 Department of Children & Family Services <i>Building a Stronger Louisiana</i>	Division/Section	Child Welfare
	Chapter No./Name	6 – Foster Care (FC)
	Part No./Name	2 – Working With the Child's Family
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I. STATEMENT OF POLICY

It is the policy of the Department of Children and Family Services to follow Indian Child Welfare Act (ICWA) legislation. ICWA seeks to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. 1902). ICWA applies to all children where the Department or state courts have reason to believe the child is an Indian child of a federally recognized tribe. The Department and state courts must treat the child as an Indian child, unless and until it is determined the child is not a member or is not eligible for membership in an Indian tribe. The tribe alone is responsible for determining tribal membership.


DCFS is the state’s designated Title IV-E agency. DCFS is required to negotiate with federally recognized Indian tribes that request to develop an agreement with the state to administer all or part of the Title IV-E program on behalf of Indian children who are under authority of the tribe.

Procedures for the transfer and care responsibility of a child from a state to a tribal court are outlined below. All transfer procedures developed for a tribe are to be established and maintained in consultation with that tribe. This applies to federally recognized tribes throughout the United States, not just within the State of Louisiana.

II. PROCEDURES

ICWA guidelines require a minimum of “active efforts” to reunite an Indian child with his or her family or tribal community. Active efforts constitute more than reasonable efforts as required by Title IV-E of the Social Security Act (42 USC 671(a)(15)). ASFA’s exceptions to reunification and LA Ch. Code Art 672.1 do not apply to ICWA proceedings. Active efforts include the following:

- Engaging the Indian child, the Indian child’s parents, the Indian child’s extended family members, and the Indian child’s custodian(s);
- Taking steps necessary to keep siblings together;
- Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- Identifying, notifying, and inviting representatives of the Indian child’s tribe to participate;
- Conducting or causing to be conducted a diligent search for the Indian child’s extended family members for assistance and possible placement;
- Taking into account the Indian child’s tribe’s prevailing social and cultural conditions and way of life, and requesting assistance of representatives designated by the Indian child’s tribe with substantial knowledge of the prevailing social and cultural standards;
- Offering and employing all available and culturally appropriate family preservation strategies;

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- Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;
- Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;
- Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those services;
- Monitoring progress and participation in services;
- Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;
- Supporting regular visits and tribal home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and,
- Providing post-reunification services and monitoring.

Active efforts must be conducted while investigating whether the child is a member of a tribe, is eligible for membership in a tribe, or whether a biological parent of the child is or is not a member of a tribe. FC *** case workers **** shall ask parents, children, other relatives, and collaterals if a child in Department custody is an Indian child. If it is believed a biological parent or a child in foster care is potentially a member of a federally recognized tribe, then the parent, child, and foster *** caregiver **** shall be provided with the DCFS CW Form ICWA-1, Rights under ICWA.

State courts must ask if there is reason to believe the child subject to the child custody proceeding is an Indian child by asking each party to the case, including the child's attorney and Department representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child. If the court does not inquire of the child's Indian status, the FC *** case worker **** must ensure documentation is included in the report to the court of the child's Indian status and the responses of all parties asked.

In any foster care placement involving an Indian child, the placement preferences of ICWA and the individual tribe apply. In any foster care placement of an Indian child, the child must be placed in the least restrictive setting that most approximates a family, allows his or her special needs to be met, and is in reasonable proximity to his or her home, extended family, and/or siblings. Preference must be given to placement of the child in the following order:

- A member of the Indian child's extended family;
- A foster home, licensed, approved, or specified by the Indian child's tribe, whether on or off a reservation;

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- An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.


If the Department determines any of the preferences cannot be met, the Department must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences and why the preferences could not be met. Any placement of an Indian child in foster care must be willing to support the child's connections to the tribe and participate in tribal events.

If parental rights are terminated for any reason and an Indian child is freed for adoption, the foster *** caregiver** must be informed that adoption by the **caregiver** can only proceed with the agreement of the tribe. The FC **case worker** shall inform the foster **caregiver **** of this fact at placement of the child.

A. PROCEDURES WHEN CHILD IS IDENTIFIED AS NATIVE AMERICAN AND IDENTITY AND/OR LOCATION OF TRIBE AND/OR PARENTS IS KNOWN

In any involuntary proceeding in a state court where the court or Department knows or has reason to know that an Indian child from or eligible for membership in a federally recognized tribe is involved, and where the identity and location of the child's Indian parents or custodians or tribe is known, the Department shall directly notify the Indian parents, Indian custodians, and the child's tribe by certified mail with return receipt requested, of the pending proceedings and of their right of intervention. Personal service or other types of notification may be in addition to, but not in lieu of, notice by certified mail with return receipt requested. Notice shall include requisite information from the ICWA legislation, which is as follows:

- (1) Name of the Indian child, the child's birthdate and birthplace;
- (2) Name of Indian tribe(s) in which the child is enrolled or may be eligible for enrollment;
- (3) All names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information;
- (4) A copy of the petition, complaint or other document by which the proceeding was initiated;
- (5) A statement of the absolute right of the biological Indian parents, the child's Indian custodians and the child's tribe to intervene in the proceedings at any time;
- (6) A statement indicating if the Indian parent(s) or Indian custodian(s) is (are) unable to afford counsel, and where a state court determines indigence, counsel

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- will be appointed to represent the Indian parent or Indian custodian where authorized by state law;
- (7) A statement of the right of the Indian parent, Indian custodians and the child's tribe to be granted, upon request, up to 20 additional days to prepare for the proceedings;
 - (8) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section;
 - (9) A statement of the right of the Indian parents, Indian custodians, and the child's tribe to petition the court for transfer of the proceedings to the child's tribal court pursuant to 25 U.S.C. 1911, absent objection by either parent, provided that such transfer shall be subject to declination by the tribal court of said tribe;
 - (10) A statement of the potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians; and
 - (11) A statement that, since child custody proceedings are conducted on a confidential basis, all parties notified shall keep confidential the information contained in the notice concerning the particular proceeding. The notices shall not be handled by anyone not needing the information contained in the notices in order to exercise the tribe's rights under ICWA.

Copies of these notices to the tribes shall be sent to the United States Secretary of the Interior and the appropriate federal Area Director.


- The current United States Secretary of the Interior may be identified and contacted at: <http://www.doi.gov/public/contact-us.cfm>; Mailing Address – Department of the Interior, 1849 C Street N.W., Washington DC 20240; Phone – (202) 208-3100.
- For Louisiana, the federal Regional Director would be Eastern Region Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, TN 37214.
- Additional contact information for other states is located in Foster Care Policy, Appendix A, ICWA.

B. PROCEDURES WHEN CHILD IS IDENTIFIED AS NATIVE AMERICAN BUT IDENTITY OR LOCATION OF TRIBE AND PARENTS IS UNKNOWN

If the identity or location of the Indian parents, Indian custodians, or the child's tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be sent by certified mail with return receipt requested to the appropriate federal Regional Director (see contact information above).

Notice to the appropriate federal Regional Director may be sent by certified mail with return receipt requested or by personal service and shall include the following information, if known:

- (1) The same information noted above in Section A, Parts 1-11; and,
- (2) A request for the United States Secretary of the Interior or designee to make reasonable documented efforts to locate and notify the child's tribe and the child's

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Indian parents or Indian custodians within 15 days, after receipt of the notice from the persons initiating the proceedings, to notify the child's tribe and Indian parents or Indian custodians and send a copy of the notice to state court.

C. TRANSFER OF NATIVE AMERICAN CHILD TO FEDERALLY RECOGNIZED TRIBAL AGENCY

1. Contact the designated tribal agent for service of legal notices within the tribe to which the child is a member or eligible for membership by phone and by certified mail. To determine the status of a tribe as federally recognized and obtain contact information for the tribe, go to <http://www.usa.gov/Government/Tribal-Sites/C.shtml>. Refer to the Federal register at: <https://www.federalregister.gov/articles/2012/08/01/2012-18594/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice> to determine the designated tribal agent for service of legal notices. The contact with the designated tribal agent for service of legal notices within the tribe should be initiated within 24 hours of the child entering foster care and/or the Department becoming aware of a child's membership or eligibility for membership in a federally recognized tribe. The decision to transfer custody or court transfer procedures between the state and tribal court may occur at any stage of the proceeding and at the discretion of the tribe. When a federally recognized tribe is notified an Indian child is in DCFS custody, the tribe may request the case be transferred to a tribal court. If the parent or Indian custodian requests transfer of the case to a tribal court, the DCFS * case worker: **

- Confers with the Regional BGC Attorney; and
- Asks the parents whether either will oppose transfer of the case and reports this information to the state court responsible for the child welfare case.
 - If the next hearing in the case is coming up within the next 10 working days, report to the court through the attorney representing the Department and through testimony during the hearing;
 - If the next hearing in the case is more than 10 working days, but within the next 30 days, report to the court through the court report and by bringing the issue to the attention of the attorney representing the Department as well as being prepared to provide information through testimony during the hearing;
 - If the next hearing in the case is not due for more than 30 days, submit a special report to the court within 5 working days of acquiring knowledge of the child's membership in or eligibility for membership in a federally recognized tribe, and bring the issue to the attention of the attorney representing the Department as well as being prepared to provide information through testimony during the hearing.

If a case is transferred by state court at the request of the family, tribe, or Department, the tribal court has the authority to accept or decline transfer. These details should be worked out


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with the tribe prior to pursuing transfer of the case with the state court to ensure expeditious, successful case transfer.

2. DCFS will notify IV-E eligibility worker via FAST III as soon as child's tribal membership/eligibility is identified. Tribal membership/eligibility shall not impact the child's eligibility for receipt of services or payments under Title IV-E, Title XIX, or other federal funds.
3. DCFS must determine Title IV-E eligibility at time of transfer of custody if eligibility has not already been determined.
4. At transfer of custody and in accordance with the regulations guiding these funding streams, DCFS will provide all essential documentation and information to the tribal agency for the child to continue Title IV-E and Title XIX eligibility, including, but not limited to:
 - All judicial determinations to the effect continuation in the home from which the child was removed would be contrary to the welfare of the child and reasonable efforts described in section 471(a)(15) of the Act have been made (instant order, affidavit in support of instant order, and any other subsequent court orders);
 - Other documentation the state agency has related to the child's Title IV-E eligibility under sections 472 and 473 of the Act (FAST I, FAST V, birth certificate, social security card);
 - Information and documentation available to the Department regarding the child's eligibility or potential eligibility for other federal benefits (SSI-1);
 - The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act (Case Plan and Assessment of Family Functioning in FATS); and
 - Information and documentation of the child's placement settings (Form 001 B Foster Care Record Face Sheet), including a copy of the most recent provider's certification document or approval (TIPS/LARE 357A, initial certification letter, re-certification approval letter).

In order for the child to remain Title IV-E eligible under tribal authority, the tribe must have a IV-E agreement in place with a state Title IV-E agency or must be a tribe operating as a IV-E agency. If the child is eligible for IV-E funding, the DCFS *** case worker** coordinates with the eligibility worker and the tribal **case worker** to ensure coverage continues during the transition. If the child is not IV-E eligible, or the tribe does not have a IV-E agreement or is not operating as a IV-E agency, the DCFS **case worker** coordinates with the tribal **case worker **** to continue any other benefits for which the child may be eligible.

In all cases, the DCFS *** case worker **** continues to provide services to the child and family until the tribe confirms in writing that the case has been accepted by the tribal court. At that time, the DCFS case can be dismissed.

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D. CONTINUED WORK WITH NATIVE AMERICAN FAMILIES

When a Native American tribe declines to accept jurisdiction of a child welfare case, the Department completes case planning with the family ([6-800 Case Planning Process](#)). The tribal agent is notified of all risk and safety assessments, staffings, case planning meetings, court hearings, placements, and runaway episodes. The tribal agency is invited to and encouraged to provide input into all case planning meetings, including updates or revisions to the case plan. A copy of the case plan is provided to the tribe when they are involved with a family. Approval by the tribe is sought on every placement change decision.

If a tribal agency is not present during a staffing, case planning meeting, or court hearing, the Department documents efforts to involve the tribe and the response of the tribe to those efforts. Afterward, the Department informs the tribe of decisions made during the events, including case closure (6-630 Closure of the Foster Care Case). When a case with tribal involvement is closed, documentation that the tribe was notified of the case closure is made in the closing narrative and case notes.

When an Indian child's child welfare court proceedings remain in State court, either the attorney for the Department or the child shall address the child's ICWA status during every child custody proceeding.

In the event a child is eligible for membership in a tribe, but is not yet a member, the Department should take the steps necessary to obtain membership for the child in the tribe.

III. FORMS AND INSTRUCTIONS

[FAST I Form](#) / [Instructions](#) Financial Assessment Transaction Form

[FAST III Form](#) / [Instructions](#) Change Redetermination Form

[FAST V Form](#) / [Instructions](#) REDET Redetermination Form

FC Assessment of Family Functioning (AFF) – in the Family Assessment Tracking System (FATS)

FC Case Plan – in the Family Assessment Tracking System (FATS)

[CW 001B Form](#) / [Instructions](#) Foster Care Record Face Sheet

[CW Form ICWA-1](#) Rights under ICWA

[SSI-1](#) / [Instructions](#) SSI Screening Form

Court documents


TIPS/LARE 357A

Initial Certification Letter

Re-Certification Approval Letter

IV. REFERENCES

CW Policy Chapter 6, [Appendix A ICWA](#)

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CW Policy [6-630 Closure of the Foster Care Case](#)

CW Policy [6-800 Case Planning Process](#)

[LA Children's Code Article 672.1](#)

[Social Security Act, Section 471\(a\) \(15\)](#)

[Social Security Act, Section 472](#)

[Social Security Act, Section 473](#)

[Social Security Act, Section 475\(1\)](#)

[Social Security Act, Section 475\(1\) \(C\)](#)

ICWA legislation

25 U.S.C. 1902

25 U.S.C. 1911