

Chapter 14 – Permanency Hearing to Consider Change of Goal (“Goal Change Hearing”)

14.1 Overview

The “goal change hearing” is the name commonly given to the permanency hearing that initiates the permanent removal of the child from the parents. Although this term will not be found in the Juvenile Act or the Pennsylvania Rules of Juvenile Court Procedure, it will be used here to denote any permanency hearing in which any party or the court itself seeks a change in the permanency goal from reunification to some other option.

Most dependency cases begin with a permanency goal of reunification with the parents or guardians. During the permanency review process, the judge or hearing officer monitors the parents’ compliance with the permanency plan and their progress toward remedying the circumstances that led to the removal of the child. The judge or hearing officer also assesses whether the agency has made reasonable efforts to provide services that meet the children and family’s needs, made reasonable efforts to conduct family finding and made reasonable efforts to reunify the child with the parents or guardians. (See Chapter 20: General Issues, Section 20:3 for more information on reasonable efforts)

When reasonable efforts have been made to reunify the child with the parents but the child has remained in care and reunification is not viable or imminent, the court must consider changing the goal from reunification to another permanency goal. In many cases, this means a change to adoption. Other goal options in the permanency hierarchy are: Permanent Legal Custodianship, Permanent Placement with a Fit and Willing Relative and Another Planned Permanent Living Arrangement (APPLA).

The “goal change hearing” can be emotional for both the child and the parents. Like every permanency hearing, the goal change hearing must be judge-driven. While it is important to give the parties the opportunity to be heard, it is equally important for the judge to maintain control over the hearing, to rule from the bench whenever possible and to explain decisions on the record to assure that all parties understand. (See the general discussion of the conduct of permanency hearings in Chapter 13: Permanency Hearings)

It should be noted that, under Pa.R.J.C.P. 1187(A), a hearing officer does not have the authority to preside over any hearing in which any party seeks to establish a permanency goal of adoption or change the permanency goal to adoption. However, once the goal has been changed by the judge to adoption, the hearing officer may hear all subsequent review hearings, unless a party objects or exercises the right to have a hearing before the judge.

14.2 Initiating the Goal Change

The Juvenile Act generally requires the agency to request a goal change and file a petition for termination of parental rights when the child has been in care for 15 out of 22 months. (42 Pa.C.S. § 6351(f)(9)). This requirement is consistent with federal law, as amended by ASFA (42 U.S.C. § 675 (5)(C) and (E)).

In addition, there are other points when the agency should request or the court should consider a goal change. In cases involving aggravated circumstances, including severe physical abuse, sexual abuse or aggravated physical neglect, where it is demonstrated at the outset of the case that the circumstances that led to removal cannot be remedied and that the child cannot be safely reunified with the parents, the court can establish a goal other than reunification from the beginning.

The permanency goal should also be changed when there have been aggravated circumstances found and the court has determined that reasonable efforts to preserve or reunify the family are not required, when the child has been abandoned and no parent has made substantial or continuing contact for a period of six months *or at any time when it is clear to the judge that reunification is not viable and another permanency goal seems to be more appropriate for the child.* (See Chapter 20: General Issues, Section: 20.2 for more information on aggravated circumstances.)

In most cases the goal change is initiated by the child welfare agency, but there is no reason why any party may not seek a goal change.

- A. The agency** — The agency generally initiates the request for goal change by giving notice of a permanency hearing stating a goal change will be requested or by giving separate notice of intent to change the goal. Pa.R.J.C.P. 1601 (B).
- B. The court** — There is nothing in the Pennsylvania Rules of Juvenile Court Procedure or the Juvenile Act that precludes the court from ordering the agency to change the permanency goal or to order the filing of a petition for termination of parental rights.
- C. The parent** — A parent can agree to a goal change. In cases proceeding to adoption, the parent can file a petition to voluntarily relinquish his or her parental rights. See discussion of voluntary termination, following.
- D. The child**
 - 1. The guardian *ad litem* (GAL) or counsel for the child may initiate a goal change in the interest of the child or at the request of the child. It is crucial that the views of the child regarding the goal change be ascertained to the fullest extent possible and communicated to the court by the child, the GAL, attorney or CASA pursuant to 42 Pa.C.S. § 6351(e.1).

Best Practice — Goal Change Initiation

While not required by Pennsylvania statute or rule of court, the request to change a goal can come in many forms. The official change of goal by the court is most commonly initiated by the agency. This is typically done by the agency petitioning the court for a permanency hearing with notice that they are requesting a goal change.

Additionally, nothing precludes the court from initiating a change of goal. In some counties the judge informs all the parties at the permanency hearing that at the next scheduled permanency hearing a change of goal will be considered. It is particularly beneficial to provide all parties with the date of the upcoming goal change hearing to prevent any issues of parties not receiving appropriate notice.

2. In cases where the child is twelve years of age or older, the child must consent to adoption and it is important to know whether the child is consenting to adoption *before* the goal is changed to adoption and a petition to terminate parental rights is filed.
3. The guardian *ad litem* or counsel for the child may also file a petition for termination of parental rights. (23 Pa.C.S. § 2512(a)(4)).

14.3 Goal Change to Adoption

As noted, when a child has been in care for 15 out of the past 22 months, the agency is required to ask for a change in the permanency goal from reunification to another permanency goal — in most cases, adoption — and file a petition for termination of parental rights, unless certain exceptional circumstances apply. These include (42 Pa.C.S. § 6351(f)(9)):

1. that the child is being cared for by a relative who does not wish to pursue an adoption;
2. that the agency has documented a “compelling reason” why filing a termination petition that would not serve the child’s needs and welfare; or
3. that services necessary to achieve reunification within the time frames set by the permanency plan were not provided by the agency.

While the agency may be required to request a change in goal as enumerated above, the court is not required to grant the request. In *In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010), the Pennsylvania Supreme Court reiterated the need for appellate courts to defer to the findings of fact and credibility determination of a trial court in dependency cases, given that trial courts have generally “presided over several other hearings with the same parties and have a longitudinal understanding of the case and the best interests of the individual child involved.” The court rejected the conclusion that a trial court was required to grant a goal change motion if a child had been in placement for fifteen of the

Best Practice — Combining Goal Change and Termination Hearings

Consider hearing the goal change and the termination of parental rights at the same time. The evidence at both hearings is essentially the same and hearing both at the same time is more efficient. The Juvenile Act suggests that it is appropriate for the dependency judge to also preside over the termination hearing. (42 Pa.C.S. § 6351(i)). (See also Chapter 17: Termination of Parental Rights.)

last twenty-two months pursuant to subsection (f)(9), instead opining that subsection (f)(9) was merely “one of a number of factors a trial court must consider in ultimately determining whether the current placement is appropriate or if and when another placement would be appropriate based upon a trial court's assessment of what is ‘best suited to the safety, protection and physical, mental and moral welfare of the child.’” *Id.* at 1190 (quoting 42 Pa.C.S. § 6351(g)).

When considering whether to change the goal and to order the filing of a petition for termination of parental rights, the judge should consider multiple factors including whether or not aggravated circumstances have been filed or found, the length of time that the child has been in placement and whether or not the agency has identified or is in the process of identifying an adoptive resource for the child.

Although the processes of goal change to adoption and the filing of the petition for termination of parental rights go hand in hand, they are two separate issues. It may be in the best interest of the child to change the goal to adoption but not order the petition to terminate parental rights. For example, if a child has been abandoned by the parents but is not in a pre-adoptive foster home or is in a residential treatment facility, it might be prudent to change the goal, but delay the filing of the petition for termination of parental rights until a pre-adoptive resource has been identified. It should be noted that identification of a pre-adoptive resource is not a prerequisite to the filing of a petition to terminate parental rights.

Finally, the Adoption Act permits parents to voluntarily terminate their parental rights. (23 Pa.C.S. § 2501). If a parent does not contest a goal change to adoption, consider ordering the agency to discuss voluntary relinquishment of parental rights. Voluntary termination prevents a trial and the child is freed for adoption at an earlier stage and thus will achieve permanency sooner. Voluntary termination also provides a benefit to the parents in that it does not constitute an aggravated circumstance (as would an involuntary termination) should the parents have other children that come into care and are adjudicated dependent.

14.4 Change to Other Permanency Goals

When the conditions for a goal change are fulfilled but adoption is not possible or is not in the child’s best interests, the Court should consider ordering a change from reunification to another goal that will provide a permanent placement for the child.

A. Permanent Legal Custodianship (PLC) & Subsidized Permanent Legal Custodianship (SPLC)

When neither reunification nor adoption is a viable option for permanency, PLC or SPLC is the favored goal. While it may not afford the child the same degree of permanency as adoption — because PLC is essentially a custody order subject to modification like any other custody order — it does provide the child with the opportunity for a permanent relationship and case closure. In many cases the legal custodian is a relative, but legal custodianship may be given to an unrelated foster parent or any suitable adult.

SPLC provides the custodian with a subsidy similar to foster care payments to ensure the custodian is financially able to meet the needs of the child. Any agreed-upon monthly subsidy amount cannot exceed the amount that would have been provided had the eligible child remained in foster care. The agreement must be signed and in effect prior to or at the time of the SPLC order and terminates upon the eligible child’s eighteenth birthday or age twenty-one if the SPLC agreement became effective when the child was at least thirteen years of age and this agreement was in effect on or after July 1, 2012.

The PLC or SPLC may be ordered at any time after the child has been in care for at least six months and the child has been with the PLC/SPLC resource for at least six months. (See the discussion in Chapter 12: Permanency Options.)

B. Placement with a Fit and Willing Relative

If reunification is not viable and the child is placed with relatives who do not wish to adopt or become permanent legal custodians, the court should consider a permanency goal of placement with a fit and willing relative. (42 Pa.C.S. § 6351(f.1)(4)). Again, the pros and cons of this option are discussed more fully in Chapter 12: Permanency Options.

C. Another Planned Permanent Living Arrangement (APPLA)

The following are examples of living arrangements that qualify as APPLA: long-term foster care, group care/residential treatment and supervised independent living. *These arrangements are not, however, a permanency goal—APPLA is the permanency goal.*

APPLA is the least favored of all permanency options. APPLA’s use is limited to youth age sixteen and older. Act 94 of 2015 (Pennsylvania law addressing the federal Preventing Sex Trafficking and Strengthening Families Act) mandates that efforts to identify supportive adult connections be established for all youth with the goal of APPLA. Accordingly, before changing the goal to APPLA, the court should demand the agency document compelling reasons that all other permanency options are not possible for the child. When changing a goal to APPLA, the court should enter detailed findings in support of a goal of APPLA. Some possible compelling reasons to order a goal change to APPLA might include:

1. a youth who requests emancipation or independent living;
2. a child who has a significant bond that precludes termination of parental rights, but the parent is unable to care for the child due to the child’s emotional, mental, or physical disability or limitations and the foster parents are committed to providing a home until the child reaches majority and will facilitate visitation; or
3. a child who needs long-term medical or psychiatric care that cannot be provided in a family or foster care setting.

It is imperative that the court ensure all children, especially those with a goal of APPLA, have meaningful and significant connections with responsible, caring adults. Family finding, particularly important in cases with the goal of APPLA, ensures the ongoing diligent efforts of the county agency, or its contracted providers, to search for and identify adult relatives and kin and engage them in the county agency’s social service planning and delivery of services, including gaining commitment from relatives and kin to support a child or parent/guardian receiving county agency services. (See Chapter 2: Act 55 of 2013: Family Finding for more information.)

The court is required to inquire as to the efforts made by the county agency to comply with family finding requirements pursuant to 62 P.S. §1301 et seq. Family finding may be discontinued only if, after a hearing, the court determines that: (1) continued family finding no longer serves the best interests of the child; (2) continued family finding is a threat to the child’s safety; or (3) the child is in a preadoptive placement and the court proceedings to adopt the child have been commenced. (See (Pa. R.J.C.P. §§ 1149, 1608 D. (1) (h).)

Consistent with the intent of the Pennsylvania legislature (Act 94 of 2015) and the long-term goals for judicial procedure as it relates to cases where the agency is

seeking to change the goal to APPLA, it is recommended that the court engage in the following analysis which is set forth below.

The court shall conduct an inquiry regarding the following matters and require proof from the agency seeking to change the goal to APPLA:

1. Has the child reached sixteen years of age or older? and;
2. Has the county agency identified at least one significant connection with a supportive adult willing to be involved in the child's life as the child transitions to adulthood, or document that efforts have been made to identify a supportive adult? and;
3. Does the agency seeking to change the goal to APPLA have documentation that details a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative? and;
4. Does the agency seeking to change the goal to APPLA have documentation that details its intensive, ongoing and, as of the date of the hearing, unsuccessful efforts to return the child to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative? and;
5. Has the agency seeking to change the goal to APPLA made reasonable efforts to engage in family finding to find biological family members and kin for the child? and;
6. What are the child's desired permanency goals for himself/herself? and;
7. What compelling reasons has the agency seeking to change the goal to APPLA provided to explain why it continues not to be in the best interests of the child to return to the child's parent, guardian or custodian, be placed for adoption, be placed with a legal custodian or be placed with a fit and willing relative? and;
8. What: (a) significant connection is identified in the permanency plan or (b) efforts have been made to identify a supportive adult for the child, if no one is currently identified? and;
9. Why, as of the date of the hearing, APPLA is the best permanency plan for the child?

Next, the court shall consider the testimony and evidence elicited in response to the analysis. Finally, the court must weigh the evidence solicited in response to its inquiry and make an ultimate finding that “the county agency has documented a compelling reason that it would not be best suited to the safety, protection and

physical, mental, and moral welfare of the child to be returned to the child’s parent, guardian of custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit or willing relative” and that changing the goal to APPLA is in the best interest of the child.

14.5 Effects of Goal Change

When a permanency goal is changed from reunification to another permanency goal, the agency is basically relieved of continuing efforts toward reunification. However, if reunification is or remains the concurrent plan, the agency must continue to offer services and make reasonable efforts to reunify.

Irrespective of a goal change, the judge or hearing officer can order the agency to continue to offer services and make reasonable efforts when it is in the best interest of the child. For example, if a goal is changed to APPLA, continued visitation between the child and parents may be in the child’s best interests. This may especially be true in instances where the child is older and has strong connections to his or her birth family.

Upon ordering a goal change, the court should review the existing visitation schedule to determine whether the visitation schedule should be changed in keeping with the new permanency goal and the best interests of the child. (See Chapter 8: Visitation for more information.)

In deciding whether to change the visits, the court should consider the following:

1. Is there a concurrent plan of reunification?
2. Have the parents been consistently visiting?
3. What is the bond with the child and the parents and the child and the caregivers?
4. What is the quality of the visits?
5. Are the visits supervised or unsupervised? What is the frequency of the visits?
6. How do the visits affect the child? Are there any behavioral changes noted after the visits?
7. What are the child’s wishes?
8. Is the child placed with relatives or family friends where continued contact would likely occur after case closure?
9. If the new goal is adoption, the court should consider a reduction in visitation that is consistent with a permanency goal of adoption.
10. If the child is bonded with the parents and having frequent visits, consider a gradual reduction in visits so as to minimize the loss.
11. An opinion from the child’s therapist or other expert on any reduction of visits and the effect that it may have on the child.

14.6 Evidentiary Issues in Goal Change Hearings

In a permanency hearing where goal change is being considered, the court should consider the *full* record that reflects the parents’ compliance and progress as it relates to whether they have remedied (or will remedy) the circumstances that led to removal and placement of the child. In the ordinary permanency hearing, the court is generally looking at what has transpired between review hearings. At the time of a permanency hearing with a goal change emphasis, the full history and record is relevant.

While compliance with the Family Service Plan is an issue bearing on the goal change, what the court is really examining is progress (or lack thereof). While the parents’ refusal or failure to comply is relevant, the real issue is progress. It is not unusual for parents to be compliant and cooperative, but make no progress. Conversely, some parents are not compliant, but manage to remedy the conditions that led to removal of the child without the help of the agency. The real issues are: have the parents remedied the conditions that led to removal, can the child be safely reunified with the parents in a reasonable period of time and does reunification best serve the needs and welfare of the child.

CAUTION—if the permanency hearing for goal change and the termination of parental rights hearing are being heard at the same time, keep in mind that hearsay evidence that may be admissible in the permanency hearing may not be admissible in the termination hearing.

14.7 Findings and Orders

As it does following any permanency hearing, the court shall enter its findings and conclusion of law into the record, in open court, and issue a written court order at the conclusion of a goal change hearing. (Pa.R.J.C.P. 1608 (D) and 1609). The order is especially important when a goal change occurs because orders granting goal changes are often appealed.

In addition to what is normally contained in a permanency hearing order, the order entered pursuant to a goal change should clearly set forth the reasons that the request for a goal change was granted or denied. (See the discussion of orders in Chapter 13: Permanency Hearings.)

In Pennsylvania, dependency findings and orders for permanency hearings including those in which a change of goal occurs are contained within the CPCMS Dependency Module. These court forms contain the needed information to assist the court in asking the necessary questions, in managing the case, in meeting federal requirements and in capturing statewide data. The forms also allow for the entering of detailed text, which can outline the specific directives of the court.

If the court has done its job throughout the review process, the court orders should clearly track the compliance and progress of the parents and should make a clear record

to support the court’s decision for the goal change. Entering detailed findings at each permanency review can assist the court at the time of goal change and can shorten the length of the hearing where a goal change occurs.