

**State of Kentucky  
Primary Review  
Title IV-E Foster Care Eligibility  
Report of Findings for  
April 1, 2010 – September 30, 2010**

**Introduction**

During the week of January 24, 2011, the Children’s Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State’s title IV-E foster care program. The review was conducted in collaboration with the State of Kentucky’s Department for Community-Based Services (DCBS) and was completed by a review team comprised of representatives from the State agency, CB Central and Regional Offices, ACF Regional Grants Management, and peer reviewers from the States of Alabama and Georgia.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the Kentucky Department for Community-Based Services’ title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the Act); and (2) to validate the basis of the State’s financial claims to ensure that appropriate payments were made on behalf of eligible children.

**Scope of the Review**

The primary review encompassed a sample of the State’s foster care cases that received a title IV-E maintenance payment during the six-month period under review (PUR) of April 1, 2010 through September 30, 2010. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of 77 cases from the original sample and three (3) cases from the over-sample.

In accordance with Federal provisions at 45 CFR 1356.71, the State was reviewed against the requirements of title IV-E of the Act and Federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(1) and (2), and (c), respectively;
- Voluntary placement agreements as set forth in §472(a)(2)(A) and (d)-(g) of the Act and 45 CFR §1356.22;
- Responsibility for placement and care vested with State agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the State plan in effect July 16, 1996 as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v);

- Placement in a licensed foster family home or child care institution as defined in §472 (b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child’s foster care placement as required at 45 CFR §1356.30.

The case file of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider’s file also was examined to ensure the foster family home or childcare institution where the child was placed during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child also were reviewed to verify the expenditures were allowable under title IV-E and to identify underpayments that were eligible for claiming.

**Compliance Finding**

The review team determined that 62 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Eighteen (18) cases were determined to be in error for either part or all of the PUR and one (1) non-error case was ineligible for Federal funding for a period of claiming. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs associated with the 18 error cases and the one (1) non-error case with ineligible payments, are being disallowed. Because the number of cases in error is greater than four (4), the Kentucky Department for Community-Based Services is found not to be in substantial compliance for the PUR.

**Case Summary**

The following charts record the 18 error cases; the one (1) non-error case with ineligible payments; reasons for the improper payments; improper payment amounts; and Federal provisions for which the State did not meet the compliance mandates.

**Error Cases**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Maintenance Payments (FFP)</b>	<b>Administrative Costs (FFP)</b>
KY #9	Valid removal of the child had not occurred during the most recent foster care episode. The physical removal from the home did not coincide with the judicial ruling authorizing the child’s removal from the home. [45 CFR § 1356.21(k)(2)]. Ineligible Payment Period: 05/13/08 – 09/30/10. The child is ineligible for the entire foster care episode.	\$17,426	\$5,127
KY #15	The AFDC requirement of a child being removed from the home of a specified relative was not met. [§472(a)(1) and (3) of the Act; 45 CFR §1356.71(d)(1)(v)].	\$19,036	\$4,299

	Ineligible Payment Period: 03/01/08 – 09/30/10 The child is ineligible for the entire foster care episode.		
KY #19	Judicial determination of contrary to the welfare was not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(c)]. Ineligible Payment Period: 04/16/10 – 04/28/10 The child is ineligible for the entire foster care episode.	\$141	\$85
KY #23	Safety requirements for foster care provider were not met. [45 CFR §1356.30]. Ineligible Payment Period: 04/01 – 05/31/10	\$2,020	\$423
KY #27	Safety requirements for foster care provider were not met. [45 CFR §1356.30]. Ineligible Payment Period: 09/01 – 09/30/10	\$1,331	\$212
KY #28	Judicial determination of contrary to the welfare was not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(c)]. Ineligible Payment Period: 05/13/10 – 05/16/10 The child is ineligible for the entire foster care episode.	\$106	\$27
KY #29	Judicial determination of contrary to the welfare was not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(c)]. Ineligible Payment Period: 04/01/01 – 10/31/10 The child is ineligible for the entire foster care episode.	\$95,401	\$20,993
KY #39	Judicial determination of contrary to the welfare not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(c)]. Ineligible Payment Period: 08/02/10 – 10/31/10 The child is ineligible for the entire foster care episode.	\$1,066	\$633
KY #40	Safety requirements for foster care provider were not met. [45 CFR §1356.30]. Ineligible Payment Period: 04/01/10 – 05/31/10	\$1,573	\$423
KY #46	Judicial determination of reasonable efforts to finalize the permanency plan was not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(2)]. Ineligible Payment Period: 09/01/10 – 09/30/10	\$794	\$212
KY #49	Judicial determination of reasonable efforts to finalize the permanency plan was not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(2)]. Ineligible Payment Period: 09/01/10 – 09/30/10	\$1,174	\$212

KY #53	Safety requirements for foster care provider were not met. [45 CFR §1356.30]. Ineligible Payment Period: 12/30/09 – 06/30/10	\$4,524	\$1,282
KY #54	Judicial determination of contrary to the welfare not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(c)]. Ineligible Payment Period: 05/20/03 – 06/22/10 The child is ineligible for the entire foster care episode.	\$50,711	\$14,839
KY #56	Judicial determination of contrary to the welfare not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(c)]. Ineligible Payment Period: 08/18/10 – 10/31/10 The child is ineligible for the entire foster care episode.	\$1,573	\$523
KY #70	Safety requirements for foster care provider were not met. [45 CFR §1356.30]. Ineligible Payment Period: 04/26/10 – 06/30/10	\$1,156	\$459
KY #71	Safety requirements for foster care provider were not met. [45 CFR §1356.30]. Ineligible Payment Period: 02/13 – 04/27/10	\$1,363	\$522
KY #75	Safety requirements for foster care provider were not met timely. [45 CFR §1356.30]. Ineligible Payment Period: 06/01 – 07/31/10	\$1,068	\$423
KY #76	Judicial determination of contrary to the welfare not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(c)]. Ineligible Payment Period: 04/01/10 – 09/30/10 The child is ineligible for the entire foster care episode.	\$5,356	\$1,269

Total: Admin \$205,819  
 Maint \$51,963  
**\$257,782**

**Non-error Cases with Ineligible Payments**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
KY #83	Judicial determination of reasonable efforts to finalize the permanency plan was not attained. [§472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(2)] Ineligible Payment Period: 10/01/10 – 10/31/10	\$910 Maint. \$216 Admin.

Total: **\$1,126**

## **Areas in Need of Improvement**

The findings of this review indicate that the State needs to further develop and implement procedures to improve program performance in the following areas. For each issue, there is a discussion of the nature of the area needing improvement, the specific title IV-E requirement to which it relates, and the corrective action the State should undertake.

Issue #1: Lack of Judicial Determinations Regarding Contrary to the Welfare. Seven (7) cases were in error because the judicial requirement of “contrary to the welfare” was not satisfactorily met. The judicial determination must be made in a valid court order that includes language to the effect that the required finding is rendered. For a judicial removal, there must be a determination to the effect that continuation in the home would be contrary to the child’s welfare, or that placement is in the child’s best interest.

Title IV-E Requirement: For a child who is judicially removed and placed in foster care, Federal provisions at §471(a)(15)(B)(i); §472(a)(1); and 45 CFR §1356.21(c) require the State to obtain a judicial determination of “contrary to the welfare.” A child’s removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest of the child. For a child judicially removed on or after March 27, 2000, the contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care. The judicial determination must be made in a valid court order. For title IV-E eligibility purposes, a court order is considered valid if it is considered valid under the State’s statutes governing the court procedures and types of court orders.

Recommended Corrective Action: The State should continue to develop and implement procedures to ensure timely judicial determinations of “contrary to the welfare.” The accuracy and reliability of eligibility determinations generally are increased through training of the judiciary and other court officials to correct delays in judicial findings, as well as to secure court orders that reflect title IV-E criteria on legal authority, best interests and reasonable efforts. Staff training will help to ensure that workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements.

Issue #2: Timeliness of Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. Two (2) cases were in error and one (1) non-error case had ineligible payments because the judicial requirement of “reasonable efforts to finalize a permanency plan” was not satisfactorily met. Kentucky, like most States, incorporated the Federal requirement for a judicial determination of “reasonable efforts to finalize a permanency plan” into its court proceeding for the 12-month permanency hearing. However, if the permanency hearing is delayed or the court order does not contain the required determination, the State does not meet the requirements of Federal regulation. In most cases in the review sample, during the period

under review court orders contained a definitive finding regarding reasonable efforts to finalize the permanency plan.

In some court orders reviewed, the documentation of judicial determinations on reasonable efforts to finalize the permanency plan had very little information about the work the agency was doing to achieve the permanency goal for the child. There were some court orders that were not child-specific and lacked facts for which judicial determinations were made to establish permanency goals.

Title IV-E Requirement: For a child who is judicially removed and remains in foster care for 12 months or more, Federal provisions at §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(2) require the State to obtain a judicial determination of whether the State made “reasonable efforts to finalize a permanency plan” for the child. The judicial finding must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from the month in which the prior determination is obtained. If the judicial determination of “reasonable efforts to finalize” is not made or is not timely, the child becomes ineligible from the beginning of the first month after it is due and remains ineligible until the month the judicial determination is made.

Recommended Corrective Action: To address the delays in permanency hearings and the lack of determinations required under title IV-E in court orders, we recommend that the Department of Community-Based Services and the Administrative Office of Courts (AOC) make a joint effort to make improvements. These efforts can consist of quarterly reports, by county, that provide information such as: court orders that do not contain the required findings, delays in permanency hearings that create untimely judicial findings and court continuances that significantly delay decisions about achieving placement stability and permanency for a child. These issues could be addressed at Department of Community-Based Services and AOC meetings, as well as in trainings for judges and attorneys. The requisite judicial determination need not be tied to a permanency or other court hearing. The judicial determination may be rendered by the court at any point during the 12-month period. The State should continue to develop and implement procedures to ensure timely judicial determinations of “reasonable efforts to finalize the permanency plan” regardless of the timing of the permanency hearing.

The accuracy and reliability of eligibility determinations generally are increased through training of the judiciary and other court officials to correct delays in judicial findings, as well as to secure court orders that reflect title IV-E criteria on legal authority, best interests, and reasonable efforts. Staff training will help to ensure that workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements.

Issue #3: Safety Requirements of Provider: Seven (7) cases were in error because the safety requirements pertaining to the caregiver staff of the childcare institutions where the child was placed during the PUR had not been completed timely. The foster care provider was re-approved without receipt of central registry and/or criminal records checks on some of the staff. This was found during the review not to meet Federal safety requirements since the Kentucky Department of Community-Based Services’ licensing requirements state that “Staff shall (1) submit to a

criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470; and (2) staff shall submit to a new criminal background check in accordance with KRS 17.165 and central registry check in accordance with 922 KAR 1.470 once every two (2) years.”

**Title IV-E Requirement:** As required by 45 CFR 1356.30(f), in order for a child placed in a childcare institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed in accordance with the requirements of the State where the childcare institution is located.

**Recommended Corrective Action:** The State must ensure that files in the childcare institutions contain documentation related to the safety consideration of all staff as required by State policy and required to verify eligibility for funding under title IV-E. In addition, we suggest that the State establish a procedure to regularly monitor the child care institutions’ timely implementation of background checks for their staff in accordance with State requirements.

### **Strengths and Promising Practices**

The following positive practices and processes of the title IV-E foster care eligibility program were observed during the review. These approaches seem to have led to improved program performance and successful program operations in the identified areas.

**Automated Eligibility Determinations:** Kentucky’s DCBS has improved its process in determining title IV-E eligibility through the automated data system, TWIST, which is the State’s information system for child welfare. TWIST facilitates timely eligibility decisions and tracks eligibility throughout the foster care episode. The system interfaces with the Kentucky Automated Management and Eligibility Systems (KAMES). This is the TANF, Food Stamps and Medicaid eligibility system and allows for the automated verification of family income and receipt of benefits.

**Licensing and Criminal Records Checks:** The Office of Inspector General (OIG), which licenses child-placing and childcare institutions, has developed a detailed, compliance driven process that includes a tracking system to ensure that licenses are renewed timely. The licensing process was clearly documented and the licenses for the foster care providers were available in the case records. If the Agency is not in compliance for re-licensing, a detailed corrective action plan is developed describing each discrepancy and timeframe for completion. In addition, the re-licensing process starts three (3) months prior to expiration to ensure timely renewal. The criminal record checks were sufficiently documented and the safety-related requirements were met for the children in the sample who were in foster family homes during the PUR. As noted above, however, seven (7) cases were identified with improper payments pertaining to safety concerns for childcare institutions. The State should continue to improve its process for ensuring the safety requirements are met for all children, including those placed in childcare institutions.

## **Additional Comments**

We certainly wish to recognize the exemplary work done by Ms. Renee Close, Ms. Melissa Humphrey, Ms. Jennifer Blair, and other State agency staff in preparation for, as well as in the conduct of, the review. The organization and completeness of the eligibility case documentation and their technical assistance during the review enabled us to complete the review in the most efficient and orderly manner.

## **Disallowances**

A disallowance in the amount of \$205,819 in maintenance payments and \$51,963 in related administrative costs of Federal financial participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$910 in maintenance payments and \$216 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error case. The total disallowance as a result of this review is \$258,908 in FFP. The State also must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

## **Next Steps**

As noted earlier, CB has determined that the Kentucky Department for Community-Based Services' foster care program under title IV-E was found not to be in substantial compliance with Federal eligibility requirements for the PUR. DCBS, therefore, is required to develop a Program Improvement Plan (PIP) pursuant to 45 CFR 1356.71(i) in order to correct those areas needing corrective action as identified in this report.