

# REVIEW HEARINGS

## Bench Card

*Bench Cards have 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 <sup>1</sup>

The purpose of the review hearing is to determine:

1. the safety of the child;
2. the continuing necessity for and appropriateness of the child's placement;
3. the extent of compliance with the case or permanency plan; and
4. the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

### WHEN

1. No later than 6 months after entry of the court's order taking jurisdiction and at least every 2 months thereafter.<sup>2</sup>
2. The Department and the guardian *ad litem* must file progress reports with the court at least 5 days before each review hearing, excluding status hearings.<sup>3</sup>
3. For a youth in the legal custody of the Department, within 90 days prior to the youth's 18<sup>th</sup> birthday.<sup>4</sup>
4. A review hearing may be combined with a permanency hearing.<sup>5</sup> (Note: Clerks must "result" both hearings.)
5. Continuances: The court may continue a review hearing for a short period of time to respond to substantive issues raised for the first time at a review hearing.<sup>6</sup> The court may enter temporary orders, as appropriate, pending the hearing.<sup>7</sup>

### WHO MAY BE PRESENT

1. The general public is excluded, and only such persons found by the court to have a direct interest in the case may be admitted.<sup>8</sup>
2. The Department must provide notice of the review 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 must confirm to the court that this notice was given.<sup>9</sup>
3. The child may be excluded from hearings at any time at the discretion of the court.<sup>10</sup>
4. Youth age 12 and older are required to attend review hearings in person or remotely, unless the youth declines in writing prior to the hearing, declines through counsel, or the court finds good cause to excuse the youth from attending the hearing.<sup>11</sup>

### EVIDENCE

1. The Rules of Evidence do not apply.<sup>12</sup>
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 review hearing.<sup>13</sup>
3. A child age 8 or older has the right to be heard, either in person or in writing.<sup>14</sup> If the child or youth testifies, a counselor, friend or other person shall be permitted to remain in the courtroom at the witness stand as the child or youth testifies.<sup>15</sup>

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4. Privileges in effect at the review 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.<sup>16</sup>

## STIPULATIONS<sup>17</sup>

Must be on the record and are subject to court approval. 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 CARE<sup>18</sup>

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.

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.

## INFORMATION THE DEPARTMENT MUST PROVIDE/QUESTIONS THE COURT MUST ASK

*ICWA (See the ICWA Bench Card)*

1. The Department must document and the court must ask:<sup>19</sup>
  - a. Is there reason to believe that the child is an Indian child?
  - b. What efforts have been made since the last hearing to determine whether the child is an Indian child?
  - 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?
2. The court must determine whether the Department exercised due diligence 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.<sup>20</sup>
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's status, the court must treat the child as an Indian child.<sup>21</sup>

## *Placement*

1. The Department must include information about the child's placement in its report to the court.<sup>22</sup>
2. If a group of siblings was removed from the home but was not placed together, the Department must document, and the court must ask about: 1) the Department's efforts to place the siblings together, 2) the reasons the siblings were not placed together, and 3) the Department's 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.<sup>23</sup>

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## APPLA

If the permanency goal is APPLA, the plan must document:<sup>24</sup>

1. intensive, ongoing, and unsuccessful, as of the date of the hearing, efforts the Department made to place the youth with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department in a placement with a fit and willing relative, including an adult sibling.
2. reasons why APPLA is the best permanency goal for the youth and compelling reasons why one of the other placements is not in the youth's best interests.
3. steps taken by the Department to ensure that the youth's foster parents or child care institution are following the reasonable and prudent parent standard when making decisions about the youth's participation in extracurricular, enrichment, cultural, and social activities.
4. opportunities provided to the youth to regularly engage in age or developmentally appropriate activities.

## Educational Stability<sup>25</sup>

The Department must document and the court must ask about the Department's efforts to ensure educational stability for the child, including efforts made to keep the child in the same school or the reasons why staying in the same school is not in the child's best interests.

## Psychotropic Medication

If the child is placed in the Department's custody and the child is being treated with psychotropic medications, the Department must document and the court must inquire about the type of medication, the dosage and the medical professional who prescribed the medication.<sup>26</sup> The court may make any additional relevant inquiry.<sup>27</sup>

## Youth Age 12 and Older<sup>28</sup>

The court shall ask each youth age 12 and older about the youth's desired permanency outcome and discuss with the youth the youth's current permanency plan. (*See Transition to Successful Adulthood Bench Card*)

## Youth Age 14 and Older<sup>29</sup>

For youth age 14 and older, the hearing shall include a review of the services needed to assist the youth to make the transition from foster care to successful adulthood. (*See Transition to Successful Adulthood Bench Card*)

## Youth Age 16 and Older<sup>30</sup>

For youth with a proposed or current permanency goal of APPLA, the court shall make written case specific findings as of the date of the permanency hearing:

1. APPLA is the best permanency plan for the youth; and
2. There are compelling reasons why it is not in the youth's best interests to be placed with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department in a placement with a fit and willing relative, including an adult sibling.

## OTHER FINDINGS<sup>31</sup>

1. Modify case plan or permanency plan, as appropriate.<sup>32</sup>
2. Modify disposition, as appropriate.<sup>33</sup>

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3. Extended Home Visits: Extended home visits must be approved by the court in writing prior to the extended home visit. An extended home visit is any period of unsupervised visitation between the parent and the child that exceeds 48 hours in duration.

The court may authorize an extended home visit for a period not to exceed 6 months from the date the order was filed. The court may authorize additional periods of extended home visit only after conducting a review hearing to determine the appropriateness of maintaining the child in the legal custody of the Department. In the event the court approves an extended home visit beyond 6 months, the court shall conduct a hearing to review the extended home visit no less than every 42 days to address the efforts and progress toward a change in legal custody.<sup>34</sup>

4. If appropriate, the Department made/did not make reasonable efforts to finalize the permanency plan in effect.<sup>35</sup>
5. When the child will not be returned home, review the Department's consideration of in-state and out-of-state placements.<sup>36</sup>
6. If appropriate, a specific finding about the parent's progress on accomplishing the requirements of the case plan.<sup>37</sup>

## ORDER

1. Enter further orders as necessary to ensure the progress of the case toward achieving permanency for the child.<sup>38</sup>
2. If the next review hearing is the annual permanency hearing, order the Department to prepare a written permanency plan to be filed and served 5 days prior to the hearing.<sup>39</sup>
3. Deadline for achieving reunification:  
If the child has been in the temporary or legal custody of the Department for 12 of the last 22 months, the Department must file a petition to terminate parental rights prior to the last day of the 15<sup>th</sup> month, unless the court makes one of these findings:<sup>40</sup>
  - a. The child is placed permanently with a relative.
  - b. There are compelling reasons why termination of parental rights is not in the child's best interests.
  - c. The Department has failed to provide reasonable efforts to reunify the child with the family.If the deadline is approaching (or has passed), the court should enter orders as appropriate, which may include making the finding based on information already before the court, setting deadlines for further proceedings for the court to make the finding, or ordering the Department to file a petition to terminate.
4. Enter appropriate orders for youth age 12 and older. (*See Transition to Successful Adulthood Bench Card*)
5. Schedule the next hearing.

## RECOMMENDED QUESTIONS

1. What are the specific threats of danger that caused the child to be removed from the home?
2. Is the child vulnerable to the threats of danger? In what way?
3. Do the parent(s) have sufficient protective capacities to protect the child from the threats of danger at home?
4. What is preventing the child from returning home today? How are the conditions for return home in your report related to the threats of danger? How will satisfying those conditions allow the child to return safely home?

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5. Is there an in-home safety plan that will allow the child to remain or return safely home? If so, is there at least one caregiver in the home? Is the home calm enough for services to be provided? Are the adults willing to cooperate in the implementation of the in-home plan? Are there sufficient appropriate, reliable resources available and willing to provide services to the family?
6. 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 the threats of danger and allow the child to return safely home?
7. Is the Department fully exploring placement options with a fit and willing relative? If so:<sup>41</sup>
  - 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?
8. What is the concurrent plan for this child? What steps has the Department taken to implement the concurrent plan? What additional steps need to be taken before the next hearing?
9. Has the child been moved since the shelter care 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?
10. Child:
  - a. Do you want to attend the next hearing?
  - b. Do you understand what happened here today?
  - c. Do you understand what will happen next in your case?
  - d. Do you understand what you need to do before the next hearing?
  - e. Do you have any questions for the court?
11. 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 do before the next hearing?
  - d. Do you have any questions for the court?
12. Department and guardian *ad litem*:
  - a. Do you understand what is required of the Department and/or guardian *ad litem* prior to the next hearing?
  - b. Do you have any questions for the court?

## ENDNOTES

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<sup>1</sup> I.C. § 16-1622(1)(a).

<sup>2</sup> I.C. § 16-1622(1)(a); I.J.R. 45(a).

<sup>3</sup> I.C. § 16-1622(1)(a) and (b).

<sup>4</sup> I.C. § 16-1622(3).

<sup>5</sup> I.C. § 16-1622(2)(b).

<sup>6</sup> I.J.R. 45(c).

<sup>7</sup> *Id.*

<sup>8</sup> I.C. § 16-1613(1); I.J.R. 52(a).

<sup>9</sup> I.J.R. 40(a) and (b).

<sup>10</sup> I.C. § 16-1613(1).

<sup>11</sup> I.J.R. 40(c).

<sup>12</sup> I.R.E. 101(e)(6); I.J.R. 51(b).

<sup>13</sup> I.J.R. 40(a) and (b).

<sup>14</sup> I.J.R. 40(b).

<sup>15</sup> I.C. § 16-1613(2).

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<sup>16</sup> I.R.E. 502, 505. *See also* I.R.E. 503(d)(4), 504(d)(1), 516(d)(3), 517(d)(3), and 518(d)(5).

<sup>17</sup> I.J.R. 38.

<sup>18</sup> I.J.R. 59.

<sup>19</sup> I.C. § 16-1622(1)(a)(ii).

<sup>20</sup> 25 C.F.R. § 23.107(b)(1).

<sup>21</sup> *Id.* Idaho Code provides that if there is reason to *believe* that a child is an Indian child, the court must inquire about efforts made to determine the child's status and make a determination that the Department is making active efforts to verify whether the child is an Indian child. The U.S. Bureau of Indian Affairs regulations, however, provide that where the court has reason to *know* the child is an Indian child, the court must inquire about efforts made to make the determination. The regulations also provide that if the court does not have sufficient evidence to determine that the child is not an Indian child, the court must proceed as if the child is an Indian child. 25 C.F.R. § 23.107(b)(2).

<sup>22</sup> I.J.R. 43(2).

<sup>23</sup> I.C. § 16-1622(1)(a)(iv).

<sup>24</sup> I.C. § 16-1622(1)(a)(vi and vii).

<sup>25</sup> I.C. § 16-1622(1)(a)(iii).

<sup>26</sup> I.C. § 16-1622(1)(a)(ix).

<sup>27</sup> *Id.*

<sup>28</sup> I.C. § 16-1622(1)(a)(v).

<sup>29</sup> *Id.*

<sup>30</sup> I.C. § 16-1622(1)(a)(viii).

<sup>31</sup> If the 12-month review hearing is combined with the permanency hearing, *see also Permanency Hearing Bench Card*. Findings for both the review hearing and the permanency hearing must be made.

<sup>32</sup> I.J.R. 45(b)(1).

<sup>33</sup> I.J.R. 45(b)(2).

<sup>34</sup> I.J.R. 42.

<sup>35</sup> I.J.R. 45(b)(3).

<sup>36</sup> *Id.*

<sup>37</sup> I.C. § 16-1622(1)(a)(i).

<sup>38</sup> I.J.R. 45(b)(4).

<sup>39</sup> I.J.R. 45(d).

<sup>40</sup> I.C. § 16-1622(2)(g).

<sup>41</sup> I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).