

FEDERAL AND STATE REASONABLE AND ACTIVE EFFORTS REQUIREMENTS							
REASONABLE EFFORTS	FEDERAL LAW	CHILDREN'S CODE & RULES	TIMING OF FINDING	INDIAN CHILD			
				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 or eliminate the need to remove the child from the child’s home. 42 U.S.C. §§ 671(15) & 672(2)(A)(ii); 45 CFR § 1356.21.	<p>“Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child’s home, with the paramount concern being the child’s health and safety.” NMSA §32A-4-7(D) (regarding release or delivery from custody).</p> <p>“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).</p>	<p>In an ex parte custody order and at the custody hearing.</p> <p><i>Note:</i> The “contrary to the welfare” finding must be made in the court’s first order; the finding regarding 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.</p>	<i>Preventing Removal</i>	<p>“In order to have a foster care placement, a state must show that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” 25 U.S.C. §1912(d).</p> <p>“Active efforts must be documented in detail in the record.” §23.120(b), BIA Regulations, 81 Fed. Reg. 114 (June 14, 2016).</p>		<p>In New Mexico, this finding is made at adjudication. <i>See State ex rel. CYFD v. Marlene C.</i> 2011-NMSC-005.</p> <p><i>See also State ex rel. CYFD v. Yodell B.,</i> 2016-NMCA-029 (decided in 2015) (at TPR involving an Indian child, the active efforts required by §1912(d) must be proved by clear and convincing evidence).</p>

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			45 C.F.R. §1356.21 (b)(1) & (c).				
		Court must determine “whether reasonable efforts were used by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were made to attempt reunification of the child with the natural parent.” NMSA §32A-4-22(A)(11).	Disposition				
Reunifying Families	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(E).	At all judicial review hearings. If the plan is not reunification, CYFD still must make reasonable efforts to implement the court-ordered permanency plan (e.g. adoption, permanent guardianship).	Reunifying Families	“Any party must show that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved		At adjudication, all judicial review hearings, and termination of parental rights hearings.

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					<p>unsuccessful.” 25 U.S.C. § 1912(d).</p> <p>“Active efforts must be documented in detail in the record.” §23.120(b), BIA Regulations, 81 Fed. Reg. 114 (June 14, 2016).</p>		
		<p>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</p>	<p>Termination of parental rights</p>				

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		§32A-4-28(B)(2).					
		The court may establish a permanent guardianship for an abused or neglected child "when the prospective guardianship is in the child's best interest and when [CYFD] has made reasonable efforts to reunite the parent and child and further efforts by [CYFD] would be unproductive" NMSA §32A-4-31 (C)(2).	Permanent Guardianship				
<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 shall 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." NMSA §32A-4-25 (E).	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.	At all stages of the case.	<i>Whether ICWA Applies</i>			

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		NMSA §32A-4-6(D).					
<i>Relative Identification and Placement</i>	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>"Within thirty days after a child is taken into custody by law enforcement, or when the department files a petition seeking legal custody of the child, whichever occurs first, the department shall exercise due diligence and make reasonable efforts to identify and provide notice to all grandparents; all parents of a sibling of the child, when the parent has legal custody of the sibling; and other adult relatives of the child, including adult relatives suggested by the parents, unless such notice would be contrary to the best interests of the child due to family or domestic violence." NMSA §32A-4-17.1 (2016).</p> <p>"The department shall make reasonable efforts</p>	The Court should inquire about relatives at all stages of the case.	<i>Relative Placement (ICWA Placement Preferences)</i>	In any foster care or pre-adoptive 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).	The ICWA placement preferences are restated at NMSA §32A-4-9. NMSA 32A-4-22(A)(13) (as amended in 2016) 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 [ICWA] or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's case plan provides for maintaining the	<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.</p> <p>The inquiry regarding good cause is a different inquiry than either the reasonable or active efforts inquiries. <i>Cf. State ex rel. CYFD v. Yodell B., in re Tyrell B.</i>, 2016-NMCA-029 (decided in 2015); <i>State ex</i></p>

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		<p>to conduct home studies on appropriate relatives who express an interest in providing placement for the child." NMSA §32A-4-18 (E) (as amended in 2016).</p> <p>At disposition, "the court shall make and include in the dispositional judgment its findings on . . . whether reasonable efforts have been made by the department to identify, locate and give notice to all grandparents and other relatives and to conduct home studies on any appropriate relative who expresses an interest in providing care for the child. If the court finds that reasonable efforts in these areas have not been made, the court may make supplemental orders as necessary and may reconsider the</p>				<p>Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported."</p>	<p><i>rel., CYFD v. Casey J.</i>, 2015-NMCA-088, ¶¶ 14-15.</p>

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		matter at the initial judicial review and subsequent periodic review hearings." NMSA §32A-4-22(A)(6) (new in 2016).					
<i>Sibling Placement</i>	The State shall make 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).	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 §32A-4-22(A)(12).	At all stages of the case.				
<i>Discharge</i>		The Court shall determine whether the department has made reasonable efforts to	At discharge hearings.				

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		<p>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 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. NMSA §32A-4-25.3(B).</p>					