

FEDERAL AND STATE REASONABLE AND ACTIVE EFFORTS REQUIREMENTS

				INDIAN CHILD			
REASONABLE EFFORTS	FEDERAL LAW	CHILDREN'S CODE & RULES	TIMING OF FINDING	ACTIVE EFFORTS	FEDERAL LAW	CHILDREN'S CODE & RULES	TIMING OF FINDING
<i>Preventing Removal</i>	When a child is taken into the custody of the state, a court must make findings that "continuation in the home would be contrary to the child's welfare" and that the child welfare agency made "reasonable efforts" to prevent the need for placement of the child in foster care. 42 U.S.C. §671(a)	"Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety." NMSA §32A-4-18(E) (regarding custody hearings)	In an ex parte custody order and at the custody hearing **The "contrary to the welfare" finding must be made in the court's first order; the finding re reasonable efforts to prevent removal must be made within 60 days of the child's removal. Failure to make timely findings may result in loss of federal foster care payments for that child for the duration of the child's time in foster care. 45 C.F.R. §1356.21 (b)(1) & (c).	<i>Preventing Removal</i>	In order to have foster care placement, state must show that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and these efforts were unsuccessful. 25 U.S.C. § 1912(d)		In New Mexico at adjudication. <i>See, Marlene C. 2011-NMSC-005.</i>
		Court must determine "whether reasonable efforts were used by the	Disposition				

		department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were used to attempt reunification of the child with the natural parent.” NMSA § 32A-4-22(A)(9)					
<i>Reunifying Families</i>	States must make reasonable efforts to reunify families. 42 U.S.C. §671(a)	At judicial reviews CYFD “shall show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code.” NMSA 32A-4-25(D).	At all judicial review hearings. If the plan is not reunification, the CYFD still must make reasonable efforts to implement the court-ordered permanency plan (e.g. adoption, permanent guardianship).	<i>Reunifying Families</i>	State must show that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and these efforts were unsuccessful 25 U.S.C. § 1912(d)		At adjudication and all judicial review hearings and termination of parental rights hearings.
		The Court must determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child. Id.	At all judicial reviews				

		One ground for termination of parental rights is that “the child has been a neglected or abused child ... and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child.” NMSA 32A-4-18 (B)(2).	Termination of parental rights				
<i>Timely Permanency</i>	States must make reasonable efforts to achieve timely permanency for children and to reunify families. 42 U.S.C. §671(a)	The Court must determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child. <u>Id.</u>	At all judicial reviews; this finding must be made at least once every 12 months the child is in care.				
<i>Whether ICWA Applies (NM Specific)</i>		CYFD must make reasonable efforts to determine whether a child in state custody is an Indian child for the purposes of ICWA. NMSA §32A-4-6(C).	At all stages of the case	<i>Whether ICWA Applies</i>			

<p><i>Relative Identification and Placement (NM Specific)</i></p>	<p>This is similar to the federal requirement that “within 30 days after the removal of a child . . . the state shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child” when a child is taken into state custody. 42 U.S.C. §671(a).</p>	<p>CYFD must make reasonable efforts to identify and locate all grandparents and other relatives and to conduct home studies on any appropriate relative expressing an interest in providing permanency for the child. NMSA §32A-4-25.1(D).</p>	<p>Although the New Mexico language is in the statutory section on permanency hearings, the Court should inquire about relatives at all stages of the case.</p>	<p><i>Relative Placement (ICWA Placement Preferences)</i></p>	<p>In any foster care or preadoptive placement of an Indian child, preference shall be given, in the absence of good cause to the contrary, first to a placement with a member of the Indian child's extended family. 25 U.S.C. §1915(b).</p>	<p>The ICWA placement preferences are restated at NMSA §32A-4-9. NMSA 32A-4-22(A)(11) further states that if the child is an Indian child, the court must determine at disposition and judicial reviews “whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's treatment plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for</p>	<p>The Court should review placement at all stages of the case to ensure the ICWA preferences are followed. The state must show good cause not to follow the placement preferences. This is different from reasonable efforts.</p>
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Sibling Placement	Child welfare agency has made reasonable efforts to place siblings in custody together unless doing so would be contrary to the safety and well-being of the children. 42 U.S.C. §671(a)	Court must determine whether reasonable efforts were made by the department to place siblings in custody together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings. NMSA. NMSA §32A-4-22(A)(10).	At all stages of the case				
Discharge		The Court shall determine whether the department has made reasonable efforts to provide the child with information concerning the child's family history, the whereabouts of any sibling if appropriate and education and health records; to provide child with the child's social	At discharge hearings				

		security card, birth certificate, state-issued identification card, death certificate of a parent and proof of citizenship or residence; to provide assistance in obtaining Medicaid to the child, unless the child is ineligible for Medicaid; and to provide a referral for a guardianship or limited guardianship if the child is incapacitated.					
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