



## JOHN N. HUDSON

JURIST IN RESIDENCE

P.O. Box 545

NATCHEZ, MS 39121

TELEPHONE: (601) 807-5837

EMAIL: [JUHUDSON@BELLSOUTH.NET](mailto:JUHUDSON@BELLSOUTH.NET)

# JIR Letter

## Title IV-E funds and Youth Courts—What you do is critical!

### What are Title IV-E funds?

Title IV-E funds are federal funding to states to pay a portion of foster care payments for children who are eligible. Federal dollars pay a majority of the cost. Federal law requires prerequisites to exist before reimbursement. If those are not met, the state will be responsible for 100% of the foster care cost.

Thus, when youth courts do not meet those prerequisites, it results in a loss of substantial funds for the State of Mississippi. We all know that our state can ill afford this loss.

### Goals of Title IV-E

The purposes of the Title IV-E requirements include

1. reducing the number of children who are removed from their homes and placed in substitute care,
2. to improve the quality of care of children in substitute care, to return the children to their homes as soon as the conditions of the home allow and
3. to facilitate adoption or other permanent placement for children who cannot be returned home.

### Title IV-E Eligibility Requirements

There are 6 major requirements which must be met. The child must:

1. Be a citizen or qualified alien status—*verified by MDCPS*
2. Be 0-21 years old—*verified by MDCPS*
3. Be eligible under former Aid to Families with Dependent Children Program—Deprivation, income—*verified by MDCPS*
4. **Be within proper legal jurisdiction—placement and care with MDCPS—*Dependent on Court action or inaction,***
5. **Have an order with required judicial findings included—*Dependent on court action or inaction;***
6. Be living in an eligible arrangement—Licensed foster homes, juvenile guardianships, non-secure private child care institutions and some public shelters

The bolded requirements are those that the court has direct involvement and responsibility. The balance of this letter will address when and how we should enter orders which meet federal scrutiny.

### Court ordered placement

- Federal regulations **prohibit** court ordered placement!
- A “court ordered placement” involves the court taking placement and care responsibility away from the MDCPS and assuming placement and care responsibility **without bona fide** consideration of the agency’s recommendation.
- Should the court disagree with the agency’s recommendation and an alternative placement request is made, a hearing date must be set where all parties provide testimony regarding their placement preference.
- To be IV-E eligible, a direct placement may only result from a specially noticed hearing to all interested parties.
- The resulting order should clearly recite the steps the court took to resolve the competing opinions and why the agency’s recommendation is not in the child’s best interest

## Required Judicial Findings to authorize removal

The following language and findings must be included in the orders of the youth court pertaining to a child removed due to alleged or adjudicated child abuse or neglect.

1. ***Maintaining in the home is contrary to the child’s welfare.***
  - a. This finding must be in the **first** court order authorizing removal (order memorializing middle of the night order, shelter order etc)
  - b. Findings must be detailed and specify the reasons why removal was necessary for the safety and welfare of the child.
  - c. If this finding is not made, ***it cannot be remedied.*** The entire cost of care for the family will be state funded and can ***never*** be funded by title IV-E during the removal episode.
  - d. MYCIDS orders include this language but do not provide a place for the court to include detailed findings. This is being remedied and will soon be available. Until then include the findings in your order wherever you can place them.
2. ***“Reasonable Efforts” to Prevent Removal***
  - a. A specific finding, after presentation of facts, that “reasonable efforts” have been made by the agency to prevent a child’s removal.
  - b. Finding must be made within 60 days of removal. Due to the time limitations in Mississippi statute this should be no problem. Funding does not begin until finding is made.
  - c. If the finding is not made, ***it cannot be remedied.*** Again, the entire cost of care for the family will be state funded and can ***never*** be funded by Title IV-E funds during the removal episode.
  - d. Finding must be detailed and cannot include any efforts by the agency that occurred after removal regardless of when the finding was made.
  - e. Exception to necessity of finding is when aggravating circumstances exist.
  - f. Of course, if, after the presentation of the facts, the court does not believe the agency exercised “reasonable efforts” to prevent removal a “no reasonable efforts” finding should be made.
  - g. MYCIDS orders include this critical language and a space for the court to enter the specific findings. ***Several orders have been discovered that included the “reasonable efforts” language but the space provided for inserting the specific findings was left blank. Those orders do not meet federal requirements.***
3. ***“Reasonable Efforts” to Finalize the Permanent Plan***
  - a. During review or permanency hearings the court must make a finding of “reasonable efforts” by the agency to finalize the permanent plan.

- b. This finding must be made at least once every 12 months and every 12 months thereafter. However, there is no prohibition to make the finding more frequently. In fact, a better practice would be to make the “reasonable efforts” inquiry at each review. Hopefully, such would engender more accountability by the agency and hasten permanency.
- c. The order should include specific facts that support the court order.
- d. The order should include the permanency goal for the child.
- e. Of course, if the court, after presentation of the facts, does not believe that “reasonable efforts” have been demonstrated, then the court should make a “no reasonable efforts” finding, or possibly continue the hearing for a brief period of time to allow the agency to come into compliance. If at the continued hearing the agency continues to be unable to demonstrate reasonable efforts, then the court should make the appropriate finding.
- f. Title IV-E funding will cease with a “no reasonable efforts” finding. However, unlike the requirement for “reasonable efforts” to prevent removal, once the agency has come into compliance and demonstrated “reasonable efforts” to finalize the permanent plan, funding will be restored.
- g. MYCIDS permanency orders and permanency review orders include the referenced language and space to include the critical finding. It is essential that the specific factual findings are included in the order.

### **Permanency Timelines**

Finally, it is critical that the required timelines established by state and federal law for hearings be met. MYCIDS is tracking this information and can assist courts to stay current.

### **Summary—Take Aways**

1. If removal and placement is made there must be a recitation that continuation in the home is *contrary to the welfare of the child*. *Specific factual findings must be included. **This must appear in the first court order removing the child from the home.***
2. Placement and care responsibility for the child must be vested with MDCPS, with exception as cited above.
3. The Court must find MDCPS has made “*reasonable efforts*” to prevent removal of the child from the home or a finding that no reasonable efforts needs to be made because of aggravating circumstances. Specific factual finding must be included. The order must be entered within 60 days of removal.
4. In subsequent hearings, the court must find that MDCPS has made “reasonable efforts” to finalize the permanent plan. Specific factual finding must be included. These should occur at least once every 12 months. A better practice is to include in every review.

If our youth courts make the appropriate orders following the guidelines set out above, Mississippi will draw down significantly more federal funds to serve this very fragile population. The agency is strapped for funds. When agency representatives do their jobs well and meet the requirement of law, we should ensure that we document that work properly in our orders to qualify for reimbursement.

Respectfully,  
John