

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-17-02	2. Issuance Date: January 17, 2017
	3. Originating Office: Children's Bureau	
	4. Key Words: Legal Representation and Child Welfare; Parent Attorney, Children's Attorney, Agency Attorney, Quality Legal Representation	

TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E and IV-B of the Social Security Act, Indian Tribes and Indian Tribal Organizations, State Courts, and State and Tribal Court Improvement Programs.

SUBJECT: High Quality Legal Representation for All Parties in Child Welfare Proceedings

PURPOSE: To encourage all child welfare agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure parents, children and youth, and child welfare agencies, receive high quality legal representation at all stages of child welfare proceedings.

LEGAL AND RELATED REFERENCES: Title IV-E and IV-B of the Social Security Act; the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a et seq.); the Indian Child Welfare Act of 1978 (ICWA) (Pub. L. 95-608)

INFORMATION

The purpose of this information memorandum is to emphasize the importance of high quality legal representation in helping ensure a well-functioning child welfare system. This memorandum also highlights important research and identifies best practices and strategies to promote and sustain high quality legal representation for all parents, children and youth, and child welfare agencies in all stages of child welfare proceedings.

The Children's Bureau (CB) strongly encourages all child welfare agencies and jurisdictions (including, state and county courts, administrative offices of the court, and Court Improvement Programs) to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.

I. Background

Courts play an integral role in the child welfare system. A court order is required to involuntarily remove a child or youth from the home and to find that child or youth dependent.

Once a child is removed from home and placed in out-of-home care, federal law requires that judges make a number of determinations about the safety of the home of removal, the welfare of the child, and that child's permanency plan in order for an agency to receive title IV-E funding.¹

A court must review agency decisions about the family, the suitability of the child or youth's temporary placement, and the child's permanency plan that will result in family preservation, reunification, or another permanency goal. In order for a judge to make the best possible decisions for a family, it is critical that he or she receive the most accurate and complete information possible from and about all parties. Incomplete or inaccurate information renders judicial decision-making more difficult and may result in delays, increases in the length of time children and youth spend in care, additional costs to state or tribal government, and less beneficial decisions.

Numerous studies and reports point to the importance of competent legal representation for parents, children, and youth in ensuring that salient information is conveyed to the court, parties' legal rights are protected and that the wishes of parties are effectively voiced. There is evidence to support that legal representation for children, parents and youth contributes to or is associated with:

- increases in party perceptions of fairness;
- increases in party engagement in case planning, services and court hearings;
- more personally tailored and specific case plans and services;
- increases in visitation and parenting time;
- expedited permanency; and
- cost savings to state government due to reductions of time children and youth spend in care.

The decisions courts make in child welfare proceedings are serious and life changing. Parents stand the possibility of permanently losing custody and contact with their children. Children and youth are subject to court decisions that may forever change their family composition, as well as connections to culture and heritage. Despite the gravity of these cases and the rights and liabilities at stake, parents, children and youth do not always have legal representation. Child welfare agencies also sometimes lack adequate legal representation. In some states parents or children may not be appointed counsel until a petition to terminate parental rights has been filed. The absence of legal representation for any party at any stage of child welfare proceedings is a significant impediment to a well-functioning child welfare system.

II. Parties, Interests and Rights

The U.S. legal system is based on the premise that parties have a due process right to be heard and that competent legal representation and fair treatment produce just results. Parents, children and youth, and title IV-E/IV-B agencies are all parties to child welfare proceedings. Each may be required to provide sworn testimony under oath in court, each may be cross-examined and all are subject to court orders. All parties have significant liberties or liabilities at stake.

Parents

¹ 42 U.S.C. 672(a)(2)(A)(ii); 42 U.S.C. 671(a)(15); 45 CFR § 1356.21(b)(2).

The stakes are particularly high for parents in child welfare proceedings as their parental rights may be permanently severed, a right that the United States Supreme Court has identified as a fundamental liberty interest.² By any standard this marks a significant deprivation. Termination of parental rights is often referred to as the civil law equivalent of the death penalty.

There is consensus in the field that the rights at stake for parents and the complexity of legal proceedings in child welfare cases require all parents to have competent legal counsel. Parents' attorneys protect parents' rights and can be key problem solvers as counselors at law, helping parents understand their options, the best strategies for maintaining or regaining custody of their children and bringing cases to conclusion.

Children and Youth

Children and youth that have been removed from their families, even for a short period of time, experience a range of trauma and stress. Children and youth are often scared and confused and have incomplete understandings of what is happening to their families and what their future will hold. A recent study characterizes this uncertainty as “ambiguity” and provides evidence that ambiguity (this not knowing where he or she will live or what will happen to him or her) is a tremendous source of trauma.³

Federal law recognizes the importance of children having an advocate in judicial proceedings. In order to receive funding under the Child Abuse Prevention and Treatment Act (CAPTA) state grant, the governor of each state must provide an assurance that the state has provisions and procedures requiring “that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child.”⁴

While CAPTA allows for the appointment of an attorney and/or a court appointed special advocate (CASA), there is widespread agreement in the field that children require legal representation in child welfare proceedings.⁵ This view is rooted in the reality that judicial proceedings are complex and that all parties, especially children, need an attorney to protect and advance their interests in court, provide legal counsel and help children understand the process

² *Santosky v. Kramer*, 455 U.S. 745 (1982).

³ See Mitchell, Monique. (2016) *The Neglected Transition: Building a Relational Home for Children Entering Foster Care*. Oxford: Oxford University Press.

⁴ 42 U.S.C. 5106a (b)(2)(B)(xiii).

⁵ One of the findings of the Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep), a project funded by CB, is that there is widespread agreement on the proper role of the child's attorney. The QIC-ChildRep review of the academic literature, national standards, conference recommendations and stakeholder opinion documents the evolution of lawyer representation of children and reveals an emerging consensus on nearly all aspects of the role and duties of the child's legal representative. Even the differences across the debate of client-directed versus best interests are narrowed. The QIC-ChildRep recommends that states adopt the 2011 ABA Model Act as the statutory structure for legal representation of the child. See Appendix A for descriptions of an exemplary specialty office and a statewide model of delivering child representation.

and feel empowered. The confidential attorney-client privilege allows children to feel safe sharing information with attorneys that otherwise may go unvoiced.

In addition to attorneys, children and youth also benefit from a lay guardian ad litem, such as a CASA. CASAs can make important contributions to child welfare proceedings through time spent getting to know the child's needs and reports to the court.

Child Welfare Agencies

Title IV-E/IV-B caseworkers and their supervisors must regularly appear in court. It is incumbent upon these caseworkers and supervisors to provide evidence that the agency has made reasonable efforts (or active efforts where cases are subject to Indian Child Welfare Act⁶ (ICWA)) to prevent removals,⁷ that it is contrary to the welfare of a child to remain in the home,⁸ and that reasonable efforts have been made to finalize a permanency plan.⁹

Attorneys for public child welfare agencies play a crucial role in ensuring that the child welfare agency presents evidence of its diligence in working with families, that reasonable efforts are made, and that there are not undue delays in service provision, case planning or other vital services to keep families safe, together and strong. Agency attorneys can provide valuable oversight as to whether removal or return decisions conform to the proper standards. Such oversight is critical to ensuring judges have the information requisite to make statutorily required judicial determinations. Agency representation has also been identified as a safeguard against case workers engaging in the unauthorized practice of law.

State and Territorial Governments

Concern over the rights of children in care has resulted in federal class action lawsuits alleging civil rights violations. Such lawsuits cost state governments hundreds of millions of dollars in legal defense expenses. It stands to reason that high quality legal representation for all parties may help ensure greater system accountability, thereby reducing the likelihood that such lawsuits are filed in the first place.

Tribes and Tribal Governments

In cases involving an Indian child, it is critical that the right of tribes to intervene and participate in proceedings under ICWA is honored and that an attorney or other representative of the tribe be noticed, present if the tribe deems it appropriate, or otherwise able to fully represent the tribe of which the child is a member or eligible for membership.¹⁰ As sovereign nations, tribes have a statutorily protected interest¹¹ in member or potential member children who are party to state child welfare proceedings, and it is critical that the tribal voice be heard.

⁶ 25 U.S.C. 1912(d).

⁷ 42 U.S.C. 672(a)(2)(A)(ii).

⁸ *Id.*

⁹ 42 U.S.C. 671(a)(15); 45 CFR § 1356.21(b)(2).

¹⁰ 81 FR 3886/ 25 CFR part 23; see also, the BIA's 2016 ICWA Guidelines (p.8, A.3, re: 23.133). Note that tribes, as sovereign nations, should identify their own representatives in state court proceedings, whether or not the representative is a lawyer. <https://www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf>

¹¹ 25 U.S.C. 1901(3).

Failure to provide a meaningful opportunity for tribes to participate in cases involving Indian children is a violation of ICWA¹², may lead to unnecessary long stays in care, increased foster care costs, appeals, and unnecessary trauma for Indian children and youth.

III. Increases in Procedural Justice, Fairness and Engagement

State intervention in the lives of families, even when absolutely necessary, is a traumatic experience for children and parents alike. Removal and family separation based on allegations of abuse or neglect typically represent the most difficult and vulnerable time a family may face. During this time, it may be very difficult for a parent to fully trust an agency caseworker. A parent also may not fully understand how the child welfare system works, the relevant laws and his or her legal rights.

Lack of trust and lack of familiarity with the child welfare system can create significant barriers to engagement, especially for youth and parents. Lack of engagement can stand in the way of identifying strengths, needs and resources and impede all elements of case planning. When a parent or youth is unable or unwilling to engage with child protective services or agency caseworkers it is less likely that they will feel the process is fair.

Research supports that when a party experiences a sense of fairness, he or she will be more likely to comply with court orders, return for further hearings, trust the system, and will be less likely to repeat offenses.¹³ In the legal field, this feeling of fairness or trust in court proceedings is known as procedural justice.

Researchers have identified four key components to procedural justice: 1) voice – having one’s viewpoint heard; 2) neutrality – unbiased decision-makers and transparency of process; 3) respectful treatment – individuals are treated with dignity; 4) trustworthy authorities – the view that the authority is benevolent, caring, and genuinely trying to help.¹⁴

Several studies and program evaluations examining legal representation in child welfare proceedings have identified competent legal representation as a key element in enhancing party perceptions of procedural justice. A small [study](#) in Mississippi compared the outcomes of child abuse and neglect cases for parents who did and did not have legal representation in two Mississippi counties.¹⁵ Parents who were represented by an attorney believed that they had a greater voice in determining case outcomes, and they understood the court process better than parents without attorneys. In addition, preliminary findings indicate a trend toward more positive

¹² 25 CFR 23.111.

¹³ See generally Leben, S. & Burke, K. (2007-2008) Procedural fairness: A key ingredient in public satisfaction. *Court Review*, 44, 4-17; Tyler, T. & Zimerman, N. (2010) Between Access to Counsel and Access to Justice: A Psychological Perspective. *Fordham Urban Law Journal*, 37, 473-507; Tyler, T. (2007-2008) Procedural justice and the courts. *Court Review*, 44, 26-31 Tyler, T. (1990). *Why People Obey the Law: Procedural Justice, Legitimacy, and Compliance*. New Haven: Yale University Press.

¹⁴ Tyler, T. & Zimerman, N. (2010) Between Access to Counsel and Access to Justice: A Psychological Perspective. *Fordham Urban Law Journal*, 37, 473-507.

¹⁵ Exploring Outcomes Related to Legal Representation for Parents Involved in Mississippi's Juvenile Dependency System, Preliminary Findings, National Council of Juvenile and Family Court Judges (2013) available at: <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266785>

outcomes in cases where parents were represented by an attorney: they attended court more often, stipulated to fewer allegations, and had their children placed in foster care less often.

The importance of procedural justice has also been recognized by the Conference of Chief Justices and the Conference of State Court Administrators. In 2013, the Conferences jointly adopted a resolution to support and encourage state supreme court leadership to promote procedural fairness, identifying procedural justice as critical for courts to promote citizen's experience of a fair process.¹⁶

IV. Early Appointment of Counsel, Improved Case Planning, Expedited Permanency and Cost Savings

There is a growing body of empirical research linking early appointment of counsel (at or prior to a party's initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.¹⁷ Early appointment of counsel allows attorneys for parents and children to be involved from the very beginning of a case. Attorneys can contest removals, identify fit and willing relatives to serve as respite care providers, advocate for safety plans and identify resources, all of which may help prevent unnecessary removal and placement. Where removal is necessary attorneys for parents and children can be actively involved in case planning, helping to craft solutions that address their client's needs and concerns and expediting reunification or other permanency goals.

The [Quality Improvement Center on the Representation of Children in the Child Welfare System](#) (hereinafter, QIC-ChildRep), a randomized control trial funded by the CB, provided strong evidence that the early appointment of a well-trained attorney for children and youth expedites permanency.¹⁸ Children represented by attorneys trained and practicing under the QIC-ChildRep model in Washington State were 40 percent more likely to experience permanency within the first six months of placement than children represented by non QIC-ChildRep attorneys.¹⁹

A number of smaller, less rigorous studies lend further support to links between early legal representation and expedited permanency. A pilot study in Texas aimed at earlier appointment of attorneys for parents found that cases where attorneys were appointed within ten days of petition filing had more permanent outcomes (e.g., reunification) than cases in which attorneys were appointed later.²⁰ A study examining foster care data from multiple jurisdictions found that the

¹⁶ Conference of Chief Justices and Conference of State Court Administrators (2013) Resolution 12: In Support of State Supreme Court Leadership to Promote Procedural Fairness. (<http://ccj.ncsc.org/~media/microsites/files/ccj/resolutions/07312013-support-state-supreme-court-leadership-promote-procedural-fairness-ccj-cosca.ashx>).

¹⁷ See Thornton & Gwin (Spring 2012) *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 Fam Law Quarterly 139.

¹⁸ See Duquette *et. al.*, (2016) *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System*, ABA Publications; see also QIC findings: Robbin Pott (2016), *The Flint MDT Study*, in CHILDREN'S JUSTICE.

¹⁹ Olebeke, Zhou, Skles & Zinn, (2016) Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System, Chapin Hall. Available at: <http://www.chapinhall.org/qicreport>

²⁰ Wood, S. M., Summers, A., & Duarte, C.S. (2016). Legal Representation in the Juvenile Dependency System: Travis County, Texas' Parent Representation Pilot Project. *Family Court Review*, 54, 277-287.

presence of the mother's attorney at the preliminary protective hearing (emergency removal hearing) predicted a higher likelihood of reunification.²¹

There is also evidence that legal representation helps ensure more thoughtful and effective case planning. A study conducted in Palm Beach Florida found that children's attorneys practicing in compliance with the practice model resulted in more personally tailored and specific case plans and services, as well as expedited permanency.²²

Both parents' attorneys and children's attorneys can be helpful in addressing collateral legal issues that may leave families vulnerable, such as housing, employment, immigration, domestic violence, healthcare and public benefits issues -- one or any combination of which may contribute to bringing families into contact with the child welfare system. Such efforts may help prevent children from entering foster care or help children return home sooner.

High quality agency representation brings a number of clear benefits to a jurisdiction's child welfare system. Consistent statewide quality legal representation helps individual caseworker practice and overall statewide performance. More consistent advice and consultation with counsel helps ensure child welfare agencies policies and procedures are followed consistently across the state and that all federal child welfare requirements are met. Agency effort has a direct result on judicial decisions, which in turn directly affects federal monitoring and continuous quality improvement efforts such as the title IV-E foster care eligibility reviews and Child and Family Services Reviews (CFSR).

Agency representation provides legal guidance to child welfare agencies that helps caseworkers meet legal standards governing caseworker visits, evidentiary burdens, compliance with court orders, and existing law. Consistent and adequate representation is likely to reduce the number of court hearings required and make court hearings more focused and efficient. Consistent agency representation also helps child welfare agencies avoid over-intervention while still protecting those children at risk.

The most rigorous research effort examining agency representation to date found that agency attorneys who represented the agency as a client (the agency representation model) and received specialized training achieved permanent placement decisions for children on average 250 days more quickly than attorneys external to the agency (also known as the prosecutorial model) representing the state²³. Data also indicated significant state savings because of the reduction in time children spent in temporary foster care placements.

V. Standards of Practice, Specialization, and Quality Assurance

Leading national organizations have long emphasized that the gravity of the interests at stake in child welfare cases require well-trained legal representation for all parties at all stages of child

²¹ Wood., S.M., & Russell, J.R. (2011). Effects of parental and attorney involvement on reunification in juvenile dependency cases. *Children and Youth Services Review*, 33, 730-1741.

²² See Zinn, A. & Slowriver, J. (2008), *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chapin Hall Center for Children at the University of Chicago available at <https://www.chapinhall.org/research/report/expediting-permanency>

²³ See Herring, D. (1993). Legal Representation for the State Child Welfare Agency in Civil child Protection Proceedings: A Comparative Study. *Tol L. Rev.* 603

welfare proceedings. Most notably, the ABA has passed [national standards](#) of practice for parent attorneys, attorneys for children and youth, and counsel for public child welfare agencies in child welfare proceedings.²⁴ The standards have been widely supported, adopted by many state bar associations and written into court rules and legislation across the country. Under the standards, attorneys practicing child welfare law are required to have a minimum number of child welfare law training hours and provide practice guidance to ensure attorneys represent their clients ethically. CB strongly encourages all states to adopt standards of practice for parents, children and youth, and the child welfare agency to help ensure all parties receive high quality legal representation.

CB has invested in the ABA accredited [Child Welfare Legal Specialist \(CWLS\) Certification](#) program administered by the National Association of Counsel for Children (NACC), which has resulted in over 600 attorneys and judges around the country obtaining CWLS certification.²⁵ Certification requires attorneys to complete a self-directed course of study, submit work product, and take a test to demonstrate knowledge of applicable child welfare law and practice. CB strongly encourages all attorneys and judges practicing child welfare law to obtain CWLS certification. CB also strongly encourages all Court Improvement Programs, courts, and bar associations to work together to support attorneys and judges that practice child welfare law to obtain CWLS certification.

The QIC-ChildRep provided empirical evidence that specialized child welfare law training and coaching can positively impact attorney behavior and result in more effective representation of children. QIC-ChildRep lawyers changed their behavior to conform to the practice model, resulting in greater contact with clients, increased communications with other important collateral contacts and were more actively involved in conflict resolution and negotiation activities.

Related research has determined that training can impact judges' behavior on the bench. This may hold true for attorney practice as well. A recent [study](#) completed by the National Council of Juvenile and Family Court Judges (NCJFCJ) lends further support to the importance of training legal professionals.²⁶ The study, which looked at the effect that judicial participation in NCJFCJ's Child Abuse and Neglect Institute had on judicial practice in court hearing revealed that, post-training, judges were more likely to use specific strategies to engage parents in the court process. Judges also asked more questions after the training and were more likely to discuss child well-being and services that would allow the child to return home. This indicates the training was effective in increasing engagement of parents in the process and improving the overall quality of dependency hearings.

VI. Caseload, Ethics, and Quality Legal Representation

The larger the caseload, the less a lawyer can do for any individual client. The NACC recommends a standard of 100 active clients for a full-time attorney.²⁷ The NACC based this

²⁴ Available at: http://www.americanbar.org/groups/child_law/tools_to_use.html

²⁵ Available at: <http://www.naccchildlaw.org/?page=certification>

²⁶ Child Abuse and Neglect Institute Evaluation: Training Impact on Hearing Practice (2016) available at: <http://www.ncjfcj.org/CANI-Report-2016>

²⁷ National Association of Counsel for Children, *Child Welfare Law Guidebook*, 2006, at 54.

recommendation on a rough calculation that the average attorney has 2000 hours available per year and that the average child client would require about 20 hours of attention in the course of a year.²⁸ In the federal class action lawsuit filed against the state of Georgia, *Kenny A. v. Deal*, one of the allegations was that overly large caseloads for children's attorneys violated children's constitutional rights to competent legal counsel. The court heard expert testimony from NACC regarding caseload size. Evidence gained through the testimony became a key consideration in the court's finding that foster children have a right to an effective lawyer who is not burdened by excessive caseloads in dependency cases.

Other research and guidelines recommend smaller caseloads. In the QIC-ChildRep study, the adjusted caseload of the sample was 60 cases. That is, even when child representation occupied only a portion of a lawyer's practice, when the number of cases is adjusted for the percentage of effort required for child representation, the typical caseload was approximately 60 cases.

Data gained from the QIC-ChildRep shows benefits to smaller caseloads.²⁹ The QIC-ChildRep asked attorneys to do much more than appear in court, the theory being the more an attorney knows about the facts of the case and the competencies and challenges of his or her client the better he or she will be able to represent that client and that proper representation requires considerable work and advocacy outside of the courtroom. For child clients, where it is critical to observe the child in school and in placement settings and regularly communicate with collateral contacts such as teachers, foster parents and service providers, this could require several hours of effort a month per client. It is also the child's attorney's duty to independently verify the facts of the case.

A 2008 caseload study by the Judicial Council of California recommended a caseload of 77 clients per full-time dependency attorney to achieve an optimal best practice standard of performance.³⁰ The Massachusetts Committee for Public Counsel Services, which provides counsel for children and parents in dependency cases, enforces a caseload of 75 open cases.³¹ In a very detailed systematic study, a Pennsylvania workgroup carefully broke down the tasks and expected time required throughout the life of a case and matched that to attorney hours available in a year. They concluded that caseloads for children's lawyers should be set at 65 per full time lawyer.³²

²⁸ NACC, Pitchal, Freundlich, and Kendrick, *Evaluation of the Guardian ad Litem System in Nebraska*, (December 2009) at 42-43, available at

http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/nebraska/final_nebraska_gal_report_12.pdf

²⁹ The QIC-Child Rep found a one-standard-deviation increase (20 cases) in the size of dependency caseload is associated with a 22 percent decrease in the monthly rate of investigation and document review and a 9 percent decrease in the monthly rate of legal case preparation activities.

³⁰ CA Dependency Counsel Caseload Standards A Report To The California Legislature April 2008 by the Judicial Council of California Administrative Office of the Courts Center for Families, Children & the Courts, available at <http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/articles.htm>

³¹ Massachusetts Policies and Procedures.

https://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2010/MANUALChap5links3.pdf

³² 2014 Pennsylvania State Roundtable Report: Moving Children to Timely Permanency, available at <http://www.ocfcpacourts.us/childrens-roundtable-initiative/state-roundtable-workgroupscommittees/legal-representation/state-roundtable-reports>

Given the rights at stake for parents in dependency cases it is vital for parent attorneys to have reasonable caseloads. Ethical representation of parents in dependency proceedings requires considerable time and attention out of court. Legal scholars, practitioners and parents that have been involved with the system agree that it is the work done out of court that makes the biggest impact in dependency cases. Building trusting attorney-client relationships, being a counselor at law that helps a parent understand the system, working together to identify acceptable respite or substitute care options, developing safety plans, attending agency planning meetings, and identifying appropriate services all require a tremendous amount of time.

The higher the caseload, the less time an attorney will have to represent her client. Excessive caseloads make it harder for all attorneys to meet with clients, learn the facts of each particular case and prepare for court. This may result in increased frequency of scheduling conflicts, higher numbers of requests for continuances, undue delays in case resolution, and poor representation for all parties. The costs associated with each consequence are high for families and jurisdictions alike.

VII. Models of Delivering Legal Representation for Child Welfare Proceedings

There are three predominant models of delivering legal representation for children and parents: centralized state or county government offices; independent offices that specialize in child welfare law; and private practitioners that are either appointed by judges or assigned to cases as members of a pool of attorneys who handle child welfare cases in a jurisdiction. The vast majority of attorneys representing children and parents fall into the last group, private practitioners. For this group of attorneys, child welfare law often accounts for only a portion of their practice.

Some government and private specialty law offices utilize a multi-disciplinary team approach, which pairs or provides attorneys with access to independent social workers and/or includes a peer parent advocate. Evaluations of models that employ these types of teams are yielding very positive results. Regardless of the type of attorney or model of representation -- standards of practice, reasonable caseloads, ongoing training, connections to support (such as social workers, peer parent advocates or investigators) and effective oversight are important factors in ensuring high quality legal representation. See Appendix A for descriptions of exemplary models of delivering parent and child representation.

Parent Representation

The ABA Standards of Representation for Parents in Child Welfare Proceedings provide clear guidance that is applicable to all models of delivering parent representation. The standards emphasize the need for parent attorneys to be both counselors at law and zealous legal advocates. The counselor at law role requires an attorney to take the time to learn and understand their client's life circumstances, including their strengths and needs and the resources he or she has available. Such information is identified as critical to helping best represent the client.

The standards further articulate that helping clients understand when and how it is most important to cooperate with the child welfare agency is also crucial. Under the standards,

traditional, zealous legal representation is necessary, but insufficient to achieve the best outcomes for parents and families. Rather, the complexities of child welfare proceedings require the parent attorney to simultaneously assume multiple roles including: advisor, teacher and advocate. It is through this combination of roles that comprehensive representation and the best possible outcome are achieved.

CB strongly encourages all jurisdictions to provide legal representation to all parents in all stages of child welfare proceedings. CB further encourages all jurisdictions to consider providing such representation as part of a multi-disciplinary team.

Child Representation

Regardless of the model of child representation, the QIC-ChildRep approach is a useful tool for states and individual practitioners to consider. The approach is based on an enhanced version of the ABA Standards of Legal Representation for Children and aligns very closely with procedural justice research. The model calls for proactive lawyering, advocacy and problem-solving.

The model encourages attorneys to utilize six [core skills](#): (1) enter the child's world; (2) assess child safety; (3) actively evaluate needs; (4) advance case planning; (5) develop a theory of the case; and (6) advocate effectively.³³ Taken together, the core skills empower attorneys to have a well-informed understanding of the particular strengths, needs, and resources of the child's family, and an understanding of the child's wishes (where they are able to be expressed). It is this vital individual child and family information that allows the attorney to take an active role in representing the child in case planning and to effectively advocate on his or her behalf.

While the QIC-ChildRep was developed specifically for child representation and the study looked exclusively at child representation, with minor modification the six core skills may be equally valuable for parent representation.

CB strongly encourages all jurisdictions to provide legal representation to all children and youth at all stages of child welfare proceedings. CB further encourages all jurisdictions to consider providing such representation as part of a multi-disciplinary team.

Child Welfare Agency Representation

Many states do not currently provide adequate representation to the state's child welfare agencies or their contract agencies. The agency may be represented differently from county to county, or not directly at all. Consequently, the agency is often deprived of the benefits of having legal guidance in the investigation and disposition of their cases. Absent effective legal counsel, caseworkers lack the knowledge to be effective in court and may unwittingly fall into unlawful practice of law.

There are two basic models of representation for state and county government in child welfare proceedings: the agency representation model and the prosecutorial model. As the names

³³QIC ChildRep Model and Core Skills *available at*:
<http://www.improvechildrep.org/DemonstrationProjects/BestPracticeModelSixCoreSkills.aspx>

suggest, the agency representation model provides for an attorney or office of attorneys that represents the public child welfare agency. Under this model, the attorney(s) provide legal counsel and advice to the child welfare agency leadership. This includes counsel on specific cases, overall legal approaches to the work, and policy. The agency attorney also represents the child welfare agency in court. Agency attorneys prepare all legal documents, filings and petitions for the agency and work closely with agency caseworkers to prepare them for court. Agency attorneys also play a critical role in holding case workers accountable. It is important to note, however, that the agency attorney does not represent the caseworker individually.

Under the prosecutorial model, the attorney represents the people or the state, much as a district or county prosecutor would in a criminal case. The prosecutorial model treats the agency as the complaining witness, as opposed to a client. Often attorneys operating under the prosecutorial model are employed by the state or county district attorney's office. Some attorneys practicing under this model may also practice criminal law; other offices exist as a separate unit within the prosecutor's office and handle exclusively child welfare cases. Under this model, the public child welfare agency does not have direct legal representation. This approach is not favored today.³⁴

The agency representation model finds strong support in the ABA standards, existing research and efforts to protect against the unlawful practice of law. States will find a helpful resource in the ABA Standards of Practice for Lawyers Representing Child Welfare Agencies.

A 2016 study of dependency representation in Oregon identified inconsistent state and agency representation, a lack of uniform practice, and complicated financial models as challenges to timely and effective case planning and case management, stating that "obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon's children and families."³⁵

Furthermore, the Oregon report found that a model of government representation that provides full representation for the agency in all hearings and out-of-court activities will ultimately eliminate the risk of unlawful practice of law by child welfare employees in the courtroom, and increase outcomes for children and families in Oregon. This recommendation would eliminate "the state" as a party to dependency cases and ensure the child welfare agency is fully represented and has access to consultation with counsel.

CB strongly encourages all jurisdictions to implement the agency representation model to ensure consistent legal representation that supports child welfare agencies to meet all federal requirements.

³⁴ See Silverthorn, B. (2016) *Agency Representation in Child Welfare Proceedings*, Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect, and Dependency Cases. Bradford

³⁵ See Oregon Task Force on Dependency Representation Report, July, 2016, available at [http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20\(full\).pdf](http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20(full).pdf)

VIII. Best Practice Considerations

There are a number of strategies that a jurisdiction can employ to ensure high quality legal representation for all parties in child welfare proceedings. Each of the below can be adjusted in scale and approach to meet the unique characteristics and resources available in all jurisdictions. There are also a number of best practices that attorney offices or independent attorneys practicing child welfare law can adopt to provide high quality legal representation. Both structural and attorney best practices are included below.

Structural Best Practices to Ensure High Quality Legal Representation

- Adopt, implement, and monitor statewide standards of practice for parents' attorneys, children's attorneys and agency attorneys.
- Implement binding authority or constitutional protection requiring parents, children and youth to be appointed legal counsel at or before the initial court appearance in all cases.
- Develop a formal oversight system for parents' attorneys and children's attorneys to ensure quality assurance. This can be achieved through the creation of an office, the addition of a division to an existing office such as the public defender's office, as a duty for the presiding family court judge, through the work of a committee or by any other means that are used to ensure accountability and continuous quality improvement. In determining the assignment of oversight responsibilities, it is important to address any conflict of interest issues.
- Require mandatory initial child welfare training for parents' attorneys, children's attorneys and agency attorneys. Where resources do not exist for in-person training or geographical challenges make attendance difficult, states are encouraged to explore distance learning and online training experiences.
- Institute mandatory annual training requirements for parents' attorneys, children's attorneys and agency attorneys. Child welfare law and regulations and court rules change regularly at the state and federal level. It is important to have an effective way to keep all attorneys up-to-date. Annual update or "booster shot" trainings are one effective way to ensure all practitioners are kept current in law and practice.
- Support adequate payment and benefits to "professionalize" this type of law practice, and move from a contract system with competing priorities to an employment system like other indigent and state agency representation.
- Support a payment system for parent and child representation that is designed to promote high quality, ethical legal representation and discourages overly large caseloads.

Attorney Best Practices to Provide High Quality Legal Representation

- Communicate regularly with clients (at least monthly and after all significant developments or case changes) and in-person when possible.
- Ensure that language translation services and other accommodations to ensure equal access and full participation in all processes are available to all clients at all stages of child welfare proceedings.
- Thoroughly prepare for and attend all court hearings and reviews.

- Thoroughly prepare clients for court, explain the hearing process and debrief after hearing are complete to make sure clients understand the results. For children this must be done in a developmentally appropriate way.
- Regularly communicate with collateral contacts (i.e., treatment providers, teachers, social workers).
- Meet with clients outside of court (this provides attorneys an opportunity to observe clients in multiple environments and independently verify important facts).
- Conduct rigorous and complete discovery on every case.
- Independently verify facts contained in allegations and reports.
- Have meaningful and ongoing conversation with all clients about their strengths, needs, and wishes.
- Regularly ask all clients what would be most helpful for his or her case, what is working, and whether there is any service or arrangement that is not helpful, and why.
- Work with every client to identify helpful relatives for support, safety planning and possible placement.
- Attend and participate in case planning, family group decision-making and other meetings a client may have with the child welfare agency.
- Work with clients individually to develop safety plan and case plan options to present to the court.
- File motions and appeals when necessary to protect each client’s rights and advocate for his or her needs.

IX. Conclusion

The child welfare system is intended to keep families safe, together and strong, and where that is not possible to find the next best option for children and youth. To realize this potential it is critical that children and families experience the system as transparent and fair, one in which rights are protected and options are known, co-created and understood. Providing high quality legal representation to all parties at all stages of dependency proceedings is crucial to realizing these basic tenets of fairness and due process under the law. Moreover, research shows that legal representation for all parties in child welfare proceedings is clearly linked to increased party engagement, improved case planning, expedited permanency and cost savings to state government. CB strongly encourages all jurisdictions to work together to ensure all parties receive high quality legal representation at all stages of dependency proceedings.

Inquiries: CB Regional Program Managers

/ s /

Rafael López
 Commissioner
 Administration on Children, Youth & Families

Attachments:

A - Models of Delivering Parent Representation

B - CB Regional Office Program Managers

RESOURCES

ABA Standards of Representation for Parents, Children, and Child Welfare Agencies

http://www.americanbar.org/groups/child_law/tools_to_use.html

NACC Child Welfare Legal Specialist Certification (CWLS)

<http://www.naccchildlaw.org/?page=certification>

Quality Improvement Center for the Representation of Children in the Child Welfare System.
(QIC-ChildRep) Practice Model

<http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx>

NCJFCJ Enhanced Resource Guidelines

<http://www.ncjfcj.org/ncjfcj-releases-enhanced-resource-guidelines>

Child Welfare Capacity Building Center for Courts

<https://capacity.childwelfare.gov/courts/>

Models of Delivering Parent Representation

The [Washington State Office of Public Defense \(OPD\)](#) provides legal representation to indigent parents in child welfare proceedings. The program was created more than a decade ago following an investigative report showing that indigent parents throughout the state typically received poor legal representation in dependency and termination cases. Now operating in 83% of the state, the Parents Representation Program provides state-funded attorneys for indigent parents, who have legally mandated rights to counsel. These attorneys are contracted by OPD, which oversees performance, limits caseloads and provides resources.

The OPD designed and implemented standards specifically for dependency and termination case representation, uniquely blending a counselor at law approach with traditional practice techniques. The standards require OPD contract attorneys to meet and communicate regularly with their parent clients throughout the case, ensure their clients have adequate access to services and visitation, prevent continuances and delays within their control, prepare cases well, and attempt to negotiate agreements and competently litigate if no agreement is reached. Reasonable caseloads are set at no more than 80 open cases per full-time attorney (equivalent to about 60 parents).

The program has been favorably evaluated six times. In 2010, in consultation with the Washington State Center for Court Research, OPD published a report on the court records and court orders in 1,817 dependency cases prior to and after implementation of the Parents Representation Program. The comparison found significant differences in the rate of reunification. Cases commenced after the program was implemented achieved permanency 36.5% more often than those that were commenced prior to representation under the program began.

A 2011 study by the University of Washington, which conducted the study at DSHS's request, found that after the Parents Representation Program was instituted in various counties, cases were decided between one month and one year faster. The study concluded that the program is helpful in getting children out of foster care and into permanent homes that it should be extended statewide. The reduction of time that children spend in care has been attributed as saving the state hundreds of thousands of dollars.

[The Detroit Center for Family Advocacy](#) provides legal and social work advocacy for parents to ensure that children do not needlessly enter foster care. The Center receives referrals directly from child welfare agencies to help at-risk families resolve legal issues that directly impact the child's safety in the home. For example, a mother may need assistance resolving a housing issue against a landlord. A domestic violence victim may need assistance obtaining a restraining and child custody order against an abusive ex-husband. Or a father may need an advocate to ensure that a school is providing the right services to a child with special needs. The model is based on a fundamental belief that early intervention by a multidisciplinary legal team can prevent kids from unnecessarily entering foster care.

A three year evaluation conducted between 2009 and 2012 confirmed the efficacy of the model. During the evaluation period, the Center served 110 children for whom the child protective services had substantiated child abuse or neglect. The CFA was to use legal tools and

advocacy, supported by social workers, to safely prevent removal. Not one of those children entered foster care—reducing trauma to the child and family and also avoiding thousands of dollars in costs for each child. The Center achieved its legal objectives in 98.2 percent of its prevention cases, and the multidisciplinary approach to addressing problems ensured that these children were able to remain in their homes.

[The Center for Family Representation](#) (CFR) in New York is another example of a comprehensive parent representation model that is achieving notable outcomes. The CFR model provides every parent with an attorney, a social worker, and a parent advocate. Parent advocates are parents who themselves once faced family court prosecution, had their children removed, and were able to successfully reunify their families. Under the CFR model, every parent is surrounded by a team that works together to problem-solve, identify resources, strengths and needs and provide counsel and advice. By combining in-court litigation with out-of-court social work referrals and case-management, individualized service planning, and parent mentoring, CFR dramatically improve outcomes for our families. Former clients of CFR report very high degrees of satisfaction with CFR representation, citing it as essential to their successes and communicating that they truly felt their voices were heard and needs effectively addressed.

Models of Delivering Child and Youth Representation

[KidsVoice](#) in Pittsburgh, Pennsylvania is recognized as a national model for multi-disciplinary and holistic approach to child advocacy and legal representation. They are a non-profit agency that advocates in court and in the community to ensure safe and permanency homes for abused, neglected, and at-risk children. Each year, KidsVoice represents nearly 3,000 children involved in the child-welfare system in Allegheny County's Juvenile Court. Child advocacy at KidsVoice goes beyond the traditional child welfare and juvenile court arenas. The staff advocates for clients in educational, medical, mental health and Social Security matters, as well as providing representation for minor criminal citations and for expungement of delinquency records. They also assist the older clients as they pursue college or vocational training opportunities and transition to living independently. Every client is represented by both an attorney and a Child Advocacy Specialist (a social service professional with expertise in social work, mental health, education or child development).

The [Wyoming Guardians Ad Litem Program](#) is a state- and county-funded centralized state office that trains and supervises all attorneys representing children in Juvenile Court in the state. In 2008, the program adopted rules and policy setting practice standards and addressing other related quality indicators like the presence of children and youth in court proceedings, set caseload maximums for all program attorneys, began specialized training for the program attorneys, instituted a quality assurance process, and a multi-tiered evaluation process for program attorneys. From 2008 to 2012, the program underwent an overhaul of the program and brought many of the attorney positions in-house as full-time attorneys or state employees, drastically reducing the number of independent contract attorneys. In 2015, the program released an on-line cases management system to better track compliance with standards, timeliness of proceedings, and outcomes for children and youth.

CB Regional Office Program Managers

Attachment B

<p>1</p>	<p>Region 1 – Boston Bob Cavanaugh bob.cavanaugh@acf.hhs.gov JFK Federal Building, Rm. 2000 15 Sudbury Street Boston, MA 02203 (617) 565-1020 States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont</p>	<p>6</p>	<p>Region 6 – Dallas Janis Brown janis.brown@acf.hhs.gov 1301 Young Street, Suite 945 Dallas, TX 75202-5433 (214) 767-8466 States: Arkansas, Louisiana, New Mexico, Oklahoma, Texas</p>
<p>2</p>	<p>Region 2 - New York City Alfonso Nicholas alfonso.nicholas@acf.hhs.gov 26 Federal Plaza, Rm. 4114 New York, NY 10278 (212) 264-2890, x 145 States and Territories: New Jersey, New York, Puerto Rico, Virgin Islands</p>	<p>7</p>	<p>Region 7 - Kansas City Deborah Smith deborah.smith@acf.hhs.gov Federal Office Building, Rm. 349 601 E 12th Street Kansas City, MO 64106 (816) 426-2262 States: Iowa, Kansas, Missouri, Nebraska</p>
<p>3</p>	<p>Region 3 – Philadelphia Lisa Pearson lisa.pearson@acf.hhs.gov 150 S. Independence Mall West - Suite 864 Philadelphia, PA 19106-3499 (215) 861-4030 States: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia</p>	<p>8</p>	<p>Region 8 – Denver Marilyn Kennerson marilyn.kennerson@acf.hhs.gov 1961 Stout Street, 8th Floor Byron Rogers Federal Building Denver, CO 80294-3538 (303) 844-1163 States: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming</p>
<p>4</p>	<p>Region 4 – Atlanta Shalonda Cawthon shalonda.cawthon@acf.hhs.gov 61 Forsyth Street SW, Ste. 4M60 Atlanta, GA 30303-8909 (404) 562-2242 States: Alabama, Mississippi, Florida, North Carolina, Georgia, South Carolina, Kentucky, Tennessee</p>	<p>9</p>	<p>Region 9 - San Francisco Debra Samples debra.samples@acf.hhs.gov 90 7th Street - Ste 9-300 San Francisco, CA 94103 (415) 437-8626 States and Territories: Arizona, California, Hawaii, Nevada, Outer Pacific—American Samoa Commonwealth of the Northern Marianas, Federated States of Micronesia (Chuuk, Pohnpei, Yap) Guam, Marshall Islands, Palau</p>
<p>5</p>	<p>Region 5 – Chicago Kendall Darling kendall.darling@acf.hhs.gov 233 N. Michigan Avenue, Suite 400 Chicago, IL 60601 (312) 353-9672 States: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin</p>	<p>10</p>	<p>Region 10 – Seattle Tina Naugler tina.naugler@acf.hhs.gov 701 Fifth Avenue, Suite 1600, MS-73 Seattle, WA 98104 (206) 615-3657 States: Alaska, Idaho, Oregon, Washington</p>



Technical Bulletin

Frequently Asked Questions: Independent Legal Representation

July 20, 2020

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1. **BACKGROUND**

In 2017, the Administration for Children and Families (ACF) Children's Bureau (CB) issued an Information Memorandum (IM) identifying high quality legal representation for parents, children and the child welfare agency as critical to a well-functioning child welfare system ([ACYF-CB-IM-17-02](#)). The rationale includes research showing that early appointment of counsel in child welfare proceedings can improve case planning, expedite permanency and lead to cost savings to state/tribal government.¹

CB issued revised and new policies that allow title IV-E agencies to claim Federal financial participation (FFP) for administrative costs of independent legal representation provided by an

¹ ACYF-CB-IM-17-02 highlights associations of legal representation with enhanced parent engagement and identifies best practices and exemplary models of legal representation, including multi-disciplinary representation, which pairs attorneys with independent social workers or peer parent partners, as especially promising. An important [study](#) conducted in New York City in 2019 provides especially compelling evidence of the effectiveness of the multi-disciplinary approach. A companion, [qualitative study](#) released in 2020 lends further support to the model.

attorney under section 474(a)(3) of the Social Security Act (the Act) and federal regulations at 45 CFR 1356.60(c). In [section 8.1B of the Child Welfare Policy Manual \(CWPM\)](#), CB revised and issued Q/A #30 on January 7, 2019, issued #31 on July 29, 2019 and issued #32 on April 20, 2020.

In addition, CB has determined that states and tribal grantees may use kinship navigator funds provided under title IV-B, subpart 2 of the Act to provide brief legal services to “assist kinship caregivers in learning about, finding and using programs and services to meet the needs of the children they are raising and their own needs,” which may include “support[ing] any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving.” See section 427(a)(1) of the Act.

CB issues this Technical Bulletin (TB) to respond to title IV-E agency and other stakeholder frequently asked questions (FAQs) about the aforementioned policies. The FAQs in this TB do not establish new policy or requirements or supersede existing laws or official guidance.

Question: What are the revised and new CWPM questions?

Answer: CWPM 8.1B #30 allows title IV-E agencies to claim FFP for the administrative costs of “preparation for and participation in judicial determinations” in all stages of foster care legal proceedings, by: a title IV-E agency attorney, an attorney providing independent representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care and an attorney providing independent representation to such a child’s parent.

CWPM 8.1B #31 further clarifies that a title IV-E agency that has an agreement with a tribe or any other public agency under section 472(a)(2)(B)(ii) of the Act may claim title IV-E administrative costs for legal representation provided by tribal or public agency attorneys under the agreement in all stages of foster care related legal proceedings. The title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for title IV-E foster care or a title IV-E eligible child in foster care who is served under the agreement, and the child’s parents, to prepare for and participate in all stages of foster care related legal proceedings.

CWPM 8.1B #32 clarifies that administrative costs for paralegals, investigators, peer partners or social workers may be claimed as title IV-E foster care administrative costs to the extent they are necessary to support an attorney providing independent legal representation.

2. TITLE IV-E ADMINISTRATIVE COSTS

A title IV-E agency may claim administrative costs for preparation for and participation in judicial determinations by a title IV-E agency attorney or an attorney providing independent representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent. Such activities and expenses must be necessary to carry out the requirements in the agency’s title IV-E plan. See 45 CFR 1356.60(c)(2)(ii).

Question: What are some examples of *foster care legal proceedings*?

Answer: Examples include:

- hearings related to judicial determinations that it is contrary to the welfare of a child to remain in the home,
- hearings related to a child's removal from the home,
- hearings related to judicial determinations that the agency provided reasonable efforts to prevent removal and finalize the permanency plan,
- permanency hearings,
- hearings related to progress on case plans, and
- appeal proceedings that relate to judicial determinations required under title IV-E.

Question: What are some examples of *allowable administrative activities* for agency or independent attorneys to prepare for and participate in judicial determinations for all stages of foster care legal proceedings?

Answer: Examples include:

- independent investigation of the facts of the case, including interacting with law enforcement,
- meeting with clients or making home or school visits,
- attending case planning meetings,
- providing legal interpretations,
- preparing briefs, memos, and pleadings,
- obtaining transcripts,
- interviewing and preparing their client and witnesses for hearings,
- hearing presentation,
- maintaining files,
- supervising attorneys, paralegals, investigators, peer partners or social workers that support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings,
- filing child abuse and neglect petitions for candidates for foster care,
- court fees to file a petition for a judicial determination required under title IV-E, and
- appellate work in reference to foster care legal proceedings.

Question: If the title IV-E agency determined that a child is a candidate for title IV-E foster care (as defined under section 472(i) of the Act), may the agency claim allowable title IV-E administrative costs of “pre-removal” independent legal representation by an attorney for the child and/or his or her parent?

Answer: Yes, in preparation for legal proceedings in relation to the child’s removal, beginning with the first month in which the candidacy determination was made. Additional information on candidacy determinations is available in [CWPM 8.1D](#).

Question: May the title IV-E agency claim independent legal representation costs by a Guardian Ad Litem (GAL) for a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent in foster care legal proceedings?

Answer: A title IV-E agency may claim title IV-E administrative costs for a GAL if he or she is an attorney providing independent legal representation to a title IV-E eligible child in all stages of foster care proceedings.

Question: Can title IV-E agencies claim title IV-E reimbursement for state/tribe-funded public defenders who are separately appointed in both the delinquency and dependency cases to represent dually involved children?

Answer: The title IV-E agency may claim only for the legal representation costs associated with the foster care legal proceedings that are necessary for the proper and efficient administration of the title IV-E plan. The agency may not claim costs related to preparation and participation in delinquency cases. To the extent that both juvenile justice and foster care proceedings are unified into one court proceeding, the title IV-E agency may only claim the time an attorney spends preparing for and participating in foster care proceedings. The time an independent attorney spends preparing for and participating in delinquency proceedings is not an allowable title IV-E cost.

3. CLAIMING TITLE IV-E FEDERAL FINANCIAL PARTICIPATION

To claim title IV-E administrative costs for independent legal representation, the title IV-E agency must clearly identify in an approved Public Assistance Cost Allocation Plan (PACAP) or Tribal Cost Allocation Methodology (CAM) the types of administrative activities the agency intends to claim and the methodology it will use to identify allowable costs.

Question: What steps must a title IV-E agency take prior to claiming FFP for independent legal representation costs?

Answer: A state title IV-E agency must update its PACAP to claim these costs, and a tribal title IV-E agency must update its CAM to claim these costs. See 45 CFR Parts 75 and 95 and ACYF-CB-PI-10-13. If a child is not specifically identified as a youth in title IV-E foster care or a candidate for title IV-E foster care, there must be an allocation to assure that each participating program is charged its proportionate share of costs. For candidates, the allocation must be based on a determination both of candidacy for foster care and of potential IV-E eligibility. Using a ratio of IV-E to non-IV-E foster care cases (i.e., title IV-E participation rate) is one acceptable means of allocation. Other means of determining candidacy and of determining potential IV-E eligibility may also be acceptable. The title IV-E agency must update its PACAP/CAM to claim these costs. For additional information, see [CWPM 8.1 B](#) (Allowable costs – Foster care maintenance payments program), 8.1C (calculating claims) and 8.1D (Candidates for title IV-E foster care).

Question: What must a state title IV-E agency's PACAP include for purposes of claiming the costs of independent legal representation?

Answer: The state title IV-E agency must clearly identify those administrative activities and the methodology that will be used for claiming title IV-E administrative costs for independent legal representation through an approved PACAP. The PACAP must:

- describe the procedures used to identify, measure, and allocate all costs to each of the programs operated by the agency (see 45 CFR 95.507(a)(1)),
- provide a statement stipulating that wherever costs are claimed for services provided by a governmental agency outside the title IV-E agency, costs be supported by a written agreement that includes, at a minimum (i) the specific service(s) being purchased, (ii) the basis upon which the billing will be made by the provider agency (e.g. time reports, number of homes inspected, etc.) and (iii) a stipulation that the billing will be based on the actual cost incurred (see 45 CFR 95.507(a)(6)),
- identify the services, eligible clients, types of cost and geographic or other scope of operations and how the costs will be accumulated into one or more identified cost pools for allocation purposes, and
- describe how the state title IV-E agency will maintain sufficient records “to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.” See also federal regulations on record retention (see 45 CFR 75.361) and record access (see 45 CFR 75.364).

Question: What must a tribal title IV-E agency’s CAM include for purposes of claiming the costs of independent legal representation?

Answer: The tribal title IV-E agency must clearly identify those administrative activities and the methodology that will be used for claiming title IV-E administrative costs for independent legal representation through an approved CAM. The CAM must:

- include specific procedures to appropriately identify, measure and allocate documented administrative and training costs,
- use general guidance provided in 45 CFR Part 95, Subpart E to develop a CAM limited to the federal and non-federal programs administered by those staff or units having responsibility for title IV-E programs,
- contain sufficient information to permit ACF and auditors to determine that costs claimed for title IV-E FFP were appropriately identified, measured and allocated, and
- assure that the information contained in the CAM was prepared in conformance with 45 CFR Part 75; that the costs are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances, that an adequate accounting and statistical system exists to support claims and the information provided in support of the CAM is accurate.

Question: How does a title IV-E agency report to ACF the administrative costs for independent legal representation?

Answer: The title IV-E agency must report such costs in accordance with instructions for the Title IV-E Programs Quarterly Financial Report (Form CB-496). The instructions specify that for periods beginning January 1, 2020 and later, the title IV-E agency must report title IV-E administrative costs for independent legal representation of children or parents as described below. See [ACYF-CB-PI-20-09](#). The average monthly number of children served through these activities must also be reported. The specific Form CB-496 Part 1 reporting lines used for independent legal representation are:

- Line 8. In-Placement Administrative Costs – Legal Representation – Child or Parent
- Line 10b. Title IV-E Foster Care Candidate Administrative Costs – Legal Representation – Child or Parent
- Line 49b. Number of Children: In-Placement - Title IV-E Funded Child or Parent Legal Representation Administrative Costs
- Line 51b. Number of Children: Title IV-E Foster Care Candidate – Title IV-E Funded Child or Parent Legal Representation Administrative Costs

Question: Must the title IV-E agency submit a title IV-E plan amendment to claim administrative costs for independent legal representation?

Answer: No, a title IV-E plan amendment is not necessary for the title IV-E agency to claim administrative costs for independent legal representation by an attorney for an eligible child and/or his/her parent.

4. NON-FEDERAL SHARE

The title IV-E program provides cost-sharing requirements for the non-federal share of program expenditures (see 45 CFR 1356.60 and 1356.68), which apply to the non-federal share of the cost of providing independent legal representation.

Question: What funds can state title IV-E agencies use to meet the requirements for the non-federal share of program expenditures?

Answer: The required state share of costs claimed for the title IV-E foster care program must be sourced from state or local appropriated funds or donated funds, but may not be sourced from federal funds provided through another program. State title IV-E agencies may not use third party in-kind expenditures (or contributions) as a source of the state share of funds for the foster care programs under title IV-E of the Act. See CWPM 8.1F, Q#2. For example, attorney volunteer hours may not be used as a source of state match.²

² Federal regulations at 45 CFR 1355.30(i) provide a specific exception for these programs to the applicability of federal regulations at 45 CFR 75.306 which permit certain other sources for a required state match.

Question: What funds can tribal title IV-E agencies (i.e., tribes directly operating the title IV-E program under section 479B of the Act) use to meet the requirements for the non-federal share of program expenditures for independent legal representation?

Answer: The required tribal share of costs claimed for independent legal representation may be sourced either from tribal appropriated funds or from third-party in-kind sources. A tribal title IV-E agency may claim in-kind expenditures for independent legal representation from any allowable third-party sources of up to 50 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(E) of the Act and 45 CFR 1356.68(c).

Question: May title IV-E agencies use title IV-B funds as match for title IV-E expenditures?

Answer: No. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by another Federal grant. See 45 CFR 75.403(f), 45 CFR 75.306(b)(5) and 1355.30(i). The agency may not claim title IV-E and other federal program funding for the same costs.

5. TITLE IV-E AGREEMENTS AND CONTRACTS

Question: May a title IV-E agency contract out its legal representation functions to another agency that is not under a title IV-E agreement with the IV-E agency?

Answer: Yes. Title IV-E agencies often contract out title IV-E administrative functions such as legal representation to other private or public agencies through a contract or other type of agreement. This is distinct from the IV-E agency entering into an agreement under section 472(a)(2) of the Act (referred to herein as a ‘title IV-E agreement’) with another public agency. A section 472(a)(2) title IV-E agreement between a title IV-E agency and a public agency is for the purpose of permitting another public agency to have responsibility for the placement and care of title IV-E eligible children. See [CWPM 8.1G](#) for additional information on title IV-E agreements.

Through contracting, the title IV-E agency pays another private or public agency to perform its administrative functions, and supervises the contracted administrative activities performed by the contractor or other agency. The process of contracting out does not include the transfer of responsibility of placement and care of a specific child/children to another agency. See CWPM section 8.1E for additional information on contracting with a title IV-E agency.

Question: May an entity with a title IV-E agreement or a contract with a title IV-E agency, submit claims directly to ACF for title IV-E administrative costs of independent legal representation?

Answer: No. Regardless of whether a title IV-E agency enters into a title IV-E agreement or a contract with another agency, the title IV-E agency is the only entity that may submit claims to the federal government for title IV-E FFP.

Question: What should a title IV-E agency, that has a title IV-E agreement with another public agency or tribe, or a contract with another private or public agency, include in its PACAP/CAM with regard to independent legal representation?

Answer: A title IV-E agency's PACAP/CAM must³:

- identify the nature of the title IV-E agreement for independent legal representation of an eligible child and his/her parent;
- describe how the title IV-E agency will monitor to assure the arrangements will be fulfilled; and
- include a statement⁴ that costs claimed for such services will be supported by a written agreement that includes at a minimum: the specific service(s) being purchased, the basis upon which the billing will be made by the provider agency (e.g. time reports, etc.) a stipulation that the billing will be based on the actual cost incurred.

6. TITLE IV-E TRAINING COSTS

Title IV-E allows title IV-E agencies to claim allowable short-term training provided to certain individuals, including current or prospective foster and adoptive parents and relative guardians and professional partners of the agency, including attorneys representing children or parents and GALs, in ways that increase the ability of such individuals to assist and support foster and adopted children, and children living with relative guardians. See section 474(a)(3)(B) of the Act).

Question: Can a title IV-E agency claim allowable costs for short-term training to an attorney who represents children and youth receiving title IV-E foster care maintenance payments (FCMP) or are otherwise eligible to receive FCMP?

Answer: Yes. A title IV-E agency may claim allowable costs at 75% FFP to provide short-term training to an attorney who represents children and youth who are receiving title IV-E FCMP or are otherwise eligible to receive FCMP and title IV-E foster care candidates and their parent(s), consistent with section 474(a)(3)(B) of the Act. See CWPM 8.1H #20. These costs must also be addressed in the agency's title IV-B/E training plan and in its approved PACAP/CAM.

Question: What are allowable short-term training costs for attorneys who provide independent legal representation?

³ See 45 CFR Part 95, subpart E. Contact your assigned ACF grants management specialist for additional information.

⁴ This statement would not be required if the costs involved are specifically addressed in a State-wide cost allocation plan, local-wide cost allocation plan, or an umbrella/department cost allocation plan." 45 CFR 95.507(b)(6).

Answer: Training topics must be closely related to one of the examples cited in 45 CFR 1356.60(c)(1) and (2) as allowable administrative activities under the title IV-E program. For example, training topics could include:

- title IV-E policies and procedures;
- cultural competency related to children and families;
- child abuse and neglect issues, such as the impact of child abuse and neglect on a child; and
- general overviews of the issues involved in child abuse and neglect investigations.

See CWPM 8.1H #8 for additional examples of allowable training topics.

7. EFFECTIVE DATE

Question: When are the revised and new CWPM Q/As effective?

Answer: A new or revised CWPM Q/A is generally effective upon issuance, and therefore, the effective date for the CWPM 8.1B #30, #31 and #32 is January 7, 2019, since #31 and #32 are clarifications of #30.

Question: When may the title IV-E agency begin claiming costs for independent legal representation?

Answer: The title IV-E agency may claim costs that are incurred on or after the policy's effective date on or after the date that the PACAP/CAM amendment is submitted (subject to potential claiming adjustments) or is approved. See 45 CFR 95.515 and 95.517.

Appendix: CWPM 8.1B, questions #30, #31 and #32

INQUIRIES TO: [Children's Bureau Regional Program Managers](#) and Administration for Children and Families Office of Grants Management

Disclaimer: Technical Bulletins provide information or recommendations to States, Tribes, grantees and others on a variety of child welfare issues. Technical Bulletins do not establish requirements or supersede existing laws or official guidance.



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Children's Bureau

Appendix: Child Welfare Policy Manual (CWPM) 8.1B, questions #30, #31 and #32

CWPM 8.1B Question #30. May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?

Answer: Yes. The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency's representation in judicial determinations continues to be an allowable administrative cost.

Previous policy prohibited the agency from claiming title IV-E administrative costs for legal services provided by an attorney representing a child or parent. This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home. These administrative costs of legal representation must be paid through the title IV-E agency. This change in policy will ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans.

CWPM 8.1B Question #31. Are title IV-E administrative costs for the legal representation provided by agency attorneys and for independent legal representation of children and parents in all stages of foster care related legal proceedings available to tribes and public agencies that have an agreement under section 472(a)(2)(B)(ii) of the Act?

Answer: Yes. A title IV-E agency that has an agreement with a tribe or any other public agency under section 472(a)(2)(B)(ii) of the Act may claim title IV-E administrative costs for legal representation provided by tribal or public agency attorneys under the agreement in all stages of foster care related legal proceedings. The title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for title IV-E foster care or a title IV-E eligible child in foster care who is served under the agreement, and the child's parents, to prepare for and participate in all stages of foster care related legal proceedings.

CWPM 8.1B Question #32. Does the policy at CWPM 8.1B #30 allow a title IV-E agency to claim title IV-E administrative costs of paralegals, investigators, peer partners or social workers that support an attorney providing independent legal representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent, to prepare for and participate in all stages of foster care legal proceedings, and for office support staff and overhead expenses?

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Answer: Yes, the policy permits a title IV-E agency to claim such title IV-E administrative costs to the extent that they are necessary to support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings for candidates for title IV-E foster care, youth in foster care and his/her parents. The costs must be consistent with federal cost principles per 45 CFR Part 75 Subpart E. The title IV-E agency must allocate such costs so as to assure that the title IV-E program is charged its proportionate share of costs (See CWPM sections 8.1B and 8.1C).