ADMIN LETTER #.C.S. 3-00

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

SUBJECT: NEW FEDERAL GUIDANCE RELATING TO ASFA AND IV-E ELIGIBILITY

DATE: Effective Immediately

ATTENTION: County Directors of Social Services

Children's Services Supervisors

Children's Services Social Workers

DSS Attorneys

District Court Judges

The Administration for Children and Families has issued a memorandum with accompanying regulations and final rules regarding Title IV-E foster care eligibility. Among other things, the purpose of the memorandum was to inform the states of federal expectations regarding requirements of the Adoption and Safe Families Act (ASFA) relating to Title IV-E. This letter contains important information about IV-E eligibility that must be implemented immediately. **Implementation is particularly critical since we are preparing for a federal IV-E audit and since federal IV-E funds pay for more than 50% of the cost of the foster care system in our state**.

The new rules require that every court order relating to a child's placement contain necessary language to ensure the child's eligibility for IV-E foster care payments. The new rules require the following:

(1) Contrary to the welfare - The **very first court order** that sanctions the removal of a child from the home, even temporarily, **must contain** a determination regarding whether remaining in the home is "contrary to the welfare" of the child. In other words, even an initial *ex parte* nonsecure custody order must contain a determination that it would be "contrary to the welfare" of the child to remain in the home. Previously, we have considered a determination in the order at the 7-day hearing to be sufficient to satisfy this criterion. [G.S. 7B-507(a)(1) provides that "each court order subsequent to the initial nonsecure custody order (that is, all continued nonsecure, dispositional, or review orders) should have a finding that continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest".] This is no longer true. **With the issuance of this Administrative Letter, the initial court order removing custody must contain the required language or the child will not be eligible for IV-E funds for the duration of that removal period. The Commentary to the federal**

regulations, however, explains that the exact wording need not be used as long as it is clear that the court concluded that continuation in the home would have been contrary to the child's welfare. It is the Division's position currently that the language contained within our form Order for Nonsecure Custody, AOC-J-150, that "there are no other reasonable means available to protect the juvenile," meets the federal requirement for a "contrary to the welfare" determination.

> **Note**: The Division of Social Services has contacted its federal regional office in Atlanta. We have asked for a written response as to whether the language contained within our form Order for Nonsecure Custody, AOC-J-150, that "there are no other reasonable means available to protect the juvenile," meets the federal requirement for a "contrary to the welfare" determination. Also, the Division has discussed the situation with the Administrative Office of the Courts and has its concurrence that if the response from the federal regional office is unfavorable, AOC-J-150 can be modified at that time by the Division to include the specific language of "contrary to the welfare".

(2) **Reasonable efforts** - Even if a "contrary to the welfare" determination is contained in the very first court order removing the child from the home, the child is still not IV-E eligible until "reasonable efforts" findings are made. Under federal law, regardless of how a child is removed from the home, states have 60 days from the time of the child's actual removal from the home in which to obtain a judicial order **that reasonable efforts were made to prevent the removal or that no efforts were possible**. However, this does not mean that agencies should wait to obtain this judicial determination, because if reasonable efforts language is not in place within 60 days of a child's removal from the home, that child will also not be IV-E eligible throughout the removal period. Thus, a judicial determination regarding reasonable efforts **must** be obtained at the earliest opportunity. [G.S. 7B-507(a) requires that reasonable efforts findings be made at the 7-day hearing (as well as at all subsequent continued nonsecure, dispositional, and review hearings)]. The court order should address **whether reasonable efforts were made since the last court hearing and whether the agency should make reasonable efforts in the future**. See, G.S. 7B-507(a)(2) and (3).

> Note: **County Departments of Social Services must** always **make reasonable efforts to achieve the court-approved plan for the child. Reasonable efforts must be made to prevent removal of the child from the child's own home unless the circumstances of the child prevent that. Reasonable efforts to reunify the child and family must be made unless the court sanctions that this plan is not appropriate. Reasonable efforts must also be made to obtain a timely and permanent home for the child when return to the parents cannot occur.**

The Court must determine the level of effort that is reasonable based on safety considerations and the circumstances of the family. Sometimes, based on its assessment of a family, the agency determines that it is reasonable to pursue a plan other than reunification for the child. The Court must sanction the agency's decision not to pursue the stated plan. In such circumstances, if the Court determines that the agency's assessment is accurate and its actions were appropriate, the Court should find that the agency's efforts were reasonable, rather than reasonable efforts were not required. G.S. 7B-507(b).

(3) **Detailed findings** - The federal regulations require that the "contrary to the welfare" and "reasonable efforts" findings be detailed; that is, the findings must include specific relevant facts about the case. There are a number of approved ways in which to provide detailed findings including: **(a) describing the facts/efforts in the court order or findings; (b) having language in the court order that cross references or refers specifically to detailed statements in an agency or other report submitted to the court; (c) having language in the court order that cross references to a sustained petition; or (d) checking off items from a detailed checklist.** If the "contrary to the welfare" and "reasonable efforts" determinations are not included in the court orders identified in paragraphs (1) and (2) above, a transcript of the court proceedings is the only documentation that will be accepted to verify that the required determinations were made.

(4) **Placement authority** - The federal regulations re-emphasize that the county DSS agency must have placement authority (when it has custody). **If the court orders a specific foster placement that differs from the DSS recommendation, the court assumes the agency's responsibility for placement and the child becomes ineligible for IV-E reimbursement**. The recent federal regulations have underscored this point. If the court sanctions the placement plan recommended by the county DSS, the child will be IV-E eligible if the other criteria are met.

(5) **Immediate implementation** - The requirements regarding "contrary to the welfare" (#1 above) and "reasonable efforts" (#2 above) findings are departures from the procedures we have followed in the past. Agencies **must** modify procedures to comply with these rules so that a "contrary to the welfare" finding in the **very first court order** removing a child from the home and "reasonable efforts" findings in the continued nonsecure custody order resulting from a 7-day hearing occur **immediately.**

We greatly appreciate your attention to these important issues regarding IV-E eligibility. If you have questions about this information, please contact our Policy and Planning Team at (919) 733-3360.

Sincerely,

Charles C. Harris, Chief

Children's Services Section

cc: Kevin FitzGerald
Karen Anderson
Local Support Managers

Nancy Coston

Children's Services Team Leaders

Local Business Liaisons

Melinda Hamrick

Children's Program Representatives

Child Welfare Attorneys