

REASONABLE EFFORTS ISSUES**A. No Reasonable Efforts Made/No Efforts Were Reasonable**

Where the removal of a child from his or her home is contemplated or has already taken place by court order, federal Title IV-E standards require a case specific court determination within 60 days of removal whether reasonable efforts were made to prevent removal or were not required [see 45 CFR 1356.21(b)(1)(i)]. If the determination concerning reasonable efforts is not made as set forth above, the child is not eligible for Title V-E foster care maintenance payments for the duration of the child's stay in foster care [see 45 CFR 1356.21(b)(1)(ii)].

Reasonable efforts to prevent removal or to reunite a child with his or her parents are not required where:

- a) The court has determined that the parent has subjected the child to aggravated circumstances as defined by the State;
- b) A court has determined that the parent has been convicted of certain categories of crimes, including homicide and felony assault of another child of the parent or such attempted crimes against other children of the parent, including the child who is the subject of the court procedure; or
- c) The parental rights of the parent with respect to a sibling has been involuntarily terminated (TPR).

The State has implemented the federal reasonable standards by amending State law to require court findings relating to reasonable efforts in all categories of foster care cases. The official court forms issued by the Office of Court Administration provide for the recording of reasonable efforts findings. The categories of findings are divided as follows:

- a) Reasonable efforts were made with a case specific finding of the efforts that were made.
- b) Reasonable efforts were not made because of a case specific court finding that reasonable efforts were not required because of the presence of one of the above-referenced federal criteria: aggravated circumstances; designated felony conviction or prior TPR [see for example section 1039-b of the Family Court Act (FCA)].
- c) Reasonable efforts were not made, but the lack of efforts were appropriate given the facts and circumstances of the case as specified in a case specific finding by the court.
- d) Reasonable efforts were not made.

To the extent that categories (a) and (c) reference specific factual findings and/or refer back to specific available documents, federal reasonable efforts requirements are satisfied. A copy of a

court determination that reasonable efforts are not required as set forth in category (b) would also satisfy federal standards.

It is federally acceptable for a court to conclude that no efforts were reasonable given the specific facts of a case. In such a situation, if the court states, for example, that reasonable efforts were not made but that the lack of efforts were appropriate because of the seriousness of the risk to the children of further abuse by the child's parent because of the parent's violent behavior, and the court cross references the district's abuse or neglect petition and/or testimony of a caseworker, the federal standards are satisfied. If in that factual situation, the court only concludes that reasonable efforts were not made, then the federal standards are not satisfied.

There may be many situations in all categories of foster care where no efforts to prevent removal or to enable the child to safely return home where the child was removed are reasonable given the particular facts of the case. These cases include, for example, where there has been no prior involvement by the agency with the family and unless the child is removed from his or her home, the child would be in imminent risk of harm.

The court in such cases has the option to evaluate whether the absence of efforts were appropriate, thus accurately reflecting the circumstances of the case and satisfying federal reasonable efforts standards.

B. Reasonable Efforts to Finalize the Child's Permanency Plan

Federal Title IV-E standards require that there must be a judicial determination that reasonable efforts have been made to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, etc.) within 12 months of the date the child is considered to have entered foster care. A child is considered to have entered foster care the earlier of the date of the fact finding or abuse or neglect or 60 days after removal of the child from his or her home. Such determination must thereafter be made every 12 months while the child is in foster care (see 45 CFR 1356.21(b)(2)(i)). Failure to secure a timely court determination within the applicable 12 month period for a child removed from his or her home by court order results in foster child becoming ineligible for Title IV-E foster care maintenance payments until the first day of the month such a judicial finding is made.

The State has implemented the federal standards by enacting legislation creating permanency hearings and requiring case specific court findings relating to reasonable efforts. Such findings relate to either:

- a) Reasonable efforts were made to make it possible for the child to safely return to his or her home; or
- b) If the permanency plan for the child is adoption, guardianship or some other permanent living arrangement other than reunification with the parent, reasonable efforts were made to finalize such alternative permanent placement [see sections 355.5, 756-a, and 1089 of the FCA].

A case specific finding of reasonable efforts to finalize the child's permanency plan or

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to make it possible for the child to safely return home must be made on a timely basis for a child removed by a court order to satisfy the federal standards. A finding of “no reasonable efforts” will not satisfy the federal requirements. A court finding that reasonable efforts are not required to reunify the child with his or her parent because of aggravated circumstance, a felony conviction or prior TPR will not satisfy Federal requirements relating to reasonable efforts to finalize a child’s permanency plan. If the court only makes a reasonable efforts finding addressing the issue of removal at a permanency hearing, the federal standards are not satisfied.

At a permanency hearing where the child’s permanency goal has changed at some point prior to the permanency hearing, the court should examine the efforts made during that period by the agency prior to the permanency hearing. It would not be appropriate in a case, for example, where a child’s goal has been changed from reunification to adoption and the agency has filed a TPR for the court to conclude that no efforts were made.

Note: The federal reasonable efforts standards are not eligibility requirements for children placed into foster care by voluntary placement agreement.