

FACT OR MYTH?

What are the current permanency options for children?

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CHILDREN, YOUTH & FAMILIES

INTRODUCTION

- Who we are
- Who you are and why you're here
- Why our session is titled “Fact or Myth”

MYTH or FACT?

**A CHILD CAN HAVE MORE THAN ONE
PERMANENCY PLAN AT A TIME.**

FACT

A CHILD MAY HAVE PRIMARY AND ALTERNATIVE PERMANENCY PLANS

- The permanency plan shall identify a primary goal and may identify additional alternative goals. RCW 13.34.136(2)(a).
- What is concurrent planning?
- When can the primary or alternate plan be changed?

MYTH or FACT?

**RETURN HOME (REUNIFICATION) IS A
PERMANENT PLAN.**

FACT

REUNIFICATION IS A PERMANENT PLAN

- Return of the child to the home of the child's parent, guardian, or legal custodian is a permanency plan.
RCW 13.34.136(2)(a).
- Parental rights remain with birth or legal parent.
- The dependency is dismissed and all care and custody is returned to the parents.

MYTH or FACT?

TO DISMISS AN IN-HOME DEPENDENCY CASE, A PARENTING PLAN MUST BE IN PLACE.

MYTH

DISMISSAL OF AN IN-HOME DEPENDENCY DOES NOT REQUIRE A PARENTING PLAN

- After a child is returned home, DCYF continues casework supervision for at least six months, at which time the court shall determine the need for continued intervention. RCW 13.34.145(7).
- How does the absence of a parenting plan impact child safety, if at all?
- When establishing or modifying a parenting plan will implement the permanent plan and result in dismissal of the dependency, the dependency court may do so if certain conditions are met. RCW 13.34.155(2)(a).

MYTH or FACT?

**A GUARDIANSHIP IS NOT PERMANENT SO IT IS
NOT PERMANENCY FOR A CHILD.**

MYTH

GUARDIANSHIP IS A PERMANENT PLAN

- Provides permanency for youth with an approved adult.
- The parent continues to be the legal parent, and the guardian has care, custody and decision-making rights as granted by the court (which may vary depending on the type of guardianship).
- Dependency is dismissed.

MYTH or FACT?

**TITLE 11 AND TITLE 13 GUARDIANSHIPS ARE
PPERMANENT PLANS.**

FACT

TITLE 11 AND TITLE 13 GUARDIANSHIPS ARE PERMANENT PLANS

- Two types of guardianships are permanent plans:
 - Guardianship pursuant to ch. 13.36 RCW (“Title 13 Guardianship”)
 - Guardianship of a minor pursuant to RCW 11.130.215 (“Title 11 Guardianship” or “Guardianship of a minor”)
- Both types of guardianship are to be discussed with parents and caregivers as an alternative to termination of parental rights and adoption.

MYTH or FACT?

**ICWA DOES NOT APPLY TO A GUARDIANSHIP
IF THE GUARDIAN IS A RELATIVE.**

MYTH

ICWA DOES APPLY TO GUARDIANSHIPS

- Every petition and order must address whether ICWA applies, and if it does, the order must address that the Act's requirements have been satisfied. RCW 13.36.030(4); RCW 11.130.250.
- Guardianships are a “foster care placement” as defined in ICWA and WICWA, even though the child or youth is not placed in a licensed foster home.
- A “foster care placement” includes placements where parental rights have not been terminated but the parent cannot have the child returned upon demand.

GUARDIANSHIPS

MYTH OR FACT?	TITLE 13	TITLE 11
CHILD MUST BE DEPENDENT	✓ FACT	✗ MYTH
DCYF IS PRIMARILY THE PETITIONER	✓ FACT	✗ MYTH
REQUIRES ORDER OF CONCURRENT JURISDICTION IF THE CHILD IS DEPENDENT	✗ MYTH	✓ FACT (usually)
REQUIRES PRIOR EFFORTS TO REMEDY PARENTAL DEFICIENCIES	✓ FACT	✗ MYTH
REQUIRES THAT THE PROPOSED GUARDIAN MEET THE MINIMUM QUALIFICATIONS TO CARE FOR CHILDREN AS ESTABLISHED BY DCYF	✓ FACT	✗ MYTH
GUARDIAN MAY BE ELIGIBLE FOR RGAP/GAP	✓ FACT	✓ FACT

MYTH or FACT?

**A TITLE 13 GUARDIANSHIP CAN BE
TERMINATED EVEN IF IT IS NOT IN THE
CHILD'S BEST INTERESTS.**

MYTH

TERMINATING A TITLE 13 GUARDIANSHIP ONLY OCCURS WHEN DOING SO IS IN THE CHILD'S BEST INTERESTS

- The court may not terminate a Title 13 guardianship, even if it is agreed, unless it is in the child's best interests. RCW 13.36.070(2), (3).
- If not agreed, requirements also include a substantial change in the circumstances of the child or guardian.
- If agreed, requirements also include that the parent has successfully corrected the parental deficiencies identified by the court in the dependency and that the circumstances of the parent have changed so that returning the child to the parent's custody no longer creates a risk of harm to the child's health, safety, or welfare.

MYTH or FACT?

**ADOPTION IS MORE PERMANENT THAN A
GUARDIANSHIP.**

MYTH

ADOPTION AND GUARDIANSHIP ARE BOTH PERMANENCY

- An adoption and a guardianship are established by different legal standards and involve different burdens of proof.
- Both permanency plans provide the child or youth with permanency.
- Both an adoption and guardianship can be undone.

MYTH or FACT?

**ADOPTION IS THE BEST PERMANENT PLAN FOR
A YOUNG DEPENDENT CHILD.**

MYTH

ADOPTION MAY NOT BE THE BEST PERMANENCY PLAN FOR A PARTICULAR CHILD, EVEN A YOUNG CHILD

- The best permanency plan is a child-specific analysis that is ongoing throughout the life of the case.
- Discussing guardianship as a permanency option is important and required.
- Exploring permanency options that allow for continued family connections is in children's best interests.

MYTH or FACT?

**ADOPTION SUPPORT PAYS MORE THAN THE
GUARDIANSHIP SUBSIDY (RGAP, GAP).**

MYTH

SAME QUALIFICATIONS FOR SUBSIDY PAYMENTS

- Both adoption support and guardianship assistance program (GAP) have the same qualifications for subsidy payments.
- Guardians may qualify for WCCC assistance that provides Non-Needy or In-Loco Parentis Child Care Subsidy.

MYTH or FACT?

A GUARDIAN CANNOT CONTINUE TO RECEIVE GUARDIANSHIP SUPPORT (RGAP, GAP) IF THEY LEAVE THE STATE OF WASHINGTON.

MYTH

GUARDIANS CAN MOVE FROM WASHINGTON STATE

- Guardians do not need to remain licensed to receive the RGAP/GAP subsidy after the guardianship is established.
- Guardians do not need to remain within Washington State to maintain the RGAP/GAP subsidy.

MYTH or FACT?

**A GUARDIANSHIP CAN ONLY BE ESTABLISHED IF
THERE IS AN IDENTIFIED GUARDIAN.**

FACT

GUARDIANSHIP REQUIRES AN IDENTIFIED GUARDIAN

- To establish a guardianship, the court needs to appoint a guardian.
- The proposed guardian must sign a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age eighteen. RCW 13.36.040(2)(c)(vi).

MYTH or FACT?

**ALL TRIBES SUPPORT GUARDIANSHIP AS A
PERMANENT PLAN.**

MYTH

EACH TRIBE IS UNIQUE AND INDIVIDUAL

- If you've consulted with a tribe on one child's case, you've consulted with one tribe on one child's case.
- Tribes are all sovereign and unique; tribes can (and do!) have different perspectives and beliefs, which may also vary by case.
- Do not assume what permanent plan a tribe will support. Instead, engage the tribe in a meaningful discussion about permanency planning.

MYTH or FACT?

TITLE 13 GUARDIANSHIP IS NOT AN AVAILABLE PERMANENT PLAN FOR A LEGALLY FREE CHILD.

MYTH

A TITLE 13 GUARDIANSHIP CAN BE ESTABLISHED FOR A LEGALLY FREE CHILD

- The court may establish a Title 13 guardianship for a legally free child.
- The court must find:
 - The elements for a Title 13 guardianship are met;
 - The benefits for the child outweigh any potential disadvantage of having no legal parent; and
 - One or more exceptional circumstances exist.

RCW 13.36.040(3).

MYTH or FACT?

LONG-TERM FOSTER CARE IS AN AVAILABLE PERMANENT PLAN FOR A CHILD WHO IS SIX YEARS OLD.

MYTH

LONG TERM FOSTER CARE (AND LONG TERM RELATIVE CARE)

- Long term foster care is a permanency plan only if the child is between ages 16 and 18, with a written agreement between the parties and the care provider. RCW 13.34.136(2)(a).
- The same is true for long term relative care.

MYTH or FACT?

**TERMINATION OF PARENTAL RIGHTS IS A
PERMANENT PLAN.**

MYTH

TERMINATION OF PARENTAL RIGHTS IS NOT A PERMANENT PLAN

- Termination of parental rights does not achieve or provide for a permanent placement or any permanent legal caregiver.
- Termination of parental rights is necessary to achieve the permanency plan of adoption, but termination of parental rights is not a permanency plan.

MYTH or FACT?

TERMINATING PARENTAL RIGHTS REQUIRES AN IDENTIFIED ADOPTIVE HOME FOR THE CHILD.

MYTH

TERMINATION OF PARENTAL RIGHTS DOES NOT REQUIRE AN IDENTIFIED ADOPTIVE HOME

- To terminate parental rights, the court must find that **continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a state and permanent home.**
RCW 13.34.180(1)(f).
- This element does not require an identified adoptive home and can be proven in two ways:
 - Prospects for a permanent home exist but continuing the parent-child relationships prevents the child from obtaining that placement.
 - The parent-child relationship has a damaging and destabilizing effect on the child that would negatively impact the child's integration into a permanent home.

TERMINATION OF PARENTAL RIGHTS DOES NOT REQUIRE AN IDENTIFIED ADOPTIVE HOME

- BUT keep in mind that the availability of an identified guardianship placement can be material to determining whether the termination statute has been satisfied.
- The court must “consider the efforts taken by the [D]epartment to support a guardianship and whether a guardianship is available as a permanent option for the child.”
- The availability of a guardianship is relevant evidence.

THANK YOU!