1   **10-360. Discharge hearing.**

2   A.   **Discharge hearing.** The last review or permanency hearing held before the child's

3   eighteenth birthday shall be a discharge hearing.

4   B.   **Notice.** The department shall be responsible for obtaining a setting for the discharge

5   hearing and shall give notice of the discharge hearing to all other parties and any other persons as

6   required by law.

7   C.   **Conduct of hearing and required findings.** At the discharge hearing, the court

8   shall

9   (1)   review the transition plan;

10   (2)   determine whether the department has made reasonable efforts to

11   (a)   provide written information concerning the child's family history

12   and the whereabouts of any sibling, if appropriate;

13   (b)   provide education and health records to the child;

14   (c)   provide the child's social security card, certified birth certificate,

15   state-issued identification card, death certificate of a parent, proof of citizenship or residence, and

16   official documentation that the child was in foster care to the child;

17   (d)   assist the child in obtaining Medicaid if the child is eligible; and

18   (e)   refer the child for a guardianship or limited guardianship if the child

19   is incapacitated; and

20   (3)   make a finding of whether the child has decided to participate in the

21   fostering connections program and whether the child has been provided an opportunity to develop

22   a voluntary services and support agreement.

1   D.   **Continued jurisdiction past the child's eighteenth birthday.** If the court finds

2   that the department has not made reasonable efforts to meet all the requirements of Paragraph

3   (C)(2) of this rule and that termination of jurisdiction would be harmful to the child, the court may

4   continue to exercise its jurisdiction in the abuse or neglect case for a period not to exceed one (1)

5   year from the child's eighteenth birthday, as long as the child consents to the court's continued

6   jurisdiction. The court may dismiss the case at any time after the child's eighteenth birthday for

7   good cause.

8   [Provisionally adopted by Supreme Court Order No. 21-8300-007, effective for all cases pending

9   or filed on or after November 12, 2021; provisionally adopted rule approved by Supreme Court

10   Order No. 22-8300-017, effective for all cases pending or filed on or after December 31, 2022.]

11   **Committee commentary.** — This rule uses "child" throughout to mirror statutory

12   language, but the Committee recognizes that this rule impacts youth, those older children who are

13   closer to the age of eighteen (18).

14   This rule implements hearing requirements for youth imposed by the Abuse and Neglect

15   Act and by the Fostering Connections Act, Articles 4 and 26 of the Children's Code, respectively.

16   Paragraph D addresses the continued jurisdiction of the children's court over an abuse and neglect

17   case involving a youth who has reached the age of eighteen (18) only when the department has

18   failed to make reasonable efforts to provide the information, documents, and assistance required

19   by NMSA 1978, Section 32A-4-25.3 (2009) and 8.10.9.17 NMAC.

20   Paragraph D of this rule does not address the jurisdiction or procedures of the Fostering

21   Connections Act for eligible adults beyond the age of eighteen (18). *See* Article 8 of the Children's

22   Court Rules and Forms; [and] *see generally* NMSA 1978, §§ 32A-26-1 to -12 (2020, as amended

23   through 2021).

1   For Indian children under the Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901-

2   1963, in addition to the information listed in Paragraph (C)(2), it is best practice to provide the

3   Indian child's tribal membership documents, contact information for the tribe and the ICWA

4   worker, the child's clan relationships, and the child's genogram or ancestry chart.

5   [Provisionally adopted by Supreme Court Order No. 21-8300-007, effective for all cases pending

6   or filed on or after November 12, 2021; provisionally adopted commentary approved as amended

7   by Supreme Court Order No. 22-8300-017, effective for all cases pending or filed on or after

8   December 31, 2022.]