

<h1 style="font-size: 48px; margin: 0;">ACF</h1> <p style="font-size: 24px; margin: 0;">Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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INFORMATION MEMORANDUM

TO: State and Territorial Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act, State Chief Justices, State Court Administrators, State Court Improvement Program (CIP) Coordinators, the National Council of Juvenile and Family Court Judges, the National Center for State Courts, National Child Welfare Resource Centers and ACF Regional Offices

SUBJECT: Court Involvement in the Child and Family Services Review (CFSR)

LEGAL AND RELATED REFERENCES: Titles IV-B and IV-E of the Social Security Act; the Social Security Act Amendments of 1994 (Public Law 103-432); 45 Code of Federal Regulations (CFR) section 1355; the Promoting Safe and Stable Families Amendments of 2001 (Public Law 107-133); Section 438 of the Social Security Act; ACYF-CB-PI-03-04

PURPOSE: The purpose of this Information Memorandum is to clarify the requirements and expectations of the Administration for Children and Families (ACF) regarding the engagement and involvement of State court representatives in the Child and Family Service Review (CFSR) and Program Improvement Plan (PIP) processes.

INFORMATION:

The Federal regulation at 45 CFR section 1357.15(l) requires that the State's Child and Family Service Plan (CFSP) describe the internal and external consultation process used to obtain broad and active involvement of stakeholders across the child and family services delivery system in the development of the plan. The stakeholders identified in the regulation include, among others, representatives from other agencies, organizations, and programs; parents; tribal representatives; advocates; and the courts. Such involvement promotes collaboration among State child welfare agencies and others in the

child welfare system, and provides a broad perspective for the agency to use in determining goals and objectives and developing plans to address identified needs. In designing CFSR, ACF chose to reference this requirement for several reasons, including the following:

- In evaluating a State's effectiveness in implementing the requirements of titles IV-B and IV-E through the CFSR, there is a need to obtain the same broad-based perspectives from stakeholders that ACF requires States to obtain for the CFSP;
- In designing PIPs that respond to needs for improvement identified in the CFSR, there is a need to encourage the active involvement of stakeholders to help assure coordinated efforts across agencies and organizations in developing reasonable plans that can be implemented effectively; and
- In developing both PIPs and CFSPs, there is a need to avoid duplication of effort and to help States use limited resources to focus on their most critical goals and objectives.

Therefore, ACF included in the CFSR regulation provisions that link the various stages of the CFSR to the consultation process it requires in the CFSP process. Specifically, at 45 CFR section 1355.33 (a) (2) (ii) ACF requires that the CFSR be conducted by a team of Federal and State reviewers that includes representatives selected by the State, in collaboration with ACF, from those with whom the State was required to consult in developing its CFSP, as described and required at 45 CFR section 1357.15(l). This external consultation should extend to all phases of the CFSR process, including the statewide assessment (45 CFR section 1355.20 and 45 CFR section 1355.33 (b)), the on-site review (45 CFR section 1355.33 (c) (4) (iv)), and the PIP (45 CFR section 1355.35 (a) (i)). Although ACF is concerned that States include all relevant stakeholders in both the CFSP and CFSR process, for reasons noted below, there is a particular need to assure the active involvement of the courts, as one of the stakeholders, in all aspects of both the CFSP and the CFSR.

In reauthorizing CIP, the Promoting Safe and Stable Families Amendments of 2001 (Public Law 107-133) expanded the program's scope to include implementation of a PIP, as necessary, in response to findings identified in a CFSR. Thus, through CIP, all State court systems are required to participate in the implementation of a CFSR PIP when the court system is involved. ACF implemented this requirement in a 2003 CIP Program Instruction (ACYF-CB-PI-03-04) by requiring CIP strategic plans to target specific activities to bring the State into compliance in accordance with a CFSR PIP. State courts were also instructed to include in their strategic plans a strategy to facilitate legal and judicial participation in the CFSR and collaboration with the child welfare agency at all stages of the review, and to identify activities that would inform the legal and judicial community about the reviews and encourage active legal and judicial participation.

Further, as we have completed the initial round of CFSRs in all States and moved to a greater focus on the PIP phase of the CFSR process, we have compiled findings of the initial 52 CFSRs, some of which emphasize the need for active court involvement in

developing and implementing the PIP. (See the Children's Bureau website at www.acf.hhs.gov/programs/cb for information on the compiled findings of the CFSRs.) The findings highlight that no State has yet achieved substantial conformity on Permanency Outcome 1 (Children have permanency and stability in their living situations), and that among the seven systemic factors evaluated in the CFSR, fewer States have achieved substantial conformity on Case Review System than on any of the remaining systemic factors. Given the expertise and involvement of the courts in both of these areas, we believe that these findings underscore the importance of court participation in the CFSR and PIP processes, if States are to make measurable improvements in achieving timely permanency for children in foster care and create the systemic changes in their programs needed to sustain the improvements.

Throughout the implementation of the CFSR, ACF has made numerous efforts to promote the active participation of State court representatives in all phases of the CFSR. These efforts include issuing written guidance through the CFSR *Procedures Manual*, leading discussions with each State concerning external consultation with the courts in the series of Federal-State conference calls that precede the on-site CFSR, and meeting periodically with national organizations concerned with judicial issues in order to increase awareness of the CFSR process and the opportunities for consultation. The National Child Welfare Resource Center on Legal and Judicial Issues, funded by ACF, has developed written materials for the courts and State child welfare agencies, and provided other forms of training and technical assistance designed to increase the involvement of court representatives in the CFSR.

Reflecting the same desire for more participation of the courts in the CFSR, the National Council of Juvenile and Family Court Judges (NCJFCJ), the Conference of Chief Justices (CCJ), and the Conference of State Court Administrators (COSCA) passed resolutions at their annual meetings in 2004 urging more involvement by the courts in the CFSR and PIP processes. The resolutions of these organizations underscore the need for courts and judges to be involved closely in the CFSR/PIP process.

ACF has noted wide variation among States in the level of involvement and consultation with court representatives in the CFSR and PIP processes. As ACF staff meet with representatives of national court-affiliated organizations, we continue to be concerned about reports of situations where the courts have not been consulted and afforded opportunities to become involved in the State's CFSR and PIP processes. We also have observed variation in the extent to which PIPs submitted to ACF by States include strategies to improve the outcomes and systemic factors that involve active involvement by the courts. At times, State child welfare agencies may involve the CIP Coordinators but not include other representatives of the court system, such as judges. We also recognize that, in many situations the courts have not participated in the CFSR and PIP processes despite notification and encouragement by the child welfare agency. In pursuing the actions described below, our desire is to assure that ACF and the State child welfare agencies consistently provide the notification and information needed to encourage such collaboration where it is possible.

In response to these concerns, ACF will take the steps listed below in order to promote the involvement of the courts in all parts of the CFSR process. Although we are not prescribing specific activities that would satisfy the requirement to consult with the courts or other stakeholders noted in the regulation, we are seeking a broad level of meaningful court involvement across the CFSR and PIP processes, without which we do not believe the processes can be considered complete.

- Beginning in the next round of CFSRs, ACF Regional Offices will notify in writing Secretaries and Commissioners of the Departments in which child welfare agencies are located, State directors of child welfare, the State's Chief Justice, the presiding juvenile or family court judge in the State's largest metropolitan subdivision, the State's Court Administrator and the State's CIP Coordinator of the initiation of the statewide assessment and the projected date of the on-site review. In the notification, ACF Regional Offices will set forth ACF's expectation that State court representatives be afforded the opportunity to consult with the State agency, and will encourage court participation in all phases of the CFSR and PIP processes. In addition, the notification will confirm the locale in the State that ACF will review as the largest metropolitan area that, by regulation, must be reviewed as a site in the on-site CFSR review.
- In the series of Federal-State conference calls leading up to the on-site CFSR, ACF will ask for specific plans from the States as to how they are including the courts in all phases of the CFSR. Regional ACF offices will provide the States with information and/or technical assistance to help address any barriers to judicial participation in the CFSR process.
- We are adding technical assistance resources to the National Resource Center for Legal and Judicial Issues in the form of recently retired judges who will, in consultation with the Regional Office, Children's Bureau, and the State, make site visits to States prior to a State beginning its statewide assessment. These site visits will include a visit with the State's Chief Justice and child welfare administrator and the presiding juvenile or family court judge in the State's largest metropolitan subdivision, and will be designed to promote the Chiefs' support of the CFSR. The retired judges will visit States again at the beginning of the PIP development process for the same purpose, and will also be available for interim technical assistance in promoting court involvement in the CFSR and PIP processes, as needed.
- In the PIP training that is conducted by the National Resource Center on Organizational Improvement following the on-site review, ACF will further emphasize with States the importance of inviting and including court representatives in the training, and ACF will ensure that portions of the training focus on issues in the PIP that require court and agency consultation and collaboration.
- In reviewing future PIPs for approval, ACF will review specifically for consultation involving the courts and improvement strategies that reflect the courts' involvement, including integration of CFSR issues into the CIP strategic plan. In reviewing

progress reports on currently approved PIPs, ACF will also review for the level of the courts' involvement and role in implementing provisions of the PIP.

- In reviewing CIP strategic plans for approval, ACF will review specifically for strategies to facilitate legal and judicial participation in the CFSR process, collaboration with the child welfare agency on the review, and activities targeted to bring the State into compliance in accordance with its CFSR PIP.

INQUIRIES TO: ACF Regional Offices

/s/

Joan E. Ohl
Commissioner
Administration on Children, Youth and Families