

CHAPTER 8: Review Hearings

8.1 OVERVIEW OF REVIEW HEARINGS

Review hearings are court proceedings that take place after approval of the case plan and that continue until permanency for the child is attained. Idaho Code section 16-1622(3) and Idaho Juvenile Rule 45 govern these hearings. Review hearings are critical to timely completion of case plans and permanency plans. Review hearings facilitate timely permanent placement of the child. They aid in the timely recognition of those families for whom reunification will be achieved and those families for whom reunification is not a viable option.

These hearings are informal, the rules of evidence do not apply, and the general public is not permitted to be present.¹ Children eight and older are entitled to notice and have a right to be heard, in person or in writing.² Foster parents (including relatives providing care for a child) and pre-adoptive parents, are also entitled to notice and have a right be heard at review hearings.³

Review of the case status is vital for each child within the court's jurisdiction, whether the child is placed in the custody of IDHW or under the supervision of IDHW in the child's own home. In either situation, child safety and timely permanency may be aided by appropriate review of the case. In particular, consistent review helps ensure that progress is being made towards permanency for the child.

Review hearings are necessary because continuation of a child in foster care for an extended time has a negative effect on a child and the family. A child in foster care forms new relationships which may weaken his or her emotional ties to biological family members. A child shifted among foster homes may lose the ability to form strong emotional bonds with a permanent family.⁴ A careful decision concerning the future of every child is needed as soon as

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. §16-1613(1) (2010).

² IDAHO JUV. R. 40(b); Chapter 12: Special Topics.

³ IDAHO JUV. R. 40(a); Chapter 12: Special Topics.

⁴ The research on children's attachments is extensive. The primary work took place during the 1970's. Examples of this initial research on children's attachment can be found in the following sources: M. RUTTER, MATERNAL DEPRIVATION REASSESSED (1981); J. BOWLBY, ATTACHMENT AND LOSS (1973); J. GOLDSTEIN, A FREUD AND A. SOLNIT, BEYOND THE BEST INTEREST OF THE CHILD (2d ed. 1979).

possible. Review hearings can help ensure that decisions concerning a child’s future are made at regular intervals and implemented expeditiously.

Review hearings should re-examine long-term case goals and change or revise goals that are no longer appropriate. Just as review hearings should hasten family reunification when possible, they should also help identify cases in which reunification should be discarded as a goal because a child cannot safely be returned home in a timely fashion. If reunification is not an option, review hearings can lead to timely implementation of an alternative permanency plan.

Review hearings provide regular judicial oversight of children in foster care and can help avoid delays in providing necessary services to the child and family. For example, incomplete case plans can prolong foster care placement by failing to clearly specify what each party must do to facilitate family reunification. Unresolved disputes may block case plan progress. Each party may be proceeding unilaterally without confronting a disputed issue, although the dispute may constitute a roadblock to family reunification.

Judicial review helps a case progress by requiring the participants to set timetables, take specific action, and make decisions. Review hearings provide a forum for the parents, helping to assure that their viewpoint is considered in case planning. Through careful scrutiny of the case plan by the attorneys and the court, case content and planning problems can be identified. Terms of the plan can be specified so that all parties understand their obligations and the court can assess progress.

Regular and thorough review hearings may also create incentives for IDHW to make decisions concerning the permanent placement of a child. When the review hearing is challenging and demanding, greater consideration is given to the examination of all placement options. Review hearings also create a valuable record of the actions of the parents and the Department. Current information is put on the record and is more likely to be freely exchanged in the informal atmosphere of a review hearing.

8.2 TIMING OF REVIEW

Timetables for review hearings are governed by both federal and state statute. Federal law specifies that review of children in foster care must occur at least once every six months.⁵

Idaho law requires that courts hold a hearing for review of the child’s case plan or permanency plan no later than six months after entry of the decree finding the child within the jurisdiction of the Child Protective Act and every six months thereafter, so long as the child is in the custody of the Department.⁶ The court has the discretion to conduct review hearings more frequently.⁷ Recommended best practice is to conduct review hearings at least once every two to three months, unless there is good reason in a particular case to schedule reviews less frequently.⁸ In Idaho, review hearings are commonly conducted on a more frequent schedule

⁵ 42 U.S.C. § 675(5)(B) (2010).

⁶ § 16-1622(3).

⁷ Pursuant to section 16-1622(1), parents “may not request a review hearing within three months of a prior review hearing.”

⁸ NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RESOURCE GUIDELINES IMPROVING COURT PRACTICES IN CHILD ABUSE AND NEGLECT CASES 67 (1995).

depending on the needs of the case. In particular, review hearings may occur more frequently at the beginning of a case, when families are making substantial early progress on the case plan, or they may occur more frequently as termination of parental rights deadlines approach. Other types of cases in which more frequent reviews are appropriate include those in which compliance with substance abuse or mental health rehabilitation requirements are an issue.

As in all child protective proceedings, the court should avoid granting continuances except in emergency situations. If a continuance is necessary, it should be for a short period of time, and the court should consider entering appropriate orders to ensure that all parties are prepared to proceed on the new date.

8.3 SUBMISSION OF REPORTS TO THE COURT

The Idaho CPA requires IDHW and the guardian *ad litem* to file a written report to the court at least every six months.⁹ This responsibility to report coincides with the courts' responsibility to review cases under their jurisdiction. The court may order more frequent reports where necessary to support review hearings.

Timely submission of reports can assist the parties in analyzing the case, help the judge reach a decision, and help to document the facts and history of the case. Reports should be distributed to the parties well in advance (a minimum of five days or as ordered by the court) of the review hearing to allow time for the parties to consider proposals and to prepare for the hearing.

Any guardian *ad litem* report submitted after the adjudicatory hearing must include the child's wishes regarding permanency or the transition from foster care to independent living.¹⁰ This requirement should be included in the order setting the review hearing. Recommended best practice is for the reports to be verified.

8.4 KEY DECISIONS THAT THE COURT SHOULD MAKE AT THE REVIEW HEARING

A. Is the Child in an Appropriate Foster Care Placement That Adequately Meets the Child's Physical, Emotional, Educational, and Developmental Needs?

When the court places a child in the custody of IDHW, state law vests authority for the placement decision in the Department, subject to review by the court.¹¹ Federal law requires that placement authority be vested in the Department in order for the child to be eligible for federal funds.¹² When the parties raise issues about the child's placement, "[a]s long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility", the court may make appropriate placement decisions without impacting the child's eligibility for IV-E funding.¹³

⁹ §§ 16-1629(9), 16-1633(2).

¹⁰ § 16-1633(2).

¹¹ Under Idaho law, the authority to make placement decisions resides with IDHW. See § 16-1629(8) and *Dept. of Health & Welfare v. Hays*, 137 Idaho 233, 236-37, 46 P. 3d 529, 532-33 (2002).

¹² See 45 C.F.R. §1356.71(d)(1).

¹³ The U.S. Department of Health and Human Services, Administration for Children and Families has a Child Welfare Policy Manual with questions and answers about ASFA, in which the USDHHS states that "[a]s long as the

B. What Services Are Being Provided to Assist the Child in Adjusting to the Placement and to Ensure the Stability of the Placement?

1. General

In order to ensure the stability of the foster care placement and to ensure positive outcomes for children, the court should monitor and review the services being provided to the child and the foster family.¹⁴ This review should include whether the child is participating in counseling and treatment services contemplated by the case plan. The court should consider whether those services are meeting their objectives or whether they need to be reconsidered.

2. Educational Needs

In addition, the court should monitor and review whether the child's educational needs are being met, including whether the child has remained in the school of origin.¹⁵ If continued enrollment is not in the child's best interest, the court should monitor whether the child has been or will be immediately enrolled at another school.¹⁶ To assist courts in this evaluation, an Educational Needs bench card is provided with the Child Protection Bench cards available at the Idaho Supreme Court's Child Protection website.

3. Independent Living

Every youth who is 15 years or older must have an individualized Independent Living (IL) Plan that includes permanency and IL skill development. At the permanency hearing, (which may also serve as a review hearing), a determination of the services needed to assist a youth 16 years or older to make the transition from foster care to independent living must be identified.¹⁷ Services may include (1) information on education, training, and skills necessary to obtain employment (2) vouchers for education or training, including postsecondary education (3) list of support network contacts for youth when he or she exits care (4) information on health care and how to make decisions after exit from care (5) location of important documents needed for independent living such as a social security card or immunization records.¹⁸

court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow payments.” The court can also require the agency to include the child's foster care placement in the case plan or the permanency plan, and can then reject a plan that includes an inappropriate placement. Additionally, the court can make a finding that the department has not made reasonable efforts to eliminate the need for shelter care or finalize a permanency plan for the child and set a future hearing to review the finding. The case plan and permanency plan are discussed in further detail in chapters 6 and 7. ADMINISTRATION FOR CHILDREN & FAMILIES, CHILD WELFARE POLICY MANUAL (2011) available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp?idFlag=0

¹⁴ IDAHO JUV. R. 44(a)(1).

¹⁵ 42 U.S.C. § 675(1)(G).

¹⁶ 42 U.S.C. §1305. *See also* Chapter 12: Special Topics.

¹⁷ IDAHO JUV. R. 46(c).

¹⁸ For more information on Idaho's independent living program see Chapter 12: Special Topics.

4. *Medical, Vision, Dental, and Mental Health Needs*

The Department, in order to qualify for IV-E foster care maintenance payments (in consultation with pediatricians, other experts in health care, and experts in and recipients of child welfare services), must develop a plan for ongoing oversight and coordination of health care needs of children in foster care, including mental and dental health care needs and oversight of prescription medicines.¹⁹ At review hearing, the court should ensure that health care needs, including mental and dental needs, are being met and that oversight of prescription medicines is being provided.

5. *Family Contact*

The court should examine the child’s need for contact with family, especially siblings. Specifically, the court should monitor whether the Department has made reasonable efforts to place siblings in the same placement, and if not, whether the Department is facilitating frequent contact between siblings.²⁰ Similarly, federal law requires IDHW to “exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child . . .”²¹

The court should review the terms of visitation at review to determine whether terms and conditions of visits should be modified. Where reunification is a goal, and as parents successfully engage in services and threats of danger have decreased or protective capacities have increased, it may be appropriate to provide less restrictive, more extensive visitation.²²

As visitation increases to include unsupervised visits in the parents’ home, visits exceeding forty-eight (48) hours must be approved by the court in writing, in advance.²³ An extended home visit may be ended by IDHW if the Department determines that termination of the visit is in the best interests of the child. If an extended home visit is terminated, IDHW must prepare a written statement stating when the visit was terminated and the reasons for terminating the visit. This statement must be filed with the court within forty-eight hours of terminating the visit.²⁴

C. Is Child Support Appropriate?

The court should review if parents are complying with child support obligations.²⁵ Support amounts should either be confirmed or adjusted during review hearings. The court should take

¹⁹ 42 U.S.C. § 622(b)(15)(A).

²⁰ Federal law requires, as a condition of continued funding, that IDHW make “reasonable efforts . . . to place siblings removed from their home in the same . . . placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings.” Furthermore, federal law requires that where a joint placement is not made, the state must “provide for frequent visitation or other ongoing interaction between the siblings, unless the state documents that frequent visitation or other ongoing interaction would be contrary to the well-being of any of the siblings.” 42 U.S.C. § 671(a)(31)(A) & (B). *See also* IDAHO JUV. R. 44(a)(2).

²¹ 42 U.S.C. § 671(a)(29). Locating and notifying relatives is not required in many cases of family or domestic violence.

²² IDAHO JUV. R. 42 provides a procedure for implementing extended home visits.

²³ *Id.*

²⁴ *Id.*

²⁵ Idaho law provides for the entry of support orders for children in the child protection system. *See* § 16-1628(1). The terms of child support should be included in the case plan. IDAHO JUV. R. 44(a)(2).

care to avoid financial burdens that interfere with family reunification. In particular, delays in setting support followed by retroactive lump sum support orders can delay permanency; the financial disruption can interfere with the parent(s)' ability to maintain or to obtain residential space in preparation for the child's return home. Where a parent is not supporting their child, failure to establish a child support obligation will narrow the grounds for parental termination.

D. Are Children Engaged in the Proceedings in an Age Appropriate Manner?

Children can become frustrated when they are excluded from court proceedings and have no voice in a system designed to ensure their best interests are served. The court should monitor and review that children eight years of age and older have been notified by the Department of all post-adjudicatory hearings.²⁶ The court should provide an opportunity for children to participate in the proceedings in an age-appropriate manner; whether that is in person, by letter, by phone, or through the assigned caseworker, Guardian *ad Litem*, and/or foster parents.²⁷ For more information on how the court and practitioners can provide a meaningful opportunity for children to participate in the process, see Chapter 12.

E. Are the Needs of the Foster Parents Being Addressed?

The court should monitor and review any services that may be provided to the foster family to support the care and nurturing of the child.²⁸ In general, foster parents should be at review hearings and should be engaged by the court in regard to the child's progress and foster parents' needs,²⁹ as they often have more information than anyone else on how the child is doing on a day-to-day basis.

F. Have the Parents Complied with the Case Plan?

Initially, the court should review the safety issues which brought the child into care and determine whether the conditions for return home have been met. If the conditions for return home have been met, appropriate steps should be taken to facilitate reunification. Secondly, the court should review information on the extent to which the parents have complied with the case plan.³⁰

If the parents have not complied with the case plan, the court should review information on why the parents have not complied. If the reasons for non-compliance indicate a lack of effort on the part of the parents, it may be necessary to remind them of the prior court order and to explain that their continued non-cooperation may result in termination of their parental rights.

The reasons for non-compliance may indicate a need to modify or clarify the case plan. At the review, the court can correct any misunderstood expectations. Before making the decision on

²⁶ IDAHO JUV. R. 40.

²⁷ IDAHO JUV. R. 40; William Jones, *Making Youth a Meaningful Part of the Court Process*, in JUVENILE AND FAMILY JUSTICE TODAY, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (Fall 2006).

²⁸ IDAHO JUV. R. 44.

²⁹ IDAHO JUV. R. 40(a).

³⁰ See generally THERESE ROE LUND & JENNIFER RENNE, *CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS* (2009). Pgs. 43-46.

whether and how to revise 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 any changes they need that will enable them to address the issues that need to be resolved before the child can be safely returned home. Again, parents should also be informed of the risk of termination of parental rights or other permanent loss of custody should they fail to meet their responsibilities under the plan.

Reviewing the parents’ progress on the case plan should be a two-step inquiry. For example, a parent may be required to participate in anger management classes. The first part of the inquiry is whether the parent completed the class. The second part of the inquiry is whether the parent is using the skills learned in the class to decrease threats or increase his/her protective capacity. The review hearing should not be reduced to a simple checklist of services provided and services attended.

G. Is IDHW Making Reasonable Efforts to Reunify the Family and to Eliminate the Need for Placement of the Child?

When the case plan goal is family reunification, IDHW should be held accountable for meeting its obligation to provide services to the family. The court should make specific factual findings as to what efforts the agency is making to eliminate the need for placement of the child and whether such efforts are reasonable.³¹ The court should identify any areas in which agency efforts are inadequate and set forth orders to address those inadequacies.

H. Did IDHW Make Reasonable Efforts to Finalize a Permanency Plan for the Child?

Idaho law requires a concurrent plan (also referred in the Idaho Juvenile Rules as the “alternate permanency plan”) in every CPA case where the child is determined to be within the jurisdiction of the court.³² At review hearings prior to the permanency hearing, the court should monitor IDHW’s reasonable efforts not only to attain reunification, but also to move forward on the concurrent permanency plan so that permanency is not delayed if reunification efforts fail.³³ Should reunification efforts fail, the concurrent plan must be in place and ready for implementation.

8.5 POST-PERMANENCY REVIEW

There is a continuing obligation to review the child’s case and alternate permanency plan at least every six months as long as the child is in the Department’s custody.³⁴ State law requires the court to make written, case-specific findings that the Department has made reasonable efforts to finalize a permanency plan for the child.³⁵ Federal law requires this finding to be made within twelve (12) months of the date the child is considered to have entered foster care and at least

³¹ § 16-1615(5)(b); IDAHO JUV. R. 39(i)(3).

³² § 16-1621(1); IDAHO JUV. R. 44(3).

³³ IDAHO JUV. R. 45(a)(3).

³⁴ § 16-1622(3).

³⁵ § 16-1622(5); IDAHO JUV. R. 45(a)(3).

every twelve months after the permanency hearing.³⁶ Permanency hearings may be combined with review hearings.³⁷ In addition, Idaho Juvenile Rules provide that the court should review IDHW's consideration of options for both in and out-of-state placements, if reunification is not the permanency goal.³⁸

8.6 ADDITIONAL MATTERS THE COURT SHOULD CONSIDER

A. Are Any Additional Court Orders Necessary to Move the Case Toward Successful Completion?

Additional orders may be needed to move the case toward successful completion. For example, if one parent has successfully completed services but the other has not, it may be possible to return the child to the parent who has completed the case plan, subject to a condition in the plan limiting contact with the other parent.³⁹

B. Has the Time and Date for the Next Hearing Been Set; Are Any Orders Needed to Prepare for the Next Hearing?

The court should set the time and date for the next hearing and enter any orders necessary to prepare for it. For example, transport orders may be necessary if a parent is in the custody of the Idaho Department of Corrections or county jail, or if a child is in the custody of the Idaho Department of Juvenile Corrections or in detention.

8.7 AGREEMENTS BY THE PARTIES

Whenever issues at a review are presented through a stipulation of the parties, the court must take the time to thoroughly review the agreement with the participants. IJR 38 requires that all stipulations be part of the court record, and that the court confirm that all stipulations have been entered into knowingly and voluntarily, have a reasonable basis in fact, and are in the best interest of the child.⁴⁰ If the parties' agreement is not comprehensive, the court may need to hear evidence to resolve the disputes. The court might also adjourn the hearing for a short time (such as one day) to give the parties time to resolve issues or present them to the court for consideration.⁴¹

If the court conducts frequent review hearings, any agreed upon statement of facts should convey the recent history of the case. The history should include an agreed upon statement concerning services provided to the child and family since the last hearing, actions taken by the parents in accord with the case plan, and progress made toward ending state intervention. This provides a definitive record of what has occurred since the previous hearing. This record will be

³⁶ 45 C.F.R. 1356.21(b)(2)(i).

³⁷ § 16-1622(4).

³⁸ IDAHO JUV. R. 45(a)(3) and IDAHO JUV. R. 46(c).

³⁹ IDAHO JUV. R. 45(a)(4).

⁴⁰ IDAHO JUV. R. 38. Rule 38 sets for the requirements for the use of stipulations in CPA proceedings

⁴¹ See § 16-1613(1) and IDAHO JUV. R. 45(b).

invaluable later in the case when it is necessary to decide whether to reunite the family or terminate parental rights.

If the parties have reached agreement as to future steps to be taken, the court should either make sure that the agreement is comprehensive or resolve any issues not considered. A comprehensive agreement might include such issues as placement, services to the child, services to the family, visitation (where applicable), Department oversight of the family, location of missing parents, determination of paternity, etc.

8.8 THE COURT'S WRITTEN FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AT THE REVIEW HEARING

Best practice is for the court to make written findings of fact and conclusions of law, in language understandable by the parties, with enough detail to document the progress of the participants on the case plan or permanency plan and to support the court's actions. As in other stages of the proceedings, the burden of preparing findings can be sharply reduced by incorporating well-prepared reports submitted by the Department or other participants. It is particularly important that the court include an order modifying the case plan or permanency plan (when appropriate), ordering the participants to comply with the plan, and setting further proceedings. The court should include a finding as to which participants were present and, if any necessary participants were not present, a finding that proper notice was given.

CONCLUSION

Review hearings are critical to the successful completion of the case plan or permanency plan. The key functions of the review hearing are to comprehensively assess the status of the case, to document the participants' progress on the case plan or the permanency plan, and to modify the case plan or the permanency plan based on the progress, or lack of progress, made by the participants. A well-devised plan, together with effective review, enables the court to ensure that the case moves forward to a timely and successful resolution that protects the rights of the parties and the best interests of the child.