



National Training and Development Curriculum

FOR FOSTER AND ADOPTIVE PARENTS

OVERVIEW OF KEY FEDERAL LAWS IMPACTING CHILD WELFARE

Additional information on federal laws can be found at the Child Welfare Information Gateway:
<http://www.childwelfare.gov/index.cfm>.

- **Social Security Act:** The Social Security Act is the base from which all federal child welfare law was developed. The creation of this law provided federal funding and federal responsibility of children across the United States. It created the platform from which states have built their own child welfare systems. The Social Security Act, Title IV-B, establishes requirements to receive federal funding for family support services, time limited family reunification services (up to 15 months), adoption promotion and support services. It also creates funds for general child welfare services. The Social Security Act was amended to include the Adoption Assistance and Child Welfare Act of 1980, which created Title IV-E funds. Title IV-E eligible children receive foster care reimbursement to achieve permanent living arrangements. The federal government reimburses the state for a lot of the costs associated with the care and maintenance of children who are IV-E eligible. Title IV-E also requires:
 - Reasonable efforts must be made to prevent a child from entering foster care and to reunify a child.
 - Written case plans with permanency goals, reasons a child is in foster care, services offered to resolve the cause for foster care.
 - Periodic review of the progress toward permanency by an independent third party not same administrative unit.
- **The Indian Child Welfare Act of 1978 (ICWA):** The primary purpose of this law was to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. The law was passed at a time where large numbers of Indian children were being removed from their homes and their tribes. ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe. Key elements of this Act:
 - Allows the child's tribe and family to have an opportunity to be involved in decisions affecting services for the Indian child.

- Allows the parent or tribe to petition to transfer jurisdiction of the child welfare case to their own tribal court. If the tribe does not take jurisdiction of the case they still retain the right to intervene with the case.
- Sets requirements and restrictions regarding placement of Indian children in foster and adoptive homes. Preference is given to the child's extended family, Indian families approved by the tribe, and Indian organizations and foster parents.
- Increases the burden of proof from preponderance to clear and convincing evidence.
- Established minimum Federal standards for the removal of Indian children from their families
- **Adoption Assistance and Child Welfare Act of 1980:** The primary purpose of this law was to establish a program of adoption assistance, strengthen the program of foster care assistance for needy and dependent children, and improve the child welfare, social services, and aid to families with dependent children programs. This act amended titles IV-B and XX of the Social Security Act. Key elements of this Act:
 - Required States to make adoption assistance payments to parents who adopt a child who is AFDC-eligible and is a child with special needs.
 - Defined a child with special needs as a child who: cannot be returned to parent's home, has a special condition such that the child cannot be placed without providing assistance, and has not been able to be placed without assistance. The state expands upon this framework to determine specifically what children will qualify for adoption assistance payments.
 - Required, as a condition of receiving Federal foster care matching funds, that States make "reasonable efforts" to prevent removal of the child from the home and return those who have been removed as soon as possible.
 - Required the participating States to establish reunification and prevention programs.
 - Required the State to place a child in the least restrictive setting and, if possible and in the child's best interest, one that is close to the parent's home.
 - Required the State to review every 6 months the status of a child in any nonpermanent setting to determine what is in the best interest of the child, with most emphasis placed on returning the child home as soon as possible.
 - Required the court or administrative body to determine the child's future status within 18 months after initial placement into foster care.



- **The Multiethnic Placement Act of 1994 (MEPA):** MEPA was signed into law in 1994 as part of the Improving America's Schools Act. The Department of Human Services issued a detailed guidance to help states implement MEPA and to clarify the relationship between MEPA and the equal protection and anti-discrimination principles of the United States Constitution and Title VI of the Civil Rights Act. The law was enacted at a time when there were a disproportionate number of minority children in the child welfare system and a lack of minority homes available within the system. Minority children were waiting longer than Caucasian children to find permanent placements. Among the many factors that contributed to placement delays and denials, Congress found that the most salient were racial and ethnic matching policies and the practices of public agencies which have historically discouraged individuals from minority communities from becoming foster or adoptive parents. MEPA addressed these concerns by prohibiting the use of a child's or a prospective parent's race, color, or national origin to delay or deny the child's placement and by requiring diligent efforts to expand the number of racially and ethnically diverse foster and adoptive parents. Key elements of this Act:
 - Prohibited State agencies and other entities that receive Federal funding and were involved in foster care or adoption placements from delaying, denying, or otherwise discriminating when making a foster care or adoption placement decision on the basis of the parent or child's race, color, or national origin.
 - Prohibited State agencies and other entities that received Federal funds and were involved in foster care or adoption placements from categorically denying any person the opportunity to become a foster or adoptive parent solely on the basis of race, color, or national origin of the parent or the child.
 - Required States to develop plans for the recruitment of foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom families are needed.
 - Allowed an agency or entity to consider the cultural, ethnic, or racial background of a child and the capacity of an adoptive or foster parent to meet the needs of a child with that background when making a placement.
- **Inter-Ethnic Placement Act (IEP) of 1996:** MEPA was amended by the provisions for Removal of Barriers to Interethnic Adoption (IEP) included in the Small Business Job Protection Act. As explained in the Information Memoranda on IEP issued by HHS in June 1997, and May 1998, the amendments remove potentially misleading language in MEPA's original provisions and clarify that "discrimination is not to be tolerated," whether directed at children in need of appropriate, safe homes, at prospective parents, or at previously "underutilized" communities who could be resources for placing children. The law prohibits any consideration of children's race or ethnicity as a factor in deciding which permanent placement will be in their best interest. This law in essence prevents states from only placing children with foster/adoptive parents that are of the same race/ethnicity. It requires states to look at each case and find the best placement of a child regardless of the race/ethnicity. There are four key parts of this law:



- Delays in placing children who need adoptive or foster homes are not to be tolerated, nor are denials based on any prohibited or otherwise inappropriate consideration.
- Discrimination is not to be tolerated, whether it is directed toward adults who wish to serve as foster parents, toward children who need safe and appropriate homes, or toward communities or populations, which may have been under utilized as a resource for placing children.
- Active, diligent and lawful recruitment of potential foster and adoptive parents of all backgrounds is both a legal requirement and an important tool for meeting the demands of good practice.
- The operative standard in foster care and adoptive placements has been and continues to be ‘the best interest of the child’.
- **Adoption and Safe Families Act of 1997:** This amends Title IV-E, Social Security Act and sets basic standards that must be followed by all states. This law was primarily created to address the ‘foster care drift’. Foster care drift is defined as children coming into the child welfare system and staying throughout their life, never achieving a permanent setting. This law sets timeframes and priorities that must be adhered to related to moving children through the child welfare system:
 - Requires reasonable efforts to include ‘a child’s health and safety shall be the paramount concern.
 - Establishes circumstances when reasonable efforts can be exempted.
 - Requires reasonable efforts to secure an adoptive placement when parental rights are terminated.
 - Requires judicial permanency hearing for children no later than 12 months after the date children entered foster care; no less than every 12 months as long as the children are in foster care.
 - Requires that states must file petition to terminate parental rights when children have been in foster care for 15 of the previous 22 months.
 - The only exceptions to the ASFA requirements are: living with a relative, termination not in the child’s best interest, state failed to provide services consistent with case plan time frame.
- **Fostering Connections to Success and Increasing Adoption Act of 2008:** The primary purpose of this law was to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, and improve incentives for adoption. This law amends parts B and E of title IV of the Social Security Act. Key elements of the law include:
 - Created a new plan option for States and Tribes to provide kinship guardianship assistance payments under title IV-E on behalf of children who have been in foster care of whom a relative is taking legal guardianship. Provided basically all of the services, resources, and health benefits available to children who are adopted for children who achieve permanency through guardianship.



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- Permitted States to extend title IV-E assistance to otherwise eligible youth remaining in foster care after reaching age 18 and to youth who at age 16 or older exited foster care to either a kinship guardianship or adoption, provided that they have not yet reached age 19, 20, or 21, as the State may elect, and are in school, employed, engaged in another activity designed to remove barriers to employment, or incapable of doing so due to a documented medical condition (effective October 1, 2010).
- Allowed federally-recognized Indian Tribes, Tribal organizations, and Tribal consortia to apply to receive title IV-E funds directly for foster care, adoption assistance, and kinship guardianship assistance (effective October 1, 2009).
- Required title IV-E agencies to identify and notify all adult relatives of a child, within 30 days of the child's removal, of the relatives' options to become a placement resource for the child.
- Required each child receiving a title IV-E foster care, adoption, or guardianship payment to be a full-time student unless he or she is incapable of attending school due to a documented medical condition.
- Required title IV-E agencies to make reasonable efforts to place siblings removed from their home in the same foster care, adoption, or guardianship placement.
- Permitted title IV-E agencies to waive on a case-by-case basis a non-safety licensing standard for a relative foster family home.
- Required States to ensure coordination of health care services, including mental health and dental services, for children in foster care.
- Required that, 90 days prior to a youth's emancipation, the caseworker develops a personalized transition plan as directed by the youth.
- Required that a case plan include a plan for ensuring the educational stability of the child in foster care.
- ⊖ Required fingerprint-based criminal records checks of relative guardians, and child abuse and neglect registry checks of relative guardians and adults living in the guardian's home
- **Family First Prevention Services Act of 2018:** This Act is intended to provide more resources to help families in crisis stay together and places limits on federal funds for putting foster youth into congregate care placements like group homes. The Act also includes several other child welfare-related updates to federal policy.
 - Limited Title IV-E payments for placements that are not foster family homes to two weeks for child care institutions (unless it is a specified placement)



- Required procedures for fingerprint-based criminal records checks of national crime information databases, and child abuse and neglect registry checks on any adult working in a child care institution
- Adds a Title IV-E plan requirement that Title IV-E agencies must provide specific and detailed information about foster family home licensing standards and whether they meet model licensing standards identified by HHS, waivers of non-safety licensing standards for relative caregivers and case worker training
- Required Title IV-E agencies to certify they will not enact policies that will significantly increase the state/tribe's juvenile justice population in response to the restrictions on title IV-E foster care payments for child care institutions
- Revised the definition of foster family home to limit a home to six children. Allows agencies to make exceptions to the numeric limitation for:
 - a parenting youth to remain with their child,
 - siblings to stay together,
 - a child with a meaningful relationship with a family to stay with that family, and
 - a family with special training or skills to care for a child with severe disabilities
- Added a requirement to provide official documentation to prove the child was in foster care to the list of documents a youth must be provided before aging out of foster care
- Revised the John H. Chafee Foster Care Program for Successful Transition to Adulthood (the Chafee program) purposes to specify that it is available to youth who have experienced foster care at age 14 or older
- Made education and training vouchers (ETV) available to eligible youth ages 14-26, but limits the youth's participation in the ETV program at 5 years total
- Permitted states and tribes to provide the Chafee program up to age 23, if the agency extended the age for title IV-E foster care to 21 or provides comparable services to those youth using state or any other funds outside of title IV-E
- Revised the existing requirement to provide the Chafee program to youth who have aged out of foster care by clarifying that youth may be eligible if they aged out at an age other than 18 as long as they have not attained age 21 (or age 23 if the state or tribe has extended foster care to youth up to age 21)

