

# Judicial Review and Technical Assistance Title IV-E Compliance Report

## Dependency Cases

*for*

Marin  
County

4/12/2004

## **Preface**

The Adoption Assistance and Child Welfare Act (42 U.S.C. 620 et seq.), enacted by Congress in 1980, established many new and innovative provisions for improving services provided to children and families including:

- \* Federal procedural rules governing child welfare case management, permanency planning, and foster care placement reviews;
- \* Development by state child welfare agency of a state plan detailing how child welfare services would be delivered;
- \* Provision by state child welfare agency of 'reasonable efforts' to keep families together by providing prevention and reunification services; and
- \* Creation of the first significant role for the court system by requiring courts to review child welfare cases on a regular basis.

The Act also contained financial incentives to assist states with the implementation of the various provisions. One of these incentives is title IV-E funding for foster care maintenance and administrative costs. California received \$2 billion in title IV-E funding during the fiscal year 2002.

The Adoption and Safe Families Act of 1997 (ASFA) amendments to title IV of the Social Security Act made significant changes to federal child welfare policy and was an effort to provide additional tools and financial incentives to reach the original goals of the 1980 Act—child safety, reunification if feasible, and permanency. ASFA was designed to accomplish these goals in several ways, such as by shortening the time a child may remain in foster care, clarifying the reasonable efforts requirements, and requiring states to hold a permanency hearing for every child within 12 months of the date the child entered foster care. The final rule implementing ASFA (45 C.F.R. §§ 1355—1357 (2000)) provided further clarification of the ASFA requirements.

The Judicial Review and Technical Assistance (JRTA) project of the Center for Families, Children the Court at the Administrative Office of the Courts was created in response to a 1992 title IV-E eligibility audit by the Office of the Inspector General. The federal auditors determined that 39 percent of the cases reviewed were not eligible under title IV-E and California faced a potential repayment of \$51.7 million.

The JRTA project provides education and technical assistance to counties to improve compliance with title IV-E. With funding from the California Department of Social Services and the federal government, the JRTA project team—experienced juvenile court attorneys—visit local juvenile courts, review court files, observe courtroom proceedings, provide written reports and memoranda, and assist the counties in implementing the recommendations made by the JRTA project.

California passed the June 2003 federal title IV-E foster care eligibility review with the report citing the work of the JRTA project as a strength. The next federal title IV-E eligibility review will take place in California in approximately June 2006. The JRTA project will continue to assist counties in their efforts to comply with title IV of the Social Security Act.

### **General Advice**

Judicial review of foster care cases is intended to ensure that:

- \*Children are not removed from their homes unnecessarily;
- \*Where removal is necessary for the protection of children, reasonable efforts are made to reunify children with their families; and
- \*When children cannot be safely returned to their families, they receive legally permanent homes.

There are three categories of judicial findings and orders:

- \*Removal findings and order;
- \*Status review findings; and
- \*Permanency findings and order.

These findings and orders must be made, to the extent supported by the evidence, within certain statutory timelines and adherence to these timelines is critical. In addition to the importance of achieving the goals of ASFA, the consequence of not holding a judicial review at which the issues are considered and the findings and orders made, may include reimbursement by the state agency of title IV-E funding received or an interruption in the payment of title IV-E funding.

### **Removal Findings and Order**

Federal law requires the court to consider two issues at a removal hearing and make two findings regarding these issues to support a child's removal from the parental home. First, the court must find that remaining at home would be contrary to the child's welfare. Second, the court must find that reasonable efforts were made to prevent or eliminate the need for removal. The judicial determinations regarding "contrary to the welfare" and "reasonable efforts to prevent removal" must be explicitly documented and must be made on a case-by-case basis and so stated in the court order (45 C.F.R. §1356.21(d) (2000)). Finally, federal law requires the court to order that the child's placement and care are the responsibility of the state or county child welfare agency. In California the removal findings and order are usually made during the detention hearing held under Welf. Inst. Code § 319 and California Rules of Court, Rule 1443.

## **Status Review Findings**

Under federal law, the status of every child must be reviewed, and status review findings made at least every six months (42 U.C.S. § 675(5)(B)). There must be an independent review based on the evidence presented and the findings made, to the extent they are supported by the evidence.

The status issues reviewed include:

- \*Whether the child's placement continues to be necessary;
- \*Whether the child's placement is appropriate;
- \*The extent of the agency's compliance with the case plan in making reasonable efforts to safely return the child home;
- \*The extent of the agency's compliance with the case plan in making reasonable efforts to finalize the child's permanent placement;
- \*The extent of the progress made by the parents toward alleviating or mitigating the causes necessitating placement in foster care;
- \*The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal; and
- \*Whether the services set forth in the case plan include those needed to assist a child the age of 16 years and older in making the transition from foster care to independent living.

The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, in a legal guardianship or another permanent placement must be no later than 12 months from the "date the child entered foster care." This date is defined under title IV-E as the earlier of two dates: (1) the date of the first judicial finding that the child has been subjected to child abuse or neglect, or (2) the date that is 60 days after the date the child was removed from the home (42 U.S.C. § 675 (5)(F); 42C.F.R. § 1355.20). Welfare and Institutions Code section 361.5, which interprets 42 U.S.C. § 675 (5)(F), states that "a child shall be deemed to have entered foster care on the earlier of the date of the first jurisdictional hearing held pursuant to section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian."

Status review findings are made at the prepermanency hearing, permanency hearing and post permanency hearings.

## **Permanency Order and Finding**

Under title IV-E, the court must hold the child's first permanency hearing within 12 months of the date the child is considered to have entered foster care (42 U.S.C. § 675 (5)(C); 45 C.F.R. § 1356.21(b)(2), 1356.21(h)).

During permanency hearings, the court must make an independent review based on the evidence presented, determine the appropriate permanency plan and enter an order implementing or continuing a permanent plan of return home, adoption, legal guardianship, permanent placement with a fit and willing relative, or another planned permanent living arrangement (45 C.F.R. 1355.20). The options available in California are return home, adoption, legal guardianship, permanent placement with a fit and willing relative or an identified placement with a specific goal. A permanent plan of an identified placement with a specific goal is the least permanent plan for a child and may be ordered only in cases where the agency has documented to the court a compelling reason for determining that the other alternative permanent plans are not in the best interest of the child. A finding that sets forth the likely date by which the agency will finalize the permanent plan or achieve the specific goal is also required.

Once a permanent plan is selected and implemented, the child's permanent plan must be reviewed at least every 12 months for as long as the child is placed out-of-home (42 U.S.C. § 675 (5)(C)).

The permanency finding and order are made at the permanency hearing and post permanency hearings.

Please note that the findings and orders discussed in this report are required for federal title IV-E foster-care purposes. There are many other findings and orders required by California statutes that are not discussed in this report.

## **Removal Hearing**

### ***“Continuance in the home is contrary to the child’s welfare” finding***

This is the first removal finding and is by far the most important finding under title IV-E (42 U.S.C. § 672(a) (1); 45 C.F.R. § 1356.21(c)). This finding must be made at the initial hearing where the court first physically removes the child from the home of his or her parents (i.e., the detention hearing). If this finding is not made at that first hearing, the county is prohibited from ever collecting title IV-E funds for this child.

*Found in 10 of 10 hearings 100.00%*

### ***“Care, Custody and Control”***

Title IV-E requires that the court enter the order, “placement and care are the responsibility of the State agency” (42 U.S.C. § 672(a)(2); 45 C.F.R. § 1355.20(a)). California operates on a “county model” and therefore the local child welfare agency is responsible for the care and supervision of the child. In California, the order is that “placement and care are the responsibility of the [name of local child welfare agency].” If this order is not made at detention, then the child will not be eligible for federal funding until the order is made.

*Found in 10 of 10 hearings 100.00%*

### ***“Reasonable efforts to prevent or eliminate the need for removal” finding***

The last removal finding is that “reasonable efforts” were made “to prevent or eliminate the need for removing the child from the child’s home” (42 U.S.C. § 672(a)(1), 671(a)(15); 45 C.F.R. § 1356.21(b)(1)). The level of effort made by the local child welfare agency must be found to have been reasonable. The local child welfare agency may assess the situation of the child and family and decide that because of concerns for the child’s safety, efforts beyond the initial response and assessment were not warranted. The “reasonable efforts” finding can be made after the initial hearing, as long as it is made within 60 days of removal and refers to the reasonable efforts made before removal. Federal IV-E funding does not start until this finding is made. If it is not made within 60 days, the child will not be eligible for federal funding for his or her entire stay in foster care. JRTA recommends that both removal findings and the order be made at the initial detention hearing.

*Found in 10 of 10 hearings 100.00%*

## **Timeliness of Removal Hearing**

A removal hearing is considered timely when the required findings and order are made at the first hearing after a child has been physically removed from a parent or guardian and that hearing occurs within three court days of the date the child was physically removed from a parent or guardian.

*Timely in 10 of 10 hearings 100.00%*

## **Prepermanency Hearing**

Under federal law, a review of the child's status must occur within six months of the date the child enters foster care. This hearing is the prepermanency hearing.

Under Welfare and Institutions Code section 366(a)(1), this hearing is set from the date of the original dispositional hearing, which may be held after the date the child is deemed to have entered foster care. To address this difference between the federal and state timelines, JRTA recommends that courts also conduct a case review of a child's status at the dispositional hearing as required by California law (Welf. Inst. Code § 361(e)).

### ***"Necessary and appropriate placement"***

*Found in 0 of 8 hearings 0.00%*

### ***"Extent of the agency's compliance with the case plan"***

*Found in 4 of 8 hearings 50.00%*

### ***"Extent of family's progress"***

*Found in 7 of 8 hearings 87.50%*

### ***"Likely date of return or other permanent plan"***

*Found in 4 of 8 hearings 50.00%*

### ***"Independent living skills services for children 16 years old or older"***

*Found in 0 of 0 hearings 0.00%*

## **Timeliness of Prepermanency Hearing**

The prepermanency hearing is considered timely if it is held within six months of the date the child entered foster care.

*Timely in 3 of 8 hearings 37.50%*

## **Permanency Hearing**

The 12-month permanency hearing also serves as a case review hearing. Thus, the first three case review findings, as well as the permanency finding and order, must be made at the first permanency hearing. The independent living skills finding must be made for a child 16 year old or older.

### ***“Necessary and appropriate placement”***

Found in 0 of 5 hearings 0.00%

### ***“Extent of the agency’s compliance with the case plan”***

Found in 1 of 5 hearings 20.00%

### ***“Extent of family’s progress”***

Found in 4 of 5 hearings 80.00%

### ***“Permanent plan of: return home, adoption, legal guardianship, placement with a fit and willing relative, or identified placement with a specific goal is ordered/continues to be appropriate”***

Found in 3 of 5 hearings 60.00%

### ***“Likely date to finalize plan or achieve goal”***

Found in 0 of 5 hearings 0.00%

### ***“Independent living skills services for children 16 years old or older”***

Found in 0 of 1 hearings 0.00%

## **Timeliness of Permanency Hearing**

A permanency hearing is considered timely if it is held within 12 months of the date the child entered foster care.

Timely in 4 of 5 hearings 80.00%

## Post Permanency Hearing

Each post permanency hearing held after the selection of the initial permanent plan serves a case review hearing and a permanency hearing. The court makes the first two case review findings, as well as the permanency order and finding. The independent living skills service finding must be made for a child 16 years old or older.

Post permanency hearings must be held at least every six months until the child is no longer in a foster care placement.

### *“Necessary and appropriate placement”*

Found in 0 of 13 hearings 0.00%

### *“Extent of the agency’s compliance with the case plan”*

Found in 3 of 13 hearings 23.08%

### *“Permanent plan of: return home, adoption, legal guardianship, placement with a fit and willing relative, or identified placement with a specific goal is ordered/continues to be appropriate”*

Found in 11 of 13 hearings 84.62%

### *“Likely date to finalize plan or achieve goal”*

Found in 0 of 13 hearings 0.00%

### *“Independent living skills services for children 16 years old or older”*

Found in 0 of 2 hearings 0.00%

## Timeliness of Post Permanency Hearing

A post permanency hearing is considered timely if it is held within six months of a previous permanency or post permanency hearing.

Timely in 10 of 13 hearings 76.92%

## **Conclusion**

We wish to thank everyone who has assisted us during our visit to your county. We appreciate your cooperation and the information you provided. Should you have any questions or concerns that arise after our site visit or would like our assistance in implementing changes, please do not hesitate to contact us. Our contact information is included on the next page. Below are some of the ways in which we might be able to assist you:

- \* Review minute orders
- \* Review agency reports for recommended legal findings and orders
- \* Review agency reports for appropriate documentation
- \* Training for judicial officers
- \* Training for clerks
- \* Training for attorneys
- \* Training for agency staff
- \* Technical assistance

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