

**Judicial Determinations and Hearing Requirements to
Establish and Continue Title IV-E Reimbursement for Child Welfare Foster Care Placements¹**

This chart provides a snapshot of the decisions judges must make, the time by which such decisions must be made, and the financial consequences if the decisions are not timely made.

INVOLUNTARY PLACEMENTS: Initial Determinations²

Judicial determination: Should child be involuntarily removed from home?

If yes, find: *"Placement is in the best interests of the child" or "Continued custody by the parent is contrary to the child's welfare" and one of the "reasonable efforts" findings*

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
Continuation of residence in the home would be contrary to the welfare of the child or out-of-home placement is in the child's best interest; and	Continuation of the child in the custody of the parent is contrary to the child's welfare; and	In the first court order that sanctions the removal of the child.	In the ex parte order removing the child AND at the EPC or detention hearing.	No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement. Note: This finding must coincide with the actual physical or constructive removal of the child from the care of the parent. ³
Reasonable efforts were made to prevent the placement; or	Reasonable or active ⁴ efforts were made to prevent placement; or	Within 60 days of the child's placement.	At the EPC hearing or detention hearing.	No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement if finding does not occur within 60 days of the child's physical or constructive removal from the care of the parent.
Reasonable efforts to prevent the placement were not required.	Reasonable efforts to prevent placement were not required.	Within 60 days of the child's placement.	At the EPC or detention hearing; or upon a prima facie determination that certain circumstances exist. ⁵	No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement if finding does not occur within 60 days of the child's physical or constructive removal from the care of the parent.

¹ Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of the county social services agency OR a public agency with which the county or state agency has a Title IV-E agreement. Public agencies include trial social services and corrections.

² Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of the county social services agency OR a public agency with which the county or state agency has a Title IV-E agreement. Public agencies include trial social services and corrections.

³ "Constructive removal" occurs when the parent has legal custody, but the child has been with a relative and the court orders emergency protective care with the county agency leaving the child in the physical care of the relative.

⁴ Active efforts to prevent the breakup of the Indian family are required under the Indian Child Welfare Act (ICWA), 25 U.S.C. 1912. *Minn. Stat. § 260.012* and *260C.178*, among others, require the court to make determinations of active efforts consistent with the ICWA.

⁵ *Minn. Stat. § 260.012* provides that reunification efforts are not required when: the parent has subjected the child to egregious harm; parental rights to another child of the parent have been involuntarily terminated; child is an abandoned child; parent's custodial rights to another child have been involuntarily transferred under chapter 260C; or the parent has been convicted of certain crimes toward another of the parent's children.

VOLUNTARY PLACEMENTS: Initial Determination⁶

Judicial determination: Is the placement in the child's best interests?

If yes, find: *"Placement is in the best interests of the child"*

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
Continued voluntary placement is in the best interests of the child.	Placement of the child in foster care is in the best interests of the child.	Within 180 days ⁷ of child's placement.	<p>For voluntary placement of a child NOT in placement to access treatment and governed by <i>Minn. Stat. § 260D</i>, CHIPS petition required within 90 days of voluntary placement agreement; first hearing on CHIPS petition requires "best interests" determination.⁸</p> <p>For voluntary placement of a child in foster care to access treatment and governed by <i>Minn. Stat. §260D</i>, report to the court is due by day 165 of child's placement and finding of "best interests" by day 175.</p>	No eligibility or reimbursement for <i>Title IV-E</i> reimbursement after 180 days.

⁶ Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of the county social services agency OR a public agency with which the county or state agency has a Title IV-E agreement. Public agencies include trial social services and corrections.

⁷ Under federal regulations, 180 days means 180 days, not six months.

⁸ See *Minn. Stat. § 260C.141, subd. 2.*

PERMANENCY: Ongoing determinations⁹

Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan¹⁰ for all children in foster care and whether agency identified a “compelling reason” for the child to continue in placement past 12 or 14 month permanency hearing?

If yes, find: “The agency made reasonable efforts to finalize a permanent plan for all children in foster care” and “the agency identified a compelling reason for the child to continue in placement past 12 or 14 month permanency hearing.”

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
1. Reasonable efforts have been made to finalize the permanent plan in effect for the child. ¹¹	1A. For CHIPS cases, reasonable or active efforts have been made to reunify the child with the parent(s).	1A. Required 12 months from the date the child is considered to have entered foster care and every 12 months thereafter as long as the child continues in foster care.	1A. At the time of disposition hearing under <i>RJPP 41.05, subd 1</i> , and at least every 90 days as a part of the disposition review hearing required under <i>RJPP 41.06, subd. 2</i>	1A. Eligibility for <i>Title IV-E</i> reimbursement ceases at the beginning of the month following the missed determination required according to federal requirements. Eligibility is re-established by obtaining the determination. Eligibility is re-established as of the 1 st of the month in which the court determination is made. Note: On 1A, the Minnesota requirement reflects state policy for more frequent review to ensure case plan progress.
	1B. For most TPR and permanency cases, reasonable or active efforts have been made to reunify the child with the parent(s).	1B. Same.	1B. At the admit/deny hearing on the permanency petition required at month 12 by <i>Minn. Stat. § 260C.201, subd. 11(a)</i> . <i>RJPP 34.03, subd. 3 or 4</i> , requires a prima facie determination regarding whether the agency made reasonable efforts to reunify (when such efforts are required) based on	1B. Same.

⁹ Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of the county social services agency OR a public agency with which the county or state agency has a Title IV-E agreement. Public agencies include trial social services and corrections.

¹⁰ Under 45 CFR 1356.21, “permanent plan” means reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement. Permanent orders regarding a child under Minnesota law are similar and are contained at *Minn. Stat. §§ 260C.201subdivision 11* and 260C.141 subdivision 2a (2) (i) [for a child in placement due solely to disability].

¹¹ Under 45 CFR 1355.20 the permanent plan for the child includes: reunification, adoption, guardianship (the equivalent of transfer of permanent legal and physical custody to a relative, permanent placement with a relative, or another planned permanent living arrangement, but only after documentation of a compelling reason why one of the other permanency options are (*continued from previous page*) not in the best interests of the child. Minn. Stat. § 260.012 (e) defines “reasonable efforts to finalize a permanent plan for the child” to include: reunification efforts, assessment of a noncustodial parent for day-to-day care, conducting a relative search, and when the child cannot return home, planning and finalizing a safe and legally permanent alternative home for th child, preferably through adoption or transfer of permanent legal and physical custody of the child.

PERMANENCY: Ongoing determinations⁹

Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan¹⁰ for all children in foster care and whether agency identified a “compelling reason” for the child to continue in placement past 12 or 14 month permanency hearing?

If yes, find: “The agency made reasonable efforts to finalize a permanent plan for all children in foster care” and “the agency identified a compelling reason for the child to continue in placement past 12 or 14 month permanency hearing.”

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
			the petition; final determination is made after trial on the merits.	
	1C. For cases NOT requiring reunification efforts, agency efforts to finalize permanent placement of the child are required together with court review of those efforts. ¹²	1C. Same.	1C. At EPC hearing or permanency hearing required within 30 days or by 90 days at disposition in a termination of parental rights matter. ¹³	1C. Same.
	1D. When the child continues in foster care past 12 or 14 ¹⁴ months, a finding regarding the nature and extent of the agency’s reasonable or active efforts to reunify the child with the parent(s).		1D. 12 months or 14 months. (See footnote 5.)	1D. Same.
2. When the court orders the child to continue in foster care past 12 or 14 months, a finding of “compelling reasons” why the child continues in foster care. This is a one-time finding and does not have to repeated annually.	2. When the court orders or approves ¹⁵ the child’s stay in foster care past 12 or 14 months, the court must find “compelling reasons.” ¹⁶ This is a one-time finding and does not have to repeated annually.	2. At 12 or 14 months from the date the child entered placement.	2. At time of permanency hearing or anytime the court orders long-term foster care, foster care for a specified period of time or approves the child’s continuing in foster care past a total of 12 months.	2. Eligibility ceases in month after determination missed; eligibility may be re-established by entering finding. Eligibility is re-established as of the 1 st of the month in which the determination is made by the court.

¹² See *Minn. Stat. § 260C.012 (e) and (f)*

¹³ See *Minn. Stat. § 260C.178 subdivision 1 (e) (3)*.

¹⁴ *Minn. Stat. § 260C.201, subd. 11*, requires a permanency petition to be filed at month 11 and an Admit/Deny Hearing on the permanency petition at month 12 for all children who remain in court ordered foster placement. Children who are in voluntary placement must have a permanent hearing 14 months after entering placement. See *Minn. Stat. § 260C.201, subd. 11*, regarding how time period is calculated.

¹⁵ For a child in voluntary foster care for treatment under *Minn. Stat. § 260D*, the court may approve the continued voluntary arrangement; the placement does not become court ordered. See *Minn. Stat. § 260D*.

¹⁶ See various requirements at *Minn. Stat. § 260C.201, subd. 11; § 260C.312; § 260C.141, subd. 2a*; and definition at *§ 260C.007, subd. 8*.

PERMANENCY: Annual Review for Long Term Foster Care¹⁷

Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan for all children in foster care.

If yes, find: *"The agency made reasonable efforts to finalize a permanent plan for all children in foster care."*

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
The court must review whether the agency made reasonable efforts to finalize the permanent plan for the child.	The court must review whether the agency made reasonable efforts to finalize the permanent plan for the child. ¹⁸	Annually determination as long as the child continues in foster care or other out-of-home placement.	Every 12 months as long as the child continues in long term foster care, foster care for a specified period of time, or other out-of-home placement. ¹⁹	Eligibility ceases in month after determination missed; eligibility may be re-established by entering finding. Eligibility is re-established as of the 1 st of the month in which the determination is made by the court.

¹⁷ Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of the county social services agency OR a public agency with which the county or state agency has a Title IV-E agreement. Public agencies include trial social services and corrections.

¹⁸ *Minn. Stat. § 260C.201, subd. 11 (g)*, details the reasonable efforts required of the agency and to be reviewed by the court. The annual review is required for any child ordered into long-term foster care or foster care for a specified period of time under *Minn. Stat. § 260C.201, subd. 11* or *§ 260C.317, subd. 3 (d)*. The annual review must review the child's out-of-home placement plan and the reasonable efforts of the agency to:

1. Ensure that long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option under this chapter that would better serve the child's needs and best interests.
2. identify a specific long-term foster home for the child, if one has not already been identified;
3. support continued placement of the child in the identified home, if one has been identified;
4. ensure appropriate services are provided to address the physical, health, mental health, and educational needs of the child during the period of long-term foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and
5. plan for the child's independence upon the child's leaving long-term foster care as required under Minnesota Statutes 260C.212 subd. 1; and
6. where placement is for a specified period of time, a plan for the safe return of the child to the care of the parent.

¹⁹ See *Minn. Stat. § 260D.08* for a child in voluntary foster care for treatment, *§ 260C.201, subd. 11 (g)*, for child in long-term foster care or foster care for a specified time, and *§ 260C.317, subd. 3(c)*, for state wards in long-term foster placement.