



David A. Paterson  
Governor

NEW YORK STATE  
OFFICE OF CHILDREN & FAMILY SERVICES  
52 WASHINGTON STREET  
RENSSELAER, NY 12144

Gladys Carrión, Esq.  
Commissioner

## Local Commissioners Memorandum

<b>Transmittal:</b>	10-OCFS-LCM-02
<b>To:</b>	Local District Commissioners, Director of Services, Foster Care Supervisors
<b>Issuing Division/Office:</b>	Administration
<b>Date:</b>	May 14, 2010
<b>Subject:</b>	<b>Federal Administration for Children and Families' Final Report on the 2009 Title IV-E Subsequent Primary Foster Care Eligibility Review</b>
<b>Contact Person(s):</b>	Please contact your Regional Office with any questions: BRO – Mary Miller (716) 847-3145 <a href="mailto:Mary.Miller@ocfs.state.ny.us">Mary.Miller@ocfs.state.ny.us</a> RRO– Karen Buck (585) 238-8549 <a href="mailto:Karen.Buck@ocfs.state.ny.us">Karen.Buck@ocfs.state.ny.us</a> SRO– Jack Klump (315) 423-1200 <a href="mailto:Jack.Klump@ocfs.state.ny.us">Jack.Klump@ocfs.state.ny.us</a> ARO– Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.state.ny.us">Kerri.Barber@ocfs.state.ny.us</a> SVRO– Pat Sheehy (845) 708-2498 <a href="mailto:Patricia.Sheehy@ocfs.state.ny.us">Patricia.Sheehy@ocfs.state.ny.us</a> NYCRO– Patricia Beresford (212) 383-1788, ext. 4708 <a href="mailto:Patricia.Beresford@ocfs.state.ny.us">Patricia.Beresford@ocfs.state.ny.us</a> Native American Services – Kim Thomas (716) 847-3123 <a href="mailto:Kim.Thomas@ocfs.state.ny.us">Kim.Thomas@ocfs.state.ny.us</a>
<b>Attachments:</b>	Yes: ACF Final Report '09 Title IV-E Foster Care Eligibility Report
<b>Attachment Available Online:</b>	N/A

### I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform local departments of social services that New York State was recently found to be in **substantial compliance** with federal Title IV-E child and provider eligibility requirements by the federal Administration for Children and Families (ACF). This determination was based on the Subsequent Primary Title IV-E Foster Care Eligibility Review (FCER), completed in

Rensselaer during the week of August 31 – September 4, 2009. The federal report was issued on April 14, 2010. This LCM transmits this Final Report on the FCER.

ACF commends New York State for its significant efforts and clear achievements in continuing to improve compliance with Title IV-E eligibility requirements. These achievements could not have been made without the hard work of the social services districts, courts, voluntary authorized agencies and others over the last three years. Therefore, this LCM also extends OCFS's commendations to everyone who participated in the activities undertaken over the last few years to prepare for the Subsequent Primary Review.

Although New York State passed this Subsequent Primary Review, two error cases and several improper payments were found. This is important as federal Title IV-E eligibility reviews occur on a three-year cycle and the next review will have the same high compliance threshold of 95%. Therefore, this LCM is also a reminder that the state, local districts, courts, voluntary authorized agencies and other necessary partners must continue to work together to focus efforts on improving Title IV-E compliance, including improving case documentation. The attached Final Report sets forth the ACF findings on areas in need of improvement and areas of concern, as well as areas of strength.

## **II. Background**

This FCER applied to cases where Title IV-E was claimed during an established period during 2009. This review follows two previous reviews conducted by ACF.

In 2003, ACF conducted a Primary Eligibility Review of New York State's Title IV-E Foster Care program. A total of 80 cases were reviewed and 31 cases were found to be in error. As this error rate exceeded the threshold of 10% (eight cases), New York State was found to not be in substantial compliance and was subject to a Secondary Eligibility Review. Over the next two years, OCFS, social services districts, the Office of Court Administration and others worked to implement the Title IV-E Program Improvement Plan (PIP) developed as a result of the Primary Review Report. Each social services district also developed and implemented its own PIP that incorporated the Title IV-E standards, findings from the initial Primary Review, and each district's assessment of the specific areas needing improvement and action steps to achieve compliance. These activities helped New York State prepare for the successful 2006 Secondary Review.

In 2006, ACF conducted the Secondary Title IV-E FCER in New York. In that review, 150 cases were reviewed and the threshold was 10% (case error rate and dollar error rate could not exceed 10%). OCFS was found to be in substantial compliance and work began for the preparation of the 2009 Subsequent Primary Review.

For the 2009 Review, ACF reviewed 80 cases for a threshold of 5% (no more than 4 cases in error). New York State was found to be in substantial compliance with only two error cases. An additional 15 cases are cited for improper Title IV-E payments. ACF has disallowed \$238,346 in Title IV-E funds for the error cases and non-error cases with ineligible payments. To avoid an assessment of interest, these funds must be returned to the federal government through a decreasing adjustment to the state's federal Title IV-E claims within 30 days of the report. Social services districts with error cases and/or payment errors will be advised under

separate cover letter on how to report the decreasing adjustment for their cases. OCFS will continue to review the error cases to determine if an appeal to the Departmental Appeals Board is warranted.

It is important to note that if the state had been found to be not in substantial compliance for this Subsequent Primary Review, a new PIP would have been required followed by another Secondary Review in 2012. This review would have entailed a more extensive review of 150 cases with an error threshold of 10%. If OCFS failed, the error rate would have been extrapolated for the period under review, across the entire Title IV-E claim with a potentially significant fiscal impact. Due to the successful completion of the Subsequent Primary Review, a PIP and Secondary Review are not required.

### **III. Program Implications**

New York State will undergo another Title IV-E Subsequent Primary Review in 2012. That review will again consist of a sample of 80 cases. The error rate for achieving compliance will remain at 5% or less, i.e., four or less error cases. In order to remain successful in the next Subsequent Primary Review, it is critical that the state, social services districts, the courts and our other partners continue activities to support compliance with Title IV-E eligibility requirements.

As a start, local social services districts are encouraged to review and update their Title IV-E procedures to continue necessary activities to maintain and improve Title IV-E compliance. The review should specifically include the areas ACF noted as in need of improvement in the Final Report of the Secondary Review. OCFS intends to supplement these district efforts by periodically conducting reviews of Title IV-E cases and surveys of court order and foster home licensing compliance.

Additionally, OCFS will continue to work closely with social services districts, the courts, voluntary agencies and others to support additional activities and communications that are essential to New York State's success in future federal Title IV-E Foster Care Eligibility Reviews. For example, OCFS will be updating the Title IV-E eligibility manual and checklist as well as initiating additional training for local district staff. Information will be made available shortly on the OCFS website.

Please contact your OCFS Regional Office if you have any recommendations, questions, or concerns.

*/s/ Thomas S. Tipple*

---

**Issued By:**

Name: Thomas S. Tipple

Title: Deputy Commissioner

Division/Office: Administration



DEPARTMENT OF HEALTH & HUMAN SERVICES

---

ADMINISTRATION FOR CHILDREN AND FAMILIES  
**Administration on Children, Youth and Families**  
1250 Maryland Avenue, S.W.  
Washington, D.C. 20024

APR 14 2010

Gladys Carrion, Esq.  
Commissioner  
New York State Office of Children and Family Services  
Capital View Office Park  
52 Washington Street  
Rensselaer, New York 12144-2796

Dear Ms. Carrion:

The Children's Bureau (CB), Administration for Children and Families (ACF), conducted a subsequent primary review of the New York State Office of Children and Family Services (NYS OCFS) title IV-E foster care program during the week of August 31, 2009. The review protocol was implemented in accordance with the Federal provisions at part 45, section 1356.71 of the Code of Federal Regulations (45 CFR 1356.71).

Please note that my letter to you of March 31, 2010 included an earlier draft of the final report that did not accurately reflect the results of the on-site review. This letter and the enclosed report replace those documents, which we have disposed of accordingly.

This letter transmits our report of final findings for this primary review and provides a summary of the findings. The issuance of this report was delayed due to our need to request additional information from OCFS to verify title IV-E eligibility on several cases in the sample. In our preparation for the August 2009 Foster Care Eligibility Review with NYS, the Children Bureau (CB) Regional Office requested that the complete case record be accessible for each sample case during the on-site review in order to resolve issues pertaining to case-specific eligibility and provide reviewers with all of the information available for them to ascertain compliance with Federal requirements. This request was not met and, therefore, hindered the timely issuance of the report. With regard to future title IV-E foster care eligibility reviews, we ask that State agency staff ensure that complete case records are available on-site for each sample case.

The purposes of the primary title IV-E foster care review were (1) to determine whether NYS OCFS was in compliance with the eligibility requirements as outlined in statute and regulations at section 472 of the Social Security Act and 45 CFR §1356.71; and (2) to validate the basis of the NYS OCFS financial claims to ensure that appropriate payments were made on behalf of eligible children. A computerized statistical sample of 80 cases was reviewed by a team comprised of Federal and State staff to determine the State's level of compliance in meeting the Federal eligibility requirements for the 6-month period under review (PUR) of October 1, 2008 through March 31, 2009.

The review team determined that 78 of the 80 cases met eligibility requirements (i.e., deemed non-error cases) for the PUR. Two (2) cases were found to be in error for either part or all of the PUR and fifteen (15) non-error cases were found to be ineligible for Federal funding for a period for which payments were claimed. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs associated with the error cases and non-error cases with ineligible payments, are being disallowed.

The review was a collaborative effort involving extensive planning, preparation and assistance from numerous State and Federal staff. These efforts resulted in a well-coordinated and professionally-conducted review. In particular, we offer our thanks and appreciation to Ms. Susan A. Costello and Ms. Judith A. Tomisman for their assistance throughout the phases of the review process.

I am pleased to inform you that CB has determined that the NYS OCFS title IV-E foster care program is in substantial compliance with Federal eligibility requirements for the PUR. Although two (2) cases were determined to be error cases, this finding does not exceed the threshold for substantial compliance in a primary review of four or fewer cases in error. The additional findings for non-error cases with ineligible payments were not considered in determining the State's substantial compliance with the Federal requirements. Since NYS OCFS is in substantial compliance, a secondary review is not required. The next primary review will be held within three years.

We commend the State for its continuous efforts to improve its title IV-E foster care eligibility program since the previous secondary review was conducted in August 2006. CB has noted overall improvement in the timeliness of judicial findings and, in some jurisdictions, improvement in the quality of written court orders. We recognize that NYS operates a State-supervised, county-administered child welfare system, which can result in variations in program operations among the counties throughout the State. However, the NYS child welfare system could benefit from using court order templates statewide. The templates will help to promote consistency in legal and case practices for children in child welfare and juvenile justice cases for which title IV-E payments are made and ensure the issuance of court orders statewide that are explicit, child-specific and timely. NYS OCFS also may benefit by inviting the Office of Court Administration stakeholders to participate in the title IV-E foster care eligibility review process because the child welfare and family court systems provide joint services to children and families and are dependent upon each other to ensure successful outcomes for children. The enclosed report of findings identifies additional program strengths and provides recommendations for further program enhancements.

This letter also constitutes our formal notice of disallowance of \$238,346 for title IV-E funds claimed improperly for the error cases and non-error cases with ineligible payments. NYS OCFS must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

Since the amount of disallowed funds was previously included in Federal payments made to the State, you must repay these funds by including a prior period decreasing adjustment on the quarterly report of expenditures (form ACF-IV-E-1), part 1, line 1, columns (c) and (d). Form ACF-IV-E-1 must be submitted within 30 days of the date of this letter in order to avoid the assessment of interest. The State must cease claiming title IV-E payments associated with the improperly paid cases until eligibility is substantiated for them.

This is the final decision of the Children's Bureau. If you disagree with the decision about the review findings, Federal regulations at 45 CFR Part 16 permit you to appeal this decision directly to the Departmental Appeals Board (the Board). Your written request to appeal must be sent within 30 calendar days of receiving this notice of finding and payment disallowance. The use of registered or certified mail, return receipt requested, is recommended to establish the mailing date of all correspondence. The letter to appeal this decision should be sent to:

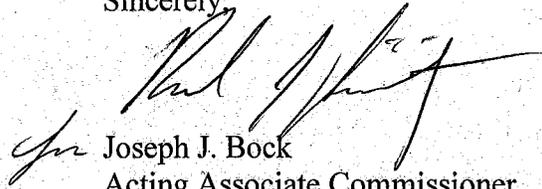
Department of Health and Human Services  
Departmental Appeals Board, MS 6127  
Appellate Division  
330 Independence Avenue, SW  
Cohen Building, Room G-644  
Washington, DC 20201

You must attach a copy of this decision to your appeal notice and the notice must state the amount in dispute and the reason you think this decision is wrong. A copy of your appeal also should be sent to Junius Scott, Child Welfare Regional Program Manager in Region II. The Board will notify you of further procedures.

If you appeal, you may elect to repay the amount at issue pending a decision by the Board, or you may retain the funds pending that decision. An adjustment to return the disallowed funds for the purposes of avoiding interest assessment must be made through the use of form ACF-IV-E-1, as described above. If you retain the funds and the Board sustains all or part of the disallowance, interest will be charged starting from the date of this letter on the funds the Board decides were properly disallowed. Regulations at 45 CFR Part 30 detail how interest will be computed. In the event you choose to take no action to return the funds, it will be assumed you have elected to retain the funds, either to appeal or to delay recoupment of the funds until the next issued grant award. Interest will continue to accrue on the Federal funds retained by the State during this period.

If there are any questions or concerns, please feel free to contact Junius Scott, Child Welfare Regional Program Manager in Region II, at (212) 264-2890, ext. 145, or by e-mail at [junius.scott@acf.hhs.gov](mailto:junius.scott@acf.hhs.gov). You also may contact Shari Brown, Children and Families Program Specialist at (212) 264-2890, ext. 125, or by e-mail [shari.brown@acf.hhs.gov](mailto:shari.brown@acf.hhs.gov). Questions concerning the disallowance should be directed to Jing Lin, Financial Management Specialist, at (212) 264-2890, ext 138, or by e-mail at [jing.lin@acf.hhs.gov](mailto:jing.lin@acf.hhs.gov).

Sincerely,



Joseph J. Bock  
Acting Associate Commissioner  
Children's Bureau

Enclosure

cc: Junius Scott, Child Welfare Regional Program Manager; CB, Region II; New York, NY  
Laura Velez, Deputy Commissioner; NY, OCFS, Division of Child Welfare and  
Community Services; Rensselaer, NY  
Susan Costello, Director; NY OCFS, Financial Management; Rensselaer, NY  
Shari Brown, Children and Families Program Specialist; CB, Region II; New York, NY  
Jing Lin, Financial Management Specialist; ACF, OA, OGM, Region II; New York, NY  
Clinton McGrane, Grant Officer, ACF, OA, OFM, Region II; New York, NY  
Gail Collins, Director; CB, Division of Program Implementation; Washington, DC

**State of New York  
Primary Review  
Title IV-E Foster Care Eligibility  
Report of Findings for  
October 1, 2008-March 31, 2009**

**Introduction**

During the week of August 31, 2009, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State's title IV-E foster care program. The review was conducted in collaboration with the New York State (NYS) Office of Children and Family Services (OCFS) and was completed by a review team comprised of representatives from NYS OCFS, NYS local social service districts (Albany, Chemung, Delaware, Essex, Genesee, NYC, Niagara, and Steuben), CB Central and Regional Offices, ACF Regional Grants Management, peer reviewers from New Jersey and Utah and an observer from the St. Regis Mohawk Tribe.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether NYS OCFS' title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the Act); and (2) to validate the basis of the State's financial claims to ensure that appropriate payments were made on behalf of eligible children.

**Scope of the Review**

The primary review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the 6-month period under review (PUR) of October 1, 2008 through March 31, 2009. A computerized statistical sample of 110 cases (80 cases plus 30 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of 78 cases from the original sample plus 2 oversample cases. Two cases, samples #57 and #72, were excluded from the original sample because no title IV-E foster care maintenance payment was made during the PUR. The State provided documentation to support excluding these cases from the review sample and replacing them with cases from the oversample.

In accordance with Federal provisions at 45 CFR 1356.71, the State was reviewed against the requirements of title IV-E of the Act and Federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(1) and (2), and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A) and (d)-(g) of the Act and 45 CFR §1356.22;

- Responsibility for placement and care vested with State agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the State plan in effect July 16, 1996 as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v);
- Placement in a licensed foster family home or child care institution as defined in §§472 (b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child's foster care placement as required at 45 CFR §1356.30.

A case folder of each child in the selected sample was reviewed to verify title IV-E eligibility. Foster care provider's documents were also examined to ensure the foster family home or childcare institution where the child was placed during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child also were reviewed to verify the expenditures were allowable under title IV-E and to identify underpayments that were eligible for claiming. A sample case was assigned an error rating when the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was paid. A sample case was cited as non-error with ineligible payment when the child was not eligible on the activity date outside the PUR or the child was eligible in the PUR on the service date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity. CB and the State agreed that the State would have until September 16, 2009 to submit additional documentation for a case that during the onsite review was identified as in error, in undetermined status, or not in error but with ineligible payments. OCFS submitted additional documentation for case samples #58 and #61. Based on the supplemental documentation, both error cases were changed to non-error.

### **Compliance Finding**

The review team determined that 78 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Two (2) cases were determined to be in error for either part or all of the PUR and fifteen (15) non-error cases were ineligible for Federal funding for a period of claiming. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs associated with the error cases and non-error cases with ineligible payments, are being disallowed. Because the number of cases in error is fewer than four (4), NYS OCFS is found to be in substantial compliance for the PUR.

### **Case Summary**

The following charts record the error cases; non-error cases with ineligible payments; underpayments; reasons for the improper payments; improper payment amounts; and Federal provisions for which the State did not meet the compliance mandates.

**Error Cases**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
#1	Court placed child with relative instead of in the care and responsibility of the authorized State agency. [45 CFR 1356.21(k)(2)] Ineligible period: 10/01/2008-12/18/2008	\$11,870 Maint \$26,139 Admin
	Child was not removed from the specified relative's home. [§472(a)(1) and (4); 45 CFR§1356.21(k)(l)] Ineligible period: 9/27/2007-9/30/2008; 01/01/2009-03/31/2009	
#17	Child was not removed for the specified relative's home. [§472(a)(1) and (4); 45 CFR§1356.21(k)(l)] Ineligible: Entire FC episode: 05/23/2007-03/31/2009	\$2,534 Maint \$2,502 Admin
	Foster family home not fully licensed [§472(b) and (c); 45 CFR §§ 1356.71(d)(1)(iv) & 1355.20] Ineligible: 12/24/2008-01/31/2009	

Total: \$14,404 Maint  
\$28,641 Admin

**Non-error Cases with Ineligible Payments**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
#5	Child entered foster care 4/29/1991; No court order stating reasonable efforts until 3/1992; [§§472(a)(1) & 471(a)(15)(B)(i); 45 CFR§ 1356.21(c)] Ineligible: 04/1991-02/1992	\$27,944. Maint \$12,668 Admin
	No safety check for foster care provider [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 07/01/2000-06/30/2003	
#8	Foster home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 02/15/2008-05/01/2008	\$1,949 Maint \$1,609 Admin
#9	Foster family home not licensed. [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20] Ineligible: 07/02/2008-08/31/2008	\$1,447 Maint \$1,609 Admin
#14	Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 12/01/2001-05/31/2004; 02/01/2006-02/28/2006	\$21,264 Maint \$13,457 Admin
#30	No safety checks for foster care provider. [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 03/03/2008-05/31/2008	\$2,308 Maint \$2,413 Admin

#36	Foster family home not licensed. [§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 02/01/2005-04/30/2005	\$1,782 Maint \$2,793 Admin
#41	Safety check not timely for foster care provider. Child placed in 11/2007; safety check completed 1/2008. [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 11/2007-01/2008	\$1,203 Maint \$804 Admin
#45	Foster family home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 04/05/2008-06/30/2008	\$3,037 Maint \$4,826 Admin
#52	Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 04/01/2007-04/30/2007	\$2,292 Maint \$2,283 Admin
	Foster family home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 09/01/2006-10/21/2006	
	No safety checks for foster care provider. [§§472(a)(20); 45 CFR §§1356.30] Ineligible: 09/01/2006-10/31/2006	
#60	Foster family home not licensed. [§§472(b) and (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 07/01/2005-08/31/2005	\$1,454 Maint \$1,396 Admin
#68	Payment made before judicial determination of contrary to the welfare and reasonable efforts to prevent removal. [§§472(a)(1) & 471(a)(15)(B)(i); 45 CFR § 1356.21(c)] Ineligible: 02/01/2005-02/28/2005	\$107 Maint \$0 Admin
#69	Foster family home not licensed. [§472(b) & (c); 45 CFR §§1356.71(d)(1)(iv) & 1355.20] Ineligible: 05/14/2008-07/31/2008	\$2,495 Maint \$2,413 Admin
#74	Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 08/01/2002-9/30/2002; 11/01/2003-11/30/2003; 02/01/2006-03/31/2006	\$4,471 Maint \$3,329 Admin
#76	Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 01/22/2003-02/28/2004; 04/01/2005-05/31/2005	\$6,999 Maint \$17,154 Admin

#79	Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii); 45 CFR §1356.21(b)(2)] Ineligible: 04/01/2001-12/21/2003; 02/01/2005-07/31/2005	\$24,443 Maint \$25,352 Admin
-----	---	----------------------------------

Total: \$103,195 Maint  
\$92,106 Admin

### Areas in Need of Improvement

The findings of this review indicate the State needs to further develop and implement practices and procedures to improve the title IV-E program performance in the following areas. For each issue, there is a discussion of the nature of the area needing improvement, the specific title IV-E requirement to which it relates, and the corrective action the State should undertake.

**Issue #1: Removal Pursuant to a Court Order.** Two (2) non-error cases had ineligible payments related to judicial determinations. In non-error case sample #68, ineligible payments were made prior to the judicial determination of ‘contrary to the welfare.’ In non-error case sample #5, ineligible payments were made prior to the judicial determination of ‘reasonable efforts to prevent removal.’

*Title IV-E Requirement:* Removal of the child from the home must be according to judicial determinations of contrary to the welfare and reasonable efforts to prevent removal for court-ordered removals. If the removal occurred on or after March 27, 2000, the contrary to the welfare determination must be made in the first ruling that sanctions (even temporarily) the removal of a child from his or her home and the judicial determination that reasonable efforts to prevent removal were made or were not required must be made no later than 60 days from the date of the child’s removal from home. Judicial determinations must be made in a timely manner in a valid court order. A transcript of the court proceeding can be used in lieu of a written court order to document the judicial findings were made as required [§§472(a)(1); 471(a)(15)(B)(i); 45 CFR§1356.21(c)]. Prior to obtaining evidence that the eligibility requirements, including judicial determinations, are sufficiently met, the State may not claim title IV-E maintenance payments on behalf of a child.

*Recommended Corrective Action:* Training of the judiciary personnel who prepare the written documents will help to correct delays in judicial findings, as well as to secure court orders that reflect title IV-E criteria on legal authority, best interests, and reasonable efforts. Staff training will help to ensure that workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements.

**Issue #2: Reasonable Efforts to Finalize Permanency Plan.** Four (4) of the non-error case samples (#52, #74, #76, #79) had ineligible payments because the judicial requirement of “reasonable efforts to finalize the permanency plan” were not met.

*Title IV-E Requirement:* For a child to be continually eligible for title IV-E payments, there must be a judicial determination that reasonable efforts were made to finalize the child's permanency plan that is in effect. The judicial determination that the agency has made reasonable efforts to finalize the permanency plan, for a child removed on or after March 27, 2000, must be made no later than 12 months from the date on which the child is considered to have entered foster care and at least once every 12 months thereafter, while the child is in foster care. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the 12th month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due. The child remains ineligible until such a judicial determination is made. [Statutory Citation: 472(a)(1), 471(a)(15)(B)(ii) and (C) Regulatory Citation: 1356.21(b)(2)].

*Recommended Corrective Action:* As recommended above, OCFS should continue to develop and implement procedures, as well as train personnel on the Federal requirement, to ensure that judicial determinations of reasonable efforts to finalize permanency plans are obtained timely and documented appropriately.

### **Issue #3: Aid to Families with Dependent Children Eligibility.**

Specified Relative: In error case samples #1 and # 17, the child was not removed from the specified relative.

*Title IV-E Requirement:* Under §472(a)(1) and (3) of the Act and 45 CFR §1356.21(l), a child is required to have lived in the home of a parent or other relative specified at 45 CFR §233.90(c)(1)(v) and to have been eligible for Aid to Families with Dependent Children in that relative's home in the month the court proceedings leading to the removal are initiated or the voluntary placement agreement (VPA) is signed, but prior to the child's removal from home. If in that month, the child was not living with the specified relative who is the subject of the court proceedings, or who signed the VPA, the child must have been living with that specified relative at some time within the six months prior to the month of the initiation of the court proceeding or signing the VPA for removal.

*Recommend Corrective Action:* OCFS should continue to develop and implement, as well as train on, procedures to ensure that best legal and case practices are instituted statewide.

**Issue #4: Correct coding of AFCARS data element 59.** Two (2) cases were excluded from the original sample and replaced with cases from the oversample. Documentation provided by the State confirmed the case replacements were necessary because a title IV-E maintenance payment was not made during the PUR. OCFS officials indicated these cases were inadvertently included in the sample for title IV-E maintenance.

*Title IV-E Requirement:* The case sample and oversample drawn for review consist of cases of individual children with a "1" coded in AFCARS data element 59, "Sources of Federal Financial Support/Assistance for Child," for the 6-month reporting period of the PUR. As provided for in Appendix A of 45 CFR §1355.40, the AFCARS data element 59 inquires whether title IV-E foster care maintenance payments are paid on behalf of a child in foster care. If title IV-E foster

care maintenance payments are paid on behalf of the child, the data element should be coded "1." If title IV-E foster care maintenance payments are not being paid on behalf of the child, the data element should be coded "0."

*Recommended Corrective Action:* The validity of the sample and oversample depends on the accuracy with which the State agency completes the AFCARS data element 59. It is critical that OCFS reports data element 59 accurately. Data entry and processing systems should be evaluated to determine internal accuracy and consistency of the data.

**Issue #5. Placement in a Licensed Facility.** In error case sample #17, the foster care home was not licensed for the entire PUR. In non-error case samples #8, #9, #36, #45, # 52, #60, and #69, ineligible IV-E payments were made prior to the foster care homes obtaining fully licensure or approval.

*Title IV-E Requirement:* For the child to be eligible, the child must be placed in a facility that is licensed and meets all of the State agency standards of full licensure or approval. The documentation of full licensure can be satisfied by the certificate of licensure/approval or a letter of approval. Effective September 28, 2000, full licensure must be met by all providers, including those licensed or approved by a child-placing agency. The license must show that the foster family home or childcare institution is licensed for the duration of the child's placement. The State may not claim title IV-E maintenance payments on behalf of a child prior to the full licensure of the foster care placement for the child [§ 472(b) and (c); 45 CFR §§ 1356.71(d)(1)(iv).1355.20].

*Recommended Corrective Action:* OCFS should continue to ensure that staff are fully trained and understand that all State licensing criteria must be met prior to claiming title IV-E maintenance payments.

**Issue #6. Safety Requirements of Provider.** In non-error case samples # 5, #30, #41, and # 52, there were no safety checks. Ineligible payments were made prior to completion of safety checks.

*Title IV-E Requirement:* To ensure that a child is not placed in a foster care setting where the potential caregiver has caused or is likely to cause harm to a child, the State is required to examine the potential safety risk posed to the child by a foster care provider. The State agency must also document that the foster care provider meets the established safety standards before a child is placed with the foster care provider and before title IV-E foster care maintenance payment are claimed for the child placed with the foster care provider [§472(b) and (c). 45 CFR §§1356.71(d)(1)(iv). 1355.20].

*Recommended Corrective Action:* OCFS should continue with their statewide improvement efforts to ensure that all staff statewide are trained and understand the Federal requirements keeping the outcomes of safety, permanency, and well-being of all children paramount.

## **Strengths and Promising Practices**

The following positive practices and process of the title IV-E foster care eligibility program were observed during the review. These approaches may have led to improved program performance.

*Court Orders:* CB recognized the collaborative efforts between OCFS and the State Office of Court Administration to standardize and enhance the quality and timeliness of court orders issued on foster care cases. Most of the orders contained detailed, child-specific information and clear enunciation of judicial expectations for actions to achieve the desired permanency outcome. The permanency hearings in which the findings were rendered, particularly for the PUR, were held timely and more frequently than is required for title IV-E eligibility purposes. In addition, we noted some court orders addressed Indian Child Welfare Act requirements for children's affiliation to Native American or tribal groups. Having all jurisdiction utilize the standardize court orders statewide as a guide would minimize the omission of pertinent information.

*Permanency Law.* The New York State Permanency legislation has been in effect since December 2005. A clear impact of this law was found in the reviewed sample cases with respect to the improved timeliness of judicial determinations of reasonable efforts to finalize the permanency plan. It is our hope that these efforts will strengthen the State's ability to achieve better permanency outcomes for children in foster care.

## **Areas of Concern:**

*Provision of Complete Case Records.* We found that many of the case records provided for cases selected did not contain the complete record for the most recent episode of foster care. This practice resulted in less than a full picture of the circumstances in the sample case. In some instances, information that might have been of assistance in clarifying or confirming case circumstances such as the removal home was omitted from the file. While we appreciate the effort to reduce the need to review duplicative or unnecessary materials during the onsite review, it is possible that an opportunity was missed to highlight best practices or other commendable title IV-E eligibility initiatives discernable from a review of the full case record. The State should instruct local districts to provide the entire case record for future reviews.

*Court Orders in Juvenile Justice Cases.* Children entering foster care on the basis of petitions pertaining to allegations of juvenile delinquency or a person in need of supervision are served through different sections of the New York State law enacted to address these cases. We found that the language in some of the court orders did not clearly state the results of the judicial determination of 'contrary to the welfare.' In two instances, the placements were to protect the interest of the community instead of the reason for placement being in the best interest of the child. We recommend that judicial training focus on the purpose of the title IV-E foster care program and how courts orders in such cases can more clearly state reasons for the contrary to welfare in order meet the federal requirements.

## **Disallowances**

A disallowance in the amount of \$14,404 in maintenance payments and \$28,641 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$103,195 in maintenance payments

and \$92,106 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$238,346 in FFP. The State also must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

**Next Steps**

As part of its commitment to improve the Foster Care Eligibility Program, CB recommends that OCFS continue its efforts to strengthen the program statewide through the ongoing collaboration and training efforts with staff and external stakeholder that are crucial to an efficient and effective State child welfare program. CB is available to provide and identify resources critical to these efforts.