

## **Title IV-E Legal Representation Cost Allocation Plan (CAP) Instruction**

The purpose of the OCFS-5606 Cost Allocation Plan (CAP) is to offer entities guidance and choices with respect to how to identify, measure and cost allocate expenditures to be reported for title IV-E claiming purposes. Using the CAP template will assist in identifying allowable costs for child welfare cases and the population of children served by an attorney.

The OCFS-5606 form must be submitted to the New York State Office of Children & Family Services (OCFS) for review and approval prior to claiming. Appendix A contains information on allowable costs and acceptable CAP methodologies by the Office of Children & Family Services (OCFS) and the federal Administration for Children & Families (ACF).

Below are instructions for filling out the OCFS-5606 form.

First, fill out the title block with the entity name, description of business, date, signature and include name and title of the person signing the OCFS-5606 form.

- **Entity Name**: The entity that has an approved Memorandum of Understanding (MOU) with OCFS. This will be either a New York State County, NYS Indigent Legal Services (ILS), NYS Unified Court System (UCS)/Office of Court Administration (OCA) or NYC Mayor's Office of Criminal Justice (MOCJ).
- **Description of Entities Business**: The role of the agency/entity/organization in legal representation.
  - If the entity is a county, the description should be something to the effect of: "Provides mandated legal representation pursuant to NYS County Law Article 18-B".
- **Signature**: Signature of the person submitting the OCFS-5606 form. This can be the fiscal officer or any other representative that the entity designates to affirm what is being provided is accurate and true.
- **Date**: The date the OCFS-5606 form is completed.
- **Name**: Print the name of the person signing the OCFS-5606 form.
- **Title**: The title of the person signing the OCFS-5606 form.

Next, answer the questions:

1. This question is meant to ascertain how all legal representation costs are paid for in your entity. Select all the boxes that apply: Legal representation costs should include all the costs that your entity pays for, which could include criminal and child welfare representation costs. The purpose of this section is to provide what type of costs are currently paid for, as well as how those

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costs are paid for. Please provide a narrative of how costs for legal representation are identified.

- Contracts: Does another entity /organization/ agency represent children or parents in legal representation cases for you? An example would be the Legal Aid Society as a contracted legal representation provider and the contract would be mentioned as the document where the costs are identified.
- Per Diem invoices: The entity should select this option when child welfare representation is delivered through an Assigned Counsel Plan. Vouchers submitted to Assigned Counsel Plans would describe how costs are identified.
- Staff Attorneys: Attorney staff that work directly for the entity completing the form, e.g., public defense attorneys. Payroll showing the salaries of those providing representation would describe how costs are identified.
- Non-Attorney Staff (allowable staff): Non-attorney staff that work directly for the entity completing the form, e.g., paralegals, investigators, social workers, or other staff that support an attorney in providing independent child welfare legal representation. Payroll showing the salaries of those providing representation would describe how costs are identified.
- Other: If legal representation costs are paid for in a manner that does not fall into the categories listed above, please provide how those costs are identified.

Note: More than one box can be selected, but for each box checked a description of how legal representation costs are documented must be submitted. A separate document can be attached if needed.

Please describe how payments for all legal representation costs are documented.

- This is to identify how the legal costs are paid for and documented. This will help better understand what type of documentation will be provided to support claims. For example, if payments are processed through the claiming entities financial system, then the entity would provide a payment detail report to support the claim.
2. Please provide a list of titles that are title IV-E allowable, that will be claimed for. Allowable titles include attorneys and non-attorney staff. Please see the examples listed below. The listed examples are not all-inclusive.

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Examples:

- Attorney staff: Associate Attorney, Senior Attorney, Public Defenders, Assistant Public Defender, Senior Public Defender, Conflict Defender, Appellate Attorney
- Non-Attorney staff: Paralegal, Social Workers, Investigator

### 3. Are indirect costs part of all legal representation costs?

Indirect costs are unallowable title IV-E Legal Representation costs. If these indirect costs are part of your legal representation costs, they must be identified and pulled out of the costs that will be submitted for title IV-E reimbursement. Examples of indirect costs include rent, utilities, and administrative costs. Costs of these type are unallowable under the title IV-E legal representation program.

The only costs that are reimbursable for legal representation are expert witnesses, attorney salaries, and the salaries of paralegals, investigators, peer partners or social workers. Salary-related (fringe) costs are eligible to the extent that they are necessary to support an attorney in providing independent child welfare representation to prepare for and participate in all stages of child welfare legal proceedings for title IV-E foster care candidates, youth in foster care and their parents.

### 4. The entity must select an acceptable cost allocation methodology that accurately breaks out the allowable and unallowable title IV-E legal representation expenditures. Appendix A is attached to the form as a reference and includes examples of cost allocation methodologies accepted by OCFS and ACF for the purposes of reimbursement/claiming under title IV-E.

- Please check the box to confirm understanding and attach a narrative of the methodology applied and how the methodology will be applied against the cost.

### 5. For reporting purposes, ACF requires that title IV-E legal representation claims be split between pre-placement (not placed in foster care) and in-placement (placed in foster care) costs.

- Example: An attorney represents a parent of five children, and two out of the five children are not in foster care. The claiming entity must submit its allowable costs split between pre-placement and in-placement. Each entity needs to properly allocate the cost using the methodology selected in Question 4.

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Please check the box confirming your understanding. Attach a narrative of how expenditures and case counts for pre-placement and in-placement will be determined. Federal reporting instructions require the monthly number of children on whose behalf title IV-E Foster Care in-placement independent legal representation – child or parent administrative costs (all placement settings) were incurred and the monthly number of children on whose behalf title IV-E candidate pre-placement independent legal representation – child or parent administrative costs were incurred to be reported.

Once completed submit the form for OCFS approval. OCFS will complete the “for OCFS use section” and inform the entity if the CAP, (OCFS-5606) was approved or, if rejected, the reasons why and what needs to be corrected for it to be approved. If there are any questions, please email the legal representation mailbox: [titleivelegalrep@ocfs.ny.gov](mailto:titleivelegalrep@ocfs.ny.gov)