

**State of Rhode Island**  
**Department of Children, Youth and Families Secondary Review**  
**Title IV-E Foster Care Eligibility Report of Findings for**  
**October 1, 2009 - March 31, 2010**

**Introduction**

During the week of September 13, 2010, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a secondary review of Rhode Island's title IV-E foster care program. The review was conducted in collaboration with the State of Rhode Island Department of Children, Youth and Families (DCYF) and was completed by a review team comprised of representatives from Rhode Island DCYF, CB Central and Regional Offices, and two peer reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether Rhode Island's 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 Rhode Island's financial claims to ensure that appropriate payments were made on behalf of eligible children.

This secondary review was conducted as a result of the findings of the primary review completed during the week of September 10, 2007. Then, Rhode Island DCYF was determined not to be in substantial compliance with the title IV-E eligibility requirements for the period under review (PUR) of October 1, 2006 through March 31, 2007. Rhode Island DCYF submitted the required Program Improvement Plan (PIP) to correct the areas found deficient in its eligibility program for foster care. CB's approval of the PIP completion was based on the State's periodic reports of progress and final report of the planned improvements, which outlined the completion of the identified goals and action steps in the PIP. The PIP goals and activities included, but were not limited to, the following:

- Amend court orders to reflect the reasonable efforts made by DCYF to maintain the child in his or her home. Work with attorneys and caseworkers to explain the importance of permanency planning and how to better prepare cases so that the court can make meaningful findings of reasonable efforts to achieve permanency for the child. Collaborate with the court to review the purposes behind the title IV-E-related findings and request these findings be made on the record.
- Implement system enhancements designed to capture more information and subject payments to various system edits.
- Seek technical assistance to improve the timeliness of foster home licensing and improve record keeping by including in the eligibility files copies of licenses and criminal background checks.

During the PIP implementation period, Rhode Island DCYF strengthened its practices and revised forms and procedures to improve their title IV-E eligibility determination system. Key to the State's successful implementation of its PIP was the involvement of agency staff at all levels in

collaboration with the court. Technical assistance was provided to DCYF by the National Resource Center for Permanency and Family Connections and the National Resource Center for Legal and Judicial Issues.

## **Scope of the Review**

The secondary review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the six-month PUR of October 1, 2009 through March 31, 2010. A computerized statistical sample of 200 cases (150 plus 50 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. One hundred fifty (150) cases were reviewed, which consisted of 141 cases from the original sample plus 9 oversample cases. Nine (9) cases were excluded from the original sample because no title IV-E maintenance payments were made during the PUR. The State provided documentation to support excluding these cases from the review sample and replacing them with the 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.

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 in which the child was placed during the PUR was licensed or approved and that safety considerations were appropriately addressed. Payments made on behalf of each child also were reviewed to verify that 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 activity date. CB and the Rhode Island DCYF agreed that, subsequent to the onsite review, the State would have 30 days to submit additional documentation for cases that, during the onsite review, were identified as in error, in undetermined status, or to have an ineligible payment. Based on the supplemental documentation sent by Rhode Island DCYF, sample cases 28, 37, 39, 40, 51, 53, 60, 62, 65, 100, 101, 103, 109, 112 and 140 were determined to be non-error cases.

## Compliance Finding

The review team determined that 136 of the 150 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Fourteen (14) cases were in error for either part or all of the PUR resulting in a case error rate of less than 10 percent. Because the case error rate did not exceed the threshold, it was not necessary to calculate the dollar error rate.

Based on the review findings, CB has determined that the Rhode Island DCYF title IV-E foster care program is in substantial compliance with Federal eligibility requirements for the PUR. Substantial compliance in a secondary review is achieved when either the case error rate or dollar error rate does not exceed 10 percent. States are found not to be in substantial compliance with Federal title IV-E program requirements when both the case error rate and the dollar error rate exceed 10 percent. The team did not identify any underpayments for the sample cases. The next review, which will be a primary review, will be held within three years.

## Case Record Summary

The following chart records the error cases; reasons for the improper payments; improper payment amounts; and Federal provisions for which the State did not meet the compliance mandates.

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
#18	Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 03/15/2007 – 03/31/2010; Ineligible for the entire episode	\$77,613 Maint. \$13,818 Admin.
#24	Lack of judicial determination of contrary to the welfare; No initial court order or transcript. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(c)] Ineligible: 01/07/2005 – 03/31/2010; Ineligible for the entire episode	\$29,474 Maint. \$13,070 Admin.
#43	Missing initial court order resulting in the lack of judicial determination of contrary to the welfare. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(c)] Ineligible: 07/07/2004 – 03/31/2010; Ineligible for the entire episode	\$90,170 Maint. \$27,399 Admin.
#55	Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 02/17/2006 – 03/31/2010; Ineligible for the entire episode	\$48,239 Maint. \$9,649 Admin.
#59	Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 03/18/2005 – 03/31/2010; Ineligible for the entire episode	\$44,536 Maint. \$23,340 Admin.

#71	Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 11/15/2005 – 03/31/2010; Ineligible for the entire episode	\$68,093 Maint. \$19,084 Admin.
#78	Lack of a fully licensed foster family home for a child placed in an out-of-State home. [§472(b) and (c) of the Act; 45 CFR 1356.71(d)(1)] Ineligible: 09/03/2009 – 03/31/2010; Ineligible for the entire episode	\$1,430 Maint. \$942 Admin.
#82	Judicial determination of contrary to the welfare was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(c)] Ineligible: 12/09/2008 – 03/31/2010; Ineligible for the entire episode	\$25,594 Maint. \$7,390 Admin.
#91	Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)]; No documentation verifying safety considerations with respect to staff of the childcare institution have been addressed. [§471(a)(20) of the Act; 45 CFR 1356.30(f)] Ineligible: 08/03/2005 – 03/31/2010; Ineligible for the entire episode	\$110,111 Maint. \$14,893 Admin.
#98	Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 08/24/2006 – 03/31/2010; Ineligible for the entire episode	\$54,653 Maint. \$15,779 Admin.
#106	Missing initial court order resulting in lack of judicial determination of contrary to the welfare [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(c)]; Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(1)(A)(ii) of the Act; 45 CFR 1356.21(b)(2)] Ineligible: 01/17/2007 – 03/31/2010; Ineligible for the entire episode	\$16,519 Maint. \$17,066 Admin.
#117	Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 8/05/2005 – 3/31/2010; Ineligible for the entire episode	\$47,862 Maint. \$9,649 Admin.
#120	No documentation verifying safety considerations with respect to staff of the childcare institution have been addressed. [§471(a)(20) of the Act; 45 CFR 1356.30(f)] Ineligible: 10/10/2008 – 03/31/2010	\$54,843 Maint. \$7,831 Admin.

#122	A valid removal did not occur; the child remained in the removal home 5 days after judicial removal for foster care, but the delayed physical removal was not authorized by the removal court order. [45 CFR 1356.21(k)(2)]; Judicial determination of reasonable efforts to prevent removal was not attained. [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(1)] Ineligible: 01/16/2007 – 03/31/2010; Ineligible for the entire episode	\$41,186 Maint. \$14,498 Admin.
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Total: \$710,323 Maint.  
\$194,408 Admin.  
**\$904,731**

### Areas in Need of Improvement

The findings of this review indicates 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: *Judicial determination of reasonable efforts to prevent removal is not attained.* Seven cases were found to be in error because the court order removing the child from the home did not contain a judicial determination that reasonable efforts had been made to prevent removal. Although most of these cases contained evidence of a caseworker’s affidavit that there had been reasonable efforts to prevent removal, the court order removing the child from the home did not specifically incorporate any provisions of the affidavit or make an explicit determination pertaining to the requisite finding. Thus, the documentation of reasonable efforts provided was no more than an affidavit. In accordance with Federal mandates, reference to reasonable efforts in an accompanying affidavit, and in the State law governing the removal proceedings, is not adequate to satisfy the judicial determination requirements under §472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(d). Further, the State did not provide a subsequent court order within 60 days of the removal or court transcript documenting the reasonable efforts determination. Therefore, the children in these cases are ineligible under title IV-E for the entire foster care episode.

Title IV-E Requirement: For a child judicially-removed and placed in foster care on or after March 27, 2000, Federal provisions at §472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(b)(1) require a judicial determination to the effect that reasonable efforts be made “*prior to the placement of the child in foster care, to prevent or eliminate the need for removing the child from the child’s home*” [section 471(a)(15)(B)(i) of the Act]. If the judicial determination of “reasonable efforts to prevent removal” is not made within the first 60 days the child is in foster care, the child is ineligible from the beginning of the first month the child was ordered into foster care and remains ineligible for the entire episode that the child is in foster care.

Recommended Corrective Action: The court order documentation in the seven error cases was the result of revisions DCYF completed between 2004 and 2007 and was used as documentation of eligibility during that time. The court order now in use was developed following the 2007 title IV-E review and was determined to adequately meet Federal requirements regarding judicial findings of

reasonable efforts to prevent removal and contrary to the welfare.

Issue #2: *Court orders required to determine title IV-E eligibility are often not available to DCYF staff.* In three cases found to be in error, initial court orders were not present in the title IV-E eligibility file and were not provided separately. Without a copy of the court order or court transcript, eligibility staff are unable to determine with accuracy the judicial determinations made by the court related to continuation in the home being contrary to the welfare of the child.

Title IV-E Requirement: For a child judicially-removed and placed in foster care, Federal provisions at §472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(c) require a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child. Absent the initial order placing the child in foster care, the child is ineligible for the entire episode in foster care.

Recommended Corrective Action: 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: *Judicial determination of reasonable efforts to finalize permanency plan not attained [§472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)(2)].* One case found to be in error lacked the permanency order documenting the efforts made by DCYF to finalize the permanency plan for the child. Without a copy of the court order or court transcript, eligibility staff are unable to determine with accuracy the judicial determinations made by the court related to the reasonable efforts made by the DCYF to finalize the permanency plan for the child in a 12-month period.

Title IV-E Requirement: 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 judicial determination is made.

Recommended Corrective Action: 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 #4: *Incomplete licensing information and documentation of safety considerations for staff of childcare institution for children placed out-of-State.* One case lacked a license for a home where a child was placed out-of-State. This home was studied but not licensed by the receiving State. Another case lacked information that complete safety considerations for staff were met for the out-of-State facility the child was placed in during the PUR.

Title IV-E Requirements: Federal statute requires licensed or approved foster care facilities to conform fully to the same standards within the State that the State establishes for similar situated foster family homes and childcare institutions operating to provide foster care. Under the provisions at 45 CFR 1356.71, the title IV-E foster care eligibility review substantiates that the child's foster care placement was fully licensed for the entire time the child resided in the placement. The State agency must also provide documentation to verify safety considerations with respect to childcare staff of the institution are satisfied for the duration of the child's placement for the PUR. The State agency documentation must demonstrate that the staff of the childcare institution meets the safety criteria that the State establishes, even when the child is placed in an out-of-State institution.

Recommended Corrective Action: When placing a child out-of-State, DCYF must request the receiving State to license the home in accordance with the licensing standards of the receiving State. In circumstances where the child is placed in an out-of State childcare institution, DCYF needs to obtain the receiving State's licensing policy governing the process; a copy of the active childcare institution license applicable for the duration of the child's placement; and documentation verifying that criminal records checks were done for all staff providing childcare at the institution.

Issue# 5: *Safety requirements were not met for a child's placement in an in-State facility.* One case found to be in error lacked information that complete safety considerations for staff were met for the facility the child was placed in during the PUR.

Title IV-E Requirement: Federal regulations at 45 CFR 1356.30(f) require the State to provide documentation that criminal records checks have been conducted with respect to all childcare facility staff pursuant to State laws and policies.

Recommended Corrective Action: The State is encouraged to design a system to ensure that safety considerations have been met for all staff at the facility at the time of licensure and re-licensure. A quality assurance review of childcare facility licensing records would assist in identifying any lapses in the necessary criminal background checks for staff at such facilities.

Issue# 6: *Valid removal of the child did not occur on the date the court ruled it was contrary to the welfare of the child to remain in the home.* In one case found to be in error, the child remained in the parent's home for five days after the court issued a judicial determination that it was contrary to the welfare of the child to remain in the home. The delayed physical removal was not authorized by the removal court order [45 CFR 1356.21(k)(2)].

Title IV-E Requirements: For a child judicially-removed and placed in foster care, Federal provisions at §472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21(c) require a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child. A removal is considered not to have occurred in situations in which the child is judicially-removed from the parent or another specified relative and the child is permitted to remain

in that same relative's home under the supervision of the State agency. The physical removal from the home must coincide with the judicial ruling that authorizes the child's removal from the home and placement in foster care under the responsibility of the State agency. In these situations, the child is not eligible for title IV-E funding for the duration of the foster care episode, in accordance with 45 CFR 1356.21(k)(2).

Recommended Corrective Action: It is recommended that DCYF review the circumstances relating to the delayed physical removal of the child in this case and develop policy to ensure that removal episodes coincide with the court's ruling related to the child's safety in the home.

## **Program Strengths & 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.

- DCYF efforts to improve the foster home and residential licensing process through implementation of the State's title IV-E Program Improvement Plan (PIP) have resulted in licensing files complete with required title IV-E documentation. Except as noted above, DCYF foster home and facility licenses were contained in the files as well as criminal background checks for household members and facility staff. In foster homes with pending licenses, documentation clearly specified the issues resulting in a delay in licensing/re-licensing the home. DCYF 2008/2009 title IV-E PIP following the 2007 title IV-E review included action steps for National Resource Center technical assistance to assist Rhode Island DCYF in developing a streamlined process to reduce the length of time needed to license a foster home. DCYF has since reduced the average length of time to license a foster home to six months. DCYF staff worked to improve accurate and orderly licensing record keeping. DCYF reported in its PIP updates a newly-developed audit system to assess staff performance regarding their record-keeping skills.
- AFDC financial eligibility determinations are automated. DCYF's title IV-E eligibility system interfaces with the State's InRhodes information system, allowing for the automated verification of family income and receipt of benefits. In addition, all cases contained determinations for the appropriate month of child eligibility. Specified relatives were appropriately identified in all cases reviewed.

## **Disallowance**

A disallowance in the amount of \$710,323 in maintenance payments and \$194,408 in related administrative costs of Federal financial participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. The total disallowance as a result of this review is \$904,731 in FFP. The State also must identify and repay any ineligible payments that occurred for the 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 the State's ongoing efforts to improve its title IV-E foster care eligibility determination process, CB recommends that DCYF examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating an accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations.