

Cultural Adoptions with State's Consent

In order for a adoptive child to receive an Adoption subsidy through the Office of Children's Services, various legal and eligibility requirements must be met. The completed subsidized adoption is the merging or marriage of the eligibility process with the legal adoption finalization process.

Several assumptions:

- 1) All parties in a cultural adoption case must agree with the plan for adoption.
- 2) All adoptive families must have a completed and approved adoptive homestudy before an adoption subsidy can be approved.
- 3) OCS custody of the child will remain in place until a new birth certificate is issued by the Bureau of Vital Statistics.
- 4) All children who qualify for an adoption subsidy must have an eligibility determination for either the Federal Title IVE Subsidy or for the state-funded, State with Medicaid Adoption Subsidy.
- 5) All children who qualify for an adoption subsidy through OCS, must be in the custody of the OCS at the time that the adoption subsidy is approved and the adoption is finalized.
- 6) All adoption subsidies must be approved PRIOR to the finalization of the adoption by the court (State or Tribal).
- 7) All adoptive parents have the ability to select how they wish to finalize their adoption, either in State court or in the Tribal court.

All children who qualify for an adoption subsidy must have an eligibility determination for either the Federal Title IVE Subsidy or for the state-funded, State with Medicaid Adoption Subsidy.

Initially, every effort is made to qualify the child for a Federal Title IVE subsidy. Thus, to be eligible for a IVE subsidy a two pronged-test must be met: Eligibility and Special Needs.

Eligibility

- 1) The child is determined eligible for IVE adoption assistance through one of four avenues:
 - a. The child is AFDC-eligible and meets the definition of a child with special needs. This must be determined at the time of the child's removal from the parents' home AND in the month the adoption petition is initiated.
- 2) Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs.
 - a. SSI eligibility must be in place at the time that the adoption petition is filed.

- 3) Child is eligible as a child of a minor parent and meeting the definition of a child with special needs
 - a. The child's parent is in foster care and receiving IVE foster care maintenance AND
 - b. Prior to the finalization of the adoption, the child meets the definition of a child with special needs
- 4) Child is eligible due prior Title IVE adoption assistance eligibility and meets the definition of a child with special needs.
 - a. The child had been previously adopted and received a IVE subsidy. This adoption was dissolved, and the child is placed in a subsequent adoptive placement. The child is automatically eligible for a IVE subsidy in the second adoption, based on the eligibility in the first adoption.

Special Needs

For a child to qualify for a special needs determination all three of the following criteria must be met:

- 1) The State must determine that the child cannot or should not be returned to the home of his or her parents.
 - a. Usually this is in the form of a Termination of Parental Rights Order
 - b. In Cultural Adoptions, this language must be judicially determined; thus a stipulation regarding permanency is signed by all parties to the CINA proceeding, in which the specific language in the stipulation must state:
 - i. Active efforts have been made by OCS and that these efforts have not been successful.
 - ii. The child cannot return to the parents' home.This is then followed up by a court order, which adopts the conditions of the stipulation in the order.
- 2) The State must determine that there exists a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing Title IVE adoption assistance. These conditions include:
 - a. Ethnic background
 - b. Age
 - c. Membership in a sibling group
 - d. Presence of a medical condition
 - e. Presence of physical, mental or emotional disabilities.
- 3) The State must determine in each case a reasonable, but unsuccessful, effort to place the child with appropriate parents without providing adoption assistance has been made. Examples include:
 - a. Relative searches
 - b. Letters to Tribes
 - c. Adoption Exchanges

- d. Child-specific recruitment
- e. Other recruitment activities

EXCEPTION: Should a child be placed in a relative placement and/or the child has developed a "significant emotional tie" to the adoptive parents, the efforts to place the child without a subsidy (listed above) do not apply. However, OCS is still required to document that the family was asked if they could adopt the child without a subsidy to meet this special needs requirement.

*If all **three** of the special needs criteria are met; and **one** of the eligibility criteria are met, then the child qualifies for a **Title IVE subsidy**.*

*If all of **three** of the special needs criteria are met; but **none** of the eligibility criteria are met, then the child qualifies for a **State Adoption Subsidy with Medicaid**.*

What OCS needs from the Tribes to finalize the adoption and close custody of the court proceedings in the State Superior Court...

In a Cultural Adoption with State's Consent case, the State is effecting adoption without a Termination of Parental Rights proceeding or order, utilizing cultural methods for finalizing an adoption. For this reason, the following process must occur:

- 1) All parties to the case must agree with the plan for the adoption. This agreement is completed in the CINA proceeding in the State Superior Court.
- 2) The child's parents will sign a stipulation that outlines their agreement to the adoption in the Tribal court or council.
- 3) The stipulation must also state that OCS has made active efforts to return the child to the parent's home and that these efforts have been unsuccessful.
- 4) Additionally, the stipulation must state that the child cannot return home. This language is directly tied to the child's special needs determination for an adoption subsidy (See #1 under Special Needs above).
- 5) OCS also requires an adoption petition from the Tribal court or council. This can be a letter from the Tribal court or council that informs the State that the adoption will be heard by the Tribe on a specific date, time and location. This document is tied directly to the child's eligibility for a IVE adoption subsidy (See # 1 under Eligibility above).

Once the adoption is approved by the Tribal court, and the adoptive family has received the child's birth certificate, the OCS will need a copy of the birth certificate in order to close out the CINA proceedings in the State court.

3.20.3 TRIBAL ADOPTION WITH STATE'S CONSENT

AUTHORITY: AS 25.23.040(3) Persons Required to Consent to Adoption, AS 25.23.080(a)(c) Petition for Adoption, AS 25.23.130(1)(2)(c) Effect of Adoption Decree, 25 U.S.C. 1913(a), 1915(a) & (c), 1951(a) & (b) (P. L. 95-608, Sec. 103(a), Sec. 105(a)(c), Sec. 301(a)(b) Indian Child Welfare Act of 1978),

POLICY: ICWA-eligible children who are in the custody of DFYS at the time of the adoption may receive an adoption subsidy and have the adoption finalized within the tribe or Tribal court. The finalization of the adoption within the tribe or Tribal court, is at the request of the adoptive family, and is not legally mandated by the DFYS. The adoption may also be finalized in State court.

PROCEDURE:

- a. In the case where a termination of parental rights order has been granted by the State court, the adoption would be finalized through the procedures under section 3.20.2 Adoption Finalization and Closure of the Case. If this adoption is subsidized, section 6.2.2.6.A Adoption Subsidies should be followed for the subsidy eligibility, negotiation, and approval.
- b. In the case where a consent to adoption by parent is signed, a termination of parental rights would not be necessary. For traditional adoptions within Indian or Alaska Native cultures, adoptions may occur without the termination of parental rights. This option supports the traditional adoptions process within the tribe or Tribal court.
- c. To finalize an adoption within the tribe or Tribal court with a consent to adopt by parent, the worker must receive the following documents:
 1. If the plan is for the child to receive an adoption subsidy, a State court order issued at Permanency Planning Hearing or other hearing which states that the active efforts have not been successful and that the child cannot return home.
 2. A stipulation regarding permanency signed by all parties and the court order adopting the stipulation signed by the State court.
 3. The petition to adoption and filing within the tribe or Tribal court
 4. Tribe or Tribal court adoption decree and/or new birth certificate of the child.