

Title IV-E Legal Representation Frequently Asked Questions (FAQ)

General

Q. I'm having trouble!

A. Email titleivelegalrep@ocfs.ny.gov for assistance.

Q. Can I submit my claim as a PDF?

A. No, all claims must be submitted using the agency specific excel claim forms.

Q. Is there a difference between a case number and CIN?

A. Yes, the case number is assigned to the entire case (meaning it can be a case for the parent, but the child would be included in the same case record). A CIN or client identification number is assigned to an individual, each client with a case should have an individual CIN.

Q. What if I don't have the CIN?

A. If the child/parent's name and DOB are provided, Title IV-E staff can look up the data in the Welfare Management System (WMS)

Q. Can I submit claims quarterly?

A. Yes, but a separate claim form must be used for each month within that quarter.

Q. How often can I submit a claim?

A. A claim can be submitted any time if it's within the 18-month claiming time frame. If submitting claims quarterly; a separate claim form must be completed for each month.

Q. I entered the wrong information, now what?

A. Contact the titleivelegalrep@ocfs.ny.gov for guidance.

Q. Why do we have to provide parent and/or child information?

A. The title iv-e agency is federally required to report the number of title iv-e eligible children being served for the foster care program components. Additionally, these costs will be federally reviewed and subject to audit by ACF. .

Q. Why would a claim for legal representation be rejected by the OCFS Bureau of Financial Operations?

A. The excel claim workbook was created to meet the federal CB-496 claiming requirements. Any missing information including supporting documentation, incorrect saturation rates, duplicate claims or missing parent/child information would prevent a claim from being reported. Also, if the claim submitted is beyond the federal claiming period, the claim will be rejected

Q. How long will it take to receive reimbursement?

A. Quarterly Expenditure Reports are submitted within 30 days of the end of the quarter. On average federal awards are received within 6 to 8 months of submission.

Q. How will my entity receive reimbursement?

A. Please contact your primary contact for the Statewide Financial System portal. If you do not know your primary contact, please email titleivelegalrep@ocfs.ny.gov for assistance.

Q. Why does 20% of the supporting documentation need to be provided with the claim?

A. The Code of Federal Regulations (CFR) 45 CFR 75.352 require that subrecipient funds are monitored by the pass-through entity. These documents are required to meet the CFR and the State Single Audit requirements. Additional documentation may be required upon a federal audit.

Allowable Costs

- Q.** Are the legal costs for all eligibility categories of foster care children and their parents allowed to be claimed under Title IV-E?
- A.** If the agency determined that the child is a candidate for title IV-E foster care, the state may claim title IV-E administrative costs of independent legal representation by an attorney for the child and his/her parent. Otherwise, reimbursement is limited to those children and youth who are receiving title IV-E foster care maintenance payments (FCMP) or eligible to receive a FCMP.
- Q.** Besides salary and benefits of attorneys doing the work, what “administrative costs” are reimbursable (i.e., cost of acquiring transcripts, attorney travel, production of discovery, etc.)?
- A.** We do not have a list of allowable costs, however, the costs of the attorney performing the independent legal representation must be reasonable, necessary for the administration of the title IV-E program and must be described in the state’s cost allocation plan per 45 CFR 1356.60(c). To the extent that any such activities mentioned in the question are for candidates for title IV-E foster care, youth in foster care and his/her parent in foster care legal proceedings, they could be allowable administrative costs under title IV-E if not prohibited by federal or state regulations.
- Q.** May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E in foster care or a title IV-E eligible child in foster care and the child’s parents prepare and participate in all stages of foster care related legal proceedings?
- A.** Yes. The statute at section 474 (a) (3) of the act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency’s representation in judicial determinations continues to be an allowable administrative cost. Previous policy prohibited the agency from claiming title IV-E administrative costs for legal services provided by an attorney representing a child or parent. This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare and participate in all stages of foster care legal proceedings, such as court hearings related to a child’s removal from the home. These administrative costs of legal representation must be paid through the title IV-E agency. This change in policy will ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans.
- Q.** What representation costs may be claimed? That is, is ‘representation’ defined so to include *all* legal representation during the child welfare episode? Including: costs associated with representation in neglect or abuse cases, termination of parental rights, custody, paternity, guardianship, family offense, sibling or grandparent visitation, and any other additional Family Court matter that may arise during the course of the original proceeding or the child’s time in placement?
- A.** The policy specifies that such legal representation may be claimed for “all stages of foster care legal proceedings” which in general means the representation is associated with meeting a title IV-E requirement. The policy includes the following examples: court hearings related to a child’s removal from the home, reasonable efforts to prevent removal and finalize the permanency plan, and compliance with case plans. Some of the examples listed in the state’s question appear to go further than what the policy allows, for example, legal representation in all child abuse and neglect cases, unless a child is a candidate for foster care or in foster care.

Q. Does the policy at CWPM 8.1B #30 allow a title IV-E agency to claim title IV-E administrative costs of paralegals, investigators, peer partners or social workers that support an attorney providing independent legal representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent for and participate in all stages of foster care legal proceedings, and for office support staff and overhead expenses?

A. Yes, the policy permits a title IV-E agency to claim such title IV_E administrative costs to the extent that they are necessary to support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings for candidate for the title IV-E foster care, youth in foster care and his/her parents. The cost must be consistent with federal cost principles per 45 CFR part 75 Subpart E. The title IV-E agency must allocate such costs so as to assure the title IV-E program is charges its proportionate share of costs (See CWPM section 8.1B and 8.1C)

Q. Can funds be used to support legal representation of foster parents and kinship families?

A. No, title IV-E policy, regulations and statute do not permit title IV-E FFP for the cost of independent legal representation of foster parents and kinship families.

Q. Is there a list of non-allowable costs? And, specifically, are the following costs reimbursable?

A. There is not a list of non-allowable costs. In addition, please see below:

- **Q.** Representation by institutional providers as well as individual private practitioners?
A. Independent legal representation is not limited to individual private practitioners. It may also include independent legal representation provided by entities such as an office of public defender or legal aid service.
- **Q.** The work of non-attorney professionals as part of the interdisciplinary legal representation team in place in many legal aid offices. (e.g., social workers, peer advocates, investigators)?
A. Interdisciplinary teams that pair attorneys with social workers, peer advocates and investigators are important factors in ensuring high quality legal representation (ACYF-CB-IM-17-02). However, consistent with CWPM 8.1B #30, the title IV-E agency may only claim costs for activities necessary for independent legal representation *by an attorney* in foster care proceedings.
- **Q.** Preventive (“pre-petition”) interdisciplinary legal representation for the parents?
A. Early appointment of counsel (at or prior to a party’s initial appearance in court) in child welfare proceedings improves case planning, expedited permanency and cost savings to state government (ACYF-CB-IM-17-02). If the agency determined that the child is a candidate for title IV-E foster care, the state may claim title IV-E administrative costs of independent legal representation by an attorney for the parent. However, such costs may not be for a period prior to the month in which the cited candidacy determination was documented as made.

Training

Q. Can NYS access the 75% IV-E funds for state investments in training of AFCs?

A. We are unclear what an AFC is. In general, the title IV-E agency may claim the allowable costs to provide short-term training to an attorney who represents candidates for title IV-E foster care and youth receiving or eligible to receive a title IV-E FCMP and their parents and meets the criteria established in section 474(a)(3)(B) of the Social Security Act. (See CWPM 8.1H #20)

- Q.** If so, must the training be provided by OCFS, or can OCA, ILS or other government entity provide the training or contract for the training?
- A.** Title IV-E agencies may contract with another organization to conduct training on behalf of the State agency. It is within the discretion and flexibility of the title IV-E agency to determine the most efficacious and cost-effective means of meeting the short-term training needs of the State and local agencies. (See CWPM 8.1H #2). These costs must also be addressed in the state's title IV-B/E training plan and in its approved PACAP.
- Q.** Is all training for attorney reimbursement at 75%, or only for training necessary for legal representation in Family Court? There is significant additional training that NY considers necessary for attorneys to correctly navigate the child welfare system such as trauma, substance abuse, racial equity and cultural competence, DV, etc.
- A.** The title IV-E agency may claim allowable costs to train an attorney who represents children and youth who are receiving or are eligible to receive a title IV-E FCMP, candidates for title IV-E foster care and their parents in accordance with the criteria established in section 474(a)(3)(B) of the Social Security Act at 75% FFP (See CWPM 8.1H #20 and Q/A#8 for examples of allowable training topics).
- Q.** Must the training qualify for attorney credits for continuing legal representation?
- A.** No.

Claiming

- Q.** What steps are required to start claiming?
- A.** As with all administrative costs, title IV-E agencies must provide for appropriate cost allocation through an approved PACAP, therefore the state must update its PACAP to claim these costs. Additionally, as noted above, if training costs are also to be title IV-E claimed, the state must update its title IV-B/E training plan to identify the involved activities and costs.