



**THE JUVENILE DEPENDENCY SYSTEM AND
PARENTS WITH INTELLECTUAL DISABILITIES:
A FACT SHEET AND GLOSSARY**

Parents who have intellectual disabilities may find themselves involved with Pennsylvania's children, youth, and family (CYF) system if there are concerns about the parents' ability to provide appropriate care for and to protect their children. This involvement can be informal or it can result in court proceedings. Ultimately, parents who are unable to care for their children, regardless of the reason, may face the termination of their parental rights. This Fact Sheet is designed to provide some basic information about the CYF system and the rights of parents with intellectual disabilities in those proceedings. At the end of the Fact Sheet is a glossary of common terms used in the CYF system.

What is the CYF system?

The CYF system was set up by state law to protect children from abuse and neglect. Each county in Pennsylvania has an Office of Children, Youth and Families (County OCYF), though it may have a different name in some counties. For instance, in Philadelphia the County OCYF is called the Department of Human Services. The OCYF is responsible to investigate reports about harm to children and to intervene when it concludes that the child is at risk of harm. The County OCYF must protect children and provide services to the family when:

- children have been injured, abused, or sexually molested by their parents or caretakers;
- children are not adequately cared for or watched;
- parents are not able to care for their children and no other responsible adult is available;
- in certain other situations when parents need help with their problems or their children's problems.

The goal of the CYF system is to keep families together. If children can remain with their parents and be safe, the family will remain together and the CYF system will provide services to help the family work through its problems. If the parents and children cannot live safely together, the CYF system will remove the child from the home. The CYF system's actions will be taken within the context of judicial proceedings that afford protections to both the parents and the children.

How can parents with intellectual disabilities prevent involvement of the CYF system?

Individuals with intellectual disabilities may face questions about their ability to care for and supervise their children. To prevent CYF involvement, parents with intellectual disabilities, their families, and their advocates should consider taking proactive steps to assure that the parents have the services and supports they need to provide an adequate home and care for their children, preferably before their children are born. This can include the following:

- Family members or friends who can provide support to parents with intellectual disabilities are helpful.
- County Mental Health and Mental Retardation Programs may have services that can support parents with intellectual disabilities. For instance, home and community-based waiver programs can fund some homemaker or chore services that can help to maintain a clean and safe home environment.
- Advocacy groups, such as The Arc of Pennsylvania, may be able to recommend resources in the parents' community that can offer assistance, such as parenting classes or other services.

What is the role of the County OCYF Caseworker?

The main contact between the parent and the County OCYF is the parent's caseworker. It is important to keep the caseworker informed about important developments or changes that happen to the family as long as it is involved with the CYF system (changes of address, new people living in the home, change in job). The caseworker will be the person who helps the parent to identify and develop any services he needs to keep his child or to be reunited with his child after he has been removed from the home. It is important that parents with intellectual disabilities talk to their

caseworker if they experience any problems with the services they are supposed to receive (including scheduling issues or arranging for transportation to the services), any problems with meeting requirements imposed on the parents, or any problems relating to visitation with children in out-of-home placements.

Can the County OCYF require a parent to take certain actions without going to court?

The County OCYF must take legal steps to protect a child by initiating "dependency" proceedings (discussed more below) and, if a court finds that the child is dependent, a parent may be required to take certain steps to regain custody of the child. Sometimes, though, the County OCYF may have information that shows that a family is having problems caring for its children which places them at some risk of harm, but either there is not sufficient evidence to start legal proceedings or the County OCYF wants to try to address those problems without filing legal proceedings. In those circumstances, the County OCYF can offer "pre-trial voluntary services" to the family to protect the children's welfare while avoiding court involvement. Pretrial voluntary services may ask the parents to voluntarily take steps or make changes to protect their children -- such as moving to a safer home, keeping the children away from someone who may be a threat to them, arranging for medical care for the children, taking anger management classes, or taking parenting classes. A process called "Family Group Decision-Making" is sometimes used to bring together all of the interested parties -- the parents, OCYF, service providers, and others -- to identify appropriate pre-trial voluntary services. Parents have the right to refuse to participate in this process and to refuse the offer of pre-trial voluntary services.

When will juvenile dependency proceedings be started?

Juvenile dependency proceedings begin for one of the following reasons: (1) an authorized person concludes that the child must be placed in "protective custody" immediately; (2) a "dependency petition" is filed; or (3) the parents sign a "voluntary placement agreement" to place the child in County OCYF custody. This Fact Sheet does not address voluntary placement agreements.

Can a child be removed from the family home without any court hearing?

Yes, under certain circumstances. A police officer can take a child into protective custody if there are reasonable grounds to believe the child is suffering from an illness or injury or is in imminent danger from his surroundings to require removal. A physician or a hospital also can hold a child in protective custody if it is immediately necessary to protect the child. The County OCYF must file a petition with the Juvenile Court to secure a protective order to hold a child for more than 24 hours. When a child is removed from the home before a protective order is issued by the court, the parents must be notified of the whereabouts of the child (unless there is a court order to the contrary) and the reasons for taking the child into custody.

When will the Juvenile Court authorize protective custody of a child?

The court will issue a protective custody order if it determines that removal of the child is necessary for the welfare and best interests of the child.

Does a parent have a right to be present at a court hearing to determine whether her child can be taken into or remain in protective custody?

No. The court can issue an emergency protective custody order on an "ex parte" basis, which means that the parents need not be present at that hearing.

How long can a protective custody order last?

A protective custody order only allows the child to be held for 72 hours (three days). If the child is not returned to the family home, the court must hold a "shelter care" hearing before the expiration of the protective custody order.

What happens after a child is taken into protective custody?

Within 24 hours after a child is taken into protective custody, the County OCYF must file a shelter care application if it seeks (as it usually will in those situations) not to return the child to the family home. Within 72 hours

after the protective custody order is issued, the court must hold a shelter care hearing.

Do parents have a right to receive notice of and be present at the shelter care hearing?

Yes. Parents must receive reasonable notice of the shelter care hearing and have the opportunity to attend.

Do parents have the right to have an attorney at the shelter care hearing?

Yes. At the shelter care hearing and all proceedings after that, the parents have the right to be represented by an attorney. The court will appoint an attorney for parents who are poor. The court, however, may not appoint counsel for a parent who does not have legal custody. Since the child welfare system can be confusing and there may be multiple hearings, parents should make sure that their attorney explains the proceedings in plain language and also clearly explains what actions the court requires the parents to take, what the consequences will be if they do not take those actions, and whether they must comply with any specific deadlines.

Will the parent's attorney also represent her child?

No. A separate attorney will be appointed to represent the child's legal interests. The court may also appoint a "guardian ad litem" to act as an advocate for the best interests of the child. In some counties, the guardian ad litem is called a "Court-Appointed Special Advocate" (CASA).

What will happen at the shelter care hearing?

The primary purpose of the shelter care hearing is to determine whether to keep the child in an emergency out-of-home placement or to return him to the family home. The judge will order that the child remain in an out-of-home placement if she finds that it is in the child's best interest. Specifically, the court must consider the following issues:

- whether shelter care is necessary;
- whether allowing the child to live in the family home would be contrary to the welfare of the child;

- whether reasonable efforts were made to prevent placement (this includes consideration of whether the County OCYF offered the family services to assist it and whether such services were adequate and accessible); and
- if services were not offered, whether the failure to offer services was reasonable.

If the court determines at the shelter care hearing that the child should remain in an out-of-home placement, the court will also consider:

- whether the parents should be entitled to visitation rights while the child is in shelter care and, if so, the terms of the visitation;
- whether the child has any special medical or psychological needs that should be addressed;
- whether the child has any educational needs (including special education) that must be addressed and what steps have been taken to assure his educational stability;
- the provision of interim services for the child and, possibly, the parents;
- any other issues that are appropriate (such as the need for court-ordered evaluations, paternity determinations, issuance of restraining orders, and notice to absent parents).

Can the court consider the intellectual disability of a parent at a shelter care hearing?

The court should not place a child outside the home simply because one or both parents have an intellectual disability, but the court may do so if it determines that the parents cannot provide appropriate care for the child even if their disability may be part of the cause. The court, though, must also consider whether the County OCYF made reasonable efforts to prevent placement, absent emergency. Those efforts might include arranging for services that a parent with an intellectual disability might need to keep his child in the home. The parent's attorney should be able to offer evidence at the shelter care hearing about whether the parent was offered such services and what services might have been appropriate to help the parent.

Where will the child live if the court determines at the shelter care hearing to keep him in an out-of-home placement?

If the judge determines that the child should continue to remain in an emergency out-of-home placement, the child must be placed in the least restrictive environment that will meet his needs. Often this is "kinship care," where the child is placed with fit and willing relatives who have a connection to the child. Kinship caretakers are required to become licensed foster parents. The child can be placed with an unlicensed kinship caretaker in an emergency situation, but the caretaker must become a fully licensed foster parent within 60 days. If kinship care is not available, the child generally will be placed in a foster home or, more rarely, a group home, shelter, or residential treatment facility. Every effort should be made to keep siblings together.

How long can an out-of-home shelter care placement last?

If the judge determines at the shelter care hearing that the child should remain in an emergency out-of-home placement, the County OCYF must file a dependency petition within 24 hours and the court will schedule an "adjudication hearing" within 10 days after the dependency petition is filed.

Can a dependency petition be filed if a child has not been removed from the home and placed in protective custody?

Yes. There may be situations in which the OCYF determines that a child may be "dependent," but is not in immediate danger so as to warrant removing him and placing him in protective custody. In this situation, there is no shelter care hearing. Instead, legal proceedings are started when the OCYF files a dependency petition, which is sometimes called an "Urgent Petition." After the dependency petition is filed, the court will schedule an adjudication hearing -- the same type of hearing as would be scheduled if the child had been in protective custody and been subject to a shelter care hearing.

Is OCYF the only party that can file a dependency petition?

No. Although the County OCYF is usually the party that files the dependency petition, any person can file a "private petition" with the Juvenile Court to assert that the child is dependent. The Juvenile Court will

schedule a hearing within 14 days to see if there are sufficient facts to support a private dependency petition. If the court finds there are sufficient facts, then it will permit the dependency petition to be filed and an adjudication hearing will be scheduled.

Will the parent be notified of the adjudication hearing and have the right to be present and have an attorney?

Yes. Parents will be notified of the hearing and have the right to be present and to have an attorney appointed to represent them if they cannot afford to hire one.

Will the parent's attorney represent his child?

No. Just as in a shelter care hearing described above, different attorneys will be appointed for the parent and the child. Often, a guardian ad litem also will be appointed for the child.

When will the adjudication hearing be held?

If the child has not been removed from the home and placed in shelter care, the adjudication hearing will be held within 45 days of the filing of the dependency petition. If the child is in shelter care, then the hearing (as noted above) will be held within 10 days after the petition is filed.

What will happen at the adjudication hearing?

The court must determine in the adjudication hearing whether there is clear and convincing evidence that the child is a "dependent child" as defined by Pennsylvania's Juvenile Act. A dependent child is one who "is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals." For example, a child can be declared to be dependent if:

- he has been subject to physical, sexual, or emotional abuse;
- he has been subject to neglect (such as not receiving basic necessities (food, clothing, or shelter) notwithstanding offers to improve the child's condition;

- he is without adequate supervision or discipline that is appropriate given his age and capabilities;
- he is financial exploited;
- he is excessively absent from school (truancy);
- he does not receive proper medication or medical treatment due to the parent's failure to provide it; or
- the parent has had parental rights terminated as to another child within the past three years and is currently engaging in conduct that poses a risk to the well-being of the child who is alleged to be dependent.

The court will also assess at the adjudication hearing whether the County OCYF has made reasonable efforts to prevent the need for placement of the child or to safely reunite the family.

If a dependency petition alleges that there are "aggravating circumstances," the court must also determine whether that is true. "Aggravating circumstances" can include: (1) the parent's conviction of specific criminal offenses (such as homicide, rape, and aggravated assault), or (2) the child or another child of the parent was the victim of physical abuse resulting in serious bodily injury, sexual violence, or aggravated physical neglect (which means neglect that results in a life-threatening condition or seriously impairs the child's functioning). If the court determines that the child is dependent and that aggravating circumstances exist, it may find that there is no need to make reasonable efforts to preserve the family.

Will the court consider a parent's intellectual disability in determining if her child is dependent?

Again, the mere fact that a parent has an intellectual disability generally cannot result in a determination that her child is dependent. On the other hand, a parent's intellectual disability will not excuse the parent's failure to provide proper parental care and control to avoid a finding of dependency.

What happens after the court determines that a child is dependent?

After the court determines that a child is dependent, then it must hold a "disposition hearing" to determine who will have custody of the child and what services should be provided to the child and the family. The

disposition hearing can be -- and usually is -- heard immediately after the adjudication hearing. In cases when additional information about disposition is needed (such as professional reports or evaluations), the court can schedule the disposition hearing for a later date, but not later than 20 days after the determination of dependency. If the disposition hearing is not on the same day as the dependency hearing, the court usually will order the child to remain in his current placement until the disposition hearing is held.

What will happen at the disposition hearing?

The key issues in the disposition hearing are: (1) whether the child should be placed or kept in placement outside of the family home; and (2) what services, if any, should be provided to the child and family.

When can the court order a child to be placed or kept in an out-of-home placement at the disposition hearing?

The court can authorize the placement of a child outside the home only if there is "clear necessity" to separate the child from the parents. The court must assess:

- whether allowing the child to live in the family home would be contrary to his health, welfare, or safety;
- whether reasonable efforts to prevent placement were made prior to placement or, if preventative services were not offered due to emergency, whether the failure to offer services was reasonable; and
- if the court determined at a shelter care hearing that reasonable efforts were not made to prevent removal, whether reasonable efforts are underway to reunite the family.

If, however, the court found at the adjudication hearing that aggravated circumstances exist, it must only make findings about whether placement of the child at home would be contrary to his health, welfare, or safety.

How will the court assess the appropriateness of services to the child and family at the disposition hearing?

The court will consider various reports at the disposition hearing that may be relevant to assuring that the child and family has access to appropriate services.

- The court will review the Family Service Plan (FSP). The County OCYF must develop a FSP within 60 days after a family is accepted for service or within 30 days if the child was in emergency placement and continued placement is necessary. Usually the FSP is completed at the time of the disposition hearing, but if it is not the court may bring the parties back for a post-hearing review of the FSP. The FSP must describe the service goals for the family (such as participating in parent training classes or an anger management program), the services to be provided to achieve those goals, and the dates by which the goals should be completed. The parent will be required to sign the FSP unless she disagrees with it. If a parent disagrees with the FSP, she must make the basis for the disagreement clear so that it can be resolved and the FSP can be finalized. For example, if a parent needs services that are not included in the FSP, the parent should identify those services. Once the FSP is finalized, it is important for the parent to work on the goals set out so that she can show the court her commitment to fixing any problems and getting her child back.
- The court will also review the Child's Permanency Plan (CPP) if it has been completed. The CPP is an amendment to the FSP that is made when a child is placed outside the home. The CPP identifies the circumstances that made placement necessary, the child's permanency goal and concurrent planning goal (which is the alternative permanency goal if the initial goal does not work out), the placement location and type, medical and educational information, and anticipated duration of out-of-home placement. In addition, the CPP identifies the services that will be provided to achieve the permanency goal for the child. There are five potential permanency goals: (1) family reunification, which is the preferred permanency choice; (2) adoption if reunification is not best suited for the child's safety and welfare and the County OCYF petitions for termination of parent rights; (3) placement with a legal custodian if adoption is not best suited to the child's safety and welfare; (4) placement with a fit and willing relative if legal custodianship is not best suited to the child's safety and welfare; and (5) an alternative planned permanent

living arrangement if the County OCYF has shown a compelling reason for ruling out the other four options.

If the court at the disposition hearing orders out-of-home placement for the child, where will he be placed?

Just as at the shelter care hearing discussed above, the court must place the child in the least restrictive setting appropriate to his needs.

Frequently, this will be kinship care that allows the child to live with a relative. If kinship care is not an option, then the child most likely will be placed in a foster home. Specialized foster homes may be used for youngsters with unique medical or psychological needs. Group homes are another option, used most often for older children or teenagers. Children with complex psychiatric needs may be placed in residential treatment facilities. Supervised independent living is an option for older teenagers (usually over 17), which allows them to live in an apartment or house by themselves or with one or more other teens with the provision of supports to enable them to develop independent living skills.

If the court at the disposition hearing allows the child to remain at home after he has been declared dependent, what type of services are available to prevent the possibility that he may be removed from the family home in the future?

There are a variety of services that may be made available to families involved in the CYF system, including:

- Services to Children in Their Own Home (SCOH services) -- SCOH services monitor the continued safety of children, reduce the risk of abuse or neglect, prevent out-of-home placement, and assist the family to obtain supportive services. SCOH services can include assistance to the family with parenting, household organization, medical, psychological, and other services or treatment.
- Family Preservation Services -- These are intensive, short-term, home-based interventions to remedy problem situations and avoid placement.
- Parenting classes.
- Anger management classes.
- Counseling, therapy, or other behavioral health services.
- Job training.

- Drug and alcohol rehabilitation.
- Counseling in homemaking and home budgeting.

When parents have intellectual disabilities, the County OCYF and court should also consider the availability of specialized services to meet their unique needs. This can include, for example, helping the parents to apply for services from their County Mental Retardation program or providing specialized parenting programs that are designed for parents with intellectual disabilities.

Does a parent have visitation rights with a child who has been removed from the family home?

Generally, yes. As long as child's permanency goal is "family reunification," the parents are entitled to visit the child unless the court finds that visitation poses a "grave threat" to the child. If, as in most cases, visitation is allowed, the court's orders will identify the frequency of visitation (usually at least every other week) and any conditions on visitation (such as whether it must be supervised). A parent not only has the right to visit his child, he also has the responsibility to do so. Visitation is essential to promote reunification by reducing the pain of separation, promoting attachment, and helping the parents to practice skills they have learned. Visitation is an opportunity for the parent to show his continued interest in and commitment to the child and desire for family reunification.

Aside from visitation, does a parent have any other rights after the child has been placed outside the home?

Unless the court orders otherwise, a parent whose child was placed outside the home also has the right to:

- send and receive mail and phone calls to and from the child;
- go with the child to any medical or dental appointments;
- be informed if the child's placement is changed;
- be consulted and make decisions about the child's religion;
- be consulted and make decisions about the child's Individual Education Plan (IEP); and
- be consulted and make decisions about medical treatment.

If the court orders an out-of-home placement for a child at the disposition hearing, does that mean that the parent permanently loses custody of the child?

Not necessarily. The court will schedule a "permanency hearing" within 6 months after the disposition hearing (or within 30 days of the disposition hearing if the court found that aggravating circumstances exist). Additional permanency hearings will be conducted every 6 months until the child is returned home or removed from the court's jurisdiction.

What happens at the permanency hearing?

At each permanency hearing, the County OCYF must submit an updated Family Service Plan/Child Permanency Plan that addresses the continuing appropriateness of placement (including whether there has been progress toward alleviating the circumstances that made out-of-home placement necessary), the permanency goal, and an estimated date for achieving that goal. If family reunification is the goal, the court will also assess whether the County OCYF has made reasonable efforts to offer the parents appropriate services to allow the child to return home and, if so, whether the parents have taken advantage of those opportunities. At least when the child is 16, but preferably earlier, the court will also inquire into whether the County OCYF has offered the child services to enable him to transition to independent living.

Why is the 12-month permanency hearing important?

By law, a child has a right to a safe and permanent home. If possible, that home should be with her parents, but the law will not let a child wait an excessive period. Children in out-of-home placements are meant to be there only temporarily while parents make changes. By the time of the 12-month permanency hearing (one year after the disposition hearing), the court's focus will be on finalizing the Child's Permanency Plan. If the child's permanency goal remains reunification, the court will set clear expectations on what needs to happen to achieve that goal and when that goal must be achieved. If the County OCYF or the court concludes that the permanency goal is no longer appropriate, the permanency hearing will become a "goal change" hearing, discussed below.

Does the Americans with Disabilities Act require the County OCYF to make reasonable accommodations for parents with intellectual disabilities?

The County OCYF generally must provide or arrange for the provision of appropriate services necessary to keep the family intact or, if the child has been removed, to reunite the family. As described above, the court, too, will consider at shelter care hearings, adjudication of dependency hearings, and disposition hearings what services parents should receive. This issue also will be addressed during the permanency hearings as long as family reunification is the child's permanency goal. These services, as described above, can include those tailored to meet the needs of individuals with intellectual disabilities. The duty to assure that parents are offered appropriate services stems from both: (1) the Pennsylvania Juvenile Act, the primary purpose of which is to maintain family unity; and (2) the Americans with Disabilities Act (ADA), which requires public entities like the County OCYF to make accommodations for an individual's disability that are reasonable and do not result in a fundamental alteration of its programs or services. Thus, the County OCYF and court generally should assure that parents with intellectual disabilities receive appropriate services that, as necessary, are modified to address their unique disabilities.

What should a parent with an intellectual disability do if he needs special services to maintain his child at home or to get his child back after he was placed outside the home?

The parent, his attorney, family, or advocates should promptly request that the County OCYF provide the services the parent needs, including any specialized services for people with intellectual disabilities. The issue should be raised, for example, at meetings to develop the Family Service Plan and Child Permanency Plan. The issue also should be raised at the shelter care hearing, adjudication hearing, and disposition hearing. If the parent has not received the services he needs (including services adapted to address his intellectual disability) before the permanency hearing, he must raise that issue at the hearing. It is important that the parent and his attorney assert his need for appropriate special services early and frequently until those needs are met. It also is important that the parent take advantage of the services offered by the County OCYF by keeping appointments and not rejecting services that are offered unless he has a sound reason to do so. If the parent does not use the services that are

offered, the court may find that further efforts to assist him to maintain or reunite the family are not necessary.

What is a "goal change" hearing?

A goal change hearing is the name usually given to a permanency hearing that begins the process to permanently remove the child from the parents. Any party (usually the County OCYF) or the court itself may seek to change the permanency goal from reunification to some other option (usually adoption). A goal change generally must be requested when the child has been in out-of-home care for 15 out of 22 months. Goal change may also be considered in other circumstances, such as: when the court has found aggravated circumstances exist and that reasonable efforts to preserve or unify the family are not required; when the child has been abandoned and no parent has made substantial or continuing contact for 6 months; and at any other time when it is clear to the judge that family reunification is not viable and another permanency goal is more appropriate. In determining whether a goal change is appropriate, the key issues are:

- whether the parents have shown progress toward remedying the circumstances that led to the placement of the child;
- whether the child can be safely reunified with the parents in a reasonable period of time; and
- whether reunification best serves the needs and welfare of the child.

What is termination of parental rights?

Termination of parental rights (TPR) permanently strips a parent of any legal status with respect to the child, including all rights and privileges to have further contact and to be informed about his adoption and well-being. It also strips the child of any rights regarding or relationship with his parents. Parental rights must be terminated before a child can be adopted.

When can a parent's rights be terminated?

Parental rights can be terminated only if a court finds by clear and convincing evidence that: (1) one of the bases for termination of parental rights identified in a Pennsylvania statute has been met, and (2) severing

any remaining bond between the parent and child will not harm the child. The statutory reasons that can justify termination of parental rights (if there will be no harm to the child from severing the parental bond), including the following:

- If the child has been in an out-of-home placement for 15 of the last 22 months, unless: (1) the child is in kinship care; (2) there is a compelling reason not to seek TPR (such as an older child who does not want to be adopted or if the parent and child have a strong emotional bond that should be preserved); or (3) the County OCYF has failed to provide services in accordance with the Family Service Plan to facilitate reunification.
- The parent has failed or refused to perform parental duties and responsibilities, including failing to pay support or failing to visit or communicate with the child, unless there are circumstances outside the parent's control.
- There is evidence of abuse or neglect or other drastic conduct that affects the physical or mental well-being of the child and the court is convinced that the conditions or causes cannot or will not be remedied. This allows termination not only when the parent fails or refuses to perform her duties, but also when she is incapable of doing so. Actual harm to the child need not be shown if there is a high probability of harm.
- The child has been removed from the care of the parents, the conditions that led to the removal still persist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions within a reasonable time, and the termination of parental rights would serve the best interests of the child.

Do parents have the right to have an attorney in a TPR hearing?

Yes. An attorney will be appointed to represent parents who are the subject of petitions to involuntarily terminate their parental rights and who cannot afford to hire an attorney. Children will be provided with separate counsel in such proceedings.

Can the court terminate a person's parental rights because he has an intellectual disability?

In some cases, depending on the facts, Pennsylvania courts have held that a person's intellectual disability can be sufficient to meet one of the statutory justifications for termination of parental rights where the child had been removed from the parent's care for some time, the conditions that led to his removal persisted, the parent cannot or will not remedy those conditions within a reasonable period of time, and services are unlikely to bring about the remedy of those conditions. There are two important factors, though, to bear in mind. First, a TPR proceeding cannot be filed immediately. Parents with intellectual disabilities will have opportunities before then to get services that will enable them to improve their capacity to care for their children and prevent termination of parental rights.

Second, the Pennsylvania courts have emphasized that, even if the parent is unable to care for the child, parental rights should not be terminated if there is a strong parent-child bond and the child would be harmed if parental rights were terminated. This applies to parents with intellectual disabilities, too. Thus, parents with intellectual disabilities can help to preserve their parental rights by taking steps to build a strong bond with their children, even if they have been removed from their custody. Through regular visitation, attending school functions and medical appointments, and telephone calls, parents with intellectual disabilities can make efforts to maintain a bond with their children to help avoid termination of their parental rights.

Can parental rights be terminated if the County OCYF did not accommodate the needs of a parent with an intellectual disability?

As discussed above, both Pennsylvania's Juvenile Act and the ADA generally require the County OCYF to provide appropriate services to parents with intellectual disabilities to enable them to be effective and capable parents. In Pennsylvania, it is not clear, as a legal matter, whether a parent can use the County OCYF's failure to accommodate his disability as a defense to a TPR proceeding. Generally, the court in a TPR proceeding will consider whether the County OCYF made reasonable efforts to reunite the family, which should include consideration of whether the County OCYF made provisions or arrangements to address the parent's issues relating to his intellectual disability. The court, though, will be less inclined to consider an ADA argument in a TPR proceeding if either: (1) the parent never sought accommodations from the County OCYF that he contends should have been provided; or (2) the County

OCYF provided the parent with accommodations for his disability, but the parent did not fully take advantage of them. Accordingly, it is essential that a parent with an intellectual disability promptly request any needed services and accommodations and use those offered long before the point where TPR proceedings are initiated.

Does Disability Rights Pennsylvania (DRP) represent parents with intellectual disabilities who are involved in juvenile dependency proceedings?

No. DRP does not provide individual representation to parents with disabilities whose children are the subject of dependency proceedings or who are involved in proceedings to terminate their parental rights. Parents, however, are entitled to have an attorney appointed to represent them in these proceedings if they cannot afford to hire their own attorney.

GLOSSARY

Adjudication hearing is the hearing at which the Juvenile Court will determine whether allegations of neglect, abuse, or other bases for dependency have been proven and support the state's intervention on behalf of the child.

Adoption is a legal process in which a new parent-child relationship is established. Adoption is the preferred permanency goal for children who cannot be reunited with their families. Adoption cannot occur before termination of parental rights.

Aggravating circumstances are specific types of circumstances that can be alleged in a Dependency Petition and, if proved at an adjudication hearing following the Juvenile Court's determination that the child is dependent, can result in the Court's ruling that reasonable efforts to preserve or reunify the family need not be made.

Alternative Planned Permanent Living Arrangement or AAPPLA is any permanent living arrangement other than family reunification, adoption, Permanent Legal Custodianship (including Subsidized Permanent Legal Custodianship), or kinship care. The Juvenile Court can consider an APPLA as a permanency goal only when the County OCY can document a compelling reason that one of the other permanency options is not possible

for the child. An APPLA may be appropriate, for example, for an older teen who requests independent living or emancipation as his permanency goal.

Americans with Disabilities Act is the federal law that prohibits disability-based discrimination by employers, public entities (such as the County OCY), and public accommodations (such as private social service agencies).

"CASA" or "Court-Appointed Special Advocate" -- In many cases, the court will appoint a "guardian ad litem" for a child in addition to a separate attorney for him. In some counties, the guardian ad litem is called a CASA.

"Child Permanency Plan" or "CPP" is an amendment to the Family Service Plan that is created if a child is placed outside the family home. The CPP identifies the child's permanency goal, delineates the services that will be provided to achieve the permanency goal, and when the goal is expected to be achieved. The CPP may also identify a concurrent planning goal, which is the alternative if the stated permanency goal cannot be achieved.

Child Protective Services Law or ACPSL is the Pennsylvania law that governs the reporting and investigation of child abuse. CPSL also authorizes a physician or director of a medical institution to take a child into protective custody when it is immediately necessary to protect the child from further serious injury.

County Office of Children, Youth, and Families or County OCYF is the office in each county that is responsible under the Pennsylvania Juvenile Act to assure that children are not subject to abuse or neglect. In Philadelphia, the County OCYF is called the Department of Human Services.

Dependent child is a child who has been determined by the Juvenile Court to be dependent following an adjudication hearing. Reasons why a child may be adjudicated as dependent include: lack of proper parental care or control; abandonment; chronic, unjustified absence from school; and commission of a delinquent act by a child under age 10.

Dependency Petition is the petition that must be filed (usually by the County OCY) to assert that a child is dependent and to trigger the

adjudication hearing. This petition is sometimes called an **Urgent Petition**. A Dependency Petition may be the first step that initiates the dependency proceedings or it may be filed after the child has been taken into protective custody and then placed in shelter care.

Disposition or Disposition Hearing occurs after an adjudication hearing when the Juvenile Court determines that the child is dependent. At the disposition hearing, the Juvenile Court determines who will have custody and control of the dependent child.

Family reunification is the return of a child who has been adjudicated dependent to his family home after he has been removed. Family reunification is generally the initial permanency goal when a child is removed from the home.

Family Service Plan or AFSP is the vehicle to obtain needed services for a child who has been adjudicated dependent and the family. The FSP describes service goals for the family, the types of services will be provided to achieve those objectives, and the dates by which various actions are to be completed.

Foster care is a type of out-of-home disposition that follows the adjudication of dependency and results in the child's placement generally with an individual or family who is not related to the child.

"Guardian Ad Litem" -- Often the court will appoint a person to represent a child's best interests. This often will be a person separate from the child's attorney. The guardian ad litem has the right to access all relevant records concerning the child, to conduct his own investigation, and to participate fully in hearings.

Goal change hearing means a hearing that is held when the County OCYF asks that the court formally change the permanency goal for the child from family reunification to adoption.

Juvenile Act is the Pennsylvania law that governs juvenile dependency proceedings. The Juvenile Act provides the state with authority to intervene in the lives of children who may need state protection, from taking the child into protective custody in certain situations to adjudicating children as dependent to providing for permanency planning for dependent children.

Kinship care or Kinship foster care is one type of disposition following an adjudication of dependency that results in the child being placed outside his home with an able and willing family member. County OCYFs must give first consideration to kinship care when they are placing children.

Permanency means a safe, enduring, and nurturing home where a child has the best opportunity to establish relationships and reach his or her full potential. The child's permanent placement is intended to last indefinitely and to give a child a supportive family (preferably, his own family) which will provide a definitive legal and social status.

"Permanency goal" means the child's ultimate placement goal identified in the Child's Permanency Plan. There are five potential permanency goals: (1) family reunification; (2) adoption; (3) permanent legal custodianship; (4) placement with a fit and willing relative; and (5) an alternative planned living arrangement. A child may also have a **"concurrent planning goal,"** which is the permanency goal that will be used if the initial permanency goal is cannot be achieved.

Permanency plan means the plan that must be developed by the 12-month permanency hearing that identifies the permanency goal as family reunification, adoption, placement with a permanent legal custodian, placement with an able and willing relative in kinship care, or another permanent living arrangement. In the case of older adolescents who cannot be reunited with their families or adopted, the plan should prepare them to live independently as adults.

Permanency review hearing is the hearing that occurs after the child has been adjudicated dependent and ordered to be removed from his home. A permanency hearing is generally held within 6 months of the initial disposition hearing and at least every 6 months thereafter until the child is returned home or removed from the court's jurisdiction. The purpose of the permanency hearing is to determine the continued need for and appropriateness of the placement, the extent of progress made to remedy the circumstances that required the out-of-home placement, and the appropriateness and feasibility of the current placement goal and the likely date by which the goal will be achieved.

Permanent Legal Custodianship or APLC is a relationship between a child and a caretaker that is intended to be permanent and self-sustaining

and transfers certain parental rights to the caretaker, including custody and the right to make decisions. PLC is a permanency option for dependent children when reunification or adoption is not appropriate or practical.

"Pre-trial Voluntary Services" are services that offered to the family by the County OCYF before it initiates dependency proceedings in an effort to protect the child's welfare without court involvement.

Protective custody means that the child has been removed from the parent's custody without a hearing when there are reasonable grounds to believe that the child is suffering from an illness or injury or is in imminent danger from his surroundings. The child can be held in protective custody for up to 24 hours without a hearing.

Protective custody order is an order that may be issued by the Juvenile Court after a child is taken into protective custody and the County OCYF petitions for a protective order. A protective order will be issued if the Court determines that removal of the child from the parent's custody is necessary for his welfare and best interests. A protective custody order lasts only for 72 hours, at which time the court must hold a shelter care hearing.

Reasonable accommodation or Reasonable modification is a mandate under the Americans with Disabilities Act that public entities (such as County OCYFs) and private social service agencies must make changes to their policies, practices, and procedures when necessary to prevent discrimination against individuals with disabilities unless doing so would result in a fundamental alteration. An example of a reasonable accommodation might be that a County OCYF must arrange for parenting classes adapted to the needs of parents with intellectual disabilities.

Reasonable efforts means efforts, as required by federal law, to prevent children from being removed from their family homes and placed in foster or other substitute care or to enable the reunification of families after the child has been removed. Reasonable efforts can include counseling services, parent education, homemaker/caretaker services, and day services that provide care and supervision to a child for less than 24 hours per day.

Services to Children in their Own Home or ASCOH are services that are provided to children who have been declared dependent and to their family

members. SCOH services monitor the continued safety of the children, reduce the risk of abuse or neglect, prevent out-of-home placement, and to assist the family to obtain supportive services (including mental health services for the parents or children).

Shelter care hearing means the hearing that occurs 72 hours after the Court issues a protective custody order that allows removal of the child due to emergency circumstances. At the shelter care hearing, the court determines whether the child should be returned home or placed in another setting (shelter care) pending the adjudication hearing.

Subsidized Permanent Legal Custodianship or ASPLC is a program that provides a financial subsidy to individuals when Permanent Legal Custodianship is an appropriate permanency goal but the potential custodian could not take custody without financial assistance. The custodian in a SPLC must agree to a yearly evaluation to continue his eligibility for the subsidy and must be able to provide for the child without court supervision and long-term agency involvement.

Termination of parental rights is a judicial determination that the parent's legal rights (including the right to visit the child, to communicate with the child, and to have information about the child) are permanently severed.

Contact Information

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@disabilityrightspa.org.

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

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