

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.4G TITLE IV-E, General Title IV-E Requirements, Fair Hearings

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#### 1. Question: Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?

**Answer:** Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims are therefore covered under this regulation. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the title IV-E agency has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. The title IV-E agency "must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program."

Examples of service issues in title IV-E that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

- **Source/Date:** ACYF-CB-PIQ-83-04 (10/26/83) (revised 6/6/13)
- **Legal and Related References:** 45 CFR 1355.30 (k), and (p), 205.10 and 1392.11

**2. Question: Please explain the circumstances in which adoptive parents have the right to a fair hearing.**

**Answer:** Federal regulations at 45 CFR 1356.40(b)(1) require that the adoption assistance agreement be signed and in effect at the time of, or prior to, the final decree of adoption. However, if the adoptive parents feel they wrongly have been denied benefits on behalf of an adoptive child, they have the right to a fair hearing. Some allegations that constitute grounds for a fair hearing include: relevant facts regarding the child were known by the title IV-E agency or child-placing agency and not presented to the adoptive parents prior to the finalization of the adoption; denial of assistance based upon a means test of the adoptive family; adoptive family disagrees with the determination by the title-IV-E agency that a child is ineligible for adoption assistance; failure by the agency to advise potential adoptive parents about the availability of adoption assistance for children in the foster care system; decrease in the amount of adoption assistance without the concurrence of the adoptive parents; and denial of a request for a change in payment level due to a change in the adoptive parents circumstances. In situations where the final fair hearing decision is favorable to the adoptive parents, the agency can reverse the earlier decision to deny benefits under title IV-E. If the child meets all the eligibility criteria, Federal Financial Participation (FFP) is available, beginning with the earliest date of the child's eligibility (e.g., the date of the child's placement in the adoptive home or finalization of the adoption) in accordance with Federal and State/Tribal statutes, regulations and policies.

The right to a fair hearing is a procedural protection that provides due process for individuals who claim that they have been wrongly denied benefits. This procedural protection, however, cannot confer title IV-E benefits without legal support or basis. Accordingly, FFP is available only in those situations in which a fair hearing determines that the child was wrongly denied benefits and the child meets all Federal eligibility requirements. For example, if a fair hearing officer determines that a child would have been eligible for Supplemental Security Income (SSI) prior to the finalization of the adoption, FFP is available only if there had been eligibility documentation for the child from the Social Security Administration, or its designee at that time. Accordingly, if a fair hearing officer decides that a child should have received adoption assistance, but, in fact, the child does not meet all the Federal eligibility criteria, the title IV-E agency cannot claim FFP under title IV-E for the child.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01) (revised 6/6/13)
- **Legal and Related References:** Social Security Act -sections 471(a)(12) and 473

**3. Question: Do foster parents or relative caregivers have a right to a fair hearing under section 471(a)(12) of the Social Security Act (the Act) with regard to adverse placement decisions? In particular, do the provisions for relative preference at section 471(a)(19) of the Act and an opportunity to be heard for foster parents and relative caretakers at section 475(5)(G) of the Act create fair hearing rights?**

**Answer:** No. The provisions at sections 471(a)(19) and 475(5)(G) of the Act have no relation to or bearing on the fair hearing requirements. The title IV-E agency determines where and with whom the child will be placed by virtue of its placement and care responsibility.

The fair hearing provision at section 471(a)(12) of the Act provides for granting an opportunity for a fair hearing to any individual whose claim for benefits available pursuant to this part is denied or not acted upon with reasonable promptness. The benefit under the title IV-E foster care maintenance payments program is provided to eligible children.

- **Source/Date:** 06/09/04 (revised 6/6/13)
- **Legal and Related References:** Section 471(a)(12) of the Social Security Act, 45 CFR 205.10 and 1355.30(p)(2).

**4. Question: Does section 471(a)(12) of the Act give prospective adoptive parents a right to the 45 CFR 205.10 fair hearings provisions with regard to pre-adoptive foster care placement issues?**

**Answer:** No. Section 471(a)(12) of the Act does not grant prospective adoptive parents the right to a fair hearing under 45 CFR 205.10, for the purposes of challenging the title IV-E agency's exercise of its placement and care responsibilities pursuant to section 472(a)(2)(B) of the Act. The title IV-E fair hearings provision is directed to individuals who believe that they have been denied a benefit to which they are entitled, such as the denial of adoption assistance (see 45 CFR 205.10(a)(5) and Child Welfare Policy Manual Section 8.4). The situation raised in the question does not involve the denial of a benefit or assistance, but rather entails a placement decision.

Nothing in Federal law or regulations requires the title IV-E agency to provide an individual with an opportunity for a fair hearing with regard to agency placement decisions.

- **Source/Date:** 06/09/04 (revised 6/6/13)
- **Legal and Related References:** Section 471(a)(12) of the Social Security Act, 45 CFR 205.10.

**5. Question: Is the title IV-E agency required to conduct the fair hearings mandated at section 471(a)(12) of the Social Security Act (the Act), or may it delegate the process to another agency?**

**Answer:** Although section 471(a)(12) of the Act requires that the title IV-E agency provide for an opportunity for a fair hearing "before the State agency," the regulation at 45 CFR 1355.30(p)(2) cross references 45 CFR 205.10. The latter citation at 45 CFR 205.10(a)(9) authorizes the hearings to "be conducted by an impartial official(s) or a designee of the agency." Thus, an agency other than the title IV-E agency may be designated to conduct hearings and make recommendations to the title IV-E agency. The provision at 45 CFR 205.100(b)(1), however, prohibits officials of the title IV-E agency from delegating their

authority for exercising administrative discretion in the "administration or supervision of the plan." Thus, although the title IV-E agency may delegate the fair hearing function pursuant to the title IV-E requirement, the title IV-E agency must make the final decision.

- **Source/Date:** 7/6/05 (revised 6/6/13)
- **Legal and Related References:** Social Security Act -- Sections 471(a)(12), 45 CFR Parts 1355.30(p)(2), 205.10(a)(9) and 205.100(b)(1)