

Child Welfare Policy Manual

Questions & Answers

8.3C.2c TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, permanency hearings

1. Question: Must the State cease efforts at reunification at the permanency hearing if the child is unable to return home to the parent at that time?

Answer: No. The State is not obliged to set an alternate permanency plan at the permanency hearing if the child and family are not able to reunify at that time. However, the intent of the Adoption and Safe Families Act in shortening the time line for holding a permanency hearing was to place greater accountability and responsibility on parents for making their home ready and safe for the child's return. Families often present very complicated issues that must be resolved prior to reunification. For example, parents dealing with substance abuse issues may require more than 12 months to resolve those issues. However, a parent must be complying with the established case plan, making significant measurable progress toward achieving the goals established in the case plan, and diligently working toward reunification in order to maintain it as the permanency plan at the permanency hearing. Moreover, the State and court must expect reunification to occur within a time frame that is consistent with the child's developmental needs. If this is not the situation, the State is obliged to establish and act on an alternate permanency plan for the child at the permanency hearing. Too often, reunification is retained as the permanency goal when a parent is negligent in complying with the requirements of the case plan until the months or weeks immediately prior to the permanency hearing. A parent's resumption of contact or overtures toward participating in the case plan in the months or weeks immediately preceding the permanency hearing are insufficient grounds for retaining reunification as the permanency plan. In such situations, the parent should demonstrate a genuine, sustainable investment in completing the requirements of the case plan in order to retain reunification as the permanency goal. The shortened time frames and increased accountability for parents makes it incumbent on the State to begin providing services to families as soon as it receives responsibility for the child's placement and care. Ideally, the State will begin delivering services to resolve those parental issues which lead to the removal as soon as the child is removed from home.

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
- **Legal and Related References:** Social Security Act - section 475 (5)(C); 45 CFR 1355.20

2. Question: What is the rationale for prohibiting any body that conducts permanency hearings from being part of or under the supervision or direction of the State agency? Does this requirement extend to other public agencies with which the State 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 any body appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the State 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 State agency has an agreement. Title IV-E requirements extend to any other public agency with which the State 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 (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(C); 45 CFR 1355.20

3. Question: May a State include placement in a permanent foster family home and emancipation in the list of permanency goals at section 475 (5)(C) of the Social Security Act (the Act) that are exempt from the compelling reason requirement in that section?

Answer: No. Section 475 (5)(C) of the Act specifies that the only permanency options the State may set without a compelling reason to do so include reunification, adoption, legal guardianship, or placement with a fit and willing relative.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(C); 45 CFR 1355.20

4. Question: In what way can a State meet the requirement for the court holding a permanency hearing to conduct age-appropriate consultation with the child in section 475(5)(C)(iii) of the Social Security Act (the Act)?

Answer: Any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. Section 475(5)(C)(iii) of the Act tasks the State with applying procedural safeguards to ensure that the consultation occurs. However, the statute does not prescribe a particular manner in which the consultation with the child must be achieved which provides the State with some discretion in determining how it will comply with the requirement.

We do not interpret the term "consult" to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, the child's views on the child's permanency or transition plan must be obtained by the court for consideration during the hearing. For example, a report to the court in preparation for a permanency hearing that clearly identifies the child's views regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child's views to the court could also meet the requirement. Information that is provided to the court regarding the child's best interests alone are not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child's views on his/her permanency or transition plan.

- **Source/Date:** 06/22/07
- **Legal and Related References:** Social Security Act - 475(5)(C)(iii)