

## Judicial Determinations and Hearing Requirements to Establish and Continue *Title IV-E* Reimbursement for Child Welfare Foster Care Placements<sup>1</sup>

Ann Ahlstrom  
Last revised 4-23-2008

<b>INVOLUNTARY PLACEMENTS: Initial Determinations</b>				
<b>Judicial determinations related to involuntary placements and whether or not the child should be involuntarily removed: “Placement is in the Best Interests of the Child” or “Continued Custody by the Parent is Contrary to the Child’s Welfare”</b>				
<b>Judicial Determination</b>		<b>Timing</b>		<b>Consequence of Failure to Comply with Federal Requirement</b>
<b>Federal Requirements</b>	<b>State Requirements</b>	<b>Federal Requirements</b>	<b>State Requirements</b>	
1. Continuation of residence in the home would be contrary to the welfare of the child OR placement is in the child’s best interest; and	1. Continuation of the child in the custody of the parent is contrary to the child’s welfare; and	1. In the first court ruling that sanctions the removal of the child;	1. In the ex parte order removing the child AND at the EPC or detention hearing;	1. No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement; <b>Note: This finding must coincide with the actual physical or constructive removal<sup>2</sup> of the child from the care of the parent.</b>
2. Reasonable efforts were made to prevent the placement; or	2. Reasonable or active <sup>3</sup> efforts were made to prevent placement; or	2. Within 60 days of the child’s placement;	2. At the EPC hearing or detention hearing;	2. No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement if finding does not occur within 60 days of the child’s physical or constructive removal from the care of the parent;

<sup>1</sup> Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of:  
a. the county social services agency (including probation in an umbrella county); OR  
b. a public agency with which the county or state agency has a Title IV-E agreement.

Public agencies include tribal social services and corrections. Legal responsibility is obtained by voluntary placement agreement or court order. In Minnesota, legal responsibility may, but does not require, that the agency has legal custody of the child.

<sup>2</sup> “Constructive removal” occurs when the parent has legal custody, but the child has been with another relative and the court orders emergency protective care with the county agency leaving the child in the physical care of the relative.

<sup>3</sup> Active efforts to prevent the breakup of the Indian family are required under the Indian Child Welfare Act (ICWA), 25 U.S.C. 1912. Minn. Stat. § 260.012 and 260C.178, among others, require the court to make determinations of active efforts consistent with the ICWA.

**INVOLUNTARY PLACEMENTS: Initial Determinations**

**Judicial determinations related to involuntary placements and whether or not the child should be involuntarily removed: “Placement is in the Best Interests of the Child” or “Continued Custody by the Parent is Contrary to the Child’s Welfare”**

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
3. Reasonable efforts to prevent the placement were not required.	3. Reasonable efforts to prevent placement were not required.	3. Within 60 days of the child’s placement;	3. At the EPC or detention hearing; or upon a prima facie determination that certain circumstances exist; <sup>4</sup>	3. No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement if finding does not occur within 60 days of the child’s physical or constructive removal from the care of the parent;

<sup>4</sup> *Minn. Stat. § 260.012* provides that reunification efforts are not required when: the parent has subjected the child to egregious harm; parental rights to another child of the parent have been involuntarily terminated; child is an abandoned child; parent’s custodial rights to another child have been involuntarily transferred under chapter 260C; or the parent has been convicted of certain crimes toward another of the parent’s children.

<b>VOLUNTARY PLACEMENTS: Initial Determination</b>				
<b>Judicial determination related to voluntary placement and whether or not the child needs placement: <i>Placement is in the Best Interests of the Child</i></b>				
<b>Judicial Determination</b>		<b>Timing</b>		<b>Consequence of Failure to Comply with Federal Requirement</b>
<b>Federal Requirement</b>	<b>State Requirement</b>	<b>Federal Requirement</b>	<b>State Requirements</b>	
Continued voluntary placement is in the best interests of the child.	Placement of the child in foster care is in the best interests of the child.	Within 180 days <sup>5</sup> of child's placement	1. For voluntary placement of a child NOT in placement due solely to disability, CHIPS petition required within 90 days of voluntary placement agreement; first hearing on CHIPS petition requires "best interests" determination; <sup>6</sup>	No eligibility or reimbursement for <i>Title IV-E</i> reimbursement after 180 days.
			2. For voluntary placement of a child in placement due solely to disability, by day 175 of child's placement.	

<sup>5</sup> Under federal regulations, 180 days means 180 days, not six months.

<sup>6</sup> See *Minn. Stat. § 260C.141 subdivision 2a.*

**PERMANENCY: Ongoing determinations**

**Judicial determinations related to agency's duty to make reasonable efforts to finalize a permanent plan<sup>7</sup> for all children in placement and the requirement for "compelling reasons" for a child to continue in placement past 12 or 14 month permanency hearing**

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
1. Reasonable efforts have been made to finalize the permanent plan in effect for the child <sup>8</sup> ;	<b>1A.</b> For CHIPS cases, reasonable or active efforts have been made to reunify the child with the parent(s);	Required 12 months from the date the child is considered to have entered foster care and every 12 months thereafter as long as the child continues in foster care.	1A. At the time of disposition hearing under <i>MRJPP 41.05, subd 1</i> ; and at least every 90 days as a result of the disposition review hearing required under <i>MRJPP 41.06, subd. 2</i>	1A. Eligibility for <i>IV-E</i> reimbursement ceases at the beginning of the month following the missed determination. Eligibility is re-established by obtaining the determination. Eligibility is re-established as of the 1 <sup>st</sup> of the month in which the determination is made by the court.
	<b>1B.</b> For most TPR and permanency cases, reasonable or active efforts have been made to reunify the child with the parent(s);	Same	1B. At the admit/deny hearing on the permanency petition required by <i>Minn. Stat. § 260C.201, subd. 11 (a)</i> at 12 months. <i>MRJPP 34.03, subd. 3 or 4</i> require a prima facie determination regarding reasonable efforts to reunify (when such efforts are required) based on the petition; final determination is made after trial on the merits.	1B. Same;

<sup>7</sup> Under 45 CFR 1356.21, "permanent plan" means reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement. Permanent orders regarding a child under Minnesota law are similar and are contained at *Minn. Stat. §§ 260C.201 subdivision 11* and *260C.141 subdivision 2a (2) (i)* [for a child in placement due solely to disability].

<sup>8</sup> Under 45 CFR 1355.20 the permanent plan for the child includes: reunification, adoption, guardianship (the equivalent of transfer of permanent legal and physical custody to a relative, permanent placement with a relative, or another planned permanent living arrangement, but -- in the case of another planned permanent living arrangement -- only after documentation of a compelling reason why one of the other permanency options are not in the child's best interests.

**PERMANENCY: Annual review for long-term foster care**

**Judicial determinations related to agency's duty to make reasonable efforts to finalize a permanent plan for all children in placement – annual review requirement:**

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement
Federal Requirement	State Requirement	Federal Requirement	State Requirement	
The court must also review reasonable efforts to finalize the permanent plan for the child at least every 12 months as long as the child remains in foster care.	Annual in-court review is required for a child ordered into long-term foster care or foster care for a specified period of time. <sup>9</sup>	Annual judicial determinations regarding the agency's reasonable efforts to finalize the permanent plan for the child are required as long as the child continues in foster care or other out-of-home placement.	Every 12 months as long as the child continues in foster care or other out-of-home placement. <sup>10</sup>	Eligibility ceases in month after determination missed; eligibility may be re-established by entering finding. Eligibility is re-established as of the 1 <sup>st</sup> of the month in which the determination is made by the court

<sup>9</sup> *Minn. Stat. § 260C.201 subd. 11 (g)* details the reasonable efforts required of the agency and to be reviewed by the court. The annual review is required for any child ordered into long-term foster care or foster care for a specified period of time under *Minn. Stat. §§ 260C.201 subd. 11* or *260C.317 subd. 3 (d)*. The annual review must review the child's out-of-home placement plan and the reasonable efforts of the agency to:

1. identify a specific long-term foster home for the child or a specific foster home for the time the child is specified to be out of the care of the parent, if one has not already been identified;
2. support continued placement of the child in the identified home, if one has been identified;
3. ensure appropriate services are provided to the child during the period of long-term foster care or foster care for a specified period of time;
4. plan for the child's independence upon the child's leaving long-term foster care as required under Minnesota Statutes 260C.212 subd. 1; and
5. where placement is for a specified period of time, a plan for the safe return of the child to the care of the parent.

<sup>10</sup> See *Minn. Stat. §§ 260C.141 subd. 2a* for a child in placement due solely to the child's disability, *260C.201 subd. 11 (g)* for other children in long-term or specified time foster placement, and *260C.317 subd. 3 (c)* for state wards in long-term foster placement.

**PERMANENCY: Ongoing determinations (continued)**

**Judicial determinations related to agency's duty to make reasonable efforts to finalize a permanent plan for all children in placement and requirement for "compelling reasons" for child to continue in placement past 12 or 14 month permanency hearing:**

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement
Federal Requirement	State Requirement	Federal Requirement	State Requirement	
	1C. For cases NOT requiring reunification efforts, agency efforts to finalize permanent placement of the child are required together with court review of those efforts; <sup>11</sup>		1C. At EPC, or permanency hearing required within 30 days or by 90 days at disposition in a termination of parental rights matter <sup>12</sup> ;	1C. Same.
	1D. When the child continues in foster care past 12 or 14 <sup>13</sup> months, a finding regarding the nature and extent of the agency's reasonable or active efforts to reunify the child with the parent(s);		1D. 12 months or 14 months. (See footnote 5.)	1D. Same.
2. When the court orders the child to continue in foster care past 12 or 14 months, a finding of "compelling reasons" why the child continues in foster care. This is a one-time finding.	2. When the court orders or approves <sup>14</sup> the child's stay in foster care past 12 or 14 months, the court must find "compelling reasons." <sup>15</sup> This is a one-time finding and does not have to be repeated annually.	2. At 12 or 14 months from the date the child entered placement.	2. At time of permanency hearing or anytime the court orders long-term foster care, foster care for a specified period of time or approves the child's continuing in foster care past a total of 12 months.	2. Eligibility ceases in month after determination missed; eligibility may be re-established by entering finding. Eligibility is re-established as of the 1 <sup>st</sup> of the month in which the determination is made by the court

<sup>11</sup> See *Minn. Stat. § 260C.012 (e) and (f)*

<sup>12</sup> See *Minn. Stat. § 260C.178 subdivision 1 (e) (3)*.

<sup>13</sup> *Minn. Stat. § 260C.201 subdivision 11* requires an admit/deny hearing on a permanency petition required to be filed at 11 months, for all children in court ordered foster placement 12 months from the date of the court order for placement. Children who are in voluntary placement must have a permanent hearing 14 months after they enter placement. See *Minn. Stat. § 260C.201 subdivision 11* regarding how time period is calculated.

<sup>14</sup> In the case of a child in placement due solely to the child's disability, the court may approve the continued voluntary arrangement; the placement does not become court ordered. See *Minn. Stat. § 260C.141 subdivision 2a*.

<sup>15</sup> See various requirements at *Minn. Stat. §§ 260C.201 subdivision 11, 260C.312, and 260C.141 subdivision 2a* and definition at *260C.007, subdivision 8*.