

Setting the Stage for Better Permanency Outcomes

Hearing Best Practices Adjudication and Disposition Hearings



Learning Objectives

- Understand how to prepare for and conduct effective adjudication and disposition hearings
- Understand what needs to be done between hearings
- Understand how to integrate best interest factors into decision making



Child Abuse and Neglect Hearing Best Practices

The NCJFCJ Enhanced Resource Guidelines Adjudication Hearings



The Adjudication Hearing



Adjudication is the stage of the proceedings in which the court determines whether allegations of

dependency, abuse, or neglect concerning a child are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child.

The Adjudication Hearing

Importance of Early Notice

When the parties are provided with early notice, they may make essential contributions to resolving the case by

- (a) giving important information to the court,
- (b) providing a placement for the child,
- (c) paying child support, or
- (d) offering important emotional support for the child



Before the Adjudication Hearing – Georgia Law

- **Time limits for filing of petition**
 - OCGA 15-11-151
- **Service of process**
 - OCGA 15-11-161
- **Discovery**
 - OCGA 15-11-170 (mandatory, discretionary, reciprocal)
- **Time frames for the hearing**
 - OCGA 15-11-181

Continuances beyond time limits

OCGA 15-11-110

- Court must find after hearing on MFC:
 - Not contrary to the interests of the child(ren)
 - Good cause exists
 - Amount of time is necessary
- Facts supporting above findings must be entered in the record

ITIO I.L.M. 304 Ga. 114 (2018)

Prepare for the Adjudication Hearing

- Review and analyze relevant documents / evidence
- Interview witnesses and prepare testimony
- Reflect on decision-making process to guard against institutional bias
- Determine whether there are any related matters in juvenile or other courts
- Determine who must be present
- One last thought:

Parties' trust in, and respect for, judges is not determined so much by the decisions they make as by the way they make them



Prepare for the Adjudication Hearing

PIECE OF EVIDENCE	FACTS FOUND	CONCLUSION	ORDER



Filter the evidence through:

- Credibility
- Reliability
- Relevance
- Weight
- Etc



Apply the facts to statutory and case law, including standard of proof

NCJFCJ



Determine what legal remedies to the conclusions of law are most appropriate

Conducting the Adjudication Hearing

- Open the Hearing
 - Identify persons present and explain purpose of hearing
- Engage parents, children, relatives, and foster parents
- ICWA
- Due Process
 - Were all parties properly served?
 - Are parties entitled to counsel and represented?
 - Has counsel had opportunity to fully discuss purpose and potential outcome of hearing with clients?
 - Competency issues?
 - ADA / accessibility issues properly addressed?

Conducting the Adjudication Hearing

OCGA 15-11-181

- Persons with right to participate
- Title 24 (Georgia Rules of Evidence) applies in full. Privilege limited to attorney/client communications and religious leader communications
- After hearing evidence, court shall make and file specific written findings as to whether the child is a dependent child
- If the court finds the child is not a dependent child, it shall dismiss the petition and discharge any prior orders or restrictions
 - Continues throughout case → no dependency = no jurisdiction

Child presence and participation

OCGA 15-11-181(b)(3)

Child has a right to be present unless court finds after considering evidence of harm to such child that will result from his or her presence at the proceeding, that being present is not in the child's best interests

Child presence and participation

- **15-11-181(b)(3)**

Food for thought...

- Can attorney or GAL waive the child's presence without presenting the evidence required by 15-11-181(b)(3)?
- A right to be present must be knowingly and voluntarily waived.

"The right [to be present] may be waived by the defendant personally, or by defendant's counsel if counsel does so in the defendant's presence or pursuant to the defendant's express authority." *Goodroe v. State*, 480 S.E.2d 378, 224 Ga.App. 378 (Ga. App. 1997)

Key Decisions at the Adjudication Hearing

The principal decisions that the court must make at adjudication are:

- NOTE: petitioner shall have the burden of proving the allegations of a dependency petition by clear and convincing evidence.
- The court shall make and file specific written findings re whether a child is a dependent child.
- If the court finds that a child is not a dependent child, it shall dismiss the petition alleging dependency
- If the court adjudicates a child dependent, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case.
- If the court adjudicates a child dependent, the court shall also make and file a finding about whether such dependency is the result of substance abuse by such child's parent, guardian, or legal custodian.
- If the disposition hearing is held on the same day as the adjudication hearing, the court shall schedule the dates and times for the first periodic review hearing and for the permanency plan hearing.



"You lied about conducting cloning experiments in the past. Why should the jury believe you now?"

Conducting the Adjudication Hearing

If adjudication proceeds by admission or consent

- Is the parent *knowingly, intelligently, and voluntarily waiving* his/her trial rights? Does the parent have the capacity to enter into a consent order?
- Has the parent been advised by counsel of, and does parent understand, the rights waived and direct and potential consequences of an admission?
- Is the admission or consent voluntary?
- **Stipulate to facts, consent to remedy**
- There must still be specific findings of fact to dependency. Consent order = stipulated facts



Key Decisions at the Adjudication Hearing

- Are there specific allegations as to each parent separately?
- Which allegations have been proven by clear and convincing evidence?
- Are the allegations, as proven or stipulated, legally sufficient to support a finding of abuse, neglect or dependency? If not, dismiss the dependency and order returning custody of the child to the parents or legal guardians.
- If there are no allegations or the state is not proceeding as to one or more parents, determine whether the court has statutory authority to take jurisdiction

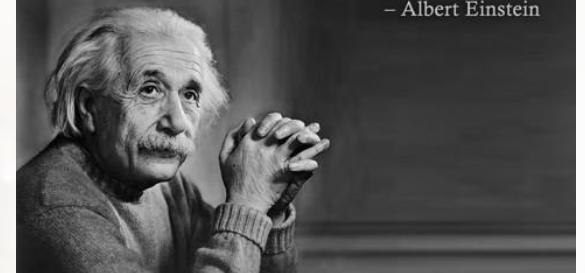


Concluding the Hearing and Preparing for the Next Hearing

- Focus on permanency and mandatory timeframes.
 - Engage parents and children to make sure they understand what has occurred
- Set disposition hearing within 30 days and identify tasks to be accomplished, including filing of disposition report.
- Make understandable findings and orders on the record.

If you can't explain it **simply**, you don't understand it well enough.

– Albert Einstein



What Happens between this Hearing and the Disposition Hearing?

This is not break time!

- For the Agency
- For the other parties
- For the parent attorney
- For the child attorney
- For the CASA/GAL
- For the Court
- For anyone else



Any Questions?



Child Abuse and Neglect Hearing Best Practices

The NCJFCJ Enhanced Resource Guidelines Disposition Hearings



The Disposition Hearing

Disposition is the stage of the juvenile court process in which, after finding that the child is within jurisdiction of the court, the court determines who shall have custody and control of the child and how the case will proceed to achieve reunification or some other permanency plan for the child.



The Disposition Hearing

- ASFA requires that the Agency develop a case plan within 60 days from the child's removal from the home (45 C.F.R. §1356.21(g)(2)).
- GA law provides for the case plan to be filed within 30 days following physical removal of the child from the home and at every subsequent review. O.C.G.A. § 15-11-200(a)



The Disposition Hearing

Agreements by the Parties

- When a combined stipulation of adjudication and disposition is proposed to the court, the judge should take special care that the stipulation is complete and well-considered, and specifically tailored to remedying dependency grounds
- Disposition should address only the services rationally related to the jurisdictional findings of the court

keep it
relevant not random

Before the Disposition Hearing – Georgia Law

- Time limits for the hearing (30 days after adjudication hearing. OCGA 15-11-210(a))
- Preparation and filing of Social Study and Case Plan (OCGA 15-11-190, 191, and 200)



Before the Disposition Hearing

- Review relevant documents and evidence and prepare testimony
- Analyze the proposed case plan in light of the grounds for dependency and family needs
- Reflect on decision-making process to guard against institutional bias
- Determine whether there are any related matters in juvenile or other courts
- Determine who must be present at the hearing



Before the Hearing – Written Social Study and Report

- If the allegations of the petition alleging dependency are admitted or after an adjudication hearing the court has adjudicated a child as a dependent child, the court may direct that a written social study and report be made by a person designated by the court.
- Each social study shall include, but not be limited to, a factual discussion of each of the following subjects:
 - (1) What plan is recommended to the court;
 - (2) Whether the best interests of the child will be served by granting reasonable visitation rights to his or her other relatives in order to maintain and strengthen the child adjudicated to be a dependent child's family relationships;
 - (3) Whether the child adjudicated to be a dependent child has siblings under the court's jurisdiction, and, if so:
 - (A) The nature of the relationship between such child and his or her siblings;
 - (B) Whether the siblings were raised together in the same home and whether the siblings have shared significant common experiences or have existing close and strong bonds;
 - (C) Whether the child adjudicated to be a dependent child expresses a desire to visit or live with his or her siblings and whether ongoing contact is in such child's best interests;

Before the Hearing – Written Social Study and Report

- (D) The appropriateness of developing or maintaining sibling relationships;
 - (E) If siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place siblings together or why those efforts are not appropriate;
 - (F) If siblings are not placed together, the frequency and nature of the visits between siblings; and
 - (G) The impact of the sibling relationship on the child adjudicated to be a dependent child's placement and planning for legal permanence;
- (4) The appropriateness of any placement with a relative of the child adjudicated to be a dependent child; and
 - (5) Whether a caregiver desires and is willing to provide legal permanency for a child adjudicated to be a dependent child if reunification is unsuccessful.

§ 15-11-190 – written social study and report

§ 15-11-191 - subjects included in social study

Before the Disposition Hearing

- **When the agency recommends foster placement, an affidavit of reasonable efforts should be submitted. The following are some additional key elements of the report:**
 - 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 why the child cannot return home today;
 - Identification of relatives and friends who have been contacted about providing a home for the child.



Conducting the Disposition Hearing

- Open the hearing
- Engage parents, children, relatives and foster parents
- Applicability of ICWA: Who has asked? Responses?
- Due Process: notice to absent parents, representation, competency



Search ID: rman844

"And Dubois, here, is in charge of due process."

Evidence to be Considered at the Disposition Hearing

- (a) A disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing.
- (b) The court may consider any evidence, including hearsay evidence, that the court finds to **be relevant, reliable, and necessary** to determine the needs of a child adjudicated as a dependent child and the most appropriate disposition.
- (c) Before determining the appropriate disposition, the court shall receive in evidence:
- (1) The social study report the child's proposed written case plan. The social study report and case plan shall be filed with the court not less than 48 hours before the disposition hearing;
 - (2) Any study or evaluation made by a guardian ad litem appointed by the court;
 - (3) Any psychological, medical, developmental, or educational study or evaluation of the child adjudicated as a dependent child; and
 - (4) Other relevant and material evidence as may be offered, including, but not limited to, the willingness of the caregiver to provide legal permanency for the child adjudicated as a dependent child if reunification is unsuccessful.

Evidence to be Considered at the Disposition Hearing

- (d) Prior to a disposition hearing, and upon request, the parties and their attorneys shall be afforded an opportunity to examine any written reports received by the court.
 - (e)(1) Portions of written reports received by the court which are not relied on by the court in reaching its decision, which if revealed would be prejudicial to the interests of any party to the proceeding, or which reveal confidential sources, may be withheld in the court's discretion.
 - (2) Parties and their attorneys shall be given the opportunity to controvert written reports received by the court and to cross-examine individuals making such reports.
- (f) At the conclusion of the disposition hearing, the court shall set the time and date for the first periodic review hearing and the permanency plan hearing.

§ 15-11-210. Disposition hearing

Types of Orders at Disposition

(a) The court may make any of the following orders of disposition or a combination of those best suited to the protection and physical, emotional, mental, and moral welfare of a child adjudicated as a dependent child:

- (1) Permit such child to remain with his or her parent, guardian, or legal custodian subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of such child;
- (2) Grant or transfer temporary legal custody to any of these persons or entities:
 - (A) Any individual, including a biological parent, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for such child, provided that priority for placement is given to an adult who is a relative or fictive kin;

Types of Orders at Disposition

(B) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for such child;

(C) Any public agency authorized by law to receive and provide care for such child; provided, however, that for the purpose of this Code section, the term “public agency” shall not include DJJ or DBHDD; or

(D) An individual in another state with or without supervision by an appropriate officer pursuant to the requirements of [Code Section 39-4-4](#), the Interstate Compact on the Placement of Children;

(3) Transfer jurisdiction over such child in accordance with the requirements of [Code Section 39-4-4](#), the Interstate Compact on the Placement of Children;

Types of Orders at Disposition Continued

(4) Order such child and his or her parent, guardian, or legal custodian to participate in counseling or in counsel and advice as determined by the court. Such counseling and counsel and advice may be provided by the court, court personnel, probation officers, professional counselors or social workers, psychologists, physicians, physician assistants, qualified volunteers, or appropriate public, private, or volunteer agencies as directed by the court and shall be designed to assist in deterring future conditions of dependency or other conduct or conditions which would be harmful to a child or society;

(5) Order the parent, guardian, or legal custodian of such child to participate in a court approved educational or counseling program designed to contribute to the ability of such parent, guardian, or legal custodian to provide proper parental care and supervision of such child, including, but not limited to, parenting classes;

Types of Orders at Disposition Continued

(6) Order DFCS to implement and such child's parent, guardian, or legal custodian to cooperate with any plan approved by the court; or

(7) Order temporary child support for such child to be paid by that person or those persons determined to be legally obligated to support such child. In determining such temporary child support, the court shall apply the child support guidelines provided in § 19-6-15 and the implementation and any review of the order shall be held as provided in § 19-6-15. Where there is an existing order of a superior court or other court of competent jurisdiction, the court may order the child support obligor in the existing order to make payments to such child's caretaker on a temporary basis but shall not otherwise modify the terms of the existing order. A copy of the juvenile court's order shall be filed in the clerk's office of the court that entered the existing order. Temporary child support orders entered pursuant to this paragraph shall be enforceable by the court's contempt powers so long as the court is entitled to exercise jurisdiction over the dependency case.

Types of Orders at Disposition Continued

(b) The transfer of temporary legal custody may be subject to conditions and limitations the court may prescribe. Such conditions and limitations shall include a provision that the court shall approve or direct the return of the physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian either upon the occurrence of specified circumstances or at the direction of the court. The return of physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian may be made subject to conditions and limitations the court may prescribe, including, but not limited to, supervision for the protection of such child.

§ 15-11-212. Types of orders of disposition; transfer of temporary legal custody; permanency plan

Written Findings of Fact to Support Disposition

Any order of disposition shall contain written findings of fact to support the disposition and case plan ordered. Before making an order of disposition, the court shall consider the following:

- (1) Why the best interests and safety of a child adjudicated as a dependent child are served by the disposition and case plan ordered, including but not limited to:
 - (A) The interaction and interrelationship of such child with his or her parent, siblings, and any other person who may significantly affect the child's best interests;
 - (B) Such child's adjustment to his or her home, school, and community;
 - (C) The mental and physical health of all individuals involved;
 - (D) The wishes of such child as to his or her placement;
 - (E) The wishes of such child's parent, guardian, or legal custodian as to such child's custody;
 - (F) Whether there exists a relative of such child or other individual who, after study by DFCS, is found to be qualified to receive and care for such child; and
 - (G) The ability of a parent, guardian, or legal custodian of a child adjudicated as a dependent child to care for such child in the home so that no harm will result to such child;
- (2) The availability of services recommended in the case plan;
- (3) What alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case;
- (4) The appropriateness of the particular placement made or to be made by the placing agency; and
- (5) Whether reasonable efforts were made to prevent or eliminate the necessity of a child adjudicated as a dependent child's removal and to reunify his or her family after removal from the custody of his or her family unless reasonable efforts were not required. The court's findings should include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of such removal.

§ 15-11-213. Written findings of fact to support disposition and case plan

Factors to Consider Under Georgia Law

Best interest and safety of the child

- Specific factors set forth for disposition
- Best interest factors set forth in O.C.G.A. § 15-11-26

Availability of services set forth in the case plan

Alternative dispositions or services considered and found by the court not to be appropriate

The appropriateness of the particular placement made or to be made by the child placing agency

Whether reasonable efforts were made to avoid removal or to reunify

§ 15-11-26. Best Interest Factors and § 15-11-213. Written findings of fact to support



Concluding the Disposition Hearing

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



Child Abuse and Neglect Hearing Best Practices

Child Representation and Best Interest Factors



IN THE BEST INTEREST
of
the children

Checklist



Child representation

OCGA 15-11-103 Right to Counsel

15-11-103(c) - duties:

A child's attorney owed to his or her client the duties imposed by the law of this state in an attorney-client relationship

Child representation

OCGA 15-11-105 Guardian ad Litem duties

(a) A guardian ad litem shall advocate for a child's best interests in the proceeding for which the guardian ad litem has been appointed.

...

(c) Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall at a minimum:

- (1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter;
- (2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views;
- (3) Conduct an independent assessment to determine the facts and circumstances surrounding the case;
- (4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding;
- (5) Communicate with health care, mental health care, and other professionals involved with such child's case;
- (6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents;
- (7) Review all court related documents;
- (8) Attend all court hearings and other proceedings to advocate for such child's best interests;
- (9) Advocate for timely court hearings to obtain permanency for such child;
- (10) Protect the cultural needs of such child;
- (11) Contact the child prior to any proposed change in such child's placement;
- (12) Contact the child after changes in such child's placement;
- (13) Request a judicial citizen review panel or judicial review of the case;
- (14) Attend judicial citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last judicial citizen panel review and include an assessment of the DFCS permanency and treatment plans;
- (15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child;
- (16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and
- (17) Monitor compliance with the case plan and all court orders.

Child representation

GEORGIA RULES OF PROFESSIONAL CONDUCT

RULE 1.1 COMPETENCE

RULE 1.3 DILIGENCE

RULE 1.4 COMMUNICATION

RULE 1.6 CONFIDENTIALITY

RULE 1.7 CONFLICT OF INTEREST

RULE 1.9 CONFLICT OF INTEREST: FORMER CLIENT

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

RULE 2.1 ATTORNEY AS ADVISOR

Child representation

2021 research study in Washington on the effect of quality legal representation for children:

When well-trained attorneys who practice standards-based representation represent children and youth in child abuse and neglect proceedings, young people experience:

45% higher reunification rate with their biological parents
30% reduction in the rate of placement moves
65% reduction in the rate of non-normative school moves

Washington State Center for Court Research, (2021) Evaluation of the Washington State Dependent Child Legal Representation Program. Olympia, WA: Administrative Office of the Courts.

Child representation

OCGA 15-11-104(b) Dual role

An attorney for an alleged dependent child may serve as such child's guardian ad litem unless or until there is conflict of interest between the attorney's **duty to such child** as such child's attorney and the attorney's **considered opinion of such child's best interests** as guardian ad litem.

Guiding Principals of Best Interest Determinations

- The importance of family integrity and preference for avoiding removal
- The health, safety, and/or protection of the child
- The importance of timely permanency decisions
- The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult



Best Interest Factors

- Child's **physical safety** and welfare, including food, shelter, health, and clothing
- Love, affection, bonding, and emotional ties between **child and parent** or caregiver
- Love, affection, bonding, and emotional ties between **child and siblings** (including half and stepsiblings)
- Child's **need for permanence**, including need for stability and continuity of relationships with parent, siblings, other relatives, and any other person who has provided significant care to the child
- Child's sense of **attachments**, including sense of security and familiarity, and continuity of affection for the child
- **Capacity and disposition of each parent** or person available to care for child to give love, affection, and guidance and to continue education and rearing of child
- **Home environment** of parent or person available to care for child considering promotion of child's nurturance and safety rather than superficial or material factors
- **Stability** of unit and presence or absence of support systems within community to benefit child
- **Mental and physical health** of all individuals involved
- **Home, school, and community record and history** of child, as well as any health or educational special needs of the child
- Child's **community ties**, including church, school, and friends
- Child's **background and ties**, including familial, cultural, and religious
- **Least disruptive placement alternative** for child
- **Uniqueness** of every family and child
- **Risks** attendant to entering and being in substitute care
- Child's **wishes** and long-term goals
- **Preferences** of persons available to care for child
- Evidence of **family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse** in any current, past, or considered home for child
- **Recommendations** from a guardian ad litem
- **Any other factors** considered by court/GAL to be relevant and proper to its determination

What Happens between the Disposition and Initial Review Hearings?

- For the Court
- For the Agency
- For the other parties
- For the attorneys
- For the CASA/GAL
- For anyone else

Final Thoughts and Comments?

