

**DSS ADMINISTRATIVE LETTER  
CHILD WELFARE SERVICES CWS-02-09**

<b>TO:</b>	<b>COUNTY DIRECTORS OF SOCIAL SERVICES</b>
<b>ATTENTION:</b>	<b>CHILDREN'S SERVICES PROGRAM MANAGERS AND SUPERVISORS CHILDREN'S SERVICES SOCIAL WORKERS</b>
<b>DATE:</b>	<b>March 17, 2009</b>
<b>SUBJECT:</b>	<b>NEW FEDERAL LEGISLATION - THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008 (PUBLIC LAW 110-351)</b>
<b>EFFECTIVE DATE:</b>	<b>IMMEDIATELY</b>

The purpose of this administrative letter is to provide counties with information and instruction regarding recently enacted federal legislation – the Fostering Connections to Success and Increasing Adoptions Act of 2008. This letter also provides state policies adopted in order to comply with specific requirements of the act. In addition to this letter the Children's Bureau provides guidance on the new Act through the following:

- ACYF-CB-PI-08-05, available at [www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2008/pi0805.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0805.htm)
- ACYF-CB-IM-08-03, available at [www.acf.hhs.gov/programs/cb/laws\\_policies/policy/im/2008/im0803.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2008/im0803.htm)

The legislature includes eight provisions that every state is required to take action to insure compliance:

**1.) Title IV-E plan requirements for notice to relatives of removal:**

The law adds a change requirement that agencies exercise due diligence to identify and notify all adult relatives of a child within 30 days of the child's removal. The notification to relatives must include information about serving as a placement resource for the child.

Counties must, within 30 days after a child is removed from the child's parents, notify all grandparents and other adult relatives of the removal. The relatives must be notified (1) that the child has been or is being removed from the parent(s); (2) of the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice; and (3) of the requirements to become a licensed foster home and the additional services and supports that are available for children in a licensed foster home.

Counties shall include any relatives that are suggested by the parents, and exercise due diligence to identify and notify any close relatives (grandparents, siblings, aunts, uncles, great grandparents, nieces or nephews) who are adults. Due diligence around identification and notification applies to both paternal and maternal relatives. Though the requirement is for notice within 30 days of placement, this should be an ongoing process over the life of the case. Relatives that are later identified should be offered the same opportunity to participate in the child's care when appropriate.

The form and policy to meet this new requirement is being developed for approval.

**2.) Title IV-E plan requirements for school attendance assurance:**

The law adds a requirement that each child receiving a Title IV-E foster care, adoption or guardianship payment is a full-time elementary or secondary school student, or is incapable of attending school due to a documented medical condition.

**Foster Care Policy: North Carolina policy already includes the following:**

Counties must ensure that every child in foster care who has attained the minimum age for compulsory school attendance under state law must be enrolled as a full-time elementary or secondary school student or has completed secondary school. "Elementary or secondary school student" is defined to include a child that is (1) enrolled in an institution which provides elementary or secondary education in compliance with state law, (2) instructed in elementary or secondary education at home in accordance with state law on home schools, (3) in an independent study program in elementary or secondary education that is administered by the local school or school district and is in accordance with state law and, or (4) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the child's case plan.

**Adoption Assistance Policy: North Carolina policy on this issue already includes the following:**

Counties must ensure that every child who receives adoption assistance and is of the compulsory age (seven to sixteen) for school attendance under state law is enrolled as a full-time elementary or secondary school student or has completed secondary school. "Elementary or secondary school student" is defined to include a child that is (1) enrolled in an institution which provides elementary or secondary education in compliance with state law, (2) instructed in elementary or secondary education at home in accordance with state law on home schools, (3) in an independent study program in elementary or secondary education that is administered by the local school or school district and is in accordance with state law. If none of these are applicable, documentation must support that the child is incapable of attending school on a full-time basis due to a documented medical condition, physical and or therapeutic condition(s). Documentation shall be maintained in the adoption assistance case record.

**3.) Educational stability case plan requirement:**

The law amends the case plan provisions by adding the requirement of a plan to ensure the educational stability of the child in foster care.

The child's case plan must include:

- 1.) assurances that the child's placement takes into account the appropriateness of the current education setting and the proximity to the school in which the child was enrolled at the time of placement;
- 2.) an assurance that the state agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; and
- 3.) if remaining in the school is not in the child's best interests, assurances by the state agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school.

In order to meet this requirement, The Educational Status Component of the Out of Home Family Services Agreement (form DSS-5245) and the Child Placement Chapter are being revised and are in the approval process.

**4.) Title IV-E plan requirements for sibling placement:**

The law adds a new plan requirement that agencies must make reasonable efforts to place siblings removed from their home in the same foster care, adoption or guardianship placement, or facilitate visitation or ongoing contacts with those that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.

**Foster Care: North Carolina policy on this issue already includes the following:**

Siblings shall be placed together, whenever possible, unless contrary to the child's developmental, treatment or safety needs. Through the eyes of the child, it is traumatic to be removed from parents and home. To be separated from siblings adds to the impact of loss and trauma. When siblings are able to remain together in an out of home placement, there can be a greater sense of continuity of family. Frequently, older children will have had some responsibilities for caring for younger siblings when in their own home, and they may feel worried and protective regarding these siblings if separated from them. Likewise, the younger siblings may have looked to their older siblings for comfort and guidance.

Because it is important to place siblings together, the agency shall recruit and prepare foster families who are willing to take sibling groups. Foster families need special preparation regarding issues of sibling relationships among children in foster care, as well as the impact of separation and loss on those relationships.

There are times when it is not in the child's best interest to be placed with siblings because of each child's developmental, treatment, and/or safety needs. In some situations, for example, children may be endangered by unsupervised contact with their more aggressive or sexually active sibling. When this is this case, it is the responsibility of the agency to provide for frequent supervised or unsupervised visitation and ongoing contact for the siblings in order to maintain their ties to one another. Social workers shall document the basis for the decision not to place siblings together.

**Adoption: North Carolina policy on this issue already includes the following:**

The possibility that adoption may become the plan for sibling groups should be taken into consideration at the time such groups of children enter the foster care system. Every effort should be made to place sibling groups in the same foster home or, if not possible, to continue their frequent contact with each other. A decision to separate them should be made only after thorough assessment of the children's needs and the availability of appropriate resources for placement. Siblings shall be placed together whenever possible unless contrary to the child's developmental, treatment, and/or safety needs. If siblings are separated, frequent and regular on going contact should be arranged and encouraged.

**5.) Title IV-E plan requirement to inform parents of adoption tax credit:**

The law adds a new plan requirement that agencies must inform prospective adoptive parents of the adoption tax credit.

Adoptive parents may be able to take a tax credit for qualifying expenses paid to adopt an eligible child (including a child with special needs). In addition to the credit, certain amounts paid by an employer for qualifying adoption expenses may be excludable from gross income. For both the credit or the exclusion, qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child. An eligible child must be under 18 years old, or be physically or mentally incapable of caring for him or herself. The adoption credit or exclusion cannot be taken for a child who is not a United States citizen or resident unless the adoption becomes final. A taxpayer also may be eligible to take an increased credit or exclusion for expenses related to the adoption of a child with special needs if the child otherwise meets the definition of qualifying child, is a United States citizen or resident and a state determines that the

child cannot or should not be returned to his or her parent's home and probably will not be adopted unless assistance is provided. The credit and exclusion for qualifying adoption expenses are each subject to a dollar limit and an income limit.

Persons should be referred to Web site at <http://www.irs.gov/taxtopics/tc607.html> or by calling the IRS at **Toll-Free, 1-800-829-1040**

**6.) Title IV-E plan case-by-case licensing waivers for relatives:**

The law explicitly permits a licensing agency to waive on a case-by-case basis a non-safety licensing standard for a relative foster family home.

North Carolina policy currently allows waiver of non-safety licensing standards for relatives pursuing licensure. Counties are encouraged to consider requesting waivers for non-safety related issues that may currently be preventing relatives from becoming licensed. It is noted that any child in DSS custody, placed in a licensed foster home, is eligible for any funding reimbursement for which the child would otherwise be eligible. This includes foster homes licensed with approved waivers.

**7.) De-linking, over time, eligibility for IV-E adoption assistance to 1996 AFDC criteria:**

The law provides that beginning in federal fiscal year 2010 (and continuing through FFY2018), the link to AFDC will be phased out for adoption assistance. Beginning in FFY2010, children who are age 16 or older when their adoption assistance agreement is finalized, will have no income or resource related eligibility requirements. With each new federal fiscal year, this age will be lowered by two years so that by FFY2018 any child with special needs may qualify for IV-E adoption assistance under the new rules. In addition, beginning in FFY2010, any child who has been in foster care for 60 continuous months may qualify for federal adoption assistance under the revised eligibility rules (regardless of age) and any sibling of a child who is eligible under the revised rules (whether due to age or length of stay in care) may also qualify under those criteria.

**8.) Transition plan for emancipating youth:**

The law amends the case review system to create a new requirement that during the 90-day period prior to the youth's emancipation, the caseworker must develop a personalized transition plan as directed by the youth.

In order to reduce confusion with the Transitional Plan for youth 16 and 17, this plan is being entitled the Emancipation Plan. The form and policy to meet this new requirement is being developed for approval.

In addition to these eight provisions, the Division continues to explore and develop implementation plans that will be forth coming on the following:

- **Travel to school added to foster care maintenance payment definition:**

The law amends the definition of a "foster care maintenance payment" to include the cost of reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care.

A workgroup including Division staff and local DSS representatives is being formed. If your county is interested in participating, they should contact Thomas Smith, Child Welfare Services consultant at (919) 733-2580 or at [thomas.smith@ncmail.net](mailto:thomas.smith@ncmail.net). Counties will be informed as soon as policy and procedures are finalized.

- **Title IV-B plan health oversight and coordination plan requirements:**

The law amends the existing title IV-B plan requirement that States, in coordination with the State Medicaid agency, develop a plan for ongoing oversight and coordination of health care services for children in foster care, including mental health and dental health needs.

The Division is currently working with the Division of Medical Assistance to develop this ongoing oversight and coordination. Counties will be informed at a future time of any changes or additions to policy.

- **Good faith negotiation with Indian Tribes requesting the development of title IV-E agreements:**

The law requires that the state negotiate with tribes that are interested in developing their own IV-E child welfare programs.

We have contacted the Eastern Band of the Cherokee Nation and are exploring with them whether they wish to develop their own child welfare system.

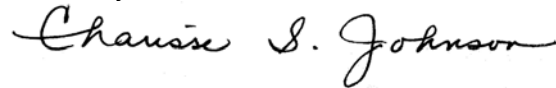
- **Guardianship Assistance Payments:**

The law gives states the **option** to use federal IV-E funds for kinship guardianship payments for children raised by relative caregivers.

The Division continues to research the impact of making guardianship assistance payments available. A workgroup including Division staff and local DSS representatives is being formed. If your county is interested in participating, they should contact Thomas Smith, Child Welfare Services consultant at (919) 733-2580 or at [thomas.smith@ncmail.net](mailto:thomas.smith@ncmail.net)

If you have any questions about the information included in this Administrative Letter, please contact your CPR or Thomas Smith, Child Welfare Services consultant at (919) 733-2580 or at [thomas.smith@ncmail.net](mailto:thomas.smith@ncmail.net).

Sincerely,



Charisse Johnson, Chief  
Child Welfare Services Section