# Moving Children Out of Foster Care
## The Legislative Role in Finding Permanent Homes for Children

*By Nina Williams-Mbengue*

## Permanency: A Key Concept for Children in Foster Care

*"The word brings to mind thoughts of forever . . . safety . . . security . . . long term and meaningful connections—an attachment—between a child and a caring adult."* (Achieving Permanency for Children: Pioneering Possibilities Amidst Daunting Challenges)[1]

*"It means having your side of the church full when you get married. It means having the key to the house. It means having your picture on the wall in someone's house. It is a chance for someone to choose you and for you to choose them."* (Youth presenters, compiled by the National Child Welfare Resource Center for Youth Development)

Child development experts know that in order for a child to grow up as a healthy, functioning and productive member of society, a sense of a permanent home and family is key. Children thrive in an environment that includes an adult who is committed to their long-term well-being: someone whom they can depend on to take them to school, monitor their grades, attend PTA meetings and sporting events and ask about their friends.

Children benefit from stable, nurturing family lives, positive school environments and networks of caring friends, relatives and neighbors. This network of support can help a child perform well academically, have positive health and mental health outcomes and make it more likely that they will develop good relationship and social skills that can enable them to become successful adults.[2]

However, for children who enter the foster care system because of parental abuse, neglect or abandonment, these critical connections and sense of permanency may be lost from the moment a child is removed from home. The removal itself can be devastating and confusing for children of any age. Once in foster care, many children experience prolonged stays. According to 2006 data from the federal Adoption and Foster Care Analysis and Reporting System (AFCARS), of the 289,000 children who exited care during 2006, 51 percent had been in care 12 months or more.[3]

Children also may frequently move from one foster home placement to another. The longer a child is in placement, the higher the chance that he or she will move again. In fiscal year 2002, 73 percent of children in care longer than four years had three or more placements.[4] Frequent moves may result in children losing contact with siblings, other family members, friends and adults in their community who may have been involved in their lives, such as neighbors, coaches, religious leaders and others. This further places the children at risk of emotional and behavioral problems and other negative outcomes.[5]

Children in foster care may be forced to attend different schools each time they move, resulting in the loss of school records, teachers and friends. They also face poor educational outcomes that include lower standardized test scores, poor academic performance and higher rates of grade retention, absenteeism, tardiness, truancy and dropout.[6]

**Child and Family Services Reviews at a Glance**

- Congressionally authorized review of state child welfare systems.

- The first round of on-site reviews was conducted from 2000 to 2004, and the second round runs from 2007–2010; administered by the Central and Regional Offices of the Children's Bureau, U.S. Department of Health and Human Services.

- States conduct their own **Statewide Assessment** with support from the federal government and submit it to the Children's Bureau 60 days before the on-site review.

- Federal and state teams conduct an **on-site review** of three sites in the state. The teams examine outcomes for a sample of children and families served by the state child welfare agency, including interviewing both the children and families engaged in services and the community stakeholders, such as the courts and community agencies, foster families and caseworkers.

- States prepare a **Program Improvement Plan** to develop or enhance policies, training and practices identified as needing improvement.

- Federal funds are withheld if a state does not successfully complete its Program Improvement Plan.

**Child Welfare Outcomes Assessed by the Reviews**

- **Safety:** Children are protected from abuse and neglect and are safely maintained in their homes whenever possible and appropriate.

- **Permanency:** Children have permanency and stability in their living situations and continuity in their family relationships and connections.

- **Child and family well-being:** Families are better able to provide for their children's needs, and children are provided services that meet their educational, physical health and mental health needs.

**How Performance Is Assessed Through the Reviews**

- Statewide safety and permanency data indicators are compared with national standards.

- Qualitative information on state performance is collected through reviews of actual case records and interviews with children, families and others in regard to safety, permanency and well-being outcomes.

- State performance is evaluated with regard to how well critical components of the child welfare system function ("systemic factors," such as the agency's responsiveness to the community and the training of child welfare staff).

- More information about the reviews is available at www.acf.hhs. gov/programs/cb/cwmonitoring/index.htm#cfsr.

Approximately 24,000 foster youth "age out" of care each year, meaning that they have reached age 18 and are no longer under the state's custody. By this time, many of these children bear the scars of physical abuse and emotional trauma from exposure (including prenatally) to alcohol and other drugs; parental abuse, neglect and abandonment; violence in their homes and communities; separation from birth families; and frequent changes in foster care placement. These experiences place children at great risk of developing physical, emotional and behavioral problems that can lead to school failure, teen pregnancy, homelessness, unemployment and incarceration.[7,8] However, funding from the federal John H. Chaffee Foster Care Independence Program allows states to offer more services to young people who age out of care, including Medicaid coverage for youth up to age 21, education and training vouchers, tuition waivers and housing assistance to aid their journey into adulthood.

Even for children who realize the permanency goal of adoption, a number of studies show that 10 to 25 percent of pre-adoptive placements disrupt before adoption proceedings are finalized.[9] (Study findings varied based on the population studied, the duration of the study, and geographic and other factors.) In addition, up to 10 percent of finalized adoptions dissolve, resulting in the child's return to foster care.[10] Factors correlated with disruptions include the number of placements the child experiences while in foster care, the behavioral and emotional needs of the child and agency staff turnover.

## Paths to Permanency

Creating and fostering safe, permanent, long-term connections between a child and a caring adult has become a major goal of our nation's child welfare system, which is "home" to approximately 500,000 foster children on any given day.[11] The following are the main paths to permanency that state child welfare agencies offer children and their families:

- Reunification;
- Permanent placement with relatives;
- Adoption;

- Legal guardianship; and
- Other Planned Permanent Living Arrangement (OPPLA, also known as Another or Alternative Planned Permanent Living Arrangement (APPLA)).

### Reunification

During the reunification process, the child welfare agency works with a child's family to provide necessary supports and services, such as substance abuse treatment or mental health counseling. The child may be removed and placed in foster care until successful completion of a parental court- or agency-ordered treatment plan, at which time the family is reunified unless there is further court or agency determination or assessment of risk.[12] In 2006, 53 percent of children who exited foster care were reunified with their biological families.[13]

### Permanent Placement with Relatives

States offer the goal of permanent placement with a relative when the goal of reunification, adoption or legal guardianship by the relative is not in the child's best interests. In addition, a child may be placed with a relative but retain a permanency goal of reunification with the parent, legal guardianship, adoption or emancipation.

### Adoption

Adoption is the permanency option used to create a new legal parent-child relationship. Often, this option is chosen when reunification has been attempted but after efforts to reunify, it is determined that reunification is not possible because a biological parent is not able to provide a safe environment for the children.

### Legal Guardianship

While constituting a relatively small percentage of permanent placements, legal guardianship is a court-approved placement with a relative or non-relative caregiver that does not terminate parental rights and does allow a child to remain with a family member and live in or have access to familiar friends, neighborhoods and schools. Generally, reunification and adoption have to be ruled out as permanency options for the child before guardianship is used.

### OPPLA

Other Planned Permanent Living Arrangement is a term created by the Adoption and Safe Families Act of 1997 (ASFA) to designate the least preferred permanency option for children for whom there is no goal for a legal, permanent family. These are children who age out of the foster care system. They have not been reunified with their biological families, placed under legal guardianship or with a relative or adopted. Such youth age out of the system each year and are subject to a host of negative outcomes that include low rates of high school completion, difficulty maintaining employment and difficulty in obtaining health and dental care.[14]

## Overcoming Barriers to Permanency: The Child and Family Services Reviews

In 1994, Congress passed amendments to the Social Security Act authorizing the U.S. Department of Health and Human Services (HHS), through the Children's Bureau, to review state child and family service programs and ensure state conformity with Titles IV-B and IV-E of the Social Security Act. As a result, this legislation established the authority for the Child and Family Services Reviews (CFSRs; see the box "Child and Family Services Reviews at a Glance" on page 2).

In 1997, ASFA was passed to establish the "unequivocal" national goals for children in the child welfare system of "safety, permanency, and well-being."[15] The legislation created a unique opportunity for the Children's Bureau to build

on past child welfare reforms to make child welfare systems more responsive to the needs of children and families. ASFA accomplished this by

- Reaffirming the need for a collaborative approach to providing services and supports to children and families, emphasizing linkages between child welfare systems and other support systems for families. ASFA also recognized the need for collaboration between child welfare systems and the courts.

- Clarifying the importance of removing barriers to moving children waiting in foster care to permanent placements.

- Shortening judicial time frames and the time frames for initiating termination of parental rights proceedings in certain cases. (States are required to file a petition to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months.)

- Clarifying reasonable efforts to avoid out-of-home placement and requirements for recruiting adoptive families and finalizing permanent placements when reunification with children's biological families has been ruled out.

The first and second rounds of the CFSRs indicated that states continue to struggle with achieving permanency for children in care. (The second round began in 2007 and will continue through 2010 in all 50 states, the District of Columbia and Puerto Rico.) The review outcome that measures permanency (Permanency Outcome 1) is used to assess state efforts to ensure that children have permanency and stability in their living situations. (A separate review outcome assesses state efforts to ensure permanency for children by preserving their family relationships and connections while they are in state custody.) Review teams use Permanency Outcome 1 to examine the following.

- **Foster care re-entries:** Assesses whether, when the child was returned home after being in foster care, the state made concerted efforts to address safety concerns in order to prevent their re-entry into care within 12 months of the first foster care episode.

- **Stability of placement:** Assesses state efforts to maintain the child in a stable placement, and looks at whether changes in placement were in the best interest of the child and consistent with achieving the child's permanency goal(s).

- **Permanency goal for child:** Determines whether the state established appropriate permanency goals for the child in a timely manner (usually 60 days from the child's entry into foster care). As noted above, possible permanency goals are reunification, permanent placement with relatives, adoption, legal guardianship or OPPLA.

- **Reunification:** Assesses state efforts to achieve reunification, guardianship or permanent placement with relatives in a timely manner (usually less than 12 months from when the child enters foster care).

- **Adoption:** Assesses state efforts to achieve a finalized adoption in a timely manner (usually less than 24 months from when the child enters foster care).

- **OPPLA:** Assesses state efforts to ensure that the child is prepared to make the transition from foster care to independent living and is in a "permanent" living arrangement in foster care until the transition.

The first round of reviews indicated that a number of factors were associated with states not meeting the required standards.[16] These included the following.

- **Lack of services to ensure permanency for children.** The reviews found that in many states, concurrent planning (simultaneously planning for adoption or legal guardianship while pursuing reunification with the biological family)

was often inadequate, thus extending children's length of stay in foster care. In addition, a number of states did not file or complete timely adoption home studies, or hold timely termination of parental rights hearings, permanency hearings or six-month case reviews, all of which slowed down the adoption process and lengthened children's time in care.

- **Inadequate reunification services.** States often did not provide needed services and supports, such as substance abuse treatment and mental health services, to prepare families to safely care for children. Families often were not involved in case planning, were not provided access to frequent and substantive family and sibling visits with children in care, and were not provided frequent and substantive caseworker visits with parents. Such visits are key to adequately preparing a family for reunification and for assessing the potential risk of harm to a child.

- **Stability of foster care placements.** Children were too often initially placed in emergency or temporary shelters, from which they then had to move to different foster placements.

## Moving Toward Permanency

States are currently undergoing the second round of reviews but are continuing to struggle with achieving substantial conformity with Permanency Outcome 1. State child welfare agencies have focused on a number of key strategies that states can consider when working to improve permanency outcomes for children in foster care.

### *Concurrent Planning*
Concurrent planning is a strategy commonly used by child welfare agencies across the country for ensuring timely permanency. As noted above, through concurrent planning, an agency simultaneously plans for reunification and another permanency option, usually adoption, that is appropriate for the child. This approach has been shown to reduce the amount of time that children spend in substitute care when reunification does not occur.[17] Final reports from the first round of CFSRs linked concurrent planning efforts in a number of states to positive results. These included reducing time to permanency, establishing appropriate permanency goals, successfully engaging parents in reunification or adoption efforts and reducing time to adoption finalization.[18]

### *Reunification Services*
Reunifying children in foster care with their biological families is the most common permanency goal for children, and most children do return to their families once all safety issues are resolved. Because re-entry into foster care puts children at higher risk, states may want to consider steps to mitigate this possibility by ensuring that services and supports are available for stabilization following reunification, for recurrent needs and for periodic crisis support. Some of the common interventions used by states to reunify families include family engagement efforts, individualized assessments and case planning, and delivery of appropriate, targeted services:[19]

- **Family engagement** includes frequent, substantive visits by the caseworker to the parent to build a strong caseworker-parent relationship. Also key to family engagement efforts are substantive parent-child visits and the involvement of foster parents during visits.

- **Individualized assessments and case planning** should involve ensuring the use of effective assessment tools and the involvement of parents and children (as appropriate) in case plan development.

- **Appropriate and targeted services** for families are critical. Concrete, tailored, intensive and comprehensive services include substance abuse treatment services, transportation, food, housing assistance and parenting education.

### *Support for Kinship Care and Legal Guardianship*
Supporting relative caregivers of children who are not involved in the child welfare system can prevent such children

from ultimately entering foster care. Relative caregivers of children who are system-involved can provide permanent families for these children through adoption, permanent legal custody or guardianship. In addition, relative caregivers can provide support to birth parents and critical information to both caseworkers and courts to ensure that reunification takes place only when a parent is able to provide safe and stable care for a child, thereby reducing the likelihood of foster care re-entry.

## *Adoption*
A number of states are engaged in efforts to address barriers to finding adoptive homes for children in foster care. These include:

• Developing or expanding recruitment campaigns through the use of the media and the Internet;

• Better organizing child welfare agency staff to focus on adoption, including creating adoption units and permanency task forces to focus on the issue;

• Streamlining the process of adoptive home approval through the use of dual licensure (through which foster parents can apply for foster care and adoptive licensure at the same time); and

• Expediting home studies by contracting with provider agencies to handle the approval process.

States also are working closely with courts to improve the timeliness of permanency hearings and are establishing adoption subsidies and services to assist families and improve the stability of adoptive placements.[20]

In addition, as previously noted, 10 to 25 percent of pre-adoptive placements disrupt prior to finalization, and a smaller percentage of finalized adoptions are dissolved, primarily because of children's behavioral problems as well as agency staff turnover.[21] Agency staff turnover is a critical issue because when a child welfare caseworker leaves, a child's record has to be handed to another worker, or a new worker, who must go through the time-consuming process of learning about the case and understanding the child's needs, thus slowing permanency efforts.

States can offer support through a variety of services, such as respite care, camp and other activities for children, support groups, counseling, educational support and help finding and covering the cost of specialized residential treatment services for adoptive children's behavioral and emotional needs.[22]

## *Permanency for Youth*
Achieving permanency for older youth may mean strengthening families by providing reunification services; prioritizing kinship care, guardianship or subsidized guardianship; or considering open adoptions (through which birth parents stay in regular contact with their child and the adoptive family). [23] Other helpful approaches can include an intensified focus on recruiting foster and adoptive families for older children, involving youth in their permanency plans, dedicating child welfare staff to promoting permanency for older youth and providing pre-and post-placement services to youth and adoptive families.

## *Court-Related Improvements and Supports*
The Children's Bureau has put a great deal of emphasis on the development of partnerships among courts, state agencies, tribes, youth organizations and other child welfare stakeholders to improve outcomes for children and families. States can work with courts to improve scheduling and develop case tracking systems to ensure timely permanency hearings. Other tools are providing special training of judges and attorneys, ensuring assistance from Court Improvement Projects (federally funded projects designed to assess and improve court processes related to foster care and adoption), using mediation or other forms of nonadversarial case resolution that can shorten time frames, expediting termination of parental rights hearings and promoting collaboration between child welfare agencies and courts.[24]

## How State Legislators Can Help Promote Permanency for Children in Foster Care

State legislators can have an enormous impact on improving permanency outcomes for children in foster care through their budgetary and oversight roles in the child welfare system. Legislators will want to coordinate with state child welfare administrators and other experts about the range of policies and practices available that might affect permanency. They will want to understand their state's permanency indicators and goals through participation in the CFSR process, so as to craft policy that will go hand and hand with child welfare agency goals. Working together, legislators and child welfare agencies can approach permanency in a coordinated, comprehensive fashion.

The CFSRs can be an important tool for legislators in this process by providing a particular focus on and insight into permanency. Below are questions that lawmakers might use in discussions with their state child welfare agency about how to employ the CFSR and Program Improvement Plan (PIP) process to improve permanency outcomes for children in their state. These include both (1) questions about the status of, and legislative involvement in, the state's CFSR and (2) questions about state performance on CFSR Permanency Outcome 1. (As discussed above, Permanency Outcome 1 assesses state efforts to ensure that children have permanency and stability in their living situations.)

### Questions About the CFSR

- At what point is the state in the CFSR cycle?

- What type of legislative support does the agency need during the current phase of the CFSR or PIP process?

- How might legislators get involved in the CFSR or PIP at this stage?

- With whom should I/my office/other lawmakers coordinate regarding our involvement?

### Questions About Permanency Outcome 1

- What were the key findings of the latest CFSR regarding Permanency Outcome 1? What was identified as working well in the areas of strength? What was identified as needing attention in the areas of need?

- How did the state's permanency composite data indicators compare with the national standards? (The CFSR establishes national standards for state performance on its permanency data in the areas of timeliness and permanency of reunification, timeliness of adoptions, achieving permanency for children in foster care for long periods of time and placement stability.)

- What is the recent history of the state's efforts to improve performance related to Permanency Outcome 1? What has been tried before and worked or not worked?

- How is the agency addressing the areas needing improvement for Permanency Outcome 1 in the latest PIP? If a PIP is in the process of being developed, what are the key challenges being encountered in developing a plan to address the areas needing improvement?

- What legislative initiatives might be helpful in improving state performance on Permanency Outcome 1? Is there legislative action, outside of additional resources, that would be helpful (for example, ensuring the involvement of other state agencies in PIP planning and implementation)?

- Are there interim checkpoints that will allow legislators to tell whether the PIP strategies related to Permanency Outcome 1 are working?

- When legislators receive questions from constituents or the media about agency performance related to Permanency Outcome 1, are there key messages that we can help to disseminate regarding the state's efforts? Can legislators do anything proactive to  disseminate those messages now?

## Moving Toward Permanency Through Collaboration

Using the CFSRs, and working in collaboration with state child welfare agencies, courts and other stakeholders, state lawmakers can bring much-needed focus and attention to issues related to permanency for children in foster care. State legislators can engage state child welfare agency administrators in examining law, policy and funding to determine how to most effectively improve permanency goals and outcomes for children and families involved in state child welfare systems.

## Notes

1.  Lorrie L. Lutz, *Achieving Permanence for Children: Pioneering Possibilities Amidst Daunting Challenges* (New York: Hunter College School of Social Work/National Resource Center for Foster Care and Permanency Planning, November 2003); www.hunter.cuny.edu/socwork/nrcfcpp/downloads/achieving-permanence.pdf.

2.  Brenda Jones Harden, "Safety and stability for foster children: A developmental perspective," *The Journal of Children* 14, no. 1 (Winter 2004): 31–33.

3.  Children's Bureau, U.S. Department of Health and Human Services, *The AFCARS Report: Preliminary FY 2006 Estimates as of January 2008 (14)* (Washington, D.C.: U.S. Department of Health and Human Services, 2008); www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.htm.

4.  Children's Bureau, U.S. Department of Health and Human Services, *Child Welfare Outcomes 2002: Annual Report* (Washington, D.C.: U.S. Department of Health and Human Services, 2002); www.acf.hhs.gov/programs/cb/pubs/cwo02/index.htm.

5.  Sandra Stukes Chipungu and Tricia B. Bent-Goodley, "Meeting the challenges of contemporary foster care," *The Journal of Children* 14, no. 1 (Winter 2004): 75–93.

6.  Steve Christian, *Educating Children in Foster Care* (Denver, Colo.: National Conference of State Legislatures, 2003).

7.  Mark E. Courtney, Amy Dworsky, and Harold Pollack, *When Should the State Cease Parenting? Evidence from the Midwest Study* (Chicago: Chapin Hall Center for Children at the University of Chicago, December 2007).

8.  Richard Wertheimer, *Youth Who "Age Out" of Foster Care: Troubled Lives, Troubling Prospects* (Washington, D.C.: Child Trends, 2002).

9.  Children's Bureau, U.S. Department of Health and Human Services, *Adoption Disruption and Dissolution: Numbers and Trends* (Washington, D.C.: U.S. Department of Health and Human Services, 2004); www.childwelfare.gov/pubs/s_disrup.cfm.

10.  Ibid.

11.  Children's Bureau, U.S. Department of Health and Human Services, *The AFCARS Report: Preliminary FY 2006 Estimates as of January 2008 (14)*.

12.  Sue Badeau and Sarah Gesiriech, *A Child's Journey Through the Child Welfare System* (Washington, D.C.: The Pew Commission on Children in Foster Care, 2003); http://pewfostercare.org/docs/index.php?DocID=24.

13.  Children's Bureau, U.S. Department of Health and Human Services, *The AFCARS Report: Preliminary FY 2006 Estimates as of January 2008 (14)*.

14.  Mark Courtney, "Youth aging out of foster care," *Research on Transitions to Adulthood and Public Policy* 19 (April 2005); www.transad.pop.upenn.edu/downloads/courtney--foster%20care.pdf.

15.  Adoption and Safe Families Families Act of 1997 (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_bills&docid=f:h867enr.txt.pdf.

16.  Children's Bureau, U.S. Department of Health and Human Services, *General Findings From the Federal Child and Family Services Review* (Washington, D.C.: U.S. Department of Health and Human Services, 2005); www.acf.hhs.gov/programs/cb/cwmonitoring/results/genfindings04/genfindings04.pdf.

17.  Children's Bureau, U.S. Department of Health and Human Services, *Concurrent Planning: What the Evidence Shows* (Washington, D.C.: U.S. Department of Health and Human Services, 2006); www.childwelfare.gov/pubs/issue_briefs/concurrent_evidence.

18.  Children's Bureau, U.S. Department of Health and Human Services, *General Findings From the Federal Child and Family Services Review.*

19.  Children's Bureau, U.S. Department of Health and Human Services, *Family Reunification: What the Evidence Shows* (Washington, D.C.: U.S. Department of Health and Human Services, 2006); www.childwelfare.gov/pubs/issue_briefs/family_reunification.

20.  Urban Institute, *Foster Care Adoption in the United States: A State by State Analysis of Barriers & Promising Approaches* (Washington, D.C.: The Urban Institute, 2004); www.urban.org/publications/411108.html.

21.  Children's Bureau, U.S. Department of Health and Human Services, *Adoption Disruption and Dissolution: Numbers and Trends* (Washington, D.C.: U.S. Department of Health and Human Services, 2004); www.childwelfare.gov/pubs/s_disrup.cfm.

22.  Mark Testa, "When children cannot return home: Adoption and guardianship," *Children, Families, and Foster Care* 14, no. 1 (Winter 2004); www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/3d/c4/7e.pdf.

23.  Children's Bureau, U.S. Department of Health and Human Services, *Enhancing Permanency for Older Youth in Out-of-Home Care*  (Washington, D.C.: U.S. Department of Health and Human Services, 2004); www.childwelfare.gov/pubs/focus/enhancing/).

24.  Urban Institute, *Foster Care Adoption in the United States: A State by State Analysis of Barriers & Promising Approaches.*

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