



North Carolina Department of Health and Human Services
Division of Social Services

325 North Salisbury Street • Raleigh, North Carolina 27603
Courier # 56-20-25 MSC 2409

Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

Sherry S. Bradsher, Director
(919) 733-3055

May 21, 2007

Dear County Director of Social Services

Attention: Children's Services Supervisors
Children's Services Social Workers
County Fiscal Officers

Effective Date: Immediately

Subject: Court Order Language Requirements

This letter is being sent to counties to remind them of the requirements around court order language and the significant financial consequences when court orders are not timely or do not contain the required language. This information is not new and was previously communicated to counties in 2001 by [CS-39-2001](#). The Division is sending the information again at this time because of increasing concerns about IV-E revenue that is lost to counties when audits reveal that court orders are not being done correctly.

IV-E funding is not an option for a child entering foster care until all of the eligibility requirements for IV-E funding are met. This includes both IV-E maintenance costs and IV-E administrative costs. This means that another funding source, usually State Foster Home Funds for maintenance payments, must be used until all requirements for IV-E funding are met. Administrative costs must also come from a source other than IV-E until all requirements for IV-E funding are met.

Requirements for initial IV-E funding eligibility include Contrary to Welfare/Best Interests language, AFDC Eligibility/Connectedness, Reasonable Efforts language, and Placement and Care Responsibility. The child is not eligible for IV-E funding until the first day of the month in which **all** of these requirements are met. This means that court delays and continuances can result in substantial financial loss to counties. If an audit or review determines that a child was found to be IV-E eligible incorrectly, the county may be liable for substantial financial penalties and/or paybacks. Detailed eligibility information can be found in [Chapter XIII](#) of the Family Services Manual.

Specific requirements that were previously communicated in [CS-39-2001](#) are as follows:

Contrary to the Welfare/Best Interest

The initial removal order must include a specific finding that continuation in the home would be contrary to the welfare of the child or that placement is in the best interest of the child. This initial order may be a non-secure order, one issued at adjudication/disposition, or one issued as a result of a review hearing.

Contrary to the welfare/best interest determinations are intended to insure that children are not removed from their homes unnecessarily. This requirement applies not only to cases where children are removed from their homes and placed in DSS custody as a result of abuse, neglect, or dependency but also as a result of delinquent or undisciplined actions. The wording in the order for non-secure custody included on form AOC-J-150 (please make sure you are using the most current version) will satisfy this requirement (i.e. there are no other reasonable means to protect the juvenile). Contrary to the welfare findings, however, must be detailed, child-specific, and actually appear in the removal order. In addition to including such a finding in the non-secure custody order, this issue must also be addressed in the petition filed with the request for non-secure custody. The petition should describe why removal from the home was necessary in detailed, child-specific terms, as the petition provides the basis upon which the non-secure custody order is written and granted.

In the absence of a petition alleging abuse, neglect or dependency, contrary to the welfare findings regarding children who are removed from their homes and placed in DSS custody as a result of delinquent or undisciplined behavior require particular attention in order to access federal foster care funds. Careful inquiry will need to focus on why the child's best interest is served outside the home and why services for the child are not obtainable except by removal from the home. A court order stating simply that the child was removed from the home because he is a threat to the community or he would abscond from the home does not satisfy the IV-E funding requirement. If the order states specific facts that make reference to the child's threat to self, then the requirement would be met. N.C.G.S. 7B-2503(1)c. and 7B-2506(1)c. require that such orders contain a finding that continuation in the juvenile's own home would be contrary to the juvenile's best interest.

In some instances a child's custody may be removed from the parents, but the child may continue to live in a home other than the parents' home. In these cases, the court order should include an explanation as to why removal of custody from the parents is in the child's best interest. In all cases, the child must be immediately removed from that home following the determination that it is not in his best interest (contrary to the welfare) to remain.

Reasonable Efforts

According to N.C.G.S. 7B-507, a court finding that reasonable efforts have been made to prevent or to eliminate the child's removal from the home must be made at the 7 day hearing and all subsequent evidentiary hearings. This will assure compliance with federal regulations that require this finding within 60 days of the child's actual removal from the home. For delinquent and undisciplined children, this provision means the agency must establish to the judge's satisfaction that it made such reasonable efforts before the actual removal of the child. That the efforts that were made were reasonable is a judicial determination and there is no specific guidance as to what constitutes reasonable efforts in any particular case. The court may find, in fact, that a lack of efforts is reasonable, when there was no safe way to make efforts to prevent removal. For example, at times the circumstances may be so egregious that the child would not be safe to remain in his home while services are being provided. In such cases, the court may find that no efforts short of the child's removal were possible. N.C.G.S. 7B-507 requires the court to make a finding concerning the agency's obligation to make reasonable efforts in the future in addition to making a finding about previous efforts.

Once the child has entered foster care, the court must also find that the agency has made reasonable

efforts to finalize a permanent plan. The permanent plan may be to reunify the family or secure a new permanent home for the child. The finding is based on the agency's permanent plan as approved by the court at the time of the hearing and must be made within 12 months of the child's entry into foster care (according to N.C.G.S 7B and ASFA regulations) and at every subsequent hearing.

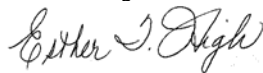
In all cases, the regulations require that the findings be detailed, child specific, and contain specific relevant facts about the case. There are a number of ways to provide detailed findings, including describing the efforts in the actual court order, using language in the court order that references a sustained petition, incorporating by reference the court reports or checking off items from a detailed check list.

Placement Authority

To maintain eligibility for federal foster care funds, the county DSS must have responsibility for the child's placement and care. Generally, this means that the agency decides the child's specific placement. If the court issues an order naming a specific placement, the agency and parties must at least be given an opportunity to present evidence and arguments in reference to the placement. The resulting order must also demonstrate that the court gave bona fide consideration of the agency's position in order to preserve IV-E eligibility. This regulation does not purport to limit a court's power, but rather to specify the conditions under which an agency may be eligible to receive federal funds to help pay for a child's cost of care. Courts may order specific placements, however, when they order such placements and do not permit the agency to offer evidence, the agency will not receive federal funds for that placement. When the court does not agree with the agency, in order for IV-E reimbursement to be available, the order must explain the court's reason for diverging from the agency's recommendation. Please note that the prohibition against court ordered placements does not apply in cases where the court order clearly indicates an endorsement or approval of the agency's placement choice.

If you have any questions about these changes, please contact your Children's Program Representative or Thomas Smith, program consultant with the Family Support and Child Welfare Services Section at thomas.smith@ncmail.net or (919) 733-9465.

Sincerely,



Esther T. High, Acting Chief
Family Support and Child Welfare Services Section

cc: Sherry Bradsher
JoAnn Lamm
Children's Program Representatives
Work First Representatives
Family Support and Child Welfare Services Team Leaders

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