

Chapter 13 – Permanency Hearing

13.1 Overview

After a child has been adjudicated dependent and the court has issued a disposition order under 42 Pa.C.S. § 6351(a), Pennsylvania’s Juvenile Act requires the court continue its oversight of the case by holding a series of subsequent hearings “for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child” (42 Pa.C.S. § 6351(e)). All such post-dispositional hearings, whenever they occur, are denominated “permanency hearings” in Pennsylvania. Moreover, the Juvenile Act specifies a long list of determinations that must be made at all permanency hearings — again, whenever they occur.

However, as a practical matter, the primary focus and issues emphasized at these hearings will vary substantially, depending on the posture of the dependency case involved. In general, early permanency hearings often serve as status review hearings, in which the primary concerns are with issues of compliance with the initial permanency plan, progress being made towards plan goals, minor plan adjustments that may be necessary in view of changes in circumstances and ensuring reasonable efforts are made by the agency to finalize the court ordered permanency plan. In later permanency hearings, on the other hand, the focus is likely to emphasize the remaining steps that are needed to finalize permanency — and whether the original goal still appears to be appropriate and feasible. In some cases, it is necessary to hold a permanency hearing to choose a new goal. Considerations applicable to permanency hearings where the focus is on changing the permanency goal are distinctive enough to warrant treatment in a separate chapter (See Chapter 14: Permanency Hearing: To Consider Change of Goal).

In each permanency review hearing the court must determine whether or not the agency made reasonable efforts to finalize the permanency goal (See also Chapter 20; General Issues, Section 20.3: “Best Interests” and “Reasonable Efforts” Findings), whether or not the agency made reasonable efforts to comply with family finding, the appropriateness of the permanency goal and concurrent plan, the parents’ compliance and progress as well as a number of issues specifically related to each dependent child. Updated evidence is needed at each hearing for each of these issues so as to enable these judicial determinations.

The following sections will not only discuss requirements common to all permanency hearings, but will offer practical suggestions for making the best and most efficient use of these hearings at various stages of dependency proceedings, in order to achieve the overall goal of safe, timely permanence while ensuring child well-being.

13.2 Timing of Permanency Hearings

Permanency hearings must be held within the timeframes dictated by 42 Pa.C.S. § 6351(e) and Pa.R.J.C.P. 1607. Generally speaking, courts are required to hold permanency hearings every six months from the start of a case until its final resolution. But in cases involving “aggravated circumstances,” including criminal misconduct, gross abuse or neglect, or abandonment on the parent’s part, a faster timetable is imposed (for a more complete discussion of aggravated circumstances, see Chapter 20: General Issues, Section 20.2: Aggravated Circumstances).

An initial permanency hearing must be held within six months of the date of the child’s removal from the parental home for placement or pursuant to a transfer of temporary legal custody or other disposition, whichever is earliest (42 Pa.C.S. § 6351(e)(3)(i); Pa.R.J.C.P. 1607(B)). Thereafter, the court must conduct a permanency hearing every six months until the child is returned to a parent or guardian, or removed from the jurisdiction of the court.

A permanency hearing must be held within 30 days of (42 Pa.C.S. § 6351(e)(3)(ii) and Pa.R.J.C.P. 1607(A)):

1. An adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child’s parent, guardian or custodian or to preserve and reunify the family need not be made;
2. A permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child’s parent or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court’s determination;
3. An allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or
4. A motion alleging that the hearing is necessary to protect the safety or physical, mental or moral welfare of a dependent child.

Best Practice — Frequent Judicial Oversight

Frequent judicial oversight keeps everyone accountable. Although permanency hearings are mandated to occur at least every six months, best practice guidelines encourage conducting permanency hearings at a minimum of every three months — particularly in the early stages of the case or at other critical junctures. Beginning the permanency planning at the 3-month mark rather than at the 6-month mark recognizes the child’s need for early resolution of permanency and is a more effective way of assuring progress toward securing permanency for the child. In cases, where the parents are not working on their family service plan goals or where it is unlikely that the parents will ever be able to remedy the conditions that led to removal and placement, holding permanency hearings in a 3-month cycle will result in earlier permanency for children.

Motions are also an efficient way to resolve issues that need to be brought to the court’s attention between permanency hearings. Single issues can be heard without crowding the court docket or trying to advance hearing dates.

Judges and hearing officers should take the lead in scheduling status reviews that address single issues that should not be left unattended between permanency hearings, such as whether the child moved from shelter care to kinship or foster care, and whether services ordered are in place. This is an efficient way to provide early resolution of issues. It is not necessary for caseworkers to complete full family service plans for each status hearing.

Note that these mandated timeframes do not preclude scheduling a permanency hearing sooner than the law prescribes — for example, whenever it becomes clear that the present plan is no longer appropriate. Moreover, individual courts may choose to establish a more expedited schedule of permanency hearings as a matter of good practice.

13.3 Pre-Hearing Conferences

Courts should consider holding pre-hearing conferences that include all parties and their legal representatives for review in complex cases. This enables the judge or hearing officer to get a feel for the number of potential witnesses and the type of evidence that may be introduced, set limitations on witnesses, make advance rulings on evidence, and handle other issues that may contribute to effective time management and the smooth running of the hearing. In addition, a pre-hearing conference may provide an occasion for the use of facilitation or mediation strategies.

As a rule of thumb, a complex case is one involving multiple siblings, one in which sexual abuse, physical abuse resulting in serious bodily injury, or aggravated physical neglect is alleged, or one in which so many witnesses will be called that more than two hours will be required to complete the hearing.

13.4 Hearing Objectives

The general purpose of any permanency hearing is to make progress toward finding a permanent placement for the child. The court should not just receive an “update” of what occurred between review hearings, but should actively engage the parties and work toward identifying a permanent placement for the child.

At every permanency hearing, the judge or hearing officer must review and determine the child’s permanency plan, the date by which the permanency goal might be achieved, and whether the placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child. The court may also assess the status of the case, re-examine long-term goals, or refine or update the case plan, if necessary.

Best Practice — Issues to be Emphasized at Permanency Hearings

Although Pennsylvania statutes essentially create an all-inclusive statutory “permanency hearing” category that encompasses both routine review-type hearings and hearings that truly focus on finalizing permanency, this should not diminish the importance of this distinction in actual court practice.

One way to operationalize the distinction is by reference to the matters that the judge or hearing officer is required to address at permanency hearings under 42 Pa.C.S. § 6351. In most instances, in permanency hearings that are scheduled within the first year of a case, the issues that are of overriding concern include the appropriateness, feasibility and extent of compliance with the permanency plan, progress made toward alleviating circumstances necessitating placement and whether reasonable efforts are being made by the agency to finalize the permanency plan.

In permanency hearings involving children who have been in placement for 12 to 18 months or longer, on the other hand, other issues become of paramount concern, including the continuing necessity and appropriateness of placement, the appropriateness and feasibility of the current placement goal, the likely date that the placement goal might be achieved, whether a petition for termination of parental rights should be filed and when the child will achieve permanency.

As noted above, however, hearings that are denominated “permanency hearings” in the Juvenile Act may have different functions, depending on when they occur in the dependency proceeding. Some of the basic sub-types of permanency hearings include:

Expedited Review Hearings for Youth in Shelters — If at the time of disposition, the child has not been returned to the care of the parents or guardians and remains in shelter care, respite care or other short-term/temporary placement, the judge or hearing officer should review the child’s placement within 30 days to ensure that the child has either returned home or has been placed as directed by the dispositional order.

Expedited FSP Status Hearings — Pennsylvania statutes encourage an expedited court process through adjudication and disposition. Ideally, adjudication occurs within 10 days of petition filing and most courts routinely consider dispositional issues immediately after adjudicatory determinations are made. Review of the appropriateness of the Family Service Plan (FSP) should be a central component of the dispositional process. However, the agency has up to 30 days in removal cases and 60 days in non-removal cases to fully complete the case plan. Consequently, a fully developed FSP might not be available for consideration at the time of disposition. (See also Chapter 10: Disposition)

The court has statutory discretion to proceed with disposition even if a FSP is not available. But waiting six months for the next *required* permanency review to examine the FSP is probably too long, given the short permanency timeframes envisioned by the federal Adoption and Safe Families Act (ASFA) and Pennsylvania statutes.

In these instances, it makes sense for the court to schedule an expedited FSP status hearing that allows for an in-court examination of the FSP (with all parties present). This practice helps to ensure that all parties understand FSP provisions/expectations, and it allows the court to examine the steps that have already been taken with respect to the plan. This hearing should probably occur within 45-60 days of the disposition hearing.

6-Month Permanency Hearing — This is the first statutorily required permanency hearing after disposition. At this hearing, the agency is required to submit an updated FSP and evidence regarding the reasonable efforts made by the agency to finalize the permanency goal. Depending on the court, this may include a report summarizing the efforts made and case progress to date. The report usually also addresses the continuing appropriateness of the placement, the permanency plan and an estimated date for achieving this plan.

Best Practice — Permanency Reviews Every 3 Months

While only required by rule every 6 months, permanency reviews occurring every 3 months provides for better judicial oversight leading to more timely permanence for youth and increased child well-being. Parents receive the benefit of judicial pressure to remedy conditions that led to involvement with the dependency system and frequent reminders that the clock is ticking. Likewise, the agency can address concerns more quickly and can be held accountable in their provision of reasonable efforts to achieve permanency for youth.

Ideally, the agency has “front-loaded” services, which is crucial to successful reunification or permanency. At this hearing the judge or hearing officer should make sure that all the services are in place and fine-tune the permanency plan. As in every proceeding, the court must determine, through proper inquiry, whether the children are safe.

This hearing marks the beginning of a transition in focus from examining case progress to the initiation of some definitive steps to finalization of the child’s permanency plan. **Serious** discussion of a child’s concurrent plan is appropriate if substantial case progress has not occurred.

“Gentle pressure, relentlessly applied.”

- Honorable Max Baer, Supreme Court Justice

In all cases where children are removed from the home, the agency is required to implement a concurrent plan. Concurrent planning is the practice whereby the agency simultaneously establishes and executes one permanency goal along with a concurrent plan for the child. If for any reason the primary goal does not work out for the child, the concurrent plan can be immediately effectuated. Concurrent planning can significantly shorten the length of time a child remains in care since virtually no time is lost from the end of the primary plan to the initiation of the concurrent plan.

The court’s role in concurrent planning is to determine that both the permanency goal and concurrent plan are appropriate and are established in a timely manner. The court will review the status of the concurrent plan at all permanency hearings, but the concurrent plan should initially be established at disposition.

Additionally the court must make a finding as to whether or not the agency has made reasonable efforts to finalize the permanency goal. This necessitates receiving information regarding the agency’s efforts to assist the parents in accessing services and meeting the Family Service Plan

requirements if the permanency goal is reunification. Likewise, if the permanency goal is adoption, legal guardianship, fit and willing relative or another planned permanent living arrangement, the agency must demonstrate the “reasonable efforts” made to finalize such. The court should also consider any additional efforts required by court order.

12-Month Permanency Hearing — By this time (unless extenuating circumstances apply) the focus of the permanency hearing process should clearly shift to finalization of the child’s permanent plan. If the plan goal remains reunification but the child cannot now be returned home, the judge or hearing officer should set very clear expectations regarding what needs

Best Practice — Considerations for Permanency Hearings

More frequent reviews can shorten the time it takes to review a case in court. These short reviews keep all parties on their toes and it is easier for the court to “pick up where it left off at the last review”, instead of “rehashing” issues that were already litigated. The progression of the case is easier to follow as well. Remember to allow additional time in cases with multiple siblings as the court must independently review the case and plan for each child.

Holding “dual hearings” for dually adjudicated youth is a more efficient way to provide oversight in a case. Dual hearings enable the court to clearly define the responsibilities of the agency and the probation department. Dual hearings also help to streamline services.

The court should have basic questions for caseworkers, foster parents, service providers, therapists, etc. in order to assess compliance, progress, and the quality of the services and the permanency plan. Remember to give each party and interested person the opportunity to be heard.

The child welfare agency’s proposed permanency plan should be provided to all parties and their legal representatives sufficiently in advance of the hearing to allow for preparation and response. If there has been a family conference as part of a family group decision-making process, the report and recommendation from that conference should be included with the child welfare agency’s report and submitted to the court for approval as the permanency plan. Citing the importance of the permanency hearing as a step in the move to permanency for the child, the *Enhanced Resource Guidelines* recommends that the court should not accept stipulations to the plan or agreed orders without full examination of the parties to ensure their understanding of the issues under consideration (NCJFCJ, 2016, pp. 299-300).

to happen to achieve this goal within a clearly defined timeframe. In these situations it is also appropriate for the judge or hearing officer to schedule expedited status reviews to ensure that steps are being taken to return the child home. The judge or hearing officer should make it clear, that if expectations are not met, a goal change is likely to occur at the next permanency hearing.

15-Month Permanency Hearing — At the fifteenth-month hearing mark, the agency is required by the Adoption and Safe Families Act (ASFA) to move toward termination of parental rights if the child has remained in care for 15 of the last 22 months. Unless the court says otherwise, such as making a finding of a compelling reason not to pursue termination, the agency must file a petition for the termination of parental rights (TPR). It is not the agency's decision whether or not to file for termination. It is presumed that the agency will file for termination at 15 months when conditions necessitating placement have not been remedied unless the court makes a determination to the contrary. At this hearing, the court will change the goal to adoption, unless finding it is not in the child's best interest to do so or compelling reasons not to terminate parental rights, and direct the agency to file a petition to terminate parental rights (Pa. R.J.C.P 1608 (D)(3)).

18-Month Permanency Hearing — Again, unless some very extenuating circumstances apply, the primary decision made at this hearing will be to immediately reunify the child with the parents or guardians or, if this is still not possible, determine the specifics of an alternative permanency plan. If the court directed the agency to file a petition for termination of parental rights, or assumed the agency would do such per ASFA, asking about the petition being filed and what progress has been made toward TPR is appropriate.

Permanency Hearing: To Consider Change of Goal — (see Chapter 14: Permanency Hearing to Consider Change of Goal/"Goal Change Hearing".)

13.5 Conduct of the Hearing

13.5.1 Courtroom Management

At times permanency hearings can be more contentious than adjudication hearings. Often, the facts alleged in the petition for dependency and even the issue of dependency itself is not in dispute. However, after time has elapsed, the parties are not always in agreement as to what should happen. The parents may feel they have done everything required of them to be reunified with their children. The agency may not agree. In particular, a permanency hearing to consider a change of goal can be particularly emotionally devastating to both child and parents.

The permanency hearing must be driven by the judge or hearing officer. It is important for the judge or hearing officer to set the tone for the hearing and to control the proceedings. The judge or hearing officer should make it clear what the issues are and keep the parties focused.

At the onset, the judge or hearing officer should state the purpose of the hearing and what the court needs to decide. This keeps the parties and the lawyers focused. Unless there is an emergency, only matters that are properly before the court should be decided. However, the safety of the child is always relevant!

It is important that the parties have an opportunity to be heard and have their positions considered as this hearing is often about the process and not the result. In particular, the judge or hearing officer should consult with the child to ensure the child's views have been ascertained to the fullest extent possible. On the other hand, it is important not to let the parties and the lawyers turn the hearing into a family therapy or "venting" session. Testimony and evidence should be relevant to the proceeding and focused on the determinations that must be made at a permanency hearing.

The judge's or hearing officer's demeanor should reflect the seriousness of the proceedings for all parties. The parties should feel that they have the opportunity to be heard at the appropriate time. The judge or hearing officer should strongly discourage people from speaking unless they are being addressed by a lawyer or the court. The judge or hearing officer should control the emotions of the parties, making it clear that parties and others who have relevant evidence, or who have a legitimate interest in the child or the outcome, will be heard, but that persons who are out-of-control may be asked to leave the courtroom.

The judge or hearing officer must demand that the professionals involved in the case — the lawyers, caseworkers, services providers, and others be prepared. If the lawyers and others know that the judge or hearing officer has high expectations, they will be prepared.

The judge or hearing officer should be an active listener, and should ask questions to supplement the record, to clarify matters, or to cover matters that were neglected by the parties. This is especially important when a party is *Pro Se* and unable to adequately examine witnesses. Moreover, the court's obligation to make an informed decision may require the judge or hearing officer to intervene by asking questions, in order to develop the evidence necessary to inform the decision.

The court should allow sufficient time for the matters to be heard. The *Enhanced Resource Guidelines* recommends 60 minutes be allocated for a routine review hearing (NCJFCJ, 2016, p. 299). Some things that should be taken into

consideration in scheduling sufficient time for a hearing are: the number of children; the number of witnesses who will testify; the complexity of the issues; the special needs of the children and/or the parents; and whether it is a dually adjudicated dependency/delinquency hearing. This list is by no means exhaustive. In allocating time for a hearing, the court should include the time it takes to complete the written court order contained in the AOPC's CPCMS Dependency Module so the order can be distributed to all parties at the conclusion of the hearing (see section 13.8 for a discussion of court orders).

The timing of the hearing is also important. The "cattle-call" approach is inhumane as it often requires parties and witnesses to sit in the courthouse for an entire day before entering the courtroom. The judge or hearing officer should be mindful that as people are waiting they may be missing school and work; medications are wearing off or missed; young children are missing nap time or nap time is disrupted; and children and families are missing meals. The bottom line is that it is equally important for the parties to feel that they have had an adequate opportunity to be heard and that the court has considered their positions.

13.5.2 Persons in Attendance

At a minimum, children, parents (including putative fathers), relatives, other adults with custody, the caseworker and anyone else with a proper interest, including family members, kin, fictive kin and supports, should attend the hearing. The judge or hearing officer should ensure that all parties, including the parents, have legal representation. If the parents are not represented, the judge or hearing officer should make sure they understand they are entitled to representation and that they are voluntarily choosing to proceed without representation (see Chapter 5: Right to Legal Representation, Section 5.5: Waiver of Counsel for a colloquy).

The child must be present at all proceedings, except for good cause shown (Pa.R.J.C.P. 1128). The child's attendance at the permanency hearing is particularly important, because the court is required to ascertain, to the fullest extent possible, the child's wishes regarding the permanency plan. The preferred method is for the judge or hearing officer to hear directly from the child. Even though the child's wishes may be contrary to the child's best interest, it is important for the judge or hearing officer to view the case "through the eyes of the child." The judge or hearing officer should consult with the child in a manner appropriate to the child's age and maturity.

Upon motion or request in advance of the hearing, the judge or hearing officer may excuse the child from a hearing for good cause. If the child is not present in court, or does not wish to speak to the judge or hearing officer, the views of the child may be communicated to the court by the GAL, attorney, CASA or other person designated by the court. The judge or hearing officer must ensure that the child's wishes are known in every case (See also Chapter 20: General Issues, Section 20.6: Children in the Courtroom).

Pa.R.J.C.P. 1129 allows for the child (and other parties) to appear by Advance Communication Technology (ACT). However, this should be the exception rather than the rule as there are other important reasons for a child to appear in person. Appearance in the courtroom permits the judge or hearing officer to assess things such as the physical health and well-being; the care that is being provided by the caregivers; and the bond and relationship with the parents, foster parents and others. Although Rule 1129 permits appearance by ACT, at a minimum the child must appear in person at least every six months.

Best Practice — Establishing Paternity

Protocol for the Agency:

- a) Check with the Bureau of Child Support Enforcement (BCSE) paternity tracking system for acknowledgements of paternity.
- b) Check Pennsylvania Child Support Enforcement System (PACSES) for orders of support.
- c) Ask/interview the mother.
- d) Ask/interview the child.
- e) Check all collateral sources (schools, medical records, neighbors, other relatives)

Protocol for the Court:

- a) Establish a legal father (only one father per child).
- b) Question mother and/or the child under oath.
- c) Explain to mother the importance of establishing paternity.
- d) In cases where there is no legal father, and an alleged father appears, the judge should do a colloquy on the record about his obligations (child support, etc) and then ask him to sign an acknowledgement of paternity or order genetic testing.
- e) In cases with a legal father, and there is a question as to who the biological father is, require the party seeking a paternity test to file a motion or petition seeking genetic testing with service upon and notice to the legal father.
- f) Never order genetic testing in a case with a legal father, without first disestablishing paternity.
- g) The court order should reflect whether paternity has been established and, if not, the reason(s) paternity has not been established and what efforts, if any, are being made to establish paternity.
- h) If paternity has not been established before the adjudication of dependency, but is subsequently established through either acknowledgement or genetic testing, the court should enter an order establishing paternity.
- i) If paternity has not been established, at every court hearing, the court should inquire as to the efforts that have been made to establish paternity.

If paternity has not been established at this point, it is important for the judge or hearing officer to insist that paternity be established. If paternity has been established but the father is not participating in the hearings, visiting the child or working on family service plan goals, the judge or hearing officer should direct the caseworker to take affirmative action to engage or involve the father. (See Locating Fathers & Establishing Paternity Bench Card).

If a parent is incarcerated, the judge or hearing officer should demand the caseworker make personal contact with the parent at the correctional facility. Most correctional facilities have videoconferencing capabilities that will allow a parent to participate in the hearing by videoconference or at least by teleconference. (See Chapter 9: Incarcerated Parents.)

A deputy Sheriff or other court security should be present to ensure that all persons attending the hearing feel safe and are safe.

Foster parents, pre-adoptive parents and relatives providing care are all entitled to timely notice and the opportunity to be heard at permanency hearings; this does not give them legal standing in the proceeding unless they have been awarded legal custody (42 Pa.C.S. § 6336.1). Under ASFA, however, foster parents and pre-adoptive foster parents are entitled to notice of the hearing and a right to be heard. (42 U.S.C. § 675 (5) (G)). If foster parents, pre-adoptive parents or kinship caregivers have not submitted a written report (see discussion below, under “Admissibility of Evidence, Reports and other Documents”) or do not ask to be heard, the judge or hearing officer should nevertheless engage them concerning the child’s progress, behaviors, needs, etc. When children have been placed outside of the home, caregivers spend more time with them than the parents, caseworkers or the lawyers. As such, they are in the unique position to

Best Practice — Kinship Care

The judge or hearing officer should encourage kinship care where such care provides for the safety of the child. Kinship care includes relatives by blood, marriage or adoption and other supportive persons known to the child and family. Inquiries should be made as to the agency’s use of family finding and other family engagement techniques. Even when kin has been identified, the court should require the agency to continue family finding to expand the number of supports for the child and the family.

If relatives and extended family are available, Family Group Decision Making should be considered. FGDM allows the family to develop its own plan that provides for the child’s safe care and, as a consequence, the family becomes invested in the plan and is more likely to follow the plan and make progress on the goals (*The Mission and Guiding Principles for Pennsylvania’s Dependency System*, 2009, p.13).

observe and assess the child's behavior, progress, adjustment and needs on a daily basis. It is also important to ascertain whether caregivers are helping to facilitate the permanency goal, and working toward safe reunification in partnership with the agency.

Ideally, service providers should attend. Although hearsay is admissible at a permanency review hearing, sometimes the court may require information that is not contained in any reports that have been offered or that is beyond the caseworker's knowledge. Additionally, it is important for the providers to hear the court's findings and orders on the record to have a better understanding of the court's expectations. If it is not possible for the service provider to be at the hearing in person, they are permitted to appear by ACT (Pa.R.J.C.P. 1129).

If a CASA has been appointed, the CASA should attend the permanency hearing. (See Chapter 20: General Issues, Section 20.9 for more information about CASA)

If ICWA is applicable, the Indian custodian, counsel for the tribe, a tribal representation or liaison should be present. It would be appropriate for these persons to participate by video or teleconference if they are unable to attend in person.

Other persons that should be present (if applicable) include: parents of a half-sibling who have custody of the half sibling, parent support partners or mentors, education liaisons and school representatives, education decision makers, adult or juvenile probation officers and interpreters.

13.6 Matters to be Determined

Pa.R.J.C.P 1608 (D) requires the court to ensure that seventeen basic issues be determined at permanency review hearings. If these matters are not covered by counsel, then the judge or hearing officer should take the lead. Following this chapter are lists of suggested questions to assist the court in covering the matters set forth below. However, it should be remembered that the lists of suggested questions are not exhaustive, and that the questions must be adapted to suit specific cases and the language tailored to suit specific witnesses.

13.6.1 Continuing Necessity of Placement

The court must determine whether the placement continues to be necessary and appropriate for the child and whether the child is safe. If the child is placed, the court must determine whether the placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child. Judges and hearing officers should ask why placement is still needed, whether the child is or should be placed with siblings, if there is any family member available for placement or visitation with the child, if the placement is meeting the child's needs,

if the child is happy, safe and adjusted to the placement. An additional inquiry into the services needed to assist a child who is fourteen years of age or older to make the transition to independent living should also be made (See the discussion of Transitioning Youth, Section 20.8 in Chapter 20: General Issues.)

In deciding whether placement of the child remains necessary, the court should consider and assess child vulnerability, parental capacity and safety threat. Depending on the age and maturity of the child or the parents, the assessment and ultimate risk may be different. In deciding the issue of return, the court should consider the protective capacity of the parents. "Protective capacity" refers to the behavioral, cognitive and emotional characteristics that can specifically and directly be associated with a person's ability to care for and keep a child safe. This may not be the same for each sibling. For example, a parent with an intellectual disability may be able to safely parent a 16-year-old child with no special needs, but may not be able to parent a 2-year-old child or a 16-year-old child with special medical needs.

Return should not be based upon compliance, but rather progress and the mitigation of safety threats. A parent may not have completed every program or goal, but **once the risk to the safety of the child is removed or mitigated, in most cases, the child should return home.**



13.6.2 Appropriateness of Placement

The determination of the appropriateness of the placement involves the consideration of the child's needs and is based on information about the child's behavior, health, mental status, education and development.

Questions that may assist in this determination are ones about the safety of the child, the visitation plan and whether it is adequate and, if separated from siblings, whether or not sibling visits are occurring. The court should also determine whether the child's medical needs are being met and ask questions about immunizations, dental care, glasses, medications and other special medical needs, as well as the need for mental health or other therapeutic services and whether or not these are being provided (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p.13).

If the child is displaying behavioral issues, or if the placement was due to ungovernability, the judge or hearing officer should also inquire as to the child's level of compliance and assess the progress that has been made toward alleviating those placement conditions. Special attention should be given to the child's educational needs and development, what services are needed to assist the child age 14 or older in transitioning

"The most difficult thing was switching schools so frequently, it was hard to maintain friendships and keep up with school work."

- C.S., 18, Former Pennsylvania Foster Youth

to independence and whether the child's basic needs for clothing and personal care items are being met.

13.6.3 Appropriateness, Feasibility, and Extent of Compliance with the Permanency Plan

The court must also make findings related to the child's and parents' compliance and progress. These are two separate and distinct findings. When making a determination as to the compliance of parents or guardians, the judge or hearing officer may want to consider asking a caseworker for an opinion of the level of compliance with the permanency plan. Questions should also be asked

"The judge told me he is proud of how I am handling things now."

- Pennsylvania Parent

regarding attendance at visitation and the quality of the visits for both parents. Based upon the information received during the hearing, the judge or hearing officer must make a finding in the permanency review order as to whether the parents or legal guardians have had no, minimal, moderate, substantial or full compliance with the permanency plan

The determination of the level of compliance and progress is subjective and must be analyzed on a case-by-case basis. Many judges and hearing officers struggle with the determination of the level of compliance and progress. It is important that specific facts are included to support the level of compliance and progress finding determined in the order.

Judges and hearing officers should take into consideration all of the parents' or guardians' actions during each review period including efforts towards compliance and attempts at progress. Judges and hearing officers should look at an individual's work schedules, child care, financial and transportation issues when making this assessment. Judges and hearing officers should also consider the parties' understanding of the permanency plan when considering efforts made by the parent or guardian.

Despite the fact that judges and hearing officers are required to enter findings related to both compliance and progress, these two issues are distinct. *Compliance* addresses the extent to which a parent or guardian is actively involved with services ordered by the court or contained in the FSP; while *progress* addresses the level to which behavioral changes are being made and demonstrated by the parent or guardian. These are two separate analyses which may or may not be inter-connected. For example, a parent or guardian may be very compliant with attendance in a particular court ordered service; however make no or minimal positive behavioral changes.



Conversely, a parent or guardian may be minimally compliant with a particular service yet make significant behavioral changes.

While it is likely that all parties may have an opinion and/or recommendation regarding the level of a parents' or guardians' compliance and progress, the judge or hearing officer should make the assessment of both. Finally, although judges and hearing officers are required to address both findings, those related to progress focusing on actual behavioral changes generally have the greatest impact on permanency decisions.

13.6.4 Progress toward Alleviating Circumstances Requiring Placement

In assessing the progress made toward alleviating the circumstances that necessitated the original placement, the court should consider whether the parents were offered reasonable and appropriate services, whether the parents requested services that were not provided and inquire as to what the parents still need to accomplish before reunification would be recommended by the agency. In determining progress the court should concentrate on changes in behaviors rather than on whether the parent "attended" all sessions or completed certain tasks. A finding must be made in the permanency review order if the parents or legal guardians have had no, minimal, moderate, substantial or full progress toward alleviating the circumstances which necessitated the original placement.

Remember, the agency is required to make reasonable efforts to reunify the child with the parents unless they have been relieved of this requirement by the court. This includes offering appropriate and reasonable services. The judge or hearing officer should not hesitate to hold the agency accountable for failure to make reasonable efforts. However, once a finding of no reasonable efforts has been made, federal and state funding for the costs of the child's placement may be lost by the county until the agency comes into compliance by providing reasonable efforts. (See Chapter 20: General Issues, Section 20.3: "Best Interests" and "Reasonable Efforts" Findings)

13.6.5 Appropriateness and Feasibility of Current Placement Goal and the Concurrent Plan

At every permanency review, the court must determine whether the placement goal is appropriate and feasible, and if not, whether a new placement goal should be set. The judge or hearing officer should seek an opinion from the agency and consider the positions of the GAL or counsel for the child, the parents and their counsel and the CASA, if one is assigned, before reaching a decision. The judge or hearing officer should state on the record or in writing the reasons the goal is or is not appropriate and feasible.

If a concurrent plan had not been established at the disposition hearing, the judge or hearing officer should set a concurrent plan. Concurrent planning is required in all out-of-home dependency cases. In the majority of cases, the initial permanency goal is reunification. Establishing a concurrent plan from the beginning will expedite permanency for a child if the efforts to reunify fail. It is not sufficient to simply “name” a concurrent goal, rather there should be affirmative action of the agency to pursue the concurrent plan while the primary goal is being pursued.

It is important for the judge or hearing officer, to emphasize to the parties that the establishment of the concurrent plan does not in any way mean that the goal of reunification will not be seriously pursued. The court should also explain that ASFA only gives the parents a short time to remedy the conditions that brought the children into placement. In some cases, knowing that there is a “Plan B” so to speak, will cause parents to work harder towards achieving their goals.

KEY ELEMENTS OF CONCURRENT PLANNING



Concurrent planning should include:

- **Involvement of the parent in determining the concurrent plan and, in the case of an Indian child, involvement of the Indian custodians and the child’s tribe;**
- **Placement of the child in a relative-adopt or foster-adopt home to reduce the number of times the child must move;**
- **Strict time limits on case progress and scheduling of hearings;**
- **Detailed small steps to accomplish the plan, in weekly and monthly increments, accompanied by frequent court reviews;**
- **Progress measured by behavior, documented in reports submitted to the court, excellent social work, supported by training, consultations and reasonable caseload; and**
- **Defining success by timely permanency, whether it is reunification or the alternate plan.**

Enhanced Resource Guidelines, NCJFCJ (2016) p. 93.

For more detailed discussion of goal changes, see Chapter 14: Permanency Hearing to Consider Change of Goal.

13.6.6 Likely Date that Placement Goal Might Be Achieved

Judges and hearing officers should determine the likely date by which the placement goal will be achieved. Common sense is often the best tool. Remember, this date is a projected date and not a deadline. It is helpful to make certain that parents and children understand that this is a projection not a promise.

13.6.7 Reasonable Agency Efforts to Finalize Permanency Plan

At the permanency hearing, the judge or hearing officer must determine whether or not the agency made reasonable efforts to finalize the permanency plan that is in effect. This finding is tied to the concept of procedural justice. Although it may be harsh to render a finding of no reasonable efforts, it is important to hold the agency to its obligation to make reasonable efforts to finalize the plan.

A determination that there were reasonable efforts requires evidence about the “reasonable” actions of the agency to assist the child and parents. It is not sufficient to simply hear evidence as to the compliance and progress level of the parent or child. Nor should the court include in its analysis agency staffing shortages, caseload sizes or other systemic issues. **To make this finding, evidence as to the agency’s affirmative actions to make reasonable efforts is the sole issue.** (See Chapter 6: Entering the System/Shelter Care Hearing and Chapter 20: General Issues, Section 20.3 “Best Interests” and “Reasonable Efforts” Findings for more information on reasonable efforts determinations).



Best Practice — Ensuring Equity in Engagement and Services

The judge or hearing officer should ensure that reasonable efforts are made with respect to both parents. Historically the child welfare system has been criticized as being focused on the mother in the case. Fathers should receive similar levels of service and be afforded the same level of persistence from the caseworker as is given to the mother.

13.6.8 Whether the Child is Safe

The judge or hearing officer should always assess the safety of the child at every permanency hearing. Any party may present evidence about the safety of the child. The judge or hearing officer must consider any evidence of conduct by a parent, guardian, foster parent or any person supervising the care of the child that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance, regardless of whether the evidence

or the conduct was the basis for the determination of dependency (42 Pa.C.S. § 6351(f.2)). Each parent should be considered individually. If the child is unsafe, the judge or hearing officer should consider whether the child might be safer under a safety plan developed by the agency.

As noted above, unless good cause has been shown, all parties, including the child, shall appear at every hearing (Pa.R.J.C.P. 1128 and comment to the rule). Even if excused by the court, at minimum, the child shall appear at least every six months (Pa. R.J.C.P. 1129). If the child is not present the court should ask where the child is and why the child is not present. *It is critical for the court to see the child.* The child's physical appearance is important to the assessment of safety. Is the child overweight or underweight? Does the child appear to be clean? Additionally, the child's affect and demeanor can aid in the assessment of well-being. Does the child appear happy and content or sad and depressed? In cases of physical abuse, the judge or hearing officer can see first-hand how the child is healing. The court should take the opportunity to have the child photographed at each review hearing, or if the child is not present for some reason, the judge or hearing officer should demand that a picture be



Best Practice — Children Appearing at Every Hearing

The judge or hearing officer should set an expectation that children will appear at each hearing unless there is a good reason for the child not to appear. It is important that the court see the child to develop a first-hand understanding of the child including developing a rapport with him or her. While the court may wish to exclude the child from sensitive portions of the proceeding, the presence of the child serves as a visual reminder that it is *this* child's best interest that the court is serving. It also provides the child with an opportunity to be heard and to participate in proceedings that have a profound impact on his or her life.

When considering waiving the child's appearance, the judge or hearing officer should consider circumstance that are specific to the child and not make generalized decisions about attendance.

received, in order to create a record of the child's physical development and growth. See Chapter 20: General Issues, Section 20.6: Children in the Courtroom for more information about waiving children's appearance at court.

13.6.9 Reasonable Efforts to Engage in Family Finding

At each permanency hearing, the court is required to inquire as to the efforts made by the county agency to comply with family finding requirements pursuant to

62 P.S. §1301 *et seq.* Family finding may be discontinued only if, after a hearing, the court determines that: (1) continued family finding no longer serves the best interests of the child; (2) continued family finding is a threat to the child's safety; or (3) the child is in a pre-adoptive placement and the court proceedings to adopt the child have been commenced. (See Pa. R.J.C.P. 1149, 1608 D. (1) (h).)

Even if the court has ordered family finding to be discontinued, the court may, at a subsequent hearing, order family finding to resume when the court determines family finding is best suited to the safety, protection, and physical, mental, and moral welfare of the child, and does not pose a threat to the child's safety.

In assessing whether the agency has made reasonable effort to engage in family finding, the court should ask what methods they used to identify family and kin supports (interview, social media, search engines, etc.); who was identified and the relationship of those identified to the child and family; whether the agency made contact with those identified and, if so, whether those contacted can be a support or potential placement resource. The court should also inquire as to how the family and kin were included in service planning and delivery. It is important to stress that family finding is more than looking for a kinship foster home — it is also about identifying other supports for the child and the parents.

The judge or hearing officer should also inquire as to the “next steps” that the agency will undertake to identify supports or additional supports for the child and the parents. (See also Chapter 2: Act 55 of 2013: Family Finding)

13.6.10 Services Needed to Help Older Youth Transition to Independence

At each permanency hearing, the court must assess the services needed to assist a child in making the transition to independent living (Pa.R.J.C.P 1608 (D) (1) (k)). Although the agency is only required to provide services to transition a child into independent living when the child is fourteen years of age or older, these services should be ordered whenever it becomes appropriate. Information on the individual needs of the child and the development of skills should be sought. Because educational success is an important step on the road to self-sufficiency, the court should investigate whether the child is on track to graduate from high school, or whether the child is enrolled in an alternate education program that will assist the child in achieving self-sufficiency, is being provided vocational and career counseling and any plans for post-secondary education. Children with disabilities should have a transition plan included in their Individual Education Plan if they are eligible for special education services.

Housing is also an important issue. Some children may need to transition into a supervised living environment through the adult mental health system. This process takes a long time and should be initiated before the sixteenth birthday.

Other general areas of inquiry might be employment, daily living skills and the possession of necessary identification and documents such as a birth certificate and a social security card. (See Transitioning Youth, Section 20.8 of Chapter 20: General Issues.)

The court should inquire as to whether the child is placed in the most family like setting that will enable the child to develop independent living skills and the efforts that have been made to develop and maintain connections with supportive adults. The judge or hearing officer should receive an update on family finding when making these determinations.

The court should also determine the services need to assist the child to make a transition to successful adulthood including the specific independent living services or instructions that are currently being provided, have been identified by the independent living assessment pursuant to the Chafee Act (42 U.S.C. § 671 *et seq.*) and the services that the child will receive before the next hearing.

Other determinations include: whether the child is receiving job-readiness services, whether the child has physical health or behavioral health needs that will require continued services into adulthood and what steps are being taken to ensure that the child will have stable housing or living arrangements at case closure.

At least ninety days before a child's eighteenth birthday, the court must hold a hearing to determine whether supervision will terminate. Before the hearing a transition plan shall be developed for the child. The transition plan shall be presented to the court and the court must approve the transition plan before supervision can be terminated. Pa.R.J.C.P. 1631 E provides that the transition plan shall, at a minimum, include:

- a) the specific plans for housing;
- b) a description of the child's source of income;
- c) the specific plans for pursuing educational or vocational training goals;
- d) the child's employment goals and whether the child is employed;
- e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;
- f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;
- g) verification that all vital identification documents and records have been provided to the child; and
- h) a description of any other needed support services.

Best Practices — Creating & Approving the Transition Plan

Bringing together family members can help develop a transition plan that will ensure that the child has a life-long support system. Family finding can assist with the identification and location of family members and close connections that will provide the support. Once family and kin are located, a FGDM conference can help create the transition plan.

If the transition plan is NOT approved, the court should schedule a review every thirty days until the plan is approved.

If supervision is not terminated, the court must conduct a permanency hearing at least every six months. (Pa.R.J.C.P. 1610).

13.6.11 Findings Regarding Sibling Placement and Visitation

In most cases, placing siblings together best serves the emotional needs and welfare of children in foster care. In many cases, the sibling bond may be stronger than the bond between a child and a parent and separation of siblings is traumatic.

If siblings are not placed together, the court must determine whether reasonable efforts were made to place siblings together and whether joint placement is contrary to the safety and well-being of the child or sibling. The court must also ask whether visitation is occurring at least twice a month, unless the court finds that visitation is contrary to the safety and well-being of the child or sibling.

Although the rule mandates sibling visitation twice per month, unless visitation is contrary to the safety and well-being of the child or sibling, siblings who have been placed apart should visit as often as possible. Thus it is imperative that the judge or hearing officer specify in the order the frequency of sibling visitation that is expected. (See Chapter 8: Visitation and Visitation Bench Card.)

13.6.12 Findings Regarding Visitation with Parents and Guardians

At every permanency hearing, the judge or hearing officer is required to determine whether visitation with a parent or guardian is adequate, unless a finding is made that visitation is contrary to the safety and well-being of the child.

In determining whether the frequency or duration of the visitation is adequate, the court should consider:

- the age of the child;
- the wishes of the child;
- the level of supervision required;
- the distance the parties are required to travel for the visitation; and
- the quality of the visitation.

Best Practices — Creative Visitation Plans

- Creative plans clearly identify and communicate roles and responsibilities of all involved in the visitation plan.
- Frequency and duration of visits respects the individualized needs of the child and the parent/guardian.
- The location of the visits are designed for privacy and interaction only as restrictive as required to protect the child.
- Efforts to manage participant reactions to visits, initially and on an ongoing basis, are part of the creative visitation plan.

From Pennsylvania's State Roundtable Visitation Workgroup: Visitation Best Practice Key Components

Visitation is a right that respects familial bonds; it is not a privilege.

Visitation should be consistent with the permanency goal and presumed to be unsupervised unless there is a valid reason for supervision.

The court should understand that frequent and meaningful family time can lessen the trauma of separation from family, can improve the quality of the relationship between a child and a parent, and, in the case of infants, create a bond and relationship between an infant and his parents.

Even when visitation is supervised, it should occur in the most family-friendly location possible. Attendance at a child's medical or educational appointments or other activities is a responsibility of a parent or guardian, but should not be considered visitation.

“Consistent with child safety, relationships between and among children, parents, and siblings are vital to child well-being. Judges must ensure that quality family time is an integral part of every case plan. Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child.”

NCJFCJ. (2011) Key Principles for Permanency Planning

Best Practices — Benefits of Frequent Family Time

- Promotes healthy attachment and reduces the negative effects of separation for the child and parents.
- Establishes and strengthens the parent-child relationship.
- Eases the pain of separation and loss for the child and parents.
- Keeps hope alive for the parents and enhances parents' motivation to change.
- Involves parents in their child's everyday activities and keeps them abreast of the child's development.
- Helps parents gain confidence in their ability to care for their child and allows parents to learn and practice new skills.
- Provides a setting for the caseworker or parenting coach to suggest how to improve parent-child interactions.
- Allows foster parents to support birth parents and model positive parenting skills.
- Provides information to the court on the family's progress (or lack of progress) toward their goals.
- Facilitates family assessments and can help the court determine whether reunification is the best permanency option for the child.
- Helps with the transition to reunification.

Dougherty, S. (2006) *Promising Practices in Reunification*. National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work.

13.6.13 Educational, Health Care and Disability Needs of the Child

At every permanency hearing, the judge or hearing officer is required to determine whether a child's educational, health care and disability needs are being addressed.

Educational success is a significant gauge of well-being for children and an important factor for successful transition to adulthood. Yet educational success is overlooked when children are in the dependency system. Sometimes the same dependent children and youth whose safety and permanency needs are being met by the child welfare system experience significant educational challenges.

Educational success measures include:

- consistent attendance;
- achieving reading and math levels;
- academic progress;
- engaging in extracurricular activities; and
- developing an attachment to school.

With respect to the child's educational needs, the court should determine whether:

- the child is regularly attending school;
- the child has changed schools since the last review;
- the child is enrolled in an appropriate educational program; and
- the child is making progress towards promotion and graduation.

Educational stability is paramount and any order of the court resulting in placement of a child or change in placement of a child shall address it. Pa. R.J.C.P. 1148 states that a child shall remain in their school of origin unless the court determines it is not in the child's best interest to do so. If the court orders the child to be enrolled in another school, then the child shall attend public school unless the court finds this is not in the child's best interest. If attending a residential facility's on-grounds school, the court should ascertain whether the credits a child earns at a residential placement are transferable toward graduation at a public school. (See also Chapter 20: General Issues, Section 20.7.1: Factors to Consider Prior to Placement).

Children with disabilities should have an Individual Education Plan (IEP) transition plan as required by 22 Pa. Code 14.13(5) included in their IEP beginning at age fourteen if they are eligible for special education services. Certain children may require supportive services or special living arrangements secured as they transition to independence. If the court determines that the parents are incapable of making educational decisions for the child or are not readily available and willing to participate in making educational decisions for the child, the court should appoint an educational decision maker (EDM) for the child. (See Chapter 10: Disposition, Section 10.6.1: When to Appoint an Educational Decision Maker.)

If an EDM has previously been appointed, the court should determine whether an EDM continues to be necessary and whether the appointed EDM is meeting the needs of the child. If parental rights have been terminated, the judge or hearing officer should ensure that an educational and medical decision maker is appointed.

"Children in congregate care often lack an active, involved adult to make education decisions on their behalf. Without an adult invested in the child's education, the child is more likely to fall through the cracks of the school system. Judges must ensure that children in care have an adult in their lives to make education decisions on their behalf, and should appoint an educational decision maker when needed pursuant to Juvenile Court Rule 1147."

"Educational Success & Truancy Prevention – A report to the PA State Roundtable." (2013), p. 9



KEY POINT REGARDING THE USE OF CYBER SCHOOL

While virtual learning may be a viable option for some highly motivated youth, medically fragile children or those who need to recover a few credits, studies indicate that cyber-learning is a poor option for at-risk students, particularly those with a history of truancy. When considering the use of cyber schools, judges and hearing officers should give significant weight to the needs of the youth, the level of adult supervision that will be available and the capacity of the cyber school program to meet the foster youth's needs. Finally, judges and hearing officers should designate a specific person to monitor the youth's involvement and progress supplying a periodic report to the court.

With respect to the child's health care needs, the court should determine whether the child is receiving all routine medical, mental health, and dental care as well as any special care, psychotropic medications and services that the child may need.

If a child has a disability or special needs, the judge or hearing officer should determine whether the child's current placement is equipped to address the child's disabilities or special needs and whether the child is receiving the necessary services.

Best Practice — Questions to Ask When a Child is on Psychotropic Medications

- What is the child's diagnosis? Is it the correct diagnosis?
- What is the medication's intended effect? Is it effective?
- Are we monitoring for adverse effects?
- If the child is doing well, have we thought about tapering the medication?
- What is the opinion of the treating physician?
- What other treatment interventions are happening along with medication?

13.6.14 Other Findings as to Well-Being

It is important for children in kinship, foster or congregate care to engage in the same types of activities and experiences as children who are not in care. At each permanency hearing the court is required to make findings as to whether the agency has taken sufficient steps to ensure that the caregivers are exercising the reasonable and prudent parent standard and whether the agency has taken sufficient steps to ensure that the child has been provided regular and ongoing opportunities to engage in age-appropriate activities or developmentally-appropriate activities. (See Pa.R.J.C.P. 1120 for definitions).

In making these findings, the court should consult the child and the caregivers and identify any barriers to participation.

13.6.15 Special Findings when the Permanency Goal is APPLA

A child under the age of sixteen years cannot be assigned the permanency goal or concurrent plan goal of Another Planned Permanent Living Arrangement (APPLA). APPLA is the least favored of all permanency options and the rules require special findings and considerations *before* the goal of APPLA is assigned and *after* the goal of APPLA is assigned. (Pa. R.J.C.P. 1608 § (D) (2)).

Before assigning a goal of APPLA the court must consider evidence entered into the record concerning:

- the intensive, ongoing and unsuccessful efforts that have been made to reunify the child with a parent; or to place the child with a fit and willing relative, legal guardian or adoptive parent;
- the specific services, including the use of search technology and social media to find biological family members and kin (family finding) as well as permanency services that have been provided, which serve an intensive, ongoing and unsuccessful efforts to achieve another permanency goal;
- the full name of a least one identified supportive adult with whom the child has significant connections;
- how each supportive adult has formalized the connection with the child;
- the services that will be provided by the agency to support and maintain the connection between the child and the identified supportive adults; and

- the specific planned, permanent placement or living arrangement for the child that will provide the child with stability.

The court is also required to ask the child about his or her desired permanency outcome. In speaking with the child, the judge or hearing officer should take the time to explain or make sure that the child understands all other permanency outcomes and why APPLA may not be the best permanency outcome for the child.

After consideration of the above-facts and before assigning a goal of APPLA, and at each subsequent permanency hearing, the judge or hearing officer must state on the record:

- why APPLA is (or continues to be) the best permanency goal for the child;
- compelling reasons why another permanency goal is NOT (or continues NOT to be) in the best interests of the child; and
- the full name of a least one identified supportive adult with whom the child has significant connections.

Best Practice — Preventing a Goal of APPLA

- A goal of APPLA should only be assigned when there is absolutely no other option.
- Start with identifying supports rather than placement. Utilize family finding to identify prospective supports for the child. Insist that someone from the agency speaks with every identified person to identify supports. Sometimes someone who is a support can become a placement resource once they know the child.
- Review the child's profile. Ask that the profile be re-written to emphasize strengths.
- Order that a matching specialist or child-specific recruiter be assigned. Order the agency to hold a child-options meeting.
- Order the agency to offer a FGDM or a family conference meeting. Sometimes the family may be able to come up with a plan.
- Order visitation and outings with prospective supports and pre-placement visitations with prospective foster or kinship families.
- Cultivate supports or create opportunities for the child to develop supports, such as appointing a CASA, Youth Support Partner or mentor. Encourage the child to engage in activities that are likely to connect him or her with positive supportive adults (scouting, community service projects, religious programs, etc.)
- Hold frequent status reviews on the issue of identifying supports for the child. At the status review, the court should review updates on family finding.
- Never give up! Even when APPLA is the goal, it should be carefully reconsidered and scrutinized at every subsequent court hearing.

13.6.16 Whether a Termination of Parental Rights (TPR) Petition Should Be Filed

Absent compelling reasons to do otherwise, when a child has been in care for 15 out of the past 22 months, the agency is required to ask for a change in the permanency goal from reunification to another permanency goal, usually adoption, and to file a petition for termination of parental rights (For more detailed discussion, see Chapter 14: Permanency Hearing to Consider Change of Goal and Chapter 17: Termination of Parental Rights). The judge, not the agency, determines whether there is a compelling reason NOT to file a petition for termination of parental rights. Therefore, it is imperative that the judge be aware of all the facts and circumstances of the case to make the final decision as to the maintenance of parental rights.

When considering whether or not to order a petition for termination to be filed, the judge should consider several factors including whether or not aggravated circumstances have been filed and found (see the discussion of aggravated circumstances in Chapter 20: General Issues, Section: 20.2); the length of time the child has been in placement; and whether or not the agency is in the process of identifying an adoptive resource for the child.

Under certain circumstances, there may be a compelling reason not to file a termination petition. These include that the child is being cared for by a relative and that relative does not wish to pursue an adoption; that good progress has been made by the parent(s) or guardian(s) and the expectation is that they will achieve compliance with their permanency plan shortly; or the needed services were not provided by the agency for the child to be reunited with the parent(s) within the time frames set by the permanency plan (for more information, see Chapter 17: Termination of Parental Rights).

A TPR petition should be filed when there have been aggravated circumstances founded with no reasonable efforts and the child has been in care for six months or longer; when the child has been abandoned and no parent has made substantial or continuing contact for a period of six months; or at any time when it is clear to the judge or hearing officer that reunification is not viable and adoption seems to be the most appropriate permanency goal for the child.

If the permanency goal is changed to adoption, the judge should inquire about whether the agency or parents' attorneys have discussed voluntary relinquishment and consent to adoption with the parents. An inquiry should also be made regarding the child's desire for adoption if the child is twelve years of age or older. The judge may also want to consider whether post-permanency counseling is appropriate for either the child or parent (for more information, see Chapter 19: Adoption).

Note that, once the child has been in care for 15 out of 22 months, the court may want to consider a goal change even if termination of parental rights is not an option. It is certainly time to assess whether the parents are meeting expectations, whether the child is happy and safe in the current placement and whether another permanency goal should be considered.

13.6.17 When and How the Child Will Achieve Permanency

Finally, on the basis of all the determinations made above and all the evidence presented at the permanency hearing, the court must determine if and when the child will be returned to parents or guardian, in cases in which reunification is in the child's best interests; otherwise, if and when the child will be placed for adoption, placed with a legal custodian, placed with a fit and willing relative or placed in another planned, permanent living arrangement. These options are listed in order of preference and the determination is made based upon what is best suited to the child's safety, protection and welfare (42 Pa.C.S. § 6351(f.1)).

The preferred goal in most cases is reunification with a parent or guardian, followed by adoption, permanent legal custodianship and placement with a relative. The least preferred permanency goal is APPLA, which is often the goal for older youth who are not able to return home.

It is the responsibility of the agency and the court to do everything possible to ensure that a child secures a loving and permanent home — including older youth.

Best Practice — Helping Older Youth Secure Permanency

The following practices can assist in identifying and securing permanent homes for older youth and children that the agency has not been able to place in a permanent home:

- Adoption Prep Services
- Child Specific Recruitment
- Family Finding
- Matching Specialists
- Pre-Placement Visitation with Perspective Families

13.7 Admissibility of Evidence, Reports and other Documents

A judge or hearing officer has broad discretion concerning the admissibility of evidence, reports and documents at a permanency hearing. The judge or hearing officer should consider any evidence that is helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing (Pa.R.J.C.P 1608(C) (1)).

Per Pa.R.J.C.P. Rule 1608(F), the modified or updated FSP must be submitted to the court (if requested) and counsel at least 15 days before the permanency hearing. However, if the FSP has not been modified or updated or if the hearing is an expedited review or status hearing, the FSP, report and recommendations from the agency, proposed orders of court, CASA report, etc. should be submitted to the court and counsel at least 72 hours in advance of the hearing.

Foster parents, pre-adoptive parents and relative caregivers are also entitled to submit a pre-hearing report to the court regarding the child's adjustment, progress and condition, and to have the report examined and considered as evidence (Pa.R.J.C.P. 1604). The President Judge shall assign a designee to receive these reports. The designee will file the report with the clerk of courts and distribute to the judge, attorneys, parties and CASA if appointed.

If requested, due process requires that the judge or hearing officer permit cross-examination of those who have provided information upon which the judge or hearing officer may rely. All parties have a right to cross-examine witnesses and challenge evidence. "Where reception of hearsay evidence would deprive the parent of an opportunity to confront and cross-examine a witness, such evidence may not be admitted" (*In the interest of Jones*, 429 A.2d 671 (Pa. 1981)).

13.8 Findings and Orders

After a permanency review hearing, the judge or hearing officer shall enter its findings and conclusions of law into the record, in open court and the court enter an order. (Pa.R.J.C.P. 1608 (D) and 1609).

The court order is the document that drives the case. If well-written and timely entered, the order gives clear and comprehensible direction to all parties of what the court expects. It enables the caseworker to initiate the necessary services and fine-tune the Family Service Plan.



A good court order should state the court's findings of fact and conclusions of law — well-written, detailed findings can save time later as they may be incorporated at the permanency hearing to consider a change of goal or at a TPR

hearing. In cases of multiple siblings, the findings, conclusions and orders should be child-specific.

The order should clearly communicate to the parties, foster parents, providers and other interested persons what is expected between the review hearings. Whenever feasible, detailed court orders should also contain dates or timelines for implementation of specific orders. This can increase accountability and encourage timely case progress.

The judge or hearing officer is the gatekeeper to making a good record. Therefore, the order should indicate the names of the parties and all counsel and whether the parties and attorneys were present at the hearing.

The order should clearly reflect what occurred at the review hearing, what is expected to occur before the next hearing and what will occur at the next review hearing (goal change, possible case closure, etc.) If possible, the order should provide the date, time and place of the next review hearing.

“Judicial findings can strengthen the court’s decision-making and create a more complete record. Clear findings..., including specific instructions to the parties, increase the likelihood that there will be consistent decisions in the case. Without a strong written record, there is a risk that the same issues and excuses for parental or agency inactivity will be repeated, prolonging case resolution.”

National Center for Juvenile and Family Court Judges (NCJFCJ). (2016) *Enhanced Resource Guidelines*, p.273.

In Pennsylvania, dependency findings and orders for permanency hearings are contained within the CPCMS Dependency Module. These court forms contain the needed information to assist the court in asking the necessary questions, in managing the case, in meeting federal requirements and in capturing statewide data. The forms also allow for the entering of detailed text, which can outline the specific directives of the court.

The court order should clearly set forth who has legal custody of the child, including who will make educational and medical decisions for the child; the physical placement of the child, including the name and address of such person (unless disclosure is prohibited by the court); the specific visitation schedule for the parents, guardians or siblings that are adjudicated dependent but not placed together; and any conditions, limitations, restrictions and obligations in its permanency order imposed upon any parties to the action.

Best Practices — Findings and Orders

Whenever possible, “rule from the bench” so that the parties understand what happened at the hearing and what is expected to occur in the future.

If possible, the parties should leave the courtroom with a copy of the court order. Handing out court orders gives parties an immediate, written record of what was decided, what they are expected to do prior to the next hearing, any social services that have been specifically ordered and the date and time of the next hearing.

Providing parties, especially parents, with a copy of the court order at the conclusion of the hearing can increase their participation in the case plan. This can have a positive impact on successful “front-loading” of cases by involving parents earlier in the court process.

Dedicate the last few minutes of a hearing to allow sufficient time to create the order. Parties can wait for the order to be completed and distributed.

It is important that the child and the parents (especially those who may not be represented) understand the court’s findings of fact and the legal conclusions. The parties deserve an explanation. Remember — not all parents or children can or will read the written order.

When stating the findings and conclusions on the record, the judge or hearing officer should ensure the parties that all evidence was considered and should highlight both strengths and challenges. The judge or hearing officer should make sure that the parties understand the findings and orders and give the parties the opportunity to ask questions.

If an appeal is filed, well-written and well-recited findings and orders make a good record for the appellate court. This is especially important with the Children’s Fast Track rules.

13.9 Thorough Permanency Hearings

By rule, many matters to be determined are involved during a permanency hearing. It is important to safety, well-being and timely permanence that the court conduct a thorough hearing. Judges and hearing officers should consider using the Permanency Review Hearing (PRH) Checklist to ensure all matters have been considered. The PRH Checklist can be found at the end of this chapter.

"The judge told me I had rights and I get to speak."

- Pennsylvania Parent

QUESTIONS TO BE ASKED AT PERMANENCY HEARINGS

Note: These lists of questions are not exhaustive. It is important to adapt the questions to a specific case and, within a case, to tailor the questions for each sibling, parent and guardian. Additionally, the judge or hearing officer must always determine whether the agency has made reasonable efforts to reunify the child with the parents or to finalize the permanency plan.

These suggested questions concern the issue of the need for placement and the quality of the placement.

- _____ How long has the child been in out-of-home placement?
- _____ If the child is in a residential treatment facility (RTF), is the RTF still medically necessary? If not, where will the child be placed upon discharge from the RTF?
- _____ If the child is in placement through juvenile probation, are there issues in the home that would prevent the child's return? Are there relatives available or does the child need foster care?
- _____ Is placement still needed? Why?
- _____ Should the child be placed with siblings?
- _____ Are there any relatives available for purposes of placement or visitation?
- _____ Is the current placement still appropriate? If not, why?
- _____ Is the permanency plan still appropriate and feasible? Why or why not?
- _____ Is the child safe? If not — why?
- _____ Is the placement meeting the child's needs?
- _____ How has the child adjusted to placement?
- _____ Has the child bonded to the foster family?
- _____ Is the child happy?

These suggested questions concern the child's needs and behaviors.

- _____ What is the level of compliance of the child? (if applicable)
- _____ In cases where the removal was based upon the child's conduct (truancy, ungovernability, etc.), what progress has been made in alleviating the conditions that led to the original placement?
- _____ If the child is not placed with siblings, are sibling visits occurring?
- _____ Has the child had all appropriate/required immunizations?
- _____ Has the child seen a dentist? Does the child need glasses?
- _____ Does the child have any special medical or mental health needs? Are these needs being met?
- _____ Is the child prescribed any medications? Is the child compliant with medication?
- _____ Is the child in need of mental health services or other therapeutic services? Is the child receiving these services?
- _____ Is the child experiencing any behavioral issues?
- _____ Are the child's educational needs being met? Is the child on target educationally?

- _____ What services are needed to assist a child 14 years of age or older in transitioning into independent living?
- _____ Does the child need clothing?
- _____ What extra-curricular activities is the child involved in?

These suggested questions concern the child's educational needs.

- _____ Where does the child attend school? What grade is the child in?
- _____ Has the child changed schools since entering care? Had the child changed schools prior to the adjudication of dependency?
- _____ What is the educational setting? Is the child in an appropriate school setting where he/she can make progress toward graduation?
- _____ Should the child be evaluated or re-evaluated for special education or does the child need any accommodations for a disability (504 Plan)?
- _____ Does the child have an Individualized Education Plan (IEP)? Is a special needs child's IEP enabling the child to make progress?
- _____ If the child has an IEP, are the IEP and evaluations up-to-date?
- _____ If the child is 14 years of age or older, does the child have an IEP transition plan regarding how the child will transition to independent living?¹
- _____ Is the child making progress towards promotion? Is the child on track academically and in the right grade?
- _____ Is the child attending school on a regular basis?
- _____ If truancy is an issue, how has the school intervened? Have the underlying reasons for the truancy been determined? Is there a plan? How is it working?
- _____ Are there any issues with transportation to and from school?
- _____ What are the child's grades? Is the child on grade level in reading and math? If not, is the child participating in tutoring at school?
- _____ Are the child's behaviors in school appropriate? Describe the behaviors?
- _____ Has the child been suspended or expelled? Why?
- _____ Does the child like school? Does the child have friends at school? What are the child's favorite subjects? (Questions for the child.)
- _____ Does the child or youth participate in developing his or her educational goals? If not, can such a process be implemented so that the youth will feel invested in his or her education?
- _____ Is the child engaged in a sport, club or extracurricular activity at school?
- _____ Is the student involved in a mentoring program?
- _____ Are the parents or guardians attending school meetings and advocating for the child's educational needs?
- _____ Are the parents and guardians meeting the child's educational needs? If not, does the child need an Education Decision Maker (EDM)? If so, who should be appointed?

¹The transition plan for children with disabilities in federal law is required by age 16 at the latest. 20 U.S.C. (d)(1)(A)(i)VIII(aa); (bb); 34 C.F.R. 300.320(b). In Pennsylvania, the PA Code requires such an IEP transition plan by age 14 years of age. 22 PA Code 14.131 (5).

- _____ If the child or youth has special needs, does the EDM need help navigating the IEP process?²
- _____ Does the child have an involved Educational Decision Maker? Is the EDM still necessary?
- _____ If the child has entered high school, is he or she on track to graduate? Does he or she have a graduation plan? Has this child been informed of post-secondary opportunities?
- _____ Does the child who is 18 or older have a detailed transition plan under Rule 1631?
- _____ If the child attends a post-secondary educational program is he or she making progress toward graduation?

These suggested questions concern compliance and progress of the parents/guardians.

- _____ What is the level of compliance of the mother?
- _____ What is the level of compliance of the father?
- _____ What progress has the mother made toward alleviating the circumstances that led to the original placement?
- _____ What progress has the father made toward alleviating the circumstances that led to the original placement?
- _____ Are the parents regularly visiting the child?
- _____ Do the visits go well?
- _____ Have either of the parents requested any services that the agency has not provided or cannot provide?

These suggested questions concern the permanency plan and the permanency/placement goal.

- _____ Is the permanency plan appropriate and feasible? Why or why not?
- _____ Were reasonable efforts made to finalize the permanency plan? If not—why?
- _____ Is the current permanency/placement goal appropriate and feasible? Why or why not?
- _____ If the current permanency/placement goal is not appropriate, what is the new goal?
- _____ What is the likely date that the permanency/placement goal might be achieved?

These questions concern the issue of whether a petition for termination of parental rights should be considered.

- _____ Has a petition for aggravated circumstances been filed? Have aggravated circumstances been previously found? (See Chapter 20: General Issues, Section 20.2 for more information on aggravated circumstances.)

² (The PEAL Center or the Disabilities Rights Network of Pennsylvania can provide IEP support.)

- _____ If the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent or preserve and reunify the family need not be made or continue to be made, has the county agency filed or sought to join a petition to terminate parental rights (TPR) and to identify, recruit, process and approve a qualified family to adopt the child?
- _____ If the permanency goal has been changed to adoption or a TPR petition has or will be filed, has the agency or the parents' attorneys spoken with the parents about a voluntary relinquishment or consent to adopt?
- _____ If the child is 12 years of age or older, does the child want to be adopted?
- _____ Should the parents and/or the child be referred to adoption counseling?
- _____ If the agency has not filed a TPR petition has the court considered the following:
- whether the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;
 - whether the county agency has documented compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or
 - whether the child's family has not been provided with necessary services to achieve the safe return to the child's parent within the time frames set forth in the permanency plan?

These suggested questions concern the issue of when the child will achieve permanency.

- _____ When will the child be returned to the child's parent, guardian or custodian in cases where the return of the child is best suited to the safety, protection and physical, mental and moral welfare of the child?
- _____ When will the child be placed for adoption, and the county agency file for termination of parental rights in cases where return to the child's parent, guardian or custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child?
- _____ When will the child be placed with a legal custodian in cases where the return to the child's parent, guardian or custodian or being placed for adoption is not best suited to the safety, protection and physical, mental and moral welfare of the child?
- _____ When will the child be placed with a fit and willing relative in cases where return to the child's parent, guardian or custodian, being placed for adoption or being placed with a legal custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child?
- _____ If the goal is placement in another living arrangement intended to be permanent in nature (APPLA), has the county agency documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative? Have all efforts to achieve a more preferred permanency goal been exhausted? Have circumstances changed such that another goal should be considered?

These suggested questions concern the issue of the child's progress, behaviors, needs, etc. (questions for the caregivers).

- _____ Describe the child's interaction with you (the caregiver).
- _____ Is there any change in the child's behaviors after the child returns from a visit with the parents, siblings or other family members?
- _____ Does the child sleep well? Does the child sleep through the night?
- _____ Does the child have nightmares or bad dreams?
- _____ How does the child interact with other children?
- _____ How has the child adjusted to school?
- _____ How is the child doing in school—academically and behaviorally?
- _____ Does the child talk about his family? What does he say?
- _____ Does the child seem happy or content?
- _____ Does the child need anything?
- _____ Is the child involved in extracurricular activities?
- _____ Do the parents call the child or write letters?
- _____ How does the child react or respond to the letters or telephone calls?

These suggested questions concern the well-being of the child.

- _____ What do you like/ What does the child like to do for fun?
- _____ Do you/Does the child have friends? Who is your/Who is the child's best friend?
- _____ Do you feel safe (at home, foster home, school, community)?
- _____ Does the child have any special medical, physical or mental health needs?
- _____ Is the child receiving appropriate treatment and services for mental or physical health needs?
- _____ Is the child up to date on medical and dental appointments and immunizations?
- _____ Does the child have enough clothing?
- _____ Does the child have appropriate toiletries?
- _____ Do you/Does the child have the opportunity to get their hair done or get a haircut?
- _____ Is there anything that you/ that the child wants or needs?
- _____ Are you/Is the child participating in age-appropriate activities such as sports, music, dance, arts, etc?
- _____ Do you/Does the child have the opportunity to spend quality time with extended family and friends?

These suggested questions are designed to engage the child.

- _____ Do you want to speak? Would you like the courtroom cleared?
- _____ Are you happy at home or in your placement?
- _____ Would you tell me what your room looks like?
- _____ Do you feel safe in your placement or at home?
- _____ Where are you attending school? How are you doing in school?
- _____ What do you like to do for fun?
- _____ What are you interested in?

- _____ If the agency or the court could provide you with something that you wanted, what would it be?
- _____ Do you have a life plan?
- _____ What are your goals or plans after you complete high school?
- _____ Do you need clothing, glasses, etc?
- _____ How often do you see your parents and/or siblings? If it were possible would you like more visits with them?
- _____ Do you enjoy the visits with your parents and/or siblings? Why or why not?
- _____ Are there other important people you want to have contact with?
- _____ Who do you miss?

These suggested questions concern the transitional/older youth?

- _____ Will you graduate on time?
- _____ Would you like to attend special events such as the prom? Do you need assistance with clothing or purchasing tickets to attend these events?
- _____ Are you able to get graduation photos taken?
- _____ What would you like to do after you graduate from high school or get your GED?
- _____ Do you have your birth certificate, social security card, driver's license or state I.D.?
- _____ Are you employed or would you like to have a job?
- _____ Tell me the names of at least 3 supportive adults who will support you for the rest of your life.
- _____ Would you like to obtain a drivers' license?
- _____ Would you like to visit colleges or vocational schools?
- _____ Have you taken the SAT? Have you completed the FASFA forms?
- _____ Are you interested in the military? If so, have you taken the ASFAB exam?
- _____ Do you have a bank account?
- _____ Has your attorney or your caseworker talked to you about continuing services and court supervision after you turn 18? Have you agreed to continued services and court supervision?
- _____ If you have not agreed to continued services and court supervision, why not?
- _____ Tell me about your plans when your case is closed. Do you have a job? Where will you live? How will you eat? Who will buy your clothes?
- _____ If your case were closed:
 - Who would you call to take you to the hospital if you were sick in the middle of the night?
 - Who would send you a birthday card or buy you a birthday present?
 - Who would you speak with for advice?
 - Where will you spend special holidays (Christmas, Thanksgiving, Hanukkah, etc.)?
 - Where would you live? How would you buy clothing, food, and hygiene products?

For youth who are parents ask the following:

- _____ Are you visiting your child (if the child is in foster care)? How often? How do the visits go?

- _____ Does your child seem happy?
- _____ Do you attend your child's medical and dental appointments?
- _____ Does your child seem healthy?
- _____ Do you think your child is safe?
- _____ Does your child need anything?
- _____ Is there anything that you need?
- _____ Are you receiving/paying child support?
- _____ Does your child have contact with the other parent?
- _____ Does your child have contact with other family members?
- _____ If your case is closed, how will you care for your child?

For youth with a goal of APPLA ask the following:

- _____ Do you understand what APPLA means?
- _____ Would you like to try to return home with your parent(s)? Why or why not?
- _____ What do need so that you can return home to a parent?
- _____ Why do you not wish to return home?
- _____ What do you think your permanent home should be?
- _____ With whom would you like to live on a long-term or permanent basis?
- _____ Would you like to be adopted? Why or why not?
- _____ Give me the name of a least one adult who is important in your life and who will support you whenever you need support?
- _____ Would you like to visit with any family members in another county or another state?