



ADMINISTRATION FOR
CHILDREN & FAMILIES

330 C Street, S.W., Washington, DC 20201 | www.acf.hhs.gov

September 29, 2023

Dear Tribal Leader:

The Department of Health and Human Services, Administration for Children and Families (ACF) is committed to partnering on a nation-to-nation basis with Tribes to ensure the wellbeing of Tribal children and preservation of Tribal families. We invite you to provide your input on a Notice of Proposed Rulemaking (NPRM) for foster care legal representation and an NPRM for safe and appropriate placements and services for children in foster care who identify as lesbian, gay, bisexual, transgender, queer or questioning, or intersex, as well as children who are on-binary or have non-conforming gender identity or expression (LGBTQI+) that were published in the Federal Register on September 28th, 2023.

[Foster Care Legal Representation](#). The NPRM on foster care legal representation proposes to allow title IV-E agencies to claim FFP for the administrative costs of an attorney providing: (1) legal representation in foster care proceedings of a title IV-E agency or any other public agency or tribe that has an agreement in effect under which the other agency has placement and care responsibility of a title IV-E eligible child; (2) independent legal representation of a child who is either a candidate for title IV-E foster care, or in title IV-E foster care, the child's parent(s), and the child's relative caregiver(s) in foster care and other civil legal proceedings when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV-E agency's title IV-E foster care plan; and (3) legal representation of an Indian child's tribe, when the child's tribe intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV-E foster care or an Indian child who is a candidate for title IV-E foster care when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV-E agency's title IV-E foster care plan.

ACF understands that representation for a child's tribe that has intervened in these state court proceedings may not always be provided by an attorney. In some cases, non-attorneys represent a child's tribe in state court proceedings if they are a member of and authorized to represent the child's tribe. We are considering allowing the cost of a non-attorney to represent a child's tribe when it is necessary for the administration of the title IV-E plan. Therefore, we are seeking input on this potential proposal:

- What research or evidence supports a non-attorney's ability to effectively provide the information that state courts need in a proceeding for a foster care placement or termination of parental rights?
- How can ACF ensure that non-attorneys provide adequate representation given that they are not subject to attorney licensing requirements or ethics rules?

[Safe and Appropriate Placements for Children Who Identify as LGBTQI+](#). ACF proposes requirements for safe and appropriate foster care placements for children in foster care who identify as LGBTQI+. Specifically, that agencies must: make available and place children who identify as LGBTQI+ with trained providers in an environment free of hostility who facilitate access to services that support the LGBTQI+ child; have a process for the LGBTQI+ child to report concerns about any placements; have procedures to prohibit agency and provider retaliation against a child due to their actual or perceived LGBTQI+ identity; have a process to request a safe and appropriate placement; provide access to services that support the LGBTQI+ child's identity; meet placement and consultation requirements for transgender, gender non-conforming, and intersex children placed in sex-segregated child-care institutions; ensure certain agency employees are trained, as well as requirements for notifying contractors and other entities about the proposed requirements for agencies. Lastly, ACF proposes

to modify the current CFSR regulations to monitor a state agency's compliance with the safe and appropriate placement requirement. We are seeking input on these proposed requirements.

Tribal Consultation seeking input on the NPRMs will be held through a teleconference call on the following date and time:

Date: October 30, 2023

Time: 2:00 p.m. EDT

Please register here:

https://acf-hhs.gov.zoomgov.com/webinar/register/WN_GZFFZMNISwe7UAFyhMf4Ng

After registering, each participant will receive a confirmation email containing information about joining the consultation. The Tribal consultation teleconference call is open to all tribal leaders or their designees and may address any aspect of the NPRMs. In addition to participating in the tribal consultation teleconference call, the Children's Bureau encourages tribal leaders to submit comments in writing in response to the NPRM.

The deadline for the receipt of written comments in response to the NPRMs is November 27, 2023.

You may submit written comments to the NPRMs using one of the following methods:

- Federal [eRulemaking Portal](#):
 - Legal Representation in Foster Care NPRM comments may be submitted to <https://www.regulations.gov/document/ACF-2023-0008-0001>
 - Safe and Appropriate Placements for Children Who Identify as LGBTQI+ NPRM comments may be submitted to: <https://www.regulations.gov/document/ACF-2023-0007-0001>
- Email: CBComments@acf.hhs.gov. Include docket number and/or RIN number in subject line of the message.

Additional Information is provided in Information Memoranda which will be posted on the Children's Bureau's website at <https://www.acf.hhs.gov/cb/laws-policies>

If you have any questions regarding the tribal consultation teleconference calls, please contact Cheryl Speed of the Children's Bureau at Cheryl.Speed@acf.hhs.gov. We look forward to receiving your input on this matter.

Sincerely,

/s/

Aysha E. Schomburg, Esq.
Associate Commissioner
Children's Bureau