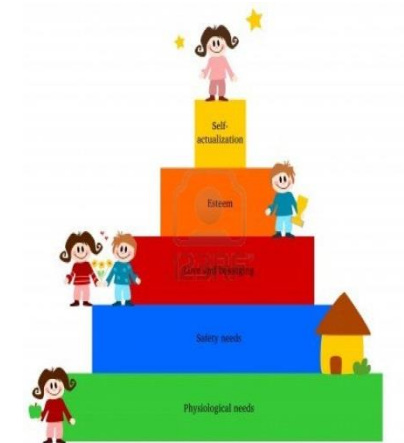
*****The least restrictive and reasonable efforts requirements*****
apply throughout the life of the case until the child achieves permanency or ages out.

The Permanency Obligation in California: the Basics

- The obligation to make reasonable efforts to finalize the permanency plan and select the most preferred plan.
- The requirement to identify permanent connections:
 - **WIC 366.22 (a)(3)**— The court must determine whether the agency has made reasonable efforts to maintain a child's relationship with individuals other than their siblings and may make orders to ensure those relationships are maintained.
 - **WIC 366.3(e)(2)** ---The court must determine whether individuals other than the child's siblings who are important to a child have been identified and the actions taken to maintain the child's relationship with those individuals.
 - **WIC 16501.1(i)**— The case plan should identify individuals other than the child's siblings who are important to a child.
 - The social worker is responsible for working with the child to locate those individuals and taking actions to support the relationship(s).

The Federal and State Framework: Permanency Preferences

- Return home

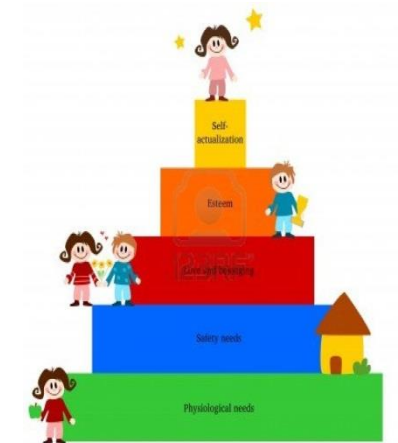


Family Reunification

- Almost every parent will receive family reunification services to address the issues that brought the case into the dependency court system. **WIC 361.5**
 - Exceptions in limited circumstances specified by law
- Timeframe for services generally 12 months, but can vary due to factors such as:
 - Child's age
 - Parent's age (parents who are minors might be afforded additional time)
 - Compliance with case plan
- If child not safely returned home within timeframe, set a hearing 120 days from termination of family reunification services pursuant to **WIC 366.26**

The Federal and State Framework: Permanency Preferences

- Return home
- Adoption



California: The Permanency Hearing WIC 366.26

Preference: child freed for adoption

If the court determines...by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.

EXCEPTIONS:

1. **Child is living with a relative who wants to be the guardian and removal would be detrimental to the emotional well-being of the child**
 - Law specifies that a relative caregiver's preference for legal guardianship shall NOT constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement
2. **There is a compelling reason that termination of parental rights would be detrimental**

Compelling Reason Exception WIC 366.26

What is a *compelling reason* for determining that termination of parental rights would be detrimental to a child?

1. Parents have maintained regular contact/visitation and child would benefit from continued relationship
2. Child is 12 years old or older and objects
3. Child is in residential treatment and adoption unlikely
4. Child is with foster parent unable to adopt because of exceptional circumstances and removal would be detrimental to emotional well-being of the child
5. There would be substantial interference with a sibling relationship
6. The child is an Indian child and termination would not be in the child's best interests (i.e. would disrupt connection to the tribe)

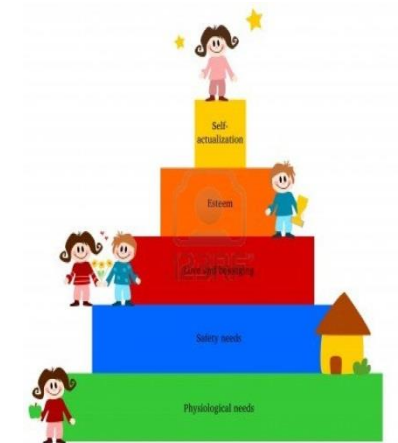
Documenting Compelling Reasons

- Compelling reasons are forceful and convincing facts that are case-specific.
- Evidence that is not current or reflects generalizations should not be accepted.



The Federal and State Framework: Permanency Preferences

- Return home
- Adoption
- Guardianship

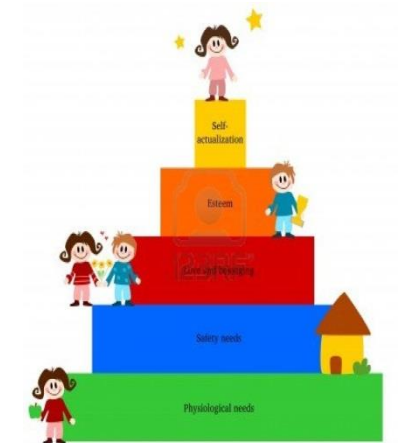


No Termination of Parental Rights WIC 366.26

- If the court finds adoption/termination of parental rights is not in the best interest of the child (because of relative guardianship or compelling reason exception), legal guardianship the preference.
- The court shall order legal guardianship if:
 1. In the best interest of the child, and
 2. Suitable guardian can be found

The Federal and State Framework: Permanency Preferences

- Return home
- Adoption
- Guardianship
- Placement with a fit and willing relative



A New Permanency Option...WIC 366.26

2014 - Strengthening Families Act (SFA) – federal

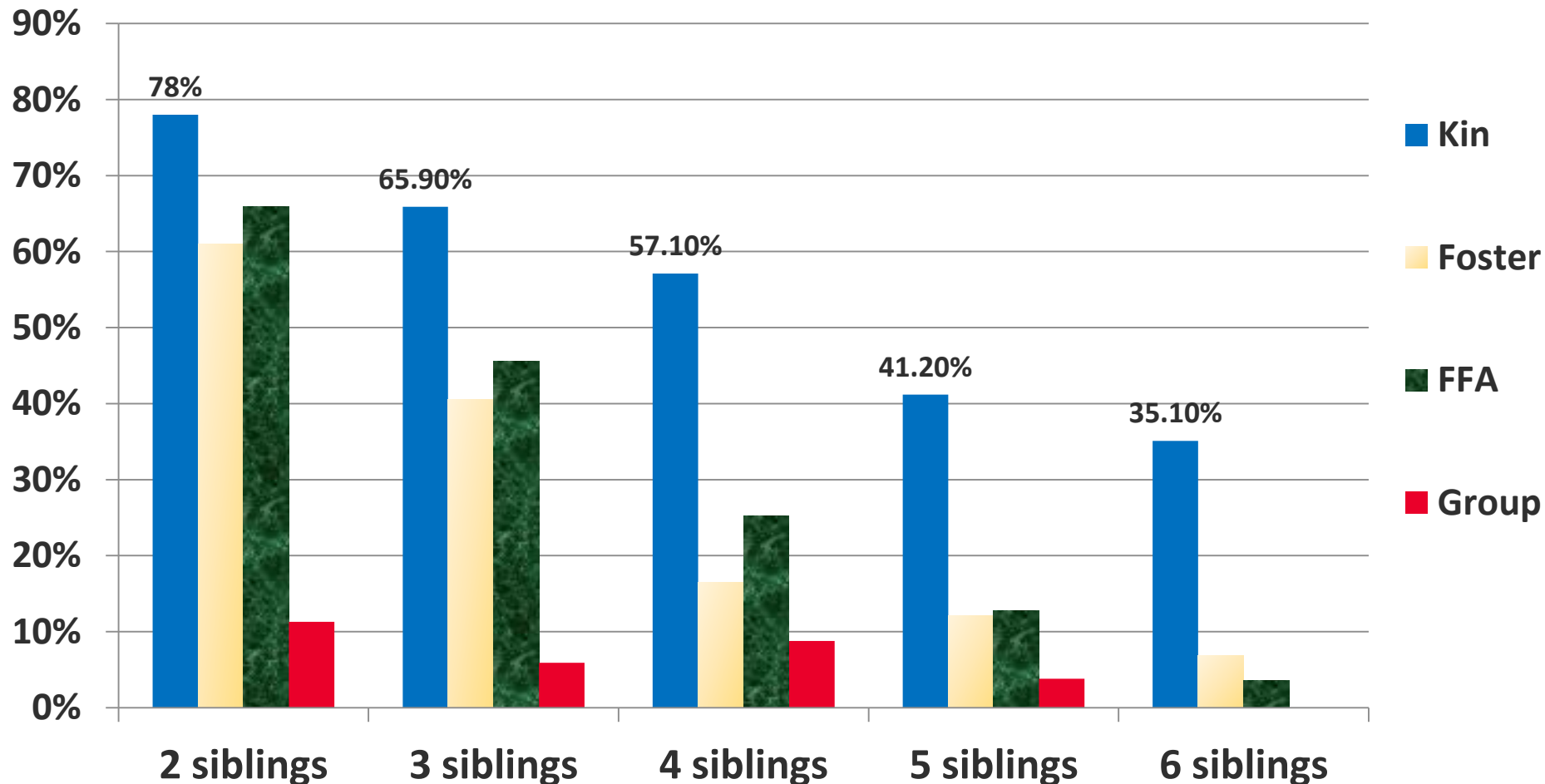
2015 – codified in California by SB 794

Created a new permanency option: **placement with a fit and willing relative**

- Child must be living with the approved relative
- The relative must be willing to provide a permanent environment (even though the relative is not willing to become a legal guardian as of the hearing date)
- The child shall not be removed from the home if it would be seriously detrimental to the emotional well-being of the child because of substantial psychological ties to the relative caretaker

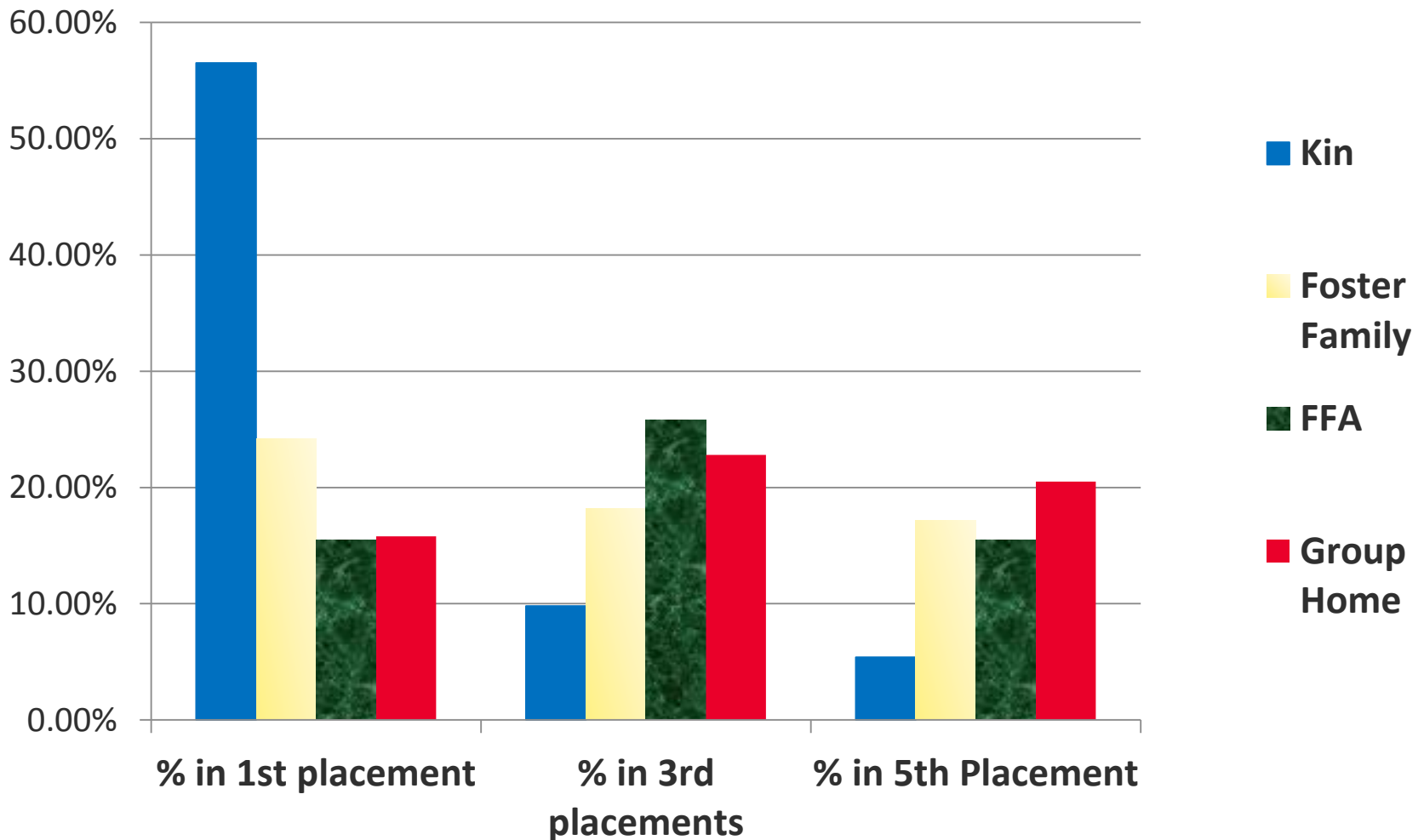
Kin Most Likely to Support ALL Siblings

% of Siblings ALL Placed Together



Kin Provide Greater Stability – Even with Older Foster Youth

Youth Ages 14 - 17 Still in Care at 12 Months



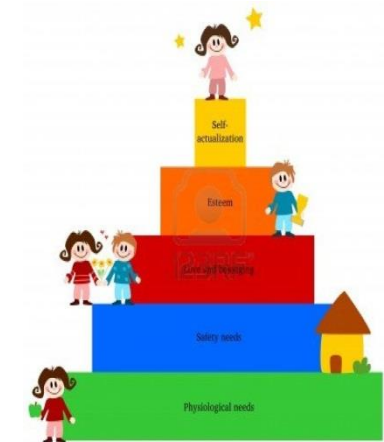
Other Permanency-Related Requirements & Incentives re: Relatives



- Relative notification within 30 days of removal - 42 U.S.C.A. § 671 (a)(29); WIC § 309
- Preference to place children with relatives - 42 U.S.C.A. § 671 (a)(29); Family Code § 8710, WIC § 361.3
- Requirement that reasonable efforts be made to place siblings together and insure visitation if joint placement cannot be done safely - 42 U.S.C.A. § 671 (a)(31); WIC §§ 306.5 & 16002

The Federal and State Framework: Permanency Preferences

- Return home
- Adoption
- Guardianship
- Placement with a fit and willing relative
- Remain in foster care with a permanent plan identified
- Another Planned Permanent Living Arrangement (over 16)



More From the Strengthening Families Act...

- Pre-2015, child not in guardianship or adoption placed in “long-term foster care”
- Strengthening Families Act/SB 794...
 - Removed “long-term foster care” as a permanency option
 - Added “another permanent planned living arrangement” as an option, but only for youth ages 16+
 - For youth under 16, the court must order that the child “remain in foster care with a permanent plan of return home, adoption, legal guardianship, or placement with a fit and willing relative, as appropriate”
- There are new requirements for court report and judicial findings for these two permanency options.

APPLA

- To select or maintain the plan of APPLA, the court:
 - Must determine whether the agency has documented the intensive, ongoing, unsuccessful efforts to achieve reunification, adoption, guardianship, or placement with a fit and willing relative;
 - Must find that APPLA is the best permanency plan for the child; and
 - Must find that that there is a compelling reason that it is not in the best interest of the youth to return home, be placed for adoption, enter a guardianship arrangement, or be placed with a fit and willing relative. **42 U.S.C. 675(a)(2)(A) & (a)(3)**



What type of information should the court expect to determine that intensive, ongoing, unsuccessful efforts to achieve the preferred permanency plans have been made?

- That a full array of permanency services have been provided.
- That an array of permanency services have been tried multiple times throughout the case.
- That the barriers to permanency have been identified and that there is a strategy for addressing them.
- That the youth has been engaged in permanency planning.
- That the youth fully understands permanency options.



Fostering Connections, Extended Foster Care & Permanency

- Extended foster care allows youth the option of support services past age 18 if they have not achieved permanency.
- The obligation to make efforts and provide services to achieve permanency continues until age 21 or the youth exits care.
- Fostering Connections required states that opted to extend foster care to also extend adoption and kinship guardianship subsidies.
- Early results from Chapin Hall's CalYouth Study show that extended care:
 - Has not negatively impacted permanency outcomes, but
 - Has reduced exits from care through running away and leaving without a discharge plan

EVALUATING PERMANENCY OPTIONS



Comparison of Legal and Psychosocial Factors

FACTOR	ADOPTION	LEGAL GUARDIANSHIP		PLANNED PERMANENT LIVING ARRANGEMENT— (Long Term Foster Care)
		RELATIVE/NREFMs GUARDIANSHIP (Supported by Kin-GAP)	NON-RELATIVE/NREFM GUARDIANSHIP (Supported by Foster Care funds)	
1. ELIGIBILITY/ PLACEMENT CRITERIA	Approved Adoption Homestudy and approval must be from a licensed Adoption Agency	Must meet state approval standards and agency must make recommendation to Court for Legal Guardian. Final approval comes from Court.	Must meet state approval standards and agency must make recommendation to Court for Legal Guardian. Final approval comes from Court.	Must meet state licensing/approval/Resource Family Approval standards. Juvenile Court approves all placements.
2. ONGOING AGENCY INVOLVEMENT	Agency closes child's case following finalization. Agency is involved only for the provision of AAP, if eligible, or if the family requests, post adoption services may be made available	Court may dismiss Juvenile Court Dependency following order of Guardianship. If so, no further Agency support or involvement. Support may be available through local Kinship Support Service Centers. If dependency is continued, Agency supervision, case management and Court supervision continues. ³	Court may dismiss Juvenile Court Dependency following order of Guardianship, although technically, court maintains right to supervision of placement. When a family receives foster care funding, they are visited every 6 months by CWW. Court supervision and case management continues if dependency is not dismissed.	Agency continues to hold custody of the child and provides case management services to the child and sometimes to the family. Caregivers must keep license or certification active and are subject to regulations and involvement by the Agency in their home and with the family.
3. RELATIONSHIP	An adopted child becomes their child in all respects. The legal relationship is the same as it is to a child born to them.	Guardianship suspends the legal rights of birth parents. The guardian(s) have parental responsibility for care, custody, control, and conduct of the child.	Guardianship suspends the legal rights of birth parents. The guardian(s) have parental responsibility for care, custody, control, and conduct of the child.	While foster parents provide food, housing and nurturance to a child, the Juvenile Court has legal jurisdiction and the Social Services Agency is responsible for the case management and supervision.

Comparison of Legal and Psychosocial Factors (con't)

FACTOR	ADOPTION	LEGAL GUARDIANSHIP		PLANNED PERMANENT LIVING ARRANGEMENT— (Long Term Foster Care)
		RELATIVE/NREFMs GUARDIANSHIP (Supported by Kin-GAP)	NON-RELATIVE/NREFM GUARDIANSHIP (Supported by Foster Care funds)	
4. PERMANENCE	Adoption is a lifelong legally binding relationship and provides the highest level of legal permanence. ⁶ The adoptive parent(s) become the legal parents. Birth parents rights are terminated, and birth parents cannot reclaim the child. ⁷	Guardianship provides permanence, however, it is not as legally secure as adoption; the Court can terminate guardianship, and birth parents can petition the court to terminate the guardianship, or the Legal Guardian may ask the court to dismiss guardianship. Birth parents' rights are usually not terminated, and birth parents may have the right to visit the child. The Legal Guardian has authority to allow birth parents to be involved in decisions re: the child.	Guardianship provides permanence, however it is not as legally secure as adoption. The Court can terminate the guardianship, and birth parents can petition the court to terminate the guardianship, or the Legal Guardian may ask the court to dismiss the guardianship. Birth parents' rights are usually not terminated, and birth parents may have the right to visit the child. The Legal Guardian has authority to allow birth parent to be involved in decisions re: the child.	Foster care is meant to be temporary, and does not provide legal permanence for a child. The birth parents can challenge continuing need for custody in Court. The Agency can remove the child from the caregiver's home, or the caregiver can request child's removal. Placement can disrupt at any time. Birth parents rights are generally not terminated, and birth parents maintain right to visit and be involved in major decisions regarding the child, depending on case situation. The Agency makes recommendations to Court regarding the child, and the Juvenile Court makes major decisions.

Comparison of Legal and Psychosocial Factors (con't)

FACTOR	ADOPTION	LEGAL GUARDIANSHIP		PLANNED PERMANENT LIVING ARRANGEMENT— (Long Term Foster Care)
		RELATIVE/NREFMs GUARDIANSHIP (Supported by Kin-GAP)	NON-RELATIVE/NREFM GUARDIANSHIP (Supported by Foster Care funds)	
5. PARENTING RIGHTS AND RESPONSIBILITIES	Adoptive parents possess all parenting rights and responsibilities for the child	Legal Guardians possess parenting rights and responsibilities. When birth parent rights are not terminated, they retain right to visitation. The court can make visitation orders that limit parents' rights.	Legal Guardians possess parenting rights and responsibilities. When birth parent rights are not terminated, they retain right to visitation. The court can make visitation orders that limit parents' rights.	Caregivers share parenting rights with the Agency. They must obtain Agency permission for some medical procedures, travel with the child, etc. Agency/Court make major decisions regarding the child. Birth parents may still be involved and may be involved in major decisions regarding the child. Court decides on major medical decisions
6. EDUCATIONAL DECISIONS	Adoptive parents make <u>all</u> decisions regarding the education of the child.	Guardians can choose the child's school and educational program. They can request special services from schools, regional centers and any other service provider. The birth parent may have the right to be involved in school meetings and planning for the child. In special situations, the court may be involved in decisions.	Guardians can choose the child's school and educational program. They can request special services from schools, regional centers and any other service provider. The birth parent may have the right to be involved in school meetings and planning for the child. In special situations, the court may be involved in decisions.	Unless parental rights are terminated the birth parent retains the right to make critical decisions regarding education for the child, including the right to veto any private or parochial schooling. The child welfare agency and the courts are involved in specific decisions. Foster parents can be appointed as surrogate parents. If parental rights are terminated, the court can limit a parent's educational rights.

Comparison of Legal and Psychosocial Factors (con't)

FACTOR	ADOPTION	LEGAL GUARDIANSHIP		PLANNED PERMANENT LIVING ARRANGEMENT— (Long Term Foster Care)
		RELATIVE/NREFMs GUARDIANSHIP (Supported by Kin-GAP)	NON-RELATIVE/NREFM GUARDIANSHIP (Supported by Foster Care funds)	
7. CHILD'S RESIDENCE/ MOVES OUT OF COUNTY OR OUT OF STATE	Residence is solely determined by the adoptive parents.	Guardians have the right to move anywhere in state, but must notify the court in writing. An Inter County Transfer must be completed. If the Legal Guardian plans to move out of California, they must obtain court permission.	Guardians have the right to move anywhere in state, but must notify the court in writing. An Inter County Transfer must be completed. If the Legal Guardian plans to move out of state, they must obtain court permission. Guardianship and/or funding may need to be re-established in the new state.	Legal residence is determined by residence of birth parents. The Juvenile Court and the Child Welfare Agency determine where the child lives. Courtesy supervision is arranged when a child moves w/ caregiver out of county or out of state.
8. DRIVING/ LICENSE	The adoptive parents may sign for the minor's driver's license.	The guardian may sign for the minor's driver's license.	The guardian may sign for the minor's driver's license.	Youth is required to file proof of financial responsibility. A responsible adult can sign the DMV application; liability issues may be of concern.
9. ARMED SERVICES	The adoptive parents may consent to the enlistment of a minor.	A guardian may consent to the enlistment of a minor.	A guardian may consent to the enlistment of a minor.	The Juvenile Court retains the responsibility to consent to the enlistment of a minor.
10. MARRIAGE OF MINOR CHILD	Adoptive parents may consent to marriage of their minor child.	Both the court and the relative guardians must give consent to the marriage of the minor child.	Both the court and the guardians must give consent to the marriage of the minor child.	The Juvenile Court maintains the responsibility to consent to the marriage of a minor under its jurisdiction.

Comparison of Legal and Psychosocial Factors (con't)

FACTOR	ADOPTION	LEGAL GUARDIANSHIP		PLANNED PERMANENT LIVING ARRANGEMENT— (Long Term Foster Care)
		RELATIVE/NREFMs GUARDIANSHIP (Supported by Kin-GAP)	NON-RELATIVE/NREFM GUARDIANSHIP (Supported by Foster Care funds)	
11. SERVICES AVAILABLE	Post-adoptive services are limited – not available in all jurisdictions	If dependency is dismissed, Agency no longer provides support. Support may be available through local kinship centers.	When dependency is dismissed, the Agency continues to provide support, through resource and referral, and home visits every 6 months	Child and caregiver eligible for services through the Agency. Agency provides supervision, case management and crisis intervention services.
12. DEATH OF CAREGIVER	The adopted child is treated the same as a birth child. The adoptive parents can designate in their will who will raise the child in the event of their death. AAP funding can only be paid to an adoptive parent.	Guardianship terminates in the event of death of the guardian. Birth parents may attempt to regain custody. The guardian or the court may appoint a successor guardian or re-establish dependency.	Guardianship terminates in the event of death of the guardian. Birth parents may attempt to regain custody. The guardian or the court may appoint a successor guardian or re-establish dependency.	The Social Services Agency retains placement authority and must locate another living arrangement for the child.
14. INDEPENDENT LIVING SKILLS PROGRAM ELIGIBILITY	Youth adopted after their 16 th birthday may participate in ILSP programs, except for Housing Assistance Programs.	Youth under relative Legal Guardianship after their 16 th birthday may participate and benefit from all ILSP programs.	Youth under relative and non-relative Legal Guardianship after their 8 th birthday may participate and benefit from all ILSP programs.	Youth who remain in Foster care may participate and benefit from all ILSP services.

Foster Care Benefits (AFDC-FC): Basic Eligibility



- Categorical requirements of the child
 - Age, residency, immigration status, deprivation
- Conditions of removal from the home and placement
 - Court Order/Judicial Determination (continuing to live in the home would be contrary to welfare of the child; and reasonable efforts have been made to keep child in the home)
 - Voluntary Placement Agreement (VPA)
 - Given up for adoption, or parental rights terminated
 - **Living with a non-related legal guardian (state-only AFDC-FC. Guardianship can be established by Probate Court OR Dependency Court)**

Kin-GAP: Basic Eligibility

- Child:
 - Age
 - Dependent or delinquent (WIC § 300 or 602)
 - Citizenship and immigration status
 - Lived with same relative at least **6 continuous months**
- Relative:
 - Appointed guardian **by juvenile court**
 - Entered into a written, signed negotiated agreement with the child welfare agency (or probation or tribe)
- Foster care case dismissed by the court after (or at the same time as) that the court appoints the relative as guardian



AAP: Basic Eligibility

- “Special needs”

AND

- Written and signed AAP agreement with state stipulating amount of AAP entered into ***before*** the adoption is finalized (no means test)

AND one of the following:

- Subject of an independent OR agency adoption and meets SSI requirements – OR -
- Subject of an agency adoption and under supervision of county welfare department – OR -
- Subject of an agency adoption and would have been at risk of dependency – OR -
- Subject of an agency adoption and committed to care of the department



Funding Availability of Benefits Beyond Age 18

	Federal Kin-GAP	State Kin-GAP	AAP	AFDC-FC
Non-Related Legal Guardianship: Federally eligible youth exits foster care to guardianship with a non-relative (any age)	Eligible for federal Kin-GAP until age 18	Not eligible	Not eligible	Eligible for AFDC-FC from age 18 – 21 (transfers from fed Kin-GAP to state AFDC-FC at age 18)
Non-Related Legal Guardianship: Non-federally eligible youth exits foster care to guardianship with non-relative (any age)	Not eligible	Not eligible	Not eligible	Youth eligible for AFDC-FC until age 21
Relative Guardianship: Youth exits foster care to guardianship with a relative and negotiated payments begin BEFORE age 16	Youth eligible for federal or state Kin-GAP (linked to youth's IV-E status while in foster care) until age 18. EXCEPTIONS: <ul style="list-style-type: none"> Eligible until 21 IF youth has mental/physical disability Eligible until 19 OR graduation for high school (whichever comes first) IF youth is expected to graduate by age 19 		Not eligible	Not eligible
Relative Guardianship: Youth exits foster care to guardianship with a relative and negotiated payments begin AFTER age 16	Youth eligible for federal or state Kin-GAP (linked to youth's federal eligibility status while in foster care) until age 21.		Not eligible	Not eligible
Adoption: Youth exits foster care to adoption with a relative OR non-relative and AAP Agreement signed BEFORE age 16	Not eligible	Not eligible	Youth eligible for AAP until age 18. EXCEPTION: <ul style="list-style-type: none"> Eligible until 21 IF youth has mental/physical disability 	Not eligible
Adoption: Youth exits foster care to adoption with a relative OR non-relative and AAP Agreement signed AFTER age 16	Not eligible	Not eligible	Youth eligible for AAP until 21	Not eligible

Other Benefits Available After Age 18

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Independent Living Services	Not Eligible UNLESS in foster care at age 16 or later	Eligible if receiving Kin-GAP (services start at age 16)	Not Eligible UNLESS in foster care at age 8 or later (services start at age 16)	Eligible for ILP at age 16 (or 14 in some counties)
Transitional Housing <ul style="list-style-type: none"> • THP-Plus FC until 21 • THP-Plus until 24 (subject to 24 or 36 month time limit) 	Not eligible UNLESS there was an order for foster care at age 18 or later	Not eligible UNLESS there was an order for foster care at age 18 or later	Not eligible UNLESS there was an order for foster care at age 18 or later	Eligible as long as in foster care at age 18 or older
Extended Medicaid until 26	Not eligible UNLESS there was an order for foster care at age 18 or later	Not eligible UNLESS there was an order for foster care at age 18 or later	Not eligible UNLESS there was an order for foster care at age 18 or later	Eligible as long as in foster care at age 18 or older
Education and Training Vouchers	Not Eligible UNLESS in foster care at age 16 or later If in foster care after age 13, considered “independent” for FAFSA	Not Eligible UNLESS in foster care at age 16 or later If in foster care after age 13, considered “independent” for FAFSA	Not Eligible UNLESS in foster care at age 16 or later If in foster care after age 13, considered “independent” for FAFSA	Eligible as long as in foster care any time after age 16 If in foster care after age 13, considered “independent” for FAFSA

PAM'S STORY

How It Began

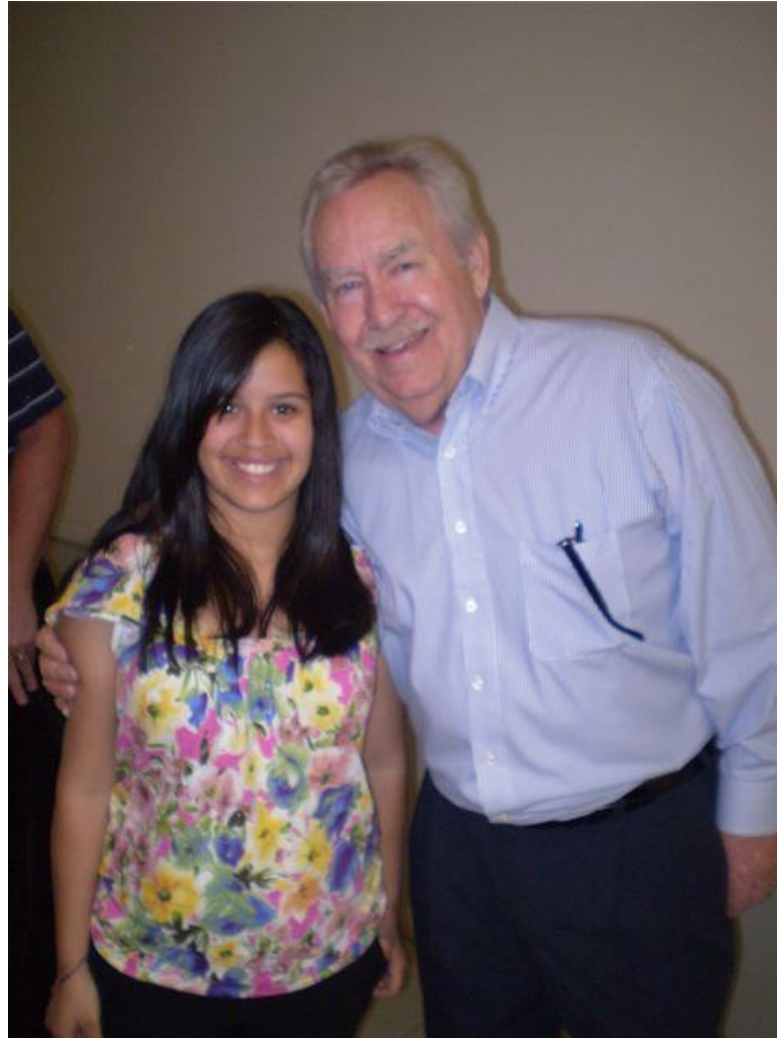
- Daughter has had a history of drug usage since she was in junior high, but cleaned up when she was 23 and became pregnant with her first child, Madi
- When Madi was 3 years old, her father died in a work related accident after only being married to Madi's mother for 5 months
- Pam's daughter received a good amount of money from her husband's death and began using drugs again



The Last Straw



Becoming Permanent Guardians



Caring For Madi



Receiving Annabella

- Completely shocked to hear our daughter had given birth again
- Did not hesitate to adopt the newborn, like with Madi, our main goal was to protect her
- This time, went through an emergency placement process but still had little guidance



Raising Annabella and Eriana's Birth



Eriana's Upbringing



Finding Support

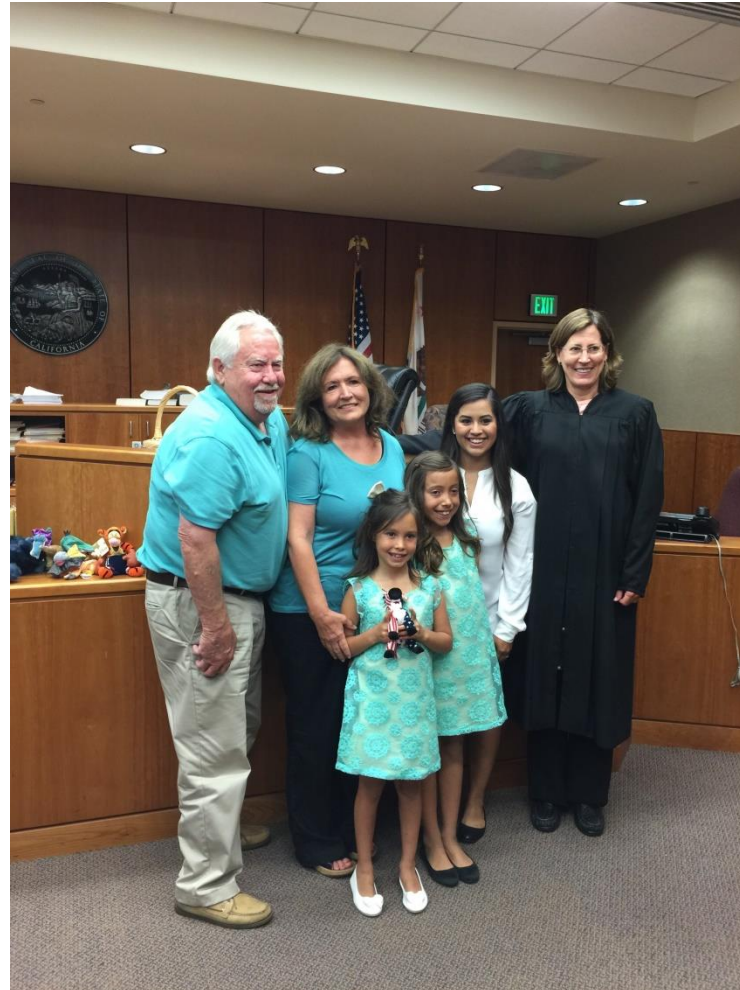


Raising Eriana

- Eriana's behavior was so bad at first, I had to quit my job and go to school with her every day to keep her and other children safe, she would attack them
- Annabella began picking up on Eriana's poor behaviors, hitting, kicking, cussing, no one ever helped us with that or the affect this had in our family



Reflections and Recommendations



Thank You for Participating

- A certificate of participation will be posted online after the webinar at <http://kids-alliance.org/webinars/>
- Webinar will be recorded and archived at <http://kids-alliance.org/webinars/>

QUESTIONS?
