

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

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

Best Practice – Educational Information

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

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

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

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

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

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

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

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

Best Practice – Maintaining Family Connections

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

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

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

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

9.6 Educational Decision Makers (EDM)

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

9.6.1 When to Appoint an Educational Decision Maker

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

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

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

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

9.6.2 Person Eligible for Appointment

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

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

9.6.3 Special Rules for Students with Disabilities

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

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

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

9.7 Findings and Orders

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

12.6.1 Continuing Necessity of Placement

The court must determine whether the placement continues to be necessary and appropriate for the child and whether the child is safe. If the child is placed, the court must determine whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child. Judges and hearing masters should ask why placement is still needed, whether the child is or should be placed with siblings, if there is any family member available for placement or visitation with the child, if the placement is meeting the child's needs, if the child is happy, safe, and adjusted to the placement. An additional inquiry into the services needed to assist a child who is sixteen years of age or older to make the transition to independent living should also be made (See the discussion of Transitioning Youth in Chapter 19: General Issues.)

In deciding whether placement of the child remains necessary, the court should consider and assess child vulnerability, parental capacity, and safety threat. Depending on the age and maturity of the child or the parents, the assessment and ultimate risk may be different. Return should not be based upon compliance, but rather progress and the mitigation of safety threats. A parent may not have completed every program or goal, but once the risk to the safety of the child is removed or mitigated, in most cases, the child should return home. (See Best Practices Box on Compliance versus Progress, following.)

12.6.2 Appropriateness of Placement

The determination of the appropriateness of the placement involves the consideration of the child's needs and is based on information about the child's behavior, health, mental status, education and development.

Questions that may assist in this determination are ones about the safety of the child, the visitation plan and whether it is adequate and, if separated from siblings, whether or not sibling visits are occurring. The court should also determine whether the child's medical needs are being met and ask questions about immunizations, dental care, glasses, medications and other special medical needs, as well as the need for mental health or other therapeutic services and whether or not these are being provided (PA Children's Roundtable Initiative, 2009, p.13).

If the child is displaying behavioral issues, or if the placement was due to truancy or ungovernability, the Judge or Hearing Master should also inquire as to the child's level of compliance and assess the progress that has been made toward alleviating those placement conditions. Special attention should be given to the child's educational needs and development, what

"The most difficult thing was switching schools so frequently, it was hard to maintain friendships and keep up with school work."

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

services are needed to assist the child age 16 or older in transitioning to independence; and whether the child's basic needs for clothing and personal care items are being met.

12.6.3 Appropriateness, Feasibility, and Extent of Compliance with the Permanency Plan

When making a determination as to the compliance and progress of parents or guardians, the Judge or Hearing Master may want to consider asking a caseworker for an opinion of the level of compliance with the permanency plan. Questions should also be asked regarding attendance at visitation and the quality of the visits for both parents.

Based upon the information received during the hearing, the Judge or Hearing Master should rate the level of compliance as "no, minimal, moderate, substantial or full." In determining progress the court should concentrate on changes in behaviors rather than on whether the parent "attended" all sessions or completed certain tasks.

12.6.4 Progress toward Alleviating Circumstances Requiring Placement

In assessing the progress made toward alleviating the circumstances that necessitated the original placement, the court should consider whether the parents were offered reasonable and appropriate services, whether the parents requested services that were not provided, and inquire as to what the parents still need to accomplish before reunification would be recommended by the agency. Remember, the agency is required to make reasonable efforts to reunify the child with the parents unless they have been relieved of this requirement by the court. This includes offering appropriate and reasonable services. The Judge or Hearing Master should not hesitate to hold the agency accountable for failure to make reasonable efforts. However, once a finding of no reasonable efforts has been made, federal and state funding for the costs of the child's placement may be lost by the county, until the agency comes into compliance by providing reasonable efforts. Based upon the information received during the hearing, the Judge or Hearing Master should assess the level of progress as "no, minimal, moderate, substantial or full."

As noted above, unless good cause has been shown, the child should be present at the hearing. If the child is not present the court should ask where the child is and why the child is not present. It is critical for the court to see the child. The child's physical appearance is important to the assessment of safety. Is the child overweight or underweight? Does the child appear to be clean? Additionally, the child's affect and demeanor can aid in the assessment of well-being. Does the child appear happy and content or sad and depressed? In cases of physical abuse, the Judge or Hearing Master can see first-hand how the child is healing. The court should take the opportunity to have the child photographed at each review hearing, or if the child is not present for some reason, the Judge or Hearing Master should demand that a picture be received, in order to create a record of the child's physical development and growth.

12.6.9 Services Needed to Help Older Youth Transition to Independence

Although the agency is only required to provide services to transition a child into independent living when the child is 16 years of age or older, in reality this process should begin much earlier. These services should be ordered whenever it becomes appropriate. Information on the individual needs of the child and the development of skills should be sought. General areas of inquiry might be vocational and career counseling, secondary and post-secondary education, employment, daily living skills and the possession of necessary identification and documents such as a birth certificate and a social security card. Children with disabilities should have a transition plan included in their Individual Education Plan if they are eligible for special education services. Some children may need to transition into a supervised living environment through the adult mental health system. This process takes a long time and should be initiated before the 16th birthday.

At each permanency hearing, the court must assess the services needed to assist a child in making the transition to independent living (Pa.R.J.C.P 1608 (D) (1) (j)). Because educational success is an important step on the road to self-sufficiency, the court should investigate whether the child is on track to graduate from high school, or whether the child is enrolled in an alternate education program that will assist the child in achieving self-sufficiency. General areas of inquiry might include both secondary and post-secondary education as well as vocational and career counseling, employment, daily living skills, and possession of necessary identification and documents such as a birth certificate and a social security card. Housing is also an important issue (See Transitioning Youth in Chapter 19: General Issues.)

At least 90 days before a child's 18th birthday, the court must hold a hearing to determine whether supervision will terminate. Before the hearing a transition plan shall be developed for the child. The transition plan shall be

presented to the court and the court must approve the transition plan before supervision can be terminated. Pa.R.J.C.P. 1631 E provides that the transition plan shall, at a minimum, include:

- a) the specific plans for housing;
- b) a description of the child's source of income;
- c) the specific plans for pursuing educational or vocational training goals;
- d) the child's employment goals and whether the child is employed;
- e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;
- f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;
- g) verification that all vital identification documents and records have been provided to the child; and
- h) a description of any other needed support services..

Best Practices — Creating & Approving the Transition Plan

Bringing together family members can help develop a transition plan that will ensure that the child has a life-long support system. Family Finding can assist with the identification and location of family members and close connections that will provide the support. Once family and kin are located, a FGDM conference can help create the transition plan.

If the transition plan is NOT approved, the court should schedule a review every 30 days until the plan is approved.

If supervision is not terminated, the court must conduct a permanency hearing at least every six months. (Pa.R.J.C.P. 1610).

12.6.10 Educational, Health Care, and Disability Needs of the Child

At every permanency hearing, the Judge or Hearing Master is required to determine whether a child's educational, health care and disability needs are being addressed.

Educational success is a significant gauge of well-being for children and an important factor for successful transition to adulthood. Yet, sometimes educational success is overlooked when children are in the dependency system. Sometimes the same dependent children and youth whose safety and permanency needs are being met by the child welfare system experience significant educational challenges.

Educational success measures include:

- consistent attendance;
- achieving reading and math levels;
- academic progress;
- engaging in extracurricular activities;
- an attachment to school.

With respect to the child's educational needs, the court should determine whether:

- the child is regularly attending school;
- the child has changed schools since the last review;
- the child is enrolled in an appropriate educational program; and
- the child is making progress towards promotion and graduation.

Best Practice - Education of Children in Residential Settings

If a child is being educated at a residential placement, the court should inquire whether the child could and should attend the local public school instead. Also, the court should ascertain whether the credit a child earns at a residential placement is transferable toward graduation at a public school.

Children with disabilities should have an I.E.P. transition plan as required by 22 Pa. Code 14.13(5) included in their Individual Education Plan beginning at age 14 if they are eligible for special education services. Certain children may require supportive services or special living arrangements to be arranged as they transition to independence. If the court determines that the parents are incapable of making educational decisions for the child or are not readily available and willing to participate in making educational decisions for the child, the court should appoint an educational decision maker (EDM) for the child. (See Chapter 9: Disposition — When to Appoint an Educational Decision Maker.)

If an EDM has previously been appointed, the court should determine whether an EDM continues to be necessary and whether the appointed EDM is meeting the needs of the child. If parental rights have been terminated, the Judge or Hearing Master should ensure that an educational and medical decision maker is appointed.

Best Practice:- Cyber Schools

While virtual learning may be a viable option for some highly motivated youth, medically fragile children, or those who need to recover a few credits, studies indicate that cyber learning is a poor option for at-risk students, particularly those with a history of truancy. When considering the use of cyber schools, judges and hearing masters should give significant weight to the needs of the youth, the level of adult supervision that will be available and the capacity of the cyber school program to meet the foster youth's needs. Finally, judges and hearing masters should designate a specific person to monitor the youth's involvement and progress supplying a periodic report to the court.

With respect to the child's health care needs, the court should determine whether the child is receiving all routine medical, mental health, and dental care as well as any special care, psychotropic medications, and services that the child may need.

Best Practice - Questions to Ask When a Child is on Psychotropic Medications

- What is the child's diagnosis? Is it the correct diagnosis?
- What is the medication's intended effect? Is it effective?
- Are we monitoring for adverse effects?
- If the child is doing well, have we thought about tapering the medication?
- What is the opinion of the treating physician?
- What other treatment interventions are happening with medication?

If a child has a disability or special needs, the Judge or Hearing Master should determine whether the child's current placement is equipped to address the child's disabilities or special needs and whether the child is receiving the necessary services.

12.6.11 Whether a Termination of Parental Rights (TPR) Petition Should Be Filed

Absent compelling reasons to do otherwise, when a child has been in care for 15 out of the past 22 months, the agency is required to ask for a change in the permanency goal from reunification to another permanency goal, usually adoption, and to file a petition for termination of parental rights (For more detailed

- ✓ Are the child's educational needs being met? Is the child on target educationally?
- ✓ What services are needed to assist a child 16 years of age or older in transitioning into independent living?
- ✓ Does the child need clothing?
- ✓ What extra-curricular activities is the child involved in?

These suggested questions concern the child's educational needs.

- ✓ Where does the child attend school? What grade is the child in?
- ✓ Has the child changed schools since entering care? Had the child changed schools prior to the adjudication of dependency?
- ✓ What is the educational setting? Is the child in an appropriate school setting where he/she can make progress toward graduation?
- ✓ Should the child be evaluated or re-evaluated for special education or does the child need any accommodations for a disability (504 Plan)?
- ✓ Does the child have an Individualized Education Plan (IEP)? Is a special needs child's IEP enabling the child to make progress?
- ✓ If the child has an IEP, are the IEP and evaluations up-to-date?
- ✓ If the child is 14 years of age or older, does the child have an IEP transition plan regarding how the child will transition to independent living?¹
- ✓ Is the child making progress towards promotion? Is the child on track academically and in the right grade?
- ✓ Is the child attending school on a regular basis?
- ✓ If truancy is an issue, how has the school intervened? Have the underlying reasons for the truancy been determined? Is there a plan? How is it working?
- ✓ Are there any issues with transportation to and from school?
- ✓ What are the child's grades? Is the child on grade level in reading and math? If not, is the child participating in tutoring at school?
- ✓ Are the child's behaviors in school appropriate? Describe the behaviors?
- ✓ Has the child been suspended or expelled? Why?
- ✓ Does the child like school? Does the child have friends at school? What are the child's favorite subjects? (Questions for the child.)
- ✓ Does the child or youth participate in developing his or her educational goals? If not, can such a process be implemented so that the youth will feel invested in his or her education?
- ✓ Is the child engaged in sport, club, or extracurricular activity at school?
- ✓ Is the student involved in a mentoring program?
- ✓ Are the parents or guardians attending school meetings and advocating for the child's educational needs?

¹The transition plan for children with disabilities in federal law is required by age 16 at the latest. 20 U.S.C. (d)(1)(A)(i)VIII(aa); (bb); 34 C.F.R. 300.320(b). In Pennsylvania, the PA Code requires such an IEP transition plan by age 14 years of age. 22 PA Code 14.131 (5).

- ✓ Are the parents and guardians meeting the child's educational needs? If not, does the child need an Education Decision Maker? If so, who should be appointed?
- ✓ If the child or youth has special needs, does the EDM need help navigating the IEP process?²
- ✓ Does the child have an involved Educational Decision Maker? Is the EDM still necessary?
- ✓ If the child has entered high school, is he or she on track to graduate? Does he or she have a graduation plan? Has this child been informed of post-secondary opportunities?
- ✓ Does the child who is 18 or older have a detailed transition plan under Rule 1613?
- ✓ If the child attends a post-secondary educational program is he or she making progress toward graduation?

These suggested questions concern compliance and progress of the parents/guardians.

- ✓ What is the level of compliance of the mother?
- ✓ What is the level of compliance of the father?
- ✓ What progress has the mother made toward alleviating the circumstances that led to the original placement?
- ✓ What progress has the father made toward alleviating the circumstances that led to the original placement?
- ✓ Are the parents regularly visiting the child?
- ✓ Do the visits go well?
- ✓ Have either of the parents requested any services that the agency has not provided or cannot provide?

These suggested questions concern the permanency plan and the permanency/placement goal.

- ✓ Is the permanency plan appropriate and feasible? Why or why not?
- ✓ Were reasonable efforts made to finalize the permanency plan? If not—why?
- ✓ Is the current permanency/placement goal appropriate and feasible? Why or why not?
- ✓ If the current permanency/placement goal is not appropriate, what is the new goal?
- ✓ What is the likely date that the permanency/placement goal might be achieved?

These questions concern the issue of whether a petition for termination of parental rights should be considered.

² (The PEAL Center or the Disabilities Rights Network of Pennsylvania can provide IEP support.)