

Support for Amendment of SSL 458-b to Permit KinGAP Subsidy to Continue Post-Adoption

KinGAP, the Kinship Guardianship Assistance Program, was created as a permanency option for kinship foster parents by the Foster Connections Act of 2008, and implemented in New York in 2011. Social Services Law 458-b is the statutory mechanism by which it has been incorporated into our state's child welfare practices. KinGAP was intended to be a permanency option specific to kinship foster parents, allowing children who live with kin in a foster care setting to exit foster care to "permanency" with a fit and willing relative while maintaining the same level of support that would be offered to an adoptive family exiting foster care.

KinGAP has advantages over adoption as permanency option that benefit both the caregiver and the Local Department of Social Services (LDSS). When a child enters foster care, they enter with the permanency goal of "return to parent" in most instances. It is the job of the LDSS and the courts to ensure that reunification efforts are being made throughout the life of the foster care case. In instances where the LDSS and courts have determined that it is no longer in the child's best interests to return to the parents, they are faced with finding a new permanency solution for the child. In adoption proceedings, parents must either voluntarily relinquish their parental rights, or, if unwilling to do so, must have their rights terminated by the court before a child can be freed for adoption by a foster family or pre-adoptive family. KinGAP is achieved by an order of guardianship from family court, with an agreement from the LDSS to continue a subsidy for the child, similar to the adoption subsidy. In this instance, no termination of parental rights proceeding must take place, therefore eliminating time and effort on the part of the county, while also maintaining familial integrity for the family unit who is exiting foster care.

While kinship caregivers who are foster parents are given the choice between exiting to KinGAP or exiting to adoption, the quickest path to permanency is often KinGAP, and while it is considered a "permanent" option, the biological parents still have rights intact and may choose to pursue regaining physical custody of the child at a later date. The biological parents also may continue to have visitation rights, which in some cases is seen as a positive, while in others it may be seen as a negative.

In the Office of Children and Families booklet entitled "Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)", indicates to families who are considering KinGAP as a permanency option that: "I am not prevented from adopting this child at any time in the future" (p. 11). It does not subsequently indicate that if an adoption were to happen after a KinGAP agreement has taken place, the caregiver would then lose the KinGAP subsidy agreed upon with the county.

In a recent case in Schenectady County, a kinship guardian who was receiving a KinGAP subsidy for the child in their care pursued adopting the child in family court. The county subsequently stopped her KinGAP subsidy after the adoption went through. Reasons may vary from case to case as to why a guardian of a child may want to pursue adoption at a later time, but adoption does offer finality when considering permanency, and would allow a caregiver to take over in the role of adoptive parent. The Administrative Law Judge who presided over the case determined that the Social Services Law Sec. 458-b(7)(b) indicated that the subsidy may be terminated "if the relative guardian is no longer legally

responsible for the child”, indicating that possible causes may include the status of the guardian being terminated or the child is no longer receiving support from the guardian. The decision indicated that the guardians who became the adoptive parents did not at any point stop being responsible for the child, nor did the child stop receiving support from the guardians turned adoptive parents, and therefore awarded the KinGAP subsidy continued to the caregivers.

Codifying the ruling in an amendment to SSL 458-b would take the guess-work away from counties as to what to do with these cases, and allow flexibility for caregivers who may want to adopt in the future, but are being ushered into KinGAP at the end of their foster care cases. Caregivers should not be penalized for pursuing the ultimate level of permanency through adoption if that is what is in the best interest of the child in their care, nor should counties now discourage families from exiting foster to KinGAP so as to avoid losing a subsidy in the future. As more kin enter into caregiving arrangements for children, it is important to support these families and not limit or hinder their stability or permanency outcomes.