

Chapter 9 - Disposition

9.1 Overview

In the timeline of dependency proceedings the disposition hearing occurs immediately after adjudication. The adjudication and disposition are separate processes and serve two different purposes. The majority of jurisdictions in Pennsylvania hold these hearings consecutively for the purposes of timeliness and convenience. This occurs for several reasons: many, if not all, of the parties are the same at both hearings, much of the evidence presented is similar, it helps to expedite the process and many times the outcomes overlap. When these hearings are held jointly the Judge or Hearing Master should ensure that all necessary findings for each hearing are included in the final order.

A disposition hearing is not a permanency hearing. In the juvenile court process, disposition is the stage at which the court determines who shall have custody of the child in question, as well as what services should be provided to the child and family. In the interest of protecting the child from further neglect or abuse, the court must decide whether to remove the child from the home, continue out-of-home placement and review safe alternatives to placement, or return the child to the home.

In cases where information is incomplete at the time of adjudication (i.e., Family Service Plans/Permanency Plans, professional reports or evaluations are not available), the court may adjudicate the child and defer disposition. If the child has been removed from the home, the disposition hearing must be held within 20 days after adjudication (Pa.R.J.C.P. 1408 & 1510). In these circumstances, the child is typically ordered to remain in the current placement setting, if placed out-of-home, until the disposition hearing. Bifurcating the process in this manner allows more time to obtain information on the case and aids the Judge or Hearing Master in making the most appropriate decision on the custody and placement of the child. This also allows the agency the opportunity to more fully engage the family in identifying the most appropriate services.

*** Best Practice – Frontloading Services***

Identifying appropriate services to families early in the process is imperative. Whether the adjudication and disposition hearings are held simultaneously or separately, the judge or hearing master can take this opportunity to order the agency to provide immediate services to alleviate the circumstances necessitating placement. The court can order the agency to do an exhaustive search for absent or putative fathers and kin resources or offer the families some type of Alternative Dispute Resolution (including FGDM, mediation or facilitation). The provision of these services prior to disposition or at an expedited review after disposition promotes timely permanency for the child (PA Children's Roundtable Initiative, 2009, p. 13).

9.2 Preliminary Matters

As is the case with other dependency hearings, notice must be provided to all parties in advance of the dispositional hearing. Notice of the hearing must be provided to the agency solicitor, the child's GAL and/or legal counsel, parents, foster parents, pre-adoptive parents or relatives providing care for the child, the county agency, the Court Appointed Special Advocate if assigned, and any other persons as directed by the court (Pa.R.J.C.P. 1501).

Likewise, parties at the dispositional hearing are entitled to be represented by counsel, as discussed more fully in Chapter 4: Right to Legal Representation.

In addition, the rules governing discovery and inspection in dependency cases (Pa.R.J.C.P. 1340-1342), discussed in Chapter 6: Adjudication, also apply prior to disposition hearings.

9.3 Reports

At the disposition hearing, the court may consider various written reports that may not have been allowable or available previously. Reports can include, but are not limited to, results of examinations, written reports by experts regarding the case, and the Family Service Plan/Child Permanency Plan (Pa.R.J.C.P. 1509).

The Family Service Plan (FSP) is the plan developed for the family by the agency. Creation of this plan should be accomplished with the family's input. Under 55 Pa. Code § 3130.61, the FSP must include identifying information on the family members, the circumstances which necessitated placement, service objectives and services to be provided to achieve the objectives, actions to be taken by the parents, children, the county agency or other agencies, and the dates when these actions will be completed. In counties that use Family Group Decision Making (FGDM) to identify needed services the FGDM plan is often incorporated into the FSP document.

Best Practice – Family Service Plan Requirements

Judges and hearing masters should consider the requirements contained within the FSP, the feasibility of accomplishing the requirements and the connection each requirement has to positively impact child vulnerability, parental protective capacity and the reduction of specific child safety threats. FSPs should help guide needed change. Sometimes the needs of a child or parent may require a multitude of services which, in turn, may feel overwhelming to a family. When this occurs, judges and hearing masters can help by providing guidance regarding which services are priorities for the court.

The agency is generally required to complete a written FSP within 60 days of accepting a family for service (55 Pa. Code § 3130.61). However, if a child is in emergency placement and continued placement is necessary, the agency has only 30 days from the time of placement to complete the FSP (55 Pa. Code § 3130.66). If the agency has not completed the FSP by the time of the disposition hearing, it may be appropriate to bring the parties back for a post-hearing review of the completed FSP.

Additionally, upon placement of a child, the agency is required to prepare a Child's Permanency Plan (CPP) (amendment to the FSP) for each child. The CPP also provides a wide variety of information for the courts and should be provided to all parties. The CPP includes specific information regarding the child, such as: circumstances which made placement necessary, the child's permanency goal and concurrent planning goal, the placement type and location, medical and educational information, appropriateness of the placement, justification for the placement's level of restrictiveness, and anticipated duration of the placement (55 Pa. Code § 3130.67).

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 permanency 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 in shifting from the initial permanency plan to 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 reviews the status of the concurrent plan at future hearings, but the concurrent plan should initially be established at disposition.

The services provided in any plan should be tailored to meet the specific needs of each child and parent. Every family with whom the system works is different and therefore the services needed are likely to be different...they need to be tailored to fit each family's individual needs. As such, the identification and delivery of services is best accomplished through a collaborative process with the family. In many counties this occurs through a FGDM meeting or other family conference.

9.4 Stipulations

When the parties admit the allegations or stipulate to a set of facts as to dependency, they often agree to a disposition order at the same time. Stipulations are a very efficient and valuable way to reach the necessary outcome because the parties are taking part in the resolution of the issues, as opposed to simply acquiescing in a court-imposed ruling.

In some counties alternative dispute resolution processes such as mediation or facilitation may be utilized to reach this agreement. Regardless of the method used, the agreement should address, in detail and with completeness, how this matter will move to resolution in a definite and acceptable time frame. Particular emphasis should be placed on the facts which led the agency to initiate dependency proceedings, and a court must be sure the parties understand the serious nature of the situation and the applicable law. At this stage, it is imperative that the Judge or Hearing Master inform the parents what improvement on their part must be shown before the child can come home.

Best Practice – Active, Ongoing Court Oversight

Once the court is certain that a stipulated agreement is well-considered and within the abilities of the parties, it would be prudent to set a review in three or four weeks to be sure all of the services are in place and all parties are moving towards the goal and cooperating with each other. Agency case workers and service providers should participate in the review. The review notice should be given at the conclusion of the disposition hearing.

9.5 Conduct of the Hearing

The Judge or Hearing Master sets the stage for what happens in the courtroom, starting with an introduction, an explanation of the judicial role and a description of what is going to happen in the courtroom. Before proceeding, the court should likewise ask those in the courtroom to introduce themselves and identify their relationship to the child.

Although dependency court is a less formal setting than many civil proceedings, some decorum and formality should be observed and all parties should show consideration for the seriousness of the matter at hand. This includes the manner in which parties are addressed. By addressing parties by their proper names, as opposed to their roles as “Guardian”, “Dad”, and “Mom”, the court conveys a tone of respect for both the proceeding and those involved. This culture of caring and collaboration sets a positive tone for the hearing and can ensure the child and the family leaves the hearing with hope.

All procedures and rules of evidence applicable to adjudication hearings are applicable to disposition hearings, except that “helpful” evidence that would not be competent in an adjudication hearing may be considered to the extent of its probative value in a dispositional hearing (42 Pa.C.S. § 6341(d)). The court may entertain both testimonial evidence and documentary evidence during the proceeding. Testimonial evidence may be offered by all persons and agency representatives who have current knowledge of the child and the family, so the court can use this relevant knowledge in making permanency decisions for the child.

Documentary evidence from the agency, private providers, schools and health care providers, should be secured by counsel and the Guardian *Ad Litem*, and provided to the court and all parties. Written reports can directly assist a judge in reaching a decision, in addition to giving caseworkers additional perspective as to the needs of a child and family. Further, where concerns regarding child safety can be clearly identified, necessary services can be implemented and clear objectives for family members set, which will provide touch points for later reviews.

Best Practice – Educational Information

Each party should attempt to bring all of the child’s current and relevant educational information including reports, report cards, attendance records, disciplinary records, and evaluations such as a copy of the child’s Educational Screen or other educational assessments of the child to the adjudication hearing, the disposition hearing, and all subsequent hearings.

If the agency does not have the records, the court should direct the agency to immediately obtain the records of the child. In January 2013, the Family Educational Rights and Privacy Act (FERPA) was amended to ensure that child welfare agencies obtain immediate access to the education records of children in care.

Under the Uninterrupted Scholars Act (P.L. 112-278), agency caseworkers and private providers are authorized to obtain the education records of children in out of home care for whom they have legal responsibility, including children under a voluntary placement agreement and youth adjudicated dependent under shared case responsibility.

The key discussion in a disposition hearing is whether it is **clearly necessary** that the child be placed or continued in placement away from home and which services should be provided at the early stages of the case. If initial placement is clearly necessary, the court should attempt to place the child and

his or her siblings, if possible, with a safe relative minimizing any potential trauma. Each child has a family, immediate and extended. Locating members of that extended family widens the circle of caring adult relationships for the child and permits meaningful connections which help the child develop a sense of belonging.

The court has great latitude to impose conditions and limitations which serve the best interest of the child. Often a discussion on disposition is necessary before significant planning can begin, bearing in mind the goal of arriving at an appropriate long-term plan for the child's future, one which speaks to the needs and problems of the child and parents.

"I felt fortunate to have been placed with my aunt, someone I've known my whole life, someone I can have fun with, laugh with. I felt really blessed when she came and got us that night."

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

Best Practice – Maintaining Family Connections

The single most identified factor contributing to positive outcomes for children is the maintenance of meaningful connections and relationships with safe, supportive family members. Accordingly, it is important to transform the ideology of courts and agencies from providing placements with licensed strangers, to finding and connecting children with safe family members. By doing that, we honor relationships between family members, give a family the opportunity to heal and develop trust with the agency, and provide a child with a much-needed sense of belonging (PA Children's Roundtable Initiative, 2009, p. 10).

Depending on the nature of the case, a judge or hearing master may consider asking the family to engage in FGDM, if it has not yet been undertaken. Although a judge or hearing master should not order a FGDM conference, as this is a voluntary practice, the Judge or Hearing Master can order the agency to provide information regarding the practice and order the family to meet with a facilitator who can explain the process of FGDM clearly so as to make an informed decision. Alternatives to proceedings in front of a judge, like FGDM, mediation and facilitation, can lessen the stress on a family and be quite useful. With the parties working together to find solutions in a non-adversarial environment, focusing on the family's strengths, the parties and the caseworkers can make a huge difference in successfully resolving cases (for more information on FGDM, see Chapter 19: General Issues).

Should no agreement be reached, the court will make the determination as to whether the child can stay at home with safety measures in place or should

be placed away from the home, and if so, where, specifically, the child is to reside.

9.6 Educational Decision Makers (EDM)

It is presumed that a parent or guardian can make appropriate educational decisions to safeguard the child's best interests, unless there is evidence presented to the court contrary to this. When such evidence is presented, the court should hear from the parties.

9.6.1 When to Appoint an Educational Decision Maker

If the court determines that all parents or guardians are unable to fulfill the child's educational needs, the court may appoint an Educational Decision Maker (EDM) to safeguard the child's educational best interests (Pa.R.J.C.P. 1147). If the court appoints an EDM, the court may wish to advise the parent/guardian to remain involved in the child's education to the extent that they are able. If appointed, the continued necessity of an EDM should be addressed at each subsequent hearing.

Best Practice – Hearings to Determine Whether Appointment of an Educational Decision Maker is Needed

When determining whether to appoint an Educational Decision Maker (EDM), a court should ascertain whether the parent or guardian can fulfill the child's ongoing educational needs. Judges should allow testimony from all interested parties and should make findings supporting the need for an appointment if one is necessary. The Judge should consider various factors such as: (1) the permanency goal of child (*i.e.* reunification or adoption); (2) any unique circumstances of the child; (3) the complexity of the educational decisions that may need to be made; (4) whether the child has a disability and needs special education; (5) whether the parents are capable of making educational decisions for the child and readily available and willing to participate; (6) why the person to be appointed is appropriate for this child's needs; (7) how well the person to be appointed knows the child; and (8) the best interests of the child.

At each subsequent hearing, the court should determine whether an EDM continues to be necessary and whether the appointed EDM is meeting the needs of the child.

9.6.2 Person Eligible for Appointment

While not an exhaustive list, the following persons may be considered to serve as a child's EDM:

- A family member;
- A foster parent or former foster parent ;
- A Guardian Ad Litem (GAL);
- A Court Appointed Special Advocate (CASA);
- A family friend;
- A mentor; or
- Any other person deemed appropriate by the Court.
- If special education is not an issue, a child welfare professional.

9.6.3 Special Rules for Students with Disabilities

When dealing with children who need special education services, there are additional requirements under the federal Individuals with Disabilities Education Act (IDEA)*. Thus, when the court appoints an Educational Decision Maker for a child who is or may be eligible for special education, the Court's Order should state that:

- (1) The Educational Decision Maker meets the requirements of the IDEA.
- (2) The parents are not "attempting to act" in the special education process, or that the court has determined the parent's authority to make decisions should be limited and has appointed an Educational Decision Maker for the child.
- (3) Like all other parents under the IDEA, the EDM appointed by the Court has all of the rights of an IDEA parent including the right to access educational records, request and consent to evaluations, disagree with the recommendations of the school, and request mediation or a due process hearing.

**A court-appointed EDM for a child with disabilities cannot be an employee of the state education agency, the local education agency, or any agency involved in the education or care of the child, including the local child welfare agency.*

9.7 Findings and Orders

In its written findings of fact and legal conclusions, a court must address both the immediate and long-term plans for the maintenance of the child, including the nature of the placement and why it is necessary and appropriate, under the circumstances.

The court must also review the case plan, as well as the concurrent plan proposed by the agency, to determine whether it is appropriate as is or with modification, and whether it is capable of being implemented, monitored, and followed by the family. The findings and conclusions must include the services ordered and the corresponding needs to be met.

***Best Practice – Active, Ongoing Court Oversight ***

When placement out of the home is necessary the court should include the type of placement and specific name and location of the placement, whenever possible. This should include the names of kin, foster families or facility names. Circumstances may arise when it is not appropriate to identify the name or address of a resource family. In such a case, it may be appropriate to use “*confidential*” in the order to protect that information.

In addition it is sometimes not possible for the agency to identify a specific placement location immediately. In these instances the placement type should be identified generally with the Judge or Hearing Master requesting the case be returned to the court within 30 days to determine the actual placement of the child and issue a new order.

If a child is moved prior to a court hearing the case should be brought back before the court to make a determination on the appropriateness of the move. This practice can provide insight to the court on the frequency of moves endured by the child. In all situations, care should be exercised to limit placement moves and the corresponding trauma that moves have on the child. The court must consider that every move of a child inflicts upon the child trauma and a sense of loss. Placement moves should be controlled by the court and managed in the best interest of the child. In any placement move experienced by the child, the court should re-examine the child's educational stability and plan.

Pursuant to Pa.R.J.C.P. 1512D(2), the court must find in open court or enter into the record through the dispositional order, a finding if the child is placed, that:

- a) remaining in the home would be contrary to the welfare, safety, or health of the child;
- b) reasonable efforts were made by the county agency to prevent the child's placement;

- c) the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available; and
- d) if preventive services were not offered due to the necessity of an emergency placement, that such lack of services was reasonable under the circumstances.

Under Pa.R.J.C.P. 1515, other areas to be covered in the order and in open court include:

- a) the court's disposition;
- b) the reasons for the court's disposition;
- c) the terms, conditions, and limitations of the disposition;
- d) the name of any person or the name, type, category, or the class of agency, licensed organization, or institution that shall provide care, shelter, and supervision of the child;
- e) whether any evaluations, tests, counseling, or treatments are necessary;
- f) the permanency plan for the child;
- g) the services necessary to achieve the permanency plan;
- h) any findings necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147;
- i) any findings necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and
- j) a visitation schedule, including any limitations. (Though the rule does not specify what the visitation must be, guidance on this can be found in Chapter 7:Visitation)

In Pennsylvania, dependency findings and orders for dispositional 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.

If a child is placed in foster care, the court should also order child support if the parents are able to help cover the costs of care, keeping in mind that child support obligations should not be unduly burdensome.

When possible, the order should also set the date for the Permanency Review Hearing (see Chapter 12: Permanency Hearing) and be distributed immediately to all parties.

Finally, pursuant to Pa.R.J.C.P. 1515(c), the court must determine on the record that the parties were advised of their appellate rights. The court should explain the right to appointed counsel for an appeal if a party is without counsel, and without the financial resources or otherwise unable to employ counsel. The court should explain the right of any party who is indigent to proceed with an appeal without payment of costs.

DISPOSITION HEARING CHECKLIST

1. TIMELY HEARING:

___ **Date** Child Removed: _____
___ **Date** of Disposition Hearing Care Hearing: _____

(Note: The Disposition Hearing must take place no later than twenty (20) days after child is adjudicated dependent.)

2. NOTICE HEARING:

___ Determine if written notice of time, place and purpose of Disposition Hearing was issued to the child and the child's:
___ Mother and attorney ___ Father and attorney
___ Guardians/custodians and attorney ___ GAL and/or attorney
___ Tribe (If ICWA applies)
___ Determine status of any absent parents/parties.

3. WHO SHOULD BE PRESENT:

___ Judge
___ Mother
___ Father
___ Guardians/Custodians
___ Child(ren)
___ Spouse of Child, if any
___ Parents' Attorneys
___ Guardian *ad Litem*
___ Child's Attorney
___ Agency Solicitor
___ Caseworker
___ CASA
___ Court Reporter
___ Security Personnel

WHO MAY BE NEEDED:

___ Extended Family Members
___ Friends of the Family
___ Foster/Pre-adoptive Parents
___ Other Witnesses
___ Service Providers
___ Law Enforcement
___ Probation Officer

4. PROCEDURE:

___ Explain the purpose of the disposition hearing, (which is to determine whether the child, who was adjudicated dependent, will remain in or be returned home, or be placed in another setting).
___ Identify all parties present.
___ Advise parties of their rights, including the possibility of termination of parental rights if child is in foster care for fifteen (15) of the last twenty two (22) months.

- ___ Determine whether timely service of process and notice of the hearing was given to the necessary parties.
- ___ Take testimony to determine if it is clearly necessary to remove the child from the home and determine the best placement; testimony shall be offered by the agency and fact witnesses, including parents; expert testimony, if needed, will be given, and aggravated circumstances testimony, if appropriate, shall be offered.

** When alternatives to removal are not possible or practical, clear necessity is shown. **

5. ISSUES RELATED TO DISPOSITION:

- ___ An agency's reasonable efforts regarding services which would permit reunification.
- ___ Family visitation if the child is placed outside the home.
- ___ Payment of child support if the child is placed outside the home.
- ___ Ongoing services and non-placement reviews, if the child is placed in the home.
- ___ Educational needs of the child.
- ___ Long term plan for the child.
- ___ Status of Family Finding process.
- ___ Ensure that frequency and duration are appropriate based on the age and needs of the child.
- ___ Ensure that oversight and location of visits are least restrictive and provide for the most natural interaction to occur.

6. ISSUANCE OF ORDERS:

Orders shall address these points:

- ___ Disposition of the child in home or out.
- ___ Services and assessments ordered for the child and the family.
- ___ Permanency Plan for the child.
- ___ Visitation schedule, including any limitations.

7. SCHEDULE NEXT HEARING:

- ___ Three-Month Review Hearing **Date:** _____
- ___ Six-Month Review Hearing **Date:** _____
- ___ Permanency Hearing **Date:** _____

8. **ADVISE PARTIES ON THE RECORD OF THE FOLLOWING:**

- _____ Right to appeal within thirty (30) days.
- _____ Right to proceed without payment of costs if
unable to afford to pay costs.
- _____ Right to appointed counsel if unable to afford
to retain counsel



DISPOSITION HEARING BENCHCARD



Relevant Statutes	42 Pa.C.S. § 6351 (a) and (b) Pa.R.J.C.P. 1340-1342; 1408, 1510 & 1512 (A) (1).
Purpose of Hearing	Hearing at which the judge considers all the evidence, such as reports and recommendations, regarding the child's placement. The judge also reviews the case plan developed by the parties to determine if it addresses all of the problems affecting the child.
Time Frame	Not later than 20 days after adjudication if the child has been removed from the home (42 Pa.C.S. § 6341(c)). The court may continue the hearing for a reasonable time to receive reports and other evidence bearing on the disposition or the need for treatment, supervision or rehabilitation (42 Pa.C.S. § 6341(e)).
Rules of Evidence	In disposition hearings all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value. Thus hearsay may be considered (42 Pa.C.S. § 6341(d)).
Next Hearing	<p><u>Permanency Hearing:</u> within 6 months of the date the child was removed from the home or date of disposition, whichever is earlier (42 Pa.C.S. § 6351(e)).</p> <p><u>Permanency Hearing:</u> Or within 30 days if there is an allegation of aggravated circumstances or the court finds that reasonable efforts are not required to reunify the family (42 Pa.C.S. § 6351(e)).</p> <p>Best practice is to conduct review hearings a minimum of every 3 months.</p>
Appeal Rights	On the record to all parties



DISPOSITION HEARING

SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- What is the appropriate disposition of the case and long-term plan for the child? (i.e., What disposition does the predisposition report recommend?)
- Where should the child be placed?
- Is this the least restrictive, most appropriate, most family-like placement option?
- Does the agency-proposed case plan reasonably address the problems and needs of child and parent? Have both the father and mother been included in the development of the plan?
- Has the father been identified? Has paternity been established? If not, what specific actions have been taken or are needed?
- What is the concurrent plan for the child? Was the concurrent plan established in a timely manner? Is it appropriate to the child's circumstances?

- Are any evaluations, tests, counseling or treatment necessary?

- What are the services necessary to achieve the permanency plan? Are services specific to the needs of the father, the mother and the child(ren)?

- Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?
- What if any child support should be ordered?
- What visitation with parents is appropriate? 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 such as transportation?
- What visitation with siblings is appropriate?
- When will the case be reviewed?
- Has Family Finding been done to identify all possible family and caregivers?
 - Has any possible kinship placement been identified?
 - What, if any, are the obstacles to placing the child with family/kin?

- Has the family been offered a Family Group Decision Making Conference?
- Does the family understand what Family Group Decision Making is?
- Remember to advise all parties of the following:
 - Right to appeal within thirty (30) days.
 - Right to proceed without payment of costs.
 - Right to appointed counsel.

These questions are adapted from the text of this chapter, the Mission and Guiding Principles for Pennsylvania's Dependency System and the Disposition Hearing Checklist provided in the Resource Guidelines (NCJFCJ, 1995, p. 63-64).