

**§ 428.9 Service plan review for foster care and other out-of-home placement cases.**

(a) The service plan review must be conducted in accordance with the requirements of section 430.12 of this Title and must be documented in the uniform case record for any child in foster care or any child who was placed by a court in the direct custody of a relative or other suitable person pursuant to article 10 of the Family Court Act. The term *foster care case* includes children who are legally free for the purpose of adoption and children not in the care and custody or custody and guardianship of the local commissioner of social services who reside with their minor parents in the same foster family home or residential facility.

(b) (1) Unless such service plan review will occur within 60 days of the date certain for a permanency hearing, a case consultation must be held for each child defined in section 1087 of

the Family Court Act in preparation for each permanency hearing held in accordance with article 10-A of the Family Court Act including in those cases where the permanency hearing will constitute the service plan review. Such case consultation must be documented in the progress notes and the decisions and outcomes must be incorporated into the permanency hearing report. Such case consultation must be conducted no earlier than 60 days prior to the date certain of the permanency hearing and must be completed with sufficient time to finalize and submit the permanency hearing report at least 14 days before the date certain for the permanency hearing. Participants in the case consultation must include:

- (i) the case planner and/or the child's caseworker;
  - (ii) the child's parent(s), unless the parent has had his or her parental rights to the child terminated or unless it can be documented that one or both of them are unwilling or unable to attend;
  - (iii) each child age 10 or over, unless it can be documented that the child is unwilling to attend, or it can be demonstrated that such attendance would not be in the child's best interests; and
  - (iv) the child's foster parent, if the child is in placement in a foster boarding home; the child's pre-adoptive parent, if the child is in such placement; or the relative or other suitable person with whom the child has been placed directly by a court order.
- (2) Wherever practicable, the case consultation participants must meet together at the same time, however, at a minimum a face-to-face case consultation must be held separately with each of the required participants.
- (3) Efforts must be made to also consult with the case manager; the permanency discharge resource; key providers of service to the child and family; the child's school; in the case of an Indian child, the child's tribe, if known; and any other person identified by the parent(s), however, efforts to involve such additional person(s) must not delay the case consultation or preparation of the permanency hearing report.
- (c) The purpose of such case consultation described in subdivision (b) of this section is to assist with the development of the permanency hearing report and to address the following:
- (1) review the progress and the status of the child who had been removed from his or her home, including the child's health and education;
  - (2) review the safety of the child in his or her current environment;
  - (3) review the appropriateness of the current placement, including whether such placement is the least restrictive environment that can meet the child's needs;
  - (4) assess whether it would be safe to return the child to his or her home, and assess the level of risk of the likelihood of abuse or maltreatment such return would entail;
  - (5) review the progress made by the each parent toward successful implementation of the service plan and the child's permanency planning goal, unless the parent has had his or her parental rights to the child terminated;
  - (6) review the reasonable efforts made to assist with the achievement of the child's permanency planning goal;
  - (7) assess the need for modification or continuation of the current permanency planning goal;
  - (8) review the current service plan and any barriers to service delivery and assess the need to make modifications to support the safety, permanency and well-being of the child;
  - (9) review the current visiting plan and assess the need to make modifications to support family relationships;
  - (10) for a child who is not free for adoption, review the status of the concurrent permanency plan for the child, in the event the child is unlikely to be able to safely return home;
  - (11) review the status of any permanency discharge resource being considered for the child;

- (12) develop a recommendation as to whether the child needs to continue in placement or be discharged from such placement. If the child will be discharged from placement within the upcoming six months, develop a recommended discharge plan; and
- (13) for a child completely free for adoption with a goal of adoption, review the status of each adoption milestone, and assess progress toward achievement, as appropriate, including but not limited to recruitment efforts, adoption assistance/subsidy approval and overcoming any other barriers to finalization of the adoption.
- (d) The permanency hearing report, prior to filing with the court, must be developed by the responsible social services district or voluntary agency in accordance with a purchase of services agreement, and in consultation with appropriate district and voluntary staff, including but not limited to the social services district and/or agency attorney.
- (e) The permanency hearing report must be prepared in the form and manner as required by OCFS.
- (f) The permanency hearing report must be filed with the court and mailed to those parties required by section 1089 of the Family Court Act.

**Historical Note**

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