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<b>ACF</b>  Administration for Children and Families	<b>U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES</b> <b>Administration for Children, Youth and Families</b>	
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#### INFORMATION MEMORANDUM

**TO:** STATE AGENCIES AND INDIAN TRIBES THAT HAVE CERTIFIED UNDER TITLE IV-B, SECTION 427 OF THE SOCIAL SECURITY ACT, Regional Administrators, OHDS, Regions I - X

**SUBJECT:** Attached is the Section 427 Review Handbook which has been developed as a guide for reviewers in the conduct of section 427 reviews.

**INQUIRES TO:** Beverly Stubbee, Director, Program Operations Division, Children's Bureau - 202/245-0821.

/s/  
Dodie Truman Borup  
Commissioner

[Attachment](#) - Section 427 Review Handbook

## **SECTION 427 REVIEW HANDBOOK**

### **Table of Contents**

#### Background

#### Administrative Review

#### Case Record Survey

##### --Preparation

- Timeframe for Notification
- Sampling Universe

##### --On-Site Case Review

- Team Composition
- Entrance Conference
- Orientation and Training
- Case Reading/Recording on Decision Table
- Exit Conference
- Missing Documentation
- Notification of Findings

##### --Case Record Survey Form/Requirements for and Conventions Used in the Conduct of the Case Record Survey - Case Data

- Date of Placement
- Case Plan
- Periodic Reviews
- Dispositional Hearings

##### --Conventions Applicable to Both Periodic Reviews and Dispositional Hearings

##### --Discussion on 18 Remaining Protections

Attachment A -Applicable Forms

Attachment B - Listing of Statutory/Regulatory/Policy Citations

Attachment C - Case Record Survey Mock-ups for all Type Reviews

## **BACKGROUND**

Section 427 of title IV-B of the Social Security Act (the Act) provides that a State may be eligible for additional title IV-B payments if it has implemented and is operating to the satisfaction of the Secretary certain systems and programs providing protections for children in foster care. These statutory requirements include the conduct of an inventory of all children in foster care for six months under the responsibility of the State, the implementation and operation of a statewide information system, a case review system for each child in foster care under the supervision of the State, a service program to help children return to their families or be placed for adoption or legal guardianship, and a preplacement preventive service program designed to help children remain with their families.

In FY 1981, States were requested to self-certify their eligibility for section 427 funds on the basis of their understanding of the statutory requirements and an analysis of the related State child welfare programs, systems and policies implemented and in operation during the year for which they certified. States were also informed that their self-certification would be subject to a review by the Department to assure that required systems and programs were in place and were being implemented by the State.

To verify compliance with section 427 requirements, a two-stage review is conducted. The first stage is the Administrative Procedures Review which determines whether States have developed the policy and procedural systems necessary to implement the section 427 requirements for all children in foster care who are under the responsibility of the title IV-E/IV-B agency or another public agency with whom the title IV-E/IV-B agency has an agreement. A State is in compliance with the Administrative Procedures Review only if it has fully implemented 100% of the statutory provisions for all children covered under section 427.

The second stage of the compliance review is the Case Record Survey which confirms that these policies are being implemented throughout the State. The Case Record Survey verifies that for each child in foster care:

- there is a written case plan;

- periodic reviews of the status of each child are held at least once every six months either by a court or by administrative review;

- a dispositional hearing is held by a court or court-appointed body no later than 18 months after the placement of the child, and periodically thereafter (to be determined by the State), which shall determine the future status of the child; and

- 13 of 18 remaining section 427 protections have been provided and documented in Initial and Subsequent Reviews and 15 of 18 for Triennial Reviews.

The Case Record Survey must confirm that section 427 foster care protections are being provided for at least 66% of the children whose case records in the State file meet the criteria for inclusion in the Initial Review; 80% in the Subsequent Review; and 90% in the Triennial Review. The Initial Review is conducted for the fiscal year in which the State first certifies its eligibility. If a State meets the Initial Review requirements, a Subsequent Review is conducted for the following fiscal year. States that meet the requirements of the Subsequent Review will be reviewed for the third fiscal year following the fiscal year for which the Subsequent Review was conducted. This is known as the Triennial Review. If a State does not meet the established standards for any review for the year under review, the review is conducted each succeeding year (unless the State withdraws) until eligibility is established.

To be eligible for section 427 funds in its first year of certification, a State's systems must have been implemented and in operation by September 30 of that year. Since State systems and programs should become more efficient the longer they are in operation, Subsequent and Triennial Reviews have increasingly higher levels of compliance.

In addition, the Case Record Survey must demonstrate that each periodic review and dispositional hearing was not only held, but held within the time requirements set forth in the statute. Therefore, after the Initial Review, verification that such reviews and hearings are being conducted within the timeframes allowed begins with the dates of the prior year's hearing and review. From those dates, the due dates in the fiscal year under review are established.

### **ADMINISTRATIVE PROCEDURES REVIEW**

The review of administrative procedures is designed to determine the State's specific response to the legislative requirements of section 427, as established by State laws, policies, procedures and systems. The review focuses on the following major administrative components:

--the inventory of children in foster care;

--the statewide information system;

--the case review system; and

--a service program designed to help children return to their own families or be placed for adoption or legal guardianship.

The review verifies that the State:

1. has conducted an inventory of all children who are under the State's responsibility and who have been in foster care for six months or more (this is a one-time requirement);
2. has implemented and is operating an ongoing statewide information system for all children who have been in foster care within the preceding 12 months; and
3. has in place statutes or administrative procedures, such as administrative directives, guidelines, manuals and working procedures with the courts, which implement the case review system and a permanency planning services program. State administrative

procedures must make all the Federal protections mandatory and must document every element described in the Federal statute and regulations that applies to section 427. Only if the State achieves 100% compliance with the administrative requirements will the Department conduct the second part of the compliance review, the Case Record Survey.

The Administrative Procedures Review is conducted prior to the Initial Review. The State Agency Administrative Review Report and the Region's recommendation on eligibility is to be sent to Central Office for concurrence prior to being sent out to the State. Once a State passes the Administrative Procedures Review portion of the section 427 review, the Regional Office should conduct ongoing informal studies of procedures and provide consultation to the State during the period between reviews in order to assure that the State continues to maintain its eligibility and to prepare the State for its next Case Record Survey. If no changes in State policies or procedures have occurred since the Administrative Procedures Review, the Regional Office should have the State confirm that in writing. If changes have occurred, the State should submit the appropriate materials to the Regional Office in order to verify ongoing compliance.

If subsequent deficiencies are discovered after a State has initially passed its Administrative Procedures Review, the State must take corrective action in consultation with the Regional Office within an approved timeframe so that all section 427-related policies and procedures conform with the Federal requirements. The Case Record Survey may be conducted as scheduled. However, if corrective action is not completed within the timeframe allowed, section 427 funds may be recovered from the State even if the State passes the Case Record Survey portion of the review.

## **CASE RECORD SURVEY**

### **PREPARATION**

#### **Time Frame for Notification:**

Preparation for a section 427 review should begin with the State agency well before the review is scheduled. This early planning should include discussions with the State on the foster care universe from which a random sample is to be drawn so there is no confusion on the State's part at a later date.

The Regional Office should make a written request for the random sample, providing the State with the criteria for the sample. The State should be instructed that the sample must include the case number, county, date of birth, date of entry into foster care, and date of exit from foster care if the case is closed, for each case in the sample. When the random sample is drawn, the State should forward the listing to the Regional Office and define in writing the universe of children from which the random sample was selected. This should include a specification of all excluded cases, the size of the universe, the selection and randomization procedure used, and the number of open and closed cases in the universe.

Final planning should begin no later than two months prior to the review. After the dates of the review have been established, written notification to the State agency administrator should include, at a minimum, the purpose of the review; the dates of the review; the type of review (Initial/Subsequent/Triennial); and the acceptable standard for continued eligibility (66%/80%/90%).

All planning and notification to local agencies is to be done at the State level, even in county-administered States. The in-State preparation is the responsibility of the State and not the Regional Office.

### **Sampling Universe:**

In determining which children should be included in the State's foster care population for purposes of section 427, two criteria must be in place: (1) Is the child in foster care' (Has the child been removed from his own home pursuant to a voluntary placement agreement or as the result of a judicial determination and placed in out-of-home care') and (2) Is the child under the responsibility of the State agency for placement and care'

For purposes of the section 427 review, foster care is defined as twenty-four hour substitute care for children outside their own homes. It includes living arrangements in homes of relatives (other than parents or relatives from which the child was removed), in adoptive placements prior to the legalization of adoption (even if title IV-E adoption assistance payments are being made), in foster family homes, group homes, child care institutions including emergency shelters, and agency operated boarding homes. For the child to be afforded the protections of section 427, there is no requirement that foster care payments be made or that the home in which the child is placed be licensed.

The circumstances of placement, the existence of handicapping conditions, the status of the child (e.g., adjudicated delinquent, or refugee minor), or the existence of a blood relationship between the foster parent and the child are not reasons for excluding children from the section 427 review. (See ACYF-PIQ-85-06 and ACYF-PA-87-02 for further discussion on the foster care universe to be included in section 427 reviews.)

For the Initial Review, the sample must include children who have been in foster care for at least six consecutive months during the fiscal year under review and whose case is still open at the end of the fiscal year. This includes all children who entered care before 4/1 and are still in care on 9/30 of the year under review.

For Subsequent and Triennial Reviews, the sample must include both open and closed cases provided they were open for at least six consecutive months during the fiscal year under review.

A case is considered to be closed for the purposes of the section 427 review on the date a youth reaches the age of majority in the State. Therefore, the age of majority should be specified in the planning stage of the review so the State can design its program for drawing the sample with this in mind.

The sample would not include children who have returned home but remain under the supervision of the State (unless they remained in their foster care situation for at least six months during the fiscal year under review). Such children, who are no longer in foster care during the period specific to review, would not be included in the sample.

For all Initial and Subsequent Reviews, regardless of the size of the foster care population in the State, a random sample of 175 case records is drawn, allowing 150 records for the case record survey and 25 for the oversample. For Triennial Reviews, a random sample of 200 case records is necessary, allowing 163 records for the case record survey and 37 for the oversample. An oversample is necessary to allow for cases which must be disqualified from the sample during the review. Some reasons for disqualification might include: (1) the child has not been in foster care for a minimum of six consecutive months during the fiscal year under review; (2) the child has been returned home by the court and is being supervised at home by the agency; (3) the child is placed back home on a trial basis for more than six months; or (4) the child has been in runaway status for more than six months. Exclusions for reasons other than these must not be given without consultation with Central Office.

The entire random sample must be arranged in a random reading sequence. Some States have a capacity for random digit generation, and this will generate a random sample in random reading sequence if the records are pulled and kept in the sequence of the random digits. However, the Regional Office will need to re-randomize the sample using a table of random numbers (which can be found in Attachment A) if the random selection process used by the State results in an "ordered" sample that reflects in some way the filing order of the State file.

## **ON-SITE CASE REVIEW**

### **Team Composition:**

The State may choose between two approaches for conducting the Case Record Survey: (1) a combined team of Federal and State staff, with State participation not exceeding 50% of the review team's membership, or (2) a team of all Federal staff. In either approach, there should always be a State liaison designated to respond to questions and help with clarification on State policy and procedures.

### **Entrance Conference:**

A time should be scheduled before beginning the review for the Federal team to meet with the Commissioner, the Director of Child Welfare and other selected State staff to discuss the purpose of the review and answer any questions the State personnel might have at that time.

### **Orientation and Training:**

After the entrance conference and before the actual case record survey begins, the Federal team leader should present an overview of the survey form and provide any training needed to help assure that all team members will be reading with consistency.

Arrangements should be made for a State representative to: explain how the State records are set up; present the forms used for the required documentation for case plans, periodic reviews, etc.; inform the team about the State's periodicity for dispositional hearings; and answer questions the team members may have on State procedures.

### **Case Reading/Recording on Decision Table:**

The records must be read in the sequential order of the sample's random reading listing. If a record is missing, the case is considered a failed case since verification of the requirements cannot be documented. If a record is disqualified from the sample, substitute the first record in the oversample for the disqualified record and continue reading in sequence. (In Initial and Subsequent Reviews, this will be sample number 151; in Triennial Reviews, sample number 164.) After each record is reviewed, the team leader should record the decision on the Decision Table and both the reviewer and team leader must initial the form. This assures that both the team leader and the reviewer agree that the correct decision is recorded.

Decision Table I must be used for all Initial and Subsequent Reviews. Decision Table V is used for all Triennial Reviews.

To assure consistency and equity in case reading, it is important to have a percentage of cases re-reviewed by other team members. Therefore, each review is to include no less than a 10% quality control cross-reading for both acceptable and unacceptable case records which should be spaced throughout the case record review. If the conclusions of the reviewers differ, the team leader should discuss the findings with each to try and resolve the differences. If the differences cannot be resolved by the reviewers, the team leader should make the decision and inform the review team of the problem and how it was resolved.

At the end of each day of reading, the team leader should review each completed survey form to assure that the form is properly completed; the due dates are correctly calculated; no further reviews are actually due; etc. If corrections need to be made, the survey form should go back to the reviewer to correct the discrepancies since it is the reviewer who has signed off on the survey sheet and made the decision to pass or fail the case.

The case reading must continue until the Decision Table indicates either that the State has passed the Case Record Survey (when the cumulative number of unacceptable cases in column 4 is the same number as the number in column 3) or until the entire sample has been read (150 cases for Initial and Subsequent Reviews and 163 cases for Triennial Reviews). Even if the Decision Table indicates that the State has failed the Case Record Survey (the cumulative number of unacceptable cases in column 4 is the same as the number in column 5), the team should read the entire sample and reach a decision at the last record (150 or 163 respectively). This eliminates the need to return to the State and continue the review if the State later provides acceptable documentation that was missing during the Case Record Survey or the Grant Appeals Board rules in favor of a State in certain cases.

### **Exit Conference:**

On completion of the review, the review team should hold an exit conference with State agency administrators in which general impressions of the review may be conveyed. However, binding statements regarding the State's eligibility must not be made and are not authorized until the review findings have been fully analyzed.

### **Missing Documentation:**

If critical documentation is not found in the case record, time allowed for the agency to locate and produce documentation should be limited to the period of the on-site review. If the State fails the Case Record Survey and the Region recommends that the State be found ineligible, a letter will be sent from the Commissioner to the State advising them of the Region's recommendation. In this communication, the State will be given 15 calendar days from the date of receipt to provide any additional documentation or information which might have relevance before a final decision is made by the Commissioner to find the State ineligible to receive section 427 funds for that year. If, however, the State provides additional documentation to the Region prior to the 15-day letter from the Commissioner, the Region must take this into account before making a recommendation to Central Office.

### **Notification of Findings:**

If the State is found to be in compliance, the Regional Office should prepare a draft letter to the State that includes a summary of the results of the review and a copy of the form, "Report on State Eligibility." The letter and summary should specify the State's eligibility under section 427, and present specific findings of the review, general strengths and weaknesses noted and recommendations for corrective action. A copy of these documents should be forwarded to Central Office within 15 working days of the review for review and comment before sending to the State. Feedback will be given within 10 working days after receipt of the drafts.

If, however, the State is found to be out of compliance, the Regional Office notifies the State of its recommendation of disapproval within 15 working days of the review. Such a recommendation for disapproval is also sent within 15 working days to the Commissioner, ACYF. The Commissioner should be provided with a copy of the Report on State Eligibility, the letter to the State agency concerning the recommendation for disapproval and the Decision Table.

A letter will be sent from the Commissioner advising the State of the Region's recommendation and offering the State 15 days to send any pertinent information/documentation prior to making a final decision. The final decision will be made by the Commissioner, in consultation with appropriate Regional staff, and cleared by the Office of General Counsel. If the recommendation is upheld, a letter of disallowance will be sent from the Commissioner to the State. A copy of the disallowance letter will be forwarded to the Regional Office.

## **CASE RECORD SURVEY FORM**

### **REQUIREMENTS FOR AND CONVENTIONS USED IN THE CONDUCT OF THE CASE RECORD SURVEY**

## **CASE DATA**

### **Date of Placement:**

The Federal statute requires that the status of each child be reviewed no less frequently than once every six months and that dispositional hearings be held no later than 18 months after the original placement of the child. Therefore, correctly determining the date of original placement is a critical part of the review.

The regulations at 45 CFR 1356.21(f) define "original foster care placement" in terms of (1) the date of the child's most recent removal from his home and (2) placement into foster care (3) under the care and responsibility of the State agency. Therefore, the date of placement for purposes of determining timeliness of periodic reviews and dispositional hearings should be calculated according to the three synchronous factors listed above.

The date of placement is the date of the most recent placement prior to (or in) the fiscal year under review and will usually coincide with the date the child is removed from the home. For example, a child might be removed from his home and placed in emergency shelter although the court hearing granting the State agency custody is not held for 24 to 72 hours. The date the child was placed in the emergency shelter would be the date of placement if the State statute provides interim authority for the agency to remove a child in an emergency and gives the State responsibility for, or supervision of, the child until a hearing is held. If a State statute gives the court or another entity responsibility for the child until the hearing, the date of placement, for purposes of determining timeliness, would be the date of the hearing at which responsibility for placement and care was given to the State agency. This includes temporary responsibility. The State agency need not be given "custody" of the child. Federal law requires only that the State title IV-E/IV-B agency have the responsibility for the child's placement and care.

For a child who was removed from his home, placed in a detention facility, jail, State training school, mental hospital or other such facility (none of which are considered to be foster care) and later placed in foster care, the date of placement would be the date the child was placed in the foster family home, group home or child care institution under the responsibility of the State title IV-E/IV-B agency or another public agency with whom the State agency has an agreement.

### **Case Plan:**

A case plan must be developed for each child no later than 60 days after placement in foster care. The case plan must be a written document, which is a discrete part of the case record, and is available to the parents or guardian of the child. To verify that there is a written case plan under "Findings" on the Case Record Survey form, the reviewer must look for a case plan or case plan update (which may be the report to the court or administrative review panel for the periodic review) for each child for the year under review. If there is an identifiable case plan, but some of the required case plan elements are missing, the reviewer would mark the Survey Form as having met the requirement for a written case plan but the appropriate missing element(s) would be marked "No" under the 18 remaining protections. (At this time ACYF is not reviewing for the

requirement that the case plan be developed within 60 days of placement. Therefore, the reviewer would not fail the case if a case plan had not been developed within that timeframe.)

### **Periodic Reviews:**

Periodic reviews by a court of an administrative body, as defined in section 475(B) and (c)(6) of the Act, are required no less frequently than once every six months after the date of placement to determine the child's progress in care and to determine whether the case plan is being implemented. The review must consider such issues as the continuing necessity for and appropriateness of the placement, the extent to which services have been provided in accordance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating the placement in foster care. The review must also project a likely date by which the child may be returned home or placed for adoption or legal guardianship. Periodic reviews must be held for every child in foster care (including those in court-sanctioned long-term foster care or adoptive placements). There are no exceptions to this requirement.

If the six-month periodic review is a court review, a formal hearing is not required. It may consist of the judge's review of the case plan and agency's report or it may be a meeting in chambers of all parties. In reading the case record, a reviewer may find anything from a signed court order to the judge's signature and date reviewed on the agency's report to the court, either of which are acceptable and will verify that a periodic review was conducted by the court.

If the agency holds an administrative review, it must be conducted by a panel of persons at least one of whom is not responsible for the case management or delivery of services to the child or parents (the objective party). Administrative reviews must be open to the participation of the parents, unless parental rights have been terminated or their whereabouts remain unknown even after an attempt to locate them has been made.

If the periodic review is missing any of the required elements (such as participation open to the parents or the objective party participation on the panel, as required in an administrative review), it would still be counted as having been held but the appropriate missing element(s) would be marked "No" on the 18 remaining protections.

If the periodic review is a court review, reviewers may use the report to the court or the case plan in conjunction with any court documentation when validating the appropriate elements of the 18 remaining protections for the periodic review. If it is an administrative review, reviewers must use the document(s) identified by the State as its administrative review. Responses to the remaining safeguards should be limited to this document(s) and should be based on the last periodic review conducted during the fiscal year under review.

If a periodic review is not held, or is late, the reviewer may look to the proceedings of the dispositional hearing, if it was held within the timeframe needed for the periodic review, to determine if it could be considered as meeting the requirements for a periodic review. If it is necessary to substitute a dispositional hearing for a periodic review, the elements of a periodic review must still be addressed in the remaining protections.

Although both the dispositional hearing and the periodic review are part of the required case review system, these two requirements of the statute serve two distinctly different purposes. The purpose of the periodic review is to assess the child's case plan. These reviews assure that children in foster care are receiving appropriate attention and services, that cases are being properly managed, and that plans and activities are specifically directed towards a permanent placement for the child. The review must consider such issues as the continuing necessity for, and appropriateness of, the placement; the extent to which services have been provided in accordance with the case plan; as well as project a likely date by which the child may be returned home or placed for adoption or legal guardianship.

The dispositional hearing, on the other hand, is a procedural safeguard required by law which is to determine the future status of the child. That is, the dispositional hearing must determine whether the child should be returned to his parents, continued in foster care, placed for adoption, or some other permanent plan which must be made for the child.

Activities such as educational or medical staffings, when serving a singular and different purpose than the periodic review, do not meet the requirement for periodic reviews which are to determine the child's progress in foster care and to determine whether the child's foster care plan is being implemented. If, however, the State has defined such staffings in State policy to also cover the purpose of the foster care periodic review, these may be counted. State policy must make clear that these activities also include the requirements for the periodic review as defined in section 475(5)(B) of the Act.

**INITIAL REVIEWS:** To record dates for periodic reviews on the Case Record Survey sheet, an "N/A" would be applicable for the "Last P.R. Held in Prev. FY" since this is the first year the State has certified that it has met the requirements of section 427. In an Initial Review, if a review had been held anytime during the last seven months of the fiscal year under review, the periodic review requirement would be met. The one-month extension is not applied at the end of the fiscal year for Initial Reviews only.

**FIRST SUBSEQUENT REVIEWS:** If a child came into care during the fiscal year under review or less than seven months prior to the year under review, an "N/A" would be applicable for the "Last P.R. Held in Prev. FY" and the "Due" date would be six months after the date of placement. If the child came into care more than seven months prior to the fiscal year under review, the date of the last periodic review in the previous fiscal year would be recorded on the survey form and the date under "Due" would be six months after that date. Do not add the one-month extension under the "Due" column. The date under the "Held" column may be anytime within one month after the "Due" date. The next "Due" date would be six months from the date in the "Held" column.

If the last periodic review in the previous fiscal year was not held between 3/1 and 9/30 of that year, reviewers would then determine if a review had been held within the first three months of the year under review (three-month grace period -- 10/1 through 12/31). If a periodic review had been held between 10/1 and 12/31 of the fiscal year under review, the first periodic review requirement would be met. If not and the review is overdue, an "X" is marked under the "Held" column and the date the review was actually held is written in parenthesis beside the "X." The

periodic review requirement would not be met for such cases, even if the next periodic review is conducted within six months of the first review actually held in the fiscal year under review.

**SECOND SUBSEQUENT REVIEWS:** The periodic review requirement is the same as for the First Subsequent Review, with the exception that the three-month grace period is not applicable for second subsequent reviews. A periodic review must have been held between 3/1 and 9/30 of the previous fiscal year or on the first day (10/1) of the year under review. If not, the timeliness requirement is not met and the case fails.

**TRIENNIAL REVIEWS:** If a child came into care during the fiscal year under review or less than seven months prior to the year under review, an "N/A" would be applicable for the "Last P.R. Held in Prev. FY" and the "Due" date would be six months after the date of placement. If the child came into care more than seven months prior to the fiscal year under review, the date of the last periodic review in the previous fiscal year would be recorded on the survey form and the date under "Due" would be six months after that date. Do not add the one-month extension under the "Due" column. The date under the "Held" column may be anytime within one month after the "Due" date and the review will be considered timely. The next "Due" date would be six months from the date in the "Held" column. If a review is overdue, an "X" is marked under the "Held" column and the date the review was actually held is written in parenthesis beside the "X." The periodic review requirement would not be met for such cases.

If there was no periodic review held between 3/1 and 9/30 of the previous fiscal year and no periodic review was held on 10/1 of the year under review, any review in that year would be considered overdue and the case would not meet the requirement for timely periodic reviews.

### **Dispositional Hearings:**

Dispositional hearings must be held by a court or a court-appointed administrative body no later than 18 months after the placement of the child, and periodically thereafter (periodicity to be determined by the State) to determine the future status of the child.

A termination of parental rights hearing can be considered a dispositional hearing. Dispositional hearings are not required if a termination of parental rights is on appeal at the time a dispositional hearing is due since the outcome would affect whether the child could be placed for adoption, returned home or continued in foster care. Reviewers would mark "TPR on appeal" on the survey form and the requirement for dispositional hearing will have been met. Once the appeal is decided, the dispositional hearing should be held as soon as possible unless the decision adjudicates the future status of the child. All subsequent hearings must be held as appropriate.

There are two exceptions to the requirement for subsequent dispositional hearings. One is for children in court-sanctioned permanent foster care placements with specified families. The other is for children in adoptive placements awaiting finalization of adoption. To satisfy the requirement of a "court-sanctioned" long-term foster care arrangement with a specified family, the judge must specify the family with whom the child is to live. If, for instance, the report by the agency to the court recommends permanent foster care with the "Sam Smiths," and the court order states that the court is in agreement with the plan for the child, this would be acceptable. If

however, the court order only includes language to the effect that the child should remain in long-term foster care or remain in custody of the State agency until the age of majority, the order would not meet this requirement and future dispositional hearings must be held.

The dispositional hearing requirement as set forth in section 427(a)(2)(B) and defined in section 475(5)(C) relates to the child's status after placement. Such hearings should not be confused with court proceedings which may be called "dispositional hearings" by the court but which deal with the initial placement or custody of the child or other issues related to the removal from the home. The statute intends that the dispositional hearing make a determination of the child's future status at a reasonable period after placement and after the case plan has been in effect. The focus is on family reunification or other permanent placement to avoid unnecessary or excessively long foster care placement. Thus, the dispositional hearing is not simply any court activity that occurs after placement or simply a judicial review. It is a hearing specifically related to matters determining the future status of the child.

To satisfy the requirement that the first dispositional hearing be held no later than 18 months after placement, reviewers should select the hearing closest to the 18-month due date (plus a one-month extension) and pick up with the State's periodicity after that date.

**INITIAL REVIEWS:** To record dates for dispositional hearings on the Case Record Survey sheet, an "N/A" would be applicable for the "Last D.H. Held in Prev. FY(s)." If a child had been in care for less than 18 months, an "X" should be recorded under "Not Due." For children in care longer than 18 months, the one-month extension is added at the beginning of the State's periodicity. For instance, if the Initial 427 Review is for FY 1986 and the State's periodicity is 12 months, a dispositional hearing would be required between 8/31/85 and 9/30/86. Therefore, if a dispositional hearing is held anytime during the 13-month period before the end of the fiscal year under review, this requirement would be met.

**FIRST SUBSEQUENT REVIEWS:** If a child had been in care for less than 18 months prior to the end of the fiscal year under review, an "X" is recorded in the "Not Due" column. If a child had been in care longer than 18 months prior to the beginning of the fiscal year under review, the date of the last dispositional hearing held for the child prior to the fiscal year under review must be recorded on the survey form and the date under "Due" is counted from that previous dispositional hearing using the State's periodicity. Do not add the one-month extension in the "Due" date. The date under the "Held" column may be anytime within one month after the "Due" date. The next "Due" date would be the State's periodicity from the date in the "Held" column. If the length of time between the date of the last dispositional hearing and 10/1 of the year under review exceeds the State's periodicity by more than one month, the reviewers should determine if a dispositional hearing had been held within the first three months of the year under review (three-month grace period). If a hearing had been held between 10/1 and 12/31 of the fiscal year under review, the dispositional hearing would not be considered overdue. If another dispositional hearing is not due during the fiscal year under review, an "X" is recorded in the "Not Due" column. If a hearing is overdue, an "X" is marked under the "Held" column and the date actually held is written in parentheses beside the "X." The dispositional hearing requirement would not be met for such cases.

**SECOND SUBSEQUENT REVIEWS:** The dispositional hearing requirement would be the same as for the First Subsequent Review, with the exception that the three-month grace period is not applicable for Second Subsequent Reviews. If the length of time between the date of the last dispositional hearing held prior to the year under review and 10/1 of the year under review exceeds the State's periodicity by more than one month, the case does not meet the dispositional hearing requirement for the year under review.

**TRIENNIAL REVIEWS:** If a child had been in care for less than 18 months prior to the end of the fiscal year under review, an "X" would be recorded in the "Not Due" column. If a child had been in care longer than 18 months prior to the beginning of the fiscal year under review, the date of the last dispositional hearing held for the child prior to the fiscal year under review must be recorded on the survey form and the date under "Due" is counted from that previous dispositional hearing using the State's periodicity. Do not add the one-month extension in the "Due" date. The date under the "Held" column may be anytime within one month after the "Due" date and would still be considered timely. The next "Due" date would be the State's periodicity from the date in the "Held" column. If another dispositional hearing is not due during the fiscal year under review, an "X" is recorded in the "Not Due" column. If a hearing is overdue, an "X" is marked under the "Held" column and the date actually held is written in parentheses beside the "X." In these cases, the timeliness requirement is not met and the case fails.

If the length of time between the date of the last dispositional hearing held prior to the year under review and 10/1 of the year under review exceeds the State's periodicity by more than one month, the case does not meet the dispositional hearing requirement for the year under review.

**Conventions Used in Section 427 Reviews Applicable for Both Periodic Reviews and Dispositional Hearings:**

--During the Case Record Survey for Subsequent and Triennial Reviews, periodic reviews and dispositional hearings are considered timely if they are held on or before the same date in the month following the due date. For example, a review or hearing due February 14 must be held by March 14.

--In Subsequent and Triennial Reviews, if a periodic review or dispositional hearing is due, but not held, during September of the fiscal year under review, reviewers should look into the next fiscal year to determine if one was held within the one-month extension allowed. If it was not held, the case fails.

--When a dispositional hearing or periodic review is postponed, regardless of who requests the postponement, it cannot be counted as being held. If a dispositional hearing or periodic review begins (with all parties assembled) and the judge or head of the review panel grants a continuance, it may be counted as being held on the date everyone was assembled. The date on which the actual hearing or review is completed is the point from which to count towards the next hearing or review. The appearance before the judge of a guardian ad litem or an attorney for the parents, to request that the hearing be postponed until further documentation is received, would not constitute a continuance.

--Sometimes foster care placements may be interrupted if a child is returned home for a trial visit or runs away while in care. If the child is returned to foster care within six months, the placement is considered continuous and the requirements for periodic reviews and dispositional hearings will not change. If the child remains in his own home or continues in runaway status, he is not in foster care; therefore, the requirement for periodic reviews and dispositional hearings are no longer necessary. Any future placement would be a new placement and the time for counting dates for periodic reviews and dispositional hearings would begin anew.

## **DISCUSSION ON THE 18 REMAINING PROTECTIONS:**

The remaining protections must be verified for every record reviewed. If a case has failed based on one of the three major elements, the record must be reviewed for the remaining protections that it is possible to verify. For instance, if there is no case plan, the nine elements required for the case plan cannot be reviewed, but the reviewer should complete the verification of protections for the periodic review and other procedural safeguards. Then, following the on-site review, if the State provides the missing case plan, those elements can be reviewed and the findings on the appropriate 18 remaining protections completed without having to return to the State and re-review records for the other protections.

### **CASE PLAN (Protections 1 - 9):**

ACYF-PI-85-3 sets forth case plan requirements as they relate to section 427. Therefore, beginning with reviews for fiscal year 1986, these protections should be verified only from the document(s) the State has identified as its "case plan," which is also the document(s) made available to the parents. The reviewer may use a combination of an original case plan with the updated case plan for this information. If the information is not in the case plan document(s), the reviewer should not look to the narrative or other documentation to supplement the case plan and should mark "No" for this protection.

### **PERIODIC REVIEW (Protections 10 - 15):**

The six-month review may be acceptable in the form of either a court or an administrative review. If it is a court review, reviewers may use the report to the court in conjunction with any court documentation on the review to record compliance with these protections. If it is an administrative review, the State must identify the document(s) it considers to be the product of its administrative review. Verification of these protections should be limited to this documentation and should be based on the last periodic review in the fiscal year under review.

### **OTHER PROCEDURAL SAFEGUARDS (Protections 16 - 18):**

Verification of these protections may be found in documentation in the record; i.e., court documentation, reports to the court, correspondence to the parents, running narrative, etc.

## **STATUTORY/REGULATORY/POLICY CITATIONS**

### **STATUTORY CITATIONS**

Section 427 of the Social Security Act (the Act)

Section 475 (1) and (2), (5)(A)(B)(C) and (6) of the Act

#### REGULATORY CITATIONS

45 CFR 1355.20, 1356.21(d)(1)-(5), (e)(1) and (2) and (f), 1356.70, and 1357.25

#### POLICY CITATIONS

ACYF-PIQ-88-01, dated 1/13/85  
ACYF-PIQ-85-08, dated 9/23/85  
ACYF-PIQ-85-06, dated 6/5/85  
ACYF-PIQ-85-05, dated 4/12/85  
ACYF-PIQ-84-08, dated 12/27/84  
ACYF-PIQ-84-07, dated 11/7/84  
ACYF-PIQ-83-09, dated 12/14/83  
ACYF-PIQ-83-06, dated 11/4/83  
ACYF-PIQ-82-12, dated 7/12/82  
ACYF-PIQ-82-11, undated  
ACYF-PIQ-82-05, dated 3/8/82  
ACYF-PIQ-82-01, dated 1/19/82  
ACYF-PIQ-81-01, dated 10/20/81  
ACYF-PA-87-02, dated 6/1/87

ACYF-PI-86-03, dated 8/19/86 (replaces Attachment II of PI-85-02)  
ACYF-PI-85-03, dated 3/14/85  
ACYF-PI-85-02, dated 1/29/85  
ACYF-PI-82-06, dated 6/1/82

ACYF-IM-87-31, dated 10/22/87

**TO:** Frank Dell'Acqua  
Assistant General Counsel  
Office of General Counsel

**Through:** G. Barry Nielsen, Director  
Office of Policy, Planning and Legislation

**FROM:** Commissioner, Administration for Children, Youth and

Families

**SUBJECT:** Section 427 Review Handbook

Attached is a draft Section 427 Review Handbook that has been developed to assist Regions in the conduct of section 427 reviews and to assure consistency in reviewing practices nationwide.

Should you have any questions concerning the proposed handbook, you may contact Donna Milligan at 755-7447.

Dodie Truman Borup

**Attachment**

POD/DMilligan/4/26/88: document #0694, pg. 40

**STATUTORY AND REGULATORY CITATIONS**

**STATUTORY CITATIONS**

Section 427 of the Social Security Act (the Act)  
Section 475(l) and (2), (5)(A)(B)(C) and (6) of the Act

**REGULATORY CITATIONS**

45 CFR B55.20, B56.21(d)(1)-(5), (e)(1) and (2) and (f), B56.70 and B57.25