DIVISION OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE MEMO #1-2009

Date:	January 16, 2008
To:	All Division of Children and Family Services Staff
From:	Todd Reckling, Administrator CFS Policy Section Division of Children and Family Services
Approved by:	Todd A. Landry, Director Division of Children and Family Services
Re:	Transfer of Indian Child Welfare Act Cases to Tribal Courts
Effective Date:	Immediately
Duration:	Until Revised
Contact:	Sherri Eveleth, Indian Child Welfare Program Specialist, 402-370-4216 Chris Hanus, Administrator, Child Welfare Unit, 402-471-9308

Introduction and Background:

The Indian Child Welfare Act applies to Indian children involved in child custody proceedings as defined by the Federal and Nebraska Indian Child Welfare Acts (ICWAs). One aspect of the ICWAs is the right for a parent, Indian custodian or tribe to request that the case be transferred to the tribal court of the child's tribe. The following protocol sets out the Division of Children and Family Services' (CFS) expectation for documenting and responding to a request to transfer a case to the tribal court of the child's tribe. These procedures are to be followed by all CFS staff.

Appropriately responding to a request to transfer a case to the tribal court of a child's tribe is an important function in an ICWA case. This response process will support compliance with the ICWAs and avoid the problems associated with noncompliance that may lead to delayed permanency for children. The result of having a formal, documented process which all staff follows is improved services to children and families.

Process:

Requests to transfer an ICWA case to the tribal court of a child's tribe are generally legal documents filed with the court by a parent, Indian custodian or tribe, but may also be indicated orally by a parent, Indian custodian or tribal representative during meetings or other conversations. Parents may object to the transfer, and the case cannot be transferred if either parent formally objects to the transfer in court. If neither parent objects to the transfer, all parties may state their position concerning transfer.

There is a presumption that transfer is in the best interests of Indian children, absent good cause to the contrary. The Bureau of Indian Affairs Guidelines state that good cause exists if the child's tribe does not have a tribal court. The BIA Guidelines also state that good cause MAY exist if one of the following is present:

1. The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing.
2. The Indian child is over twelve years of age and objects to the transfer.
3. The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.
4. The parents of the child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

The enumerated provisions do not automatically result in a finding that good cause exists not to transfer the case. The BIA Guidelines also provide if any party, other than a parent, objects to the transfer, the party must state the reasons for the objection in writing and the party requesting transfer must have the opportunity to respond, including presenting alternatives that would negate the objections. Only a court has the authority to make the good cause determination.

When the Department first becomes aware that a motion has been made to transfer juvenile court proceedings to a Tribal Court or any parent, Indian custodian or tribe has indicated that transfer may be requested, CFS staff shall contact the Department's Indian Child Welfare Program Specialist and the Department's legal counsel. Consultation will be provided as to what position the Department will take with respect to the Motion with appropriate consideration given to policy, legal and cultural issues. Legal counsel will be involved in representing the Department's position to the court, presenting evidence on the motion and creating the best record possible on which to base an appeal of an adverse ruling.