

**CHAPTER 14**

**DISPOSITION REVIEW HEARING**

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	PROCEDURE	AUTHORITY
14.01	<b>RECOMMENDED HEARING LENGTH</b> 30 minutes	Resource Guidelines, p. 62
14.02	<b>GENERALLY</b> After an adjudication and disposition order has been issued (see Benchbook Chapter 12 regarding adjudication and Chapter 13 regarding Disposition), the court shall conduct a hearing to review the disposition. Dispositions in regard to review of voluntary out-of-home placement matters shall be pursuant to Minn. Stat. § 260C.205 and § 127A.47, subd. 6 ( <i>see Benchbook Chapter 20 regarding voluntary placements</i> ).	RJPP 41.01
14.03	<b>TIMING</b> <b>A. LEGAL CUSTODY TO AGENCY.</b> When disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. <b>B. PROTECTIVE SUPERVISION.</b> When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.	RJPP 41.06
14.04	<b>NOTICE</b> 1. <b>UPON WHOM.</b> The court administrator shall serve upon each party, participant, and attorney notice of the date, time, and location of the hearing. The "Notice of Hearing" form is located on Courtnet. 2. <b>TIMING AND METHOD.</b> Such notice shall be delivered at the close of each prior hearing or mailed at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the prior hearing, later written notice is not required.  <i>Comment: It is best practice to set the date of the next hearing and deliver written notice of that next hearing before the parties leave the courtroom.</i>	RJPP 41.06, subd. 5  RJPP 32.04
14.05	<b>EVIDENCE</b> The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minn. Stat. § 626.556, subd. 8.  <i>Comment: Minn. Stat. § 626.556, subd. 8, provides that "no evidence relating to the neglect or abuse of a child or to any prior incidents of abuse or neglect involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding</i>	RJPP 41.04  Minn. Stat. 626.556, subd. 8

	PROCEDURE	AUTHORITY
	<p><b>14.05 Evidence (continued)</b></p> <p><i>arising out of the alleged neglect or abuse on the grounds of privilege set forth in Minn. Stat. § 595.02, subds. 1(a), (d) and (g).” Minn. Stat. § 595.02, subds. 1(a), (d), and (g) deal with communication between husband and wife, and between medical or therapeutic professional and patient. While such communications might otherwise be privileged, they shall not be excluded during child protection proceedings.</i></p>	RJPP 41.04
14.06	<p><b>MODIFICATION OF DISPOSITION</b></p> <p><b>A. WHO MAY SEEK MODIFICATION.</b> Any party or the county attorney may seek modification of a disposition order by motion made pursuant to RJPP 15. The motion may be heard at the scheduled disposition review hearing or at an earlier date or may be considered by the court without hearing if upon proper notice and if no party objects.</p> <p><i>Comment: If a disruption in the child's out-of-home placement occurs, the matter should be scheduled for review within 10 days.</i></p> <p><b>B. AGREEMENT TO MODIFICATION.</b> The court, on its own motion or that of any party, may modify the disposition or order the case plan modified when all parties agree the modification is in the best interests of the child and:</p> <p>(a) a change of circumstances requires a change in the disposition or modification of the case plan; or</p> <p>(b) the original disposition or case plan is inappropriate.</p> <p><b>C. OBJECTION TO MODIFICATION.</b> If a party objects to a proposed modification, or if the child's guardian ad litem is not present when the motion is made, the court shall re-schedule the hearing for the next available date. A party has a right to request a court review of the reasonableness of the case plan upon a showing of a substantial change in circumstances. The court may also:</p> <p>1. Order the agency to make further efforts to identify and place a child with a relative if the court finds the agency has failed to perform duties required under Minn. Stat. § 260C.212, subds. 2 and 5<sup>1</sup>; or</p>	<ul style="list-style-type: none"> <li>• RJPP 41.06, subd. 3</li> <li>• RJPP 15</li> </ul> <p>RJPP 41.06, subd. 4(a)</p> <p>RJPP 41.06, subd. 4(b)</p>

<sup>1</sup> Minn. Stat. § 260C.212, subd. 2, specifies the placement preference order, the factors to be considered in determining the child's needs, provides that placement cannot be delayed or denied based on delayed or denied based on race, color, or national origin of the foster parent or the child, and emphasizes that siblings should be placed together. Minn. Stat. § 260C.212, subd. 5, provides details about the scope and timing of the relative search that must be accomplished by the responsible social services agency.

	PROCEDURE	AUTHORITY
	<p><b>14.06 Modification of disposition – objection (continued)</b></p> <ol style="list-style-type: none"> <li>2. Find that the agency has performed required duties under Minn. Stat. § 260C.212, subd. 5<sup>2</sup>, and no further efforts to locate relatives are required; or</li> <li>3. In the case of an <b>Indian</b> child, unless good cause is found under 25 U.S.C. § 1915, order the agency to make additional efforts to comply with the placement preferences of 25 U.S.C. § 1915.</li> </ol> <p><b>D. AMENDED DISPOSITION ORDER.</b> In the event the disposition is modified, the court shall issue an amended disposition order in accordance with RJPP 41.05 (see Chapter 12 regarding disposition).</p>	<p>RJPP 41.06, subd. 4(b)</p> <p>RJPP 41.06, subd. 7</p>
	<b>HEARING PROCEDURE</b>	
14.07	<p><b>INITIAL PROCEDURE</b></p> <p><b>A. All Hearings:</b> At the commencement of the hearing, it is best practice for the court on the record to:</p> <ol style="list-style-type: none"> <li>1. State the <b>case name and file number</b>.</li> <li>2. Ask all parties, participants, and attorneys present to <b>identify</b> themselves for the record.</li> <li>3. Determine whether <b>all required persons</b> have been <b>informed of the time and place of the hearing</b> and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing.</li> <li>4. <b>Determine whether child is or should be present.</b> If the child is present, determine whether it is in child's best interest to be present or excluded from hearing.</li> <li>5. <i>(Optional best practice)</i> <b>Ask anyone else in the audience involved in the hearing to identify themselves</b> and their relationship to the child and family.</li> </ol>	RJPP 30.04
14.08	<p><b>ISSUES TO BE REVIEWED</b></p> <p><b>A. ISSUES IF LEGAL CUSTODY TO AGENCY.</b> When disposition is legal custody to the responsible social services agency, the disposition review hearing shall review of the following:</p> <ol style="list-style-type: none"> <li>1. Whether the out-of-home placement plan is relevant to the safety and best interests of the child.</li> <li>2. Whether the agency is making reasonable efforts, or active efforts in the case of an <b>Indian</b> child, to implement the requirements of the out-of-home placement plan.</li> </ol>	RJPP 41.06, subd. 2(a)

<sup>2</sup> See footnote 1, *supra*.

<sup>3</sup> See footnote 1, *supra*.

	PROCEDURE	AUTHORITY
	<p><b>14.08 Issues to be reviewed (continued)</b></p> <p><i><u>Comment:</u> What is considered “reasonable” changes over the course of the case. Generally, the agency provides more intensive services at the beginning of a case and gradually lessens its efforts as the case proceeds to ensure that the parent can manage on his or her own.</i></p> <ol style="list-style-type: none"> <li>3. The extent of progress made toward alleviating or mitigating the causes necessitating placement.</li> <li>4. Whether the parents or legal custodian of the child are visiting the child and, if not, what barriers, if any, exist to visitation.</li> <li>5. Whether the child is receiving appropriate services under the case plan.</li> <li>6. Whether the parent is receiving appropriate services under the case plan.</li> </ol> <p><i><u>Best Practice:</u> The parties should be asked if there are other services they feel they need that are not included in the plan or if there are services that are not included in the plan, or if there are services that will be unreasonably difficult for them to accomplish.</i></p> <ol style="list-style-type: none"> <li>7. When a child has siblings in out-of-home placement: <ol style="list-style-type: none"> <li>(a) whether the child resides with the siblings;</li> <li>(b) when the child and siblings are not placed together, whether further efforts are appropriate to place the siblings together; and</li> <li>(c) when the child and siblings are not placed together, whether there is visitation amongst siblings.</li> </ol> </li> <li>8. When a child is not placed with a relative, whether the agency's efforts under Minn. Stat. § 260C.212, subd. 5<sup>3</sup>, are adequate.</li> <li>9. In the case of an <b>Indian</b> child, whether the placement preferences of 25 U.S.C. § 1915 are met.</li> <li>10. When the agency is utilizing concurrent permanency planning (which, generally is always), whether the agency's efforts to place the child with a relative or a foster parent who has committed to providing the child's legally permanent home in the event reunification efforts are not successful.</li> <li>11. Whether the parent or legal custodian understands the requirements of Minn. Stat. § 260C.201, subds. 11 and 11a, related to the required permanent placement determination hearing, including the projected date by which the child will be returned home or the hearing will be held.</li> </ol>	<p>RJPP 41.06, subd. 2(a)</p>

	PROCEDURE	AUTHORITY
	<p><b>14.08 Issues to be reviewed (continued)</b></p> <p><i>Comment: The reports of the guardian ad litem and social worker should address each of the above issues and, if so, it is not necessary to discuss each of the issues on the record but, instead, address only those issues that seem to be problematic.</i></p> <p><b>B. ISSUES IF PROTECTIVE SUPERVISION.</b> When the disposition is protective supervision of the child in the home of a parent, the disposition review hearing shall include review of the following:</p> <ol style="list-style-type: none"> <li>1. Whether the agency has served and filed a case plan for the parents or legal custodian and child as required under RJPP 37.</li> <li>2. Whether the case plan continues to be relevant to the safety and best interests of the child.</li> </ol> <p><i>Best Practice: If changes are made they should be noted on the record and included in the order.</i></p> <ol style="list-style-type: none"> <li>3. Whether the agency is making appropriate efforts to implement the case plan and, if not, what additional efforts must be made by the agency.</li> <li>4. Whether the agency, child's attorney, and the guardian ad litem have reasonable access to the child to determine the child's safety, health, and well-being.</li> <li>5. Whether the parents or legal custodian are utilizing the services set out in the case plan, and if not, what other services or modifications to the case plan might be appropriate.</li> <li>6. Whether the child is receiving the necessary services identified in the case plan and whether those services are meeting the best interests of the child.</li> </ol> <p><b>C. ISSUES IF TRIAL HOME VISIT.</b> When the disposition is a trial home visit:</p> <ol style="list-style-type: none"> <li>(a) the court shall conduct a hearing to determine whether the trial home visit continues to be necessary;</li> <li>(b) the responsible social services agency shall advise the court and parties within three (3) days of the date a trial home visit is terminated by the responsible social services agency without a court order;</li> <li>(c) the responsible social services agency shall prepare a report for the court when the trial home visit is terminated, whether by the agency or court order, which describes the child's circumstances during the trial home visit and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and</li> </ol>	<p>RJPP 41.06, subd. 2(c)</p> <p>RJPP 41.06, subd. 2(b)</p>

	PROCEDURE	AUTHORITY
	<p><b>14.08 Issues to be reviewed (continued)</b></p> <p>stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten (10) days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under RJPP 42. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanent placement determination hearing does not exceed twelve (12) months.</p>	RJPP 41.06, subd. 2(b)
14.09	<p><b>DISPOSITION REVIEW ORDER</b></p> <p>If the prior disposition order is continued without modification, issue an order so stating. If the disposition order is modified, issue a revised order amending the necessary provisions of the prior order pursuant to Rule 41.05.</p>	RJPP 41.06, subd. 7
14.10	<p><b>NOTICE OF SUBSEQUENT HEARINGS</b></p> <p>For each hearing following the Admit/Deny Hearing, the court administrator shall serve upon each party, participant, and attorney a notice of the date, time, and location of the next hearing. The notice shall be delivered at the close of the hearing or mailed at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the hearing, later written notice is not required.</p>	RJPP 32.04