



North Carolina Department of Health and Human Services
Division of Social Services

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Courier # 56-20-25

Michael F. Easley, Governor
Carmen Hooker Buell, Secretary

Pheon E. Beal, Director
(919) 733-3055

November 26, 2001

Dear County Director of Social Services

**ATTENTION: District Court Judges
DSS Children's Services Social Workers/Supervisors
Attorneys representing DSS
Court Counselors
GAL Administrators/GALs
Attorney Advocates**

**SUBJECT: Court Order Language Required by Title IV-E of the
Social Security Act and the Adoption and Safe Families
Act**

Title IV-E of the Social Security Act and the state's Adoption and Safe Families Act enacted in January, 1999 require particular attention to the wording of court orders that remove a juvenile from home and vest legal custody with the county Department of Social Services. Compliance with these requirements significantly affects the state's eligibility to receive federal foster care funds since these funds pay approximately 50% of the costs of care for children who enter the foster care system.

Over the next several years, staff of the federal Children's Bureau will be conducting a comprehensive IV-E audit in each state that will include a review of compliance with the requirements regarding court order language. The state's audit is scheduled for August, 2002. Court orders involving any IV-E eligible child in foster care between October 1, 2001 and March 30, 2002 are subject to audit. The purpose of this letter is to clarify federal and state requirements regarding the wording of court orders that remove children from their home and vest legal custody with the county Department of Social Services. This letter has been reviewed and approved by child welfare specialists with the Attorney

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General's Office. Please share the information with all persons involved in the preparation of court orders. As an additional reference, we recommend the publication entitled Making Sense of the ASFA Regulations, published by the American Bar Association.

Critical issues in this discussion include: (1) "contrary to the welfare/best interest" determinations; (2) "reasonable efforts" findings; (3) placement authority of county DSS agencies; and (4) trial home visits. In order to comply with state laws and federal requirements for IV-E funding, court orders must contain specific findings of facts as described below.

Contrary to the Welfare/Best Interest

The initial removal order must include a specific finding that continuation in the home would be contrary to the welfare of the child or that placement is in the best interest of the child. This initial order may be a nonsecure order, one issued at adjudication/disposition, or one issued as a result of a review hearing. "Contrary to the welfare/best interest" determinations are intended to insure that children are not removed from their homes unnecessarily. This requirement applies not only to cases where children are removed from their homes and placed in DSS custody as a result of abuse, neglect, or dependency but also as a result of delinquent or undisciplined behavior. The wording in the order for nonsecure custody included on form AOC-J-150 will satisfy this requirement (i.e. "there are no other reasonable means to protect the juvenile"). "Contrary to the welfare" findings, however, must be detailed, child-specific, and actually appear in the removal order. In addition to including such a finding in the nonsecure custody order, this issue must also be addressed in the petition filed with the request for nonsecure custody. The petition should describe why removal from the home was necessary in detailed, child-specific terms, as the petition provides the basis upon which the nonsecure custody order is written and granted.

In the absence of a petition alleging abuse, neglect or dependency, "contrary to the welfare" findings regarding children who are removed from their homes and placed in DSS custody as a result of delinquent or undisciplined behavior require particular attention in order to access federal foster care funds. Careful inquiry will need to focus on why the child's best interest is served outside the home and why services for the child are not obtainable except by removal from the home. A court order stating simply that the child was removed from the home because he is a threat to the community or he would abscond from the home does not satisfy the IV-E funding requirement. If the order states

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specific facts that make reference to the child's threat to self, then the requirement would be met. As of January 1, 2002, N.C.G.S. 7B-2503(1)c. and 7B- 2506(1)c. will require that such orders contain a finding that continuation in the juvenile's own home would be contrary to the juvenile's best interest.

In some instances a child's custody may be removed from the parents, but the child may continue to live in a home other than the parents' home. In these cases, the court order should include an explanation as to why "removal of custody from the parents" is in the child's best interest. In all cases, the child must be immediately removed from that home following the determination that it is not in his best interest (contrary to the welfare) to remain.

Reasonable Efforts

According to N.C.G.S. 7B-507, a court finding that reasonable efforts have been made to prevent or to eliminate the child's removal from the home must be made at the 7 day hearing and all subsequent evidentiary hearings. This will assure compliance with federal regulations that require this finding within 60 days of the child's actual removal from the home. For delinquent and undisciplined children, this provision means the agency must establish to the judge's satisfaction that it made such reasonable efforts before the actual removal of the child. That the efforts that were made were reasonable is a judicial determination and there is no specific guidance as to what constitutes "reasonable efforts" in any particular case. The court may find, in fact, that a lack of efforts is reasonable, when there was no safe way to make efforts to prevent removal. For example, at times the circumstances may be so egregious that the child would not be safe to remain in his home while services are being provided. In such cases, the court may find that no efforts short of the child's removal were possible. N.C.G.S. 7B-507 requires the court to make a finding concerning the agency's obligation to make reasonable efforts in the future in addition to making a finding about previous efforts.

Once the child has entered foster care, the court must also find that the agency has made reasonable efforts to finalize a permanent plan. The permanent plan may be to reunify the family or secure a new permanent home for the child. The finding is based on the agency's permanent plan as approved by the court at the time of the hearing and must be made within 12 months of the child's entry into foster care (according to N.C.G.S 7B and ASFA regulations) and at every subsequent hearing.

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In all cases, the regulations require that the findings be detailed, child specific, and contain specific relevant facts about the case. There are a number of ways to provide detailed findings, including describing the efforts in the actual court order, using language in the court order that references a sustained petition, incorporating by reference the court reports or checking off items from a detailed check list.

Placement Authority

To maintain eligibility for federal foster care funds, the county DSS must have “responsibility for the child’s placement and care.” Generally, this means that the agency decides the child’s specific placement. If the court issues an order naming a specific placement, the agency and parties must at least be given an opportunity to present evidence and arguments in reference to the placement. The resulting order must also demonstrate that the court gave “bona fide” consideration of the agency’s position in order to preserve IV-E eligibility. This regulation does not purport to limit a court’s power, but rather to specify the conditions under which an agency may be eligible to receive federal funds to help pay for a child’s cost of care. Courts may order specific placements, however, when they order such placements and do not permit the agency to offer evidence, the agency will not receive federal funds for that placement. When the court does not agree with the agency, in order for IV-E reimbursement to be available, the order must explain the court’s reason for diverging from the agency’s recommendation. Please note that the prohibition against court ordered placements does not apply in cases where the court order clearly indicates an endorsement or approval of the agency’s placement choice.

Trial Visits

In practice, a trial home visit is intended to be a short-term option in preparation for returning the child home permanently. In order to preserve the child’s IV-E status, a trial home visit may only extend up to six months, unless the court order specifies a longer period. If the visit exceeds six months or the time period ordered by the court, and the child subsequently returns to foster care, this is considered a new placement for IV-E purposes and eligibility must be re-determined. This requires a new court order removing the child and including new findings regarding “contrary to the welfare/best interests” and “reasonable efforts”. In order to preserve the child’s IV-E status, when the court orders physical custody to the removal home but maintains legal custody with the agency, the order must reflect that such physical custody is, in fact, a trial home

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visit. Placement at home can only be considered a trial home visit if the court designates it as such.

Clear, Cogent and Convincing Findings

In addition to the above issues regarding federal law and N.C.G.S. 7B, a recent appellate court decision, In the matter of: Omar Jamal Lambert-Stowers, No. COA00-1188, October 2, 2001, has serious implications regarding clear, cogent and convincing evidence findings. In that case, our Court of Appeals held that the trial court must recite the standard of proof in an adjudicatory order terminating parental rights, i.e., that the grounds have been proven by clear, cogent and convincing evidence, and that failure to do so is error. Although this decision refers specifically to a TPR action, we believe it has implications for findings in all adjudicatory orders and strongly recommend that such language be included in all such orders.

We hope that this information is helpful to you. If the above recommendations are followed, children in foster care should benefit from the maximum level of federal funds available to provide for their care and services needs. We greatly appreciate your attention to the wording of court orders. The child welfare specialists in the Attorney General's Office may be contacted for clarification or assistance with these issues. They are David Gordon (252-756-3454), Jane Thompson (336-761-2453 ext. 42), Kirk Randleman (828-669-4044 ext. 208), and Chris Sinha (919-733-2770).

Sincerely,



Charles C. Harris, Chief
Children's Services Section

CCH/jhs

cc: Pheon Beal
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Sherry Bradsher
Children's Services Team Leaders
Children's Services Program Representatives

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