

NEWS YOU CAN USE:

TITLE IV-E CHILD WELFARE FUNDING FOR LEGAL REPRESENTATION UPDATES

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September 22, 2020
1:00pm - 2:00 pm EST



Roadmap for Today's Session

- **What Happened?**
Federal Title IV-E Policy Change
- **Updates and Technical Guidance**
- **Insights from the Field**
Nevada and Washington State
- **Other Funding Sources**
- **Q & A / Discussion**





WHAT HAPPENED?

FEDERAL TITLE IV-E POLICY CHANGE

Allison Green, JD, CWLS

Legal Director

*National Association of Counsel for
Children*



*The first thing we do,
Let's kill all the lawyers*

William Shakespeare

Title IV-E

Back Then..

Question 18.



May a State claim title IV-E administrative funds for the legal services of a child in foster care or his/her parents, such as the parent or child's legal representation in court hearings?

(Deleted 01/07/2019)

Answer

No. The regulations at 45 CFR 1356.60(c) specify that Federal financial participation is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E State plan. The administrative function specified at 45 CFR 1356.60(c)(2)(ii), preparation for and participation in judicial determinations, concerns the State agency's representation but not the provision of legal services to a child or parent. Only the State agency's participation in judicial determinations is an allowable cost.

Source/Date

06/09/04

Legal and Related References

Section 474 of the Social Security Act, 45 CFR 1356.60(c)(2)(ii).

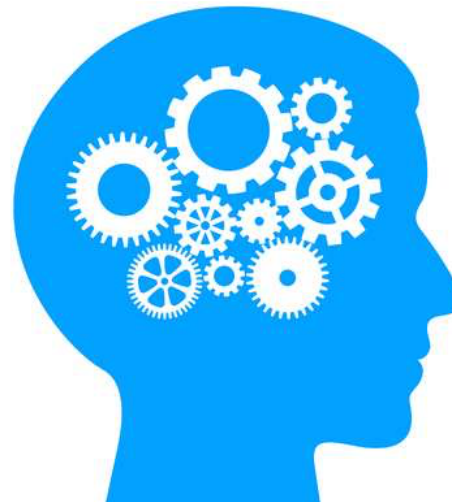
Research
Shows High-
Quality Legal
Representation
Makes a
Difference

- Prevents the need for removal
- Expedites timelines to permanency
- Promotes engagement in case planning, services, and court hearings
- Increases rates of kinship placement
- Yields cost savings for government agencies

Growing Body of Data & Research



Aligns with Values



**Common
Sense**

Title IV-E

Today...

Question 30.



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 foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?

Answer

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 for 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.

Source/Date

1/7/2019

Legal and Related References

45 CFR 1356.60(c), section 474(a)(3)

Additional Updates

- Tribal Representation is included (Q/A 8.1B #31)
- Costs of multidisciplinary representation are included, including paralegals, peer partners, social workers and investigators (Q/A 8.1B #32)
- Office support staff and overhead are included (Q/A 8.1B #32)
- June 2020 White House Executive Order reiterates commitment to high-quality legal representation/ Title IV-E opportunity

Title IV-E Financing Math 101

Quarterly Cost of Children &
Parents Legal Representation

X

50% Sample State Title IV-E
Penetration Rate

X

50% Title IV-E admin rate
reimbursement

Sample:

\$1000 state dollars

X.50 X.5 =

\$250 federal dollars

75%
match for
training
costs

How Might Title IV-E Funding Elevate the Quality of Legal Representation?



Hiring to ensure
reasonable
caseloads



Elevating
salaries to
attract and
retain top talent



Promoting
multi-
disciplinary
models of
practice

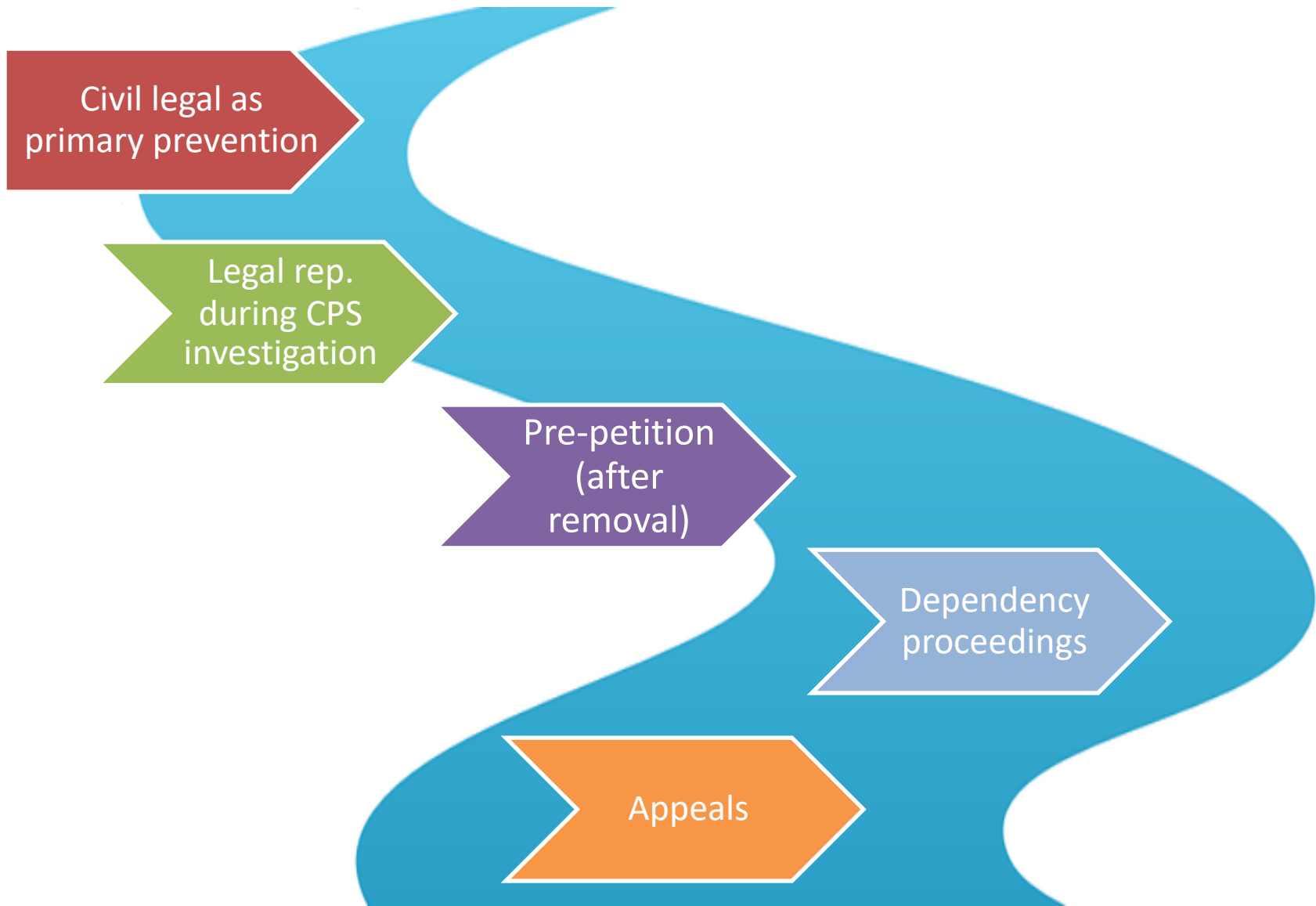


Building in
assurances of
quality, e.g.
certification
and standards
of practice

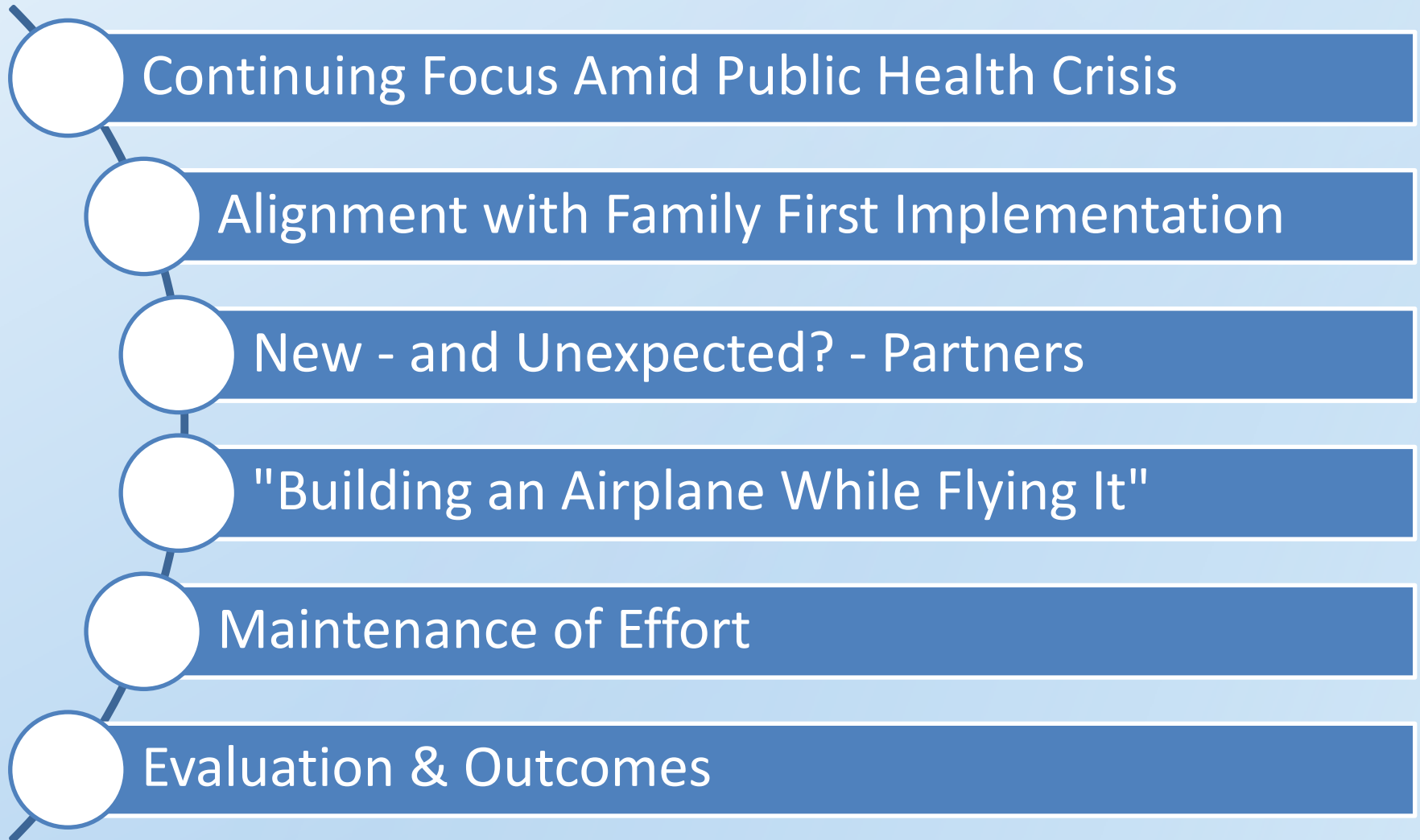


Expanding
representation
to all stages of
the process

Legal Advocacy at All Stages



Themes & Challenges





UPDATES AND TECHNICAL GUIDANCE

David Kelly

*Special Assistant to the Associate
Commissioner*

*U.S. Department of Health & Human
Services, Children's Bureau*

July 2020 Technical Guidance

U.S. Department of Health &
Human Services, Children's Bureau
Technical Bulletin (July 2020)

https://www.acf.hhs.gov/sites/default/files/cb/technical_bulletin_faq_legal_representation.pdf



Technical Bulletin Frequently Asked Questions: Independent Legal Representation

July 20, 2020

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1. BACKGROUND

In 2017, the Administration for Children and Families (ACF) Children's Bureau (CB) issued an Information Memorandum (IM) identifying high quality legal representation for parents, children and the child welfare agency as critical to a well-functioning child welfare system ([ACYF-CB-IM-17-02](#)). The rationale includes research showing that early appointment of counsel in child welfare proceedings can improve case planning, expedite permanency and lead to cost savings to state/tribal government.¹

CB issued revised and new policies that allow title IV-E agencies to claim Federal financial participation (FFP) for administrative costs of independent legal representation provided by an

¹ ACYF-CB-IM-17-02 highlights associations of legal representation with enhanced parent engagement and identifies best practices and exemplary models of legal representation, including multi-disciplinary representation, which pairs attorneys with independent social workers or peer parent partners, as especially promising. An important [study](#) conducted in New York City in 2019 provides especially compelling evidence of the effectiveness of the multi-disciplinary approach. A companion, [qualitative study](#) released in 2020 lends further support to the model.



INSIGHTS FROM THE FIELD



Title IV-E funding for Legal Representation in
Clark County, presented by
Barbara Buckley

Children's Attorneys Project

www.lacsn.org

<https://www.lacsnprobono.org/resources-and-training/childrens-attorneys-project/>

- CAP started twenty years ago when there was no independent representation for children.
- Today, we represent 6,000 children a year and 3,600 at any given point in time with 26 attorneys and 350 pro bono attorneys (72% of the state).
- Our office provides high-quality representation to children and won the inaugural “Best Children’s Law Office Award from the National Association of Counsel for Children.” But we can always do better!
- Excited at this new opportunity.
- Title IV-E agency, State of Nevada Department of Family Services (DCFS) and our office collaborated on this new opportunity
- Rolling application - Our State’s application:
<http://dcfs.nv.gov/uploadedFiles/dcfsvgov/content/Programs/GMU/Title%20IV-E%20Reimbursement%20Program%20for%20Legal%20Services%20Application%204.9.20.pdf>

Priorities for us: Improving outcomes and safety while in care.

- Clearing children on waitlist
- Reducing caseloads
- Engaging in pre-petition advocacy to prevent children from entering foster care (perhaps through brand new minor guardianship project?)
- Progress: two attorneys hired; waitlist reduced by 70 children.

Washington State
Office of Public Defense

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MAKING THE LEGAL SYSTEM WORK FOR CHILDREN AND PARENTS

[LEARN ABOUT HIGH-QUALITY REPRESENTATION](#)

The Family Justice Initiative is a national collaborative of children's attorneys, parents' attorneys, educators, researchers, and national policy advocates who share a common goal: to increase access to high-quality legal representation for children and parents in child welfare cases. It's led by the ABA Center on Children and the Law, the Children's Law Center of California, and the Washington State Office of Public Defense.

<https://familyjusticeinitiative.org/>

FEDERAL FUNDING

In a recent policy change, the United States Department of Health and Human Services, Children's Bureau, has interpreted administrative costs for foster care to include costs for children's and parents' attorneys. (Child Welfare Policy Manual, Section 8.1B, Question 30). For the first time, jurisdictions can seek federal reimbursement for the cost of legal representation for eligible children *and* their parents.

The resources listed below provide information about claiming federal Title IV-E Funds of the Social Security Act to pay for legal representation for children and parents. For additional information, including sample memorandums of understanding and IV-E claim forms for attorneys, please contact Mimi.Laver@americanbar.org or Elizabeth.Thornton.FJI@outlook.com

- Frequently Asked Questions
- FAQ regarding the relationship between Family First IV-E funds and Attorney IV-E funds
- Technical Bulletin – Frequently Asked Questions: Independent Legal Representation
- Overview Article – *Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview*
- Article – New Federal Funding Rule Aims to Boost Effectiveness of Parents' and Children's Counsel
- U.S. Administration for Children and Families – High Quality Legal Representation for All Parties in Child Welfare Proceedings
- Webinar Recording – “Federal IV-E Reimbursement for High-Quality Legal Representation for Children and Parents”
- U.S. Department of Health and Human Services, Administration for Children and Families Information Memorandum
- Maryland memorandum of Agreement Re: Title IV-E Funds for Parent Representation
- Montana IV-E Reimbursement Contract for Legal Representation for Parents and Children
- New Mexico IV-E Agreement
- Washington Interagency Agreement re: Title IV-E for Child Representation
- Washington Interagency Agreement re: Title IV-E for Parent Representation
- Wyoming MOU
- MOU Colorado Judicial Branch

<https://familyjusticeinitiative.org/iv-e-funding/>



OTHER FUNDING SOURCES

Karen Ann Lash

*Director, Practitioner-in-Residence
The Justice in Government Project,
American University*

A few other state-administered federal funds that can support at-risk families' civil legal needs:

- 1. Victims of Crime Act Victim Assistance Formula Grant (VOCA)**
U.S. Department of Justice (DOJ)
- 2. Temporary Assistance for Needy Families (TANF)**
U.S. Department of Health & Human Services (HHS)
- 3. CARES Act Coronavirus Relief Fund (CRF)**
U.S. Department of the Treasury



Grants Matrix: State-Administered Federal Funds that can Support Legal Aid

The Justice in Government Project (JGP) searches for opportunities to connect good government with access to justice. This includes identifying state and local government policies, programs, and priorities where evidence shows including legal services alongside other supportive services can improve outcomes, effectiveness, and cost efficiencies. States receive a significant influx of federal grants – [about one-third of total state government funding](#) – to implement many public policies and programs including those to enable access to health care, income security, education, employment, social services, and housing, and improve family stability and public safety.

Many opportunities to financially support civil legal aid flow from states' powers to administer some of those federal funding sources. Avoiding here the technical differences among the [different grant mechanisms](#), this matrix focuses on those [block, formula, and open-end reimbursement grants](#) (AKA pass-through funds) where the federally-established amounts and spending parameters give states flexibility to tailor spending to local priorities and allow state spending on civil legal aid – whether to support self-represented litigants, brief counsel and advice, or limited and/or full representation. Each of the federal funding sources in the matrix have their own authorizing statute, regulations, formulas, sub-regulatory guidance and degrees of flexibility.

The matrix shows the possibilities for partnering with state and local governments to address the need for civil legal help that advances government priorities involving low-income and other underserved populations. It provides an overview of those state-administered federal funds that can support legal aid and examples of how states have used these funds to advance their goals with legal aid. It also gives helpful tips, like how to find your state's administrator, how much funding is available, and where to find state-specific plans and reports. For an abbreviated overview of this resource, please see JGP's [Grants Matrix At-a-Glance](#).

PANDEMIC-RELATED FUNDING INFORMATION: The Helpful tips column includes tips in orange font about CARES Act and other COVID-19-related law or agency guidance relevant to the funding source. Given the pandemic-related imperative for legal aid and partners to expand technology tools and remote service delivery, the Helpful tips column also highlights in green font the potential to use funds for technology.

This matrix features:

- AmeriCorps [State and National](#), [VISTA](#), and [Senior Corps](#)
- [Community Development Block Grant \(CDBG\)](#)
- [Community Services Block Grant \(CSBG\)](#)
- [Coronavirus Relief Fund](#)
- [Emergency Solutions Grants \(ESG\) program](#)
- [Family Violence Prevention and Services Formula Grants \(FVPSA\)](#)
- [Housing Opportunities for Persons With AIDS \(HOPWA\) program](#)
- [Older Americans Act \(OAA\), Title III-B](#)
- [Ryan White HIV/AIDS Program](#)
- [Social Services Block Grant \(SSBG\)](#)
- [State Opioid Response grants \(SOR\)](#)
- [STOP \(Services, Training, Officers, and Prosecutors\) Violence Against Women Formula Grant](#)
- [Substance Abuse Prevention and Treatment Block Grant \(SABG\) and the Community Mental Health Services Block Grant \(MHBG\)](#)
- [Temporary Assistance for Needy Families \(TANF\)](#)
- [Title IV-D – Child Support and Establishment of Paternity](#)
- [Title IV-E – Federal Payments for Foster Care and Adoption Assistance](#)
- [Title IV-E – Support and Prevention Services](#)
- [Victims of Crime Act \(VOCA\) Victim Assistance Formula Grants](#)
- [Workforce Innovation and Opportunity Act \(WIOA\) State Formula Funding](#)

- Grants Matrix: <https://www.american.edu/spa/jpo/toolkit/module-2.cfm>
- VOCA & Legal Aid FAQs: <https://www.american.edu/spa/jpo/toolkit/grant-faqs.cfm>
- TANF & Legal Aid FAQs: <https://www.american.edu/spa/jpo/toolkit/grant-faqs.cfm>
- MIE Journal article, *Civil Legal Aid Funding in the Time of COVID-19*:
https://www.american.edu/spa/jpo/toolkit/upload/mie_summer2020_funding-in-the-time-of-covid-19.pdf

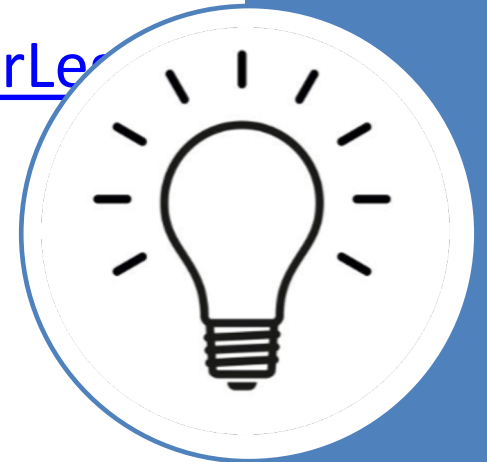
Learn More

NACC's Title IV-E Policy Update Page:

<https://www.naccchildlaw.org/page/TitleIVforLegalRepresentation>

Family Justice Initiative:

<https://familyjusticeinitiative.org>



Q & A



"Sir, I have a question that's lunch-related."

THANK YOU!

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