



Child Abuse and Neglect Institute

Improving Outcomes for Children and Families

MODULE: THE ADJUDICATION & DISPOSITION HEARING

National Council of Juvenile and Family Court Judges





Setting the Stage for Better Permanency Outcomes

Hearing Best Practices

Adjudication and Disposition Hearings





LEARNING OBJECTIVES

- Understand how to prepare for and conduct an effective adjudication hearing
- Understand how to prepare for and conduct a dispositional hearing
- Understand the components of good case plans



ADJUDICATION AND DISPOSITION CASE SCENARIO





CASE SCENARIO DISCUSSION

- ◉ Which allegations of the petition have been proven or admitted, if any?
- ◉ Is there a legal basis for continued court and agency intervention?
- ◉ Were reasonable efforts made prior to removal? Were the issues sufficiently addressed to alleviate the need for involvement? (Did you catch the hints to drug use?)
- ◉ What findings do you need to make in order to comply with federal law?
- ◉ Does the agency-proposed case plan reasonably address the problems and needs of the children and parents?
- ◉ Are these findings the same or different than in your state? If different, how?



CHILD ABUSE AND NEGLECT HEARING BEST PRACTICES

NCJFCJ Enhanced *RESOURCE GUIDELINES* The Adjudication Hearing





The Adjudicatory 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 Adjudicatory 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



The Adjudicatory Hearing

ICWA Issues at Adjudication

- If adjudication proceeds by agreement
 - Consent executed in writing and certified that Indian parent(s) rights were fully explained in a language they understood
- **Clear and convincing evidence** (including testimony by qualified expert)
- **Active efforts**



Before the Adjudication Hearing

- ◉ Review relevant documents
- ◉ 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



Conducting the Adjudication Hearing

- ◉ Open the Hearing
 - Identify persons present and explain purpose of hearing
- ◉ Engage parents, children, relatives and foster parents
- ◉ Due Process
 - Are parties entitled to counsel and represented? Have counsel had opportunity to fully discuss purpose and potential outcome of hearing with clients?
 - Competency issues?



Key Decisions at the Adjudication Hearing

BEFORE ADJUDICATION IN ANY CASE:

- Are there specific allegations as to each parent?
 - Which allegations have been proven by the applicable burden of proof?
- Are the allegations, as proven or admitted, 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



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 an admission ?
- Has the parent been advised by counsel of, and does he/she understand, the rights waived and direct and potential consequences of an admission?
- Is the admission or consent voluntary?
- Have the pleadings been amended to reflect the agreement of the parties?
- Is the testimony or other evidence necessary to support an admission or consent?
- If an ICWA case, certify that
 - The consent to foster placement was executed in writing



Key Decisions at the Adjudication Hearing

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

- (1) Which allegations of the petition have been proved or admitted, if any;
- (2) Whether there is a legal basis for continued court and agency intervention; and
- (3) Whether reasonable efforts have been made to prevent the need for placement and safely reunify the family.



Key Decisions at the Adjudication Hearing

IN ICWA CASES, DETERMINE WHETHER

- There is evidence, including the testimony of a qualified expert witness, that proves by clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. **25 USC § 1912(E)**
- The Agency has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. **25 USC § 1912(D)**
- **If an ICWA case, certify that**
 - The consent to foster placement was executed in writing and filed in court
 - The consequences of the consent were fully explained in detail in English or in a language that the parent or Indian custodian understood



Key Decisions at the Adjudication Hearing

ADDITIONAL FINDINGS and ORDERS IF THE DISPOSITION HEARING IS NOT HEARD IMMEDIATELY AFTER THE ADJUDICATORY HEARING

- ◉ Where will the child be placed prior to the Disposition Hearing?
- ◉ Is the temporary order placing each child extended until the dispositional hearing?
- ◉ Any orders the court deems appropriate (evaluations, services, family time, etc.).



Concluding the Hearing and Preparing for the Next Hearing

- Focus on permanency and mandatory timeframes.
 - Engage parents and children -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.



CHILD ABUSE AND NEGLECT HEARING BEST PRACTICES

NCJFCJ Enhanced *RESOURCE GUIDELINES* The Disposition Hearing





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)).



Before the Disposition Hearing

- ◉ Review relevant documents
- ◉ 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



Before the Disposition Hearing

Dispositional Reports

- Among other things, the disposition report should include the following:
- A statement of family changes that are needed to correct the issues necessitating state intervention, 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;
- Benefits of compliance and consequences for non-compliance; and
- A likely date the child will leave care if the child is in placement.



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
- ⦿ Stipulation should address only the services rationally related to the jurisdictional findings of the court



A Closer Look at the Case Plan

- ⦿ There is nothing more important in permanency planning than effective case planning
- ⦿ The case plan should be driven by the identified needs of the family and not by the readily available resources of the agency and the community
- ⦿ The case plan is the roadmap to permanency for the children we serve



A Closer Look at the Case Plan

- ⦿ The foundation of a good case plan is the court's determination of the reason that the child cannot be maintained at home safely.
- ⦿ The Court should never, consciously or through inaction, abdicate its responsibility as gatekeeper.
- ⦿ The Court should carefully scrutinize stipulations to case plans.



A Closer Look at the Case Plan

CHILD WELL-BEING

- What is the child's well-being status? What progress has the child made?
- What services, interventions or supports are in place to promote well-being?
- How has the Agency assessed the quality of those services?
- Are those services specifically tailored to child's unique issues?
- What additional services, interventions or supports will be provided to overcome child's barriers to progress?



A Closer Look at the Case Plan

Characteristics of a Good Case Plan

SIMPLICITY

SPECIFICITY

ACCOUNTABILITY

RELATIVITY

DOABILITY



Lawon, Age 17



Questions to Ask About Every Case Plan and Every Step

- Is it simple so as to be understood by all?
- Is it specific as to who, what, where and when?
- Does it allow for accountability?
- Does it relate directly to the reason the child cannot be maintained safely at home?
- If all of the steps are achieved, will the risk to the child be reduced to a level that will allow the children to return home?
- Is it doable?



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.



Before the Disposition Hearing

Other information that should be included either in the affidavit of reasonable efforts or an accompanying court report is:

- ⦿ A description of the placement and where it is located, including an explanation outlining why the placement is the most appropriate, least restrictive and most family-like setting for the child;
- ⦿ Proposed arrangements for family time with parents and siblings including a clear explanation of the need for supervision, which the court should carefully evaluate;
- ⦿ Placement of the child's siblings and, if they are to be apart, a clear explanation of the need to separate them and a plan for family time; An appropriate permanency plan and concurrent plan with specific implementation steps outlined for each; and
- ⦿ Proposed child support

OTHERS?



Conducting the Disposition Hearing

- Open the Hearing
- Engage parents, children, relatives and foster parents
- Review applicability of ICWA - who has asked? Responses?
- Due Process
 - Notice to absent parents, representation, competency



Key Findings and Decisions at the Disposition Hearing

- Has the agency filed the case plan within 60 days of removal? 45 C.F.R. 1356.21(g)(2)
 - How were the parents and child involved in the development of the case plan?
- Can the child be safely returned home today?
 - What specifically prevents the parent from providing the minimally adequate standard of care?



Key Findings and Decisions at the Disposition Hearing

What is the permanent plan?

- ⦿ If the permanent plan is not reunification, has there been a judicial determination that reasonable efforts are not required due to aggravating circumstances? 42 USC 671(a)(15)
- ⦿ What is the concurrent case plan, and what steps are being taken to implement that plan?



Key Findings and Decisions at the Disposition Hearing

- If the plan is reunification, what services will be offered to the parents?
 - How do the services specifically address the safety concerns supporting the jurisdictional findings?
 - Do the parents believe the services will meet their needs and build on their strengths?
 - How does the Agency assist 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?



Key Findings and Decisions at the Disposition Hearing

Is the placement appropriate? 42 USC §675(5)(A)

- When and where did the case worker last see the child?
- Is the child safe? Is the placement least restrictive (most family like) and most appropriate available?
- If child is in foster care, what efforts are being made to fully explore kinship options? 42 U.S.C. § 671(a)(19) and (29)
- Have relatives been deemed inappropriate? If so, why?
- If child is in kinship care, how is the relative linked with all available training, services and financial support?
- Has the Agency made reasonable efforts to place siblings together? If not, has the Agency documented that joint placement would be contrary to the safety or well being of any sibling? If not, what efforts have been made to place the siblings together? 42 U.S.C. § 671(a)(31).
- From the child's and family's perspective, how 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? 42 U.S.C. § 675(1)(G).



Key Findings and Decisions at the Disposition Hearing

What are the terms of meaningful 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 if this is recommended?
- Are the time and location of family time logistically possible for the parents and extended family, and supportive of the child's needs?
- If siblings are not placed together, what reasonable efforts are being made to provide sibling contact or communication?



Key Findings and Decisions at the Disposition Hearing

All of the key decisions addressed at the PPH are revisited at the Disposition Hearing. In the course of evaluating these issues, the court must make formal legal decisions regarding:

- What is the appropriate disposition of the case and permanency plan for the child?
- Where should the child be placed?
- Is agency-proposed plan rationally related to jurisdictional findings?
- Has agency made reasonable efforts to eliminate the need for placement or prevent need for placement?
- What, if any child support should be ordered
- When will the case be reviewed?



Findings of Fact and Conclusions of Law at Disposition Hearing

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

- ⦿ Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law.
- ⦿ State the permanency and concurrent plans for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoptive home.)



Findings of Fact and Conclusions of Law at Disposition Hearing

- When applicable, specify why continuation of child in the home would be contrary to the child's welfare.
- Where charged with this responsibility under state law and based upon evidence before the court, approve, disapprove or modify the agency's proposed case plan.
- Determine whether there is a plan for monitoring the implementation of the service plan and assuming the child's continued well-being?



Findings of Fact and Conclusions of Law at Disposition Hearing

- ◉ When placement or services are ordered that were not agreed upon by the parties, specify the basis upon which the order is made.
- ◉ Specify whether reasonable efforts have been made to prevent or eliminate the need for placement.
- ◉ Specify the terms of family time.
- ◉ Specify parental responsibilities for child support.
- ◉ Written in easily understandable language so that parents and all parties fully understand the court's order.
- ◉ Be stated in open court on the record whenever possible.
- ◉ Set date and time of next hearing, if needed.



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
- ◉ Provide copies of orders



Adjudication and Disposition Hearing Practice

Any Questions?

