

GLENN A. GRANT
Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037 njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

DIRECTIVE #20-23
(Supersedes Directive #03-22)

Questions may be directed to the
Family Practice Division at
609-815-2900, ext. 55350.

**TO: Assignment Judges
Trial Court Administrators****FROM: Glenn A. Grant, Administrative Director****SUBJECT: Family - Children in Court (CIC) -- Revised Benchmark Hearings
Protocol and Checklist****DATE: November 13, 2023**

This Directive supersedes Directive #03-22 and promulgates for statewide use an updated protocol and checklist as approved by the Judicial Council for use when conducting a benchmark hearing for youth in placement. The protocol and checklist are to be used when older youth have been placed outside of their homes by the Division of Child Protection and Permanency (DCP&P). The updated protocol reflects the following changes:

- Revisions in support of fairness and equity;
- A benchmark hearing is to occur after the fact-finding hearing;
- Benchmark hearings are to be scheduled in the FC docket;
- A transcript of the benchmark hearing can be provided to the attorneys on request;
- Discussion of the litigation is not to take place during the benchmark hearing; and
- The format of the benchmark hearing is similar to an *in camera* proceeding.

The benchmark hearing checklist was updated to conform to the revisions to the protocol.

The benchmark hearing is a youth-centered event that enables older youth in placement to have a direct conversation with the judge to identify and develop strategies to ensure that the youth's needs are addressed in a timely manner. A successful benchmark hearing requires a free-flowing, substantive conversation between the youth and the judge, resulting in the identification of specific measures to help the youth achieve their goals.

The attached revised protocol sets forth the purpose of the benchmark hearing and provides guidance on case selection, scheduling of the benchmark hearing, necessary and discretionary hearing participants, noticing methods, information that should be reviewed by the court to prepare for the hearing, and the hearing process. The attached checklist is a form to be completed by the youth's DCP&P caseworker to provide to the court two weeks before the benchmark hearing.

The attached revised benchmark hearings protocol and revised checklist will go into effect on January 1, 2024, to allow time for the vicinage court staff to coordinate with their respective DCP&P local offices.

Attachments

cc: Chief Justice Stuart Rabner
Family Presiding Judges
Christine Norbut Beyer, DCF Commissioner
Attorney General Matthew J. Platkin
Public Defender Joseph E. Krakora
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Special Assistants to the Administrative Director
David Tang, Chief, Family Practice Division
Family Division Managers and Assistant Division Managers
Jacqueline Augustine, Assistant Chief, Family Practice Division

Benchmark Hearing Protocol (Revised)

The New Jersey Judiciary has recognized the value of providing children who are the subject of a child protection action the opportunity to attend or participate in court proceedings connected to their cases. There are unfortunately a number of cases where the child will be in the long-term custody of the State and the trial court serves as the final decision-maker on the child's placement. In this *parens patriae* role, the trial judge acts in many ways as the surrogate parent for the child. The determination of where the child lives and with whom, custody status, and educational plans are just some of the critical life decisions made by our judges. Similar to our own children, youth are very focused on their journey to adulthood, and judges have a special obligation and responsibility to fulfill this parental role. Benchmark hearings are but one small step in fostering the relationships needed for a child's successful maturation and success. The benchmark hearing serves an opportunity to view these children as more than just a case number or file. It is a chance to get to know the child's desires, aspirations, and concerns for their future.

The benchmark hearing is for youth in placement. Its purpose is for older youth in placement, particularly those who have been in placement for several years or who are in an independent living situation to discuss the present and the future. The desired goal is for the judge to have a direct conversation with the youth and go beyond the formality of a court hearing. The goal is to listen and learn the child's needs. The judge can then help ensure that those needs are addressed in a timely manner. The benchmark hearing is a youth-centered event which shall be scheduled by the court. Its success depends on a free-flowing, substantive conversation between the youth and the judge, and identification of specific measures to help the youth meet their identified goals.

The youth, with the help of the law guardian, will initially identify the issues to be addressed and the individuals who should attend the hearing. The youth should be encouraged to identify a supportive individual(s) ("support person") (e.g., a coach, mentor, teacher or kin) who will then be invited to attend the hearing. A parent may attend the hearing if the youth so chooses. The youth and the law guardian must attend the hearing. The caseworker may also attend at the discretion of the youth. The youth also determines whether they want the resource parent(s) and/or members of their birth family at the hearing.

Ideally, benchmark hearings should be held for youth at the following five (5) intervals:

- Youth between the ages of 11 and 14, at the discretion of the court, who have been in an out of home placement for one or more years,
- Age 15,
- Age 16,
- Age 17, and
- Ages 18-20.

The hearing is to be held after a fact-finding hearing in the FN docket. Court staff should monitor reports to determine the number of youth who meet the eligibility criteria. Judges shall conduct benchmark hearings for all eligible youth.

*A **Benchmark Hearing Checklist*** is available to inform the judge about the youth's current situation. Questions contained in the checklist represent basic background information that the Division of Child Protection and Permanency (DCP&P) caseworker should know for each youth or be in the process of updating during the course of normal casework.

The checklist shall be completed by the youth's caseworker and filed with the court at least two weeks prior to the hearing. If a DCP&P caseworker has completed an assessment of the youth's strengths and needs, a copy of that assessment shall be forwarded to the court with the checklist. In preparation for the benchmark hearing, the court may also consider any court reports submitted by a Court Appointed Special Advocate (CASA).

Case Selection

The benchmark hearing shall be scheduled in cases after the fact-finding hearing has occurred. Youth between the ages of 11 and 14 who have been in placement for one year or longer and youth aged 15, 16 & 17 should be scheduled for a benchmark hearing. Youth between the ages of 18 and 20 should also be scheduled for a benchmark hearing with a focus on housing, post-secondary education, and employment. This includes youth residing in group homes, shelters, and treatment resource homes. The decision to schedule a benchmark hearing for youth residing in a residential treatment center shall be made on a case-by-case basis.

If there is an objection to the scheduling of a benchmark hearing, it shall be filed in writing with the court no later than two weeks prior to the hearing, with a copy to

all counsel, and include the reason for the objection. Judges may, at their discretion, refrain from holding benchmark hearings for good cause shown, or if the hearing would be detrimental to the youth, and the decision shall be placed on the record.

Scheduling

Benchmark hearings are to be scheduled only in the FC docket. Scheduling in the FC docket is consistent with the philosophy that the benchmark hearing is not to address litigation issues and ensures statistical accuracy.

Family court staff should identify youth between the ages of 11 and 14 (and who have been in placement more than one year) or ages 15 through 20 during the calendar year. The list of eligible youth should be provided at least every six months to the Judge, DCP&P, and the law guardian.

The date for the benchmark hearing may be selected at a court event. At ***least six weeks*** advance notice of the hearing date should be provided. The benchmark hearing should be scheduled to minimize school disruption.

Benchmark hearings held during child protection litigation (FN docket) shall be held only after the fact-finding has occurred.

If DCP&P already has guardianship of the youth, the court may determine on a case-by-case basis whether to schedule a benchmark hearing.

Although the benchmark hearing shall be scheduled in the FC docket, all parties are to be notified that the hearing has been scheduled if there is active litigation in the FN or FG dockets. (See Noticing section below).

Participants

Given the purpose of the benchmark hearing, i.e., a free-flowing conversation between the youth and the judge about the youth's goals and needs, participation of all adults involved in the case and counsel is not needed.

The youth shall participate. DCP&P shall be responsible for ensuring the youth's attendance at the hearing.

The youth's law guardian shall attend the hearing.

Support person(s) identified by the youth (e.g., coach, teacher, kin) will be invited by the caseworker to attend the hearing. The law guardian will help the youth identify the support person whom the youth wants present at the hearing. Persons who could upset or inhibit the youth would undermine the purpose of the hearing and should be excluded at the discretion of the judge.

The youth's caseworker may be invited to attend the hearing at the discretion of the youth.

If there is a CASA assigned to the case, the CASA may also be invited to attend the hearing at the discretion of the youth.

Counsel who are not invited by the youth to attend the benchmark hearing may request and obtain a copy of the recording under protective order. The benchmark hearing is unrelated to the child protection (FN docket) or guardianship (FG docket) litigation, and thus the benchmark hearing is not to be included in an appeal of those matters.

Noticing

For benchmark hearings that are scheduled at a court event (e.g., a compliance review), the attorneys, parties present and CASA will receive notice of the benchmark hearing date in court. The judge can respond to any questions regarding the purpose of the hearing at that time. If the caseworker is not present at the court event, the DAG will be responsible for advising the caseworker of the benchmark hearing date. Court staff will notify the attorneys, parties and CASA (if appointed) of benchmark hearings that are not scheduled at a court event.

The parents and their attorneys only participate in the hearing if invited by the youth. If the birth parents are not present when the benchmark hearing is scheduled, their attorneys shall be responsible for advising the parents that a benchmark hearing is being scheduled.

If a CASA is not yet assigned to the case when the benchmark hearing is scheduled, the court shall include the benchmark hearing date in the order assigning the CASA to the case.

Law Guardian & DCP&P Collaboration

The law guardian shall be in contact with the youth to work with them to identify the support person(s) who will be invited to the hearing.

At least three weeks prior to the benchmark hearing date, the law guardian should provide the court with the name, address, email address, and telephone (home, work, and/or cell) number of the support person(s) whom the youth wants at the hearing.

Any assessment previously completed for the youth should be forwarded to the court, with copies to the law guardian, caseworker, and CASA if one is assigned. If a CASA is already assigned to the case, the CASA volunteer can assist the caseworker in completing the checklist.

Benchmark Hearing Checklist

The caseworker should complete the Benchmark Hearing Checklist. If the placement is provided through an agency contract, the DCP&P caseworker can seek assistance from the contract provider to complete the checklist. Other professionals working with the youth (such as therapists, psychiatrists, etc.) should also be contacted for updated information sought in the checklist. If a CASA is already assigned to the case, the CASA volunteer can assist the caseworker in completing the checklist.

DCP&P shall email the completed Benchmark Hearing Checklist to court staff in the CIC unit at least two weeks prior to the hearing date for review by the judge and shared with the law guardian.

Hearing Process

Upon receipt of the hearing notice, the caseworker shall attend to the requirements of this protocol by noticing the individuals whom the youth requests to be present.

The hearing shall be conducted in the courtroom or in chambers, at the discretion of the judge. The benchmark hearing shall be recorded, and conducted in the same manner as an *in camera* review to promote an open discussion with the youth. The judge is encouraged to come down from the bench and engage in real conversations with the youth.

The court shall advise all participants at the beginning of the benchmark hearing that the hearing is confidential and is being recorded.

Since the hearing is a conversation between the youth and the judge, the youth can be encouraged to identify the issues they want to discuss with the judge. The judge will also identify issues that need to be addressed. Other parties present can identify other issues they would like to be discussed. The conversation in the benchmark hearing shall not include topics directly related to the litigation (i.e., the allegations of abuse or neglect and/or termination of parental rights). Judges are the substitute parental decision-makers, and the expectation is that the conversation will be similar to ones they would have with their own children or relatives. Similarly, judges should explore ideas or strategies to reward the youth for positive behavior, such as improved grades, achieving short-term goals, or other positive actions.

The terms of any agreement made as a result of the benchmark hearing need not be put in writing. Any new information resulting from the benchmark hearing, such as a goal change, should be provided to DCP&P to address if necessary.



New Jersey Judiciary
Benchmark Hearing Checklist

☐ Ages 11-14 (if in foster care for one or more years)

☐ Age 15

☐ Age 16

☐ Age 17

☐ Ages 18-20

Name of Youth

Related FN/FC/FG docket numbers

Has a fact-finding hearing occurred in the FN docket? ☐ Yes ☐ No
(If no, a benchmark hearing shall not be scheduled until after the court has entered an FN fact-finding order.)

Was Guardianship awarded? ☐ Yes ☐ No
If yes, indicate date _____ and docket number: _____.

Permanency

1. What is the permanency goal?
 - ☐ Reunification with parent or relative
 - ☐ Adoption
 - ☐ Kinship Legal Guardianship
 - ☐ APPLA - Other Long Term Specialized Care
 - ☐ APPLA - Independent Living (under 18)
 - ☐ APPLA - Individual Stabilization (18+)
 - ☐ Long-term custody with a relative
2. What needs to be done to achieve this goal?

3. What is the youth's placement history? (Indicate date of each placement)

4. If the youth is in a residential placement:
Identify the reasons for continuing the residential placement and provide a discharge date (if known):

Youth: _____

Identify what the residential program is providing to allow this particular youth to move to a less restrictive setting:

What is the time frame for moving the youth to a less restrictive setting?

5. Are there problems with the placement? ☐ Yes ☐ No
If yes, describe the problems in detail.

6. Is the youth receiving life skills training? ☐ Yes ☐ No
7. What are the youth's future goals?

8. If the permanency plan is Independent Living/Individual Stabilization, what does the youth, given the permanency plan and individual needs, require to become an independent, productive adult?

9. Are there barriers to obtaining the youth's goals? ☐ Yes ☐ No
If yes, describe.

10. What is the youth's immigration status?

11. If the youth is not a US citizen, what, if anything, is being done to assist the youth regarding their immigration status?

12. Does DCP&P have the youth's
birth certificate? ☐ Yes ☐ No
social security card? ☐ Yes ☐ No

Youth: _____

Education

13. In what school district is the youth currently registered and what school does the youth attend? (Attach most recent report card.)

14. Who has attended the parent/teacher conferences in this school year, or the last two marking periods, for the youth?

15. Are there problems, other than academic, at school, *e.g.*, bullying, extracurricular activities, etc.?

☐ Yes ☐ No

If yes, describe.

16. Has the youth been suspended or expelled from school?

☐ Yes ☐ No

If yes, describe.

17. Is the youth involved in any school-related extracurricular activities?

☐ Yes ☐ No

If yes, describe.

Transition Planning Issues

18. a. What is the youth's expected date of graduation? _____

b. Will the youth graduate on time?

☐ Yes ☐ No

c. What are the youth's realistic options regarding future educational plans?

19. Has the youth taken the PSATs, SATs, ACTs, or other college entrance exam?

☐ Yes ☐ No

If college does not appear to be a realistic option, answer questions 20 through 22.

If college is an option, skip to question 23.

20. Is the youth in a vocational program?

☐ Yes ☐ No

If not, should they be in one?

☐ Yes ☐ No

List any job history.

21. Does the youth have any vocational interests? ☐ Yes ☐ No

If yes, explain what has been done to foster the youth's interests.

22. What other opportunities will the youth be pursuing?

23. a. Does the youth need to take the GED Test? ☐ Yes ☐ No

b. Does the youth understand the process to take the GED Test? ☐ Yes ☐ No

c. Does the youth need GED prep classes? ☐ Yes ☐ No

d. Does the youth need assistance in paying for the GED prep classes or for the GED Test if there is a fee? ☐ Yes ☐ No

24. Where does the youth plan to reside?

Health

Physical Health

25. Does the youth have a Medicaid card? ☐ Yes ☐ No

26. Has the youth had a recent physical? ☐ Yes ☐ No

27. Does the youth have any ongoing physical health issues? ☐ Yes ☐ No

If yes, describe.

28. Does the youth have any special needs? ☐ Yes ☐ No

If yes, describe how these needs have been addressed.

Mental Health

29. Has the youth received a psychological evaluation? ☐ Yes ☐ No

If yes, when? _____

30. Has the youth received a psychiatric evaluation? ☐ Yes ☐ No

If yes, when? _____

31. Has the youth received any therapy/counseling? ☐ Yes ☐ No
If yes, what type? _____
How often? _____
Is therapy still recommended to continue? ☐ Yes ☐ No
32. Are more services needed? ☐ Yes ☐ No
If yes, explain what services are needed and why.

33. Is the youth prescribed any psychotropic medication? ☐ Yes ☐ No
If yes, provide names of medications, dosage, and frequency.

34. Is the youth taking their prescribed medication? ☐ Yes ☐ No
If no, explain why.

Social Development

35. What best describes the youth's social development? (Check one)
☐ On a healthy social development pathway.
☐ Having some minor problems with their social development.
☐ Having some moderate problems with their social development.
☐ Experiencing severe disruptions in their social development.
36. Describe positive indicators:

37. Describe main concerns:

38. Is or has the youth been involved in any juvenile delinquency proceedings? ☐ Yes ☐ No
If yes, what is the status?

39. Does the youth have a mentor? ☐ Yes ☐ No
If yes, describe the relationship.

Recreation

40. Is the youth involved in any recreational activities? ☐ Yes ☐ No
If yes, what are they?

If no, are they interested in being involved in any? ☐ Yes ☐ No
If yes, describe.

Developmental

41. Does the youth have any developmental issues? ☐ Yes ☐ No
If yes, provide details.

42. Does the youth have any disabilities? ☐ Yes ☐ No
If yes, has an SSI application been filed? ☐ Yes ☐ No
43. Does the youth have any special needs for which the youth may need or benefit from DDD or DVR services? ☐ Yes ☐ No

Additional Questions for Youth Ages 18 through 20

44. Does the youth presently have sufficient housing arrangements? ☐ Yes ☐ No
Explain.

45. Does the youth have any immediate post-secondary education or vocational plans? ☐ Yes ☐ No
Explain.

46. What is youth's employment plan/goals?
