

# “Reasonable Efforts” in Child Welfare Placement Cases

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# The Adoptions and Safe Families Act

**ASFA amended the federal foster care law Titles IV-B and IV-E of the Social Security Act**

**All states passed legislation in order to be in compliance with ASFA**

**Made safety, permanency, and well being of the child the primary focus of the law**

**Signed into law on November 19, 1997**

**HHS Regulations went into effect on March 27, 2000**

# **Title IV-E Court Related Eligibility Requirements**

- **Removal of Child**
- **Legal Authority**
- **Best Interests**
- **Reasonable Efforts – Removal**
- **Reasonable Efforts – Permanency**
- **Placement with Specific FC Provider**

# Reasonable Efforts - Removal

- **Federal Standard**

- **A case specific judicial determination whether reasonable efforts were made to prevent removal or that reasonable efforts were not required must be made within 60 days of removal of child**

# Reasonable Efforts—Removal

- **Impact of Non-Compliance**
  - **Failure to make a timely and adequate court finding of reasonable efforts results in loss of Title IV-E funding for the entire duration of the foster care episode**
  - **Can be very costly, particularly in congregate placements**

# Reasonable Efforts to Prevent Placement

- The state agency has a duty to provide timely, reasonable efforts to prevent placement
- The court must make a finding that the department made such reasonable efforts - finding must be made within 60 days of the child's removal as per fed law but best practice is to make finding immediately
- If the court does not make the finding, the agency will not receive IV-E dollars for the child's entire stay in foster care
- The finding must be detailed and child specific - not just a reference to state law

# Reasonable Efforts

Don't be confused, this phrase is used in two ways. Reasonable efforts is also used to describe the efforts to achieve permanency plan.

- The court must make a finding whether the agency provided reasonable efforts to finalize the permanency plan within 12 months of the child's removal
- A negative, late, insufficient or missing finding means the agency is ineligible for IV-E dollars until the court makes a positive finding.
- The finding must be detailed and child specific

# Reasonable Efforts to Prevent Placement

- Recent preventive efforts - homemaker, parent aide, visiting nurse, day care, parenting classes, substance abuse or mental health treatment
- Recent casework contacts or counseling by agency or someone agency has facilitated
- Relevant past efforts – particularly as it relates to current issues - ex.- past offers of help with DV situation
- Relevant emergency type assistance – again as it relates to current issues – ex. – efforts to provide emergency shelter

# Reasonable Efforts to Prevent Placement

- Non-foster care safety plan
- Use of non perp parent
- Perp parent in a different setting
- Use of relative of fictive kin
- Use of court-ordered protective supervision

# Remember. . .

- There have been no efforts that could have been reasonably made to prevent the placement.
- This is not “no efforts,” this is “no efforts could have been reasonably made.”

# Reasonable Efforts – Finalize Permanency Plan

- Federal Standard – every 12 months
  - Initial permanency hearing must be held within 12 months of the removal under Wyoming law

# PERMANENCY HEARINGS

- **Participation: Parent, Child (court will “consult with child in an age appropriate manner” ), Relative caretakers and foster parents (entitled to notice and opportunity to be heard – “right to be heard” )**
- **Full hearing**
- **Independent judicial review**

## Timing:

- **Within 12 months of the removal or**
- **Within 30 days of a judicial determination that reasonable efforts to help a child safely return home are not required**
- **Every 12 months thereafter as long as child is in foster care**

# Activism for Permanency

- This is not just the job of caseworkers - Lawyers and Judges can and should DIFFUSE the time bombs and not just clean up after the explosion
- What are the “reasonable efforts” that should be made toward permanency?
- When do “reasonable efforts” for permanency begin? – interesting dissent in Matter of H Children 79 P3d 997 (2004)

# Some Wyoming Caselaw on Reasonable Efforts

- Is it required reasonable efforts?
- Matter of DH, AP and JK 173 P3d 365 (2007) counseling, parenting classes, caseworkers helped with case plans, visitation, in-home parenting opportunities, employment assistance, housing assistance, knew that she could have rights terminated, **did attempt to place with relatives; did home evals for all relatives suggested, GM was not appropriate**
- Matter of JW and BJ, Jr. 2010 WL 965306 (2010) – Reversal of denial of placement with relatives

- Matter of ATE, KOE, ETE, ME FDE 222 P3d 142 (2009)

Affirmed the dismissal of TPR of father – no reasonable efforts made : five workers, some for only a few months, continuing issue of father’s use of marijuana – was not the reason for the children’s removal, agency would not allow visits with children due to pos tox for marijuana – this was not the court’s order where only should deny visits when actually under the influence at the time of the visit, no visits meant no parenting classes were permitted, when court ordered that he was to have visits even if pos tox, agency then implied they would have him arrested if he tested positive - the case had been about the children having appropriate medical, dental, care and a clean safe environment and turned into a case of agency requiring that father demo he wanted children more then pot

# *Reasonable Efforts - Reunification*

## *What has been the frequency/quality of visitation?*

- Has DSS observed the parent with the child and identified strengths and weaknesses?
- What about sibling visitation?
- Perhaps most important reasonable effort

## *Is court-ordered trial home visit/temporary return home appropriate?*

- May reduce re-entry
- Trial discharge can be for less than 6 months

## *Are non-safety issues keeping the child from returning home?*

- Could services address the child's special needs?
- Would implementation of the following services get the child home?
  - income assistance
  - housing assistance

# *Reasonable Efforts - Reunification*

## *Case Plans*

Has the agency worked with the parent and encouraged her cooperation in the case plan?

Review each service and whether there has been adequate participation by the parent. Could the agency have helped or encouraged participation in any way?

- transportation?
- evening/weekend program?
- arrangements with employers?
- Medicaid/insurance issues
- Financial assistance issues?
- coordinate schedules?
- Interaction between child and parent
- Can the parent meet the child's needs?
- Further evaluations necessary?
- Home visits
- Transitional services
- Other members of the household

# Reasonable Efforts - Reunification

- What's the child's position?
- Has the agency informed the parent of special needs of the child/educated the parent on how to care for those special needs?
- Did the agency help to coordinate programs to avoid duplication and inconsistent recommendations?
- Did the agency make sufficient contacts with the parent? Were contacts made at various times, in various ways?

# Reasonable Efforts - Reunification

- Will the child and parent need counseling together in order to transition to living together?
- Are there other members of the household who have to be prepared for the child's return?
- Has the father been identified and located?
- Are there any relative placement options that have yet to be pursued?

# More Wyoming Caselaw

- TPR appellate cases that discuss the concept of “reasonable efforts” toward reunification in the context of Wyo. Stat. Ann. 14-2-309 (a)(iii) illustrate what court should be looking for in perm hearings:
- Matter of MN 78 P3d 232 (2003) (brain injured parent) – offered reasonable efforts of placement with relative, one on one discussions given known memory and cognitive problems, extensive efforts to help with skills, simplistic incremental steps, took into account mother’s problems, transportation, very experienced counselor with flexibility, case managers, evals for substance abuse, mental health, parenting, housing, flexible meetings, note taking

Matter of SED, Jr. 57 P. 3d 1235 (2002) – (very limited parent) placing child in same town as birth parents, 2 visits a week offered, one with Project Reach, advised parents not to move, arranged transportation options for visits when they did move, moved child to foster home in new town; community-wide response by nearly every available resource including soup kitchens, faith based services, DFS, public health, counseling, mental health, vocational rehab, offered help with nutrition, scheduling, budgeting, housekeeping, used simple incremental steps with limited parents on a weekly, sometimes daily basis

Matter of HP and NP 93 P.3d 982 (2004) – (incarcerated parent) six meetings of MDT and 4 case plans – tailored for her situation, housing help, employment, transportation for visits, child care, medical coverage, overnights with GM so kids could visit prison, trial placement with mother, encouragement, CASA, counseling

- Matter of SRJ and CDJ 212 P3d 611 (2009) : (mother had drug and mental health problems) When no services in town, looked for psychological services in another town and when mother would not travel there, brought psychologist to mother, sent caseworkers to her home for UAs when mother would not come to office, after mother moved, drove children to another town for visits, gave her another worker when she threatened worker, gave her phone contact with children when she was inappropriate in person visits
- Matter of CS 143 P3d 918 (2006) : Reasonable efforts does not mandate driving parent to court for TPR hearing

- Matter of FM 163 P3d 844 (2007) - reasonable efforts not provided to mother re 9 year old son, TPR as to him reversed; case plan did not say she could lose her parental rights, no evidence introduced as to any services offered to her for housing, employment or other things she was required to do under the first service plan, no evidence of any help to communicate with child while she was in prison, child was allowed to decide if he would read mother's letters; case focused on child's best interests only and did not focus on mother's improvements or on agency efforts; mother was willing to sign over guardianship to the caretaking relative, but did not want to lose parental rights and lower court erred in suggesting that mother would still have a relationship

# Reasonable Efforts—Adoption

## Pre-TPR:

- Has the agency prepared the TPR petition?
- Who must be served?
- Has a date for the TPR trial been set?
- How will the case proceed if parent is missing?
- Is mediation appropriate?
- Has the agency explored open adoption?
- Can pretrial issues be resolved?
- What records or testimony will be necessary?
- Will reasonable efforts toward reunification cease once TPR is filed?

# Reasonable Efforts—Adoption

- Did adoptive resource recruitment as soon as TPR is filed or earlier?
- Are current caretakers or relatives an adoptive resource?
- Have current caretakers been provide information and support regarding this decision?
- What's the child's position, and how old is the child?

# Reasonable Efforts-Adoption

- Do the current or prospective caretakers have reservations?
- Would services allow an adoption to occur?
- Is counseling necessary?
- Have any pre-adoptive parents been counseled on adoption assistance and subsidy issues?
  - regular monthly payments
  - medical coverage
  - respite care
  - special costs, such as ramps or wheelchairs
  - special services: speech and language instruction, physical therapy
  - family or individual counseling
  - one time legal costs
- Is a homestudy necessary?

# Reasonable Efforts-Adoption

## Where resource not identified

Has the agency listed the child locally, nationally, regionally?

Has the agency utilized matching programs, or community outreach programs?

Could a private agency be used?

Is there anyone in the child's life who might wish to adopt?

## Reasonable Efforts- Guardianship or Custody with a Relative or Foster Care w/Relative

- Have adoption or other permanency options been explored?
- What is the quality and nature of relationship to the child—is this the best placement?
- Are the relatives committed to the child long term?
- Are the relatives able to meet child's needs?
- Are any services necessary?
- Does the relative acknowledge the abuse/neglect?
- Does the relative hold the parent accountable?
- How will contact with the parent be managed?
- Is a subsidy available? Does the family need to apply for TANF or other benefits? If so, has the agency helped the family apply?
- Will this preserve the child's cultural identity?
- Has a homestudy been initiated?
- Are there others in the household who need to be checked out?

# What is an “APPLA?”

ASFA defines the term as “any permanent living arrangement not enumerated in the statute.”

42 U.S.C. 475(5)(C)

“Planned” means the arrangement is intended, designed, considered, premeditated, or deliberate

“Permanent” means enduring, lasting, or stable

*It is not “independent living” – that is a collection of services, that should be provided for all children*

*Includes:*

- *physical placement of the child*
- *quality of care*
- *supervision*
- *nurture*

# APPLA

***Have other permanency options been fully considered and ruled out for valid reasons?***

- Review compelling reasons at each and every permanency hearing and at each review to determine whether a more preferred permanency option is possible.

***What efforts has the agency made to identify and recruit a permanent placement for the child?***

- Parents?
- Relatives?
- Current and former caretakers?
- Mentors, coaches, teachers, counselors, or employers?

***Have we asked the child?***

***Is this placement the best way to meet child's needs?***

# Recommendations for APPLA

- Don't use "APPLA" as a catchall for temporary plan
- Conduct an individual assessment of placement *at each permanency hearing*
- Review the youth's service agreement
- Consider all issues pertaining to well being of child, including issues of visitation, with parents, siblings, others

# CONNECTIONS FOR THE CHILD

- Church
- Community
- Athletic
- Schools
- Neighborhoods
- Friends
- Hobbies

# Permanency for the Child

WHAT is home?

- “Where they always have to take you in”
- “Where you go for Thanksgiving”
- “Where you bring the baby for them to meet”

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