


Revision Date: 9/8/21	Primary Author(s): Moira Dillon
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POLICY 1106 – Guardianship and Permanent Guardianship

A. POLICY

When foster children cannot return home, guardianship is a permanency option that may be in a child’s best interest.

There are two types of guardianship available for children who are active with the Division of Family Services (DFS): guardianship and permanent guardianship.

1. **Guardianship**: - a legal relationship established by the court between a minor child and an adult guardian that allows for the ongoing care of the child in a safe and nurturing environment and includes medical and educational responsibilities.
2. **Permanent Guardianship** – the permanent placement and transfer of legal guardianship and custody of a child from DFS to a DFS approved foster parent, guardian or relative (13 Del. C. c. 23 Subchapter V).

B. PROCEDURES

When all efforts to reunify the family have been exhausted, all reasonable efforts to secure adoption of the child have been unsuccessful, or when it has been determined that adoption is not possible or in the best interest of the child, the next priorities for permanency are permanent guardianship and guardianship.

1. Guardianship:

- a. Any adult person or persons may petition the Family Court for a guardianship order regarding a child not his, hers or theirs. The Department of Services for Children, Youth and Their Families (DSCYF), DFS, a licensed agency, the guardian ad litem or a hospital that has an interest in the health, education or welfare of a child may petition Family Court for a guardianship order so long as the proposed guardian(s) consent to the appointment.
- b. For children not in foster care, the family may file a petition in Family Court for guardianship of the child.
- c. Grounds for Guardianship are determined by the Family Court and include the following:
 - i. The parent voluntarily consents to the guardianship.
 - ii. For children in DSCYF custody, the court must also find that it is the appropriate permanency plan and in the best interest of the child.
 - iii. Petitioner establishes that the child is abused, or neglected or dependent
 - iv. Guardianship is in the child’s best interest.
 - v. Youth age 14 or over must consents to the guardianship, and if the child opposes, just cause exists to grant the guardianship.
- d. The petitioner is responsible for paying the Family Court filing fee.

- e. The caseworker and supervisor should agree that the child meets the criteria for a change of plan to custody and legal guardianship. The caseworker will also discuss this prospective change with the foster home coordinator, if applicable, and supervisor for their input and agreement prior to presentation to the Permanency Planning Committee. If there is disagreement between the treatment staff and the foster care staff, the treatment supervisor will schedule a meeting to include all parties with the Assistant Regional Administrator to resolve the issues.
- f. Once the caseworker and supervisor have ruled out other permanency options, the caseworker will refer the case to the Permanency Planning Committee for review. The Permanency Planning Committee will determine if grounds exist for guardianship and recommend the plan change if appropriate. If the Permanency Planning Committee recommends the plan change, the caseworker will document the compelling reasons for ruling out reunification, permanent guardianship and adoption in case notes and Permanency Planning Committee FOCUS events.
- g. The caseworker and foster home coordinator shall co-present the case to the Permanency Planning Committee for review and recommendation of the plan change. If the case is active with a private foster care agency, the caseworker must discuss the guardianship plan with the private agency caseworker and invite the caseworker to attend the Permanency Planning Committee meeting. If approved, this recommended plan change should be presented to Family Court at the next scheduled hearing for approval.
- h. The Division will support a legal guardianship provided:
 - The child cannot return home, and
 - The child has a stable and positive relationship with the prospective guardian and has lived successfully for a minimum of six months in the home of the guardian, and
 - The prospective guardian is an approved relative or non-relative foster care provider, and
 - It has been determined that permanent guardianship is not feasible or in the child's best interest, and
 - The child has special needs and is age 12 or older or is part of a sibling group, and
 - All parties agree that the child and prospective guardian were able to maintain a stable relationship and function effectively without Division supervision, and
 - The prospective guardian is able to support the child financially, or satisfactory financial arrangements can be made.
- i. If the Permanency Planning Committee recommends that it is appropriate to pursue guardianship, the caseworker will present the child with the guardianship plan. If the case is a private agency foster care case, the private agency caseworker will discuss the guardianship goal with the foster parent and the child.
- j. When possible, and if the child is not TPRd, the caseworker will meet with the child's parents to discuss the new permanency plan and to determine if they are in agreement with the plan. This meeting should be jointly arranged if the case is a private agency foster care case.
- k. The prospective guardian is the petitioner. The caseworker shall assist the guardian with the petition for guardianship. The petition will include the roles and responsibilities of the guardian and include visitation with the child's family, if appropriate. If the child has siblings, ongoing sibling contacts and visits shall be included as long as there are no safety concerns and it is in the child's best interests.

- l. If the parents cannot be located, notice of hearing will be made by publication. The caseworker will follow the same procedure used in notifying parties of custody hearings. This does not apply to parents whose parental rights have been terminated.
- m. In preparation for the award of guardianship, the caseworker will inform the guardian about changing the recipient of benefits to the guardian.
- n. The caseworker will attend the guardianship hearing and will be prepared to testify regarding the agency's position including why it is the best interests of the child.
- o. Upon the granting of guardianship, the caseworker will have an exit conference with the guardian family and the child and ensure the guardian family has phone numbers to call for services if needed. The caseworker will then close the case.
- p. For children who are not in Division care, the caseworker will refer the prospective guardian to Family Court to petition for guardianship of the child. The caseworker will provide information to the family to contact the Department of Health and Social Services to determine if there are benefits available for the child.

2. Permanent Guardianship:

- a. To be eligible for Permanent Guardianship, the following criteria must be met:
 - One of the statutory grounds for a Termination of Parental Rights (TPR) must exist.
 - Adoption is not possible or appropriate.
 - Permanent guardianship is in the child's best interest.
 - Only a relative, guardian or foster parent of the child may petition for permanent guardianship.
 - A foster parent or guardian must have been caring for the child for at least 6 (six) months or held guardianship for at least 6 (six) months or is a relative.
 - If the guardian is a foster parent, it requires that:
 - i. The child be at least 12 years old; or
 - ii. The foster parent is the guardian of one of the child's siblings; or
 - iii. The child suffers from a serious physical or mental disability and receives benefits for same that would not be available if TPR or adoption occurred.
 - If the guardian is a relative, there is no minimum age requirement for the child.
 - Permanent guardianship has been recommended by the Permanency Planning Committee and the plan change has been approved by the Family Court.
- b. In addition to the eligibility criteria stated above, the caseworker will consider the following standards in approving the proposed permanent guardian:
 - Is emotionally, mentally, physically and financially suitable to become the permanent guardian;
 - Has expressly committed to remain the permanent guardian and assume the rights and responsibilities for the child for the duration of the child's minority, and;
 - Has demonstrated an understanding of the financial implications of becoming a permanent guardian.
- c. The petitioner is responsible for paying the Family Court filing fee.
- d. The caseworker and supervisor should agree that the child meets the criteria for a change of plan to permanent guardianship. The caseworker will also discuss this prospective change with the foster home coordinator, if applicable, and supervisor for their input and agreement prior to presentation to the Permanency Planning Committee. If there is disagreement between the treatment staff and the foster care staff, the treatment supervisor will schedule a meeting to include all parties with the Assistant Regional Administrator to resolve the issues.

- e. Once the caseworker and supervisor have ruled out other permanency options, the caseworker will refer the case to the Permanency Planning Committee for review.
- f. The caseworker and foster home coordinator shall co-present the case to the Permanency Planning Committee for review and recommendation of the plan change. If the case is active with a private foster care agency, the caseworker must discuss the permanent guardianship plan with the private agency caseworker and invite the caseworker to attend the Permanency Planning Committee meeting. If approved, this recommended plan change should be presented to Family Court at the next scheduled hearing for approval.
- g. The Permanency Planning Committee will determine if grounds exist for permanent guardianship and recommend the plan change if appropriate. If the Permanency Planning Committee recommends the goal change, the caseworker will document the compelling reasons for ruling out reunification and adoption in case notes and Permanency Planning Committee FOCUS (For Our Children's Ultimate Success - automated information system) events.
- h. The caseworker will inform the foster parent, guardian or relative applying for permanent guardianship that financial assistance may be available. If the foster parent, guardian or relative is interested, the caseworker will contact the Adoption Assistance/Subsidy Specialist and follow the procedures set out in Policy 503 Post-Permanency Financial Assistance. This policy includes required training as a prerequisite for financial assistance.
- i. If the Permanency Planning Committee recommends that it is appropriate to pursue permanent guardianship, the caseworker will present the child with the permanent guardianship plan. If the case is a private agency foster care case, the private agency caseworker will discuss the permanent guardianship plan with the foster parent and the child.
- j. When possible, and if the child is not TPRd, the caseworker will meet with the child's parents to discuss the new permanency plan and to determine if they are in agreement with the plan. This meeting should be jointly arranged if the case is a private agency foster care case.
- k. The caseworker will obtain formal, written consent of the permanent guardianship from the child (depending on age), the prospective guardian and the child's parents unless the parents' rights have been terminated. If consent cannot be obtained from the parents, the petition may still be filed.
- l. The caseworker and the DAG office shall prepare the petition for permanent guardianship. The petition will include the roles and responsibilities of the guardian and include visitation with the child's family, if appropriate. If the child has siblings, ongoing sibling contacts and visits shall be included as long as there are no safety concerns and it is in the child's best interests.
- m. The caseworker will forward the completed petition, consents, and filing fee paid by the petitioner to the DAG for filing in Family Court.
- n. All permanent guardianship petitions for children for whom the Department of Services for Children, Youth and Their Families (DSCYF) or DFS holds custody are to be filed in Family Court.
- o. The permanent guardian petitioner must pay the Family Court filing fee.
- p. A licensed child placing agency shall prepare a social report in accordance with 23 Del.C. § 2354 and provided to the court no later than 2 weeks prior to the hearing. The Permanency Planning Committee shall review and approve the child specific permanent guardianship social report.

- q. The social report shall include the following:
 - Information regarding the child and the child's background.
 - Information regarding the guardian or guardians and the proposed home.
 - Information regarding the physical and mental condition of the child.
 - Information regarding the suitability of the placement.
 - A statement as to whether all the requirements set forth in the law have been met.
 - A recommendation regarding permanent guardianship.
- r. If the parents cannot be located, notice of hearing will be made by publication. The caseworker will follow the same procedure used in notifying parties of custody hearings. This does not apply to parents whose parental rights have been terminated.
- s. In preparation for the award of permanent guardianship, the caseworker will inform the permanent guardian about changing the recipient of benefits to the guardian.
- t. The caseworker will attend the permanent guardianship hearing and will be prepared to testify regarding the agency's position including why it is the best interests of the child.
- u. Upon the granting of permanent guardianship, the caseworker will have an exit conference with the permanent guardian family and the child and ensure the guardian family has phone numbers to call for services if needed. The caseworker will then close the case.

3. RESCISSION

An order of guardianship may be rescinded by the court. The impact of that on DFS is that any child who had been in the custody of DSCYF immediately prior to the entry of a permanent guardianship, custody shall revert to DSCYF.

C. FOCUS

1. Caseworkers complete the Permanency Planning Committee events.
2. Caseworkers document activities in progress notes.

D. FORMS Use the DFS policy website to access any forms:
<https://kids.delaware.gov/policies/dfs-policies>

Petition for Guardianship
 Signed Consent Forms