

CASE PLAN HEARING

Bench Card

This Bench Card has been created by the Administrative Office of the Court as a resource for judges. Bench Cards do not represent statements of law by the Idaho Supreme Court and do not constitute legal advice.

PURPOSE

Where aggravated circumstances are not found, to determine whether the best interests of the child is served by adopting, modifying, or rejecting the case plan.¹ This includes cases where the child was placed in the custody of the Department and cases where the child was placed at home under the supervision of the Department.² (Where aggravated circumstances are found, see *Permanency Hearing – Aggravated Circumstances Bench Card*.)

WHEN³

1. The case plan hearing must be held within 30 days after the adjudicatory hearing.
2. The case plan must be filed no later than 5 days prior to the hearing.

WHO MAY BE PRESENT

1. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case.⁴
2. The Department shall provide notice of the planning hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children age 8 and older. The Department shall confirm to the court that this notice was given.⁵
3. The child may be excluded from hearings at any time at the discretion of the court.⁶

EVIDENCE

1. The Rules of Evidence do not apply.⁷
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department each have the right to be heard at the case plan hearing.⁸
3. A child age 8 or older has the right to be heard, either in person or in writing.⁹ If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.¹⁰
4. Privileges in effect at the case plan hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental, or emotional condition of or injury to a child or concerning the welfare of a child.¹¹

MAKING THE RECORD¹²

The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interests of the child.

EXTENDED FOSTER CARE¹³

If a youth wishes to remain in extended foster care beyond the age of 18, and meets eligibility criteria, refer to Idaho Juvenile Rules (I.J.R.) 59 and the *Extended Foster Care Bench Card* for guidance.

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When the court orders extended foster care, the court shall continue to hold review and permanency hearings in accordance with I.C. § 16-1622. The court shall also determine whether the child continues to meet the eligibility requirements. If at any time the child no longer meets the requirements, the court shall terminate extended foster care.

CONTENTS OF THE CASE PLAN

The case plan is the roadmap for achieving permanency for the child. Part One of the case plan, the Family Case Plan, identifies the threats of danger that prevent the child from safely returning home and the conditions that must be met before the child can safely return home. Part One also identifies the changes that must be made in the behavior, commitments and attitude of the parent(s) and the conditions that must be met in order for the case to be closed.

Part Two of the case plan, the Child's Case Plan, includes the information about the child that is required by the Child Protective Act.

If the child is placed in the legal custody of the Department, the case plan must include:

Placement

1. The current foster care placement for the child.¹⁴
2. If a group of siblings was removed from the home but was not placed together, the Department must document: 1) the efforts to place the siblings together, 2) the reasons the siblings were not placed together, and 3) the plan to ensure frequent visitation or ongoing contact among the siblings, unless visitation or contact would be contrary to the wellbeing of one or more siblings.¹⁵

Services to the Child

1. Services to identify and meet any educational, emotional, physical, or developmental needs the child may have, and to assist the child in adjusting to the placement or to ensure the stability of the placement.¹⁶
2. Options for maintaining the child's connection to the community. This includes people, schools, organizations, or activities with which the child has a significant connection.¹⁷
3. The plan to ensure educational stability for the child, including efforts to keep the child in the same school or reasons why keeping the child in the same school is not in the child's best interests.¹⁸
4. For youth age 14 and older, the case plan must include the information described in the *Transition to Successful Adulthood Bench Card*.¹⁹

ICWA (See the ICWA Bench Card)

1. If there is reason to believe the child is an Indian child, and there has been no final determination of the child's status as an Indian child:²⁰
 - a. The efforts made to determine whether the child is an Indian child; and
 - b. The Department's efforts to work with all tribes of which the child may be a member and to verify whether the child is a member or eligible for membership.
2. If the child is an Indian child, active efforts by the Department to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family.²¹ If there is reason to know the child is an Indian child, but the court does not have enough evidence to determine the child's status, the court must treat the child as an Indian child.²²

Reunification

1. A reunification plan that includes:²³

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- a. Reasonable efforts to be made by the Department to make it possible for the child to return home.²⁴
 - b. All issues that need to be addressed before the child can safely be returned home (or remain home) without Department supervision.²⁵
 - c. Tasks to be completed by the Department, each parent and others, to address each issue, including services to be provided by the Department and in which the parents are required to participate.²⁶
 - d. Deadlines for completion of each task.²⁷
 - e. The role of the Department as to each parent.²⁸
 - f. A plan for achieving reunification within 12 months from the date the child was removed from the home.²⁹
2. A visitation plan, the need for supervision of visitation, and child support.³⁰

Concurrent Permanency Plan

A concurrent permanency plan is required when the court has placed the child in the custody of the Department.³¹

The concurrent plan must include:

1. A permanency goal, which must be one of the following:³²
 - a. Termination of parental rights and adoption.
 - b. Guardianship.
 - c. For youth age 16 and older only, “another planned permanent living arrangement” (APPLA.)
2. All options for permanent placement of the child, including in-state and out-of-state placement options.³³
3. The advantages and disadvantages of each option, and a recommendation as to which option is in the child’s best interests.³⁴
4. The actions necessary to implement the recommended option.³⁵
5. A schedule for accomplishing the actions necessary to implement the permanency goal within the time frames in the Idaho Juvenile Rules.³⁶
 - a. If the permanency goal is termination of parental rights and adoption, a schedule that has the objective of finalizing termination within 18 months from the date the child was removed and finalizing the adoption within 24 months from the date the child was removed.³⁷
 - b. If the permanency goal is guardianship, a schedule that has the objective of finalizing the guardianship within 13 months from the date the child was removed.³⁸
6. For youth age 14 and older, the services needed to assist the child to make the transition from foster care to successful adulthood.³⁹ (*See the Transition to Successful Adulthood Bench Card*)
7. For youth age 16 and older whose permanency goal is APPLA, the plan must include the information listed in the *Transition to Successful Adulthood Bench Card*.⁴⁰
8. Further investigation necessary to identify or assess other options for permanent placement, to identify actions necessary to implement the recommended placement or to identify options for maintaining the child’s significant connections.⁴¹
9. If the court approves a concurrent permanency plan with a goal of termination of parental rights and adoption, the plan must identify the names of the proposed adoptive parents, when known.⁴²

If the child is placed in protective supervision, the case plan must include:

Services to the Child

1. Services to identify and meet any educational, emotional, physical, or developmental needs the child may have, and to assist the child in adjusting to the placement or to ensure the stability of the placement.⁴³

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2. Options for maintaining the child's connection to the community. This includes people, schools, organizations, or activities with which the child has a significant connection.⁴⁴
3. For youth age 14 and older, the case plan must include the information described in the *Transition to Successful Adulthood Bench Card*.⁴⁵

Issues that Need to be Addressed: ⁴⁶

1. All issues that need to be addressed to allow the child to remain at home without Department supervision;
2. Tasks to be completed by the Department, each parent and others, to address each issue, including services to be made available by the Department and in which the parents are required to participate;
3. The deadlines by which the tasks are to be completed; and
4. The role of the Department as to each parent.

QUESTIONS THE COURT MUST ASK AND FINDINGS THE COURT MUST MAKE

Psychotropic Medication ⁴⁷

If the child is placed in the Department's custody and the child is treated with psychotropic medications, the court must inquire about the type of medication, the dosage and the medical professional who prescribed the medication. The court may make any additional relevant inquiry.

ICWA (See the ICWA Bench Card)

1. The court must ask:
 - a. Is there reason to believe that the child is an Indian child? ⁴⁸
 - b. What efforts have been made since the last hearing to determine whether the child is an Indian child?⁴⁹
 - c. What efforts have been made by the Department to work with all tribes of which the child may be a member and to verify whether the child is a member or eligible for membership?⁵⁰
2. The court must determine whether the Department is using active efforts to work with all tribes of which the child may be a member to verify whether the child is a member or eligible for membership.⁵¹
3. If there is reason to know the child is an Indian child, but the court does not have enough evidence to determine the child is not an Indian child, the court must treat the child as an Indian child.⁵²

CASE PLAN ORDER

The court's order must:

1. adopt, modify, or reject the case plan.⁵³
2. incorporate the case plan approved by the court.⁵⁴
3. provide that reasonable efforts shall be made to reunify the family in a timely manner.⁵⁵
4. require completion of the steps necessary to finalize the permanent placement of the child.⁵⁶
5. schedule the next hearing.

RECOMMENDED QUESTIONS

1. Does the case plan identify the specific threats of danger that caused the child to be removed from the home?
2. What are the plans, tasks and services that will mitigate or eliminate the threats of danger?

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3. What are the conditions that must be met in order for the child to return or remain safely home?
4. What is preventing the child from returning home today?
5. Will the issuance of a protective order in this case allow the child to return safely home? What conditions need to be included in the protective order to manage or eliminate the threats of danger and allow the child to return safely home?
6. Does the case plan identify the behaviors, commitments and beliefs that each parent must change?
7. What are the plans, tasks and services that will assist the parents in changing their behavior and beliefs?
8. What are the conditions for case closure?
9. If the child is an Indian child, and the child is in the custody of the Department, does the child's placement comply with ICWA? (*See the ICWA Bench Card*)
10. Is the Department fully exploring placement options with a fit and willing relative? If so:⁵⁷
 - a. Who are the members of the child's extended family (including out-of-state family, adult siblings, and fictive kin)?
 - b. Who has been contacted?
 - c. Are they placement options?
11. Has the child been moved since the adjudicatory hearing? If so:
 - a. Why?
 - b. What further efforts are needed to ensure the child's placement stability?
 - c. Does the new placement support the child's cultural identity?
12. Parents:
 - a. Do you understand what happened here today?
 - b. Do you understand what will happen next in your case?
 - c. Do you understand what you need to accomplish before the next hearing?
 - d. Do you have any questions for the court?
13. Department and guardian *ad litem*:
 - a. Do you understand what is required of the Department and/or guardian *ad litem* prior to the review hearing?
 - b. Do you have any questions for the court?

ENDNOTES

¹ I.C. § 16-1621(1)(a).

² I.C. § 16-1621(3) and (4).

³ I.C. § 16-1621(1).

⁴ I.C. § 16-1613(1); I.J.R. 52(a).

⁵ I.C. § 16-1621(2); I.J.R. 40(a) and (b).

⁶ I.C. § 16-1613(1).

⁷ I.R.E. 101(e)(6); I.J.R. 51(b).

⁸ I.J.R. 40(a).

⁹ I.J.R. 40(b).

¹⁰ I.C. § 16-1613(2).

¹¹ I.R.E. 502, I.R.E. 505. *See also* I.R.E. 503(d)(4), I.R.E. 504(d)(1), I.R.E. 516(d)(3), I.R.E. 517(d)(3), I.R.E. 518(d)(5).

¹² I.J.R. 38.

¹³ I.J.R. 59.

¹⁴ I.J.R. 43(2).

¹⁵ I.C. § 16-1621(3)(b)(iv).

¹⁶ I.C. § 16-1621(3)(a).

¹⁷ I.C. § 16-1621(3)(b)(i).

¹⁸ I.C. § 16-1621(3)(b)(ii).

¹⁹ I.C. § 16-1621(3)(a).

²⁰ I.C. § 16-1621(3)(b)(v).

²¹ 25 U.S.C. § 1912(d)

²² 25 C.F.R. § 23.107(b)(2).

²³ I.C. § 16-1621(3)(c).

²⁴ I.C. § 16-1621(3).

²⁵ I.C. § 16-1621(3)(c).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ I.J.R. 44(a)(1).

³⁰ I.C. § 16-1621(3)(b)(iii) and (c).

³¹ I.C. § 16-1621(3)(d).

³² *Id.*

³³ I.C. § 16-1621(3)(d)(i).

³⁴ I.C. § 16-1621(3)(d)(ii).

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³⁵ I.C. § 16-1621(3)(d)(iii).

³⁶ I.C. § 16-1621(3)(d)(iv).

³⁷ I.J.R. 46(a).

³⁸ I.J.R. 44(a)(2).

³⁹ I.C. § 16-1621(3)(a)(i).

⁴⁰ I.C. § 16-1621(3)(d)(viii).

⁴¹ I.C. § 16-1621(3)(d)(ix).

⁴² I.C. § 16-1621(3)(vi).

⁴³ I.C. § 16-1621(3)(a).

⁴⁴ I.C. § 16-1621(3)(b)(i).

⁴⁵ I.C. § 16-1621(3)(a).

⁴⁶ I.C. § 16-1621(4).

⁴⁷ I.C. § 16-1621(1)(c).

⁴⁸ I.C. § 16-1621(1)(b).

⁴⁹ I.C. § 16-1621(1)(b)(i).

⁵⁰ I.C. § 16-1621(1)(b)(ii).

⁵¹ *Id.*

⁵² 25 C.F.R. § 23.107(2)(b).

⁵³ I.C. § 16-1621(1)(a).

⁵⁴ I.C. § 16-1621(5).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).