

CHAPTER 8: Review Hearings

8.1 INTRODUCTION

Review hearings are court proceedings that take place after approval of the case plan and continue until permanency for the child is attained and the child protection case is closed. 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

Section 16-1622(1)(a) requires that a comprehensive “review hearing” be held no later than six months after entry of the court’s order taking jurisdiction and every six months thereafter. At a review hearing, the Department and guardian *ad litem* are required to file written reports and the court is required to make certain specific findings. Idaho Code § 16-1622(1)(b) authorizes a second type hearing, called a “status hearing.” At status hearings, written reports are not required unless ordered by the court, there are no statutorily required findings, and the matters reviewed can be as limited or as comprehensive as the court determines to be appropriate.²

When the court schedules the hearing, it is important for the court to specify whether it is scheduling a six-month review hearing or a status hearing. Accurately specifying the type of hearing informs the Department and the guardian *ad litem* of the need to file a report prior to the hearing, and enables the clerk to enter the correct hearing type in the court’s case management system.

The purpose of a six-month review hearing is to:

- Determine the safety of the child;
- Determine the continuing necessity for and appropriateness of the placement;
- Determine the extent of compliance with the case plan;
- Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care;
- Determine whether the child is an Indian child;
- Inquire regarding the child’s educational stability;
- Inquire regarding sibling placement;
- Inquire regarding permanency;³

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.J.R. 45(a). See also I.C. § 16-1622.

² In this chapter, the term “review hearing” includes both six-month review hearings and status hearings. Otherwise, we will refer specifically to six-month review hearings or status hearings.

³ I.C. § 16-1622(1)(a).

- Document efforts by the Department related to the reasonable and prudent parent standard;⁴
- Document efforts made to find a permanent placement other than another planned permanent living arrangement;
- Make necessary findings regarding a permanency goal of another planned permanent living arrangement
- Document and inquire regarding the use of psychotropic medication by the child;
- To project, when reasonable, a likely date by which the child may safely be returned and maintained in the home or placed in another permanent placement;⁵

At a review hearing, the court may:

- Modify the case plan or permanency plan.
- Modify disposition.
- Determine whether the Department has made reasonable efforts to finalize a permanency plan. Best practice is to make the reasonable efforts finding at every review hearing for the period between the last hearing and the current hearing.⁶
- If the child will not be reunified with a parent(s), review the Department's consideration of options for in-state and out-of-state placement.
- Enter further orders as necessary or appropriate to ensure the progress of the case toward achieving permanency for the child;⁷
- If the next review hearing is an annual permanency hearing, order the Department to prepare and file a written permanency plan.⁸

Review hearings are critical to 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.

Review hearings are informal, the rules of evidence do not apply, and the general public is not permitted to be present.⁹ Children age eight and older are entitled to notice of review hearings and have a right to be heard, in person or in writing.¹⁰ 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.¹¹ Foster parents (including relatives providing care for a child)

⁴ I.C. § 16-1622(1)(a)(vi).

⁵ 45 U.S.C § 675(5)(B); I.C. § 16-1622(1)(a).

⁶ NCJFCJ Enhanced Resource Guidelines - Improving Court Practice in Child Abuse and Neglect Cases, <http://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf>, Pg. 257, Last accessed April 29, 2018.

⁷ I.J.R. 45(a).

⁸ I.J.R. 45(c) and 46.

⁹ I.C. § 16-1613(1) (2009); I.J.R. 51.

¹⁰ I.J.R. 40(b); Chapter 12: Special Topics.

¹¹ I.J.R. 40(c).

and pre-adoptive parents are also entitled to notice and have a right be heard at review hearings.¹²

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.¹³ 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 a viable 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.¹⁴ 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 create incentives for IDHW to make decisions and take action concerning the permanent

¹² I.J.R. 40(a); Chapter 12: Special Topics.

¹³ 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).

¹⁴ See I.J.R. 44 and 46.

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 SIX-MONTH REVIEW HEARINGS

The timing of six-month review hearings is governed by both federal and state law. Federal law requires that cases involving children in out-of-home care be reviewed within six months of the date the child entered foster care and every six months thereafter.¹⁵

Idaho law also requires that the court hold a six-month review hearing 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.¹⁶ Courts have the discretion and are encouraged to conduct review hearings more frequently. 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 hearings more or less frequently.¹⁷ When scheduling the review hearing, the court should consider the scope of the review and the need for written reports from the Department and the guardian *ad litem* to determine whether the hearing should be a six-month review or a status hearing.

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

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 enter appropriate orders to ensure that all parties are prepared to proceed on the new date. The court may continue a review hearing to give the parties time to respond to substantive issues raised for the first time at a review hearing, and the court may enter temporary orders as appropriate pending the continued hearing.¹⁸

¹⁵ 42 U.S.C. § 675(5)(B) (2012).

¹⁶ I.C. § 16-1622(1)(a) (Supp. 2016).

¹⁷ NCJFCJ Enhanced Resource Guidelines - Improving Court Practice in Child Abuse and Neglect Cases, <http://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf>, Pg. 11, Last accessed April 29, 2018.

¹⁸ I.J.R. 45(b).

8.3 SUBMISSION OF REPORTS TO THE COURT

The Idaho Child Protective Act (CPA) requires IDHW and guardians *ad litem* to file a written report to the court at least five days prior to a six-month review hearing.¹⁹ The responsibility to report coincides with the courts' responsibility to review cases under its jurisdiction.

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 attorneys to discuss the contents of the report with their clients, the parties to consider the information 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 the plan for the child's transition to successful adulthood.²⁰ Recommended best practice is for the court to include an order requiring submission of reports in compliance with the statute and the order scheduling the hearing and that the reports be verified.

8.4 KEY DECISIONS AT THE SIX-MONTH REVIEW HEARING

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

Idaho Code section 16-1622(1)(a)(i) provides that one purpose of the review hearing is to determine:

- The safety of the child;
- The continuing necessity for and appropriateness of the placement;
- The extent of compliance with the case plan; and
- The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

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.²¹

As progress is made in resolving the causes necessitating the child's placement in foster care, progress should also be made in reunifying the family. The case might proceed from supervised visitation to unsupervised visitation, to overnight visitation, to extended home visits, to placing the child at home under the protective supervision of the Department, and ultimately, to closing the case.

¹⁹ I.C. § 16-1629(9) (Supp. 2014); § 16-1633(2).

²⁰ I.C. § 16-1633(2) and § 16-1622(1)(a)(v).

²¹ I.C. § 16-1622(1)(a)(i). *See generally* THERESE ROE LUND & JENNIFER RENNE, CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS 43-46 (2009).

An extended home visit is an effective transition step in reunification. An extended home visit is a period of unsupervised visitation in excess of 48 hours, and requires the prior written approval of the court.²² An order approving an extended home visit can include conditions to ensure the safety and welfare of the child, and it is subject to termination by the Department when necessary to ensure the safety and welfare of the child. If the Department terminates an extended home visit, the Department must prepare a written statement that states when and why the visit was terminated. The Department must file the statement with the court within 48 hours of termination of the visit (excluding weekends and holidays), and serve copies on the parties.²³ Because extended home visits are a transition step in reunification, they should be for a limited and specified period of time (typically until the next hearing), and should generally be for less than six months.²⁴

Often, the determination that intervention may be stepped down, or that reunification has been successfully achieved and the case may be vacated, happens at a review or status hearing. The CPA provides that the Department may move the court to vacate an order placing a child in its custody or under its protective supervision at any time.²⁵ In addition, any party may file a motion asking the court to revoke or modify an order placing a child in state custody or under protective supervision, except that the parents may not file such a motion within three months of a previous hearing.²⁶

B. Is the Child an Indian Child?

It is critical that the court ensures compliance with the Indian Child Welfare Act. Compliance with the 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. At a review or status hearing, the court is required to inquire of the participants whether they know or have reason to know that the child is an Indian child, the efforts the Department has made since the last hearing 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.²⁷ If

²² I.J.R. 42.

²³ I.J.R. 42.

²⁴ If a child is returned to foster care after an extended home visit that exceeds six months without prior court approval, this constitutes a removal under federal law. Judicial findings of "best interest/contrary to the welfare" and "reasonable efforts to prevent removal" are required, or an otherwise eligible child could lose eligibility for federal funding. See Chapter 12 for further discussion of these findings.

²⁵ I.C. § 16-1622(1)(e). *But see* I.C. § 16-1622(2)(a) (Supp. 2018).

²⁶ I.C. § 16-1622(1)(c). That section further provides that if the motion asserts that the child's best interests are no longer served by the prior disposition order, or that the Department has failed to provide adequate care for the child, the court must hold a hearing on the motion. I.C. § 16-1622(1)(d).

²⁶ I.C. § 16-1622(1)(e).

²⁷ 25 CFR § 23-107(a). The Idaho Code, I.C. § 16-1622(1)(a)(ii), 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 CFR § 23.101.

there has not been a final determination regarding the child's Indian status, the CPA places two specific obligations upon both the Department and the court.

First, the Department must document, and the court must inquire, about the efforts that have been made since the last hearing to determine whether the child is an Indian child. Second, the Department must document, and the court must determine, that 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. 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."²⁸

If the child is an Indian child, ICWA has procedural and substantive requirements that apply in a CP proceeding, and in particular to review and status hearings. This includes provisions for notice to the parents or 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, and placement preferences, among other issues.

If further efforts are needed to determine if the child is an Indian child, to give notice as required by the ICWA, or to otherwise comply with the requirements of the act, the court should include appropriate orders in its review or status hearing order.

Because new information about a child's heritage can arise at any time, the court should inquire at each hearing whether information has become available to give reason to know that the child is an Indian child. Chapter 11 of this manual contains a detailed discussion of the Indian Child Welfare Act.

C. C. Is the Child in an Appropriate Foster Care Placement that Bests Meets Her or His Needs?

The choice of a child's foster care placement is critical to a child's well-being. Idaho law requires the Department to make a reasonable effort to place the child in the least restrictive environment, and establishes placement priorities that must be considered when making a placement decision for the child.²⁹ Federal law requires the child welfare agency to exercise due diligence starting at the time the child is removed to notify the child's extended family members, who may be potential foster and/or permanent placements for a child.³⁰

One purpose of review hearings is to review the appropriateness of the child's placement.³¹ Because the choice of a child's foster care placement is critical to a child's well-being, the court should make careful inquiry as to the Department's placement decision, encourage full and open consideration of all options for the child's placement, and engage in a thorough consideration of

²⁸ 25 CFR § 23-107(c).

²⁹ I.C. § 16-1629(11).

³⁰ 42 U.S.C. § 671(a)(29) (2012).

³¹ I.C. § 16-1622(1)(a)(i)(2).

which option will best meet the child's physical, emotional, educational, and developmental needs.

As part of that inquiry, the court is required to review the Department's consideration of options for in-state and out-of-state placement of the child.³² In addition, the Department is required to document, and the court is required to inquire about sibling placement. The court's inquiry should include questions about whether siblings were placed together, and if not, the reasons why not, and the plan ensuring frequent and ongoing contact between the siblings, unless ongoing contact would be contrary to the safety or welfare of one or more of the siblings.³³

Federal law requires that placement authority be vested in the Department in order for the child to be eligible for federal IV E funds.³⁴ When the court places a child in the custody of IDHW, state law vests authority for the placement decision with the Department. This authority is subject to review by the court.³⁵ The role of the court in reviewing agency placement decisions is discussed in Chapter 5 of this manual. 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).³⁶ The ICPC is discussed in Chapter 12 of this manual.

D. Another Planned Permanent Living Arrangement (APPLA)

Special consideration is required when the primary permanency goal for the child is APPLA. APPLA may be a primary permanency goal in very limited circumstances and only for youth age 16 and older.³⁷

When the primary permanency goal for a youth is APPLA the Department must document:³⁸

- That the youth's foster parents or child care institution is following the reasonable and prudent parent standard when deciding when the child may participate in extracurricular, enrichment, cultural, and social activities.
- The regular, ongoing opportunities to engage in age or developmentally appropriate activities that have been provided to the youth.
- The intensive, ongoing, and as of the date of the hearing, unsuccessful effort made to place the youth 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.
- Why APPLA is the best permanency plan for the youth and a compelling reason why, as of the date of the hearing, 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, including an adult sibling.

³² I.J.R. 45(a)(3).

³³ I.C. § 16-1622(1)(a)(iv) (Supp. 2016); see also § 16-1601(5) (Supp. 2018).

³⁴ See 45 C.F.R. § 1356.71(d)(1) (2012).

³⁵ I.C. § 16-1629(8), I.J.R. 43; see also *Dep't of Health & Welfare, et al v. Does I*, No. 45020, at 1 (Idaho Apr. 24, 2018), <https://isc.idaho.gov/opinions/45020.pdf>.

³⁶ I.C. §§ 16-1629(8), 16-2102(Art.III).

³⁷ *Id.*

³⁸ I.C. § 16-1622(1)(a)(vi)-(vii).

These requirements are the result of increasing attention upon youth 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 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. The purpose of the second 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.

When the primary permanency goal for a youth is APPLA, at the six-month review hearing the court must make written, case-specific findings that:³⁹

- There are compelling reasons why APPLA is the best permanency plan for the youth
- There are compelling reasons why, as of the date of the hearing, 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, including an adult sibling.

In some cases, the primary permanency goal for the child may be something other than APPLA, but the difficulty in achieving that goal is such that the child remains in a long-term foster placement. For example, the permanency goal for the child may be termination of parental rights and adoption, but the child has special needs, maladaptive behaviors, and/or delinquent behaviors that make a stable family placement for the child particularly difficult to achieve. In such cases, the practical reality is that the child is in APPLA even though APPLA is not the goal. In such cases, the best practice is to make the same review, and require the same efforts, as if APPLA were the permanency goal.

E. What Services are Being Provided to Meet the Child’s Needs?

1. General

The CPA requires case plans and permanency plans to identify the services to be provided to the child, including services needed to 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.⁴⁰ 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

One purpose of review hearings is for the court to inquire about the child’s educational stability. The Department is required to report, and the court is required to inquire, as to the efforts made to ensure educational stability for the child, including efforts to keep the child in the same school

³⁹ I.C. § 16-1622(10)(a)(viii).

⁴⁰ I.C. § 16-1621(3)(a), § 16-1620(3)(a) (Supp. 2014).

or the reasons why remaining in the same school is not in the child's best interest.⁴¹ The court should further inquire generally as to the child's educational needs and how those needs are being met. There is further information about the educational needs of children in foster care in Chapter 12 of this manual.

3. Transition to Successful Adulthood

For each youth 14 and older, case plans and permanency plans must include a plan for the youth's transition to successful adulthood.⁴² The CPA requires the court to review the plan at each six-month review hearing.⁴³ 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.⁴⁴ For youth 14 and older, this should include not only the permanency goal, but also the plan for transition to successful adulthood. 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.⁴⁵ The purpose of the 90-day hearing is to take one last opportunity to promote a successful future for a youth that is about to turn 18, and upon turning 18, will no longer be under the jurisdiction of the court in the CPA case. Additional information about transition plans and transition planning is located in Chapter 12 of this manual.

4. Medical, Vision, Dental, Mental Health Needs, and Psychotropic Medication

The Department, in order to qualify for IV-E foster care maintenance payments (in consultation with pediatricians and other experts in health care), 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.⁴⁶ 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.

Idaho law has specific requirements when a child is being treated with psychotropic medication.⁴⁷ The Department must report the medication and dosage prescribed, and the medical professional who prescribed the medication. The court is required to inquire as to the use of psychotropic medication, and may make any additional inquiry relevant to the use of psychotropic medication. The purpose of this requirement 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.

5. Family Contact

⁴¹ I.C. § 16-1622(1)(a)(iii).

⁴² I.C. §§ 16-1621(3)(a)(i), 16-1620(3)(h)(i), 16-1622(2)(a)(v).

⁴³ I.C. § 16-1622(1)(a)(v).

⁴⁴ I.C. § 16-1622(1)(a)(v).

⁴⁵ I.C. § 16-1622(3).

⁴⁶ 42 U.S.C. § 675(1)(C) (2015).

⁴⁷ I.C. § 16-1622(1)(a)(ix) (Supp. 2016).

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, ongoing contact between siblings.*⁴⁸

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.⁴⁹

F. Is Child Support Appropriate?

The court should review whether parents are complying with child support obligations, and whether those child support obligations are reasonable. The CPA provides that child support obligations can be established or modified in a CPA proceeding.⁵⁰ However, setting or modifying child support obligations in the CPA proceeding can be problematic, in part because the child protection case file is sealed. One approach is for child support to be established or modified in a child support proceeding pursuant to Idaho Code title 32, chapter 7.

The court should take care to avoid financial burdens that interfere with family reunification. Delays in setting support followed by retroactive lump sum support can be particularly disruptive. The financial disruption can interfere with the parents’ ability to obtain or maintain housing, transportation, and other needs that are essential to comply with the case plan and enable the children to return to a safe and stable home. At the same time, parents have the duty to provide for the financial support of their children, and the failure to provide financial support for a child can be evidence in support of grounds for termination.⁵¹ Where a parent is not supporting their child, failure to establish a child support obligation can impact the proof needed to establish the grounds for termination of parental rights.

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.⁵² The best practice recommendation is to

⁴⁸ I.C. § 16-1601(5) (Supp. 2018). 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).

⁴⁹ I.C. § 16-1621(3)(c) (Supp. 2014). See also §16-1622(2)(a) (Supp. 2018).

⁵⁰ I.C. § 16-1628 (2009).

⁵¹ Failure to pay child support is an element of abandonment; if the case plan provides for payment of child support and the parent does not comply, the failure to comply with the case plan is grounds for termination, and failure to pay child support can be evidence of neglect for failing to provide care necessary for a child’s well-being. See I.C. §§ 16-2005 (grounds for termination of parental rights); 16-2001(5) (definition of abandonment), 16-2001(3) (definition of neglect).

⁵² Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, ABA CHILD L. PRAC. (2006) 145.

include all children, of all ages, in all proceedings.⁵³ 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.
- 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 her/his engagement in the process.⁵⁴

“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.

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 appropriately protect the child.⁵⁵

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.⁵⁶ 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.⁵⁷

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.⁵⁸ Children 12 and older are required to attend their six-month review and permanency hearings in person or

⁵³ NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, SEEN, HEARD, AND ENGAGED: CHILDREN IN DEPENDENCY COURT HEARINGS 8 (2012).

⁵⁴ Khoury, *supra* note 52, at 150.

⁵⁵ NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, *supra* note 53, at 8-9.

⁵⁶ I.J.R. 40(b).

⁵⁷ I.C. § 16-1614(1) (Supp. 2014).

⁵⁸ I.C. § 16-1614(2).

by telephone, unless the child declines in writing, declines through counsel, or the court finds good cause to excuse the youth.⁵⁹

At each review hearing, the court should confirm that a child age eight and over has been provided notice of the hearing by IDHW.⁶⁰ At each six-month review hearing, the court is required to ask youth 12 and older about the youth's desired permanency outcome, and to discuss the permanency plan with the youth.⁶¹ For youth 14 and older, this should include the plan for transition to successful adulthood. In addition, the guardian *ad item* is required ask any child capable of expressing her or his wishes regarding permanency, the transition to successful adulthood, and to include the child's express wishes in the guardian *ad litem*'s report to the court.⁶²

For more information on how the court and practitioners can provide a meaningful opportunity for children to participate in the process, see Chapter 12.8.

H. Are the Foster Parents Engaged in the Proceedings?

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.⁶³ One approach to increasing foster parent engagement 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 well-being 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.

I. Have the Parents Complied with the Case Plan?

Review hearings are an important opportunity for the court to assess the continuing effectiveness of the case plan, to motivate the participants, to actively engage the participants in problem-solving, and to hold the participants accountable.

The court should review information on the extent to which the parents have complied with the case plan.⁶⁴ 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 gained the skills for which the class was taken and if so, whether the parent is using the skills learned in the class to decrease threats or increase his/her protective capacity.

⁵⁹ I.J.R. 40(c)

⁶⁰ I.J.R. 40(b).

⁶¹ I.C. § 16-1622(1)(v) (Supp. 2016).

⁶² I.C. § 16-1633(2).

⁶³ I.J.R. 40(a).

⁶⁴ I.C. § 16-1622(1)(a)(iii).

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. If non-compliance indicates an obstacle to complete the task, the obstacle and options for overcoming the obstacle should be identified. For example, the parent may have failed to attend counseling due to a lack of transportation. The parent may need information or assistance with transportation such as Department-provided gas vouchers or bus passes.

Non-compliance, or a case plan that lacks a measurable outcome for a task, may indicate a need to modify or clarify the case plan. At the review hearing, the court can correct any misunderstood expectations as to what is required by either the parents or the Department. 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.

In some cases, non-compliance may indicate a need to modify the permanency goals. Permanency goals and permanency planning are discussed in more detail in Chapter 7.

J. Is the Department Making Reasonable Efforts?

At the permanency hearing, the court is required to make written, case-specific findings as to whether the Department made reasonable efforts to finalize the permanency plan in effect for the child.⁶⁵ 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.⁶⁶ Should reunification efforts fail, the concurrent plan must fully be in place and ready for implementation at the annual permanency hearing.

If reunification is the primary permanency goal for the child, the review includes an assessment of the reasonableness of the Department's efforts to reunify. There may be reasonable efforts the Department is not making that could be made and that would assist the parent in achieving reunification. That issue should be raised by counsel for parents at a review hearing. A finding that the Department is not making reasonable efforts to reunify is one mechanism for holding the agency accountable for its statutory duties. If the court finds that the Department is not making reasonable efforts, an otherwise eligible child may lose eligibility for federal IV-E funding.⁶⁷ Before making a finding that the Department is not making reasonable efforts, the court should enter an order specifying the further efforts the Department must make

⁶⁵ I.C. § 16-1622(2)(c).

⁶⁶ I.J.R. 45(a)(3).

⁶⁷ 42 U.S.C. § 675(5)(C)(i) (2010); 45 C.F.R. § 1356.21(b)(2).

and allow the Department an opportunity to comply. If the court finds that the Department is not making reasonable efforts, then once the Department has made the required efforts, written, case-specific reasonable efforts findings can be made and funding can be reinstated.

If reunification is the primary permanency goal for the child, then the case plan must also include a concurrent permanency goal and a plan for achieving that goal.⁶⁸ Review and status hearings should include a review of the concurrent plan, the reasonableness of the Department's efforts in developing and implementing the plan, and the progress in finalizing the plan. The concurrent plan must be fully in place and ready for implementation so that permanency for the child is not delayed if reunification efforts fail. Ideally, the best option for the child's temporary and permanent placement will be identified early, and the child will be in the placement while the parents are working the reunification plan.

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.⁶⁹

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 finalize the permanency plan for the child. Sometimes, the successful completion of the case requires the coordination of efforts with other courts, sometimes in other states. 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.⁷⁰ The permanency goal for the child may be adoption or guardianship and the adoptive parent(s) or guardian may reside in another state.⁷¹ In such cases, proceedings in another court are needed to finalize the permanency plan for the child but the court in the CPA case has exclusive jurisdiction over the child.⁷² In these instances, the court should enter an order relinquishing its exclusive jurisdiction to the other court, so that both cases can proceed under the concurrent jurisdiction of each court. Idaho Child Protection Forms found in the Child Protection section of the Idaho Supreme Court website include a template form for relinquishing jurisdiction.

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

⁶⁸ I.C. § 16-1621(3)(d) (Supp. 2016),

⁶⁹ I.C. § 16-1622(1)(a); I.J.R. 45(a).

⁷⁰ I.J.R. 45(a)(4).

⁷¹ See also Chapter 12.7 of this manual for additional information on the Interstate Compact on the Placement of Children,

⁷² I.C. § 16-1603(1) (2009).

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

8.7 AGREEMENTS BY THE PARTIES

Whenever issues at a review are presented through a stipulation of the parties, the court must take the time to thoroughly review the agreement with the participants. IJR 38 requires that all stipulations be part of the court record and that the court approve the agreements and confirms 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.⁷³ 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.

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.

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.

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

The court must make written findings of fact and conclusions of law. Best practice is for those findings to be detailed enough 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

⁷³ I.J.R. 38.

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. The essence of an effective hearing is not, however, just to tick off items on the list of statutory requirements. The essence of an effective hearing is for the court to actively engage with all participants, to motivate the participants through problem-solving, acknowledgement and praise of positive effort and progress, and where appropriate, to hold the participants accountable for insufficient effort. 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.