Title IV-E

An Overview

STATE COURT ADMINISTRATIVE OFFICE
CHILD WELFARE SERVICES
2015

WHAT IS TITLE IV-E?

- Title IV-E is the section in the Social Security Act that governs foster care funding. 42 USC 670-679b
- The Act provides federal funding to States to pay a portion of the cost of foster care for children who were or would have been eligible for the former Aid to Families with Dependent Children (AFDC) program, but for removal from their home.
- Michigan made a decision to accept the federal funds available under Title IV-E, therefore we are obligated to follow the requirements of the Act.
- CSA of the Michigan DHHS administers the federal Title IV-E contract. The federal DHHS audits our Title IV-E program periodically.

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THE GOALS OF TITLE IV-E

- To reduce the number of children who are removed from their own homes for placement in substitute care.
- To improve the quality of care provided to children in substitute care.
- To return children to their homes as soon as the conditions in the home allow.
- To facilitate adoption or other permanent placements for children who cannot be returned home.

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Title IV-E Funding

IV-E vs. Non IV-E Cases

- IV-E Eligible Cases
  - **State/Federal** government split the cost of care
  - Ratio changes, but Federal dollars pay for majority

  ** No cost to the child county care fund (CCF)

- Non IV-E Eligible Cases
  - **County/State** government split cost of care
  - 50/50 ratio

  ** CCF pays half the cost

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Responsibilities under Title IV-E

- **Courts** – Make the necessary findings to comply with IV-E federal funding regulations; Ensure orders are properly drafted; Placement with DHHS; Timely permanency hearings.

- **DHHS** – Make IV-E eligibility determinations; Ensure eligible cases are properly paid for; Provide notice to attorneys and courts when funding is denied; Work with courts and attorneys to ensure all necessary financial information is available to make the appropriate IV-E determination.

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IV-E Funding Determinations

A child must meet certain criteria to be "IV-E eligible". If the child is eligible, and subsequently placed in an approved IV-E placement, then the federal government **reimburses** the state for a majority of the costs of the foster care placement and the administrative costs for that child.

Two Part Test:

1. Is the child IV-E *Eligible*?
2. Is the child's placement IV-E *Reimbursable*?

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6 Main IV-E Requirements

1. US Citizenship/Qualified Alien Status
2. Age (0 – 21)
3. Former AFDC Program Eligibility
   - Deprivation, Income, etc.
4. Legal Jurisdiction
   - *Placement and Care with DHHS*
5. Required Judicial Findings
6. Eligible Living Arrangement
   - Licensed foster homes, juvenile guardianships, non-secure private child care institutions, some public shelters

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Responsibilities of the Court

- **Make appropriate findings within specified time frames.**
- **Draft court orders properly and with case specific detail.**
- **The child must be placed with DHHS for placement and care.**
  - **The court cannot retain control over the placement of the child or IV-E funding may be jeopardized.**

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Placement and Care Responsibility

42 U.S.C. § 672(a)(2)

Under Title IV-E, to be eligible for federal funds, the Act requires that the responsibility for placement and care of the child is with the State agency administering the state plan approved under section 471 of the Act.

- **What is placement and care?** The development of an individual case plan for the child, including periodic review of the appropriateness and suitability of the plan and the foster care placement, to ensure that proper care and services are provided to facilitate return to the child's own home or to make an alternative permanent placement. The case plan activities include assessing family strengths and needs, identifying and using community resources, the periodic review and determination of the continued appropriateness of placement, and the efforts to finalize a permanency plan.

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Court Ordered Placement

- Federal regulations **prohibit** court-ordered placements.
- A "court-ordered" placement involves the court taking placement and care responsibility away from the agency and assuming placement and care responsibility by choosing the child's placement without bona fide consideration of the agency's recommendation regarding placement.
- This prohibition does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice.

Source/Date: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
Legal and Related References: 45 CFR 1356.21(g)(3)

But what if the court disagrees with the agency's placement decision?

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Direct Placement

- The court may not always concur with the agency's placement decision.
- It is possible to disagree with the agency's placement decision, make a direct placement, and maintain Title IV-E funding *if the court follows the proper procedures*.
- If the court hears the relevant testimony and works with all parties, including the agency, to make appropriate placement decisions, payments will not be disallowed.
- This is referred to as a "direct placement".

Source/Date: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
Legal and Related References: 45 CFR 1356.21(g)(3)

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SCAO Best Practice Recommendation for Direct Placements

- If a request for a court-ordered or direct placement is made, a hearing date must be set for all parties to provide testimony regarding their placement preference.
- Prior to the hearing, the parties should participate in a Family Team Meeting or mediation.
- To be eligible for Title IV-E funding, a direct placement may only result from a special noticed hearing to all interested parties.
- The order resulting from this hearing should clearly indicate the steps the court took to resolve the competing opinions as well as why the agency's placement recommendation is not in child's best interests.

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Three Critical Court Findings

1. **Contrary to the Child's Welfare** to Remain in the Home
   SCAO Forms: JC05b, JC11a, JC75
2. Agency Made **Reasonable Efforts to Prevent Removal** SCAO Forms: JC05b, JC11a, JC75, JC49
3. Agency Made **Reasonable Efforts to Finalize the Permanency Plan**
   SCAO Form: JC 19, JC 76

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Ex parte order authorizing immediate protective custody of child MCL 712A.14b

(1) Upon receipt electronically or otherwise of a petition or affidavit of facts, a judge or referee may issue a written ex parte order, electronically or otherwise, authorizing the department of human services to immediately take a child into protective custody and place the child pending the preliminary hearing if the court finds all of the following:

(a) There is reasonable cause to believe that the child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal from those surroundings is necessary to protect the child's health and safety.

(b) The circumstances warrant issuing an ex parte order pending the preliminary hearing.

(c) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

(d) No remedy other than protective custody is reasonably available to protect the child.

(e) Continuing to reside in the home is contrary to the child's welfare.

(2) The ex parte order shall be supported by written findings of fact.

Placement of child into foster care MCL 712A.13a(9)(c)

(9) The court may order placement of the child in foster care if the court finds all of the following conditions:

(a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from risk as described in subdivision (a).

(c) Continuing the child's residence in the home is contrary to the child's welfare.

(d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

(e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.

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1. Contrary to the Welfare (CTW) Findings

- These findings are required to be in the **first** court order authorizing removal.
- What if the finding isn't made? *This cannot be remedied.*
  - The entire cost of care for that family will be a 50/50 state and county split and can **never** be funded by Title IV-E during the removal episode.
- Critical to ensure Title IV-E funding!

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45 C.F.R. Section 1356.21(d)

About CTW Findings

- The finding must be detailed and specify the reasons removal from the home is necessary for the safety and welfare of the children.
- Legal removal is the date the order is signed by a judicial officer, not the date of the hearing.
- A child should not be removed from the home by DHHS without a court order signed by a judicial officer.
- Affidavits, nunc pro tunc orders, or orders referring to state law without case specific information do not meet Title IV-E requirements.

45 C.F.R. Section 1356.21(d)

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2. Reasonable Efforts to Prevent Removal from Home

- A specific court finding, after a presentation of facts, that "reasonable efforts have been made to prevent the child's removal from the home."
- Title IV-E regulations require this finding to be made within 60 days of the child's removal from the home. *Funding does not begin until the finding is made.* JC05b, JC11a, JC75
- What if this finding isn't made? *This cannot be remedied.* The findings must be detailed and include relevant case facts.
  - For example, "DHHS provided the mother substance abuse counseling for 6 months, and in-home care prevention assistance twice a week for 3 months."

45 C.F.R. 1356.21(d)

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Approved, SCAO

JIS CODE: OTC

STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER TO TAKE CHILD(REN) INTO PROTECTIVE CUSTODY AND PLACE (CHILD PROTECTIVE PROCEEDINGS), PAGE 1 ☐ EX PARTE	CASE NO. PETITION NO.

Court address: Court telephone no.

1. In the matter of
   names(s), alias(es), DOB (see reverse side for other identifying information)
2. Date of entry of order _____ Judge/Referee _____ Bar no.

THE COURT FINDS:

3. ☐ a. The child(ren) has/have already been removed from the parent(s), guardian, or legal custodian and is/are absent without leave from court-ordered placement.
   ☐ b. Pursuant to ☐ MCL 712A.2(b) and MCR 3.963(B) ☐ MCR 3.974(B)(1), there is reasonable cause to believe that:
   1) The child(ren) is/are at substantial risk of harm or is/are in surroundings that present an imminent risk of harm and the child(ren)'s immediate removal from those surroundings is necessary to protect the child(ren)'s health and safety.
   2) The circumstances warrant issuing this order.
   3) Continuing to reside in the home is **contrary to the child(ren)'s welfare** because: (Specify.)
   4) No remedy other than protective custody is reasonably available to protect the child(ren).
   5) Consistent with the circumstances, **reasonable efforts** were made to prevent or eliminate the need for removal of the child(ren) as follows: (Specify.)

☐ 4. a. Reasonable efforts are not required to prevent or eliminate the child(ren)'s removal from the home due to (See note below.)
☐ the ☐ mother ☐ father subjecting the child(ren) to the aggravated circumstance(s) of _____, as provided in section MCL 722.638(1) and (2), and as evidenced by _____

☐ the ☐ mother's ☐ father's conviction for murder of another child of the parent.
☐ the ☐ mother's ☐ father's conviction for voluntary manslaughter of another child of the parent.
☐ the ☐ mother's ☐ father's conviction for aiding or abetting in the murder or manslaughter of another child of

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Approved, SCAO

JS CODE PCS-PRo-PrB, PrN, TCS-PRnOPN

STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER AFTER PRELIMINARY HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 2 ORDER ____ OF ____	CASE NO. PETITION NO.

Court address | Court telephone no.

In the matter of

☐ 14. The child(ren) is/are Indian as defined in MCR 3.002(12). The petitioner ☐ has ☐ has not given notice of the preliminary hearing as required by MCR 3.920(C)(1).
☐ The preliminary hearing must be adjourned pending conclusion of a removal hearing required by MCR 3.967.
☐ The removal hearing required by MCR 3.967 was conducted in conjunction with this hearing (see required findings in item 16).

A qualified expert, _____, testified as required by law.

15. ☐ a. Contrary to the welfare findings were made in a prior order.
☐ b. It is contrary to the welfare of the child(ren) to remain in the home because: (Attach separate sheets as necessary.)

☐ 16. ☐ a. Consistent with the circumstances, reasonable efforts to prevent or eliminate removal of the child(ren) from the home were made as determined in a prior order. OR
☐ b. Consistent with the circumstances, reasonable efforts were made to prevent or eliminate removal of the child(ren) from the home. Those efforts include: (Specify below.) OR
☐ c. The child(ren) is/are Indian, and the court finds by clear and convincing evidence and the testimony of a qualified expert witness who has knowledge about the child-rearing practices of the Indian child's tribe, that active efforts ☐ have ☐ have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts have proved ☐ unsuccessful, ☐ successful, the continued custody of the child(ren) by the parent or Indian custodian ☐ is ☐ is not likely to result in serious emotional or physical damage to the child(ren), and the child(ren) ☐ should ☐ should not be removed from the home. (Specify below.)

The efforts for 16.b. or 16.c. are: (Specify the efforts from 16.b. or 16.c. here. If the child is an Indian child, specify active efforts as defined by MCR 3.002(1) and MCL 712B.3(a).)

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Reasonable Efforts Not Required Finding: *Aggravated Circumstances*

1. The parent has subjected the child or a sibling of the child to aggravated circumstances as enumerated in MCL 722.638 (1)-(2). These circumstances may include:
   i. Abandonment of a young child.
   ii. Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
   iii. Battering, torture, or other severe physical abuse.
   iv. Loss or serious impairment of an organ or limb.
   v. Life threatening injury.
   vi. Murder or attempted murder.
   vii. The parent has had parental rights to another child terminated.

2. OR the parent has been convicted of 1 or more of the following:
   i. Murder of another child of the parent
   ii. Voluntary manslaughter of another child of the parent
   iii. Aiding or abetting, attempting, conspiring or soliciting to commit such a murder or such a voluntary manslaughter
   iv. A felony assault that results in serious bodily injury to the child or another child of the parent

3. OR the parent is required by court order to register under the sex offenders registration act.

MCL 722.638 (1) and (2); MCL 712A.19a(2); MCR 3.965(C)(4)

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3. Reasonable Efforts to Finalize the Permanency Plan

- A court finding that "reasonable efforts have been made to finalize the permanency plan for the child."
- Detailed facts to support this finding in the court order.
- This finding must be made at least once every 12 months. MCL 712A.19(a) JC 19
- Identify the permanency goal for each child.

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MCR 3.976 Permanency Planning Hearings

(A) Permanency Plan. At or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when:

(1) the child may be returned to the parent, guardian, or legal custodian;

(2) a petition to terminate parental rights should be filed;

(3) the child may be placed in a legal guardianship;

(4) the child may be permanently placed with a fit and willing relative; or

(5) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (1)-(4)

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What is Permanency?

- Federal Permanency Goals:
  - Reunification
  - Adoption
  - Juvenile guardianship
  - Placement with a fit and willing relative
  - Placement in Another Permanent Planned Living Arrangement (APPLA)
    - APPLA can only be the goal for youth age 16+

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Approved, SCAO

STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER FOLLOWING DISPOSITIONAL REVIEW PERMANENCY PLANNING HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 3 ORDER ___ OF ___	CASE NO. PETITION NO.

Court address | Court telephone no.

In the matter of

☐ 16. The child(ren) is/are Indian and the court finds that active efforts ☐ have ☐ have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

☐ 17. *Reasonable efforts ☐ have ☐ have not been made to finalize the court-approved permanency plan of

☐ a. return to the parent for the child(ren) named

☐ b. adoption for the child(ren) named

☐ c. legal guardianship for the child(ren) named

☐ d. placement with a fit and willing relative for the child(ren) named

☐ e. ☐ placement in another planned permanent living arrangement (APPLA) for the child(ren) named

☐ ☐ a. placement in another planned permanent living arrangement - emancipation (APPLA-E) for the child(ren) named

due to the compelling reasons that (Specify the compelling reasons for another planned permanent living arrangement for c. and e., as appropriate, by entering the language that corresponds to the number(s) from the list on page 5.)

The reasonable efforts made to finalize the court-approved permanency plan identified above include:
(Specify the permanency plan for each child and the reasonable efforts made toward finalizing that plan.)

☐ Because adoption is the court-approved permanency plan, the Department of Human Services shall be ordered to initiate proceedings to terminate parental rights.

☐ 18. The permanency planning goal in item 17 ☐ is appropriate. ☐ is no longer appropriate and shall be:

☐ 19. The appointment of a juvenile guardian is in the best interest of the child(ren) named above in item 17.c. ☐ The court has received and considered the information required by MCR 3.979(A)(1), and the proposed guardian should be appointed.

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What if the Court can't find Reasonable Efforts were made To Finalize the Permanency Plan?

- If the court finds "no reasonable efforts were made" to finalize the permanency plan, Title IV- E reimbursement becomes unavailable.
- Once the court is able to make a positive reasonable efforts finding, Title IV-E reimbursement is again available for the case.
- The time during which the negative finding was in effect is the time frame when the IV-E reimbursement is not available.

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SUMMARY: REQUIRED COURT FINDINGS

1. Continuation in the home is *contrary to the welfare of the child*. **Required in first court order removing the child from the home.**
2. Placement and care responsibility for the child vested with DHHS.
3. The agency has made *reasonable efforts to prevent the child's removal from the home* or a finding that no reasonable efforts need to be made (aggravated circumstances). **Required within 60 days** (*SCAO recommends finding in first court order.)
4. The agency has made reasonable efforts to finalize the permanency plan for the child. **Required within 12 months and every 12 months thereafter.**

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2016 FEDERAL TITLE IV-E Review

- The federal Department of Health & Human Services (DHHS) audits state Title IV-E programs approximately once every three years.
- The federal DHHS will review 80 cases that are randomly selected throughout the state.
- To pass the review, those 80 cases cannot contain more than 4 errors.
  - Major financial penalties if a state does not pass the review.
- The on-site review lasts one full week and will take place at the Grand Tower in Lansing, MI.

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2015-2016 Federal Title IV-E Period Under Review

- In preparation for the next Title IV-E on-site review, Michigan will enter into the "period under review" (PUR); meaning that any case that receives Title IV-E funding during this time period may be selected as one of the 80 cases for the 2016 Title IV-E on-site review
- **The PUR is scheduled from October 1, 2015, through March 31, 2016.**

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Preparation for 2016 Federal Review

- Pay special attention to IV-E compliance during PUR.
- Local county case reads will begin after March 31, 2016, to resolve any compliance issues prior to the federal review.
- Case file preparation and transportation.
- Collaboration between DHHS and Court to get all necessary court orders in file.

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2013 Federal Audit Trends

- Removal dates on court orders were incorrect.
- Names misspelled or wrong birth dates– check birth certificate and Affidavit of Parentage.
- Reasonable Efforts to Finalize the Permanency Plan findings lacked detail and child specific goals.

Michigan's last on-site review was in 2013, and the state passed with zero errors.

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STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER CORRECTING IDENTIFYING INFORMATION (CHILD PROTECTIVE PROCEEDINGS)	CASE NO. PETITION NO.

Court address | Court telephone no.

1. In the matter of (read name as shown on petition.) name(s), alias(es), DOB

2. The legal files and orders reflect that the child/parent named above is identified as: (State all variances in the name, date of birth, race, and sex.)

3. The child's/parent's name, date of birth, race, and sex is as shown on
   - ☐ the birth certificate.
   - ☐ other _____.

THE COURT FINDS:

☐ 4. After reviewing the legal file, that the child named above came into foster care on _____ (Date) and has been placed with the Department of Human Services for placement, care, and supervision since that date.

IT IS ORDERED:

5. ☐ a. Even though there are variances in the name, date of birth, race, and sex of the child described in item 2, the child is the same child as the child described in item 1.

   ☐ b. Even though there are variances in the name, date of birth, race, and sex of the parent described in item 2, the parent is the same parent.

☐ 6. The corrected case name is _____.

Date | Judge

JJ Cases and Title IV-E Funding

- Juvenile Justice cases can be eligible for Title IV-E funding.
- *Contrary to the Welfare* findings must be in the first order authorizing removal:
  - This is true whether or not DHHS has placement and care responsibility when the youth is initially removed from the home.
- *Reasonable Efforts to Prevent Removal* and to *Finalize the Permanency Plan* Findings required.
- DHHS must have placement and care responsibility once the youth leaves detention.
- Best practice is to reference NA case file in DL orders and vice versa if the youth is a dual ward.

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Placement and Care Responsibility

- **The child must be placed with DHHS for placement and care.**
  - The court cannot retain control over the placement of the child or IV-E funding will be jeopardized
- The court may "recommend" a placement or concur with DHHS's decision for placement.
- This does not interfere with the probation officers ability to *supervise* the youth.
- **Best practice: Give DHHS placement and care responsibility as early as possible, but no later than the date the youth is placed in a title IV-E reimbursable placement.**

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REMOVAL FINDINGS IN JJ CASES

HOW AND WHY THE CHILD'S BEST INTERESTS WOULD BE SERVED OUTSIDE OF THE HOME.

- Step 1: The court may base the removal finding on either:
  A. The actions of the parent(s)
  B. The youth's threat to self
- Step 2: What is the risk of harm to the child that results? Use case specific facts to support the finding.
  Key: Tie the action to the harm or risk of harm.
  - **It is contrary because…and why?**
  - **Details, details, details!**

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JJ CASES AND CONTRARY TO THE WELFARE FINDINGS DHHS POLICY: FOM 902

- For juvenile justice wards, the court order may not reference the petition to document this finding because the petition often only details the youth's delinquent behavior.
- **A CTW finding must be based on either**:
  - The parents' actions that put the child at risk.
  - The youth's threat to self provided the court order details case specific documentation the court utilized for making the determination.
- **• A CTW finding cannot be based on:**
  - The youth's delinquent behavior.
  - Reference that removal is in society's best interest. The youth is a threat to the community.

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FINAL COMMENTS

- If the child is returned home and subsequently removed at a later date, this is considered a new placement episode. All court findings are required to be made again and a new IV-E eligibility determination will be made by DHHS.
- Revocation of a Juvenile Guardianship
- IV-E Appeal:
  - If the court does not agree with the agency's decision to deny IV-E funding, an administrative hearing may be requested. The court itself cannot file the administrative appeal, but the LGAL or an attorney appointed for the child for this specific purpose, may request the appeal.

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SCAO's Assistance to the Courts

- SCAO forms accommodate state and federal law.
- Title IV-E Refresher Trainings are available to your court upon request.
- Provide support when local county compliance issues arise.

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QUESTIONS?

- Contact SCAO – Child Welfare Services

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