

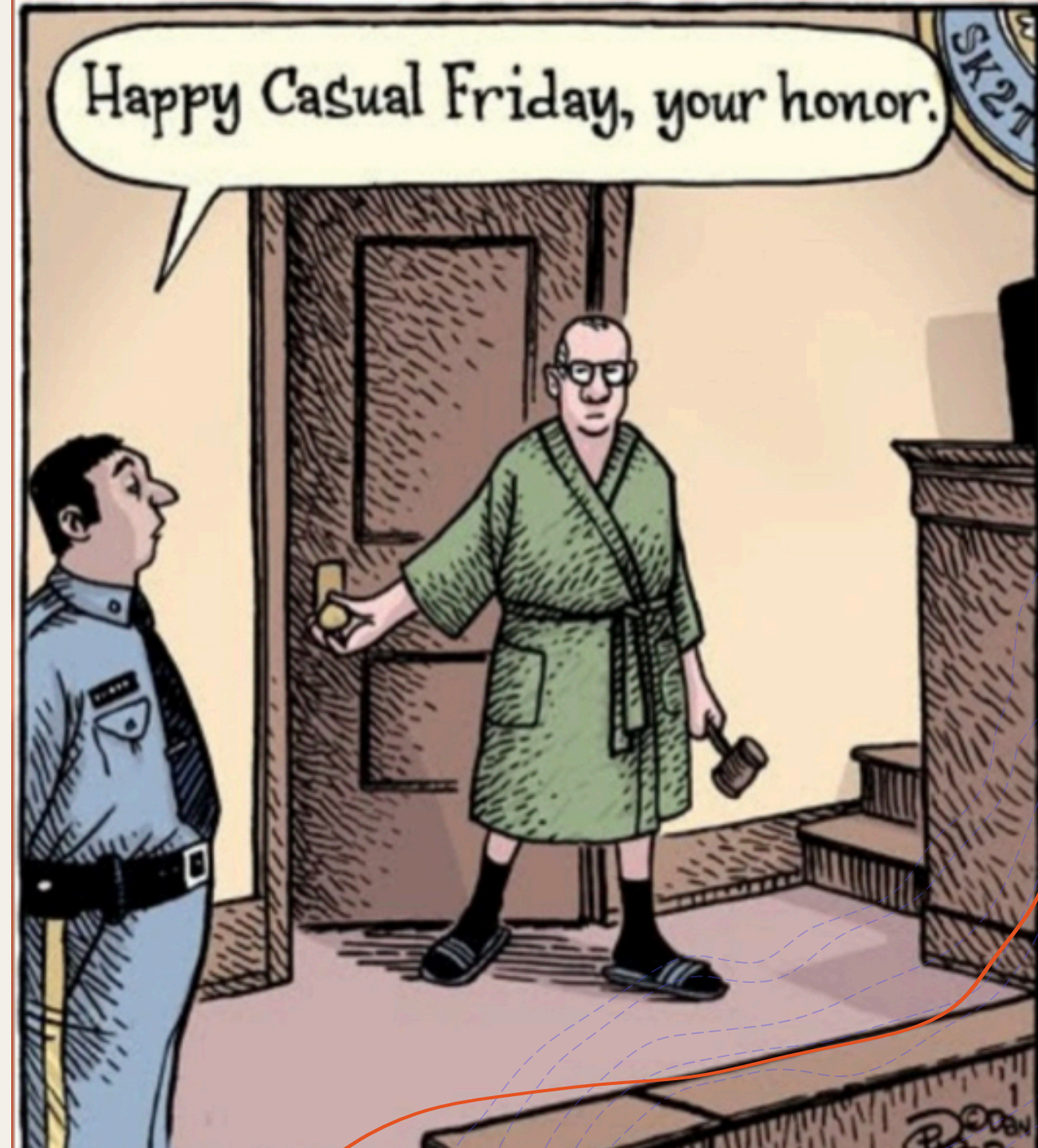
Navigating Review Hearings

With Special Emphasis on the Initial Review



HEARINGS & EVIDENCE

Aren't Reviews
Informal?



ITIO C.H., 343 Ga. App. 1 (2017)

But perhaps the most troubling aspect of this case is that the parents' right to the custody, care, and control over their own children was almost entirely ignored when the court removed these children from their parents' custody without the State presenting *a single witness or a piece of evidence*.

ITIO C.H., 343 Ga. App. 1, 17 (concurring opinion)

ITIO C.H., 343 Ga. App. 1 (2017)

"Although our ruling in Division 1 renders moot the parents' remaining arguments, we are by no means condoning any additional procedural irregularities that occurred during the January review hearing. The Juvenile Code clearly contemplates that witnesses must be sworn and subject to cross-examination, hearsay will not be allowed (unless under a statutory exception), parties have the right to confront witnesses, and rules of evidence regarding the introduction of exhibits should be followed. Like the right to counsel, these rights are not optional. "
ITIO C.H., 343 Ga. App. 1, 13.


OCGA §15-11-210(b):

"[At the disposition hearing 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".

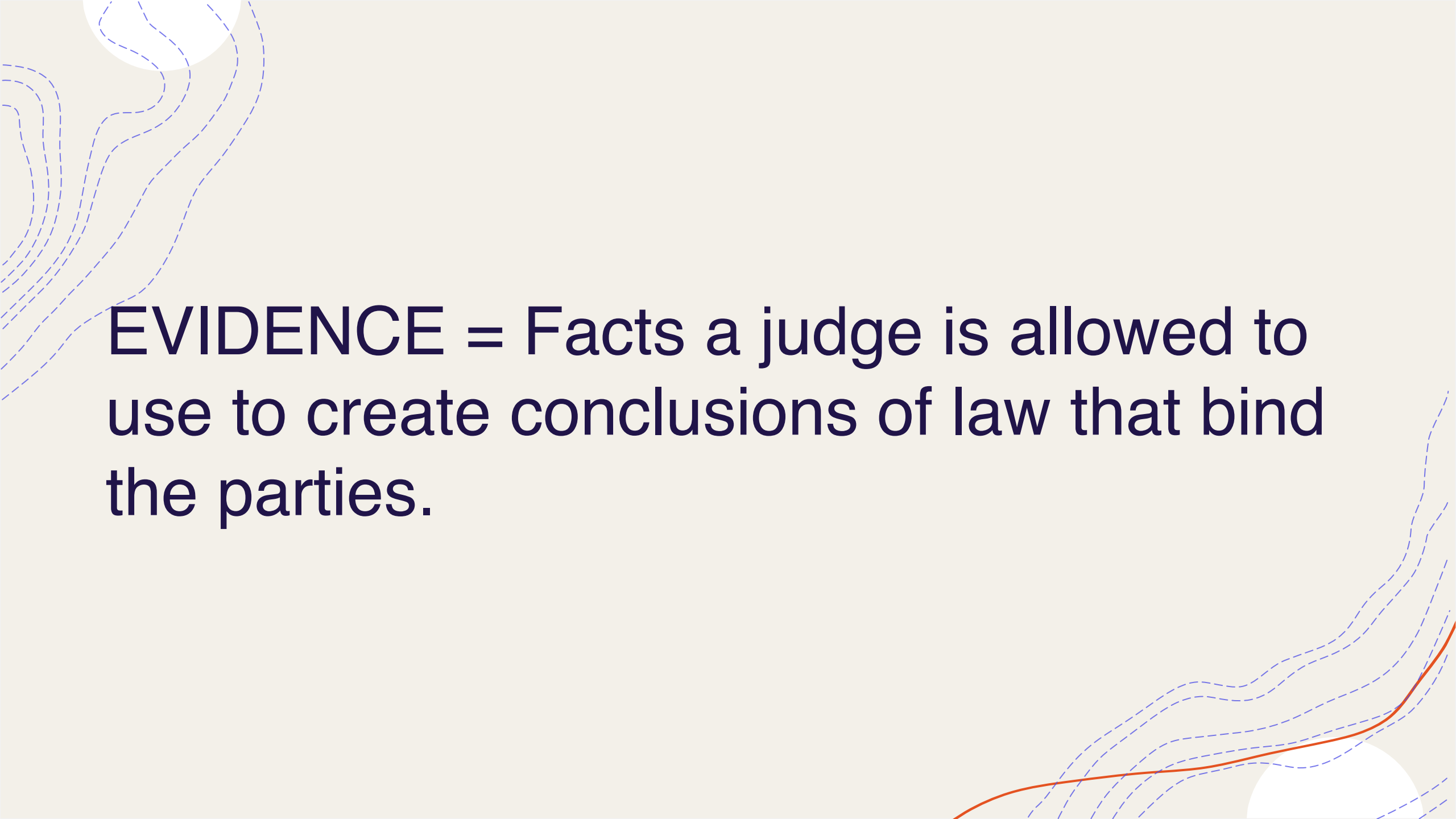
Old 15-11-56(a): "...all information helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition".

Hearsay at Review Hearings

- (f) 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 case plan and permanency plan. (O.C.G.A. § 15-11-216, effective Jan 1. 2022)



The “informality” of review hearings consists entirely in the fact that hearsay is admissible over objection.

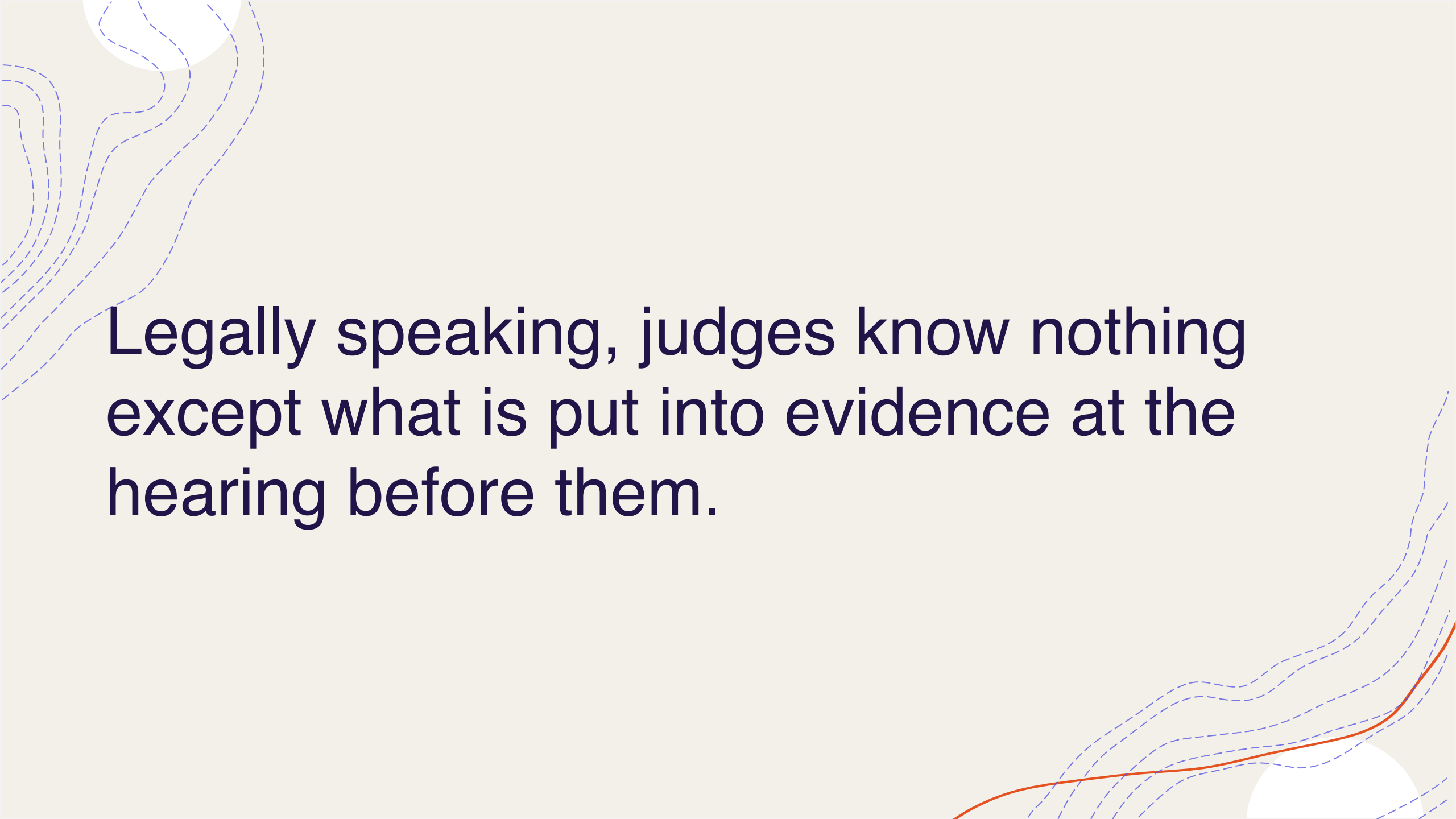


EVIDENCE = Facts a judge is allowed to use to create conclusions of law that bind the parties.



The 3 main ways judges can learn facts:

1. Sworn testimony of witnesses;
2. Properly-admitted documents, photos, etc.
3. Stipulations of the parties.

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Legally speaking, judges know nothing except what is put into evidence at the hearing before them.



The following are *not evidence*:

1. The judge's recollection of former cases & hearings (even in the same case).
2. The judge's notes.
3. Off-the-record conversations.
4. Documents that have not been admitted into evidence.

All of the
evidence
becomes the
record of the
case.

Nothing may
appear in the
order that is
not in the
record.

THE MECHANICS OF THE REVIEW HEARING

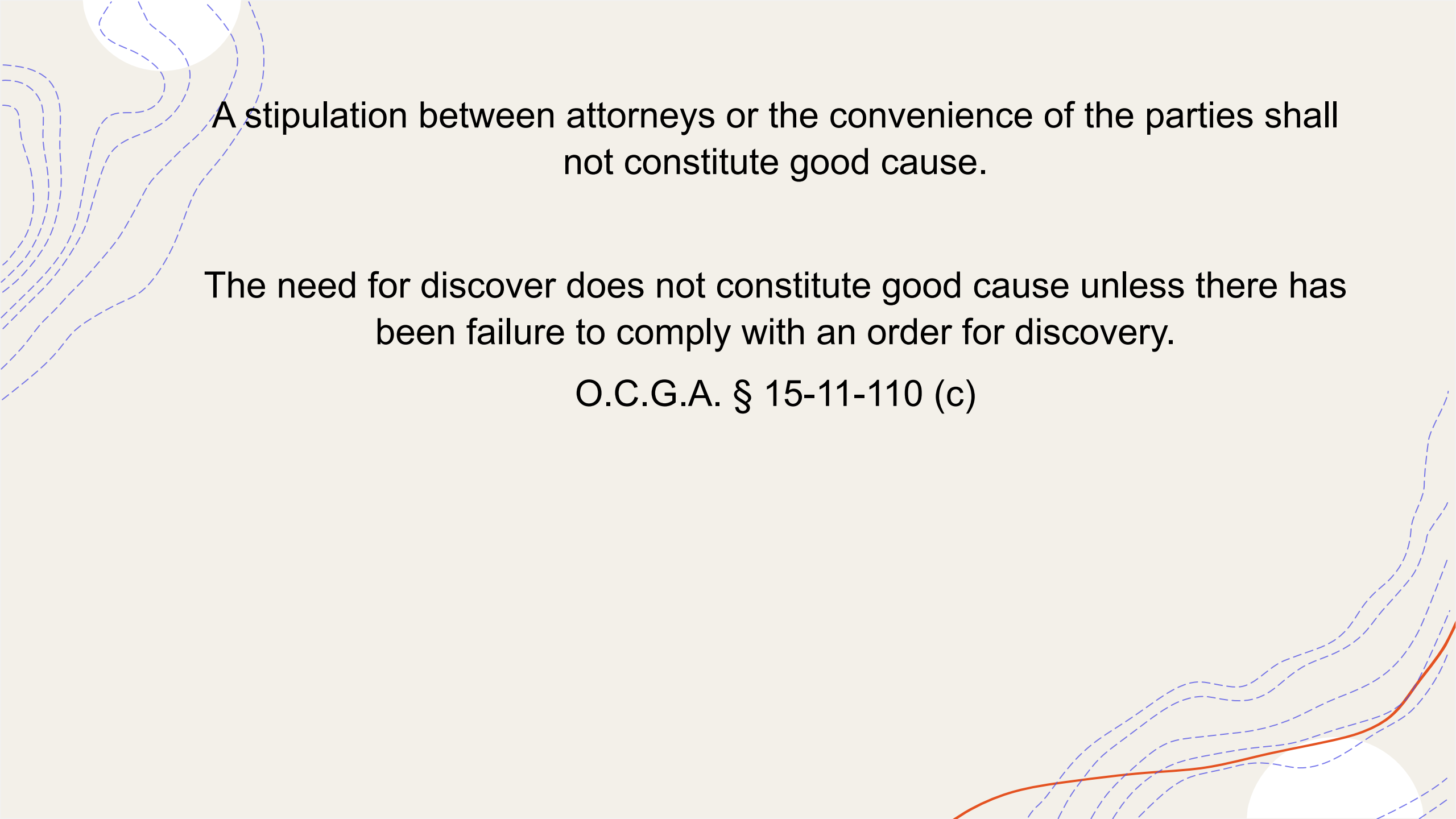
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Continuances

“Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered in the court record.” O.C.G.A. § 15-11-110 (b).

1. The record must reflect why the date chosen for the next hearing is “necessary”, and must be based on evidence on the record. A finding that the date is “the next available court date”, without more, is insufficient:

“[A] court must evaluate what other matters are competing for the court’s attention such that the dependency hearing must be continued to the date chosen, including a determination of why those other matters must be afforded a priority over [the case being continued]. *IT/O I.L.M.*, 304 Ga. 114, 121 (2018)



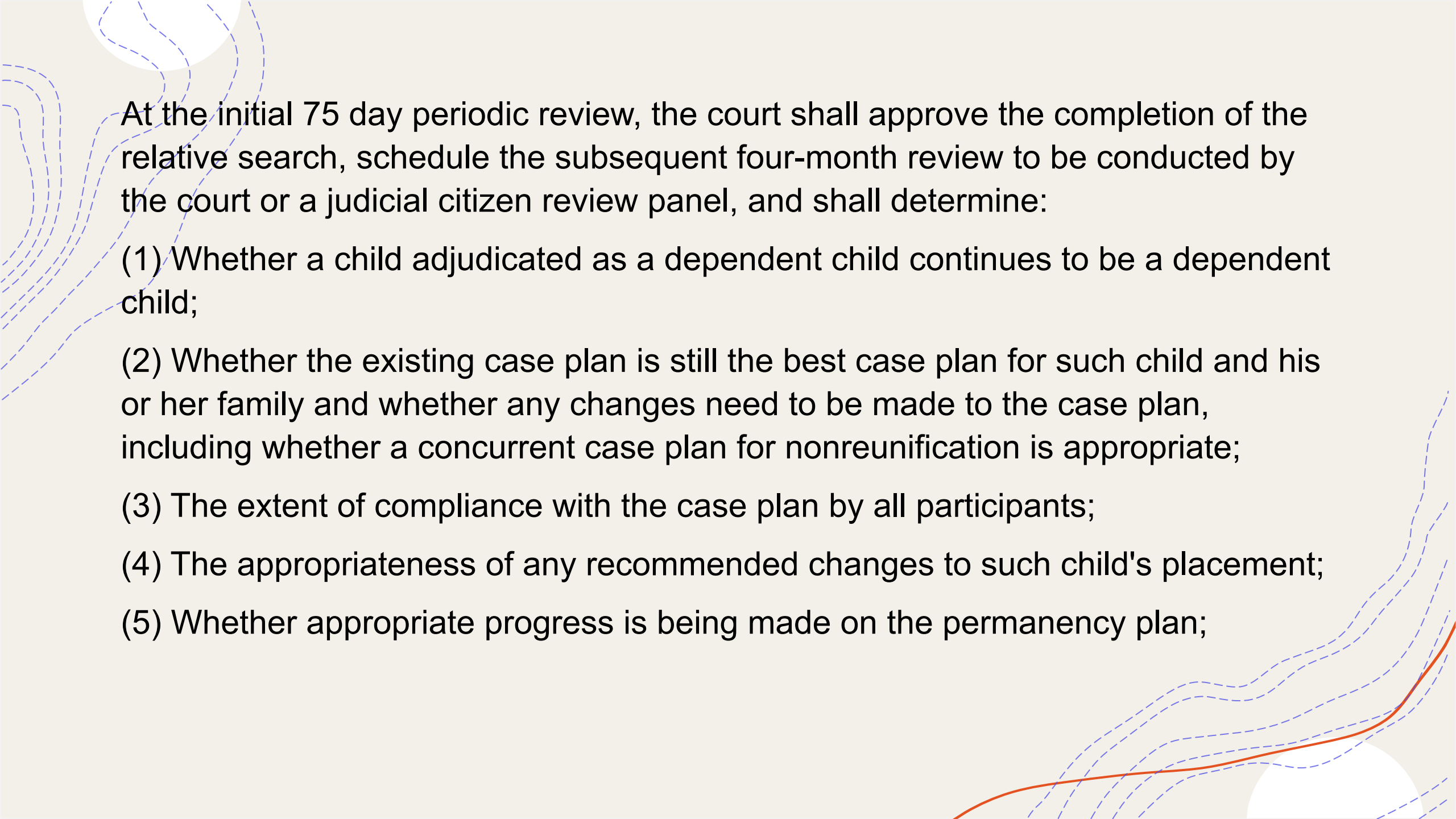
A stipulation between attorneys or the convenience of the parties shall not constitute good cause.

The need for discover does not constitute good cause unless there has been failure to comply with an order for discovery.

O.C.G.A. § 15-11-110 (c)

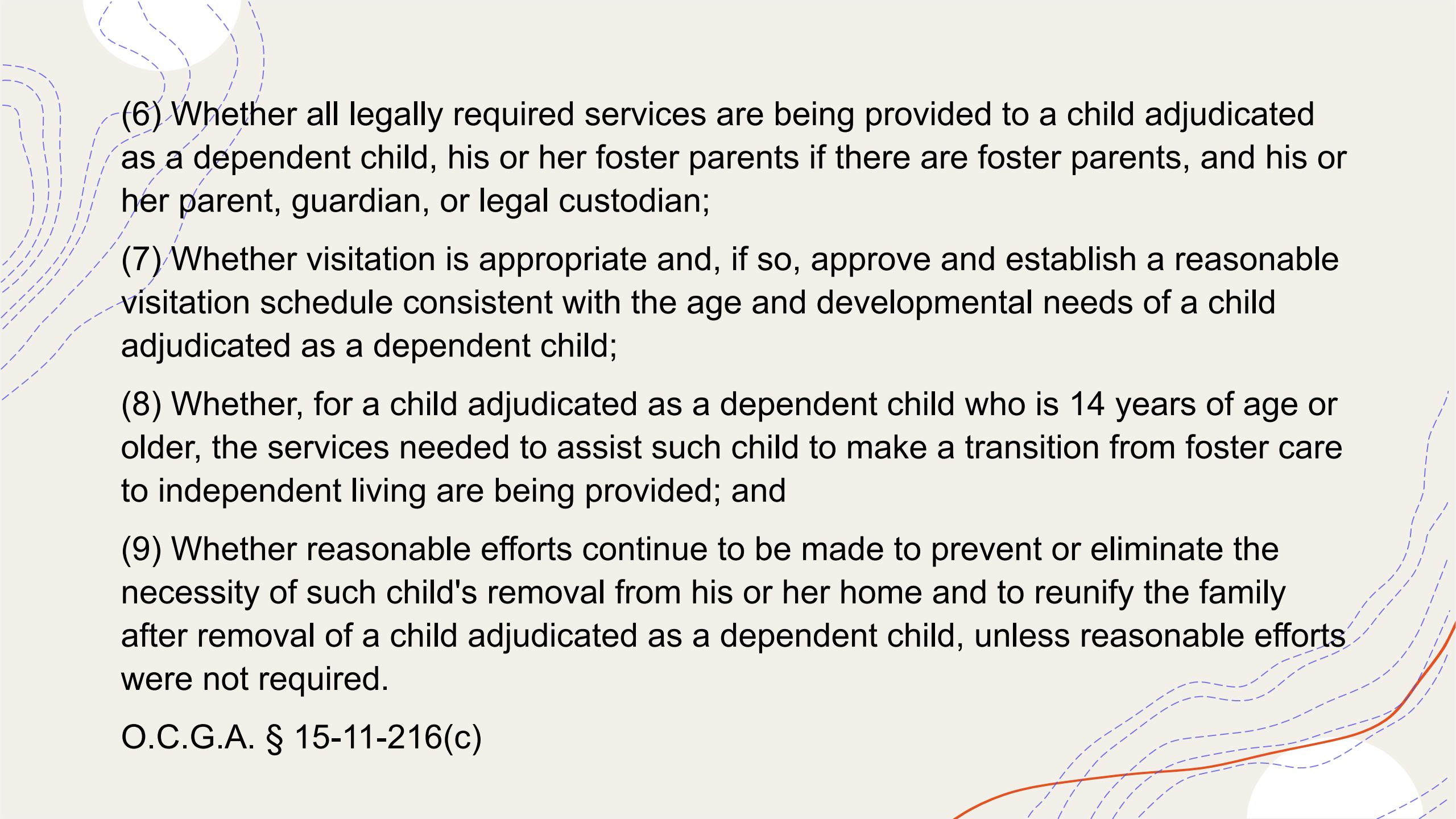
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Findings

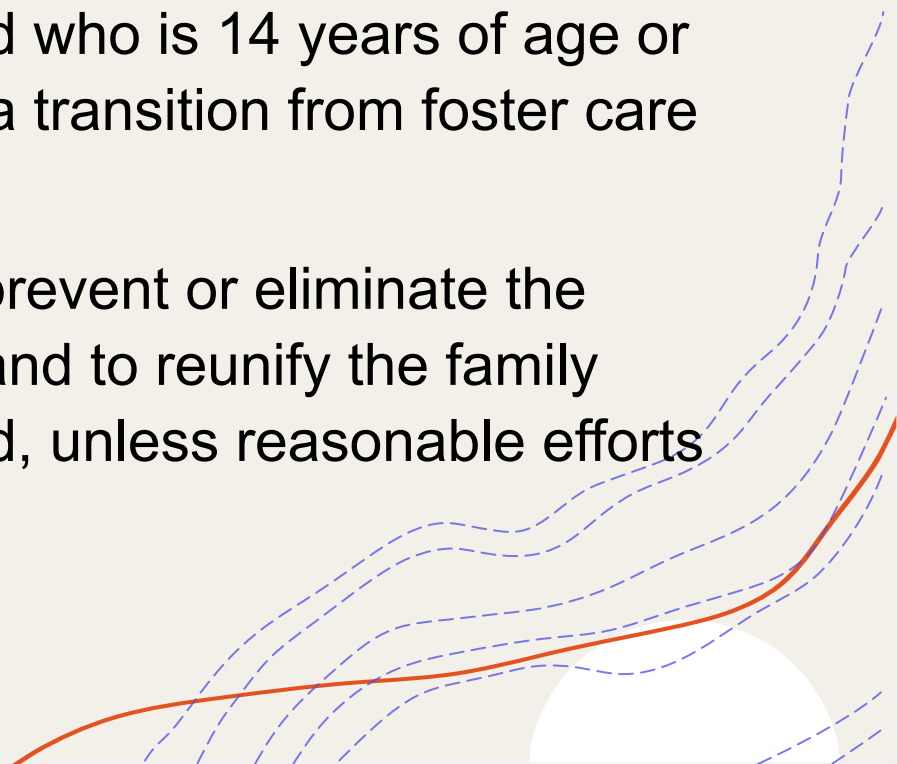


At the initial 75 day periodic review, the court shall approve the completion of the relative search, schedule the subsequent four-month review to be conducted by the court or a judicial citizen review panel, and shall determine:

- (1) Whether a child adjudicated as a dependent child continues to be a dependent child;
- (2) Whether the existing case plan is still the best case plan for such child and his or her family and whether any changes need to be made to the case plan, including whether a concurrent case plan for nonreunification is appropriate;
- (3) The extent of compliance with the case plan by all participants;
- (4) The appropriateness of any recommended changes to such child's placement;
- (5) Whether appropriate progress is being made on the permanency plan;

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- (6) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian;
 - (7) Whether visitation is appropriate and, if so, approve and establish a reasonable visitation schedule consistent with the age and developmental needs of a child adjudicated as a dependent child;
 - (8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and
 - (9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of such child's removal from his or her home and to reunify the family after removal of a child adjudicated as a dependent child, unless reasonable efforts were not required.

O.C.G.A. § 15-11-216(c)



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The Case Plan



The case plan that is being reviewed must contain (among other things):

- Specific time-limited goals
- Assignment of specific responsibility for accomplishing planned activities
- The projected date of completion of the case plan objectives

The case plan for a child of 14 y/o or older must be developed and revised in consultation with the child. If the child desires it, up to 2 members of the case planning team may be people chosen by the child (not a foster parent or DFCS case worker).

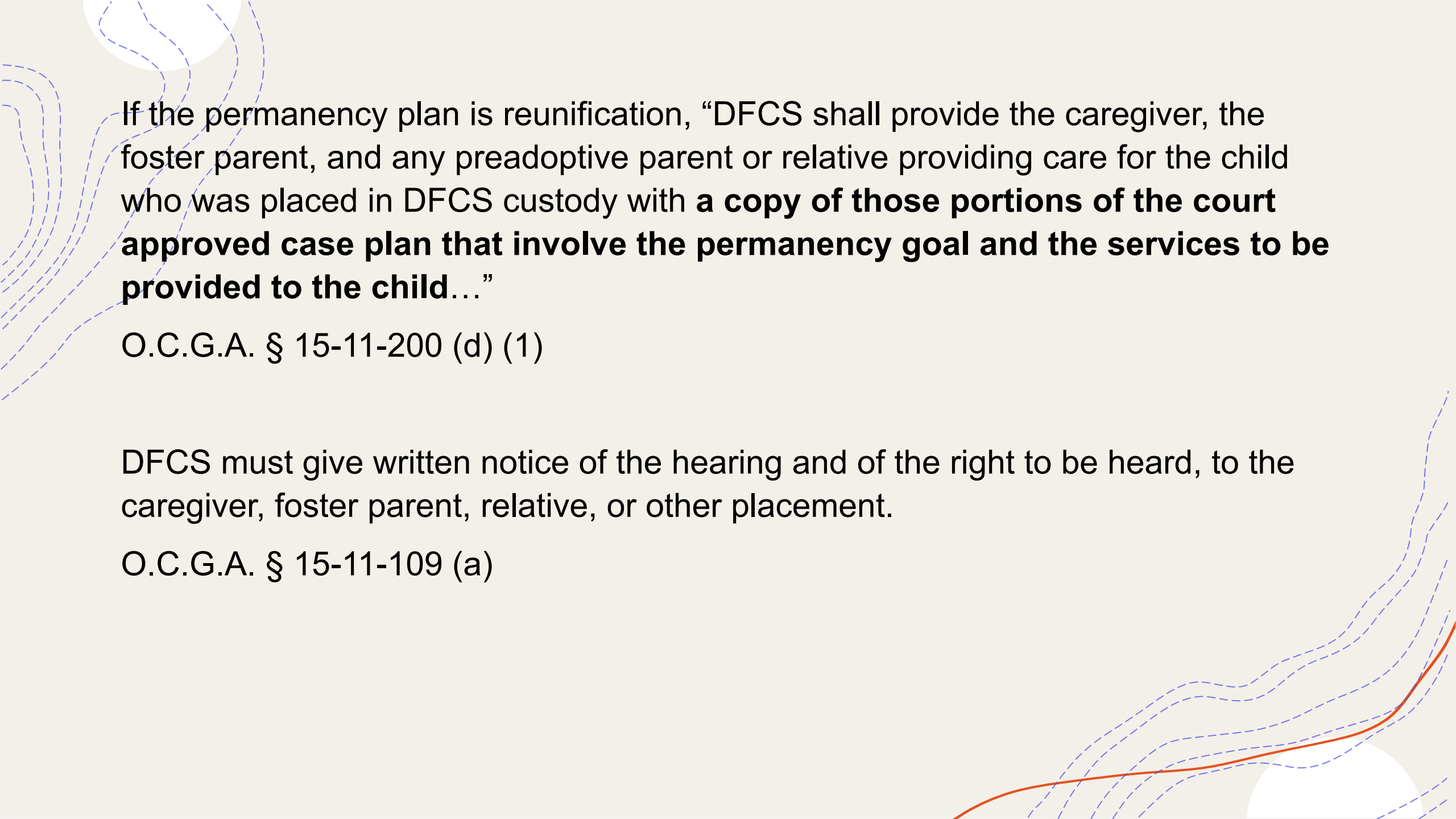
For these children, the case plan must include a written transitional living plan with specific services offered to prepare the child for independent living.

O.C.G.A. § 15-11-201



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Caregiver Participation



If the permanency plan is reunification, “DFCS shall provide the caregiver, the foster parent, and any preadoptive parent or relative providing care for the child who was placed in DFCS custody with **a copy of those portions of the court approved case plan that involve the permanency goal and the services to be provided to the child...**”

O.C.G.A. § 15-11-200 (d) (1)

DFCS must give written notice of the hearing and of the right to be heard, to the caregiver, foster parent, relative, or other placement.

O.C.G.A. § 15-11-109 (a)



“At each hearing or review the court **shall** make specific findings of fact in writing regarding participation by the caregiver of a child, the foster parent of a child or any pre adoptive parent, or any relative providing care for a child. Such findings of fact shall include:

- (1) Whether the caregiver was provided notice of the hearing or review, including the method, and whether the caregiver expressed an interest in being heard at the hearing or review; and
- (2) If the caregiver is present, specific information regarding the caregiver’s views, including, but not limited to, concerning the child’s well-being, health, and safety; any changes the caregiver believes are necessary to advance the child’s well-being, health, and safety; and the timeliness, necessity, and quality of services being provided to the child and caregiver; and a summary of documentation presented by the caregiver regarding the child’s well-being, health, and safety, including, but not limited to, reports from physicians, counselors, psychologists, and teachers.”

O.C.G.A. § 15-11-109 (d)

Conducting the Review Hearing

- *Open the Hearing

- Identify persons present and explain purpose of hearing

- *Engage parents, children, relatives and foster parents

- *Due Process Considerations

- Identification of Parents and Guardians

- Notice

- Representation

- Competency and Understanding

- Applicability of other Federal Laws and Legislation

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))
- *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))
- *Is the agency making reasonable efforts to rehabilitate the family and effect the safe reunification of the child and family, or to effectuate another court-ordered permanency plan? (45 C.F.R. § 1356.21(b))

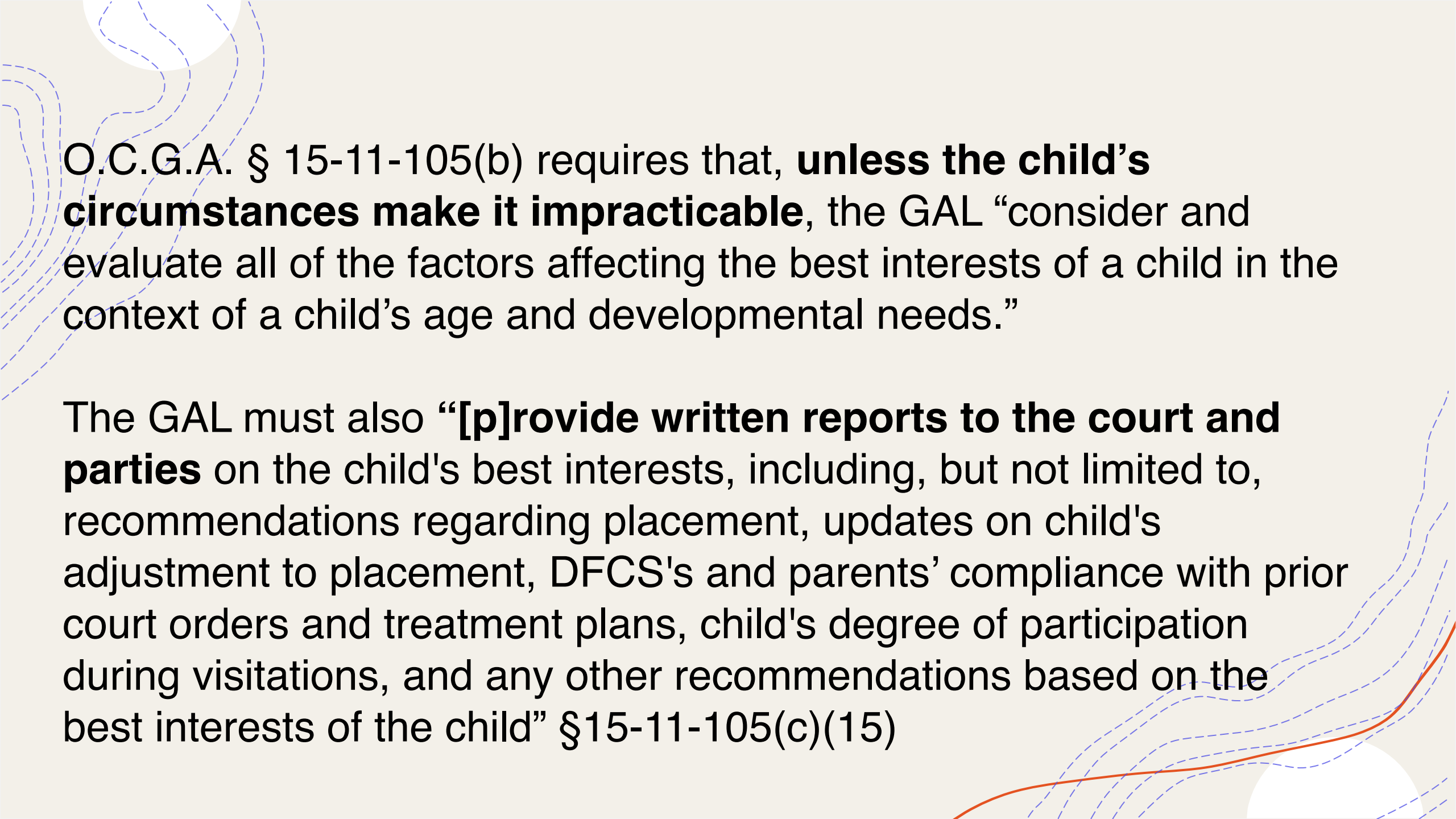
Findings of Fact and Conclusions of Law at the Review Hearing

- *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;

Findings of Fact and Conclusions of Law at the Review Hearing

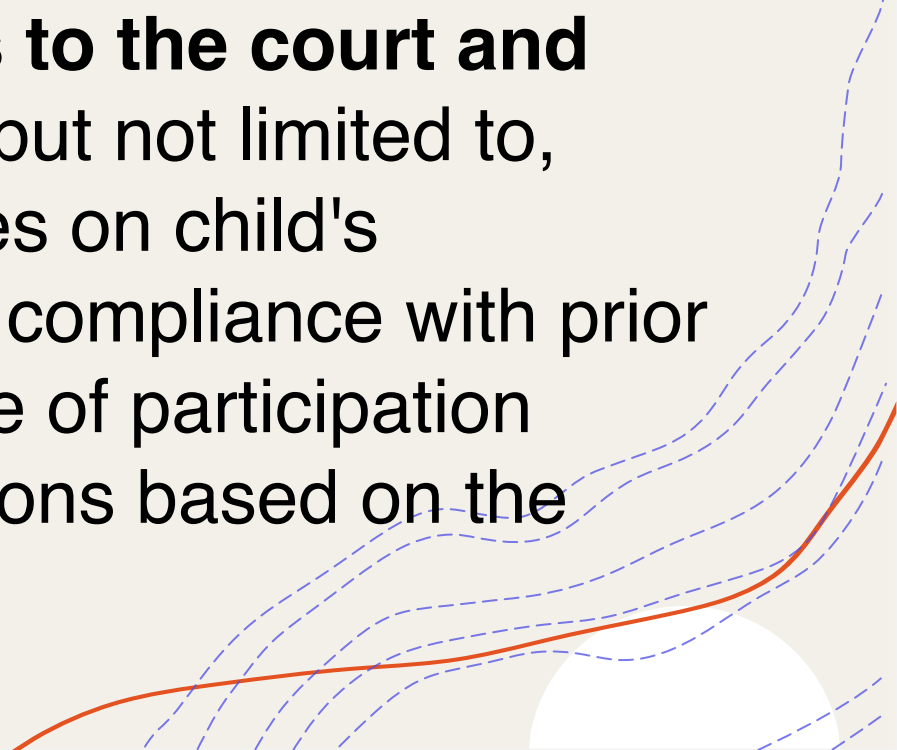
- *Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- *Identify an expected date of final reunification or other permanency plan for the child;
- *Set forth orders for the agency to make additional efforts 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.

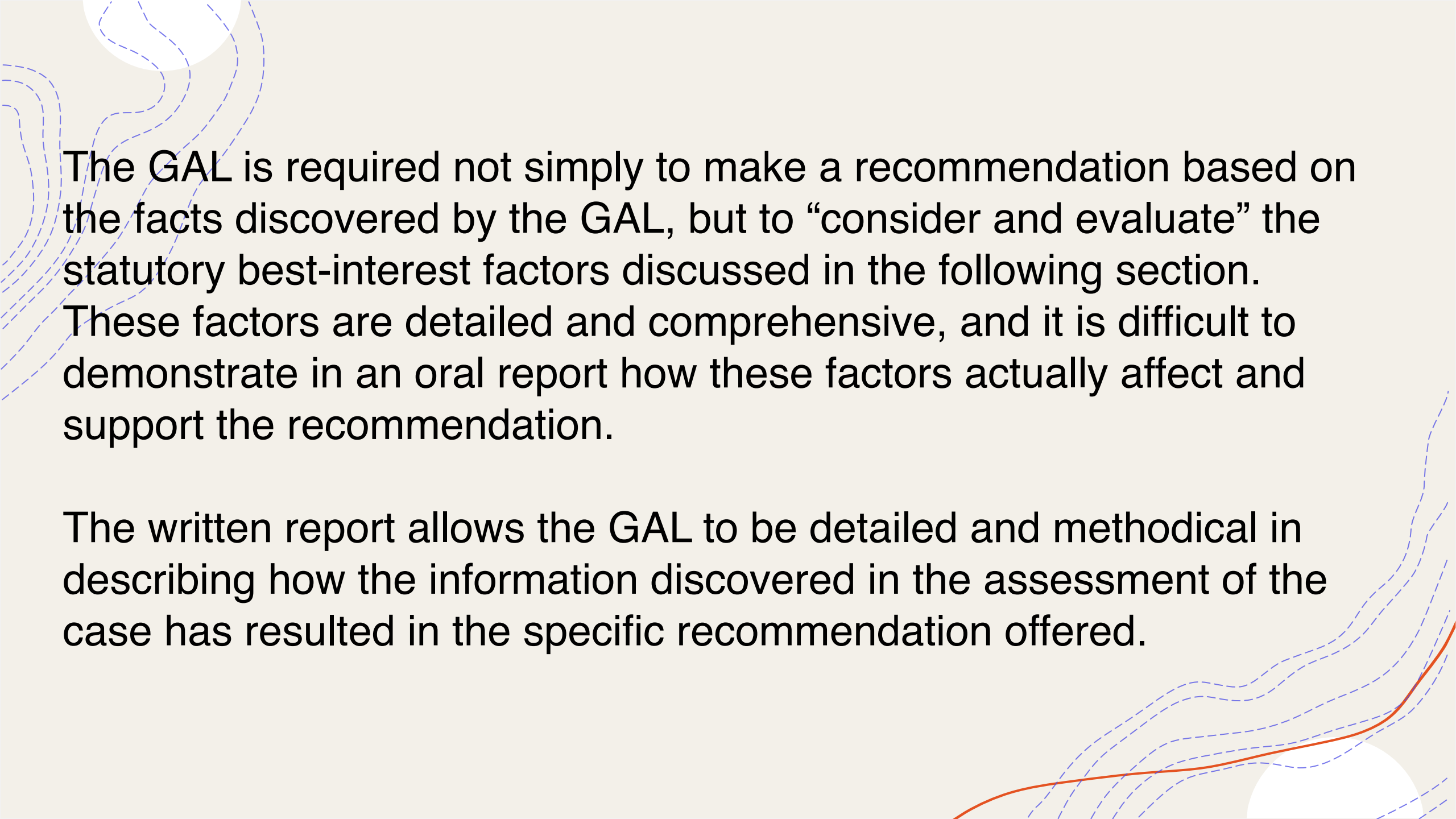
THE GAL AT REVIEW HEARINGS



O.C.G.A. § 15-11-105(b) requires that, **unless the child's circumstances make it impracticable**, the GAL “consider and evaluate all of the factors affecting the best interests of a child in the context of a child's age and developmental needs.”

The GAL must also “[p]rovide written reports to the court and **parties** on the child's best interests, including, but not limited to, recommendations regarding placement, updates on child's adjustment to placement, DFCS's and parents' compliance with prior court orders and treatment plans, child's degree of participation during visitations, and any other recommendations based on the best interests of the child” §15-11-105(c)(15)





The GAL is required not simply to make a recommendation based on the facts discovered by the GAL, but to “consider and evaluate” the statutory best-interest factors discussed in the following section.

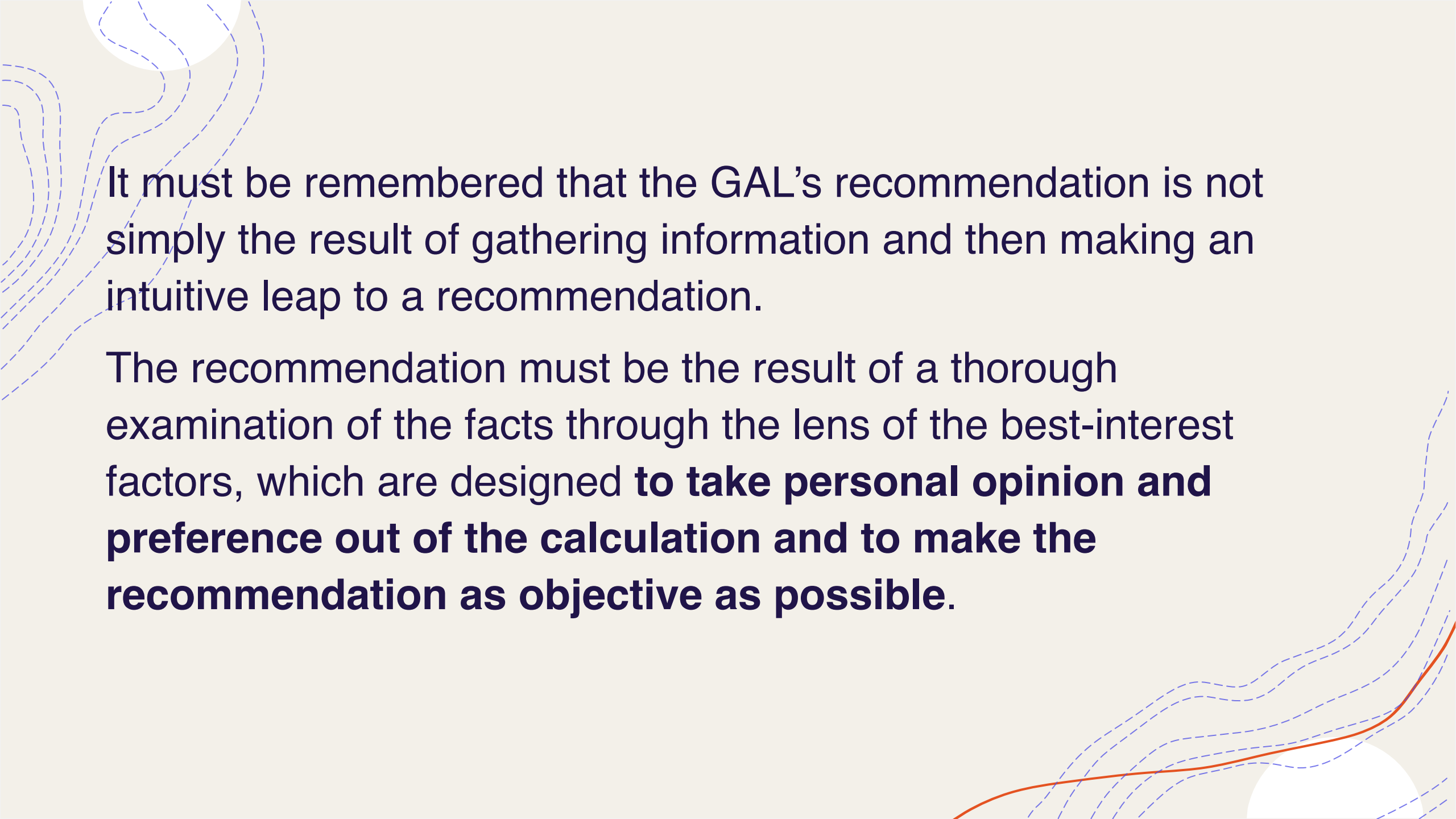
These factors are detailed and comprehensive, and it is difficult to demonstrate in an oral report how these factors actually affect and support the recommendation.

The written report allows the GAL to be detailed and methodical in describing how the information discovered in the assessment of the case has resulted in the specific recommendation offered.



The GAL will need to make an oral report:

1. At adjudicatory hearings, when the written report is not automatically admissible (O.C.G.A. § 15-11-104(l)).
2. At every hearing where there are new or unexpected developments in the evidence, so that the GAL can show that what has happened at the hearing has been explicitly considered and added to the best-interest calculus. There will be times when this new information will change the recommendation.



It must be remembered that the GAL's recommendation is not simply the result of gathering information and then making an intuitive leap to a recommendation.

The recommendation must be the result of a thorough examination of the facts through the lens of the best-interest factors, which are designed **to take personal opinion and preference out of the calculation and to make the recommendation as objective as possible.**



Review hearings in general (initial review, 4-month review, periodic reviews, permanency hearings, &c.) are **where most of the work gets done in dependency cases.**

Effective advocacy from attorneys for the parties and from GALs are necessary to keep the case from stalling and to move the child to an appropriate permanency outcome.



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