

CHAPTER 8: Review Hearings

8.1 INTRODUCTION

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(1) and Idaho Juvenile Rule 45 govern these hearings. The purpose of the review hearing is to review “compliance with the case plan and/or the permanency plan (whichever is in place at the time of the hearing) and the progress of the Department in achieving permanency for the child.”¹

At the review hearing, the court may:

1. Modify the case or permanency plan.
2. Modify disposition.
3. Determine whether the Department has made reasonable efforts to finalize a permanency plan.
4. If the child will not be reunified with a parent(s), review the options for in- and out-of-state placement.
5. If the next review hearing is an annual permanency hearing, order the Department to prepare and file a written permanency plan.²
6. Enter further orders necessary to ensure that the case is moving towards achieving permanency for the child.³

Review hearings are critical to early 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.⁴ Children age eight and older are entitled to notice of review hearings

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 the ICWA; and “IDHW” and “the Department” are used interchangeably to refer to the Idaho Department of Health and Welfare.

¹ IDAHO JUV. R. 45(a).

² IDAHO JUV. R. 45(c) and 46.

³ IDAHO JUV. R. 45(a)(1)-(4).

⁴ IDAHO CODE ANN. § 16-1613(1) (2009); IDAHO JUV. R. 51.

and have a right to be heard, in person or in writing.⁵ Foster parents (including relatives providing care for a child) and pre-adoptive parents are also entitled to notice and have a right to be heard at review hearings.⁶

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 will be aided by a regular, thorough review of the case. If progress is not being made, review hearings provide an opportunity for early identification and resolution of barriers to progress.

Continuation of a child in foster care for an extended time has a negative effect on the child and the family. A child in foster care forms new relationships that may weaken his or her emotional ties to biological family members. When a child is moved between foster homes, the child may lose the ability to form strong emotional bonds with a permanent family.⁷ Thoughtful decisions concerning the child's present and future needs are necessary from the outset and throughout the life of the case. Review hearings can help ensure that decisions concerning a child's future are made at regular intervals and implemented expeditiously.

Review hearings should examine the long-term permanency goal(s) for the child and change or revise goal(s) 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 the concurrent permanency goal.

Review hearings can also 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 facilitates case progress by monitoring compliance with the case or permanency plan, making appropriate changes in the terms of the plan, requiring that participants take specific action(s), and making decisions necessary to move the case forward.⁸ Review hearings provide a forum for the parents and children, helping to assure that their viewpoint is considered in case planning and implementation. 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 and hold participants accountable. Regular and thorough review hearings may also

⁵ IDAHO JUV. R. 40(b); Chapter 12: Special Topics.

⁶ IDAHO JUV. R. 40(a); Chapter 12: Special Topics.

⁷ 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: MICHAEL RUTTER, *MATERNAL DEPRIVATION REASSESSED* (Penguin Books 1981); JOHN BOWLBY, *ATTACHMENT AND LOSS* (Basic Books 3d ed. 1973); JOSEPH GOLDSTEIN, ANNA FREUD AND ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (Free Press 2d ed. 1979).

⁸ See IDAHO JUV. R. 44 and 46.

create incentives for IDHW to make decisions and take action 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

The timing of review hearings is governed by both federal and state law. Federal law requires that cases involving children in out-of-home care be reviewed every six months.⁹

Idaho law requires that the court hold a hearing to review of the child's case plan or permanency plan no later than six months after entry of the court's 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.¹⁰ Courts have the discretion and are encouraged to conduct review hearings more frequently.¹¹ Recommended best practice is to conduct review hearings at least once every 60 to 90 days, unless there is good reason in a particular case to schedule reviews more or less frequently.¹²

In Idaho courts, review hearings are commonly conducted on a more frequent schedule depending on the needs of the case. For example, more frequent review hearings may be appropriate:

- At the beginning of a case when families are making substantial early progress on the case plan.
- When the family is in crisis and needs more frequent monitoring and supportive services.
- When there is a disruption in the child's placement.
- When a child has special developmental, health, or educational needs.
- When the parents or child(ren) have a history of trauma.
- When compliance with substance abuse or mental health treatment plans are an issue.

Child Protection Drug Courts (CPDC) exemplify the value and effectiveness of regular and frequent review hearings.

As in all child protective proceedings, the court should diligently avoid granting continuances except in emergencies. 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.

⁹ 42 U.S.C. § 675(5)(B) (2012).

¹⁰ § 16-1622(1)(a) (Supp. 2014).

¹¹ Pursuant to § 16-1622(b), parents “may not request a review hearing within three months of a prior review hearing.”

¹² NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RESOURCE GUIDELINES IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 67 (1995).

8.3 SUBMISSION OF REPORTS TO THE COURT

The Idaho Child Protective Act (CPA) requires that IDHW file a written report to the court at least every six months.¹³ Guardians *ad litem* must file reports with the court at the adjudicatory hearing and at all review and permanency hearings.¹⁴ The responsibility to report coincides with the courts' responsibility to review cases under their jurisdiction. The court may or may not order more frequent reports where necessary to support review hearings.

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

All guardian *ad litem* reports submitted after the adjudicatory hearing must include the child's wishes regarding permanency and, where appropriate, the transition from foster care to independent living.¹⁵ Recommended best practice is that this requirement be included in the order setting the review hearing and that the reports be verified.

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

A. *Can the Child be Safely Returned Home Today?*

When the permanency goal is reunification, the most important question by the court at each review and/or permanency hearing is: "Can the child(ren) be safely returned home today?" If the answer to that question is no, the follow up question should be: "What is standing in the way of the child(ren) safely returning home today?" The answer to that question should, at least in part, inform the focus of the review hearing.¹⁶

B. *Is the Child a Native American or Alaska Native?*

The Indian Child Welfare Act establishes specific standards that must be met if an Indian or Alaskan Native child is removed from home.¹⁷ State courts must, in every child custody proceeding, ask whether the child is or could be an Indian child. Early identification of a child's Indian heritage allows tribes to intervene as early as possible and provides an opportunity for the tribe to bring resources to bear and prevent the breakup of the family.¹⁸ In addition, the state court must ask "each party in the case, including the guardian *ad litem* and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child."¹⁹ In most cases, the child's ICWA status will have been resolved prior to the review hearing. In some cases, either the child's ICWA

¹³ § 16-1629(9) (Supp. 2014).

¹⁴ § 16-1633(2).

¹⁵ *Id.*

¹⁶ § 16-1622(1)(a). *See generally* THERESE ROE LUND & JENNIFER RENNE, CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS 43-46 (2009).

¹⁷ 25 U.S.C. §§ 1902-1963 (2012).

¹⁸ BIA Guidelines A.(c)(3) (2015).

¹⁹ *Id.* at B.1(b).

status has not been resolved or new information becomes available that indicates the child may be an Indian child. The best practice recommendation is that the court inquires about the child's ICWA status at each hearing until the question is resolved.²⁰

C. Has IDHW Exercised and is IDHW Continuing to Exercise Due Diligence to Identify and Notify the Child's Extended Family?

Federal law requires that within 30 days of removal of the child from the parent(s)' custody, the child welfare agency exercise due diligence to identify, and provide notice of the child's removal to the following relatives of the child: all adult grandparents, all parents of a sibling of the child when the parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents).²¹ The definition of "sibling" is determined by state law. Siblings include an individual who is considered to be a sibling under state law or who would be considered a sibling under state law despite a disruption in parental rights. For example, a sibling who shares a biological parent with a child in care is a sibling even though their common parent's rights to the sibling have been terminated.²²

D. 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.²³ Federal law requires that placement authority be vested in the Department in order for the child to be eligible for federal funds.²⁴ 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.²⁵

²⁰ *Id.* See also Chapter 11: Indian Child Welfare Act.

²¹ 42 U.S.C. § 671(a)(29) (2012).

²² ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T. HEALTH & HUMAN SERVS, GUIDANCE ON PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT, ACYF-CB-IM-14-03 (issued Oct. 23, 2014), *available at* <http://www.in.gov/children/files/ACYF-CB-IM-14-03.pdf> (last visited April 29, 2015). This program instruction is the only direction available on how this new language will be interpreted. It is not binding authority.

²³ Under Idaho law, the authority to make placement decisions resides with IDHW. See § 16-1629(8) and Dept. of Health & Welfare v. Hays (In re Doe), 137 Idaho 233, 236-37, 46 P. 3d 529, 532-33 (2002).

²⁴ See 45 C.F.R. § 1356.71(d)(1) (2012).

²⁵ 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 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, *supra*. ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T. HEALTH & HUMAN SERVS., CHILD WELFARE POLICY MANUAL (2011), *available at* http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=31 (last visited April 29, 2015).

E. 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.²⁶ 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 review and monitor whether the child's educational needs are being met, including whether the child has remained in the school of origin.²⁷ If continued enrollment in the child's school of origin 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.²⁸

3. Independent Living

Every youth who is 14 years or older must have an individualized Independent Living (IL) Plan that includes permanency and IL skill development.²⁹ At the permanency hearing, (which may also serve as a review hearing), a determination of the services needed to assist a youth 14 years or older to make the transition from foster care to independent living must be identified.³⁰ 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; and (4) information on health care and how to make decisions after exit from care. In addition, each year the Department must provide the youth with a copy of his or her credit report.³¹

A youth who has been in foster care for six or more months and is aging out of foster care must be provided a copy of his/her birth certificate, social security card, driver's license or state issued identification card, medical records, and health insurance information.³² For youth age 16

²⁶ §§ 16-1621(3)(a), 16-1620(3)(a) (Supp. 2014).

²⁷ 42 U.S.C. § 675(1)(C), (G) (2012).

²⁸ *Id.* § 675(1)(G)(ii)(II). See also Chapter 12: Special Topics.

²⁹ 42 U.S.C. § 675(1)(D) (2012). Effective September 29, 2015, the age drops from 16 to 14. 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. For more information on Idaho's independent living program, see Chapter 12: Special Topics.

³⁰ Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 112(a)(1), (c), 128 Stat. 1926, 1928 (2014) (to be codified at 42 U.S.C. § 675(5)(C)(i) effective September 29, 2015); §§ 16-1622(2)(e), 16-1621(3)(d)(vi) (2014).

³¹ *Id.*

³² 42 U.S.C. § 675(5)(H) (2012); Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183,

years and older with a permanency goal of APPLA, the court must ask the youth about his or her desired permanency outcome.³³ In addition, the court must:

- Require IDHW to document on the record efforts to place the youth permanently with a parent, relative, or in a guardianship or adoptive placement.³⁴
- Make a judicial determination that APPLA is the best permanency goal for the youth.³⁵
- Make a judicial determination that there are compelling reasons not to permanently place the youth with a parent, relative, or in a guardianship or adoptive placement.³⁶
- Document the steps that the Department is taking to ensure that the foster family is following the “reasonable and prudent parent” standard and that the child(ren) has regular opportunities to engage in “age or developmentally appropriate activities.”³⁷

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.³⁸ At review hearings, 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 is meeting its mandate to make reasonable efforts to place siblings in the same placement, and if not, whether the Department is facilitating frequent contact between siblings.³⁹

The court should also review visitation to determine whether the terms and conditions of visitation should be modified. Where reunification is a goal, the parents successfully engage in services, the safety issues have been ameliorated, or the parents’ protective capacities have increased, it may be appropriate to provide less restrictive, more extensive visitation.⁴⁰

§ 114, 128 Stat. 1926, 1930 (2014) (to be codified at 42 U.S.C. §675(5)(I), effective September 29, 2015). *See also* Chapter 12: Special Topics.

³³ *Id.* at § 675A(a)(2)(A).

³⁴ *Id.* at (a)(1).

³⁵ *Id.* at (a)(2)(B).

³⁶ *Id.*

³⁷ *Id.* at (a)(3).

³⁸ 42 U.S.C. § 675(1)(C) (2012).

³⁹ 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.” *Id.* § 671(a)(31).

⁴⁰ § 16-1621(3)(c) (Supp. 2014).

As visitation increases to include unsupervised visits in the parents' home, visits exceeding forty-eight hours (extended home visits) must be approved by the court in writing, in advance. 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 state in writing when the visit was terminated and the reasons for terminating the visit. This statement must be filed with the court within 48 hours of terminating the visit.⁴¹

F. Is Child Support Appropriate?

The court should review whether parents are complying with child support obligations.⁴² Support amounts should either be confirmed or adjusted during review hearings.⁴³ The court should take 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.

G. Are Children Engaged in their Proceedings?

Across the nation, children in out-of-home care have expressed a desire to participate in child protection hearings in which their future is decided.⁴⁴ The best practice recommendation is to include all children, of all ages, in all proceedings.⁴⁵ There are many benefits to having children in the courtroom, even when they are very young:

- Often, the parties and their counsel behave better when children are present.
- The presence of the children focuses the participants on what is at stake.
- Children hear firsthand what occurs at hearings.
- It makes visible the passage of time in achieving permanency for the child.
- The judge is able to observe the interaction between the parents and their children.
- The judge is able to observe the interaction between the child and the foster parents.
- The judge can communicate directly with the child.

“Children are the first to remind stakeholders that they have lived through and are well aware of the issues that brought them into foster care. As long as they are appropriately prepared for the hearing, discussions in court will not likely cause them additional trauma or harm. Moreover, excluding children from court can be equally (if not more) upsetting, because it strips children of the opportunity to come to terms with their past and move on and precludes children from having a sense of involvement in and control over planning their future.” -*Seen, Heard, and Engaged: Children in Dependency Court Hearings*, NCJFCJ Technical Bulletin, 2012.

⁴¹ IDAHO JUV. R. 42.

⁴² Idaho law provides for the entry of support orders for children in the child protection system. See IDAHO CODE ANN. § 16-1628(1). The terms of child support should be included in the case plan.

⁴³ § 16-1628.

⁴⁴ Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, ABA CHILD L. PRAC. (2006) 145.

⁴⁵ NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, *SEEN, HEARD, AND ENGAGED: CHILDREN IN DEPENDENCY COURT HEARINGS* 8 (2012).

- For older youth, engagement in the process provides a sense of control.
- The judge can evaluate the child's representation.
- A child's presence facilitates his/her engagement in the process.⁴⁶

One traditional objection to the presence of children in the courtroom is that children can be disruptive. The experience of judges who have implemented this practice is that maintaining courtroom order and control is no more difficult when children are present. A second objection is that by attending court hearings, children may be further traumatized by what they experience in the courtroom. An awareness of the child's trauma is important. In consultation with the participants, the court can manage the courtroom environment to protect the child.⁴⁷

In Idaho, children age eight and older have the right to notice and to be heard, in person or in writing, at all post-adjudicatory hearings.⁴⁸ Children under age 12 must be appointed a guardian *ad litem* to advocate for their best interest, and counsel must be appointed for the guardian.⁴⁹ Youth age 12 and over are entitled to the appointment of an attorney to represent their express wishes. If appointment of counsel is not practical or appropriate, the court must appoint a guardian *ad litem* for the child and the guardian must be represented by an attorney.⁵⁰

At each review hearing, the court should confirm that a child age eight and over has been provided notice of the hearing by IDHW.⁵¹ Children and youth should be encouraged to participate in review hearings in an age appropriate manner. For more information on how the court and practitioners can provide a meaningful opportunity for children to participate in the process, see Chapter 12.

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

Foster parents, pre-adoptive parents, and relatives who are providing care for a child in an out-of-home placement are entitled to notice of and have a right to be heard at all post-adjudicatory hearings.⁵² The best practice recommendation is to schedule review hearings at times when foster parents can attend and that require a minimum loss of work time.

At each review hearing, the court should:

- Confirm that IDHW provided notice of the hearing as required by IJR 40(a).
- Engage foster parents regarding the child's wellbeing and progress.
- Engage foster parents regarding the services and support that could be provided to the foster family to strengthen their ability to care for and nurture the child.

⁴⁶ Khoury, *supra* note 44, at 150.

⁴⁷ NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, *supra* note 45, at 8-9.

⁴⁸ IDAHO JUV. R. 40(b).

⁴⁹ § 16-1614(1) (Supp. 2014).

⁵⁰ § 16-1614(2).

⁵¹ IDAHO JUV. R. 40(b).

⁵² IDAHO JUV. R. 40(a).

I. Have the Parents Complied with the Case Plan?

The court should review information on the extent to which the parents have complied with the case plan.⁵³ 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. Monitoring compliance with the case plan should not be reduced to a simple checklist of services provided and services attended.

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 motivation and/or effort on the part of the parents, it may be appropriate to remind parents that compliance is required by court order and to reiterate that continued non-compliance may result in termination of their parental rights.

Non-compliance may also 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 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 services, support, or changes to the case plan that will enable them to address the safety issues that need to be resolved before the child can be returned home.

J. Is IDHW Making Reasonable Efforts?

At the permanency hearing, the court is required to make a case-specific finding that the Department did or did not make reasonable efforts to finalize the permanency plan in effect for the child.⁵⁴ At review hearings prior to the permanency hearing, the court should determine whether IDHW has made reasonable efforts to attain reunification and on progress with the concurrent permanency plan so that permanency is not delayed if reunification efforts fail.⁵⁵ Should reunification efforts fail, the concurrent plan must fully be in place and ready for implementation at the annual permanency hearing.

8.5 POST-PERMANENCY REVIEW

The court must hold a hearing to review the child's case or permanency plan no later than six months after the court's order taking jurisdiction and no later than every six months until the case is closed.⁵⁶ Idaho law does not provide specific detail about the scope and content of a post-permanency review hearing.⁵⁷

⁵³ § 16-1622(1)(a)(iii).

⁵⁴ § 16-1622(2)(c).

⁵⁵ IDAHO JUV. R. 45(a)(3).

⁵⁶ § 16-1622(1)(a); IDAHO JUV. R. 45(a).

⁵⁷ See § 16-1622(1)(a); IDAHO JUV. R. 45(a).

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.⁵⁸ Idaho Child Protection Forms include a template form for relinquishing jurisdiction. It and other child protection forms can be found on the Child Protection section of the Idaho Supreme Court website.

In some cases, it is a condition of the case plan that the parent who has completed the plan obtain a custody order addressing issues of custody as between the parents before the child protection case is closed. The court in the CPA case has exclusive jurisdiction over the child, which can delay progress on the custody case.⁵⁹ In such instances, counsel should ask the court in the CPA proceeding for an order relinquishing jurisdiction for purposes of the custody case.

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 STIPULATIONS 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 approve the agreements and 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.⁶⁰ If the parties' agreement is not comprehensive, the court may need to hear evidence to resolve the disputes.

If the court conducts frequent review hearings, any stipulated 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 invaluable later in the case when it is necessary to decide whether to reunite the family or terminate parental rights.

⁵⁸ IDAHO JUV. R. 45(a)(4).

⁵⁹ § 16-1603(1) (2009).

⁶⁰ IDAHO JUV. R. 38. Rule 38 sets forth the requirements for the use of stipulations in CPA proceedings

If the parties have reached agreement as to future steps in the case, the court should make sure that the agreement is comprehensive and resolves any issues not considered or inadvertently omitted. 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 regular 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.