

Comparison of Out-of-Care and Permanency Options

		Extended Family Program (over 90 days)	Temporary Out-of-Care Orders (41(1)(b))	Section 54.01 Permanent Transfer of Custody (before CCO)	Section 54.1 Permanent Transfer of Custody (after CCO)	Adoption of Child/Youth in CCO	Family Law Act (FLA) Guardianship Applications for a Child under a CFCSA Custody Order ^{1,2}	
Assessment of Proposed Care Provider(s) / Adoptive Parent(s) / Guardian(s) / Criminal Record Check	Home visit	Visit the home and assess the ability of the care provider(s), and all other individuals living in the home, to safely care for the child. Discuss the planned living arrangement with the proposed care provider(s)/guardian(s) to ensure that they understand and agree to the plan for the child/youth.			Visit the prospective adoptive parent(s)' home and interview them and all other individuals living in the home.		Visit the proposed guardian(s)' home and interview them and all other individuals living in the home. Discuss the planned living arrangement with the proposed guardian(s) to ensure that they understand and agree to the plan for the child/youth.	
	Prior Contact Check and Criminal Record Check	Conduct Prior Contact Check (Initial Record Review (IRR), Detailed Record Review (DRR)) and Criminal Record Check (CRC) on proposed care provider(s) and any individual 18 years of age and over who lives in the home or may have significant and unsupervised access to the child/youth.			Conduct Prior Contact Check (Initial Record Review (IRR), Detailed Record Review (DRR)) and Criminal Record Check (CRC) on proposed guardian(s) and on any individual 18 years of age and over who lives in the home or may have significant and unsupervised access to the child/youth, if two years have passed since the last Prior Contact Check or CRC.		Conduct Prior Contact Check (Initial Record Review (IRR), Detailed Record Review (DRR)) and Criminal Record Check (CRC) on prospective adoptive parent(s) and on any individual 18 years of age and over who lives in the home or may have significant and unsupervised access to the child/youth.	
	References	Obtain three written references for the proposed care provider(s), including at least one from a family member from each care provider's family, and at least one from a non-family member who has known the care provider(s) for at least three years. If written references cannot be obtained, complete verbal references and document outcomes.			No additional references required (references would have been gathered and assessed during EFP or Temporary Custody to Other under 41(1)(b) assessment).		Obtain three written references.	
	Medical Check	Not required, unless there are health-related concerns.				Medical assessment required.		Not required, unless there are health-related concerns.
	Assessment Template	Complete <i>the Assessing Care Provider Readiness, Capacity and Commitment</i> process as outlined in Appendix D of Chapter 4: Out of Care Policies, and document the results.			Assess whether proposed guardian(s) is able to permanently care for the child/youth, using form CF2194: <i>Assessment of Proposed Guardians under a S. 54.01 order</i> guide.		Complete the same steps that are used for screening proposed guardian(s) as outlined in Appendix D of Chapter 4: Out of Care Policies, and document the results.	
	Additional info	Adhere to any agreements with an Indigenous Community under s. 92.1, if applicable. When there are concerns respecting the care provider(s), develop a plan to address them by involving an Indigenous community as appropriate.	Adhere to any agreements with an Indigenous Community under s. 92.1, if applicable.	Adhere to any agreements with an Indigenous Community under s. 92.1, if applicable.	Adhere to any agreements with an Indigenous Community under s. 92.1, if applicable.	Before the prospective adoptive parents are approved, they must also participate in a ministry-approved education program.	N/A	

¹ Note: Practitioners do not provide advice regarding whether proposed guardians should or should not apply for guardianship under the FLA. Further information regarding policy/practice related to the FLA can be assessed using the following link: [Extended Family Program - Definition of Legal Guardianship Memo](#)

² When a person's guardianship application under the FLA is going to be heard together with a CFCSA proceeding, the Director takes no position on the FLA application if working toward returning the child/youth to the parents apparently entitled to custody. However, if the Director has determined that the child/youth cannot be returned to the parents apparently entitled to custody and it is necessary to implement an alternate permanency plan, assess whether or not to support the FLA application by completing the steps outlined in the table.

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Process to Obtain Order / Agreement	Initiating order / agreement	Parent(s) voluntarily gives care of child/youth to the care provider(s). This agreement must be in writing (Schedule A of EFP Agreement) and identify which parental responsibilities the parent(s) assigns to the care provider(s). The director may then enter into an EFP agreement with the care provider(s).	A director applies for the order at the protection hearing. Prior to obtaining an order under 41(1)(b), the child/youth may have been in an interim order under 35(2)(d) or 35(2)(a).	A director applies for the order after assessing that the child/youth cannot safely return to the parent(s)' care and an alternate legal permanency plan is required. If a 54.01 order is being explored for a child currently in an EFP, the 54.01 order can only be granted with the consent of the parent(s).	A director applies for the order after identifying extended family members or other adults with a relational, familial, or cultural connection who are willing to become the permanent guardian to a child/youth in a CCO.	A director initiates the process after identifying an adoptive home for a child/youth in a CCO. If the prospective adoptive parent(s) are not family members or other adults with a relational, familial, or cultural connection to the child, then these avenues have already been explored and found to not be viable.	Process may be initiated by parent or by proposed guardian.
	Residency period	No residency period required.		The child/youth has lived with the proposed guardian(s) under an EFP Agreement or a temporary custody order to a person other than a parent under section 41(1)(b) or equivalent for at least six consecutive months immediately prior to application to transfer custody under s. 54.01.	The child/youth is in care under a CCO and has lived with the proposed guardian(s) for at least 6 months immediately before the application for an order to transfer custody under Section 54.1.	The child/youth is in care under a CCO and has lived with the prospective adoptive parent(s) for at least 6 months after the Notice of Placement and immediately before the adoption is finalized.	No residency period required.
	Cultural Safety Agreement	A Cultural Safety Agreement is not required.		A Cultural Safety Agreement is required for an Indigenous child/youth if the proposed guardian(s) / adoptive parent(s) is non-Indigenous or not of the same Indigenous heritage as the child/youth. This applies even if the proposed guardian(s) / adoptive parent(s) is a family member.			A Cultural Safety Agreement is not required.
	Exceptions Committee for Indigenous children	Review from Exceptions Committee not required (child not in care).			Review from Exceptions Committee is not required if the proposed guardian(s) / adoptive parent(s) is a relative. Review from Exceptions Committee is required if the proposed guardian(s) / adoptive parent(s) is not a relative and is non-Indigenous.		Review from Exceptions Committee not required (child not in care).
	Independent legal advice	Free independent legal advice is not provided through MCFD. However, parent(s) and care provider(s) should be advised to seek independent legal advice.		Free independent legal advice is available to the child/youth and the proposed guardian(s) through MCFD.		Free independent legal advice may be available through MCFD on a case-by-case basis for prospective adoptive parents. Legal advice is available for the child.	Free independent legal advice is not available through MCFD.
	Court process	No court process; the parent(s) voluntarily initiates agreement directly with the care provider(s).	A director makes the application to the Provincial Court, including preparing and filing court documents.	A director makes the application to the Provincial Court to transfer guardianship, including preparing and filing court documents.		A director makes the application to the Supreme Court for the adoption order on behalf of prospective adoptive parent(s), including preparing and filing court documents; payment of court fees; application for amended birth certificates; notifications of the adoption as required.	A person other than the director may make an application for guardianship under FLA at any time. The prospective guardian(s) makes the application to the Provincial Court for transfer of guardianship, and they, or their lawyer, are responsible for preparing and filing court documents and payment of court fees.

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Legal Impact of Order / Agreement	Parental responsibilities	<p>Care provider(s) is responsible for providing day-to-day care of the child/youth. Parent(s) maintains guardianship.</p> <p>Before entering into an EFP agreement with the care provider(s), ensure that the guardian(s) has authorized the care provider(s) to, at a minimum: make day-to-day decisions and have day-to-day care, control, and supervision; make decisions regarding education and extra-curricular activities; give consent to health care; receive and request information about health, education, or other information about the child.</p>	<p>The child/youth has been removed by the director and the court places the child in the custody of the care provider(s) under the director's supervision for a specified period of time. Care provider(s) has may typically exercise all responsibilities of a personal guardian of the child/youth</p>	Full range of parental responsibilities as defined in the <i>Family Law Act</i> unless otherwise modified in a court order.			
	Duration of legal relationship	<p>Legal relationship continues for the duration of the agreement. The total recommended length of an EFP agreement, including all renewals, is based on the age of the youngest child in the agreement, on the date of the initial agreement and should not exceed:</p> <ul style="list-style-type: none"> • 12 months if the youngest child in the agreement was under the age of 5 years on the date of the initial agreement; • 18 months if the youngest child was at least 5 years old but under the age of 12 on the date of the initial agreement; • 24 months if the youngest child was 12 years of age or older on the date of the initial agreement. <p>When the child/youth will not return to their parent(s)' care, begin to implement a concurrent plan for permanency, including a Permanent Transfer of Custody under s. 54.01. However, if a child's permanency needs are met through continued use of EFP Agreements, the EFP Agreement may continue to be renewed. In this way, EFP Agreements can be used to support customary care arrangements.</p>	<p>Legal relationship continues for as long as the court order is valid. Orders may be extended by the courts.</p> <p>Time lines for court related matters are pursuant to maximum time periods in s. 45 of the CFCSA:</p> <ul style="list-style-type: none"> • 12 months if child under 5 years old • 18 months if child is 5 years old or over but under 12 years old. • 24 months is child is 12 years old or older. <p>Note: extensions beyond the maximum timeframes may occur pursuant to an order under s. 44 or s. 44.1, which may be needed when more time is required due to adjournment of court hearing dates.</p>	<p>Legal obligations between a child/youth and the guardian(s) end on the child/youth's 19th birthday.</p> <p>Although the guardian(s) under 54.01/54.1 may later apply to adopt the child, this would be a private adoption and would not be eligible for PAA. Additionally, the care provider would lose all financial support offered to 54.01/54.1 care provider(s) by the director. The guardian would also be responsible to pay any fees related to obtaining the adoption order.</p>	<p>Adoption creates a lifelong legal relationship between the adoptive parent(s) and child/youth.</p>	<p>Legal obligations between a child/youth and the guardian(s) end on the child/youth's 19th birthday.</p>	

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Legal Impact of Order / Agreement (continued)	Access with birth parents	<p>The agreement is developed between the parent(s) and the care provider(s); the director considers the parent's contact with the child/youth as identified in the agreement, as well as their involvement in significant decisions affecting the child/youth.</p> <p>A director can require the care provider(s) to honour the terms of the agreement by notifying the director if the parent seeks to increase access or resume care of the child.</p> <p>As an EFP is a voluntary agreement initiated by the parent(s), the director has no ability to limit the parent's access. If the parent(s) exercises their right to access and the parent's access places the child at risk, the director should consider other options that keep the child safe.</p>	<p>The director directs and monitors the child or youth's access and plans for reunification with the parent(s), and the care provider's role, to ensure that access and reunification proceed as planned. This is to be outlined in supervision order.</p>	<p>Guardians are responsible to assess what contact with birth parents is appropriate, unless otherwise stated in an access order.</p> <p>Access orders may be made under s. 57.01 before the order is made.</p> <p>Parents or others may seek access as an application for contact under FLA.</p>	<p>Guardians are responsible to assess what contact with birth parents is appropriate, unless otherwise stated in an access order.</p> <p>Access orders may be made under s. 57.1 before the order is made.</p> <p>Parents or others may seek access as an application for contact under FLA.</p>	<p>Openness Agreement is between the proposed adoptive parent(s) and the birth parent(s) and is ideally negotiated by the director before the adoption order is granted. Openness Agreements are not legally binding.</p> <p>Adoptive parents are typically responsible to assess what contact with birth parents and other family is appropriate.</p> <p>A birth parent may seek access through an application for contact under FLA after the adoption order is granted.</p>	<p>Guardians are typically responsible to assess what contact with birth parents is appropriate.</p> <p>Birth parents may seek access as an application for contact under FLA.</p>
	Changing the child's name and other documentation	<p>The child/youth's name is not changed.</p> <p>Birth parent continues to be named on the child's birth certificate.</p>		<p>The child/youth's name is not changed when guardianship is transferred.</p> <p>Birth parent continues to be named on the child's birth certificate.</p>	<p>The child/youth's name may be changed during the adoption process, with consent from a child/youth 12 years of age and older. For children 7 to 11 years of age, a report is made to the judge regarding the child's views about the name change.</p> <p>Adoptive parent(s) is named on the child's birth certificate.</p>	<p>The child/youth's name is not changed when guardianship is transferred.</p> <p>Birth parent continues to be named on the child's birth certificate.</p>	
	Child's inheritance	<p>Does not affect the child/youth's pre-existing inheritance or succession to property rights. If the child/youth's care provider dies, the child/youth has no right to inherit from the estate unless they are named as a beneficiary in the care provider's will. If the child/youth's birth parents die, the child/youth retains the right to inherit from the estate.</p>		<p>Does not affect the child/youth's pre-existing inheritance or succession to property rights. If the child/youth's guardian dies, the child/youth has no right to inherit from the estate unless they are named as a beneficiary in the guardian's will. If the child/youth's birth parents die, the child/youth retains the right to inherit from the estate.</p>	<p>The child/youth's rights of inheritance in relation to the adoptive parent(s) are the same as if they were the child/youth's birth parents.</p> <p>The child/youth does not have a right to inherit property from their birth parents, unless they are named as a beneficiary in the birth parents' will.</p> <p>PGT must be notified of the adoption placement and order.</p>	<p>Does not affect the child/youth's pre-existing inheritance or succession to property rights. If the child/youth's guardian dies, the child/youth has no right to inherit from the estate unless they are named as a beneficiary in the guardian's will. If the child/youth's birth parents die, the child/youth retains the right to inherit from the estate.</p>	

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Legal Impact of Order / Agreement (cont.)	Indigenous connections and legal status	An Indigenous child/youth’s rights will not be impacted and the rights a child/youth is entitled to as part of their Indigenous heritage will not be affected.	An Indigenous child/youth’s rights will not be impacted and the rights a child/youth is entitled to as part of their Indigenous heritage will not be affected.	An Indigenous child/youth’s rights will not be impacted and the rights a child/youth is entitled to as part of their Indigenous heritage will not be affected.	An Indigenous child/youth’s rights will not be impacted and the rights a child/youth is entitled to as part of their Indigenous heritage will not be affected.	<p>If an Indigenous child/youth who is registered under the <i>Indian Act</i> is adopted by parents who are not registered themselves, the child/youth does not lose their status as a registered Indigenous person.</p> <p>An Indigenous child/youth’s rights of inheritance in relation to their birth parents will be severed. Accordingly, the child/youth’s legal rights of inheritance (e.g., land settlement payments paid to registered Indigenous children) in relation to the birth parents terminates. However, the child/youth’s cultural rights of inheritance (e.g., family names, access to cultural memorabilia) are not necessarily severed.</p>	An Indigenous child/youth’s rights will not be impacted and the rights a child/youth is entitled to as part of their Indigenous heritage will not be affected.

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Director's Role After Order / Agreement	Assess for Reunification	The parent(s) may resume care of the child at any time. If the director has concerns, this may be assessed and may result in removal from the parent(s) if necessary.	Director to continually assess whether child may be safely returned to parent's care.	Parent can apply to resume guardianship under FLA, at which point the court may order an assessment by a family justice counsellor.		No plans for reunification with birth parents; adoption order cannot be set aside.	Parent can apply to resume guardianship under FLA, at which point court may order an assessment by a family justice counsellor.
	Monitoring care of the child	The agreement and plan are monitored as outlined in the EFP agreement. EFP Agreement to be reviewed at least every six months; at least two weeks before the agreement expires; and at the request of the parent, child, care provider, or Indigenous community.	A court-ordered supervision is in place. Terms of care, including expectations of care provider(s), are defined as part of the order, and must include that the care provider(s) cooperate with the director's plan regarding access with parent(s) and that the director may remove if the terms are not followed.	No ongoing monitoring of child's care by the director.			
	Changing the order / agreement	Care agreement may be changed by the parent and the care provider. However, any changes to the care agreement must be approved by the director and reflected in the EFP Agreement.	Order may be amended by applying to the court.	<p>An order can only be changed or cancelled through the <i>Family Law Act</i> (FLA). MCFD funding is terminated at the time of the new order and cannot be transferred to a new guardian.</p> <p>A parent may apply under FLA to resume guardianship of the child. The director may apply to have intervenor status and present information in court, if the director believes this to be in the child's best interests.</p> <p>If a guardian later wishes to adopt the child, this must be arranged through a private adoption with the consent of the birth parent. MCFD funding is terminated at the time of the adoption. Post Adoption Assistance is not available through private adoption.</p>	<p>Neither an adoptive parent nor a birth parent can apply to the court to have the adoption order set aside.</p> <p>Even if another person is appointed guardian to an adopted child/youth, the adoptive parent continues to be their parent.</p> <p>The only mechanism that can sever the adoptive parents' legal parental responsibilities is if a child/youth is brought into care and a CFCSA Continuing Custody Order is granted.</p>	<p>A <i>Family Law Act</i> order can only be changed through the FLA. A guardian may apply under FLA to name a parent or another person named as guardian.</p> <p>A parent may apply under FLA to resume guardianship of the child. MCFD may seek intervenor status if such an application is made.</p> <p>Any order under the CFCSA takes precedence over an FLA order.</p>	
	Files	Open CS, FS, RE, and CT files. If there is no active work occurring with the parent(s) apparently entitled to custody and the EFP Agreement is being extended beyond the recommended duration, such as with customary care arrangements, the FS file may be closed.	Open CS, FS, RE, and CT files.	Upon completion, all MCFD files are closed except for an RE/CT file to administer ongoing funding. No further worker involvement.	Upon completion, all MCFD files are closed except for an AA file to administer funding if applicable. No further worker involvement.	No MCFD files open.	

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Financial Supports	Financial support from MCFD	Monthly rates: Age 0 to 11 years: \$1,024.64 Age 12 to 19 years: \$1,124.19			If eligible, adoptive parents may receive Post Adoption Assistance (PAA). Contracts are two years in duration and may be renewed as long as the family continues to be eligible. PAA maintenance is calculated using a sliding scale according to number of dependents. Age 0 to 11 years: up to \$806.78 Age 12 to 19 years: up to \$926.53	No MCFD financial support provided.	
	Income testing for MCFD support	Ongoing financial support from MCFD is not income or asset tested.			PAA maintenance is income and asset tested. PAA specific services are asset tested.	No MCFD financial support provided.	
	Transfer of financial support	Funding is not transferrable. However, if a new care provider is required, a new agreement/order may be initiated with that care provider.	Funding is not transferable to another guardian. In case of divorce or death of a guardian, the payment contract may be amended to remove one of the guardians, but cannot be amended to add a new guardian who was not named in the original order.		PAA is transferable if the adoptive parent(s) is deceased and a new guardian is named in the adoptive parents' will.	No MCFD financial support provided.	
	Child care subsidy and surcharge	The guardian/care providers qualify for the child care subsidy and surcharge without income testing. Social worker to complete CF2044 form.				Income tested, as is the situation for any parent. If eligible for PAA, child care may be available, but not for employment purposes.	Income tested, as is the situation for any parent.
	Federal government supports	The care provider(s) should contact the Canada Revenue Agency for eligibility for federal benefits.	The guardian(s) is not eligible to receive federal benefits such as the Canada Child Benefit or the Child Disability Benefit. However, if the child/youth is eligible for the Child Disability Benefit, an amount equal to the Child Disability Benefit may be added to the financial support provided to the care provider.		The adoptive parent(s) / guardian(s) should contact the Canada Revenue Agency to determine eligibility for federal benefits.		
	Income tax	The care provider(s)/guardian(s) should contact the Canada Revenue Agency to learn more about any tax implications of receiving maintenance payments and whether the child/youth can be claimed as a dependent on the care provider(s)/guardian(s) tax return.				The adoptive parent(s) / guardian(s) is eligible to claim the child/youth as a dependent for income tax.	
	Medical and dental coverage	Medical and dental coverage may be provided by MCFD if the child is not covered under another comparable program. Children may be eligible for coverage through Healthy Kids, Pharmacare, FNHA/NIHB.	Child/youth is not eligible for medical or dental coverage through MCFD. Children and youth may be eligible for medical and dental coverage through sources such as Healthy Kids and Pharmacare. Indigenous children and youth may also have coverage through First Nation Health Authority (FNHA)/Non-Insured Health Benefits (NIHB). Children/youth may also be eligible to be added to the guardian's/care provider's private extended health and dental benefits plans, according to the limits of the plan.				

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Ongoing Supports	Respite / relief care	<p>Informal respite: Care provider(s) may receive up to \$300 per month in respite funding paid off the RE file using code 14541. Care provider(s) is to act as a “prudent parent” in selecting a respite caregiver.</p> <p><i>Or</i></p> <p>Formal respite: Care providers may be provided with up to three days per month of respite care billed on a 1234 form by a foster parent.</p>	Policy is silent on the issue of respite care. With manager approval, some areas provide respite similar to that available to EFP care providers. Consult with your team leader.	Guardian(s) may be eligible to access respite through a Support Services Agreement, as available to any parent.		Provision for respite may be funded through post-adoption assistance (if eligible).	Guardian(s) may be eligible to access respite through a Support Services Agreement, as available to any parent.
	Mental health supports	<p>Mental health services may be obtained from government, community, and/or private services, including CYMH services, as available to any parent.</p> <p>Services may also be provided by MCFD in accordance with any plan or agreement/order.</p>		Mental health services may be obtained from government, community, and/or private services, including CYMH services, as available to any parent.		Mental health services may be obtained from government, community, and/or private services, including CYMH services, as available to any parent. Additionally, provision for mental health supports, including counselling and assessments, may be funded through post-adoption assistance (if eligible).	Mental health services may be obtained from government, community, and/or private services, including CYMH services, as available to any parent.
	Supports for children / youth with special needs	<p>Support services may be obtained from government, community, and/or private services, including the At Home program and CYSN services, as available to any parent.</p> <p>Services may also be provided by MCFD in accordance with any plan or agreement/order.</p>		Support services may be obtained from government, community, and/or private services, including the At Home program and CYSN services, as available to any parent.		Support services may be obtained from government, community, and/or private services, including the At Home program and CYSN services, as available to any parent. Additionally, provision for supports may be funded through post-adoption assistance (if eligible).	Support services may be obtained from government, community, and/or private services, including the At Home program and CYSN services, as available to any parent.
	Community and other supports	<p>Support services may be obtained from government, community, or private services, as available to any parent.</p> <p>The care provider(s) may access supports through Grandparents Raising Grandchildren.</p> <p>Services may also be provided by MCFD in accordance with any plan or agreement/order.</p>		Support services may be obtained from government, community, or private services, as available to any parent.	The guardian(s) may access supports through Grandparents Raising Grandchildren.	Support services may be obtained from government, community, or private services, as are available to any parent. Additionally, provision for additional supports, such as speech therapy or tutoring, may be funded through post-adoption assistance (if eligible).	Support services may be obtained from government, community, or private services, as are available to any parent. Guardians may access supports through Grandparents Raising Grandchildren.

This tool is a guide only. Workers must review current policy when assessing and planning with children and families.

Last updated: November 2022

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Post-Majority Supports	Agreements with Young Adults	Not eligible to apply for Agreements with Young Adults.					
	Provincial Tuition Waiver Program	Eligible to apply for Provincial Tuition Waiver Program. All time spent in an out of care status (including EFP, 35(2)(d)/41(1)(b), 54.01 and 54.1), as well as any time spent in care or on a Youth Agreement, may count towards two-year eligibility threshold.				Eligible to apply for Provincial Tuition Waiver Program. Although adoption orders are not an eligible status for calculation of two-year eligibility threshold, all time spent in care or in an out-of-care option prior to an adoption order may count towards two-year eligibility threshold.	Only eligible if the child/youth spent at least two years in an eligible in-care or out-of-care CFCSA order or agreement. FLA orders are not an eligible status for calculation of two-year eligibility threshold.
	Youth Education Assistance Fund (YEAF)	Not eligible to apply for YEAF.			Eligible to apply for YEAF only if the child/youth was part of a CCO for at least 5 years immediately prior to the s. 54.1 order.	Eligible to apply for YEAF only if the child/youth was part of a CCO for at least 5 years immediately prior to the adoption order.	Not eligible to apply for YEAF.