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SUBJECT:

Permanent Legal Custodian Policy

BY:

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Families

SCOPE: COUNTY CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
COUNTY CHILDREN AND YOUTH ADVISORY COMMITTEES
PRIVATE CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
COUNTY CHIEF JUVENILE PROBATION OFFICERS
COUNTY CHILDREN AND YOUTH SOLICITORS
COUNTY CHILDREN AND YOUTH FISCAL OFFICERS

PURPOSE:

The purposes of this bulletin are to reiterate the guidelines and requirements for choosing permanent legal custodianship (PLC) as a permanency option for children who have been adjudicated dependent, or delinquent with shared case responsibility,, and for exercising the option to subsidize this permanency choice. This bulletin further introduces new legislation that allows states the opportunity to use federal funding to subsidize relative/kinship PLC caregivers in eligible cases. Although the new legislation refers to this program as the Guardianship Assistance Program (GAP), it will continue to be referred to as subsidized permanent legal custodianship (SPLC) in Pennsylvania. Lastly, the bulletin lists programmatic and eligibility differences between federal, State and county SPLC arrangements. Included are references to applicable federal and Commonwealth statutes and regulations.

REFER COMMENTS AND QUESTIONS REGARDING THIS BULLETIN TO:
Regional Directors

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BACKGROUND:

In 2000, the efforts of two work groups culminated in the issuance of the Office of Children, Youth and Families (OCYF) Bulletin 3130-03-01/3140-03-07. That bulletin provided guidelines for establishing PLC as a permanency goal, as well as procedures for the SPLC program. This bulletin rescinds and replaces 3130-03-01/3140-03-07.

Also in 2000, OCYF issued The Pennsylvania Standards for Child Welfare Practice (Practice Standards) in which special focus was given to the areas of Safety, Permanency, and Well Being. Currently, the Practice Standards are being updated by stakeholder work groups devoted to that purpose.

Meanwhile, on October 7, 2008, Former President George W. Bush signed into law the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections), (Public Law (P.L.) 110-351). This law made significant amendments to Title IV-B and Title IV-E of the Social Security Act, one of which allows states the option to implement a federally-supported relative guardianship assistance program. Other components of the new legislation provide incentives and additional resources which would allow the child and his or her family to achieve the goal of supported permanency while still maintaining close familial relationships.

For the purposes of this bulletin, distinctions are made for the use of the term "relative" versus "kinship/kin". These distinctions are based on the types of cases that can be claimed during specific time periods. These terms are further defined in the definition section of this bulletin.

STATUTORY AND REGULATORY AUTHORITY:

FEDERAL STATUTE:

1. The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) (P.L. 110-351)

This federal law made several significant changes to the Social Security Act including, for the purposes of this document, an option for each state to include in its Title IV-E state plan, a Guardianship Assistance Program (GAP) that would allow federal funding to support subsidized PLC for relatives when all eligibility requirements are met.

2. Adoption and Safe Families Act of 1997 (ASFA) (P.L. 105-89)

ASFA provides states with the tools and incentives, through statutory and regulatory requirements, to achieve the goals of safety, permanency, and well being for children and their families with a focus on timeliness. ASFA provides the impetus to dismantling the barriers to permanency that exists for children in placement, and for achieving timely permanency for these children. Refer to OCYF Bulletin 3130-01-01, entitled "The Second Revised Interim Implementation Guidelines for the Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89)".

3. The Multiethnic Placement Act of 1994 (MEPA)

MEPA requirements, along with those of the Interethnic Placement amendments to MEPA in the Small Business Job Protection Act of 1996, apply to foster care and adoption, and will apply to permanent legal guardianship as well. Child welfare agencies, both public and private, that provide or fund foster family care or adoption services may not:

- Deny any person the opportunity to become an adoptive or foster parent, or permanent legal guardian, on the basis of race, color, or national origin of the adoptive or foster parent, or permanent legal guardian, or the child involved; or
- Delay or deny the placement of a child for adoption or into foster care or into a PLC, or otherwise discriminate in making a placement decision on the basis of race, color, or national origin of the adoptive or foster parent, or permanent legal guardian, or the child involved.

STATE STATUTE:

42 Pa.C.S., Chapter 63. The Juvenile Act. The Juvenile Act was amended to comply with federal ASFA provisions.

Section 6351. Disposition of dependent child.

§6351 (a)(2). Provides for the court to transfer the temporary custody of a child found to be a dependent child to an individual, including a relative who, after study, is found by the court to be qualified to receive and care for the child.

§6351 (a)(2.1). Provides for the court to transfer permanent legal custody of a child to an individual, including a relative who, after study, is found by the court to be qualified to receive and care for the child. Visitation and child support is also addressed.

§6351 (e) Permanency hearings. Establishes a time frame in which the court shall conduct permanency hearings for the purpose of determining and reviewing the permanency plan for a child who is in substitute care.

§6351 (f.1) Additional Determination. Requires that the court determine if and when the child will be returned to the child's parent, guardian or custodian, placed for adoption and the county agency will file for termination of parental rights, placed with a legal guardian, placed with a fit and willing relative or placed in another living arrangement intended to be permanent in nature and approved by the court. A hierarchal order is also established.

Section 6357. Rights and duties of legal custodian.

Provides for the granting of custody of a child to a legal custodian and places certain rights upon that custodian, including the right to physical custody of the child, to determine the nature of the child's care and treatment. The custodian is prescribed the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child.

DEFINITIONS:

Custodian: A person other than a parent or legal guardian, who stands in *loco parentis* of the child, or a person to whom legal custody of the child has been given by order of a court.

Permanent Legal Custodianship (PLC): A permanency plan option for a child who is in the custody of the county agency, and who is placed in substitute care. PLC is a recognized permanency goal. Once custody of the child is awarded to a permanent legal custodian, the child is considered to have achieved permanency.

Relative: The definition of relative encompasses any relation by blood, marriage or adoption, which is within the fifth degree of kinship to the child. This includes great-great-grandparents and first cousins once removed (children of first cousins). **For federal claiming purposes, this definition applies to cases/agreements, whether existing prior to or developed during, April 1, 2009-September 30, 2009.**

Kinship/Kin: The definition of kinship/kin encompasses those relationships that fall under Pennsylvania's current definition of kin that exists in other areas of practice and policy. This includes existing relationships with a child that meets at least one of the following:

- Relative through blood, marriage (affinity), or adoption;
- God parent as recognized by an organized church;
- Member of the child's Indian tribe, nation or clan; or
- Individual with a significant, positive relationship with the child or family.

An individual with a significant, positive relationship with the child or family would be a person who knew the child or family prior to the execution of the PLC agreement. This may include relationships established with a teacher, current or former resource parent, etc. **For federal claiming purposes, this definition applies to cases/agreements, whether existing prior to or developed, as of October 1, 2009.**

Subsidized Permanent Legal Custodianship (SPLC): A permanent legal custodianship arrangement where a federal, state or county subsidy is provided to the custodian for the cost of providing care to a child.

DISCUSSION:

The intention of ASFA was to make state child welfare systems more responsive to the needs of the children and families they serve. A primary tenet of ASFA is that all children should live in safe and permanent homes. By establishing the federally supported SPLC option for states, Fostering Connections expands the availability of resources when considering PLC as a permanency option for children, while simultaneously recognizing the value of kinship relations. ASFA contains several key principles relating to permanency which include:

- Substitute care is a temporary setting and not a place for children to grow up;

- Permanency planning begins as soon as the child enters substitute care;
- The practice of concurrent planning is encouraged to facilitate the timely consideration of all permanency options;
- Achieving permanency requires timely decisions from all parts of the child serving system; and
- Innovative approaches are needed to produce change.

PLC has both advantages and disadvantages that should be weighed carefully when establishing a permanency plan for a child.

The advantages of PLC include:

- Provides a long-term stable environment for the child;
- Allows a child to strengthen an established relationship;
- Assists in establishing and maintaining family connections;
- Provides legal recognition to a *de facto* parental figure;
- Promotes attachment and bonding to an adult; and
- Reduces county agency involvement as the court may order that there is no need for continued agency intervention.

The disadvantages of PLC include:

- PLC does not provide the same level of permanence to the relationship, as does adoption;
- The child and custodian may view the relationship as less of a commitment;
- PLC, especially when the custodian is kin, may discourage parents from rehabilitation; and
- The court may retain jurisdiction of the case with continued agency involvement.

POLICY AND PROCEDURES:

Child welfare professionals recognize the critical role that permanency planning, including concurrent planning, plays in achieving timely permanency for children in substitute care. In establishing permanency goal plans, workers follow the hierarchy of preferred goals as specified in §6351 (f.1) of the Juvenile Act. At each permanency hearing, the court must determine the permanency goal "best suited to the safety, protection and physical, mental and moral welfare of the child". The first preferred permanency option for children is to return to the home of the parent, guardian or custodian from whom they were removed. Only when the court has determined that reunification is not 'best suited' will the next preferred option of adoption be considered. If adoption is similarly 'ruled out' by the court as a viable permanency option for a child, the agency must next consider PLC. (*Note: PLC may not be used to avoid transracial adoption when the adoption is best suited to meet the child's protection and physical, mental and moral welfare.*)

PLC is an available option for a child to achieve permanency. While it is not appropriate for all children, especially very young children, PLC may serve other children very well. For those children with strong bonds to parents who are unable to

care for them, due to ongoing physical or behavioral health issues, or for older children who have been appropriately counseled about adoption, and remain adamantly against it, permanency through placement with a permanent legal custodian may be the most optimal consideration, especially when the custodian is a relative, allowing the child to remain in his or her family system.

Parental consent is not required for a PLC and parental rights need not be terminated. When appropriate, the parent should be involved in the development of the child's placement, permanency and visitation plan as well as financial support. (*Note: Family Group Decision-Making or a similar family engagement model would be appropriate.*)

Prior to ASFA, a child for whom reunification and adoption were not possible might have been placed in 'long term foster care'. Now, when a child has developed a strong bond with a caregiver, PLC offers an opportunity for the relationship to be formalized by the court, with the expectation that the child remain with that custodian, without continued agency intervention, until the child reaches the age of 18.

The following section of the bulletin contains the requirements that must be met, the responsibilities of the county agency, as well as the guidelines to follow in determining whether a PLC arrangement is an appropriate permanency option for the child, regardless of whether the arrangement will be subsidized. The subsequent SPLC section will address the additional requirements that must be met to provide a subsidy.

PERMANENT LEGAL CUSTODIANSHIP

CHILD ELIGIBILITY REQUIREMENTS:

PLC must be determined on a case-by-case basis. As noted above, PLC may be more appropriate for an older child who has strong ties to his/her family, and less appropriate for a younger child, as it does not provide the permanence of adoption. Children, such as those who are medically fragile or have other special needs, should also be considered for PLC placement. PLC may be considered appropriate for a sibling group to ensure that family connections are preserved. A child is eligible for the goal of PLC placement when the conditions outlined below have been met:

- The child has been adjudicated dependent, or delinquent with SCR, cannot return home and the goal of adoption has been appropriately ruled out. There must be a compelling, thoroughly documented reason that the goal of adoption does not serve the child's physical, mental or emotional health, safety or morals in order for the Court to rule out this goal.
- The child, age 12 or older, refuses to consent to adoption and has participated in adoption preparation counseling¹ to the extent that the child understands the

¹ "Adoption counseling" should involve intensive work with the child by a trained child preparation worker. The agency may refer a child for child preparation services through the Statewide Adoption and Permanency Network (SWAN), or provide its own trained personnel. The agency should be prepared to offer documentation of this required counseling to the court so that the court may appropriately 'rule out' adoption.

implications of his/her refusal to be adopted. Pennsylvania's Adoption Act (23 Pa. C.S. §2711(a)(2)) requires the child to consent to the adoption if the child is 12 years of age or older and capable of consent. *(Note: Fostering Connections requires that children 14 and older be consulted regarding the PLC arrangement in order to be eligible for Title IV-E. While consultation is not a Title IV-E requirement for children ages 12 and 13, this age group must be consulted in order to be compliant with state law.)*

- The child, under the age of 12, for whom adoption preparation counseling has been provided, but who remains opposed to adoption, and for whom the court has made the determination that adoption is not in the child's best interest.
- The child's parents' rights have been terminated, but the permanency plan of adoption is no longer an option; *(Note: termination of parental rights is not required for a child to have the goal of PLC.)*
- The treatment/services being provided to the child's parents cannot, or are unlikely to, remedy the specific condition which led to the child's removal, for a timely safe reunification.
- When a child initially enters care, he or she must be in the custody of a county agency at least six months, and must have had at least one permanency hearing prior to the court's determination that a PLC placement is the most appropriate permanency goal for the child. The six-month time frame insures that the county agency will have requested at least one permanency hearing for the purpose of proposing a goal change to PLC placement, while still allowing the child to achieve expedited permanency. *(Exception: if the court makes a determination that aggravated circumstances exist and the child is a dependent child, a permanency hearing may be held within 30 days. If the child is living with the identified custodian, and lived with the custodian at least six months between time spent in formal kinship care, and the time prior to entering county custody, a PLC placement may be expedited, if adoption is 'ruled out' for the child.)*
- When a child has been in foster care, returned home and re-entered foster care with a prior caregiver, within six months of the return home, if the child re-enters care *for the same reasons* as the previous entry, a change of permanency goal to adoption or PLC may be sought without waiting for another six months of placement to pass. Time spent with the approved caregiver during the first placement will 'count' towards the required six months.
- A child must have lived, or be living, with the identified custodian for a total of six months, which need not be consecutive, prior to the court ordering PLC. Particularly in cases in which the child has not lived with the identified custodian recently, best practice would dictate that the child should be living with the identified custodian for a period of time prior to the PLC order to insure that the living arrangement will meet the child's needs, and to provide opportunity for the agency to offer appropriate transitional services.

PERMANENT LEGAL CUSTODIAN ELIGIBILITY REQUIREMENTS:

In order for the county agency to recommend to the court a particular individual as a PLC candidate for a child, the child must have lived with the individual for at least six months and, preferably, be currently living with the candidate. These need not be six consecutive months, and the individual need not have been an approved resource

home for the child the entire time. (*Exception: if federal SPLC is being considered, it must be six consecutive months, and the individual must be a formal resource parent who meets the definition of relative/kin.*)

Given that the child must be in the custody of the county agency, the child should be in an approved resource home for at least six months prior to the establishment of PLC as a permanency goal. The PLC candidate may be the individual serving as the formal resource parent for the child, or may be an individual with whom the child lived for six months prior to coming into agency custody who is now willing to become an approved resource home for the child, or there may be some combination of informal and formal care by the prospective PLC resource that equals six months. PLC candidates who are not currently approved will need to meet the guidelines established in the Emergency Caregiver Bulletin, OCYF Bulletin 3140-03-08/3490-03-04, or the Kinship Care Policy Bulletin, OCYF Bulletin 00-03-03 before the child can be placed with them. The following guidelines apply when a person seeks to become the PLC resource for a child, and should be considered when determining if the individual is "qualified to receive and care" for the child:

- Should more than one qualified individual be a PLC candidate for the child, for example, a relative with whom the child is not currently living, but who is working to become an approved home for the child, and a non-relative foster parent with whom the child has been living for at least a six month period, the court may evaluate the PLC candidates on an equal basis and award custody based on a disposition best suited to maintain the child's safety, permanency and well being;
- Prospective candidates, including kinship resources, must have a thorough understanding of the benefits of adoption over custodianship;
- Prospective candidates must be willing to accept legal responsibility for the child; and
- Prospective candidates must be willing to make a permanent commitment.

PERMANENT LEGAL CUSTODIAN RIGHTS AND DUTIES:

Once the custodian has been awarded legal custody of the child, he or she is expected to provide a safe and permanent home for the child. The following are the custodian's rights and duties to the child:

- Legal and physical custody of the child;
- Determine the nature of care and treatment of the child, including ordinary medical care (42 P.S. §6357 Rights and duties of legal custodians);
- Provide for the care, protection, training and education, and the physical, mental, and moral welfare of the child;
- Abide by any visitation plan sanctioned by the court for the child to visit with parents/siblings/extended family;
- Make other decisions on behalf of the child including:
 - Child's travel,
 - Child's driver's license,
 - Marriage, and
 - Enlistment in the armed forces.

- Petition for child support from the parents in non-subsidized PLC cases if they choose (See 23 Pa.C.S. 4321 et al and 42 Pa.C.S. 6351 (a)(2.1)). (*Note: in SPLC cases, the custodian needs to discuss this step with the county agency issuing the subsidy payments. The county agency maintains the right to continue as the plaintiff for child support in SPLC cases in order to help offset the cost of the subsidy that is paid to the custodian.*); and
- Pay their own legal expenses related to a parent's request to change custody or visitation, or to a later decision to adopt the child. The county agency will not provide legal counsel to any custodian who becomes a party to such legal matters.

COUNTY AGENCY OPTIONS FOR PROVIDING PERMANENCY SERVICES:

County agencies have the following options when providing permanency services to children in substitute care. These options may be used exclusively, or in combination, to determine the most optimal deployment/conservation of county agency resources. These options include the following:

- Provide permanency services directly with county agency staff; and/or
- Make referrals to the SWAN Prime Contractor for units of services.

SWAN Program Components:

OCYF Bulletin 3350-03-01, entitled "Statewide Adoption Network (SWAN) Policies and Procedures", expanded the scope of permanency services to include availability to children in substitute care for whom PLC placement is a prospective permanency option. Those children are eligible for child profile, child specific recruitment and child preparation services. The following child categories may be serviced through SWAN:

- Children in the legal custody of county agencies whether or not they have a court-ordered goal of adoption; and
- Children in need of post-permanency services. These services are available through the SWAN Prime Contractor, and are subject to the availability of funds designated by the Department for post-permanency services. Post-permanency services may also be provided by the county agency, and funded through the Needs Based Plan and Budget process.

Eligible families are those applicants who express an interest in providing permanency for children who meet the criteria identified above and are approved in accordance with the Commonwealth's requirements. Permanency includes placement with a permanent legal custodian.

COUNTY AGENCY RESPONSIBILITIES RELATING TO PLC:

The county agency is responsible for ensuring that the following actions occur and must maintain documentation of such actions:

- PLC candidates are informed of the availability of this permanency option, as well as the availability of a subsidy payment for those custodians who meet the specified federal, State or county SPLC requirements as outlined in this bulletin; (Attachment A shall be utilized for this purpose.)
- Compelling reasons exist that make PLC placement the permanency goal best suited to the child's physical, mental or emotional health, safety or morals;
- Compliance with guidelines set forth in the SWAN Bulletin, if permanency services were provided through a referral to the SWAN Prime Contractor;
- A petition has been made to the court for a change of permanency goal for the child to PLC placement;
- Appropriate evidence has been presented to support this recommendation to the court, including documentation of counseling efforts with the child and PLC candidate;
- Training and support services to assist with the transition to a more permanent relationship are provided to the custodian and the child, both those who are living together through formal kinship care or resource family care, and those who haven't lived together recently;
- The case record must contain supporting documentation for each child:
 - How the child meets the eligibility requirements;
 - The steps taken to determine that reunification or adoption is not appropriate;
 - The efforts made to discuss adoption with the PLC candidate and the reasons why it is not an option, (a referral for family preparation services through SWAN should be considered);
 - The efforts made to discuss the planned PLC arrangement with the child's parent(s) or the reasons why efforts were not made, (use of a Family Group Decision Making model or similar family engagement model is recommended);
 - The reasons why PLC and, if applicable, receipt of a subsidy are in the child's best interest; and
 - If the child is separated from siblings during placement, the reasons why and the plans to maintain sibling connections.

COURT PROCEDURE AND DOCUMENTATION:

The county agency shall request the Juvenile Court to make the following findings when considering, and then ruling, that the child's permanency goal should be changed to PLC, in accordance with §6351 of the Juvenile Act (relating to the disposition of dependent child):

- That reasonable efforts to return to the parent, legal guardian or custodian need not be made and that reunification is not an option for the child;
- That compelling reasons exist why adoption is not an appropriate permanency goal for the child;
- That the child's permanency goal be PLC, and that this goal is best suited for the protection and physical, mental and moral welfare of the child;
- That, after home study, the prospective PLC candidate(s) is/are qualified to receive and care for the child;

- That, if applicable, a visitation plan with parents, siblings, and extended family has been established, subject to approval by the court; and
- That continued county agency involvement has or has not been determined necessary and appropriate.

Court orders should have standard language addressing the custodian's rights and duties relating to the physical custody, medical care, authority to make educational decisions and the signing of all educational plans including individualized education plans, and to make other decisions on behalf of the child as outlined in this bulletin.

COUNTY AGENCY RESPONSIBILITIES FOLLOWING TRANSFER OF CUSTODY:

Once the court has awarded custody to a permanent legal custodian, the child is no longer considered to be in foster care. The county agency may find it necessary or appropriate to support the success of the PLC arrangement through referral to community-based or prevention services.

The court or the county agency may determine that the child and custodian continue to need services in order to assure the success of the PLC arrangement, to ease the transition from agency custody and to sustain the placement as a viable permanency placement for the child. In this case, the county agency may continue to provide in-home services as it would with any other family in need of such services. As with any other in-home case, all applicable regulatory and statutory requirements would apply to these cases.

PARENTAL RIGHTS AND DUTIES:

If parental rights have not been terminated when a PLC arrangement occurs, the agency should discuss the permanency plan with the parents, including the anticipated benefits to the child. That discussion should include informing them of the specific rights and duties that remain with the parents, including those outlined below, unless otherwise specified by the court.

- The right to visitation when it does not affect the health and safety of the child;
- The right to petition the court for custody of the child;
- The right to pass on property to the child; and/or
- The duty to pay child support (See 23 Pa.C.S. 4321 et al and 42 Pa.C.S. 6351 (a)(2.1)).

VISITATION:

PLC placement allows interaction between a child and his/her family as determined by the court. The Juvenile Act, (42 Pa.C.S. § 6351(a) (2.1)), requires the court to "refer issues related to ... continuing visitation by the parent to the section of the court of common pleas that regularly determines ... visitation." However, the Juvenile

Court should address this issue to the extent it impacts the permanency goal of PLC, prior to transferring custody from the county agency to the custodian. If parental rights have not been terminated, parents have the right to visit the child, unless the court has ruled that continued visitation is not in the child's best interest. The county agency should review the visitation history and parameters as addressed in the current child permanency plan (CPP), and make recommendations to the court accordingly. In developing a recommended visitation plan for the court's approval, the county agency should consider the following when a goal of PLC placement is being recommended:

- The visitation plan should give priority to the child/custodian relationship;
- A visitation plan should support the child's relationships with parent, siblings and extended family members;
- A visitation plan should be based on the child's need to see his/her parents, siblings and family and on the parents'/family's ability to be supportive of the child/custodian relationship and the intended permanent nature of the situation;
- The parties to develop the initial plan should include:
 - Parents,
 - Current/prospective caregivers,
 - Children who have capacity to contribute based on their age, maturity, mental and emotional condition, and
 - Others determined to be important in the child's life (extended family, private agency, caseworkers, guardian ad litem, etc.).
- Visitation arrangements should change as the needs of the child and the custodian change. Parents and custodians should be aware of their options when they are unable to agree upon changes to the court-approved visitation plan (e.g. mediation or returning to court); and
- Information in the visitation plan shall include:
 - Identifying information of persons to be included in the visits,
 - Dates for which the plan is effective,
 - Notice of a visit or changes to planned visitation,
 - Agreed upon rules which address any safety issues and whether visits must be supervised (e.g., no use of drugs or alcohol),
 - Visit frequency,
 - Visit length and time,
 - Transportation arrangements, and
 - Visit activities.

The court should notify the county agency if the child's parents petition for a change in visitation or custody of the child.

EDUCATION:

Once the custodian has been awarded legal custody of the child, he or she has the duty to enroll the child in school pursuant to 24 P.S. §13-1327. It is expected that all school-age children will attend school full-time. However, through the new federal Fostering Connections law, agencies are now required to assure that any school-age child, for whom a federal subsidy is made, is a full-time student or is incapable of attending school due to a documented medical condition. This requirement is

addressed on the annual evaluation form which is Attachment C of this bulletin. When a child in substitute care requires special education services, a "surrogate parent" must be appointed pursuant to federal special education regulations as the child is a "ward of the state", (34 C.F.R. §300.515(a)(3)). 34 C.F.R. §300.20 (a)(2) includes 'guardian' in the definition of 'parent' unless the child is a 'ward of the state'. A child who has been placed with a permanent legal custodian, is not in the legal custody of the county agency, and is not a 'ward of the state'. Since the authority of a legal custodian to choose the child's educational program is provided in the Juvenile Act, and since federal regulations include 'guardian' in the definition of 'parent', court orders appointing permanent legal custodians may, but do not have to, address this issue by stating that the custodian is also the child's guardian for educational matters. Custodians, like parents and surrogates, may receive support services, including parent training activities.

OCYF bulletin 3130-10-04 entitled "Educational Stability and Continuity of Children Receiving Services from the County Children and Youth Agency (CCYA) Including the Use of the Education Screen" clarifies the responsibilities of CCYAs regarding educational stability and continuity for all children receiving services from a child welfare agency. CCYAs should refer to this bulletin to better understand the educational rights of children and to enhance the protection of the educational rights for all children receiving services from the county children and youth agency through the introduction of, and mandated implementation of, an Education Screen.

SUBSIDIZED PERMANENT LEGAL CUSTODIANSHIP (SPLC):

The SPLC program provides a subsidy to the eligible permanent legal custodian for the adequate care of the child. For the purposes of this bulletin, the term 'SPLC' encompasses subsidized funding from three possible funding streams: federal, state and county.

Complete descriptions of each option, along with the requirements and guidelines that must be met in order to provide a subsidy payment to the permanent legal custodian, are thoroughly explained in the following section.

NON-RECURRING EXPENSES:

As a result of programmatic requirements in the Fostering Connections law, federally-subsidized custodianship cases will be eligible for non-recurring expense reimbursement. To be consistent, Pennsylvania will also offer non-recurring expense reimbursement as part of its State subsidy program. The eligibility requirements for both federal and State non-recurring expense reimbursement are the same as the federal and State SPLC requirements and are enumerated below.

Non-recurring expenses are the reimbursement of reasonable and necessary costs incurred by the PLC candidate for expenses directly related to obtaining legal custodianship of a child. These expenses must have been incurred in compliance with federal and state laws and not be reimbursed from other sources or funds. Nonrecurring expenses include, but are not limited to:

- Court costs;
- Attorney fees;
- Health and psychological examinations and consultations;
- Transportation;
- Criminal background checks; and
- The reasonable cost of lodging and food for the child and the custodian(s) when necessary to obtain legal custodianship.

Legal custodians can receive up to \$2,000 per child for actual expenditures incurred related to non-recurring expenses while obtaining legal custodianship. (For example, if they obtain legal custodianship of two children, they can receive up to \$4,000). County agencies may not opt to create policy that limits reimbursement of these expenses at a lower amount. County agencies are also prohibited from limiting any of the expense categories available to families under nonrecurring expenses. For county subsidized permanent legal custodianships, the reimbursement of nonrecurring expenses is optional.

FEDERAL SUBSIDIZED PERMANENT LEGAL CUSTODIANSHIP:

When considering a subsidy, the county should first determine the child's and custodian's eligibility for federal SPLC as the requirements are more restrictive. The federal share of the subsidy is calculated using the Federal Financial Participation rate with the remaining amount paid by the state at a rate of 80% and the county at a rate of 20%.

The federal SPLC program provides subsidy support to *relative/kinship* permanent legal custodians to enable them to provide ongoing adequate and appropriate care for the child. Below are the eligibility criteria relating to the permanent legal custodian and the child for whom the subsidy is received:

Child's eligibility:

- Must have been eligible for Title IV-E foster care maintenance payments for six (6) consecutive months while in placement with the relative/kinship caregiver²;
- Must have been in foster care with the relative/kinship caregiver who meets all of the federal SPLC candidate eligibility requirements for at least six (6) consecutive months during the current custody episode;
- Must have a strong bond with the relative/kinship caregiver; and
- Must have been consulted if age 14 or older; (*Note: Fostering Connections requires that children 14 and older be consulted regarding the PLC arrangement in order to be eligible for Title IV-E. While consultation is not a Title IV-E*

² In order to meet this requirement a child must have met all of the Title IV-E eligibility requirements including but not limited to: removal pursuant to a voluntary placement agreement or a legal finding that remaining in the home was contrary to the child's welfare and all Aid to Families with Dependent Children (AFDC) relatedness criteria must be met (citizenship, removal from specified relative, deprivation, etc.). While the Act does not require Title IV-E foster care maintenance payments to have been made on behalf of the child during the six-month timeframe, it does require that such a child meet all Title IV-E foster care maintenance payment eligibility criteria.

requirement for children ages 12 and 13, this age group must be consulted in order to be compliant with state law.)

Or

- Must be a child who is in county custody, who is the sibling of an eligible child and who is placed in the same custodian home. It is not necessary for the child to be placed simultaneously with their eligible sibling to meet this requirement. Siblings do not have to meet the eligibility criteria listed in the first four bullets to receive Federal SPLC payments or for the legal custodian to be reimbursed for the nonrecurring expenses related to costs of the legal custodianship.

Federal SPLC Candidate eligibility:

- Must be an approved resource home, having met all of the requirements of Title 55 Pa. Code Chapter 3700 regarding foster family home approval, and not be on provisional status;
- All clearances required for ongoing home approval must be up-to-date; and
- Must meet the definition of "relative/kinship".

STATE SUBSIDIZED PERMANENT LEGAL CUSTODIANSHIP:

Should the requirements not be met for Federal SPLC, the State SPLC option, which is broader in scope, should then be considered. The funding for the state subsidy is comprised of 80% state and 20% county/local. Below are the eligibility criteria for the child and State SPLC candidate along with a few scenarios of when a household would meet the State SPLC guidelines:

Child's eligibility:

- Must have lived, or be living, with the identified custodian for a total of six months, which need not be consecutive, prior to the court ordering PLC. Particularly in cases in which the child has not lived with the identified custodian recently, best practice would dictate that the child should be living with the identified custodian for a period of time prior to the PLC order to insure that the living arrangement will meet the child's needs, and to provide opportunity for the agency to offer appropriate transitional services.

State SPLC Candidate eligibility:

- Must meet all of the requirements of Title 55 Pa. Code Chapter 3700 regarding foster family home approval;
- All clearances required for ongoing home approval must be up-to-date; and
- If already an approved resource parent, must not be on provisional status.

Scenarios: A family would be eligible to receive a State, but not a federal, subsidy if:

- (1)
 - All State SPLC candidate and child eligibility requirements have been met.
 - A Title IV-E eligible child has been living with a relative/kin for six (6) *non-*consecutive months.
- (2)
 - All State SPLC candidate and child eligibility requirements have been met.
 - A Title IV-E eligible child has been living with a *non-relative/non-kin* for six (6) months, which need not be consecutive.
- (3)
 - All State SPLC candidate and child eligibility requirements have been met.
 - A child *not eligible* for Title IV-E has been living with a relative/kin for six (6) months which may or may not be consecutive.

NOTE: The scenarios are not intended to include all the possible situations for which a SPLC candidate may be eligible for a State subsidy; instead they are intended to provide examples of the types of scenarios that may be encountered more frequently.

COUNTY SUBSIDIZED PERMANENT LEGAL CUSTODIANSHIP:

Lastly, in those cases in which a court orders a SPLC arrangement with a PLC candidate who does not meet eligibility requirements, the only subsidy possible is one at the county level and must be 100% funded by the county. Federal and State participation are prohibited.

COUNTY AGENCY RESPONSIBILITIES REGARDING SPLC

The county agency must take the following actions, and maintain documentation of such actions, in order to claim Federal and/or State reimbursement for applicable portions of any subsidies paid to SPLC caregivers:

- If the SPLC candidate requests a subsidy, a written response must contain a statement advising of the decision made regarding the child and candidate's eligibility to receive a Federal and/or State subsidy, the basis for that decision; and the candidate's appeal rights, if applicable;
- Negotiate a subsidy amount that is appropriate to the child's needs and the SPLC candidate's circumstances;
 - Criteria for the SPLC candidate, such as residence or a means test designed to exclude candidates from receiving subsidy payments or other benefits on behalf of an eligible child, may not be used.
 - The amount of the subsidy may not exceed the foster care maintenance payment, which would have been paid to a resource parent, if the child for whom the subsidy payment is made were living in a resource family home.
- Fully execute the subsidy agreement prior to the legal establishment of PLC and provide the SPLC candidate with a copy of the agreement including the process

for requesting a change to the subsidy amount by either party, and include all applicable appeal rights;

- Conduct an annual evaluation to ensure and document any changes in the needs and circumstances of the child and the permanent legal custodian; and
- Issue written notice to the permanent legal custodian following the annual evaluation, if the agency wishes to renegotiate the subsidy amount, based on information provided.

EXECUTION OF THE SPLC SUBSIDY AGREEMENT:

The county agency must make a written determination regarding child eligibility and SPLC candidate eligibility prior to the execution of the SPLC subsidy agreement (Attachment D). The agreement must be signed prior to the legal establishment of PLC. Subsidy payments may begin on the date by which all of the following are accomplished:

- The permanency goal for the child has been changed to PLC;
- The case record documentation discussed on page 10 has been completed;
- All child and SPLC candidate eligibility as well as subsidy requirements have been met and all parties have signed the agreement; and
- The Juvenile Court orders PLC and transfers custody to the SPLC candidate.

SUBSIDY AGREEMENT REQUIREMENTS:

The purpose of the subsidy payment is to enable the custodian(s) to provide appropriate care and support to meet all of the needs of the child. The subsidy agreement is a written, legally binding document, signed by the county agency director or designee and the SPLC candidate. A copy of the custodian's appeal rights must accompany each agreement and any annual evaluation. The subsidy agreement sets forth the terms of the subsidy (Attachment B) as well as specifies:

- That the amount of the subsidy may not exceed the foster care maintenance payment which would have been paid to the foster/resource parent, if the child for whom the subsidy payment is paid, remained in foster care;
- The dollar amount of the subsidy;
- The payment schedule;
- The effective date of the agreement;
- That the amount of the subsidy is based on the child's needs and the circumstances of the custodian(s), and as such the subsidy may be adjusted periodically with the concurrence of the custodian(s)³;

³ There are two exceptions to this stipulation. The first occurs when the child receives state subsidy and Supplemental Security Income (SSI). In this situation, the county must automatically reduce the child's subsidy by the amount of the SSI. The second exception occurs when the child re-enters care, at which point the amount of the subsidy should be re-negotiated to a lower amount as long as the custodians continue to be actively involved in reunification efforts for the child. The re-negotiated amount should take into account costs incurred by the custodians related to engaging in active reunification efforts including, but not limited to travel costs, telephone contact, sending care packages or providing an allowance. If the custodians are not actively involved in reunification efforts, the subsidy may be suspended or discontinued.

- The additional services and assistance for which the child and custodian may be eligible and the procedure by which the custodian may apply;
- That said agreement will remain in effect without regard to the state residency of the custodian; and
- That the agency will pay up to \$2000 for the total cost of non-recurring expenses associated with obtaining legal custodianship of the child.

The subsidy agreement will be terminated unilaterally by the county agency when any one of the following conditions occurs:

- The permanent legal custodian(s) is/are no longer providing for the financial support of the child. ("Any support" includes various forms of financial support, for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs, are acceptable forms of financial support. Payments may also continue to be paid on behalf of the child if the child moves to attend post-secondary school or otherwise lives independently of the guardian as long as the guardian continues to provide any support to the child.);
- The permanent legal custodian(s) is/are determined by court action to no longer be legally responsible for the child. (The permanent legal custodian(s) is/are considered no longer legally responsible for the support of a child when the child becomes an emancipated minor, marries, enlists in the military or the court terminates the permanent legal custodianship. If the child returns to the care and responsibility of a CCYA and/or JPO, this activity does not automatically terminate the custodians' legal responsibility for the child.);
- The permanent legal custodian(s) requests termination of the subsidy;
- The custodian and the county agency agree that the subsidy is no longer needed;
- The child reaches 18 years of age;
- The death of the custodian (if one custodian is appointed);
- The death of both custodians (if two custodians are appointed); or
- The death of the child.

Other than in the case of his/her/their own deaths, (a) custodian(s) must provide written notice immediately, but no later than 30 days, to the county agency if any of the above situations occur. In the event of the death of a single custodian, or of both appointed custodians, the agency should use the same protocols as are used in the death of adoptive parents regarding subsidy payments.

Subsidy agreements are not transferable. If the original custodian(s) is/are unable to care for the child and the custodianship is terminated as a result, the child and new custodian would have to meet the eligibility requirements for SPLC based on their current circumstances. However, with State SPLC cases, if the court is willing to transfer custody to another approved SPLC candidate, it may be possible to request a waiver of the six months shared residency requirement. (See 'exception' on page 7)

An SPLC child re-entering out-of-home care is not grounds for suspension or discontinuation of the subsidy agreement unless the Judge terminates the legal relationship between the SPLC child and custodian and/or the child's goal is **not**

reunification with the SPLC custodian. The following procedures should be followed depending upon the specific circumstances of the case:

- If the SPLC child re-enters out-of-home care with the CCYA who entered into the initial agreement, the CCYA can re-negotiate the subsidy amount in order to reduce the payment amount to cover the costs associated with the child's placement or, in the event the custodians are not actively involved in reunification efforts, suspend or discontinue the subsidy agreement. The CCYA also has the option of referring the case to Domestic Relations for child support assessment against the parents.
- If the SPLC child re-enters care with the CCYA who did not enter into the initial subsidy agreement, contact should be made with the CCYA who entered into the agreement to notify them of the child's placement in the event they choose to re-negotiate the amount of the subsidy.

ANNUAL SUBSIDY EVALUATION REQUIREMENTS:

A sample form for the annual subsidy evaluation is included as Attachment C. County agencies may utilize their own process and form for completing the annual evaluation, as long as it includes all the elements delineated in the sample. A proposal to adjust the subsidy amount may be made, based on the results of the evaluation. Adjustments may also be made to the agreement prior to the evaluation at the request of the custodian(s) or county agency with the concurrence of the custodian(s) (note the exceptions in the footnote on page 17). The subsidy can be provided to the custodian until the child reaches the age of 18 years. A copy of the agreement and each annual evaluation and any changes to the agreement must be provided to the custodian(s) within 15 calendar days of:

- The date of the original agreement;
- The date of the annual evaluation; or
- The date in which any changes were made to the agreement.

APPEAL RIGHTS FOR SUBSIDIES:

Both the child and the custodian(s) have a right to appeal a decision that results in any of the following:

- A determination that the child and/or custodian is/are ineligible for a subsidy;
- A finding of ineligibility after a determination of eligibility;
- A denial or reduction of service; or
- The termination or suspension of service.

The county agency must provide written notification to the parties of their right to appeal the decision at:

- The time of the initial eligibility determination;
- Each annual evaluation; and

- The time in which any changes are made to the subsidy agreement by the county agency.

The written notification must also provide the address where written appeal requests must be sent as well as a statement that the request for appeal must be made within 30 days of the date of the county agency's decision, as defined by the mailing date on the agency's written notification and the postmark on the appeal letter. All hearings will be conducted in accordance with 55 Pa. Code, Chapter 275, Subchapter A (relating to appeal and fair hearing). For more information, please visit the following website: <http://www.pacode.com/secure/data/055/chapter275/chap275toc.html>.

COUNTY AGENCY DOCUMENTATION REQUIREMENTS REGARDING SUBSIDIES:

The county agency must establish an SPLC eligibility file for each child for whom a federal or State SPLC agreement is executed. This file must be separate from the child's case record and must contain all of the documents and information needed to establish initial and ongoing eligibility for the SPLC program. The following documents and information must be included in the eligibility file:

- Copies of court orders documenting the date in which the child came into county agency custody; the date the petition was filed with the court recommending the permanency goal of PLC placement; the date in which PLC was approved by the court as the child's permanency goal; and the date in which PLC was awarded by the court to the custodian(s) receiving the subsidy payment;
- Copies of court orders that contain the contrary to welfare determination or a voluntary placement agreement (required for federal SPLC, but recommended for State SPLC as well);
- The date in which the child was placed with the individual(s) who became the permanent legal custodian(s);
- A statement that the PLC caregiver met at least the temporary approval requirements to provide foster family care at the time the goal of PLC placement was ordered, and the date the PLC caregiver met full approval status, if applicable;
- Copies of the latest Child Abuse verification forms, State Police and FBI clearances for the custodian(s) (federal and State SPLC cases);
- A fully executed subsidy agreement;
- Copies of the annual evaluation forms;
- Copies of any requests to renegotiate the agreement;
- Copies of the notice of appeal rights provided to the custodian;
- Copies of any requests for appeal submitted by the custodian and the results of any appeal hearings;
- Case record documentation requirements enumerated on page 10;
- Documentation that the child is a citizen or qualified alien (required for federal SPLC, but strongly recommended for State SPLC as well);
- Documentation that the custodian is a relative/kin (federal only);
- Documentation that the child was eligible for Title IV-E while living in the relative/kin home for six (6) consecutive months (federal only); and

- Documentation that the child is a sibling of an eligible child and placed in the same custodian home (federal only when applicable).

CLAIMING PROCEDURES AND EFFECTIVE DATES FOR IMPLEMENTATION OF THE FEDERAL SPLC PROGRAM:

Existing Cases/Agreements:

Title IV-E reimbursement may be claimed for cases where non-federal SPLC Agreements were entered into prior to the issuance of this bulletin. In order to claim Title IV-E reimbursement for these cases, the county must verify and ensure that the case record contains supporting documentation that the child and custodian meet all of the following requirements:

- PLC child eligibility requirements (listed on pages 6-7);
- SPLC child eligibility requirements (listed on pages 14-15). Please note that the relative eligibility requirement is different depending on the date that the SPLC Agreement was executed. The following provides guidance regarding the dates that each definition is effective:
 - For cases where the agreement was entered into prior to and during April 1, 2009 - September 30, 2009, counties are able to claim Title IV-E reimbursement for children placed with a relative defined narrowly as any relation by blood, marriage or adoption, who is within the fifth degree of kinship to the child. This includes great-great-great grandparents and first cousins once removed (children of first cousins).
 - For cases where the agreement was entered into prior to or beginning October 1, 2009 or later, counties are able to claim Title IV-E reimbursement for children placed with kin defined under Pennsylvania's current definition. This includes existing relationships with a child that meets at least one of the following:
 - Relative through blood, marriage (affinity), or adoption;
 - God parent as recognized by an organized church;
 - Member of the child's Indian tribe, nation or clan; or
 - Individual with a significant positive relationship with the child or family that was in place prior to the execution of the SPLC agreement. This may include relationships established with a teacher, current or former resource parent.
- Permanent legal custodian requirements (listed on pages 7-8);
- SPLC candidate requirements (listed on pages 14-15); and
- Case record requirements enumerated on page 10.

Once it has been determined that the child and custodian meet the requirements above, the county must write a new subsidy agreement that meets the subsidy agreement requirements enumerated on pages 17 and 18 (including the availability of reimbursement of non-recurring expenses) and have the custodian(s) sign this amended agreement. **Title IV-E reimbursement may begin on the day that all of the eligibility requirements are met and the amended agreement is in place.**

New Cases/Agreements:

Title IV-E reimbursement may begin for new cases on the date by which all of the following are accomplished:

- The permanency goal for the child has been changed to PLC;
- The case record documentation enumerated on page 10 has been completed;
- All child and candidate eligibility as well as federal SPLC requirements have been met and all parties have signed the agreement; and
- The Juvenile Court orders PLC and transfers custody to the SPLC candidate.

FINANCIAL ASSISTANCE:

Permanent legal custodians who are not eligible for, or who decline, subsidy may incur various financial expenses when adding a child to the household. It is important to know what financial options may be available for the child and custodian. The county agency must notify the custodian of all options available to financially assist in the care of the child, including a subsidy. The county agency should assist the custodian in the process of securing all benefits to which the child may be entitled. When a subsidy **is not received**, a custodian may apply for Temporary Assistance for Needy Families (TANF), General Assistance (GA), or for food stamps for the child at the local County Assistance Office (CAO). Any person who is receiving these benefits must notify the CAO of any changes in the household composition and income that may occur as a result of the PLC arrangement. In addition, a child may be eligible for SSI, a Social Security program for low-income children with disabilities. Application for SSI benefits must be made to the local Social Security Administration. The court may order child support payments to be paid by the parent(s) at the time the court orders placement with the PLC candidate. Continuing issues related to child support may be pursued in the Domestic Relations Section (DRS) of the Court of Common Pleas.

Temporary Assistance for Needy Families (TANF):

To be considered for TANF, the custodian must be a "specified relative". In order to be eligible for TANF, the child must meet the following specified eligibility requirements, known as definitive conditions:

- The child is living with a "specified relative". A specified relative is a person related to the child through blood or marriage within the *fifth* degree, and includes the child's great great great grandparents and first cousins once removed. The CAO can help determine whether a relative meets the criteria for 'specified relative';
- The child is under age 18 years or, if age 18, the child is still in school (a child is ineligible upon reaching age 19); and
- The child is deprived of parental support.

Permanent legal custodians, who receive TANF for themselves, or for themselves and the child, are subject to the rules regarding work requirements and the five-year lifetime limit of TANF. The child will not be eligible for TANF if the custodian has exhausted his/her time limits. If the custodian is included on the grant, the custodian must meet the established work requirements. If the child is in school and works part-time, this income may be exempt from the determination of benefits. If the child is under age 18, and has not earned a high school diploma or its equivalent, he/she is required to attend an educational program or activity that will result in the receipt of a high school diploma or its equivalent. If the child is not in school, he/she must meet the work requirements to be eligible for TANF. If the custodian has any income, it will be considered if the custodian is included in the grant; SPLC recipients who are currently receiving or who decide to apply for financial assistance should be aware that subsidized custodianship payments will be included as income. The custodian should discuss the specific effect that this income may have on the grant with the CAO.

General Assistance (GA):

The eligibility of the child for GA is determined only if the child does not meet the definitive conditions for TANF (e.g. the child is not related to the custodian). The following restrictions affect the ability to receive GA:

- The custodian may be able to receive GA for a child until the child reaches age 18;
- The custodian cannot receive GA for himself/herself when the child is over age 13;
- If the child is in school and works part-time, the child's income may be exempt from the determination of benefits (subsidy income will not be exempt, however);
- If the child is under age 18, and has not earned a high school diploma or its equivalent, he/she is required to attend an educational program or activity that will result in the receipt of a high school diploma or its equivalent; and/or
- If the child is not in school, he/she must meet the work requirements to be eligible for GA.

Food Stamps:

The determination of eligibility for food stamps is based on the income and resources of the household. The CAO can address questions regarding eligibility for food stamps.

Supplemental Security Income (SSI):

The county agency must notify the custodian that the child was or may be SSI eligible and assist with the application process. If a child is receiving SSI prior to the court ordering the PLC arrangement, the county agency and the custodian should request that the Social Security Administration complete an assessment to determine whether the child's benefits will be affected by a change in the child's circumstances. For SSI, each child is considered a "family of one", as long as the child is in care, which

means that the eligibility for benefits is based solely on the program eligibility requirements for one person (i.e., the child) and that, generally, the income, assets, etc. of everyone in the household are not considered.

However, once the court has ordered the PLC arrangement, the county agency must report to the Social Security Administration that the payee is now the custodian, and the child is no longer in foster care, and no longer considered 'a family of one'. The custodian must be informed of the following by the county agency:

- That the custodian should also notify the Social Security Administration of the change in the child's living arrangements;
- That SSI eligibility may be considered when determining additional benefits;
- That a child receiving SSI is automatically eligible for Medicaid;
- That in State SPLC cases, the county agency must reduce the monthly subsidy amount by the amount of any SSI benefits that the child receives. Custodians who receive a State-only subsidy are not permitted to receive the full reimbursement amount that was paid to them while the child was in foster care, as well as the child's SSI benefits; and
- That in Federal SPLC cases, the Social Security Administration will reduce the amount of the SSI payment dollar for dollar by the amount of the Federal SPLC payment.

Child Support:

Unless parental rights have been terminated, parents generally have the duty to financially support their children. The court shall refer issues related to child support to the DRS of the court (42 PA.C.S. §6351 (2.1)). In non-subsidized PLC cases, the county agency should assist the custodian in the initial process. At a minimum, the county agency needs to contact the DRS of the court to discuss a new assessment of parental support (see 23 PA.C.S. §4301 et al) and arrange for the payments to be made to the PLC caregiver, upon order of the court. If the custodian has applied for, and is receiving, cash assistance (TANF or GA) for the child, any support the parents would pay will be assigned to the Department of Public Welfare (DPW), rather than to the custodian, to offset the cash payments. DPW may return up to \$50.00 a month of current parental support to the custodian.

In SPLC cases, the county agency is permitted to receive child support payments to offset the cost of paying a subsidy to the permanent legal custodian. Custodians receiving subsidies for the care of the child should discuss petitioning the court for child support with the county agency prior to doing so.

If a PLC/SPLC child re-enters care, the CCYA cannot initiate child support assessment against the custodian.

MEDICAL CARE:

When a child is placed in foster care, the county agency makes application to the CAO for Medicaid for the child. Parents should maintain their insurance coverage, if

any, for the child, which should continue after the court transfers custody to the custodian when parental rights have not been terminated. In non-subsidized PLC and in State/county SPLC cases, the county agency must work with the custodian and the CAO to determine the child's continued eligibility for Medicaid. The CAO makes the final determination of the child's eligibility for Medicaid once custody is transferred to the custodian.

Other issues with regard to the child's medical care are likely to arise. The county agency should work with the custodian to address these details prior to the court transferring custody of the child to the custodian.

Private Medical Insurance

- If parental rights are not terminated, parents are required to use their own medical benefits, if any, to cover the child;
- Although a PLC or SPLC arrangement does not require a custodian to put the child on his/her own medical benefits, the custodian may do so if he/she wishes;
- If private insurance is not available, Medicaid may be available;
- If private insurance is available and the child is eligible for Medicaid, Medicaid will be the "payer of last resort"; or
- If the child's parents have health insurance available through their employer, a referral to the Health Insurance Premium Payment (HIPP) program may be completed. The HIPP program will make a determination as to whether purchasing the available insurance represents a cost savings to the Department. Parents who are enrolled in the HIPP program are required to cooperate with the program. Persons with court ordered medical coverage cannot be enrolled in the HIPP program.

Medicaid:

- As soon as the county agency determines that the recommended permanency goal for the child is a PLC/SPLC placement, the county agency should complete the CY-61C (Attachment D) to determine the child and caregiver's eligibility for subsidy and send to the CAO to make arrangements for a change in the child's Medicaid benefits;
- Immediately after the court orders the PLC/SPLC arrangement, the county agency shall notify the CAO of the transfer of custody to the PLC/SPLC caregiver. In PLC and State/county SPLC cases, the child's Medicaid will continue until the CAO has made contact with the caregiver, and a determination of continued eligibility can be made;
- In PLC and State/county SPLC cases, the caregiver should be provided with an application for Medicaid for the child which must be completed and submitted to the local CAO;
- In those cases in which a subsidy is being paid for the care of the child, the subsidy payment is not considered income to the child when determining Medicaid eligibility;

- A child who is eligible for TANF/GA benefits, SSI or is receiving federal SPLC⁴ is automatically eligible for Medicaid;
- In federal SPLC cases, the child is eligible for Medicaid in the state of residence;
- In State/county SPLC or PLC cases, if the custodian and the child move to another state, the child will no longer be eligible for Medicaid in Pennsylvania and the custodian must immediately notify the CAO of the change in residence. If the custodian wants continued Medicaid coverage for the child, he/she will need to apply in the new state of residence; or
- If the custodian receives Medicaid for the child and the child becomes covered under the custodian's or parent's private insurance at a later date, the custodian must notify the CAO of this change.

Behavioral Health, Substance Abuse and Other Services

Any services a child may be receiving, including substance abuse treatment services or behavioral health care services, will need to continue after the court orders a PLC arrangement. The county agency must help the custodian with ensuring that these services will continue uninterrupted. The service provider will also need to be informed that the contact person for the child will be the custodian and not the agency.

As soon as the county agency determines that the recommended permanency goal for the child is PLC placement, the county agency should assist the custodian in contacting the child's substance abuse/behavioral health care or other service provider to ensure that:

- There is continuity of care for the child;
- Payments for treatment will continue to be made, regardless of the source;
- The therapist/provider is aware of significant changes in the child's life;
- The custodian participates, if therapeutically advised; and
- The custodian is involved in the child's treatment plan.

TERMINATION OF PERMANENT LEGAL CUSTODIANSHIP:

A PLC arrangement is intended to provide a safe and permanent placement for a child. Although the arrangement legally ends when the child reaches the age of 18, it is hoped that the arrangement develops into a life-long relationship. The following are circumstances under which the PLC arrangement would no longer be valid:

- The court terminates the order placing the child with the custodian. (*Note: permanent legal custodianships are not considered to be automatically terminated if the child returns to the care and responsibility of the CCYA.*); or
- Upon the death of the custodian(s). In this event, custody of the child reverts back to the Juvenile Court for further disposition. The court may order a new custodianship based upon the recommendations of the now deceased custodian(s); however, a study must be completed to determine if the proposed

⁴ In order for a child to be eligible for Medicaid, the Federal SPLC agreement must reflect a minimum \$1 payment. Agreements that indicate a \$0 payment will make the child ineligible for Medicaid.

custodian(s) is/are qualified to receive and care for the child. (*Note: in SPLC cases, the proposed custodians must meet all of the requirements of Title 55 Pa. Code Chapter 3700, regarding foster family home approval.*)

Exception: (1) In federal SPLC cases, in the event of death of the custodian, the subsidy ceases. (2) In State SPLC cases, in the event of death or disability of the custodian, a waiver of the six months shared residency requirement may be requested, if the agency believes that placement with the PLC candidate, recommended by the disabled/deceased PLC caregiver, is in the child's best interest, and the agency approves the home and the court establishes PLC with the identified replacement custodian. A new SPLC agreement must be made with the new PLC caregiver prior to the court order granting legal custody.

Attachment A

**Permanent Legal Custodian
Confirmation of Intent**

The first and most preferred permanency option for children in foster care is to return to the home of a parent, guardian or custodian from which they were removed. If reunification is not possible, the next preferred option is adoption. For children who cannot be reunified with their parents, or for whom adoption is not appropriate, the next permanency option is placement with a permanent legal custodian.

Prior to the Adoption and Safe Families Act (ASFA), a child for whom the Juvenile Court ruled out reunification and adoption, might have been placed in long term foster care. Now, when a child has a strong bond to a related or non-related former or current caregiver, the child may be placed with that caregiver in a permanent legal custodianship without continued agency intervention. Those who are currently approved as, or who are able to meet the eligibility requirements of, a foster parent, may be eligible to receive subsidy payments for the child,

The agency will file a petition with the Juvenile Court recommending the goal change to placement with a permanent legal custodian. When the court transfers custody of the child to you, as the specified custodian, the placement of the child with you is intended to be **permanent**.

Child: _____

I/We understand the various permanency options available to the above-named child. If the Juvenile Court approves the permanency option of placement with a permanent legal custodian for the child and places the child in my/our custody, I/we

_____ Do wish to become permanent legal custodian(s), but do **not** wish to receive subsidy payments if approved. In choosing this option, I/we understand that TANF benefits, child support, Medicaid, SSI and other benefits may be available.

_____ Do wish to become permanent legal custodian(s) and receive subsidy payments if approved.

Signatures:

Legal Custodian's Signature

Date

Legal Custodian's Signature

Date

Caseworker's Signature

Date

Attachment B

SUBSIDY AGREEMENT FOR PERMANENT LEGAL CUSTODIAN(S)

I/We, the undersigned legal custodian(s), and _____ County Children and Youth Agency do hereby agree to the terms and conditions of this subsidy agreement, made on behalf of _____, the child, who was born on ____ / ____ / ____ (month/day/year), as detailed below.

As permanent legal custodian(s), I/we intend to care for the above-mentioned child as a member of my/our family until the child reaches the age of 18. I/we enter into this agreement in order to receive a subsidy. I/we also agree to cooperate with all court orders that address any matters related to fulfilling the legal arrangements and responsibilities of permanent legal custodianship.

PROVISIONS OF AGREEMENT

I. Eligibility

- The child is eligible for Federal Subsidized Permanent Legal Custodianship.
- The child is eligible for State Subsidized Permanent Legal Custodianship.
- The child is eligible for County Subsidized Permanent Legal Custodianship and as such the following section may not apply per county option: II.A – Nonrecurring Expenses.

II. Assistance

A. Nonrecurring Expenses

The permanent legal custodian(s) is/are eligible for a one-time only reimbursement of up to \$2,000 for actual expenditures incurred in obtaining legal custodianship of the child, not be incurred in violation of state or federal law, and not reimbursed from other sources or funds. These expenses may include court costs, attorney fees, and other legal expenses directly related to obtaining legal custodianship. The payment may also be reimbursement for the health and psychological examinations and consultations; transportation; criminal background checks and the reasonable cost of lodging and food for the child and the custodian(s) when necessary to complete the process.

The amount of _____ meets these criteria and will be reimbursed on ____ / ____ / ____ (month/day/year) directly to the custodian(s).

B. Monthly Subsidy

1. The County Children and Youth Agency agrees to pay the above mentioned permanent legal custodian(s) a cash subsidy payment of \$_____ per day. The amount of this subsidy payment is based on the needs of the child and the circumstances of the permanent legal custodian(s) and has been negotiated between the County Children and Youth Agency and the legal custodian(s). This amount may not exceed the maximum foster care placement maintenance payment the child would have received in a foster family home (including level of care supplements not covered by Medicaid). **In order for the child to be eligible for Medicaid, the Federal SPLC agreement must reflect a minimum \$1 payment.**
2. Other increases or decreases to the initial agreement payment amount may be made, but may not exceed the maximum foster family home rate, as identified in Number 1 above. Any payment adjustments may only be made with the concurrence of the legal custodian(s) except in cases where the child receives State Subsidized Permanent Legal Custodianship and Supplemental Security Income concurrently. In these cases, a

new subsidy agreement will be issued reducing the amount of the monthly subsidy dollar for dollar by the amount of the Supplemental Security Income received by the child. An additional exception occurs when the child re-enters care. The amount of the subsidy may be modified without the concurrence of the legal custodian(s) depending on the circumstances of the case.

3. Payments may begin only after the custodian(s) has/have committed to care for the child, has/have assumed permanent legal custodianship of the child, and the agreement has been signed by all parties. A copy of the court order should accompany this agreement. Payments will begin on ____/____/____ (month/day/year) and will be made on a monthly basis hereafter.
4. Should the legal custodian(s) relocate to another county/state, the subsidy agreement for permanent legal custodian monthly subsidy payments will remain in effect regardless of the county or state in which the child resides.

C. Medical Care

1. The following Medicaid benefits will be provided to the child within the conditions described below. The value of these services is not considered as part of the maximum monthly subsidy payment. These services include:

- Due to the child's eligibility for and receipt of Federal Subsidized Permanent Legal Custodianship, the child is automatically eligible for Medicaid and will remain eligible, regardless of the state of residence.
- Due to the child's eligibility for State or County Subsidized Permanent Legal Custodianship, the custodian(s) are responsible for applying for Medicaid for the child. Medicaid benefits may not be available to the child if they reside outside of Pennsylvania. The child's eligibility will depend on the eligibility guidelines for the state of residence.

2. The legal custodian(s) agree(s) to cooperate with and abide by the Medicaid program rules and procedures of the state which provides Medicaid. The child is only eligible for Medicaid as provided by the state of residence. If a state of residence does not provide a Medicaid service that Pennsylvania does provide, then Pennsylvania is not responsible for covering that service. Items covered by Medicaid vary from state to state.
3. The legal custodian(s) agree(s) to notify the County Assistance Office if they receive Medicaid for the child and the child becomes covered under the legal custodian(s) or parent's private insurance at a later date.

D. Social Services

1. The following social services will be provided to the child within the conditions described below. The value of these services is not considered as part of the maximum monthly subsidy payment. These services include:

Other social services:

2. Post-permanency services are available in Pennsylvania through the Statewide Adoption and Permanency Network (SWAN). Post-permanency services include:
 - Case advocacy;
 - Respite; and

- Support groups.

If the legal custodian(s) is/are interested in these services, they may contact SWAN at 1-800-585-SWAN.

III. Notification of Change

Other than in the case of his/her/their own deaths, the legal custodian(s) agree(s) to provide written notice immediately, but no later than 30 days, to the County Children and Youth agency if any of the following circumstances occur:

- Change in the legal custodian(s) address or telephone number;
- Change in the child's legal custodian(s);
- Date of determination that the legal custodian(s) is/are no longer legally responsible for the support of the child;
- Date the legal custodian(s) is/are no longer providing any support to the child;
- Date of death of the child;
- Date the child enlists in the military;
- Date of marriage of the child;
- Date the child becomes an emancipated minor;
- Separation or divorce of the legal custodian(s);
- Date the child becomes eligible/ineligible for Supplemental Security Income (SSI); or
- Date the child re-entered care through a county agency.

IV. Modification of Terms

- A. This agreement is subject to modification when a significant change in a child's needs or the legal custodian's circumstances affects the need for or amount of the monthly subsidy payment.
- B. The parties to the agreement may at any time request modification of the agreement in writing.
- C. When a modification to the agreement is requested by the legal custodian(s) or the County Children and Youth Agency, or when such modification is warranted by changes in the child's needs or the legal custodian(s) circumstances, the County Children and Youth Agency shall negotiate the modification with the legal custodian(s). In the event that the County Children and Youth Agency and the legal custodian(s) are unable to agree upon the modification proposed by either party, the legal custodian(s) may file an appeal pursuant to Section V of this agreement (please see section VII for more information on the fair hearings and appeals process).
- D. In cases where the child receives State Subsidized Permanent Legal Custodianship and Supplemental Security Income concurrently, a new subsidy agreement will be issued reducing the amount of the monthly subsidy dollar for dollar by the amount of the Supplemental Security Income received by the child. The legal custodian(s) concurrence with this change is not required in this circumstance.

V. Termination of Agreement

This agreement will be terminated in any of the following circumstances:

- The child reaches the age of 18;
- The legal custodian(s) is/are no longer providing any financial support for the child;
- The legal custodian(s) request termination of the subsidy;
- The legal custodian(s) is/are determined by court action to no longer be legally responsible for the child;

- The legal custodian(s) and the County Children and Youth Agency agree that the subsidy is no longer needed;
- The death of the legal custodian(s) of the child (the death of one legal custodian in a single parent family or the death of both legal custodians in a two parent family);
- The death of the child; or
- The child re-enters care through a County Children and Youth Agency and the legal custodian(s) is/are not actively involved in reunification efforts.

VI. Term

Unless termination occurs as a result of one or more of the conditions set forth in Section V, this agreement will terminate when the child attains the age of 18 on ____/____/____ (month/day/year).

VIII. Fair Hearings and Appeals

- A. The right to a fair hearing is a procedural protection that provides due process for individuals who claim that they have been wrongly denied benefits. Policy requires that the subsidy agreement for permanent legal custodian(s) be signed and in effect at the time of, or prior to, the custodian being awarded custody of the child. If the legal custodian(s) feel they have been wrongly denied benefits on behalf of a child, they have the right to a fair hearing at any time. A county may attempt on their own to settle any disputes prior to custody being awarded to the custodian, but must refer any appeals that occur after custody of the child is awarded to the legal custodian(s) to the Bureau of Hearings and Appeals. Some allegations that constitute grounds for a fair hearing include:
- Relevant facts regarding the child were known or should have been reasonably known by the public or private agency and not presented to the legal custodian(s) prior to being awarded custody;
 - Denial of assistance based upon a means test of the legal custodian(s);
 - Legal custodian disagreement that a child is ineligible for subsidy;
 - Failure by the County Children and Youth Agency to advise potential legal custodian(s) about the availability of subsidized permanent legal custodianship for children in the State foster care system;
 - Decrease in the amount of monthly subsidy without the concurrence of the legal custodian(s) except in cases where the child receives State Subsidized Permanent Legal Custodianship and Supplemental Security Income concurrently; and
 - Denial of a request for a change in payment level due to a change in the child's needs and/or legal custodian(s) circumstances.
- B. An appeal must be filed in writing within 30 calendar days of receiving written notice of an adverse decision from a County Children and Youth Agency. The existing subsidy continues during the appeal process. Upon receipt of the appeal, the County Children and Youth Agency shall date stamp the appeal and submit the appeal with a copy of the agency action that is being appealed to the DPW Bureau of Hearing and Appeals within three working days.
- C. This procedural protection, however, does not confer benefits which have no legal support or basis. Accordingly, subsidized permanent legal custodianship is available only in those situations in which a fair hearing determines that the child was wrongly denied benefits and the child meets all eligibility requirements.

Signatures:

Legal Custodian's Signature

Date

Legal Custodian's Signature

Date

Legal Custodian's Address

Telephone

County Agency Director or Designee's Signature

Date

Caseworker or Supervisor's Signature

Date

A copy of this subsidy agreement was given or mailed to the permanent legal custodian(s) on ____/____/____ (month/day/year).

Annual Evaluation Form for the Subsidized Permanent Legal Custodianship (SPLC)

Name of Child:	Date of Birth:
Name of Custodian(s):	Telephone Number:
Address:	
Date of Original Subsidy Agreement:	County Agency:

Child Information	YES	NO	COMMENTS
1. Has the court terminated the permanent legal custodianship order?			
2. Has the child reached the age of 18?			
3. Is the child currently living with you? <i>If no, please provide the current location of the child and answer question 3a</i>			
3a. If no, are you currently providing financial support to the child (e.g. child support, tuition, clothing, therapy)?			
4. Is the child a full-time elementary or secondary school student? <ul style="list-style-type: none"> • <i>Yes should be checked if the child is instructed in elementary or secondary education or at home in accordance with a home school law of the State or other jurisdiction in which your home is located</i> • <i>If no is checked, please state the reason why the child is not a full time student in the Comments box.</i> 			<input type="checkbox"/> N/A – Child is not of compulsory school age.
5. Has the child become an emancipated minor, married or enlisted in the military?			
6. Have you added the child to your health insurance?			
6a. If yes, did you notify the county assistance office?			
7. Have there been any changes in the child's development, medical and/or behavioral condition that would require a change in the subsidy agreement? <i>Please provide explanation of changes, including any additional treatment required.</i>			
8. Since the initial agreement/ last annual evaluation, have any new benefits (such as Veteran's Benefits, Supplemental Security Income, Social Security, child support) been initiated for or received by the child? <i>If yes, please list the amount, source and effective date in the comment section.</i>			
9. Were you convicted of any crimes related to welfare fraud during the past year?			
10. Would you like to terminate this subsidy agreement?			
11. Would you like a change to the SPLC agreement currently in effect?			

I/we understand that the agency may adjust (in county funded cases) or request to adjust (in federal/State-supported cases) the amount of subsidy based on the information I/we have given. I/we confirm that the information is true and accurate to the best of my/our knowledge. I/we will continue to fulfill the responsibilities of the permanent legal custodianship and this subsidy agreement.

Signature of Custodian Date Signature of Custodian Date

This subsidy agreement has been: Changed _____ Unchanged _____

Reason for change: _____

The county agency must provide a written notification to the parties of their right to appeal the above decision. Appeal hearings will be conducted in accordance with 55 Pa Code, Chapter 275, Subchapter A, relating to appeal and fair hearing.

Signature of Supervisor Date Signature of County Agency Staff Date

Additional Information For Permanent Legal Custodian(s)

Additional Questions - If there are any questions about the SPLC agreement or the information requested on this form, please contact _____ with _____ County Children and Youth Agency at _____.
(Name of Contact) (County) (Phone Number)

Post Permanency Services – Post-permanency services are available through the Department’s contract with the Statewide Adoption and Permanency Network (SWAN) Prime Contractor and are subject to the availability of funds designated by the Department for post-permanency services. SWAN Post-permanency services include the following:

- Advocacy for post-permanency services;
- Support groups; and
- Respite Care.

Eligibility is open to all adoptive, kinship, and permanent legal custodian placements from the child welfare system. Families self-refer for SWAN post-permanency services by calling SWAN at 1-800-585-SWAN (7956). County and private agencies across the State offer a variety of post-permanency services including:

1. Information and referral;
2. Educational Materials/Newsletter;
3. Educational Programs;
4. Lending libraries;
5. Support Groups/Programs;
6. Advocacy;
7. Respite Care;
8. Therapy; and
9. Case management.

Placement of Child – If your child has been placed into a facility by a County Children and Youth Agency (CCYA) or a Juvenile Probation Office (JPO), it is imperative that you contact the CCYA with whom you have SPLC agreement.

CCYA Review: To be completed by the CCYA based on the information contained in the completed form.

As a result of this evaluation, the subsidy agreement: May be Renegotiated May Not be Renegotiated

Reason for decision: _____

Signature of Agency Staff Date Signature of Supervisor Date