5101:2-49-03 **Special needs criteria for Title IV-E adoption assistance (AA).**

(A) Prior to the finalization of adoption, the public children services agency (PCSA) shall determine that all of the following special needs criteria have been met and documented in the statewide automated child welfare information system (SACWIS) under the child's characteristics and in the child's adoption assistance (AA) case record in order for the child to be considered a child with special needs.

(1) The child cannot or should not be returned to his or her parent(s) and is in the permanent custody of a PCSA, private child placing agency (PCPA) or a child that meets the requirements of a child with special needs who is the subject of an independent adoption in accordance with rule 5101:2-49-02 of the Administrative Code. This requirement is met when the child is legally available for adoption.

(2) The PCSA has determined that the child has one or more of the following special need factors or conditions making it difficult to place the child with an adoptive parent(s) without the provision of ~~adoption assistance (AA)~~AA or medical assistance:

(a) The child is part of a sibling group being adopted together or is placed in the same adoptive placement of a sibling previously adopted.

(b) The child is a member of a minority, racial or ethnic group making it difficult to place the child for adoption. However, if the child is between the age of newborn and twelve months the child shall~~must~~ be also diagnosed to have one of the conditions outlined in paragraph (A)(2)(g) or (A)(2)(h) of this rule.

(c) The child is six years old or older.

(d) The child has remained in the permanent custody of a PCSA or ~~private child placing agency (PCPA)~~PCPA for more than one year before an adoptive placement.

(e) The child has been in the home of the prospective adoptive parent(s) for at least six consecutive months directly preceding the adoptive placement and the child would experience severe separation and loss if placed in another setting due to significant ties with the ~~propsective~~ prospective adoptive parent(s). The emotional ties shall be assessed and documented by a qualified mental health professional.

(f) The child has experienced a previous adoption disruption or three or more substitute care placements while in the custody of a PCSA or PCPA.

~~(g) The child has been diagnosed by a qualified professional, in the professional's area of expertise who is not responsible for providing casework services to the child. For the purpose of this rule, a "qualified professional" is an audiologist, orthopedist, physician, psychiatrist, psychologist, licensed marriage and family therapist, speech and language pathologist, a licensed independent social worker, licensed professional clinical counselor, a licensed social worker who is under the direct supervision of a licensed independent social worker or a licensed professional counselor who is under the direct supervision of a licensed professional clinical counselor.~~

~~The qualified professional must provide a clear written statement, supported by an assessment or evaluation within the last twelve months. This statement shall include an opinion as to the origin of the problem, past history, prognosis, and recommendations related to potential treatment needs that the child has been diagnosed with one of the following:~~

~~(i) A developmental disability, as defined in rule 5123:2-1-02 of the Administrative Code.~~

~~(ii) A developmental delay, as defined in section 5123.01 of the Revised Code.~~

~~(iii) Mental illness, as defined in section 5122.01 of the Revised Code.~~

~~(iv) A medical condition causing distress, pain, dysfunction, social problems or death as diagnosed by a qualified professional.~~

(g) The child has been diagnosed by a "qualified professional," in the professional's area of expertise who is not responsible for providing casework services to the child.

(i) For the purpose of this rule, a "qualified professional" is an individual that is but not limited to the following: an audiologist, orthopedist, physician, certified nurse practitioner, physician assistant, psychiatrist, psychologist, school psychologist, licensed marriage and family therapist, speech and language pathologist, a licensed independent social worker, licensed professional clinical counselor, a licensed social worker who is under the direct supervision of a licensed independent social worker or a licensed professional counselor who is under the direct supervision of a licensed professional clinical counselor.

(ii) The qualified professional shall provide a clear written statement of the services provided with regards to the child's diagnosis within the last twelve months. This statement shall include an opinion as to the origin of the problem, past history, prognosis, and recommendations related to potential treatment needs and diagnosed with one of the following:

(a) A developmental disability, as defined in 28 C.F,R. 35.108 August 11, 2016 and section 5123.01 of the Revised Code.

(b) An individual who has a physical or mental impairment that substantially limits one or more of the major life activities.

(c) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

(d) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

(e) Physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, attention deficit hyperactivity disorder, human immunodeficiency virus.

(i) For example, applying these principles it should easily be concluded that the types of impairments set forth in paragraphs (A)(2)(g)(ii)(e)(i)(A) through (A)(2)(g)(ii)(e)(i)(K) of this rule will, at a minimum, substantially limit the major life activities indicated. The types of impairments described in this paragraph may substantially limit additional major life activities (including major bodily functions) not explicitly listed in paragraphs (A)(2)(g)(ii)(e)(i)(A) through (A)(2)(g)(ii)(e)(i)(K).

(A) Deafness substantially limits hearing;

(B) Blindness substantially limits seeing;

(C) Intellectual disability substantially limits brain function;

(D) Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limits musculoskeletal function;

(E) Autism substantially limits brain function;

(F) Cancer substantially limits normal cell growth;

(G) Cerebral palsy substantially limits brain function;

(H) Diabetes substantially limits endocrine function;

(I) Epilepsy, muscular dystrophy, and multiple sclerosis each substantially limits neurological function;

(J) Human immunodeficiency virus (HIV) infection substantially limits immune function; and

(K) Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each substantially limits brain function.

(f) A medical condition causing distress, pain, dysfunction, social problems as diagnosed by a qualified professional that results in ongoing medical treatment.

(h) The child or the child's biological family has a social or medical history establishing a substantial risk for developing one of the conditions as described in paragraph (A)(2)(g) of this rule. The substantial risk makes it difficult to place the child for adoption without the provision of AA. A qualified professional shall determine the substantial risk, as defined in paragraph (B) of this rule. A child is not at substantial risk if the child's biological parent(s) social and medical history cannot be determined.

(3) Reasonable, but unsuccessful, efforts to place the child without AA shall be met by one of the following:

(a) Except as described in paragraph (A)(3)(b) of this rule, the PCSA shall document that in each case a reasonable, but unsuccessful, effort was made to place the child with appropriate adoptive parent(s) without AA. This requirement can be met by posing the question of whether the adoptive parent(s) are willing to adopt without AA. If the adoptive parent(s) state they cannot adopt the child without AA, the requirement is met when documented in the AA case record.

(b) The placement with a particular adoptive parent(s) was in the best interest of the child because of such factors as:

(i) The existence of emotional ties with the prospective adoptive parent(s) while the child was in the care of the foster parent(s) as a foster child.

(ii) The prospective adoptive parent(s) is a relative.

(iii) The child is being adopted by an adoptive parent(s) of the child's sibling(s).

(iv) There are other circumstances that relate to the child's best interest.

(B) If all other eligibility criteria are met, and the only special needs factor is the child has been determined to be at substantial risk, with no manifestation of a special needs factor or condition, a JFS 01453 "Title IV-E Adoption Assistance Agreement" (rev. ~~1/2014~~7/2019) with no payment shall be entered into in accordance with rule 5101:2-49-07 of the Administrative Code. The PCSA shall document the following in the child's AA case record:

(1) The substantial risk as diagnosed by a qualified professional at the time of the special needs determination. A "substantial risk" means a strong probability that a certain result may occur or that certain circumstances may exist.

(2) A qualified professional in the field of their expertise has provided the PCSA with a current written statement of the child's substantial risks of developmental disability, developmental delay, mental illness, or medical condition causing distress, pain, dysfunction, or social problems ~~or death~~, supported by an assessment or evaluation. This statement shall include an opinion as to the origin of the problem, past history, prognosis, and recommendations related to potential treatment needs as described in paragraph (A)(2)(g) of this rule.

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