

Memorandum of Understanding

Appendix A Federal Financial Participation (FFP) Claiming Information

All eligible entities seeking federal reimbursement must complete and submit the quarterly claim form to the NYS Office of Children and Family Services Bureau of Financial Operations Title IV-E Unit. Only allowable costs related to Legal Representation can be included on the quarterly claim form.

Federal guidance allows title IV-E agencies to claim Federal Financial Participation (FFP) for the administrative costs of “preparation for and participation in judicial determinations” in all stages of foster care legal proceedings, by a title IV-E agency attorney, an attorney providing independent representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care and an attorney providing independent representation to such child’s parent.

Allowable Title IV-E Administrative Activities in Dependency Proceedings include:

- Hearings related to judicial determinations that it is contrary to the welfare of a child to remain in the home.
- Hearings related to a child’s removal from the home.
- Hearings related to judicial determinations that the agency provided reasonable efforts to prevent removal and finalize the permanency plan.
- Permanency hearings.
- Hearings related to progress on case plans; and
- Appeal proceedings that relate to judicial determinations required under title IV-E.

Generally, matters heard in Domestic Relations or delinquency proceedings are not considered dependency proceedings; however, dependency proceedings include Termination of Parental Rights (TPR) hearings and appeals, regardless of where the matter is heard.

Allowable administrative activities for agency or independent attorneys to prepare for and participate in judicial determinations for all stages of dependency proceedings include:

- Independent investigation of the facts of the case, including interacting with law enforcement.
- Meeting with clients or making home or school visits.
- Attending case planning meetings.
- Providing legal interpretations.
- Preparing briefs, memos, or pleadings.
- Obtaining transcripts.
- Interviewing and preparing their client and witnesses for hearings.
- Hearing presentation.
- Maintaining files.
- Supervising attorneys, paralegals, investigators, peer partners or social workers that support an attorney in providing independent legal representation to prepare for and participate in all stages of dependency proceedings.
- Filing child abuse and neglect petitions for candidates for foster care.
- Court fees to file a petition for a judicial determination required under title IV-E

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- Appellate work in reference to dependency proceedings

The costs of paralegals, investigators, peer partners or social workers that support an attorney providing independent legal representation for children, youth, and parents in dependency proceedings and for office support staff are allowable expenses to the extent that they are necessary to support an attorney in providing independent legal representation in dependency proceedings.

The costs must be consistent with federal cost principles per 45 CFR Part 75 Subpart E.

Unallowable Expenditures

Any expenditures associated with time and activities outside the scope of dependency case work are not allowable. This includes time and effort related to delinquency, criminal or non-related legal case work. To the extent that both delinquency and dependency proceedings are unified into one court proceeding, only the allowable costs associated with preparing for and participating in the dependency portion of the proceedings may be reimbursed with federal funds.

Additionally, costs related to general administrative tasks, such as attending a Human Resource or IT compliance trainings, or paid time off are unallowable.

Roles and Responsibilities

The Local Department of Social Service Agency shall:

- Determine eligibility for children in foster care and candidates for foster care.

The eligible entities shall:

- Provide and oversee the delivery of high quality, standards-based, independent legal representation to children, youth and/or parents in dependency proceedings.
- Maintain a listing of all children, youth and/or parents served in dependency proceedings during the reporting period.
- Maintain an accurate record of the actual costs incurred providing independent legal representation to children, youth and/or parents in dependency proceedings.
- Submit a cost allocation methodology to OCFS for approval.
- Submit quarterly claim forms and supporting documentation to OCFS at titleivelegalrep@ocfs.ny.gov
- Retain records to support the costs included on the quarterly claim form

OCFS Shall:

- Be responsible for providing instruction to the eligible entities who participate in the title IV-E legal representation funding process. Discussions may include a title IV-E overview, allowable and non-allowable claiming activities, changes to expenditure claiming, policies, documents, and informational updates.
- Review and approve all eligible entities cost allocation methodology.
- Apply the New York State title IV-E saturation rate (% title IV-E eligible children) to the total allowable expenditures and claim 50% FFP administrative reimbursement, upon receipt of the claim forms.

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- Disburse, to the eligible entity, their share of the Federal title IV-E reimbursement, upon receiving the Federal title IV-E reimbursement funds.
- Provide technical support and direction on Federal title IV-E policy. Track, report and ensure timely transfer of Federal title IV-E Federal Reimbursement.

Cost Allocation

Prior to submitting the legal representation quarterly claim form, all eligible entities must submit their cost allocation methodology utilizing the OCFS-5606 form to OCFS for review and approval. Below are examples of cost allocation methodologies that eligible entities may utilize.

- Develop time and activity tracking for attorneys through the following options:
 - Update the current time reporting system to add a task “legal representation related to the foster care process” that aligns with the allowable administrative activities.
 - Implement a 100%-time reporting to capture allowable and unallowable administrative activities.
 - Require contracted attorneys to submit monthly invoices that include the child’s/family’s name and or case number and the task or activity that the cost consists of.
- Create a case ratio of dependency and non-dependency cases and apply against the total legal representation costs.
- Implement a time study for attorneys to capture time associated with allowable activities for allowable cases and use that statistic to apply to the total costs.

Per page 9, item #14 on the MOU and the quarterly claim form instructions, documentation regarding the cost allocation methodology must be maintained and provided upon request in the event of enhanced monitoring and/or audit.