



# MULTI-DISCIPLINARY CHILD ABUSE & NEGLECT INSTITUTE

—Improving Outcomes for Children and Families

## MODULE 4: MAKING REASONABLE EFFORTS

National Council of Juvenile and Family Court Judges  
Materials Adapted From: Hon. R. Michael Key, LaGrange, GA



Vancouver, Washington  
March 9-11, 2017

# LEARNING OBJECTIVES



- Understand the importance of reasonable efforts as a tool for improved safety, timeliness, permanency and well-being
- Understand each stakeholders' role in making reasonable efforts



# GETTING IT RIGHT!



If you:

Do the **right** thing

For the **right** people

In the **right** way

At the **right** time

You will get:

**The right result!**



# WE HAVE CHOSEN AS OUR LIFE'S WORK.....



When children and families require assistance from the state, the health and safety of the child is the paramount concern and reasonable efforts shall be made to provide such assistance in the least intrusive and least restrictive method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible.

Nebraska Family Policy Act Section 43-532

# PASSIVITY = COMPLICITY



- Everyone has a responsibility to use “reasonable efforts” to:
  - Hold one another accountable for the work we do...
  - And to support one another in the development and delivery of effective services
- You cannot sit on the sidelines and point fingers

# JUDICIAL OVERSIGHT-ASFA



The Court holding the child welfare agency accountable for making reasonable efforts is not just a best practice.

**It's also the law!**



# JUDICIAL OVERSIGHT-ASFA



**Judicial oversight prevents unnecessary removals and acts as a safeguard against potential inappropriate agency action.**

**The court's role is to:**

- exercise oversight of the permanency plan;
- review the State agency's reasonable efforts to prevent removal from the home, reunify the child with the family and finalize permanent placements; and
- conduct permanency hearings.

# REASONABLE EFFORTS GENERALLY



The State must make reasonable efforts to:

- Maintain the family unit and prevent unnecessary removal of a child from his/her home, as long as child's safety is assured;
- Effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure immediate safety of the child); and
- Make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.

**45 C.F.R. §1356.21(b)**



# MAINTAINING FAMILY TIES



- If you take siblings out of a home, reasonable efforts must be made to keep them together unless you find there is a **significant safety issue** that prevents common placement.
- Notice to all adult relatives of the child's removal
- If they can't be placed together, agency must facilitate sibling visits unless it is not safe.

Fostering Connections Act of 2008

Preventing Sex Trafficking and Strengthening Families Act of 2014

# JUDICIAL OVERSIGHT – THE PURPOSE



- **Judicial oversight prevents unnecessary removals and acts as a safeguard against potential inappropriate agency action. [The final Rule]**
- **The condition that a judicial determination that reasonable efforts to prevent a child from entering into foster care were made before the State can be eligible for foster care maintenance reimbursements was enacted to punish the State and to hold it accountable when its social services agencies fail to do what the federal law mandates. [New York Appellate Court]**

# “CONTRARY TO WELFARE” DETERMINATION IN FIRST COURT RULING



If “contrary to the welfare” determination is not made in the first court ruling, the child is not eligible for Title IV-E foster care payments for the duration of that stay in foster care.

**45 C.F.R. §1356.21(c)**

# JUDICIAL RESPONSIBILITY FOR MAKING INDIVIDUALIZED FINDINGS



- “Our purpose for proposing (individualized judicial determinations) can be found in the legislative history of the Federal foster care program. The Senate report on the bill characterized the required judicial determinations as ‘important safeguard(s) against inappropriate agency action’ and made clear that such requirements were not to become ‘a mere pro forma exercise in paper shuffling to obtain Federal funding’ “.
- “Our primary concern is that judicial determinations be made on a case-by-case basis.”

From the Final Rule

# CASE-BY-CASE JUDICIAL DETERMINATIONS



A court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. [New York Appellate Court]

# CONGRESSIONAL EXPECTATIONS OF THE COURTS



- While acknowledging that reasonable efforts findings could “become a mere pro forma exercise in paper shuffling to obtain Federal funding”, ...
- ...the committee is unwilling to accept as a general proposition that the judiciaries of the states would so lightly treat a responsibility placed upon them by federal statute for the protection of children. [Emphasis added]

# DOCUMENTING FINDINGS



- We also believe it necessary to ensure State accountability in the areas of documentation of reasonable efforts and contrary to the welfare determinations and requirements related to enforcement of section 471(a)(18) of the Act.
- ....we believe that State accountability and Federal oversight in these critical areas of child and family protections and anti-discrimination consistent with the statute, will lead to better outcomes for children and families. [From the Final Rule]

# LEGAL THRESHOLD FOR REMOVAL



- What is the legal threshold for removal?
- BEWARE of ‘rubber stamping’ removal and placement decisions [Beware of rubber stamping anything!]
- Hold an additional hearing if necessary
- Sufficient facts to support the allegations or conclusions made
- Consideration of other plausible explanations for parental actions or behavior

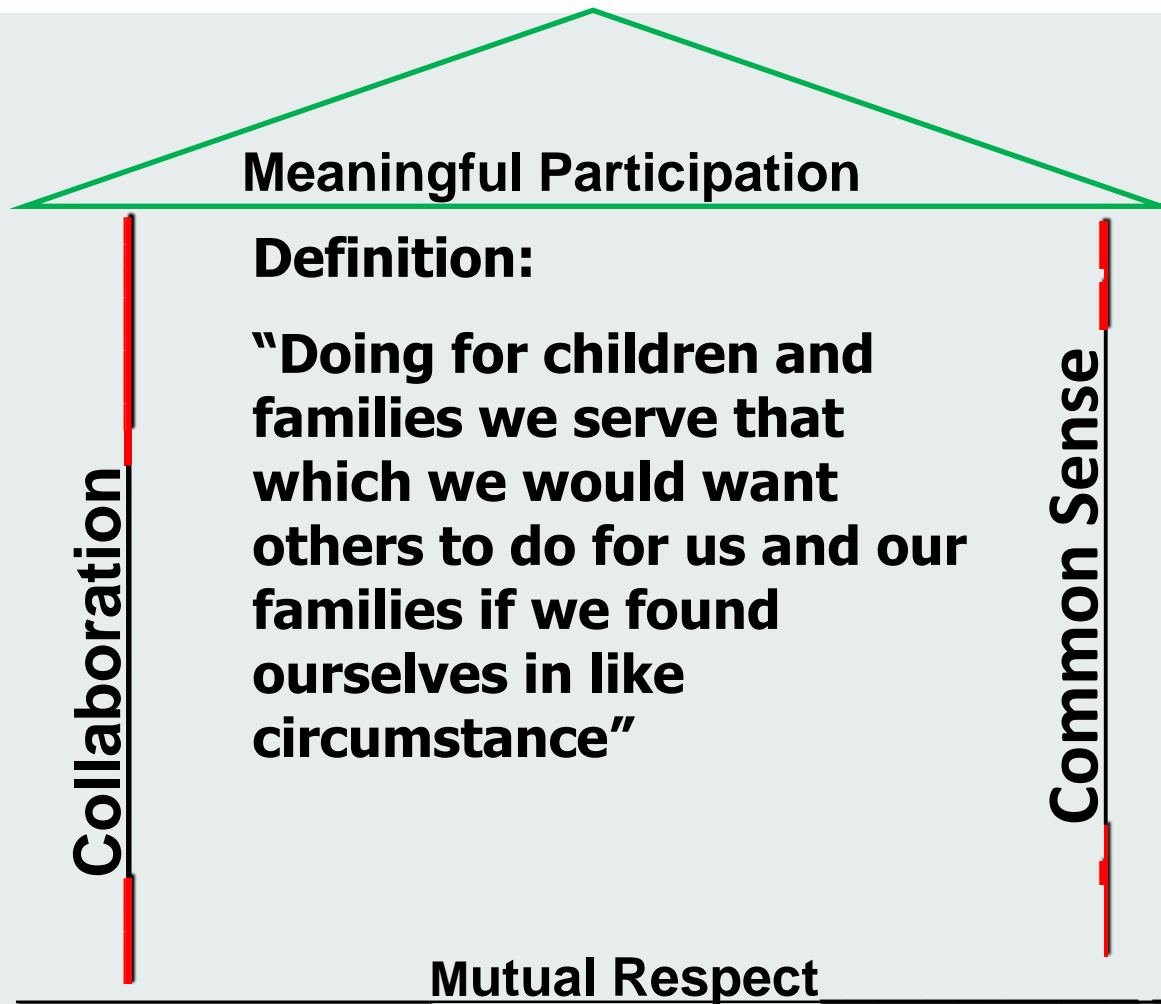


# CAN THE CHILD BE RETURNED HOME TODAY?



- Linked with the Safety Threat as well as the ‘Minimally Adequate’ Standard
- Child safety depends on:
  - Threat of danger
  - Child’s vulnerability
  - Parents’ protective capacity
- In-Home Safety Plan
  - What will protect the child?
  - When threats developed will such a plan control the safety threats?
  - What services or action steps are required to control the threats?

# REASONABLE EFFORTS – BRINGING IT HOME



# REASONABLE EFFORTS – TURNING IT UPSIDE DOWN



If it is not unreasonable to expect a certain thing to be done in order to keep families together or to reunite the family, then the failure to do that thing is a failure to make reasonable efforts.



# TWO TIERS OF REASONABLE EFFORTS



- Tier One Reasonable Efforts
  - Reasonable efforts made in each individual case
- Tier Two Reasonable Efforts
  - Reasonable efforts to track needs and to develop services to meet the needs

# THE JUDGE'S RESPONSIBILITY



- Monitor social and legal services to children and families
- Making reasonable efforts determinations

# TIMELINESS OF DELIVERY OF SERVICES - FRONTLOADING



- Timeliness of services can be as important as the services themselves.
- The failure to timely deliver services, in and of itself may constitute a failure to make reasonable efforts even if the case plan is otherwise a good case plan.
- Delaying hearings, reviews and delivery of services is like foregoing prenatal care and worrying about the baby when it gets here.

# THE KEY TO EFFECTIVE JUDICIAL OVERSIGHT



The key to effective judicial oversight is not just knowing what questions to ask or what questions should be asked....

It is the persistent pursuit of the answers to those questions.

We are trained in the law and it is our responsibility to know the law, to seek the truth and to make the right decisions based on the law and the truth.

# AVOIDING REMOVAL- SOME QUESTIONS TO BE ADDRESSED



- What are the circumstances or conditions which caused the child to have to be removed? That is to say, what was the specific reason that the child could not be adequately protected at home and the specific harm that may have occurred if the child remained at home?



# AVOIDING REMOVAL- SOME QUESTIONS TO BE ADDRESSED



- What services were offered to avoid removal?
- What services were in fact provided to avoid removal?
- What services, if any, could have avoided the removal?

# AVOIDING REMOVAL- SOME QUESTIONS TO BE ADDRESSED



- To the that extent that there were services that could have prevented the removal, why were they not offered?
- To the extent that services were not available, has the agency made reasonable efforts to identify needed resources to avoid removal of children from their homes?

# AVOIDING REMOVAL- SOME QUESTIONS TO BE ADDRESSED



- Has there been any prior referrals or agency involvement?
- If there have been prior referrals or agency involvement, were the attendant circumstances or conditions sufficient to put the agency on notice of underlying issues that would likely result in a later removal, but for the provision of appropriate services?

# AVOIDING REMOVAL- SOME QUESTIONS TO BE ADDRESSED



- If the answer to the previous question is in the affirmative, did the agency provide services at that time that were reasonably calculated to remedy the underlying issues that made a later removal likely?
- If not, then that failure constitutes a failure to make reasonable efforts to avoid this removal.

# EXAMPLES OF NO REASONABLE EFFORTS TO AVOID REMOVAL FINDING



Let's Share ...

What situations/circumstances would result in a no reasonable efforts to avoid removal finding?



# MAKING REASONABLE EFFORTS THROUGH EFFECTIVE CASE PLANNING



# REASONABLE EFFORTS AND CASE PLANNING -GETTING IT OUT FRONT



- A good case plan is so critical to effecting permanency for the child that the failure on the part of the Agency to timely develop and implement a good case plan, in and of itself, constitutes a failure to make reasonable efforts to reunify the child with the family.
- When compared to the human and monetary cost of bad case plans, good case plans are cheap.

# Case Plans



What are the features of a good case plan?





# A CLOSER LOOK AT THE CASE PLAN



- There is nothing more important in permanency planning than effective case planning
- The case plan should be driven by the identified needs of the family and not by the readily available resources of the agency and the community
- The case plan is the roadmap to permanency for the children we serve

# THE CASE PLAN: QUESTIONS TO ASK ABOUT EVERY GOAL AND EVERY STEP



- Is it simple so as to be understood by all?
- Is it specific as to who, what, where and when?
- Does it allow for accountability?
- Does it relate directly to the reason the child cannot be maintained safely at home?
- If all of the steps are achieved, will the risk to the child be reduced to a level that will allow the children to return home?
- Is it doable?

# SUMMARY: CHARACTERISTICS OF A GOOD CASE PLAN



What ARE YOUR  
goals?



- graduate
- housing
- a good job/income
- people I can trust: Friendship
- Know I am Loved



ARE They being reached ???

**SIMPLICITY**

**SPECIFICITY**

**ACCOUNTABILITY**

**RELATIVITY**

**DOABILITY**

# TO WHOM DOES THE CASE PLAN BELONG?



- The agency
- The judge
- The court staff
- The parents
- The parents' attorney
- The child
- The child's attorney
- The CASA
- The Service Providers



# WHEN DOES CASE PLANNING BEGIN?



- Permanency planning begins the first moment the child welfare agency touches the case.
- The first important step in terms of case planning is to thoroughly investigate the case to determine the reasons that the child cannot be maintained at home safely.
- It is the responsibility of the agency to dig deep into the history and dynamics of the child, the family, and the environment to determine the root causes of the alleged deprivation.
- Without a thorough investigation on the front end, permanency will be delayed as the underlying problems are discovered later in the process and the plan revised, or the child may be returned home prematurely and thereby placed at risk of a subsequent removal, or worse.

# THE FOUNDATION OF A GOOD CASE PLAN –THE COURT’S PERSPECTIVE



- The foundation of a good case plan is the court’s determination of the reason that the child cannot be maintained at home safely.
- The Court should never, consciously or through inaction, abdicate its responsibility as gatekeeper.
- The Court should carefully scrutinize stipulations to case plans.

# INAPPROPRIATE GOALS AND STEPS FOR A REUNIFICATION PLAN



- No change should be required that does not reduce the risk factors that make it unsafe for the child to return home, and no steps should be required unless the completion of those steps is reasonably calculated to bring about the identified changes.
- Too many case plans include goals and steps that bear no rational relationship to one another or to the reasons the child cannot be returned home safely, and become unnecessary barriers to reunification.
- They also often overwhelm the parents so much that they are unable to complete those steps that are properly part of the reunification plan.

# MOTIVATING THE PARENTS



- Should the agency be required to “hold the parent’s hand” early in the case? (The “velvet touch”)
- Should the agency be required to file a motion for attachment for contempt before withdrawing services based on parent’s failure to accept offered services? (The “sledge hammer”)



**AND IT STILL COMES DOWN TO  
DOING IT RIGHT!**



**If you:  
Do the **right** thing  
For the **right** people  
In the **right** way  
At the **right** time  
You will get:  
The **right** result!**



# KEY TAKE ALWAYS



- Keep them home if they can be safe in the home.
- If they can't be safe in the home, keep them with family. Remove them from foster care before they become the rope in the tug of war.
- Keep the siblings together.
- Get them home quickly if they can go home safely. If they can't go home safely and quickly, get them to alternative permanence ASAP.
- Meaningful permanency reviews and hearings are critical to assuring timely permanence.

# REMEMBER THE KIDS WE SERVE ...



- Their belongings in a bag, their hearts on a sleeve, or tucked securely away,
- Their futures not their own, but held in the hands of those who do not know them.
- Their worlds asunder; insecurity and mistrust their constant companions.
- They come to us looking for answers, for understanding, for hope, for resolution.
- What we give them will determine who they are and who they will forever be.
- Equally as important, what they become because of their having passed our way, will define our lives and our place in history.

Hon. Michael Key, September 24,  
2005

# QUESTIONS



# JUDICIAL OVERSIGHT FROM THE ENHANCED RESOURCE GUIDELINES

Juvenile and family court judges have a responsibility to provide individual case oversight as well as system oversight and leadership. The role of the juvenile and family court judge is unique, as it combines judicial, administrative, collaborative, and systemic advocacy roles. By taking on these roles, the juvenile and family court judge holds all stakeholders, including the court, responsible to ensure safe, timely permanency and well-being for children and families. Judges must provide fair, equal, effective, and timely justice for children and their families throughout the life of the case, continually measuring the progress toward permanency for children. The same judge should oversee all cases impacting the care, placement, and custody of a child. Judges should ensure that there is communication, collaboration, and cooperation among all courts handling cases involving any given family.

# JUDGE'S RESPONSIBILITY TO ADVANCE THE DEVELOPMENT OF ADEQUATE RESOURCES

Juvenile and family courts must be appropriately supported. Courts must maintain a sufficient number of specially trained and permanently assigned judicial officers, staff, attorneys, and Guardians *ad litem* to thoroughly and effectively conduct the business of the court. Judges should continually assess the availability and advocate for the development of effective and culturally responsive resources and services that families need.