The "Strengthening Families" Act: APPLA as a Permanency Goal

August 2016 *Vermont Juvenile Court Improvement Program (CIP)*

This is the second *InfoBulletin* covering provisions of the federal 2014 Preventing Sex Trafficking and Strengthening Families Act (SFA).[1] The last *InfoBulletin* focused on the "normalcy" provisions of the Act. This bulletin addresses APPLA (Another Planned Permanent Living Arrangement) as a permanency option. The Act targeted what many have perceived as the over-use of APPLA and assumptions that older youth, or youth with special or more complex needs, either don't want, or can't achieve, family-focused permanency.[2]

APPLA and DCF

Under the SFA, APPLA is prohibited as a permanency goal for youth under age 16.[3] The underlying policy is that children under 16 should have more family-focused permanency options available to them.[4] There are no exceptions to this prohibition on the use of APPLA for children younger than 16.[5] DCF revised its permanency planning policy in September 2015 to reflect the new requirements of the SFA. Policy 125 now states that an APPLA case plan goal may not be used for children and youth under the age of 16. As of 8/3/16, DCF data indicated that there were 13 youth in Vermont with APPLA as a case plan goal, less than the prior year.

For youth who have reached the age of 16, DCF will still be able to use APPLA as a permanency goal, but only with additional case planning requirements. DCF has added a new section to their permanency planning policy specific to planning with youth age 16 and older. For these youth, when reunification, adoption, or permanent guardianship cannot be achieved, a number of resources (local permanency meetings with Project Family, permanency roundtables, family group conferences, etc.) are to be utilized to achieve legal permanency. Social workers are expected to evaluate the youth's significant relationships to determine what other options might be available to ensure continuity of relationships and support of the youth into early adulthood.

APPLA and the Courts

Before approving a caseplan goal of APPLA , a judge must find that DCF has documented "intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts… to return the child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including efforts that utilize search technology (including social media) to find biological family members for the children."[6] The Act also requires that the judge re-determine, at each permanency hearing, whether the child's placement is appropriate. To determine appropriateness under the SFA, judges are required to specifically inquire of youth about their "desired permanency outcome." The judge must make a judicial determination that APPLA is the best permanency option for the child and provide "compelling reasons" why it continues to be in the youth's best interests not to return home, be placed with a legal guardian or with a fit and willing relative.[7] The requirement of "compelling reasons" is not new to child welfare law, but is reiterated in the SFA, along with the other requirements discussed here.

Currently "compelling reasons" are not defined in either Vermont law or federal law, but in order to be found "compelling," the reasons should be supported by "forceful and convincing facts and case-specific evidence."[8]

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[1] Pub. L. No. 113-183 (9/29/14)

[2] *See* Jennifer Pokempner, *Implementing the Older Youth Permanency Provisions of the Strengthening Families Act: The Court's Role,* Vol. 35 No. 5, American Bar Association, Child Law Practice (May 2016).

[3] 42 U.S.C. §675(5)(C)(i)

[4] *See* Howard Davidson, *Congress Passes New Federal Child Welfare Law: Tips for Advocates*, Vol. 33 No. 11, American Bar Association, Child Law Practice (November 2014).

[5] *See supra* note 2.

[6] 42 U.S.C. §675a(a)(1).

[7] 42 U.S.C. §675a(a)(2).

[8] *See supra* note 2. Federal regulations do provide some examples of "compelling reasons." *See* 45 C.F.R. §1356(h)(3).

The mandate that judges consider a youth's feelings and input regarding a proposed permanency plan is not new. However, the prior law required only that the court "consult" with youth on their permanency and transition plans. In contrast, the SFA requires a more direct inquiry with the youth to determine the youth's "desired permanency outcome." This should translate into a discussion between judges and youth at permanency hearings as to whether APPLA is an appropriate permanency goal that serves the youth's best interests. Giving youth this kind of voice in permanency planning will be empowering and lead the court to better understand barriers to permanency, as well as potential services and supports that might be put in place to overcome the barriers. For example, a youth may voice that she supports an APPLA plan because she doesn't want to be adopted and lose touch with her parents. A judge may wish to consider, through further discussions, whether the youth could achieve permanency through adoption and yet still maintain contact with her biological family or whether other options, such as a guardianship, should be considered.[9]

When an APPLA plan is considered to be appropriate for a particular youth and found to be in the youth's best interests, courts should ensure that, at a minimum, an APPLA plan provides for:

- "relational permanency," which means keeping youth connected with family and other supportive adults;
- a stable placement in the least restrictive (most family-like) setting; and
- services and supports that meet all general and any special needs of the youth.[10]

APPLA and Group Care

Nationwide, nearly one-third of teens in the child welfare system are placed in group care settings, and many of these youth have APPLA as their permanency goal.[11] The new provisions of the SFA provide child welfare agencies and courts with an incentive to decrease the use of group care which has been shown to produce poor outcomes for youth in terms of educational attainment, involvement with the criminal justice system, and exposure to abuse.[12] Courts can play a key role in limiting group care for youth by using the following key principles to guide their inquiries:

- Group care should be used rarely.
- If group care is used it should be time limited to meeting the treatment needs of youth and a determination should be made that the needed treatment is not available in the community.
- There should be a concrete plan for how placement back into a family or community setting will be achieved.
- Disabilities are an insufficient justification for placement in group care.[13]

Tips for judges:

If APPLA is *proposed*, the court must:

1. ask the youth about his or her desired permanency outcome;
2. confirm that DCF is ensuring "normalcy" and documenting the youth's opportunities to engage in age or developmentally appropriate activities

To *select or continue* a plan of APPLA, the court must:

1. determine whether DCF documented intensive, ongoing, unsuccessful efforts to achieve one of the more preferred types of permanency;
2. find that APPLA is the best permanency option for that particular youth; and
3. find a compelling reason that it is not in the youth's best interest to return home, be placed for adoption, or be placed with a permanent guardianship or a fit and willing relative.

Tips for child's attorney and GAL:

1. prepare youth to respond to judge's inquiries at the permanency hearing.

More information and practice tips:

- *Issue Brief: The Role of the Court in Implementing the Youth Provisions of the Strengthening Families Act*, February 2016, ABA Youth Engagement Project.
- Jennifer Pokempner, *Implementing the Older Youth Provisions of the Strengthening Families Act: The Court's Role,* Vol. 35 No. 5, American Bar Association, Child Law Practice (May 2016) http://Childlawpractice.org

[9] *Id.* Vermont law allows parents facing a TPR to enter into a post-adoption contact agreement with the intended adoptive parent(s). 33 V.S.A. §5124.

[10] *Id.* Note that the Americans with Disabilities Act prohibits discrimination in the provision of child welfare services. The law requires that accommodations be made to serve disabled children in the most integrated settings appropriate to their needs. *See* 42 U.S.C. §12101.

[11] *Id.*

[12] *Id.*

[13] *Id.*