

How To Help Our Youngest Children & Their Parents in Court: It's Everyone's Responsibility!

Judge Douglas F. Johnson

June 2022

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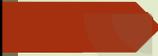
Are you interested in
changing the lives of
a generation of our
little ones for the
better?

Birth To Five Facts

- ▶ 1 in 5 foster care placements are infants.
- ▶ Once in care, they remain twice as long as older children.
- ▶ Babies under age 1 make up 25% of the children in the child welfare system.
- ▶ 76% of child abuse fatalities occur to children under age 4.
- ▶ Multiple foster placements.
- ▶ Developmental Delays &/or Damage.
- ▶ WHY NOT help the youngest of the young?

“Parents and children help each other to grow. In raising their children, parents are also raising themselves. Child rearing gives parents the chance to redo their own childhood and to improve on it.”

Alicia F. Lieberman, Emotional Life of the Toddler.



Child Abuse Prevention & Treatment Act (CAPTA)

- Section 106(b)(2)(B)(xxi) requires that States have provisions and procedures for the referral of children under the age of three who are involved in substantiated cases of child abuse or neglect to early intervention services funds by Part C of the Individual with Disabilities Act (IDEA).



IDEA 2004

- Part C, Section 637(a)(6)(A & B) (State Application and Assurances) requires states participating in Part C to refer for early intervention services an child under the age of 3 who is involved in a substantiated case of child abuse or neglect; or is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.



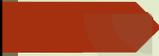
Nebraska

- ▶ Early Development Network.
- ▶ Individualized Family Service Plan.



Traumatic Relationships CAN Be Repaired!

- ▶ Young children mental health assessments and treatment:
 - ▶ Child Parent Psychotherapy
 - ▶ Circle of Security
 - ▶ Parent Child Interactive Therapy



Solution Seeking Courts

A good judge models civility, respect, dignity and requires others to do the same.

Take Parents as We find Them: Trauma informed. Compassionate. Engagement.

Act with a sense of urgency: As if this family is your own!

Front load services: Pragmatic, timely, effective response to abuse & neglect.

Affirmation with accountability: motivates parental improvement/resolution of permanency.

Alternative Dispute Resolution: Pre-Hearing Conference, Family Group Conference, Mediation.



The Essence of a Solution Seeking Court

Intense Judicial Oversight.

Front-Load Reasonable Efforts Services.

Intense Case Management.



Goals for Children

- ▶ Achieve a timely, safe, secure, permanent home consistent with ASFA: *12 Month PPH or sooner.*
- ▶ Stop foster care drift: Permanency from Day One.
- ▶ All early development needs are met.
- ▶ *Best interests, well-being & safety: caring, loving, consistent adult to meet this child's needs.*



Child Welfare Mandate

...protect the children's *current* and **future** safety and well-being, while strengthening and preserving the family unit . . . whenever possible.

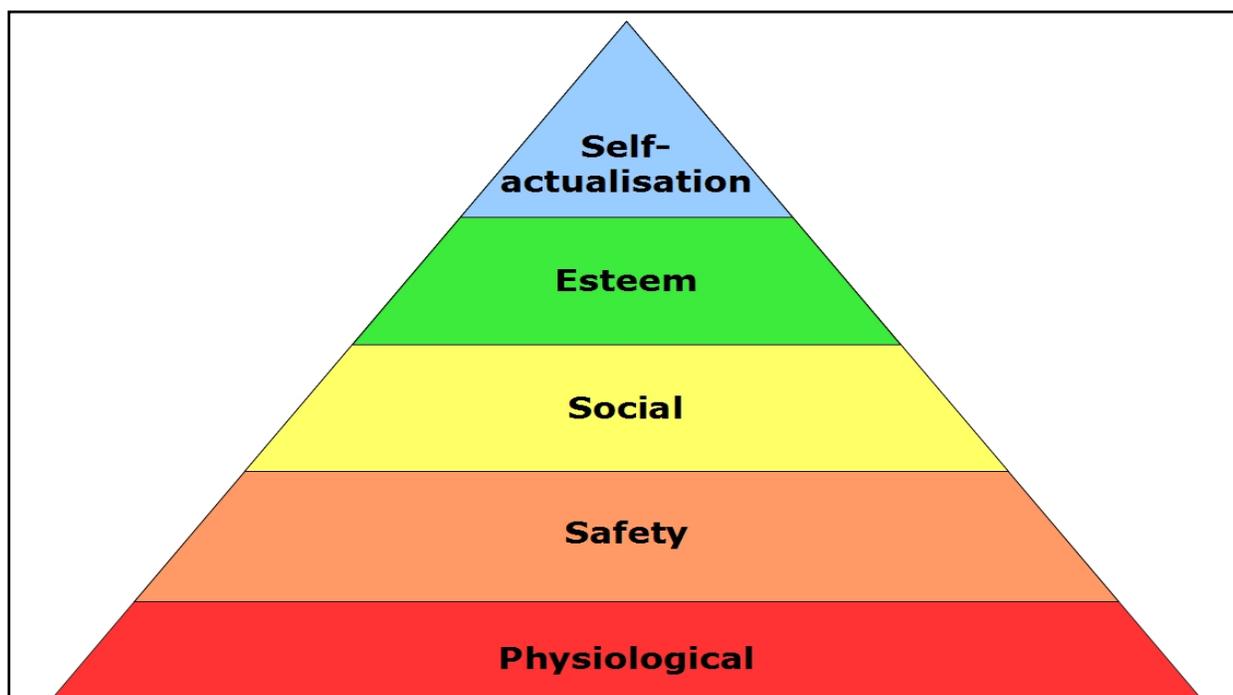
Goals for Parents

90% abuse/neglect cases: SUD and mental health.

Active participation, responsibility & rehabilitation.

Adequate parenting skills, meet their child's needs & safety, and provide a home for their children = reunification.

Due process & fair hearings.





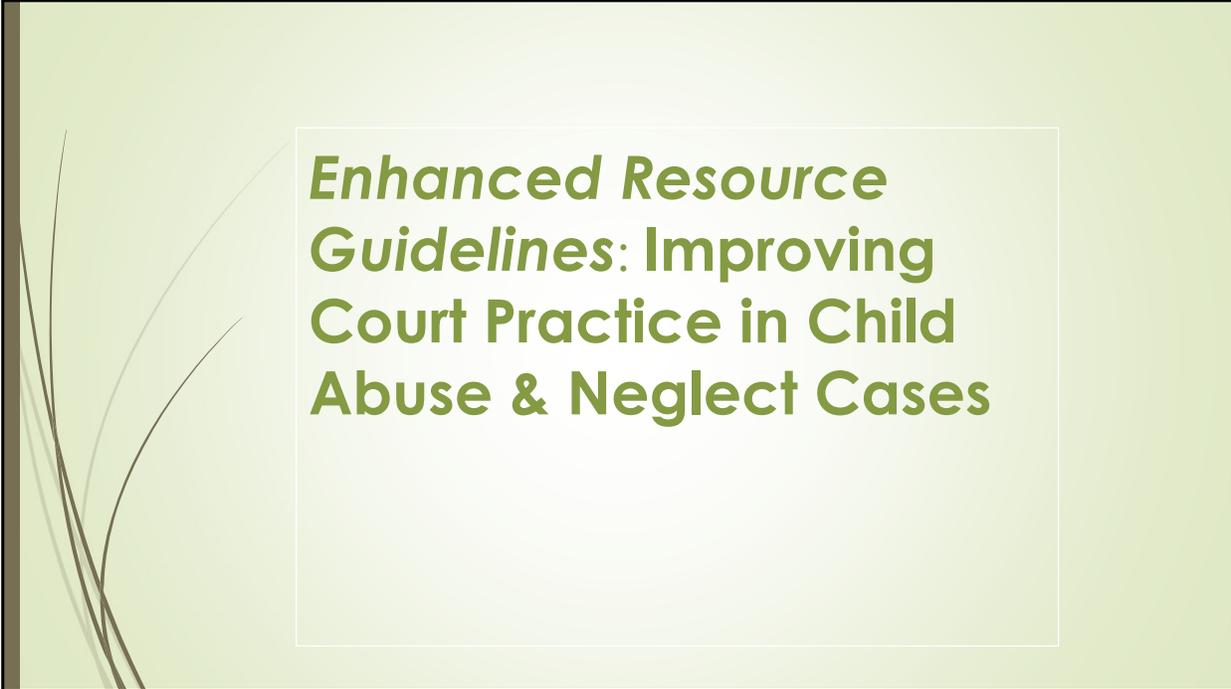
Key Elements

- ▶ Focus on holistic child/parent well-being.
- ▶ Ample & meaningful family time with safety plan.
- ▶ Parents and children reside together as soon as safely possible.

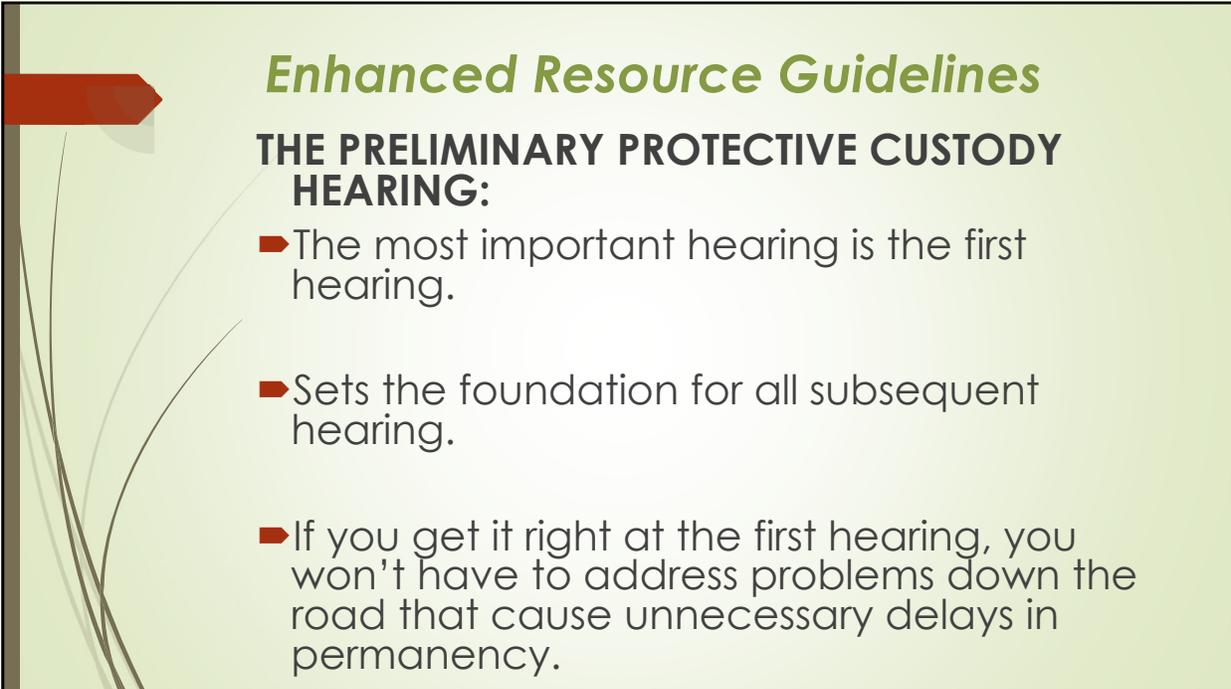


But!!

- ▶ How do we GET there?



Enhanced Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases



Enhanced Resource Guidelines

THE PRELIMINARY PROTECTIVE CUSTODY HEARING:

- The most important hearing is the first hearing.
- Sets the foundation for all subsequent hearing.
- If you get it right at the first hearing, you won't have to address problems down the road that cause unnecessary delays in permanency.

Roadblocks!



- ▶ Setting the tone.
- ▶ “We don’t know enough . . .”
- ▶ Managing strained relationships.
- ▶ “This won’t work. The parents are upset!”
- ▶ Defense Attorneys haven’t met their client . . .
- ▶ “But, there’s a TPR filed!!”
- ▶ Check list compliance vs. meaningful best practice.

Roadblocks

- ▶ How long are your hearings?
- ▶ 15 minute hearings: “Resisted? Removal issue, supervised visitation.
- ▶ Little if any parental engagement.
- ▶ Overwhelming parents with case plan tasks.
- ▶ VS: **Quality hearings!**



5 Key Issues

- 1) Identify Parents—birth cert./paternity?
- 2) Indian Child Welfare Act?
- 3) Contrary to the Welfare? Then, placement of children. “Can the child safely return home? If so, how? If not, why?” If not, relative placement?”
- 4) Family time?
- 5) Reasonable efforts services-child & parent?



It's the Law!

Preliminary Protective Custody Hearing

- An informed judicial decision concerning whether or not a child can be safely returned home pending adjudication.
- Day one parental participation—avoid hallway “professional” chitchats.
- Early identification of parental strengths, relative support, and timely reasonable efforts services.



Preliminary Protective Custody Hearing

Required Judicial Findings:

1. Reasonable efforts to (a) prevent removal and to (b) reunify: specific facts based on the evidence.
2. Remaining in the home of the parent/legal guardian would be contrary to the child's welfare: specific facts based on the evidence.



Preliminary Protective Custody Hearing Key Decisions

- ▀ Should child be returned home or kept in foster care prior to adjudication?
- ▀ What services will allow the child to remain at home safely? Safety plan?
- ▀ Has HHS made reasonable efforts to avoid out-of-home placement? Reunify?
- ▀ Parents? Stepparents?



Preliminary Protective Custody Hearing Key Decisions

- Will parents voluntarily (NAAI) participate in services? Exception: mandatory child abuse reporting. NRS 43-247.01 (Reissue 2016)
- Are responsible relatives available if needed? Foster-adopt?



Preliminary Protective Custody Hearing Key Decisions

- Is placement proposed by the Agency the least disruptive and most family-like setting?
- Does ICWA apply? Who will send notice? When?
- Will implementation of the service plan be monitored? By whom?



Preliminary Protective Custody Hearing Key Decisions

- Restraining orders?
- Examinations, evaluations, family support, or other services? When? Payment source?
- Terms/conditions for parenting time and sibling time?
- Child support referral/hearing?
- Absent parties/future hearings?
- Set the next hearing in court.



■ ***What needs to be done now?***

Always Ask:



How I can help?

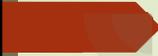
The parents?

The children?

What else can we do to help your child in this difficult time? Stuffed animal? PJs? Special blanket? Bedtime story? Favorite song?

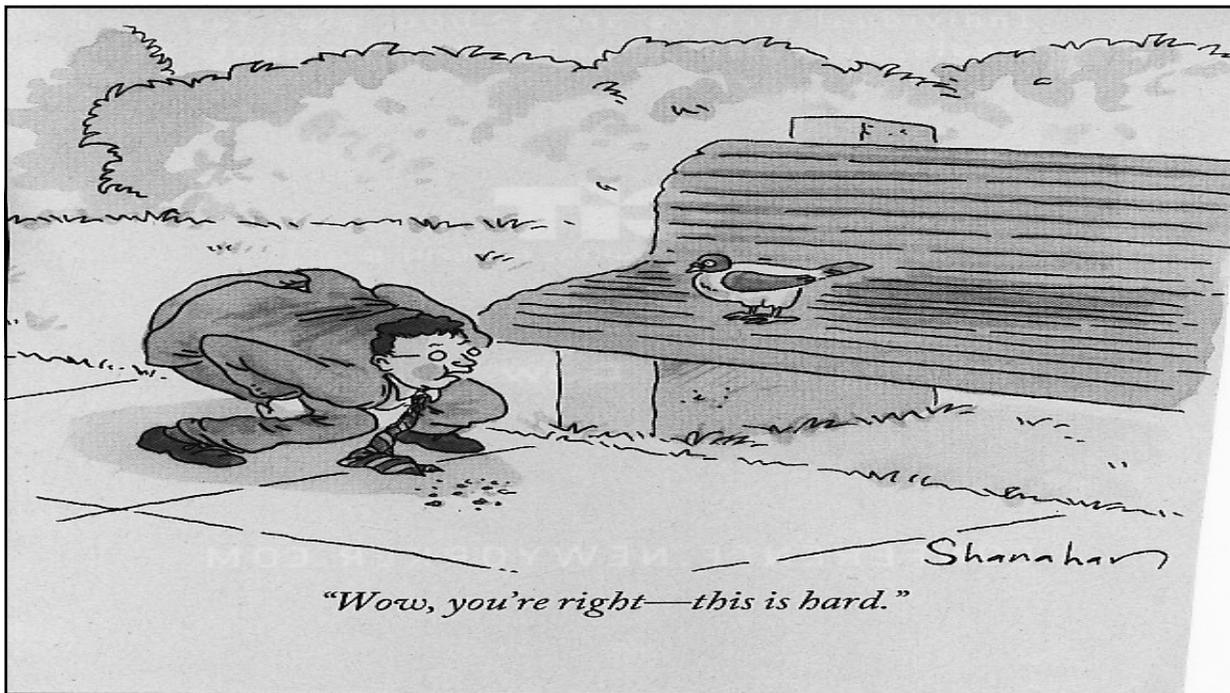
Take time to explore relative placements!

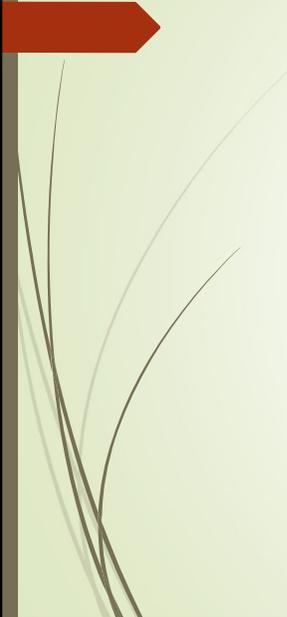




You and Your Child Matter!

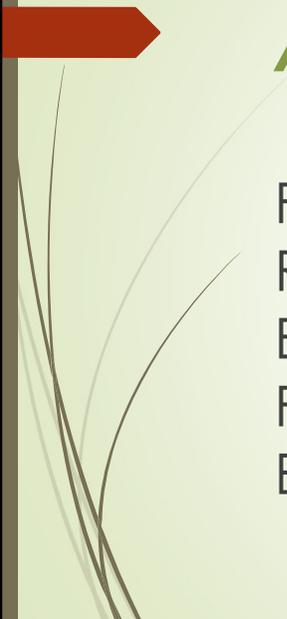
- A crisis is the best opportunity for parental “buy in” that lasts and works better than any court order.





Inability to Comply
Is DIFFERENT than
“Non-Compliance”

Good Initial & Ongoing Assessment
Is Essential to Distinguishing the
Difference



A Closer Look at:

Family Time
Reasonable Efforts
Engagement
Findings
Better Together!!

Family Time

- ▶ A judge cannot delegate parenting time to HHS, the therapist, the GAL, and/or CASA “when they are in agreement”!
- ▶ Parenting time is a fundamental parental right and is based on the evidence and made only by the judge. See: *In re Interest of C.A.*, 235 Neb. 893, 457 N.W.2nd 822 (1990), *In re Interest of Teela H.*, 3 Neb. 604, 529 N.W.2nd 134 (1995)

Presume reasonable rights of parent-child family time.

Require evidence of a safety concern to alter the presumption.

NE Supreme Court Parenting Time Guidelines (2009).

Reasonable Efforts?

- ▶ Do not accept a recommendation for a “parenting class”. Certificate based on attendance or competency?
- ▶ Do not accept “supervised visitation”.
- ▶ Do not accept “visitation once (or twice) a week for an hour or two”.
- ▶ Do not accept family time at McDonald’s, the Agency office, the mall, etc., etc. . . .

If you want to kill a relationship

- ▶ Infrequent contact.
- ▶ Brief contact.
- ▶ Artificial/counterproductive environment.
- ▶ Supervise the family time by a person with no expertise and who cannot model the parental role.



Require Reasonable Efforts

- ▶ Meaningful and ample family time in a context rich environment.
- ▶ Provide for family time in a natural setting, doing normal family things: cook a meal, play, bathe, change diaper, hold/rock baby, floor time, read/sing to baby.



Require Reasonable Efforts

- ▶ Parent modeling by a qualified person if oversight, modeling or training is needed.
- ▶ NB: Each family time over 1x per week triples the chances of achieving permanency (Brenda Jones Harden, Ph.D.).

Engagement

- ▀ Describe one highlight/challenge of being a mother/father this past week. How did that feel?
- ▀ What is your child's favorite color? Food? Special toy? Blanket?
- ▀ What frightens your child? What do you do to comfort/calm her? How does that feel?
- ▀ How does your child react when he sees you? How does that feel?
- ▀ Describe your child in one, two or three words.

Engagement

- ▀ What books do you read to your baby? How does your baby react? What words does your child say?
- ▀ Describe the kind of father/mother your toddler needs? Are you that man/woman? Do you want to be? Are you getting there? What gets in the way?
- ▀ How does it feel to hold your child?
- ▀ How are you doing? Are we missing anything? What do you think?
- ▀ CATCH Parents doing Good!

Evidentiary Findings

- ▶ Judges have an independent duty to consider the evidence and make a judicial decision.
- ▶ REMEMBER: Just because the Agency, DCA, GAL, or Defense Attorney recommends a particular finding and order DOES NOT MAKE IT SO.
- ▶ Adoption Assistance & Child Welfare Act [P.L. 96-272 (1980)], Adoption & Safe Families Act [P.L. 105-89 (1997)]

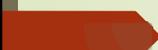
It's about the evidence!

- ▶ Judges do not (hopefully) work in a vacuum.
- ▶ The quality of a judge's decision about children and their families is directly related to the quality of information the judge receives.



Outcomes

- ▶ Good information = good judicial decisions.
- ▶ Timely services = front loading.
- ▶ Early Admissions; Cont. in Anticipation of Dismissal because parents are correcting issues.



Outcomes

- ▶ Disposition Hearing with Adjudication—parents already doing the rehabilitative case plan.
- ▶ Children & parents' needs met: reunification or adoption through due process/meaningful hearings & ADR.
- ▶ Timely Permanency--stop prolonged foster care.



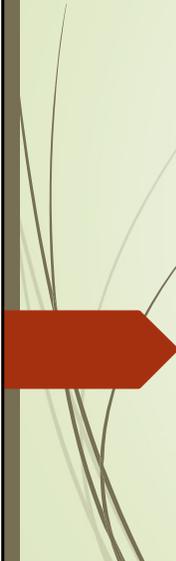
Do your homework! Read & Lead!

- ▶ NCJFCJ's Enhanced Resource Guidelines: Improving Court Practice in Abuse & Neglect Cases.
- ▶ Family Violence, Juvenile & Family Law Depts: www.ncjfcj.org.
- ▶ CASA Judge's Page Newsletter Family Visitation Issue (June 2006) & other volumes:
www.casaforchildren.org



But!

- ▶ How do we work together?
- ▶ Silos?
- ▶ Turf?
- ▶ Poor prior working "together" experience?
- ▶ Poor baby!



Linking Vision and Goals: Moving Forward Together for Children and Families



The Importance of Shared Vision

Generates a clear organizational and system purpose and promotes the necessary changes that need to occur to achieve desired future outcomes.

- ▶ It is a response to the question, "What do we want to create together?"

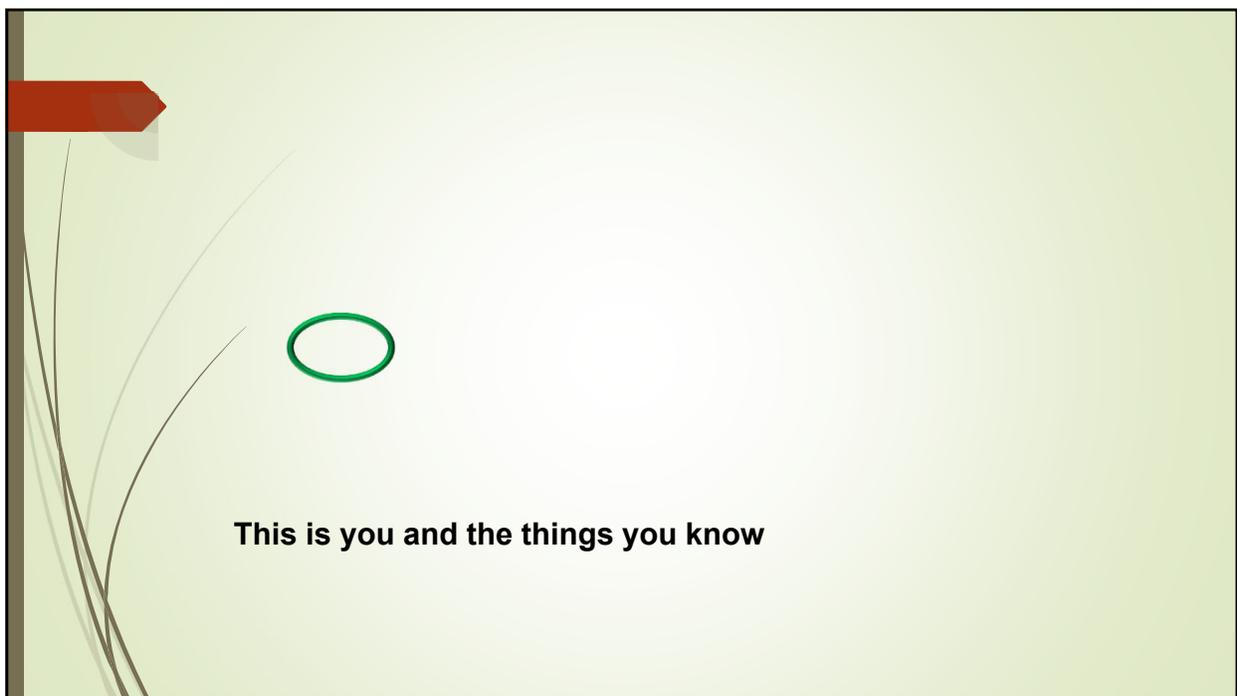
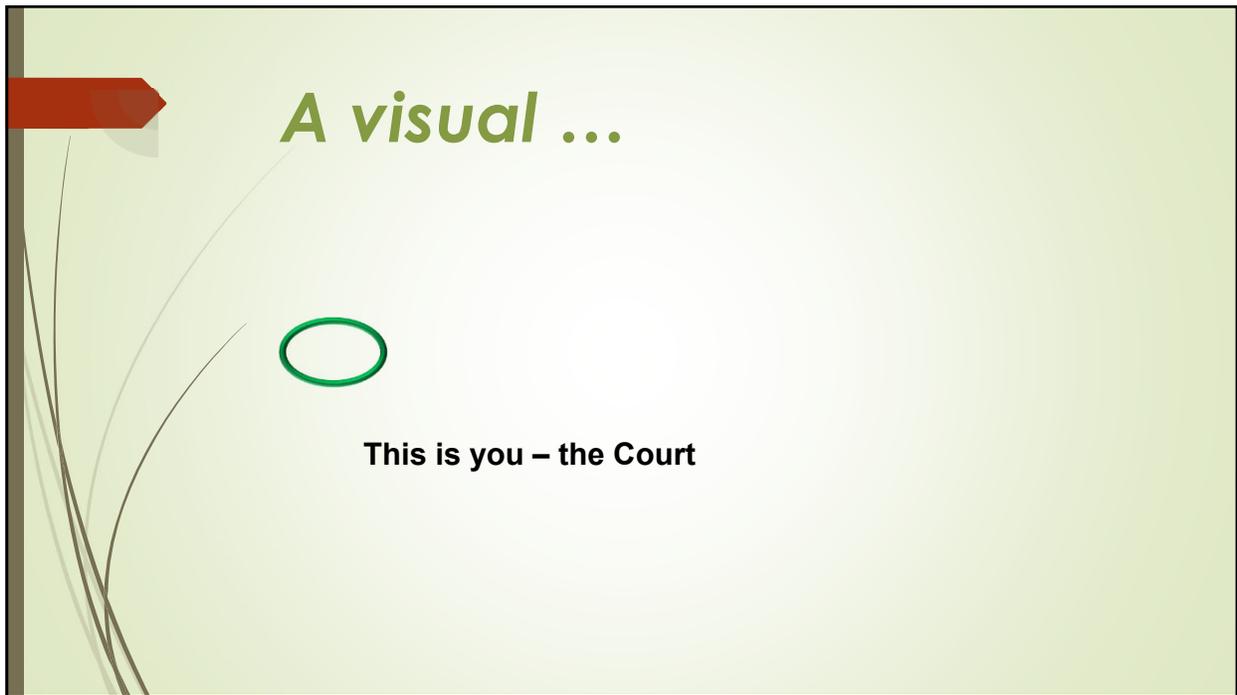
The Importance of Shared Vision

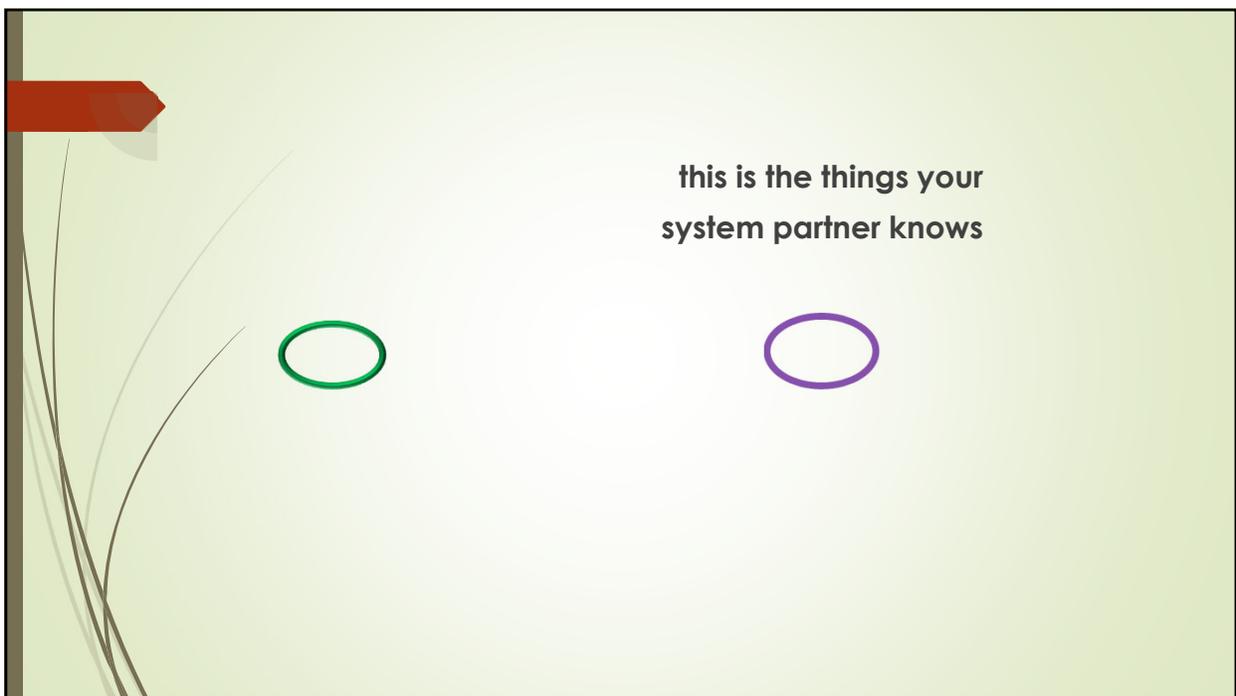
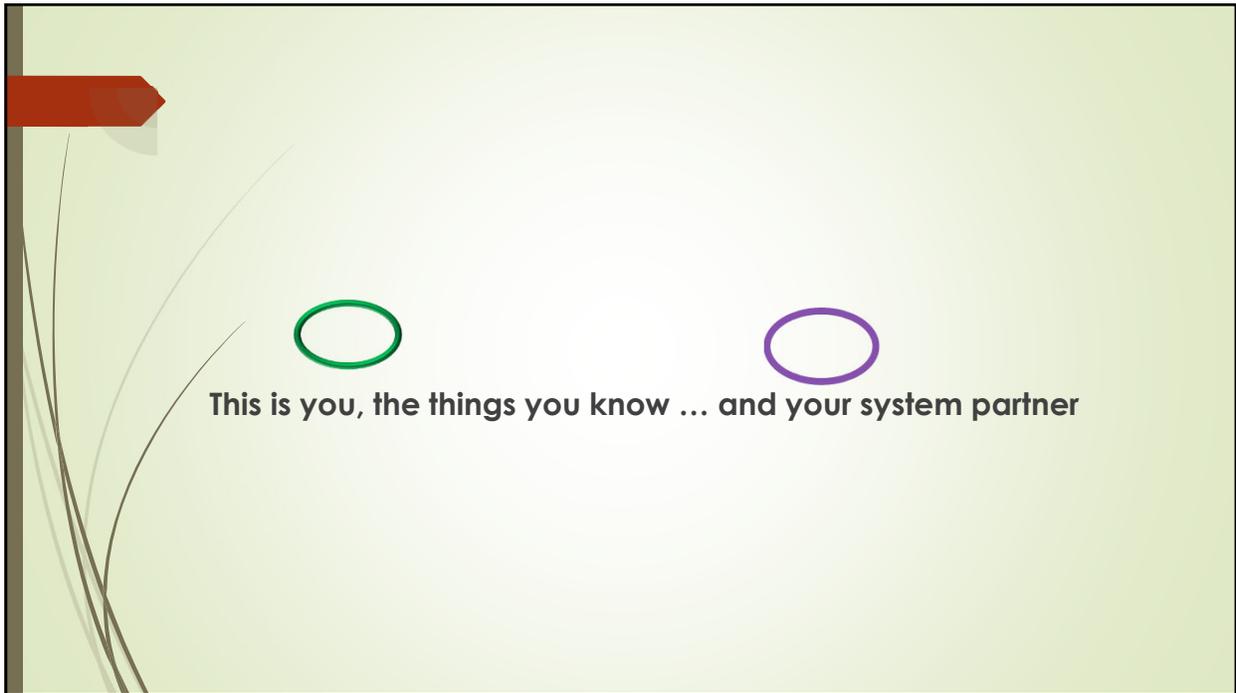
A shared vision helps to create a sense of commonality between system partners – providing coherence to varied activities and promoting understanding of different roles and responsibilities.

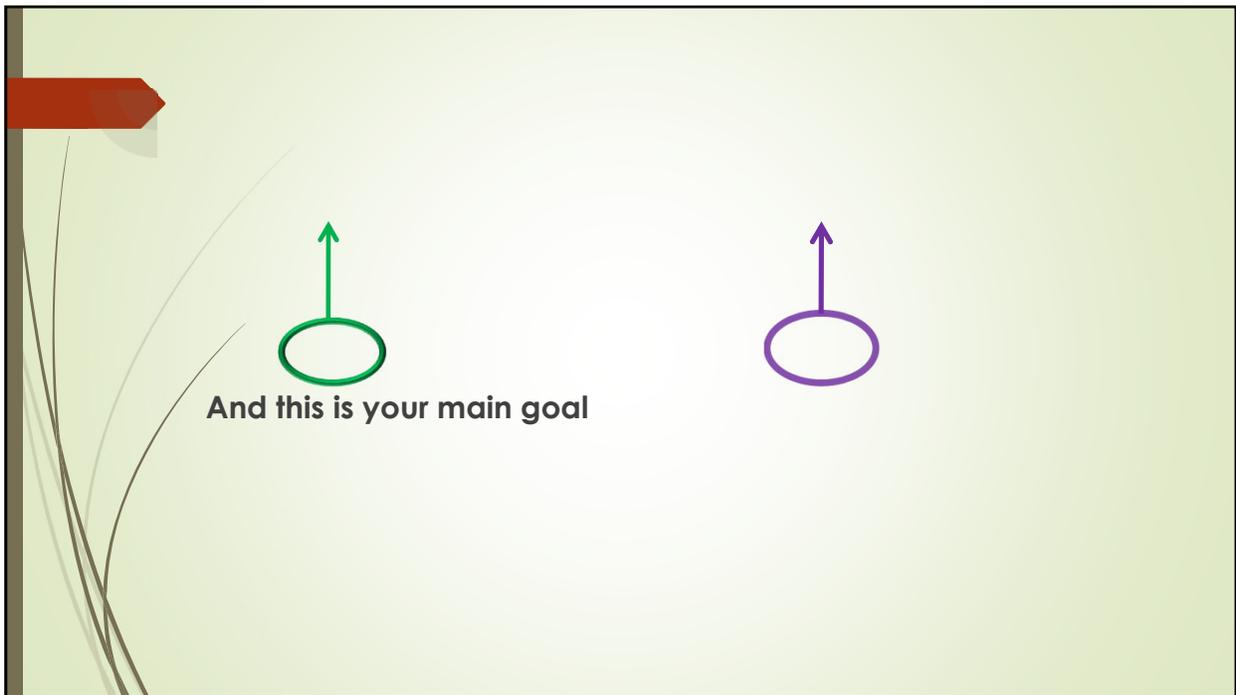
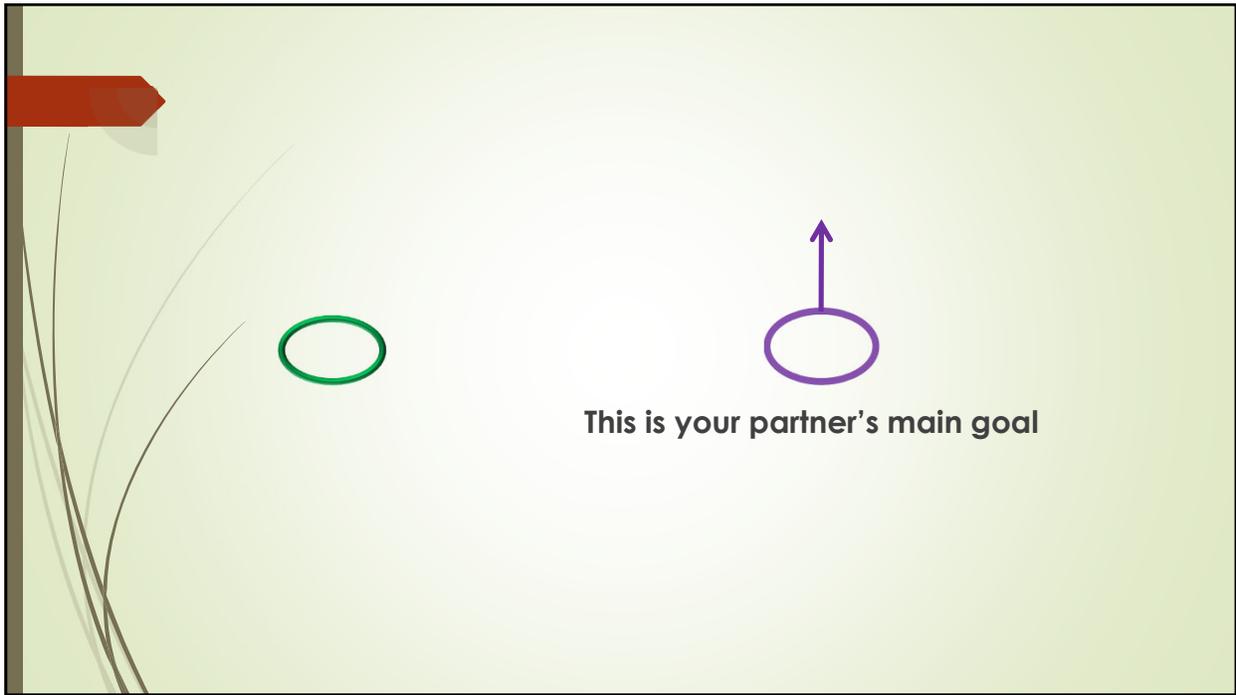
- ▶ People who truly share a vision are connected and bound together by a common aspiration.

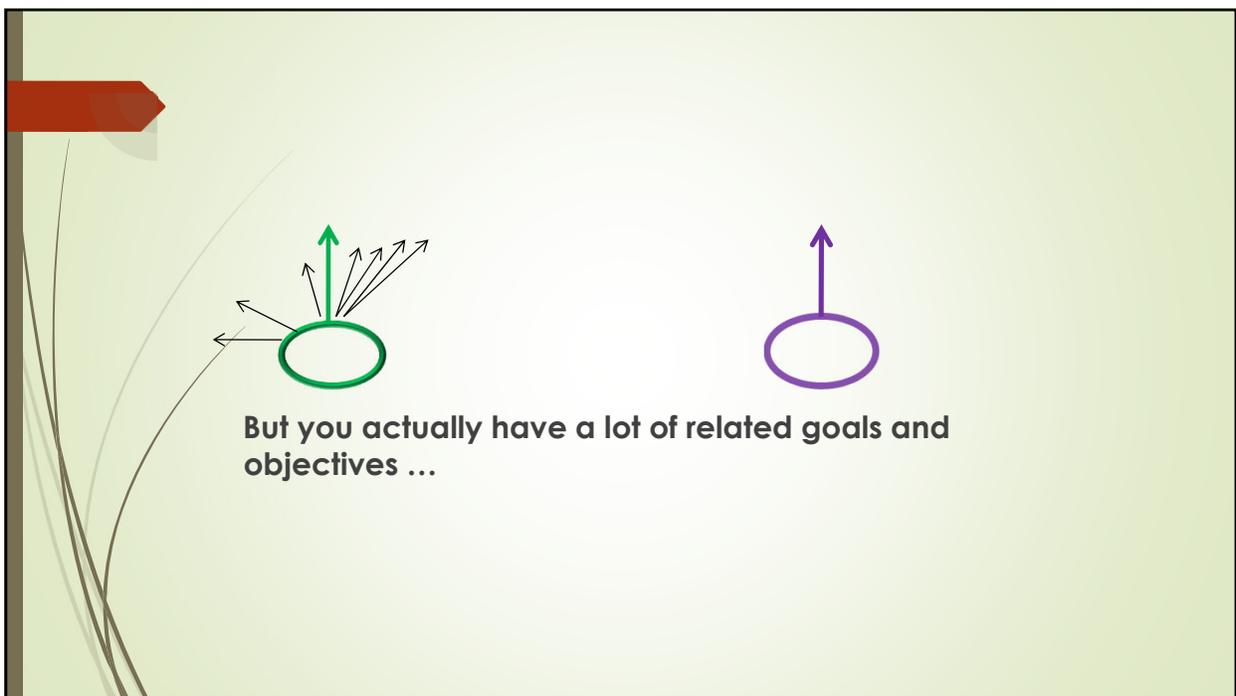
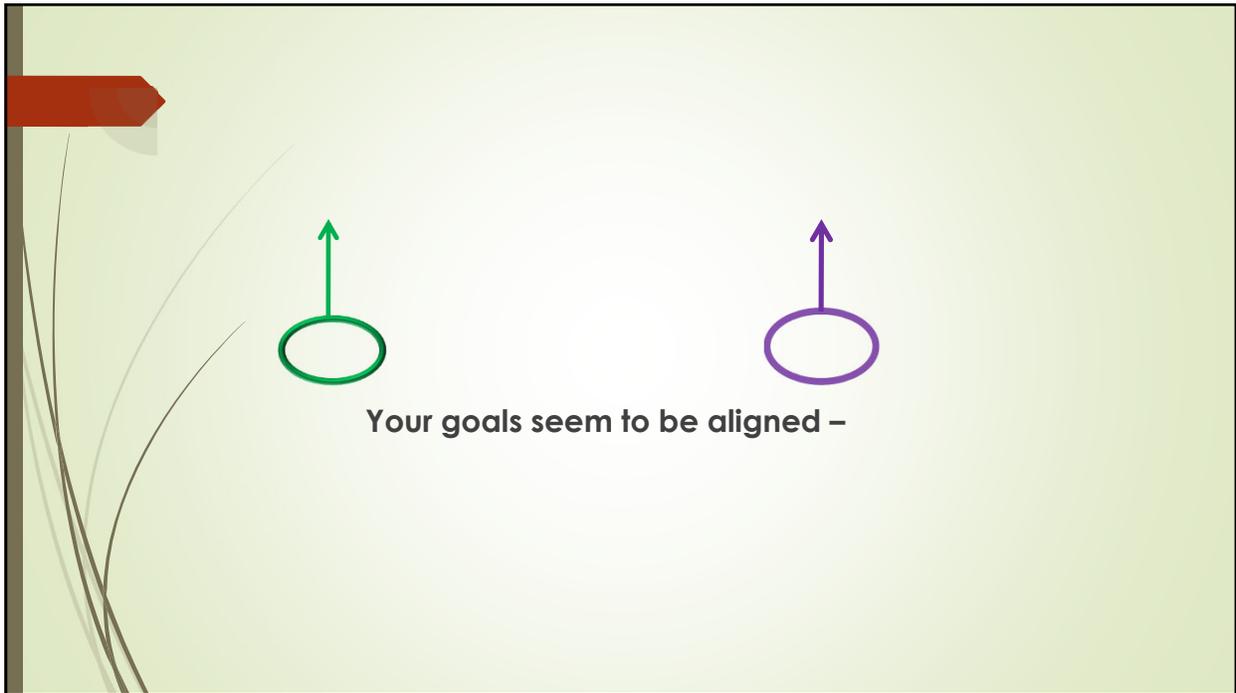
A Shared Vision ...

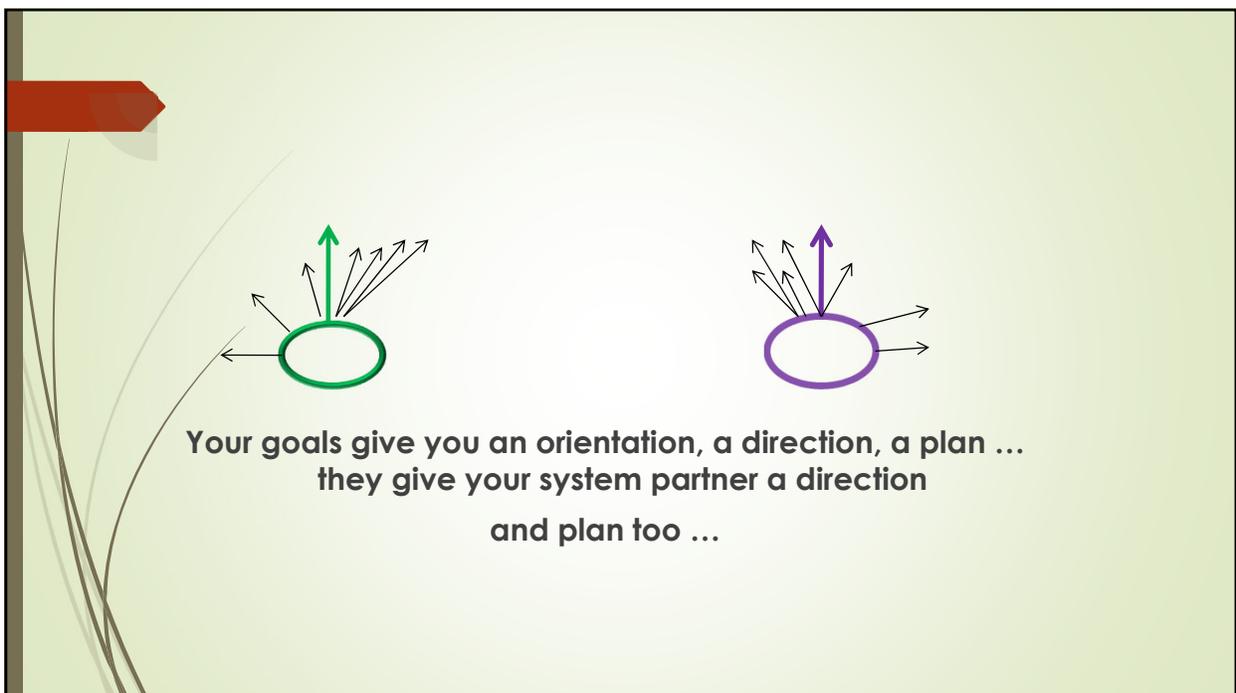
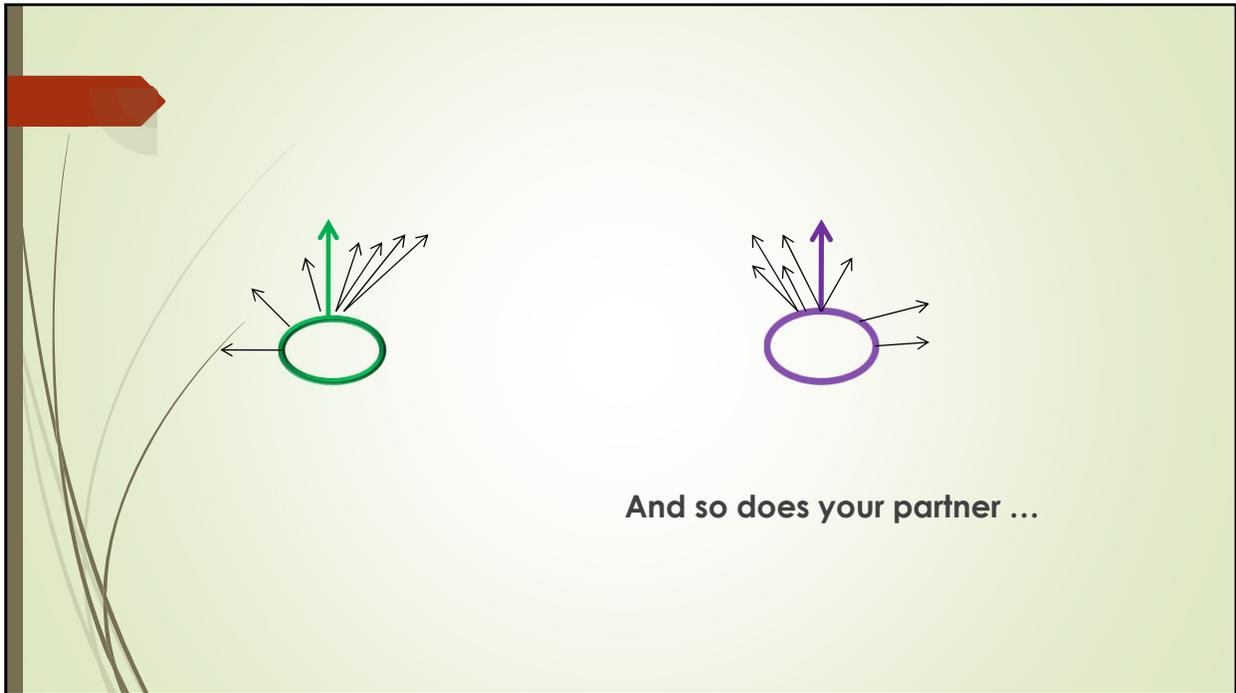
- ▶ Focuses on a mutual purpose
- ▶ Is uplifting and motivational
- ▶ Encourages experimentation and innovation
- ▶ Fosters long-term commitment to change goals

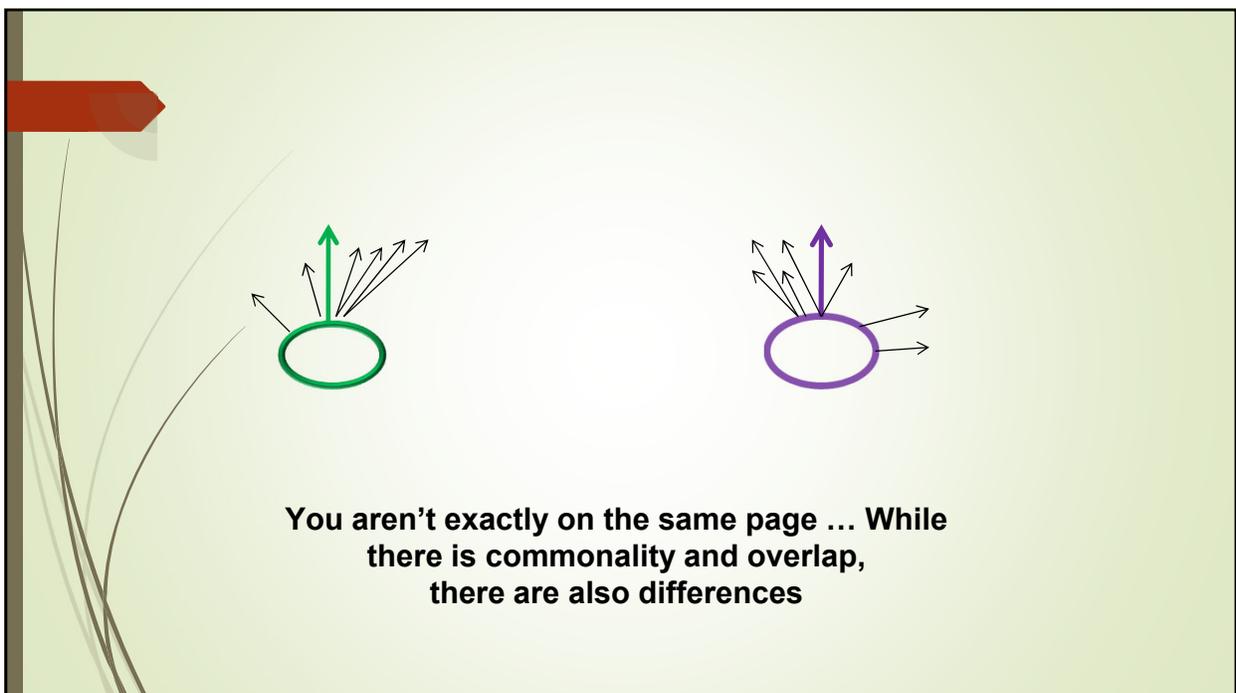
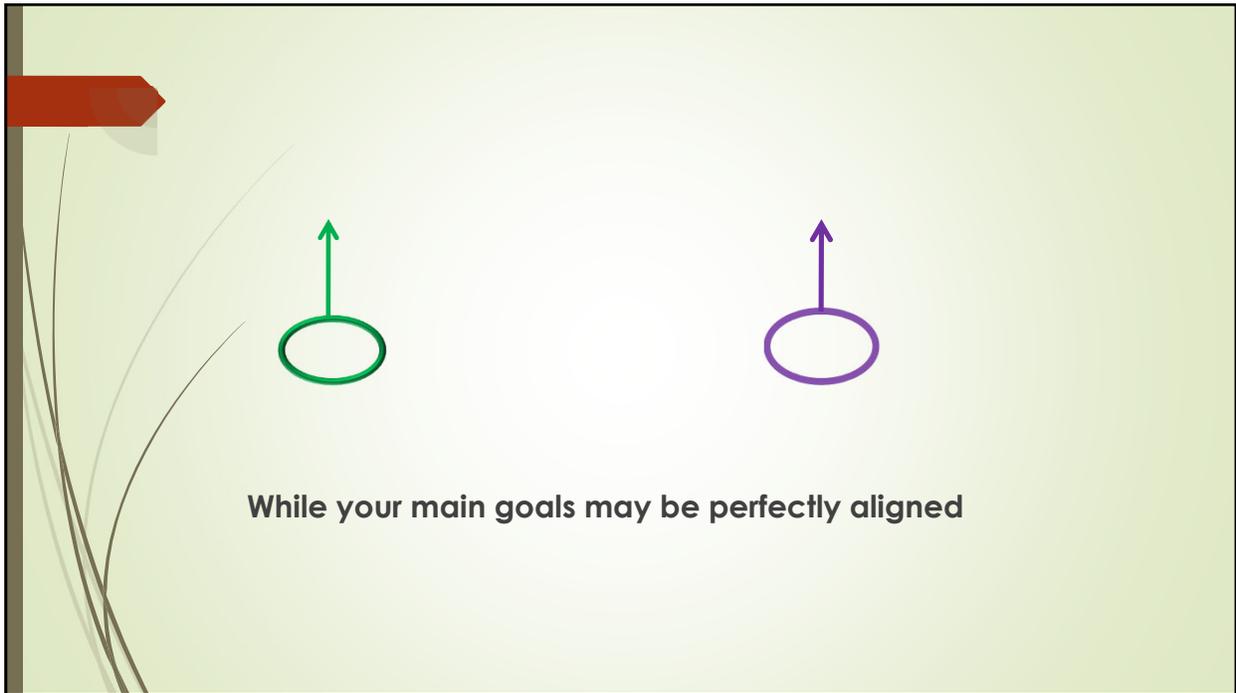


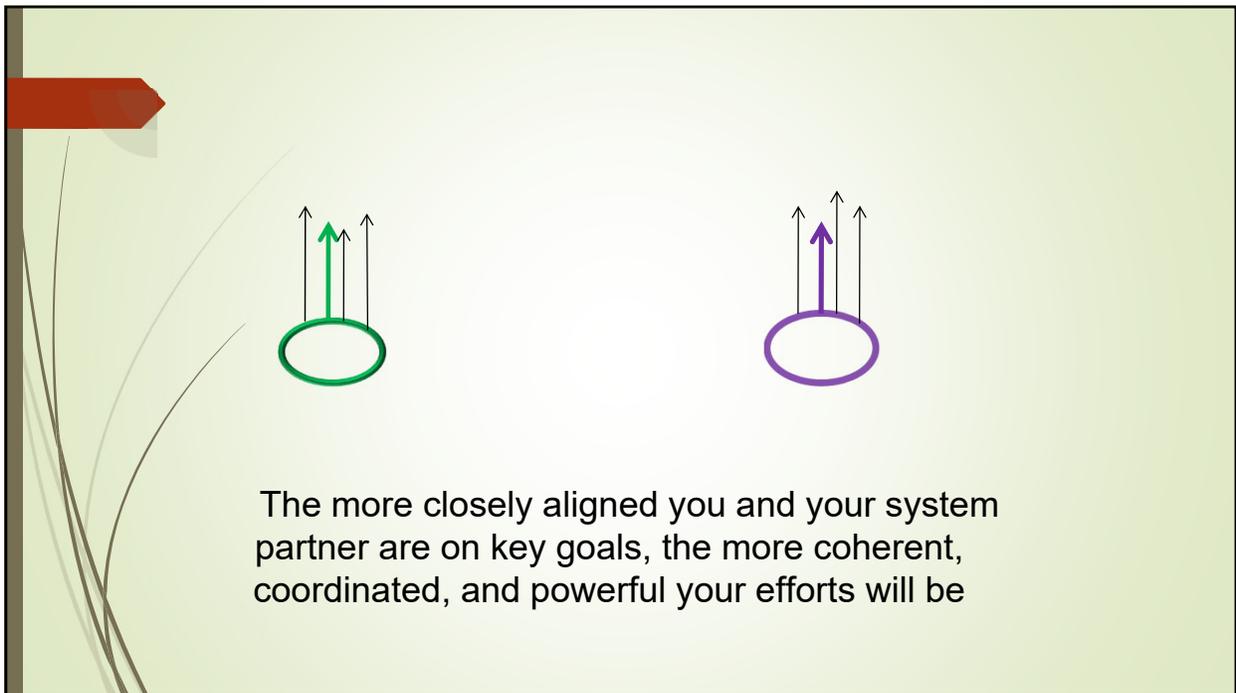


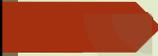






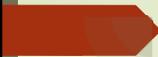






Why Align Goals?

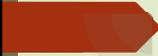
While some differences in goals and objectives are appropriate for different organizations with different organizational frameworks, staff and mandates, there are clear advantages to aligning organizational change goals with your system partners



Why Align Goals?

Facilitates movement forward while reducing the likelihood that system partners will work at cross-purposes

- ▶ reduces chances that systems will pull against each other



Why Align Goals?

Affords the opportunity for differences to retreat into the background and for commonalities to become salient

- ▀ differences and conflict among institutions, agencies, and professions that may differ in philosophy, positional power, and resources can be overcome



Ways to Align Your Goals

Expand your scope so that you are more aware of partners' goals and motivations

Bring system partners to the table to participate in your strategic planning efforts

Involve system partners in specific initiatives that are aligned with each other's vision and goals



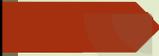
***What Can Be Done to
Improve These
Outcomes?***

Inquiry into the needs of children and parents by the judge and you show: you, social workers, attorneys, providers, teachers, and others that these needs are important and can help all stakeholders respond better to those needs

Collaboration among agencies, attorneys, child welfare, providers, schools, and courts can positively impact the chances of success for these children and parents

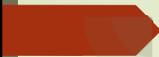


***Perfect is the
enemy of good.***



Training, training, training . . .

Collaboration, collaboration,
collaboration...



*Be the change you
want to see in the
world.* Gandhi



Thank you!

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