Permanency Hearing Before Final Order Checklist

Statutory

Prior to the Hearing, review the court file to determine:

- ☐ If first Permanency Hearing, scheduled no later than 180th day after DFPS named TMC. Tex. Fam. Code § 263.304(a)
- ☐ If subsequent Permanency Hearing, scheduled within 120 days of last Permanency Hearing. Tex. Fam. Code § 263.305
- ☐ Persons entitled to notice given 10 days' notice of hearing, including children 10 and older. Tex. Fam. Code § 263.0021
- ☐ Whether DFPS Permanency Progress Report filed at least 10 days before hearing pursuant to Tex. Fam. Code § 263.303(a) and, in addition to elements required by Tex. Fam. Code § 263.306, includes:
  - Child's Permanency Plan. Tex. Fam. Code § 263.3025(b)
  - Summary of Medical Care. Tex. Fam. Code § 266.007
- ☐ The court file includes:
  - Designation of Medical Consenter (Form 2085-B). Tex. Fam. Code § 266.004
  - Notice of Education Decision-Maker (Form 2085-E). Tex. Fam. Code § 263.004
  - Visitation Plan. Tex. Fam. Code § 263.107

At the Hearing:

- ☐ Identify those present, including the child's caregiver, note those not present, determine service on parties, and swear witnesses. Tex. Fam. Code §§ 263.0021(f), 263.306(a-1)(1),(2)(A)
- ☐ Ensure child in attendance in person or by videoconference or phone unless specifically excused. Tex. Fam. Code § 263.302
  - Youth in Texas Juvenile Justice Department (TJJD) may attend in person or by telephone or videoconference.
- ☐ Determine DFPS due diligence to locate and serve parties not present. Tex. Fam. Code § 263.306(a-1)(2)(A)
- ☐ Determine status of paternity issues and whether Paternity Registry searched. Tex. Fam. Code § 160.421
- ☐ Ensure that DFPS obtained the assistance of a parent to provide locating information for absent parent, alleged father, relative, or other adult identified by the child as a potential relative or designated caregiver. Tex. Fam. Code § 263.306(a-1)(2)(B)
- ☐ Inform each parent not represented by an attorney of right to counsel; determine indigence; appoint counsel if indigent. Tex. Fam. Code § 263.0061
- ☐ Determine if language interpretation is needed. Tex. Gov't Code § 57.002
- ☐ Inquire about Indian/Native American Heritage. 25 U.S.C. § 1912; Tex. Fam. Code § 263.306(a-1)(3)
  - Inquire of all parties if there is Indian heritage in the family.
  - Determine which Tribes may be involved.
  - Ensure proper notice to parent, Tribe, if known, and Secretary of the Interior and Bureau of Indian Affairs, if Tribe unknown. **(*See* Topical Checklist: ICWA)**
- ☐ Determine if Special Immigrant Juvenile Status for the child (or teen parent) is appropriate. 8 C.F.R § 204.11
- ☐ Review extent of compliance with temporary orders and service plan and extent to which progress has been made. Tex. Fam. Code § 263.306(a-1)(4)
- ☐ Ensure parties and those present have the opportunity to present evidence and be heard. Tex. Fam. Code § 263.0021(b)
- ☐ Determine if child's caregiver is present and given opportunity to provide information about the child. Tex. Fam. Code § 263.0021(f)
- ☐ Determine whether DFPS is able to place with relative and note evidence supporting decision. Tex. Fam. Code § 263.002(b)
- ☐ If the child has been placed with a relative or designated caregiver, inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for the Permanency Care Assistance (PCA) program. Tex. Fam. Code § 263.306(c)(2)

Permanency Hearing Before Final Order Checklist

continued

Statutory

☐ Review Permanency Progress Report to determine:

- Safety and well-being of child and whether child's needs, including any medical or special needs, adequately addressed. Tex. Fam. Code § 263.306(a-1)(5)(A)
- Continuing necessity and appropriateness of child's placement, including for a child placed outside Texas, whether the placement continues to be in the child's best interest. Tex. Fam. Code § 263.306(a-1)(5)(B)
- Appropriateness of the child's primary and alternative permanency goals and whether DFPS has made reasonable efforts to finalize the permanency plan. Tex. Fam. Code § 263.306(a-1)(5)(C)
- Whether the child has been provided the opportunity, in a developmentally appropriate manner, to express opinion about medical care provided. Tex. Fam. Code § 263.306(a-1)(5)(D)
- Whether the child has had the opportunity to identify a relative or designated caregiver. Tex. Fam. Code § 263.306(a-1)(5)(E)
- For a child receiving psychotropic medication, whether the child has:
  - been provided non-pharmacological interventions.
  - seen prescribing physician every 90 days for review. **(*See* Topical Checklist: Medical and Mental Health Care)**

Tex. Fam. Code § 263.306(a-1)(5)(F)

- Whether child's Education Decision-Maker identified, the child's education needs and goals identified and addressed, and any major changes in child's school performance or disciplinary events. **(*See* Topical Checklist: Foster Care & Education)**

Tex. Fam. Code § 263.306(a-1)(5)(G)

- For child 14 years of age or older, whether transition services needed to assist the child from substitute care to independent living are available in the child's community. Tex. Fam. Code § 263.306(a-1)(5)(H)
- For a child whose permanency goal is APPLA:
  - child's desired permanency outcome; and
  - whether APPLA is the best permanency plan and, if so, provide compelling reasons why it continues not to be in the child's best interest to:
    - return home,
    - be placed for adoption,
    - be placed with a legal guardian, or
    - be placed with a fit and willing relative.

Tex. Fam. Code §263.306(a-1)(5)(I)

  - whether DFPS has conducted an Independent Living Skills (ILS) assessment under Tex. Fam. Code § 264.121(a-3).
  - whether DFPS has addressed the goals identified in the youth's permanency plan.
  - for youth 16 years of age or older, whether DFPS has provided documents required by Tex. Fam. Code § 264.121(e).
  - for youth 18 years or older, or youth who had disabilities of minority removed, whether DFPS has provided youth with documents and information listed in Tex. Fam. Code § 264.121(e-1). Tex. Fam. Code § 263.306(a-1)(5)(I)(vi)
- If the child is placed in a Residential Treatment Center (RTC) or Qualified Residential Treatment Program (QRTP), whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code §§ 263.002 and 263.00201 respectively. Tex. Fam. Code § 263.306(a-1)(5)(J)-(K)

☐ Determine whether child is receiving appropriate medical care. Tex. Fam. Code § 266.007

☐ Review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan. Tex. Fam. Code § 263.306(c)(1)

☐ Ask child's Attorney Ad Litem (AAL) if they have seen their client and when.

- If AAL has not seen client, determine whether the AAL has shown good cause for not meeting with the client. Tex. Fam. Code § 107.004(e)
- AAL should be knowledgeable about medical care and education goals and progress. Tex. Fam. Code §§ 107.003(b), 107.004(d-2)
- AAL has duty to advise clients 16 and older of right to seek designation from the court to serve as own medical consenter. Tex. Fam. Code § 107.003(b)(3)(A)

Permanency Hearing Before Final Order Checklist

continued

Court Findings

At the End of the Hearing:

- ☐ Return the child to the parent or parents unless, with respect to each parent:
  - There is a continuing danger to the health and safety of the child; and
  - Returning home is contrary to the welfare of the child.
  - The court may return the child to the parent under a monitored return.

Tex. Fam. Code § 263.002(c)-(d).

- ☐ Determine whether to return the child to child's parents if the child's parents are willing and able to provide the child with a safe environment and return is in the child's best interest. Tex. Fam. Code § 263.306(a-1)(6)
- ☐ Advise/warn parents and parties that custodial rights and duties may be subject to restriction or termination or child not returned unless parent demonstrates willingness and ability to provide child with safe environment. Tex. Fam. Code § 263.006
- ☐ Incorporate any changes or modifications to the Service Plan into the court order. Tex. Fam. Code § 263.106
- ☐ Estimate likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in PMC. Tex. Fam. Code § 263.306(a-1)(7)
- ☐ Set next Permanency Hearing within 120 days or sooner, as appropriate. Tex. Fam. Code § 263.305
- ☐ Announce in open court the dismissal date and dates of any upcoming hearings. Tex. Fam. Code § 263.306(a-1)(8)
- ☐ **ISSUE COURT ORDER** and include or address:
  - Any changes or modifications to Service Plan. Tex. Fam. Code § 263.106
  - Notice of subsequent hearings. Tex. Fam. Code § 263.0021(c)(3).
  - Findings required by Tex. Fam. Code § 263.002(b)-(c), if applicable.

Best Practices

- ☐ If necessary parties, including child, did not receive notice, consider resetting hearing to secure their attendance.
- ☐ Engage parties with direct questions:
  - *Do you understand the purpose of this hearing?*
  - *Do you understand the DFPS permanency goal for you and your family?*
  - *Were you given the opportunity to discuss or provide input into this permanency plan?*
- ☐ Engage youth:
  - *Tell me how you feel about your medical care, school, grades, and activities.*
  - *Tell me how you're being treated where you live.*
  - *What do you want for your future?*
- ☐ REASONABLE EFFORTS: Ask direct and child-specific questions of DFPS about both the primary goal and the concurrent goal:
  - *If primary goal is reunification: please articulate the specific efforts you have made to reunify Sam with Ms. Smith; please be specific in describing your actions with regard to each.*
  - *If concurrent goal is permanent managing conservatorship to a relative: articulate the specific efforts you have made to place Sam with the grandmother, etc.*
- ☐ If child not moving toward positive permanency, set timelines and tasks that must be completed prior to next hearing.
  - Set next Permanency Hearing within 90 instead of 120 days.
- ☐ For Youth Receiving Transitional Living Services:
  - Youth 14 and older are:
    - eligible for Family Group Decision Making meetings about their future;
    - entitled to an Independent Living Skills assessment
  - Youth 16 and older must:
    - be enrolled in Preparation for Adult Living (PAL);
    - receive an Independent Living Skills assessment;
    - receive certain documents as outlined in Tex. Fam. Code § 264.121(e)

Permanency Hearing Before Final Order Checklist

continued

Best Practices

- All youth who turn 18 while in foster care are:
  - eligible for extended foster care and trial independence;
  - entitled to referrals to Texas Workforce Commission; and
  - entitled to have certain documents in their possession before they leave care, including a driver's license or identification card, birth certificate, social security card, immunization records, proof of enrollment in Medicaid, and copy of credit report.

☐ Consider the following questions:
- *What is preventing this child from returning home today?*
- *How is my decision specific to this child and this family?*
- *Are there issues impacting this family that we need to understand?*

Well-being Issues

Medical and Mental Health Care

***See* Topical Checklist: Medical and Mental Health Care**

☐ Permanency Report must include a summary of medical care, including:
- Nature of emergency medical care provided to child and circumstances necessitating care, including injury or acute illness of child.
- All medical and mental health treatment child is receiving and child's progress with treatment.
  - includes mental health, physical health, dental, eye exams, immunizations, and any physical mental health illnesses and treatments.
- Any medication prescribed for child, condition, diagnosis, and symptoms for which medication was prescribed and child's progress with medication.
- Degree to which child or foster care provider complied or failed to comply with any plan of medical treatment for child.
- Any adverse reaction to or side effects of any medical treatment provided to child.
- Any specific medical condition of child diagnosed or for which tests are being conducted to make diagnosis.
- Any activity child should avoid or engage in that might affect effectiveness of treatment, including physical activities, other medications, and diet.
- Other info required by DFPS rule or by the court.

Tex. Fam. Code § 266.007

Education and Educational Decisions

***See* Topical Checklist: Foster Care & Education**

☐ Child enrolled in school and in appropriate grade.

☐ Child remains in current school, regardless of placement changes.

☐ If change in school required due to placement change, determine:
- Where child wants to attend school
- How the child will be transported
- Whether change can be coordinated with grading and testing periods
- Whether records and credits transferred

☐ If too young for school (0-3 years), child assessed for developmental milestones through ECI; if 0-5, child enrolled in Early Head Start, Head Start, or Pre-Kindergarten.

☐ Education Decision-Maker identified on Form 2085-E. Tex. Fam. Code § 263.004

☐ School supports and disciplinary issues addressed, including signed form prohibiting corporal punishment.

☐ Child involved in extracurricular activities.

☐ As needed, child evaluated for and receiving special education services.

☐ Child age 14 or older has postsecondary education plan.