

CHAPTER 7: The Permanency Plan and Permanency Hearing

7.1 INTRODUCTION

There are three types of permanency hearings.

- 1. First Annual Permanency Hearing after Adoption of Case Plan:*
Within one year after the child’s removal, the court must hold a permanency hearing. If the court has not found that the parent subjected the child to aggravated circumstances, then reasonable efforts to reunify were required, and the case plan should have included both a reunification plan and a concurrent (alternate) permanency plan for the child. At the first permanency hearing, the court must approve, modify or reject the permanency goal and the permanency plan recommended by the Department.¹ The permanency goal must be one of the following: (1) continued efforts toward reunification for a period up to three months; (2) termination of parental rights and adoption; (3) guardianship; or (4) another planned permanent living arrangement for youth aged 16 and older.² When the court determines that the parents have made substantial progress in satisfying the requirements of the case plan and reunification is imminent, then the case continues toward reunification. When the court determines that the parents have not made substantial progress and reunification is not imminent, then the direction of the case changes to finalizing the alternative permanency goal.
- 2. Permanency Hearing after Aggravated Circumstances are Found:*
If the court found that the parent subjected the child to aggravated circumstances, then reasonable efforts to reunify were not required and the case proceeds immediately to a 30-day permanency hearing. At the 30-day permanency hearing, the court approves, modifies, or rejects the permanency goal for the child and the plan for achieving that goal. The options for the permanency goal do not include reunification.³
- 3. Subsequent Annual Permanency Hearings:*
In every case, the court must continue to hold annual permanency hearings so long as the child remains under the jurisdiction of the court. The permanency plan becomes the benchmark for determining whether the Department has made reasonable efforts to finalize permanency for the child.⁴

Note re Terminology: In this manual, “prosecutor” refers to both a county prosecutor and/or a deputy attorney general; “Indian child” refers to all native children as defined by the Indian Child Welfare Act (ICWA); and “IDHW” and “the Department” are used interchangeably to refer to the Idaho Department of Health and Welfare.

¹ I.C. § 16-1622(2)(b)

² I.C. § 16-1622(2)(a), (b) (Supp. 2016); I.J.R. 44(a)(1), 46.

³ I.C. § 16-1620(1), (2)(Supp. 2016).

⁴ I.C. §§ 16-1622(2)(a), (c); 16-1620(1).

At every permanency hearing, the court must review and either approve, modify, or reject the permanency plan proposed by the Department.⁵ The goal of a child protection proceeding is to achieve timely permanency for the child, achieve permanency within state and federal timelines, and ensure that the Department has made reasonable efforts to finalize the permanency goal in effect for the child.

A permanency hearing may be held simultaneously with a review hearing.⁶ The functions of a review hearing and a permanency hearing may overlap. When a review hearing and a permanency hearing are combined, the court must make the findings required for each hearing.

7.2 THE PERMANENCY PLAN

The permanency plan provides the road map for providing the child with a permanent placement in a timely manner. The plan identifies the court-approved permanency goal(s) for the child as well as steps for achieving the goal(s).

A. Goals

The options for the child's permanency goal fall into four general categories, in order of preference:⁷

1. Continued efforts to reunify (in the absence of a judicial determination of aggravated circumstances),
2. Termination of parental rights and adoption,
3. Guardianship, or
4. For children age sixteen (16) years or older, "another planned permanent living arrangement" (APPLA).

1. Continued Efforts to Reunify

The preferred option for permanency is the safe, permanent, and timely reunification of the child with his/her parents. The preference for reunification embodied in Idaho law is that the state must seek, to the fullest extent possible, to reunite the family.⁸ The Department must make reasonable efforts to reunify the child with the family, unless the court finds that the parent(s) subjected the child to aggravated circumstances.⁹

The statute provides that the court must approve the permanency goal, which may be continued efforts at reunification.¹⁰ Idaho Juvenile Rule 44(a) provides that the case plan shall provide that reunification must be finalized within 12 months from the date the child is removed from the home, and if in the child's best interest, the court may approve an amendment to the case plan extending the time to finalize reunification for up to three months. In addition, the

⁵ I.C. § 16-1622(2)(b).

⁶ I.C. § 16-1622(2)(b).

⁷ I.C. §§ 16-1622(2)(a), 16-1620(2).

⁸ I.C. § 16-1601(2009).

⁹ 42 U.S.C. § 671(a)(15)(D) (2012); I.C. §§ 16-1619(6)(d), 16-1620(2) (Supp. 2016). The determination of aggravated circumstances would normally be made at the adjudicatory hearing.

¹⁰ I.C. § 16-1622(2)(a).

statute provides that if the child has been in the temporary or legal custody of the Department more than fifteen of the last 22 months, the Department shall file a petition to terminate parental rights prior to the last day of the 15th month, unless the court finds that the child is placed permanently with a relative, or there are compelling reasons why termination of parental rights is not in the best interests of the child, or the Department has failed to provide reasonable efforts to reunify the child with the family.¹¹

The purpose of these provisions is to set a deadline for achieving reunification. At the first annual permanency hearing, there will have been a case plan with a goal of reunification, and a concurrent plan with a permanency goal of termination of parental rights, guardianship, or another planned permanency living arrangement. At the first annual permanency hearing, the court has a number of options, depending on the progress the parents have made toward reunification.

- In the best case, the child will have been safely reunified with the parent(s), and the court may vacate the case.
- If the parents have made substantial progress, and successful reunification can be reasonably expected, the court may approve a permanency goal of continued efforts at reunification, but with a concurrent (alternate) permanency goal in case reunification fails. The court will need to set a status or six-month review hearing¹² within three months, so that if reunification has not been achieved, the court can determine whether there are compelling reasons not to proceed with termination of parental rights, before the 15-month deadline.
- If the parents have made substantial progress, and successful reunification is expected, the court may approve a permanency goal of continued efforts at reunification, but with a concurrent permanency goal in case reunification fails, AND make the case-specific, written findings that there are compelling reasons not to proceed with termination of parental rights.
- If the parents have made some progress, the court may approve a primary permanency goal other than reunification, such as termination of parental rights, but also approve a concurrent plan with a goal of continued efforts at reunification. In such cases, the Department would proceed with filing the petition to terminate parental rights, but reunification efforts would continue while the termination proceeding is pending. This is sometimes effective in impressing upon parents the need to increase their efforts, and allows the parents more time to achieve reunification, without delaying implementation of another permanency option in the meantime.
- If the parents have made little progress, the court may approve a primary permanency goal other than reunification, such as termination of parental rights and adoption, and authorize the Department to cease reasonable efforts to reunify.¹³

¹¹ I.C. § 16-1622(2)(g).

¹² Review hearings are discussed in Chapter 8 of this manual.

¹³ I.C. § 16-1622(2)(k).

2. Termination of Parental Rights and Adoption

A permanent placement provides the child with a family relationship that will last throughout the child's life, with full and permanent responsibility to the parents that is legally secure from modification and without ongoing state intervention and/or monitoring. If reunification is not a viable option, the permanency preference is termination of parental rights and adoption.¹⁴ Adoption meets all the goals of permanency. Adoption subsidy benefits are available to assist the adoptive parents in meeting the child's needs in most situations.¹⁵

3. Guardianship

The third, and less preferred, permanency goal is long-term guardianship. Idaho has adopted provisions to secure the stability of CPA-connected guardianships.¹⁶ Nonetheless, guardianship is a less-preferred option because a guardianship is not permanent – it is subject to review and modification, and terminates when a child turns 18 years of age.¹⁷ Guardianship subsidy benefits are available in limited situations.¹⁸

4. Another Planned Permanent Living Arrangement

Another Planned Permanent Living Arrangement (APPLA) is not considered a permanent placement for a child. The situations in which APPLA is an appropriate permanency goal are **extremely** limited and should be considered only when a permanent placement is unavailable. APPLA may be used only for youth age 16 and older.¹⁹ It may include placement with a foster family, a group home, or a residential facility. Federal regulations require that IDHW, internally, document the compelling reasons for approving APPLA as the permanency goal for the child.²⁰ The Idaho Child Protective Act provides that a court may approve a permanency goal of APPLA only upon written, case-specific findings that APPLA is the best permanency goal for the child, and there are compelling reasons why a more permanent goal is not in the best interest of the child.²¹

If the youth cannot currently function in a family setting, ongoing diligent efforts by the Department may result in a family that is willing and able to provide care to the youth in the

¹⁴ I.J.R. 46(a). Where the parent subjected the child to aggravated circumstances or where the child is an abandoned infant, the state is required to file a petition to terminate parental rights unless there are compelling reasons why it would not be in the child's best interest. I.C. § 16-1624. In addition, where a child has been in the custody of the agency for 15 of the last 22 months, the state is required to file a petition to terminate parental rights, unless the court finds that it is not in the best interests of the child, that reasonable efforts have not been provided to reunite the child with its parents, or the child is placed permanently with a relative. I.C. 16-1629; 42 U.S.C. § 675(5)(E).

¹⁵ Adoption is discussed in detail in Chapter 10 of this manual.

¹⁶ See I.C. § 15-5-212A (2009).

¹⁷ See Chapter 12: Special Topics.

¹⁸ IDAHO DEPARTMENT OF HEALTH AND WELFARE, STANDARD FOR GUARDIANSHIP ASSISTANCE (2011), available at <http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/GuardianshipAssistance.pdf> (last visited April 29, 2015).

¹⁹ I.C. §§ 16-1622(2)(a), 16-1620(2). See also Preventing Sex Trafficking and Strengthening Families Act, 42 U.S.C. § 675(5)(C)(i).

²⁰ 45 C.F.R. § 1356.21(h)(3) (2012).

²¹ I.C. §§ 16-1622(2)(f), 16-1620(7) (Supp. 2016).

future. If APPLA is the approved permanency goal for the youth, the recommended best practice is to schedule frequent review hearings to ensure that the Department provides appropriate services to the youth and to determine if circumstances have changed sufficiently to allow the youth to function in a family setting.

B. Required Contents of Permanency Plans

1. The plan for achieving the permanency goal

Identifying the goal and the plan for achieving that goal requires a systematic analysis of the child's needs and the options for best meeting those needs. Every plan must document that analysis in the following manner:²²

- Address all options for the permanent placement of the child, including consideration of options for in-state and out-of-state placement.
- Address the advantages and disadvantages of each option.
- Include a recommendation as to which option is in the child's best interest.
- Specifically identify the actions necessary to implement the recommended option.
- Specifically set forth a schedule for accomplishing the actions necessary to implement the permanency goal.
- Identify 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.

2. Other Required Information

In addition to identifying the permanency goal, each permanency plan must include a considerable amount of additional information. The contents of the permanency plan have expanded over time to include provisions to promote successful outcomes for children, particularly youth, while in state custody. The plan must also:

- Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement.²³
- Provide information about the child's placement, whether there has been a change in placement since the last hearing, and if so, the reasons for the change and the selection of the new placement²⁴
- For youth 14 and older:
 - Identify the services needed to assist the youth in making the transition to successful adulthood.

²² I.C. §§ 16-1622(2)(a) [cross-referencing § 16-1621(3)(d)], 16-1620(3).

²³ I.C. §§ 16-1622(2)(a) [cross-referencing § 16-1621(3)(a)], 16-1620(3)(a).

²⁴ I.J.R. 43(2).

- Document that the youth was provided with a written copy of the youth’s rights in regard to education, health, visitation, court participation, and receipt of an annual credit report, and that the rights were explained to the youth in a developmentally appropriate way.²⁵
- Address the options for maintaining the child’s connection to the community.²⁶
 - Include connections to individuals with a significant relationship to the child, and organizations or community activities to which the child has a significant connection.²⁷
 - Ensure educational stability for the child, including the efforts to keep the child in the same school or reasons why remaining in the same school is not in the child’s best interest.²⁸
 - Document either that siblings were placed together or the efforts that were made to place the siblings together, why the siblings were not placed together, and the plan for ensuring frequent contact among the siblings unless that contact would be contrary to the safety or well-being of one or more of the siblings.²⁹
- If there is reason to know the child is an Indian child,³⁰ but there has been no final determination of the child’s Indian status, document:
 - Efforts made to determine whether the child is an Indian child, and
 - The Department’s efforts to work with all tribes of which the child may be a member to verify whether the child is a member or is eligible for membership.³¹
- If the permanency goal is termination of parental rights and adoption, identify the prospective adoptive parents, when known.³²
- If the child is being treated with psychotropic medication, the medication and dosage prescribed and the medical professional who prescribed the medication.³³

3. Plans with a Concurrent Permanency Goal

If there has been no finding of aggravated circumstances, the statute expressly provides that the court may approve, modify, or reject a permanency plan with both a primary and a concurrent permanency goal.³⁴ When the primary goal is continued efforts at reunification, it is important that the permanency plan also include a concurrent permanency goal.³⁵ Where the permanency

²⁵ I.C. §§ 16-1622(2)(a) [cross-referencing § 16-1621(3)(a)], 16-1620(3)(h).

²⁶ I.C. §§ 16-1622(2)(a) [cross-referencing § 16-1621(3)(d)], 16-1620(3)(f).

²⁷ *Id.*

²⁸ I.C. §§ 16-1622(2)(a) [cross-referencing § 16-1621(3)(a)], 16-1620(3)(f).

²⁹ I.C. §§ 16-1622(2)(a) [cross-referencing § 16-1621(3)(a)], 16-1620(3)(g).

³⁰ 25 C.F.R. §23-107(a). Idaho Code §16-1615(6)(Supp. 2016) has not been revised since the federal regulations were adopted. At the time the Idaho statute was adopted federal guidelines required that the judge must inquire whether any person has “reason to believe” that the child is an Indian child. The standards for determining the child’s status as an Indian child changed to the “know or reason to know” standard in the regulations. These regulations now provide the minimum requirement for the application of ICWA. 25 C.F.R. §23.101.

³¹ I.C. §§ 16-1622(2)(i), 16-1620(3)(j).

³² I.C. §§ 16-1622(2)(a), 16-1620(k).

³³ I.C. §§ 16-1622(2)(j), 16-1620(4)(c).

³⁴ I.C. §§ 16-1622(2)(a), 16-1621(3)(d).

³⁵ *Id.*; I.J.R. 44(a)(1).

plan includes a concurrent permanency goal, it should include a plan for achieving the concurrent goal with the same specificity that is required for the plan for the primary goal. If there has been a finding of aggravated circumstances, the statute does not expressly provide for concurrent permanency goals, but neither does the statute prohibit a court from approving a plan with concurrent goals.³⁶

4. Permanency Plans with a Permanency Goal of Continued Efforts at Reunification

When the primary permanency goal is continued efforts at reunification, the permanency plan must include a plan for achieving that goal, with the same elements that are required for the reunification component of a case plan. The plan must:

- Identify all issues that need to be addressed before the child can safely be returned home without Department supervision.
- Specifically identify the tasks to be completed by the Department, each parent, or others to address each issue.
- Specifically identify the services to be made available by the Department to the parents and in which the parents are required to participate.
- Specifically state the role of the Department toward each parent.
- Set deadlines for completion of each task.
- Where appropriate, set terms of visitation, supervision of visitation, and child support.³⁷

The permanency plan must also include a period of protective supervision or trial home visit of no less than 90 days prior to the court vacating the case when any of the following circumstances are present:

- The circumstances that caused the child to be placed in protective custody resulted in a conviction for lewd and lascivious conduct or felony injury to a child;
- The child has been in protective custody for more the six (6) months; or
- There is a high risk of repeat maltreatment or reentry into foster care exists.³⁸

The statute provides that the court must approve a permanency goal, which may be continued efforts at reunification.³⁹ Idaho Juvenile Rule 44(a) provides that the case plan shall provide that reunification must be finalized within 12 months from the date the child is removed from the home, and if in the child's best interest, the court may approve an amendment to the case plan extending the time to finalize reunification for up to three months. In addition, the statute provides that if the child has been in the temporary or legal custody of the Department 15 of the last 22 months, the Department shall file a petition to terminate parental rights prior to the last day of the 15th month, unless the court finds that the child is placed permanently with a relative, or there are compelling reasons why termination of parental rights is not in the best interests of the child, or the Department has failed to provide reasonable efforts to reunify the child with the family.⁴⁰ The purpose of these provisions is to set a deadline for achieving reunification.

³⁶ See I.C. § 16-1620.

³⁷ I.C. §§ 16-1622(a), 16-1621(3)(c).

³⁸ I.C. § 16-1622(2)(a) (Supp. 2018)

³⁹ I.C. § 16-1622(2)(a).

⁴⁰ I.C. § 16-1622(2)(g).

5. Permanency Plans with a Permanency Goal of APPLA

If the permanency plan for a youth age 16 and older includes a permanency goal of another planned permanent living arrangement, the permanency plan must document the following:

- The intensive and, so far, unsuccessful efforts made to place the child with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department with a fit and willing relative.
- Why APPLA is the best permanency plan for the youth, and compelling reasons why, so far, it would not be in the best interest of the youth to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department with a fit and willing relative.
- The steps the Department has taken to ensure that the youth's foster parents or child care institution are following the reasonable and prudent parent standard when determining whether to allow the youth to participate in extracurricular, enrichment, cultural and social activities.
- The opportunities provided to the youth to engage in age or developmentally appropriate activities.⁴¹

These requirements are the result of increasing attention upon youth who are difficult to place, who “age-out of the system,” and often go on to face dire outcomes, including incarceration, victimization, and even death. The purpose of the first two requirements is to ensure that diligent and ongoing efforts are being made to find a permanency option that includes a supportive family or family-like relationship that will continue into their adulthood. The purpose of the second two requirements is to ensure that the youth has the opportunity to do the things other kids do, so that they can have both a more “normal” adolescent experience and the opportunities to prepare for adulthood that responsible parents would normally provide.

6. Implementation Schedule

As noted above, the permanency plan is required to include a plan for implementing the permanency goal that includes the tasks needed to accomplish the goal and deadlines for completing those tasks. There are also overall deadlines for achieving permanency for a child.

a. *No Finding of Aggravated Circumstances*

If the permanency plan has a goal of termination of parental rights and adoption, the permanency plan shall include a schedule which has the objective of finalizing the termination of parental rights within 18 months from the date the child was removed from home and finalizing the adoption within 24 months from the date the child was removed from the home. Amendments to extend these timelines must be approved by the court.⁴²

⁴¹ I.C. §§ 16-1622(a) [cross-referencing §16-1621(3)(d)], 6-1620(3)(i).

⁴² I.J.R. 46(a).

If the permanency plan has a goal of guardianship, the plan shall include a schedule to finalize the guardianship within 13 months from the date the child was removed from the home.

b. *Aggravated Circumstances Found*

If the permanency plan has a goal of termination of parental rights and adoption, the permanency plan shall include a schedule to finalize the termination of parental rights within six months from the approval of the permanency plan and finalizing the adoption within 12 months from the approval of the permanency plan.⁴³

If the permanency plan includes a permanency goal of guardianship, the permanency plan must also include a schedule to finalize the guardianship within five months from the date of the judicial determination of aggravated circumstances. Amendments to extend the time to finalize the guardianship must be approved by the court.⁴⁴

c. *All cases*

Amendments to the permanency plan to extend the time to finalize the permanency goal must be approved by the court.⁴⁵

7.3 THE PERMANENCY HEARING

A. *Timing of the Hearing*

Idaho law requires that a permanency hearing be held no later than 12 months from the date the child is removed from the home or the date of the court's order taking jurisdiction under the CPA, whichever occurs first, and at least every 12 months thereafter.⁴⁶ In cases where aggravated circumstances are found (usually, but not necessarily, at the adjudicatory hearing), the court is required to hold a permanency hearing within 30 days of the determination that aggravated circumstances exist, and every 12 months thereafter.⁴⁷

Federal law requires that a permanency hearing be held within one year from the date the child is considered to have entered foster care and at least once every twelve months thereafter.⁴⁸

Attention should also be given to the child's well-being in the broadest sense. The inquiry must go beyond the basic questions of personal safety and physical health. If reunification is not possible, the child welfare system stands in loco parentis to the child and is responsible for meeting the child's educational, emotional, and social needs, including preparing the child for transition to life as an adult.

*From Enhanced Resource Guidelines, Improving Court Practice in Child Abuse and Neglect Cases, published by the National Council of Juvenile and Family Court Judges (2016), at page 272. The complete guidelines are available on-line at www.ncjfc.org.

⁴³ I.J.R. 44(b)(2).

⁴⁴ I.J.R. 44(b)(1).

⁴⁵ I.J.R. 44 and 46.

⁴⁶ I.C. § 16-1622(2)(b) (Supp. 2016).

⁴⁷ I.C. §§ 16-1619(6)(d), 16-1620(1).

The date a child is considered to have entered foster care is the date the court found the child to come within the jurisdiction of the CPA or 60 days from the date the child was removed from the home, whichever is first.⁴⁹ If the permanency hearing is not timely held, or if the court fails to use the correct language in determining that the Department made reasonable efforts to finalize the permanency plan, an otherwise eligible child may be ineligible for federal IV-E match funds.⁵⁰ Eligibility will be reinstated on the first day of the month in which the permanency hearing is held and/or the court makes a finding that the Department made reasonable efforts to finalize the permanency plan in effect.⁵¹

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

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

IDHW is required to file a permanency plan with the court at least five days prior to the permanency hearing.⁵² Similarly, the guardian *ad litem* is required to file a report with the court at least five days prior to the permanency hearing.⁵³ All guardian *ad litem* reports submitted after the adjudicatory hearing must include the child's wishes regarding permanency. For children in state custody over the age of 14, the report must also include the child's wishes regarding the plan for the child's transition to successful adulthood.⁵⁴

C. Notice

1. Foster Parents

Idaho Juvenile Rule 40 provides that “[a]fter the adjudicatory hearing, any person who is designated by the Department of Health and Welfare as the foster parent, as a pre-adoptive parent, or as a relative providing care for a child who is in the custody of the Department, shall be provided with notice of, and have a right to be heard in, any further hearings to be held with respect to the child.” This notice must be given by the Department and the Department must confirm to the court that the required notice was provided. The rule makes clear that the right to notice and to be heard does not make foster parents parties to the CPA proceeding.⁵⁵

⁴⁸ 42 U.S.C. § 675(5)(C) (2012); 45 C.F.R. § 1356.21(b)(2)(i).

⁴⁹ 42 U.S.C. § 675(F).

⁵⁰ 45 C.F.R. § 1356.21(b)(2)(ii).

⁵¹ *Id.* The finding regarding reasonable efforts to finalize permanency is further discussed below.

⁵² I.C. §§ 16-1620(1), 16-1629(9) (Supp. 2016).

⁵³ I.C. § 16-1633(2).

⁵⁴ I.C. § 16-1633(2).

⁵⁵ I.J.R. 40(a). *See also Roe v. Dep't. of Health & Welfare (In Interest of Doe)*, 134 Idaho 760, 9 P.3d 1226 (2000) (holding that foster parents did not have standing to intervene and object to the Department's permanency plan in a CPA proceeding). In cases where there has been a finding of aggravated circumstances, the CPA requires that notice of the permanency hearing be provided to the “parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian *ad litem*, attorney for the child, the Department, and foster parents. I.C. § 16-1620(5).

2. Children Eight and Older

Idaho Juvenile Rule 40 requires that “[a]fter the adjudicatory hearing, a child eight years of age or older, shall be provided with notice of, and have a right to be heard, either in person or in writing, in any further hearings to be held with respect to the child.”⁵⁶ As with notice to foster parents, notice must be given by the Department, and the Department must confirm that notice was provided. The rule also makes clear that the court may but is not required to continue the hearing when the notice is not given or when the child does not appear.⁵⁷

Idaho Juvenile Rule 40 also requires that children 12 and older are required to attend their six-month review hearings and permanency hearings in person or by telephone, unless the youth declines in writing, declines through counsel, or the court finds good cause to excuse the youth from attending.⁵⁸ The purpose of this provision is to promote more positive outcomes for youth by encouraging them to be more engaged in both the permanency planning process and the planning for the transition to independent living, and to encourage the court to engage more directly with the youth.⁵⁹

D. Agreement by the Parties

The parties may stipulate to the permanency plan at the permanency hearing. Pursuant to IJR 38, such a stipulation must be made part of the court record and is subject to court approval. The court must make reasonable inquiry to confirm that the parties entered into the stipulation knowingly and voluntarily, that the stipulation has a reasonable basis in fact, and that it is in the best interests of the child.⁶⁰ The court should ensure that the permanency plan has been thoroughly considered by all participants, especially both parents, if involved.

The court should ensure that the permanency plan contains all the essential elements of a permanency plan as discussed above. If the permanency plan is not complete, the court should address any omitted requirements.

ICWA imposes procedural requirements before the parent of an Indian child can consent to the placement of an Indian child in foster care. These requirements limit the ability of parents to consent once a child protection proceeding has been initiated. Chapter 11 of this manual contains a detailed discussion of the specific additional requirements for voluntary placements in foster care.

7.4 REASONABLE EFFORTS TO FINALIZE PERMANENCY

⁵⁶ I.J.R. 40(b).

⁵⁷ I.J.R. 40(b).

⁵⁸ I.J.R. 40(c).

⁵⁹ See Chapter 12 for more information about involving children and foster parents in court hearings.

⁶⁰ I.J.R. 38.

The court must make a case-specific finding that the Department made reasonable efforts to finalize the primary permanency goal in effect for the child, and the finding must be documented in the court records.⁶¹ If the finding is not timely made, an otherwise eligible child may lose eligibility for federal IV-E foster care payments. Eligibility will be lost on the last day of the month in which the finding was required. Eligibility is reinstated on the first day of the month in which the required finding is made.⁶²

At the first annual permanency hearing, the “primary permanency goal in effect” is generally the permanent plan identified by the Department in the case plan approved by the court.⁶³ However, the Department may identify a different permanency goal prior to the permanency hearing and might make efforts towards the new goal without court approval.⁶⁴ If the Department proceeds with a permanency goal other than the goal identified in the case plan, the reasonable efforts to finalize permanency finding is a retrospective analysis of whether the Department made reasonable efforts to finalize the most current permanency goal(s).⁶⁵ Typically, this means that the permanent plan for the first twelve (12) months of a CPA proceeding, prior to the first permanency hearing, is reunification with the parents. The recommended best practice is for the Department to file a motion with the court to amend the case or permanency plan as soon as possible, if the Department is going to proceed with a permanency goal other than the goal identified in the case plan.

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

⁶¹ 42 U.S.C. § 675(5)(C)(i) (2012); 45 C.F.R. § 1356.21(b)(2); I.C. § 16-1622(2)(c) (Supp. 2014).

⁶² 45 C.F.R. § 1356.21(b)(2)(ii).

⁶³ I.C. § 16-1622(2)(c) (Supp. 2016).

⁶⁴ 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 “The State is not required to reconcile the permanency plan in effect at the time the judicial determination is due with the reasonable efforts determination itself. In order to sustain a child’s ongoing title IV-E foster care eligibility, the court must make a judicial determination of reasonable efforts to finalize a permanency plan within 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care. We have indicated that we will not instruct courts on the criteria they are to use to make the judicial determination. At the same time, however, we recognize the significance of the provision as it relates to moving a child toward permanency. The courts, therefore, may rule on the plan that is in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months, even if the plan had been abandoned during that 12-month period. In any event, the judicial determination should reflect the court’s judgment as to whether the agency activities that were performed during the previous 12 months were meaningful in bringing about permanency for the child.” ADMIN. FOR CHILDREN & FAM., 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=142 (last visited April 29, 2015).

⁶⁵ *Id.*

7.5 OTHER KEY FINDINGS AT THE PERMANENCY HEARING

A. *Approval of the Permanency Plan*

At the permanency hearing, the court must decide whether to approve, modify, or reject the permanency plan. The CPA specifically requires that the permanency plan submitted after a finding of aggravated circumstances must be incorporated in an order by the court.⁶⁶ The recommended best practice is that all permanency plans be incorporated in an order by the court, directing the Department to comply with the plan, and directing the parents to comply with the plan if reunification continues to be a permanency goal.⁶⁷

In evaluating the permanency plan, the court should consider whether the plan is complete, whether it systematically analyzes the needs of the child and the options for addressing those needs, whether it is specific as to the tasks to be completed and the services to be provided, whether it includes appropriate deadlines, and whether the plan best meets the needs of the child.

If the permanency plan is termination and adoption, the permanency order should include the names of the proposed adoptive parent(s).⁶⁸

B. *ICWA*

It is critical that the court ensure compliance with the Indian Child Welfare Act.⁶⁹ Compliance with ICWA is essential to preserve the unique interests of the Indian child and the child's tribe and to avoid disruption and delay in both placements and court proceedings.

The first and most critical issue is to determine if the child is an Indian child as defined by ICWA, and therefore, whether ICWA applies. The child's Indian status should be resolved as soon as possible in the case but there is an ongoing duty to inquire whether ICWA may apply.

At the permanency hearing, if there is reason to know that the child is an Indian child, and there has not been a final determination regarding the child's status as an Indian child, then the Department is required to include information in the permanency plan about its efforts to determine the child's status as an Indian child, as noted above. In addition, state law places two specific requirements upon the court. First, the court is required to inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child. Second, the court is required to 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 is eligible for membership.⁷⁰ U.S. Bureau of Indian Affairs regulations provide that where the court has reason to know the child is an Indian child, but 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. The regulations also define the term "reason to know."⁷¹

⁶⁶ I.C. § 16-1620(6) (Supp. 2016).

⁶⁷ See I.C. § 16-1620(6)

⁶⁸ I.C. §§ 16-1506(2); 16-1622(2)(a), (b).

⁶⁹ See generally 25 U.S.C. § 1901–1922 (2012).

⁷⁰ I.C. § 16-1622(2)(i)(ii), § 16-1620(4)(b) (Supp. 2016).

⁷¹ 25 C.F.R. § 23.107.

If the child is an Indian child, ICWA has procedural and substantive requirements that apply in a CP proceeding, and in particular to the permanency hearing. This includes provisions for notice to the Indian custodian and the child's tribe, standards for removal of an Indian child from a parent or Indian custodian, tribal participation in planning and decision-making, placement preferences, heightened standard of proof for termination of parental rights, and procedural requirements for voluntary consent to termination, among other issues. Chapter 11 of this manual contains a detailed discussion of the Indian Child Welfare Act.

If further efforts are needed to determine if the child is an Indian child, to give notice as required by ICWA, or to otherwise comply with the requirements of the act, the court should include appropriate orders in the order approving, modifying, or rejecting the case plan.

Because new information about a child's heritage can become available at any time, the best practice recommendation is for the court to inquire at each hearing whether new information has become available that would give reason to know that the child is an Indian child.

C. APPLA

As noted above, a permanency plan with a proposed primary permanency goal of "another planned permanent living arrangement" must include detailed supporting information.

APPLA can be a permanency goal only for youth 16 and older. In addition, the court may approve APPLA as a primary permanency goal only upon written, case-specific findings that, as of the date of the hearing:

- APPLA is the best permanency goal for the youth
- There are compelling reasons why it is not in the best interest of the youth to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department with a fit and willing relative, including an adult sibling.⁷²

7.6 OTHER CONSIDERATIONS AT THE PERMANENCY HEARING

A. Sibling Placement

For some children, sibling relationships are the longest and closest relationships they will experience. A child removed from her or his parents should not also suffer the separation loss from brothers and sisters.

In 2008, the federal Fostering Connections to Success and Increasing Adoptions Act imposed a number of requirements on state child protection agencies.⁷³ Fostering Connections requires reasonable efforts to place siblings together in the same foster home, adoptive home,

⁷² I.C. §§ 16-1622(2)(f), 16-1620(7).

⁷³ ADMIN. FOR CHILDREN & FAM., U.S. DEP'T HEALTH & HUMAN SERVS., GUIDANCE ON FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, ACYF-CB-PI-10-11 (2010), available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf> (last visited April 29, 2015).

guardianship home, or other placement unless such a joint placement would be contrary to the safety or well-being of any of the siblings.⁷⁴ If siblings are not placed together, the state agency must provide for frequent visitation or other ongoing interaction between the siblings, unless doing so would be contrary to the safety or wellbeing of any of the siblings.⁷⁵

It is the policy of the state of Idaho to maintain sibling bonds in the same home, unless it is not in the best interest of one (1) or more of the children.⁷⁶ As noted above, Idaho law requires the Department to document its efforts to maintain sibling relationships in the permanency plan. In addition, at annual permanency hearings, the court is required to inquire whether siblings were placed together, or if not, the reasons why not, and a plan for ensuring frequent and ongoing contact among the siblings, unless this contact would be contrary to the safety or well-being of one or more of the siblings.⁷⁷

B. Educational Stability

Fostering Connections requires the Department to have a plan that takes into account the appropriateness of the child's current educational setting, to ensure that the child remains in the school of origin, or if such enrollment is not in the child's best interest, to provide immediate and appropriate enrollment in a new school. The Act also requires the Department to monitor the child's school attendance.⁷⁸

As noted above, Idaho law requires the Department to document its efforts to maintain a child's educational stability in the permanency plan. In addition, at annual permanency hearings, the court is required to inquire about efforts to maintain educational stability for the child, including the efforts made to keep the child in the same school or the reasons why remaining in the same school were not in the child's best interest.⁷⁹

C. Placement

Fostering Connections requires the Department to notify adult relatives of a child's removal from parents within 30 days of that removal. Notification enables relatives to provide support to the family and be considered as a foster, adoptive and/or guardianship placement for the child. If relatives are identified after 30 days, notification should occur as soon as possible. Parents should be encouraged to assist the assigned social worker in the identification of relatives to prevent their late notification.⁸⁰ The Preventing Sex Trafficking and Strengthening Families Act of 2014 expanded required notification to the parents of the child's siblings. This includes the parents of any siblings who were previously adopted.⁸¹

⁷⁴ 42 U.S.C. § 671(a)(31)(A), (B) (2015).

⁷⁵ *Id.*

⁷⁶ I.C. § 16-1601(5) (Supp. 2018)

⁷⁷ I.C. §16-1622(2)(h)(ii) (Supp. 2016).

⁷⁸ 42 U.S.C. § 675(1)(c). *See also* ADMIN. FOR CHILDREN & FAM., U.S. DEP'T HEALTH & HUMAN SERVS., GUIDANCE ON FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, ACYF-CB-PI-10-11 (2010), available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf> (last visited April 29, 2015).

⁷⁹ I.C. §16-1622(2)(h)(i) (Supp. 2016).

⁸⁰ 42 U.S.C. § 671(a)(29)(2015).

⁸¹ 42 U.S.C. § 671(a)(29)(2015).

Idaho law provides that, where the permanency goal is not reunification, the annual permanency hearing will include a review of the Department's consideration of options for in-state and out-of-state placement of the child.⁸² The CPA further provides that where a child has been placed out-of-state, the court will determine whether the out-of-state placement continues to be in the best interest of the child.⁸³ Out-of-state placement of a child requires the approval of the court, and must comply with the Interstate Compact on the Placement of Children (ICPC).⁸⁴ The ICPC is discussed in Chapter 12 of this manual.

When a child is placed in the custody of the Department, Idaho law vests authority in the Department to determine the child's placement, subject to review by the court.⁸⁵ The role of the court in reviewing agency placement decisions is discussed in Chapter 5 of this manual.

D. Engagement of Youth

Both state and federal law are focusing increased attention on the needs of foster youth. As noted above, for youth 14 and older, the permanency plan must include a plan for the youth's transition to successful adulthood. Fostering Connections requires the Department to provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, including options for housing, health insurance, education, mentoring, workforce supports, and employment services.⁸⁶ A plan for a transition to successful adulthood is required for ALL foster youth, beginning at age 14.⁸⁷ Planning for the transition to adulthood is required for all foster youth because all adolescents are transitioning to adulthood, and foster youth have special needs if their transition to adulthood is to be successful.

Idaho law requires the court to ask each youth age 12 and older about their desired permanency outcome and to discuss the permanency plan with the youth.⁸⁸ For youth age 14 and older, this should include not only the permanency goal, but also the plan for transition to successful adulthood.⁸⁹ The judge can play a vital role by actively engaging with youth throughout a child protection proceeding, and the engagement of children and youth in child protection proceedings is discussed further in Chapter 8 of this manual, regarding review hearings, and in Chapter 12, regarding special topics.

If the youth is within 90 days of reaching age 18, the Department must file a report with the court that includes the transition plan for the youth. The court must hold a review or permanency hearing at which the court reviews the plan and discusses the plan with the youth.⁹⁰ The

⁸² I.C. § 16-1622(2)(d) (Supp. 2016).

⁸³ *Id. and Idaho Department of Health and Welfare v Doe 1 (2018-39)*

⁸⁴ I.C. §§ 16-1629(8), 16-2102(Art.III).

⁸⁵ I.C. § 16-1629(8).

⁸⁶ 42 U.S.C. §675(1)(B), (1)(D), (5)(c)(iv).

⁸⁷ Historically, "independent living services" were provided for youth 16 and older who were in long-term foster care (the antecedent to APPLA).

⁸⁸ I.C. §§ 16-1622(2)(e), 16-1620(4)(a).

⁸⁹ I.C. §§ 16-1622(2)(e), 16-1620(3)(h).

⁹⁰ I.C. § 16-1622(3)

purpose of the 90-day hearing is to take one last opportunity to promote a successful future for a youth who is about to turn 18.

E. Psychotropic Medication

The use of psychotropic medication in child and youth, particularly children in foster care, is an issue of tremendous concern and increasing attention.⁹¹ This is reflected in recent amendments to the CPA, which require the court to ask and the Department to report about the use of psychotropic medications for child and youth in child protection cases.

At the permanency hearing, if the child is being treated with psychotropic medication, the court is required to ask about the use of psychotropic medications, and may make any inquiry relevant to the use of psychotropic medication.⁹²

The purpose of this provision is to promote informed decision-making on behalf of the child, and to ensure that the child is receiving the diagnostic and treatment services necessary for the child's well-being. The court might inquire, for example: whether the child needs further assessment by a different medical service provider; whether the child is receiving appropriate counseling in conjunction with the medication; whether and to what extent the medication appears to be helping the child; whether and to what extent the medication is causing harmful side effects; whether and to what extent other treatment options exist; etc.

F. Visitation

The frequency and quality of visitation between the child and the parent(s) is often the best indicator of progress toward successful reunification, or lack thereof. Where reunification remains a permanency goal, best practice recommendations include that: (a) the court inquire about the frequency and quality of visitation, (b) the court initiate a discussion about options for increasing the frequency and quality of visitation, and reducing barriers to more frequent visitation, while ensuring the safety and well-being of the child.

G. Suspending Reasonable Efforts to Reunify

The Department's efforts to reunify the child with the parent(s) will continue until the court orders otherwise. The court may order the Department to suspend further efforts to reunify when a petition or other motion is filed seeking a determination of aggravated circumstances.⁹³ The court may order the Department to suspend further efforts to reunify when a permanency plan is approved by the court that does not include a permanency goal of reunification.⁹⁴

H. Department's Duty to Seek Termination of Parental Rights

⁹¹ See UNDERSTANDING PSYCHOTROPIC MEDICATIONS, Child Welfare Information Gateway, U.S Department of Health and Human Services Administration for Children and Families, Children's Bureau, at childwelfare.gov.

⁹² I.C. §§ 16-1622(2)(j); 16-1620(4)(c).

⁹³ I.C. § 16-1620(8).

⁹⁴ I.C. § 16-1622(2)(k).

If a child has been in the temporary or legal custody of the Department for 15 of the last 22 months, the Department is required to file a petition to terminate parental rights prior to the last day of the fifteenth month. The Department is not required to file the petition if the court makes one of the following findings:

- The child is placed permanently with a relative.
- There are compelling reasons why termination of parental rights is not in the best interest of the child.
- The Department has failed to make reasonable efforts to reunify.⁹⁵

This issue may be raised at a permanency hearing or at a review hearing. (Review hearings are discussed in Chapter 8.) Generally, it will be the Department seeking the finding, to relieve the Department of its duty to file a petition to terminate. A parent may also assert lack of reasonable efforts to reunify as a basis for an order approving a permanency plan with a permanency goal of continued efforts at reunification.⁹⁶

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

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

J. Subsequent Permanency Hearings

There is a continuing obligation to hold a permanency hearing once every twelve (12) months until the case is closed.⁹⁷ State law requires the court to make written, case-specific findings that the Department has made reasonable efforts to finalize the permanency plan in effect for the child.⁹⁸ Permanency hearings may be combined with review hearings, however if the hearings are combined, care must be taken to make the necessary findings for both the review and permanency hearings.⁹⁹

CONCLUSION

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

⁹⁵ I.C. § 16-1622(2)(g).

⁹⁶ I.C. § 16-1622(2)(c).

⁹⁷ I.C. § 16-1622(2)(a), (b), 16-1620(1).

⁹⁸ I.C. § 16-1622(2)(c).

⁹⁹ I.C. § 16-1622(2)(b).