

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES**

**AND**

**(INSERT LOCAL ENTITY)**

THIS MEMORANDUM OF UNDERSTANDING (MOU), is effective the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the New York State Office of Children and Family Services (OCFS) and (INSERT LOCAL ENTITY).

**WHEREAS**, OCFS is the state title IV-E agency that administers New York State's Title IV-E Foster Care Program; is the grantee of the federal title IV-E grant award; is the pass-through entity as defined by 2 CFR §200.74; and is the New York State entity that has the authority to claim federal financial participation (FFP) for administrative costs of independent legal representation in all stages of foster care legal proceedings provided by an attorney to prepare and participate in all stages of foster care legal proceedings on behalf of parents in matters related to allegations or investigations pursuant to the New York State Family Court Act (FCA) Article 10 and 10-A and Termination of Parental Rights filed pursuant to relevant provisions of the Social Services Law (SSL); and

**WHEREAS**, the federal Social Security Act (SSA) section 474 provides that states with federally approved title IV-E plans may be entitled to claim administrative costs associated with the proper and efficient administration of the state plan at a rate of 50% of the FFP; and the title IV-E plan allows for claiming of administrative costs associated with the administration of the legal representation for eligible populations at a rate of 50% FFP; and the rate of reimbursement for costs associated with provision of training of attorneys for eligible

populations, which includes title IV-E foster care candidates (pre-placement) and title IV-E foster care (in-placement) eligible children and their parents, at the rate of 75%; and

**WHEREAS**, (INSERT LOCAL ENTITY) has statutory responsibility to provide legal representation and agrees to improve the quality of publicly funded legal representation for parents provided pursuant to Article 18-B of the New York State County Law; and

**WHEREAS**, (INSERT LOCAL ENTITY) will engage with the New York State Office of Indigent Legal Services (ILS) in the development and implementation of plans to enhance the quality of the legal representation of parents whose children are title IV-E foster care candidates (pre-placement) and title IV-E foster care (in-placement) eligible children; and

**WHEREAS**, OCFS and (INSERT LOCAL ENTITY) recognize that the federal government through the federal Administration for Children and Families (ACF), which administers and oversees the Title IV-E Federal Foster Care Program in its January 17, 2017, Information Memorandum (IM) released best practice guidance regarding *High-Quality Legal Representation for All Parties in Child Welfare Proceedings*, which included high-quality legal representation for parents, children, and the child welfare agency at all stages of child welfare proceedings as being critical to a well-functioning child welfare system.<sup>1</sup>

**WHEREAS**, OCFS and (INSERT LOCAL ENTITY) recognize that on January 7, 2019, ACF updated its *Child Welfare Policy Manual (CWPM)* to allow title IV-E reimbursement for certain administrative costs associated with attorneys providing independent legal representation to children and parents in child welfare proceedings. Such reimbursement is available for administrative and training costs for attorneys providing independent legal

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<sup>1</sup> ACYF-CB-IM-17-02, *High-Quality Legal Representation for All Parties in Child Welfare Proceedings* (U.S. Dept. of Health and Human Services, Administration for Children and Families, Children's Bureau, 2017) <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>.

representation for children who are title IV-E foster care candidates (pre-placement) and title IV-E foster care (in-placement) eligible children and the children's parents.<sup>2</sup>

**WHEREAS**, OCFS and (INSERT LOCAL ENTITY) recognize ACF provided additional updates to the *Child Welfare Policy Manual* and, on July 26, 2019, confirmed that the state title IV-E agency, OCFS, may have a memorandum of understanding (MOU) with tribal governments and other public agencies pursuant to SSA §472(a)(2)(B)(ii) to allow OCFS to claim for title IV-E reimbursement for eligible and allowable administrative and training costs for independent legal representation.

**WHEREAS**, OCFS and (INSERT LOCAL ENTITY) recognize that ACF released an Informational Memorandum (IM) related to the Title IV-E Federal Foster Care Program on January 14, 2021. This IM, *Utilizing Title IV-E Funding to Support High-Quality Legal Representation and Promote Child and Family Well-Being*, identifies high-quality legal representation for parents, children, and the child welfare agency at all stages of child welfare proceedings as being critical to a well-functioning child welfare system. The January 14, 2021, guidance focuses on the utilization of the title IV-E FFP funding to support high-quality representation for children and youth who are in foster care, candidates for foster care and their parents so as to promote child and family well-being.<sup>3</sup>

**WHEREAS**, the purpose of this MOU is to establish a procedure for a financial reporting relationship between OCFS and counties, the City of New York (NYC) and tribes for allowable federal title IV-E of the SSA expenditures for the legal representation and training of attorneys who represent parents of eligible children in cases pursuant to FCA Articles 10 and 10-A, or sections 358-a, 384, or 384-b of the SSL.

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<sup>2</sup> *Technical Bulletin - FAQs on Independent Legal Representation*, <https://www.acf.hhs.gov/cb/resource/technical-bulletin-faqs-legal-representation>; see also Mark Hardin, "Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview," *Child Law Practice Today* (American Bar Association, February 25, 2019), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january--december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/)

<sup>3</sup> ACYF-CB-IM-21-06 Issuance Date January 14, 2021.

**WHEREAS**, this MOU will specify the conditions under which (INSERT LOCAL ENTITY) may be reimbursed by OCFS for a portion of costs spent by (INSERT LOCAL ENTITY) in providing legal representation and attorney training as specified under §474(a)(3) of the SSA and federal regulations at 45 CFR §1356.60(c); and

**WHEREAS**, (INSERT LOCAL ENTITY) agrees by accepting of the federal title IV-E reimbursement for training and legal representation costs, (INSERT LOCAL ENTITY) will comply with all reporting requirements contained herein in addition to the demonstration of certain enhancements to the quality of legal representation; and

**WHEREAS**, (INSERT LOCAL ENTITY) agrees that failure to comply with the requirements of this MOU may result in disallowances, reduced drawdown by an amount determined to be owed back to the ACF, withholding of future awards, and/or deferral of claims.

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**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN OCFS AND (INSERT LOCAL ENTITY) AS FOLLOWS:**

1. Pursuant to this MOU, (INSERT LOCAL ENTITY) must develop a parent legal representation quality enhancement plan as per instructions in Attachment C, attached herein; (INSERT LOCAL ENTITY) must collaborate with ILS to submit such quality enhancement plan for approval as per the time frames, instructions, and conditions contained within Attachment C. (INSERT LOCAL ENTITY) will provide monitoring metrics as needed to guarantee the achievement of quality enhancement metrics as provided for in OCFS Informational Memorandum (INF)\_\_\_\_. (INSERT LOCAL ENTITY) must submit approved quality enhancement plan and any metrics collected to ILS and OCFS, and shall provide such information in the time and manner as directed by ILS and OCFS. OCFS reserves the right to time limit approved legal representation quality enhancement metric plans approved by OCFS as part of Attachment C. (INSERT LOCAL ENTITY) will provide OCFS and ILS with data associated with such enhanced quality representation plans upon request and in the time and manner as requested by ILS and/or OCFS.

2. (INSERT LOCAL ENTITY) may develop and provide training to attorneys who represent parents whose children are title IV-E foster care candidates (pre-placement) and title IV-E foster care (in-placement) eligible children in all stages of foster care-related legal proceedings. The trainings must be closely related to the examples cited in 45 CFR §1356.60(c)(1) and (2). A description of all trainings shall be compiled and will be shared with OCFS. Such description must be submitted to OCFS for review and approval. OCFS will submit the approved description

of trainings to ACF for inclusion within NYS' title IV-B state plan for federal approval. Federally approved trainings will be eligible for title IV-E reimbursement.<sup>4</sup>

If (INSERT LOCAL ENTITY) chooses to create and provide training to attorneys who represent parents whose children are title IV-E foster care candidates (pre-placement) and title IV-E foster care (in-placement) eligible, such training plans must be submitted to OCFS in a form and manner prescribed by OCFS, which will allow OCFS to meet ACF reimbursement requirements. Such trainings will need supporting documentation that, at minimum, shows the funds used were from non-federal appropriations and were not training funds from ILS.

3. (INSERT LOCAL ENTITY) may be considered a subrecipient of OCFS' grant by the federal government to the Title IV-E Foster Care Program grant as defined by 2 CFR §200.93, which defines subrecipient to mean a [non-federal entity](#) that receives a [subaward](#) from a [pass-through entity](#) to carry out part of a [federal program](#); but does not include an individual that is a beneficiary of such program. A [subrecipient](#) may also be a [recipient](#) of other federal awards directly from a [federal awarding agency](#). Accordingly, OCFS is providing the notice of award, *Attachment D*, for information on the federal subaward in accordance with 45 CFR §75.352.

4. (INSERT LOCAL ENTITY) will be subject to requirements for subrecipients who receive subawards from pass-through entities pursuant to 2 CFR §200.331 (over \$750,000), which includes a requirement that the [subrecipient](#) permit the [pass-through entity](#) and [auditors](#) to have access to the [subrecipient's](#) records and financial statements as necessary for the [pass-through entity](#) to meet the requirements of this part.

5. (INSERT LOCAL ENTITY) will be subject to the relevant portions of the applicability table in 45 CFR §75.101(b)(1), as well as the exceptions described in §75.101 (d) and §75.101(e) since

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<sup>4</sup> Federal regulations at 45 CFR 1356.60 (b)(2) require that all training activities and costs funded under title IV-E must be included in the title IV-B state plan.

all mandatory grant programs must comply with the Subrecipient Monitoring and Management requirements described in subpart D, §75.351 through §75.353.

6. (INSERT LOCAL ENTITY) will establish procedures to report to OCFS the allowable expenditures in the form and manner as prescribed by OCFS. Such allowable expenditures shall be submitted to OCFS pursuant to the claim form and instructions attached hereto as Attachment B. OCFS reserves the right to change and update the claim form as required for compliance with the administration of the state's title IV-E plan and program. Costs associated with the training of attorneys providing independent legal representation to the parents of title IV-E foster care candidates (pre-placement) and title IV-E foster care (in-placement) eligible children are eligible for title IV-E reimbursement. Costs matchable as training expenditures at 75% FFP may include salaries, fringe benefits, travel, and per diem for (INSERT LOCAL ENTITY) staff development personnel assigned to training functions to the extent of time spent performing such functions; salaries, fringe benefits, travel, and per diem for experts outside the agency engaged to develop or conduct training programs; postage, training supplies, and purchase, or development of training material. Costs matchable as attorney training expenditures at 75% FFP may include travel, per diem, tuition, books, and registration fees for attorneys attending allowable short-term training (regardless of the duration of the training) for the time period the attorney is actually participating in training. Allowable administrative expenditures shall be the reasonable and necessary costs of the attorney performing independent legal representation of parents whose children are title IV-E candidates (pre-placement) or title IV-E foster care (in-placement) eligible children. Further, the allowable expenditures shall be those that qualify for federal reimbursement under title IV-E of the SSA.

7. (INSERT LOCAL ENTITY) agrees it will not report any expenditure that is not an allowable expenditure or an expenditure that has been covered by any other federal reimbursement or matching federally funded claim, or an expenditure which (INSERT LOCAL ENTITY) will seek

reimbursement from any other source, including but not limited to ILS. OCFS reserves the right to adjust the claim prior to submission to the federal entity if OCFS deems any portion of said claim to not meet federal reimbursement requirements.

8. (INSERT LOCAL ENTITY) shall be responsible for the repayment of any disallowed expenditures. Disallowed expenditures are those expenditures that have been claimed to the federal government under the Title IV-E Federal Foster Care Program and subsequently determined to not be federally eligible for reimbursement. A disallowance will be the amount of federal funds identified for recovery by the federal government. A disallowance will be applied against any future (INSERT LOCAL ENTITY) claims submitted, thereby reducing future reimbursement. If there are no additional claims to be submitted by the (INSERT LOCAL ENTITY), or the Department of Health and Human Services directs otherwise, (INSERT LOCAL ENTITY) will be required to pay the funds received for disallowed expenditures to OCFS. In the event of termination of this agreement, the (INSERT LOCAL ENTITY) will repay a federal overpayment to OCFS, per the process outlined by OCFS that meets OSC guidelines for remitting repayments of federal disallowances or penalties for open or closed federal grants, for remittance by OCFS to the Department of Health and Human Services.

9. OCFS reserves the right to issue disallowances, restrict claiming, withhold future reimbursements, and defer claims due to noncompliance of the terms of the MOU. In the event of termination of this agreement, (INSERT LOCAL ENTITY) must repay any monies owed to OCFS as per issued disallowances.

10. (INSERT LOCAL ENTITY) will be required to maintain and report to OCFS cases using the client identification number (CIN),<sup>5</sup> child's name, address, date of birth and name of parent(s).

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<sup>5</sup> A child's client identification number is a unique client identifying number that local entities will need to collaborate with local districts of social services to acquire for each child for which costs will be claimed.



The report required to be maintained by (INSERT LOCAL ENTITY) will be used by OCFS for the purposes of quarterly claims submitted to ACF, per OCFS claim form and parent-child detail form.

11. (INSERT LOCAL ENTITY) will be required to submit quarterly claims pursuant to the attached OCFS claim form and instructions as referenced above and attached hereto as Attachment B.

12. OCFS payments to (INSERT LOCAL ENTITY) are dependent upon the federal government's grant award to OCFS under the federal Title IV-E Foster Care Program.

13. Claims must be submitted by (INSERT LOCAL ENTITY) within 18 months of the date on which the administrative expenses were paid by (INSERT LOCAL ENTITY) in order to be claimed within the two-year claiming deadline per 45 CFR §95.7. Any claims submitted beyond the two-year deadline will not be reported to ACF for reimbursement.

14. Source documentation must include invoices, contracts, list of trainings, titles/names of training attendees, and system-generated financial reports that support the claim, as well as financial reports that support the required title IV-E agency or state match required by the federal title IV-E program. Additional documentation may be requested to support claims as necessary. All amounts claimed must be easily identified in the source documentation. The ACF requires the number of title IV-E children/parents served for the quarter being claimed to be stated. The OCFS-5603 *Parent-Child Detail Form* or other source document that must be approved by OCFS that captures required parent-child information sufficient to support the claims requested for reimbursement must be included as an attachment to the *Title IV-E Legal Representation Administration and Training Claim Form*. These claim forms, supporting documentation, and lists of client identification numbers, children's names, dates of birth, children's addresses, and parent names, among other information, must be provided to the

Bureau of Financial Operations Title IV-E Unit through the electronic OCFS designated mailbox [titlelivelegalrep@ocfs.ny.gov](mailto:titlelivelegalrep@ocfs.ny.gov). In the event of enhanced monitoring and/or audit, (INSERT LOCAL ENTITY) will need to provide source documentation, as defined by OCFS. (INSERT LOCAL ENTITY) will be required to retain all source documentation related to the claims for 30 years consistent with required foster care records retention requirements.

15. (INSERT LOCAL ENTITY) must submit an approved legal representation quality enhancement metric plan as referenced herein as Attachment C and in accordance with OCFS-INF \_\_\_\_\_. The terms and conditions outlined in (INSERT LOCAL ENTITY)'s approved legal representation enhancement metric plan shall be incorporated herein and subject to the terms and conditions outlined in said Attachment C.

The term of this AGREEMENT shall commence upon execution by both parties.

This AGREEMENT which includes all attachments and necessary approvals constitutes the full agreement between the parties, any such time frames and limitations required or prescribed by OCFS through the attachments or process shall represent all of the terms of this AGREEMENT.

The AGREEMENT may be terminated by the mutual written agreement of the contracting parties.

The AGREEMENT may be terminated by OCFS, for cause, upon the failure of the (INSERT LOCAL ENTITY) to comply with any of the terms and conditions of this AGREEMENT.

IN WITNESS THEREOF:

The parties hereto have executed this AGREEMENT as of the first day and year above written.

By: \_\_\_\_\_

(INSERT LOCAL ENTITY/DUNS NUMBER)

By: \_\_\_\_\_

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