

Section Three: Special Needs Children and Legal Risk Placement: Open Or Closed Adoptions

In this section the resource family will learn:

- ☑ An understanding of the term “special needs” children
- ☑ An overview of “legal risk” placement and concurrent planning
- ☑ The differences between open and closed adoption

Special Needs:

As previously stated, children in foster care are victims of abuse or neglect, range in many different ages from birth to late teens, may come in sibling groups, and are frequently multi-cultural or bi-racial. Abuse can occur in many different forms including physical, and/or sexual abuse and neglect.



Some of the children available for adoption or guardianship may have pre-natal exposure to drugs or alcohol with some severely handicapped while others are mildly impacted. Children who have been abused often have special behaviors or physiological problems which require special parenting skills.

Due to the abuse some children have suffered, they are considered “special needs children”. Special needs occur in a wide range of behaviors, including medical, emotional, educational and social issues. These range from very mild to severe and every child is different. As a resource family, it is vital that you participate in case conferences (meetings) with the social worker to be appropriately prepared (or educated) and have full disclosure regarding a child you are considering as a permanent member of your home.

Clearly, while each child in the foster care system is different, and a unique set of special needs, these experiences are common to foster care children. As an adoptive or guardian parent, it is very important that you gain specific information about the child

you are considering. You should be given information about the child's medical, developmental, educational, psychological and family history in order to make an informed decision and determine if you are able to parent a child with mild or severe special needs. Your family will also need to decide if you are willing to adopt older children, sibling groups or younger children. The home study (or resource family assessment) is a process that also helps you to make a decision about what type of child and situation fits best with your family, unless your family has already been identified for a specific child.

Legal Risk Placement

A *legal risk* placement is one where the child is placed with a foster/adopt family before parental rights have been terminated. The case plan has identified the concurrent goal of adoption (and at the same time the state is making efforts toward reunification with the parent) and at times, the termination process has begun. The case should have received a critical review by a team whose responsibility it is to determine what the goal should be and if the child should be placed with a family that is potentially permanent. Placement of a child, with a concurrent goal of adoption or primary goal of adoption, with a family who is potentially permanent (and has an approved resource family assessment) is called a "legal risk" adoptive placement.

A foster/adopt family is selected for the child so that the child will not have to move again if the court does proceed to terminate the birth parents' legal rights. The foster/adopt family has been licensed for foster care and should have a completed approved adoptive home study (or resource family assessment).

Foster/adopt families (or legal risk adoptive families) are families who are primarily interested in becoming adoptive parents and are willing to become licensed for foster care in order to take a child who is not yet legally free but for whom termination of parental rights has been started or is planned. In these cases, OCS is working on two concurrent plans: reunification with the birth parents while also pursuing permanent placement should reunification efforts fail. Because parental rights have not yet been terminated, these placements carry with them some legal and emotional risk for the foster/adopt family. The court may decide not to grant OCS's petition to terminate

parental rights and order the return of the child to the birth parent(s) and/or give the birth parents additional time to correct deficiencies.

Different cases involve different degrees of legal risk. The prospective foster/adopt family should always ask the child's worker to carefully explain the circumstances of the child's legal situation to them. Foster/adopt families may also be called upon to have some degree of contact with the child's birth parents or extended family. Some children



may still be involved in visits with their birth parent(s). ***It is imperative that resource families are encouraging and supportive of visitation with the birth family.*** If you are a legal risk adoptive family and you feel that you can not tolerate contact with a birth family, you should explore with your home study writer, Alaska

Adoption Support Center staff, or your social worker to determine if legal risk is the right thing for you and your family. You can learn more about the importance of visitation and working with birth families in the Alaska Resource Family CORE training.

Foster Parent Adoption. Sometimes a family may begin as a resource family without any intention or desire to adopt a child. But if a child's plan for reunification fails and appropriate relatives are not found, the resource family may be asked to adopt a child in its care. This decision is totally up to the family and may require the consent of the child if he or she is over 10 years of age. In making your decision, please take into account how attached the child is to your family, how attached you are to the child, impact as a whole on your family and the stability your home may provide for this child if another move is not required.

Establishing permanence for a child can be a challenging process. A child's permanency should give them a sense of stability, predictability and identity. In establishing identity both connections and continuity are important. Connections refer to long-term and ongoing relationships with people who have a lifetime commitment to the child. Connections give children the sense of belonging to a family and stability in knowing that a family is there for them. Continuity refers to the child's ability to understand and make connections between the past, present and the future. Continuity

means knowing where one comes from, where one has been and gives the child a sense of where they may be going. Parents also need to understand the importance of their own cultures and thus understand the importance of keeping the child connected to their culture. This may mean relative or parental contact; connections with cultural and religious practices unlike yours; and with Alaskan Native families and relatives, if the child is a Native Alaskan child.

Sometimes children in foster care have had several moves and can not tell you where or with whom they have lived. Perhaps no one has kept pictures for them in a photo album or *life book* which illustrates who their family members are or how the child has grown and changed. As an adoptive parent, it is important to assist the child in keeping connected to their past. When an adoptive parent commits to the plan of adoption for the child they are becoming a part of the child's plan that defines relationships and encompasses goals for the future. The child and the adoptive parent need to have a plan for where they are going in life and who will help them get there.

Considering whether or not an adoption is "open or closed" is part of the future planning for adoption. Let's look at the differences between these kinds of relationships.

What are the differences between "open" or "closed" adoption and what is best for the adopted child and your family?

Open and Closed Adoptions

Some adoptions are called "*open*" and some adoptions are termed "*closed*". Open adoptions can take many forms. "Open" usually means that the child maintains some form of contact with the biological parents and/or their birth relatives. Open adoptions may allow the adoptive parents, and often the adopted child, to interact directly with birth parents. However, there is often a continuum of openness; openness can be varied with each case being different. It is important in any open adoptive relationship for family members to interact in ways that are appropriate, culturally relevant and account for any safety aspects regarding a specific case. It is vital that the adoptive family have as much information about the benefits of open adoption as possible. For many children open adoption can be a mechanism for dealing with past removal issues, such as grief and loss of a birth parent, and assist them to move on toward a productive

life. Open adoption facilitates identity formation and can provide a positive sense of self for adopted children, especially as they move into and out of adolescence.

In closed or confidential adoptions there is no identifying information exchanged and/or the birth parent, through the termination processes, may lose any right to receive continued information about their child, or have contact after the termination of parental rights has occurred.

Let's Explore Open and Closed Adoptions Further:

In open adoptions, communication may include letters, e-mails, telephone calls or visits. The frequency of contact ranges from weekly to perhaps once yearly. Sometimes adopted children actually visit and spend time in their birth parent's home; sometimes they receive only cards, pictures and letters. The frequency of contact ranges depending on the situation, but is always focused on a few goals.

The goals of open adoption are:

- To minimize the child's loss of relationships and assist them in understanding their own identity
- To maintain and celebrate the adopted child's connections with all of the important people in his or her life, including birth parents.
- To allow children to resolve losses with the truth regarding their birth family rather than fantasy about what life or a parent was like.

During the last several decades, there have been movements toward openness in adoption because research has shown that children (and families) do best when they know the truth and have questions answered about where they come from, why they were "given away", and what their birth family is like. Today, birth parents are empowered to have more choices and there stigma associated with single parenting. Also, the societal movement toward less secrecy and the honoring of diversity, including a variety of family structures, has allowed for greater acceptance in open adoption.



In Alaska, adopted people can contact the State of Alaska, Division of Vital Statistics to receive copies of original birth records when the adoptee reaches his/her eighteenth birthday. Birth parents, who choose to do so, may provide

vital statistics with information to be given to the child if the child ever contacts that agency for information.



Open adoption continues to be a source of discussion which is often based on philosophical differences and fear rather than empirical research. Existing research (Minnesota Texas Research Project <http://fsos.che.umn.edu/mtarp/default.html>) indicates the following points:

Many Fears Regarding Open Adoption Are Based On Myths:

- Parties in open adoption are NOT confused about their parenting rights and responsibilities.
- Children in open (fully disclosed) adoptions are NOT confused about who their parents are. They do understand the different roles of adoptive and birth parents in their lives.
- Birth mothers do NOT attempt to “reclaim” their children.
- Differences in adolescent adoptive identity or degree of preoccupation with adoption are NOT related to the level of openness in the adoption.
- Adoptive openness does NOT appear to influence an adoptee’s self esteem in a negative way.
- Adoptive parents in open adoptions do NOT feel less in control and have a greater sense of permanency in their relationship with their child.
- Open adoption does NOT interfere with adoptive parent’s sense of entitlement or sense that they have the right to parent their adopted child.

- ☑ Birth mothers in open and ongoing mediated adoptions do NOT have more problems with grief resolution. They show better grief resolution than those mothers in closed adoptions.

The level of openness in any adoption should be decided on a case by case basis. There is no one level of adoption openness that fits all families and situations. Each adoption has its own strengths, challenges and rewards.

Often, parents who voluntarily relinquish their legal rights do so because they are able to make arrangements “or stipulations” for continued contact (open adoption) after an adoption takes place. As an adoptive parent, you must understand the “stipulations” are actually conditions of a relinquishment and think about how those conditions could impact your family. If these conditions are not met by the adoptive family it would be possible for the birth parent to challenge the validity of the relinquishment later in court.

There are other factors that need to be considered in any open or closed adoption agreement.

Proximity to Birth Parents: For visitation to be a part of any open adoption agreement the birth and adoptive parents need to live in proximity to one another; or they need to have a plan in place for how continued visits can occur over time and distances. The more detailed this plan is the less likely it will be to have conflict later about the specifics of any agreement.

Major differences in life situations, interests and values also need to be considered in any open adoption agreement and how these differences may impact an open adoption agreement after the professionals are gone.

Relatives or friends who discourage contact or engage in behaviors that disparage the birth or adoptive parents need to be considered. Adoptive parents need to ask themselves if relatives and friends are a supportive resource or if they will interfere at a level that impedes the process. Any influences which are disparaging to the birth parents ultimately negatively impact the adopted child.

Adoptive parents need to think about how a change in the birth mother's situation, such as marriage or the birth of another child, will impact the adoptive child and family. Try to think about all of the pros and cons of this situation and actively brain storm possible scenarios when thinking about how open an adoption should be.

The comfort zone for the adoptive parents is also very important. Inability to negotiate a mutually agreed upon comfort zone, where safety of the child is considered, is one reason for decreased openness.

When To Consider Closed Adoption:

Any open adoption agreement should always be focused on the best interest of the child. If contact with birth family is stressful for the child and causes psychological trauma, then a less open or closed adoption should be considered. In some cases, especially those where parental rights have been terminated, maintaining a relationship with a birth parent may not be in the child's best interest. This is especially true if:

- A birth parent is unable to maintain appropriate relationship boundaries with a child due to severe mental health or emotional illness.
- There has been so much child abuse, neglect, or violence directed toward the child that any contact with the parent would result in the risk of further abuse or more traumas to the child.
- The adoptive family is at risk of danger due to threats or violence imposed by the birth parent.

Ultimately adoptive families should be working with their social worker or the adoption professional assigned to their family to determine how open or closed their specific adoption should be.



The staff at the Alaska Adoption Support Center/Alaska Center

for Resource Families encourages you to research this aspect of your specific adoption and to consult with your social worker; the AASC Family Support Specialist regionally located in your area may be able to give assistance; and for legal advice, your adoption attorney (if you have one) regarding areas concerning legal matters for your adoption.