



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Administration on Children, Youth and Families
330 C Street, S.W.
Washington, D.C. 20201

March 27, 2020

Dear Child Welfare Legal and Judicial Leaders,

The Children's Bureau (CB) is aware of questions and concerns regarding a number of child welfare issues in light of the COVID-19 public health emergency, including whether CB can waive statutorily required judicial proceedings. As discussed and delineated below, CB cannot waive these statutory requirements but expects that courts and states will work together to determine how best to balance child-safety related statutory requirements against public-health mandates. But as delineated below, as situations require, courts can and should use flexible means of convening required hearings.

In the wake of Hurricane Katrina, CB issued guidance about these issues, which appears in the Child Welfare Policy Manual. See generally ACYF-CB-IM-05-06. Among other things, the policy manual and the guidance explain the requirements related to judicial proceedings, as well as the implications for not holding such proceedings in a timely manner.

In all cases, title IV-E of the Social Security Act (the Act) requires that the following hearings be held and determinations made:

- **Contrary to the welfare (judicial determination):** This critical judicial determination must be made in the first court proceeding that sanctions the child's removal. If that does not occur, the child is ineligible for title IV-E foster care maintenance payments (title IV-E) for the duration of the child's foster care episode.
- **Reasonable efforts to prevent removal (judicial determination):** This determination—an important statutory protection—must be made within 60 days of the child's removal; if not conducted timely, the child will not be eligible for title IV-E for the duration of the foster care episode.
- **Reasonable efforts to finalize the permanency plan (judicial determination):** This judicial determination must be made within 12 months of the child entering foster care (as defined at §475(5)(F) of the Act and 45 CFR 1355.20(a)). If not conducted in a timely manner, the agency may not claim title IV-E until it has secured the determination. Once made, the agency may again begin claiming title IV-E on behalf of the otherwise eligible child. Note that this determination may be made in any type of judicial proceeding, including a permanency hearing.
- **Six month review and 12 month permanency hearings:** These hearings ensure that the court is aware of what is happening with the child on a routine basis and that the child's case continues to progress. They can be held in any type of proceeding; neither impacts a child's title IV-E eligibility or the agency's ability to claim title IV-E on behalf of an

otherwise eligible child, as long as the requisite judicial determinations (described above) are made. Nonetheless, these hearings are to be conducted in a timely manner.

Despite the public health crisis that exists, it is critical that child welfare agencies and courts work together to ensure that the requisite judicial proceedings continue during this time of uncertainty; each is critical to ensuring the safety, permanency and well-being of children and youth who have been removed from their homes and placed into foster care or who may need to be removed from their homes. Prolonged or indefinite delays in delivering services and postponements of judicial oversight place children's safety and well-being in jeopardy; may lead to unnecessarily long stays in foster care; and are inconsistent with statutory and regulatory requirements. States and courts should adhere to their own statutory and regulatory requirements about conducting such hearings in person or through other means, including holding such proceedings via videoconference and/or telephonically.

CB believes that justice requires that parents and children continue to be able to meet, speak, and stay in frequent communication with their attorneys. Therefore, we urge all attorneys, courts, Court Improvement Programs (CIPs) and administrative offices of the courts to work together to ensure that parents, children, and youth are well represented and able to participate in all proceedings in which judicial determinations are made, whether they are conducted in-person or virtually. Similarly, we expect that all parties will continue to receive timely notice of all proceedings, as required by the Act. States and courts are reminded that hearings and notices must be accessible to limited English proficient individuals and individuals with disabilities, in accordance with Federal civil rights laws. CB urges all attorneys to keep in close contact with their clients, in any way they can, and to bring urgent issues to the attention of the courts and all parties. Additionally, in order to practice in a manner consistent with constitutional principles and to serve the best interests of children, CB urges all attorneys, courts, CIPs and administrative offices of the court to:

- Refrain from making sweeping, blanket orders ceasing, suspending, or postponing court hearings;
- Ensure that important decisions about when and how hearings are conducted are made on a case-by-case basis in accordance with the facts of each individual matter;
- Encourage attorneys to file written motions raising issues of immediate concern;
- Make maximum use of technology to ensure due process where in-person hearings are not possible or appropriate;
- Ensure parents and youth have access to technology such as cell phones, tablets, or computers with internet access to participate in hearings or reviews and maintain important familial connections;
- Consider utilizing CIP funds to support and enhance virtual participation for parents, children, youth, and their attorneys in hearings and reviews; and
- Encourage attorneys to resolve agreed-upon issues via stipulated orders. For example, if all parties agreed that a child in foster care can be reunified with his/her family immediately, that issue should be resolved via a stipulated order, rather than waiting weeks or months for an in-person court hearing.

CB is also aware of instances where judges have issued blanket orders suspending or drastically reducing family time (visitation) between children in foster care and parents, sometimes indefinitely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during times of crisis. CB strongly discourages the issuance of blanket orders that are not specific to each child and family that suspend family time; doing so is contrary to the well-being and best interest of children, may contribute to additional child trauma, and may impede the likelihood of reunification. With respect to family time, CB urges all courts, CIPs, and administrative offices of the courts to:

- Discourage or refrain from issuing blanket court orders reducing or suspending family time;
- Be mindful of the need for continued family time, especially in times of crisis and heightened anxiety;
- Remain cognizant that interruption or cessation of family time and parent-child contact can be traumatic for children;
- Continue to hold the child welfare agency accountable for ensuring that meaningful, frequent family time continues;
- Become familiar with ways in which in-person visitation may continue to be held safely;
- Encourage resource parents to provide transportation to, and supervision of, family time in order to limit additional people having to be involved to limit possible exposure to COVID-19;
- Consider the use of family members to supervise contact and to engage in visitation outdoors, where feasible;
- Inquire whether parents and resource parents have access to cell phones and computers with internet access to ensure virtual connections where in-person family time is not possible;
- Encourage use of technology such as video conferencing, phone calls and other readily available forms of communication to keep children, parents, and siblings connected;
- Ask parents their preference when deciding how to proceed with family time as some parents may prefer to meet via technology due to health concerns; and
- Consider whether children may be reunified with their parents in an expedited manner if the child's safety would not be jeopardized.

It is also critical that agencies and courts take all measures possible to continue ensuring that parents and children receive services and treatment. Interruptions in court-ordered services or treatment in case plans due to lack of provider availability during the COVID-19 pandemic are likely to present significant barriers for parents working toward reunification. Lack of, or inability to access, treatment or services due to provider closures during the pandemic should not be interpreted as a lack of parental compliance, and might indicate an agency's failure to make reasonable efforts to reunify. This may constitute a compelling reason not to file a petition to terminate parental rights under §475(5)(E) of the Act simply because a child has been in foster care for 15 months of the last 22 months. CB urges courts to be mindful of the circumstances in each case.

With respect to parental services and treatment, CB urges all courts, and administrative offices of the courts and CIPs to:

- Inquire actively about, and monitor closely, the availability of treatment and other services for parents;
- Inquire whether parents and resource parents have access to landlines, cell phones and computers with internet access to ensure virtual connections where in-person time is not possible; and
- Encourage use of technology to continue treatment and services where in-person services or treatment may temporarily be unavailable.

Finally, CB is aware that there are mandated costs or fees that litigants must pay in order to participate in dependency hearings via certain technology platforms in some jurisdictions. CB urges any jurisdiction that requires payment from litigants to suspend such charges in light of the present circumstances. A comprehensive list of low or no cost communication platforms and applications used currently around the country for participation in hearings and reviews or attorney communication with children and parents is included as an attachment to this letter.

We thank you for your efforts to protect the safety of children and rights of parents, and to ensure that meaningful judicial oversight remains intact during these difficult times. Vulnerable children and families around the country are counting on you to do so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Milner".

Jerry Milner
Associate Commissioner
Children's Bureau