



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date

November 14, 2005

Action Requested

Please Review

To

Hon. Harvey Goldfine, Commissioner
Superior Court of Marin County

Deadline

N/A

Ms. Paula Robertson, Supervisor
Marin County Child Protective Services

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From

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Center for Families, Children & the Courts
Judicial Review and Technical Assistance Project

Subject

Title IV-E Compliance Site Visit—Dependency
October 2005

This Title IV-E Site Visit Memorandum is a companion document to the Judicial Review and Technical Assistance (JRTA) Title IV-E Compliance Report. This memorandum includes the compliance figures for the hearings reviewed, summarized on the last page, as well as some general comments and suggestions. The hearings reviewed were held between June 2004 and October 2005.

Timeliness

Detention Hearing

The detention finding, “Continuance in the home is contrary to the child’s welfare”, must be made at the first court hearing following the child’s removal from the home and may not be delayed even for a one-day continuance granted pursuant to section 322. Section 319(c) requires the court to make the “contrary to the welfare” finding or release the child from custody when continuing a detention hearing. The court may make a temporary finding at the first court appearance pending a further determination at the continued hearing.

The Marin County timeliness compliance figure for detention hearings was 83 percent. One of the six cases reviewed was late. In that case, the child was removed from the home on Friday night but the petition wasn’t filed until Wednesday. Although the court scheduled the detention for the next day, the last filing of the petition deemed this case untimely.

Prepermanency Hearing

Under federal law, a review of the status of the case must occur no more than six months from the “date the child entered foster care.” The “date the child entered foster care” is the earlier of the *first* finding of abuse or neglect (the jurisdictional findings) or 60 days after the child is physically removed from the home.

The Marin County timeliness compliance figure for the prepermanency hearings reviewed was 80 percent – a significant improvement from the last review’s compliance figure of 37.50 percent. Only one of the five prepermanency hearings reviewed was late. In that case, the six month prepermanency hearing was set based upon the date of the jurisdictional hearing. While this practice usually provides for a timely hearing, in this case it did not because the jurisdiction hearing had been continued for a contested hearing. The date that jurisdiction was finally taken was almost 90 days past the date that the child was physically removed from the home. Thus, this hearing was about 30 days late.

Permanency Hearing

There is no discrepancy between federal law and California dependency law regarding the setting of the permanency hearing. The permanency hearing must be held within 12 months of the “date the child entered foster care”.

Under California law, a permanency hearing may occur at a six month hearing for a child under the age of three, at a twelve month review hearing for a child three and above, or at a dispositional hearing¹ when reunification services are not ordered for the parents.

The Marin County permanency hearing timeliness compliance figure was 60 percent. Two of the five permanency hearings reviewed were late because of continuances for contested hearings.

Post Permanency Hearing

A post permanency hearing must be held every six months.

¹ Section 361.5 (f) states that the dispositional hearing shall include a permanency hearing.

All of the six post permanency hearings reviewed were held on a timely basis, resulting in a timeliness compliance figure of 100 percent.

Specific Findings and Orders

The findings and orders discussed below are required for title IV-E eligibility and/or ASFA compliance purposes. The many other findings and orders required by California statutes are beyond the purview of this memorandum.

Detention Hearings

Finding A

“Continuance in the home is contrary to the child’s welfare.”

Order B

“Temporary placement and care is vested with the child welfare agency.”

Finding C

“Reasonable efforts have been made to prevent removal.”

These findings and order were made in all Marin County detention hearings reviewed for a compliance figure of 100 percent.

Prepermanency Hearing, Permanency Hearing, and Post Permanency Hearings

Finding D1

*Prepermanency Hearing, Permanency Hearing, and
Post Permanency Review Hearings*

“The child’s placement is necessary and appropriate.”

Please note that this is a two-part finding. The first issue is whether the child’s placement in foster care continues to be necessary. The second is whether the current foster care placement meets the child’s needs.

This finding is required at the **prepermanency, permanency, and post permanency** hearings.

The Marin County compliance figure for prepermanency and permanency hearing types was 60 percent. The compliance figure for post permanency hearings was 0 percent. The language for this finding was frequently missing from both the recommended findings and orders as well as the minute orders. After this review, the need for this finding at all of these hearing-types was discussed about with representatives from the Marin County Department of Social Services. This was a positive and productive meeting that revealed that the Department is in the process of revising the recommended findings and orders templates. Inclusion of this finding in that document was discussed as was potential technical assistance from this reviewer.

Finding D2

Prepermanency Hearing and Permanency Hearing

“The agency has complied with the case plan by making reasonable efforts to make it possible for the child to safely return home AND to complete whatever steps are necessary to finalize the permanent placement of the child.”

This finding is required at the time of the **prepermanency** hearing and the **permanency** hearing. It addresses the issue of concurrent planning.

The department is required to make reasonable efforts to reunify *and* to finalize a permanent plan pursuant to the case plan. In non-reunification cases, credit is given when a finding is made as required under section 361.5 (b)(1)—(14) and a finding regarding reasonable efforts to finalize a permanent plan is made.

Credit was given for this finding in four out of the five prepermanency hearings reviewed and four out of the five permanency hearings reviewed resulting in a compliance figure of 80 percent for both hearing types. Although the compliance figure is high, Marin County needs to reword the finding. The Marin County finding currently addresses services offered to help the parents overcome the problems that led to the removal rather than efforts to return the child home and finalize the permanent plan. Credit will not be given credit for the finding at the next review if the wording of the finding is not changed.

Finding D2

Post Permanency Hearing

“The department has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.”

This finding is required at the **post permanency** hearings. Following the termination of reunification services, the focus of the case plan shifts to achieving permanency for the child. The change in Finding D2 reflects this focus on permanency.

The Marin County post permanency hearing compliance figure for this finding was 0 percent. The finding was missing from both the recommended findings and orders and the minute orders.

Finding D3

Prepermanency Hearing and Permanency Hearing

*“The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement...
by the mother has been _____
by the father has been _____”*

This finding is required at the **prepermanency** hearing and the **permanency** hearing. It is intended that there be an assessment of the overall progress which can be characterized with a qualitative descriptor such as “none, minimal, moderate, or substantial.”

In non-reunification cases, credit is given when a finding is made as required under section 361.5 (b)(1)-(14).

The Marin County prepermanency hearing compliance figure for this finding was 80 percent. The only case where the finding was missing was in a matter that failed to make any of the required Title IV-E findings. This case involved a dependent who had completed high school and whose eighteenth birthday was a few days after the six-month review. The recommended findings and orders addressed the request for the case to be dismissed upon the dependent’s birthday, but did not make any of the findings for Title IV-E. The appropriate way to handle this situation is for the court to make the Title IV-E findings since the findings are not just prospective, but also retrospective, addressing the necessity of the placement the child has been in, the agency’s compliance with the case plan, and the progress that was made by the parents prior to the date of the hearing. These findings are necessary for the case to qualify for federal reimbursement for the time that the teen was in a Title IV-E eligible placement.

The Marin County permanency hearing compliance figure for this finding was 60 percent. The language was missing in the two cases that did not receive credit.

Under federal law, a finding “projecting the likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship” must be made at each six-month periodic review of a case’s status (42 U.S.C. § 675(5)(B).)

Finding D4 Prepermanency Hearing

“The likely date by which the child may be returned to and safely maintained in the home OR placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is _____.”

This finding is required at the time of the **prepermanency** hearing. The correct date is the date of the scheduled permanency hearing because that is the date the child will be returned home or one of the other permanency hearing options will be ordered. The full date must be inserted. For example, October 5, 2004 is correct. October 2004 is not correct.

The Marin County compliance figure was 80 percent for this finding. The only case that did not contain the date is the matter addressed above where none of the required Title IV-E findings were made.

Finding D5 Permanency Hearing and Post Permanency Hearings

“The permanent plan of

- return home* *or*
- adoption* *or*
- legal guardianship* *or*
- permanent placement with _____, a fit and willing relative*
or
- placement with _____ and a specific goal of _____ (Provide the name of the placement and select a goal of return home, adoption, guardianship, placement with a relative, a less restrictive foster care setting, or emancipation with identification of a long-term mentor.)*

is appropriate and is ordered as the permanent plan.”

This finding is required at the **permanency hearing and post permanency hearings**.

California law provides for several options at the time of the permanency hearing. The court may:

1. Return the child to the parent’s home immediately;
2. Order up to six additional months of reunification services²;
3. Terminate reunification services and order placement with specified “fit and willing relatives” or order a placement with an identified foster family, group home, or residential center and a specific goal³; or
4. Terminate reunification services and order the matter set for a section 366.26 implementation hearing.

Credit is given by the JRTA team for this finding at the 12 month permanency hearing when one of the above options is selected and at the 18 month permanency hearing when option 1, 3, or 4 is selected.

Include the name of the specific relative with whom the child is placed if the permanent plan option chosen is “permanent placement with _____, a fit and willing relative.”

Include the name of the group home, residential treatment center, or foster family if the permanent plan is an identified placement with a specific goal. Choose as a specific goal the option that provides the child with a more family-like and permanent setting. Although

² The court must find a “substantial probability that the child will be returned” when ordering up to six additional months of services (§§ 361.5(a)(3), 366.21(e), and 366.21(g)). See also ACF *Child Welfare Policy Manual*, § 8.3C.2c. The manual is available on the ACF website at: <http://www.acf.hhs.gov/programs/cb/laws/cwpm/index.jsp>

³ When terminating reunification services without referring the matter for a section 366.26 implementation hearing, the court must find by clear and convincing evidence that a compelling reason exists for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child. The finding must also be made at post permanency hearings for a child in an identified placement with a specific goal if the court does not order the matter set for a section 366.26 implementation hearing (Welfare and Institutions Code sections 366.21(g)(3) and 366.3(g)).

California's Welfare and Institutions Code does continue to use the term "long-term foster care," the phrase no longer appears in the federal statutes and it is not a preferred placement under ASFA. ASFA mandates regular reviews of a child's status and permanency options. To provide the specificity needed to ensure that the agency and the court regularly assess placement permanency and plan for the child's future the court should enter a placement order identifying, by name, the child's placement and specifying the goal of that identified placement, without referencing it as "long-term foster care" or "planned permanent living arrangement." The appropriate specific goal will depend upon the circumstances of the child's situation. For example, for a child in an identified group home placement, the goal could be placement with a foster family or a relative.

If the placement is confidential, specify the type of placement (e.g. residential treatment center, group home, foster home, relative) followed by term "location confidential" and provide the court with the specific location under separate cover.

The Marin County permanency compliance figure for this finding was 100 percent.

This finding and order must be made at the post permanency hearings. Only one of the six post permanency hearings reviewed had a correctly made order, resulting in a compliance figure of 16.67 percent.

The apparent discrepancy between the compliance at permanency and post permanency hearings is easily explained. Because Marin County sets all permanency hearing matters for a hearing under Welfare and Institutions Code section 366.26, credit is given by the JRTA team for this order because the permanency plan will be chose at the .26 hearing. At the post permanency hearing, the court is choosing and ordering a permanent plan. However, most of the cases did not receive credit because the court ordered a permanent plan involving foster care placement but failed to specify a specific goal for the child. It is my understanding that this order is being revised by the Department and will now contain information on the child's goal when he or she is no longer in foster care. This should allow Marin County to achieve full compliance for this order.

Finding D6 Permanency Hearing and Post Permanency Hearings

Finding D6a

"The likely date by which the agency will finalize the permanent plan is ___/___/___.

OR

Finding D6b

The likely date by which the child's specific goal will be achieved is ___/___/___."

The date selected as the likely date for finalization of the permanent plan or the likely date the child's specific goal will be achieved must be based on a realistic assessment of the circumstances of the case.

Credit is given at the permanency hearing for this finding when the matter is referred for a section 366.26 implementation hearing and the finding, "The likely date by which the child may be placed for adoption, legal guardianship, or placed in an identified placement with a specific goal is _____."
(Date of section 366.26 implementation hearing)

Credit is given at the permanency hearing for this finding when the court orders six additional months of reunification services, finds a "substantial probability that the child will be returned" and "The likely date the child may be returned to and safely maintained in the home OR placed for adoption, appointed a legal guardian, placed permanently with a relative or placed in an identified placement with a specific goal is _____."
(Date of 18-month review hearing)

The Marin County permanency compliance figure was 100 percent. The post permanency compliance figure for this finding was 0 percent. Credit was given for this finding in all of the permanency hearings because the matters were set for 366.26 hearings. However, this information is not a part of the recommended findings and orders for post permanency hearings.

Finding D7

*Prepermanency Hearing, Permanency Hearing, and
Post permanency Hearings*

"The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living."

During each hearing (prepermanency, permanency, and post permanency) for a child 16 years of age or older, the court must assess the services provided by the agency as set forth in the case plan as well as the child's *Transitional Independent Living Plan (TILP)* to determine whether the services will assist the child in making the transition from foster care to independent living. If so, the finding should be made. If not, the case plan should be amended and an appropriate finding made on the basis of the amended case plan.

This finding was made in two of the four hearings in which it was required resulting in a Marin County compliance figure of 50 percent. While the finding is consistently made in post permanency hearings, the finding has not been incorporated into the findings and orders template for prepermanency and permanency hearings. The social worker's reports indicate that eligible children are receiving independent living services, so adding this finding in appropriate prepermanency and permanency matters should bring compliance for this finding to 100 percent.

Title IV-E Dependency Compliance
Review Results for Marin County—October 2005 Site Visit

Detention	
# Hearings reviewed	6
A	100 %
B	100 %
C	100 %
Timely	83.33 %
Prepermanency	
# Hearings reviewed	5
D1	60 %
D2	80 %
D3	80 %
D4	80 %
D7** (0 of 1)	0 %
Timely	80 %
Permanency	
# Hearings reviewed	5
D1	60 %
D2	80 %
D3	60 %
D5	100 %
D6	100 %
D7** (0 of 1)	0 %
Timely	60 %
Post Permanency	
# Hearings reviewed	6
D1	0 %
D2	0 %
D5	16.67 %
D6	0 %
D7** (2 of 2)	100 %
Timely	100 %
**D7 For all review hearings	
# Hearings required to make finding	4
Percentage made finding as required	50 %