

Child Welfare Policy Manual

Questions & Answers

9.1 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Application of Title IV-B and Title IV-E Procedural Requirements

1. Question: When the Bureau of Indian Affairs (BIA) is responsible for a child's foster care costs, it will often contract with a State to provide services to that child. Such child is then included in the State's inventory, information system and case review system. The BIA appoints an administrative panel to conduct six month periodic reviews. Do the administrative review panels appointed by the BIA to conduct periodic (six month) reviews for Indian children in foster care satisfy the requirements of sections 475 (5) and (6) of the Social Security Act (the Act)?

Answer: Yes. Periodic reviews which are administrative reviews (rather than reviews conducted by a court) can take various forms at the State's option. They may be conducted by State agency staff, by a review panel made up of persons outside the agency, or by a panel comprised of both agency staff and the public. Title IV-E does not prohibit the State agency from utilizing a non-agency panel appointed outside the administration of the State agency.

Regardless of who appoints the review panel, the review must be conducted in accordance with section 475(5)(B) and (6) of the Act. It must be open to the participation of the parents of the child and it must include at least one person who is not responsible for the case management of, or delivery of services to, either the child or the parent who are the subject of the review.

- **Source/Date:** ACYF-CB-PIQ-83-09 (12/14/83)
- **Legal and Related References:** Social Security Act - sections 422 (b)(8), 471 (a)(16) and 475(5)(B) and (6)

2. Question: Please explain how the termination of parental rights (TPR) requirement applies to Indian tribes and its relationship to Indian Child Welfare Act requirements.

Answer: The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe.

The addition of the requirement in section 475 (5)(E) of the Social Security Act (the Act) to file a petition for TPR for certain children in no way diminishes the requirements of ICWA for the State to protect the best interests of Indian children. Furthermore, States are required to comply with the ICWA requirements and develop plans that specify how they will comply with ICWA in section 422 (b)(9) of the Act.

The requirement in section 475 (5)(E) of the Act applies to Indian tribal children as it applies to any other child under the placement and care responsibility of a State or tribal agency receiving title IV-B or IV-E funds. While we recognize that termination of parental rights and adoption may not be a part of an Indian tribe's traditional belief system or legal code, there is no statutory authority to provide a general exemption for Indian tribal children from the requirement to file a petition for TPR. If an Indian tribe that receives title IV-B or IV-E funds has placement and care responsibility for an Indian child, the Indian tribe must file a petition for TPR or, if appropriate, document the reason for an exception to the requirement in the case plan, on a case-by-case basis.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - sections 422(b)(9) and 475 (5) (E); 45 CFR 1356.21 (i)

3. Question: May the State or Tribe define compelling reasons for not filing a petition to terminate parental rights (TPR) in State law or Tribal code?

Answer: No. States and Tribes may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis. States and Tribes may, however, provide case workers examples of such for training purposes.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - sections 475 (5)(E); 45 CFR 1356.21 (i)

4. Question: Do Indian Tribes have to operate the title IV-B programs to operate a title IV-E program?

Answer: This question has moved to [9.2; question 11](#).

- **Source/Date:** 12/19/08
- **Legal and Related References:** Social Security Act - section 471(a)(2)