

**State of New York
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
October 1, 2008-March 31, 2009**

Introduction

During the week of August 31, 2009, 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 New York State (NYS) Office of Children and Family Services (OCFS) and was completed by a review team comprised of representatives from NYS OCFS, NYS local social service districts (Albany, Chemung, Delaware, Essex, Genesee, NYC, Niagara, and Steuben), CB Central and Regional Offices, ACF Regional Grants Management, peer reviewers from New Jersey and Utah and an observer from the St. Regis Mohawk Tribe.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether NYS OCFS' 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 6-month period under review (PUR) of October 1, 2008 through March 31, 2009. A computerized statistical sample of 110 cases (80 cases plus 30 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 78 cases from the original sample plus 2 oversample cases. Two cases, samples #57 and #72, were excluded from the original sample because no title IV-E foster care maintenance payment was made during the PUR. The State provided documentation to support excluding these cases from the review sample and replacing them with cases from the oversample.

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.

A case folder of each child in the selected sample was reviewed to verify title IV-E eligibility. Foster care provider’s documents were also 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. A sample case was assigned an error rating when the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was paid. A sample case was cited as non-error with ineligible payment when the child was not eligible on the activity date outside the PUR or the child was eligible in the PUR on the service date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity. CB and the State agreed that the State would have until September 16, 2009 to submit additional documentation for a case that during the onsite review was identified as in error, in undetermined status, or not in error but with ineligible payments. OCFS submitted additional documentation for case samples #58 and #61. Based on the supplemental documentation, both error cases were changed to non-error.

Compliance Finding

The review team determined that 78 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Two (2) cases were determined to be in error for either part or all of the PUR and fifteen (15) non-error cases were 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 error cases and non-error cases with ineligible payments, are being disallowed. Because the number of cases in error is fewer than four (4), NYS OCFS is found to be in substantial compliance for the PUR.

Case Summary

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

Error Cases

| Sample Number | Improper Payment Reason & Ineligibility Period | Improper Payments (FFP) |
|----------------------|---|----------------------------------|
| #1 | Court placed child with relative instead of in the care and responsibility of the authorized State agency. [45 CFR 1356.21(k)(2)] Ineligible period: 10/01/2008-12/18/2008 | \$11,870 Maint \$26,139 Admin |
| | Child was not removed from the specified relative's home. [§472(a)(1) and (4); 45 CFR§1356.21(k)(l)] Ineligible period: 9/27/2007-9/30/2008; 01/01/2009-03/31/2009 | |
| #17 | Child was not removed for the specified relative's home. [§472(a)(1) and (4); 45 CFR§1356.21(k)(l)] Ineligible: Entire FC episode: 05/23/2007-03/31/2009 | \$2,534 Maint \$2,502 Admin |
| | Foster family home not fully licensed [§472(b) and (c); 45 CFR §§ 1356.71(d)(1)(iv) & 1355.20] Ineligible: 12/24/2008-01/31/2009 | |

Total: \$14,404 Maint
\$28,641 Admin

Non-error Cases with Ineligible Payments

| Sample Number | Improper Payment Reason & Ineligibility Period | Improper Payments (FFP) |
|----------------------|---|-----------------------------------|
| #5 | Child entered foster care 4/29/1991; No court order stating reasonable efforts until 3/1992; [§§472(a)(1) & 471(a)(15)(B)(i); 45 CFR§ 1356.21(c)] Ineligible: 04/1991-02/1992 | \$27,944. Maint \$12,668 Admin |
| | No safety check for foster care provider [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 07/01/2000-06/30/2003 | |
| #8 | Foster home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 02/15/2008-05/01/2008 | \$1,949 Maint \$1,609 Admin |
| #9 | Foster family home not licensed. [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20] Ineligible: 07/02/2008-08/31/2008 | \$1,447 Maint \$1,609 Admin |
| #14 | Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 12/01/2001-05/31/2004; 02/01/2006-02/28/2006 | \$21,264 Maint \$13,457 Admin |
| #30 | No safety checks for foster care provider. [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 03/03/2008-05/31/2008 | \$2,308 Maint \$2,413 Admin |

| | | |
|-----|---|---------------------------------|
| #36 | Foster family home not licensed. [§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 02/01/2005-04/30/2005 | \$1,782 Maint \$2,793 Admin |
| #41 | Safety check not timely for foster care provider. Child placed in 11/2007; safety check completed 1/2008. [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 11/2007-01/2008 | \$1,203 Maint \$804 Admin |
| #45 | Foster family home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 04/05/2008-06/30/2008 | \$3,037 Maint \$4,826 Admin |
| #52 | Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 04/01/2007-04/30/2007 | \$2,292 Maint \$2,283 Admin |
| | Foster family home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 09/01/2006-10/21/2006 | |
| | No safety checks for foster care provider. [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 09/01/2006-10/31/2006 | |
| #60 | Foster family home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 07/01/2005-08/31/2005 | \$1,454 Maint \$1,396 Admin |
| #68 | Payment made before judicial determination of contrary to the welfare and reasonable efforts to prevent removal. [§§472(a)(1) & 471(a)(15)(B)(i); 45 CFR § 1356.21(c)] Ineligible: 02/01/2005-02/28/2005 | \$107 Maint \$0 Admin |
| #69 | Foster family home not licensed. [§472(b) & (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 05/14/2008-07/31/2008 | \$2,495 Maint \$2,413 Admin |
| #74 | Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 08/01/2002-9/30/2002; 11/01/2003-11/30/2003; 02/01/2006-03/31/2006 | \$4,471 Maint \$3,329 Admin |
| #76 | Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii) ; 45 CFR §1356.21(b)(2)] Ineligible: 01/22/2003-02/28/2004; 04/01/2005-05/31/2005 | \$6,999 Maint \$17,154 Admin |

| | | |
|-----|---|----------------------------------|
| #79 | Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 04/01/2001-12/21/2003; 02/01/2005-07/31/2005 | \$24,443 Maint \$25,352 Admin |
|-----|---|----------------------------------|

Total: \$103,195 Maint
\$92,106 Admin

Areas in Need of Improvement

The findings of this review indicate the State needs to further develop and implement practices and procedures to improve the title IV-E 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: Removal Pursuant to a Court Order. Two (2) non-error cases had ineligible payments related to judicial determinations. In non-error case sample #68, ineligible payments were made prior to the judicial determination of ‘contrary to the welfare.’ In non-error case sample #5, ineligible payments were made prior to the judicial determination of ‘reasonable efforts to prevent removal.’

Title IV-E Requirement: Removal of the child from the home must be according to judicial determinations of contrary to the welfare and reasonable efforts to prevent removal for court-ordered removals. If the removal occurred on or after March 27, 2000, the contrary to the welfare determination must be made in the first ruling that sanctions (even temporarily) the removal of a child from his or her home and the judicial determination that reasonable efforts to prevent removal were made or were not required must be made no later than 60 days from the date of the child’s removal from home. Judicial determinations must be made in a timely manner in a valid court order. A transcript of the court proceeding can be used in lieu of a written court order to document the judicial findings were made as required [§§472(a)(1); 471(a)(15)(B)(i); 45 CFR§1356.21(c)]. Prior to obtaining evidence that the eligibility requirements, including judicial determinations, are sufficiently met, the State may not claim title IV-E maintenance payments on behalf of a child.

Recommended Corrective Action: Training of the judiciary personnel who prepare the written documents will help 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: Reasonable Efforts to Finalize Permanency Plan. Four (4) of the non-error case samples (#52, #74, #76, #79) had ineligible payments because the judicial requirement of “reasonable efforts to finalize the permanency plan” were not met.

Title IV-E Requirement: For a child to be continually eligible for title IV-E payments, there must be a judicial determination that reasonable efforts were made to finalize the child's permanency plan that is in effect. The judicial determination that the agency has made reasonable efforts to finalize the permanency plan, for a child removed on or after March 27, 2000, must be made no later than 12 months from the date on which the child is considered to have entered foster care and at least once every 12 months thereafter, while the child is in foster care. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the 12th month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due. The child remains ineligible until such a judicial determination is made. [Statutory Citation: 472(a)(1), 471(a)(15)(B)(ii) and (C) Regulatory Citation: 1356.21(b)(2)].

Recommended Corrective Action: As recommended above, OCFS should continue to develop and implement procedures, as well as train personnel on the Federal requirement, to ensure that judicial determinations of reasonable efforts to finalize permanency plans are obtained timely and documented appropriately.

Issue #3: Aid to Families with Dependent Children Eligibility.

Specified Relative: In error case samples #1 and # 17, the child was not removed from the specified relative.

Title IV-E Requirement: Under §472(a)(1) and (3) of the Act and 45 CFR §1356.21(l), a child is required to have lived in the home of a parent or other relative specified at 45 CFR §233.90(c)(1)(v) and to have been eligible for Aid to Families with Dependent Children in that relative's home in the month the court proceedings leading to the removal are initiated or the voluntary placement agreement (VPA) is signed, but prior to the child's removal from home. If in that month, the child was not living with the specified relative who is the subject of the court proceedings, or who signed the VPA, the child must have been living with that specified relative at some time within the six months prior to the month of the initiation of the court proceeding or signing the VPA for removal.

Recommend Corrective Action: OCFS should continue to develop and implement, as well as train on, procedures to ensure that best legal and case practices are instituted statewide.

Issue #4: Correct coding of AFCARS data element 59. Two (2) cases were excluded from the original sample and replaced with cases from the oversample. Documentation provided by the State confirmed the case replacements were necessary because a title IV-E maintenance payment was not made during the PUR. OCFS officials indicated these cases were inadvertently included in the sample for title IV-E maintenance.

Title IV-E Requirement: The case sample and oversample drawn for review consist of cases of individual children with a "1" coded in AFCARS data element 59, "Sources of Federal Financial Support/Assistance for Child," for the 6-month reporting period of the PUR. As provided for in Appendix A of 45 CFR §1355.40, the AFCARS data element 59 inquires whether title IV-E foster care maintenance payments are paid on behalf of a child in foster care. If title IV-E foster

care maintenance payments are paid on behalf of the child, the data element should be coded “1.” If title IV-E foster care maintenance payments are not being paid on behalf of the child, the data element should be coded “0.”

Recommended Corrective Action: The validity of the sample and oversample depends on the accuracy with which the State agency completes the AFCARS data element 59. It is critical that OCFS reports data element 59 accurately. Data entry and processing systems should be evaluated to determine internal accuracy and consistency of the data.

Issue #5. Placement in a Licensed Facility. In error case sample #17, the foster care home was not licensed for the entire PUR. In non-error case samples #8, #9, #36, #45, # 52, #60, and #69, ineligible IV-E payments were made prior to the foster care homes obtaining fully licensure or approval.

Title IV-E Requirement: For the child to be eligible, the child must be placed in a facility that is licensed and meets all of the State agency standards of full licensure or approval. The documentation of full licensure can be satisfied by the certificate of licensure/approval or a letter of approval. Effective September 28, 2000, full licensure must be met by all providers, including those licensed or approved by a child-placing agency. The license must show that the foster family home or childcare institution is licensed for the duration of the child’s placement. The State may not claim title IV-E maintenance payments on behalf of a child prior to the full licensure of the foster care placement for the child [§ 472(b) and (c); 45 CFR §§ 1356.71(d)(1)(iv).1355.20].

Recommended Corrective Action: OCFS should continue to ensure that staff are fully trained and understand that all State licensing criteria must be met prior to claiming title IV-E maintenance payments.

Issue #6. Safety Requirements of Provider. In non-error case samples # 5, #30, #41, and # 52, there were no safety checks. Ineligible payments were made prior to completion of safety checks.

Title IV-E Requirement: To ensure that a child is not placed in a foster care setting where the potential caregiver has caused or is likely to cause harm to a child, the State is required to examine the potential safety risk posed to the child by a foster care provider. The State agency must also document that the foster care provider meets the established safety standards before a child is placed with the foster care provider and before title IV-E foster care maintenance payment are claimed for the child placed with the foster care provider [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20].

Recommended Corrective Action: OCFS should continue with their statewide improvement efforts to ensure that all staff statewide are trained and understand the Federal requirements keeping the outcomes of safety, permanency, and well-being of all children paramount.

Strengths and Promising Practices

The following positive practices and process of the title IV-E foster care eligibility program were observed during the review. These approaches may have led to improved program performance.

Court Orders: CB recognized the collaborative efforts between OCFS and the State Office of Court Administration to standardize and enhance the quality and timeliness of court orders issued on foster care cases. Most of the orders contained detailed, child-specific information and clear enunciation of judicial expectations for actions to achieve the desired permanency outcome. The permanency hearings in which the findings were rendered, particularly for the PUR, were held timely and more frequently than is required for title IV-E eligibility purposes. In addition, we noted some court orders addressed Indian Child Welfare Act requirements for children's affiliation to Native American or tribal groups. Having all jurisdiction utilize the standardize court orders statewide as a guide would minimize the omission of pertinent information.

Permanency Law. The New York State Permanency legislation has been in effect since December 2005. A clear impact of this law was found in the reviewed sample cases with respect to the improved timeliness of judicial determinations of reasonable efforts to finalize the permanency plan. It is our hope that these efforts will strengthen the State's ability to achieve better permanency outcomes for children in foster care.

Areas of Concern:

Provision of Complete Case Records. We found that many of the case records provided for cases selected did not contain the complete record for the most recent episode of foster care. This practice resulted in less than a full picture of the circumstances in the sample case. In some instances, information that might have been of assistance in clarifying or confirming case circumstances such as the removal home was omitted from the file. While we appreciate the effort to reduce the need to review duplicative or unnecessary materials during the onsite review, it is possible that an opportunity was missed to highlight best practices or other commendable title IV-E eligibility initiatives discernable from a review of the full case record. The State should instruct local districts to provide the entire case record for future reviews.

Court Orders in Juvenile Justice Cases. Children entering foster care on the basis of petitions pertaining to allegations of juvenile delinquency or a person in need of supervision are served through different sections of the New York State law enacted to address these cases. We found that the language in some of the court orders did not clearly state the results of the judicial determination of 'contrary to the welfare.' In two instances, the placements were to protect the interest of the community instead of the reason for placement being in the best interest of the child. We recommend that judicial training focus on the purpose of the title IV-E foster care program and how courts orders in such cases can more clearly state reasons for the contrary to welfare in order meet the federal requirements.

Disallowances

A disallowance in the amount of \$14,404 in maintenance payments and \$28,641 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 \$103,195 in maintenance payments

and \$92,106 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$238,346 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 part of its commitment to improve the Foster Care Eligibility Program, CB recommends that OCFS continue its efforts to strengthen the program statewide through the ongoing collaboration and training efforts with staff and external stakeholder that are crucial to an efficient and effective State child welfare program. CB is available to provide and identify resources critical to these efforts.