

5101:2-53-09

Procedures for the transfer of Indian children to a tribal court, a tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement.

- (A) Either parent, the Indian custodian, or the Indian child's tribe may request, at any time, orally on the record or in writing, that the court transfer a foster care or termination of parental rights proceeding to the jurisdiction of the child's tribe. The right to request a transfer is available at any stage in each foster care or termination of parental rights proceeding.
- (B) Upon receipt of a transfer petition, the court must promptly notify the tribal court in writing of the transfer petition and may request a timely response regarding whether the tribal court wishes to decline the transfer. The court must transfer the child custody proceeding unless it determines that transfer is not appropriate because one or more of the following criteria are met:
- (1) Either parent objects to the transfer;
 - (2) The tribal court declines the transfer; or
 - (3) Good cause exists for denying the transfer.
- (C) If the public children services agency (PCSA) or private child placing agency (PCPA) asserts that good cause exists for the court to deny transfer, the agency shall state the reasons orally on the record or provide them in writing on the record and to the parties to the child custody proceeding. In determining whether good cause to deny transfer exists, the court must not consider:
- (1) Whether the foster care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage;
 - (2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;
 - (3) Whether transfer could affect the placement of the child;
 - (4) The Indian child's cultural connections with the tribe or its reservation; or
 - (5) Socioeconomic conditions or any negative perception of tribal or bureau of Indian affairs (BIA) social services or judicial systems.
- (D) If the tribal court accepts the transfer, the state court will expeditiously provide the tribal court with all records related to the proceeding. The agency shall work with the state court and the tribal court to ensure that the transfer of the custody of the Indian

child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

- (E) In order to ensure a Title IV-E eligible child remains eligible when transferring jurisdiction to a tribal court, the tribe must be a tribal Title IV-E agency or enter into a Title IV-E agreement with the PCSA. The tribe may request:
 - (1) Transfer of jurisdiction to a tribal court. If the jurisdiction is transferred to the tribal court, the tribe assumes transfer of placement and care responsibility.
 - (2) Transfer of placement and care responsibility to a tribe. The tribe may assume placement and care responsibility of an Indian child, while the jurisdiction remains with the county court.
- (F) Upon a tribe's request for the transfer of jurisdiction or the transfer of placement and care responsibility to the tribe, the PCSA shall consult, collaborate, and coordinate with the tribe to establish a Title IV-E agreement and procedures to ensure the transfer of jurisdiction is in compliance with federal regulations as outlined in 45 C.F.R. 1356.67 (2012).
- (G) The PCSA that has placement and care responsibilities for the child shall:
 - (1) Determine foster care maintenance eligibility at the time of transfer, if an eligibility determination is not already completed.
 - (2) Provide a copy of the Title IV-E determination and supporting documentation to the tribe to support the Title IV-E determination. This documentation includes:
 - (a) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child in accordance with rule 5101:2-47-13 of the Administrative Code;
 - (b) Reasonable efforts that have been made to prevent the removal in accordance with rule 5101:2-47-22 of the Administrative Code;
 - (c) Documentation of how the child met the relatedness to the aid to dependent children (ADC) program authorized under Title IV-A of the Social Security Act as of July 16, 1996 in accordance with rule 5101:2-47-14 of the Administrative Code.
- (H) In order to facilitate consistency in the structure of the file transfer and for purposes of the continuity of eligibility and services to the child, the PCSA shall ensure the records are organized and include the following:

- (1) A file stamped copy of all judicial orders and court reports for the foster care episode, especially those orders that include judicial determinations supporting continued Title IV-E eligibility.
 - (2) A copy of the child's placement history for the foster care episode, which shall include:
 - (a) A copy of the initial complaint;
 - (b) A copy of the caregiver's license or approval for the child's most recent placement, including background check documentation verifying clearances for all adults in the caregiver's household; and
 - (c) If a child is currently placed out-of-state by the PCSA pursuant to the Interstate Compact on the Placement of Children (ICPC), the approved JFS 01661 "Interstate Compact Placement Request (ICPC 100A)" ~~(rev. 7/2016)~~ and JFS 01662 "Interstate Compact Report on Child's Placement Status (ICPC 100B)" ~~(rev. 7/2016)~~, or equivalent forms, including copies of reports by the supervising agency.
 - (3) Journalized copies of all case plans including case plan goals for the foster care episode and documentation of services provided to the child and family.
 - (4) A current copy of the child's health and education forms.
 - (5) Other federal benefit documentation including information about the child's eligibility for medicaid, child support, social security, supplemental security income (SSI), or other benefits, which are known to the PCSA and/or are in pending status.
- (I) When a child is placed under the ICPC, upon receipt of the petition to transfer, the PCSA shall notify the receiving state that the jurisdiction over the child may be transferred to a Title IV-E tribe or tribal agency. PCSAs are encouraged to initiate and foster communication between the tribe or tribal agency and the receiving state in order to avoid disruption of the placement and/or federal eligibility for foster care maintenance payments to the child's caregivers.

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Certification

Date

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