

not, operating in substantial conformity.

[65 FR 4077, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.34 Criteria for determining substantial conformity.

(a) *Criteria to be satisfied.* ACF will determine a State's substantial conformity with title IV-B and title IV-E State plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for statewide data indicators associated with specific outcomes for children and families;

(2) Its ability to meet criteria related to outcomes for children and families; and

(3) Its ability to meet criteria related to the State agency's capacity to deliver services leading to improved outcomes.

(b) *Criteria related to outcomes.*

(1) A State's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) *In the area of child safety:*

(A) Children are, first and foremost, protected from abuse and neglect; and,

(B) Children are safely maintained in their own homes whenever possible and appropriate;

(ii) *In the area of permanency for children:*

(A) Children have permanency and stability in their living situations; and

(B) The continuity of family relationships and connections is preserved for children; and

(iii) *In the area of child and family well-being:*

(A) Families have enhanced capacity to provide for their children's needs;

(B) Children receive appropriate services to meet their educational needs; and

(C) Children receive adequate services to meet their physical and mental health needs.

(2) A State's level of achievement with regard to each outcome reflects the extent to which a State has:

(i) Met the national standard(s) for the statewide data indicator(s) associated with that outcome, if applicable; and,

(ii) Implemented the following CFSP requirements or assurances:

(A) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;

(B) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

(C) The requirements in section 422(b)(9) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances by the State as required by section 422(b)(10)(C)(i) and (ii) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(11) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(12) of the Act regarding a State's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

(G) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement.

(3) A State will be determined to be in substantial conformity if its performance on:

(i) Each statewide data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as "substantially achieved" in 95 percent of the cases examined during the on-site review (90 percent of the cases for a State's initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome

has been achieved for each case reviewed.

(4) The Secretary may, using AFCARS and NCANDS, develop statewide data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide data indicator(s) when appropriate. To the extent practical and feasible, the statewide data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105-89).

(5) The initial national standards for the statewide data indicators described in paragraph (b)(4) of this section will be based on the 75th percentile of all State performance for that indicator, as reported in AFCARS or NCANDS. The Secretary may adjust these national standards if appropriate. The initial national standard will be set using the following data sources:

(i) The 1997 and 1998 submissions to NCANDS (or the most recent and complete 2 years available), for those statewide data indicators associated with the safety outcomes; and,

(ii) The 1998b, 1999c, and 2000a submissions to AFCARS (or the most recent and complete report periods available), for those statewide data indicators associated with the permanency outcomes.

(c) *Criteria related to State agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the State agency must also satisfy criteria related to the delivery of services. Based on information from the statewide assessment and onsite review, the State must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the State plan requirements associated with the systemic factor must be in place, and no more than one of the state plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this

section, is rated on the basis of only one State plan requirement. To be considered in substantial conformity, the State plan requirement associated with statewide information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide information system:* The State is operating a statewide information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(10)(B)(i) of the Act);

(2) *Case review system:* The State has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parent's home where such placement is in the child's best interests; for visits with a child placed out of State at least every 12 months by a caseworker of the agency or of the agency in the State where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(A) of the Act);

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the State has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the State agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the

continuation of foster care) (sections 422(b)(10)(B)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(10)(B)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(10)(B)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

(3) *Quality assurance system:* The State has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State where services included in the CFSP are provided;

(ii) Is able to evaluate the adequacy and quality of services provided under the CFSP;

(iii) Is able to identify the strengths and needs of the service delivery system it evaluates;

(iv) Provides reports to agency administrators on the quality of services evaluated and needs for improvement; and

(v) Evaluates measures implemented to address identified problems.

(4) *Staff training:* The State is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the State's CFSP;

(ii) Addresses services provided under both subparts of title IV-B and the training plan under title IV-E of the Act;

(iii) Provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed and that includes the basic skills and knowledge required for their positions;

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the State's CFSP; and,

(v) Provides training for current or prospective foster parents, adoptive parents, and the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under title IV-E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the Statewide assessment and on-site review determines that the State has in place an array of services (45 CFR 1357.15(n) and section 422(b)(10)(B)(iii) and (iv) of the Act) that includes, at a minimum:

(i) Services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;

(ii) Services that address the needs of the family, as well as the individual child, in order to create a safe home environment;

(iii) Services designed to enable children at risk of foster care placement to remain with their families when their safety and well-being can be reasonably assured;

(iv) Services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;

(v) Services that are accessible to families and children in all political subdivisions covered in the State's CFSP; and,

(vi) Services that can be individualized to meet the unique needs of children and families served by the agency.

(6) *Agency responsiveness to the community:*

(i) The State, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State and county agencies responsible for implementing the CFSP and other major stakeholders in

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the services delivery system including, at a minimum, tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(l)(4));

(ii) The agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.16(a));

(iii) There is evidence that the agency's goals and objectives included in the CFSP reflect consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) There is evidence that the State's services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) *Foster and adoptive parent licensing, recruitment and retention:*

(i) The State has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State to every licensed or approved foster family home or child care institution receiving funds under title IV-E or IV-B of the Act (section 471(a)(10) of the Act);

(iii) The State complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed (section 422(b)(9) of the Act); and,

(v) The State has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent

placements for waiting children (section 422(b)(12) of the Act).

(d) *Availability of review instruments.* ACF will make available to the States copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

[65 FR 4078, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001]

§ 1355.35 Program improvement plans.

(a) *Mandatory program improvement plan.*

(1) States found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

(i) Be developed jointly by State and Federal staff in consultation with the review team;

(ii) Identify the areas in which the State's program is not in substantial conformity;

(iii) Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

(iv) Set forth the amount of progress the statewide data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the State's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

(vi) Identify how the action steps in the plan build on and make progress over prior program improvement plans;

(vii) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(2) In the event that ACF and the State cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a