

110 CMR 6.00: CASE REVIEWS

Section

6.01: Foster Care Review and Permanency Hearing - Generally

6.02: Foster Care Review (FCR)

6.03: Permanency Hearings

6.01: Foster Care Review and Permanency Hearing - Generally

(1) Foster Care Review. A Foster Care Review (FCR) is a review, conducted by a panel under the auspices of the Department's independent Foster Care Review Unit (FCRU) established under M.G.L. c. 18B, § 6A, of the action plan and progress toward permanency and the safety and well-being of a child or young adult.

(a) who is either:

1. committed by a court to the custody of the Department or an agent of the Department;
2. in the custody of the Department *via* an adoption surrender, executed in conformance with M.G.L. c. 210, § 2;
3. in the voluntary care of the Department pursuant to a Voluntary Placement Agreement or a petition under M.G.L. c. 119, § 23(a)(1); and

(b) who is not living at home at the time the foster care review is scheduled to occur.

(2) Permanency Hearing. A Permanency Hearing is a review conducted by the court which granted custody of a child to the Department. The review is conducted under the provisions of M.G.L. c. 119, § 29B and includes reviews for any child or young adult up to 22 years of age.

(3) Definitions.

(a) Age or Developmentally Appropriate Activities:

1. activities or items that are generally accepted as suitable for children, youth and young adults of the same chronological age or level of maturity or that are determined to be developmentally-appropriate based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
2. in the case of a specific child, youth or young adult, activities or items that are suitable based on the developmental stages attained by the child, youth or young adult with respect to their cognitive, emotional, physical, and behavioral capacities.

(b) Reasonable and Prudent Parent Standard. The standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child, youth or young adult while at the same time encouraging the emotional and developmental growth of the child, youth or young adult. The caregiver shall employ this standard when determining whether to allow a child, youth or young adult in foster care to participate in extracurricular, enrichment, cultural, and social activities.

6.02: Foster Care Review (FCR)

(1) Requirement. The Department shall conduct a FCR within six months after a child or young adult is placed out of the home and every six months thereafter as long as the child or young adult remains out of the home.

(2) Content. A FCR shall include consideration of the following:

(a) a review of the family assessment and action plan and any updates since the last foster care review, including the reason for the Department's continued involvement with the family; and

(b) a review of the tasks, services and supports within the action plan since the last foster care review, including:

1. the Department's actions and efforts to address the reason for the Department's involvement and to achieve safety, permanency and well-being for the child/young adult, including contact with parent(s) and children and placement resource;
2. each parent's actions and efforts toward participation in the tasks, services and supports identified in the action plan, including participation in scheduled visits, intended to reduce or alleviate the danger to, or need for placement of, the child(ren) or young adult and whether desired outcomes were achieved;

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3. where appropriate, the child/young adult's actions and efforts toward participation in the tasks, services and supports identified in the action plan and the extent to which the outcomes of safety, permanency and well-being were achieved;
 4. progress made toward resolving the issues identified in the family assessment and action plan, updates to the family assessment and action plan or the previous FCR;
 5. the placement provider's actions and efforts toward the fulfillment of the expectations necessary to meet the needs of the child, including providing regular opportunities to engage in age or developmentally appropriate activities; and
 6. the Department's actions and efforts to ensure the child's placement is following the reasonable and prudent parent standard;
- (c) a review of the safety of the child or young adult, including children living at home, and the necessity and appropriateness of the child or young adult's continued placement;
- (d) a review of the extent of progress made toward alleviating or mitigating the causes necessitating the child/young adult's placement and achieving desired outcomes;
- (e) a review of the Department's permanency plan for the child or young adult and the projected date by which the child or young adult will achieve permanency either through:
1. stabilization with their parents or guardian;
 2. reunification and safely maintaining with their parents or guardian;
 3. adoption;
 4. guardianship by a person other than the Department or its agent;
 5. permanently living with Kin; or
 6. another planned permanent living arrangement for a child 16 years of age or older;
- and
- (f) a review of the proposed action planning for the next six months, including:
1. the steps necessary to achieve permanency for the child or young adult; and
 2. the visitation schedule for the parents, siblings and grandparents if applicable and the means by which the schedule will be implemented.
- (g) a review of the child or young adult's medical and dental checkups, consistent with the well-child schedule;
- (h) a review of the child or young adult's educational needs and the stability of the educational setting;
- (i) a review of the child or young adult's regular opportunities to engage in age or developmentally appropriate activities;
- (j) a review of the services and supports for the child or young adult 14 years of age or older that will assist them in transitioning from foster care to a successful adulthood; and
- (k) for any child who have reached the age of 17 years and six months, a review of a child's request to receive young adult services through the Department beyond 18 years of age.
- (3) **Structure and Format.** A FCR should be conducted by a three member panel consisting of:
- (a) a member of the FCRU, who shall convene and chair the panel;
 - (b) a person who may or may not be a Department employee, provided that such person may not be the social worker, supervisor or manager assigned to the case under review;
 - (c) a volunteer, provided:
 1. the volunteer shall be recruited to represent to the maximum extent feasible the various socio-economic, racial and ethnic groups of the community served by the Department;
 2. the volunteer has, prior to participation, attended FCRU orientation and follow up training sessions;
 3. the volunteer is not an employee of the Department (but may be a Department foster parent);
 4. the volunteer is not an employee of, board member of, or volunteer associated with, an agency contracted to provide services to the child or family whose case is under review;
 5. the volunteer does not know and is not known by the family; and
 6. the volunteer has signed an agreement to be a foster care review panel volunteer with the Department and acknowledged the circumstances which could lead to termination or non-renewal of the agreement.

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(d) The format of the FCR may vary depending on the family's needs and circumstances, and the number of participants in the FCR. However, the following guidelines shall apply to each FCR:

1. The review shall be a structured discussion; and
2. All participants shall be encouraged to participate and afforded the opportunity to express their views.

(4) Participants. A FCR shall at a minimum invite the following people, who shall be notified in writing to attend the FCR prior to its scheduled date:

(a) parent(s), or guardian if applicable, of the child(ren) being reviewed, unless parental rights have been terminated or surrendered, under M.G.L. c. 210, §§ 2 or 3, or under M.G.L. c. 119, § 26, or the review only concerns a young adult, or unless a parent has a documented history of violent or assaultive behavior that is not mitigated by treatment which results in behavioral changes by the parent. In such case approval to exclude the parent from in-person participation in the FCR shall be obtained from the Area Director/designee in consultation with the FCRU manager, and the parent shall be notified by the Area Director/designee of the reasons for such exclusion and shall be advised of alternative methods of providing input into the review. The parents may invite other persons to provide support. While this may include an attorney, an attorney is not required.

(b) a putative or unwed father, unless his parental rights have been surrendered or terminated, if:

1. he is named on any legal papers (*i.e.* petitions, birth certificate, or other judicial decree);
2. he has formally acknowledged paternity;
3. he has been named as the father by the mother; or
4. he has been determined to be the father by genetic marker testing.

(c) the child or young adult, if 14 years of age or older, as well as any individual invited by the child or young adult to provide support, unless the child or young adult is a danger to themselves or other participants or exhibits behavior that would make it impossible for the review to be conducted;

(d) the social worker(s) assigned to the family and the children or young adult, including an adolescent outreach worker;

(e) the supervisor(s) of the social worker(s) assigned to the family and the children or young adult, provided such supervisor(s) may but is not required to attend;

(f) the family resource worker assigned to the foster home of the child(ren)'s placement

(g) foster parents;

(h) placement provider, if a child or young adult is receiving congregate care services from an agency under contract with the Department;

(i) the child's attorney or guardian *ad litem*, if any;

(j) the parent's attorney, unless their clients rights have been terminated;

(k) the Department Attorney;

(l) staff of other public or private agencies and other individuals important to the child/young adult or family; and

(m) the Guardian for an Incapacitated young adult.

Participants will be notified of the date and time for the FCR 30 calendar days prior to the scheduled FCR. Any of the above persons who are invited, but unable to attend the FCR shall be permitted to submit written comments to the Foster Care Review Unit in *lieu* of attendance.

(5) Responsibilities of Social Workers. As part of the FCR process, a social worker shall, and their supervisor shall ensure the social worker:

(a) verify periodic lists furnished to them of all families in their caseload who are to be scheduled for a FCR;

(b) inform the FCRU of the names of the individuals who are to be invited to the review, including those individuals the family or child or young adult 14 years or age or older wishes to invite and ensure the current addresses of the participants listed in 110 CMR 6.02(4) and other invitees are reflected in the electronic case record;

(c) arrange for a child or young adult 14 years of age or older to be transported to the FCR if the child or young adult wishes to attend;

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- (d) inform the FCRU if the family's primary language is other than English;
 - (e) ensure that a current family assessment and action plan is available for the FCR including updating the electronic and physical record as needed;
 - (f) ensure a copy of any action plan(s) that will be reviewed at the FCR are provided to the parents, as well as any child or young adult 14 years of age or older prior to the FCR;
 - (g) discuss the pending FCR with parents, foster parents, and the child or young adult prior to the review, to ensure all parties understand its format and purpose;
 - (h) discuss any change in the action plan with the, parents, child(ren) or young adult 14 years of age or older, supervisor, foster parents and providers prior to the FCR, if such a change will be proposed at the FCR;
 - (i) notify FCRU staff of any casework issues, including any concerns about participants safety, which may require particularly sensitive handling during the review, or of any recent significant events which might affect the FCR;
 - (j) discuss with their supervisor the action plan, family progress and proposed permanency plan in supervision prior to the FCR;
 - (k) attend the FCR and provide clarification and information about the action plan and other information about the family as needed; and
 - (l) revise the family assessment and action plan with the family and child(ren) or young adult 14 years of age or older, if needed, for the next six-month period in a manner consistent with the determinations.
- (6) Responsibilities of Area Directors. The Area Director or designee shall:
- (a) provide for alternative staff representation in instances in which the social worker cannot attend the FCR due to an emergency, illness, or scheduled vacation;
 - (b) ensure that all families have up to date family assessments and action plans;
 - (c) ensure a copy of any action plan(s) that will be reviewed at the FCR has been provided to the parents, child(ren) or young adult 14 years of age or older prior to the FCR;
 - (d) review the monthly preliminary list of families due for review and notify the FCRU if adjustments are necessary to FCR scheduling;
 - (e) provide a person to participate as a member of the foster care review panel, provided that such person may not be the social worker, supervisor or manager assigned to the case under review;
 - (f) arrange for an interpreter if one is needed for the review;
 - (g) ensure there is a room available in the Area Office for the FCRs scheduled each month; and
 - (h) ensure the determinations of the FCR panel are implemented.
- (7) Responsibilities of FCRU Staff. FCRU staff shall:
- (a) schedule the date, time and place of the review and select the volunteer panel member;
 - (b) invite all necessary parties to attend the review;
 - (c) review the family's case record, or the record for the young adult as applicable, including the family assessment any prior service or action plan;
 - (d) if necessary, seek out additional information from appropriate staff which will facilitate an effective review;
 - (e) chair the FCR;
 - (f) ensure that all participants have the opportunity to have their views heard;
 - (g) facilitate an alternative method of participation when needed for any participant listed under 110 CMR 6.02(4) who cannot attend in person; and
 - (h) prepare a written summary of the FCR panel's determinations and recommendations, including minority opinions and objections, in a format established by the Department.
- (8) Responsibilities of Panel Members. FCR panel members shall:
- (a) have equal authority during the FCR;
 - (b) prepare for the FCR according to procedures established by the FCRU;
 - (c) maintain the confidentiality of all client related information;
 - (d) attend the FCR as scheduled;

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- (e) actively participate in the FCR, in an objective and unbiased manner; and
 - (f) notify the FCRU if they have personal knowledge of the client or family whose case is to be reviewed.
- (9) Determinations Made by the Panel. The panel members shall discuss and determine:
- (a) whether there are any concerns for the child(ren)'s safety identified during the FCR process;
 - (b) whether the child's or young adult's placement in substitute care is necessary as of the FCR;
 - (c) whether the child's current placement is appropriate;
 - (d) the extent of each parties' participation and progress as follows:
 1. The parent(s) participation in the action plan and whether they have demonstrated observable changes that reduce or alleviate danger to their child(ren) or the need for the child(ren)'s placement or to achieve other outcomes necessary to improve their capacity to keep their child(ren) safe and provide for the child(ren)'s well-being;
 2. The child(ren) or young adult's participation in the action plan and whether they have demonstrated progress in achieving the outcomes to improve their safety and well-being;
 3. The Department's actions and efforts to address the needs of the family; and
 4. The placement provider's fulfillment of the placement expectations to meet the child(ren) or young adult's needs.
 - (e) the extent of progress which has been made by all parties to achieve the Department's identified permanency plan(s) in the action plan;
 - (f) whether the Department has taken steps to:
 1. ensure the child(ren)'s or young adult's placement resource is following the reasonable and prudent parent standard; and
 2. ascertain whether the child(ren) or young adult has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consulting with the child or young adult in an age appropriate manner about the child(ren)'s or young adult's opportunities to participate in the activities;
 - (g) the Department's permanency plan for the child(ren) or young adult and the projected date by which the child(ren) or young adult may achieve permanency either through:
 1. stabilization with their parents or guardian;
 2. reunification and safely remaining with their parents or guardian;
 3. adoption;
 4. guardianship by a person other than the Department or its agent;
 5. permanently living with Kin; or
 6. another planned permanent living arrangement for a child 16 years of age or older.
- (10) In addition, the panel may make and record nonbinding recommendations designed to further the child's progress towards permanency.
- (11) At the FCR that occurs within six months of a child's 18th birthday, the FCR panel, the child and the Department review a child's request to receive young adult services with the Department after 18 years of age.
- (a) If all parties agree to the child receiving young adult services and the child meets the criteria for young adult services under 110 CMR 23.00: *Services for Young Adults*, the child will continue to receive services through the Department.
 - (b) If the Department and child agree that the child is not interested in receiving young adult services at 18 years of age, the Department works with the child on transition planning for a discharge at 18 years of age.
 - (c) If the child is requesting young adult services beyond 18 years of age and either the Department or the FCR Panel disagrees, the child's request is sent to a Young Adult Review Panel at the Area Office responsible for the child's case for a final decision.
- (12) The FCRU panel member shall record the panel's determinations and recommendations, including minority opinions and objections, and a summary of the review in the electronic case record in a format prescribed by the Department. The FRCU will notify applicable agency staff when the report is completed and will provide copies of the report to the:

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- (a) parents, unless their parental rights were terminated;
- (b) child or young adult 14 years of age or older;
- (c) placement provider;
- (d) child's or young adult's attorney and/or GAL, if applicable; and
- (e) parent's attorneys, unless their client's parental rights were terminated.

(13) Panel Disagreement with Action Plan. If the determinations of the panel conflict with the action plan as written, the determination of the panel, shall be binding upon the Department and shall be incorporated into a revised action plan, unless the panel's determinations are successfully appealed as set forth in 110 CMR 6.02(14).

(14) Appeal of FCR Determination.

(a) Parents, foster parents, the child's or young adult's attorney, as well as any child or young adult 14 years of age or older may appeal the FCR determination to change the permanency plan for the child or young adult by requesting a Fair Hearing within 30 days after receiving the FCR Report. All other FCR determinations may be appealed through the grievance process.

(b) If the department social worker or supervisor disagree with any of the FCR determinations, the area staff and FCR staff will attempt to resolve the disagreement in accordance with the Foster Care Review Policy.

(15) Permanency Plan Change. Whenever the FCR panel determines, under 110 CMR 6.02(9)(g), that the permanency plan for the child or young adult should be changed, the department must schedule the case for a permanency planning conference. The permanency plan does not change until a permanency planning conference is held. If the permanency planning conference determination differs with the FCR permanency plan determination, the case will be referred to the Regional Director who will determine the permanency plan.

6.03: Permanency Hearing

A Permanency Hearing is a review conducted by a court of competent jurisdiction under M.G.L. c. 119, § 29B, of a child or young adult younger than 22 years old in substitute care. The Department shall participate in a permanency hearing to determine a child's or young adult's permanency plan within 12 months of an initial order of commitment, or grant of custody to the Department, and every 12 months thereafter as long as the child or young adult remains in substitute care. If a child or young adult has entered substitute care through a voluntary placement agreement as set forth in 110 CMR 4.10 through 4.14, the permanency hearing will be held within 12 months of the child or young adult entering placement or within 60 days of the Department obtaining court custody, whichever is later. For children who remain in the Department's custody after they are placed home, a permanency hearing will be conducted if at the time the review is scheduled the child has been home for less than six months.

The process utilized for a permanency hearing shall be in accordance with Trial Court Rule VI Uniform Rules for Permanency Hearings. The Department shall file with the court which committed the child to the Department's custody a permanency report prior to the permanency hearing date, and shall send a copy of the report to the attorneys of record, or to a party who is unrepresented. The outcome of the Department's FCR and Permanency Planning Conference is included in the permanency report. If a parent has signed an adoption surrender, or if a parent's parental rights have been terminated by a court of law, the parent or his or her counsel will not be sent a copy of the permanency report.

The Department shall notify the child's current foster/pre-adoptive parent of the date of the permanency hearing. The current foster/pre-adoptive parent has the right to be heard at the permanency hearing.

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At the permanency hearing the court shall determine the permanent plan for the child. In making such determination the court shall consult with the child, in an age-appropriate manner, about the proposed permanency plan for the child. Such consultation may be through a report by the Department social worker, the child's attorney or a guardian *ad litem* whose has discussed with the child the proposed permanent plan. A child 14 years of age or older may attend the permanency hearing review. The Department shall use reasonable efforts to achieve the permanency plan determined by the court. The Department may concurrently use reasonable efforts to achieve an alternative permanent plan if the permanent plan determined by the court is reunification with the family and the permanency plan established through the Department's permanency planning conference is other than reunification.

REGULATORY AUTHORITY

110 CMR 6.00: M.G.L. c. 18B, §§ 6A,7; c. 119, §§ 37 and 29B.