

## **CHAPTER 6: The Case Plan and the Case Plan Hearing**

### **6.1 THE CASE PLAN**

The case plan is the roadmap for achieving permanency for the child. It identifies the issues that are preventing the child from safely returning home. It includes tasks that must be completed to resolve each of those issues and achieve reunification or another permanent placement for the child. The goal of a child protection case is to achieve permanency for the child, taking into consideration the significance of time in a child's life. For that reason, the case plan is required to include timelines for achieving permanency.<sup>1</sup> The case plan is the benchmark for determining if the Department is making reasonable efforts to finalize the permanency plan for the child. Failure to comply with the case plan is the basis for terminating parental rights.<sup>2</sup> The case plan is essential to the progress of the case and in achieving permanency for the child. The court, Department, and all parties must pay careful attention to the specificity and thoroughness of the case plan.

Idaho law requires that a case plan be prepared “in every case in which the child is determined to be within the jurisdiction of the court, and there is no judicial determination that aggravated circumstances were present...”<sup>3</sup> This includes cases in which the court places the child under the protective supervision of the Department or in which the parent(s) is incarcerated.

#### ***A. Case Plan Requirements***

In cases with no finding of aggravated circumstances, the case plan must include a reunification plan and an alternate permanency plan (or concurrent plan).<sup>4</sup> In cases involving protective supervision, the case plan must include the relevant portions of the “reunification plan” outlined in Idaho Code section 16-1621(4). In cases involving a finding of aggravated circumstances, the permanency plan must have a permanency goal that does not include reunification. Permanency planning is discussed in Chapter 7 of this manual.

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*Note re Terminology:* In this manual, “prosecutor” refers to both a county prosecutor and/or a deputy attorney general; “GAL” refers to both a guardian *ad litem* and/or a CASA; “Indian child” refers to all native children as defined by the ICWA; and “IDHW” and “the Department” are used interchangeably to refer to the Idaho Department of Health and Welfare.

<sup>1</sup> IDAHO JUV. R. 44.

<sup>2</sup> IDAHO CODE ANN. §§ 16-2005(1)(b) (Supp. 2014), 16-2002(3)(b).

<sup>3</sup> *Id.* § 16-1621(1).

<sup>4</sup> § 16-1621.

### 1. No Aggravated Circumstances – Child in Department Custody

In cases in which the court has not made a finding of aggravated circumstances, Idaho Code section 16-1621(3) requires that the case plan include a “reunification plan”<sup>5</sup> with the following provisions:

- Reasonable efforts which will be made to make it possible for the child to return to his home.
- [T]he services to be provided to the child, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement.
- [O]ptions for maintaining the child’s connection to the community, including individuals with a significant relationship to this child and organizations or community activities with...[whom] the child has a significant connection.
- A specific statement of the role of the Department toward each parent.
- Identification of all issues that need to be addressed before the child can safely be returned home (also known as “Conditions for Return Home”)<sup>6</sup>, without Department supervision.
- Specific identification of the tasks to be completed by the Department, each parent, or others to address each issue, including services to be made available by the [Department] to the parents and in which the parents are required to participate.
- [D]eadlines for the completion of each task.
- Where appropriate, specific identification of the terms for visitation, supervision of visitation, and/or child support.

Every case plan should address the distinctive needs of each parent. The Department will sometimes prepare separate case plans for each parent. Judges and lawyers need to be aware of the different needs and obligations of each parent under the case plan.

In **all** cases in which the child is removed from the home and placed in the legal custody of the Department, Idaho Code section 16-1621(3)(d) requires that the case plan include a concurrent permanency goal and a plan for achieving that goal. The concurrent permanency goal may be one of the following: termination of parental rights and adoption, guardianship, or another planned permanent living arrangement.<sup>7</sup>

Concurrent planning<sup>8</sup> is a critical element in the initial case plan if a child is to achieve permanency in a timely manner. The plan for the concurrent permanency goal should be

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<sup>5</sup> § 16-1621(3)(c).

<sup>6</sup> The Department’s reports to the court and *The ABA Child Safety Guidelines for Attorneys and Judges* use the term “Conditions for Return Home” to describe this section of the case plan relevant to the state requirement. See THERESE ROE LUND & JENNIFER RENNE, A.B.A., *CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS* 34-38 (2009).

<sup>7</sup> § 16-1621(3)(d).

<sup>8</sup> “Concurrent planning” is defined in the CPA as a “planning model that prepares for and implements different outcomes at the same time.” *Id.* § 16-1602(12). One of the primary purposes of the CPA is to “coordinate efforts by state and local public agencies, in cooperation with private agencies and organizations, citizens’ groups, and concerned individuals, to: ... (3) Take such actions as may be necessary to provide the child with permanency including concurrent planning...” *Id.* § 16-1601(3) (2009).

developed with as much specificity as the plan for the primary permanency goal. Waiting for reunification efforts to fail before seeking out an alternative permanency option only delays the child's arrival in a permanent placement and increases the emotional toll on the child.

Idaho Code section 16-1621(3)(d) provides that the concurrent plan must:

- Address all options for permanent placement of the child including consideration of options for in-state and out-of-state placement of the child;
- Address the advantages and disadvantages of each option in light of the child's best interest and include recommendations as to which option is in the child's best interest;
- Specifically identify the actions necessary to implement the recommended option, and the schedules for accomplishing those actions;
- Address options for maintaining the child's connection to the community, including individuals with a significant relationship to this child and organizations or community activities with...[whom] the child has a significant connection.
- In the case of a child who has attained the age of 14 years,<sup>9</sup> specifically identify the services needed to assist the child to make the transition from foster care to independent living; and
- Specify further investigation necessary to identify and/or address other options for permanency placement, to identify actions necessary to implement the recommended placement, or to identify options for maintaining the child's significant connections.

## 2. No Aggravated Circumstances – Child under Department Supervision

A case plan must also be prepared in cases where the child is home under the Department's protective supervision.<sup>10</sup> Such a plan must include:

- Identification of the services to be provided to the child, including services to meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement.
- Options for maintaining the child's connection to the community, including individuals with a significant relationship to this child and organizations or community activities with...[whom] the child has a significant connection.
- Identification of all issues that need to be addressed before the child can safely live at home without the Department's supervision.
- Specific identification of the tasks to be completed by the Department, each parent, or others to address each issue, including services to be made available by the [Department] to the parents and in which the parents are required to participate.
- [D]eadlines for the completion of each task.

<sup>9</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 113(a), (f), 128 Stat. 1928, 1929 (2014) (to be codified at 42 U.S.C. § 675(5)(C)(i), effective September 29, 2015). NOTE: This new federal requirement is inconsistent with current Idaho statute at the publication of this manual.

<sup>10</sup> § 16-1621(4).

### ***B. The Alternate Care Plan***

In Idaho, the Department submits two documents to meet the state and federal requirements regarding the contents of the case plan – the alternate care plan and the case plan.<sup>11</sup>

The alternate care plan is a rich source of information and detail regarding safeguards for the children and the development of the goals and tasks outlined in the case plan. Some of the information that is included in the alternate care plan is also required by the Idaho statute governing case plans. The alternate care plan must be included with the case plan in all cases.<sup>12</sup>

Federal law defines “case plan” as a document that includes the following minimum provisions: “A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.”<sup>13</sup> The Department refers to this portion of the planning process as the alternate care plan.

Pursuant to this federal definition, the case plan (alternate care plan) must describe specifics of a child's care while in placement, including, at a minimum, the following:

- A description of the type of home or institution in which the child is to be placed;
- A plan for ensuring that the child receives safe and proper care and that appropriate services are provided to the parents, child, and foster parents:
  - To improve the conditions in the parents' home;
  - To facilitate the child's return to his or her own safe home or the alternative permanent placement of the child;
  - To address the child's needs while in foster care;
- To the extent available, the child's health and education records;
- Where appropriate, for a child age 14 years<sup>14</sup> or older, a description of programs and services that will help the child prepare for independent living; and/or
- If the permanency goal for the child is adoption, documentation of the steps being taken to find an adoptive family.<sup>15</sup>

For youth age 14 and older, the case plan must be developed in consultation with the youth and, at the option of the youth, up to two members of the case planning team who are not the case worker or foster parent.<sup>16</sup> The case plan must specify the child's rights with respect to education, health, visitation, and court participation, the right to be provided with certain

<sup>11</sup> § 16-1621(3)(d). Department staff often refer to the case plan as a “service plan.”

<sup>12</sup> § 16-1621(3), (4).

<sup>13</sup> 42 U.S.C. § 675(1)(B) (2012).

<sup>14</sup> See Preventing Sex Trafficking and Strengthening Families Act, *supra* note 9.

<sup>15</sup> 42 U.S.C. § 675(1); § 16-1621(3)(vi).

<sup>16</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 113(a), (f), 128 Stat. 1928, 1929 (2014) (to be codified at 42 U.S.C. § 675(1)(B), (5)(C)(iv), effective September 29, 2015).

documents<sup>17</sup>, and the right to stay safe and avoid exploitation.<sup>18</sup> At the case plan and permanency hearings, IDHW must identify the services that will be provided to help the youth transition to a successful adulthood.<sup>19</sup>

## 6.2 GOALS AND ELEMENTS OF EFFECTIVE CASE PLANNING FROM A SOCIAL WORK PERSPECTIVE

### A. *The Case Planning Process*

Case planning, often called “service planning” by social workers, is the process of establishing desired results, goals, and tasks to address the needs of the entire family so that they can live safely without Department involvement. Case planning is the bridge or link between the safety assessment and the service or intervention required to meet the child’s need for safety, permanency, and well-being. Therefore the connection between the safety assessment and the case plan is essential and purposeful. The case plan must address the identified safety threats to the child and provide services to the parent or caregiver to address their assessed diminished protective capacities. The case plan also should contain timelines for the accomplishment of all tasks.

The purpose of the case planning process is to achieve the following goals:

- Identify services and tasks that will reduce safety threats to the child, enhance the protective capacity of parents or caregivers, and/or mitigate the child’s vulnerability.
- Create an individualized, outcome-oriented case plan that addresses the needs of all family members.
- Establish a concurrent plan in the event the family cannot be reunited permanently and safely.
- Demonstrate parental commitment and follow through to completing the case plan.

The plan must be specific, measurable, achievable, realistic, and time-limited. The planning process should engage the family in an effective method of problem solving that might be useful as the family encounters other challenges. It should communicate the belief that change is both expected and desired. It should also send an optimistic, hopeful message that change is possible. Effective planning is dependent upon ongoing assessment. Assessment guides the plan by identifying the issues that pose continued threats of danger to the children.

During case planning the focus should be on the family unit. Services should be offered to strengthen the family and to allow parents to function effectively while adequately protecting and providing for their children. The role of the social worker is to ensure that families have reasonable access to a flexible, culturally-responsive, individualized array of services and resources.

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<sup>17</sup> § 114, 128 Stat. at 1930 (to be codified at 42 U.S.C. § 675(5)(I), effective September 29, 2015). Youth aging out of foster care must be provided with a copy of their birth certificate, social security card, health insurance information, copy of their medical record, and a driver’s license or a state-equivalent identification card.

<sup>18</sup> § 113(d), 128 Stat. at 1929 (effective September 29, 2015).

<sup>19</sup> § 112(b)(2)(B)(ii)(I), (c), 128 Stat. at 1927, 1928, and § 111(b), (d), 128 Stat. at 1924, 1925 (to be codified at 42 U.S.C. § 675(5)(B) and 42 U.S.C. § 671(a)(10), respectively (both effective September 29, 2015)).

### ***B. Family Participation in Case Planning***

Ideally, effective case planning requires participation of a "family team." A family team can include parents, age-appropriate children, other family members, other family supports, resource families/adoptive parents, therapists, mentors, case aides, or others who are significant in the family's life.

IDHW currently uses a process called Family Group Decision making (FGDM)<sup>20</sup> to encourage participation of families in case planning and to assist families in identifying issues and needs. FGDM recognizes that families have the most information about themselves and have the ability to make well-informed decisions. Family members become active participants in decision making for the family.

FGDM embraces the following values: the process of planning should be family focused, strength based, community based, and culturally appropriate. Generally, all family members who wish to be present at the family meeting are invited. The family can identify other non-family supportive individuals who are also invited to participate. The family meeting is usually facilitated by an independent coordinator – the social worker is present but does not lead the meeting.

At the meeting, information is shared by all present, usually starting with the social worker who presents the facts that led to the filing of the CPA proceeding. The family can ask questions of the social worker and others to make sure that they have a full understanding of the issues in the case.

Once information is exchanged, the professionals generally leave the room so that the family can discuss their planning in private. The family's job is to create a plan to ensure that the child is cared for and protected from threats of violence. The family then presents their plan to the professionals who provide input. The goal of the process is to reach consensus, although the professionals may veto portions of the plan.

The process of FGDM not only can assist in achieving timely reunification of the child with her or his family, but also may assist the family to understand when reunification is not possible. In the latter situation, FGDM can help to identify an alternate permanent placement for the child.

## **6.3 THE CASE PLAN HEARING**

### ***A. Purpose of the Case Plan Hearing***

At the case plan hearing, the court must decide whether to adopt, modify, or reject the case plan filed by the Department.<sup>21</sup> In making this determination, the court should evaluate the plan using the legal requirements discussed above.

If the court approves the plan as submitted or as modified, the plan must be incorporated in an order by the court, directing the Department and the parents to comply with the plan. Other

<sup>20</sup> FGDM is also known as family decision-making, family group conferencing, or family unity meetings.

<sup>21</sup> § 16-1621(1) (Supp. 2014).

parties, in appropriate circumstances, also may be required to comply with the plan. If the child is placed in the custody of the Department (rather than under the Department’s supervision), “the court’s order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan.”<sup>22</sup> The court’s order also shall require the Department to simultaneously take steps to accomplish the goal of reunification and the concurrent permanency goal.

In evaluating the case plan, the judge should ensure, first and foremost, that the case plan addresses the safety issues that brought the child into care or are preventing the child from safely returning home. In addition, judges should consider the following questions:<sup>23</sup>

- Does the plan include goals or tasks addressing changes in behaviors, commitments, and attitudes that will mitigate the threat of danger to the child? (If the plan merely lists the services participants must attend and/or generically directs the participants to “follow a treatment recommendation,” then the plan only provides a basis for measuring the participants’ attendance, but does not provide a basis for measuring changes in their behavior.)
- Does the case plan follow logically from the threats of danger to the child and gaps in parents’ protective capacities? The plan should contain precise detail regarding the strategy and actions necessary to change the situation and to allow the child to return home.
- Is the case plan merely a re-iteration of any safety plan previously put in place? The case plan should not duplicate the safety plan; rather, these two plans should operate concurrently. The safety plan is focused on ensuring the child’s safety. The case plan should focus on what must change over time to enable the child to return home.
- How do the parents react to the case plan?
- Does the case plan focus on reducing threats of danger to the child and also increasing protective capacities of the parents? The family will have the best chance of success at reunification if the case plan addresses both the reduction of threat and increasing the parents’ protective capacities.

### ***B. Timing of the Hearing***

The court shall schedule a case plan hearing to be held within thirty (30) days after the adjudicatory hearing.<sup>24</sup> It is particularly important to approve the case plan in a timely fashion as the plan provides the “road map” for permanency for the child. As in all CPA proceedings, the court should strongly discourage continuances.

### ***C. Submission of the Case Plan to the Court***

The written case plan must be filed no later than five (5) days prior to the case plan hearing.<sup>25</sup> The case plan must be delivered to the parents, legal guardians, the prosecuting attorney or deputy attorney general, the guardian *ad litem*, and the attorney for the child.

<sup>22</sup> § 16-1621(5).

<sup>23</sup> These questions were developed and are discussed in the ABA CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS. See LUND & RENNE, *supra* note 6, at 40.

<sup>24</sup> § 16-1621(1).

<sup>25</sup> *Id.*

## ***D. Notice***

### **1. Foster Parents**

Idaho law requires that notice of the case plan hearing be provided to the “parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian *ad litem*, attorney for the child, the Department, and foster parents.”<sup>26</sup> In addition I.J.R. 40 provides that “[a]fter the adjudicatory hearing, any person who is designated by the Department of Health and Welfare as the foster parent, as a pre-adoptive parent, or as a relative providing care for a child who is in the custody of the department, shall be provided with notice of, and have a right to be heard in, any further hearings to be held with respect to the child.” This notice must be given by the Department and the Department must confirm to the court that the required notice was provided. The Juvenile Rules also makes clear that the right to notice and to be heard does not make foster parents parties to the CPA proceeding.<sup>27</sup>

### **2. Children Eight and Older**

Idaho Juvenile Rule 40 requires that “[a]fter the adjudicatory hearing, a child eight years of age or older, shall be provided with notice of, and have a right to be heard, either in person or in writing, in any further hearings to be held with respect to the child.”<sup>28</sup> As with notice to foster parents, notice must be given by the Department, and the Department must confirm that notice was provided

### **3. Agreements by the Parties**

The parties may stipulate to a case plan. Pursuant to Idaho Juvenile Rule 38, such a stipulation must be made part of the court record and is subject to court approval.<sup>29</sup> The court must make reasonable inquiry to confirm that the parties entered into the stipulation knowingly and voluntarily, that the stipulation has a reasonable basis in fact, and that it is in the best interests of the child. The court should ensure that the case plan has been thoroughly considered by all participants, especially both parents, if involved. The court should specifically ask the parents, on the record, whether they are willing and able to comply, and whether there are additional or different services they need or want that will enable them to address the issues that need to be resolved before the child can be safely returned home.

The court must ensure that the case plan is comprehensive and that it contains all the essential elements of a case plan (as discussed above). If the case plan is not comprehensive, the court should address any omitted elements.

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<sup>26</sup> § 16-1621(2).

<sup>27</sup> IDAHO JUV. R. 40(a). *See also* *Roe v. Dep’t. of Health & Welfare (In Interest of Doe)*, 134 Idaho 760, 9 P.3d 1226 (2000) (holding that foster parents did not have standing to intervene and object to the Department’s permanency plan in a CPA proceeding).

<sup>28</sup> IDAHO JUV. R. 40(b).

<sup>29</sup> IDAHO JUV. R. 38.

## 6.4 BEST PRACTICES TO REDUCE DELAYS AND TO ACHIEVE TIMELY PERMANENCY FOR CHILDREN BEFORE THE CASE PLAN HEARING

### A. Early Identification and Involvement of Absent Parents

The status of absent biological parents must be resolved as early as possible to avoid delays in achieving permanency. In all cases, absent parents should be identified as soon as possible so a determination can be made regarding whether they must be joined to the action and/or whether they or their families might provide resources in support of the child's permanency.

Timely resolution of paternity issues is both in the best interest of the child and essential to avoiding delays at subsequent points in the court process. Where the parents are not married at the time the child was born or where an unmarried father has not been adjudicated as a parent, paternity tests should be conducted early in the case as a matter of best practice. This will ensure that a man thought to be the father of the child actually is the father of the child and is properly part of the CPA proceeding.<sup>30</sup>

### B. Early Identification and Involvement of Relatives

Both Idaho and federal law impose a priority in favor of placing children with relatives. Idaho law provides:

At any time the department is considering a placement pursuant to this chapter, the department shall make a reasonable effort to place the child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:

- (a) A fit and willing relative.
- (b) A fit and willing non-relative with a significant relationship with the child.
- (c) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code.<sup>31</sup>

Federal law requires that the Department place children with relatives so long as the relative meets the Department's "child protection standards."<sup>32</sup>

The Department must identify all relatives of the mother, father, and putative father(s) of the child and thoroughly investigate the appropriateness of these relatives as potential caretakers for the child. Additionally, the Department must identify the parents of the child's siblings and notify them of the child protection case. The term "sibling" is defined by state law and includes individuals who would be a sibling under state law were it not for a disruption in parental rights.<sup>33</sup> Identification and investigation of all potential caretakers is essential to ensure that the

<sup>30</sup> See, e.g., *Doe*, 134 Idaho at 762, 9 P.3d at 1228 (acknowledging that where putative father was not contacted until child protection case had been pending for two years, the delay led to conflict between grandparent/foster parent and birth father).

<sup>31</sup> § 16-1629(11) (Supp. 2014).

<sup>32</sup> 42 U.S.C. § 671(a)(19) (2012).

<sup>33</sup> 42 U.S.C.A. § 671(a)(29) (2015). While the official U.S. Code does not yet reflect the adoption of the Preventing Sex Trafficking and Strengthening Families Act of 2014, the unofficial code is cited here to enable easier access to the revised statutory provisions.

placement selected is the one that best meets the needs of the child and ensures the child's safety.<sup>34</sup>

### ***C. Compliance with the Interstate Compact on the Placement of Children (ICPC)***

A child may not be placed out of state without a court order and without compliance with the ICPC. Interstate placement is a time consuming process and the Department should initiate the ICPC process as soon as possible.<sup>35</sup>

### ***D. Compliance with the Indian Child Welfare Act (ICWA)***

If the child is an Indian child, the lawyers, judge, guardian *ad litem*, and social workers involved in the case must be familiar with and implement the provisions of the ICWA.<sup>36</sup> The Act establishes special procedural and substantive safeguards to protect the interests of Indian children, their families, and the Indian tribe. This includes tribal determination of who is an Indian child, full tribal participation in planning and decision making in the child protection case, placement preferences for extended family members and other Indian families identified by the child's tribe, and, when requested, transfer of the child protection case to the child's tribal court.

To ensure that permanency for Indian children is not delayed, the courts and the Department should:

- Determine at the earliest possible opportunity whether the ICWA applies to one or more children in a case.
- Put procedures in place for immediate notice of the pendency of a case to the child's Indian tribe.
- Open lines of communication with the tribal representative to ensure that complete information is exchanged and that time delays are avoided.
- Be familiar with and follow the procedural and substantive requirements set out in the ICWA and the Bureau of Indian Affairs (BIA) Guidelines, effective February 25, 2015.
- Make sure that the Department documents and the court verifies all notices, consents, and "active efforts" in accordance with the requirements of the Act.

Chapter 11 of this Manual contains a detailed discussion of the Indian Child Welfare Act.

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<sup>34</sup> If the child is an Indian child, the Indian Child Welfare Act establishes a clear placement preference with members of the child's extended or tribal family. 25 U.S.C. § 1915 (2012). The ICWA is discussed in detail in Chapter 11 of this manual.

<sup>35</sup> §§ 16-1629(8) (2014), 16-2102(Art. III) (2014). The ICPC is discussed in detail in Chapter 12 of this manual.

<sup>36</sup> See generally 25 U.S.C. §§ 1901-1963 (2012) and BIA Guidelines. Revised BIA Guidelines were recently published by the BIA on February 25, 2015 and can be found at 80 Fed. Reg. 10146 (Feb. 25, 2015). At the time of the publication of this Manual, the Guidelines are an authoritative but non-binding resource regarding interpretation of the ICWA. The Guidelines provide that, "These guidelines provide minimum Federal standards to ensure compliance with ICWA and should be applied in all child custody proceedings in which the act applies." BIA Guidelines § A.5(a). *As of the publication of this Manual, the Bureau of Indian Affairs had proposed regulations making the BIA guidelines mandatory.*

## CONCLUSION

The case plan is the roadmap for achieving permanency for the child. As with any journey, circumstances change, necessitating changes in the plan. The next step in a CPA proceeding is to schedule regular review hearings, at which the court will review progress on the plan and determine whether changes need to be made to the plan. Review hearings are discussed in Chapter 8 of this manual.

