

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Tool Name: Procedure for Transfer of a Child to a Tribe or Tribal Agency	Effective Date: May 1, 2015
	Reference: 2.A (2.12 – Indian Child Welfare Act [ICWA])	Version: 2

DCS will work with tribal representatives to ensure the transfer of jurisdiction and/or responsibility for the placement and care of a child under a IV-E plan to a Tribal IV-E agency or an Indian Tribe with a IV-E agreement in a way that does not affect the child's eligibility or receipt of IV-E payments and the child's eligibility for Medicaid. DCS will consult with tribes regarding these procedures.

DCS will negotiate, in good faith, with any Indian tribe that would like to enter an agreement with DCS to administer all or part of the IV-E program on behalf of Indian children who are under tribal authority. The IV-E programs include foster care maintenance payments for children placed in DCS or tribally licensed foster family homes, adoption assistance payments, kinship guardianship assistance payments, and tribal access to resources for administration, training, and data collection under Title IV-E. If a tribe expresses an interest in establishing an agreement with DCS, please contact the ICWA Subject Matter Expert Attorney in Central Office or the International and Cultural Affairs (ICA) liaison.

PROCEDURE

A tribe may request transfer of jurisdiction from a state court to a tribal court at any point throughout the life of the case. In order to ensure a child remains IV-E eligible when transferring jurisdiction to a Tribal Court, the tribe must be a Tribal IV-E Agency or have an IV-E agreement.

Tribal Transfers

Jurisdiction Transfer to Tribal Court

If a motion to transfer is filed in an Indiana court having jurisdiction over a CHINS action involving an Indian child in the custody of DCS, the Court may issue an order approving or authorizing transfer of jurisdiction over the CHINS case to a Tribal Court. If the Tribal Court accepts jurisdiction, the CHINS case will be transferred to the Tribal Court. DCS will request the Indiana Court send a copy of the entire file to the Tribal Court before closing the Indiana CHINS case.

Jurisdiction remains with State Court, and Placement and Care Responsibility is Transferred to Tribe (Tribe is a IV-E agency)

A IV-E eligible child will maintain eligibility under the initial IV-E eligibility determination.

Jurisdiction remains with State Court, and Placement and Care Responsibility is Transferred to Tribe (Tribe is **not a IV-E agency)**

In situations where a child is IV-E eligible under State placement and care, DCS will collaborate with the Tribe in order to determine the best course of action for placement

and care costs since the child will lose IV-E eligibility once Placement and Care is transferred to the Tribe. Options should be explored during this collaboration for the child to maintain IV-E eligibility.

Jurisdiction Transfer to Tribal Court, and DCS maintains Placement and Care Responsibility

In situations where a child's case is transferred from a State Court to a Tribal Court, a IV-E eligible child will remain eligible under DCS Placement and Care responsibility.

DCS Responsibilities in Facilitating Transfers

In all of the above options for Tribal Transfers, the DCS Family Case Manager will make contact with the ICA Liaison. ICA will collaborate with the designated DCS Central Office Attorney, along with the Tribe, to determine the most appropriate course of action based on the individual case.

The DCS Staff Attorney and the Family Case Manager (FCM) will collaborate with representatives of a Tribal Agency to ensure that the transfer does not jeopardize the child's eligibility for Title IV-E and Medicaid (or Indian Health Benefits) and is in the best interest of the child. At a minimum, DCS will:

1. Establish the child's eligibility for Title IV-E prior to the formal transfer, if an eligibility determination has not already been completed,
2. Provide the tribe with all essential documents and information used to determine the child's eligibility for Title IV-E and Medicaid under Title XIX, including, but not limited to:
 - a. The Court's order that the child's continuation in the home from which they were removed was contrary to their welfare and that reasonable efforts outlined in 42 USC 671(a)(15) were made at the time the child was removed;
 - b. Documentation of the date the child was removed;
 - c. Any other information used to determine eligibility including information regarding the child's household and resident's income at removal, if the child's IV-E eligibility was based on that income;
 - d. Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;
 - e. The child's current Case Plan;
 - f. The child's health and education records; and
 - g. The child's current placement information, including the most recent resource home license or approval.
3. Close the case in the case management system when the DCS Staff Attorney provides the Court's final order of dismissal of the CHINS court case, and
4. Contact the DCS Staff Attorney and an International and Cultural Affairs liaison with any questions at InternationalandCulturalAffairs@dcs.IN.gov.