
PERMANENCY HEARING

Time is of the essence for permanency of children in the dependency system. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interests of the child.

Permanency is a primary goal of Florida's dependency system. §§ 39.001(1)(h)-(j). Permanency is achieved by returning the child to his or her natural parents, by adoption, or if the court has ruled that reunification and adoption are not in the child's best interests, in another permanent placement. §§ 39.621(1)-(2). The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interests of the child.

Before the Permanency Hearing

The department must prepare a Judicial Review Social Services Report (JRSSR) and serve copies on all parties at least three business days before the permanency hearing. § 39.621(3)(a). The report must contain the child's recommended permanency goal, suggested changes to the case plan, and why the recommended goal is in the child's best interests. The department is required to explain the permanency goals and related financial assistance to the child and child's placement. § 39.621(3)(B).

Timing

A permanency hearing may be held at any time, including in conjunction with judicial reviews. § 39.701(8)(f). However, a permanency hearing is required:

- within 12 months of the child's removal; or within 30 days of a judicial determination that reasonable efforts to reunify are not required. 42 U.S.C. § 671(a)(15)(E), whichever occurs first § 39.621(1);
- at least every 12 months while the child is in care. 45 C.F.R. § 1355.20(a).

At the Permanency Hearing

The court must determine:

- whether the current permanency goal for the child is appropriate or should be changed;
- when the child will achieve one of the permanency goals; and
- whether the department has made reasonable efforts to finalize the permanency plan currently in effect.

§ 39.621(1); 45 C.F.R. § 1356.21. The court's findings must be explicitly documented, made on a case-by-case basis, and stated in the court order. § 39.621(7).

TIME FRAMES TO ACHIEVE PERMANENCY

It is a primary goal of Florida's dependency system that all children achieve permanency "as soon as possible." § 39.001(1)(h). No child should remain in foster care longer than one year. § 39.001(1)(h).

REASONABLE EFFORTS FINDINGS

In order for federal funding to continue for a dependent child, the court must make a finding that the department made reasonable efforts to achieve the case plan goal within 12 months after the child is removed, and at least every 12 months thereafter. 45 C.F.R. § 1356.21(b)(2)(i).

The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child; and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible...In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

Reasonable Efforts Findings

- Must be "as meaningful as possible and child specific." 45 C.F.R. § 1356.21(d)(3).
- Must reference specific facts of the case. 45 C.F.R. § 1356.21(d)(3).
- May reference a report to the court, but must also reference specific facts from the report to be legally sufficient. 65 Fed. Reg. 4020, 4056 (Jan. 25, 2000).
- Need only be made regarding the case plan in effect at the time of the hearing; previous, abandoned plans need not be addressed. 65 Fed. Reg. 4020, 4052 (Jan. 25, 2000).

If the court finds that reasonable efforts to achieve the permanency goal were not made, the child is ineligible for federal funding from the end of the month in which the finding was made. Funding may be restored as soon as the court makes a finding that reasonable efforts were made.

PRACTICE TIP: Should the case go on to a TPR trial, a solid and specific reasonable efforts finding that is reflected in the order can be very useful in proving that the parents were offered services and yet failed to comply with their case plan.

DETERMINING THE PERMANENCY PLAN

If the court determines that reunification is not appropriate, the court must determine another permanency plan. Under § 39.621(2), the following permanency goals are available – listed in the order of preference:

- Reunification;
- Adoption;
- Permanent Guardianship;
- Permanency Placement with a Fit and Willing Relative
- Placement in Another Planned Permanent Living Arrangement (APPLA).

The best interests of the child are the primary consideration in determining the permanency goal for the child. § 39.621(5). However, the court must also consider the child's wishes and the recommendation of the guardian ad litem. § 39.621(5).

REUNIFICATION

Reunification is the preferred choice among permanency options both in Florida statutes and the Adoption and Safe Families Act of 1997 (ASFA). The court shall return the child to the custody of the parents at any time it determines they have substantially complied with the case plan if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health. § 39.701(9)(b); see also § 39.522(2).

ADOPTION § 39.621(2).

- When a child cannot safely return home, adoption is the preferred legal option under ASFA and Florida law. § 39.621(2).
- Any permanency option other than reunification or adoption may be considered only if adoption is determined not to be in the child's best interests. § 39.621(6).
- The dependency court shall retain jurisdiction over children placed with the department until the children are adopted, and has jurisdiction over all matters pertaining to the child's adoption under Chapter 63. § 39.812(4); § 39.813.

PRACTICE TIP: When the permanency goal for the child is adoption, the case plan must include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child. At a minimum, the documentation shall include recruitment efforts that are specific to the child, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems. §39.6011(5).

PERMANENT GUARDIANSHIP § 39.6221

"Permanent guardianship of a dependent child" means a legal relationship that a court creates between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decision making on behalf of the child. § 39.01(54).

In a permanent guardianship the parent's rights are not terminated and the court retains jurisdiction over the child. § 39.6221(5). However, the department no longer supervises the placement and regular review hearings are discontinued. § 39.6221(5).

Permanency Guardianship does not terminate the parent-child relationship, therefore the following apply:

- the child has the right to inherit from his or her parents;
- the parents have the right to consent to the child's adoption; and

- the parents maintain their responsibility to provide financial, medical, and other support for the child as ordered by the court.

Findings Required - § 39.6221(1).

- Reunification or adoption is not in the child's best interests.
- The child has been in the placement for not less than the preceding 6 months.
- The permanent guardian is suitable and able to provide a safe and permanent home for the child.
- The court determines that the child and the relative or other adult are not likely to need supervision or services of the department to ensure the stability of the permanent guardianship.
- The permanent guardian has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.
- The permanent guardian agrees to give notice of any change in his or her residential address or the residence of the child by filing a written document in the dependency file of the child with the clerk of the court.

Contents of Court's Order - § 39.6221(2).

- Reasons why the parents are not fit to care for the child and why reunification is not possible.
- Reasons why a permanent guardianship instead of adoption is being established.
- Frequency and nature of visitation with parents, siblings, or grandparents.
- Require that the permanent guardian not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

The court shall enter a separate order establishing the authority of the permanent guardian to care for the child, which can be provided to non-parties. § 39.6221(3).

PERMANENT PLACEMENT WITH A FIT AND WILLING RELATIVE § 39.6231

Placement with a fit and willing relative requires the continuation of court and department oversight. The court shall continue to review the placement every six months. § 39.6231(7). When the court conducts the required permanency hearings, the permanency goal shall be reviewed in order to re-evaluate the possibility of adoption or permanent guardianship of the child. § 39.6231(7).

Permanent placement with a fit and willing relative does not terminate the parent-child relationship, therefore the following apply:

- the child has the right to inherit from his or her parents;
- the parents have the right to consent to the child's adoption;
- the parents maintain their responsibility to provide financial, medical, and other support for the child as ordered by the court.

Findings Required

- Reunification or adoption is not in the child's best interests.
- The child has been in the placement for not less than the preceding 6 months.
- The relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.
- The relative is suitable and able to provide a safe and permanent home for the child.
- The relative agrees to give notice of any change in his or her residence or the residence of the child by filing a written document with the clerk of court.

Contents of Court's Order - §39.6231(3).

- Reasons why the parents are not fit to care for the child and why reunification is not possible.
- Reasons why a permanent placement with a fit and willing relative instead of adoption is being established.
- Visitation with parents, siblings, or grandparents.
- Require that the relative not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

The court shall enter a separate order establishing the authority of the relative to care for the child which can be provided to non-parties. § 39.6231(4).

The guardian ad litem and the department must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver. § 39.6231(2).

ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT (APPLA) § 39.6241

ASFA and Florida statutes created Another Planned Permanent Living Arrangement (APPLA) as a final permanency option after reunification, adoption, permanent guardianship, or placement with a fit and willing relative, are found not to be in the best interests of the child. § 39.6241(1). The ASFA regulations define APPLA as "any permanent living arrangement not enumerated in the statute." 65 Fed. Reg. 4036 (Jan 25, 2000). The court must make specific findings to approve APPLA as a permanency option. Regular judicial reviews continue and are to be held every 6 months. § 39.6241(3). The department is required to continue supervision of the placement. § 39.6241(3).

APPLA does not terminate the parent-child relationship, therefore the following apply:

- the child has the right to inherit from his or her parents;
- the parents have the right to consent to the child's adoption;
- the parents maintain their responsibility to provide financial, medical, and other support for the child as ordered by the court.

Findings Required - § 39.6241(1).

In order to place a child in an APPLA:

- the court must find a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interests of the child;
- the department must document reasons why the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care;
- the court must find the health, safety, and well-being of the child will not be jeopardized by such an arrangement; and
- there are compelling reasons to show that placement in another planned permanent living arrangement is the most appropriate permanency goal.

Examples of Compelling Reasons § 39.6241(1)(d).

- The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability, and the child's foster parents have committed to raising him or her to the age of majority and to facilitate visitation with the disabled parent;
- The case of a child for whom an Indian tribe has identified another planned permanent living arrangement for the child; or
- The case of a foster child who is 16 years of age or older who chooses to remain in foster care, and the child's foster parents are willing to care for the child until the child reaches 18 years of age.

The guardian ad litem and the department must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver. § 39.6241(2).

MODIFYING PERMANENCY ORDER

The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child. § 39.621(9). If a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall hold a hearing to determine whether the dependency case should be reopened and whether there should be a modification of the order. At the hearing, the parent must demonstrate that the safety, well-being, and physical, mental, and emotional health of the child are not endangered by the modification. § 39.621(9). The court must also consider the parent's compliance with the case plan, the circumstances of the dependency and whether those issues have been resolved, stability of the child's placement, the custodian's recommendation, and the recommendation of the guardian ad litem.