



*Making the Legal System Work for Children and Parents*  
<https://familyjusticeinitiative.org>

## Questions and Answers: Federal IV-E reimbursement for high-quality legal representation for children and parents

Title IV-E of the Social Security Act is the primary authority for federal funding for foster care. In summary, the federal government matches state funds for foster care room and board, as well as administrative and training costs. In a recent policy change, the United States Department of Health and Human Services, Children's Bureau, has interpreted administrative costs for foster care to include costs for children's and parents' attorneys. ([Child Welfare Policy Manual, Section 8.1B, Question 30](#)) Jurisdictions can now seek federal reimbursement for the cost of legal representation for eligible children and their parents.

Below we have answered some common questions about this federal policy change. For additional resources, including the recording of a Family Justice Initiative (FJI) webinar on this topic, please visit the FJI website at <https://familyjusticeinitiative.org>.

Please note that the answers to these questions are based on the FJI's interpretation of federal law and policy and should not be considered federal policy or guidance. The answers to these questions could be subject to change based on future federal guidance.

### **State Matching Funds**

- 1. Will jurisdictions have to redirect IV-E funds from current programs or give up something to support legal representation for parents and children?**
  - No. Title IV-E funds are an open-ended entitlement. The federal policy change means that **new/additional** IV-E dollars are now available to support high-quality legal representation for children and parents.

**2. Can states provide matching funds for children's and parents' counsel with funds they currently use to support child and parent legal representation, or do they need to use new or additional funds to meet the state match requirement?**

- States can meet the match requirements with funds that they currently use to support legal representation for children and/or parents. However, the Children's Bureau has been clear that their preference is that newly available federal funds support improved representation for parents and children – not act as a substitute for state investment. The new federal funds should be used to invest in improved representation.

**3. What are considered state matching funds?**

- State matching funds can come from any public funds expended on legal representation for children and parents. The state IV-E agency can pass through federal funds to legal agencies and have the legal agency funding (i.e., state/county/local public funds for representation) meet the state match requirement. Alternatively, the state IV-E agency could invest money in legal representation to meet the state match requirement as well.

**4. How will this work in states where the funding for representation for children and parents is currently county based – i.e., all the money comes out of a county budget?**

- This should not impact the ability to receive federal matching funds. State matching funds can come from any public funds, including county or other local public funds, spent to support legal representation for children and parents. The federal reimbursement will be to the state IV-E agency, which can transfer the funds to the county or local jurisdiction.

**5. Is there a way for legal organizations in a given locality to access this funding in the event the local IV-E agency decides not to seek federal funds for representation for children and parents?**

- No. Funds must be claimed through the state IV-E agency.

**6. Are federal matching funds only available for candidates for foster care and/or Title IV-E eligible children, meaning non-IV-E children would not be reimbursable?**

- Federal reimbursement will be based on a state's proportion of foster children eligible for Title IV-E (referred to as the state's "penetration rate") and will not require an analysis of whether individual clients are IV-E eligible. For more information on how reimbursement will work, please see ABA Child Law Practice article: [Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview.](#)

## **Legal Representation Addressed by Policy Change**

- 7. Will Title IV-E reimbursement cover the costs of CASA or non-attorney Guardians Ad Litem (GALs) for children?**
  - No. Federal IV-E reimbursement for the cost of legal representation for parents and children will only provide reimbursement for costs associated with legal representation (attorneys) and will not be available to reimburse jurisdictions for costs related to CASA programs or non-attorney GALs.
- 8. Will Title IV-E funds be available to reimburse jurisdictions for attorneys' out-of-court time including review of discovery, client meetings, and travel?**
  - Yes. Our current understanding is that legal representation covers attorney time, including out-of-court time, review of discovery, attorney administrative costs, etc.
- 9. Can jurisdictions submit a claim for federal reimbursement for costs for non-attorney members of an interdisciplinary legal representation team for children and parents?**
  - No. Our understanding is that while jurisdictions can invest the newly available federal funds in [high-quality legal representation](#) for children and parents, including an interdisciplinary legal team, they can only claim federal reimbursement for public dollars (state/local/county) spent on attorneys.
- 10. Will IV-E reimbursement cover the costs of attorneys for tribes?**
  - Federal IV-E reimbursement for the cost of attorneys for parents and children is available to tribes administering Title IV-E programs (i.e., tribes can seek reimbursement if they are administering a IV-E program and investing public funds into representation for parents and children).
  - The child welfare policy manual change does not make Title IV-E funds available to reimburse tribes for the cost of attorneys for tribes that intervene and participate in state court child welfare proceedings.
- 11. May federal IV-E funds be used to reimburse jurisdictions for the cost of legal representation for kinship-caregivers trying to gain legal custody of a child placed with them?**
  - The child welfare policy manual addresses federal reimbursement for attorneys for parents and children. It does not address representation for kinship caregivers.

## **Pre-Petition or “Preventative” Legal Representation**

- 12. May Title IV-E funds be used to reimburse jurisdictions for the cost of legal representation for parents and/or children before a petition for removal or court supervision is filed?**
  - Yes. The Child Welfare Policy Manual states that Title IV-E funds are available to reimburse jurisdictions for the cost of attorneys for children and parents to

“prepare for and participate in all stages of foster care legal proceedings, such as hearings related to a child’s removal from the home.” This includes costs for pre-petition representation for parents and/or children. Pre-petition representation of parents has been shown to help keep children [safely out of the foster care system](#).

**13. Are Title IV-E funds available for legal representation part of the *Family First Prevention Services Act (FFPSA)* prevention funds?**

- No. Title IV-E funds available to reimburse jurisdictions for attorneys for parents and children are separate and distinct from IV-E funds available for prevention services under *FFPSA*.

**Independent Legal Representation**

**14. On what authority may states require that the entity providing legal representation, and on whose behalf the IV-E agency is seeking reimbursement, provide specific training or ensure qualifications prior to appointment?**

- Title IV-E agencies, in collaboration with relevant attorney groups, judges, Court Improvement Programs, and state court administrative bodies, may agree on what level of training and qualifications are required for attorneys who are appointed to child welfare cases. Jurisdictions are well advised to implement [Standards of Practice](#) for attorneys representing both children and parents in child welfare proceedings. Generally, representing parents and children in child welfare proceedings requires that attorneys are competent in the relevant laws and litigation skills. Attorney time should be spent on in-court advocacy, as well as out-of-court client counseling and advocacy to help clients navigate the child welfare system. In addition, parents’ and children’s attorneys should receive training in relevant topics such as understanding substance use and recovery, trauma, available services to assist families, and disproportionality, disparity and bias.
- The Title IV-E agency is not the appropriate agency to oversee parents’ and children’s attorneys, and this federal policy change does not require, nor should it be read as encouraging, the Title IV-E agency to oversee or administer legal representation programs for children and parents.

**15. Will receiving funding through the IV-E agency create a conflict of interest for attorneys?**

- Receiving federal funds through the state IV-E agency should not create a conflict of interest for attorneys for parents and children provided that appropriate safeguards are in place to protect attorneys’ independence. For example, any memoranda of understanding or contract through which legal agencies receive federal reimbursement should make clear that the Title IV-E agency is not involved in evaluating attorney performance, making decisions on attorney contracts, etc.

## **Title IV-E Plan Requirements**

**16. Are jurisdictions required to have a Title IV-E plan amendment addressing legal representation if they plan to seek federal reimbursement for legal representation for children and parents? Is there a Program Instruction from the Children's Bureau requiring this and if so, what is the Program Instruction number?**

- There is not a Program Instruction requiring jurisdictions to amend their IV-E plans to include legal representation for children and parents. However, jurisdictions seeking to draw down federal IV-E funds to support legal representation for parents and children must include it in their IV-E budget allocation. Our understanding is that the Children's Bureau highly encourages jurisdictions seeking to draw down federal funds for legal representation for children and parents to include it in their Child and Family Service Plans since that plan serves as the blueprint for ensuring children's safety, permanency, and well-being.

**17. What is the deadline for jurisdictions to update their Child and Family Service Plans to include reimbursement for legal representation for children and parents?**

- The deadline is June 30, 2019. However, jurisdictions can amend their Child and Family Service Plans to include legal representation for children and parents on an ongoing basis.

For answers to additional questions about legal representation for children and parents or for more information about claiming federal Title IV-E funds for legal representation, please visit the [Family Justice Initiative](#) website and/or contact [Mimi.Laver@americanbar.org](mailto:Mimi.Laver@americanbar.org) or [Elizabeth.Thornton.FJI@outlook.com](mailto:Elizabeth.Thornton.FJI@outlook.com)