

**Achieving Permanency:  
Compliance versus Progress**

**Honorable Eleanor L. Bush**  
Court of Common Pleas of Allegheny County

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**Assumptive versus Critical Thinking  
\*In Safety Decision Making**

<b>It's bad all of the time</b>	<b>In most cases it's not "bad" all of the time. The "bad" times can be isolated incidents</b>
Young children are the only ones vulnerable	Vulnerability is determined based on many assessed factors
Maltreatment is the only focus when determining Safety	Safety threats and Parental Protective Capacities should also be a focus when deciding Safety
When in doubt – remove	When in doubt – make sure you have first gathered enough information from the Safety Analysis process
If a child is removed, then they obviously need to be supervised during visitation	Safety for removal and Safety for Visitation may look different

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**Compliance versus Progress: Moving from  
assumptive thinking to critical thinking**

*Don't assume that compliance equals progress*

- Safety Analysis and Decision Making
- An attorney must be knowledgeable about how the agency came to the conclusion on whether or not the child is currently safe or able to be protected by the parent.
- 3 key elements to consider when determining safety:
  1. Safety Threats
  2. Vulnerability of the Child
  3. Parental Protective Capacities (behavioral changes)

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**Compliance versus Progress: Moving from assumptive thinking to critical thinking**

- At the earliest hearing, the behaviors causing a safety risk or safety threat to the child should be identified.
- Information gathered on safety threats, vulnerability and parental protective capacities, in behavioral terms, provides for:
  - more clarity surrounding the circumstances
  - critical thinking in making a decision regarding the child's safety
  - a basis for providing clear priorities and expectations to the family
  - more specific recommendations to the Judge

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**What's more important?**

<p><b>Compliance</b></p> <ul style="list-style-type: none"> <li>• Mother attends AA meetings</li> <li>• Parents have attended 6/10 parenting classes</li> <li>• Teenager did not make it to the next level at group home</li> <li>• Father shows up to every visit</li> </ul>	<p><b>Progress</b></p> <ul style="list-style-type: none"> <li>• Mother stops drinking when at home alone with the children</li> <li>• Parents have displayed more patience in handling their children's tantrums at visits</li> <li>• Teenager is demonstrating the ability to control their anger and can identify "triggers" to their drug use</li> <li>• Father has been asked numerous times to not take a nap during his visits</li> </ul>
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**Compliance = The action steps of doing what was asked**

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**Compliance**

A parent's compliance is generally easily **defined in:**

- Family Service Plans
- Permanency Plans
- Court Orders

A parent's compliance is generally **measured by:**

- Attendance
- Completion
- Participation

\*There is an objective determination as to the parents' participation

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**Progress** = Enhanced parental protective capacities either through behavioral, emotional or cognitive change that eliminate the original safety risk or threat

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**Progress**

- To evaluate a parent's progress we must look at:
  1. What are the circumstances which necessitated placement (specific safety threats)
  
  2. What are the parent's behavior changes which indicate that he or she has learned from and/or internalized the necessary information from the services so as to remove the safety concerns which lead to placement (parental protective capacities).

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Compliance versus Progress

Quantity versus Quality Analysis

- **Compliance** allows you to count:
  - The number of visits attended
  - The number of services appointments made
  - The hours a parent has devoted to the role as a parent

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Compliance versus Progress

Quantity versus Quality Analysis

- **Progress** forces you to think critically about *how* those counted visits, service appointments or hours are spent
  - Are the parents engaged with their children during visitation
  - Do the parents seem to understand their mental health needs better
  - Is there a change in how the parent thinks, feels or acts behaviorally
  - Does the child know their triggers to using drugs

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Measuring Compliance

Compliance is easier to identify and easier to reflect back to the parents.

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**Measuring Compliance**

- When measuring compliance, consider the following:
  - Parents' level of understanding of the permanency plan
  - Reasonableness of permanency plan requirements
  - Cooperation and follow-through with the agency's request
  - Emotional, behavioral and cognitive ability of the parents
  - Circumstances of the parents
  - Roadblocks to compliance

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**Measuring Progress**

Much harder to define

Subjective Analysis

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**Measuring Progress**

- When measuring progress consider the following:
  - Parents understanding of the safety concerns and protective capacities they need to enhance
  - Parents acknowledgement of the behaviors which contributed to the circumstances
  - Emotional, behavioral and cognitive ability of the parents
  - Circumstances of the parents
  - Roadblocks to progress
  - Positive or negative behavioral changes

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### When is Compliance and Progress Measured

- With the Court Order
- With the Family Service Plan
- With Visitation
- When determining whether the original reasons that necessitated **dependency** continue to exist
- When determining removal or reunification

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### When is Compliance and Progress Measured

- ASFA requirements:
  - Reasonable Efforts to prevent removal 45 C.F.R. Sec. 1356.21 (b)(1)
  - Reasonable Efforts to finalize the permanency goal 45 C.F.R. Sec. 1356.21 (b)(2)
  - “contrary to the welfare” 45 C.F.R. Sec. 1356.21 (c)
- Safety must be determined at every hearing

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### When is Compliance and Progress Measured

- Juvenile Act and parallel Rules requirements for matters to be determined at permanency hearings, specifically:

“extent of compliance with the permanency plan developed for the child.” 42 Pa. C.S. § 6351(f)(2), Pa. R.J.C.P. 1608(D)(1)(b).

“extent of progress made toward alleviating the circumstances which necessitated the original placement” 42 Pa. C.S. § 6351(f)(3).

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## Scenario activity

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- ### Why a focus on progress?
- It is your duty to present facts to the court and assess your clients level of both compliance and progress
  - Progress helps to ensure that you are clear on the agency's expectations for behaviors that need to be changed, so that you can decrease your clients confusion about expectations
  - Provides the opportunity to praise the parents for accomplishments and emphasize areas needing continued progress
  - Expedites permanency and reunification

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Compliance = Progress  
OR  
Progress = Compliance

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**Compliance** = The action steps of doing what was asked

**Progress** = Enhanced parental protective capacities either through behavioral, emotional or cognitive change that eliminate the original safety risk or threat

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**What Can I do Starting Tomorrow?**

- From the first hearing make sure you:
  - Know the original safety risk or safety threat
  - What behavioral changes your client needs to make
  - If the original safety threat present at the time of removal has been eliminated OR if behavioral changes made can now keep the child safe now. Ask “if the child was at home right now, would there be enough to remove them today”

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**What Can I do Starting Tomorrow?**

- Ensure that the “bar” on compliance isn’t raised so high that it is impossible for your client to show progress
- Don’t assume that a client complying is making progress
- Don’t assume that a client who is *not* complying is *not* making progress
- Don’t allow decisions at today’s hearing to be made based on the parent’s parental capacities in the past
- Advocate for the parental capacities demonstrated by the parent TODAY
- Don’t allow for unnecessary monitoring “just to be sure” or “just because of a gut feeling” by the caseworker

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Findings related to the PROGRESS of behavioral changes generally have the greatest impact on permanency decisions for children

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