

Chapter 13 – Permanency Hearing to Consider Change of Goal (“Goal Change Hearing”)

13.1 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 Master 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 Master also assesses whether the agency has offered reasonable services and made reasonable efforts to reunify the child with the parents or guardians.

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.

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 so as to assure that all parties understand (see the general discussion of the conduct of permanency hearings in Chapter 12: Permanency Hearings).

It should be noted that, under Pa.R.J.C.P. 1187(A), a hearing master 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 to adoption by the Judge, the Hearing Master may hear all subsequent review hearings, unless a party objects or exercises the right to have a hearing before the Judge.

13.2 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 6 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 19: General Issues, 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 through an amendment to the Family Service Plan. This amendment gives notice to the parents that the agency is requesting a goal change.
- B. The court** — There is nothing in the rules 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, below.
- D. The child**
 - 1. The Guardian *Ad litem* 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).
 - 2. In cases where the child is 12 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)).

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 in 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 a hearing to change the goal will occur at the next scheduled Permanency Hearing. 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.

13.3 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 the trial court in dependency cases, given that the 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 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 the 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)).

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 16: Termination of Parental Rights).

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 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.

13.4 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 13 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 11: 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 11: 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. 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.

Best Practice – Ensuring Connections

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. One strategy being used throughout Pennsylvania is known as Family Finding. Much more than a web-based search, Family Finding offers methods and strategies to locate and engage the relatives of children living in out of home care. Family Finding is used to provide each child with lifelong, supportive adult connections (PA Children’s Roundtable Initiative, 2009, p. 11).

Yet another strategy being used in various jurisdictions includes partnering with the business and faith communities to provide mentorship opportunities for older youth. These partnerships are providing invaluable adult support and connections for older youth, especially as they transition to adulthood.

Where possible, courts should encourage the development and use of models that ensure children are connected to responsible, caring adults.

13.5 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 Master 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 stronger connections to his or her birth family.

Upon ordering a goal change, the Judge 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.

In deciding whether to change the visits, the Judge 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.

13.6 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 FSP is an issue bearing on the goal change, what the court is really examining is the 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.

13.7 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 where 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 12: Permanency Hearings).

In Pennsylvania, dependency findings and orders for permanency hearings including those in which 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 goal change occurs.