

Rediscovering Voluntary Relinquishment Practice

National AIA Resource Center



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Facilitator's Guide

Family Constellation Challenges- Resources

With the passage of 1997's Adoption and Safe Families Act (P.L. 105-89), finding permanent homes for foster children has received more attention than any time since the early 1980s. With new fiscal incentives and a renewed conviction that adoption is the best alternative for most children unable to live with their birth parents, child welfare agencies across the country are searching for new ways to minimize the length of time children spend in foster care and to maximize the number of adoptive placements.

One approach many public adoption agencies are trying is quite familiar to adoption practitioners from a generation ago - voluntary relinquishment. Simply defined, voluntary relinquishment is the act of surrendering one's rights and responsibilities as the parent of a child for the purpose of allowing that child to be adopted by someone else. While still quite common among agencies focusing primarily on infant adoptions, voluntary relinquishment as a means for ending parental rights and responsibilities of children in foster care fell into disuse throughout the country in the mid and late 1980s (Simmons, 1999). In its place, involuntary termination of parental rights became the typical route to making a child legally available for adoption. This article explains the benefits of using voluntary relinquishment to make children available for adoption and highlights some current variations in practice around the United States.

Why Voluntary Relinquishment?

In most cases of children who are removed from their parents for reasons of abuse or neglect, the families are offered a package of services geared to ameliorate the problems that lead to the removal so that the children can be returned home. When a return is not deemed appropriate or possible, the child welfare agency and the courts will select an alternate plan for the children's permanence. The most permanent alternative is adoption. However, in order for a child to be adopted by someone, the rights and responsibilities of the birth parents must be terminated. In most states, for a variety of reasons, termination of parental rights is handled through an involuntary process that takes place in court. The nature of the procedure varies widely from state to state. Typically, evidence is presented portraying the birth parents in a fairly negative light in an effort to demonstrate why adoption is the best plan for a child and the parents' rights should be terminated. The process is often humiliating for the parents and generally distressing for all involved.

Such a process is neither inevitable nor necessary. How much better it would be (and much more in keeping with the values of the social work profession) if instead the parent could be enlisted in planning for his or her child's permanence. Rather than viewing the parent as an impediment, the worker could instead see him or her as a partner with whom decisions can be jointly made to serve the child's best interests. If the service plan and the child welfare process have been well explained from the very beginning, a recommendation for adoption will come as no surprise to the parent when efforts to reunify have not been successful. The parent can then take responsibility for what happens next to his or her child and join in the process (to the extent possible) of moving the permanent plan forward to completion. A demeaning court



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hearing can thus be avoided and the parent can participate in preparing the child for the next stage in his or her life.

Again, this process is not new. Prior to the passage of P.L. 96-272, adoption workers routinely used this approach rather than petition the court for a finding that the parent was “unfit.” With the incorporation of stringent timelines for court hearings and the surge of new cases in the child welfare system in the mid- to late- 80s, the practice of voluntary relinquishments fell into disuse. A survey by AIA Resource Center staff (Simmons, 1999) revealed that policy makers, administrators, and social workers around the country were interested in seeing this practice revitalized. Some had already begun taking innovative steps to increase parental involvement in planning for the permanency of their children. Two of these strategies - mediation and family group conferencing - are highlighted below.

Mediation

Using a “parent empowerment” process, a model first developed in Oregon (Etter & Giovannini, 1988; Etter, 1997; Price, this issue) employs a four-stage mediation process. The four stages are “A Child’s Needs,” “Looking at Options,” “A Cooperative Adoption,” and “Letting Go.” The process introduces the birth parents to the idea of a cooperative adoption and helps them work through their own issues to arrive at a place where they can “let go.” Using a series of stories about both the children in care and their parents and their respective needs, the worker and the birth parents work through each stage by discussing a variety of issues. The stories serve to depersonalize the current situation while at the same time giving the worker and parents a point of departure to discuss it in a neutral manner.

The Oregon model emphasizes that this process is neither voluntary relinquishment counseling nor is it negotiation. It is cooperative adoption planning. It requires an effective partnership among parents, caseworkers, courts, mediators, and attorneys. The model requires an outside mediator (i.e., someone who is not an employee of the child welfare agency). This third party with no perceived interest in the outcome of the intervention is more likely to be trusted by the birth parent and to give the birth parent a sense of fair treatment.

Etter (1996) defined three keys to successful mediation. The first of these is choice. The essential players in the case have to have choices. If any of the players lacks choices, there is little or nothing to mediate. Part of the process of planning cooperatively is to determine what will work for the birth parents and what will work for the adoptive parents. Suggesting a range of options available to each gives the mediator room to work with the respective parties towards a successful agreement.

The second key to successful mediation is preparation. As always, informed decision making is fundamental to true empowerment. All the participants should be adequately briefed regarding the meaning, the implication, and the likely effect of the options with which they are presented. Etter (1996) suggested using educational groups with participants of prior mediations to help prepare the birth parents and using the home study social workers to help work with the prospective adoptive families.



The third key to a successful mediation is the use of a written agreement. In an earlier work, Etter (1988) itemized three essential elements of a cooperative adoption agreement: Future communication, contingency agreement, and invalidation.

Future communication

The frequency, type, and medium of future communication must be decided. Some arrangements provide for face-to-face contact, while others are limited to a letter and a current photograph of the child. Some agreements provide for a letter from the birth parent to the child as well. How often these communications will occur must also be specified, as should the medium of communication (i.e., will the parties communicate directly or through a third party, such as the placing agency).

Contingency agreement

The birth parents agree to name a guardian/adoptive parent in their will for the child and to specify that the award of guardianship can be made only if the prospective guardian agrees to abide by the terms of the cooperative adoption agreement.

Invalidation

A clause is typically inserted that relieves the adoptive parents of having to comply with the visitation and communication clauses if the birth parent assumes an adversarial relationship with the adoptive parents. However, if the nature of the conflict is the enforcement of the cooperative agreement, that is not construed to invalidate the agreement. Some (Simmons, 1999) would also include additional invalidation terms to protect the interests of the birth parents as well. If, for example, the adoptive parents renege on their agreement to provide visitation or an annual update on the child's well-being, the birth parents would have the right to pursue a civil action in court and collect damages against the adoptive parents.

Family Group Conferencing

Family group conferences are meetings of extended family (broadly defined to include fictive kin and other adults who have had a significant role in the child's life) and relevant professionals to discuss the well being of a child and to attempt to decide on an appropriate course of action. The practice of family group conferences apparently originated simultaneously in New Zealand and in Oregon in the 1980s. Marsh and Crow (1998) have identified four themes that underpin the family conference approach, two of which seem to have particular relevance to voluntary relinquishments: reducing or eliminating court time and adversarial procedures, and encouraging familial accountability and responsibility.

Many in the field of child welfare are concerned that "professional policies and practices designed to protect children can themselves be harmful" to the children and their families (Marsh & Crow, 1998). One can readily identify the increasingly adversarial nature of the juvenile court process and the all too frequent procedural delays in getting children through the courts and into permanent living situations as examples of problematic practices. These in



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turn suggest the need for different approaches to problem resolution for children and families that can bypass or expedite court proceedings. Family group conferencing provides the opportunity for eliminating much of the need for court time and therefore the possibility of adversarial encounters.

The second key theme is that family group conferencing encourages familial accountability and responsibility. Marsh and Crow (1998) express concern that over time, “policies and services have perhaps taken over functions and roles which were previously carried out by the family.” The extended family is seen as being capable of making good, well-reasoned decisions on behalf of one of their own members, and perhaps better positioned than the state to make and implement those decisions. The extended family is also seen as a resource and as a provider of resources and services that may be useful to the family in resolving the presenting problems. The extended family is viewed as working in partnership with the professionals to design a family service plan.

The conference

The conferences are constructed such that the family members can undertake serious, significant, and detailed discussions, both among themselves privately and with the relevant professionals, in order to reach some conclusion about what outcome is best for the child’s welfare. All parties receive some pre-conference preparation regarding the process and goals of the meeting.

The conference itself has three stages. In the first stage, full information is given to the family regarding the situation and the problems as assessed by the professionals. Time is provided for the family members to discuss the professionals’ assessment with them and to explore fully the available options and associated consequences. The second stage allows the family the opportunity to meet without the professionals being present. The family considers the information they have been provided, deliberates options, and discusses what help is needed from the family or from more formal service providers. In the third stage, the family meets again with the professionals and shares with them their discussion and decisions. At this point, the family members and professionals work together to construct and sign off on a mutually agreeable plan that will provide the needed care and protection for the child. If no plan is agreed upon, the participants can opt either to have a second conference or refer the matter on to the courts to decide.

Applications in the practice of voluntary relinquishment

The Family Group Conference model can appropriately be used at any of the key decision points in the course of a child welfare case. It may also be appropriate for the worker to introduce the idea of a voluntary surrender of parental rights for the family’s consideration at any stage. It is not difficult to envision any number of scenarios taking place.

Perhaps the birth parent wants to consider relinquishment, but is fearful of the family’s reaction. The Conference could prove to be the arena where this decision will receive unanticipated support. On the other hand, workers must be cautious that the conference might also

provide the arena for family members to voice fervent objections to the relinquishment option and may undermine whatever resolve the parent might have about proceeding in this direction. The worker must be prepared for any turn of events.

For those families for whom voluntary relinquishment is a new option, the Conference can provide the opportunity for the extended family to give their blessing to a decision which, while painful for all, might be considered the best step for the child and the birth parents. The Conference might also produce an extended family member willing to adopt the child, an option becoming more common and worthy of consideration (Hegar, 1993; Magruder, 1994).

Family conferencing offers child welfare workers a different route for introducing the voluntary relinquishment option while gaining the support of those most affected by the decision. This support, coupled with the knowledge that s/he acted affirmatively for her/his child, will help the parent face the difficult days after the adoption is completed.

Conclusion

In whatever form it takes, employing voluntary relinquishment to move children to permanence allows parents to be involved in deciding what happens to their children. It both affirms and empowers the parent, something completely lacking in court-ordered, involuntary termination of parental rights. When done well, it also provides the child with the birth parents' permission to move on and to make the connections necessary to become part of a new family. This is a welcome trend in child welfare practice.

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For a fuller discussion of policy and practice issues surrounding voluntary relinquishment, see the new AIA monograph, Voluntary Relinquishment of Parental Rights: Considerations and Practices, on which this article is based.

References

- Etter, J. (1996).
"Mediation for Permanency." Unpublished presentation to the Santa Clara County Division of Children and Family Services, December 11, 1996.
- Etter, J. (1997).
Mediating permanency outcomes: Practice manual. Washington, DC: Child Welfare League of America.
- Etter, J. & Giovannini, M. (1988).
Adoption mediation: Applying preventive conflict management to open-adoption planning. *Mediation Quarterly*, 21, 51-57.
- Hegar, R. (1993).
Assessing attachment, permanence, and kinship in choosing permanent homes. *Child Welfare*, 72, 367-78.



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Magruder, J. (1994).

Characteristics of relative and non-relative adoptions by California public adoption agencies. *Children and Youth Services Review*, 16, 123-131.

Marsh, P. & Crow, G. (1998).

Family group conferences in child welfare. Oxford: Blackwell Science Ltd.

Price, A. (1999).

Using child welfare mediation to expedite permanency. *The Source*, 9(2), 11-12.

* Simmons, B. (1999).

Voluntary relinquishment of parental rights: Considerations and practices. Berkeley, CA: The National Abandoned Infants Assistance Resource Center.

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