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EXHIBIT 1  
DATE 1/13/09  
HB 2

**HEALTH AND HUMAN SERVICES  
APPROPRIATIONS SUBCOMMITTEE  
January 13, 2009**

**TITLE IV-E FUNDING**

**Presented by:**

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**TITLE IV-E FUNDING  
Informational Packet**

**Information included in packet:**

Child and Family Services Funding Sources for SFY 2008

**Graphs:**

Total Children in Care: July, 2003 to December, 2008

Title IV-E Saturation Rate: July, 2003 to December, 2008

Title IV-E Kids v. Total Kids: July 2003 to December, 2008

Title IV-E Eligible Services

Synopsis of Title IV-E Foster Care Requirements

Frequently Asked Title IV-E Questions

# Child and Family Services Division

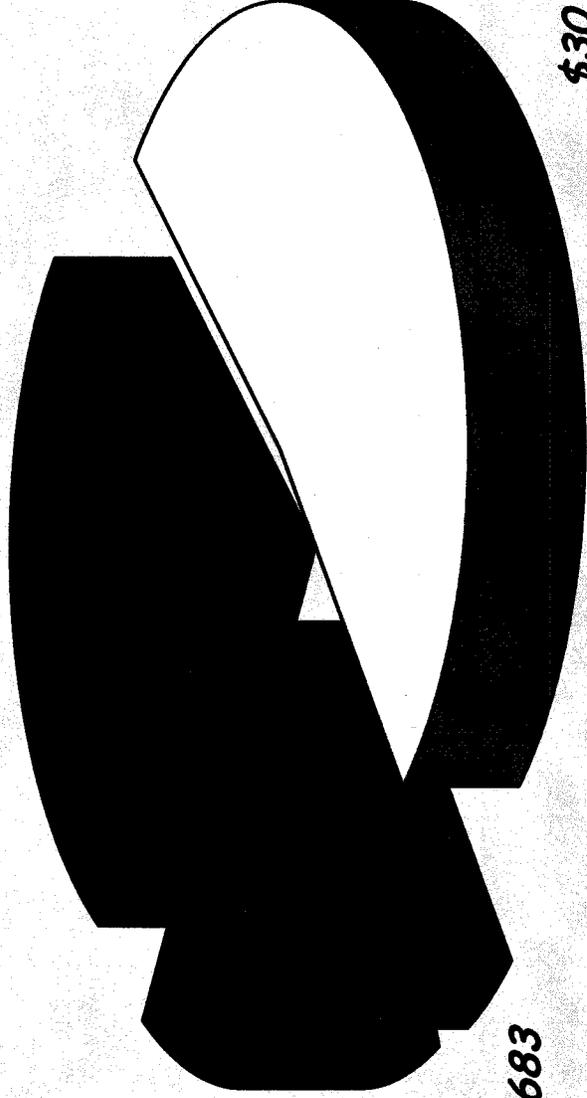
## Funding Sources

FY 2008

Total Funding =  
\$58,092,774

\$15,773,730

\$9,182,866

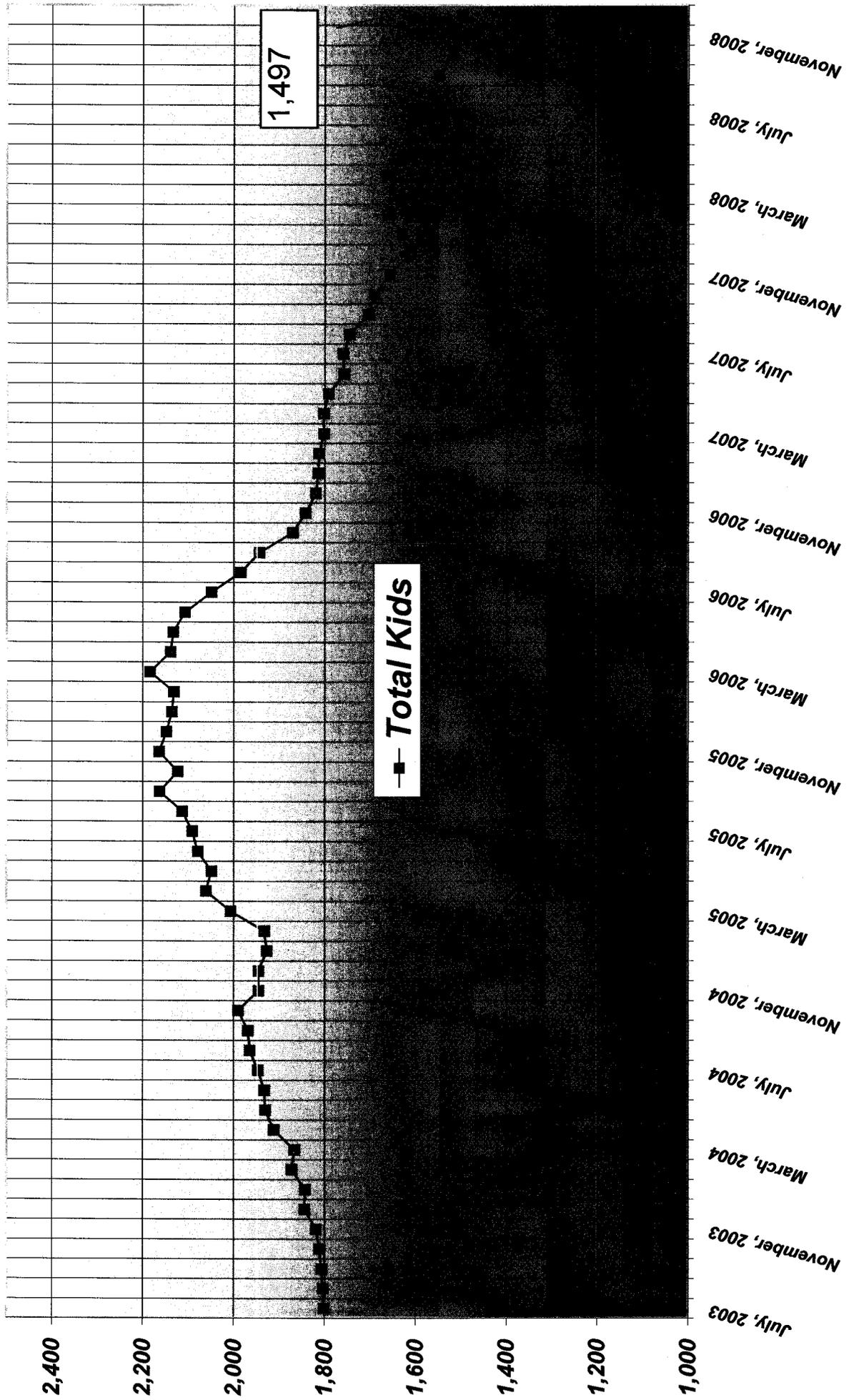


\$2,565,683

\$30,570,493

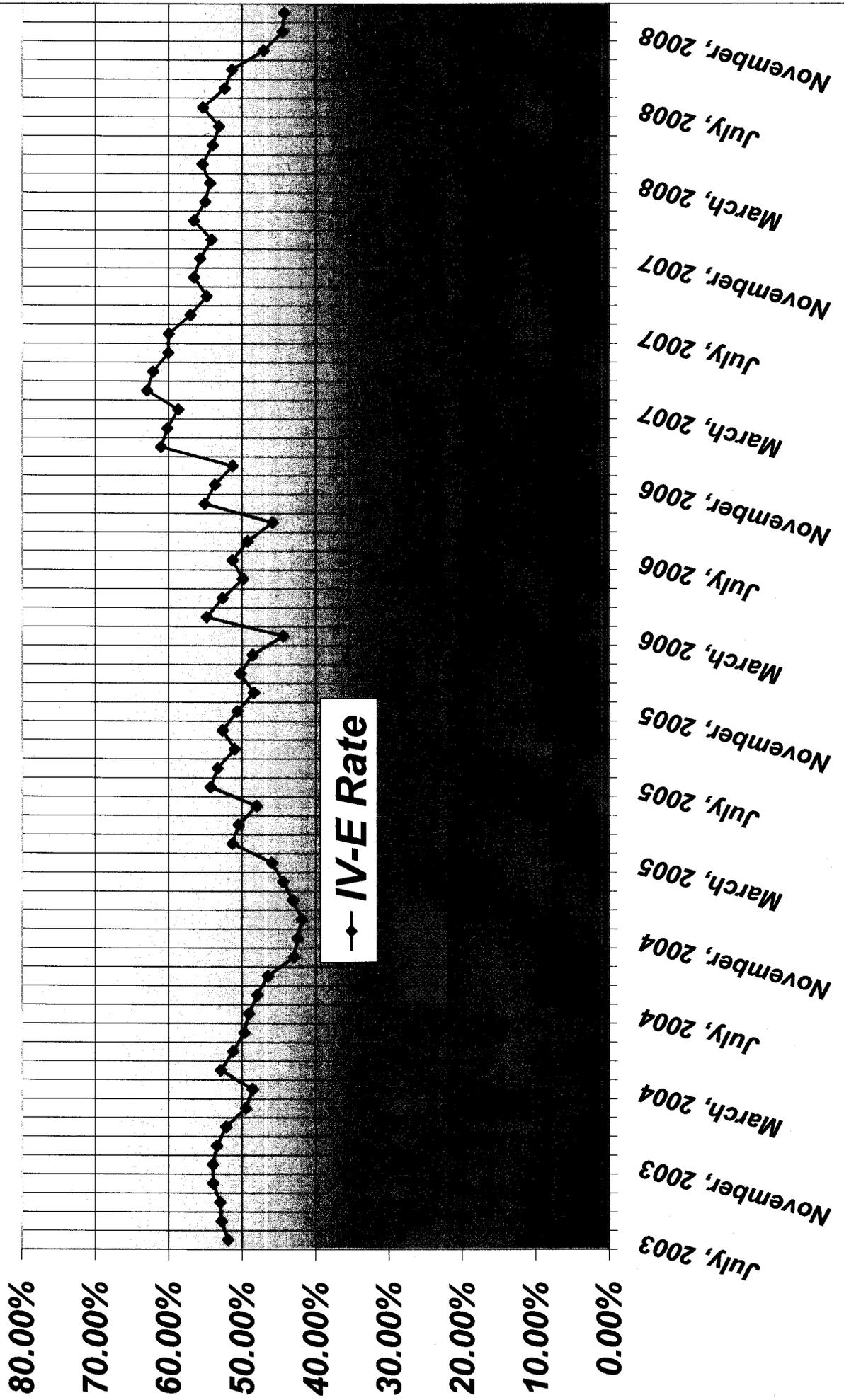
- General Fund 52.62%
- State Special Funds 4.42%
- Other Federal Funds 15.81%
- Title IV-E Funds 27.15%

# Total Kids In Care July, 2003 to December, 2008

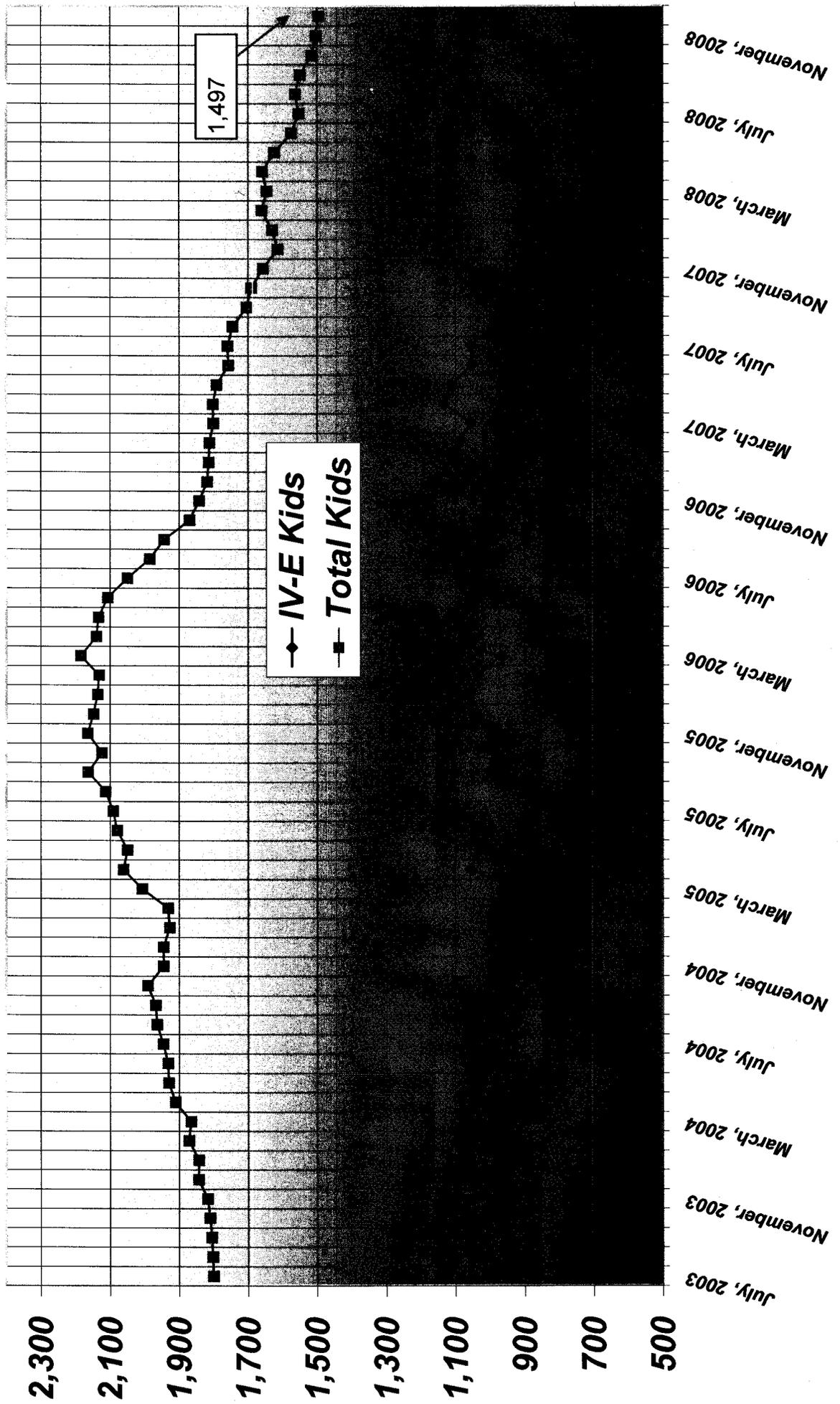


Children over 17 (approximately 30) are not included in the total.

# IV-E Saturation Rate July, 2003 to December, 2008



# IV-E Kids vs. Total Kids July, 2003 to December, 2008



Children over 17 (approximately 30) are not included in the total.

## TITLE IV-E ELIGIBLE SERVICES

The services and benefits listed below refer solely to those services or benefits which are Title IV-E allowable and may be provided to or on behalf of children meeting all Title IV-E eligibility criteria. The services funded by Title IV-E **must** be related to a foster care placement. Title IV-E funding cannot be used for services provided before the child is placed in out-of-home care nor can the funding be used for mental health/physical health services.

**Allowable Administrative Costs (50/50):** The following are examples of allowable administrative costs necessary for the administration of the Title IV-E foster care program:

- Referral of the foster child to services;
- Preparation for and participation in judicial determinations;
- Placement of the child;
- Development of the case plan;
- Case reviews;
- Case management and supervision (including Family Group Decision Making);
- Rate setting;
- Recruitment and licensing of foster homes and institutions (including the cost of the fingerprint-based criminal background check);
- A proportionate share of related overhead; and
- Costs related to data collection and reporting.
- Allowable administrative costs **do not** include the costs of social services provided to the child, the child's family or foster family for counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

### **Allowable Benefits that may be paid on behalf of a Title IV-E eligible child (68/32):**

- Monthly foster care payment—this payment covers the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation;

- Other services which are Title IV-E allowable:
  - Supplemental transportation
  - Supplemental clothing
  - Supplemental diaper
  - Supplemental child care
  
- Monthly subsidized guardianship payment—this payment must be \$10 less than the monthly foster care payment being made on behalf of the child prior to establishing the guardianship. Effective January 1, 2009, subsidized guardianship payments are limited to relative guardians; and
  
- Monthly subsidized adoption payment—this payment must be \$10 less than the monthly foster care payment being made on behalf of the child prior to finalizing the adoption.

**Allowable Training Costs (75/25):** Foster care related training

## SYNOPSIS OF TITLE IV-E FOSTER CARE REQUIREMENTS

In general, the Title IV-E requirements address significant mandates for both the child protective services agency and the courts. The requirements reflect the federal goals for children in the child welfare system: **safety, permanency, and well-being**. With the exception of the financial eligibility requirements, all of the requirements relating to judicial findings and required court order language reflect three major principles:

1. Every child deserves a safe, permanent family;
2. The child's health and safety should be the paramount considerations in all placement and permanency planning decisions; and
3. Foster care is a temporary situation--it is not an appropriate place for children to grow up.

This synopsis contains a discussion of the major eligibility requirements for Title IV-E foster care funding. The synopsis is not intended to address all of the eligibility requirements but does address the major financial eligibility requirements and requirements for Courts.

### A. Initial Eligibility

1. The family income cannot exceed the income requirements that were in effect under AFDC and Medicaid in July, 1996.
2. The child must be deprived of a parent—either by dissolution, disability, unemployment, under-employment, or death.
3. The child must be removed from a specified caretaker relative—usually a parent or a member of the child's extended family. If the child's removal is from the home of an extended family member, the child must have resided with his/her parent within six months of the removal.

### B. Eligibility related to Home/Facility in which Child is Placed

Generally speaking, the child must be placed in a fully licensed home before the State or Tribe may claim administrative costs for a child.

### C. Out-of-Home Placements

1. **Contrary to the welfare determination:**
  - A child's removal from the home must have been the result of a judicial determination to the effect that continuation of the child's

residence in the home would be contrary to the child's welfare, or that placement would be in the best interest of the child.

- The contrary to the welfare determination must be made in the **first court ruling** that sanctions (even temporarily) the removal of a child from the home.

**Note:** If a court order provides that a child may be removed but, at the time the order is issued, the child remains in the home, a subsequent court order must be issued **after the child has been placed** which contains the contrary to the welfare determination.

- If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care.

## 2. "Reasonable Efforts" for family reunification

- A child's health and safety is paramount in determining reasonable efforts to reunify.
- Reasonable efforts must be made to preserve the family prior to the placement of a child in foster care and to reunify families if the child is placed in foster care (reasonable efforts to prevent the removal of the child from his/her home or make it possible for a child to return home safely).
- Reasonable efforts to prevent placement or reunify are not required under the following circumstances (discretionary provision):
  - a) if a court has determined that there are aggravated circumstances. Aggravated circumstances must be defined in state law or tribal code but the federal legislation provides a list which includes abandonment, torture, chronic abuse and sexual abuse;
  - b) if the parent has committed deliberate homicide or mitigated deliberate homicide of another sibling (of the child), has aided, abetted, attempted, conspired or solicited to commit deliberate or mitigated deliberate homicide, or if the parent has committed felony assault resulting in serious bodily injury to the child or another sibling;

- c) if the parental rights of the parent to a sibling have been involuntarily terminated.
- Does not preclude state/tribal courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described above.

**Note:** If an Indian child is the subject of a proceeding in state district court, the requirements of the Indian Child Welfare Act govern; e.g. a) active efforts must be made to preserve and rehabilitate the family and b) the agency cannot request that the state district court make a finding that reasonable efforts are not necessary to prevent the placement.

- When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent removal, must be made **no later than 60 days** from the date the child is removed from the home.

**Note:** If a court order provides that a child may be removed but, at the time the order is issued, the child remains in the home, a subsequent court order must be issued **after the child has been placed** which contains the reasonable efforts finding (or, if the child who is the subject of the proceeding is an Indian child, as defined by the Indian Child Welfare Act, the active efforts finding).

- If the determination concerning reasonable efforts to prevent the removal is not made within 60 days of the removal of the child from his/her home, the child is not eligible under the Title IV-E foster care maintenance payments program for the duration of that stay in foster care.

3. **"Reasonable Efforts" requirement to move children toward adoption or other permanent living arrangement:**

- If continuing reasonable efforts to reunify is inconsistent with the permanency plan for the child, reasonable efforts to place the child in a timely manner in a permanent placement according to the permanency plan must be made.
- States/tribes must document the steps taken to find an adoptive family or other permanent living arrangement for a child, to place the child with an adoptive family or other permanent living

arrangement (including relative care or legal guardianship), and to finalize the adoption or legal guardianship.

- Documentation of the steps taken to find a permanent family for the child must include child specific recruitment efforts such as the use of state, regional and national adoption exchanges.

#### **4. Documentation of judicial determinations:**

- The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented.
- The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be made on a case-by-case basis and so stated in the court order.
- If reasonable efforts and contrary to the welfare determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made.
- Neither affidavits nor nunc pro tunc orders are acceptable as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.
- Court orders that reference State law or Tribal codes to substantiate judicial determinations are not acceptable, even if State law or Tribal code provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

#### **5. Permanency hearings:**

- A permanency hearing must be held either 12 months after the court determines the child has been abused or neglected or 12 months after the first 60 days the child is in care, whichever comes

first (federal law formerly required a dispositional hearing at 18 months).

- If reasonable efforts to reunify are determined by a court to be unnecessary, a permanency hearing must be held within 30 days after the court's determination.
- After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The only circumstances under which subsequent permanency hearings need not be held are if the child is placed in either a guardianship or adoptive placement.
- The permanency hearing must be a hearing. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.
- The permanency plan for a child must include whether and when the child will be returned to the parent or placed for adoption. Other permanency options include guardianship, placement with a fit and willing relative, or other planned permanent living arrangement.
- Courts conducting permanency hearings must consult with youth, in an age-appropriate manner, regarding his/her proposed permanency plan.
- The record of the permanency hearing for the child must document:
  - a) consideration of interstate placements in permanency planning decisions when appropriate;
  - b) consideration of in-state and out-of-state placement options when appropriate;
  - c) identification of appropriate in-state and out-of-state placements when using concurrent planning when appropriate;

- d) determination by Court that, if the child is already in an out-of-state placement, the placement continues to be appropriate and in the child's best interests; and
- e) the court consulted with the child, in an age-appropriate manner, about the permanent or transitional plan for the child/youth.

**Note:** If the child is an Indian child under the jurisdiction of tribal court and the codes of the child's tribe provide for customary adoptions whereby the child is placed adoptively but the parent-child legal relationship is not terminated, such an adoptive placement is considered a permanent placement.

- If the State or Tribe concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State or Tribe must document to the court the compelling reason for the alternate plan.
- Within 12 months of the date the child is considered to have entered foster care, the court must make a judicial determination that the state/tribe has made reasonable efforts to finalize the permanency plan.
- If the judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under Title IV-E from the end of the twelfth month following the date the child is considered to have entered foster care and remains ineligible until such a judicial determination is made.

**NOTE: The orders required after the permanency hearing must contain:**

- a) **the finding that the social services agency has made reasonable efforts to implement the permanency plan;**
- b) **identify what the reasonable efforts were;**
- c) **specifically identify the permanency plan; and**
- d) **specifically name the child.**

**6. Background checks:**

**a) Criminal background check:**

- To be eligible for Title IV-E payments, states (and tribes which administer a licensing/adoption program and access Title IV-E funds) are required to conduct fingerprint-based checks of the National Criminal Investigation Division for prospective foster or adoptive parents;
- Families for which a record check reveals a felony conviction for child abuse or neglect, spousal abuse, crimes against children (including child pornography), or for crimes involving violence [including rape, sexual assault, or homicide (but not other physical assault or battery)] will not be approved;
- Families for which a record check reveals a felony conviction for physical assault, battery or a drug-related offense will be not be granted a license or approved for adoption if the felony was committed in the past 5 years; and
- For a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

**b) Child protective services background check:**

- States (and Tribes) must check any child abuse and neglect registry in each state the prospective foster and adoptive parents and any other adult(s) living in the home have resided in during the preceding five years; and
- The information obtained from any child abuse/neglect registry must be protected from unauthorized disclosure.

## FREQUENTLY ASKED TITLE IV-E QUESTIONS

### 1. Is the amount of Title IV-E funding capped?

No—Title IV-E is an entitlement, not a grant (the only other human services federal entitlement is Medicaid). Title IV-E is a reimbursement program in that the state is reimbursed for the cost of services provided.

Because Title IV-E is an entitlement, the state may claim funds for: a) children determined eligible; b) the administrative costs associated with providing Title IV-E eligible services to eligible children; and c) training costs associated with providing training on Title IV-E related topics.

Discussion has occurred at the federal level proposing that Title IV-E be block-granted and a cap be established for each state depending on past Title IV-E expenditures. However, to date, Title IV-E has not been block-granted.

### 2. Does the Child and Family Services Division have a waiting list of children who have been determined Title IV-E eligible but the funds aren't available?

No—Title IV-E is not a grant; therefore, once a child is determined eligible the Division can be reimbursed for the Title IV-E services provided to that child.

### 3. Can a child lose his/her Title IV-E eligibility?

Yes—redeterminations for Title IV-E foster care eligibility must be completed each year the child is in foster care. If the child's circumstances have changed the child may not continue to be Title IV-E eligible—for example, the child's parental deprivation may change in that the child's parents reunite or the family income may increase so the income is no longer within the AFDC income limits. A child can also lose eligibility if the child is moved to the home of an unlicensed kincare provider.

Finally, although the child does not lose eligibility, if a child's permanency hearing has not been held within the required timeframe or if the court has not issued the permanency order within the required timeframe, Title IV-E funds cannot be used for the period of time between when the hearing and order should have been issued and when the hearing/order is actually issued.

### 4. Can the Division increase the number of children who are Title IV-E eligible?

No—if a child does not meet the requirements, Title IV-E funding cannot be used. The Division has done everything possible to maximize the reimbursement from Title IV-E.

Over the past two years, the files of all children receiving foster care, subsidized guardianship, or subsidized adoption payments have been reviewed to determine whether a child's eligibility (or ineligibility) for Title IV-E was accurately determined.

A child's Title IV-E eligibility must be established when the child enters foster care. If the child is not eligible for Title IV-E at the time of placement, the child cannot become eligible for Title IV-E later on during the placement. Staff have reviewed the files of children whose foster care payments are made using general fund to determine if the documentation is in file to support the child being eligible for Title IV-E at the time of placement.

The Division also reviewed the files of children in the Title IV-E guardianship waiver to confirm that all the children in the experimental group and all the children in the control group were accurately determined Title IV-E eligible.

A child's eligibility for Title IV-E subsidized adoption is determined immediately prior to finalization of the adoption. Over the past two years, CFSD staff reviewed the case files of all the children receiving a subsidized adoption payment. Files of children receiving both a general fund payment and a Title IV-E payment were reviewed.

Files of children receiving a general fund subsidized adoption payment were reviewed to determine whether the child should have been determined eligible for Title IV-E. If the child should have been determined eligible for Title IV-E subsidized adoption, entries were made to change the funding source for that child's payment from general fund to Title IV-E.

Files of children receiving a Title IV-E subsidized adoption payment were reviewed to assess whether that child was correctly determined eligible for Title IV-E payments. Adjustments were made for those children who were incorrectly determined Title IV-E eligible. The reason the Division reviewed these children is that the Children's Bureau has indicated that the Bureau intends to initiate reviews of Title IV-E subsidized adoption similar to the Title IV-E foster care reviews currently conducted by the Children's Bureau.

**5. Can the Montana Legislature change the Title IV-E requirements?**

No—the Title IV-E requirements are established either by federal legislation or federal regulation and no state legislature can modify those requirements.

**6. Is the child Title IV-E eligible if the court orders the child placed with a specific family?**

No—the court must grant the division care and placement responsibility for the child to be Title IV-E eligible. If the court orders a specific placement, the court has assumed

the placement authority so the child is ineligible for Title IV-E funding. If the court assumes placement authority and then returns that authority to the division, the child is eligible for Title IV-E funding on the date placement authority was returned to the division. The only circumstance under which the court can order placement with a specific family and the child retains Title IV-E eligibility is when there is a conflict between the parties and the court must make the placement decision.

**7. How are the Title IV-E administrative costs calculated?**

Title IV-E reimburses the state for administrative costs associated with CFSD staff providing Title IV-E eligible services to Title IV-E eligible children. The amount of reimbursement is based on: a) the Department's cost allocation plan; b) the random-moment time study in which field staff are called randomly and the staff person must indicate what s/he is working on at the time; and c) the percentage of Title IV-E eligible foster children compared to the total number of foster children.