



# Disposition Hearing Benchcard

## CASE MANAGEMENT – BEFORE THE HEARING

### *Persons who should be present at the disposition hearing<sup>1</sup>*

- Judge or judicial officer
- Parents of each child whose rights have not been terminated
  - Mothers, fathers (legal, biological, alleged, putative, named), non-custodial parents – all possible parents
- Child
- Assigned caseworker
- Agency attorney and/or prosecuting attorney
- Attorney(s) for each parent
- Legal advocate for the child
- Guardian *ad Litem* (GAL); CASA
- The child’s current placement (caregivers, foster parents, custodial adults, adoptive parents)
- All adult relatives of the child
  - Relatives (P.L. 110-351) with legal standing or other custodial adults, including adult half-siblings
  - Paternal *and* maternal relatives
- Non-related extended family, fictive kin (persons known and trusted by the families; godparents)

The disposition hearing is the hearing at which the judge considers reports, recommendations, and other evidence regarding the child’s placement. The judge also reviews the case plan developed by the parties.

ASFA requires that the agency must develop a case plan “within a reasonable period” which can be no more than 60 days after the removal of the child (45 C.F.R. § 1356.21(g)(2)). The agency must involve the parents in case plan development (45 C.F.R. § 1356.21(g)(1)). If the parents are unwilling or unable to participate in the case plan development, the department must document its efforts to engage the parents in the process (65 Fed. Reg. 4057 (Jan. 25, 2000)).

- Parents of a sibling child, where such parent has legal custody of the sibling (P.L. 113-183)
- If ICWA applies: Indian custodian; the child's tribe and attorney; tribal representative/tribal liaison; ICWA-qualified expert witness
- Treatment and/or service providers
- Parent partners, parent mentors if assigned/available, substance abuse coach, DV advocate
- Cultural leaders, cultural liaison, religious leaders
- Adult or juvenile probation or parole officer
- Educational surrogate parent if appropriate
- Educational liaison/school representative
- Court-certified interpreters or court-certified language services
- Court reporter
- Court security

### ***Review reports submitted to the court***

- *Case plan/disposition report should include:*<sup>2</sup>
  - a statement of family changes needed to correct the problems necessitating state intervention, along with timetables for accomplishing them;
  - a description of services to be provided to assist the family; and
  - a description of actions to be taken by parents to correct the identified problems and any steps the parent has taken thus far.
- *When the agency recommends foster placement, an affidavit of reasonable efforts (ACTIVE EFFORTS in ICWA cases)<sup>3</sup> should be submitted. The following are some additional key elements of the affidavit:*
  - A description of the efforts made by the agency to avoid the need for placement and an explanation why they were not successful;
  - An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family; and

- Identification of relatives and friends who have been contacted about providing a placement for the child.
- **Other information that should be included in either the affidavit of reasonable efforts or an accompanying court report:**
  - a description of the placement and where it is located;
  - proposed arrangements for family time;
  - placement of the child's siblings and, if they are to be apart, proposed arrangements for visitation;
  - an appropriate long-term plan for the child's future; and
  - proposed child support.

### ***Consider whether there are any related cases in juvenile or other courts***

- Are there other family, delinquency, domestic violence, probate, guardianship, or criminal cases or orders of protection involved in this case?
- Can these cases be consolidated before one judge?
- Is there a potential for duplicative or conflicting orders?
- Can the judges consult?

## **CONDUCTING THE DISPOSITION HEARING**

### ***Opening the Hearing***

- Call the case.
- Identify the people in the courtroom and their connection to the case.
- Verify that the court has current addresses for parents/guardians. (Do not openly identify addresses when one or more parents is party to an injunction for protection against domestic violence.)
- Explain the type and purpose of the hearing.
- State the number of days the child has been in care and the number of placements to date.

## ***Due Process and Due Diligence Considerations***

- **IDENTIFICATION OF PARENTS AND/OR GUARDIANS**
  - Have the identity and location of all parents and/or guardians been determined?
  - If not, what diligent search efforts have been made for all parents and/or guardians?  
Are they sufficient?
  - Has paternity of all children been legally established? If so, how?
  - Have efforts to identify and locate fathers been sufficient? What has been done?
  
- **NOTICE**
  - Ensure that reasonable notice of the date, time, place, and purpose of the hearing was achieved.
  - How were the parents/guardians and foster parents notified of this hearing?
    - If child, parents, caregivers, or relatives who requested notices are absent, confirm that they were properly noticed (P.L. 110-351 § 103).
  - Was the notice in a language and form understandable to the parents/guardians?
  - Has the agency exercised due diligence to identify and provide notice to all adult relatives of the child's removal and their options to participate in the child's care and placement? (42 U.S.C. § 671(a)(29))
  - Verify that the agency used due diligence to notify all relatives within 30 days of removal (P.L. 110-351 § 103).
  - Verify that the agency used due diligence to provide notice to all parents of a sibling child, where such parent has legal custody of that child (P.L. 113-183 § 471(a)(29)).
  - If the child is eligible for membership in a federally recognized tribe, confirm that the tribe has been notified pursuant to ICWA.
  
- **REPRESENTATION**
  - Advise any unrepresented parties of their right to counsel, including court-appointed counsel if indigent.
    - If parents do not have counsel, advise of right to counsel, ascertain whether the right to counsel is understood, and appoint counsel for parents who qualify as indigent.

- Are there language issues to consider in appointing counsel?
- Does counsel have sufficient training and experience to provide competent representation in this case?
- Has counsel had sufficient opportunity to consult with his/her client prior to the hearing?
- If counsel is waived, determine if waiver is made knowingly, intelligently, and voluntarily.
- Appoint counsel to represent the child if one has not yet been appointed.
  - Does counsel have sufficient training and experience to represent the child in this case?
  - Has counsel met with the child in person? Is counsel able to determine and advocate the child's position?
  - Should the court appoint a Guardian *ad litem* and/or CASA for the child?
- **UNDERSTANDING AND COMPETENCY**
  - Do the parents understand the allegations and the purpose of the hearing?
  - Are there parental competency issues?
- **APPLICABILITY OF OTHER FEDERAL LAWS AND REGULATIONS**
  - Do the provisions of the Americans with Disabilities Act, Service Members Civil Relief Act, UCCJA/UCCJEA, ICPC, or other federal laws apply to this case?<sup>4</sup>
    - Verify timely compliance with all ICPC requirements.

### ***Engage parents and any children or relatives present***

- What language are you most comfortable speaking and reading?
- Do you understand what this hearing is about? (Explain the purpose of the hearing.)
- Were you involved in any ADR processes used before this hearing? If yes, what was the outcome?
- Have you had sufficient opportunity to speak with your counsel prior to this hearing?
- Ask parents if any other individuals should be involved in the court matter, or who else is significant in the child's life.

# KEY INQUIRIES, ANALYSES, AND DECISIONS AT THE DISPOSITION HEARING

## REFLECTIONS ON THE DECISION-MAKING PROCESS TO PREVENT BIAS

*Take a moment before every hearing or before making decisions in a case to ask yourself:*

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or might influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?
- Have I placed the child in foster care as a last resort?
- Have I integrated the parents, children, and family members into the hearing process in a way that ensures they have had the opportunity to be heard, respected, and valued? Have I offered the family and children the chance to respond to each of the questions from their perspective?
- Is this family receiving the same level and tailoring of services as other families?
- Is the parents' uncooperative or negative behavior rationally related to the involvement of the agency and/or the court?
- If this were my child, would I be making the same decision? If not, why not?

## ***Indian Child Welfare Act (ICWA) Determination***

- *Has an ICWA determination been made? If yes, different standards apply; refer to the ICWA Disposition Hearing Checklist.*<sup>5</sup>
- If an ICWA determination has not been made, does ICWA apply? Refer to the ICWA Checklist.<sup>6</sup>
  - If needed, inquire as to whether the child or parents may be of Native American heritage (25 U.S.C. § 1903, 1912, and 1922). If such heritage is a possibility, until such a determination is made, the court should proceed as if ICWA applies.

## ***Key decisions and findings at the disposition hearing***

**HAS THE AGENCY MADE REASONABLE EFFORTS TO ELIMINATE THE NEED FOR PLACEMENT (ACTIVE EFFORTS IN ICWA CASES)<sup>7</sup> OR PREVENT THE NEED FOR PLACEMENT?**

- **Can the child be SAFELY returned to a parent today?**
  - What specifically prevents the parent from providing the minimally adequate standard of care?

## **REVIEW THE CASE PLAN**

- *Verify that the agency has filed the case plan in a timely manner.*
  - The agency must file the case plan within 60 days of removal (45 C.F.R. § 1356.21(g)(2)).
- *Verify that the agency has involved parents in case plan development (45 C.F.R. § 1356.21(g)(1)).*
  - If the parents are unwilling or unable to participate in the case plan development, the department must document its efforts to engage the parents in the process (65 Fed. Reg. 4057 (Jan. 25, 2000)).
- *Verify that the agency has involved children age 14 and older in case plan development (P.L. 113-183 § 475(1)(B)).*
  - Verify that children age 14 and older have selected two members of the case planning team who are not the caseworker or foster parent. (P.L. 113-183 § 475(5)(C)(iv)).

- Verify that the case plan documents the child’s education, health, visitation, and court participation rights, the right to receive a credit report annually, and a signed acknowledgment that the child was provided these rights and that they were explained in an age-appropriate way (P.L. 113-183 § 475(A)).

### **KEY DECISIONS THE COURT SHOULD MAKE AT THE DISPOSITION HEARING:**

#### **Determine whether:**

- The agency made or failed to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely, with a description of the services and why those services did not prevent removal or enable the child to return home;

**OR**

- The agency is not required to make reasonable efforts to prevent removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely;

**AND**

- It would be contrary to the welfare and best interest of the child to continue in the home (42 U.S.C. § 672, 472(1)).

#### **REVIEW CASE PLAN**

- Verify that the agency has filed the case plan in a timely way, involved parents in case plan development, and involved children age 14 and older in case plan development.
- What is the permanency plan?
- What are the terms of meaningful family time?
- How does the plan address and support the child’s well-being?

**Is the case plan rationally related to jurisdictional findings?**

**In making dispositional orders, consider the best interests of the child.**



- **Verify that the agency has involved children age 14 and older in case plan development (P.L. 113-183 § 475(1)(B)).**
  - Verify that children age 14 and older have selected two members of the case planning team who are not the caseworker or foster parent. (P.L. 113-183 § 475(5)(C)(iv)).
  - Verify that the case plan documents the child's education, health, visitation, and court participation rights, the right to receive a credit report annually, and a signed acknowledgment that the child was provided these rights and that they were explained in an age-appropriate way (P.L. 113-183 § 475(A)).
- **What is the permanency plan?**
  - **If the permanency plan is reunification**, what services will be offered to the parents?
    - How do the services specifically address the safety concerns supporting jurisdictional findings?
    - Do the parents believe the services will meet their needs and build on their strengths?
    - How does the agency assist the family in accessing services?
    - Has the agency demonstrated that the services offered are culturally appropriate and proven effective for families with similar issues and characteristics?
  - **If the permanency plan is not reunification**, has there been a judicial determination that reasonable efforts are not required due to aggravated circumstances? (42 U.S.C. § 671(a)(15))
  - What is the **concurrent case plan**, and what steps are being taken to implement that plan?
  - APPLA is limited as a permanency plan for youth age 16 and older (P.L. 113-183 § 475(5)(C)(i)).
- **What are the terms of meaningful family time with parents, siblings, and extended family members?**
  - Do the terms of family time match the safety concerns?
    - Is there evidence supporting supervised visitation if this is recommended?
  - Are the time and location of family time logistically possible for the parents and extended family, and supportive of the child's needs?
- **Is the case plan rationally related to jurisdictional findings?**

## REVIEW THE CHILD'S PLACEMENT

- Is the placement appropriate? (42 U.S.C. § 675(5)(A))
  - When and where did the caseworker last see the child? What was the nature of contact?
  - Is the child safe? Is the placement least restrictive (most family-like), the most appropriate available, and in close proximity to the parents? (42 U.S.C. § 675(5)(A))
  - If the child is in foster care, what efforts are being made to fully explore kinship options? (42 U.S.C. § 671(a)(19) and (29))
  - Have relatives been deemed inappropriate? If so, why? Were waivers to foster care licensing considered?
  - If child is in kinship care, how is the relative linked with all available training, services, and financial support?
  - Has the agency made reasonable efforts to place siblings together? If not, has the agency documented that joint placement would be contrary to the safety or well-being of any sibling? If not, what efforts have been made to place the siblings together? (42 U.S.C. § 671(a)(31))
  - If an ICWA case, is the placement consistent with ICWA placement preferences? (25 U.S.C. 1915)
  - From the family's perspective, is the placement culturally and linguistically appropriate?
  - Is the placement in proximity to the child's educational setting, or does it otherwise support educational continuity? (42 U.S.C. § 675(1)(G))
  - Is the placement trained to help children with traumatic stress reactions cope with those reactions? Is the placement knowledgeable about recognizing and managing traumatic stress reactions?
  - Verify that the case plan outlines efforts to ensure caregivers and foster parents are able to apply a reasonable prudent parent standard (P.L. 113-183 § 471(a)(24); 111(a)(3)).
    - Caregivers and foster parents should support the child's participation in age- or developmentally-appropriate activities.

## CHILD WELL-BEING<sup>8</sup>

- What is the specific plan to assess and ensure the child's well-being, including, as applicable, his/her educational, developmental, emotional and mental health, medical, dental, medication, and reproductive health needs?

- Verify that the child’s mental, physical, dental, and educational needs are being addressed. Get input from all parties/participants, including child (if appropriate) and caregiver.
- Verify that the child has received all health assessments, immunizations, hearing and vision screenings, dental check-ups and services, prescriptions for medications, and medical equipment as needed.
- Is a trauma assessment of the child by a trauma-informed professional needed?
- What monitoring, treatment, or other supports might be needed to help children cope with any traumatic stress reactions?
  - Verify that if the child is a victim of sex trafficking, or at risk of becoming a victim of sex trafficking, that the case plan includes appropriate and necessary services for the child (P.L. 113-183 § 471(a)).
- If the child has been missing from placement, inquire about the factors that led to the child being absent from care, and to the extent possible how those factors will be addressed in subsequent placements (P.L. 113-183 § 471(a)(35)).
- If the child has been missing from placement, inquire about what is known of the child’s experiences while absent from care, including whether the child was a victim of sex trafficking or at risk of such victimization – and if so, what services will be offered (P.L. 113-183 § 471(a)(35)).
- Verify that parents are participating in the child’s medical and educational appointments.
- Review appropriate school records, including any Individualized Education Program (IEP).
- Verify that the child is attending the same school as when he/she entered care. If not, ask what has been done to ease the transition.
- Verify that the child is attending school on a regular basis and has adequate transportation.
- How are the child’s educational needs being met, and what are the plans for the future?
  - What is the child’s academic performance? Are there identifiable areas in which the child is excelling? Are there areas that are posing a challenge, and how are they being addressed?
  - Are there any potential barriers related to the child’s academic success that can be addressed by the court, the agency, and the caregiver?
- Is there a need for a surrogate parent to act in the place of a parent in educational decision-making and in safeguarding the child’s rights under the Individual with Disabilities Education Act (IDEA)?

## SETTING THE STAGE FOR SUBSEQUENT HEARINGS AND ACHIEVING POSITIVE OUTCOMES FOR CHILDREN AND FAMILIES

**Effective Case Planning Moving Forward:** The court should set clear expectations for parties and advocates regarding the information to be provided to the court at subsequent hearings by inquiring about:

### ***Trauma:***

- Has trauma played a role in the child's behavior?
- Is trauma being sufficiently considered in decisions about where the child is going to live and with whom?
- Is there reason to believe that the child is a victim of sex trafficking or at risk of becoming a sex trafficking victim? Is the placement able to support their needs and are appropriate services in place? (P.L. 113-183)

### ***Child Well-Being:***

- Has the court fully considered well-being issues including education, physical and dental health, and mental/emotional/developmental health?
- Does the placement facilitate a sense of "normalcy" by supporting the child's participation in developmentally appropriate activities and events? (P.L. 113-183)
- If the child has been missing from placement(s), why did the child leave? How will the agency address those factors in current/subsequent placements? What experiences did the child have while absent? Was the child exposed to traumatic events? How will the current/subsequent placements address any needs resulting from that trauma? (P.L. 113-183)

*Refer to the Preliminary Protective Hearing Chapter in the GUIDELINES for more detail.*

## ***The court's written findings of fact and conclusions of law at the disposition hearing should:***

- Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law.
- State the permanency plan for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of the child with a relative, placement of the child in a permanent adoptive home).
- When applicable, specify why continuation of child in home would be contrary to the child's welfare.
- Where charged with this responsibility under state law and based upon the evidence before the court, approve, disapprove, or modify the agency's case plan.
- Determine whether there is a plan for monitoring the implementation of the service plan and assuming the child's continued well-being.
  - Is a GAL/CASA available to do this?
- When placement or services are ordered that were not agreed by the parties, specify the evidence or legal basis upon which the order is made.
- Specify whether reasonable efforts have been made to prevent or eliminate the need for placement.
- Specify the terms of family time and communication with parents, extended family, and siblings.
- Specify parental responsibilities for child support.
- Be written in easily understandable language so that all parties know how the court's findings relate to subsequent case planning.
- Set the date and time of the next hearing, if needed

## **CONCLUDING THE DISPOSITION HEARING**

### ***Case Management – Prepare for the next hearing***

- Identify tasks to be accomplished by the next hearing.
  - Focus on permanency and mandated timeframes.

- Make oral findings and orders that all participants can understand.
  - Make findings and orders on the record.
- Consider the appropriateness of ADR processes, and order if applicable.
- Schedule review and permanency hearings within state and federal timeframes.
- Identify persons whose presence is needed at the next hearing.
  - Order that the child (if appropriate) and caregivers receive notice of all proceedings and hearings.
- Ensure all orders are written, signed, copied, and distributed at the end of the hearing.
  - Provide all parties with a copy of orders immediately following the hearing.

### ***Engage parents, children, and family members.***

- Specifically ask parents and children if they understand what occurred at the hearing, and engage them in a conversation about next steps.
  - Can you tell me what happened here today?
  - Can you tell me what the next steps are?
- Advise parents of the importance of their active participation in all proceedings.
  - Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in state and federal laws.

### **PREPARE FOR THE NEXT HEARING**

- Focus on permanency and mandatory timeframes.
- Set review and permanency hearings and identify tasks to be accomplished.
- Make understandable findings and orders in court on the record.
- Engage parents and children.

The first review should be set within three to six months of disposition. The case must be reviewed no less frequently than every six months (42 U.S.C. § 675(5)(B)).

If the court determined that a child has been abandoned or that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days (42 U.S.C. § 671(a)(15)(E); 45 C.F.R. § 1356.21(h)(2)), and the agency must file a petition to terminate parental rights within 60 days, absent compelling reasons not to file (45 C.F.R. §1356.21(i)(ii) and (iii)).

- Advise parents of the consequences for failure to appear at future court hearings.
- When calendaring the next hearing, all parties, including the parents, should be asked if the scheduling works for them, and if not, ask for a better time.
- Ensure that parents and children have contact information for caseworkers and attorneys and that they understand the process to request court review if necessary.
- Ask if there are any questions for the court.

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## THE DISPOSITION HEARING BENCHCARD ENDNOTES

<sup>1</sup> State and federal laws determine who must be present for any hearing to proceed. Noted participants may or may not be required by law; however, as many as possible should be encouraged to attend the hearing.

<sup>2</sup> If an ICWA case, see Disposition Hearing Checklist for ICWA cases, in *Indian Child Welfare Act Checklists for Juvenile and Family Court Judges*. (2003). Reno, NV: NCJFCJ.

<sup>3</sup> *Ibid.*

<sup>4</sup> See Federal Law Chapter.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Supra* note 2.

<sup>8</sup> Judges may wish to re-visit the child well-being questions listed in the PPH Benchcard to supplement this inquiry.