

Chapter 12 – Permanency Hearing

12.1 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, and minor plan adjustments that may be necessary in view of changes in circumstances. In later permanency hearings, on the other hand, the focus is likely to shift to the 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 13: Permanency Hearing: To Consider Goal Change).

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.

12.2 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 19: General Issues).

A 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.

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.

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 masters should take the lead in scheduling status hearings that address single issues that should not be left unattended between permanency hearings. 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.

12.3 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 Master 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.

12.4 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 Master 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 Master 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 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 Master 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 Services 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.

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 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, depending on the court, a report summarizing 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.

Ideally, the agency has “front-loaded” services, which is crucial to successful reunification or permanency. At this hearing the Judge or Hearing Master 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.

Best Practice – Concurrent Planning

In all cases where children are removed from the home, the agency should engage in concurrent planning. 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 future hearings, but the concurrent plan should initially be established at disposition.

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

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, to schedule a permanency hearing to consider changing the goal (with the agency being required to file the appropriate pleading requesting termination of parental rights or permanent legal guardianship) or a hearing to determine the specifics of an alternative permanent plan.

Permanency Hearing: To Consider Change of Goal — (see Chapter 13: Goal Change)

12.5 Conduct of the Hearing

12.5.1 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 Master. It is important for the Judge or Hearing Master to set the tone for the hearing and to control the proceedings. The Judge or Hearing Master should make it clear what the issues are and keep the parties focused.

At the onset, the Judge or Hearing Master should state the purpose of the hearing and what the court is going 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 Master 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 Master's demeanor should reflect the seriousness of the proceedings, particularly when interacting with parents. The parties should feel that they have the opportunity to be heard at the appropriate time. The Judge or Hearing Master should strongly discourage people from speaking unless they are being addressed by a lawyer or the court. The Judge or Hearing Master 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 Master 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 Master has high expectations, they will be prepared.

The Judge or Hearing Master 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 Master 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 *Resource Guidelines* recommend that 30 minutes be allocated for a routine review hearing, while the *Adoption and Permanency Guidelines* recommend 60 minutes for a true permanency hearing (NCJFCJ, 1995: 74; NCJFCJ, 2000: 19). 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 "dual 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 so the order can be distributed to all parties at the conclusion of the hearing (see the discussion of Court Orders, below).

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 Adoption and Permanency Guidelines recommend 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 and that the plan meets the best interests of the child (NCJFCJ, 2000, p. 20).

The timing of the hearings 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 Master 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 child 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.

12.5.2 Persons in Attendance

As is the case with other hearings in dependency matters, participation in permanency hearings is restricted. However, children, parents (including putative fathers), relatives, other adults with custody, and anyone else with a proper interest should attend. The Judge or Hearing Master should ensure that all parties, including the parents, have legal representation. If the parents are not represented, the Judge or Hearing Master should make sure they understand they are entitled to representation and that they are voluntarily choosing to proceed without representation (see Chapter 4: Right to Legal Representation).

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 Master 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 Master to view the case "through the eyes of the child." The Judge or Hearing Master 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 Master 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 Master, 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 Master must ensure that the child's wishes are known in every case (further information on accommodating children in court is provided in Chapter 19 General Issues).

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 Master 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 seek 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 Master 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 Master should direct the caseworker to take affirmative action to engage or involve the father.

If a parent is incarcerated, the Judge or Hearing Master 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 by videoconference or at least by teleconference. (See Chapter 8: Incarcerated Parents.)

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

Best Practice – Kinship Care

The Judge or Hearing Master should encourage kinship care where such care provides for the safety of the child. If relatives are not known to the agency or readily available, inquiries should be made as to the agency’s use of Family Finding or other family engagement techniques.

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 (PA Children’s Roundtable Initiative, 2009, p.13).

12.6 Matters to be Determined

Pa. R.J.C.P 1608 (D) requires the court to ensure that twelve basic issues be determined at permanency review hearings. If these matters are not covered by counsel, then the Judge or Hearing Master should take the lead. Following this chapter are checklists 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.

12.6.1 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 masters 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 sixteen years of age or older to make the transition to independent living should also be made (See the discussion of Transitioning Youth in Chapter 19: 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. 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. (See Best Practices Box on Compliance versus Progress, following.)

12.6.2 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 (PA Children's Roundtable Initiative, 2009, p.13).

If the child is displaying behavioral issues, or if the placement was due to truancy or ungovernability, the Judge or Hearing Master 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

"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

services are needed to assist the child age 16 or older in transitioning to independence; and whether the child's basic needs for clothing and personal care items are being met.

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

When making a determination as to the compliance and progress of parents or guardians, the Judge or Hearing Master may want to consider asking a caseworker for an opinion of the level of compliance with the permanency plan. Questions should also be asked 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 Master should rate the level of compliance as "no, minimal, moderate, substantial or full." In determining progress the court should concentrate on changes in behaviors rather than on whether the parent "attended" all sessions or completed certain tasks.

12.6.4 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. 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 Master 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. Based upon the information received during the hearing, the Judge or Hearing Master should assess the level of progress as "no, minimal, moderate, substantial or full."

Best Practice – Compliance Versus Progress

The Judge or Hearing Master 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. Likewise, 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.

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 masters 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 masters 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 masters should look at an individual's work schedules, child care, financial and transportation issues when making this assessment. Judges and hearing masters 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 masters 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 parent's or guardian's compliance and progress, the Judge or Hearing Master should make an assessment of both. Finally, although judges and hearing masters are required to address both findings, those related to progress focusing on actual behavioral changes generally have the greatest impact on permanency decisions.

12.6.5 Appropriateness and Feasibility of Current Placement Goal

At every permanency review, the court should determine whether the placement goal is appropriate and feasible, and if not, whether a new placement goal should be set. The Judge or Hearing Master 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 before reaching a decision. The Judge or Hearing Master should state on the record or in writing the reasons the goal is or is not appropriate and feasible.

For more detailed discussion of goal changes, see Chapter 13: Permanency Hearing: To Consider Change of Goal.

12.6.6 Likely Date that Placement Goal Might Be Achieved

Judges and hearing masters 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.

12.6.7 Reasonable Agency Efforts to Finalize Permanency Plan

At the permanency hearing, the Judge or Hearing Master must determine whether or not the agency made reasonable efforts to finalize the permanency plan that is in effect. 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 (see Chapter 5: Entering the System/Shelter Care Hearing for more information on reasonable efforts determinations).

Best Practice: - Ensuring Equity in Engagement and Services

The Judge or Hearing Master should ensure that reasonable efforts are made in 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.

12.6.8 Whether the Child is Safe

The Judge or Hearing Master 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 Master 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 Master 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, the child should be present at the hearing. 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 Master 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 Master should demand that a picture be received, in order to create a record of the child's physical development and growth.

12.6.9 Services Needed to Help Older Youth Transition to Independence

Although the agency is only required to provide services to transition a child into independent living when the child is 16 years of age or older, in reality this process should begin much earlier. 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. General areas of inquiry might be vocational and career counseling, secondary and post-secondary education, employment, daily living skills and the possession of necessary identification and documents such as a birth certificate and a social security card. Children with disabilities should have a transition plan included in their Individual Education Plan if they are eligible for special education services. 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 16th birthday.

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) (j)). 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. General areas of inquiry might include both secondary and post-secondary education as well as vocational and career counseling, employment, daily living skills, and possession of necessary identification and documents such as a birth certificate and a social security card. Housing is also an important issue (See Transitioning Youth in Chapter 19: General Issues.)

At least 90 days before a child's 18th 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 30 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).

12.6.10 Educational, Health Care, and Disability Needs of the Child

At every permanency hearing, the Judge or Hearing Master 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, sometimes 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;
- 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.

Best Practice - Education of Children in Residential Settings

If a child is being educated at a residential placement, the court should inquire whether the child could and should attend the local public school instead. Also, the court should ascertain whether the credit a child earns at a residential placement is transferable toward graduation at a public school.

Children with disabilities should have an I.E.P. transition plan as required by 22 Pa. Code 14.13(5) included in their Individual Education Plan beginning at age 14 if they are eligible for special education services. Certain children may require supportive services or special living arrangements to be arranged 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 9: Disposition — 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 Master should ensure that an educational and medical decision maker is appointed.

Best Practice:- Cyber Schools

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 masters 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 masters 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.

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 with medication?

If a child has a disability or special needs, the Judge or Hearing Master 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.

12.6.11 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 13 Permanency Hearing: To Consider Change of Goal and Chapter 16: 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 19: General Issues); 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 16: 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 6 months or longer; when the child has been abandoned and no parent has made substantial or continuing contact for a period of 6 months; or at any time when it is clear to the Judge or Hearing Master 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 12 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 18: 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.

12.6.12 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

12.7 Admissibility of Evidence, Reports and other Documents

A judge or hearing master has broad discretion concerning the admissibility of evidence, reports, and documents at a permanency hearing. The Judge or Hearing Master 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(D)).

Per Pa.R.J.C.P. Rule 1608(E), 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 Master permit cross-examination of those who have provided information upon which the Judge or Hearing Master 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)).

12.8 Findings and Orders

After a permanency review hearing, the Judge or Hearing Master shall enter its findings and conclusions of law into the record, in open court, and 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 Master 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.

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 or guardians; 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 Master should ensure the parties that all evidence was considered and should highlight both strengths and challenges. The Judge or Hearing Master 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.

PERMANENCY HEARING CHECKLIST

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 Master 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? (In an applicable case.)
- ✓ 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?
- ✓ Is the child safe? If not — why?
- ✓ 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 16 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 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?

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).

- ✓ Are the parents and guardians meeting the child's educational needs? If not, does the child need an Education Decision Maker? If so, who should be appointed?
- ✓ 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 1613?
- ✓ 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.

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

- ✓ Has a petition for aggravated circumstances been filed? Have aggravated circumstances been previously found? (For additional information—see Chapter 19: General Issues for more information on aggravated circumstances.)
- ✓ 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 foster parent).
- ✓ 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 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?
- ✓ 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?
- ✓ Has your attorney or your caseworker talked to you about continuing services and supervision after you turn 18? Have you agreed to continued services and supervision?

- ✓ If you have not agreed to continued services and 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?
- ✓ For children 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? Do you attend your child's medical and dental appointments? Does your child seem happy? Does your child seem healthy?
 - Does your child need anything?
 - 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?



PERMANENCY HEARING BENCHCARD

Relevant Statutes	<p>42 Pa.C.S. § 6351</p> <p>Pa.R.J.C.P. 1607 (Scheduling of Permanency Hearings) & 1608(D) (Evidence in Permanency Hearings).</p>
Purpose of Hearing	<p>The child should attend every hearing unless waived by the judge. At the permanency hearing the court determines if the child welfare agency has made reasonable efforts to finalize the permanency plan in effect for the child.</p> <p>The court will make a permanency decision as to whether the plan for the child should be: reunification, adoption, legal custodianship, placement with a relative or another permanent living arrangement. The court should also consider concurrent planning for the child to achieve permanency more quickly.</p> <p>Time is of the essence for permanency of children. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child.</p>
Time Frame	<p>A permanency hearing must be held within 6 months of the child's removal from the home or a transfer of temporary legal custody or other disposition, whichever is earlier.</p> <p>A permanency hearing must be held within 30 days of a determination that reasonable efforts to reunify the family are not required.</p>
Rules of Evidence	<p>Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance can be presented to the court regardless of whether it was the basis for the determination of dependency. "Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court" (Pa.R.J.C.P. 1608(D)).</p>
Next Hearing	<p>A permanency hearing must be held every 6 months until the child is removed from the jurisdiction of the court.</p> <p>Best practice is to conduct review hearings a minimum of every 3 months.</p>



PERMANENCY HEARING SUMMARY OF KEY QUESTIONS/DETERMINATIONS



- Were reasonable efforts made by the Agency to reunify the family and to finalize a permanent plan?
- Is the plan in the best interest of the child?
 - Will placement be continued for a specific time, with a continued goal of family reunification? Have adoptive parents been identified?
- If legal custodianship is the plan, why is it preferable to TPR and adoption?
- If/when will the custody of the child be transferred to an individual or couple on a permanent basis?
- If APPLA is the plan:
 - 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?
 - Has family finding been thoroughly conducted?
 - Have all efforts to achieve a more preferred permanency goal been exhausted?
 - Have circumstances changed such that another plan should be considered?
 - Is the child placed in the most family-like setting possible?
- What are the child's special needs? Who is to provide the services to meet the child's needs?
- Is the visitation plan still appropriate or do revisions need to be made?
 - Does the frequency and duration of the visits seem appropriate based on the child's age and needs?
 - Have relatives or kin resources been exhausted for visitation location and oversight?
 - Has a visitation plan been presented to the court that outlines details of the visitation plan, including assistance to the parent or siblings such as transportation?
- What are the child's educational needs?
 - Will the child remain in the same school?
 - If the child has been moved, does the child need new assessments?
 - If the child has been moved, is there monitoring to make certain his or her transition is successful?
 - Is the child appropriately placed, attending school, and making progress?
 - Does the child have a parent or guardian making reliable education decisions or should an EDM be appointed

These questions are adapted from the text of this chapter, the Mission and Guiding Principles for Pennsylvania's Dependency System, the Permanency Hearing Checklist provided in the Resource Guidelines (NCJFCJ, 1995, p.75-76) and Adoption and Permanency Guidelines (NCJFCJ, 2000, p. 20-22)