Required Findings for Federal IV-E Funding

January 24, 2007

Purpose

The Adoption and Safe Families Act (ASFA) requires the court to make certain findings in a certain manner at certain times. FAILURE TO MAKE THE REQUIRED FINDINGS WILL RESULT IN LOSS OF THE CHILD'S ELIGIBILITY FOR FEDERAL FUNDS (Title IV-E funds). The following summary includes the applicable federal and state laws and recommended best practices.

Contrary to the Welfare/ Best Interest

45 C.F.R. §1356.21(c,d)

What: Continuation of the child in the home is contrary to the welfare of the child or placement of the child in foster care is in the best interest of the child.

When: In the FIRST ORDER sanctioning removal of the child from the home. (the first order could be an endorsement on summons, Rule 16 expansion, shelter care order, adjudicatory decree, or a later order if child is removed at a later date.) Extended home visits: If an extended home visit exceeds six months and has not been authorized by the court or exceeds the time determined appropriate by the court, then a return to foster care is deemed a new placement, and the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts are required. 45 CFR 1356.21(e).

How: Case-specific and documented in the court's order. (The order can incorporate an affidavit by reference. If the finding is made on the record but omitted from the order, the omission only can be corrected with a transcript of a hearing in which the necessary case specific findings were made.)

If not: CANNOT BE CORRECTED LATER to make the child eligible for federal funds.

CPA :

- ✓ On filing of petition: Court may issue endorsement on summons if, based on facts presented to the court, it appears that it would be contrary to the welfare of the child to remain in the home and it would be in the child's best interests to vest legal custody of the child with IDHW. Idaho Code §16-1611(4).
- ✓ At shelter care hearing: Court may place a child in shelter care if it is shown that it is contrary to the welfare of the child to remain in the home, and it is in the best interest of the child to be in temporary shelter care pending the adjudicatory hearing. Idaho Code §16- 1615(5); IJR 39(9).
- ✓ At adjudicatory hearing: If the court places the child in foster care, the court shall make detailed written findings based on facts in the record that it would be contrary to the welfare of the child to remain in the home and that placing the child in foster care is in the child's best interest. Idaho Code §16-1619(4) & (6).
- ✓ On expansion of JCA proceeding: The court may expand a JCA proceeding into a CPA and place a juvenile in shelter care if it is in the best interest of the juvenile and needed for the juvenile's protection. IJR 16(b).

Best Practice Recommendation:

Supporting affidavit: the Petitioner should prepare an affidavit with information to support a contrary to the welfare/best interest finding, which, along with the petition should be filed with the court and incorporated by reference in the court's order.

Reasonable Efforts to Prevent Removal

45 CFR 1356.21(b)(1)

What: IDHW made reasonable efforts to prevent the child's removal from the home.

When: WITHIN 60 DAYS OF REMOVAL of the child from the home. (This can be done in an endorsement on summons, a Rule 16 expansion order, a shelter care order, or the adjudicatory decree, if the adjudicatory hearing is held within 60 days after the child is removed from the home.) Extended home visits: If an extended home visit exceeds six months and has not been authorized by the court or exceeds the time determined appropriate by the court, then a return to foster care is deemed a new placement, and the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts are required. 45 CFR 1356.21(e). Extended home visits are governed by IJR 42.

How: Case-specific and documented in the court's order. (The order can incorporate an affidavit by reference.) If the finding is made on the record but omitted from the order, the omission only can be corrected with a transcript of a hearing in which the necessary case specific findings were made.

If Not: If the finding is not made within 60 days from the date the child was removed from the home, the omission CANNOT BE CORRECTED LATER to make the child eligible for federal funds.

Exception: The ONLY exception to the requirement for a finding of reasonable efforts to prevent removal is where the court finds that the parent has subjected the child to AGGRAVATED CIRCUMSTANCES. Normally, a finding of aggravated circumstances would be made at the adjudicatory hearing. 45 CFR 1356.21(b)(3).

CPA: **At the shelter care hearing**: The court may place a child in shelter care if it is shown that reasonable efforts to prevent placement of the child in shelter care were made but were not successful or if the child was removed under circumstances posing an imminent danger, the efforts to prevent the child's removal from his/her home were reasonable given that the agency's assessment accurately determined that no preventative services could have been safely offered. Idaho Code §16-1615(5)(b); IJR 39(9).

At the adjudicatory hearing: If the court places the child in the legal custody of IDHW, the court shall make detailed written findings based on facts in the record that either (1) reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child; (2) if the child was removed under circumstances posing an imminent danger, the efforts to prevent the child's removal from his/her home were reasonable given that the agency's assessment accurately determined that no preventative services could have been safely offered; (3) reasonable efforts to temporarily place the child with related persons were made but were not successful; or (4) reasonable efforts were not required because the parent subjected the child to aggravated circumstances. Idaho Code 16-1619(6).

Best Practice Recommendations:

- ✓ ASFA requires that in every case the court either make an affirmative finding that reasonable efforts to prevent removal were made or that they were not required due to aggravated circumstances. A finding that reasonable efforts could not be made or were not required due to immediate danger to the child DOES NOT COMPLY WITH ASFA. Instead, the finding should be phrased as follows: "The department's efforts to prevent removal were reasonable given that the department's assessment accurately determined that no preventative services could be safely provided."
- ✓ All orders: Include a case-specific reasonable efforts finding in each order sanctioning removal of the child from the home, including the endorsement on summons, a Rule 16 expansion, a shelter care order, and the adjudicatory decree (unless aggravated circumstances is found).
- ✓ Supporting affidavit: The Petitioner should prepare an affidavit with information to support a reasonable efforts finding, which, along with the petition, should be filed with the court and incorporated by reference in the court's order.

Required Findings for Federal IV-E Funding

Reasonable Efforts To Finalize A Permanency Plan

45 CFR 1356.21(b)(2), 1355.20(a)

What: IDHW made reasonable efforts to finalize a permanency plan. (This means reasonable efforts to achieve the current placement objective, whether it is reunification, termination, etc.)

When: Within one year from the date the child entered foster care and at least once every twelve months thereafter. The date the child entered foster care is the date the court found the child to come within the jurisdiction of the act (the adjudicatory hearing) or 60 days from the date the child was removed from the home, whichever is first.

How: Case-specific and documented in the court's order. (Can incorporate an affidavit by reference. If the finding is made on the record but omitted from the order, the omission only can be corrected with a transcript of a hearing in which the necessary case specific findings were made.)

If not: If the finding is not made by the deadline, the child will lose eligibility for federal funds at the end of the month in which the finding should have been made. Eligibility CAN BE REINSTATED once the required finding is made.

CPA: **Permanency plan and 12-month permanency hearing**: the court must hold a permanency hearing prior to twelve months from the date the child is removed from the home or from the date the child is found to be within the jurisdiction of the CPA, whichever occurs first. IDHW must file a permanency plan with the court at least five days prior to the hearing. Idaho Code §16-1629(9); IJR 45.

Best Practice Recommendation:

The permanency plan should include information to support a finding that the agency made reasonable efforts to finalize the permanency plan, which can be incorporated by reference in the court's order.