366.26 Hearing – Select and Implement Permanent Plan

in order of statutory preference (366.26(b)) & 727.3(b)

START HERE

CCE that child is likely to be adopted? 366.26(b)(1) & (c)(1)

yes? → Terminate parental rights & order child placed for adoption, subject to 366.26(c)(1).

and

If currently placed in a preadoptive home : Order a hearing to finalize the adoption or tribal customary adoption upon filing of adoption petition 366.26(b)(1) & (c)(1)

OR

If not in such placement, order adoption or tribal customary adoption as permanent placement goal and order efforts be made to locate appropriate adoptive family 366.26(b)(4)

UNLESS

Child living with a relative who is unable or unwilling to adopt because of specific circumstances but is willing and able to provide legal guardianship 366.26(c)(1)(A)

OR

The court finds that adoption or TPR is not in the best interests of the child.* 366.26(c)(2(B)

In those cases:

the court shall order that present caregivers or other appropriate persons become legal guardians, or if Indian child, consider tribal customary adoption. 366.26(c)(4)(A)

(See left side of this chart for info on pursuing guardianship or permanent placement with fit and willing relative)

no? → If Indian child: Has the child's tribe elected a permanent plan of tribal customary adoption (TCA) & provided court with tribal customary adoption order? 366.26 (e)(2)

yes? → Without terminating parental rights, order a hearing to finalize the adoption upon filing of adoption petition 366.26 (e)(2)

or

no? → Court must find that agency has made diligent efforts to locate appropriate relatives & that each relative whose name has been submitted has been evaluated as an appropriate placement resource FAM 7950(a)(1)

Is child residing with:

yes? → Current nonrelative caregivers willing & able to become legal guardians?

yes? → Order that present caregivers become legal guardians & order letters of guardianship 366.26(b)(5)

no? → Relatives willing & able to become legal guardians?

yes? → Appoint relative(s) with whom the child is currently residing as legal guardian(s) and order letters of guardianship 366.23(b)(3)

no? → Are there other appropriate persons willing & able to become legal guardians? 366.26(b)(5)

yes? → Order that other appropriate persons become the legal guardians 366.26(b)(5)

no? → Court choses to keep or dismiss dependency

no? → Is an appropriate relative who is not willing & able to adopt or be the legal guardian, willing and able to be the permanent family for the child?

yes? → Order a permanent plan of placement with fit and willing relative 366.26(b) Case remains open & is reviewed at every 6 mo. review hearing. A .26 hearing must be set at that hearing unless there is a compelling reason not to.

no? → Order that child remain in foster care subject to periodic review of juvenile court under 366.3 and identify a permanent plan of return home, adoption, tribal customary adoption, legal guardianship, or placement with a fit and willing relative, as appropriate 366.26(b)(7)

and

Make factual findings identifying any barriers to achieving adoption, tribal customary adoption, legal guardianship, or placement with a fit and willing relative as of the hearing 366.26(c)(4)(A)

and

Ask child age 10 or older to identify any individuals other than his/her siblings who are important to the child in order to identify potential guardians, or in the case of an Indian Child, prospective tribal customary adoptive parents 366.26(c)(4)(A)

If the court finds that TPR is not in the best interest of the child because of conditions in 366.26, legal guardianship or tribal customary adoption shall be considered before continuing in foster care under any other permanent plan, if it is in the best interest of the child and a suitable guardian can be found. 366.26(c)(4)(A)

Regardless of age of child, child shall not be removed from a home if court finds removal would be seriously detrimental to the emotional well-being of the child due to substantial psychological ties to caregiver (366.26(c)(4)(B)(ii))

*See TPR Bench Card for conditions necessary for finding TPR not in child's best interest 366.26(b)(2)(B)(i-vi)

See back side for permanent plan options for child continuing in foster care including plans for children age 16 and above and nonminor dependents