

NACC

Leveraging Title IV-E to Advance High-Quality Legal Representation & Training

Founded in 1977, the **National Association of Counsel for Children (NACC)** is a nonprofit professional membership and legal advocacy organization dedicated to advancing the rights, well-being, and opportunities of children impacted by the child welfare system through access to high-quality legal representation.

NACC **Promotes Excellence** by providing programs and resources that improve the quality of legal representation for children, parents and agencies.

NACC **Builds Community** by supporting a national community of hard-working and dedicated child welfare professionals, and by helping attract and retain diverse talent in the children's legal advocacy profession.

NACC **Advances Justice** by advocating for policies that advance children's rights, opportunities, and well-being, including the right to counsel.

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National Association
of Counsel for Children

New Funding for Legal Representation of Children and Parents

On December 21, 2018, the U.S. Department of Health and Human Services' Children's Bureau announced a revision to the Child Welfare Policy Manual permitting states to receive up to 50% federal Title IV-E funding reimbursement for the costs of providing "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."¹ The policy was later updated to apply to tribal representation, as well as the costs of paralegals, investigators, peer partners, social workers, support staff, and overhead for independent child and parent legal representation.²

Why Does Legal Representation Matter?

High-quality legal representation has been shown to:

- Prevent the need for removal³
- Expedite timelines to permanency⁴
- Promote engagement in case planning, services, and court hearings⁵
- Increase rates of kinship placement⁶
- Yield cost savings for government agencies.⁷

What About Attorney Training?

The Child Welfare Policy Manual also provides funding under Title IV-E permitting states to receive 75% federal funding reimbursement for training costs.⁸ These trainings may include child welfare staff and court partners, including attorneys, judges and CASAs. Specialized child welfare law training has been shown to improve the quality and efficacy of legal representation and judicial decision-making.⁹ Excellent training is critical to ensure new funding for legal representation enhances and elevates current child welfare practice. Training reimbursement under Title IV-E is accessible independently from reimbursement for legal representation but should be paired to ensure all attorneys are well-qualified for child welfare law practice. →

Additional Resources

- [U.S. Child Welfare Policy Manual, Questions #30, #31 & #32](#)
- [Children's Bureau's 2017 Informational Memorandum on High Quality Legal Representation](#)
- [ABA Center on Children and the Law Title IV-E Technical Overview Brief](#)
- [The Family Justice Initiative Title IV-E FAQ](#)
- [NACC's Title IV-E Policy Page](#)

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Leveraging Title IV-E to Advance High-NACC Quality Legal Representation & Training

Getting Started

- Title IV-E funding for legal representation and attorney training is only accessible through the state Title IV-E agency. Judges, attorneys, social workers, and finance experts must partner together to develop proposals that leverage these opportunities.
- Law office and agency leaders should reach out to Title IV-E agencies, Court Improvement Programs and court administrators to begin partnership discussions (or vice-versa).
- States should consider approaches tying training requirements and Child Welfare Law Specialist (CWLS) certification¹⁰ to their plans to ensure that Title IV-E funding is funneled toward high-quality legal representation.
- Technical assistance is available through multiple organizations, including NACC, the ABA Center on Children and the Law, and the Family Justice Initiative.

Endnotes

- 1 Children's Bureau Child Welfare Policy Manual, Section 8.1B, Question #30
- 2 Children's Bureau Child Welfare Policy Manual, Section 8.1B, Question #31& #32
- 3 See, e.g., Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." Wm. Mitchell L. Rev. 40, no. 3 (2014): 1036-47.
- 4 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.issuelab.org/resources/1070/1070.pdf>; See also Duquette et. al., (2016) *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System*, ABA Publications;
- 5 For a summary of research on this factor, see "High Quality Legal Representation for All Parties in Child Welfare Proceedings." Administration for Children and Families Information Memorandum. ACYF-CB-IM-17-02. 17 January 2017.
- 6 Gerber, Pang, Ross, Guggenheim, Pecora, and Miller, *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 Children and Youth Services Review 42 (2019). <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.
- 7 Id.
- 8 Children's Bureau Child Welfare Policy Manual, Section 8.1H, Questions #8, #18
- 9 See Child Abuse and Neglect Institute Evaluation: Training Impact on Hearing Practice (2016) available at: <http://www.ncjfcj.org/CANI-Report-2016>; See also Quality Improvement Center for the Representation of Children in the Child Welfare System. (QIC-ChildRep) Practice Model. <http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx>
- 10 "The Children's Bureau strongly encourages all attorneys and judges practicing child welfare law to obtain CWLS certification... Providing high-quality legal representation to all parties at all stages of dependency proceedings is crucial to realizing [the] basic tenets of fairness and due process under the law." U.S. Department of Health and Human Services' Administration for Children and Families IM-17-02

FOR MORE INFORMATION ON

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Leveraging Federal IV-E Funding to Support Child and Parent Representation

ABA Center on Children and the Law

National Council of Juvenile and Family Court Judges

Quick Overview

This alert highlights:

- ✓ the importance of this new source of federal funding,
- ✓ requirements for accessing IV-E funding,
- ✓ who is covered by this funding,
- ✓ judges' roles in leveraging IV-E funding for children's and parent's counsel, and
- ✓ practical considerations for accessing IV-E funding to improve parent and child representation.

A new federal funding source for legal representation of parents and children in child welfare cases aims to improve representation quality. A December 2018 federal policy change allows states to seek federal reimbursement under Title IV-E of the Social Security Act for the cost of providing legal representation to eligible children and parents.¹ Before the policy change, these funds were only available for legal representation provided to child welfare agencies. In April 2020, the U.S. Children's Bureau clarified that federal IV-E matching funds may also be claimed for multidisciplinary team members who support legal representation provided to children and parents.²

Why is IV-E funding for children's and parents' counsel important?

The purpose of the new IV-E funding for children's and parents' counsel is to invest in improving legal representation for children and parents.³ High-quality legal representation for children and parents has many benefits, among them:

- promotes timely family reunifications and use of kinship care,
- ensures a well-functioning child welfare system,
- gives judges the information they need to make informed decisions in court cases involving children and families,
- ensures parties' rights are protected, their voices are heard in court, and the legal system treats them fairly,
- promotes greater understanding of the court process by parties,
- saves the system money, and
- produces positive case outcomes for parties by increasing their presence and participation in court.⁴

(See [Judge's Action Alert: Ensuring High-Quality Legal Representation for Parents and Children](#)).

Leveraging IV-E funding can help promote high-quality legal representation of children and parents in child welfare proceedings in your jurisdiction. A recent assessment⁵ of the impact of funding changes on the quality of legal representation in California found changes in funding for attorneys directly affected factors that influence representation quality, such as attorney recruitment and retention, multidisciplinary legal practice, caseloads, workload per case, and case delays. A landmark 2019 study⁶

Child Welfare Policy Manual, 8.1B¹

Question 30

Allows 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.

Question 31

Allows 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 to 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.

Question 32

Allows 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.

¹See U.S. Dep't of Health & Human Servs., Admin. For Children & Families, Children's Bureau. [Child Welfare Policy Manual 8.1B # 30-32. TITLE IV-E, Administrative Functions/Costs, Allowable Costs—Foster Care Maintenance Payments Program](#), December 12, 2019.

found providing parents multidisciplinary representation in child welfare proceedings significantly improved case outcomes Adequately funding legal representation can positively influence these and other factors that may be preventing attorneys from representing clients at the highest level.

How much funding is available for parents' and children's representation?

States can now seek administrative cost reimbursement from the federal government to pay half the cost of attorneys for children who are eligible for Title IV-E foster care benefits, and half the cost for attorneys for their parents. The formula for calculating the IV-E reimbursement rate is specific to representation of IV-E eligible parents and children. States can use their "penetration rate," which is the percentage of children who are IV-E eligible compared to the total foster care population in the state. The amount of money the state is paying for representation is multiplied by the penetration rate then multiplied by 50%.⁷ (For detailed guidance on calculating the reimbursement rate, see Mark Hardin's [article](#).)

What are the requirements for accessing this funding?

For a court or legal organization to receive funds, it must enter into an agreement with a state child welfare agency that administers the IV-E plan and receives federal matching funds. The agreement would allow the agency to claim and receive the funds from the federal government and then pass them through to the court or legal organization providing representation to IV-E eligible children or their parents. Agreements would require courts or legal organizations requesting the funds to document attorneys' costs in a way that meets federal reimbursement requirements.⁸

Who is covered by the funding?

The funding covers *legal representation* for children who are IV-E eligible and their parents,⁹ including:

- Lawyers for parents
- Lawyers for children
- Attorney guardians ad litem (GALs)

Note: When an Indian tribe is a IV-E participating tribe, it can draw down IV-E funding for the representation of Indian children and parents just like a state can.

The funding also covers individuals who support attorneys providing independent legal representation to IV-E eligible children and their parents,¹⁰ including:

- Paralegals
- Investigators
- Peer mentors
- Social workers

The funding does not cover:

- Court appointed special advocates (CASAs)
- Nonlawyer volunteer GALs
- Representation for kin caregivers

Key Resources

Federal policy

U.S. Dep't of Health & Human Servs., Admin. For Children & Families, Children's Bureau. [8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program \(Questions 30-32\)](#), December 12, 2019.

Children's Bureau, [IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings](#), January 17, 2017.

Children's Bureau, [Technical Bulletin, Frequently Asked Questions: Independent Legal Representation](#), July 20, 2020.

Interpretative guidance

Hardin, Mark. "[Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview](#)." *Child Law Practice Today*, January 30, 2019.

Family Justice Initiative. Webinar: [Federal IV-E Reimbursement for High-Quality Legal Representation for Children and Parents](#).

Implementation resources

FAQs and MOUs from several states: [FJI federal funding website page](#)

What is my role? How can I help leverage IV-E funding for children's and parents' counsel in my jurisdiction?

Think creatively about how to improve quality legal representation. The purpose of the federal funding is to invest in high-quality representation that leads to improved outcomes for children and parents in the child welfare system. This provides an opportunity for each state to define what high-quality representation of children and parents means and to leverage the funding to pursue activities that support that vision. As a judge, you can lead your stakeholders in determining the best ways to invest the federal resources in your jurisdiction. Examples of ways states might use the funding to promote high-quality representation include:

- expanding multidisciplinary legal representation (the costs of the full team can be used to claim IV-E funding);
- implementing pre-removal legal representation for parents; and
- in some instances increasing salaries for children's or parent's attorneys.¹¹

Partner with IV-E agencies on the logistics of drawing down IV-E dollars. If your court contracts with attorneys to represent children or parents in child welfare proceedings, accessing IV-E funding requires entering into an agreement with the state child welfare agency that receives IV-E administrative funds. The agreement can be in the form of a Memorandum of Understanding (MOU), interagency agreement, or other agreement in which the court agrees to document the costs of providing legal representation for parents and children in a way that meets the requirements of the IV-E state child welfare agency.¹² Your court's administration should work with the state child welfare agency that receives IV-E funds to draw up the agreement and ensure it meets state and federal requirements for claiming the funds.¹³ State child welfare IV-E agencies know how to pull down IV-E dollars and can look to the reimbursement process for agency representation for guidance when seeking reimbursement for representing children and parents.¹⁴

Encourage legal representation programs that provide parent and child representation to seek IV-E funding. If children and parents are represented by attorneys through a legal representation program or institutional provider, make sure the programs are aware of the availability of IV-E funds for parent and child representation. The program would similarly need to reach an agreement with the state child welfare agency that receives IV-E funds and develop a process that meets federal requirements for receiving funds.

What are some practical considerations related to accessing IV-E funding?

IV-E is an open entitlement reimbursement plan. This means the funding for children's and parents' representation does not take away from money the IV-E agency is using for another purpose. For any IV-E eligible service, the federal government will provide reimbursement at 50% multiplied by the state's penetration rate (the percent of children who are IV-E eligible in comparison to the total foster care population) as long as the state provides a match.¹⁵

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State or county dollars used to pay for parent’s and children’s attorneys can be used as the state match when seeking IV-E reimbursement for legal representation. Almost every state pays for child or parent representation through public money. This may be state money, county money, or state money channeled through the judicial branch, for example. In these states, state and county dollars spent on parent and child representation may be used as a match to draw down the federal IV-E funding for legal representation. In states that do not pay for parent or child representation, this new federal funding opportunity may prompt them to start to do so.¹⁶

IV-E funding applies to all child and parent representation models. This new source of federal funding covers parents’ and children’s attorneys regardless of the representation model. Whether attorneys work for institutional providers, legal representation offices, or are panel or solo attorneys appointed by the court, IV-E reimbursement may be sought to improve representation.¹⁷

Endnotes

1. U.S. Dep’t of Health & Human Servs., Admin. For Children & Families, Children’s Bureau. [Child Welfare Policy Manual 8.1B #30-32 TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program](#), December 12, 2018.
2. Child Welfare Policy Manual 8.1B #32.
3. Family Justice Initiative Webinar: [Federal IV-E Reimbursement for High-Quality Legal Representation for Children and Parents](#), 2019.
4. *See* Children’s Bureau, [IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings](#), January 17, 2017.
5. ABA Center on Children and the Law. [Effects of Funding Changes on Legal Representation Quality in California Dependency Courts](#) (2020).
6. Guggenheim, Martin & Susan Jacobs. [“Providing Parents Multidisciplinary Legal Representation Significantly Reduces Children’s Time in Foster Care.”](#) *Child Law Practice Today*, June 4, 2019.
7. Hardin, Mark. [“Claiming Title IV-E Funds to Pay for Parents’ and Children’s Attorneys: A Brief Technical Overview.”](#) *Child Law Practice Today*, January 30, 2019.
8. *Ibid.*
9. Child Welfare Policy Manual 8.1B #30-32.
10. *Ibid.*, #32.
11. Family Justice Initiative Webinar, 2019.
12. The Family Justice Initiative’s [federal funding website page](#) has several examples of Memorandums of Understanding.
13. *See* Hardin, Mark. [“Claiming Title IV-E Funds to Pay for Parents’ and Children’s Attorneys: A Brief Technical Overview”](#) for detailed guidance.
14. Family Justice Initiative Webinar, 2019.
15. *Ibid.*
16. *Ibid.*
17. *Ibid.*

Legal Representation in Child Welfare Proceedings

Benefits of high-quality legal representation



Protects parents' and children's legal rights.



Increases parties' participation in and out of court.



Improves all parties' perceptions of fairness.



Reduces delays in achieving permanency and helps children and families reach better, long-term outcomes.



Promotes tailored case plans and services.



Improves frequency and timeliness of parent-child and sibling visitation and family time.



Empowers families and communities to keep children safe at home.



Informs better judicial decision making.



Saves jurisdictions money by reducing time children spend in foster care.



Structuring a system of high-quality representation

- ✓ Clearly define roles and expectations.
- ✓ Set reasonable caseloads.
- ✓ Offer fair compensation and benefits.
- ✓ Follow standards of practice.
- ✓ Provide specialized child welfare law training.
- ✓ Ensure effective supervision.
- ✓ Seek client feedback on representation.
- ✓ Give attorneys access to an interdisciplinary model of representation.



How judges promote high-quality legal representation

- ✓ Ensure all parties have access to legal representation as early as possible in the case.
- ✓ Confirm all counsel have requisite training, experience and understanding of child welfare law to vigorously represent their clients.
- ✓ Establish an environment where parties are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.
- ✓ Understand the child welfare agency's practices, procedures, and operations, and ensure it fulfills its legal duties.
- ✓ Require that all attorneys adopt a disciplined approach to processing cases and respect timely court hearings, court decisions, and implementation of court orders.
- ✓ Ensure the spirit of collaborative meetings and case management does not compromise any party's rights and protections under the law.
- ✓ Seek opportunities to train child welfare attorneys.
- ✓ Solicit input from all parties to gain as complete a picture as possible to inform judicial decision making and promote child and family well-being.

Essential practices for all child welfare attorneys

- ✓ Advocate for your client.
- ✓ Ensure judges have information needed to make case decisions.
- ✓ Communicate with clients regularly.
- ✓ Know federal and state child welfare laws and keep current on new developments.
- ✓ Prepare for and attend court hearings and reviews.
- ✓ Seek court accommodations that promote equal access and full participation in proceedings.
- ✓ Prepare clients and witnesses for court.
- ✓ Maintain a reasonable caseload and devote sufficient time for advocacy.
- ✓ Conduct a thorough, independent investigation at every stage of the case.
- ✓ Provide ethical legal representation.
- ✓ Understand and effectively implement trauma-informed practice.
- ✓ Confirm clients receive proper notice and comply with court orders.
- ✓ Actively engage in conflict resolution and negotiation.
- ✓ Reduce case continuances and timely file all pleadings, motions, and briefs.
- ✓ Mentor and train others in the field.
- ✓ File motions and appeals to protect client rights and interests.
- ✓ Understand how cultural, social, and economic differences affect the attorney-client relationship and avoid personal and system bias.

Quality hallmarks



Child attorney

Role: Protect and advance child's interests in court, provide legal counsel, and help the child understand the legal process and feel empowered to participate.

Quality hallmarks:

- Understand the child's wishes in the case.
- Understand the child's strengths, needs, and resources.
- Ensure the child has an opportunity to attend and participate in court hearings.
- Advocate for the child to maintain contact with parents, siblings, and kin through visitation, placement, and permanency planning.
- Work with collateral contacts—teachers, foster parents, service providers.
- Collaborate with a multidisciplinary team.
- Promote tailored, specific case plans and services.
- Advocate for the child's access to education and community supports.



Parent attorney

Role: Protect the parent's legal rights, advance the parent's interests in court, and help the parent understand the legal process.

Quality hallmarks:

- Explain the child welfare legal system and the parent's rights and duties.
- Ensure the parent's voice is heard and understood in the proceedings.
- Help the parent problem solve and meet case goals.
- Build a relationship of trust and ensure the parent experiences fairness.
- Understand the parent's life circumstances, including strengths, needs, and available resources.
- Advocate parent-child contact through visitation and permanency planning.
- Collaborate with a multidisciplinary team, including parent mentors and parent social workers.
- Address collateral legal issues that may affect the child welfare case in housing, employment, health care, disabilities, domestic violence, benefits, criminal justice, and immigration law.



Agency attorney

Role: Represent the child welfare agency or jurisdiction and present evidence of the underlying case in court including agency compliance with federal and state child welfare laws.

Quality hallmarks:

- Provide guidance to agencies and caseworkers on child welfare law, procedures and policies.
- Consult on decisions to remove or return a child and ensure decisions meet legal standards.
- Prepare or help prepare the initial petition and subsequent pleadings.
- Promote quality casework and agency performance to support families.
- Ensure no undue delays in service provision, case planning, or other agency duties.
- Cooperate and communicate regularly with other counsel.
- Help the agency meet federal monitoring and continuous quality improvement requirements.
- Work with agency to ensure parties' legal rights are protected.
- Train caseworkers on federal and state laws to ensure the agency maintains high-quality performance.