



## **ROADBLOCKS TO PERMANENCE**

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Attorneys who wish to help foster children obtain permanent homes through adoption face many obstacles. Their problem, however, comes at the end of a long list of prior problems.

### **FOSTER CHILDREN HAVE PROBLEMS**

Children in foster care move too often and spend too much time in foster care. They may be shuffled repeatedly back and forth between birth family and foster families or from one foster home to another. Such moves result in further damage to already vulnerable children. They are hurt, feel rejected, learn to distrust, and fail to attach or love. Foster children are abused by the very system set up to protect them.

Attachments are critical to maintaining feelings of security, self-worth, and hope. Every interruption or loss of attachment is a major setback. Movement of the child from one home to another is social surgery and should be done only for the most serious reasons and only when the benefit outweighs the high costs.

Toth (1997, p. 20) warns of the consequences of repeated movement and delay: Once in the system, foster children have less chance of being adopted than they do of becoming homeless, getting pregnant as a teen, dropping out of school, or winding up in prison. Fewer than eight percent of these children...are ever adopted...Even children with parents waiting to adopt them are held up in foster care for three and one-half to five and one-half years.

The cost of delay to the child is beyond financial measurement. Disorganized and intermittent attachment and separation lead to later aggressive behavior, psychopathy, and mental illness. With each separation, the risk increases.

At age 18 most foster children are emancipated to independent living, a cruel joke on the child and a failure of the system designed to protect him. Foster children are typically two years behind other young persons emotionally. Even when they are armed with so-called basic independent living skills, to “free” them from wardship and declare them adult without a permanent home to back them is to invite disaster.

Katz and her colleagues (1994, p. 10) are very specific about the maximum time limits in foster care that are needed to protect the child.

[F]oster care, by its very nature, has the potential to cause harm to the[ir] child...Developmentally, six to twelve months is the longest a young child should have to live with uncertainty...For older children, 12 to 18 months should be the maximum. This is what the law requires and what we believe is necessary to safeguard attachments.

The California Governor’s Adoption Initiative nicely summarizes the policy, regulatory, and

statutory barriers (1997, p. iii):

There are many policy, practice and procedural barriers to overcome. The traditional perspectives and definitions concerning which children are appropriate for adoption do not serve the permanency needs of older children, inconsistencies between Child Welfare Services (CWS) and adoption services discourage effective service delivery, variation among counties' practices discourages intercounty placements; and judicial reluctance to terminate parental rights when reunification is impossible keeps children in long-term foster care.

## **THE DIVISION OF FAMILY AND CHILDREN HAS PROBLEMS**

A major cause of foster care drift is the failure to recognize that meeting the foster child's need for permanence is paramount. Caseworkers frequently make unending efforts to construct an acceptable biological family. Children are reunited with birth parents repeatedly, only to be removed once again when birth parents are unwilling or unable to care for the child. Yet only half of all foster children ultimately return home to stay.

Bureaucracy is another major cause. The system has many rules and many players: child welfare departments, child protection services, child welfare agencies, the courts, specialists and therapists, guardians ad litem, court-appointed special advocates, the birth parents and the foster parents. Each party may have its own vested interests and its own attorney. When one party sees time as an advantage or fears losing, that party may use the time-tested legal strategy of delay. The child is harmed by delay, yet rarely does anyone represent the child's right to a timely solution.

The child welfare system is beset with workers who are undertrained and overburdened. Turnover is high. Attention is necessarily focused on the more problematic children. Children who have food, a roof over their heads and no reported problems are ignored and left to drift within the system.

Since the need of the child demands that foster care be brief, a plan to achieve permanency should begin immediately upon entering foster care. A case plan should be developed within a day or two. The reunification plan should state specific tasks and standards which legal parents must meet in order to be reunited with their child. Adoption should be planned from the start as an alternative should the family reunification plan fail.

## **THE COURTS HAVE PROBLEMS**

The courts which oversee the foster care system are overcrowded. To move a child from foster care to permanence within 18 months, court hearings are needed upon entering the foster care system and every three to six months thereafter. Instead cases wait months even for the initial hearing. Furthermore, the legal rules for the presentation of evidence frequently fail to admit pertinent information. Complicated family matters are often poorly presented and inadequately resolved in court.

Regulatory barriers exist. Among these are the separate and sometimes conflicting requirements of foster care regulations and adoption regulations.

There are a number of statutory barriers to the adoption of foster children who cannot return to their parents' homes. Among these are statutes that:

- 1) can be misinterpreted to require sequential, rather than concurrent, planning, thus greatly lengthening the time a child spends in foster care;
- 2) do not consider the child's developmental needs in establishing reunification time lines;
- 3) allow the establishment of a plan of long-term foster care;
- 4) require that reunification services be given parents who do not want them; and
- 5) interpret policies valuing blood relatives and remove children from homes where they have significantly bonded to place them with heretofore unknown siblings and relatives.

At some point the child's right to a permanent home must supersede the rights of the birth parents. One year should be the maximum time allowed for birth parents to demonstrate their ability to care for their child. To wait longer is to put the child's future physical and mental health in serious jeopardy.

### **THE PROBLEM FOR ATTORNEYS**

Approximately 70 percent of Indiana foster children who are adopted are adopted by their foster parents. For attorneys, such adoptions are complicated. Multiple parties have legal standing including the Division of Family and Children, the birth parents, the CASA or GAL and even the county prosecutor. Before an adoption petition can be filed, multiple meetings and hearings are involved, including case conferences and appeals, initial court hearings, review hearings, permanency hearings, and the termination of parental rights. In certain instances, agreements may need to be achieved so a cooperative adoption can take place. Finally, if the children qualify as having "special needs" four different post-adoption subsidies from different sources may be available at the federal or state level. These subsidies must be arranged before the adoption is final.

The adoption of foster children can be a minefield with inadvertent errors waiting to be made. This book has been written to steer a path through the maze of processes and policies and achieve the goal of early permanence for children in the foster care system.

### **THE GOOD NEWS**

Laws and policies have changed in the past few years. The clear intent is to make foster care truly temporary (15 months or less) and to stop multiple moves of foster children. The Adoption and Safe Families Act (ASFA, 1997) stipulated that reunification with the birth family should be pursued vigorously but set certain limits.

In cases where reunification was deemed inadvisable from the start, reunification need not be pursued at all. In other situations, the permanency plan could be changed from reunification to another option (possibly adoption) after six months. In any case a termination of parental rights (TPR) must be filed after a child has been in foster care for 12 consecutive months or 15 of the past 22 months. At the same time, federal and state subsidies were provided to enhance or to encourage adoption. Almost immediately, Indiana passed PL-35 to apply the terms of ASFA to the foster children of Indiana.

Foster parents have a more significant voice in what happens to their foster children, thanks to the case conference policy of the Indiana Division of Family and Children (Jan 1, 1998). The case conference policy states that foster parents must be included in decisions about placement of foster children and about developing or changing the case plan. The most important

effect of this new policy was that children could not be suddenly removed from a foster home without the consent of the foster parents. If the foster parents disagree with the removal, they have the right to two appeals within the DFC system before the child can be placed elsewhere. Court hearings and decisions, of course, supersede DFC policies.

Finally, the Indiana legislature passed the notification bill (IC-31-34-21-4) requiring the foster parents be notified of all court hearings involving children in their care so that the foster parents might have their say. Failure to notify within the prescribed time would require that the hearing be continued. The same law also provides that foster parents might request standing to intervene as a party. The judge's decision is to be based on the child's best interests.

## **THE ROLE OF THE ATTORNEY**

Foster parents need a knowledgeable attorney as soon as they have decided to adopt. Here are some things an attorney can do after the child has been in a potential adoptive foster home for six months or more.

1) Review the Indiana DFC case conference policy with the foster parents. Foster parents have the right to call a case conference anytime they believe the current case plan is not serving the best interests of their foster child. If they believe that efforts toward reunification have been exhausted, they can propose changing the permanency plan from reunification to adoption.

2) The attorney may wish to accompany the foster parents to the case conference and through any subsequent appeals. Having a knowledgeable attorney present may be the best way to assure that policies and laws are followed.

3) The attorney may wish to consult with the foster child's CASA or GAL about the foster child's best interests and permanency plan. Foster parents have a stronger case when all parties representing the child are working toward the same goal.

4) The attorney can advise the foster parents about the federal laws, the state laws, and Indiana DFC policies related to foster care and adoption, including any eligibility for post-adoption subsidies.

5) The attorney can consult with county and state officials to help resolve any disagreements between the concerns of the foster parents and those of the DFC.

6) The attorney will want to attend all court hearings with the foster parents to make certain that they have the full say to which the law entitles them.

7) The attorney may file for adoption. Under certain circumstances, the attorney may recommend filing for adoption before there has been a termination of parental rights (TPR). The law allows for the adoption and the TPR to be handled together when this serves the child's best interests.

8) The attorney will apply for all the post-adoption subsidies for which the foster/adoptive parents are eligible.

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