

## CHAPTER 6: The Case Plan and the Case Plan Hearing

### 6.1 THE CASE PLAN

The case plan is the roadmap for achieving permanency for the child. It identifies the issues that are preventing the child from safely returning home. It includes tasks that must be completed to resolve each of those issues and achieve reunification or another permanent placement for the child. The goal of a child protection case is to achieve permanency for the child, taking into consideration the significance of time in a child's life. For that reason, the case plan is required to include timelines for achieving permanency.<sup>1</sup> The case plan is the benchmark for determining if the Department is making reasonable efforts to finalize the permanency plan for the child.<sup>2</sup> Failure to comply with the case plan is the basis for terminating parental rights.<sup>3</sup> The case plan is essential to the progress of the case and in achieving permanency for the child. The court, the Department, and all parties must pay careful attention to the specificity and thoroughness of the case plan.<sup>4</sup>

In cases where there has been no finding of aggravated circumstances, the next step after the adjudicatory hearing is preparation of the case plan and the case plan hearing.<sup>5</sup> This includes both cases in which the court places the child in the custody of the Department, and cases where the court places the child under the protective supervision of the Department. The statute specifically includes cases in which the parent is incarcerated.<sup>6</sup>

In cases where there has been a finding of aggravated circumstances, the next step is the preparation of a permanency plan and a permanency hearing. The permanency plan and permanency hearing are discussed in Chapter 7 of this manual.

#### *A. Contents of the Case Plan*

In cases where there has been no finding of aggravated circumstances, the primary permanency goal for the child is reunification, and the case plan must include a reunification plan.<sup>7</sup> Where the child is placed in the custody of the Department, the case plan must also include an alternate permanency plan (or concurrent plan).<sup>8</sup> In cases where the child is placed under the protective

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*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.

<sup>1</sup> I.J.R. 44.

<sup>2</sup> I.C. § 16-1621(4).

<sup>3</sup> I.C. §§ 16-2005(1)(b) (Supp. 2016), 16-2002(3)(b).

<sup>4</sup> Department staff often refer to the case plan as a "service plan."

<sup>5</sup> I.C. § 16-1621(1).

<sup>6</sup> I.C. § 16-1621(1).

<sup>7</sup> I.C. § 16-1621(3)(c).

<sup>8</sup> I.C. § 16-1621(3)(d).

supervision of the Department, the case plan must include the relevant portions of the reunification plan, but an alternative permanency plan is not required.<sup>9</sup>

### 1. Child in Department Custody

Idaho Code § 16-1621(3) requires that the case plan include a “reunification plan.” The primary purpose of the reunification plan is to identify what needs to be done to achieve the goal of reunification. The contents of the reunification plan have expanded over time to include provisions to promote successful outcomes for children, particularly youth, while in state custody. The statute requires that the case plan must:

- Set forth reasonable efforts that will be made to make it possible for the child to return home.<sup>10</sup>
- Include a goal of reunification and a plan for achieving that goal.
- Identify all issues that need to be addressed before the child can safely be returned home (also known as “Conditions for Return Home”)<sup>11</sup>, without Department supervision.
- Specifically identify the tasks to be completed by the Department, each parent, or others to address each issue, including services to be made available by the Department to the parents and in which the parents are required to participate.
- Set deadlines for the completion of each task.
- Specifically state the role of the Department toward each parent.
- Identify the services to be provided to the child, including services to identify and meet any educational, emotional, physical, or developmental needs the child may have.
- Identify the services to be provided to the child to assist the child in adjusting to the placement or to ensure the stability of the placement.
- Address options for maintaining the child’s connection to the community:
  - Include connections to individuals with a significant relationship to the child, and organizations or community activities to which the child has a significant connection,
  - Ensure educational stability for the child, including the efforts to keep the child in the same school or reasons why remaining in that school is not in the best interest of the child,

<sup>9</sup> I.C. § 16-1621(4).

<sup>10</sup> The court must hold annual permanency hearings, and must determine whether the Department has made reasonable efforts to finalize a permanency plan for the child, which includes reasonable efforts to reunify. If the Department has not made reasonable efforts to finalize a permanency plan for the child, **or the court fails to make the finding that the Department has made reasonable efforts to finalize the permanency plan**, an otherwise eligible child may be ineligible for federal IV-E match funds. Eligibility will be reinstated once the finding is made. The case plan provides the benchmark for determining whether the Department has made reasonable efforts. I.C. §§ 16-1622(2)(c), 45 C.F.R. § 1356.21(b)(2)(ii) (2012). Annual permanency hearings are discussed in Chapter 7 of this manual.

<sup>11</sup> The Department’s reports to the court and *The ABA Child Safety Guidelines for Attorneys and Judges* use the term “Conditions for Return Home” to describe this section of the case plan relevant to the state requirement. See THERESE ROE LUND & JENNIFER RENNE, A.B.A., *CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS* 34-38 (2009).

- Include a visitation plan and identify the need for supervision of visitation and child support, and
- Document 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.
- For youth 14 and older:
  - Identify the services needed to assist the youth in making the transition to successful adulthood, and
  - 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 manner.
- If there is reason to know that the child is an Indian child, and 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.<sup>12</sup>
- The child’s current foster care placement, whether there has been a change in placement since the last hearing and if so, the reasons for the change.<sup>13</sup>

The reunification plan should address the distinctive needs of each parent. The Department will sometimes prepare separate case plans for each parent. Judges and lawyers need to be aware of the different needs and obligations of each parent under the case plan.

In **all** cases in which the child is placed in the legal custody of the Department, Idaho Code § 16-1621(3)(d) requires that the case plan include a concurrent permanency goal and a plan for achieving that goal. The concurrent permanency goal may be one of the following: termination of parental rights and adoption, guardianship, or for youth 16 and older, another planned permanent living arrangement.<sup>14</sup>

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<sup>12</sup> 25 C.F.R § 23-107(a). I.C. § 16-1621(1)(b) has not been revised since the federal regulations were adopted. At the time that section 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.

<sup>13</sup> I.J.R. 43(2).

<sup>14</sup> I.C. § 16-1621(3)(d) (Supp. 2016).

Concurrent planning<sup>15</sup> is a critical element in the initial case plan if a child is to achieve permanency in a timely manner. The purpose of the concurrent plan is to have a “backup” plan for the permanent placement of the child in the event reunification fails, to ensure that it is the backup plan that best serves the child’s interests, to have that backup plan in place as early as possible, and to have the child in a placement consistent with that plan as early as possible. The plan for the concurrent permanency goal should be developed in earnest from the outset, and with as much specificity as the plan for the primary permanency goal. A “wait and see” approach, waiting to see how reunification efforts progress, or waiting to see if reunification will fail, before seeking alternative permanency options, will not achieve permanency for the child in a timely manner. Delays in concurrent planning can substantially impair the child’s stability and success while in state care and increase the emotional toll on the child, impairing the child’s future stability and success long after the child has left state care. Delays in concurrent planning do the greatest harm to the children who are the most at risk - those for whom reunification efforts fail.

Idaho Code § 16-1621(3)(d) provides that the concurrent plan must:

- Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child.
- Address the advantages and disadvantages of each option in light of the child’s best interest and include recommendations 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 concurrent permanency goal.
- Address options for maintaining the child’s connection to the community, including individuals with a significant relationship to this child and organizations or community activities with which the child has a significant connection.

In order to achieve the timely permanency required by ASFA, it is necessary to develop, communicate, and work simultaneously on two types of placements in the event that reunification is not possible. Concurrent planning is the process of working toward reunification while at the same time establishing and working toward an alternate or contingency permanent plan. Concurrent case planning is a family-centered practice, bringing together the caregiver and biological family to improve the child’s safety and well-being. Caregivers can offer support and parenting assistance while the biological family works through the case plan tasks with needed services. As a team, parents and caregivers can focus on the best interests of the child. The court should inquire about the concurrent plan in each case and ensure that concurrent planning efforts are underway to support the safety and well-being of children and families while promoting early permanency decisions for children.

\*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 220. The complete guidelines are available on-line at [www.ncjfc.org](http://www.ncjfc.org)

<sup>15</sup> “Concurrent planning” is defined in the CPA as a “planning model that prepares for and implements different outcomes at the same time.” I.C. § 16-1602(14). One of the primary purposes of the CPA is to “coordinate efforts by state and local public agencies, in cooperation with private agencies and organizations, citizens’ groups, and concerned individuals, to: (3) Take such actions as may be necessary to provide the child with permanency including concurrent planning...” I.C. § 16-1601(3) (2009).

- Specify further investigation necessary to identify and/or address other options for permanency placement, to identify actions necessary to implement the recommended placement, or to identify options for maintaining the child's significant connections.
- If the concurrent permanency goal is termination of parental rights and adoption, include the names of the adoptive parents once the proposed adoptive parents are identified.
- For youth 14 and older, specifically identify the services needed to assist the child to make the transition to successful adulthood.
- For youth with a proposed permanency goal of another permanent planned living arrangement (APPLA), document:
  - 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.

Concurrent permanency planning has many important aspects, and permanency planning is discussed in more detail in Chapter 7 of this manual.

## 2. Child under Department Supervision

A case plan must also be prepared in cases where the child is home under the Department's protective supervision.<sup>16</sup> The plan must:

- Identify all issues that need to be addressed before the child can safely live at home without the Department's supervision.
- Specifically identify the tasks to be completed by the Department, each parent, or others to address each issue, including services to be made available by the Department to the parents and in which the parents are required to participate.
- Set deadlines for the completion of each task.
- Specifically state the role of the Department toward each parent.
- Identify the services to be provided to the child, including services to 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.
- For youth 14 and older:

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<sup>16</sup> I.C. § 16-1621(4) (Supp. 2016).

- Identify the services needed to assist the youth in making the transition to successful adulthood, and
- 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 manner. Address options for maintaining the child’s connection to the community, including individuals with a significant relationship to this child and organizations or community activities with which the child has a significant connection.

### ***B. The Alternate Care Plan***

In Idaho, the Department submits two documents to meet the state and federal requirements regarding the contents of the case plan – the alternate care plan and the case plan, known by the Department as the service plan.<sup>17</sup>

The alternate care plan is a rich source of information and detail regarding safeguards for the children and the development of the goals and tasks outlined in the case plan. Some of the information that is included in the alternate care plan is also required by the Idaho statute governing case plans. The alternate care plan must be included with the case plan in all cases.<sup>18</sup>

Federal law defines “case plan” as a document that includes the following minimum provisions: “A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents’ home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.”<sup>19</sup> The Department refers to this portion of the planning process as the alternate care plan.

Pursuant to this federal definition, the case plan (alternate care plan) must describe specifics of a child’s care while in placement, including, at a minimum, the following:

- A description of the type of home or institution in which the child is to be placed.
- A plan for ensuring that the child receives safe and proper care and that appropriate services are provided to the parents, child, and foster parents:
  - To improve the conditions in the parents’ home.
  - To facilitate the child’s return to her or his own safe home or the alternative permanent placement of the child.
  - To address the child’s needs while in foster care.
- To the extent available, the child’s health and education records.
- Where appropriate, for a child age 14 years or older,<sup>20</sup> a description of programs and services that will help the child transition to successful adulthood; and/or

<sup>17</sup> Department staff often refer to the case plan as a “service plan.”

<sup>18</sup> I.C. § 16-1621(3), (4).

<sup>19</sup> Preventing Sex Trafficking and Strengthening Families Act, 42 U.S.C. § 675(1)(B) (2015).

<sup>20</sup> See Preventing Sex Trafficking and Strengthening Families Act, 42 U.S.C. § 675(1)(B), (5)(C)(iv) (2015).

- If the permanency goal for the child is adoption, documentation of the steps being taken to find an adoptive family.<sup>21</sup>

For youth age 14 and older, the case plan must be developed in consultation with the youth and, at the option of the youth, up to two members of the case planning team who are not the case worker or foster parent.<sup>22</sup> The case plan must specify the child's rights with respect to education, health, visitation, and court participation, the right to be provided with certain documents<sup>23</sup>, and the right to stay safe and avoid exploitation.<sup>24</sup> At the case plan and permanency hearings, The Department must identify the services that will be provided to help the youth transition to a successful adulthood.<sup>25</sup>

## 6.2 GOALS AND ELEMENTS OF EFFECTIVE CASE PLANNING FROM A SOCIAL WORK PERSPECTIVE

### A. *The Case Planning Process*

Case planning, often called “service planning” by social workers, is the process of establishing desired results, goals, and tasks to address the needs of the entire family so that they can live safely without Department involvement. Case planning is the bridge or link between the safety assessment and the service or intervention required to meet the child's need for safety, permanency, and well-being. Therefore, the connection between the safety assessment and the case plan is essential and purposeful. The case plan must address the identified safety threats to the child and provide services to the parent or caregiver to address their assessed diminished protective capacities. The case plan also should contain timelines for the accomplishment of all tasks.

The purpose of the case planning process is to achieve the following goals:

- Identify services and tasks that will reduce safety threats to the child, enhance the protective capacity of parents or caregivers, and/or mitigate the child's vulnerability.
- Create an individualized, outcome-oriented case plan that addresses the needs of all family members.
- Establish a concurrent plan in the event the family cannot be reunited permanently and safely.
- Demonstrate parental commitment and follow through to completing the case plan.

The plan must be specific, measurable, achievable, realistic, and time-limited. The planning process should engage the family in an effective method of problem solving that might be useful as the family encounters other challenges. It should communicate the belief that change is both expected and desired. It should also send an optimistic, hopeful message that change is possible.

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<sup>21</sup> 42 U.S.C. § 675(1)(E); I.C. § 16-1621(3)(vi) (Supp.2016).

<sup>22</sup> 42 U.S.C. § 675(1)(B), (5)(C) (2015).

<sup>23</sup> 42 U.S.C. § 675a(b), 675(5)(I) (2015). Youth aging out of foster care must be provided with a copy of their birth certificate, social security card, health insurance information, copy of their medical record, and a driver's license or a state-equivalent identification card.

<sup>24</sup> 42 U.S.C. § 675a(b)(1)

<sup>25</sup> 42 U.S.C. § 675(5)(C) and 42 U.S.C. § 671(a)(16), respectively (2015).

Effective planning is dependent upon ongoing assessment. Assessment guides the plan by identifying the issues that pose continued threats of danger to the children.

During case planning the focus should be on the family unit. Services should be offered to strengthen the family and to allow parents to function effectively while adequately protecting and providing for their children. The role of the social worker is to ensure that families have reasonable access to a flexible, culturally-responsive, individualized array of services and resources.

### ***B. Family Participation in Case Planning***

Ideally, effective case planning requires participation of a "family team." A family team can include parents, age-appropriate children, other family members, other family supports, resource families/adoptive parents, therapists, mentors, case aides, or others who are significant in the family's life.

IDHW currently uses a process called Family Group Decision making (FGDM)<sup>26</sup> to encourage participation of families in case planning and to assist families in identifying issues and needs. FGDM recognizes that families have the most information about themselves and have the ability to make well-informed decisions. Family members become active participants in decision-making for the family.

FGDM embraces the following values: the process of planning should be family focused, strength based, community based, and culturally appropriate. Generally, all family members who wish to be present at the family meeting are invited. The family can identify other non-family supportive individuals who are also invited to participate. The family meeting is usually facilitated by an independent coordinator – the social worker is present but does not lead the meeting.

At the meeting, information is shared by all present, usually starting with the social worker who presents the facts that led to the filing of the CPA proceeding. The family can ask questions of the social worker and others to make sure that they have a full understanding of the issues in the case.

Once information is exchanged, the professionals generally leave the room so that the family can discuss their planning in private. The family's job is to create a plan to ensure that the child is cared for and protected from threats of violence. The family then presents their plan to the professionals who provide input. The goal of the process is to reach consensus, although the professionals may veto portions of the plan.

The process of FGDM not only can assist in achieving timely reunification of the child with her or his family, but also may assist the family to understand when reunification is not possible. In the latter situation, FGDM can help to identify an alternate permanent placement for the child.

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<sup>26</sup> FGDM is also known as family decision-making, family group conferencing, or family unity meetings.



## 6.3 THE CASE PLAN HEARING

### A. Purpose of the Case Plan Hearing

At the case plan hearing, the court must decide whether to adopt, modify, or reject the case plan filed by the Department.<sup>27</sup>

If the court approves the plan as submitted or as modified, the plan must be incorporated in an order by the court, directing the Department and the parents to comply with the plan.<sup>28</sup> Other parties, in appropriate circumstances, also may be required to comply with the plan. If the child is placed in the custody of the Department (rather than under the Department's supervision), "the court's order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan."<sup>29</sup> The court's order also shall "require the Department to simultaneously take steps to accomplish the goal of reunification and the concurrent permanency goal."<sup>30</sup>

### B. Timing of the Hearing

The court shall schedule a case plan hearing to be held within thirty (30) days after the adjudicatory hearing.<sup>31</sup> It is particularly important to approve the case plan in a timely fashion as the plan provides the "road map" for permanency for the child. As in all CPA proceedings, the court should strongly discourage continuances.

### C. Submission of the Case Plan to the Court

The written case plan must be filed no later than five (5) days prior to the case plan hearing.<sup>32</sup> The case plan must be delivered to the parents, legal guardians, the prosecuting attorney or deputy attorney general, the guardian *ad litem*, and the attorney for the child.

### D. Notice

#### 1. Foster Parents

Idaho law requires that notice of the case plan 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."<sup>33</sup> In addition, I.J.R. 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

<sup>27</sup> I.C. § 16-1621(1)(a) (Supp. 2016).

<sup>28</sup> I.C. § 16-1621(5).

<sup>29</sup> I.C. § 16-1621(5).

<sup>30</sup> *Id.*

<sup>31</sup> I.C. § 16-1621(1).

<sup>32</sup> I.C. § 16-1621(1).

<sup>33</sup> I.C. § 16-1621(2).

Department and the Department must confirm to the court that the required notice was provided. The rule also makes clear that the right to notice and to be heard does not make foster parents parties to the CPA proceeding.<sup>34</sup>

## 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.”<sup>35</sup> 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.<sup>36</sup>

Idaho Juvenile Rule 40 also provides 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.<sup>37</sup> 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.<sup>38</sup>

## 3. Agreements by the Parties

The parties may stipulate to a case plan. Pursuant to Idaho Juvenile Rule 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.<sup>39</sup> The court should ensure that the case plan has been thoroughly considered by all participants, especially both parents, if involved. The court should specifically ask the parents, on the record, whether they are willing and able to comply, and whether there are additional or different services they need or want that will enable them to address the issues that need to be resolved before the child can be safely returned home.

Even when the parties stipulate to the plan, the court must ensure that it is comprehensive and it contains all the essential elements of a case plan (as discussed above). If the case plan is not comprehensive, the court should address any omitted elements.

<sup>34</sup> 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).

<sup>35</sup> I.J.R. 40(b).

<sup>36</sup> I.J.R. 40(b).

<sup>37</sup> I.J.R. 40(c).

<sup>38</sup> See Chapter 12 of this manual for more information about involving children and foster parents in court.

<sup>39</sup> I.J.R. 38.

## 6.4 KEY DECISIONS THE COURT SHOULD MAKE AT THE CASE PLAN HEARING

### A. Approval of the Case Plan

When evaluating the case plan, judges should consider the following questions.

- Is the case plan **complete**? The plan should include all the information required by the statute and the rules.
- Is the case plan **focused on safety**? The plan should focus on the safety issues that brought the child into care and what needs to change so the child can safely return home, with emphasis on reducing risks to the child and increasing the protective capacities of the parents.<sup>40</sup>
  - Does the plan include goals or tasks addressing changes in behaviors, commitments, and attitudes that will mitigate the threat of danger to the child? (If the plan merely lists the services participants must attend and/or generically directs the participants to “follow a treatment recommendation,” then the plan only provides a basis for measuring the participants’ attendance, but does not provide a basis for measuring changes in their behavior.)
  - Does the case plan follow logically from the threats of danger to the child and gaps in parents’ protective capacities? The plan should contain precise detail regarding the strategy and actions necessary to change the situation and to allow the child to return home.
- Is the case plan **comprehensive**? The case plan should fully identify and address the needs of both the parents and the children.
- Is the case plan **individualized**? The plan should address the needs of each parent and each child, and not be a list of standard provisions.
- Is the case plan **specific**? Specificity is essential, so that each participant knows what is expected, to avoid delays from lack of clarity, to provide a benchmark if the case proceeds to termination of parental rights based on failure to comply with the case plan,<sup>41</sup> and to provide a benchmark to determine if the Department is making reasonable efforts to finalize permanency for the child.<sup>42</sup>
- Is the case plan **behavior-oriented**? The ultimate objective is to change behavior. The tasks are the means to achieve that objective. For example, if lack of parenting skills is an issue, the case plan should not simply require the parent to attend a parenting class, but should also require that the parent demonstrate the skills learned

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<sup>40</sup> I.C. § 16-1601.

<sup>41</sup> I.C. §§ 16-2005(1)(b), 16-2001(3)(b) (Supp. 2016).

<sup>42</sup> I.C. § 16-1622(2)(c).

through appropriate interaction, supervision, and discipline of the child during supervised visitation.

- Is the case plan **realistic and achievable**? Are there obstacles to the completion of case plan tasks, and if so, what are the options for overcoming those obstacles? Transportation and language barriers are common examples. Initiating a discussion of the options for mitigating the obstacles can improve the potential for success, and can eliminate excuses for a parent's failure to comply with the case plan. Incarceration can limit but does not necessarily preclude a parent's ability to work a case plan. An incarcerated parent may be able to complete programming that is relevant to a case plan, may have options for visitation or other contact with the child, and at minimum should be required to comply with the rules of the facility to ensure the earliest possible release date. Ensuring that the case plan is realistic and achievable is also important because the Idaho Supreme Court has recognized impossibility as a defense to failure to comply with the case plan.<sup>43</sup> The case plan therefore provides a benchmark for termination of parental rights based on failure to comply with the case plan, but it does not provide an effective benchmark for that purpose if the plan is not one with which the parents can reasonably comply.
- Does the case plan include appropriate **deadlines**? The ultimate goal is to achieve permanency for the child, AND to do so within a reasonable time.
- What is the **parents' reaction** to the case plan? If the parents identify barriers to compliance, the court should initiate a discussion regarding the options for mitigating those barriers. The parents may be more likely to succeed when the court and other participants take an open problem-solving approach.

### B. ICWA

It is critical that the court ensure compliance with the Indian Child Welfare Act.<sup>44</sup> 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 case plan 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 case 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

<sup>43</sup> *Dept. of Health and Welfare v. Doe (Doe 2016-14)*, 161 Idaho 596, 389 P.3d 141 (2016). Termination of parental rights is discussed in Chapter 9 of this Manual.

<sup>44</sup> See generally 25 U.S.C. § 1901–1922 (2012).

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.<sup>45</sup> 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.”<sup>46</sup>

If the child is an Indian child, ICWA has procedural and substantive requirements that apply in a CP proceeding, and in particular to the case plan hearing. This includes provisions for notice to the Indian custodian and the child’s tribe, tribal participation, standards for removal of an Indian child from a parent or Indian custodian, and placement preferences, 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.

Finally, 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 believe that the child is an Indian child.

### *C. Deadlines*

As noted above, the case plan is required to include deadlines for completion of the tasks in the reunification plan,<sup>47</sup> and a schedule for accomplishing the concurrent permanency goal.<sup>48</sup> Idaho Juvenile Rules 44 and 46 set deadlines for accomplishing the permanency goals. Idaho Juvenile Rule 44(a) provides that the reunification plan must include a schedule for finalization of reunification within 12 months from the date of removal, but the court may approve an amendment to the case plan extending the time to finalize reunification up to three months.

Idaho Juvenile Rule 44(b) provides that if the concurrent permanency plan has a permanency goal of guardianship, the concurrent plan must include a schedule to finalize the guardianship within 13 months from the date the child was removed from the home, and any amendment to the case plan to extend the deadline must be approved by the court. Idaho Juvenile Rule 44 does not provide a deadline if the concurrent permanency plan has a permanency goal of termination of parental rights and adoption. If the case proceeds to the

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<sup>45</sup> I.C. § 16-1621(1)(b) (Supp. 2016); 25 C.F.R. § 23-107(a). Section 16-1621(1)(b) has not been revised since the federal regulations were adopted. At the time that section 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.

<sup>46</sup> 25 C.F.R. § 23.107.

<sup>47</sup> I.C. § 16-1621(3)(c).

<sup>48</sup> I.C. § 16-1621(3)(d)(iv).

annual permanency hearing, however, Idaho Juvenile Rule 46 provides that, if the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan must include a schedule that has the objective of finalizing the termination within 18 months and finalizing the adoption within 24 months of the date the child was removed from the home. That subsection further provides that any amendment to the case plan to extend the deadline must be approved by the court. The court should be aware of these deadlines when reviewing the timeliness of actions and schedules prior to the annual permanency hearing. The permanency hearing is discussed in further detail in Chapter 7 of this Manual.

#### ***D. Other Important Considerations***

##### **1. Psychotropic Medications**

The use of psychotropic medications in children and youth, particularly children and youth in foster care, is an issue of tremendous concern and increasing attention.<sup>49</sup> 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 children and youth in child protection cases.

At the case plan hearing, if the child is being treated with psychotropic medications, the court is required to ask about the use of psychotropic medications, and may make any inquiry relevant to the use of psychotropic medications. This requirement applies both to children in the custody of the Department and children under the supervision of the Department.<sup>50</sup>

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.

##### **2. Visitation**

In cases where a child is in the custody of the Department, 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). The case plan is required to include a plan for visitation.<sup>51</sup> A best practice recommendation is for the court to inquire about the frequency and quality of visitation, and to initiate 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.

<sup>49</sup> 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](http://childwelfare.gov).

<sup>50</sup> I.C. § 16-1621(1)(c) (Supp. 2016).

<sup>51</sup> I.C. § 16-1621(3)(b)(iii) (Supp. 2016).

### ***E. Further Orders***

The court should set the date and time for the next hearing on the record prior to the conclusion of the case plan hearing (a review or status hearing, discussed in Chapter 8 of this manual). The court should also enter any orders necessary to ensure that all participants are prepared for the next hearing. For example, transport orders or orders allowing a parent to appear by phone may be necessary a parent is incarcerated, or orders allowing participants to appear by telephone may be appropriate where the participant resides out-of-state. Additional orders may be appropriate or necessary when further efforts are needed to identify, locate and serve absent parents or to comply with ICWA, as discussed below.

## **6.5 BEST PRACTICES TO REDUCE DELAYS AND TO ACHIEVE TIMELY PERMANENCY FOR CHILDREN AT AND BEFORE THE CASE PLAN HEARING**

### ***A. Early Identification and Involvement of Absent Parents***

The status of absent biological parents must be resolved as early as possible to avoid delays in achieving permanency. In all cases, absent parents should be identified as soon as possible so a determination can be made regarding whether they must be joined to the action and/or whether they or their families might provide resources in support of the child's permanency.

Timely resolution of paternity issues is both in the best interest of the child and essential to avoiding delays at subsequent points in the court process. Where the parents are not married at the time the child was born or where an unmarried father has not been adjudicated as a parent, paternity tests should be conducted early in the case as a matter of best practice. This will ensure that a man thought to be the father of the child actually is the father of the child and is properly part of the CPA proceeding.<sup>52</sup>

### ***B. Early Identification and Involvement of Relatives***

Both Idaho and federal law impose a priority in favor of placing children with relatives. Idaho law provides:

“At any time the department is considering a placement pursuant to this chapter, the department shall make a reasonable effort to place the child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:

- (a) A fit and willing relative.
- (b) A fit and willing non-relative with a significant relationship with the child.
- (c) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code, with a significant relationship with the child.

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<sup>52</sup> See, e.g., *Doe v. Dept. of Health and Welfare*, 134 Idaho 760, 9 P.3d 1226 (2000) (achieving permanency for child was delayed where putative father was not contacted until child protection case had been pending for two years, and the delay led to conflict between grandparent/foster parent and birth father).

(d) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code.”<sup>53</sup>

Federal law requires that the Department place children with relatives so long as the relative meets the Department’s “child protection standards.”<sup>54</sup>

The Department must identify all relatives of the mother, father, and putative father(s) of the child and thoroughly investigate the appropriateness of these relatives as potential caretakers for the child. Additionally, the Department must identify the parents of the child’s siblings and notify them of the child protection case. The term “sibling” is defined by state law and includes individuals who would be a sibling under state law were it not for a disruption in parental rights.<sup>55</sup> Identification and investigation of all potential caretakers is essential to ensure that the placement selected is the one that best meets the needs of the child and ensures the child’s safety.<sup>56</sup>

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.<sup>57</sup> The role of the court in reviewing agency placement decisions is discussed in Chapter 5 of this manual,

### ***C. Compliance with the Interstate Compact on the Placement of Children (ICPC)***

A child may not be placed out of state without a court order and without compliance with the ICPC. Interstate placement is a time consuming process and the Department should initiate the ICPC process as soon as possible.<sup>58</sup>

## **CONCLUSION**

The case plan is the roadmap for achieving permanency for the child. The case plan hearing is an important opportunity for the judge to engage with all participants, to promote a collaborative, problem-solving process, and to ensure that the plan is thorough and suited to the needs of the family and the children. As with any journey, circumstances change, necessitating changes in the plan. The next step in a CPA proceeding is to schedule regular review hearings, at which the court will review progress on the plan and determine whether changes need to be made to the plan. Review hearings are discussed in Chapter 8 of this manual.

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<sup>53</sup> I.C. § 16-1629(11) (Supp. 2016).

<sup>54</sup> 42 U.S.C. § 671(a)(19) (2015).

<sup>55</sup> 42 U.S.C.A. § 671(a)(29) (2015).

<sup>56</sup> If the child is an Indian child, the Indian Child Welfare Act establishes a clear placement preference with members of the child’s extended or tribal family. 25 U.S.C. § 1915 (2012). ICWA is discussed in detail in Chapter 11 of this manual.

<sup>57</sup> I.C. § 16-1629(8)(Supp. 2016)

<sup>58</sup> I.C. §§ 16-1629(8), 16-2102(Art. III). The ICPC is discussed in detail in Chapter 12 of this manual.