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ASFA AND THE FINAL RULE: THE HIGHLIGHTS

Contrary to the Welfare Findings

- Must be made on the first court order following a child's removal from home.
- If the finding is not made in the first order, the agency will NOT receive IV-E dollars for the entire length of the child's stay in foster care.
- Must be case specific and detailed – cannot be merely a reference to state law.
- Need not be exact language, but must be child specific – the finding, for example, cannot be that placement is contrary to the safety of the community.
- *Nunc pro tunc* orders are not permitted.

Case Plans

- Must be developed within 60 days from the time the child is removed from home.
- Parents must be included in the process.
- Plans must be detailed and case specific - cannot be merely a reference to state law.

Reasonable Efforts

- The court must make a finding that reasonable efforts to prevent removal were made within 60 days of the child's removal from home.
- If the court does not make the finding, the agency will not receive IV-E dollars for the child's entire stay in foster care.
- The finding must be detailed and child specific - not just a reference to state law.

- The court must make a finding concerning reasonable efforts to finalize the permanency plan within 12 months of the child's entry into foster care.
- A negative, late, insufficient or missing finding means the agency is ineligible for IV-E dollars until the court makes a positive finding.

- The regulations do not require a finding concerning reasonable efforts to reunify, however, for best practice, the court should be making a reasonable efforts finding at each hearing and review. Six month reviews are still required in every case.

No Reunification Services

- No reasonable efforts to reunify are necessary if a court finds: aggravated circumstances, the parent was convicted of one of the enumerated crimes, or the parent's rights to another child were involuntarily terminated.
- If a criminal case is pending against a parent for one of the enumerated crimes, the court has discretion to waive reunification services based on the child's developmental needs and the amount of time until the criminal case will be resolved.

- If the court decides the agency does not need to make reunification efforts, the court must conduct a permanency hearing within 30 days.

Permanency Hearings

- Must be held within 12 months of the child's entry into foster care (or 30 days after no reunification services decision) and every 12 months thereafter as long as child is in foster care.
- Must be a full hearing, not a paper review, held by a court or court-approved administrative body and must be open to parent participation.
- Court must approve the child's permanency plan which shall be one of the following: reunification, adoption, legal guardianship, placement in the home of a relative, or planned permanent living arrangement.
- If the plan is planned permanent living arrangement, the agency must document compelling reasons for this plan.

Termination of Parental Rights

- The agency must file a TPR if the child is in foster care for 15 of the last 22 months, or within 60 days of a judicial finding that the child is an abandoned infant or a decision of no reunification services due to the parent's felony conviction.
- The TPR petition must be filed with the court by the end of the 15th month.
- The exceptions for mandatory filing are: the child is placed with a relative, the agency has documented a compelling reason why it would not be in the child's best interests, or the agency has not provided necessary services.

Responsibility for Placement

- For Title IV-E eligibility, the agency must have responsibility for the child's placement and care. Therefore, a court may not unilaterally order a specific placement for a child without the agency's input.

Notice and Opportunity To Be Heard

- Foster parents, relative caretakers and adoptive parents have the right to timely notice of permanency hearings and six-month periodic reviews and the right to be heard.
- This section does not give the caretakers "party status" in the hearing.

Child and Family Services Reviews

- The purpose is to ensure the state is achieving desired outcomes for children and families, and that the state system is functioning at a level that promotes achievement of the identified outcomes.
- Review will include a statewide assessment and an on-site review
- During the on-site review, the review team will analyze 30-50 case files and interview stakeholders, including courts, on the same cases.
- If the state is not in substantial compliance after the review, it will have the opportunity to enter a program improvement plan prior to facing fiscal penalties.

Title IV-E Eligibility Reviews

- The purpose of the Title IV-E foster care reviews is to determine whether a child's case meets the statutory eligibility requirements for the IV-E program.
- The review team will examine whether the appropriate court orders were made in the case, whether the child meets the income test for the program and whether the child is placed in an appropriately licensed foster home.
- The reviews are scheduled every three years unless a state is out of compliance. A state will be out of compliance if more than 8 of the initial 80 reviewed cases are ineligible. In this case, the state will have one year to improve or face a financial disallowance.
- Following the program improvement period, ACF will conduct a secondary review of 150 cases before funds are withheld. If the state remains in noncompliance after the secondary review the pool of funds which could be withheld would be calculated by multiplying the dollar error rate found in the sample by the population of children who received Title IV-E payments during the review period.

Delinquency Cases

- All ASFA provisions relate to delinquency and status offender cases if the agency is receiving IV-E dollars for the child including permanency hearings, TPR mandates, case plans etc.