

## 2820 - LEGAL STATUS

<b>POLICY STATEMENT</b>	Legal responsibility and care for a child must be given to DFCS or another public agency under contract with Georgia Department of Human Resources before Title IV-E eligibility can be established.
<b>BASIC CONSIDERATIONS</b>	<p>A child must enter care pursuant to a court order or a Voluntary Placement Agreement. The SSCM is responsible for ensuring that the necessary legal proceedings concerning the removal and placement of children in out-of-home care are initiated and carried out in a timely manner, and that the appropriate judicial determinations are obtained. The SSCM must notify the Revenue Maximization MES that the appropriate judicial language is included in the court order. The Revenue Maximization MES should accept the statement of SSCM that the correct judicial language is included in the court order. The SSCM must provide copies of the initial order placing the child in foster care, the “<i>contrary to the welfare</i>” order, the “<i>reasonable efforts</i>” order, all custody extension orders, TPR orders, all permanency plan language orders, and any other documents of the court pertaining to the child to the Revenue Maximization MES.</p>
<b>Court Ordered Removal</b>	<p>There are two types of court orders:</p> <ul style="list-style-type: none"><li>• Permanent - issued when parental rights are severed</li><li>• Temporary - issued for duration of 12 months from the date of removal with one extension of 12 months permitted. If a child remains in DFCS custody beyond this period, it is necessary to file a new deprivation petition.</li></ul> <p>To establish IV-E eligibility, the first judicial determination sanctioning the removal of the child, must include a judicial determination that continuation in the home would be “<i>contrary to the welfare</i>” of the child or that placement is in the “<i>best interest</i>” of the child. The SSCM should make every effort to ensure that the initial judicial determination sanctioning the removal of the child contains the required language and is child specific, otherwise the child cannot be IV-E eligible.</p> <p>If the required language is not in the initial judicial determination, the child will never be IV-E eligible (or IV-E reimbursable) at any time during that placement episode.</p>

**BASIC  
CONSIDERATIONS  
(cont.)****Court Ordered  
Removal  
(cont.)**

Affidavits and *Nunc Pro Tunc* order or orders referencing the judicial court code are not acceptable for meeting the “*contrary to the welfare*” or “*best interest*” judicial language requirement. *Nunc Pro Tunc* orders are court orders that give retroactive effect to a judicial finding included in the order; the purpose of which is to clear up omissions in a previous court order that were inadvertently excluded. The required language must be stated in the initial court order.

There must be a court order within 60 days of the child’s removal that contains judicial language to the effect that “*reasonable efforts*” were made to prevent removal of the child or that “*reasonable efforts were not required*” to prevent removal of the child from the home. The child cannot be determined IV-E eligible until “*reasonable efforts*” language is obtained. If the “*reasonable efforts*” language is not obtained within 60 days of the child’s removal, the child is not eligible for IV-E during that placement episode. The SSCM should make every effort to obtain the “*reasonable efforts*” language in the initial court order.

**Voluntary  
Placement  
Agreement**

A Voluntary Placement Agreement is a signed written agreement between DFCS and the parent(s) or the legal guardian(s) of the child. It specifies the legal status of the child, and the rights and obligations of the parent(s) or legal guardian(s) and the county DFCS while the child is in out-of-home placement. The agreement is limited to 90 days, with the possibility of one additional 90-day extension. No placement is reimbursable without legal authorization for custody. A VPA or court order must currently be in effect for reimbursement.

Federal law allows IV-E eligibility and reimbursability to continue for 180 days under a Voluntary Placement Agreement without a court order. If the child remains in care under a Voluntary Placement Agreement beyond 180 days without acquiring a court order which states that continued voluntary placement is in the “*best interest*” of the child, the child will lose IV-E eligibility on the 181<sup>st</sup> day and for the remainder of the placement episode.

For those children that enter DFCS care and responsibility via a Voluntary Placement Agreement, a judicial determination that “*reasonable efforts*” to prevent removal is not required for meeting IV-E eligibility.

**BASIC  
CONSIDERATIONS**  
(cont.)

**Voluntary  
Relinquishment**

Voluntary Relinquishment, also called Voluntary Surrender of parental rights, occurs when a parent voluntarily signs the child into foster care for the purpose of adoption. The child is surrendered to the Department of Human Resources and the rights and duties of the county DFCS are the same as if parental rights had been terminated in court. The parent loses all parental rights and responsibilities of the child. The parents may be obligated to pay child support until such time an adoption is finalized.

**Foster Care:** A child in this situation may only be IV-E Foster Care eligible if the child had last been living with the parent(s) within six months of the date court proceedings were initiated leading to a judicial determination that included “*contrary to the welfare*” and “*reasonable efforts*” language.

**Adoption Assistance:** An otherwise eligible child who had been living with the parent(s) within six months of the date court proceedings were initiated leading to a judicial determination that included “*contrary to the welfare*” language will be eligible for IV-E Adoption Assistance. The “*reasonable efforts*” determination is not required.

**NOTE:** Voluntary relinquishments or voluntary surrenders are only taken when adoption is a viable plan for the child. Refer to the Social Services Manual for additional information.

**Permanency Plan**

A judicial determination of reasonable efforts to finalize a child’s permanency plan is required within 12 months of the child’s removal and at least every 12 months thereafter while the child is in foster care. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within the time frame prescribed, the child loses reimbursability under title IV-E at the end of the month in which the judicial determination was required to have been made and remains non-reimbursable until such a determination is made.