

🔍 | Review Hearing Benchcard

CASE MANAGEMENT – BEFORE THE HEARING

Persons who should be present at the review hearing¹

- 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

In the review hearing, the court determines the status of the child, reviews compliance with the case plan, and the possible need for case plan and placement changes to maintain focus on safety and permanency. Review is required for both out-of-home and in-home placements.

ASFA requires that the case plan be “reviewed periodically,” but not less than every six months (42 U.S.C. §675(5)(B)). Additionally, a permanency hearing must be held no more than 12 months after the date the child was first considered to have entered foster care (42 U.S.C. § 675(5) (C)) or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first.

- Non-related extended family, fictive kin (persons known and trusted by the families; godparents)
- 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

- *Pre-review reports should include:*²
 - 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, evidence of reasonable efforts (ACTIVE EFFORTS in ICWA cases)³ must be presented to the court, which allows parents and counsel to challenge the quality and quantity of those efforts. In some jurisdictions an affidavit of reasonable efforts in lieu of live testimony may be permitted. The following are some additional key elements of an affidavit of reasonable efforts:*
 - a description of the efforts made by the agency to avoid the need for placement and an explanation of 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 REVIEW HEARING

Opening the Hearing

- Call the case.
- Identify the people in the courtroom and their connection to the case.
- 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?⁴
 - 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 REVIEW 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 Review Hearing Checklist.*⁵
- If an ICWA determination has not been made, does ICWA apply? Refer to the ICWA Checklist.⁶
 - 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 review hearing

Can the child be SAFELY returned to a parent today?

- **Is there a continuing necessity for out-of-home placement?** (42 U.S.C. § 675(5)(B))
 - If not, and the court finds that the child can be safely placed at home, order that the child be returned to the parent's custody. Keep the case open for a period of time to monitor the situation. If the court is satisfied that the family has fully completed all services, and the family is ready, the court can dismiss.
 - If yes, what are the specific safety risks preventing the child from being placed with the parents today?
 - What services or supports, rationally related to the specific safety risks, can be arranged to allow the child to be maintained at home or safely returned home today?
 - Will the removal of someone from the home or addition of someone in the home allow the child to be safely placed in the home?

Does the court-approved, long-term permanent plan for the child remain the best plan for the child?

- **Is the placement appropriate?** (42 U.S.C. § 675(5))
 - When and where did the caseworker last see the child? What was the nature of the contact?
 - Is the child safe? Is the placement the least restrictive (most family-like) and most appropriate available and in close proximity to the parents? (42 U.S.C. § 675(5))

- If the child is in foster care, what efforts are being made to fully explore kinship options? (42 U.S.C. § 671(a)(19))
- Have relatives been deemed inappropriate? If so, why? Were waivers to foster care licensing considered?
- If the child is in kinship care, how is the relative linked with all available training, services, and financial support?
- Are siblings placed together? If not, has the agency documented that joint placement would be contrary to the safety or well-being of any sibling? If not, has the agency made reasonable efforts to place siblings together? (42 U.S.C. § 671(a)(31))

KEY DECISIONS THE COURT SHOULD MAKE AT THE REVIEW HEARING:

Determine whether:

- There is a continuing necessity for out-of-home placement of the child (42 U.S.C. § 675(5)(B)).
- The agency is making reasonable efforts to effect the safe reunification of the child and family (45 C.F.R. § 1356.21).
- The agency is making reasonable efforts to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child (42 U.S.C. § 671(a)(15)(C)).
- Any progress has been made toward alleviating or mitigating the causes necessitating placement in foster care? (42 U.S.C. § 675(5))
- Services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- The child's placement is an appropriate placement that adequately meets all physical, emotional, and educational needs (42 U.S.C. § 675(5)).
- There is a need for any additional court orders to move the case toward successful completion.

- From the child's and family's perspective, is the placement culturally and linguistically appropriate?
- Is the placement in proximity to the child's education setting or does it otherwise support educational continuity? (45 C.F.R. § 1356.21(g)(3); P.L. 110-351)
 - For children in foster care, what is the educational stability plan? (P.L. 110-351)
 - Are children able to remain in the school they were attending at the time of placement (unless not in their best interests) even if they move away from that school's boundaries? (P.L. 110-351) When it is not in the best interests of the child to remain, are children immediately enrolled in a new school with all educational records following them? (P.L. 110-351)
- If it is an ICWA case, is the placement consistent with ICWA preferences? (25 U.S.C. § 1915)
- 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.

Is the agency making reasonable efforts to rehabilitate the family and effect the safe reunification of the child and family? (45 C.F.R. § 1356.21(b))

- What specifically prevents the parents from safely providing the minimally adequate standard of care?
- What specific reasonable efforts have been made to reunify the child with his/her parents?

Is the agency making reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child? (42 U.S.C. § 671(a)(15)(C))⁷

- **What timeframe should be followed to achieve reunification or another permanency plan for each child?**
 - What steps have been implemented to effectuate any permanency plan?
 - What steps are still required to finalize any permanency plan?
 - What is the likely date by which the child may be returned to and safely maintained in the home OR placed for adoption or legal guardianship? (42 U.S.C. § 675(5))

What is the extent of progress toward alleviating or mitigating the causes necessitating placement in foster care? (42 U.S.C. §675(5))

- What are the barriers to progress, and what steps have been taken to eliminate those barriers?
- What is the concurrent case plan goal, and what steps are being taken to implement that plan?
- Should the case plan goal be changed?

Which services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances?

- How are the parents, extended family, and children being engaged in the development of the case plan? (45 C.F.R. § 1356.21(g)(1))
 - Verify that children age 14 and older have been involved 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 § 475(5)(C)(iv)).
 - If parents are unwilling or unable to participate in the case plan, the agency must document its efforts to engage the parents in the process (65 Fed. Reg. 4057 (Jan. 25, 2000)).
- Does the family believe the services, supports, and interventions will meet their needs and build on their strengths?
- Has the family been given the opportunity to ask for additional services?
- How is the agency assisting 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?

- What are the terms of 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?
- Are the time and location of family time logistically possible for the family and supportive of the child's needs?
- Do the terms of child support need to be set or adjusted?

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/foster and pre-adoptive parents.
- 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.
- Verify that the child is able to participate in developmentally age-appropriate activities that promote a sense of normalcy (P.L. 113-183).
- 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; if so, what services will be offered? (P.L. 113-183 § 471(a)(35))
- Is the child in an appropriate placement which adequately meets all physical, emotional, and education needs?
 - Are any identified trauma needs being supported?
 - If the child was a victim of sex trafficking, or at risk of being a victim of sex trafficking, are appropriate and necessary services being addressed? (P.L. 113-183 § 471(a))

Do any additional court orders need to be made to move the case toward successful completion?

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

- be written in easily understandable language, which allows the parents and all parties to fully understand what action they must take to have their children returned to their care as well as timeframes for completion of various tasks;
- set forth findings explaining why the children are in need of continued placement outside the parents' home or continued court supervision, including the specific risks to the children;
- set forth findings as to whether and why family reunification and an end to court supervision continues to be the long-term case goal;
- set forth findings as to whether the agency has made reasonable efforts to eliminate the need for placement, with specific findings about actions the agency is taking;
- set forth detailed Findings of Fact and Conclusions of Law about whether the parents are in compliance with the case plan, and identify specifically what further actions the parents need to complete;
- approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- identify an expected date of final reunification or other permanency plan for the child;
- set forth orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;
- make any other orders necessary to resolve the problems that are preventing reunification or the completion of another permanency plan for the child; and
- set a date and time for the next hearing, if needed.

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.

CONCLUDING THE REVIEW 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.
 - Do you understand what happened here today?
 - Do you understand 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.
 - 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.

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 case must be reviewed no less frequently than every six months (42 U.S.C. § 675(5)(B)).

The case plan goal, or permanency plan, must be re-evaluated and determined at a permanency hearing to be held within 12 months of the date the child entered care (42 U.S.C. § 675(5)(B)). If the court determines 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)).

THE REVIEW HEARING BENCHCARD ENDNOTES

¹ State and federal laws determine who must be present for any hearing to proceed. Noted participants may or may not be required by law.

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

³ *Ibid.*

⁴ See Federal Law Chapter.

⁵ *Supra* note 2.

⁶ *Ibid.*

⁷ ASFA anticipates that a finding of reasonableness of the agency's efforts will be made at the permanency hearing, as it requires such a finding within 12 months of the date the child first entered care and every 12 months afterward (45 C.F.R. § 1356.21(b)(2)(i)). If the review hearing is prior to the permanency hearing, judges should inquire about progress made toward finalizing the plan.