

Missouri Department of Social Services

Children's Division

Prevention*Partnership*Protection

**THE LEGAL
ASPECTS SERIES**

THE LEGAL ASPECTS OF RELATIVE PLACEMENT

JEANNE: Welcome to the Legal Aspects of Relative Placements, more aptly titled “Does it really matter how far the apple falls from the tree?” I’m Jeanne Gordon, the Legal Issues Training Coordinator for the Children’s Division and I’ve been a child welfare attorney since 1997.

CHRISTY: I’m Christy Collins, I’m a Program Development Specialist and I oversee the Foster Care Policy. I’ve worked for the Children’s Division since 2003.

JEANNE: Christy and I are going to present all these legal issues and talk about the facts that are involved in placements together; we decided this might be a better way to do it. Today’s date is August 31, 2010. All your materials for this training are available the Children’s Division Internet if you go to “practice and professional development” and then look for the “Legal Aspects DVD series”. You will have a PowerPoint, the Relative Placement Chart as a handout and a handout that list all these factual basis, we are going to call them “factors” that we think need to be considered when you’re looking at placement.

The training is going to cover a couple areas. Most importantly, it’s going to cover the laws that affect the placement decisions and then we are going to talk about the need for a factual basis to support the placement decision. We’re talking about information on the child, information on the relatives, how to determine if it’s in the child’s best interests or contrary to the best interests. Or in the case of siblings, is it contrary to the safety and wellbeing of any of the siblings. So we’re going to talk about the need to also document this factual basis for the decision making.

As we go, Christy and I are going to have a conversation on some scenarios on how you apply all of these laws and the facts to a particular situation.

So, when we talk about the Laws That Affect Placement Decisions, you’re really looking at a puzzle and we are trying to make all these little pieces of the puzzle

fit. You look at the facts that are applied: Is it one child or many children that were removed? What are the needs of each of the individual children? Do they have different Dads? Are any of these Dads fit for placement? What about relatives, do we have the availability of relatives for placement? What about the child's needs, do they have special needs? What about the school needs, if they are of school age child? How do all the laws that affect these placement decisions apply to this specific facts scenario in your case?

In beginning this training, we're going to start from a couple premises. Number one: that the child is in protective custody and that the child will be going home, if possible. And the reason for that is because we know that in almost all cases we are working reunification with a parent. Another premise that we're going to work from is that the child will be placed with family. Even if they are not placed initially with family members, but are placed in foster care, we are still going to continue to look for relatives for placement throughout the life of the case. There is no expiration on that relative placement law.

And lastly, we're going to assume that the concurrent plan is going to be adoption or guardianship with a relative and that's going to be the plan until we have ruled out all relatives for placement even if the child is in a foster care placement.

So, the discussion on the laws and facts that are going to follow this will follow the placement hierarchy chart that you have as a handout in this case. The purpose of this chart is to put all the laws together that affect your decision making. They have statute numbers with them and different parts of the statutes are set out and this will give you something you can talk with your family team support members and you can also use in talking with the courts.

The placement decisions will probably always vary depending on the factual basis. Don't you think Christy?

CHRISTY: I think so, I think you are going to have to look at the information about the child, about the parents, the siblings and about the relatives involved and then make your decision based on the evidence that you have.

JEANNE: The idea behind all these laws and the charts also is that when you take these facts and you apply the law you want to try to make the laws fit together and work together if at all possible.

So let's move onto, "Sources of the Law". There are all types of laws that affect placement decisions; they affect, actually, all the work that we do. The Federal and State Constitutional laws affect us. The US Constitution is actually considered the supreme law of the land. So, all the rights that we are given, as individual citizens and as parents, are the supreme law of the land and those have to be complied with.

We have Federal and State Statutes. When you talk about the Federal and State Statutes, an example of a Federal law, those are passed by the legislators, would be the Adoption and Safe Families Act. The States Statutes: Also, many of the Adoption and Safe Families Act Statutes are also included in the State Statutes. As well as; the Hotline Scheme and the Relative Placement Chart, or the Relative Placement Laws.

The Supreme Court rules of procedure also apply and when a case comes into comes into court, the Supreme Court rules of procedure help the case progress through the court system and they have the same effect as law.

Federal and State Agency Regulations: There are Federal Agency Regulations called "The Code of Federal Regulations". And an example of that is that it sets out, more in detail information on how we apply The Indian Child Welfare Act. The Indian Child Welfare Act is Federal Law and then what the rule does, is it gives more information on how to apply that law. The same holds true for Missouri. Missouri has what's called the "Code of State Regulations". An example of a Missouri Regulation would be, in TPR cases, there're caps on attorney fees for the parent's attorneys and guardian ad litem in the case, unless special findings are made by the court, that regulation is enforced then by the courts.

Lastly, we have Agency Policy. Most of the Child Welfare Manual is based on Federal and State Law and Good Child Welfare Practice. So, the Relative Placement Chart actually reflects this legal hierarchy, the way this chart is set out.

And we are going to talk about applying parent's Constitutional Rights first and then any Federal Laws that apply, which will be ICWA and the sibling placements and then the Missouri Laws on grandparents and other relative placement.

The idea again is that all these laws, we should try and make them work together based on the facts of any particular case.

So let's talk a little bit about Constitutional Rights and how it affects placement. An important part of the Constitutional Rights is the "L" word, what I call the "L" word. A parent has a liberty interest in their relationship with the child and the child has the same liberty interest in relationship to their parents and State Government, basically, cannot interfere without providing due process.

These Constitutional Rights are important because we have to work with the parents; we have to provide reasonable efforts in almost all cases. But we don't want to forget that the State has a compelling interest protecting children from abuse and neglect. We just need to remember that we can't ride up on our white horse, scoop up the child and carry the child off into the sunset, we have to work with the parents.

There are other laws besides Constitutional Laws that affect our dealings with the parents. In these next few slides that we are going to talk about the diligent search to identify and locate parents, the non-offending parent law, the prohibition on reunification and placement when there are certain criminal offenses by a parent or another in the home and lastly the need for reasonable efforts.

So you want to take a look at the Hierarchy Chart. Page 1 goes into detail about placement with a fit parent. The idea is, that a child who comes into care with the other parent that hasn't done anything, if they are a fit parent, then we are looking at placement with that fit parent. We also have to do an absent parent search, we have to look for the non-offending parent, to make sure they are a non-offending parent and whether or not they are entitled to custody and how the prohibition applies.

Lastly, when we're talking "fit parent", what we're talking about and what we're trying to talk about is it covers is all kinds of parents that are not the subject of the investigation that brought the child into care. It may include that none offending parent that hasn't done anything wrong, we may include the non-residential or the noncustodial parent. So what those terms mean may be important. When we're talking the non-residential parent, we're talking about that parent that doesn't live in the home with the child. The noncustodial parent may be that same parent, but sometimes we have to remember that there are custody orders where a parent may not have a right to visitation or custody of the child.

So the bottom line is, if the other parent is a fit parent, then they should be entitled to custody, except when limited by the non-offending parent law, the prohibition on placement and of course subject to background checks and a walk through.

And I think, isn't it true Christy, everything we are dealing with today, would be subject to a background check and a walk through?

CHRISTY: [crosstalk] Yes

JEANNE: Whether it's a relative or a kinship or whom someone we think may be a fit parent.

CHRISTY: Yes, that's correct.

JEANNE: Okay. And it comes down to; what is the safety issue that would prevent the placement? So, need to think in those types of terms when we're talking about not placing with the parent.

Let's move on to the Diligent Search Law. The law requires the Division to make diligent search efforts to locate and identify the parent and this has to be reported to the court at every hearing until relieved by the court. This gives the Division an affirmative duty to go out and look for the absent parent and identify them.

CHRISTY: So I need to keep looking for the non-offending or noncustodial parent until I find them. Is that correct?

JEANNE: Absolutely. You need to keep looking for them until you find them or unless the court would relieve you of efforts. Do you have a Social Work perspective on that?

CHRISTY: Well, I think one thing that's important to remember when doing this is that other parent can provide a lot of family history on the child that the child might not already know. In addition, it also provides another set of relatives we can explore. We all know that foster homes are kind of scarce and it would be nice for the child to be able to be placed in a community where they already know someone instead of being placed in a home with strangers.

JEANNE: And that's absolutely true. And to finish up on a legal aspect of that is that looking for the absent parent, it may provide us with a parent for reunification, relatives for placement and may affect the ability to do a TPR or a guardianship. Again, because parents have constitutional rights.

The next subject when we're talking about relatives is "who's Dad?" What about Dad, who's Dad? Dad is a very complicated issue and it's not the main subject of this training, but we have to discuss it, I think, in some detail so we're clear about whom we're placing with and what at a minimum a "Dad" is.

CHRISTY: So, what if I have a person that says he is the Father, but he's not on the birth certificate and paternity testing has not been done? Do I have to place with him?

JEANNE: I think it would be very difficult to place with that type of Dad, but you and I both know that ultimately it will be the court's decision. When we're talking about a non-offending parent, we're talking about them being entitled to custody and most of the time when we're talking about how a parent would have custody, we're talking about their legal relationship with the child. In those cases we're really looking at who's on the birth certificate. If a man's name is on the birth certificate, then there's some sort of law that allows his name to be placed there

and consequently I think that gives rise to the term “Legal Dad”. And we, at a minimum, have to be working with those types of Dads.

Now what about paternity testing, Christy, don’t you think that if paternity testing has done even if he’s not on the birth certificate, if a child comes into care that the court would place with that type of Dad?

CHRISTY: Yes, as long as he matched those background checks, walk through of the home and he was fit to take care of the child.

JEANNE: Let’s move on to that non-offending parent. This is section §211.037 and this kind of sets the law out a little bit in terms of, if the parent hasn’t done anything wrong and they are entitled to custody, then they should get placement. So, what does entitled to physical custody mean? We have talked a bit about it would help if the name is on the birth certificate, because at least at that point, you know they have some kind of rights with the child. But lots of our parents aren’t married and there are not always custody orders. Are there Christy?

CHRISTY: No.

JEANNE: So, at a minimum, if the Dad’s name is on the birth certificate, then he should be entitled to custody. We want to be careful if parents say they are divorced and there are custody orders, my recommendation would be to get a copy of the custody order. Because, how do you determine whether or not they are entitled to physical custody? I would look at; do they have visitation, are they allowed unsupervised visitation or are they allowed periods of custody? In any of those cases I would say they are entitled to physical custody. But once in a while we have court orders that say this parent is not entitled to physical custody or visitation and in those cases they would not be a non-offending parent because of what is in the order.

Again, once the child comes into care, I think placement would be made with the non-offending parent if they have paternity testing because that’s a biological father that we know. Before the child comes into care they don’t have any rights at that point.

When we're talking non-offending parents; so, we've talked a little bit about physical custody. But overall the non-offending parent is not the subject of the investigation and they are not going to currently be living with the offending parent, they would like to have custody of the child and they are willing to abide by the court orders on whatever type of contact the offending parent and the child are allowed to have. For more information on this issue, you may want to look at the policy on the non-offending parent.

Let's talk a little bit about the Prohibition on Reunification and Placement. In this particular statute, if the parent or someone living in the parent's home has a felony sex crime conviction from Missouri, where the victim was a child, then once the child is in state custody, the courts and Division are prohibited from placing or reunifying with that parent or placing in that home as long as there is someone else in the home that has one of these convictions.

CHRISTY: One thing that's important to remember in addition that is, they may not have an actual conviction for something but we also need consider the facts of the case. If they have a preponderance of evidence for something like sexual abuse; just because they weren't convicted, we probably also need to consider that when we are looking at reunification.

JEANNE: And that's a good point. The chapters that are involved in here are felony sex offenses against the child, but there are other serious issues; assault, attempted murder and other types of crimes where it would not be appropriate to place the child.

What we want to remember on the statute too, is that statutory prohibition applies on juvenile court cases that were filed on or after August 28, 2004. Most of our cases, the kids have not been in care that long, but if you have older children that you may be going back and looking at, are there any relatives for placement, you would want to look at what date they came into care to make sure whether or not this statute applies.

The case law on this area is still developing and the important cases at this time are listed on the bottom of the slide. Again, the policy sets out very clearly all the

listed offences in the statute that you would need to be concerned with. And the recommendation, pretty much, if you think you have a parent or another in the home that has one of these convictions, you probably want to send it by DLS and let them take a look at it. Do you think that would be a good idea, Christy?

CHRISTY: I would agree with that.

JEANNE: We talked about the constitutional law and the various laws that would limit a fit parent's right to placement. So now we are going to move onto the federal laws that apply on relative placement. Again, we are still on the first page of the placement chart and if you notice, you're going to see the Indian Child Welfare Act and sibling placement issues are at the bottom of the first page, placed next to each other. And that's because they are both federal law and we would try to apply them to work together when looking at placement for a child.

The Indian Child Welfare Act is federal law, the Tribe has to be notified, as provided by law and the Tribe is going to determine whether or not the child is an Indian. If it is an Indian child then the child has to be placed where the Indian Tribe requires.

CHRISTY: One other thing that is important, is to make sure we are documenting clearly, that we've discussed with the parents whether or not they have any Indian Heritage. Whether you document that in the opening summary of your case or just in a case contact, it's really important to make sure that it's documented somewhere in the record. Not only in the court portion of the record, but in our record as well.

JEANNE: Don't you think too, that if a parent says they have Indian Heritage and they have an identifiable Tribe that you would be trying to immediately contact the Tribe, to find out whether or not the child is placed?

CHRISTY: Based on the law we need to be looking at those resources and the Child Welfare Manual is really clear about the procedures that you need to go through in order to place through ICWA.

JEANNE: Clearly Missouri Law requires, also, that we comply with ICWA when it comes to the placement procedures.

ICWA placement requirements, when you're talking relative, the Tribe is going to define who the relative is based on their laws and customs and if they don't then we have some default definitions that would include Grandparent, aunt or uncle, brother or sister, niece or nephew, first or second cousin, and stepparent.

CHRISTY: So, what if we have a child that has been in a foster home for about 6 months or so and we just recently found out that ICWA applies? Are we required to remove the child from the home?

JEANNE: Yes, we would be required to comply with the Tribal placement request and this has actually happened in some cases with some very young children. In at least one case, with a very young child that had bonded to the parents but when the Indian Tribe was notified, they stepped forward and stated where they wanted the child placed and the child had to be moved. The Indian Child Welfare Act would trump any type of placement that we have. It's very sad for the child, it's very sad for the foster parents but it's an important way of keeping connections. One thing to remember is that the Indian Tribe is a Sovereign Nation and is treated as such and consequently the Indian Child Welfare Act is not just about what's in the best interest of the Indian child but it's also survival of the Tribe.

CHRISTY: So, what if the Tribe wants to make an out of state placement?

JEANNE: The Tribe can do so and ICPC does not apply. Again, they are a Sovereign Nation, good point though Christy.

Since you brought up the subject of ICPC, why don't we just discuss it a little bit, because, it applies to relative placement, clearly and placements preliminary to adoption. Do we have to place with relatives out of state if the goal is reunification though?

CHRISTY: Not necessarily, especially if ICWA does not apply. You need to consider all the factors of the case. Are you in the beginning stages of the case and

reunification is still the goal? In that situation, you would probably be best to go ahead and do the home study request through ICPC since we know that can take a little bit of time and then hold on to that for a period of time until we decide that maybe we're going to proceed with our concurrent goal and go ahead and place with the relatives. If we're at a situation in the case where the parents can't be located or they're not really working the plan anymore and we decide we need a much more stable placement for the child, then at that point of the case it would be a good idea to go ahead and move the child out of state.

JEANNE: And I think that's a good point. Do you think the court would make a contrary to the welfare of the child finding? Not to place the child with the grandparent out of state just because the goal is reunification?

CHRISTY: Yes, because it would be really difficult to work reunification with the parents if the child was placed out of the state. You wouldn't be able to do the visitation, near as well and it's really hard, especially with a young child to keep that bonding with the parent if the child is not in the same state.

JEANNE: And I think that's a very good point and I agree with you. I think the courts would support a contrary to the welfare finding to place with a grandparent or an out of state relative when you're working very hard at reunification and it would interfere with the parent's ability to visit and have contact and demonstrate the changes they are making in order to parent.

Just a reminder that the ICPC priority home study, basically, part of the reason this is so important is because it involves relatives for the most part and it's the ability to get a child that has spent a substantial time in that placement's home, which is usually going to be a relative and all of the siblings of that child to be able to get a priority home study to go to that state when it's needed.

Just remember that home studies, when they have been approved, that they're good for 6 months. So again, that would be good concurrent planning to start early? Can you explain more, how long does it take to get an ICPC approval?

CHRISTY: It just depends on the case and the circumstances of the case. Obviously, the priority ones are going to go a lot quicker than the other ones, but sometimes it can take several months depending on how quickly the worker can make the referral to ICPC and then for Missouri ICPC to contact the state ICPC where we're looking to do the home study.

JEANNE: Is it good concurrent planning to wait till the year mark and the plan changes to a goal of adoption or guardianship to do the ICPC study?

CHRISTY: No, that's really poor planning on the part of the team. We need to make sure we are making that kind of determination from the beginning. The first 30 to 60 days is a really difficult time for the out of home worker because there is so much to do. But it's really important that they be thinking about the child and a long term plan because we know that realistically we want all our kids to be reunified with the parent, but we know that that just does not happen. So, if we can be thinking what we want for that permanent placement for the child from the beginning, then the case would be a lot more successful.

JEANNE: And that makes a lot of sense.

Let's move on to sibling placements. Because we have talked about Parent's Constitutional Rights and we've talked about Federal Law on Indian Child Welfare Act. Let's look at the Federal Law on Sibling Placements.

The important thing is it requires the Division to exercise reasonable efforts to place siblings removed from the home in the same placement. It sounds easy, but I think we all realize that this is turning out to become a lot more complicated than we thought. Part of the reason for that is that the Feds do not define siblings and it's not defined in state law either, but at a minimum we know we are working to place siblings that were removed from the home together in the same placement. And the Division has great policy on the importance of sibling placements.

CHRISTY: So, if I have two siblings that are in care, they are currently placed with relatives and the mom has another baby, who should I place the new baby with?

JEANNE: Well, I think these are hard questions. I think you want to look at all the factors about the child and you want to look at all the factors about the siblings and you want to look to see if the other parent is fit first and whether or not the child should be placed with that parent. You're going to rule out ICWA, if this is an Indian child. And then you're going to look at trying to place that child with the other siblings, I think would be the best idea. What do you think?

CHRISTY: Yes, I agree with that and I think another thing that is important is to make sure you are documenting all this information in the case record. When we're reviewing records it's really important to make sure we are looking to see that we are trying to place with relatives, trying to place with siblings depending on the case situation. You can't over document, for sure.

JEANNE: And actually, Federal Law requires that the Division document all that information. I don't believe that there's any requirement that the court make findings on this, but the federal statute does require that the Division document the files with the factual basis with the decision making. And it's not on whether or not it's in the best interest of the child. Actually, what you have to document is how it's contrary to the safety or wellbeing of any of the siblings.

CHRISTY: So, the court doesn't have to make a contrary to the welfare finding, we can just document it in our record.

JEANNE: Yes, I think so.

What happens, Christy, if siblings are not placed together? If a finding is made that it's appropriate for sibling separation and somehow or another it's contrary to the welfare or the safety and wellbeing of any of the siblings that we're going to split them or they come into care initially and they can't be placed together, what are we required to do?

CHRISTY: Well, then we're required to look at grandparents for placement or other relatives if we cannot place with the grandparents and we're required to make diligent efforts to try to place the children together in the same home

unless it is contrary to the welfare and safety for them to be placed in the same home.

JEANNE: If they are placed in different homes, are we required to work to keep that contact between the kids?

CHRISTY: Yes, we definitely should be having on going visitation between the two children, three children, however many there are in the case, regular phone contact if regular in person visitation cannot be done on a regular basis due to geographic location, they need to make sure they maintain that connection.

JEANNE: And that policy matches up with the law on sibling placement that requires that. Also, if there's not going to be the sibling visitation or interaction, we're going to have to have documentation to show how it's contrary to their safety or wellbeing of any of the siblings and that's required by law.

Let's move on to the Missouri Laws on Relative Placement. If you notice, Grandparents are going to get first dibs, and then there are other adult relatives, we'll talk about how prior foster parents (obviously they know the child if the child has been in care before) would get preference if there are no relatives for placement, policy deals with kinship and then we have the regular foster parents who are able to take children in emergency placement and we'll talk about all of these.

Basically, Missouri law gives preference to relatives over none related caregivers once kids come into care. The order these are placed in, is probably the order in which the law looks at the placements, when you look at all in one big picture. What we have to remember, is that, although these are laws, again you're going to look at all the facts, and if there is a contrary to the welfare finding that can be made, if you have a factual basis for it, then maybe the child won't go with the grandparents, maybe they will go with other relatives or maybe there will be prior foster parents or another placement will take place. But you need to know what the entire factual basis is in order to have that contrary to the welfare finding.

The one thing about these relative placement laws is we're required now to do a diligent search to find these relatives and then by Federal Law we have to notify the relatives that the child has come into care. I think this is a paradigm shift for the Division, it affects how we talk to parents about placing children with relatives and it also affects confidentiality. I thought maybe, Christy, you could talk a little bit about parent engagement and how that's changed with the requirements on these relative placements.

CHRISTY: Right. Well, engagement of parents in the placement process is really important, we want them to have a say to some degree in who they place with, but we know that we can't always do that. It just depends on the situation; they might want us to place with a relative who has a significant child abuse and neglect history and we know that we can't do that. So one thing that's important is to explain to the parents that we might not be able to place with whomever they want us to, but explain to them that we're required by law to place with relatives, let them know that we may be making the decision to place with someone they might not want us to.

JEANNE: That's true. Sometimes do parents have good reasons not to want the children placed with the relatives?

CHRISTY: Sometimes they do. I explained the significant criminal history or child abuse and neglect history, maybe of a mom that was foster care as a child and we're looking to place with her parents and she doesn't want us to. Sometimes our families just don't want their extended families to be in their business, they don't think they need to know what's going on; maybe they're embarrassed to let their relatives know about what's going on with their particular child. So some of these are legitimate, but we also really need to look at the situation for the child, it's really best for a child to be placed in a stable home, preferably relatives who can care for them long term should that be what happens with the case.

JEANNE: One of the questions I get a lot in training is what if the parent tells me they don't want the child placed with the relative and gives me some factual reasons for it? Do I have to take them at their word?

CHRISTY: No, I think we need to look at the whole situation, but ultimately you are going to bring all that information to the family support team and decide on it together. It should never be a decision where a worker is just making a decision on their own. They need to consider all the facts of the case and is it a situation where maybe the CA/N history was a dirty house but this particular child is a teenager, if that's the situation maybe that's a history that's not as important as a something would be if it was sexual abuse or something more serious along those lines.

JEANNE: So if a parent presented some information, you would be checking with the relatives to try to rule that information in or out, present it to the team and if necessary take it to the court and let the court decide?

CHRISTY: Yes that would be correct.

JEANNE: And I think we have to protect our kids, so I think that's true. What about the confidentiality piece, as far as looking for relatives? Do we have different conversations with people on how to find relatives?

CHRISTY: Yes, one thing you need to do is make sure that when you're talking to both the parents, which you're trying to ascertain all the information about who their relatives are on both sides of the case. You might also ask neighbors that are working with the family or other community providers that are trying to work with the family. Anybody you might talk to that might know, even ask the children, "Who would you want to be placed with?" or "Do you have relatives that you know?" Because we know sometimes, at the beginning of a case, it's a very difficult time for the family and they might not want to always disclose that information to us. Then, when we take that information and we call the relatives we want to place with, it's important to tell them, just briefly, that the child came into care, we don't need to go into a long conversation about all the details of the case and why they came into care. But also let them know that they have a right to placement based on the law and let them know there is support for them and there are options in regards to subsidy, should that be what happens with long term with the case.

JEANNE: I think that's very true, but I think that's a big change for workers. Hasn't the policy always been that we would not contact the relatives unless the parents allowed us to?

CHRISTY: That's something that has always been local protocol in a lot of places, some would say we want to be engaging with the family, we want to be family friendly and if they don't want us to contact them we shouldn't do that. So, it's been that back and forth debate between being family friendly and also doing what's best for the child.

JEANNE: But based on the current law, we have a diligent requirement to locate and place and that trumps that confidentiality piece in terms of affirmatively going out and trying to find relatives and talking to whomever we need to. Correct?

CHRISTY: Yes, that's correct.

JEANNE: Now, let's move onto the individual relatives that are listed and we're on page 2 of the Relative Placement Chart Hierarchy is where we are.

So, Grandparents are going to get first dibs under §210.565, RSMo and the law requires the division to make diligent efforts to locate, contact and place with the Grandparents within 3 hours, when emergency placement is deemed necessary.

I think one of the important things here to remember that 3 hours seems like a very short time, but my experience has been, Christy, is that in most cases this isn't the first time we have seen that family. Is that true?

CHRISTY: That's correct. A lot of times we've had prior history with these families. So we can easily be going back to those old case records, looking at the genograms, talking with other people involved with the case and finding out who those relatives are. It's a difficult time when you're out with the family late at night and you don't have a lot of options and it's just easier to call a foster home but is it easier for the child to go with a stranger in the middle of the night when they are already scared of being removed from their home. No, nobody would

want that, it's much better if you can locate those relatives, Grandparents, whomever and get the child placed with someone they know.

JEANNE: I absolutely agree and I was telling Christy that in all the TPR's I've ever did I went back and read all the investigations and IIS cases and FCS cases and there was always a great deal of information in there that is very very useful regarding the parents and the relatives. I think it points out, from a legal perspective, the importance of during the investigation and assessment process, finding out whom that other parent is and using relatives when we're trying to do safety plans, involving as much of the family as we can. Then those IIS and FCS services would try to pull in relatives or pull in that other parent and that other parent would have relatives too. So the more information that we have and the good work we do on all these preventive cases to include the whole family will help us when the child comes into care and we're looking for relatives.

CHRISTY: So, what do I do if I have an adult sibling and a Grandparent that both want placement of the child?

JEANNE: Well, these answers are never easy and there's no intent on giving you a black and white answer to any of these questions. The most important thing is you'll want to have all the facts regarding the children that came into care and what their needs are because a lot of times our kids have high needs and when they have high needs they require extra attention or help in the home that takes them in. My experience in these kinds of cases would be that if you have an adult sibling, they're going to be a young adult, in their early 20's, usually in an apartment, trying to make a living or going to school and they probably, if you check, would not have all the resources necessary to place a couple of kids with them. Number one: as far as having enough room in the house; secondly, depending on how many jobs they work and their hours and their social life, their boyfriends and their roommates. That requires a lot of changes in their life, to be able to provide the safety for these kids that we would require for placement. Just the financial ability and wherewithal to provide for the kids would probably be different. So, more than likely the Grandparents would have preference for placement.

CHRISTY: So if I have both sets of maternal and paternal Grandparents that want placement of the child, one thing I should keep in mind to look at is all the factors of the case. If we have this many options for relatives that want the child, you want to look at whether the child has bonded to one particular relative over the other, the age of the child, the age of the grandparents and their ability to actually care for the child, does the child have special needs, all these things need to be considered when making a decision. Ultimately, what our job is is to take all that information to the family support team and let them decide.

JEANNE: Absolutely. We can't forget too, where the school is located, depending on if it is a school age child. Sometimes you just need a map and to draw a picture of this to figure it all out.

We used this question in a training just recently and one of the suggestions was, the first thing that would be done would be to run a background check on all sets of grandparents, start from there and make sure all 4 of them will pass the background and then get all that information you need. Either way, you have to have all the information. I don't think it's just about looking at the child in the second and what's going on. What do you think, Christy?

CHRISTY: I agree with that, definitely. You need to look at all the factors.

Another point, if you have a child that comes into care close to the summer, like in May or something like that and you have grandparents that live across the state, one thing you want to keep in mind is looking at all those factors when you're think about placing. This law talks about the 3 hour time frame, however, most of the laws have some kind of contrary to the welfare finding and so, if you think about it, if the child maybe is in middle school or something like that and it's May, you don't really want to rip them from their school before the semester is over. It's probably best to let them finish out the year and do the transition to the grandparents that summer. Now if it's a young child, obviously, that transition can be done a lot quicker, if there are not school issues but it's important to consider all the factors related to the parents, the children and the grandparents.

JEANNE: Absolutely, and then the court making that contrary to the welfare finding would be great. And the documentation, just like the Federal Law, the Missouri Law requires these decisions be documented, the factual basis to be documented in the Division's file on how we handled this.

One other thing, when we're talking about lots of grandparents for placement for a kid, there's nothing greater than having lots of people that want placement, lots of relatives that want placement. You know the child is loved and there's the possibility of competing homes, especially grandparents. The law also provides that, like Christy said, the family support team wants to get all the information and make a decision on who they would recommend among competing grandparents and the law specifically states you take that to the court and let the court decide. So, like you said, the court will back you up in what you are doing, as long as you have a factual basis.

One thing to remember too is the team members may not always agree. Do they Christy?

CHRISTY: Not always, you might have one that might want a certain and another that might want something else. Especially when you get parent's attorney's involved, the Dad's parent attorney might obviously want placement with the paternal relatives and maternal would want with her relatives.

JEANNE: I think an important thing to do, is to respect the other family support team members' positions. But just as a Division, make sure we have a factual basis that supports our decision, that we're not just making a gut decision, that we've got some sort of factual basis and the statute requires us to document it in our files and that will be evidence to give the court to help the court make that decision. And if you're represented by DLS attorneys at the hearings that will give them information on which to help them present that information to the court which would be really important.

I thought your idea about moving the kid during the school year was a great idea because sometimes the court would probably make that contrary to the welfare finding to allow the child to finish out the school year. So, Christy's point is very

well taken. There's some flexibility allowed in the law for all the factual basis, as long as you have a good factual basis to help support your position is what it takes. You can't just say, "Oh, we don't want to do this". Have a reason for wanting to do what you want to do.

When we're talking about Relative Placements, the law supports that the court has to make specific findings that is contrary to the child's best interest to be placed with the relative and we need to be providing that information to the court. When we talk about Relative Placement, remember that relatives are defined within 3rd degree of consanguinity and you will find that on page 3 of your relative placement chart, along with the child welfare manual talking about whose eligible for guardianship subsidies at this time, because it makes sense that if you're going to place with a relative, the hopes would be that relative would be able to get adoption subsidy if that child could not be reunified or guardianship subsidy if they meet the relative requirements.

Lastly on the slide, there's a continual obligation to make those diligent efforts to locate, identify and place with a relative. If you take nothing else from this training, please remember, that there's no expiration date on relative placements and the child benefits greatly when we're looking for those relatives and trying to find them upfront. Because then you take care of those placement decisions and conflicts on the frontend of the case. If we're not looking for the relatives or not finding them and having problems, they will show up on the backend of the case when at the last minute relatives are coming out of the woodwork and want placement and you may have had the child in a foster placement for a number of months. This is where you kind of get into competing interest in the Missouri Statutes, because the relative placement law has no expiration date but in chapter 453, a foster parent who has placement for 9 months has what's considered a preference for placement for purposes of adoption. Now the court ultimately will decide where the child is placed and who adopts the child, but these are problems that come up when we're not dealing with finding the relatives early on.

CHRISTY: So, that's probably something if I have a situation like that, where I have a child that's been in a certain foster home for a significant period of time, there's bonding there and relatives come out later, that will be another case where I'll need to consider all the factors, right? The age of the child, the relationship of the child to the relative and then ultimately let the court decide when you've presented all the facts.

JEANNE: Absolutely. The thing to talk about there, too, is about when the child is not placed with a relative, all the way through the case, make sure you are notifying the court in the court report that you haven't been able to find these relatives or they're refusing to take placement and why. Then let the court make a finding on the record that it is contrary to the welfare for the child to be placed with the relative because there are no appropriate relative for placement and why they won't take the placement, then when the relative shows up at the backend of the case at the 9 or 12 month mark and all of a sudden wants placement, it may help you with all these other issues, but it's all the facts, all the law and the Children's Division alone does not have to shoulder the burden of proof on the relative placement. I think the courts need to be of some help and if you can get a finding from the court I think those are really important as you go through the case.

CHRISTY: Definitely and it's important to document on the child's CS1, all the attempts to locate relatives. If you get to the point where you're looking at terminating parental rights, the court will want to know what efforts you've made to locate relatives. Doing case reads across the state, that's something definitely underutilized, is that section under the CS1. When you're doing case reads it's really easy to be able to flip to that and see they did look for relatives but they weren't appropriate or the child is currently placed with a relative.

JEANNE: While we're on the subject, are there reasons sometimes why the Grandparents and other relatives don't want placement initially when it's offered to them.

CHRISTY: Sometimes they don't feel like they can take care of the child, maybe the child has significant behavioral or medical issues and they feel like they'd be able to take care of them. Some of them, it's financial and they just don't think they have the means to support the children or they might live in a home where they don't have a room for the child because we have licensing standards that they'd still be required to meet in regards to safety. Now some of the other licensing standards can be waved based on relatives, but ultimately, safety is paramount if they don't have a means to support that child then we want to look otherwise.

JEANNE: What if it's an issue, maybe not safety related, well it may be safety related, but what if they don't pass the home study? There is an issue and they can't pass the home study, do we just give them one shot at the apple or should we give relatives more than one chance?

CHRISTY: Well, not necessarily, because the child doesn't necessarily need to be in a licensed home. The court could order them to a particular placement, whether they are actually licensed or not, it just depends on the situations. So, a lot of these, we will be presenting information to the court and just letting them make a decision.

JEANNE: I think an important thing to remember too, is that our relatives of our families are probably in a lot of the financial shape as our parents. So sometimes if there's defect in the house or something that needs to be fixed. It may take them more than a couple months to get the money together to fix whatever needs to be fixed before they could pass a home study. But is there any reason why we couldn't allow contact and visitation and work on a relationship with the child in the meantime?

CHRISTY: Right. Definitely promoting that relationship, getting the visitation started, just as you would if transitioning a child from one foster home to the next. You want to be doing those pre-placement visits and letting them get to know each other so that the child will have a smooth adjustment to the placement.

JEANNE: What about talking to relatives? We need to be sure that we're explaining to relatives why it's important for them to take the placement early on in the case, right?

CHRISTY: Yes, because if they decline at the beginning of the case, we can't really promise that at the end of the case we'd be able to, because then you run into the competing laws. The child might be in a current placement for 9 months, at that time you're looking at the preference for placement law versus the relative placement law and it's just a very difficult decision to make. So, it's really important to get them involved from the beginning, it will be much better for the child, both with stability and wellbeing.

JEANNE: I think we've already had the conversation about confidentiality has changed because of these statutes. When we're talking to that relative we'll be explaining that child is in care but we're not necessarily going to violate any type of HIPAA laws related to drugs or alcohol or mental health issues that involve the parents. We're just going to explain the child is in care and let them find out from the parents or other relatives on why the child is really in care.

CHRISTY: OK, so let's talk about a situation where we have multiple kids that come into care and there are also competing placements available. These 3 particular kids that come into care all have the same mother but they have three different dads, so who would I place with in this situation if there is also Grandparents that want placement? Well the law says that basically you need to look at placing with a fit parent first so in this particular situation if maybe only one of the parents is actually fit to care for the child, then we would want to look at placing all 3 of the children with that fit parent. Even though, that parent isn't the biological parent to all 3. If for instance that parent only wants the child that's his, then we would look at the next law down which is the Sibling Placement law to keep the siblings together. So, the best situation in that scenario would be to place those 2 siblings with maybe a grandparent on either side, either maternal or paternal.

JEANNE: So, what you're applying is; in that situation, where the fit dad only wants his child, his constitutional rights would allow that child and the other 2 children would place together with a grandparent. Is that correct?

CHRISTY: Yes.

JEANNE: That makes sense.

CHRISTY: Then of course if you have the situation where they end up being split, for instance the dad of one child takes his child and the other 2 siblings are placed with a relative, you would want to make sure to maintain that visitation, if you couldn't do it in person then make sure you are doing phone contact, letters, anything like that to maintain that bond for them.

JEANNE: That's a good point because that's the other part of the sibling placement law isn't it? That if you can't place together that you're going to continue to work on that relationship.

Well let's look at the other Missouri laws at placement, regarding the child's preference for placement and I think you will find that on page 3 of the Relative Placement Chart. Basically, the statute says the GAL needs to the child and ascertain what their wishes are for placement but that's not necessarily going to trump the relative placement preference nor is it going to be considered the basis for a finding of contrary to the welfare of the child.

CHRISTY: So what if I have a child who's 15 years old and they refuses to be placed with his Grandparents, does that trump the grandparents right to placement?

JEANNE: No it doesn't. You have to follow the law, the GAL is going to have to talk to the child and find out why. If there is an actual factual basis that would support a contrary to the welfare finding, then the child would not have to go there, but without that, if it's just because the child doesn't want to go with that grandparent, the law does not say that will trump the statutory preference nor is it a basis for a contrary to the welfare finding.

CHRISTY: So what if I have to siblings that want to go with different relatives?

JEANNE: Good luck (laughs). You're in the same shape, the same law applies. The GAL would have to talk to each of the two kids and find out why and if there's no factual basis that would support a contrary to the welfare finding, then they are probably going to have to be placed together with the same relative.

Back to the slides. Let's take a look at kinship placement. The laws on relative placement don't talk about kinship at all. That's defined in policy and we will try to follow that kinship placement when we don't have relatives that will meet the standards for the placement. The only other thing that would trump that kinship placement is if the child has been in care before and there's a prior foster parent that knows the child. So once you get through all those laws on the relatives and you're looking at foster parents and kinship placement, again we are still trying to look at somebody for placement that knows the child, if the child has been in care before they are going to know a prior foster parent, you would try for that placement. If that placement doesn't work, then you could look at the kinship placements where they're not related.

CHRISTY: And that's kind of tricky too because I know some people think, "Well the neighbor who knows the child, who saw the child yesterday should get preference over a foster parent who hasn't really been involved with the child for over a year." So that's an important point to note that's a little different than what most people would think.

JEANNE: And that's in the law, if you look at the foster parent piece on this you will see that's sited in the law.

Lastly, the Foster Parent Placement, clearly on the front end of a case, if it's an emergency placement and we can't locate grandparents or other relatives within that three hour time period, we can go ahead and place with foster parents. But the law still requires a diligent search for relatives for placement, we can't just quit with the foster parent, we have to continue to do that.

In one of the alternative care training classes I did in the last few months, one of the circuit managers said that she and her staff have kind of changed the way they look at this relative placement piece. So even if the child is placed with foster parents, they're going to talk about how the concurrent plan is either going to be adoption or guardianship with a relative and they're going to make it clear to the foster parents that they're continuing to work and look for relatives until they are all ruled out and before they would change the concurrent plan or look at a foster parent for the concurrent plan.

CHRISTY: That's a really good plan to have because so often we place our kids in foster homes and they immediately think that, "Oh, I'm going to get to adopt this child", especially if it's a young infant and we want to make it clear throughout the life of the case that our concurrent plan is going to be with relatives, until they're all ruled out and if that's the case then we at that time will look at the foster parent as our concurrent plan.

JEANNE: I think it really is important, you're right. I think it means the conversations the workers have with the parents needs to be more than once on why kids need to be placed with relatives. They conversations we have with relatives needs to be more than once on why they need to take the placement when it's offered and why and then the conversation also needs to be had more than once with the foster parent that the concurrent plan will be adoption or guardianship with relatives until we've ruled the relatives out and that's probably fair to everybody. Then, of course, we are back to that "D" word, which is we want to document all those different conversations because from a legal stand point when things get sticky at the end of the case and everybody is wanting placement or wanting adoption or whatever for the adoption staffing, we would have evidence to support our position because we've documented all the different times we had these conversations. We put it in our court reports that we've had multiple conversations with them, ask the court to make a contrary to the welfare finding and then all of that will make it a little easier, if it's possible to make it easier on the back end when you end up in competing relationships.

Lastly, I think on the law section because then we're going to talk about factors, right, and all the facts that are involved in the case? But lastly on the law section we're going to talk about the Federal Notification Statute, it's really important and again, it's good concurrent planning because if you notify, as required by federal law, all the adult grandparents and other adult relatives of the child within 30 days that the child has come into care, then you're going to have all those relatives on the front end of the case to deal with them. Now there's an exception to family or domestic violence, I don't think it's explained any better than that, but I think what you're looking at is safety issues, if there is information you're not wanting to provide for a relative because of family or domestic violence issues. But I think those notification requirements; I think you probably mentioned them just as we have had this conversation throughout this training, that the notification requirements are they child has been removed from the parent's custody without going into a lot of detail, the explanation of the federal and state laws regarding relative placement and options lost if they don't respond and take the replacement when it available, the fact that we have to notify these relatives of the ability to foster and what services are available during that period of time and also for the availability of relative subsidy for guardianship. So, that's all involved in the notification piece.

CHRISTY: Okay, well now let's take a look at the factors a little bit more closely. We have a child who was removed from his mother, the father cannot be located, the mother's parents are divorced and remarried, the father's parents are divorced and remarried, all four sets of grandparents want the child for placement, and all four sets of grandparents have passed criminal history check and CAN checks and walk throughs of the home, now what would I do, where should I place the child. One thing that is important is to consider all the factors and we've talked about that throughout the whole training, the factors related to the child should be considered first; the age of the child, the culture and race of the child, if the child is more bonded to one set of the grandparents than the other, if the child has behavioral or medical issues, obviously if there is significant issues you want to make sure you place with the relative who is capable of working with those behaviors. The next think you want to look at is the factors

surrounding the fit parent, in this case we already explained that we can't find the parent but we are required to continue to look for that parent throughout the life of the case. You'd also want to look at the siblings; were they removed together, have they lived together, have they ever been adopted, the relationship between the siblings, all that stuff needs to be considered. Then finally the relatives; the background checks, the location of the relatives (we've talked about that), if your goal is reunification, which most of the time it is in the beginning of the case, you'd want to place with relatives who are close to where the reunification source lives, is the relative equipped to handle the child, what's the relative's commitment level to the child, are they thinking that they just want to keep the child for a few months and then mom will get the child back, we really want to place with relatives who are able to think long term. Because we know sometimes, reunification doesn't happen and these cases need to be more long term, so we want to make sure we get a relative who's really committed to working with that child.

JEANNE: So, Christy, my question to you is; does it really matter how far the apple falls from the tree?

CHRISTY: No, it really doesn't. Safety and wellbeing of the child are paramount. You need to make sure and look at all the factors of the case and make an informed decision.

JEANNE: Well, that's the end of the training, I'd like to thank Christy for her help today and thank all of you for your participation.