

10-345. Permanency and permanency review hearings.

A. **Initial permanency hearing.** Within six (6) months after the conclusion of the initial judicial review of a child's dispositional order or within twelve (12) months of a child entering foster care, as defined in Section 32A-4-25.1(E) NMSA 1978 [~~(1997, as amended 2016)~~ (2016)], whichever occurs first, the court shall conduct a permanency hearing to determine what permanency plan is in the child's best interest.

B. **Notice.** The department shall be responsible for obtaining a setting for the initial and any subsequent permanency or permanency review hearings and shall give notice of the hearing to all other parties and any other persons as required by law.

C. **Pre-permanency hearing report; conference.** Not less than five (5) days prior to a permanency hearing, the department shall prepare and serve on each party a pre-permanency hearing report. The report shall include the department's proposed permanency plan. The pre-permanency hearing report shall also set forth any changes to the disposition plan.

D. **Pre-hearing mandatory meeting.** Not less than five (5) days prior to the initial permanency hearing, the parties shall participate in a pre-hearing mandatory meeting. The department shall give notice of the time and place of the meeting to each party.

E. **Initial permanency order.** At the conclusion of the permanency hearing the court shall enter an order establishing one (1) of the permanency plans set forth in Section 32A-4-25.1(B) NMSA 1978 [~~(1997, as amended 2016)~~ (2016)] for the child.

F. **Permanency review hearing; when required.**

(1) If the court adopts a permanency plan of reunification under Paragraph E of this rule at the conclusion of the initial permanency hearing, the court shall schedule a permanency review hearing within three (3) months, which may be vacated if the child is reunified.

(2) At the conclusion of any permanency review hearing, the court shall enter an order changing the plan, dismissing the case, or returning the child to the child's parent, guardian, or custodian as set forth in Section 32A-4-25.1(D) NMSA 1978 [~~(1997, as amended 2016)~~] (2016).

G. **Subsequent permanency hearings.** The court shall hold permanency hearings at least every twelve (12) months when a child is in the legal custody of the department. At each hearing, the court shall review the permanency plan in effect, determine that the department has made reasonable efforts to finalize the plan in effect, and determine whether changes to the plan are appropriate.

H. **Permanency and review hearings for older children; fostering connections program notification; transition plans.**

(1) At every permanency and judicial review hearing after the child attains sixteen (16) years and six (6) months of age, the court shall make a finding about whether the child has been notified about the fostering connections program and the benefits of the program.

(2) At the first hearing after the child's seventeenth birthday, the department shall present the child's transition plan to the court and the court shall order a transition plan for the child, which shall be reviewed at every subsequent judicial review and permanency hearing.

(3) At the review hearing that occurs as close as possible, but not after the child turns seventeen (17) years and nine (9) months, the court shall make a finding of whether the child has decided to participate in the fostering connections program and whether the child has been provided an opportunity to develop a voluntary services and support agreement.

[Approved, effective February 15, 1999; Rule 10-325 NMRA, recompiled and amended as Rule 10-345 NMRA by Supreme Court Order No. 08-8300-042, effective January 15, 2009; as

provisionally amended by Supreme Court Order No. 21-8300-007, effective for all cases pending or filed on or after November 12, 2021; as amended by Supreme Court Order No. 22-8300-017, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — This rule uses “child” throughout to mirror statutory language, but the Committee recognizes that this rule also impacts youth, those older children who are closer to the age of eighteen (18).

This rule implements hearing requirements for youth imposed by the Abuse and Neglect Act and by the Fostering Connections Act, Articles 4 and 26 of the Children’s Code, respectively. For details about the requirements of the discharge hearing (the last review or permanency hearing held before the child’s eighteenth birthday), *see* Rule 10-360 NMRA.

In recognition of the developing autonomy and maturity of youth, and with the goal of enhancing their decision making abilities, the Abuse and Neglect Act and the Fostering Connections Act, as well as department rules, require collaboration in the development and implementation of the transition plan. *See* NMSA 1978, § 32A-4-25.2(A) (2009) (“[T]he department *shall meet with the child, the child’s attorney and others of the child’s choosing, including biological family members*, to develop a transition plan.”); NMSA 1978, § 32A-26-2(G) (1993) (transition plan means “a written, individualized plan *developed collaboratively between the department and the eligible adult* that assesses the eligible adult’s strengths and needs, establishes goals and identifies the services and activities that will be provided to the eligible adult to achieve the established goals, the time frames for achieving the goals and the individuals or entities responsible for providing the identified services and activities as provided by rule”); NMSA 1978, § 32A-26-4(A)(4) (2020) (the department shall provide services including “the development of a transition plan, *developed jointly by the department and the eligible adult*”);

1 NMSA 1978, § 32A-26-5(G) (2020) (“The department and at least one person who is not
2 responsible for case management, in collaboration with the eligible adult and additional persons
3 identified by the eligible adult, shall conduct periodic reviews of the transition plan not less than
4 once every one hundred eighty days to evaluate progress made toward meeting the goals set forth
5 in the transition plan. *The department shall use a team approach* in conducting periodic reviews
6 of the transition plan *and shall facilitate the participation of the eligible adult.*”); [~~Section~~
7 8.10.9.7(R) NMAC (“‘Transition plan[²]’ refers to the plan *developed with the youth* prior to the
8 youth’s 17th birthday.”) (~~emphasis~~] Emphasis added throughout.)]
9 [Provisionally adopted by Supreme Court Order No. 21-8300-007, effective for all cases pending
10 or filed on or after November 12, 2021; provisionally adopted commentary approved as amended
11 by Supreme Court Order No. 22-8300-017, effective for all cases pending or filed on or after
12 December 31, 2022.]