

SIGNIFICANT ASFA CITES

1) Reasonable efforts to prevent removal; contrary to the welfare findings

42 U.S.C. § 671(a)(15)(B)(i)

The state must demonstrate a plan that ensures that reasonable efforts are made to preserve families prior to placing children in foster care.

45 CFR §1356.21(c)

Findings must be made that it is contrary to the welfare of a child to return home “in the first court ruling that sanctions (even temporarily) the removal of a child from home,” otherwise the child loses all eligibility for federal Title IV-E funding throughout the entire stay in foster care.

45 CFR §1356.21(b)(1)

Findings must be made that reasonable efforts were made to prevent the child’s removal from the home within 60 days of the child’s removal. If the findings are not made, or are not sufficient, the child loses all eligibility for federal Title IV-E funding throughout the entire stay in foster care.

45 CFR §1356.21(d)

A failure to make the finding that it is contrary to the child’s welfare to return home or to make the finding that reasonable efforts were made to prevent the child’s removal at the required time cannot be overcome by a retroactive order. The funding is lost for the child’s entire stay in foster care, no matter how long that may be. Both findings must be “explicitly documented” and made on “a case-by-case basis.” Referencing state statute to substantiate the finding is not adequate – the finding must be explicit.

65 Fed. Reg. 4056 (Jan. 25, 2000)

Contrary to the welfare findings and findings regarding reasonable efforts may not simply reference a report to the court. To be legally sufficient the findings must reference specific facts from the report. Checklists are acceptable, as long as the checklist is specific as to facts, not just statute.

2) Reasonable efforts to reunify families

42 U.S.C. § 671(a)(15)(B)(ii)

The state must demonstrate a plan that ensures that reasonable efforts are made to reunify families, making it possible for children to safely return to their homes.

45 CFR §1356.21(g)(2)

A case plan must be developed within 60 days of the date of the child’s removal.

65 Fed Reg. § 4052 (Jan. 25, 2000)

Even where court approval of a case plan is required by state law, state agencies should set the case plan and act on it while waiting for such approval.

65 Fed Reg. § 4029 (Jan. 25, 2000)

States have “up to 60 days from a child’s removal from the home to develop the case plan.”

3) Reasonable efforts to finalize the permanency plan

42 U.S.C. § 671(a)(15)(C)

The state must demonstrate a plan that ensures that reasonable efforts are made to “place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.”

45 CFR § 1356.21(b)(2)(i)

Judicial findings that reasonable efforts were made to achieve the permanency goal in the case plan must be made within 12 months of the child’s removal from the home and at least every 12 months thereafter.

45 CFR § 1356.21(d)(3)

Judicial findings that reasonable efforts were made by DCF to achieve the permanency goal in the case plan must be “as meaningful as possible and child specific.” Judicial determinations that merely reference state statute in an attempt to satisfy this requirement are insufficient. Findings must be made that reference specific facts of the case.

45 CFR § 1356.21(b)(2)(ii)

If there is no finding that reasonable efforts were made by DCF to achieve the permanency goal, then the child becomes ineligible for Title IV-E funding from the end of the 12th month from the date the child entered care. If the finding is that reasonable efforts were not made, then the child becomes ineligible for Title IV-E funding from the end of the month the finding was made. In either case, the child remains ineligible for Title IV-E funding until the court makes a finding that reasonable efforts have been made to achieve the permanency goal.

65 Fed. Reg. 4056 (Jan. 25, 2000)

Reasonable efforts findings must be made on a case-by-case basis. While they may reference a report made to the court (such as the DCF report), to be legally sufficient the findings must reference specific facts from the report. Checklists are acceptable, as long as the checklist is specific as to facts, not just statute.

65 Fed. Reg. 4053 (Jan. 25, 2000)

The judicial review required to be held six months after the child enters care must determine, in part, “the extent of compliance with the case plan” by all parties, not

just the parents. Findings relating to reasonable efforts to achieve the permanency goal are appropriate at any time, and are not limited to the permanency hearing.

4) Case plan requirements

42 U.S.C. § 675(1)(A)

The case plan must be a written document that describes the child's placement, addressing its safety and appropriateness for the child.

42 U.S.C. § 675(1)(B)

The case plan must assure that the child receives "safe and proper care." Services are to be provided in the case plan to the child, the parents, and the foster parents to 1) "improve conditions in the parents' home"; 2) facilitate the child's reunification or other permanent placement; and 3) to address the child's needs.

42 U.S.C. § 675(1)(C)

The case plan must include the child's health and education records, including contact information for providers, a copy of the child's school record and immunizations, and information about the child's medical conditions and medications. For children 16 or older, the plan should provide services to help them transition to living independently, even if the goal is not independent living. The plan must take into consideration the child's placement and its distance from the child's school.

42 U.S.C. § 675(1)(D)

Where the goal is not reunification, the plan must document the steps the Department is taking to achieve the goal.

45 CFR § 1356.21(g)(1)

The case plan should be developed jointly by the Department and the parents.

45 CFR § 1356.21(g)(2)

The case plan must "be developed within a reasonable period" which can be no more than 60 days after the removal of the child.

45 CFR § 1356.21(g)(3)

The case plan must show how the child's placement is the most family-like setting possible. If the goal is reunification, the case plan must show how the placement must be as near to the family's home as possible. The case plan must also show how the placement is "consistent with the best interests and special needs of the child."

45 CFR § 1356.21(g)(4)

The case plan must describe services offered by the Department to prevent the removal of the child and to reunify the family (past case plans).

45 CFR § 1356.21(g)(5)

If the case plan goal is adoption, the case plan must include “child-specific” recruitment efforts, such as using state, regional, and national adoption registries.

65 Fed. Reg. 4057 (Jan. 25, 2000)

If the parents are unwilling or unable to participate in the case plan development, the Department must document its efforts to engage the parents in the process.

65 Fed. Reg. 4058 (Jan. 25, 2000)

While the type of placement and the permanency goal for the child may be dictated by the court, if the court orders the placement of a child with a specific person or foster care provider, then the child loses Title IV-E eligibility.

5) Extension of the case plan beyond 12 months

42 U.S.C. § 675(5)(C)

The state must hold a permanency hearing no later than 12 months after the child entered foster care to determine the permanency plan for the child, deciding when the child will be returned home, placed for adoption or guardianship, or placed in another planned permanent living arrangement. If the goal is adoption, the court must decide when the Department will file for TPR.

42 U.S.C. § 675(5)(E)

Where a child has been in foster care for 15 of the last 22 months, the state “shall file a petition to terminate the parental rights of the child’s parents” unless the child is being cared for by a relative, the state has documented a “compelling reason for determining that filing such a petition would not be in the best interests of the child,” or the state has not made the reasonable efforts necessary to achieve the goal of the case plan where the goal is reunification.

45 CFR § 1356.21(i)(2)(ii)

Compelling reasons not to file a TPR include, but are not limited to, adoption not being an appropriate goal for the child, not having grounds to file the TPR, where the child is an unaccompanied refugee, international legal obligations or foreign policy prevents TPR, or where the Department has not made reasonable efforts to provide services to enable the reunification.

65 Fed. Reg. 4035 (Jan. 25, 2000)

Extending the case plan of reunification beyond the permanency hearing and not filing for TPR is appropriate only where “compelling reasons” exist or where parents have been “diligently working toward reunification and the state and court expect that reunification can occur within a time frame that is consistent with the child’s developmental needs.”

65 Fed. Reg. 4062 (Jan. 25, 2000)

The Department must document why not filing for TPR after 15 months is in the child's best interest.

6) Working on the adoption concurrently with filing the TPR petition

42 USC § 675(5)(e)

The Department must begin identifying, recruiting, processing, and approving qualified families for adoption concurrently with filing the petition for TPR.

45 CFR § 1356.21(i)(3)

Working on the child's adoption must be done concurrently with filing or joining a TPR petition.

45 CFR § 1356.21(g)(5)

Whenever the case plan goal changes due to circumstances to adoption, the Department must document "child-specific" efforts to achieve adoption. At a minimum, this includes using state, regional, and national electronic exchange systems.

65 Fed. Reg. 4062 (Jan. 25, 2000)

The provision that requires DCF to concurrently begin diligently working toward the adoption goal for children when a TPR is filed was "developed to ensure that a child does not wait unnecessarily between the time a TPR is granted and the child's permanent placement in a home."

65 Fed. Reg. 4052 (Jan. 25, 2000)

Even in states where the case plan must ultimately be approved by the state court, it is expected that the responsible agency will change the case plan and begin acting on the changed case plan where circumstances warrant, even prior to the approval by the court of the changed plan.