

## **CHAPTER 7: The Permanency Plan and Permanency Hearing**

### **7.1 INTRODUCTION**

There are three types of permanency hearings.

*First Annual Permanency Hearing after Adoption of Case Plan:* Within one year after the child’s removal, the court must hold a permanency hearing. If the court has not found that the parent subjected the child to aggravated circumstances, then reasonable efforts to reunify were required, and the case plan should have included both a reunification plan and an alternate permanency plan for the child. At the first permanency hearing, the court must select a permanency goal, which must be one of the following: (1) continued efforts toward reunification for a period not to exceed three months; (2) termination of parental rights and adoption; (3) guardianship; or (4) another planned permanent living arrangement for youth aged 16 and older.<sup>1</sup> When the court determines that the parents have made substantial progress in satisfying the requirements of the case plan and reunification is imminent, then the case continues toward reunification. When the court determines that the parents have not made substantial progress and reunification is not imminent, then the direction of the case changes to finalizing the alternative permanency goal.

*Permanency Hearing after Aggravated Circumstances are Found:* If the court found that the parent subjected the child to aggravated circumstances, then reasonable efforts to reunify were not required and the case proceeds immediately to a 30-day permanency hearing. At the 30-day permanency hearing, the court approves, modifies, or rejects the permanency goal for the child and the plan for achieving that goal. The options for the permanency goal do not include reunification.

*Subsequent Annual Permanency Hearings:* In every case, the court must continue to hold annual permanency hearings so long as the child remains under the jurisdiction of the court. The permanency plan becomes the benchmark for determining whether the Department has made reasonable efforts to finalize permanency for the child.

---

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

<sup>1</sup> 42 U.S.C. § 675(5)(C)(i) (2012); IDAHO CODE ANN. § 16-1622(2)(a) (Supp. 2014); IDAHO JUV. R. 44(a)(1), 46.

At every permanency hearing, the court must review and either, approve, modify, or reject the permanency plan proposed by the Department.<sup>2</sup> The goal of a child protection proceeding is to achieve timely permanency for the child, achieve permanency within state and federal timelines, and ensure that the Department has made reasonable efforts to finalize the permanency goal in effect for the child

A permanency hearing may be held simultaneously with a review hearing.<sup>3</sup> The functions of a review hearing and a permanency hearing may overlap. When a review hearing and a permanency hearing are combined, the court must make the findings required for each hearing.

## 7.2 THE PERMANENCY PLAN

The permanency plan provides the road map for providing the child with a permanent placement in a timely manner. The plan identifies the court-approved permanency goal(s) for the child as well as steps for achieving that goal(s). Formulation of the plan requires IDHW to systematically analyze the child's needs, develop options for the child's placement, and identify advantages and disadvantages of the placement options in light of the child's needs.

### A. Goals

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

1. A three month extension of efforts to reunify with the parent(s) (in the absence of a judicial determination of aggravated circumstances),<sup>4</sup>
2. Termination of parental rights and adoption,
3. Guardianship, or
4. For children age sixteen (16) years or older<sup>5</sup>, "another planned permanent living arrangement" (APPLA).<sup>6</sup>

#### 1. Continued Efforts to Reunify

The preferred option for permanency is the safe and permanent reunification of the child with his/her parents.<sup>7</sup> The preference for reunification embodied in both Idaho and federal law is that the state must seek, to the fullest extent possible, to reunite the family.<sup>8</sup> The Department must make reasonable efforts to reunify the child with the family, unless the court finds that the parent(s) subjected the child to aggravated circumstances.<sup>9</sup>

<sup>2</sup> § 16-1622(2)(b).

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

<sup>4</sup> IDAHO JUV. R. 44(a)(1).

<sup>5</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 113(b)(2)(A)(i), (f), 128 Stat. 1928, 1929 (2014) (to be codified at 42 U.S.C. § 675(5)(C)(i), effective September 29, 2015). NOTE: This new federal requirement is inconsistent with current Idaho statute at the publication of this manual.

<sup>6</sup> §§ 16-1622(2)(a), 16-1620(2).

<sup>7</sup> *Id.* § 16-1601 (2009).

<sup>8</sup> *Id.*

<sup>9</sup> 42 U.S.C. § 671(a)(15)(D) (2012); §§ 16-1619(6)(d), 16-1620(2) (Supp. 2014). The determination of aggravated circumstances would normally be made at the adjudicatory hearing.

Absent a finding of aggravated circumstances, reunification should be finalized within twelve (12) months from the date the child was removed from his home. The court may, so long as it is in the child's best interest, extend the time to finalize reunification for up to three (3) months.<sup>10</sup>

## 2. Termination of Parental Rights and Adoption

A permanent placement provides the child with a family relationship that will last throughout the child's life, with full and permanent responsibility to the parents that is legally secure from modification and without ongoing state intervention and/or monitoring. If reunification is not a viable option, the permanency preference is termination of parental rights and adoption.<sup>11</sup> Adoption meets all these goals of permanency. Adoption subsidy benefits are available to assist the adoptive parents in meeting the child's needs.<sup>12</sup>

## 3. Guardianship

The third, and less preferred, permanency goal is long-term guardianship. Idaho has adopted provisions to secure the stability of CPA-connected guardianships.<sup>13</sup> Nonetheless, guardianship is a less-preferred option because guardianships are not permanent and are subject to review and modification.<sup>14</sup>

Absent a finding of aggravated circumstances, guardianships should be finalized within thirteen (13) months from the date the child was removed from his home.<sup>15</sup> When there is a finding of aggravated circumstances, the court should finalize guardianships within five (5) months from the date of the judicial determination.<sup>16</sup> Any extension of time to finalize the guardianship requires court approval.<sup>17</sup> Guardianship subsidy benefits are available in limited situations.<sup>18</sup>

## 4. Another Planned Permanent Living Arrangement

Another Planned Permanent Living Arrangement (APPLA) is not considered a permanent placement for a child. The situations in which APPLA is an appropriate permanency goal are **extremely** limited and should be considered only when a permanent placement is unavailable. APPLA may be used only for youth age 16 and older.<sup>19</sup> It may include placement with a foster

<sup>10</sup> IDAHO JUV. R. 44(a)(1).

<sup>11</sup> 42 U.S.C. § 675(5)(B) (2012); 45 C.F.R. § 1356.21(h)(3) (2012).

<sup>12</sup> Adoption is discussed in detail in Chapter 10 of this manual.

<sup>13</sup> See § 15-5-212A (2009).

<sup>14</sup> See Chapter 12: Special Topics.

<sup>15</sup> IDAHO JUV. R. 44(a)(2).

<sup>16</sup> IDAHO JUV. R. 44(b).

<sup>17</sup> IDAHO JUV. R. 44(a)(2).

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

<sup>19</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 113(b)(2)(A)(i), (f), 128 Stat. 1928, 1929 (2014) (to be codified at 42 U.S.C. § 675(5)(C)(i), effective September 29, 2015). NOTE: This new federal requirement is inconsistent with current Idaho statute at the publication of this manual.

family, a group home, or a residential facility. Federal regulations require that IDHW, internally, document the compelling reasons for approving APPLA as the permanency goal for the child.<sup>20</sup> The Idaho Child Protective Act provides that a court may approve a permanency goal of APPLA only upon written, case-specific findings that there are compelling reasons why a more permanent goal is not in the best interest of the child.<sup>21</sup> Federal law requires, in addition, that the court find that APPLA is the best permanency plan for the child.<sup>22</sup>

If the youth cannot currently function in a family setting, ongoing diligent efforts by the Department may result in a family that is willing and able to provide care to the youth in the future. If APPLA is the approved permanency goal for the youth, best practice is to schedule frequent review hearings to ensure that the Department provides appropriate services to the youth and to determine if circumstances have changed sufficiently to allow the youth to function in a family setting.

## ***B. Required Contents of Permanency Plans***

### ***1. All Permanency Plans***

In addition to identifying the permanency goal, each permanency plan must:

- Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement.<sup>23</sup>
- Information regarding the reasonable efforts made by the Department to place the child in the least restrictive environment for the child, and how the Department placement is consistent with the best interest and special needs of the child considering the following placement priority: “(a) a fit and willing relative, (b) a fit and willing nonrelative with a significant relationship with the child, (c) foster parents and other persons licensed in accordance with” Idaho law.<sup>24</sup>
- In the event the child has been in out-of-home care for 15 of the last 22 months and the Department does not intend to file a petition to terminate parental rights, compelling reasons as to why termination of parental rights is not in the best interest of the child.<sup>25</sup>
- Include a schedule to finalize the permanency goal in accordance with the timelines set forth in court rules.<sup>26</sup>
- Document the steps that the Department is taking to ensure that the foster family is following the “reasonable and prudent parent” standard and that the child(ren) has regular opportunities to engage in “age or developmentally appropriate activities.”<sup>27</sup>

<sup>20</sup> 45 C.F.R. § 1356.21(h)(3) (2012).

<sup>21</sup> §§ 16-1620(7) (Supp. 2014), 16-1622(2)(f).

<sup>22</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 112(b)(2)(B)(ii)(II), (c), 128 Stat. 1927, 1928 (2014) (to be codified at 45 U.S.C. § 675(5)(C), effective September 29, 2015).

<sup>23</sup> §§ 16-1622(2)(a) (Supp. 2014), 16-1621(3)(a).

<sup>24</sup> *Id.* § 16-1629(11).

<sup>25</sup> § 16-1622(g).

<sup>26</sup> IDAHO JUV. R. 44(b), 46. The timelines vary depending upon the approved permanency goal and are discussed in the preceding section.

<sup>27</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 112(b)(2)(B)(ii)(I), (c), 128 Stat. 1927, 1928 (2014) (to be codified at 42 U.S.C. § 675(5)(B) and 42 U.S.C. § 671(a)(10), effective September

## 2. Plans with a Concurrent Permanency Goal

At a permanency hearing, the court may approve, modify, or reject a permanency plan with both a primary and secondary permanency goal.<sup>28</sup> When the primary goal is a three-month period of continued efforts at reunification, the permanency plan should also include a concurrent permanency goal.<sup>29</sup> Failure to include a concurrent plan could delay permanency. The permanency plan should include a specific plan for achieving goals.

A plan with a concurrent permanency goal 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. If the child is in an out-of-state placement, whether the out-of-state placement continues to be appropriate and in the best interest of the child.<sup>30</sup>
- Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interest.
- Specifically identify the actions necessary to implement the recommended option.
- Specifically set forth a schedule for accomplishing the actions necessary to implement the permanency goal(s) within the timelines established by court rule.<sup>31</sup>
- Address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.
- In the case of a child who has attained the age of fourteen (14)<sup>32</sup> years, include the services needed to assist the child to make the transition from foster care to independent living.
- Identify further investigation necessary to identify or assess other options for permanent placement, to identify actions necessary to implement the recommended placement or to identify options for maintaining the child's significant connections.

When the primary permanency goal is continued efforts at reunification for a period of up to three months<sup>33</sup>, the permanency plan must also include:

- All issues that must be addressed before the child can safely be returned home without Department supervision.
- The role of the Department toward each parent.

---

29, 2015). NOTE: This new federal requirement is inconsistent with current Idaho statute at the publication of this manual.

<sup>28</sup> §§ 16-1622(2)(a) (Supp. 2014), 16-1621(3)(d).

<sup>29</sup> § 16-1621(3)(c); IDAHO JUV. R. 44(a)(1).

<sup>30</sup> § 16-1622(2)(d).

<sup>31</sup> IDAHO JUV. R. 44, 46. The timelines vary depending upon the approved permanency goal and are discussed in the preceding section.

<sup>32</sup> 42 U.S.C. § 675(1)(D) (2012). Effective September 29, 2015, the age drops from 16 to 14. Federal law requires that the Department, in consultation with the youth in foster care, prepare a personalized transition plan for youth at least 90 days prior to their exit from care, which includes education goals and plans. The plan must be as detailed as the child chooses and include specific options on housing, health insurance, education, local opportunities for mentoring, continuing support services, work force supports, and employment services. For more information on Idaho's independent living program, see Chapter 12: Special Topics, *infra*.

<sup>33</sup> IDAHO JUV. R. 44(a)(1).

- Specific tasks to be completed by the Department, each parent, or others to address each issue.
- Services to be made available by the Department to the parents and in which the parents are required to participate.
- Deadline for completion of each task.
- Terms of visitation, supervision of visitation, and child support.<sup>34</sup>

### 3. Permanency Plans with a Permanency Goal of APPLA

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

- The compelling reasons why a more permanent goal is not in the best interest of the child.<sup>35</sup>
- The Department's efforts to place the child permanently with a parent, relative, or in a guardianship or adoptive placement.<sup>36</sup>
- The steps taken by the Department to ensure that the foster family follows the "reasonably prudent parent standard" and in addition, that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities.<sup>37</sup>

In order to facilitate timeliness for the child, the permanency plan should contain this documentation.

### 4. Implementation Schedule

#### a. *No Finding of Aggravated Circumstances*

If the permanency plan has a goal of termination of parental rights and adoption, the permanency plan shall include a schedule which has the objective of finalizing the termination of parental rights within 18 months from the date the child was removed from home and finalizing the adoption within 24 months from the date the child was removed from the home. Amendments to extend these timelines must be approved by the court.<sup>38</sup>

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

#### b. *Aggravated Circumstances Found*

If the permanency plan has a goal of termination of parental rights and adoption, the permanency plan shall include a schedule to finalize the termination

<sup>34</sup> §§ 16-1622(a) (Supp. 2014), 16-1621(3)(c).

<sup>35</sup> *Id.* §§ 16-1620(7), 16-1622(2)(f).

<sup>36</sup> 42 U.S.C. § 675A(a)(1) (2012).

<sup>37</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 112(b)(2)(B)(ii)(I), (c), 128 Stat. 1927, 1928 and § 111(b), (d), 128 Stat. 1924, 1925 (2014) (to be codified at 42 U.S.C. §675(5)(B) and 42 U.S.C. § 671(a)(10), respectively (both effective September 29, 2015)).

<sup>38</sup> IDAHO JUV. R. 46(a).

of parental rights within six months from the approval of the permanency plan and finalizing the adoption within 12 months from the approval of the permanency plan.<sup>39</sup>

If the permanency plan includes a permanency goal of guardianship, the permanency plan must also include a schedule to finalize the guardianship within five months from the date of the judicial determination of aggravated circumstances. Amendments to extend the time to finalize the guardianship must be approved by the court.<sup>40</sup>

*c. All cases*

Amendments to the permanency plan to extend the time to finalize the permanency goal must be approved by the court.<sup>41</sup>

## 7.3 THE PERMANENCY HEARING

### *A. Timing of the Hearing*

Idaho law requires that a permanency hearing be held no later than 12 months from the date the child is removed from the home or the date of the court's order taking jurisdiction under the CPA, whichever occurs first and at least every 12 months thereafter.<sup>42</sup> In cases where aggravated circumstances are found at the adjudicatory hearing, the court is required to hold a permanency hearing within 30 days of the determination that aggravated circumstances exist.<sup>43</sup>

Federal law requires that a permanency hearing be held within one year from the date the child is considered to have entered foster care and at least once every twelve months thereafter.<sup>44</sup> The date a child is considered to have entered foster care is the date the court found the child to come within the jurisdiction of the CPA or 60 days from the date the child was removed from the home, whichever is first.<sup>45</sup> If the permanency hearing is not timely held, or if the court fails to use the correct language in determining that the Department made reasonable efforts to finalize the permanency plan, an otherwise eligible child may be ineligible for federal IV-E match funds.<sup>46</sup> Eligibility may be reinstated once the permanency hearing is held and/or the court makes a finding that the Department made reasonable efforts to finalize the permanency plan in effect.<sup>47</sup>

The state and federal timelines should be seen as the latest date upon which the permanency hearing should be held. A permanency hearing could always be scheduled earlier. For example,

<sup>39</sup> IDAHO JUV. R. 44(b)(2).

<sup>40</sup> IDAHO JUV. R. 44(b)(1).

<sup>41</sup> IDAHO JUV. R. 44 and 46.

<sup>42</sup> § 16-1622(2)(b) (Supp. 2014).

<sup>43</sup> 45 C.F.R. § 1356.21(h)(2) (2012); §§ 16-1619(6)(d), 16-1620(1) (Supp. 2014). Additional information about the permanency hearing in cases involving aggravated circumstances can be found in Chapter 6 of this manual.

<sup>44</sup> 42 U.S.C. § 675(5)(C) (2012); 45 C.F.R. § 1356.21(b)(2)(i).

<sup>45</sup> 42 U.S.C. § 675(F).

<sup>46</sup> 45 C.F.R. § 1356.21(b)(2)(ii).

<sup>47</sup> *Id.*

where neither parent has made discernable progress in spite of reasonable efforts by IDHW to implement the case plan, an early permanency hearing may be appropriate.

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

IDHW is required to file a permanency plan with the court at least five days prior to the permanency hearing.<sup>48</sup> Similarly, the guardian *ad litem* is required to file a report with the court at least five days prior to the permanency hearing.<sup>49</sup>

### ***C. Engagement of Youth with a Goal of APPLA***

Federal law requires more stringent permanency plan requirements and case review for youth with a permanency goal of APPLA. At every permanency hearing the Department must document the efforts it has made to place the child permanently with a parent, relative, or in a guardianship or adoptive placement. The court must ask the child about his or her desired permanency outcome and must make a judicial determination that APPLA is the best permanency goal for the child. In addition, the court must find that there are compelling reasons why it is not in the best interest of the child to be placed permanently with a parent, relative, or in a guardianship or adoptive placement. Finally, the Department must document the steps it has taken to ensure that the foster family follows the “reasonable prudent parent standard” and whether the child has regular opportunities to engage in “age or developmentally-appropriate” activities.<sup>50</sup>

### ***D. Key Findings at the Permanency Hearing***

Idaho and federal law require that the court must make findings regarding the following matters at the permanency hearing:

- Approving, modifying, or rejecting the permanency plan proposed by the Department and reviewing the progress in accomplishing the permanency plan.<sup>51</sup>
- Whether the Department made reasonable efforts to finalize the permanency plan in effect for the child. This finding must be in writing and must be case-specific. *(If the case specific finding is not timely made, an otherwise eligible child may become ineligible to receive federal IV-E match funds. Federal IV-E match funds will end on the last day of the month in which the finding should have been made. It will be reinstated on the first day of the month in which the finding was made.)*<sup>52</sup>
- If the permanency goal for a youth age 16 and older is another planned permanent living arrangement, whether APPLA is the best permanency goal for the child and that there are compelling reasons why it is not in the best interest of the child to be placed permanently with a parent, a relative, or in a guardianship or adoptive placement.<sup>53</sup>

<sup>48</sup> §§ 16-1620(1), 16-1629(9) (Supp. 2014).

<sup>49</sup> § 16-1633(2).

<sup>50</sup> Preventing Sex Trafficking and Strengthening Families Act *supra* note 50.

<sup>51</sup> §§ 16-1622(2)(b), 16-1620(4).

<sup>52</sup> 45 C.F.R. § 1356.21(b)(2)(ii) (2012); § 16-1622(2)(c) (Supp. 2014).

<sup>53</sup> §§ 16-1620(2), 16-1622(2)(f).

- Whether the child’s connections to the community, including individuals with a significant relationship to the child, religious organizations, and community activities, are appropriately maintained because it is/is not in the child’s best interests to do so.<sup>54</sup>
- Upon motion of the Department, finding that compelling reasons exist to relieve the Department of its obligation to file a petition to terminate parental rights when the child has been in care 15 of the last 22 months.<sup>55</sup>
- In the case of a child in an out-of-state placement, that the placement “continues to be appropriate and in the best interest of the child.”<sup>56</sup>
- In the case of a child who has attained the age of 14, approving “services necessary to assist the child to make a transition from foster care to independent living.”<sup>57</sup>

### *E. Stipulation by the Parties*

The parties may stipulate to the permanency plan at the permanency hearing. Pursuant to IJR 38, such a stipulation must be made part of the court record and is subject to court approval.<sup>58</sup> 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. The court should ensure that the permanency plan has been thoroughly considered by all participants, especially both parents, if involved.

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

## **7.4 REASONABLE EFFORTS TO FINALIZE PERMANENCY**

The court must make a case-specific finding that the Department made reasonable efforts to finalize the primary permanency goal in effect for the child, and the finding must be documented in the court records.<sup>59</sup> If the findings are not made, an otherwise eligible child will lose eligibility for federal IV-E foster care payments. Eligibility will be lost on the last day of the month in which the finding was required. Eligibility may be reinstated on the first day of the month in which the required finding is made.<sup>60</sup>

At the first annual permanency hearing, the “primary permanency goal in effect” is generally the permanent plan identified by the Department in the case plan approved by the court.<sup>61</sup> However, the Department may identify a different permanency goal prior to the permanency hearing and might make efforts towards the new goal without court approval.<sup>62</sup> If the

<sup>54</sup> §§ 16-1620(3)(f), 16-1621(3)(d)(v), 16-1622(2)(a).

<sup>55</sup> § 16-1622(2)(g).

<sup>56</sup> *Id.* at (2)(d).

<sup>57</sup> 42 U.S.C. 675(5)(C)(i) (2012); §§ 16-1620(3)(g), 16-1622(2)(e) (Supp. 2014). On September 29, 2015, the federally mandated age at which planning for “a successful adulthood” is required is lowered to 14.

<sup>58</sup> IDAHO JUV. R. 38.

<sup>59</sup> 42 U.S.C. § 675(5)(C)(i) (2012); 45 C.F.R. § 1356.21(b)(2); § 16-1622(2)(c) (Supp. 2014).

<sup>60</sup> 45 C.F.R. § 1356.21(b)(2)(ii).

<sup>61</sup> § 16-1622(2)(c) (Supp. 2014).

<sup>62</sup> The U.S. Department of Health and Human Services, Administration for Children and Families has a Child Welfare Policy Manual with questions and answers about ASFA, in which the USDHHS states that “The State is not required to reconcile the permanency plan in effect at the time the judicial determination is due with the reasonable

Department changes the initial permanency goal identified in the case plan, the reasonable efforts to finalize permanency finding is a retrospective analysis of whether the Department made reasonable efforts to finalize the most current permanency goal(s).<sup>63</sup> Typically, this means that the permanent plan for the first twelve (12) months of a CPA proceeding, prior to the first permanency hearing, is reunification with the parents. The recommended best practice is for the Department to file a motion with the court to amend the case or permanency plan as soon as possible, once the Department changes the goal.

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

## **7.5 OTHER FACTORS THE COURT SHOULD CONSIDER AT THE PERMANENCY HEARING**

### ***A. Sibling Placement***

There is a federal preference for placing siblings together.<sup>64</sup> For some children, sibling relationships are the longest and closest relationships they will experience. A child removed from his or her parents should not also suffer the separation loss from brothers and sisters. If siblings cannot be placed together, then the permanency plan should ensure ongoing interaction between the siblings unless ongoing interaction would be contrary to the safety or well-being of any of the siblings.<sup>65</sup>

In 2008, the federal Fostering Connections to Success and Increasing Adoptions Act imposed a number of requirements on states relevant to these provisions of Idaho law.<sup>66</sup> Fostering Connections requires that reasonable efforts to place siblings together in the same foster home,

---

efforts determination itself. In order to sustain a child's ongoing title IV-E foster care eligibility, the court must make a judicial determination of reasonable efforts to finalize a permanency plan within 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care. We have indicated that we will not instruct courts on the criteria they are to use to make the judicial determination. At the same time, however, we recognize the significance of the provision as it relates to moving a child toward permanency. The courts, therefore, may rule on the plan that is in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months, even if the plan had been abandoned during that 12-month period. In any event, the judicial determination should reflect the court's judgment as to whether the agency activities that were performed during the previous 12 months were meaningful in bringing about permanency for the child." ADMIN. FOR CHILDREN & FAM., U.S. DEP'T HEALTH & HUMAN SERVS., CHILD WELFARE POLICY MANUAL (2011) available at [http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=142](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=142) (last visited April 29, 2015).

<sup>63</sup> *Id.*

<sup>64</sup> 42 U.S.C. § 671(a)(31)(A), (B) (2012).

<sup>65</sup> *Id.*

<sup>66</sup> ADMIN. FOR CHILDREN & FAM., U.S. DEP'T HEALTH & HUMAN SERVS., GUIDANCE ON FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, ACYF-CB-PI-10-11 (2010), available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf> (last visited April 29, 2015).

adoptive home, guardianship home, or other placement unless such a joint placement would be contrary to the safety or wellbeing of any of the siblings.<sup>67</sup> If siblings are not placed together, the state must provide for frequent visitation or other ongoing interaction between the siblings, unless doing so would be contrary to the safety or wellbeing of any of the siblings.<sup>68</sup>

### ***B. Visitation and Child Support***

To the extent that maintaining the relationship is in the child's best interests and is consistent with the permanent plan for the child, it is important that the child have the opportunity for regular and meaningful contact with the parent.<sup>69</sup> It is equally important that visitation include appropriate terms and conditions to protect the child's safety, to protect the child from undue distress that may result from a parent's inappropriate behavior during visitation, and to avoid disruption of the child's foster care placement. The plan should set forth provisions as to the frequency, duration, location, supervision, or other terms or conditions of visitation.<sup>70</sup> Parents who are able to pay should be expected to help cover the costs of foster care, and the amount and frequency of child support should be addressed in the permanency plan.<sup>71</sup>

### ***C. Maintaining the Child's Connection to the Community***

Idaho Code requires that both the case plan and the permanency plan address options to maintain the child's connection to his/her community and to maintain significant relationships in the child's life.<sup>72</sup> Fostering Connections requires states to emphasize children's relationships with siblings and other close relatives,<sup>73</sup> to maintain educational stability for the child,<sup>74</sup> and to provide a transition plan for children aging out of foster care without a permanent placement or community connections.<sup>75</sup>

Fostering Connections requires the Department to notify adult relatives of a child's removal from parents within 30 days of that removal. Notification enables relatives to provide support to the family and be considered as a foster, adoptive and/or guardianship placement for the child. If relatives are identified after 30 days, notification should occur as soon as possible. Parents should be encouraged to assist the assigned social worker in the identification of relatives to prevent their late notification. The Preventing Sex Trafficking and Strengthening Families Act of 2014 expanded required notification to the parents of the child's siblings. This includes the parents of any siblings who were previously adopted.<sup>76</sup>

With regard to educational stability, Fostering Connections requires the Department to have a plan that takes into account the appropriateness of the child's current educational setting, to ensure that the child remains in the school of origin, or if such enrollment is not in the child's

<sup>67</sup> 42 U.S.C. § 671(a)(31)(A), (B) (2012).

<sup>68</sup> *Id.*

<sup>69</sup> §§ 16-1622(2)(a) (Supp. 2014), 16-1621(3)(c).

<sup>70</sup> Idaho Code sections 16-1620(3)(f) and 16-1621(3)(a)-(d) require the case plan and the permanency plan to include provisions to maintain the child's significant relationships if in the child's best interests.

<sup>71</sup> *Id.* § 16-1628(1).

<sup>72</sup> §§ 16-1620(3)(f), 16-1621(3)(d)(v).

<sup>73</sup> 42 U.S.C. § 675(a)(31)(A), (B) (2012).

<sup>74</sup> 42 U.S.C. § 675(a)(30).

<sup>75</sup> 42 U.S.C. § 675(5)(H), (8)(B).

<sup>76</sup> 42 U.S.C. § 671(a)(29).

best interest, to provide immediate and appropriate enrollment in a new school. The Act also requires the Department to monitor the child's school attendance.<sup>77</sup>

#### ***D. Youth Transitioning Out of Foster Care***

With regard to the transition from foster care, federal law requires the state to provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, including options for housing, health insurance, education, mentoring, workforce supports, and employment services.<sup>78</sup>

For youth with a permanency goal of APPLA, federal law requires more stringent permanency plan requirements and case review. At every permanency hearing the Department must document the efforts it has made to place the child permanently with a parent, relative, or in a guardianship or adoptive placement. The court must ask the child about his or her desired permanency outcome and must make a judicial determination that APPLA is the best permanency goal for the child. In addition, the court must find that there are compelling reasons why it is not in the best interest of the child to be placed permanently with a parent, relative, or in a guardianship or adoptive placement. Finally, the Department must document the steps it has taken to ensure that the foster family follows the "reasonable prudent parent standard" and whether the child has regular opportunities to engage in "age or developmentally-appropriate" activities.<sup>79</sup>

#### ***E. Time and Date for the Next Hearing; Orders Needed***

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

#### ***F. Subsequent Permanency Hearings***

There is a continuing obligation to hold a permanency hearing once every twelve (12) months until the case is closed.<sup>80</sup> State law requires the court to make written, case-specific findings that the Department has made reasonable efforts to finalize the permanency plan in effect for the child.<sup>81</sup> Permanency hearings may be combined with review hearings, however if the hearings are combined, care must be taken to make the necessary findings for both the review and permanency hearings.<sup>82</sup>

---

<sup>77</sup> 42 U.S.C. § 675(1)(c). See also ADMIN. FOR CHILDREN & FAM., U.S. DEP'T HEALTH & HUMAN SERVS., GUIDANCE ON FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, ACYF-CB-PI-10-11 (2010), available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf> (last visited April 29, 2015).

<sup>78</sup> 42 U.S.C. § 675(H).

<sup>79</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 112(b)(2)(B)(ii)(I), (c), 128 Stat. 1927, 1928 and § 111(b), (d), 128 Stat. 1924, 1925 (2014) (to be codified at 42 U.S.C. §675(5)(B) and 42 U.S.C. § 671(a)(10), respectively (both effective September 29, 2015)).

<sup>80</sup> § 16-1622(2)(a), (b) (2014).

<sup>81</sup> § 16-1622(2)(c); IDAHO JUV. R. 45(a)(3).

<sup>82</sup> § 16-1622(2)(b); IDAHO JUV. R. 45(c).

## CONCLUSION

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

