

TITLE IV-E FOSTER CARE ELIGIBILITY TIP SHEET

This tip sheet highlights issues identified by the New York State Office of Children and Family Services and the Federal Department of Health and Human Services prior to and during the 2012 primary Title IV-E Foster Care Eligibility Review (FCER). The tip sheet addresses both non-court and court related issues and the steps to take to avoid compliance problems. Users are reminded that the complete set of Title IV-E eligibility requirements and the steps necessary to demonstrate compliance are set forth in the OCFS Eligibility Manual for Child Welfare Programs that is available on the OCFS intranet website. For further information please visit the below OCFS Title IV-E website to tour the Title IV-E Eligibility section:

<http://www.ocfs.state.ny.us/main/fostercare/titleiv-e/>

I. Non-Court Related Issues

A. FULL CERTIFICATION/FULL APPROVAL OF FOSTER HOMES

The FCER identified cases where the foster home was not fully certified or fully approved.

Title IV-E cannot be claimed for an otherwise eligible foster child who is cared for in a foster home that is not fully certified or fully approved in accordance with OCFS regulations 18 NYCRR 443.2 (authorized agency operating requirements) and 443.3 (certification or approval of foster family homes). A foster home that is certified or approved on an emergency basis in accordance with 18 NYCRR 443.7 is not fully certified or approved.

The Title IV-E eligibility standards regarding full licensure, certification or approval also apply to foster homes in other states that care for New York State foster children, according to the standards for licensure, certification or approval in the state where the child is placed.

Make sure that the foster home has been issued a certificate or approval in accordance with 18 NYCRR 443.2 and 443.3, or obtain the license from the other state **before** claiming Title IV-E for an otherwise eligible foster child.

Insert a copy of the certification, letter of approval or out of state license in the foster child's Title IV-E eligibility file.

B. SAFETY CHECKS/FOSTER HOMES

The FCER identified cases where there was no evidence of a safety check before Title IV-E was claimed for a foster child cared for in a foster home.

In order for a foster home to be fully certified or fully approved, ***the results*** of the criminal history record check performed in accordance with section 378-a(2) of the Social Services Law (SSL) and 18 NYCRR 443.8, and the Statewide Central Register of Child Abuse and Maltreatment (SCR) data base check performed in accordance with section 424-a of the SSL and 18 NYCRR 443.2 must have been received and retained by the authorized agency making the decision whether to certify or approve the foster home. Solely recording that a result was received in CONNECTIONS is not satisfactory for this purpose.

Confirm the receipt of the criminal history record check results and the SCR data base check results **before** issuing a certificate to board or a letter of approval. Make sure that a copy of both the criminal history record check summary and the SCR data base check are maintained in the foster parent's file.

If the result of the criminal history record check and/or the SCR data base check is that the applicant or household member has a criminal history or an indicated SCR report(s), documentation in the CONNECTIONS FOSTER AND ADOPTIVE HOME DIALOG (FAD) record is required. For criminal history records, a safety assessment must be completed and documented. In addition, for both a criminal history record and an indicated SCR report(s), the appropriate field(s) in Med/CHRC and SCR Comments on the Household Member Detail tab must be completed that explains why the foster parent was appropriate for certification or approval despite the existence of these records.

C. LIVING WITH A SPECIFIED RELATIVE

The dress rehearsal to the FCER identified issues with cases that involved compliance with the Title IV-E living with a specified relative eligibility standard. This standard provides that a child is required to have lived in the home of a parent or other specified relative and must have been eligible for or in receipt of ADC in that parent's or other relative's home in the month the court proceeding (whether Article 3, 7, 10 or 10-C proceedings) leading to the removal was initiated or the voluntary placement agreement was signed.

If in that month the child is not living with the parent or the other relative who is the subject of the court proceeding or who signed the voluntary placement agreement, the child must have been living with that parent or other relative within six (6) months prior to the month of the initiation of the court proceeding or the signing of the voluntary placement agreement.

Particular attention must be given to cases where the child is removed from the home of the parent and is placed into the direct legal custody of a relative (not in local DSS/OCFS custody) and the child thereafter is placed into DSS/OCFS custody. A key issue is whether the child was physically removed from the relative when entering DSS/OCFS custody. Another consideration is if the child was not physically removed from the relative (constructively removed) when did the child last reside with the parent.

See the OCFS Eligibility Manual for Child Welfare Programs, Living with Specified Relative for scenarios and further direction.

D. VOLUNTARY PLACEMENT AGREEMENTS

Local departments of social services (LDSS) are reminded of the federal and state rules relating to who may execute a voluntary placement agreement. Cases have been identified where the voluntary placement agreement was executed by a person who was awarded legal custody and not guardianship.

The definition of a voluntary placement agreement for Title IV-E eligibility purposes in section 472(f) (2) of the SSA refers to a document executed by the “parents and guardians of a minor child”. In addition, under state law, section 384-a of the SSL, a voluntary placement agreement may only be executed by a parent, guardian or person with whom the parent has entrusted care of the child. The instructions in the OCFS Eligibility Manual for Child Welfare Programs advise LDSS’s not to take a voluntary placement from a legal custodian.

II. Court Related Issues

A. BEST INTERESTS/CONTRARY TO THE WELFARE AND REASONABLE EFFORTS TO PREVENT REMOVAL

The FCER identified cases where Title IV-E was claimed before the court made a determination of best interests/contrary to the welfare or a court determination of reasonable efforts to prevent removal.

Both determinations are Title IV-E eligibility requirements.

Title IV-E cannot be claimed until **all** of the eligibility requirements have been satisfied.

Use the OCFS issued Title IV-E eligibility check list or automated spread sheet to verify that all of the Title IV-E eligibility requirements have been addressed.

B. REASONABLE EFFORTS TO FINALIZE THE CHILD'S PERMANENCY PLAN

The FCER identified cases where there was not a documented timely case specific court determination that reasonable efforts were made to finalize the child's permanency plan or to enable the child to return home safely.

The federal standard is that the judicial determination that the agency has made reasonable efforts to finalize the permanency plan for a foster 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 in foster care.

A court determination that reasonable efforts were not made but the failure to make efforts was reasonable is not satisfactory to address this federal requirement (as contrasted to complying with the federal standard regarding reasonable efforts to prevent removal).

The holding of a permanency hearing, in and of itself, does not satisfy the federal reasonable efforts to finalize the child's permanency plan requirement.

Make sure to keep track of each "date certain" for the next permanency hearing and confirm that the court has made the necessary court determination addressing reasonable efforts to finalize the child's permanency plan. In addition, make certain that there is either a court order or court transcript documenting the court's determination.

C. USE OF ORDERS TO SHOW CAUSE TO REMOVE THE CHILD FROM HIS OR HER HOME

Cases when orders to show cause were used that resulted in the removal of the child, although temporarily, created potential compliance issues with the federal requirements relating to best interests/contrary to the welfare and reasonable efforts to prevent removal.

The initial court order sanctioning removal must address best interests/contrary to the welfare, and a court determination addressing reasonable efforts to prevent removal must be made within 60 days of removal of the child from his or her home.

If the order to show cause directs removal just until the return date of the order, that is the initial court order sanctioning removal and therefore must adequately address best interests/contrary to the welfare. Also such removal starts the 60 day clock for the necessary reasonable efforts to prevent removal determination.

If an order to show cause is used, make sure that the order adequately addresses both best interests/contrary to the welfare and reasonable efforts to prevent removal. If it addresses best interests/contrary to the welfare, but not reasonable efforts to prevent removal, secure a court determination of reasonable efforts to prevent removal within 60 days of removal.

III. Other Issues/Recommendations

A. Office of Court Administration (OCA) COURT FORMS

The FCER commented on how useful it was when the model OCA court forms were used. The cases that used the OCA court forms more clearly addressed each of the federal Title IV-E eligibility requirements and were instrumental in avoiding unintended and inadvertent failures to meet the federal requirements.

B. BEST INTERESTS/CONTRARY TO THE WELFARE (JUVENILE DELINQUENT CASES)

The FCER expressed concern in regard to some findings in FCA Article 3 JD cases. It was the impression of some of the federal reviewers that the basis for the court findings of best interests/contrary to the welfare focused more on the protection of the community than on the child. For a case to satisfy Title IV-E best interests/contrary to the welfare eligibility standards, the finding must be child focused. A protection of the community basis is not federally acceptable.

Make sure that the best interests court determination is child focused.

C. PLACEMENT AND CARE/SURRENDERS

When taking a surrender pursuant to section 383-c of the SSL of a child in foster care who is being served by a voluntary authorized agency, make sure that the transfer of guardianship and custody is made to the Commissioner of the local district and not exclusively to the voluntary authorized agency.