



MEMORANDUM

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Re: Assessment of New York's Interstate Placement of Children Process -
Report

DATE: June 9, 2008

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) established a new assessment requirement for courts under state Court Improvement Projects. States that received the basic Court Improvement Grant through the Children's Bureau of the U.S. Department of Health and Human Services were required to assess their role, responsibilities, and effectiveness in the interstate placement of children and to implement improvements to develop the best strategy to use to expedite these placements.

P.L. 109-239 specifies that states assess the effectiveness of their laws and strategies for courts sharing information with out-of-state courts, developing methods to obtain information and testimony from agencies and parties in other states without requiring interstate travel by the agencies and parties, and permitting parents, children, other necessary parties, and attorneys to participate in cases that involve interstate placement without requiring those parties to travel interstate.

Based on this requirement, the State of New York Child Welfare Court Improvement Project worked with the National Council of Juvenile and Family Court Judges (NCJFCJ) through its Permanency Planning for Children Department (PPCD) to assess New York's

implementation of the Interstate Compact on the Placement of Children (ICPC). The assessment was designed to conform to the requirements of the Interstate Placement Act and P.L. 109-239; to examine and compare current state and federal law to determine if there are legal barriers to effective judicial decision making; to assess current court practices in cases involving interstate child placement; to identify practical barriers to more effectively handle such matters; and to recommend changes or improvements to remove those barriers. The assessment included reviewing and describing current New York laws and policies; developing an overview of the ICPC process from selected ICPC files¹; conducting interviews of judicial officers and stakeholders; eliciting feedback through a series of focus groups; developing and implementing an online survey of child welfare stakeholders; and developing a comprehensive report providing conclusions related to New York's implementation of the ICPC process.

This assessment report includes the following:

- ❖ Summary of law and policy;
- ❖ Description of current agency and judicial practice;
- ❖ Summary of the interviews and survey.

The attached Appendices include the following:

- ❖ Appendix A: New York ICPC Legal Analysis
- ❖ Appendix B: Case File Review Data Report
- ❖ Appendix C: Case File Review Narrative Report
- ❖ Appendix D: Stakeholder Survey Report
- ❖ Appendix E: New York State Stakeholder Survey Instrument
- ❖ Appendix F: Focus Group Interview Report
- ❖ Appendix G: Stakeholder Interview Report

SUMMARY OF LAW AND POLICY

Review of New York's ICPC legal and policy framework (attached as Appendix A) was not intended to be in in-depth examination of statutory nuances and case interpretation, but to highlight core issues that may impede or undermine efforts for the timely interstate placement of children. The current ICPC is codified into the New York CLS at Social Services Law, section 374-a. The subsequent provisions of the Safe and Timely Interstate Placement of Foster Children Act of 2006 were implemented pursuant to regulatory amendments at 18 NYCRR Parts 421 and 443.

Strengths that have been identified as a result of this assessment include a well-informed ICPC Office staff, the comprehensive judicial review of ICPC cases, flexibility for courts to allow properly admitted information from out-of-state witnesses instead of requiring an appearance, frequent reviews, utilizing Court Attorneys and Court Attorney Referees where available and ongoing dissemination of instructive materials through trainings offered by the ICPC Office.

Areas for improvement include standardizing how information can be shared quickly across state lines, incorporating the use of video and teleconferencing to obtain current

¹ See Appendix B for an outline of the case review protocol.

information regarding the case status, specifically in child welfare cases, crafting standardized ICPC court orders, and implementing rules explicitly addressing sharing of evidence and information with other states.

DESCRIPTION OF CURRENT AGENCY AND JUDICIAL PRACTICE

Information related to agency and judicial practice in New York can be found in Appendices B, C, D, E, F and G. In the State of New York, ICPC cases are coordinated through the New York State (NYS) Office of Child and Family Services ICPC office. The process when New York is the **Receiving state** is as follows:

- ❖ The Sending state prepares the ICPC packet and sends it to the New York ICPC Office;
- ❖ The New York ICPC office reviews the packet for completeness and forwards it to the local receiving agency;
- ❖ The local agency in New York conducts a home study, obtains fingerprint clearances, NYS Central Registry abuse and neglect clearances, foster-adoptive care training certification, records of recent foster-adoptive parent physicals, letters of recommendation, and completes a report with preliminary placement recommendation;
- ❖ The report and recommendation is sent to the New York ICPC Office; and
- ❖ The New York ICPC office notifies the Receiving state of the home study results and recommendation.

The process when New York is the **Sending state** is as follows:

- ❖ The local agency office prepares the ICPC packets and sends them to the ICPC office;
- ❖ The ICPC office reviews the packets for completeness and requests local agency corrections, if any are needed;
- ❖ The ICPC office forwards the packet to the Receiving state;
- ❖ The Receiving state engages in a process locally similar to the above New York Receiving state process;
- ❖ The Receiving state notifies the New York ICPC office of its determination; and
- ❖ The New York ICPC office notifies the local agency of the Receiving state determination.

Timeliness findings for the cases reviewed in this assessment may be found in detail in Appendices B and C. Eleven closed cases were randomly selected for study, five were cases with New York as the Sending state, and six were cases with New York as the Receiving state. An apparent strength of the process in New York is the time within which the ICPC office communicates notice of placement determination from a Receiving state to the local sending agency (i.e., approximately two business days). Areas for improvement include the time within which the ICPC office reviews a Sending state packet before it forwards it to a Receiving state (i.e., exceeding the three-day limit), and local agencies exceeding the 60-day home study requirement of the ICPC.

The case file review also revealed that in several cases the ICPC-100B document required to make the placement official was not part of the ICPC case file.² Review of

² According to the "Instructions for Completing the Form ICPC-100B" as revised 8/2001, the form 100B is used to (1) confirm that an approved placement is accordance with the Compact has been made, (2) withdraw a request prior to the

the case notes often noted that the ICPC-100B forms were routinely not filed by placement agencies. The lack of the ICPC-100B form is of particular concern because without it, the ICPC office files remain “open” and a tickler system cannot be developed to follow-up on these “open” files. The ICPC Office has no knowledge of the movement of a child unless this critical document is filed. Please see Appendices B and C for more information.

SUMMARY OF THE RESULTS OF THE INTERVIEWS AND SURVEY

The Stakeholder Online Survey Data Report is attached to this assessment report as Appendix D and the Survey itself is attached as Appendix E. A total of 226 child abuse and neglect stakeholders participated in the survey.

The survey results indicate that the strengths of the interstate placement process in New York include consistent notice to the court when ICPC issues arise in child abuse and neglect cases, generally good oversight of ICPC cases by the court, the inclusion of ICPC status information in permanency hearing reports, judicial inquiry as to status at interim reviews, and scheduling cases where the ICPC process is underway for review every 30 days. Respondents also noted that the ICPC office is knowledgeable and can be of great assistance, although high caseloads prevent staff from being more accessible.

The common reasons for delay identified by the stakeholder survey when New York was the Sending state included a delay in preparation of the ICPC packet by the agency and delay in the home study process in the Receiving state. Another challenge was identified as children being placed out-of-state on a “visit” with no specified time frames as to the end of the “visit,”³ or children being placed via court order without prior approval by the Receiving state. Placements of these types are clear violations of the ICPC.

Delays identified when New York was the Receiving state include delays in receiving information from the Sending state, and delays in processing by the New York ICPC office. Respondents to the online survey identified a written guide to interstate placement as a form of assistance which would be most useful to them to improve the ICPC process. Judicial officers noted that training has been and would be most helpful in improving the ICPC process in New York.

The Focus Group Interview Report is attached to this assessment report as Appendix F. A total of 33 abuse and neglect stakeholders participated in three focus groups, comprised of attorneys, family court judges, court attorney referees, Court Appointed Special Advocates (“CASA”) and agency supervisors. Sources of delay were identified as lack of resources to prepare the ICPC packets; packets not being complete and comprehensive; and their discussions with out-of-state colleagues who voice a negative perception of New York State practice as a Receiving state. Judicial training on the ICPC process was identified as needed to improve the processes, as well as

home study, (3) indicate that an approved resource will not be used, (4) report a change in the placement resource and/or type of care, (5) report a change in address, (6) close an ICPC case.

³ The term “visit” is defined at Regulation No. 9 of the ICPC Regulations. Generally, a child’s stay with an individual who has not assumed legal responsibility for his or her care, for a period of less than 30 days, is considered a visit rather than a placement, unless the extended period coincides with a school vacation period. If a stay exceeds 30 days, has no express termination date, or has no clear duration, the stay is considered to be a placement in violation of the ICPC.

standardization of home studies, creating an administrative appeals body for state-to-state issues with implementing the Compact, and specialized agency personnel for managing ICPC issues.

The Stakeholder Interview Data Report is attached to this assessment report at Appendix F. A total of eight child abuse and neglect stakeholders participated in interviews. The stakeholders identified the following as barriers to timely implementation of the ICPC process: too many layers of paperwork and review, negative perception of New York as having an agenda of “dumping children” on other states; lack of training; and lack of resources. The stakeholders indicated that there was inconsistency in proactive oversight on the part of judges with regard to the ICPC process – some judges did not actively oversee ICPC cases, whereas others would “micromanage” them. More training and better communication were cited as means of improving the process.

RECOMMENDATIONS FOR POSSIBLE REFORMS⁴

Based on the assessment results summarized above, the following recommendations are being made to improve the process surrounding the placement of children outside of New York State and into New York State placements from other states.

Statutory/ Regulatory Reform

1. Empanel a statewide multidisciplinary team to carefully review and evaluate the proposed new Interstate Compact for the Placement of Children and consider the appropriateness of its adoption in New York State for recommendation to the State Legislature and regulatory bodies.
2. Consider enactment of a statutory prohibition on utilizing NYS Family Court Act Article 6 placement to circumvent the ICPC process.

Judicial/Legal Policy

3. As a part of a larger CIP effort to enhance the quality of judicial proceedings and support increased judicial oversight, encourage active inquiry concerning identification of ICPC cases as well as utilizing permanency and review hearings to monitor progress and compliance with statutory timeframes.
4. Work with existing Office of Court Administration Forms Committee to develop an official ICPC Regulation 7 (priority ICPC requests) Court Order.

State/Legal Policy

5. Develop a protocol to allow for direct communication between local agency staff and ICPC office staff (i.e. staff of the day/helpdesk).
6. Develop an automated alert system within the State data collection system for cases falling outside of the statutory timeframes and at other key times in the life of the case (i.e. alert received 20 days after NYS ICPC office communicates placement approval to local agency, if no 100B form has been filed).
7. Encourage local agencies to assign at least one staff member to serve as an ICPC specialist; to be a resource for their agency and available for advanced training and regular process updates.

⁴ The recommendations were developed by the New York State Child Welfare Court Improvement Project Advisory Committee.

8. Discuss the development of statewide policies/funding for contracts to private agencies or individuals to allow for a prioritization of local activities (homestudies, homevisits, reporting) on cases where New York is the Receiving State.

Training

9. Provide training and other communication (Best Practice Bulletin, Judges Meetings, Use of liaison staff to communicate with local Judicial officers) to Family Courts regarding the use of Article 6 custodial placements as a mechanism for avoiding the ICPC process as this process violates the spirit of the ICPC and impacts on the provision of services and assistance to the child and family.
10. Develop a legal curriculum to train Judges, parent's counsel and attorneys for the child on the ICPC to include:
 - Current and proposed ICPC
 - Regulation 1 and 7 cases
 - Anticipated timeframes
 - Strategies to intervene
 - Consequences to placing a child outside of the Compact
11. Prepare a basic curriculum on the ICPC process, train select OCFS Regional Office Staff and Child Welfare Court Improvement Staff on the basics of the ICPC, and make the training available for presentation to groups of multi-disciplinary stakeholders within the counties.
12. Offer training to NYS CASA programs and encourage them to become an added resource in these cases toward achieving timely and safe permanency in their out-of-state placement.
13. Videotape trainings and have them available online on the CWCIP website for future viewing by all stakeholders as a way to combat high staff turnover and the infrequent contact that most child welfare professionals have with an ICPC case.

Resource Development

14. Include information regarding the Judicial role in the expedition of an out-state placement in a CWCIP Best Practice Bulletin and include links to online resources and training.
15. Develop and distribute a 5-6 page "Desk Aid" covering the basics of the ICPC process, Regulation 1 and 7 placements, required documentation and statutorily prescribed timeframes.
16. Develop and distribute a one page checklist for agency staff as a reference in completing the 100A form and in preparing a comprehensive and cohesive ICPC request packet.

State-to-state Collaboration

17. Initiate dialogue with CIP administrators and ICPC Officials in states that frequently receive placement requests for New York State children or frequently ask for placement of their children in New York State to discuss best practices and strategies for improvement in timeliness of placement and consider the formation of memorandums of understanding to outline agreed upon protocols.