

PROCEDURAL ISSUES

- The adjudication and disposition must be separate hearings. [Juv.R. 34(A)]
- If the dispositional hearing is held immediately after the adjudicatory hearing, determine whether:
 - all parties have been served with all of the documents required for the dispositional hearing prior to adjudication, including the case plan and the guardian ad litem's written report; [R.C. 2151.35(B)(1)]; [Juv.R. 34]; [Sup.R. 48]

AND

- all parties consent to the dispositional hearing being held immediately after the adjudication hearing. [Juv.R. 34(A)]
- The disposition must occur within 90 days of the filing of the complaint. [R.C. 2151.35(B)(1)]; [Juv. R. 34(A)]

 The dispositional hearing shall be held not more than 30 days after the adjudicatory hearing. [Juv.R. 34]

NOTICE

- Ensure that all parties to the action and the guardian ad litem received proper notice of the date, time, place, and purpose of the dispositional hearing. [R.C. 2151.281(I)]; [Juv. R. 4(E)]
- Determine whether the foster parent, adoptive parent, or other person with custody of the child was notified of this hearing at which they have the opportunity to be heard. [R.C. 2151.424]

 Determine if agency provided notice to grandparents and other relatives within 30 days of removal. [R.C. 2151.33(F)]

 Notice and the opportunity to present evidence do NOT make the foster parent a party to the action. [R.C. 2151.424(C)]



The American Bar Association recommends that the child attend hearings in order to facilitate the child's meaningful participation in the hearings, which has been shown to improve case outcomes. (See Standard D-5 and accompanying commentary, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.)

APPOINTMENTS

- Advise any unrepresented parties of their right to counsel, including court-appointed counsel. [R.C. 2151.352]; [Juv.R. 4(A)]



Failure to pay \$25 fee for appointment of counsel is NOT grounds for denial of appointment. [R.C. 120.36(B)]
However, the court shall direct the person to pay the application fee at the time the person files an affidavit of indigency or a financial disclosure form with the court or within 7 days of that date. If the person does not pay the application fee within that 7-day period, the court shall assess the application fee at sentencing or at the final disposition of the case. [R.C. 120.36(A)]

- If any party requests a continuance of the dispositional hearing to obtain or consult counsel, determine whether the hearing should be continued for any reasonable period of time not exceeding 90 days from the date on which the complaint in the case was filed. [R.C. 2151.35(B)(1)]; [Juv.R. 34]

SERVICE

If the complaint seeks temporary custody, planned permanent living arrangement, or permanent custody [R.C. 2151.27(C)], the summons must contain the following required explanations: [R.C. 2151.28(D)]

- An adjudication of the child as either abused, neglected, or dependent may result in an **Order for Temporary Custody** that will cause the removal of the child from the parents' legal custody until the court terminates the temporary custody order or permanently divests parents of their parental rights;

OR

- An **Order for Permanent Custody** will permanently divest parents of their parental rights and privileges;

OR

- An **Order for a Planned Permanent Living Arrangement** will cause the removal of the child from the parents' legal custody if specific criteria under R.C. 2151.353(A)(5)(a) to (c) are found to exist. [R.C. 2151.28(D)] and [R.C. 2151.353(B)]

AND

- Notice to caregiver that order is permanent in nature and will provide stable environment until emancipation or court releases from custody. HB 213. [R.C. 2151.353(B)(2)]
- Unless waived by all parties or unless the due date is extended by the court, the guardian ad litem's final report shall be filed with the court and made available to the parties for inspection no less than 7 days before the dispositional hearing. [Sup.R. 48(F)(1)(c)]
- If a motion in writing has been filed seeking legal custody of the child to be awarded to a person other than the parent, determine whether the motion was properly served on all parties. [R.C. 2151.353(A)(3)]

HEARING PROCEDURE

- Rules of Evidence: Relaxed. (Any evidence from child, guardian, children services or placing agency that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence, may be admitted, **except in matters seeking permanent custody.**) [R.C. 2151.35(B)(1) and (2)(b)]; [Juv.R. 34]
- Standard of Proof: Preponderance of the evidence. However, in Permanent Custody and Planned Permanent Living Arrangement dispositions, the standard is clear and convincing evidence. [Juv.R. 29(E)(4)]; for PPLA: [R.C. 2151.353(A)(5)]; for PC: [R.C. 2151.414(B)(1)]



The same hearing officer should preside over the adjudication and disposition. [R.C. 2151.35(B) (2) (a)]; [Juv.R. 34]

- Record the proceeding. [R.C. 2151.35(A)(2)]; [Juv. R. 37(A)]

NOTE

Witness testimony must be sworn. [Evid.R. 603]

- The guardian ad litem's report shall be filed with the court no less than 7 days before the dispositional hearing. The court should use this report to ensure the guardian ad litem has completed all duties required by Sup.R. 48(D)(13). The court may replace any guardian ad litem who is not adequately discharging such duties. [Sup.R. 48(F)]; [R.C. 2151.281]
- Enter appropriate judgment within 7 days after the conclusion of the hearing. [Juv.R. 34(C)]

DISPOSITIONAL FINDINGS

In making dispositional orders, consider the best interest of the child. [R.C. 2151.412(E)]; [2151.414(D)(1)]

In making dispositional orders, include the termination date.

The court may make any of the following orders of disposition: protective supervision, temporary custody, legal custody, permanent custody and planned permanent living arrangement. (See specific Dispositional Hearing, Special Provisions Bench Cards.)

REASONABLE EFFORTS FINDING

Determine whether:

- The agency made or failed to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely, with a brief description of the services and why those services did not prevent removal or enable the child to return home. If removal occurred under emergency circumstances and the agency had no prior contact, the court is not prohibited from finding the agency made reasonable efforts. [R.C. 2151.31(E)(2)]; [R.C. 2151.419(A)(1)]; [Juv.R. 27(B)(1)]; [42 U.S.C. 672]

OR

- The agency is not required to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely as the facts fall within one of the factors contained in R.C. 2151.419(A)(2). [R.C. 2151.31(E)(2)]; [Juv. R.27(B)(1)]; [42 U.S.C. 672]

BEST INTEREST FINDING

- To issue an order granting temporary custody of a child to the public children services agency, the court must find that it would be contrary to the welfare and best interest of the child to continue in the home. [R.C. 2151.33(E)]; [42 U.S.C. 672]
- The above findings **MUST** be stated in the order if temporary custody is granted to the agency. [R.C. 2151.33(E)]; [42 U.S.C. 672]

NOTE

Reasonable efforts findings apply to orders for temporary custody, permanent custody, and planned permanent living arrangement dispositions as they are orders that remove the child from the child's home.

NOTE

Additional requirements exist for permanent custody orders. Refer to Special Provisions Bench Cards.

CASE PLAN

- Determine whether the public children services agency has satisfied its requirement to maintain and file a case plan with the court. [R.C. 2151.412]
- If an agreed case plan has been filed with the court, determine whether to approve that case plan. [R.C. 2151.412(D)]

NOTE

The agency shall attempt to obtain agreement among all parties. [R.C. 2151.412(D)]

- In the absence of agreement of the case plan, determine the case plan contents based on the evidence presented at the dispositional hearing using the best-interest test. [R.C. 2151.412(D)]; [Juv.R. 34(F)]

NOTE

The court shall be guided by the general priorities set forth in R.C. 2151.412(G)(1) through (6) when reviewing and approving the case plan.

NOTE

All parties are bound by the terms of the journalized case plan. A party that fails to comply with the terms of the case plan may be held in contempt of court.

[R.C. 2151.412(E)(1)]



Depending on how Ohio will adopt and implement Fostering Connections, it requires assurances that the agency has coordinated with the child's school district to ensure that the child remains enrolled in the school in which the child is enrolled at the time of placement. If remaining at the child's school of origin is not in the child's best interest, the agency must provide immediate enrollment in a new school, with all educational records provided to the school. [Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 675 (1)(G)] **Immediate Enrollment:** The child is entitled to immediate enrollment in school as defined by R.C. 3313.64, and the child's enrollment shall not be delayed due to a delay in the school district's receipt of any records required under R.C. 3313.672 or any other records required for enrollment. [42 U.S.C. 11431]

- As part of the dispositional order, journalize a case plan. [R.C. 2151.412(D)]; [Juv. R. 34(F)]

DRUG TREATMENT AND TESTING ORDERS

- If alcohol or other drug addiction of a parent or caregiver of the child was the basis for the adjudication of abuse, neglect or dependence, the court shall issue an order requiring the parent or other caregiver to submit to an assessment and, if needed, treatment from an alcohol and drug addiction program certified by the department of alcohol and drug addiction services. [R.C. 2151.3514(B)]
- The court may order the parent or other caregiver to submit to alcohol or other drug testing during, after, or both during and after, the treatment. The provider shall send the test results to the court and the agency. [42 C.F.R. 2.20]; [R.C. 340.15(B)] and [R.C. 2151.3514]

VISITATION, CHILD SUPPORT AND OTHER RESTRAINING ORDERS

- Address issues of visitation. [R.C. 2151.33(B)]; [R.C. 2151.35(B)(4)]; [Juv.R. 34(H)]
- Address sibling visitation. If siblings have been placed in separate homes, determine whether regular visitation and ongoing contact is occurring among those siblings, unless contrary to the health and welfare determination. [Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 675]
- Determine whether any additional orders or restraint on conduct are necessary. Cite R.C. 2151.353(C) when protective supervision has been ordered, or R.C. 2151.33(B)] and R.C. 2151.35(B)(4) when protective supervision has not been ordered, as part of disposition. [Juv.R. 34(H)]

EDUCATION

- If the dispositional Order does not return the child home, determine what district shall bear the cost of education for the child. [R.C. 2151.357] and [R.C. 3313.64] Consistent with the requirement of the Fostering Connections Act, a child shall remain enrolled in the school in which the child is enrolled at the time of placement, unless remaining at the school of origin is contrary to the child's best interest. [R.C. 2151.35(B)(3), 2151.362, 3313.64]; [Juv.R. 34(C)]; [42 U.S.C.A. 675(1)(G)]

NOTE

The court may order the board of education of the school district in which the child was enrolled immediately prior to the filing of the complaint to release the child's grades, credits, official transcripts, IEPs, and 504 plans to any district or school in which the child enrolls after the complaint is filed. [R.C. 2151.272(B)]

Issuing school district determination as a separate Order will protect the confidentiality of the information regarding the child.

Ensure that the parents and custodian sign a release of school records, if the child is not returning to the original school district.



Also, the child is entitled to immediate enrollment in school as defined by R.C. 3313.64, and the child's enrollment shall not be delayed due to a delay in the school district's receipt of any records required under R.C. 3313.672 or any other records required for enrollment. [42 U.S.C. 11431] No board of education shall withhold the grades, credits, official transcripts, diploma, IEPs, or 504 plans of a pupil for nonpayment of fees for materials used in a course of instruction if a complaint was filed at any time in a juvenile court alleging the pupil is an abused, neglected, or dependent child or if the pupil has been adjudicated an abused, neglected, or dependent child. A school board shall require the grades, credits, official transcripts, IEPs, or 504 plan of a pupil described in this division be transferred immediately upon the receipt of either another district's or school's request for those records under R.C. 3313.672 or a juvenile judge's order under R.C. 2151.272. A board that is required to transfer records may request a copy of any order regarding the child's custody or placement issued pursuant to a complaint filed under R.C. 2151.27. However, a board shall not withhold records required to be transferred under that division pending receipt of a copy of the order. [R.C. 3313.642(D)]

CASEFLOW TIME FRAMES

- Advise the parties of their right to appeal this decision. [Juv.R. 34(J)]
- Journalize the entry within seven days of the dispositional hearing. [R.C. 2151.35(B)(3)]
- Schedule the date for the review hearing to be held pursuant to R.C. 2151.415. [Juv. R. 36]
- Give notice of the review hearing to all parties while they are present. [R.C. 2151.27(D)]; [Juv. R. 10(D) through (F), and 36(A)]



The court should ensure the youth is able to attend hearings. The court should schedule the review to avoid school absences. The court should designate a representative (guardian ad litem, CASA, or counsel) to advise the youth of his/her right to participate in hearings, and shall arrange transportation. The American Bar Association recommends children attend hearings in order to facilitate their meaningful participation in hearings, which has shown to improve case outcomes. [See Standard D-5 and accompanying commentary, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.]