ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-21-06	**2. Issuance Date:** January 14, 2021
	3. Originating Office: Children's Bureau	
	4. Key Words: High Quality Legal Representation; Multi-disciplinary Representation; Independent Legal Representation; Permanency Outcomes; Case Review Systemic Factor; PIP Legal or Judicial Strategies; Statewide Assessment; Legal Stakeholders; Collateral Representation.	

TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E and IV-B of the Social Security Act, Indian Tribes and Indian Tribal Organizations, State Courts, and State and Tribal Court Improvement Programs.

SUBJECT: Utilizing Title IV-E Funding to Support High Quality Legal Representation for Children and Youth who are in Foster Care, Candidates for Foster Care and their Parents and to Promote Child and Family Well-being

PURPOSE: To urge all state and tribal title IV-E agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure that parents, children and youth, and child welfare agencies, receive high quality legal representation at all stages of child welfare proceedings, and to maximize allowable title IV-E administrative reimbursement for children who are candidates for title IV-E foster care or who are in title IV-E foster care and their parent(s) in foster care legal proceedings.

LEGAL AND RELATED REFERENCES: Title IV-E of the Social Security Act (the Act).

INFORMATION

The purpose of this information memorandum (IM) is to urge all state and tribal title IV-E agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure that parents, children and youth, and child welfare agencies, receive high quality legal representation at all stages of child welfare proceedings, and to maximize allowable title IV-E administrative reimbursement for children who are candidates for title IV-E foster care or in title IV-E foster care and their parent(s) in foster care legal proceedings.

This IM is organized as follows:

I. Background
II. New Research Showing Multi-Disciplinary Legal Representation for Parents Helps Children Achieve Permanency
III. The Significance of High Quality Legal Representation to Child and Family

Service Reviews (CFSRs) and Program Improvement Plans (PIPs)
IV. Strategies for Promoting High Quality Legal Representation
V. The Title IV-E Claiming Process for Legal Representation Costs
VI. Conclusion

I. Background

In 2017, the Administration for Children and Families (ACF) Children's Bureau (CB) issued an IM identifying high quality legal representation for parents, children and the child welfare agency as critical to a well-functioning child welfare system.[1] The IM discussed the key attributes that define high quality legal representation.[2] The attributes of high quality legal representation discussed in the 2017 IM articulate an accepted understanding of high quality legal representation for families including having access to attorneys who are well-trained and highly knowledgeable of child welfare law, child development and trauma, litigation skills and understand the importance of out of court efforts, including but not limited to:

- time spent getting to know the strengths, needs and wishes of children, youth and parents;
- out of court advocacy for services, benefits and resources;
- participation in case planning meetings;
- school and home visits;
- meetings with important collateral contacts such as medical providers, counselors, treatments providers, family members and friends of the parent or child and other important people in their lives, and professionals; and
- other efforts to advance critical child and parent safety, permanency and well-being needs.[3]

The 2017 IM highlighted research demonstrating that the early appointment of counsel in child welfare proceedings can improve case planning, expedite permanency and lead to cost savings to state and tribal government. The IM also included evidence associating legal representation with:

- increases in party perceptions of fairness;
- increases in party engagement in case planning, services and court hearings;
- more personally tailored and specific case plans and services;
- increases in visitation and parenting time;
- expedited permanency; and

[1] ACYF-CB-IM-17-02 highlights associations of legal representation with enhanced parent engagement and identifies best practices and exemplary models of legal representation, including multi-disciplinary representation, which pairs attorneys with independent social workers or peer parent partners, as especially promising.

[2] *See Id.*

[3] *See e.g.,* Family Justice Initiative, *Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings, available at: https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-atttibutes-2019.pdf;* ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES (American Bar Association, 2006); ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (American Bar Association, 1996); NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES (National Association of Counsel for Children, 2001).

- reductions of time children and youth spend in care.

Drawing upon the evidence of the positive benefits of high quality legal representation for children and parents and its essential role in supporting a well-functioning child welfare system, in 2019 CB issued revised and new policies that allow title IV-E agencies to claim federal financial participation (FFP) for administrative costs of independent legal representation provided by attorneys representing children in title IV-E foster care, children who are candidates for title IV-E foster care, and their parents for "preparation for and participation in judicial determinations" in all stages of foster care legal proceedings.[4]

In 2019 and 2020, research out of New York City provided additional, compelling evidence of the effectiveness of multi-disciplinary[5] representation for parents of children in foster care in two companion studies. The first study provided strong empirical evidence that when parents are represented by a multidisciplinary team of lawyer, social worker, and peer advocate, who are salaried employees of an independent law office with administrative support and supervision, their children spend significantly less time in foster care and reunify with family more quickly without compromising child safety.[6] The second, qualitative study, found that elements that make the multidisciplinary practice model effective include uniformity of practice, the multidisciplinary team, and an ongoing focus on clients' well-being.[7]

In April 2020, CB issued a new policy clarifying that administrative costs for paralegals, investigators, peer partners, or social workers may be claimed as title IV-E foster care administrative costs to the extent they are necessary to support an attorney providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings for candidates for title IV-E foster care, youth in foster care and his/her parents and for allowable office support staff and overhead expenses.[8]

In July 2020, CB published a technical bulletin (TB) responding to frequently asked questions regarding the availability of title IV-E FFP for independent legal representation costs.[9] The bulletin provides a list of examples of foster care legal proceedings that funds may cover, including:

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[4]Section 474(a)(3) of the the Act and federal regulations at 45 CFR 1356.60(c). In section 8.1B of the Child Welfare Policy Manual (CWPM), CB revised and issued Q/A #30 on January 7, 2019, issued #31 on July 29, 2019 and issued #32 on April 20, 2020.

[5] The terms multidisciplinary and interdisciplinary are used interchangeably to describe a team approach to legal representation that "incorporates additional professionals into the legal team" including social workers, people with lived experience, interpreters, specialized attorneys, experts and investigators. *See e.g.,* Lucas Gerber et al., *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 Child. & Youth Servs. Rev. 42, 52 (2019); see also Family Justice Initiative, *Implementing FJI System Attributes: Attribute 2, Interdisciplinary Practice Model, available at:* https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute2-2.pdf

[6] Lucas Gerber et al., *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 Child. & Youth Servs. Rev. 42, 52 (2019).

[7] Lucas Gerber et al., *Understanding the effects of an interdisciplinary approach to parental representation in child welfare,* 116 Child & Youth Servs. Rev. (2020).

[8] CWPM 8.1B #32. The costs must be consistent with federal cost principles per 45 CFR Part 75 Subpart E. The title IV-E agency must allocate such costs so as to assure that the title IV-E program is charged its proportionate share of costs (See CWPM sections 8.1B and 8.1C).

[9] Technical Bulletin

- hearings related to judicial determinations that it is contrary to the welfare of a child to remain in the home;
- hearings related to a child's removal from the home;
- hearings related to judicial determinations that the agency has provided reasonable efforts to prevent removal and finalize the permanency plan;
- permanency hearings;
- hearings related to progress on case plans; and
- appeal proceedings that relate to judicial determinations required under title IV-E.

The TB also includes a non-exhaustive list of activities and expenditures to demonstrate the range of support for which FFP may be claimed for legal representation. The list applies to candidates for title IV-E foster care and their parents as well as children in title IV-E foster care. A child need not be court involved in order for the title IV-E agency to claim FFP for legal representation and advocacy for that child and his or her parents. That list includes, but is not limited to:

- independent investigation of the facts of the case, including interacting with law enforcement,
- meeting with clients or making home or school visits,
- attending case planning meetings,
- providing legal interpretations,
- preparing briefs, memos, and pleadings,
- obtaining transcripts,
- interviewing and preparing their client and witnesses for hearings,
- hearing presentation,
- maintaining files,
- supervising attorneys, paralegals, investigators, peer partners or social workers that support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings,
- filing child abuse and neglect petitions for candidates for foster care,
- court fees to file a petition for a judicial determination required under title IV-E, and
- appellate work in reference to foster care legal proceedings.[10]

This clarification makes it possible to help support legal team approaches, including multi-disciplinary representation models (also known as interdisciplinary[11] representation) and operational costs associated with administration and management of offices, such as data and case management systems and supervision of attorneys and legal team members providing parent, child or agency representation and costs associated with collection of information and submission of data for title IV-E reimbursement to the title IV-E agency.

In addition, CB has determined that states and tribal grantees may use kinship navigator funds provided under title IV-B, subpart 2 of the Social Security Act to provide brief legal services to

[10] Id at pg. 3.
[11] Some models use the term interdisciplinary to emphasize that all members of the legal team are child welfare experts in law, social work, investigation or peer partners with lived expertise.

"assist kinship caregivers in learning about, finding and using programs and services to meet the needs of the children they are raising and their own needs." [12]

II. New Research Showing Multi-Disciplinary Legal Representation for Parents Helps Children Achieve Permanency

Two recent companion studies of parent representation in New York City provide compelling evidence that high quality multidisciplinary legal representation for parents is an effective child welfare intervention that promotes timely permanency for children without compromising child safety.

The first study, published in 2019, utilized a design to estimate the causal effect of multidisciplinary law office representation of parents on child welfare outcomes, as compared to representation by court-appointed solo practitioners.[13] Researchers followed the trajectory of 9,852 families and their 18,288 children in New York City's child welfare system and found that children whose parents were represented through a multidisciplinary law office spent less time in foster care (approximately four months on average) through faster early reunification and guardianship. Specifically, children whose parents were represented by a multidisciplinary law office experienced reunification 43% more often in the first year of their case, and 25% more often in the second year, without any negative impact on child safety.

The second study, published in 2020, utilized a qualitative interview-based design to determine what core components of the multidisciplinary law offices speed up reunification for children in foster care. Based on interviews with nearly 60 stakeholders in New York City Family Court, including judges, lawyers, and parents, the authors determined that key elements of the multidisciplinary law offices are: (1) uniform high-quality representation; (2) utilization of a multidisciplinary team; and (3) a focus on the client's well-being.[14]

Attributes of uniform high-quality practice among the New York City providers included regular communication with clients outside of court, preparation for hearings, increased formal in-court advocacy through written motions, and improved adherence to court process and timeliness. The multidisciplinary team was essential to supporting clients in out of court case conferences, identifying and helping clients access appropriate services, and guarding against duplicative or unnecessary services. Researchers found that because the multidisciplinary legal team developed supportive relationships with clients, clients reported that they trusted their attorneys and were more willing and able to engage in services.

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[12] See Technical Bulletin kinship navigator funds may be used for: "support[ing] any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving." See section 427(a)(1) of the Act. CB issues this Technical Bulletin (TB) to respond to title IV-E agency and other stakeholder frequently asked questions (FAQs) about the aforementioned policies.

[13] Lucas Gerber et al., *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 Child. & Youth Servs. Rev. (2019).

[14] Lucas Gerber et al., *Understanding the effects of an interdisciplinary approach to parental representation in child welfare,* 116 Child & Youth Servs. Rev. (2020).

These critically important studies provide robust evidence consistent with existing research that has found that enhanced parent representation leads to increased reunification and faster permanency for children.[15]

CB strongly urges all title IV-E agencies to actively pursue utilization of title IV-E funding to create, expand and sustain models of multi-disciplinary representation for children in title IV-E foster care, candidates for title IV-E foster care and their parents.

III. The Significance of High Quality Legal Representation to Child and Family Service Reviews (CFSRs) and Program Improvement Plans (PIPs)

Child welfare agencies and legal and judicial communities have many common goals, including achieving timely and appropriate permanency, promoting and maintaining family relationships and connections, and keeping families together. The CB has emphasized the importance of legal and judicial involvement in all aspects of the CFSR and, where needed, PIPs. This is a major focus of the Court Improvement Program (CIP) which, as part of the core statutory authorizing language, is meant to ensure engagement of the parties in court.[16] This is emphasized in the CIP Program Instruction through a required project requirement to improve legal representation and lives in a context of requirements of CIPs and agencies to collaborate broadly on program planning.[17] Historically CIP and legal and judicial engagement in the CFSR processes has been limited to participation in case reviews and review and response to drafts of PIPs crafted by the child welfare agency. Round three of the CFSR presents a marked difference. As reported from the Federal Fiscal Year 2019 CIP Self-Assessment Reports, 60% of CIPs were included at a high level during the entire CFSR process; 81% were part of PIP design; 81% are involved with PIP implementation and 91% provided suggestions for strategies or activities in PIPs.[18] Additionally, every jurisdiction's PIP contains at least one legal or judicial strategy as well as multiple key activities supporting those strategies. For the 51 approved PIPs there are 147 legal or judicial strategies and 552 resulting key activities.

The need for proactive system-wide reform is evident from the performance of state child welfare systems in Round three of the CFSR:

- No state achieved substantial conformity on Permanency Outcome 1: Children Have Permanency and Stability in Their Living Situations.
- No state achieved substantial conformity on Permanency Outcome 2: The Continuity of Family Relationships and Connections is Preserved for Children.

[15] MARK E. COURTNEY, JENNIFER L. HOOK, & MATT ORME, EVALUATION OF THE IMPACT OF ENHANCED PARENTAL LEGAL REPRESENTATION ON THE TIMING OF PERMANENCY OUTCOMES FOR CHILDREN IN FOSTER CARE (Partners for Our Children, Feb. 2011); *see also* Lori Darnel & Dawn Matera Bassett, *A Program Evaluation of the Colorado Office of Respondent Parents' Counsel Social Work Pilot Program,* Metropolitan State University of Denver Dept. of Social Work, *available at:* https://coloradoorpc.org/wp-content/uploads/2019/11/ORPC-SWPP-Evaluation.pdf.
[16] See, 42 U.S.C. 629h(a)(4(A).
[17] See, https://www.acf.hhs.gov/cb/policy-guidance/pi-20-12
[18] National Report on Court Improvement Program Projects and Initiatives FY 2019, Capacity Building Center for Courts

- Further, only 2 states achieved substantial conformity on the Case Review Systemic Factor.[19]

Coupled with the growing research, CB's continued emphasis on a wider array of legal stakeholders in the CFSR process, especially attorneys for parents and children, has led to an increasing recognition of the impact that high quality legal representation can have on these and other CFSR outcomes and systemic factors. CB strongly encourages all title IV-E agencies to approach CFSR Round four with strong representation and active involvement in all aspects of the CFSR process, from members of their child and parent attorney bar in addition to agency legal representation, judges, court administrators, and CIP.

Considering the research that demonstrates the strong and effective impact of quality legal representation on outcomes measured in the CFSR, it is imperative we embrace these practices in every state to support those efforts using title IVE funding as appropriate. Although CIPs were involved in the development of nearly every PIP in Round 3, in order to develop and implement high quality legal representation programming, it is critically important and necessary to involve members of the parent and children's bar in a meaningful way. Enhancing systems to provide for high quality legal representation requires thoughtful contemplation from multiple professional roles in order for efforts to be well-developed, deeply supported and reliably integrated. Data from various legal professionals should be gathered and understood to inform each state's Statewide Assessment; identifying strengths and gaps upon which to focus. The data and the professional voices should accompany the voices of parents and youth to inform system-wide reform efforts. This early engagement will serve to support PIP development later in the process, where required, in crafting CFSR strategies designed to move systems towards the types of high quality legal representation outlined within this IM.

Many states have already recognized the impact of high quality legal representation on CFSR outcomes and have included specific strategies in their CFSR Round three PIPs. Within CFSR Round 3 approved PIPs there are 22 strategies that address quality legal representation. The CFSR process can be a way to utilize high quality legal representation as standalone or components of strategies as key activities to improve systemic factors or outcomes. For example, Louisiana has multiple strategies designed to implement a holistic plan to implement high quality legal representation for parents and children using title IV-E funding. The plan establishes pre and post removal representation models, uses multi-disciplinary teams and establishes collateral representation models beginning with pilot jurisdictions. Training, performance standards and attention to outcomes support this PIP implementation. Similarly, Michigan built upon their successful pilot of pre-removal representation in Detroit[20] with a PIP strategy that implements that model in addition to supporting families with multi-disciplinary legal teams during post-removal applications. Like Louisiana, Michigan will use title IV-E FFP to support their efforts and designed an implementation plan grounded in training and ongoing monitoring. A third example comes from Iowa. Iowa's PIP strategy to implement high quality legal representation

[19] The Case Review Systemic Factor is made up of five items: Item 20: Written Case Plan; Item 21: Periodic Reviews; Item 22: Permanency Hearings; Item 23: Termination of Parental Rights & Item 24: Notice and Right to Be Heard of Hearings and Reviews to Caregivers

[20] *See* Vivek Sankaran, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care,* William Mitchell Law. Rev. vol.40, Issue 3, 1036, 1042-1043.

across the state begins with providing National Association of Counsel for Children (NACC) Red Book training to all attorneys who practice in child welfare.[21] In addition to the training, Iowa is encouraging practitioners to demonstrate their knowledge and become certified as Child Welfare Specialists. Attorneys who receive this designation will be compensated for their representation at a higher rate. Iowa will also be monitoring the impact of these efforts by collecting data and evaluating the results.

The CFSR is intended to be a tool for states and territories to understand how children and families experience the child welfare system and whether they are receiving the help and support they need to ensure their safety, permanence and well-being. PIPs are intended as a vehicle to improve those experiences when they fall short of conformity. When improvements are made to benefit children and families they are likely to be reflected in improved outcomes on CFSR measures. High quality legal representation is a proven strategy to ensure that the voices of parents and youth are elevated and heard, a proven means of improving parent and youth engagement in case planning, and a proven way to help ensure their needs are met, all of which tie directly to critical CFSR measures. High quality legal representation prior to and after removal is critical to a well-functioning child welfare system. CB strongly encourages title IV-E agencies to work with legal and judicial partners to utilize high quality legal representation as a strategy to improve the experiences parents, youth and children have with the child welfare system and improve outcomes.

IV. Strategies for Promoting High Quality Legal Representation

High quality legal representation in child welfare proceedings is about more than preparing for and representing a child or parent in court. While attorneys for parents and children must be competent litigators with knowledge of the law and rules of procedure and evidence, research has shown that children's and parents' attorneys work out of the court is as important as attorneys' formal courtroom advocacy.[22] Parents' and children's attorneys must spend significant time with clients to build a trusting and supportive relationships, to understand the clients' goals, and to counsel clients on all legal matters.[23] This relationship building can require expertise in child development, trauma, motivational interviewing, and cultural humility.[24] In addition, attorneys for parents and children should conduct independent investigations, utilize and engage

[21] https://www.naccchildlaw.org/page/RedBook

[22] See e.g., Lucas Gerber et al., *Understanding the effects of an interdisciplinary approach to parental representation in child welfare,* 116 Child & Youth Servs. Rev. (2020); *see also,* Jay Miller, Jacquelynn F. Duron, Earl Washington & Jessica Donohue-Dioh*, Exploring the Legal Representation of Individuals in Foster Care: What say Youth and Alumni?,* Children and Youth Services Review 78 (May 2017) *available at: https://www.researchgate.net/publication/316863301_Exploring_the_legal_representation_of_individuals_in_foster_care_What_say_youth_and_alumni*

[23] Family Justice Initiative, *Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings, available at: https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-atttibutes-2019.pdf;* ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES (American Bar Association, 2006); ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (American Bar Association, 1996); NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES (National Association of Counsel for Children, 2001); DONALD N. DUQUETTE, CHILDREN'S JUSTICE: HOW TO IMPROVE LEGAL REPRESENTATION FOR CHILDREN IN THE CHILD WELFARE SYSTEM (American Bar Association, 2016).

[24] *Id.*

investigators and experts where appropriate, and participate in case planning and ongoing advocacy for services, family time, and placements that support their clients' objectives.[25]

As described above, consistent quality of representation was a key factor leading to improved permanency outcomes for children in New York City.[26] Systems that oversee or administer legal representation for children and parents can support and facilitate consistency through: access to a multidisciplinary team; support and oversight; use of data and continuous quality improvement; competitive compensation; and reasonable caseloads that enable attorneys to meet their ethical obligations to clients.[27] There are a number of strategies for promoting and sustaining high quality legal representation. Several are discussed in more detail below.

a. Centralization

Relying on a centralized office to oversee children or parents' representation can support high-quality legal representation by ensuring consistent practice among attorneys and across jurisdictions.[28] A centralized office can connect lawyers to each other and to office staff who can provide training, and technical assistance on individual cases.[29] Centralized office staff can provide supervision and oversight, promoting consistency of trial and appellate practice.[30] Additionally, a centralized office can provide access to multidisciplinary team members such as lawyers, peer advocates, and experts, and ensure or encourage integration of these experts to meet the clients' needs.[31]

A centralized office does not necessarily need to be a brick and mortar location employing a staff of attorneys and multidisciplinary team members who handle all child welfare representation. Although the independent law offices evaluated in the New York City studies rely on this sort of model that may not be practical in non-metropolitan areas. Rather, a centralized office may be a smaller statewide office that contracts with attorneys, as well as multidisciplinary team members, and provides a community of colleagues, as well as ongoing training and oversight.[32] In this type of centralized office model, legal team support and supervision can be accomplished through in-person meetings, data and evaluation, fiscal management, as well as via technology with legal team listservs, remote supervision, coaching, and training, or some combination thereof.

b. Multidisciplinary Representation

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[25] *Id.*

[26] Lucas Gerber et al., *Understanding the effects of an interdisciplinary approach to parental representation in child welfare,* 116 Child & Youth Servs. Rev. (2020).

[27] *See e.g.,* ABA Center on Children and the Law, *Effects of Funding Changes on Legal Representation Quality in California Dependency Cases* (2020).

[28] *See* Mimi Laver and Cathy Krebs, *The Case for a Centralized Office for Legal Representation in Child Welfare Cases,* ABA Child Law Practice (December 2, 2020).

[29] *See Id.*

[30] *See Id.*

[31] *See Id.*

[32] A number of states utilize this sort of centralized office for legal representation for parents and/or children, including Washington state, Oregon, Colorado, North Carolina and Massachusetts.

Multidisciplinary representation (also known as interdisciplinary representation) describes a model of representation for children and parents where attorneys have access to work in an integrated manner with a team of professionals for the benefit of the client. This may include social workers, people with lived expertise who can act as peer mentors or advocates, and needed investigators, experts, and interpreters.[33] The New York City studies described above found that multidisciplinary representation was a key attribute of the parent representation programs' impact on improved permanency outcomes.[34] Social work team members were able to help clients access services, support clients in meetings and planning with the child welfare agency, and advocated for streamlined and non-duplicative services for families.[35] Peer parents played an essential role in connecting with and motivating clients, and building trust between clients and the legal team, which parents identified as being essential to their successful participation in the child welfare process.[36]

Systems overseeing legal representation for children and parents should consider implementing a multidisciplinary practice model for parents' and children's representation. This may look different than the New York City models studied, depending on the capacity and population of the jurisdiction and needs of the clients. For example, in Colorado, the statewide office overseeing parents' representation has incorporated social workers into their practice utilizing contracted social workers who are supervised by a staff social work program coordinator.[37] The New Mexico Family Advocacy Program (NMFAP), started as a pilot in one judicial district in 2013, has adapted the multidisciplinary model of legal representation studied in New York City, to provide legal teams of parent attorneys, social workers, and parent mentors to represent parents in a number of jurisdictions in the state.[38] Supported by a grant from the CB, NMFAP predicts that its work on behalf of parents will improve a number of CFSR outcome measures.[39]

c. Utilizing Title IV-E Funding to Provide Independent Legal Representation for Candidates for Foster Care and their Parents

CB's policy clarification in 2019 made clear that title IV-E funds may be used for children who are candidates[40] for title IV-E foster care and their parents and that court involvement is not required for a title IV-E agency to claim reimbursement. This is intended to provide states, tribes and territories with a tool for preventing unnecessary and traumatic family separation. Accordingly, FFP is now available for an attorney to provide legal representation and advocacy

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[33] *See e.g.,* Family Justice Initiative, *Implementing FJI System Attributes: Attribute 2: Interdisciplinary Practice Model, available at*: https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute2-2.pdf

[34] Lucas Gerber et al., *Understanding the effects of an interdisciplinary approach to parental representation in child welfare,* 116 Child & Youth Servs. Rev. (2020).

[35] *See Id.*

[36] *See Id.*

[37] *See* Metropolitan State University of Denver Department of Social Work, *A Program Evaluation of the Colorado Office of Respondent Parents' Counsel Social Work Pilot Program, available at: https://coloradoorpc.org/wp-content/uploads/2019/11/ORPC-SWPP-Evaluation.pdf.*

[38] *See* New Mexico Family Advocacy Program Strengthening Interdisciplinary Practice*, available at:* https://nmfap.nmcourts.gov/.

[39] *See Id.*

[40] A child who is at serious risk of removal from home as evidenced by the agency either pursuing his/her removal from the home or making reasonable efforts to prevent such removal

on behalf of title IV-E foster care candidates and his/her parents. This may include allowable activities prior to court involvement, including prior to the filing of a petition to remove a child.

Evaluations demonstrate that legal advocacy in times of family vulnerability can help stabilize families and reduce the need for more formal child welfare system involvement, including foster care.[41] Several jurisdictions have started implementing pre-petition/pre-removal legal representation programs for parents.[42] These programs may receive client referrals from the title IV-E agency. In addition, multidisciplinary legal representation teams in pre-removal/pre-petition cases can provide parents advice about engaging with needed services and the child welfare agency, which can help mitigate potential child safety issues.

In Snohomish County, Washington, the Family Intervention Response to Trauma (FIRST) clinic provides free pre-petition legal representation to mothers with substance exposed infants.[43] The FIRST clinic legal team receives referrals from hospitals and community-based agencies. Clinic attorneys help parents develop safety plans and alternative care arrangements, if needed. Parent partners, working with FIRST clinic attorneys, help identify and encourage clients to engage in community-based services. The program has been able to help clients prevent family separation, access needed services and navigate the child welfare investigation process.[44] This program, and others like it, empower families to identify the services and concrete supports they need to remain safely intact.

d. Utilizing Title IV-E FFP for Judicial and Legal Representation Professional Partner Training

Rigorous, multi-disciplinary training is vital to ensuring high quality legal representation for parents, children and child welfare agencies. CB strongly encourages title IV-E agencies to partner with CIPs and other legal and judicial partners to include training and cross-training for attorneys that represent parents, children and the child welfare agencies in their title IV-E training plan. Such training meets the definition of professional partner training through the title IV-E assistance programs (i.e., Foster Care, Adoption Assistance and Guardianship Assistance) and is permissible under section 474(a)(3)(B) of the Act. The Act allows title IV-E agencies to receive FFP for training judges who hear child abuse and neglect proceedings, court staff involved with such proceedings, and attorneys that represent children, parents and child welfare agencies that will increase their ability to increase the ability of such professionals to provide support and assistance to foster and adopted children and children living with relatives. Such

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[41] *See e.g.,* University of Michigan Law School, *Promoting Safe and Stable Families: Detroit Center for Family Advocacy, available at:* http://artscimedia.case.edu/wp-content/uploads/sites/35/2014/02/14194055/CFAReport.pdf; Gina Giordano & Jey Rajaraman, *Increasing Pre-Petition Advocacy to Keep Families Together,* ABA Child Law Practice (Dec. 2020), available at: https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-increasing-pre-petition-legal-advocacy-to-keep-families-together/.

[42] *See* Family Justice Initiative, *Implementing FJI System Attributes: Attribute 4: Timing of Appointment, available at*: https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/06/fji-implementation-guide-attribute4.pdf; Casey Family Programs, *How can pre-petition legal representation helps strengthen families and keep them together?* (Jan. 2020), *available at*: https://www.casey.org/preventive-legal-support/#:~:text=Pre%2Dpetition%20or%20preventive%20legal,prevent%20child%20maltreatment%20and%20extendedb

[43] *See Id.*

[44] For more information about the FIRST clinic and other pre-petition/pre-removal representation programs, please view the webinar, *Prepetition Legal Representation*, *available at:* https://www.americanbar.org/groups/public_interest/child_law/project-areas/family-justice-initiative/prepetition-legal-representation/

trainings must be short-term, but there is broad flexibility in how such training is provided and by whom and title IV-E agencies may work with government or nongovernment partners through contracts or memoranda of understanding (MOU)s to deliver short-term training.

CB further encourages title IV-E agencies to consider institutionalizing such training for legal and judicial partners. This could take the shape of annual institutes for legal professionals that are tied to continuing legal education and/or professional certification, such as NACC's Child Welfare Legal Specialist Certification (CWLS)[45] or other state specific efforts in partnership with the state or county bar associations, the creation of dedicated child welfare law units within state or county child welfare agency training departments, or other creative approaches that best leverage available resources and meet the needs of the jurisdiction.

As discussed in ACYF-CB-IM-17-02, the Children's Bureau strongly encourages all child welfare agencies to work together with CIPs and other legal and judicial partners to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings. Joint training that builds or enhances the capacities of judges, court staff and attorneys that represent children and parents in child welfare proceedings is a critical opportunity to do so.

The availability of title IV-E FFP for professional partner training is only through the title IV-E agency in accordance with its approved training and Public Assistance Cost Allocation Plans (PACAP) or for tribal title IV-E agencies, an approved cost allocation methodology (CAM). The title IV-E agency would, thus, be responsible for describing this training initiative in the agency's annual progress and service report to the Children's Bureau and, if needed, amending the approved PACAP/CAMto identify the extent to which title IV-E and other federal, state or tribal programs benefit from the identified training. Since not all children in foster care, adoption assistance or guardianship assistance are title IV-E eligible, some portion of training focused on serving such children would need to be allocated to programs other than those under title IV-E. This is typically accomplished in a PACAP/CAM through the application of a program participation (or a penetration) rate. This is similar to how the title IV-E agency claims title IV-E administrative costs on behalf of all children and youth in the placement and care responsibility of the title IV-E agency or served by the agency.

e. Utilizing State and Local and Tribal Funds to Support Civil Legal Advocacy on Issues that affect Family Stability

Families that make contact with the child welfare system are often in the midst of or recovering from familial, health, or economic challenges or crises. This may include loss of employment, inadequate income, unstable housing or homelessness, food insecurity, mental health and/or substance misuse disorder, and intimate partner violence. Such obstacles and crisis can impede a family's ability to provide a safe and stable environment for their children and may increase the likelihood of contact with the child welfare system. Civil legal representation to address such issues can be preventative and serve as an effective tool to preserve family integrity and promote well-being.

[45] See https://www.naccchildlaw.org/page/Certification

Title IV-E agencies are encouraged to consider using state, local and tribal funds, including title IV-E reimbursement dollars received for independent legal representation to expand representation to include civil legal issues.[46] Investing reimbursement dollars in civil legal advocacy is a strategy to expand the scope of independent legal representation beyond foster care proceedings. The replacement of funds currently sourced 100% from the state or tribe by title IV-E FFP for allowable costs related to foster care proceedings could be a source for kick starting such additional legal services.

V. The Title IV-E Claiming Process for Legal Representation Costs

Title IV-E funding may only be claimed by the title IV-E agency in a state, territory or tribe. A court or law office cannot claim FFP directly from the CB. Title IV-E agencies that choose to claim administrative costs for allowable independent legal representation in foster care legal proceedings should collaborate closely with courts, CIPs, or law offices in order to develop a plan for submitting claims for reimbursement. To claim title IV-E administrative costs of any sort, a title IV-E agency must include a description of the procedures that will be used in identifying, measuring and allocating all costs in a PACAP/CAM.[47] This will require submission by the state of a PACAP or by the tribe of a CAM amendment to address any newly claimable legal representation costs. The cited PACAP/CAM must identify the scope of the clients for whom legal representation costs are to be incurred (i.e., for children in foster care, candidates for foster care and/or their parents or others). The review and approval of such an amendment will require detailed work and some patience. CB recommends that the title IV-E agency work closely with the assigned CB and Office of Grants Management (OGM) Regional Office staff to help navigate this process.

For states, the PACAP must be approved by the HHS Division of Cost Allocation Services (CAS) which is part of the HHS Program Support Center (PSC). The PACAP addresses a number of different programs, including, TANF and Medicaid. CAS also has responsibility for indirect cost agreements for many non-profit grantees, etc.[48] We recommend discussing drafts of the PACAP submission with the CB regional office staff prior to submission to assist with a more timely approval of the PACAP amendment. For tribes, the CAM is reviewed by Children's Bureau regional office and OGM but does not go through CAS for approval.

CB strongly encourages title IV-E agencies to take the following steps with legal and judicial partners on PACAP and CAM amendments to maximize the use of allowable title IV-E administrative FFP for the cost of independent legal representation for children who are candidates for title IV-E foster care or are in title IV-E foster care and their parent(s) in foster care legal proceedings.

1. Meet with the CIP/legal and judicial stakeholders to discuss the current state of legal representation for parents, children and the child welfare agency in your state.
2. Identify areas of strength and areas in need of improvement in legal representation across the state or tribe.

[46] See ACF-CB-IM-21-02 which discusses the importance of civil legal advocacy in ACF programs and identifies federal funding sources.
[47] A tribal CAM is handled in ACF and is approved by the ACF Office of Grants Management.
[48] https://rates.psc.gov/

3. Identify the models of legal representation that best meet your values and vision for child welfare in your state, territory, or tribe. (Please note that multi-disciplinary representation for children in care, candidates for care and their parents is most consistent with a prevention and well-being approach.)
4. Once the preferred model(s) of representation have been identified, continue working with the CIP and other legal and judicial stakeholders to define the specific populations to be served, geographic areas to be served and activities and administrative costs for which it would be most appropriate to seek title IV-E FFP. An important consideration is the availability of necessary data and documentation to support any claims. (This is an essential step to forming a methodology for claiming.)
5. Next, CB highly recommends requesting a meeting with your CB Regional Office to discuss thinking to date. This meeting can be an opportunity to receive CB guidance and support regarding the PCAP or CAM (for tribes) and accompanying agreements or MOUs between the title IV-E agency and the CIP, courts or legal offices. (Being able to discuss proactively ideas for claiming with your CB regional office will support a more timely review and approval of the PACAP or CAM amendment submission.)
6. We recommend sharing a draft of the amendment with the CB regional office for feedback which will support a more timely review/approval.
7. Once the title IV-E agencies have worked with your CB regional office on the draft submission and utilized the feedback, then the state will submit the PACAP amendment to CAS to go through the approval process. CAS will then share the official submission with OGM who will work with the CB regional office on the review and recommended approval. For the CAM, tribes will submit their amendment to OGM and they will share with the CB regional office for review and approval.

Following these steps will better position title IV-E agencies for success by engaging and promoting transparency with legal and judicial stakeholders, working closely with CB to ensure programmatic acceptability of PACAP and CAM amendments and positioning them for formal approval from CAS and OGM. These steps will also help ensure that title IV-E claims will not be subject to audit findings at the state, territorial and tribal levels and reduce the likelihood of potential claiming errors.

VI. Conclusion

The child welfare system is intended to keep families safe, together and strong, and where that is not possible, to find the next best option for children and youth. To realize this potential, it is critical that children and families experience the system as transparent and fair, one in which their voices are heard, rights are protected and options are known, co-created and understood. Providing high quality legal representation to children and youth in foster care, candidates for foster care and their parents at all stages of dependency proceedings is crucial to improving the experiences children, youth and parents have with the child welfare system and in turn improving outcomes. Research shows that legal representation for all parties in child welfare proceedings is clearly linked to increased party engagement, improved case planning, expedited permanency and cost savings to state government. CB strongly urges all title IV-E agencies to maximize all opportunities to seek and utilize title IV-E FFP to support high quality legal representation for children and youth in title IV-E foster care, candidates for title IV-E foster care

and their parents in foster care legal proceedings prior to removal and after a child enters foster care as a means of promoting child, parent and family well-being and improving system performance and creating more just, equitable and humane approaches to child welfare in the United States.

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/s/

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Administration on Children, Youth & Families

Disclaimer: IMs provide information or recommendations to states, tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.

RESOURCES

ABA Standards of Representation for Parents, Children, and Child Welfare Agencies
http://www.americanbar.org/groups/child_law/tools_to_use.html

ABA Legal Representation infographic:
https://www.americanbar.org/content/dam/aba/administrative/child_law/cwrepinfographic.pdf

ABA Family Integrity Policy
https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/118-annual-2019.pdf

ABA Recorded webinars including the Money Matters (CA study) and Interdisciplinary Legal Rep series: https://www.americanbar.org/groups/public_interest/child_law/resources/videos/

Family Justice Initiative, Attributes of High-Quality Legal Representation and System Attributes
https://familyjusticeinitiative.org/advocacy/

NACC Standards of Legal Representation for Children
http://www.naccchildlaw.org/?page=StandardsOfPractice

NACC Child Welfare Legal Specialist Certification (CWLS)
http://www.naccchildlaw.org/?page=certification

Quality Improvement Center for the Representation of Children in the Child Welfare System. (QIC-ChildRep) Practice Model
http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx

NCJFCJ Enhanced Resource Guidelines
http://www.ncjfcj.org/ncjfcj-releases-enhanced-resource-guidelines

NCJFCJ CANI Report
http://www.ncjfcj.org/CANI-Report-2016

Child Welfare Capacity Building Center for Courts
https://capacity.childwelfare.gov/courts/