

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.3A.13 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary placement agreements

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**1. Question: If a title IV-E agency fails to obtain the necessary judicial determination within the first 180 days of a voluntary placement, can the case be reopened when a judicial hearing is convened or does the child lose all further benefits of the title IV-E program during that period of placement?**

**Answer:** The case may not be reopened. The judicial determination must be made within the first 180 days of placement. Section 472(e) of the Social Security Act states that no Federal payment may be made for a child removed from his or her home pursuant to a voluntary placement agreement and who remains in voluntary placement in excess of 180 days, unless there has been a judicial determination within the first 180 days of such placement to the effect that the placement is in the best interests of the child.

According to the legislative history, this provision was included in Public Law 96-272 in order to allow for short term emergency placements but provide the child with the protection of a court review if the placement became prolonged.

- **Source/Date:** ACYF-CB-PIQ-85-09 (10/10/85); (3/2/20)
- **Legal and Related References:** Social Security Act - sections 472(d) and (e), and 479B

**2. Question: In the event that a court hearing date has been set within the first 180 days of a voluntary placement, but no determination made, may a pre-approved continuance hearing date deem the child eligible up to the continuance date?**

**Answer:** No. Although the applicable title IV-E requirement at section 472 (e) is stated in terms of a judicial determination, it does not specifically require a court hearing. If the determination is not made within 180 days of placement, whether or not a hearing is held, Federal financial participation may not continue.

- **Source/Date:** ACYF-CB-PIQ-85-09 (10/10/85)
- **Legal and Related References:** Social Security Act - sections 472 (d) and (e)

**3. Question: A State places a child into foster care pursuant to a voluntary placement agreement but does not have the voluntary placement provision in its title IV-E Plan and, thus, does not claim Federal financial participation (FFP) for the child. Can this**

**placement later be considered a judicial removal and FFP be claimed from that time forward if there is a petition to the court within six months of the time the child had last been living with the parent(s) and subsequent judicial determinations are made regarding "contrary to the welfare" and "reasonable efforts"?**

**Answer:** No. The statute allows FFP for otherwise eligible children who are removed from their homes either pursuant to a voluntary placement agreement or as the result of judicial determinations regarding "contrary to the welfare" and "reasonable efforts." It is a title IV-E agency option whether to claim FFP for voluntary placements. For a title IV-E agency to be eligible for Federal reimbursement for voluntary placements, it must meet the requirements of section 472 of the Social Security Act and must have such provision in its title IV-E plan. If the title IV-E agency accepts voluntary placements, but do not meet the requirements for claiming FFP, such placements are ineligible for FFP during the entire stay in foster care. The fact that a petition is filed within six months of the removal and the required subsequent judicial determinations are obtained does not change the nature of the removal from voluntary to judicial.

If, however, a title IV-E agency revises its title IV-E plan and becomes eligible to claim FFP for voluntary placements, it may also begin to claim FFP for any eligible child who had previously been removed pursuant to a voluntary placement agreement if there had been a judicial determination regarding "best interests" within 180 days of the child's placement.

- **Source/Date:** ACYF-CB-PIQ-89-03 (7/24/89); (3/2/20)
- **Legal and Related References:** Social Security Act - sections 472 and 479B

**4. Question: If a title IV-E agency, which is claiming Federal financial participation (FFP) for voluntarily placed children, misses the requirement for a judicial determination within 180 days of placement that such placement is in the best interests of the child, but petitions the court within the six-month timeframe set forth in section 472(a)(3)(A)(ii)(II) of the Social Security Act, can the title IV-E agency consider this a judicial removal, once determinations are made concerning "contrary to the welfare" and "reasonable efforts"?**

**Answer:** No. The title IV-E agency has been claiming FFP under the Federal voluntary placement program for 180 days. In this case, the title IV-E agency has failed to meet the requirement for continuing FFP that there must be a judicial determination within 180 days to the effect that the placement is in the best interests of the child. The fact that the title IV-E agency petitioned the court within six months of the time the child last resided with a relative and later obtained the judicial determinations required for judicial removals would not change the nature of that removal from voluntary to judicial.

- **Source/Date:** ACYF-CB-PIQ-89-03 (7/24/89); (3/2/20)

- **Legal and Related References:** Social Security Act - sections 472(a)(3)(A)(ii)(II) and 479B; 45 CFR 1356.22

**5. Question: May a title IV-E agency develop a voluntary placement agreement that would allow a parent to retain custody of his or her child and allow the title IV-E agency to claim Federal financial participation under the title IV-E foster care maintenance payments program on behalf of an otherwise eligible child?**

**Answer:** Yes. As long as the title IV-E agency retains placement and care responsibility for the child, the fact that the voluntary placement agreement allows the parent to retain custody of the child does not impair the child's eligibility for title IV-E foster care maintenance payments. Placement and care responsibility means that the title IV-E agency is legally accountable for the day-to-day care and protection of the child in foster care. Responsibility for placement and care allows the title IV-E agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child.

The title IV-E agency's placement and care responsibilities under section 472(a)(2)(B) of the Social Security Act must be unencumbered in order to claim Federal financial participation for title IV-E foster care costs. To the extent that a title IV-E agency's definition of custody contradicts or in any manner limits the agency's placement and care discretion, such children would not be eligible for title IV-E foster care maintenance payments.

- **Source/Date:** 06/09/04; (3/2/20)
- **Legal and Related References:** Social Security Act - sections 472(a)(2)(B) and (f), and 479B; CWPM section 8.3A.12

**6. Question: When a child is initially placed into foster care through a voluntary placement agreement, and the title IV-E agency subsequently issues a court order regarding the child's removal and/or the title IV-E agency's placement and care responsibility, what criteria must be met for the child to be eligible for title IV-E foster care maintenance payments?**

**Answer:** The child must meet the criteria for voluntary placement agreements in section 472(a)(2)(A)(i) of the Social Security Act and 45 CFR 1356.22(a) to be eligible for title IV-E foster care maintenance payments. This is because the subsequent court order does not change the child's removal, which was authorized by the voluntary placement agreement. As such, the agency is not required to secure a judicial finding of reasonable efforts to prevent removal or to finalize the permanency plan.

- **Source/Date:** 04/26/07; (3/2/20)
- **Legal and Related References:** Social Security Act - section 472(a)(2)(A) and 479B; 45 CFR 1356.22(a)

**7. Question: Section 472(e) of the Social Security Act (the Act) requires a title IV-E agency to obtain a judicial determination during the first 180 days of the voluntary placement to the effect that the placement is in the child's best interest to continue title IV-E payments beyond that time. When does this 180-day clock begin?**

**Answer:** The 180-day clock begins the day a child is physically placed in foster care as defined in 45 CFR 1355.20 pursuant to a voluntary placement agreement with the exception of constructive removals. In constructive removals, the 180-day clock begins on the date the voluntary placement agreement is signed since there is no physical removal of the child from his/her home (45 CFR 1356.21(k)(3)).

- **Source/Date:** 12/6/2007; (3/2/20)
- **Legal and Related References:** The Social Security Act - Section 472(e) and 479B; 45 CFR 1355.20, 1356.21(k)(3), and 1356.22(b)