

**DSS ADMINISTRATIVE LETTER
CHILD WELFARE SERVICES CWS-AL-02-13**

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

ATTENTION: ALL CHILD WELFARE SERVICES STAFF AND ATTORNEYS

DATE: SEPTEMBER 1, 2013

**SUBJECT: REVISED PROCEDURES FOR THE TRANSFER OF PLACEMENT AND
RESPONSIBILITY OF A CHILD FROM A STATE TO A TRIBAL IV-E AGENCY OR AN INDIAN
TRIBE WITH A IV-E AGREEMENT**

EFFECTIVE: IMMEDIATELY

I. INTENT AND BACKGROUND

On June 25, 2013 the North Carolina Division of Social Services issued Administrative Letter CWS-01-13 (<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-05/man/CWS-AL-01-13.pdf>). The purpose of that letter was to provide clarity on the formal procedures for the transfer of placement and responsibility of a child from a state child welfare Title IV-E plan to a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement. Through Program Instruction ACYF-CBPI-13-05 dated April 17, 2013 (<http://www.acf.hhs.gov/sites/default/files/cb/pi1305.pdf>), the Administration for Children, Youth and Families (ACYF) has instructed all States to establish and maintain such procedures.

Following the issuance of that Administrative Letter, ACYF provided feedback to North Carolina that the Administrative Letter issued on this subject did not contain several required elements. This letter adds those missing elements and amends one citation in the previous letter that was incorrect. To insure these transfer procedures are spelled out fully in one document, this letter will contain all of the previous information and will include the additional elements and corrections. Additions and corrections will be recognized by the red underlined font.

II. INSTRUCTIONS

Please review DSS Administrative Letter CWS-AL-03-11 (http://info.dhhs.state.nc.us/olm/manuals/dss/csm-05/man/CWS_AL_03-11.pdf) dated June 1, 2011 for the initial procedures regarding identifying Indian Heritage. The local child welfare agency that retains care and custody of a child shall consult with the appropriate Indian tribe for all families who have been identified as having American Indian heritage. When the Indian Child Welfare Act (ICWA) governs, one purpose of this consultation shall be to determine the tribe's desire to retain placement and care responsibility of an Indian child in local child welfare agency's custody. Pursuant to ICWA §1911(b) (http://www.tribalinstitute.org/lists/chapter21_icwa.htm), the juvenile district court must transfer the case to the appropriate tribal court unless:

1. a parent objects;
2. the tribal court declines to accept the transfer; or
3. good cause is established.

A. Petition to Transfer

A parent, Indian custodian, or tribe may request (orally or in writing) that the juvenile district court transfer the Indian child's custody proceeding to the tribal court of the child's tribe. The tribal court must then decide whether to accept or decline the transfer request within 20 days after the tribe receives notice of the proceedings and the request. For additional information

please refer to Bureau of Indian Affairs (BIA) Guidelines C.1. Petitions under 25 U.S.C. § 1911(b) for transfer of proceeding (http://www.nicwa.org/administrative_regulations/icwa/ICWA_guidelines.pdf). The Administrative Office of the Courts recommends that the juvenile district courts close a case only after they receive notification from the tribe that its court has formally accepted the case.

If the juvenile district court receives an oral request to transfer a case to a tribal court, the BIA Guidelines recommend that the juvenile district court reduce said oral request to writing and make it part of that court's record.

B. Good Cause

ICWA §1911(b) requires the juvenile district court to transfer the case of an Indian Child to the tribal court upon the petition of either parent or the Indian custodian or the Indian child's tribe unless there is good cause to the contrary. Only a parent can object to a transfer. Any other party may object to the transfer but must demonstrate good cause to deny the transfer request. "Good cause" is a high standard, and the burden is on the party seeking to block transfer to show that good cause exists. When the opposition to a transfer comes from a party other than a parent, the court should hold a hearing to allow all parties to express their views. BIA Guidelines set out a list of three factors that may, either singly or together, constitute good cause not to follow the placement preferences in appropriate cases.

These three factors include:

1. request of the biological parents or the child when the child has sufficient capacity to understand the proceedings;
2. extraordinary physical or emotional needs of the child as established by testimony of qualified expert witnesses; or
3. unavailability of suitable homes that meet the preference criteria.

For additional information please refer to Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,590 (http://www.nicwa.org/administrative_regulations/icwa/ICWA_guidelines.pdf).

Some examples of good cause as outlined in the BIA Guidelines include the following situations:

1. the Indian tribe does not have a tribal court;
2. the tribe failed to make a timely response to the original notice of hearing, and the proceedings were well advanced when the petition to transfer was received. The BIA Guidelines do not define "timely," so state courts must make that determination on a case-by-case basis. The BIA Guidelines do provide some guidance by acknowledging:

If a transfer petition must be honored at any point before judgment, a party could wait to see how the trial is going in state court and then obtain another trial if it appears the other side will win. Delaying a transfer request could be used as a tactic to wear down the other side by requiring the case to be tried twice. The Act was not intended to authorize such tactics and the "good cause" provision is ample authority for the court to prevent them.

This assumes that notice to the tribe was sent immediately upon identification of the appropriate tribe. Withholding notice to forestall a petition to transfer by the tribal court would violate the ICWA and negate good cause by "manufacturing" delay to prevent transfer;

3. the child has sufficient capacity to understand the proceedings and objects to the transfer;
4. requiring the parties or witnesses to present evidence in tribal court would cause undue hardship.

C. Transfer Procedures

These transfer procedures are established and maintained in consultation with Indian Tribes and do not affect a child's eligibility, receipt of services, or payment under Title IV-E or the medical assistance program operated under Title XIX (Medicaid). When transferring a child to a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement the following procedures are to be followed. The local child welfare agency must:

1. if not already complete, determine the child's eligibility under section 472 or 473 of the Social Security Act (The Act) at the time of transfer (http://www.ssa.gov/OP_Home/ssact/title04/0472.htm) and (http://www.ssa.gov/OP_Home/ssact/title04/0473.htm);
2. provide essential documentation and information necessary to continue a child's eligibility under Title IV-E and Medicaid programs under Title XIX to the Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement, including but not limited to providing:
 - all judicial determinations (court orders) to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Act have been made;
 - other documentation the local child welfare agency has that relates to the child's Title IV-E eligibility under sections 472 and 473 of the Act;
 - information and documentation available to the local child welfare agency regarding the child's eligibility or potential eligibility for other federal benefits;
 - the Family Services Agreement (case plan) developed pursuant to section 475(1) of the Act (http://www.ssa.gov/OP_Home/ssact/title04/0475.htm) including health and education records of the child pursuant to section 475(1)(c) of the Act; and information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

Should you have any questions regarding this process, please feel free to contact your Children's Program Representative.

Sincerely,



Kevin Kelley, Section Chief
Child Welfare Services

cc: Wayne Black
Child Welfare Services Team Leaders