

## CLC PRACTICE POINT

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# Approaching and Advocating the Issue of Permanency

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Permanency is both a process and a result wherein children locate and create a lifelong supportive, secure, safe, and stable parenting relationship with at least one unconditionally committed and caring adult.<sup>1</sup> It is an intimate and belonging relationship in which there is mutual participation and understanding that the relationship is intended to last forever.<sup>2</sup> In general terms, permanency is a sense of belonging—it refers both to children's membership in a family and to their attachments to the individuals who matter most to them. In legal terms, permanency refers to the child's permanent familial status created by a court order: reunification, transfer of legal custody, or termination of parental rights and adoption.<sup>3</sup>

For foster children who have been placed in out-of-home care, the instability of multiple, prolonged, and/or unstable foster care placements can have lasting effects upon a child's sense of belonging and emotional well-being.<sup>4</sup> Finding permanency that is safe and secure for a child is crucial to a child's development. It also is extremely important because those who age out of the system without a permanent connection to a loving family or adult fare much worse in many aspects of life.<sup>5</sup> Planning for permanency should begin the moment children are placed into out-of-home care and continue until the very end of their involvement in the foster care system. Informing your child client about their permanency options, engaging them in real conversations about permanency, ensuring that their express wishes are heard in court and building support of your client's position through investigation of facts are all essential to effectively advocate for your client.

## Types of Legal Permanency through the Eyes of a Child Client

### Reunification

Reunifying a child with his or her legal custodian is often the preferred outcome of children in out-of-home placements. However, reunification is not always a real option, so it is important to concurrently engage in

<sup>1</sup> California Permanency for Youth Project, <http://www.senecacenter.org/files/cpyp/Files/DefinitionPermanency12-01-07.pdf> (last visited Jan. 26, 2011).

<sup>2</sup> Sue Hoag Badeau, Casey Family Programs, *Permanency Values Training: Who Wouldn't Want a Family?* (2009).

<sup>3</sup> Minn. Stat. § 260C.201, subd. 11 (2010).

<sup>4</sup> Rhode Island Kids Count, Issue Brief # 36, *Achieving Permanency for Children and Youth in Foster Care* (May 2008), <http://www.rikidscount.org/matriarch/documents/Permanency%20IB%281%29.pdf> (last visited Jan. 26, 2011).

<sup>5</sup> A recent Chapin Hall study showed that of the 23- or 24- year-olds surveyed who had left foster care without a permanent connection, close to 40% had been homeless or "couch surfed," nearly 25% had not earned their high school diploma or GED, only around 50% were currently employed, 67% of women had become pregnant, and 45% of men had been incarcerated. Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 23 and 24*, Chapin Hall at the University of Chicago (2010), [http://www.chapinhall.org/sites/default/files/Midwest\\_Study\\_Age\\_23\\_24.pdf](http://www.chapinhall.org/sites/default/files/Midwest_Study_Age_23_24.pdf) (last visited Jan. 26, 2011).

contingency planning with your client regarding other permanency options.<sup>6</sup> If your client is placed out of the home and wants visits with family, you should ardently advocate for visitation since visits can increase the odds that permanency will occur faster.<sup>7</sup>

### Termination of Parental Rights and Adoption

Uncovering your client's true thoughts about termination of their parent's parental rights and adoption may be difficult, as children often experience conflicted feelings about adoption. Many children in out-of-home placements continue to feel a sense of loyalty to their birth family, regardless of the abuse or neglect they may have suffered while in their parents' care. Because of this, children in foster care may be unwilling to give up hope that their parents will change or they may feel guilty for wanting to "move on." Assuring clients that they do not have to give up every emotional relationship from their past in order to explore a potential new future will enable many young people to move forward and consider adoption anew.<sup>8</sup> When discussing adoption with your clients, it is therefore extremely important to talk about contact agreements, which are legal documents that may enable your client to maintain scheduled visitation with siblings, extended family and even birth parents.<sup>9</sup> If your clients are concerned about being adopted because adoption will sever the communication they currently have with their biological families, contact agreements may remove this potential roadblock to permanency.

Another common fear surrounding adoption arises when children in foster care internalize the suffering they have been subjected to, leading them to believe that they do not deserve a family or that they are not good enough to be accepted by others. Such fears may lead children to reject potential adoptive families before the families reject them. Using questions that enable youth to elaborate on the reasons behind their aversion to adoption helps clients make truly informed decisions about the permanency options available.<sup>10</sup>

### Transfer of Legal Custody

While adoption is often considered the best permanency option for children who cannot or do not want to return to their parents' care, it is just one option which supports lifelong connections between youth and stable, caring adults. A transfer of custody is similar to adoption in that it provides a child with permanency, stability, and a caring family, but it does not require a termination of the parents' parental rights. Legal custodians are given the right to enroll the child in school, obtain medical care for the child, and even seek child support from a child's parent. Modifications to transfers of legal custody may be made after two years upon a showing of a substantial change in circumstances and with notice to the county social services agency.<sup>11</sup> Thus, transfers of legal custody may be the best option for children who want to ensure their parents are granted visitation rights or for children who hope to be reunified with their parents in the future.

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<sup>6</sup> National Resource Center for Foster Care and Permanency Planning at the Hunter College School of Social Work and Casey Family Services, Permanence for Young People Framework (August 10, 2004). Concurrent Permanency Planning emphasizes the goal of family reunification, while simultaneously establishing an alternative permanency plan to be implemented if a child can't safely return to their biological parents. Minn. Stat. § 260C.213 (2010). The goals of concurrent planning are to achieve early permanency for children, decrease the child's length of stay in foster care, reduce the number of moves a child makes in foster care and develop a group of families who will work towards reunification and also serve as permanent families for the child. Id.

<sup>7</sup> One study found that each day of parental visitation per week tripled the odds of a permanent placement within one year. Concurrent Planning: What Evidence Shows, Issue Brief, U.S. Department of Health and Human Services, at 5 (April 2005), [http://childwelfare.gov/pubs/issue\\_briefs/concurrent\\_evidence.pdf](http://childwelfare.gov/pubs/issue_briefs/concurrent_evidence.pdf) (last visited Jan. 26, 2011).

<sup>8</sup> Peggy Slater, Making the Case for Ongoing Connections Between Youth and Those Who Matter to Them—Before Permanency and Beyond (December 2006).

<sup>9</sup> Contact agreements can be worked out before an adoption is finalized and the type of contact exists in many different forms such as letters exchanged through an agency or monitored by the parent, phone calls, emails, occasional supervised visits, designated holidays spent together, regular visits outside the home, an inclusion of a special person in the permanent family's "extended family" or all of the above in any combination that works. Id. See Minn. Stat. § 259.58 (2010). Communication or contact agreements.

<sup>10</sup> See "Sample Questions" below for examples of how to engage children in discussions about permanency.

<sup>11</sup> Minn. Stat. § 260C.201, subd. 11(j).

## Engaging Youth as Participants in Permanency

Because youth are often the best resource in identifying potential permanent families,<sup>12</sup> permanency efforts should be "youth-driven, family-focused, culturally competent, continuous, and approached with the highest degree of urgency."<sup>13</sup> When discussing permanency with your clients, it is necessary to explain what permanency means so that each young person may make an informed decision about his or her future permanent placement. Remember, not all foster children will want to obtain the same permanent outcome and not all youth in out-of-home placements will be granted their express desires. Regardless, it is essential that you express your client's wishes to the court, assuming you have your client's permission to share his or her position.

Many times those involved in your child client's case will throw the word permanency around without ever explaining what it means to your client. You should discuss what permanency means with your client. You should explain that permanence is not a place or a placement, but a state of mind of feeling connected to someone who will miss you when you don't show up or a person who you can count on unconditionally. You can empower your child client to choose their lifelong family connections and make them legal.<sup>14</sup> You will also need to explain all these different legal permanency options to your client in a way that they can fully understand.

### Sample Questions: Approaching Permanency with Child Clients

- If you could live with anyone you wanted, who would you live with?
- Who do you love?
- Who loves you?
- Who do you feel close and connected to?
- Is there a relative with whom you are particularly close? Is there a close family friend who you like to spend time with?
- Everyone deserves a family, even if their family isn't biologically related to them. What kind of family would you like? Would you like to have sisters? Brothers? Would you like to be the oldest? The youngest?
- If you cannot live with your parents (or siblings), how do you feel about being able to see them in the future?
- Who would you like to spend the holidays with?
- What does adoption mean to you?
- What do you like to do everyday? Where would you like to do these things?
- Is staying in your current school important to you?
- Are there any places that you stayed at before that you wish to return to?

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<sup>12</sup> 2008 National Convening on Youth Performance, Recommendations of Youth and Young Adults, <http://www.f2f.ca.gov/res/pdf/ConveningRecommendationsYouth.pdf> (last visited (Jan. 26, 2011)).

<sup>13</sup> National Resource Center for Foster Care and Permanency Planning at the Hunter College School of Social Work and Casey Family Services, *supra*, note 6.

<sup>14</sup> Badeau, *supra*, note 2.

- Is there anyone that you would like to live with or spend time with that your social worker might not know about?
- Is there anyone that your social worker looked at before for you to live with and ruled out? If yes, would you like your social worker to take another look at this person?

### Counseling Older Clients about Permanency

In 2010, approximately 36% of CLC's clients aged out of the child protection system without having been adopted or found a permanent home. As noted above, children who leave foster care without a supportive permanent connection in their lives fare much worse.<sup>15</sup> It is extremely important therefore to find permanency for older foster children, as opposed to simply preparing the child for living independently. Thus, while it is important to help prepare your older client to transition to living independently, it is imperative to continue to find a permanent connection in your client's life. While work on an Independent Living Plan begins at age 16, youth are now able to remain in the system until age 21,<sup>16</sup> and thus there may be increased time to find permanency for a client before they leave the system.

Sometimes adults give older children the option of saying that they don't want a permanent family. When this happens, the child may feel that they are not loveable, that no one would want them, that there is no hope for the child's future and that the child is not important enough for anyone to search for a family for the child.<sup>17</sup> It is important to explain to older clients that they deserve and need the support and certainty of a family.<sup>18</sup> While a formal permanent connection such as adoption or transfer of legal custody is often most beneficial, informal permanent connections can also be very useful. One way to explore informal permanent connections is through a "Permanency Pact."<sup>19</sup> A Permanency Pact between a supportive adult and a foster child is a commitment to a long term supportive relationship and often identifies the type of support needed or offered, such as a home for the holidays, a place to do laundry or an emergency place to stay.

Additional sample questions for older clients or those resistant to permanency include the following:

- Are there important people in your life that you want to stay connected to?
- Who would you call in the middle of the night if you were in trouble?
- Who would you want to share good or bad news with?
- Tell me about some of your future plans. How do you envision an adult helping you accomplish those goals?
- I'm concerned about you because of what I know about teens who leave foster care without a family to fall back on. Do you know any kids who have left foster care? What types of support do they say they need now?
- Would you like a support network of people who care about you after you leave foster care?

<sup>15</sup> See, The Children's Aid Society, *Aging Out of Foster Care: Youth Aging Out of Foster Care Face Poverty, Homelessness and the Criminal Justice System*, 2, <http://www.childrensaidsociety.org/files/upload-docs/FosterCare.pdf> (last visited Jan. 26, 2011).

<sup>16</sup> Minn. Stat. §§ 260C.451, 260C.456 (2010).

<sup>17</sup> Badeau, *supra*, note 2.

<sup>18</sup> See Jen Braun, *Ampersand Families*, American RadioWorks, *Why Bother?* (Nov. 2007).

<sup>19</sup> CLC has samples of permanency pacts. Please contact our office to get a copy of one.

- Do you have a Life Book?<sup>20</sup> If not would you like help in creating one?
- Is there anyone you have lost contact with that you would like to be re-connected with?
- Have you had an opportunity to participate in a group with other youth in foster care (peer support)? If not, is this something that you would be interested in?

## The Permanency Process

### When Must Permanency Be Reached?

Minnesota statutes require the court to determine the permanent status of a child in out-of-home placement within 6 to 12 months after the child is placed in foster care or the care of a noncustodial parent. The court must begin proceedings to determine the permanent status of a child 8 years of age or older (most CLC clients) no later 12 months after the child is placed into foster care or no later than 6 months if the child is younger than 8 years of age.<sup>21</sup> While this timeline may be extended,<sup>22</sup> it is important to be aware of counties' statutory obligations to ensure that foster children are provided with a safe, stable and lifelong home as soon as possible.

If the legal permanency determination reached is termination of parental rights, then the agency must make specific recruitment efforts to find an adoptive family or other permanent plan for the child. An in-court appearance hearing must be held every 90 days following termination of parental rights to review the agency's progress and efforts to find an adoptive placement or other placement living arrangement for the child.<sup>23</sup>

### What can you do to advocate for your client?

Given the importance of permanency, it is essential that you be pro-active in working toward permanency for your client.

- For those children who have become State Wards, check to see if your client is listed on the State Adoption Exchange.
- Request a copy of the adoption recruitment plan for your client. If there is not a recruitment plan, ask when a referral will be made and whether Public/Private Adoption Initiative (PPAI) services are being utilized.<sup>24</sup> Emphasize that PPAI services are available at no cost to the county.
- Check to see whether your client's current or past foster home is an adoptive resource. If it is, find out the target date for conversion. If not, find out what ways the foster home is going to support the transition to an adoptive home.
- Consider what steps you and others are taking to provide the youth with a support network.<sup>25</sup>

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<sup>20</sup> A Life Book is a pictorial and written representation of the life of a child designed to help a child better understand his/her background and history.

<sup>21</sup> Minn. Stat. § 260C.201, subd. 11 and 11a. Exceptions are made in cases where the child is in placement due to the child's developmental disability or emotional disturbance or the court finds compelling reasons to continue the child in foster care past the time periods specified. Id. See Minn. Stat. § 260C.007, subd. 8 (2010).

<sup>22</sup> Minn. Stat. § 260C.201, subd. 11(a)(2).

<sup>23</sup> Minn. Stat. § 260C.317, subd. 3(b) (2010).

<sup>24</sup> Through the PPAI, private adoption agencies under contract with the state provide adoption services to state wards and the families who hope to adopt them. The goal is to ensure that children are placed in adoptive homes quickly, and they and their families receive the support they need.

- Identify barriers that may be preventing your client from achieving permanency.
- If your client is receiving mental health services, examine how well the therapist understands the different permanency options and the importance of permanency for all youth.
- Examine when and what has been done to help your client identify a permanent connection. Ask which adults have a healthy relationship with the child.
- Explore what provisions have been made for visits with the child's family or other important adult connections.

It is imperative that you build support for your client's position and the best way to do this is to investigate the facts.

- Interview the parties in the case such as the birth family, kin and the resource family.
- Obtain all your client's records, which include reports from social services, psychiatrists, psychologists, medical doctors, law enforcement, schools and Guardians ad Litem. Contact any Guardians ad Litem and caseworkers for background information.
- Examine all assessments and reports carefully. Identify whether or not recommended services are relevant to your client's needs.
- Address issues in court that may be blocking your client from achieving permanency.

## Conclusion

While it is important to be respectful of your client's views on permanency, you must ensure they are adequately informed about all the options available to them so that they can become real players in the judicial process. Research shows that legal representation of children has a positive effect on permanency outcomes.<sup>26</sup> Engaging your clients in real conversations about permanency and describing to them what each option entails is an important part of working with and advocating for children in the foster care system.

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<sup>25</sup> Badeau, *supra*, note 2.

<sup>26</sup> Center on Children and the Law, *Court Works*, Vol. 10, Issue 3, (June 2008).