

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:140. Permanency services.

RELATES TO: KRS 2.015, 194A.005(1), 199.011(3), (4), (9), 199.462, 199.555, 199.557, 199.801, 387.025, 527.100, 527.110, 600.020, 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.467 requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty-four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty-four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions.

- (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.
- (2) "Age or developmentally appropriate" is defined by KRS 600.020(2).
- (3) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).
- (4) "Case permanency plan" is defined by KRS 620.020(1).
- (5) "Child" means:
 - (a) A child defined by KRS 199.011(4) and 600.020(9);
 - (b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e);
 - or
 - (c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.
- (6) "Concurrent planning" means the cabinet simultaneously plans for:
 - (a) The return of a child in the custody of the cabinet to the child's parent; and
 - (b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty-two(22) months, in accordance with 42 U.S.C. 675(5)(E).
- (7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (8) "Parent" is defined by 42 U.S.C. 675(2).
- (9) "Reasonable efforts" is defined by KRS 620.020(11).
- (10) "Relative" means an individual related to a child by blood, marriage, or adoption.
- (11) "Subsidized permanent custody" means the guardianship assistance program authorized by 42 U.S.C. 673 and funded with Title IV-E and state general funds, established in 922 KAR 1:145.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty-four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning.

- (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:
 - (a) Have been unsuccessful; or
 - (b) Are not required under the provisions of KRS 610.127.
- (2) In the provision of permanency services, the cabinet shall meet the requirements of the:
 - (a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or
 - (b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.
- (3) If a child entering the custody of the cabinet has an absent parent, an absent parent search shall:
 - (a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;
 - (b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:
 1. Date of birth;
 2. Social Security number;
 3. Present or previous employers;
 4. Present or most recent address; and
 - (c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.
- (4) The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.
- (5) When a case conference is held in compliance with KRS 620.180(2)(a)1 for a child placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan.
- (6) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.
- (7) Concurrent planning shall be considered:
 - (a) During development of the case permanency plan; and
 - (b) At the six (6) month case review.

Section 4. Permanency Goals.

- (1) A permanency goal for a child who has been removed from the child's home of origin by a court shall be established according to the particular needs and best interest of the child.
- (2) A permanency goal shall include one (1) of the following:
 - (a) Return to parent;
 - (b) Adoption;
 - (c) Permanent relative placement;
 - (d) Legal guardianship;
 - (e) Subsidized permanent custody;
 - (f) Transitioning to adulthood; or
 - (g) Another planned permanent living arrangement.

Section 5. Return to Parent.

- (1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court is returned to the parent if the cabinet determines:
 - (a) A family has successfully mitigated the danger to the child associated with the removal or has a plan to provide safety for the child while making progress towards completing the case plan; and
 - (b) Return to the parent is in the best interest of the child.
- (2) If the cabinet determines that a family has not successfully mitigated the danger to the child associated with the removal or has a plan to provide safety for the child while making progress toward completing the case plan, the cabinet shall seek a court order for:
 - (a) A change in the permanency goal;
 - (b) Termination of parental rights; or
 - (c) A civil action in support of the child's permanency goal.
- (3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption.

- (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:
 - (a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
 - (b) The cabinet pursues involuntary termination of parental rights:
 1. Pursuant to KRS 620.180(2)(c)3 or 625.090; or
 2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).
- (2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:
 - (a) A relative or fictive kin placement has been secured;
 - (b) Termination is not in the best interest of the child, for a compelling reason:
 1. Documented in the case permanency plan; and
 2. Monitored on a continual basis; or
 - (c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.
- (3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1) or a case review in accordance with KRS 620.180(2)(c)1 and 2.

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court shall be permanent custody if:

- (1) Return to the parent is not in the child's best interest; and
- (2) The cabinet determines that a relative or fictive kin who does not pursue adoption, legal guardianship, or subsidized permanent custody is able to provide a permanent home for the child.

Section 8. Legal Guardianship.

- (1) The permanency goal for a child who has been removed from the child's home of origin by a court shall be legal guardianship if the cabinet determines that:
 - (a) Return to the parent, adoption, or subsidized permanent custody is not in the child's best interest;
 - (b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and
 - (c) Legal guardianship by the adult identified in paragraph (b) of this subsection is in the child's best interest.
- (2) Legal guardianship shall be requested pursuant to KRS 387.025.

Section 9. Subsidized permanent custody. The permanency goal for a child who has been removed from the child's home of origin by a court shall be subsidized permanent custody if the cabinet determines that:

- (1) Reunification, adoption, legal guardianship, and permanent relative custody is not in the child's best interest; and
- (2) The child is eligible pursuant to Section 2 of 922 KAR 1:145.

Section 10. Transitioning to Adulthood. The permanency goal for a child who is or eighteen (18) years of age or older and has extended commitment to the cabinet or seventeen (17) years of age shall be transitioning to adulthood if:

- (1) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;
- (2) The cabinet has reviewed documentation and determined that a goal of transitioning to adulthood is in the best interest of the child;
- (3) The court has determined that transitioning to adulthood is in the best interest of the child; and
- (4) Approval is obtained from the commissioner or designee prior to the establishment of transitioning to adulthood as a permanency goal for children aged seventeen (17).

Section 11. Another Planned Permanent Living Arrangement.

- (1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:
 - (a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;
 - (b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;
 - (c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;
 - (d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and
 - (e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.
- (2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

Section 12. Permanency Services.

- (1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court so that permanency is achieved.
- (2) Permanency services may include:
 - (a) Ongoing case work and monitoring of the family to:
 1. Maintain the child safely in the child's home; and
 2. Ensure safe return of the child if the goal is return to the parent;
 - (b) Independent living services and programming for the child in accordance with 42 U.S.C. 677;
 - (c) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;
 - (d) Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;
 - (e) Post-adoption placement stabilization services as established in 922 KAR 1:530;
 - (f) Subsidized permanent custody payments as established in 922 KAR 1:145; or
 - (g) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal.

(3) Cabinet resources for a prospective or existing permanent relative or fictive kin placement shall be established in 922 KAR 1:565.

Section 13. Funerals and Burials.

(1) The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless the:

- (a) Parental rights have been terminated;
- (b) Parent cannot be located; or
- (c) Parent is unable to make funeral arrangements.

(2) Personal and family resources, including the deceased child's trust fund and insurance in the deceased child's name, shall be exhausted prior to the approval of cabinet funds for funeral and burial expenses.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 21, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 19, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 29, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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