Child Welfare Policy Manual

Questions & Answers

8.3C.4 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Reasonable efforts

1. Question: What is the definition of "reasonable efforts?"

Answer: We have not, nor do we intend to define "reasonable efforts." To do so would be a direct contradiction of the intent of the law. The statute requires that reasonable efforts determinations be made on a case-by-case basis. We think any definition would either limit the courts' ability to make determinations on a case-by-case basis or be so broad as to be ineffective. In the absence of a definition, courts may entertain actions such as the following in determining whether reasonable efforts were made:

(1) Would the child's health or safety have been compromised had the agency attempted to maintain him or her at home?

(2) Was the service plan customized to the individual needs of the family or was it a standard package of services?

(3) Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?

(4) Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?

(5) Are the State agency's activities associated with making and finalizing an alternate permanent placement consistent with the permanency goal? For example, if the permanency goal is adoption, has the agency filed for termination of parental rights, listed the child on State and national adoption exchanges, or implemented child-specific recruitment activities?

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
- **Legal and Related References:** Social Security Act - section 471 (a)(15)

2. Question: The statute states that a court of competent jurisdiction may find that reasonable efforts are not required. Please clarify what is meant by the term "court of competent jurisdiction".

Answer: The court that has responsibility for hearing child welfare dependency cases must make the determination that reasonable efforts to prevent a child's removal from home or to reunify a child and family are not required. Depending on the circumstances, this determination may be based on the findings of another court or the findings of the court that is determining whether reasonable efforts are required.

The court that hears child welfare dependency cases may find that the child has been subjected to aggravated circumstances, if it has the authority to do so, and that reasonable efforts are not required because the statutory language at section 471(a)(15)(D)(i) of the Social Security Act (the Act) regarding aggravated circumstances does not require a criminal conviction.

When a parent has been found to have committed one of the felonies enumerated at section 471(a)(15)(D)(ii) of the Act, the court's determination that reasonable efforts are not required must be based on the findings of a criminal court. The statutory language at section 471(a)(15)(D)(ii) requires a criminal conviction of one of the felonies identified therein. In circumstances in which the criminal proceedings have not been completed or are under appeal, the court that hears child welfare dependency cases must determine whether reasonable efforts are required based on the developmental needs of the child and the length of time associated with completion of the criminal proceedings or the appeals process.

When the determination that reasonable efforts are not required is based on a previous involuntary termination of parental rights, that determination is clearly based on the findings of another court decision.

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
- **Legal and Related References:** Social Security Act - section 471 (a)(15)(D); 45 CFR 1356.21 (b)(3)

3. Question: Are States required to engage in concurrent planning or is it at State option?

Answer: States have the option of making reasonable efforts to make and finalize an alternate permanent placement concurrently with reasonable efforts to reunify a child with his/her family. Concurrent planning can be an effective tool for expediting permanency, and the statute offers it as such. However, since it may not be an appropriate approach for every child or family, States are not required to use concurrent planning and the decision to do so must be made on a case-by-case basis. We urge States to obtain technical assistance and provide appropriate training and supervision to agency workers prior to deploying a concurrent planning strategy.

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

- **Legal and Related References:** Social Security Act - section 471 (a)(15)(F); 45 CFR 1356.21 (b)(4)

4. Question: The regulations, at 45 CFR 1356.21 (b)(3), list the circumstances under which the court may determine that reasonable efforts are not required to prevent removal or to reunify the child and family. Are there other circumstances under which the court may determine that reasonable efforts are not required?

Answer: The statute specifically enumerates those circumstances in which reasonable efforts are not required. Unless one of the circumstances at section 471 (a)(15)(D) of the Social Security Act (the Act) exists, the statute requires the State to make reasonable efforts. In each individual case, the court and the State must determine the level of effort that is reasonable, based on safety considerations and the circumstance of the family. Section 478 of the Act clarifies that the State court continues to have discretion when making judgments about the health and safety of the child.

- **Source/Date:** Questions and Answers to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(15)(D) and 478; 45 CFR 1356.21 (b)(3)

5. Question: Can Indian tribes identify, in tribal code, those aggravated circumstances in which reasonable efforts are not required in accordance with section 471 (a)(15)(D)(i) of the Social Security Act?

Answer: When entering into a title IV-E agreement with a State, the tribe must adhere to the list of aggravated circumstances defined in State law. The statute at section 471 (a)(15)(D)(i) specifically requires that the aggravated circumstances in which reasonable efforts are not required be defined in State law. Moreover, other public agencies and tribes that enter into agreements with the State agency are not operating or developing their own title IV-E program separate and apart from that operated under the State plan. Rather, the agency or tribe is agreeing to operate the title IV-E program established under the State plan for a specific population of children in foster care. Therefore, the other public agency or tribe is bound by any State statute related to the operation of the title IV-E program. We expect the State child welfare agency to engage the tribes, and any other agency with which it has title IV-E agreements, in developing its list of aggravated circumstances.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(15)(D) and 478; 45 CFR 1356.21 (b)(3)

6. Question: What are the requirements with respect to the timing for obtaining judicial determinations that reasonable efforts are not required to reunify a family?

Answer: There are none. We do not think it is appropriate to prescribe a time frame for obtaining such a determination.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (b)(3)