

TO BE RESCINDED

5101:2-49-03

Special needs criteria for adoption assistance.

(A) Prior to the final decree of adoption, all of the following criteria must be met in order for a child to be considered to have a child with special needs for Title IV-E adoption assistance (AA).

(1) The child cannot or should not be returned to the home of the child's parents. This determination shall be based on one of the following:

(a) An order from a court of competent jurisdiction terminating the rights of both birth parents;

(b) A petition for termination of parental rights;

(c) A signed JFS 01666 "Permanent Surrender of Child" (rev. 12/2005) by the birth parents executed in accordance with rule 5101:2-49-02 of the Administrative Code;

(d) If a child can be adopted in accordance with the law of a state or tribe without a court order terminating parental rights or a voluntary relinquishment by the parent(s), documentation from the state or tribe that provides a valid reason why the child cannot or should not be returned to the home of his or her parent(s).

(2) Except for the conditions in paragraph (D) of this rule, the custody-holding public children services agency (PCSA) or custody-holding private child placing agency (PCPA) shall document that a reasonable but unsuccessful effort was made to place the child with an appropriate adoptive parent(s) without providing AA or Title XIX medical assistance by performing all of the following activities.

(a) Posting the child as available for adoption on the Ohio adoption photo listing (OAPL) website. Following the birth of a child and prior to a child's first birthday, the child must be posted as available for adoption on the OAPL website for a minimum of three calendar days.

(b) Documenting the names of all families who respond to the posting of the child on the OAPL website and other potential families identified on the JFS 01689 "Documentation of the Placement Decision-Making Process" (rev. 02/2005) pursuant to the requirements of rule 5101:2-48-16 of the Administrative Code.

- (c) Identifying the families to be considered for a match pursuant to rule 5101:2-48-16 of the Administrative Code, informing the families of the child's special needs and inquiring whether they are willing or able to adopt the child without the provision of AA or Title XIX medical assistance.
- (3) The PCSA or PCPA shall document that the child has a specific factor or condition, or a combination of factors or conditions that makes it difficult to place the child with an adoptive parent(s) without the provision of AA and/or medical assistance. The child shall meet at least one of the following specific factors or conditions:
- (a) The child is in a sibling group of three or more or is being adopted as part of a previously adopted biological sibling group of three or more that makes it difficult to place the child for adoption without the provision of AA.
 - (b) The child is a member of a minority racial or ethnic group that makes it difficult to place the child for adoption without the provision of AA.
 - (c) The child is six years of age or older.
 - (d) The child has remained in the permanent custody of a PCSA or PCPA for more than one year without being placed in an approved adoptive home.
 - (e) The child has been in the home of his/her prospective adoptive parent(s) as a foster child for at least twelve consecutive months directly preceding the adoptive placement and would experience severe separation and loss if placed in another setting due to his/her significant emotional ties with the foster parent(s) as determined and documented by a qualified mental health professional.
 - (f) The child has experienced a previous adoption disruption or three or more disrupted substitute care placements while in the custody of a PCSA or PCPA.
 - (g) A qualified professional, assessing conditions within their area of expertise, has diagnosed the child to have one of the following conditions:

- (i) A developmental disability, as defined in rule 5101:2-1-01 of the Administrative Code; or
 - (ii) A developmental delay, as defined in rule 5123:2-1-02 of the Administrative Code; or
 - (iii) Mental illness, as defined in rule 5101:2-1-01 of the Administrative Code; or
 - (iv) Mental retardation, as defined in rule 5101:2-1-01 of the Administrative Code.
- (h) The child or the child's biological family has a social or medical history that establishes a substantial risk, as defined in paragraph (B) of this rule, of acquiring any one of the following conditions, as determined by a qualified professional assessing conditions within their area of expertise, which makes it difficult to place the child for adoption without the provision of AA:
- (i) A developmental disability, as defined in rule 5101:2-1-01 of the Administrative Code; or
 - (ii) A developmental delay, as defined in rule 5123:2-1-02 of the Administrative Code; or
 - (iii) Mental illness, as defined in rule 5101:2-1-01 of the Administrative Code; or
 - (iv) Mental retardation, as defined in rule 5101:2-1-01 of the Administrative Code.
- (B) If all other eligibility criteria are met, and the only special needs factor met is that the child has been determined at substantial risk, with no manifestation of a special needs factor at the time of adoptive placement, a JFS 01453 "Adoption Assistance Agreement" (rev. 10/2006) only with no payment shall be entered into in accordance with rule 5101:2-49-07 of the Administrative Code.
- (1) A "substantial risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist as defined in section 2901.01 of the Revised Code.

- (2) The prospective adoptive parent(s) must provide documentation of the substantial risk to the PCSA at the time of the special needs determination.
- (C) A written statement of the child's developmental disability, developmental delay, mental illness or mental retardation must be supported by an assessment or evaluation from a qualified professional including an opinion as to the origin of the problem, past history, prognosis, and recommendations related to potential treatment needs
- (D) The requirement in paragraph (A)(2) of this rule shall be waived only when one or more of the following conditions exist and it is against the best interest of the child to be placed with an adoptive family without the provision of AA or Title XIX medical assistance:
 - (1) The child has been in the home of his/her prospective adoptive parent(s) as a foster child for at least twelve consecutive months directly preceding the adoptive placement and would experience severe separation and loss if placed in another setting due to his/her significant emotional ties with the foster parent(s) as determined and documented by a qualified mental health professional; or
 - (2) The prospective adoptive parent(s) is a relative; or
 - (3) The child is being adopted by a previously adopted sibling's adoptive parent(s).
- (E) The following requirements apply to the determination of eligibility for special needs for a child who is not in the custody of a children services agency (CSA):
 - (1) When the child is being placed from Ohio into another state, and the child is not in the custody of a PCSA or PCPA the Title IV-E agency in the adoptive parent(s) state of residence shall be responsible for the determination of the child's eligibility for special needs.
 - (2) When the child is being placed from another state into Ohio, and the child is not in the custody of the state agency in the other state, it is the PCSA in the county in which the adoptive parent(s) resides that is responsible for the determination of the child's eligibility for special needs.

Replaces:

This rule is being rescinded and replaced by a new
5101:2-49-03

Effective:

R.C. 119.032 review dates:

11/30/2009

Certification

Date

Promulgated Under:

119.03

Statutory Authority:

5101.141

Rule Amplifies:

5101.11

Prior Effective Dates:

1/1/83, 4/1/86 (Emer), 7/1/86, 7/2/87, 9/1/88, 9/1/92,
5/1/98, 1/1/2007