

1 **10-802. Initial hearing; review hearings; discharge hearing.**

2 A. **Initial hearing.** An initial hearing on the petition shall be held within ninety (90)  
3 days from the date a petition is filed. At the initial hearing the court shall

4 (1) review the voluntary services and support agreement and determine whether  
5 the agreement is in the best interest of the eligible adult; and

6 (2) review the transition plan to determine whether it meets the requirements of  
7 the Fostering Connections Act.

8 B. **Required report.** Five (5) days before each review and discharge hearing, the  
9 department shall prepare and present to the court and the eligible adult a report addressing progress  
10 made in meeting the goals in the transition plan, including a proposal for transitioning to  
11 independent living, and shall propose modifications as necessary to further those goals.

12 C. **Review hearings.** Review hearings shall be held at least every six (6) months and  
13 shall be conducted in a manner that encourages the eligible adult’s meaningful participation by  
14 considering procedural modifications and flexible scheduling that meets the eligible adult’s needs.

15 D. **Active efforts required.** At each review hearing, the department shall show that it  
16 has made active efforts to comply with the voluntary services and support agreement and effectuate  
17 the transition plan. If the court finds that the department has not made active efforts to comply  
18 with the voluntary services and support agreement and effectuate the transition plan, the court may  
19 order additional services and support to achieve the goals of the transition plan and the goals of  
20 state and federal law.

21 E. **Discharge hearing.**

22 (1) **Discharge hearing based on age.** This discharge hearing is also the final  
23 review hearing and shall be held within ten (10) days prior to the eligible adult’s twenty-first

1 birthday. The department must request a discharge hearing where the court shall determine  
2 whether the department has made active efforts to help the eligible adult effectuate each element  
3 in the transition plan. If the court finds that the department has not made active efforts and that  
4 termination of jurisdiction would be harmful to the eligible adult, the court may continue to  
5 exercise its jurisdiction for a period not to exceed one (1) year from the eligible adult’s twenty-  
6 first birthday or the eligible adult’s discharge from the fostering connections program, provided  
7 that the eligible adult consents to the continued jurisdiction of the court. The court may dismiss  
8 for good cause at any time after the eligible adult’s twenty-first birthday or the eligible adult’s  
9 discharge from the fostering connections program.

10           (2)     ***Discharge hearing based on ineligibility.*** When the department seeks to  
11 discharge a participant from the fostering connections program, the department shall file a motion  
12 to discharge based on ineligibility. The court shall hold a hearing and discharge the participant if

13                   (a)     the department provided a clear, developmentally appropriate, and  
14 written notice informing the participant of the department’s intent to terminate the voluntary  
15 services and support agreement and explaining the basis for the proposed termination;

16                   (b)     the department made active efforts to meet in person with the  
17 participant to explain the information in the written termination notice and to assist the participant  
18 to reestablish eligibility if the participant so wishes; and

19                   (c)     the participant no longer meets the eligibility criteria in Section  
20 32A-26-3 NMSA 1978.

21 [Provisionally adopted by Supreme Court Order No. 21-8300-007, effective November 12, 2021.]

22           **Committee Commentary.** — The Fostering Connections Act defines “active efforts” as  
23 “a heightened standard that is greater than reasonable efforts that include affirmative, active,

**CHILDREN’S COURT RULES**  
**RULE 10-802**  
**[NEW MATERIAL]**

**Supreme Court Approved**  
**September 28, 2021**

1 thorough, and timely efforts.” NMSA 1978, § 32A-26-2(A) (2020). “‘Transition plan’ means a  
2 written, individualized plan developed collaboratively between the department and the eligible  
3 adult that assesses the eligible adult’s strengths and needs, establishes goals, and identifies the  
4 services and activities that will be provided to the eligible adult to achieve the established goals,  
5 the time frames for achieving the goals, and the individuals or entities responsible for providing  
6 the identified services and activities as provided by rule.” NMSA 1978, § 32A-26-2(G) (2020).

7         The best interest finding for the fostering connections program is distinct from the best  
8 interest finding in cases arising under the Abuse and Neglect Act. Unlike abuse and neglect cases,  
9 in which the court acts as *parens patriae*, the court in fostering connections cases must determine  
10 whether a young person who has voluntarily enrolled in the program would benefit from continued  
11 placement and services as he or she transitions to adulthood. Given that transition to adulthood  
12 lasts into a young person’s mid-twenties and that young people emerging from the foster care  
13 system often do not have existing family and other support systems to rely on, continued placement  
14 and supports will provide a benefit to almost all young people if not all young people. Finally, the  
15 best interest finding does not ask the court to predict the success of the young person in the  
16 program; it only asks the court to determine whether the young person may benefit from the  
17 program’s services and supports.

18 [Provisionally adopted by Supreme Court Order No. 21-8300-007, effective November 12,  
19 2021.]