

# CASE PLAN HEARING

## *Bench Card*

### **PURPOSE**

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

### **WHEN**

1. The case plan hearing must be held within thirty (30) days after the adjudicatory hearing.<sup>2</sup>
2. The case plan must be filed no later than five days prior to the hearing.<sup>3</sup>

### **WHO MAY BE PRESENT**

1. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case.<sup>4</sup>
2. The Department shall provide notice of the planning hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children aged eight and older. The Department shall confirm to the court that this notice was given.<sup>5</sup>
3. A child aged eight (8) or older has the right to be heard, either in person or in writing.<sup>6</sup> The Department must confirm to the court that this notice was given.<sup>7</sup> The child may be excluded from hearings at any time at the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>8</sup>

### **EVIDENCE**

1. The Rules of Evidence do not apply.<sup>9</sup>
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department each have the right to be heard at the planning hearing.<sup>10</sup>
3. A child aged eight (8) or older has the right to be heard, either in person or in writing.<sup>11</sup>
4. Privileges in effect at the case plan hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child.<sup>12</sup>

### **MAKING THE RECORD**

The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interests of the child.<sup>13</sup>

### **CONTENTS OF THE CASE PLAN**

**The Department's current practice is to prepare two documents: a service plan and an alternative care plan. The two documents are intended to provide the information required in the case plan. The court should ensure that the document(s) filed by the Department contain all required information.**

## The case plan must include:

### *Placement*

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

### *Services to the child*

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

### *ICWA (See the ICWA Bench Card)*

If there is reason to know the child is an Indian child, and there has been no final determination of the child's status as an Indian child:<sup>20</sup>

1. The efforts made to determine whether the child is an Indian child.
2. The Department's efforts to work with all tribes of which the child may be a member and to verify whether the child is a member or eligible for membership.

### *Reunification*

1. A reunification plan that includes:<sup>21</sup>
  - a) Reasonable efforts to be made by the Department to make it possible for the child to return home.<sup>22</sup>
  - b) All issues that need to be addressed before the child can safely be returned home (or remain home) without Department supervision.
  - c) Tasks to be completed by the Department, each parent and others, including services to be provided by the Department and in which the parents are required to participate.
  - d) Deadlines for completion of each task.
  - e) The role of the Department as to each parent.
  - f) A plan for achieving reunification within 12 months from the date the child was removed from the home.<sup>23</sup>
2. If the child is an Indian child, active efforts by the Department to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family. If there is reason to know the child is an Indian child, but the court does not have enough evidence to determine the child's status, the court must treat the child as an Indian child.<sup>24</sup> (*See the ICWA Bench Card*)
3. A visitation plan, the need for supervision of visitation, and child support.<sup>25</sup>

### *Concurrent permanency plan*

A concurrent permanency plan is required when the court has placed the child in the custody of the Department.<sup>26</sup>

The concurrent plan must include:

1. A permanency goal, which must be one of the following:<sup>27</sup>
  - a) Termination of parental rights and adoption.
  - b) Guardianship.

## Case Plan Hearing Bench Card

- c) For youth age 16 and older only, “another planned permanent living arrangement” (APPLA.)
2. All options for permanent placement of the child, including in-state and out-of-state placement options.<sup>28</sup>
3. The advantages and disadvantages of each option, and a recommendation as to which option is in the child’s best interest.<sup>29</sup>
4. The actions necessary to implement the recommended option.<sup>30</sup>
5. A schedule for accomplishing the actions necessary to implement the permanency goal within the time frames in the Idaho Juvenile Rules.<sup>31</sup>
  - a) If the permanency goal is termination of parental rights and adoption, a schedule that has the objective of finalizing termination within 18 months from the date the child was removed and finalizing the adoption within 24 months from the date the child was removed.<sup>32</sup>
  - b) If the permanency goal is guardianship, a schedule that has the objective of finalizing the guardianship within 13 months from the date the child was removed.<sup>33</sup>
6. For youth 16 and older whose permanency goal is APPLA, the plan must include the information listed in the Transition to Successful Adulthood Bench Card.<sup>34</sup>
7. 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.<sup>35</sup>
8. If the court approves a concurrent permanency plan with a goal of termination of parental rights and adoption, the plan must identify the names of the proposed adoptive parents, when known.<sup>36</sup>

### QUESTIONS THE COURT MUST ASK AND FINDINGS THE COURT MUST MAKE

#### *Psychotropic medication*

If the child is placed in the Department’s custody and the child is being treated with psychotropic medications, the Department must document and the court must inquire about the type of medication, the dosage and the medical professional who prescribed the medication. The court may make any additional relevant inquiry.<sup>37</sup>

#### *ICWA (See the ICWA Bench Card)*

1. The court must ask:<sup>38</sup>
  - a) Is there reason to know that the child is an Indian child?
  - b) What efforts have been made since the last hearing to determine whether the child is an Indian child?
  - c) What efforts have been made by the Department to work with all tribes of which the child may be a member and to verify whether the child is a member or eligible for membership?
2. The court must determine whether the Department 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.<sup>39</sup>
3. If there is reason to know the child is an Indian child, but the court does not have enough evidence to determine the child is not an Indian child, the court must treat the child as an Indian child.<sup>40</sup>

### CASE PLAN ORDER

The court’s order must:

1. Adopt, modify, or reject the case plan.<sup>41</sup>
2. Incorporate the case plan approved by the court.<sup>42</sup>
3. Provide that reasonable efforts shall be made to reunify the family in a timely manner.<sup>43</sup>
4. Require completion of the steps necessary to finalize the permanent placement of the child.<sup>44</sup>
5. Schedule the next hearing.

## ADDITIONAL QUESTIONS

1. What are the specific safety issues that caused the child to be removed from the home, and what is preventing the child from returning home today?
2. **If the child is an Indian child, and the child is in the custody of the Department, does the child's placement comply with ICWA? (*See the ICWA Bench Card*)**
3. **Is the Department fully exploring placement options with a fit and willing relative:**
  - a) **Who are the members of the child's extended family (including out-of-state family, adult siblings, and fictive kin)?**
  - b) **Who has been contacted?**
  - c) **Are they placement options?**<sup>45</sup>
4. Has the child been moved since the adjudicatory hearing? If so:
  - a) Why?
  - b) What further efforts are needed to ensure the child's placement stability?
  - c) Does the new placement support the child's cultural identity?
5. Parents:
  - a) Do you understand what happened here today?
  - b) Do you understand what the next steps are?
  - c) Do you have any questions for the court?
6. Department and guardian *ad litem*:
  - a) Do you understand what is required of the Department and/or guardian *ad litem* prior to the review hearing?
  - b) Do you have any questions for the court?

## ENDNOTES

<sup>1</sup> I.C. § 16-1621(1)(a).

<sup>2</sup> I.C. § 16-1621(1).

<sup>3</sup> *Id.*

<sup>4</sup> I.C. § 16-1613(1); I.J.R. 52(a).

<sup>5</sup> I.C. § 16-1621(2); I.J.R. 40(a).

<sup>6</sup> I.J.R. 40(b).

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

<sup>8</sup> I.C. § 16-1613(2).

<sup>9</sup> I.R.E. 101(e)(6); I.J.R. 51(b).

<sup>10</sup> I.J.R. 40(a).

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

<sup>12</sup> I.R.E. 502, I.R.E. 505 *See also* I.R.E. 504(d)(1); I.R.E. 503(d)(4); I.R.E. 516(d)(3); I.R.E. 517(d)(3); and I.R.E. 518(d)(5).

<sup>13</sup> I.J.R. 38.

<sup>14</sup> I.J.R. 43(2).

<sup>15</sup> I.C. § 16-1621(3)(b)(iv).

<sup>16</sup> I.C. § 16-1621(3)(a).

<sup>17</sup> I.C. § 16-1621(3)(b)(i).

<sup>18</sup> I.C. § 16-1621(3)(b)(ii).

<sup>19</sup> I.C. § 16-1621(3)(a).

<sup>20</sup> I.C. § 16-1621(3)(b)(v).

<sup>21</sup> I.C. § 16-1621(3)(c).

<sup>22</sup> I.C. § 16-1621(5).

<sup>23</sup> I.J.R. 44(a)(1).

<sup>24</sup> 25 C.F.R. § 23.107.

<sup>25</sup> I.C. § 16-1621(3)(b)(iii) and (c).

<sup>26</sup> I.C. § 16-1621(3)(d).

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

<sup>28</sup> I.C. § 16-1621(3)(d)(i).

<sup>29</sup> I.C. § 16-1621(3)(d)(ii).

<sup>30</sup> I.C. § 16-1621(3)(d)(iii).

<sup>31</sup> I.C. § 16-1621(3)(d)(iv).

<sup>32</sup> I.J.R. 46(a).

<sup>33</sup> I.J.R. 44(a)(2).

<sup>34</sup> I.C. § 16-1621(3)(d)(viii).

<sup>35</sup> I.C. § 16-1621(3)(d)(ix).

<sup>36</sup> I.C. § 16-1621(3)(vi).

<sup>37</sup> I.C. § 16-1621(1)(c).

<sup>38</sup> I.C. § 16-1621(1)(b).

<sup>39</sup> *Id.*

<sup>40</sup> 25 C.F.R. § 23.107(2).

<sup>41</sup> I.C. § 16-1621(1)(a).

<sup>42</sup> I.C. § 16-1621(4).

<sup>43</sup> I.C. § 16-1621(5).

<sup>44</sup> *Id.*

<sup>45</sup> I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).