

CHAPTER 7: The Permanency Plan and Permanency Hearing

7.1 INTRODUCTION

At the permanency hearing, the court must review, approve, modify, or reject the permanency plan proposed by the Department and must also review the parents' progress in accomplishing the permanency plan.¹ The purpose of a child protection proceeding is not only to achieve timely permanency for the child, but to achieve permanency within the state and federally mandated timelines.

A permanency hearing may be held simultaneously with a review hearing.² Presuming the permanency plan is not termination of parental rights and adoption, the functions of a review hearing and a permanency hearing somewhat overlap. Because the Department is obligated to develop a concurrent plan, the case plan hearing includes a reunification and an alternate permanency plan.³ Since the case plan should have included a permanency plan, any review of progress on the case plan will overlap with a discussion of progress toward achieving the overall goal of permanent placement. The key functions of the permanency hearing are to determine the permanent placement of the child and to set deadlines for effectuating the child's permanency goal.

7.2 THE PERMANENCY PLAN

The permanency plan provides the road map for providing the child with a permanent placement in as timely a manner as possible. The plan identifies the court-approved permanency goal for the child as well as steps for achieving the goal. Formulation of the plan requires IDHW to systematically analyze the child's needs, options for the child's placement, and advantages and disadvantages of the placement options in light of the child's needs.

The options for the child's permanency goal fall into four general categories: continued efforts to reunify with the parent(s), termination of parental rights and adoption, guardianship with a relative or family friend, or "another planned permanent living arrangement" (APPLA)

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 IDAHO CODE ANN. § 16-1622(4).

² *Id.*

³ § 16-1621(4); IDAHO JUV. R. 44(a)(2),(3).

(also sometimes referred to in Idaho statutes as long-term foster care).⁴ Each of these options will be discussed more fully below.

A. Required Contents of the Permanency Plan

The goals of the permanency plan “may be, but...[are] not limited to, one of the following: continued efforts at reunification, termination of parental rights and adoption, guardianship, or long-term foster care.”⁵ Idaho Juvenile Rule 46 and Idaho Code sections 16-1620, 16-1622, and 16-1629, read together, require that all permanency plans include the following:

- In the case of a child who will not be returned to a parent, information that will allow the court to review the Department’s consideration of options for in state and out of state placement of the child.⁶
- In the case of a child already placed out of state, information that will allow the court to find that the placement continues to be appropriate and in the best interests of the child.⁷
- Specific identification of “the activities necessary to implement the plan and . . . schedules for the accomplishment of those actions.”⁸
- In the case of a child who has attained the age of 16 years, services needed to assist the child to make a transition from foster care to independent living.⁹
- Information regarding how the Department’s recommended permanency goal maintains the child’s connections to the community, including individuals with a significant relationship to the child, religious organizations, and community activities.¹⁰
- Information regarding the reasonable efforts made by the Department to place the child in the least restrictive environment for the child, and how the Department placement is consistent with the best interest and special needs of the child considering the following placement priority: “(a) a fit and willing relative, (b) a fit and willing nonrelative with a significant relationship with the child, (c) foster parents and other persons licensed in accordance with” Idaho law.¹¹
- A statement specifying the role of the Department towards each parent.¹²
- In the event the child has been in out of home care in 15 of the last 22 months and the Department does not intend to file a petition to terminate parental rights, compelling reasons as to why termination of parental rights is not in the best interest of the child.¹³

⁴ See, e.g., IDAHO JUV. R 46(a).

⁵ IDAHO JUV. R 46(a). These goals are discussed in detail later in this chapter.

⁶ *Id.*

⁷ IDAHO JUV. R 46(c).

⁸ IDAHO JUV. R 46(a).

⁹ IDAHO JUV. R 46(c). Federal law requires that the Department, in consultation with the youth in foster care, prepare a personalized transition plan for youth at least 90 days prior to their exit from care, which includes education goals and plans. The plan must be as detailed as the child chooses and include specific options on housing, health insurance, education, local opportunities for mentoring, continuing support services, work force supports, and employment services. 42 U.S.C § 675(H)(2010). For more information on Idaho’s independent living program see Chapter 12: Special Topics.

¹⁰ § 16-1620(3).

¹¹ § 16-1629(11).

¹² § 16-1620(3).

¹³ § 16-1622(7); § 16-1629(9), 45 C.F.R. § 1356.21(h)(3).

B. Best Practice Recommendations for the Permanency Plan

As a matter of best practice,¹⁴ the permanency plan also should contain the following information:

- 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.¹⁵
- An assessment of the advantages and disadvantages of each option, in light of the child's best interests.¹⁶
- A recommendation as to which option is in the child's best interests.¹⁷
- Actions necessary to implement the recommended option and deadlines for those actions.

C. The Permanency Plan in Cases Involving Aggravated Circumstances

When the court has determined aggravated circumstances exist, Idaho Law requires all of the above elements to be a part of the permanency plan, including those identified as best practices.¹⁸

7.3 THE PERMANENCY HEARING

A. Timing of the Hearing

Idaho law requires that a permanency hearing be held prior to twelve (12) months from the date the child is removed from the home or from the date of the court's order taking jurisdiction under the CPA, whichever occurs first.¹⁹ In cases where aggravated circumstances are found at the adjudicatory hearing, the court is required to hold a permanency hearing within thirty (30) days of the determination that aggravated circumstances exist.²⁰

Federal law requires that a permanency hearing be held within one year from the date the child is considered to have entered foster care and at least once every twelve months thereafter.²¹ The date a child is considered to have entered foster care is the date the court found the child to come within the jurisdiction of the CPA or 60 days from the date the child was removed from the home, whichever is first.²² If the permanency hearing is not timely held, or if the court fails to use the correct language in determining that the Department made reasonable efforts to finalize

¹⁴ IDAHO JUV. R 44(a) also requires a number of additional requirements for the permanency plan in a case involving aggravated circumstances. While these requirements do not expressly apply in permanency plans in non-aggravated circumstance cases, they provide a good outline of best practices for all such plans.

¹⁵ IDAHO JUV. R 44(a)(1) and 44(c).

¹⁶ IDAHO JUV. R 44(a)(1).

¹⁷ IDAHO JUV. R 44(a)(3)(C).

¹⁸ IDAHO JUV. R 44(c), 44(a)(1).

¹⁹ § 16-1622(4); IDAHO JUV. R 46.

²⁰ 45 C.F.R. § 1356.21(h)(2); §§ 16-1619(6)(d) and 16-1620; IDAHO JUV. R 44. Additional information about the permanency hearing in cases involving aggravated circumstances can be found in Chapter 6 of this manual.

²¹ 42 U.S.C. § 675(5)(e); 45 C.F.R. § 1356.21(d).

²² 42 U.S.C. § 675(f).

the permanency plan, an otherwise eligible child may be ineligible for federal IV-E match funds.²³ Eligibility may be reinstated once the permanency hearing is held and/or the court makes a finding that the Department made reasonable efforts to finalize the permanency plan in effect.²⁴

The state and federal timelines should be seen as the latest date upon which the permanency hearing should be held. A permanency hearing could always be scheduled earlier. For example, where neither parent has made discernable progress in spite of reasonable efforts by IDHW to implement the case plan, an early permanency hearing may be appropriate.

B. Submission of the Permanency Plan and Guardian ad Litem Reports to the Court

IDHW is required to file a permanency plan with the court at least five days prior to the permanency hearing.²⁵ Similarly, the guardian *ad litem* is required to file a report with the court prior to the permanency hearing.²⁶

7.4 KEY FINDINGS AT THE PERMANENCY HEARING

Idaho and federal law require that the court must make the following findings at the permanency hearing:

- Approving, modifying, or rejecting the permanency plan proposed by the Department and reviewing the progress in accomplishing the permanency plan.²⁷
- Whether the Department has made reasonable efforts to finalize the permanency plan in effect for the child.²⁸
- If the plan is for another planned permanent living arrangement (long-term foster care), whether there are compelling reasons why a more permanent plan is not in the best interest of the child.²⁹
- Whether the child’s connections to the community, including individuals with a significant relationship to the child, religious organizations, and community activities, are appropriately maintained because it is/is not in the child’s best interests to do so.³⁰
- In appropriate cases, compelling reasons exist to relieve the Department of its obligation to file a petition to terminate parental rights when the child has been in care 15 of the last 22 months.³¹
- In the case of a child in an out-of-state placement, the placement “continues to be appropriate and in the best interest of the child.”³²
- In the case of a child who has attained the age of 16, “services necessary to assist the child to make a transition from foster care to independent living.”³³

²³ 45 C.F.R. § 1356.21(b)(2)(ii).

²⁴ *Id.*

²⁵ § 16-1629(9).

²⁶ § 16-1633(2)

²⁷ § 16-1622(4).

²⁸ § 16-1522(5); IDAHO JUV. R 46(c).

²⁹ IDAHO JUV. R 46(b).

³⁰ § 16-1620; IDAHO JUV. R 44(a)(1); IDAHO JUV. R 44(a)(3)(E).

³¹ §§ 16-1629(9) and 16-1622(7).

³² IDAHO JUV. R 46(c).

7.5 AGREEMENT BY THE PARTIES

The parties may submit a stipulated permanency plan at the permanency hearing. Pursuant to IJR 38, such a stipulation must be made part of the court record and is subject to court approval.³⁴ 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 permanency plan has been thoroughly considered by all participants, especially both parents, if involved.

The court should ensure that the stipulated permanency plan contains all the essential elements of a permanency plan as discussed above. If the stipulated permanency plan is not complete, the court should address any omitted requirements. The court might also adjourn the hearing for a short time (such as one day) to give the parties time to address the omitted requirements.

7.6 PERMANENCY GOALS

The goals for permanency fall into the following general categories: reunification with the parents, termination of parental rights and adoption, long-term guardianship, and another planned permanent living arrangement (APPLA).³⁵ In addition to addressing these general options, the plan should address specific options within each category.

A. Reunification

The most preferred option for permanency is the safe and permanent reunification of the child with his/her parents.³⁶ The preference for reunification embodied in federal law and in the Idaho statutory policy is that the state must seek, to the fullest extent possible, to reunite the family.³⁷ The Department must make reasonable efforts to reunify the child with the family, unless the court finds that the parent(s) subjected the child to aggravated circumstances.³⁸

B. Termination of Parental Rights and Adoption

The goal of permanency is to provide the child with a family relationship that will last throughout the child's life, with full and permanent responsibility to the new parents that is legally secure from modification and without ongoing state intervention and/or monitoring. If reunification is not a viable option, the permanency preference is termination of parental rights

³³ *Id.*

³⁴ IDAHO JUV. R 38.

³⁵ The Idaho Code and Juvenile Rules do not clearly distinguish between the permanency goal and permanency plan. To be consistent with professional literature, we distinguish between the permanency goal and permanency plan in this manual.

³⁶ § 16-1601.

³⁷ *Id.*

³⁸ § 16-1619(6)(d); § 16-1620(b); 42 U.S.C. § 671(a)(15)(D). The determination of aggravated circumstances would normally be made at the adjudicatory hearing.

and adoption.³⁹ Adoption meets all these goals of permanency. In addition, adoption subsidy benefits are available to assist the adoptive parents in meeting the child’s needs.⁴⁰

C. Guardianship

A third, and less preferred, permanency goal is long-term guardianship. Idaho has adopted special provisions to secure the stability of CPA-connected guardianships.⁴¹ Nonetheless, guardianship is a less-preferred option as guardianships are vulnerable to review and modification.⁴²

D. Another Planned Permanent Living Arrangement

Another Planned Permanent Living Arrangement (APPLA) – which is also referred to under Idaho law as “long-term foster care”⁴³ – is the least preferred permanency goal, and the situations in which it is appropriate are **extremely** limited. APPLA may include placement with a foster family, a group home, or a residential facility. Federal regulations require that IDHW, internally, identify compelling reasons for approving APPLA as the permanent placement for the child.⁴⁴ The Idaho Juvenile Rules provide that a court may only approve a permanent plan of long-term foster care based on written, case-specific findings that there are compelling reasons why a more permanent plan is not in the best interest of the child.⁴⁵

Even if the child cannot currently function in a family setting, ongoing diligent efforts by the Department may result in a family that is willing and able to provide care to the child in the future. If APPLA will be the permanent goal for the child, best practice is to schedule frequent review hearings to ensure that appropriate services are provided to the child and to determine if circumstances have changed sufficiently so as to allow the child to function in a family setting.

When Might APPLA Be Appropriate?

1. *An older teen specifically requests that emancipation be established as the permanency plan.*
2. *The tribe (in an ICWA case) selects APPLA for the child.*
3. *The parent and child have a significant bond but the parent is unable to care for the child.*
4. *The foster parents are committed to raise the child to the age of majority.*

Source: 45 C.F.R. § 1356.21(h)(3)(i-iii)

Figure 7.1: APPLA Examples

³⁹ IDAHO JUV. R 46(a). Where the parent subjected the child to aggravated circumstances or where the child is an abandoned infant, the state is required to file a petition to terminate parental rights unless there are compelling reasons why it would not be in the child’s best interests. § 16-1624. In addition, where a child has been in the custody of the agency for 15 of the last 22 months, the state is required to file a petition to terminate parental rights, unless the court finds that it is not in the best interests of the child, that reasonable efforts have not been provided to reunite the child with its parents, or the child is placed permanently with a relative. § 16-1629(9); 42 U.S.C. § 675(5)(E).

⁴⁰ Adoption is discussed in detail in Chapter 10 of this manual.

⁴¹ See § 15-5-212A.

⁴² See Chapter 12: Special Topics.

⁴³ IDAHO JUV. R 46(b).

⁴⁴ 45 C.F.R. § 1356.21(h)(3)

⁴⁵ IDAHO JUV. R 46(b).

7.7 REASONABLE EFFORTS TO FINALIZE PERMANENCY

A. *Federal*

The court must make a case-specific finding that the Department made reasonable efforts to finalize the child’s permanent placement in effect, and the finding must be documented in the court records.⁴⁶ If the findings are not made, an otherwise eligible child will lose eligibility for federal IV-E foster care payments. Eligibility may be reinstated once the required finding is made.⁴⁷

The “permanent plan in effect” is generally the permanent plan identified by the Department in the parents’ case plan. However, the Department may identify a different permanency goal prior to the permanency hearing and does not need court approval to do so. If the Department changes the initial permanency goal identified in the case plan, the reasonable efforts to finalize permanency finding is a retrospective analysis of whether the Department made reasonable efforts to finalize the most current permanency goal. Typically, this means that the permanent plan for the first twelve (12) months of a CPA proceeding, prior to the first permanency hearing, is reunification with the parents.

There may be instances where the court identifies further efforts to be made by the Department to finalize the permanency plan, such as further investigation to identify or assess potential adoptive families or potential guardians. The fact that the court requires further efforts does not necessarily mean that IDHW has failed to make reasonable efforts. For example, the need for further efforts may be the result of new information that was not previously available to the Department or changed circumstances that the Department could not reasonably anticipate and thus not the result of lack of effort.

B. *State Finding*

Idaho law imposes a similar, though not identical, finding that is less specific than the federal finding described above. Under Idaho law, a court must make a written, case-specific finding that the Department “has made reasonable efforts to finalize a permanency plan for the child.”⁴⁸ This state provision does not refer to the “permanent plan in effect.” The federally-required findings described above satisfy this more general Idaho requirement.

7.8 OTHER FACTORS THE COURT SHOULD CONSIDER AT THE PERMANENCY HEARING

A. *Keeping Siblings Together*

There is a federal preference for keeping siblings together.⁴⁹ A child who has been removed from his or her parents should not also suffer the loss of being separated from brothers and

⁴⁶ 42 U.S.C. § 675(5)(c); 45 C.F.R. § 1356.21(b)(2).

⁴⁷ 45 C.F.R. § 675(b)(2)(ii)

⁴⁸ IDAHO JUV. R 46(c)

⁴⁹ 42 U.S.C. § 671(a)(31)(A) and (B).

sisters. If siblings cannot be placed together, then the permanency plan should ensure ongoing interaction between the siblings unless ongoing interaction would be contrary to the safety or well-being of any of the siblings.⁵⁰

The plan should address the options for maintaining the child's ties to family, friends, or organizations that have a significant role in the child's life.⁵¹ The child's placement may afford the means for maintaining these significant connections. If not, then other means to maintain the child's significant connections should be explored and identified.

B. Visitation and Child Support

To the extent that maintaining the relationship is in the child's best interests and is consistent with the permanent plan for the child, it is important that the child have the opportunity for regular and meaningful contact with the parent.⁵² It is equally important that visitation include appropriate terms and conditions to protect the child's safety, to protect the child from undue distress that may result from a parent's inappropriate behavior during visitation, and to avoid disruption of the child's foster care placement. The plan should set forth provisions as to the frequency, duration, location, supervision, or other terms or conditions of visitation.⁵³ Parents who are able to pay should be expected to help cover the costs of foster care, and the amount and frequency of child support should be addressed in the permanency plan.

C. Maintaining the Child's Connection to the Community

Idaho Code requires that both the case plan and the permanency plan address options to maintain the child's connection to his/her community and to maintain significant relationships in the child's life.⁵⁴ In 2008, the federal Fostering Connections to Success and Increasing Adoptions Act imposed a number of requirements on states relevant to these provisions of Idaho law.⁵⁵ Fostering Connections requires states to emphasize children's relationships with siblings and other close relatives,⁵⁶ to maintain educational stability for the child,⁵⁷ and to provide a transition plan for children aging out of foster care without a permanent placement or community connections.⁵⁸

Regarding sibling placement, Fostering Connections requires that reasonable efforts be made to place siblings together in the same foster home, or other placement unless such a joint placement would be contrary to the safety or well being of any of the siblings.⁵⁹ If siblings are

⁵⁰ *Id.*

⁵¹ IDAHO JUV. R. 44(a)(3)(E).

⁵² IDAHO JUV. R. 44(a)(2).

⁵³ IDAHO JUV. R. 44(a)(2) provides for the establishment of visitation in the case plan. In addition, Idaho Code sections 16-1620(3) and 16-1621(3) require the case plan and the permanency plan to include provisions to maintain the child's significant relationships if in the child's best interests. *See also* § 16-1628 (authorizing the court to enter an order for a "reasonable sum" of support).

⁵⁴ §§ 16-1620(3), 16-1621(3), IDAHO JUV. R. 44(3)(e).

⁵⁵ 42 U.S.C. § 475(1)(G).

⁵⁶ 42 U.S.C. § 675(a)(31)(A) and (B).

⁵⁷ 42 U.S.C. § 675(a)(30).

⁵⁸ 42 U.S.C. § 675(5)(H) and (8)(B).

⁵⁹ 42 U.S.C. § 675(a)(31)(A) and (B).

not placed together, the state must provide for frequent visitation or other ongoing interaction between the siblings, unless doing so would be contrary to the safety or well being of any of the siblings.⁶⁰ As discussed above, the permanency plan under Idaho law, should contain such provisions for visitation, where appropriate.

With regard to educational stability, Fostering Connections requires the Department to have a plan that takes into account the appropriateness of the child's current educational setting, to ensure that the child remains in the school of origin, or if such enrollment is not in the child's best interest, to provide immediate and appropriate enrollment in a new school. The Act also requires the Department to monitor the child's school attendance.⁶¹

With regard to the transition from foster care, the Act requires the state to provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, including options for housing, health insurance, education, mentoring, workforce supports, and employment services.⁶²

D. Time and Date for the Next Hearing; Orders Needed

The court should set the date and time for the next review hearing on the record prior to the conclusion of the permanency hearing. The court should also enter any orders necessary to ensure that all participants are prepared for the next hearing. For example, transport orders may be necessary if a parent is in the custody of the Idaho Department of Corrections or in county jail or if a child is in the custody of the Idaho Department of Juvenile Corrections or in detention.

CONCLUSION

The permanency plan and timely permanency hearing are keys to achieving permanency for the child. Effective permanency planning promotes the systematic investigation and assessment of the child's options for permanent placement, in light of the child's best interests. The permanency plan identifies the actions necessary to implement the placement and to set deadlines for those actions. The plan, incorporated in the court's order, also sets the benchmark against which future progress will be measured and provides the primary mechanism for holding the participants accountable for implementing the plan.

⁶⁰ *Id.*

⁶¹ 42 U.S.C. § 671(a).

⁶² 42 U.S.C. § 675.