

CHAPTER 6: The Case Plan and the Case Plan Hearing

6.1 THE CASE PLAN

Idaho law requires that a case plan be prepared “in every case in which the child is determined to be within the jurisdiction of the court, including cases in which the parent(s) is incarcerated.”¹ This includes cases in which the child is placed in the legal custody of the Department as well as cases in which the child is home under the protective supervision of the Department.² In protective supervision cases, the case plan includes only the relevant provisions of the “reunification plan” outlined in Rule 44.

A. IDHW Preparation of the Case Plan

In Idaho, two documents are used to meet the state and federal requirements regarding the development of the case plan. The federal case plan requirements, which apply when the child is ordered into the custody of the Department, are met in the “Alternate Care Plan.” Unless specifically requested, the Alternate Care Plan is generally not submitted to the court. The state case plan requirements are satisfied with the “Case Plan”³ which is submitted to the court for approval.⁴

The Alternate Care Plan is a rich source of information and detail regarding safeguards for the children and the development of the goals and tasks outlined in the Case Plan. Because the Alternate Care Plan is not submitted to the court, it does not become part of the court’s order. Therefore, the terms of the Alternate Care Plan are not enforceable through contempt proceedings. Best practice is for the court to request that the Department provide a copy of the Alternate Care Plan when the Case Plan is submitted for review and approval.

Note re Terminology: In this manual, “prosecutor” refers to both a county prosecutor and/or a deputy attorney general; “GAL” refers to both a guardian *ad litem* and/or a CASA; “Indian child” refers to all native children as defined by ICWA; and “IDHW” and “the Department” are used interchangeably to refer to the Idaho Department of Health and Welfare.

¹ § 16-1621(1).

² § 16-1621(1) (requiring the preparation of a case plan in “every case in which the child is determined to be within the jurisdiction of the court); IDAHO JUV. R. 44(b) (requiring that a case plan in a protective supervisions case contain all the elements of a “reunification plan” under the rule).

³ Internally the Department refers to the “case plan” as the “service plan.”

⁴ IDAHO CODE ANN. §16-1621(1).

B. Requirements of Federal Law Governing the Alternate Care Plan

Federal law defines “case plan” as a document which includes the following minimum provisions: “A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and the foster parents in order to improve the conditions in the parents’ home, [and] facilitate return of the child to his own safe home.”⁵ As mentioned above, Idaho refers to this portion of the planning process as the Alternate Care Plan.

Pursuant to this federal definition, the case plan (Alternate Care Plan) must describe specifics of a child’s care while in placement, including, at a minimum, the following:

- A description of the type of home or institution in which the child is to be placed;
- A plan for ensuring that the child receives safe and proper care and that appropriate services are provided to the parents, child, and foster parents:
 - To improve the conditions in the parents' home;
 - To facilitate the child's return to his or her own safe home or the alternative permanent placement of the child;
 - To address the child's needs while in foster care;
- To the extent available, the child's health and education records;
- Where appropriate, for a child age 16 years or older, a description of programs and services that will help the child prepare for independent living; and/or
- If the permanency goal for the child is adoption, documentation of the steps being taken to find an adoptive family.⁶

C. Requirements of Idaho Law for the Court-Approved Case Plan

Idaho law imposes the following requirements for the case plan when a child is in the legal custody of the Department. In contrast to the Alternate Care Plan, which is generally not approved by the court, the case plan must be approved by the court.⁷

In cases in which the court has not made a finding of aggravated circumstances, Idaho Code § 16-1621(3) and Idaho Juvenile Rule 44(a)(2) establish that the case plan must include a “reunification plan”⁸ with the following provisions:

- Reasonable efforts which will be made to make it possible for the child to return to his home.
- [T]he services to be provided to the child, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement.
- [O]ptions for maintaining the child’s connection to the community, including individuals with a significant relationship to this child and organizations or community activities with...[whom] the child has a significant connection.

⁵ 42 U.S.C. § 675(1)(B) (2011) (alteration in original).

⁶ 42 U.S.C. § 675.

⁷ § 16-1621(4).

⁸ IDAHO CODE ANN. §16-1621(3) (2011) and IDAHO JUV. R. 44(a)(2) establish these requirements.

- A specific statement of the role of the Department toward each parent.
- Identification of all issues that need to be addressed before the child can safely be returned home (also known as “Conditions for Return Home”)⁹, without Department supervision.
- Specific identification of the tasks to be completed by the Department, each parent, or others to address each issue, including services to be made available by the [Department] to the parents and in which the parents are required to participate.
- [D]eadlines for the completion of each task.
- Where appropriate, specific identification of the terms for visitation, supervision of visitation, and/or child support.¹⁰

In **all** cases in which the child is removed from the home and placed in the legal custody of the Department (including those in which a finding of aggravated circumstances has been made), Idaho Code section 16-1621(3) requires that the case plan include a “concurrent plan”¹¹ setting forth reasonable efforts to place the child for adoption, with a legal guardian, or in another approved permanent placement if reunification with the family is not possible. This concurrent plan is referred to in IJR 44(a)(3) as the “alternative permanency plan.”

Concurrent planning is important if a child is to achieve permanency in a timely manner. Waiting for all reunification efforts to fail before seeking out an alternative permanency option only delays the child’s arrival in a permanent placement and increases the emotional toll taken on the child.

Idaho Juvenile Rule 44(a)(3) further provides that the alternative permanency plan shall:

- Address the services to be provided to the child, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement.
- Address options for maintaining the child’s connection to the community, including individuals with a significant relationship to this child and organizations or community activities with...[whom] the child has a significant connection.
- Address all options for permanent placement of the child including consideration of options for in-state and out-of-state placement of the child;
- Address the advantages and disadvantages of each option in light of the child’s best interest and must include recommendations as to which option is in the child’s best interest;

⁹ The Department’s reports to the court and *The ABA Child Safety Guidelines for Attorneys and Judges* use the term “Conditions for Return Home” to describe this section of the case plan relevant to the state requirement. See THERESE ROE LUND & JENNIFER RENNE, *CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS* (2009).

¹⁰ IDAHO JUV. R. 44(a)(2).

¹¹ “Concurrent Planning” is defined in the CPA as “a planning model that prepares for and implements different outcomes at the same time.” IDAHO CODE ANN. § 16-1602(10)(2010). One of the primary purposes of the CPA is to “coordinate efforts by state and local public agencies, in cooperation with private agencies and organizations, citizens’ groups, and concerned individuals, to: . . . (3) Take such actions as may be necessary to provide the child with permanency including concurrent planning . . .” § 16-1601(3).

- Specifically identify the actions necessary to implement the recommended option, and the schedules for accomplishing those actions;
- In the case of a child who has attained the age of sixteen (16) years, specifically identify the services needed to assist the child to make the transition from foster care to independent living; and
- Identify further investigation necessary to identify and/or address other options for permanency placement, to identify actions necessary to implement the recommended placement, or to identify options for maintaining the child’s significant connections.

A case plan must also be prepared in cases where the child is home under the Department’s protective supervision.¹² Such a plan must include:

- Identification of the services to be provided to the child, including services to meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the “home situation”.
- [A]ddress options for maintaining the child’s connection to the community, including individuals with a significant relationship to this child and organizations or community activities with...[whom] the child has a significant connection.
- Identification of all issues that need to be addressed before the child can safely live at home without the Department’s supervision.
- Specific identification of the tasks to be completed by the Department, each parent, or others to address each issue, including services to be made available by the [Department] to the parents and in which the parents are required to participate.
- “[D]eadlines for the completion of each task”.
- Where appropriate, specific identification of the “terms for visitation, supervision of visitation, and/or child support.”¹³

In summary, a comprehensive reading of the requirements of Idaho Code § 16-1621 and Idaho Juvenile Rule 44 delineate three different patterns of case plans in Idaho. In cases with no finding of aggravated circumstances, the case plan should include a reunification plan and an alternate permanency plan (or concurrent plan). In cases involving a finding of aggravated circumstances, the case plan includes only the alternate permanency plan (concurrent plan). Finally, in cases involving protective supervision, the case plan must include the relevant portions of the “reunification plan” outlined in IJR 44.

Every case plan should *consider* the distinctive needs of each parent. As a matter of best practice, the Department will often prepare separate case plans for each parent where the parents are not in a cooperative relationship. Judges and lawyers need to be aware of the different needs and obligations of each parent under the case plan.

¹² IDAHO JUV. R. 44(b).

¹³ IDAHO JUV. R. 44(a)(2), (b).

6.2 GOALS AND ELEMENTS OF EFFECTIVE CASE PLANNING FROM A SOCIAL WORK PERSPECTIVE

A. Key Decisions of the Department During Case Planning

During case planning, several key decisions must be made by the Department social worker with respect to the following questions:¹⁴

- Who needs to be involved in the development of the case plan?
- What safety factors should be addressed in the case plan?
- What behavior changes are needed to reduce safety threats?
- What are the measurable, realistic, and achievable goals and outcomes anticipated from the services and supports provided?
- What are realistic time frames for completing the case plan?
- What services and supports are needed to:
 - enhance the protective capacity of parents/caregivers.
 - meet the needs of each family member,
 - meet the goals of the case plan, and
 - increase the likelihood of permanency?
- How does the case plan address each child's developmental, educational, health, dental, mental health, and other needs?
- What level of intensity of services and supports is needed?
- What are the barriers to accessing services and supports and how can they be overcome?
- If the primary permanency plan goal is not achieved, what is the concurrent plan?
- Who is responsible for implementing each part of the case plan?
- How is the case plan going to be monitored, and by whom?
- Has all information been provided to the family?
- How does the case plan address the maintenance of family and community ties such as placement proximity, parent/child visits, sibling visits, social worker visits with parents and children, maintenance of community, and school continuity?

B. The Case Planning Process

Case Planning, often called “service planning” by social workers, is the process of establishing desired results, goals, and tasks to address the needs of the entire family so that they can live safely without Department involvement. The case plan also should contain timelines for the accomplishment of all tasks.

The purpose of the case planning process is to achieve the following goals:

- Identify services and tasks that will reduce threats of danger to the child, enhance the protective capacity of parents or caregivers, and/or mitigate the child’s vulnerability.

¹⁴ This section regarding the social work goals for case planning is based on Shirley Alexander, *Intervention with Families in HELPING IN CHILD PROTECTIVE SERVICES: A COMPETENCY-BASED CASE WORK HANDBOOK* 393 (Charmaine Brittain & Deborah Esquiel Hunt eds., 2004).

- Create an individualized, outcome-oriented case plan that addresses the needs of all family members.
- Establish a concurrent plan in the event the family cannot be reunited permanently and safely.
- Demonstrate parental commitment and follow through to completing the case plan.

The plan must be specific, measurable, achievable, realistic, and time-limited. The planning process should engage the family in an effective method of problem solving that may be useful to families as they encounter other challenges. It should communicate the belief that change is both expected and desired. It should also send an optimistic, hopeful message that change is possible. Effective planning is dependent upon ongoing assessment. Assessment guides the plan by identifying the issues that pose continued threats of danger to the children.

During case planning, the focus should be on the family unit, and services should be offered to strengthen the family and to allow parents to function effectively while adequately protecting and providing for their children. The role of the social worker is to ensure that families have reasonable access to a flexible, culturally-responsive, individualized array of services and resources.

C. Family Participation in Case Planning

Effective case planning requires participation of a "family team." A family team can include parents, age-appropriate children, other family members, other family supports, resource families/adoptive parents, therapists, mentors, case aides, or others who are significant in the family's life.

IDHW currently uses a process called Family Group Decision making (FGDM)¹⁵ to encourage participation of families in case planning and to assist families in identifying issues and needs. FGDM recognizes that families have the most information about themselves and have the ability to make well-informed decisions. Family members become active participants in decision making for the family.

FGDM embraces the following values: the process of planning should be family focused, strength based, community based, and culturally appropriate. Generally, all family members who wish to be present at the family meeting are invited. The family can identify other non-family supportive individuals who are also invited to participate. The family meeting is usually facilitated by an independent coordinator – the social worker is present but does not lead the meeting.

At the meeting, information is shared by all present, usually starting with the social worker who presents the facts that led to the filing of the CPA proceeding. The family can ask questions of the social worker and others to make sure that they have a full understanding of the issues in the case.

¹⁵ FGDM is also referred to as family decision making, family group conferencing, and family unity meetings.

Once information is exchanged, the professionals generally leave the room so that the family can discuss their planning in private. The family’s job is to create a plan to ensure that the child is cared for and protected from threats of violence. The family then presents their plan to the professionals who provide input. The goal of the process is to reach consensus, although the professionals may veto portions of the plan.

The process of FGDM not only can assist in achieving timely reunification of the child with her or his family, but also may assist the family to understand when reunification is not possible. In the latter situation, FGDM can help to identify an alternate permanent placement for the child.

6.3 THE CASE PLAN HEARING

A. Purpose of the Case Plan Hearing

At the case plan hearing, the court must decide whether to approve, modify, or reject the case plan filed by the Department.¹⁶ In making this determination, the court should evaluate the plan using the legal requirements discussed above in the first part of this chapter.

If the court approves the plan as submitted or approves a modified plan, the plan must be incorporated in an order by the court, directing the Department and the parents to comply with the plan. Other parties may also be required to comply with the plan, in appropriate circumstances. Absent a finding of aggravated circumstances, “the court’s order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan or in the alternative to complete the steps necessary to finalize the permanent placement of the child.”¹⁷

In evaluating the case plan, a judge should consider the following questions:¹⁸

- Does the plan include goals or tasks addressing changes in behaviors, commitments, and attitudes that will mitigate the threat of danger to the child? (If the plan merely lists the services participants must attend and/or generically directs the participants to “follow a treatment recommendation,” then the plan only provides a basis for measuring the participants’ attendance, but does not provide a basis for measuring changes in their behavior.)
- Does the case plan follow logically from the threats of danger to the child and gaps in parents’ protective capacities? The plan should contain precise detail regarding the strategy and actions necessary to change the situation and to allow the child to return home.
- Is the case plan merely a re-iteration of any safety plan previously put in place? The case plan should not duplicate the safety plan; rather, these two plans should operate

¹⁶ § 16-1621(1).

¹⁷ § 16-1621(4); IDAHO JUV. R. 44(2).

¹⁸ These questions were developed and are discussed in the ABA CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS. THERESE ROE LUND & JENNIFER RENNE, CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS 40 (2009).

concurrently. The safety plan is focused on ensuring the child’s safety. The case plan should focus on what must change over time to enable the child to return home.

- How do the parents react to the case plan?
- Does the case plan focus on reducing threats of danger to the child and also increasing protective capacities of the parents? The family will have the best chance of success at reunification if the case plan addresses both the reduction of threat and increasing the parents’ protective capacities.

B. Case Plans Where Aggravated Circumstances Apply

Where the court has made a finding that the parents have subjected the child to aggravated circumstances,¹⁹ the case plan should not include a “reunification plan”,²⁰ and the Department is not required to make reasonable efforts to make it possible for the child to return home.²¹

In aggravated circumstances, cases the case plan and the permanent plan are merged together, and the plan focuses on the actions and services necessary to obtain a permanent placement for the child in a new home.²² Such plans should contain all the elements discussed above for the “alternative permanency plan”.²³

C. Submission of the Case Plan to the Court

The written case plan must be filed no later than 60 days from the date the child was removed from the home or 30 days from the date of the adjudicatory hearing, whichever is first.²⁴ The case plan must be delivered to the parents, legal guardians, and the guardian *ad litem* and/or the attorney for the child. As a matter of best practice, the plan should be verified and in the form of an affidavit.

D. Timing of the Hearing

The case plan hearing must be held within five days after the plan is filed.²⁵ As in all CPA proceedings, the court should strongly discourage continuances. It is particularly important to approve the case plan in a timely fashion as the plan provides the “road map” for permanency for the child.

¹⁹ Aggravated circumstances are defined in § 16-1619(6)(d) and are discussed in detail in Chapter 5 of this manual

²⁰ § 16-1619(6)(d).

²¹ *Id.*; § 16-1621(4). *See also* IDAHO JUV. R. 44(c); 45 C.F.R. § 1356.21(b)(3)(i).

²² §§ 16-1620(1), 16-1621(4); IDAHO JUV. R. 44(c).

²³ IDAHO JUV. R. 41(i), 44(c).

²⁴ § 16-1621(1).

²⁵ *Id.*

E. Notice

1. Foster Parents

Idaho law requires that notice of the case plan hearing be provided to the “parents, legal guardians, guardians *ad litem* and foster parents.”²⁶ In addition IJR 40 provides that “[a]fter the adjudicatory hearing, any person who is designated by the Department of Health and Welfare as the foster parent, as a pre-adoptive parent, or as a relative providing care for a child who is in the custody of the department, shall be provided with notice of, and have a right to be heard in, any further hearings to be held with respect to the child.” This notice must be given by the Department and the Department must confirm to the court that the required notice was provided. The Juvenile Rules also makes clear that the right to notice and to be heard does not make foster parents parties to the CPA proceeding.²⁷

2. Children Eight and Older

IJR 40 requires that “[a]fter the adjudicatory hearing, a child (8) years of age or older, shall be provided with notice of, and have a right to be heard, either in person or in writing, in any further hearings to be held with respect to the child.”²⁸ As with notice to foster parents, notice must be given by the Department, and the Department must confirm that notice was provided

3. Agreements by the Parties

The parties may submit a stipulated case plan at the case plan hearing. Pursuant to Idaho Juvenile Rule 38, such a stipulation must be made part of the court record and is subject to court approval.²⁹ The court must make reasonable inquiry to confirm that the parties entered into the stipulation knowingly and voluntarily, that the stipulation has a reasonable basis in fact, and that it is in the best interests of the child. The court should ensure that the case plan has been thoroughly considered by all participants, especially both parents, if involved. With respect to the parents’ responsibilities identified in the case plan, the court should specifically ask the parents, on the record, whether they are willing and able to comply, and whether there are additional or different services they need or want that will enable them to address the issues that need to be resolved before the child can be safely returned home.

Best practice is that the court should ensure that the stipulated case plan is comprehensive and that it contains all the essential elements of a case plan (as discussed above). If the stipulated case plan is not comprehensive, the court should address any omitted elements. The court might also adjourn the hearing for a short time to give the parties time to address the omitted elements.

²⁶ § 16-1621(2) (emphasis added).

²⁷ IDAHO JUV. R. 40(a). *See also* *Roe v. Dept. of Health & Welfare*, 134 Idaho 760, 9 P. 3d 1226 (2000)(holding that foster parents did not have standing to intervene and object to the Department’s permanency plan in a CPA proceeding).

²⁸ IDAHO JUV. R. 40(b).

²⁹ IDAHO JUV. R. 38.

If, through the pre-trial process, a case plan is agreed upon, it may be presented to the court at the adjudicatory hearing. However, caution should be used to ensure that all the requirements of the case plan hearing are fulfilled in reviewing and approving the stipulated case plan.

6.4 BEST PRACTICES TO REDUCE DELAYS AND TO ACHIEVE TIMELY PERMANENCY FOR CHILDREN BEFORE THE CASE PLAN HEARING

A. Early Identification and Involvement of Absent Parents

The status and involvement of absent biological parents must be resolved as early as possible to avoid delays in achieving permanency. In all cases, absent parents should be identified as soon as possible so a determination can be made regarding whether they must be joined to the action and/or whether they or their families might provide resources in support of the child's permanency.

Timely resolution of paternity issues is both in the best interests of the child and essential to avoiding delays at subsequent points in the court process. Where the parents are not married at the time the child was born or where an unmarried father has not been adjudicated as a parent, paternity tests should be conducted early in the case as a matter of best practice. This will ensure that a man thought to be the father of the child actually is the father of the child and is properly part of the CPA proceeding.³⁰

B. Early Identification and Involvement of Relatives

Both Idaho and federal law impose a priority in favor of placing children with relatives. Idaho Law provides:

At any time the department is considering a placement pursuant to this chapter, the department shall make a reasonable effort to place the child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:

- (a) A fit and willing relative.
- (b) A fit and willing non-relative with a significant relationship with the child.
- (c) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code.³¹

Federal Law requires that the Department place children with relatives so long as the relative meets the Department's "child protection standards".³²

The Department must identify all relatives of the mother, father, and putative father(s) of the child and thoroughly investigate the appropriateness of these relatives as potential caretakers for the child. Identification and investigation of all potential caretakers is essential to ensure that the

³⁰ See, e.g., *In re Doe*, 134 Idaho 760, 9 P.3d 1226, 1228 (2000) (putative father not contacted until child protection case had been pending for two years leading to conflict between grandparent/foster parent and birth father).

³¹ § 16-1629(11).

³² 42 U.S.C. § 671(a)(19).

placement selected is the one that best meets the needs of the child and ensures the child's safety.³³

C. Compliance with the Interstate Compact on the Placement of Children (ICPC)

A child may not be placed out of state without a court order and without compliance with the ICPC.³⁴ As making an interstate placement is time consuming, the process must be initiated as soon as possible.

D. Compliance with the Indian Child Welfare Act (ICWA)

If the child is an Indian Child, the lawyers, judge, guardian *ad litem*, and social workers involved in the case must be familiar with and implement the provisions of ICWA.³⁵ The Act establishes special procedural and substantive safeguards to protect the interests of Indian children, their families, and the Indian tribe. This includes tribal determination of who is an Indian child, full tribal participation in planning and decision making in the child protection case, placement preferences for extended family members and other Indian families identified by the child's tribe, and, when requested, transfer of the child protection case to the child's tribal court.

To prevent these procedures from causing Indian children to linger in foster care, the courts and the Department should:

- Identify at the earliest possible opportunity whether ICWA applies to one or more children in a case;
- Have procedures in place for immediate notice of the pendency of a case to the child's Indian tribe;
- Open lines of communication with the tribal representative to ensure that complete information is exchanged and that time delays are avoided;
- Be familiar with and follow the procedural and substantive requirements set out in ICWA; and,
- Make sure that all notices, consents, and "active efforts" are documented in accordance with the requirements of the act.

CONCLUSION

Once the case plan is in place, the roadmap towards permanency for the child has been established. Even so, the lives of the family are still in flux. Best practice is for the court should ensure that a timely review of the family's progress on the plan is scheduled before the conclusion of the case plan hearing. In addition, review hearings are also important so that the plan can be modified as the family's situation changes and the case progresses.

³³ If the child is an Indian child, the Indian Child Welfare Act establishes a clear placement preference with members of the child's extended or tribal family. 25 U.S.C. § 1915. ICWA is discussed in detail in Chapter 11 of this manual.

³⁴ IDAHO JUV. R. 46(c); §§ 16-1629(8); 16-2101(3). The ICPC is discussed in detail in Chapter 12 of this manual.

³⁵ See generally 25 U.S.C. §§1901-1963. ICWA is discussed in detail in Chapter 11 of this manual.