



Elizabeth Sharp
Division of Policy
Children's Bureau
Administration on Children, Youth and Families
Administration for Children and Families
1250 Maryland Avenue SW, 8th Floor
Washington, DC 20024

March 6, 2012

Re: Tribal Child Welfare Interim Final Rule

To Whom It May Concern:

The Child Welfare League of America (CWLA) submits these comments on the interim final rule for the implementation of Title III of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). CWLA has been a strong supporter and proponent of this underlying legislation, which allows Indian tribes for the first time to operate Title IV-E programs. We submitted initial public comments in May, 2009 and now that the interim rule has been published we are pleased to have this opportunity to submit additional comments.

Overall the rule adheres closely to the statute and we generally applaud the work you have done in crafting it. We are especially encouraged by the effort to address inequities in funding by allowing a unique FMAP rate for tribal Title IV-E agencies that is at least as high as FMAP rates for state agencies. The rule also provides a helpful clarification that tribes will not be required to complete the CFSR process until they have a sufficient number of cases (150 or more) to meet a minimum threshold to sample from, and for the recognition that tribes operating Title IV-E plans will not likely serve large numbers (150 or more) of cases in the first years, and potentially for many years after initiating their programs. We additionally support granting flexibility to tribal agencies to claim their matching share for administration and training from in-kind third party sources. Furthermore, coordination of services will be vital and as such CWLA welcomes the requirement that states create procedures with tribes regarding the transfer of responsibility for care and placement of children to prevent any disruption of a child's eligibility for Medicaid or Title IV-E.

However, we would like to present a few additional recommendations that we believe will strengthen this rule and make it more workable and effective. First, with respect to the issue of the termination of parental rights, we believe that it should be explicitly stated that tribes have the option of going through a similar Customary Adoption process in lieu of the termination of parental rights. Some tribes may not wish to consider the termination of parental rights for cultural reasons and their right to self-determination should give them greater flexibility in determining when parental rights should be terminated, instead of being bound by state law. The



Customary Adoption alternative has been permitted through regulation, and we believe that this rule should reiterate that option.

Additionally, we have concerns with the definition of a “Foster Family Home” (Page 925, 1355.20(a)). As described in this rule, the definition is more geographically limiting than under the Indian Child Welfare Act (ICWA). The definition attempts to limit tribal authority for licensing their own foster homes to “on or near” reservation. We would like this language stricken or amended so that tribes may be given greater flexibility in licensing their own members who happen to live off reservation. In the vast majority of cases licensing will likely still occur on or near reservation. We would also support the development of minimum standards for what constitutes “good faith” on the part of a state with respect to tribal and stakeholder consultation. More uniformity in this area is needed from state to state.

Lastly, understanding that in tribal IV-E cases the AFCARS data elements do not apply, we continue to advocate the inclusion of ICWA data in the AFCARS data elements to allow for the tracking of children who fall under ICWA but are not handled by the tribe. Among the data elements we believe should be included are the identification of American Indian and Alaskan Native children, tribal notification, tribal intervention, out-of-home placements, foster care placement preferences, termination of parental rights (both voluntary and involuntary), and adoption placement preferences. Tracking these measurements will help ensure that ICWA is more consistently applied across the country, that federal requirements are complied with, and that Indian children are protected and connected to their families, communities, and tribes. It will also help address the disproportionate number of tribal families that lose their children.

Thank you again for the opportunity to comment on this interim final rule and for taking these suggestions into account. We look forward to continuing to work with you in ensuring that tribes can equally and effectively operate their own Title IV-E programs.

Sincerely,

A handwritten signature in cursive script that reads "Christine James Brown".

Christine James-Brown
President/CEO