

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.1G TITLE IV-E, Administrative Functions/Costs, Title IV-E Agreements

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**1. Question: May a court be considered a "public agency" for purposes of entering into a title IV-E agreement, or does "public agency" refer only to the executive branch of government? Is separation of powers an issue here?**

**Answer:** There is no statutory prohibition on agreements between the public agency administering the title IV-E foster care program and the court. However, legislative and program history do not provide precedent for agreements whose only purpose is to transfer the decision-making authority for placement and care from the title IV-E administering agency to the court or its affiliated citizen review panel. Rather, discussion of such agreements in the 1963 Handbook of Public Assistance Administration describes "another public agency" as a child placing agency authorized by State/Tribal law to operate a program of services to children and families, with supervision by the agency administering the Aid to Families with Dependent Children program. Current ACF policy sustains this position.

Therefore, the requirements of section 472(a)(2)(B) of the Social Security Act may be met through an agreement with a public agency (including a court) which is authorized under State/Tribal law to operate as a child placing agency, and, if so authorized, is operating a child placing agency. The agreement, properly written, should be binding on both parties and should permit the title IV-E agency to have access to case records, reports or other informational materials as needed to monitor title IV-E compliance. The title IV-E agency must maintain a supervisory role in relation to all title IV-E eligible children and would need to monitor the provisions required under title IV-E.

However, if a court is not authorized under State/Tribal law to operate and is not operating as a child placing agency, the court could not be considered "another public agency" with responsibility for placement and care of otherwise eligible children for purposes of section 472(a)(2)(B).

- **Source/Date:** ACYF-CB-PIQ-85-02 (3/13/85); (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 472(a)(2)(B) and 479B; Handbook of Public Assistance Administration, Part IV, Department of Health, Education and Welfare 7/24/63

**2. Question: Which agency (State or Tribal) has responsibility for providing foster care payments and child welfare services to Indian children?**

**Answer:** This is addressed in 9.4; question 1.

- **Source/Date:** ACYF-CB-PIQ-88-02 (1/27/88); (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 421, 422, 428 and 472; 25 CFR 20.3

**3. Question: What is the rationale for prohibiting anybody that conducts permanency hearings from being part of or under the supervision or direction of the title IV-E agency? Does this requirement extend to other public agencies with which the title IV-E agency has a title IV-E agreement?**

**Answer:** Critical decisions that have a significant effect on the lives of children and their families are made at permanency hearings. The purpose of requiring courts to oversee permanency hearings is to ensure that these hearings are conducted by an impartial body, which includes anybody appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the title IV-E agency or under its direction or supervision would not meet the test of impartiality.

The requirement does extend to other public agencies with which the title IV-E agency has an agreement. Title IV-E requirements extend to any other public agency with which the title IV-E agency enters an agreement for the performance of title IV-E administrative functions, including responsibility for placement and care of the child.

- **Source/Date:** Preamble to the Final Rule (64 FR 4020) (1/25/00); (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 475(5)(c) and 479B; 45 CFR 1355.20

**4. Question: Under title IV-E, a title IV-E agency must be designated to administer the foster care maintenance program. Could another State or Tribal agency, such as a "Youth Authority", provide program monitoring and supervision through an inter-agency contract (assuming some or all children under the "Youth Authority" will be eligible)?**

**Answer:** Section 472 of the Social Security Act requires that "such child's placement and care are the responsibility of the title IV-E agency administering the title IV-E plan...or any other public agency with whom the title IV-E agency administering or supervising the administration of the title IV-E plan...has made an agreement which is still in effect."

Assuming that a State or Tribal Department of Social Services (DSS) is the title IV-E designated agency, a "Youth Authority" for example, would need to have a currently effective agreement with the DSS which covers these children and all requirements of the title IV-E law and regulations. If the agreement covered all of the requirements, then the "Youth Authority" could, for purposes of administering the title IV-E plan, function as the DSS's surrogate. This arrangement, however, would not relieve the DSS of ultimate responsibility to

supervise the "Youth Authority's" administration of the title IV-E plan for these children nor does it speak to the question of IV-E allowable costs. Moreover, the requirements of the Act under section 472, are broader than merely an agreement between two entities covering particular items. To receive FFP for the care of "Youth Authority" supervised children, the DSS and the "Youth Authority" would have to assure that all the title IV-E plan requirements are met for these children, not merely addressed by the interagency agreement. Assuming these arrangements are carried out properly, FFP could be available.

- **Source/Date:** ACYF-CB-PIQ-82-10 (8/11/82); (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 472 and 479B

**5. Question: Is a public entity that has entered into a title IV-E agreement pursuant to section 472(a)(2)(B) of the Social Security Act (the Act) with the title IV-E agency permitted to perform the title IV-E functions of an employee of the title IV-E agency?**

**Answer:** Yes. Entering into a section 472(a)(2)(B) agreement with the title IV-E agency permits another public agency to have responsibility for the placement and care of title IV-E eligible children. An agency that exercises responsibility for the placement and care of a title IV-E eligible child is fulfilling the fundamental purpose of the program and is, in effect, implementing the title IV-E plan on behalf of a specified population of children under the agreement. Thus, such public agencies are permitted to perform functions that the title IV-E agency is required to perform pursuant to 45 CFR 205.100(b), such as eligibility determinations. Public agencies that enter into section 472(a)(2)(B) agreements are subject to all applicable Federal statutory, regulatory, and policy guidance as well as State or Tribal rules that implement Federal requirements.

- **Source/Date:** 06/09/04; (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 472(a)(2)(B) and 479B; 45 CFR 205.100