

Tribal/State Title IV-E Intergovernmental Agreements

Facilitating Tribal
Access to Federal
Resources

Eddie F. Brown, D.S.W.

Katherine M. Buder Center for American Indian Studies
George Warren Brown School of Social Work
Washington University

Leslie Scheuler Whitaker, M.S.W., ABD

Philliber Research Associates

Chey A. Clifford, M.S.W. Candidate

Washington University

Gordon E. Limb, Ph.D.

Washington University

Ric Munoz, J.D./M.S.W. Candidate

Washington University

December 2000



FOUNDATIONS FOR THE FUTURE



NICWA

National Indian Child Welfare Association

Protecting our children • Preserving our culture

Acknowledgements

Casey Family Programs and the National Indian Child Welfare Association gratefully acknowledge all of the input and feedback received from individuals, tribal and state child welfare programs, and federal agencies in connection with this publication. Their contributions have helped us to provide accurate and reliable information on the needs of Indian children through the National Indian Children's Alliance.

The National Indian Children's Alliance (NICA) was formed in 1999 between Casey Family Programs and the National Indian Child Welfare Association. The goal of the Alliance is to increase permanency options for Indian children through three targeted project areas: 1) the conduct of research that can contribute to policy development on issues that impact Indian children; 2) the provision of on-site technical assistance and training to tribes to enhance service options for their children and families; and 3) the development of tribal adoption codes that incorporate historically and culturally defined practices and the implementation of a campaign to develop additional foster, kinship or adoptive homes. Together, these three components will provide Indian children with a stronger foundation for achieving the permanency that all children deserve.

Design, typography, and pre-print production: Design Studio Selby

©2000 Casey Family Programs and Washington University in St. Louis. No part of this report may be reproduced in any form or disseminated without express written permission from Casey Family Programs and Washington University in St. Louis.

Contents

Abstract	5
Executive Summary	7
Introduction	9
Child Welfare in Indian Country	9
The Care of Indian Children and the Indian Child Welfare Act	10
Federal Child Welfare Funding and Title IV-E	13
Title IV-E Foster Care and Adoption Assistance Programs	13
Title IV-E and Tribal Access	16
Proposed Amendment for Direct IV-E Funding to Tribes	17
Tribal Sovereignty and Foundations of Government-to-Government Relationships	18
The Indian Reorganization Act of 1934	19
Public Law 280	19
The Indian Civil Rights Act of 1968	20
The Indian Self-Determination and Education Assistance Act of 1975	20
Further Policies Influencing Self-Determination in the 1980s and 1990s	21
Barriers to Accessing Federal Funding	21
Inconsistent Treatment of Tribal Governments by Federal Policies and Programs	22
Issues around Tribal/State Working Relationships	23
Implementation of Tribal/State Intergovernmental Agreements	25
Title IV-E Intergovernmental Agreements	26
Summary	29
Methodology	30
IV-E Agreement Content Analysis	30
Focus Groups	30
Telephone Interviews	31
Strengths and Limitations of Project Methodologies	32
Results	34
Title IV-E Tribal/State Agreement Analysis	34
Time Limits	34
Statements of Purpose	36
Responsibilities of States and Tribes	37
Foster Care Provisions	38
Adoption	39
Training	40
Other Child Welfare Related Activities	40
IV-E Compliance	40
Role of the BIA in Providing Child Welfare Related Services	42
State and Tribal Financial Responsibility	42

IV-E Definitions and Modifications	43
Other Tribal/State Intergovernmental Agreement Provisions	44
Agreement Types	44
Summary	46
Focus Group/Interview Analysis	47
Decisions to Implement IV-E	48
Agreement Development Processes	50
Supports in the Agreement Development Process	51
Barriers in the Agreement Development Process	51
Building the Institutional Capacity for Administering IV-E	52
Provisions of IV-E Agreements	53
Barriers to IV-E Implementation	57
Special Supports in IV-E Implementation	59
Agreement and Service Effectiveness	61
Prospects for the Future	65
Summary	68
Conclusions and Recommendations	70
References	73
Appendices	75

LIST OF TABLES

Table 1. IV-E Agreements Reviewed by State and Tribe	35
Table 2. Tribes/States with IV-E Agreements	75

LIST OF FIGURES

Figure 1. Agreement Duration	36
Figure 2. Agreement Provisions	38
Figure 3. Tribal Foster Care Responsibilities	39
Figure 4. Agreement Components: Compliance Issues	41
Figure 5. Other General Agreement Components	43
Figure 6. Agreement Types	45
Figure 7. Agreement Effectiveness in State/Tribal Collaboration	61
Figure 8. Tribally Administered IV-E Service Effectiveness	62

ABSTRACT

Tribal/State Title IV-E Intergovernmental Agreements: Facilitating Tribal Access to Federal Resources

Although Title IV-E of the Social Security Act is an important funding stream for foster care and adoption services in American Indian communities, limited research has been conducted on the facilitation of tribal access to federal IV-E resources. Historically, direct IV-E funding has not been available to tribal communities, therefore, tribes have worked with their respective states to develop agreements that allow them to access these important funds. The purpose of this study was to provide a comprehensive overview of current IV-E intergovernmental provisions in order to assist tribes and states in strengthening both new and existing IV-E agreements. The research team conducted a nationwide content analysis of all existing current IV-E documents and conducted focus groups and telephone interviews with tribal and state representatives. Major findings include: 1) current IV-E tribal/state agreements vary widely, thus, there is no “standard” for these agreements; 2) current IV-E tribal/state agreements focus mainly on foster care maintenance payments and services; and 3) although tribes have limited options in regard to accessing IV-E dollars (tribes must enter into an agreement with the state or they cannot access this funding source), they have established good working relationships with their respective states. Implications of these results for both tribes and states are discussed, and three recommendations are included to help facilitate tribal access to Title IV-E federal funding.

Tribal/State Title IV-E Intergovernmental Agreements: Facilitating Tribal Access to Federal Resources

1. Title IV-E is an important source of revenue for foster care and adoption in American Indian communities.
 - Title IV-E of the Social Security Act represents the largest federal share of ongoing funding for child welfare.
 - Accessing funding for tribal foster and adoption services is critical in order to implement appropriate and effective child welfare services in Indian Country.
2. Tribes do not have equal access (as do states) to IV-E funds.
 - Although Title IV-E funding was intended by Congress to serve all eligible children, American Indian children under tribal court jurisdiction do not enjoy the same entitlement to IV-E as other children in the United States.
 - Federal legislation requires tribes to enter into an intergovernmental agreement with the state in order to access IV-E funding.
3. While tribal/state relationships can be problematic, Title IV-E agreements present opportunities for tribes and states to work together to achieve mutual benefits for their citizens.
 - A large majority of both tribal and state representatives perceive their IV-E agreements to be effective in making foster care assistance available to American Indian communities.
 - Agreement effectiveness stems from the increased ability of tribes and states to provide culturally sensitive services and the opportunity for tribes to implement their own programs and exercise tribal sovereignty.
4. Nationwide, there are 13 states and 71 American Indian tribal governments that currently have Title IV-E agreements.

Content analysis of agreements revealed:

 - There is no “standard” for IV-E tribal/state agreements.
 - State governments are assuming primary responsibility for IV-E eligibility determination and for making foster care maintenance payments, while tribes are providing case work and related foster care services.
 - Training for both tribal service providers and foster/adoptive parents is not a major focus of current IV-E agreements.
 - Intergovernmental agreements tend to view the relationship as one of (state) government-to-subcontractor rather than a government-to-government relationship.
5. Focus group participants and interviewees expressed a range of observations and outcomes for implementing Title IV-E.
 - Tribal representatives reported that accessing funding, affirming tribal sovereignty, and further developing tribal child welfare programs were important incentives for pursuing IV-E agreements with state governments.

- Tribes that initiated the IV-E process and received state cooperation were more successful in completing and maximizing their agreements in a timely manner.
- Given that there is no other option available for accessing IV-E funds, both tribes and states plan to continue utilizing their IV-E agreements in the future.

caution as to the potential impact of direct funding on current resources and services; and 3) some of the tribes have already established a good, effective procedure with the state, and have indicated they would want to continue this state relationship.

6. Conclusions and recommendations for strengthening IV-E tribal/state agreements are offered.

- Weaknesses in current IV-E agreements include: 1) a lack of uniformity in tribal/state agreements that reflect a formal government-to-government relationship; 2) a lack of specificity within agreements detailing standards and practices; and 3) the limited scope of many agreements.
- Recommendations offered: 1) develop a model agreement for consideration by tribes and states; 2) develop tribal/state IV-E agreements that include both a general agreement recognizing a government-to-government relationship and a contract to provide for pass-through dollars from states and tribes; and 3) inform tribes and states as to the provisions of Title IV-E that allow tribal access to funding for training and administrative costs.
- Tribes have indicated various reactions with regard to direct funding, including: 1) tribes would prefer a direct federal relationship whenever possible; 2) given the uncertainty of the federal legislation and subsequent regulations, tribes have expressed

Tribal/State Title IV-E Intergovernmental Agreements: Facilitating Tribal Access to Federal Resources

Introduction

Approximately 405,000 Indian children live on or near tribal lands; recent data suggest that approximately 6,500 of these children will be placed in substitute care during a given year. Of these children in substitute care, between 3,900 and 4,600 meet the eligibility criteria for federal foster care and adoption assistance under Title IV-E of the Social Security Act (Cross, Earle and Simmons, 2000). Further, the average estimated monthly number of children participating in IV-E foster care almost tripled between 1983 and 1996, from 97,370 in 1983 to 266,977 in 1996 (U.S. House of Representatives, 1998). Thus, Title IV-E is an important source of revenue for foster care and adoption in American Indian communities.

Because Title IV-E foster care and adoption programs are statutorily targeted to state agencies, Indian tribes can gain access to and administer IV-E funds only by entering into agreements with state agencies in the states in which Indian communities are located. The context and content of these agreements differ substantially by tribe and state, but are influenced by a number of historical developments in child welfare and the political status of tribes. The purpose of this study is to provide a comprehensive overview of current IV-E agreements in order to assist tribes and states in developing future agreements, to make recommendations for strengthening agreements, and to support tribal/state relationships in

accessing IV-E funds. The first section will contain a literature review to examine: 1) the historical context of child welfare legislation in Indian Country, 2) a general overview of federal child welfare funding and Title IV-E, 3) foundations for government-to-government relationships, 4) barriers to accessing federal funding, and 5) issues surrounding tribal/state working relationships, and 6) implementation of tribal/state intergovernmental agreements.

Child Welfare in Indian Country

U.S. federal policy documents state that the purpose of child welfare services is to “improve the conditions of children and their families and to improve or provide substitutes for functions that parents have difficulty performing” (U.S. House of Representatives, 1998, p. 1). Outcomes of child welfare programs and services articulated by the U.S. Department of Health and Human Services (2000) include the following areas of safety, permanency, and child and family well-being:

Safety Outcomes

- Children are, first and foremost, protected from abuse and neglect.
- Children are safely maintained in their homes whenever possible and appropriate.

Permanency Outcomes

- Children have permanency and stability in their living situations.
- The continuity of family relationships and connections is preserved for children.

Child and Family Well-Being Outcomes

- Families have enhanced capacity to provide for their children's needs.
- Children receive appropriate services to meet their educational needs.
- Children receive adequate services to meet their physical and mental health needs.

Child welfare services cover a wide range of activities, including child protection, family support and preservation, and out-of-home care. The federal government has played a key role in child welfare beginning in the early 1900s. Since 1994, approximately 40 federal programs have been authorized to support child welfare services (Robinson and Forman, 1994). The largest of these programs, which includes family support, foster care, and adoption assistance, is authorized under Title IV-B and Title IV-E of the Social Security Act (U.S. House of Representatives, 1998).

While a combination of government, nonprofit and private agencies provide child welfare services to children and families, the primary responsibility for child welfare services nationwide rests with the states (U.S. House of Representatives, 1998). Additionally, while each state has its own judi-

cial/administrative structures and programs related to the provision of child welfare services, American Indian tribes have played an increasingly important role over the past two decades in providing services to American Indian communities. Today, almost all American Indian tribes in the U.S. administer some type of child welfare services either individually or in combination with other tribes (Cross et al., 2000), although the scope of these services depends largely on the size and financial resources of the tribe.

The Care of Indian Children and the Indian Child Welfare Act

Child welfare services provided in American Indian communities today are influenced by traditional indigenous approaches to child rearing which are reflected in part by the history and content of the Indian Child Welfare Act (ICWA). Traditionally, in American Indian communities, children are born into both a primary biological family as well as a kinship network. The kinship network, which includes the tribal clan or band, provides both protection and discipline for the child (Cross et al., 2000). Historically, raising American Indian children fell into the hands of both the parents and the Indian community, and the cohesiveness of American Indian tribes was maintained through these kinship practices and communal connections (Kunesh, 1996). European-American influence on traditional American Indian child-rearing practices made kinship and family systems less stable, and

parent-child relationships were redefined under the influence of European-American values and norms. Eventually, this influence undermined many American Indian cultural values and traditional practices.

European conquest affected American Indian child-rearing practices and family systems in an even more devastating way. As early as 1860, boarding schools were used by the Bureau of Indian Affairs (BIA) as a tool to “civilize” American Indian children by separating them from their tribal communities and forcing them to learn and speak English and to adopt European-American practices and customs. Kunesh (1996) states that “... the close bonds of extended Indian families ... were deemed obstacles which had to be removed.” If parents did not agree to send their children to boarding schools, the federal government took the children from their homes by force (Mannes, 1995).

In 1958, the Indian Adoption Project (IAP) was established by the BIA and the Child Welfare League of America (CWLA). This project was implemented “to provide adoptive placements for American Indian children whose parents were deemed unable to provide a ‘suitable’ home for them” (Mannes, 1995, p. 267). States were paid by the BIA to remove Indian children from their homes under the charge of neglect (Kunesh, 1996). Most of the children removed from their “unsuitable” environments were placed in non-Indian homes due to the lack of American Indian families available to care for Indian children.

Transracial placements were encouraged and most of these children were placed in Caucasian homes and separated from their Indian communities.

From 1969 through 1974, the Association on American Indian Affairs (AAIA), acting at the request of the Devils Lake Sioux Tribe of North Dakota¹, conducted studies of the impact of the afore-mentioned federal and state policies toward American Indian children and families. They found that 25 to 35% of all Indian children were being removed from their homes. To address this alarming finding and the devastating impact this rate of removal was having on American Indian communities, the AAIA began pushing for change with the BIA and U.S. Department of Health, Education, and Welfare (Mannes, 1995). Eventually, advocacy by the AAIA and other American Indian rights groups prompted the Social and Rehabilitative Services Agency (SRS) to instruct state child welfare agencies to recognize and honor tribal court directives involving Indian children residing on reservations. However, many state agencies ignored the 1970 SRS directives, charging that tribal court decisions were not impartial and that tribal court orders were not legitimate because most tribal judges were not trained to utilize “proper” legal procedures (Mannes, 1995). Although the SRS issued a second set of instructions in response to the ineffectiveness of the first instructions, the agency was unable to enforce them.

In response to the failure of these directives, in 1978, the AAIA prepared an Indian child welfare

bill that was eventually passed after numerous hearings and amendments. On November 8, 1978, the Indian Child Welfare Act (Pub. L. No. 95-608) went into effect, giving tribes jurisdiction over child custody proceedings including foster care placement, termination of parental rights (TPR), pre-adoption placement, and adoption placement. This legislation was enacted with the intention that tribal jurisdiction would ensure the survival of tribal culture and tradition as well as supplement tribes' right to self-determination (MacEachron, Gustavsson, Cross and Lewis, 1996). The ICWA called for tribal heritage protection and family preservation by mandating an end to the out-of-culture-placements of American Indian children. In commenting on the effects of this policy in American Indian communities, Cross et al. (2000) state:

The ICWA was a huge step in the right direction. However, being given the right to provide a service does not mean that the funding, desire, or know-how will come together in a timely way. For Indian tribes, program development has been hampered by lack of funding, jurisdictional barriers, lack of trained personnel, lack of information about the extent of the problem, lack of culturally appropriate service models, and community denial. Despite these obstacles, tribes have been able to develop services to a degree beyond what a reasonable person would believe possible. The struggle is still new and while great strides have been made most of the work is yet to be done (p. 53).

The ICWA established requirements and standards for child welfare agencies to follow in placing Indian children, including providing culturally appropriate services for Indian families before a child was placed and notifying tribes of the placement of Indian children (Cross et al., 2000). Through the ICWA, tribes were given jurisdiction over child welfare proceedings on the reservation as well as the right to accept or reject jurisdiction over Indian children living off the reservation (Plantz, Hubbell, Barrett and Dobree, 1989). Indian tribes were allowed to develop their own family and child welfare services and were given priority over state courts in decisions regarding foster care and adoption of Indian children living on reservations. The ICWA supported "self-determination policies and decision making to ensure the collective right of tribal survival" (MacEachron et al., 1996, p. 452).

Title II of the ICWA established a grant program to fund tribal development and operation of child welfare services. However, the largest share of ongoing funding for child welfare is administered by the Department of Health and Human Services (DHHS) under the provisions of the Social Security Act (Cross et al., 2000). Thus, accessing funding for tribal foster care and adoption services is an integral aspect of the "struggle" to implement appropriate and effective child welfare services in Indian Country.

Federal Child Welfare Funding and Title IV-E

Programs funded under the Social Security Act include Title IV-E Foster Care and Adoption Assistance, Title IV-B Child Welfare Services and the Promoting Safe and Stable Families Program, and Title XX Social Services Block Grant. Titles IV-B and IV-E “are intended to operate in consort to help prevent the need for out-of-home placement of children, and in cases where such placement is necessary, to provide protections and permanent placement for the children involved” (U.S. House of Representatives, 1998, p. 2). Title IV-B authorizes the Title IV-B Child Welfare Services Program and the Promoting Safe and Stable Families Program, which provide funding to states for family preservation and family support services. Title IV-E, the focus of this paper, authorizes funding for foster care and adoption assistance.

Title IV-E Foster Care and Adoption Assistance Programs

The Title IV-E Foster Care Program and Adoption Assistance Program are permanently authorized entitlements under which the federal government has a “binding obligation” to make payments to individuals or government entities that meet the eligibility criteria established by law (U.S. House of Representatives, 1998, p. 2)². The purpose of these programs is to provide federal matching funds for foster care and adoption

services for economically disadvantaged children and children with special needs. Title IV-E provides funds for: 1) monthly maintenance payments for eligible children in foster care; 2) monthly assistance payments for special needs children in adoptive placements; 3) administration costs associated with placement of eligible children; and 4) training costs for personnel administering the programs and for foster and adoptive parents. The following sections present summaries of the categories of assistance available under IV-E.

Foster Care Maintenance. Foster care maintenance is partially provided by Title IV-E for economically disadvantaged children in foster care family homes or child care institutions (U.S. House of Representatives, 1998). Foster care maintenance includes a monthly cash assistance payment which covers the costs of food, clothing, shelter, daily supervision, school supplies, the child’s personal incidentals, liability insurance with respect to the child, and reasonable travel to the child’s home for visitation. Foster children are eligible for IV-E subsidies if their families would have been eligible for AFDC as of July 16, 1996 (U.S. House of Representatives, 1998). In addition, the following conditions must be met:

- Removal from the home and foster placements of the child were based on either a voluntary placement agreement signed by the child’s parents or guardians or a judicial determination that remaining in the home would be detrimental to the child’s welfare.

- Reasonable efforts³ were made to prevent the need for home removal or to return the child to his/her home (with exceptions enacted to this condition in 1997).
- Care and placement of the child are the responsibility of specified public agencies.

To meet federal IV-E requirements, appropriate documentation, including an eligibility determination, must be completed for each child, and the child must be placed in a licensed foster care facility. Required documentation includes a parental placement agreement and court documents, including petitions, court orders, and/or transcripts of court proceedings. Court orders must contain required language stating that the above conditions are met; that is, the orders must state that “reasonable efforts” have been made to prevent the removal of the child from the home and that it is contrary to the best interest and welfare of the child to remain in his/her home. If the child is in foster care at the time of the court proceedings, the court order must also state that reasonable efforts have been made to reunite the child with his/her family (under the terms of the Adoption and Safe Families Act [ASFA] of 1997).

According to Section 422 of the Social Security Act and terms of the ASFA, the following protections must be in place for states/tribes to receive Title IV-E reimbursements:

- An inventory must be completed of all children who, before the inventory, had been in

foster care for six months or more which determined the appropriateness and necessity of the foster care placement; whether the child could or should be returned to his/her parents or freed for adoption or other permanent placement; and the services necessary to facilitate the return or placement of the child for adoption or legal guardianship.

- An information system is operating from which the status, demographic characteristics, location and placement goals for every child in foster care can be determined.
- A written case plan, contained in the case record, includes 1) a description of the placement; 2) a discussion of the safety and appropriateness of the placement; 3) plans for carrying out the provisions of the voluntary placement agreement of judicial determination; 4) a plan for assuring that the child receives safe and proper care; 5) a description of services to the parents, child, and foster parents that will improve the conditions in the parents’ own home and facilitate either the return of the child to his own safe home or the permanent placement of the child; 6) a discussion of the appropriateness of the services provided to the child under the plan, addressing the needs of the child while in foster care; 7) assurances that the plan achieves placement in a safe setting that is the least restrictive (most family-like) and most appropriate setting available, consistent with the best interests and special needs of the child; and 8) assurances that the plan places the child in a safe setting that is in close proximity to the parental or relative’s home in which the child had been living, consistent with the child’s best interests and special needs.

- Case reviews provide for a periodic review of the status of each child at least once every six months by a court or administrative review to determine 1) continuing necessity for and the appropriateness of the placement; 2) extent of compliance with the case plan; 3) extent of progress made toward alleviating or mitigating the causes of foster placement; and 4) the likely date the child may be returned home, placed for adoption, or provided legal guardianship.
- Permanency hearings are held no later than 12 months after the original placement (and not less frequently than every 12 months thereafter) to determine the future status of the child.
- Procedural safeguards are in place, including cooperative agreements with the courts, and/or procedures to assure there are safeguards with respect to parental rights pertaining to: 1) the removal of the child from the home; 2) a change in the child's placement; and 3) any determinations affecting visitation privileges. In addition, a child's health and education record must be reviewed, updated, and supplied to the foster parent or foster care provider with whom the child is placed.
- Permanency planning services are provided to help children, when appropriate, return to families from which they have been removed, be placed for adoption with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, be placed in some other planned, permanent living arrangement (U.S. House of Representatives, 1998).

The federal matching rate for foster care maintenance payments for a given state is that state's Medicaid matching rate, which ranges nationally from 50 to 83 percent (with an average of 57%) (U.S. House of Representatives, 1998). The state's Medicaid matching rate is based on the state's per capita income.

Adoption Assistance. Like IV-E foster care assistance, adoption assistance available under Title IV-E consists of monthly cash payments for children with special needs in adoptive placements. Children determined to have "special needs" and who are also AFDC- or SSI-eligible may receive reimbursements of specific nonrecurring costs associated with their adoptive placements. A special needs child is defined as a child with respect to whom the state determines there is a specific condition or situation, including age, membership in a minority or sibling group, or a mental, emotional, or physical handicap, which prevents placement without special assistance. The amount of adoption assistance payments is based on the circumstances of the adopting parents and the needs of the child; however, the payments may not exceed the amount the family would have received on behalf of the child under foster care.

Provisions of adoption subsidy programs vary across states. Some states offer basic maintenance payments as well as additional payments for supportive activities (such as family counseling) or for certain groups of children (such as those with

severe disabilities). Other states offer one level of payment to everyone, with no special allowances (U.S. House of Representatives, 1998). The federal matching rate for adoption assistance is also based on each state's Medicaid matching rate.

Administration and Training. Title IV-E also provides funding for allowable administrative costs associated with child placement (foster care and special needs adoption) services. These allowable costs include referral to services, preparation for and participation in judicial determinations, placement of the child, case plan development, case reviews, case management and supervision, recruitment and licensing of foster homes and institutions, rate setting, and a proportionate share of agency overhead (U.S. House of Representatives, 1998). The federal matching rate for administrative costs is 50%.

Finally, states (and tribes) may also claim matching funds (at a rate of 75%) for training costs for personnel (e.g., caseworkers) administering Title IV-E programs, as well as for foster and adoptive parents. States must have approved IV-E training plans and provide documentation of training costs to receive reimbursement.

Other notable features of the Title IV-E program include the following:

- Children receiving IV-E assistance are also eligible for Medicaid.
- All states receiving Temporary Assistance for Needy Families (TANF) funding are obligated by law to operate Title IV-E Foster Care and Adoption Assistance programs.

- The award for Title IV-E is made quarterly by filing a claim showing actual expenditures; that is, Title IV-E is a reimbursement for funds already spent. All federal IV-E funds must be matched with state or local funds.

Title IV-E and Tribal Access

Title IV-E is a critical source of funding for foster care and adoption services in the United States. However, tribal access to IV-E has been unequal to that of states. Although the IV-E program was intended by Congress to serve all eligible children, American Indian children under tribal court jurisdiction do not enjoy the same entitlement to IV-E as other children in the U.S. Title IV-E does not provide funds for children placed by tribal courts or for tribal governments providing foster care and adoption services to children under their jurisdiction. In commenting on restricted tribal access to Title IV-E, Cross et al. (2000) state:

[Title IV-E programs] provide billions of dollars of funding which can be used to support child welfare services. They are designed to promote the well-being of all children in the United States; however, most of these programs were designed with little or no consideration given to issues of tribal culture, service delivery systems, or the government-to-government relationship that exists between tribes and the state and federal governments. Consequently, tribes have encountered significant barriers to funding access (p. 53).

Title IV-E statutes provide services only for income-eligible children placed by states or public agencies with whom states have agreements.

Thus, in order for tribes to administer IV-E, they are required to enter into IV-E agreements with the states in which they are located (Cross et al., 2000; U.S. Department of Health and Human Services, 2000). Entering into such agreements requires that tribes and states develop government-to-government relationships that recognize tribal sovereignty and self-determination.

In addition to the complexities of negotiating intergovernmental agreements, there are other considerations that may limit tribal access to IV-E. Advocates in the State of Oregon (State of Oregon, n.d.) have noted the following as potential drawbacks to tribal participation in Title IV-E:

- IV-E requires a greater administrative burden on tribal courts and child welfare agencies.
- Funds are available for the maintenance of children but not for providing social services or treatment.
- State IV-E plan amendments are required to allow tribal organizations to access IV-E funding.
- Tribes must develop policy and/or administrative rules for operating the IV-E program that must be approved by the Regional Office of HHS.
- IV-E requires adequate infrastructure to administer the program and meet fiscal requirements.

Thus, tribal access to Title IV-E can be problematic, given the administrative requirements of the program in addition to the mandate that tribes must enter into agreements with their respective states to receive funding.

Proposed Amendment for Direct IV-E Funding to Tribes

During the welfare reform debate of 1996, members of Congress advocated for an amendment to Title IV-E that would provide direct funding to tribes, thereby “[ending] the disparate treatment of eligible Indian children ... by providing them with the same services as are currently provided to all other eligible children in the United States” (Funk, 2000). The amendment (S. 1478), proposed originally in 1997 and most recently in 1999, would:

- extend the Title IV-E entitlement programs to all tribal placements in foster and adoptive homes;
- authorize tribal governments to receive direct funding from HHS for administration of IV-E programs;
- recognize tribal standards for foster home licensing;
- allow the Secretary of HHS flexibility to modify the requirements of the IV-E law for tribes if the requirements are not in the best interests of Indian children and if the tribal plans include alternative provisions that would achieve the purpose of the requirement that is altered or waived; and
- continue to allow tribal/state IV-E agreements.

The amendment was referred to the Senate Committee on Finance in 1999, but little or no action has been taken since that time. Unless or until legislative action makes it possible for tribes to receive direct federal funding under Title IV-E,

as previously mentioned, tribes must enter into intergovernmental agreements with states in order to participate in the program. The following section reviews the historical foundations of tribal/state agreements and government-to-government relationships.

Tribal Sovereignty and Foundations of Government-to-Government Relationships

As is the case with the ICWA, current federal policy involving American Indian tribes is based, in part, on a trust relationship between the federal government and Indian tribes as distinct political communities (Utter, 1993). Although the legal definition of the trust relationship has caused great debate, “in its narrowest and most concrete sense, the relationship approximates that of trustee and beneficiary, with the trustee (the United States) subject in some degree to legally enforceable responsibilities” (Canby, 1981, p. 32). Broadly defined, “the [trust] relationship includes the mixture of legal duties, moral obligations, understandings and expectancies that have arisen from the entire course of dealing between the federal government and the tribes” (Canby, 1981, p. 32).

The American Indian Policy Review Commission of 1977 expanded on this broader definition:

The scope of the trust responsibility extends beyond real or personal property which is held in trust. The U.S. has the obligation to provide services, and to take other appro-

priate action necessary to protect tribal self-government. The doctrine may also include a duty to provide a level of services equal to those services provided by the states to their citizens. The conclusions flow from the basic notion that the trust responsibility is a general obligation which is not limited to specific provision in treaties, executive orders, or statutes; once the trust has been assumed, administrative action is governed by the same high duty which is imposed on a private trustee (American Indian Policy Review Commission, 1977, p. 130).

Although tribes benefit from a relationship in which the federal government acts as a “trustee,” tribes are also recognized as sovereign entities with an inherent right or power to govern (Kunesh, 1996, p. 17). Tribal sovereignty means that Indian tribes are “nations within a nation” (Cross et al., 2000, p. 51). Under the U.S. Constitution, the right to govern is inherent in the people and is exercised through representative local, state, and federal governments. Legal experts have noted that this right is comparable to the inherent sovereignty of Indian people in the tribal context (Canby, 1981; Deloria and Lytle, 1983). Canby (1981) summarizes the principal attributes of tribal sovereignty as follows:

- 1) Indian tribes possess inherent governmental power over all internal affairs.
- 2) States are precluded from interfering with the tribes’ self-government.
- 3) Congress has plenary power to limit tribal sovereignty and thereby limit the first two attributes.

“Self-determination” is an outgrowth of tribal sovereignty, covering a variety of concepts including tribal restoration, self-government, cultural renewal, reservation resource development, self-sufficiency, control over education, and equal or controlling input into policies and programs arising from the Indian-federal government trust relationship (Waldman, 1985). Federal policy began to recognize tribal self-determination beginning in the 1930s with a renewal in the 1970s, creating opportunities for tribes to retain a degree of sovereignty while overcoming some of the arbitrary restraints on sovereignty inflicted over the previous 150 years (Utter, 1993). The following summarizes a number of legislative and federal policy developments influencing, both positively and negatively, tribal self-determination and tribes’ abilities to access federal support through government-to-government agreements.

The Indian Reorganization Act of 1934

In 1928, the federal government commissioned a report (known as the Meriam Report) to study social and economic conditions on reservations. Entitled *The Problem of Indian Administration* this document reached three basic conclusions: 1) American Indians were receiving poor services, especially in health and education, from the federal government and service providers charged with meeting these needs; 2) states had a better record working with tribes than did the federal government; and 3) American Indians were not

being included in the management of their own affairs (Deloria, 1974; Utter, 1993). Six years later, the Indian Reorganization Act of 1934 was passed and included mechanisms for chartering and reorganizing tribal governments, although the policies put into place lacked adequate mechanisms to assure tribal independence from bureaucratic control (Utter, 1993). The Johnson-O’Malley Act was passed by Congress in the same year to promote federal and state cooperation in the provision of services to American Indians, particularly in the area of education. The Act aimed to involve states more aggressively in Indian affairs and was related to the Meriam Report’s view that states were more effective providers of services in American Indian communities.

Public Law 280

Public Law 280, which was passed by Congress in 1953, was one of a number of laws passed in the early 1950s that laid the groundwork for placing American Indians under state law (Deloria and Lytle, 1984). In part, such laws were based on public beliefs that assimilation of American Indians into European-American culture was the only acceptable means of raising Indian children, and that tribes were not able to adequately protect their children (Cross et al., 2000). According to this legislation, a number of states were given some forms of civil and criminal jurisdiction over American Indian communities (Canby, 1988; Sam Deloria, personal communication, July 11, 2000) and other states were given congressional

permission to amend their constitutions to extend some types of state jurisdiction onto reservation lands (i.e., state Child Protective Services, adoption and foster care services) (Deloria and Lytle, 1984). A significant number of tribes were affected by this law, and its effects included increased Indian participation in state-administered services (such as public assistance and child welfare services). Although the law had the effect of extending state services to American Indians, the law also “further eroded tribal authority and capacity to protect children” (Cross et al., 2000, p. 51).

The Indian Civil Rights Act of 1968

Johnson’s Great Society programs sought to make the plight of American Indians an integral part of “the expanding human concern of the times” (Deloria and Lytle, 1984). In 1968, President Johnson proposed “a new goal for our Indian programs: A goal that ends the older debate about ‘termination’ of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes partnership self-help” (p. 336). A major breakthrough for tribal government came with the Great Society programs. For example, although Indian tribes were not specifically mentioned in the delivery system provided in the Economic Opportunity Act of 1964, a crucial policy decision was made by the Office of Economic Opportunity (OEO) to make Community Action Program grants available to

Indian tribes (American Indian Law Center, 1976).

A further step toward self-determination was the Indian Civil Rights Act (ICRA) of 1968, which prohibited states from assuming jurisdiction over Indian Country under Public Law 280, without first obtaining tribal consent (Deloria and Lytle, 1984). The ICRA also imposed certain requirements on tribal courts, the effects of which have been debated since the time the Act was passed (Deloria and Lytle, 1984).

The Indian Self-Determination and Education Assistance Act of 1975

The Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. No. 93-638, also known as “638”) authorized the BIA and IHS to contract with and make grants directly to Indian tribal governments for federal services, much like it does with state and local governments (Deloria and Lytle, 1984). Title I (the self-determination portion of the Act) authorized the subcontracting of federal services to tribal organizations, provided discretionary grant and contract authority to tribes, provided for tribal government participation in federal programs that enable civil service employees to work for tribal organizations, and allowed the Secretary of the Interior to waive federal contracting laws and regulations that were not appropriate for tribal contracts. As a result, many tribes have developed their own social and child welfare services from BIA and IHS funds.

Title II (the Indian Education Act) extended tribal

control over the education of Indian children on reservations, although responsibility was shared among the tribe, the BIA, mission schools, and the public school system (Deloria and Lytle, 1984).

Further Policies Influencing Self-Determination in the 1980s and 1990s

The self-determination movement was accelerated through a series of legislative actions and Supreme Court decisions in the 1970s and 1980s. The Court emphasized “Indian sovereignty” and the inherent power of tribes to assert their economic, political, and cultural authority in a number of areas (Utter, 1993). Legislation supporting self-determination included the Indian Financing Act, which sought to generate capital for tribal use in reservation development (Deloria and Lytle, 1984).

During the 1990s, the federal government supported (and continues to support) the development of tribal self-governance compacts. These projects (or compacts) provide financial assistance to Indian tribes to enable them to assume programs, functions, services, and activities of the BIA, Department of the Interior, and IHS. The Tribal Self-Governance Amendments of 1997 established a permanent Self-Governance Program. The bill also allowed the Secretary of the Department of Health and Human Services to negotiate demonstration self-governance projects with tribes for the operation of non-IHS programs within DHHS (National Indian Health

Board, 1998). As stated in the Congressional Record:

The aim of Self-Governance is to remove the often needless and sometimes harmful layers of federal bureaucracy that dictate Indian affairs. By giving tribes direct control over federal programs run for their benefit and making them directly accountable to their members, Congress has enabled Indian tribes to run programs more efficiently and more innovatively than federal officials have in the past. And, allowing tribes to run these programs furthers the Congressional policy of strengthening and promoting tribal governments (U.S. House of Representatives, 1997).

Barriers to Accessing Federal Funding

In spite of federal legislation and policies supporting American Indian self-determination over the past several decades, tribal governments have faced numerous obstacles in accessing federal funding for human service programs, as has been mentioned previously with regard to child welfare services and Title IV-E. Inadequate funding levels, the failure of legislation and policy to fully address the rights and abilities of tribes to participate in federal domestic assistance programs, and ambiguous relationships between tribes and states have hampered tribes’ abilities to fully implement needed services for children and families.

Inconsistent Treatment of Tribal Governments by Federal Policies and Programs

In all areas of human services, tribal access to federal funding has been severely restricted by the inconsistency in treatment of Indian tribal governments by federal domestic assistance programs. In 1972, the Federal Assistance Review (FAR), conducted with the assistance of American Indian organizations, contained recommendations on a wide variety of subjects and called attention for the first time to the often arbitrary requirements placed upon tribal participation in federal domestic assistance programs (American Indian Law Center, 1976). The Review strongly recommended that the Office of Management and Budget and federal grant agencies take positive action to assure that new procedures and processes aimed at simplifying and speeding up federal grant systems include Indian tribes as beneficiaries of the improvements. Due to tribal opposition to sections of the report which recommended that funds be disbursed through regional councils, the report was shelved, although concern about tribal participation in federal programs continued.

In response to the findings of the FAR, the National Council on Indian Opportunity conducted a study, in cooperation with the National Tribal Chairmen's Association and the federal Office of Management and Budget, to determine the degree of tribal participation in federal

domestic assistance programs. The resulting Federal Indian Domestic Assistance Programs (FIDAP) study suggested that out of 600 federal domestic assistance programs studied, Indian tribes were participating in only 78 (American Indian Law Center, 1976). Out of the 598 programs whose authorization statutes were studied, Indian tribal governments or tribally-chartered organizations appeared to be eligible for direct services from only 389. For another 69 programs, Indian tribal governments and organizations appeared to be eligible, but the statute required some degree of state government intervention between the tribe and the administering federal agency, such as compliance with a state plan or sign-off by the state governor on tribal programs. According to an analysis of statutory provisions, Indian tribal governments were deemed ineligible for 140 programs (American Indian Law Center, 1976).

In its conclusions, the FIDAP study made the following recommendations:

- Further define, clarify and publicize the political status of federally recognized Indian tribes as units of government in respect to the delivery of federal domestic assistance programs.
- Further publicize the tribal exclusion to the state grant clearance process [spelled out in OMB documents].
- Encourage federal agencies, where discretion and choice can be administratively exercised, to establish a direct delivery system to federally recognized Indian tribes.

- Encourage federal agencies to initiate legislative changes in those cases where existing legislation establishes state or local government channels as the exclusive funding channel for Indian tribes (American Indian Law Center, 1976).

At the conclusion of a study that followed up on the findings of the FIDAP study, the American Indian Law Center (AILC) commented further on the need for tribal access to federal domestic assistance funding:

Full tribal access to the federal domestic assistance program delivery system represents a chance to participate in many billions of dollars of assistance granted each year by the federal government to communities to assist with various local problems. But a much more important issue underlies, and that is whether Indian tribal governments are “real” governments in the U.S. system or whether they are simply administrative conveniences for the BIA delivery system. The federal promise of tribal self-determination cannot be fulfilled if the tribes do not have access to the same resources that other governments have within the context of the historic federal-tribal relationship and not by means of a delivery system which ties federal services to a tacit tribal acceptance of state jurisdiction (American Indian Law Center, 1976).

In sum, federal policies have not fully recognized the self-determination and rights of tribal governments to participate in federal domestic assistance programs. The failure to recognize tribal governments as “real” governments has led to tribal

dependence on state governments in order to participate in a number of federal programs, including Title IV-E foster care and adoption assistance.

Issues Around Tribal/State Working Relationships

Beginning in 1978, the ICWA authorized grants to tribes through the Secretary of the Interior to deliver Indian child and family service programs. Although federal grants to tribes supported self-determination in the delivery of child welfare programs, tribes were expected to operate child welfare and family programs, protect Indian children’s best interests while serving their families, and preserve tribal tradition and culture with limited funding. State cooperation in delivering tribal services has been problematic, with most state governments providing little assistance to tribes in terms of funding needed programs. While some states have attempted to share small portions of state funds, many state agencies have taken the position that once jurisdiction over a child’s case is transferred to a tribe, the state is no longer responsible and thus has no fiscal responsibility (Cross et al., 2000).

State support of ICWA implementation has been problematic in other ways as well. For example, state agencies frequently claim the right to jurisdiction over child custody proceedings due to the fact that many tribal governments have little capacity to deliver basic child welfare services

(due largely to the lack of necessary funding). Tribal courts are often compelled to rely on state-based child welfare services, giving the state additional authority over Indian children and supporting the mistaken impression that tribes are incapable of providing for their own people. Therefore, many in state government feel that states have the right to maintain jurisdiction over child custody proceedings as long as they provide services to tribes (Mannes, 1995). Finally, even when tribally-based child welfare programs have been established, there are still battles with state providers over what the services should consist of and how they should be delivered (Cross et al., 2000).

Some experts have noted that “inter-governmental tension” may always be present in tribal/state relationships (Utter, 1993), while others have noted that federal initiatives like the ICWA have served as a means to generate cooperation among states and tribes. A number of efforts have been undertaken to explore the complications and challenges of tribal/state relationships in the last several decades. For example, in 1977, the National Conference of State Legislatures (NCSL) created a task force of 20 legislators to study and make recommendations for improving the relationships between states and tribes (American Indian Law Center, 1981). During the mid-1980s, the Commission on State-Tribal Relations, sponsored by the AILC, received federal funding to study the topic of tribal/state relationships. The AILC findings indicated that “no

single handbook could deal adequately with all possible issues which might arise between tribal and state governments. Their relationships are as diverse as the responsibilities and activities of these governments themselves” (American Indian Law Center, 1981, pp. 3–4). The Commission found that the greatest barrier to improved tribal/state relationships centered around biased attitudes held by members of both tribal and state governments:

The greatest barrier to improved tribal-state relationships is the set of attitudes and expectations held by some members of both governments, the public, the press and the legal profession. These attitudes ... are frequently ... shaped by the narrow and inaccurate emphasis on conflict in tribal-state relations. One of the historical communication barriers between tribal and state governments has been that, when considering their intergovernmental relationship, each has tended to idealize itself and to be harshly realistic, if not cynical, about the other. When the goals of each are compared, they are often found to be complementary (American Indian Law Center, 1985, pp. 41–42).

The Commission noted that “a necessary precondition to bringing about an improved state-tribal relationship is that each government have a sound and realistic understanding of its own goals—both stated and unstated—and its own performance, including its shortcomings” (American Indian Law Center, 1985, p. 42). The report went on to state, “The process [requires] that each government enter into it with skepticism

toward its own, as well as the other government's, propaganda and rhetoric" (American Indian Law Center, 1985, p. 42). The report recommended that each government needs to start with an assessment of its own agenda as well as that of the other government, considering such questions such as, "What does the other government say its goals are?" and, "What moves the government to act, and what does it seem to fear?" The report noted that it is also helpful to "identify and examine the negative impressions one has of the other government," considering such questions as, "Why do we have this impression? What is it based upon? Do we ourselves have the same problem?" Completing this process of self- and relational assessment "gives clues to working effectively within the tribal-state relationship" (American Indian Law Center, 1985, p. 44).

The need for mutual understanding has been promoted in recent years by the National Conference of State Legislatures and National Congress of American Indians (Johnson, Kaufman, Dossett and Hicks, 2000). Cornell and Taylor (2000) have noted that the current national trend toward development of decision-making from the federal to state and local governments has the potential to "significantly boost tribal self-rule" (p. 2) and that devolution may present opportunities for meaningful and mutually beneficial government-to-government relationships between tribes and states. In order to realize these opportunities and benefits, a mutual understanding of the unique circumstances, needs and

overall culture within which each government operates is necessary (Johnson et al., 2000).

The Sacred Child Project, sponsored by the United Tribes Technical College (UTTC) in North Dakota, developed a set of "Tribal-State Relations Guiding Principles" to aid in the development of effective tribal/state relationships. These principles include the need for cooperation, mutual respect, recognition of the government-to-government relationship, mutual benefits, and tribal self-determination. One of the principles goes on to state: "Native people can understand, relate to and help their own people better because they can understand the nuances of the people and community. However, this can be done with the assistance and partnership of outside allies" (UTTC, reprinted in Schmid, 2000, p. 8). In the case of child welfare services for children and families in American Indian communities, states are the necessary allies for receiving Title IV-E funding.

Implementation of Tribal/State Intergovernmental Agreements

Given the complex nature of tribal/state relationships and mandates of federal law, effective written agreements are vital in ensuring tribal access to federal funding resources. The purposes of written agreements include:

- clarifying and specifying roles, relationships, tasks and contingencies so that all parties state common understandings and agreement; and

- providing a standard by which to evaluate both the implementation and effectiveness of collaboration (Goodluck, 1997).

Goodluck (1997) also notes that the agreement development process can be an opportunity for tribal and state governments to resolve conflicts. Kunesh (1993) describes effective tribal/state agreements for ICWA implementation as those which define a common value framework, based on mutual respect for the needs of Indian children, families, and tribes, as well as the governments' joint roles and responsibilities in handling child welfare proceedings.

When developing tribal/state agreements, the American Indian Law Center (1985) has recommended that needs and barriers be assessed, and that negotiations begin, by considering a number of questions, including the following:

- Are the individuals who will work with the agreement on a day-to-day basis, as well as those who will approve the agreement, involved?
- Have the parties identified common interests as well as perceived barriers?
- Have the parties accepted existing legal frameworks and legislative mandates?
- Have the parties identified areas which will result in cost savings and better service?
- Have the parties agreed upon procedures for cancelling the agreement?

- Have the parties agreed upon good faith enforcement of the agreement?

Because intergovernmental agreements are agreements between different parties with different values, needs and expectations, there are differences of opinion as to what to include and not include in intergovernmental agreements (Goodluck, 1997). Many of the intergovernmental agreements for ICWA implementation reviewed by Goodluck (1997) were based on a model tribal/state Indian Child Welfare agreement compiled by the American Indian Law Center in 1986 (Grossman, 1986). Components of these agreements generally followed provisions of the ICWA and included: 1) Purpose of the Act; 2) Duties of state workers to off-reservation Indian children and families; 3) Full faith and credit clause; 4) Declaration of which departments are bound by the agreement; 5) Definitions of terms used in the agreement; 6) Tribal membership determination; 7) Issues of confidentiality; 8) Expert witness in court; 9) Who can conduct home studies and investigations; 10) Issues of jurisdiction; 11) Notice requirements; 12) Details of child protective services; 13) Details of foster care; 14) Termination of parental rights; 15) Adoption; 16) Fiscal arrangements; 17) Terms for the modification of agreements; and 18) Terms for the cancellation of agreements (Grossman, 1986; Goodluck, 1997). Similar elements are common in other types of tribal/state agreements, including intergovernmental agreements for the implementation of Title IV-E.

Title IV-E Intergovernmental Agreements

Tribal/state agreements differ by tribe and state and are mandated by federal law. Such agreements are critical aspects of Title IV-E, because they are the only way that Indian tribes can gain access to and administer IV-E funds. Currently, more than 60 tribal/state agreements are in effect (Schmid, 2000), with numerous others in different stages of development.

As Schmid (2000) states, tribal/state agreements must reflect the interests of both the state and the tribe: “[The agreement] cannot be one-sided. It must be negotiated and consider the practices of both [states and tribes]” (p. 8). He recommends that state and tribal officials consider the following before entering into a IV-E agreement:

- Is it in the mutual interest of both the tribe and state to pursue such an agreement?
- What are the benefits of entering into an agreement?
- What, if anything, must both parties give up?
- What are the short- and long-term gains?
- Will it be better for Indian children and their families?
- Do the tribe and state want to “partner” with one another?
- How does a IV-E agreement fit with the mutual goal of tribal self-government and development of infrastructure for the delivery of tribal child welfare services?

In a DHHS Office of Inspector General report, Brown (1994) states that in 15 of the 24 states with the largest Native American populations, eligible tribes did not receive Title IV-E funding from 1989 to 1993. Among the factors that limit the tribes’ access to Title IV-E funds were several federal requirements:

- Congress provided no authority for the Administration for Children and Families (ACF) to award Title IV-E funds directly to tribes; and legislation neither required nor encouraged states to share funds with tribes.
- Efforts to develop the necessary tribal/state Title IV-E funding agreements were constrained by requirements that: 1) put states at financial risk for tribes’ use of Title IV-E funds; 2) mandated a matching share for tribes’ Title IV-E funds; and 3) necessitated tribal negotiations for funding with multiple states in instances in which tribal land extends across state borders. (Brown, 1994, p. ii).

In addition, federal policy (ACYF-PIQ-85-5 and ACYF-PIQ-91-01) states that the following components should be included in a tribal/state Title IV-E agreement:

- Respective responsibilities of the state and tribe in carrying out the Title IV-E requirements.
- Provisions for assuming that specified protections are afforded to each child in foster care under the tribe’s responsibility for placement and care and for whom Title IV-E foster care maintenance payments are being made by the state.

- Designation of the state or tribe to implement the case review system and to provide the other protections and requirements contained in the statute and regulations for Section 427 and Title IV-E (ACYF, as reprinted in Schmid, 2000).

Schmid (2000) notes: “The specifics of each agreement will vary based on the culture and history of the state and the tribe, past experiences and potential for the future.” He goes on to recommend that those developing agreements should consider including the following:

1. Contract limitations
2. Philosophy
3. Purpose
4. Effective date and duration
5. Services to be provided and who will provide, including:
 - IV-E maintenance payments
 - Roles in determining IV-E eligibility
 - Case management
 - Case plans
 - Case reviews/permanency planning
 - Court hearings/court testimony
 - Foster home licensing studies
 - Adoption home studies
 - Legal proceedings for adoption
 - Training of foster parents
 - Training of tribal social workers
6. Compliance with IV-E requirements

7. Relationship between federal ACYF, BIA, ITO and state
8. Financial arrangements
 - A. State responsibility
 - Title IV-E
 - Other federal funds
 - State funds
 - Title XIX
 - B. Tribe responsibility
 - 638
 - ICWA
 - Title IV-B (parts one and two)
 - Other tribal revenue
9. Requirements to access Title IV-E
 - A. Definitions
 - Maintenance
 - Administration
 - Training
 - B. Title IV-E eligibility
 - C. Time studies
 - D. Tribal billings (certification of expenditures)
 - E. Federal approved indirect rate for tribe
10. Access to computer information system/case management
11. State and federal audits (access)
12. Other tribal or state requirements

In summary, states and tribes have histories of entering into intergovernmental agreements in order to access federal resources, such as funding available under the ICWA as well as under Title

IV-E. These agreements tend to have a range of common elements while also containing provisions specific to the needs and situations of individual tribes and states. Such agreements are vital in developing effective tribal/state relationships and in accessing IV-E funding.

Summary

Title IV-E of the Social Security Act is an important source of funding for foster care and adoption of special needs children in American Indian communities. Title IV-E supports the ability of tribes to meet a variety of outcomes relative to child and family well-being, including children's safety from abuse and neglect. Under Title IV-E, federal matching funds are provided for foster care maintenance payments to eligible children and families, adoption assistance, program administration and staff/caretaker training.

Understanding IV-E foster care and adoption assistance requires an understanding of the context and purposes of the ICWA, which was intended to preserve Indian self-determination in raising Indian children and to reaffirm the tribal role in safeguarding the welfare of children and families. Title IV-E is also the legacy of a number of laws and policies affecting self-determination and tribal sovereignty, including the Indian Reorganization Act, Public Law 280, the Indian Civil Rights Act, the Indian Self-Determination Act, and self-governance compacts.

While there has been legislation passed to support self-determination and tribal sovereignty, barriers still exist. One of these barriers is the requirement that tribes work through state governments in order to participate in certain federal programs. Title IV-E is one of these programs.

While tribal/state relationships can be problematic, programs like Title IV-E also present opportunities for tribes and states to work together to achieve mutual benefits for their citizens. To receive Title IV-E funding, tribes must enter into intergovernmental agreements with states which detail tribal/state responsibilities in administering the program and in meeting various protections as specified by federal law. While these agreements vary from tribal/state partnership to partnership, there are common elements which are recommended as foundations for effective tribal/state relationships in accessing IV-E resources for foster care and adoption assistance in American Indian communities.

Methodology

Three primary strategies were used to analyze IV-E agreements and gather data on IV-E implementation. These strategies were 1) content analysis of IV-E documents (i.e., agreements, contracts, and grants); 2) focus groups with tribal and state representatives in five states; and 3) interviews with tribal and state representatives not included in the focus groups. These strategies are described in greater detail below.

IV-E Agreement Content Analysis

Based on information of tribal/state agreements obtained from the Administration for Children and Families (ACF) under the U.S. Department of Health and Human Services (DHHS), members of the research team contacted representatives (including tribal liaisons and department directors) in the 12 states with tribal/state IV-E agreements in an attempt to gather copies of all existing IV-E agreements. Tribal/state agreements were defined as formal agreements, contracts, or grants between tribes and their respective states. Because 30 of the foster care IV-E agreements in the state of Oklahoma were identical, it was decided that only four representative agreements would be included in the analysis. A total of ten tribes in South Dakota, Michigan, Wisconsin, and Nebraska were not included in the information from ACF, therefore, due to time constraints, these additional agreements were not included in the content analysis⁴. In all, 34 tribal/state agreements, involving 12 states, were received for analysis.

Content analysis of the agreements was based on a list of suggested IV-E components compiled by Casey Family Programs consultant Don Schmid. Specifically, a data collection form was designed addressing each of the suggested components (see Appendix B for a copy of the form). Individual members of the research team completed a content analysis form of the agreements assigned to them. This form was then checked against the agreement a second time by another member of the research team. Data from these forms were then entered into an SPSS database for analysis.

Focus Groups

In addition to the agreement content analysis, two other strategies were used to gather more in-depth information on IV-E agreements and implementation. The first strategy involved focus groups with tribal service providers and state representatives in five states. Four of these states (Oklahoma, Oregon, North Dakota and Montana) had IV-E agreements in operation, and the purpose of these focus groups was to ascertain both tribal and state perspectives on the agreements and how they were working out in practice. One state (Arizona) did not have any IV-E agreements in operation in spite of the fact that this state has the highest number of American Indians living on reservations. Of the 21 tribes in Arizona, 19 tribal nations were represented by the Inter Tribal Council of Arizona (ITCA). A representative of the Navajo Nation was also in attendance, as well as an additional representative from

the Kaibab Paiute Nation (also represented by the ITCA). The purpose of the Arizona focus group was to gather information on why IV-E was not being implemented through tribal/state agreements.

Focus groups consisted of 6 to 10 participants, including a variation of tribal child welfare specialists, tribal coordinators/administrators, state program managers and department directors, and former state/tribal representatives who are now consultants. Thirty-seven focus group participants included 22 tribal representatives from 18 tribes, 9 state representatives from 5 states, and 6 additional participants. Focus group questionnaires included questions regarding motivations for pursuing IV-E, agreement development processes, and barriers and supports in IV-E implementation. (See Appendix C for a copy of the focus group questionnaire.)

Focus group discussions were tape recorded and transcribed. From the transcriptions, responses to individual questions were coded according to identified common themes. Codes were then entered into an SPSS database to facilitate summaries across focus groups. In addition, direct quotes were selected from the transcribed discussions to highlight themes as well as individualized responses.

Telephone Interviews

The second strategy used to gather more in-depth information on IV-E agreements and implementation was the use of phone interviews with repre-

sentatives of tribes and states that had IV-E agreements in place. In order to develop a list of interview participants, research team members contacted state tribal liaisons and department directors. These state representatives were asked to participate in the questionnaire process and to provide the research team with information on tribal representatives they worked with in implementing IV-E agreements. Tribal representatives were then contacted and asked to participate in the questionnaire process. Interviews of tribal and state participants addressed similar issues to the focus groups, including motivations for IV-E implementation, agreement development processes, agreement components, and barriers and supports in IV-E implementation (see Appendix D and E for copies of the interview questionnaires).

Eight states were contacted for telephone interviews, and of those contacted, 22 interviews were completed. Due to time constraints and other issues detailed below, interview questionnaires were completed for 14 tribal representatives and 8 state representatives (with 5 questionnaires completed by fax and the rest completed by telephone). Of those interviews that were attempted but not completed, one interview was not completed because staff overseeing IV-E implementation were new and did not know enough to respond to the questions, and two interviews were not completed due to the unavailability of the tribal or state contact. Interview questionnaires were coded and entered into an SPSS database for analysis.

Strengths and Limitations of Project Methodologies

The strategies used to gather and analyze information for this project have a number of strengths. The first is the use of three different methodologies (agreement content analysis, focus groups and interviews), which included both quantitative and qualitative approaches. This helped ensure that project results were as comprehensive as possible, based not only on written agreements but also on the experiences and input of those involved in agreement implementation.

The other strength of this approach is the use of informants (in focus groups and interviews) from both tribes and states, including consultants and other service providers when appropriate. The use of respondents from “both sides” of IV-E provided opportunities for tribes and states to collaborate and clarify IV-E policies, procedures, and concerns.

A number of limitations also emerged during the data gathering process. The first limitation concerned the IV-E agreements themselves. The scope and clarity of the content of IV-E agreements varied widely from agreement to agreement. Some agreements were very short and general in content while others were more extensive and specific. Thus, it was difficult to make comparisons among agreements in a number of areas. In addition, due to the general and unspecific nature of some agreements, the research team was

often unable to determine what services and other components the agreement included. For example, the provision of state matching funds (i.e., whether the state provided matching funds) was not mentioned in the majority of agreements. The second limitation centered around states that do not have formal Title IV-E agreements, but are nevertheless receiving money from the state for foster care maintenance payments. The focus of this study was on formal IV-E intergovernmental agreements, contracts, or grants developed between states and tribes. The research team is aware, however, that other types of arrangements have been worked out through existing ICWA agreements that allow American Indian tribes to access IV-E funding (e.g., Minnesota). The third limitation concerning the data gathering process involved the research team having difficulty identifying individuals (both tribal and state representatives) who knew specifics about their IV-E agreements.

One limitation associated with focus groups is that a number of tribal service providers who had committed to attending could not make it at the last minute due to job demands and other considerations. In all, of the total number of individuals (60) invited to participate in the focus groups from all five states, only 16 were unable to attend. Thus, over 73% of individuals invited to the focus groups attended. In addition, although it was a strength of the project that tribal service providers, state representatives, and consultants/advocates were able to come together to discuss

issues associated with IV-E during focus group sessions, the presence of state personnel and other non-tribal members may have impacted the responses of tribal representatives to a number of questions.

Finally, regarding limitations associated with the interviewing process, some of the interview respondents were new in their positions and were not able to fully answer interview questions. In fact, a few respondents were uncertain as to the contents of their IV-E agreements. In addition, some respondents were unclear as to the distinctions between IV-E agreements and more general ICWA agreements, and others were unfamiliar with IV-E terms and compliance issues. For example, a number of respondents seemed to confuse “administrative costs” (which include costs for casework services under IV-E) with more general overhead costs, stating that the tribe was not being reimbursed for administrative costs when other sources suggested they were.

However, overall, the use of different data collection strategies and information from different sources (written agreements, tribal representatives and state representatives) support the results and conclusions of this project as a representative picture of tribal/state IV-E implementation in the U.S.

Results

The results have been organized into two sections. The first section contains analysis of existing IV-E intergovernmental agreements. Tribal/state agreements were reviewed in order to provide a comprehensive overview of their current provisions. The second section details results of tribal/state focus groups and interviews. Through focus groups and interviews, the research team gathered more in-depth information on IV-E agreements regarding implementation, effectiveness and future directions.

Title IV-E Tribal/State Agreement Analysis

Nationwide, there are 13 states and 71 American Indian tribal governments⁵ that currently have IV-E agreements in place (see Appendix A for a chart on the tribes/states with IV-E agreements). The state of Oklahoma has the most IV-E agreements in place (30). Montana has the next highest number (7), followed by New Mexico (6), Wisconsin (5), South Dakota and North Dakota (each with 4), Kansas, Michigan, and Oregon (each with 3). Colorado and Nebraska each have two agreements, while the states New York and Utah each have one agreement.

The population sample for this study was selected based on information obtained from the Administration for Children and Families (ACF). For the purposes of this research, 12 states were examined, and 34 agreements were analyzed. However, based upon further inquiry, additional

agreements were identified in the states of Michigan, Nebraska, South Dakota, and Wisconsin that are not included in this analysis. Table 1 identifies the 34 agreements analyzed.

All IV-E agreements for foster care assistance are identical in the State of Oklahoma, but the Cherokee Nation has an additional agreement relating directly to adoption assistance. It should be noted that while only the Cherokee Nation has a IV-E adoption assistance agreement with the State, Oklahoma does provide adoption assistance to all tribes requesting services. Therefore, it was determined that only four agreements from the state of Oklahoma (including the agreement with the Cherokee Nation) would be included in this analysis. Thus, 34 tribal/state IV-E agreements, involving 12 states were analyzed for this project in order to give a nationwide, representative “snapshot” of IV-E agreements.

Time Limits

Of the agreements analyzed, slightly more than half are time-limited agreements, with 15 signed agreements in effect for a period of one year (although most of these are renewed on an annual basis) with one in effect for three years. Sixteen agreements (47%)⁶ appear to be open-ended agreements; a number of these indicate they are in effect indefinitely unless 30 days (or more) written notice for termination is provided by either party. For example, agreements in Oregon contain the following:

TABLE 1. IV-E AGREEMENTS REVIEWED BY STATE AND TRIBE

STATE	TRIBE
COLORADO	Southern Ute Ute Mountain Ute
KANSAS	Kickapoo Tribe Native American Family Services* Prairie Band of Potawatomi
MICHIGAN	Bay Mills Indian Community
MONTANA	Assiniboine & Sioux Tribes of the Fort Peck Reservation Blackfeet Tribe Chippewa Cree of Rocky Boy's Reservation Confederated Salish & Kootenai Tribe Crow Tribe Fort Belknap Indian Community Northern Cheyenne Tribe
NEW MEXICO	Cochiti Pueblo Jicarilla Apache Nambe Pueblo Picuris Pueblo Santa Ana Pueblo Zuni Pueblo
NEW YORK	St. Regis Mohawk
NORTH DAKOTA	Spirit Lake Sioux Three Affiliated Tribes Turtle Mountain Band of Chippewa
OKLAHOMA**	Cherokee Nation Cheyenne & Arapaho Tribes Citizen Band Potawatomi Nation Muscogee Creek Nation
OREGON	Confederated Tribes of Grand Ronde Confederated Tribes of the Warm Springs Reservation Coquille Tribe
SOUTH DAKOTA	Sisseton-Wahpeton Dakota Nation Standing Rock Sioux
UTAH	Ute Tribe of the Uintah & Ouray Reservation
WISCONSIN	Bad River Band of Chippewa

*Represents a consortium of tribal governments including Iowa and Sac and Fox of Kansas and Nebraska Nations

**The state of Oklahoma has IV-E agreements with 31 tribes. For the purposes of this analysis, four representative agreements were included.

This Agreement shall become effective immediately upon its execution by the parties and shall remain in effect for an indefinite term or until rescinded and terminated. Following its execution, the Agreement shall be promptly filed with the Secretary of the State and the Chairman of the Tribes. Either party may terminate this Agreement upon ninety (90) days written notice to the other party, provided that, before termination of this Agreement, the parties agree to make good faith efforts to discuss, renegotiate, and modify the Agreement.

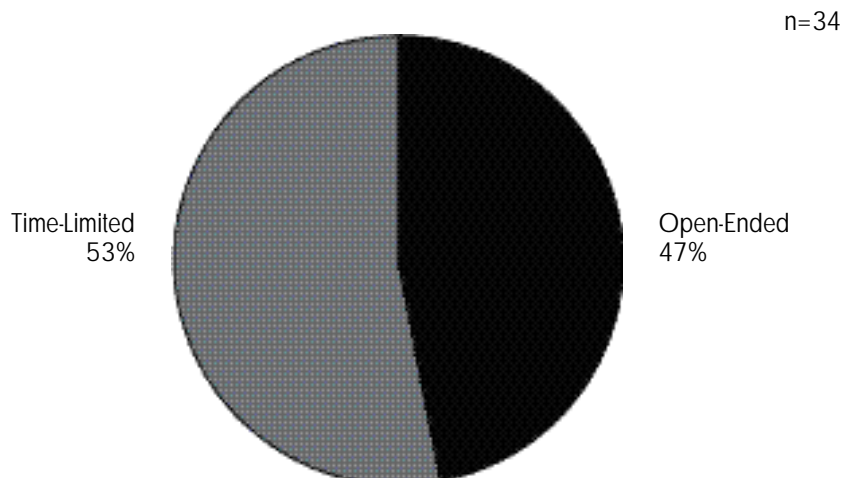
Kansas agreements state that agreements “may be terminated by either of the parties with or without cause upon 180 days prior written notice to the other, or it may be revised or canceled at any time by mutual agreement, in writing, of both parties.”

Statements of Purpose

Nineteen agreements (56%) contain statements of purpose for the agreement. Although many of these statements are very brief, a few contain preambles or agreement philosophies that frame agreement content. For example, the agreement between the Ute Tribe (Uintah and Ouray Reservation) and the State of Utah contains the following preamble and purpose statement:

The Tribe and the State recognize that there is no resource more important to maintaining the political independence, economic security and cultural integrity of the Tribe than its children. Assuring the health, safety and welfare of Ute children is, and has been, the collective responsibility of the Tribe and the State. To that end, the Tribe

FIGURE 1. AGREEMENT DURATION



and the State are committed to enlarging the capacity of the Tribe to provide comprehensive child protection and family development services to Ute children and their families.

The purpose of this Agreement between the Tribe and the State is to:

- a) increase the capacity of the Tribe to provide comprehensive child welfare and family preservation services to Ute children;
- b) share resources and expertise between the Tribe and the State in addressing the needs of Ute children;
- c) assure the health, safety, and protection of Ute children;
- d) provide an array of child welfare services to Ute children and their families;
- e) support and enhance the current services provided by Ute Social Services;
- f) promote cooperation and collaboration among all agencies involved in serving Ute children; and
- g) prevent the inappropriate cultural separation of children from their families and preserve the unique values of the Ute culture.

Montana agreements contain the following statements regarding agreement philosophy and purpose:

[Philosophy]: The parties agree to perform their respective duties and responsibilities under this Contract in good faith and in a spirit of cooperation to accomplish the pur-

pose of providing child welfare services to Title IV-E eligible Indian children residing on the ... Reservation, as is more specifically set forth below.

[Purpose]: A) The purpose of this Contract is to set forth the terms, definitions and conditions regarding the duties and responsibilities of each party to provide Title IV-E child welfare services which include Case Management, Foster Care Licensing, Indian Child Welfare Act (ICWA), and related Administrative Support Services to abused and neglected Title IV-E eligible children residing on, or transferred to the ... Reservation.

B) The Parties to this Contract understand and agree that State agencies and Tribes who administer Federal Title IV-E funds are required to comply with the mandates of the Federal Adoption and Safe Families Act (ASFA) of 1997 and the Indian Child Welfare Act, which are defined in Attachment "A" of this Contract, hereby incorporated into this Contract by this reference.

Responsibilities of States and Tribes

All agreements spell out the responsibilities of states and tribes in carrying out IV-E-related activities, although the clarity and specificity of this information vary widely from agreement to agreement. Overall, states appear to have responsibility for determining IV-E eligibility; this responsibility is clearly stated in 27 agreements (82%). However, in most cases, agreements also

state that tribes are responsible for providing the information and documentation for individual cases that enable state personnel to make eligibility determinations. For example, Kansas agreements note that “the [tribe] is primarily responsible for foster care service delivery and for providing the [state] Department sufficient information to document compliance with federal rules and regulations.”

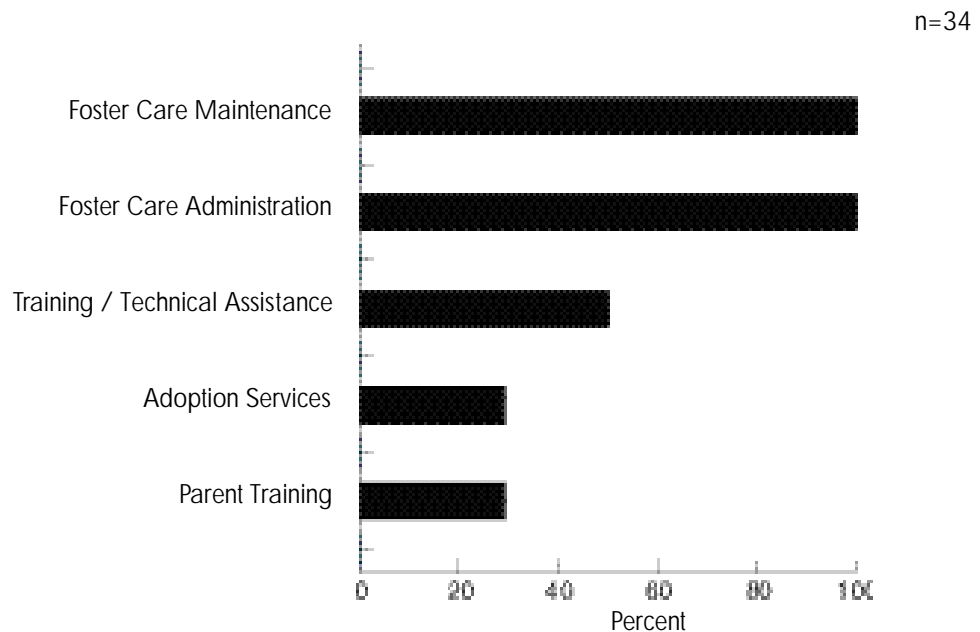
Foster Care Provisions

All agreements (100%) appear to include provisions for foster care (including maintenance payments and administration) while only 10 (29%)

contain provisions for IV-E eligible adoption costs and services. Thirty-one agreements (91%) indicate that states are responsible for making IV-E foster care maintenance payments directly to the households of eligible children. In some cases, tribes make foster care maintenance payments to families and are then reimbursed by the state.

While states appear to have the responsibility for making maintenance payments, tribes appear to have primary responsibility for IV-E foster care administration. This includes responsibility for the licensing and certification of foster homes, case management, the development of case plans, case reviews, and participating in court hearings and judicial determinations. In some cases,

FIGURE 2. AGREEMENT PROVISIONS



agreements also allow that state personnel may participate in one or more of these activities. For example, one agreement specifies that state workers may participate with tribal personnel in case management and case plan development activities, while five agreements (in Montana) indicate that state workers may participate in case reviews.

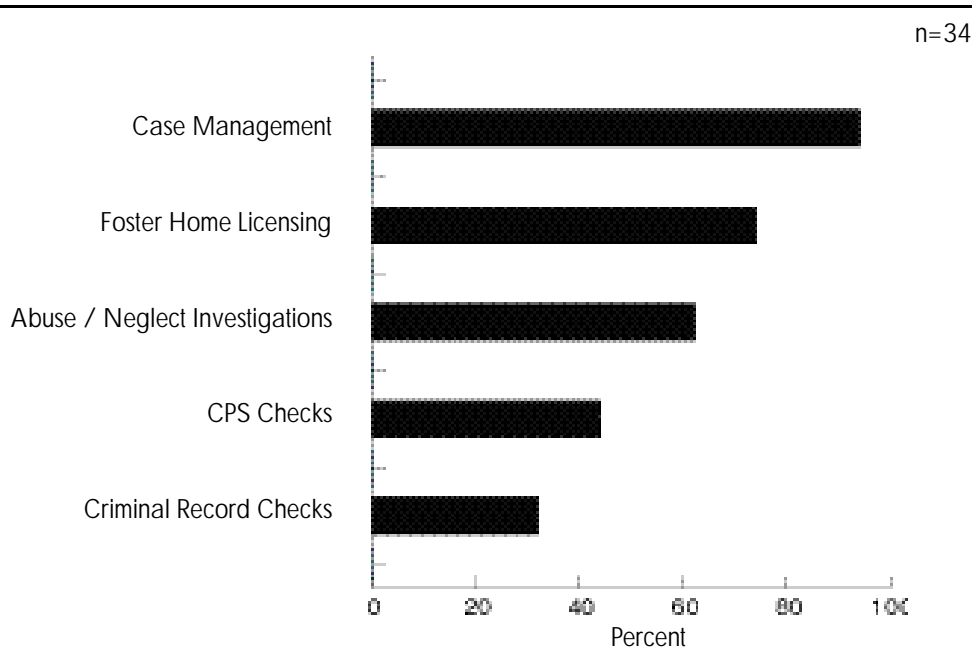
Regarding other activities related to foster care, 11 agreements (32%) indicate that tribes have responsibility for performing criminal record checks on foster and/or adoptive parents; 15 (44%) indicate that tribes have responsibility for completing Child Protective Services checks on foster and/or adoptive parents; and 21 agreements (62%) indicate that tribes have responsibility for

completing child abuse and neglect investigations. In addition, four agreements (12%) contain provisions for foster care payments to non-IV-E eligible children.

Adoption

As previously stated, only 10 agreements contain information on IV-E adoption. Of these 10, six indicate that tribes have responsibility for adoption home studies (with one of these agreements adding that state personnel may also participate). Five agreements either state or imply that tribes also assume responsibility for legal proceedings associated with adoption.

FIGURE 3. TRIBAL FOSTER CARE RESPONSIBILITIES



Training

Seventeen agreements (50%) contain references to the training of tribal social service providers and it appears that the state provides this training in 13 of the agreements. However, the extent of the training provided is unclear. In some cases (e.g., contracts between the State of New Mexico and the tribes within that state), training is referred to as “technical assistance” and consists of assistance in completing forms and maintaining IV-E compliance. That is, training is not comprehensive but instead addresses limited activities. In Kansas, tribes are eligible to participate in the same training programs that are offered to state workers. In other states, tribes are eligible to participate in state programs that provide scholarships for masters-level social work education for tribal IV-E service providers. In Montana, tribes must negotiate separate agreements to receive direct IV-E dollars from the state for training activities, and in Oregon, tribes must submit training plans in order to do the same. In sum, it is not clear from the written agreements what IV-E-related training activities are currently in place.

Other Child Welfare Related Activities

Ten agreements (29%) include references to the training of foster and/or adoptive parents. In nine of these agreements, tribes appear to assume responsibility for this training, while the state appears to be responsible in the other agreement.

A number of agreements also contain provisions and references to other child welfare-related activities, including ICWA activities and family support and preservation activities provided under Title IV-B. Twenty-five agreements (74%) contain references to family support or preservation services. Twenty-two of these agreements state the tribe provides such services while three indicate that both the tribe and state provide family support or preservation services. Only two agreements (6%) mention the provision of independent living services.

IV-E Compliance

In addition to specifying services and IV-E related activities, many agreements also contain statements and provisions related to IV-E compliance, the role of the BIA in funding or providing services, tribal and state financial responsibilities, access to computerized information systems, state and federal audits, and other agreement or contractual components. Twenty-four agreements (71%) contain references to IV-E compliance. For example, Oregon agreements spell out requirements for voluntary placements, case reviews, judicial determinations, permanency plans, making “reasonable efforts” to reunite children with their families, and a range of procedural safeguards. Other agreements contain only general references to compliance with federal IV-E requirements, like the following excerpt from an Oklahoma agreement:

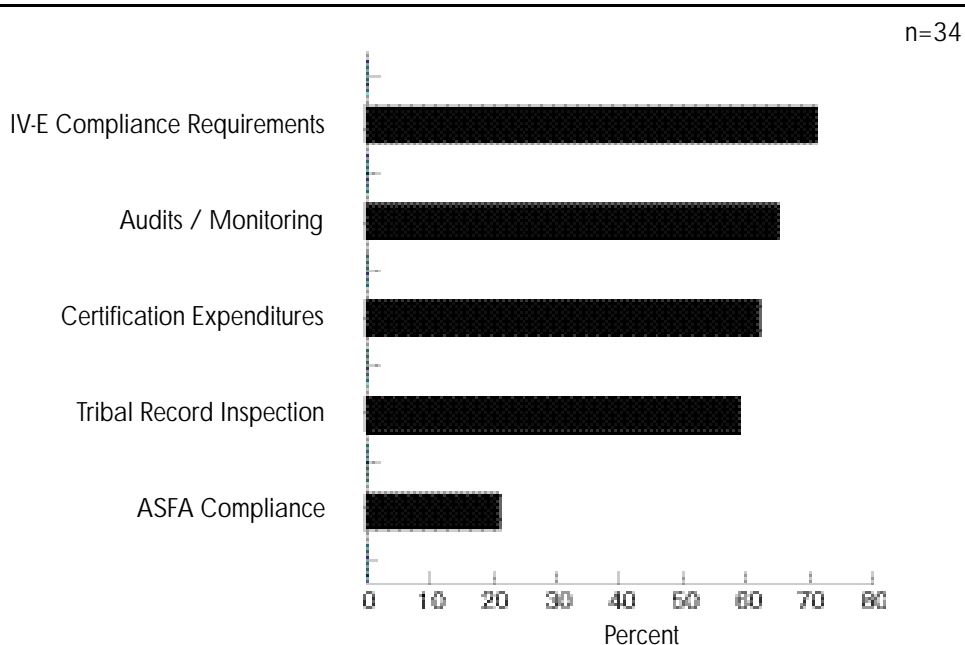
The [tribe] and the Department through their joint efforts agree to meet the provisions of Title IV-B and Title IV-E of the Social Security Act, including Section 622 of Title 42 of the U.S. Code. In the event that the Tribe does not meet IV-E and IV-B requirements, foster care payments on behalf of the child will not be made until the case is brought into compliance with IV-E and IV-B requirements.

As another example of components related to compliance, the agreement between the State of New York and the St. Regis Mohawk tribe contains the following general statement:

The Tribe has submitted to the Department a Plan which satisfactorily demonstrates that the Tribe is able to meet the standards for foster care, preventive services, and adoptive services as set forth in applicable federal and State law and regulations. The Department hereby approves the Tribe to provide foster care, preventive services and adoption services in accordance with the Plan and the terms and conditions of this Agreement.

Seven agreements (21%) make references to compliance with the Adoption and Safe Families Act (ASFA), which is another aspect of federal compliance.

FIGURE 4. AGREEMENT COMPONENTS: COMPLIANCE ISSUES



Role of the BIA in Providing Child Welfare Related Services

Twelve agreements (35%) mention the role of the BIA in providing child welfare-related services. For example, Montana agreements note that if IV-E case records remain out of compliance for a given period of time, the cases involved will revert to tribal social services or BIA for case management and payment.

State and Tribal Financial Responsibility

Twenty-four agreements (71%) contain information on state and tribal financial responsibility for IV-E. However, not all agreements are explicit in terms of: 1) whether states provide IV-E matching funds from state revenues and 2) what other tribal revenues are used for the match. Seventeen agreements (50%) mention the use of state funds. Thirteen (38%) mention ICWA funds; seven (21%) mention BIA funds; four (12%) mention unspecified tribal revenues; two (6%) mention IV-B funds; and one (3%) mentions 638 funds.

Sixty-five percent of the agreements (22) mention state and/or federal audits and performance monitoring. For example, the Colorado agreement with the Ute Mountain tribe contains the following statement:

Contractor shall permit the State and the U.S. Department of Health and Human Services, and any other duly authorized agent or governmental agency, to monitor all activities conducted by the Contractor

pursuant to the terms of this Contract. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analysis, on-site checking, formal audit examinations, or any other reasonable procedures. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

Oregon agreements contain the following:

The Tribe and SCF [State Office for Services to Children and Families] acknowledge that the DHHS or SCF conducts periodic reviews of state agencies that receive and distribute Title IV-E funds, and that DHHS or SCF requires as a part of such reviews that case files on children receiving Title IV-E support be made available for inspection at a designated location. Upon reasonable advance written notice, the tribe will make available for review by DHHS or SCF personnel the case file and provider files on those [tribal] children in foster care under the jurisdiction of the Tribal Court whose foster care providers receive Title IV-E funds. The files, when requested by DHHS or SCF, shall be delivered by the tribe to the designated location at which DHHS or SCF personnel are conducting their review. The files shall at all times remain the property of the Tribe and shall be returned to the Tribe immediately upon completion of the review process.

Sixty-two percent of the agreements (21) contain provisions for tribal billings and/or certification of IV-E expenditures to the state, with another

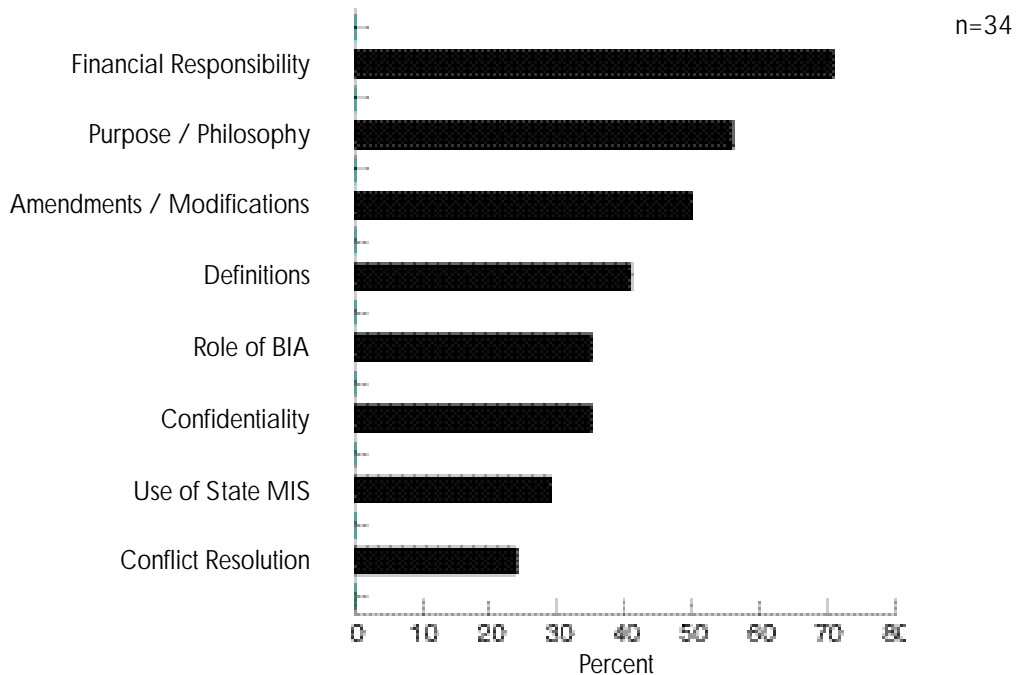
seven agreements (21%) stating procedures for the recovery of overpayments. Ten (29%) mention tribal use of state management information systems in IV-E administration. In Montana, the state provides computers, other equipment, and technical assistance which enable tribal service providers to use the state Child and Adult Protective Services Management Information System (CAPS MIS) for transmitting IV-E information to the state. Eight agreements (24%) mention personnel time studies, which are necessary to receive reimbursements for IV-E administrative costs for staff who do not spend 100% of their time working with IV-E eligible cases.

IV-E Definitions and Modifications

Fourteen agreements (41%) contain definitions of terms used in the agreements. For example, Oregon agreements contain definitions for “adoption assistance,” “case plan,” “case review,” “federal financial participation,” “foster care,” and other terms. New Mexico agreements include definitions of “disallowance,” “good cause,” “informal process for recoupment [of overpayments],” “overpayment,” and “reasonable technical assistance.”

Seventeen agreements (50%) contain language pertaining to amending or modifying agreements, while eight agreements (24%) mention conflict or

FIGURE 5. OTHER GENERAL AGREEMENT COMPONENTS



dispute resolution between the state and tribe. For example, New Mexico agreements contain the following provisions:

If the [state] Department becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by the [tribe] and State Title IV-E staff on a case-by-case basis. If the matter cannot be reconciled it shall be presented to a mutually agreed upon panel of [tribal] and Department officials on a case-by-case basis. If reconciliation is not possible, both parties shall present their views in writing to ... [the] Regional Administrator, Administration for Children and Families, U.S. Department of Health and Human Services ... Any disputed issues that remain unresolved at the end of the process described above shall be submitted to arbitration as outlined in the November 26, 1991 Memorandum on Dispute Resolution from the Office of the Attorney General of New Mexico.

Other Tribal/State Intergovernmental Agreement Provisions

Twelve agreements (35%) contain provisions for maintaining confidentiality. The Wisconsin agreement contains the following confidentiality statement:

It is mutually understood and agreed that all information concerning child custody proceedings shall be kept confidential and that such information shall be revealed, to the extent not prohibited by applicable federal or Wisconsin law, only to those persons

who require such information in order to exercise rights secured by federal, state or tribal law.

Twenty agreements (59%) contain requirements for the maintenance of tribal records, including agreements which require tribes to make records available for inspection by state personnel. For example, Oregon agreements specify that tribes “will maintain all records pertaining to Title IV-E eligibility and maintenance payments for the entire time period for which an [Indian] child is in out-of-home care, and a minimum of four (4) years after the child has left care.”

Other agreements contain standard provisions for meeting contractual requirements related to federal regulations, including barring the use of funds for lobbying or other political activities (contained in 13 agreements, or 38%) and compliance with federal labor laws (mentioned in 8 agreements, or 24%).

Agreement Types

Overall, agreements appeared to be of two types: general agreements and contracts. Specifically, 10 (29%) are titled “contracts;” 22 (65%) are called “agreements;” and two (6%) are “grants.” As an example of an agreement, the State of Michigan and the Bay Mills Indian Community include IV-E and IV-B content in their more general ICWA agreement. The State of Oregon refers to their documents as “Intergovernmental Agreements” and states that facilitating “intergovernmental cooperation” is one purpose of the agreements.

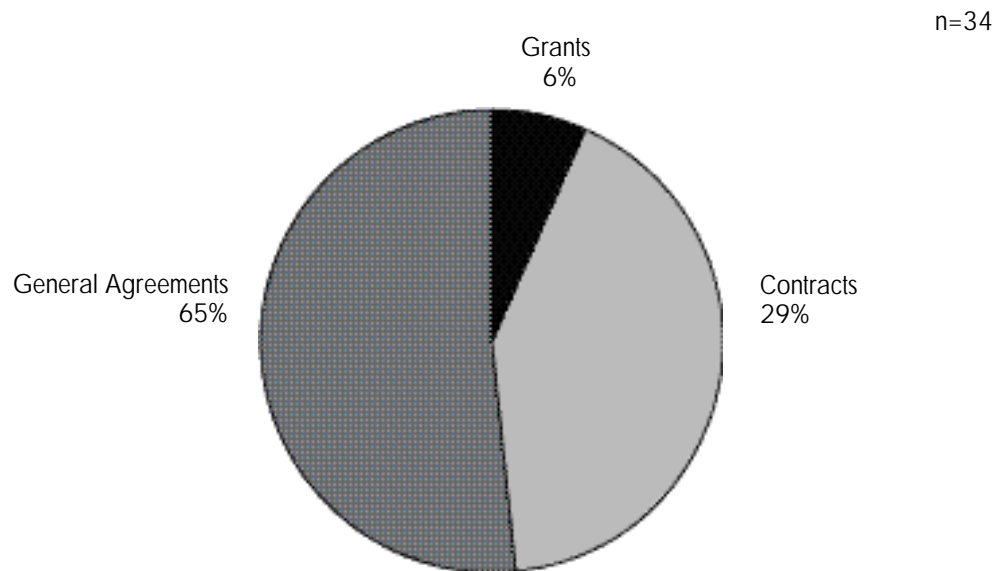
However, titles of the documents do not always refer to the nature of the relationship between states and tribes, and the terms “agreement” and “contract” are often used interchangeably. For example, while the state of Kansas titles its IV-E documents “Foster Care Agreements,” on the signature page, tribes are referred to as “contractors.”

The State of Utah has both a general child welfare agreement and a foster home contract (“to establish a full time position for recruiting and licensing Native American Family Foster Homes on the Uintah and Ouray Reservations”) with the Ute Tribe that each contains provisions for IV-E activities. The State of Kansas’ agreements with

the Kickapoo and Potawatami (Prairie Band) tribes are in the form of grant applications, which include budget summaries, problem statements, outcomes, project services and persons to be served, project procedures, project schedules, project staff and staff training information, and monitoring and evaluation procedures. The state and tribes also have more general ICWA agreements, which are signed by tribal chairs and state department secretaries.

Very few agreements appear to be true government-to-government agreements. Instead, as the word “contract” would suggest, most tribes appear to be viewed as subcontractors with state

FIGURE 6. AGREEMENT TYPES



governments, and thus, subject to state authority. For example, the Colorado agreement states, “The parties of this Contract intend that the relationship between them contemplated by this Contract is that of employer-independent contractor.” While almost all agreements (94%) are signed by the top elected tribal government official (usually the tribal chair or chief), only eight (24%) are signed by the top elected state official (the governor). Instead, state representatives who sign IV-E agreements tend to be state directors/secretaries, county directors, or other program administrators.

The contract between the State of Utah and the Ute Tribe lists the tribe as a “government agency” when asked to specify the legal status of the contractor. Agreements in New Mexico are referred to as “Joint Power Agreements,” suggesting government-to-government relationships. In addition, opening recitals in the document include the following:

WHEREAS, consistent with the Government-to-Government Policy Agreement entered into by the State and the Indian tribes of New Mexico, dated July 8, 1996, the interactions between the State and the Pueblo are predicated on a government-to-government relationship and carried forward in a spirit of cooperation, coordination, communication, and good will.

Summary

In summary, there is no “standard” for IV-E tribal/state agreements. Instead, current agreements vary widely, from state to state and from tribe to tribe (although agreements within Oklahoma are identical and agreements in New Mexico and Montana are very similar to one another). Some agreements are very general and contain few specific provisions regarding the relationship between tribal and state governments in implementing IV-E foster care and adoption services. Other agreements include some details, for example, who is responsible for making maintenance payments and who is responsible for casework associated with IV-E, but omit information on other topics important in government-to-government relationships (like procedures for conflict resolution and specifics of state and tribal financial responsibilities).

Overall, it appears that state governments are assuming primary responsibility for IV-E eligibility determination and making foster care maintenance payments, while tribes are providing case work and related foster care services. Adoption assistance appears to be a minor part of IV-E implementation; instead, the main focus is on the provision of foster care. Provisions for the training of tribal social service providers and foster care/adoptive parents tend to be either vague or nonexistent in the agreements; thus, it is not clear whether tribes are adequately accessing IV-E funding for training purposes.

Agreements also represent different approaches to tribal/state relationships, with most appearing to view the relationship as one of (state) government-to-subcontractor rather than viewing the relationship as government-to-government. Slightly more than half of the agreements are time-limited and use contractual language, with many indicating that tribes are subject to state authority, for example, by being required to submit records for state review. As an indicator of the lack of government-to-government relationships, while almost all agreements are signed by the top elected officials of tribal governments, only eight are signed by state governors, the top elected officials in state governments.

Based on an analysis of the agreements alone, there are few conclusions that can be made about tribal/state implementation of Title IV-E. Instead, this analysis suggests a need for greater specificity and uniformity in IV-E agreements as well as a greater emphasis on the government-to-government relationship that should exist between tribes and states.

Focus Group/Interview Analysis

As noted previously, in addition to collecting and analyzing Title IV-E agreements from 12 states, two strategies were used to gather more in-depth information. The first strategy included focus groups with tribal service providers and state representatives in five states (and 18 tribes). Four of

these states (Oklahoma, Oregon, North Dakota and Montana) had IV-E agreements in operation and the purpose of the focus groups was to ascertain both tribal and state perspectives on the agreements and how they were working out in practice. The fifth state (Arizona) did not have any IV-E agreements in operation in spite of the fact that this state has the highest number of American Indians living on reservations. The purpose of the Arizona focus group was to gather information on why IV-E was not being implemented through tribal/state agreements. Focus groups included 6 to 10 participants, including tribal child welfare specialists, tribal coordinators/administrators, state program managers and department directors, and former tribal/state representatives who are now consultants.

The second strategy involved phone interviews with representatives of tribes and states that had IV-E agreements in place who were not involved in focus groups. A total of 16 phone interviews were conducted (with another five interview questionnaires completed by fax) including seven with state representatives and 14 with tribal representatives. Focus groups and interviews involved a total of 32 tribes in 13 states.

Therefore, focus groups consisted of 37 tribal and state participants from five states, while telephone interviews consisted of 22 tribal and state participants from eight states.

Decisions to Implement IV-E

According to those interviewed, tribes had decided to implement their own IV-E child welfare services as early as 1977. Of the 32 tribes involved in focus groups and interviews, 10 tribal representatives indicated their tribes had planned to implement IV-E prior to 1990. However, some tribes experienced long periods of information gathering and negotiations before agreements were actually signed. For example, one tribe in an eastern U.S. state developed an interest in implementing their own child welfare services in 1983; their agreement with the state was signed 10 years later (in 1993). Eighteen agreements discussed by focus group and interview participants were signed between 1990 and 1999 with one signed in 2000.

In addition to experiencing a time lag between initial interest and the signing of an agreement, some tribes reported a delay from the time agreements were signed and when services were actually implemented. One tribe in New Mexico indicated that their agreement was signed in 1998, but the tribe is just now starting to implement IV-E services.

Interviewees and focus group members reported a wide range of motivations on the part of tribes and states in pursuing IV-E. The most frequently mentioned incentive for tribes to enter into IV-E agreements (mentioned a total of 18 times) was to gain access to an additional source of funding. For a number of tribes, IV-E funding allowed

them to develop child welfare programs for the first time. As a tribal representative in the state of Oklahoma stated, “The tribe didn’t really have a child welfare program, and IV-E was a way to get payments and to be able to use their own standards [for licensing foster homes].” This idea was echoed by a tribal representative in Montana: “Our tribe couldn’t provide foster care services without IV-E because the tribe didn’t have the financial resources.” In Oregon, a focus group member indicated that, “A major motivation for the tribe was that it was an additional source of funding for paying for foster care. By bringing in IV-E funding, the tribe could use other funding that was going to foster care for building more comprehensive programs in other areas.” A tribal service provider noted that the tribe she worked with “had a vision of trying to create a social services department . . . The state came in and was selling the idea of IV-E and the tribes latched onto this. It sounds good to have an agreement with the state.”

The next most frequently mentioned motivation for tribes to pursue IV-E involved tribal sovereignty. Many tribes wanted responsibility for running their own programs and wanted to assume ownership and control of foster care from the state. (These motivations were mentioned 14 times.) A summary of comments made in this area include:

- The tribe has been in the forefront on many sovereignty issues and wanted to implement tribal programs.

- Our tribal government found out about IV-E and wanted different tribal standards than those administered by the state.
- The tribe doesn't want state interference; we wanted a say in what happened to our families.
- Self-governance stimulated the tribal courts to pursue IV-E.
- The tribe wanted to be able to certify their own tribal foster homes for children in custody.
- Our tribe's main motivation was the desire to administer a child welfare program We wanted to take responsibility and ownership for getting children out of state custody and into tribal custody.

In commenting on the desire to build tribal/state relationships, a service provider in Oklahoma noted her tribe pursued IV-E “to get the state and the tribe to work together with the families and start pulling together as a team to provide foster homes, foster care and funding.” During a focus group in a western U.S. state, a service provider noted, “The State was not providing adequate services. Tribal members were complaining that services were discriminatory and were not sensitive to tribal needs. The tribe wanted to take over the program before but the state would not allow it.” Another tribal representative added, “Once they [the state] take our children, they're losing their culture.”

While the desire to access additional funding for developing tribal programs, establishing tribal

sovereignty, and building tribal/state relationships were the most frequently cited reasons tribes wanted to implement IV-E, other motivations included:

- wanting to increase the level of benefits/services provided to children (mentioned seven times);
- wanting to access funds on behalf of foster parents or honoring foster parents' rights to receive maintenance payments (mentioned four times);
- wanting to preserve tribal culture (mentioned three times); and
- wanting to hold the state accountable or not trusting the state to provide appropriate services (mentioned three times).

State representatives also mentioned a number of motivations for implementing IV-E with tribes. These included helping tribes assume jurisdiction in foster care cases, relieving state social services of some of the responsibility for tribal foster care, and complying with ICWA requirements (all mentioned twice); and improving relationships with tribes, gaining access to tribal foster homes and providing culturally relevant services (each mentioned once). A summary of comments about state incentives for entering into IV-E agreements include:

- The intent of the [state] Indian Child Welfare Act was to improve the working relationship with the tribes and for the state to comply with the federal act (federal ICWA). The State had not done a good job complying

with the federal ICWA up to that point. There was some feeling that if there was some way to help the tribes to assume jurisdiction, work with their own children, and provide foster care services that it would help lessen state workloads.

- The state was interested in IV-E agreements so that they would not end up doing the case management. State personnel saw it as being more cost-effective to get that workload out into the local area with work being done by local people. The state also has a governor's directive/executive orders to pursue government-to-government relationships The governor is very supportive of government-to-government relationships and agreements, and he laid it out how all the state departments are to work with the tribes.

Finally, a state representative noted that both tribes and states share a common motivation for entering into IV-E agreements: "IV-E is hard to administer but there's nothing in it that's not good for kids."

Agreement Development Processes

In almost all cases, the IV-E agreement process was initiated by tribes rather than by states. As a North Dakota focus group member indicated, "There was a push from the tribes. Their motivation helped move things forward and make things happen." In at least two states, one tribe (in each state) assumed a leadership role by forging an agreement with the state, which then served as a model for other tribes. Decisions to pursue IV-E

were sometimes influenced by conferences and advocacy organizations like state and federal Indian child welfare associations. In Oregon, one focus group member indicated she was always invited to federal meetings, conferences and state meetings where different funding sources were discussed (including IV-E). Participation in these events increased her interest in pursuing an agreement with the state.

Within tribes, social service/child welfare directors were most often involved in initiating IV-E negotiations, but other tribal participants included tribal chairs, tribal council members, and tribal attorneys. As mentioned previously, some tribes experienced long negotiation periods. In Oregon, agreement development for three representative tribes ranged from 18 months to five years. In other states, "things moved along very quickly." A South Dakota tribal representative noted that the negotiations leading to their agreement was "not a long process The state already had contracts with other tribes. The whole process took three to four months." In one Northern state, a tribal representative commented that "some tribal/state agreements had already existed [prior to the development of their IV-E agreement]. The county director and tribal chair would work out the agreements. About a year ago, the state took all of the old agreements and revamped them to create one singular [model] agreement" which was then sent to tribal chairs. In other states, state personnel assumed the responsibility for drafting initial agreements.

Supports in the Agreement Development Process

Tribal representatives mentioned a number of special supports that facilitated the development of IV-E agreements. The most frequently mentioned source of support in the agreement development process (mentioned a total of 11 times) was the involvement of a tribal liaison from the state or of another state official who was particularly interested and involved on the tribe's behalf. This type of support was discussed at length at the North Dakota focus group. As one focus group participant stated, "The state Director of Children and Family Services [at the time their IV-E agreement was initiated] said that tribal members are state citizens and have a right to IV-E payments." Another participant added, "Tribes wanted to access the funding, so the motivation came from the tribes wanting their rights But you also had a state representative who finally had an understanding of those rights and was receptive to the tribes." The North Dakota situation was summed up by the comment: "It's not enough that people are interested. You have to have a state representative who will step forward to help in the process."

A similar situation was described by participants in the Oregon focus group. A focus group member stated that the tribe had a series of meetings with the state administrator of Services to Children and Families: "He was very progressive and interested in developing relationships with tribes. The meetings helped the state understand

the structure of the tribe, their information systems and their financial ability to administer child welfare programs." Negotiations proceeded from that point, with tribal attorneys becoming involved as well as the regional Department of Health and Human Services office. Another focus group member noted that, "the tribal liaison for the state helped facilitate between the tribe and state to bring the two parties together."

Other tribal representatives commented on the helpfulness of DHHS regional representatives, with one interviewee commenting, "The state liaison and regional representative of DHHS helped us understand IV-E procedures." In another state, a BIA representative also participated in initial negotiations.

Barriers in the Agreement Development Process

Many interviewees and focus group members also mentioned a number of barriers experienced in the early stages of agreement development. These include:

- Issues related to tribal sovereignty (mentioned three times). One interviewee noted that the tribal attorneys were wary of agreement language and of financial arrangements that did not protect tribal sovereignty.
- A lack of trust between the tribe and state (mentioned three times). One interviewee noted that both parties had to be able to "look at the big picture and walk a mile in the other's shoes."

- Legal barriers or issues between attorneys (mentioned twice). An Oregon focus group member commented, “You have problems once you turn the process over to any lawyers, both tribal and state attorneys, because each side sees it differently.”
- The complexity of IV-E (mentioned twice). One interviewee noted that it took time to “make sure everybody involved understood the federal funding streams.” Another state representative noted that it was necessary to “explain standards and expectations in detail” before signing agreements.
- Turnover in the parties doing the negotiating (mentioned twice). As one focus group member indicated, “The ICWA Manager position for the tribe went vacant and slowed down the progress and discussion.”
- Slow follow-through by state administrators (mentioned once). The tribal representative who made this comment noted that “state administrators seemed to want to get going on IV-E but the time it was taking required that the tribe contact the federal DHHS representative for their region to get the state moving again.”
- Turnover in tribal government (mentioned once). One state official noted that new tribal chairs are elected each year and the turnover in tribal government slows the negotiation and agreement development process.
- The involvement of the tribal council (mentioned once). As one focus group member commented, “The negotiations are on a high level, involving the Tribal Council. The agree-

ments were developed on a [department] managerial level, and once they go to tribal government for signatures, they need to be explained to the individual who needs to sign the document So it takes more time because that individual has to be educated on some basic child welfare issues.”

Building the Institutional Capacity for Administering IV-E

Some tribes did not take special steps to increase their capacity for administering IV-E, due in part to the small number of foster care cases involved in these tribes. In other cases, the need to build institutional capacity was overlooked. As one interviewee indicated, “[Building additional capacity] wasn’t even looked at when IV-E was implemented. The tribe receives no operation funds; all overhead is covered through ICWA funds.” However, other tribes reported taking a number of steps in preparation of administering IV-E. Specifically:

- Six interviewees/focus group members mentioned initial training. Most of this training was focused on the use of computer systems, reporting requirements and meeting regulations and was provided by the states.
- Five tribes acquired new computers paid for by states, the BIA, or the tribe. Other tribes have acquired computer equipment since implementing IV-E, although the use of these computers is not always restricted to IV-E cases. Federal grants, including ICWA and BIA funds, have been used to pay for the equipment.

- Four tribes added new personnel. Two tribes indicated they had added one caseworker position; one tribe added a director, caseworker and secretary; and an agency serving a coalition of tribes in one state added a caseworker, a bookkeeper and a case aide.

In New Mexico, the state IV-E Program Manager worked with tribes to make sure they understood the wording required for court orders and case management forms (based on models that he provided). One tribal representative commented that, on the day their IV-E contract was signed, state workers “spent the day telling us how to implement it.” Another state representative mentioned that a liaison position was designated to provide tribes with training and other assistance in administering their IV-E program. In Michigan, the state representative commented, “Some tribes already have very advanced social service departments. The state did not need to be involved in building institutional capacity.”

Provisions of IV-E Agreements

Foster Care. Focus group and interview results confirmed many of the findings of the IV-E agreement content analysis. All agreements include the provision of foster care maintenance and services, with tribes providing case management, foster home recruiting and foster home licensing. In one case, both the tribe and the state provide these services, and in another case, the state still provides all services. When asked if tribal foster care services differed from those provided

by states, respondents made several comments, including statements about kinship care, placements with relatives, therapeutic foster care, and cultural orientation. The following is a summary of comments made by tribal representatives participating in focus groups and interviews:

- Relatives can be considered for foster care; the state usually doesn’t pay for kinship care.
- Tribal foster care services used to be primarily relative placements [and the placement] process was informal. When the tribe decided they needed to utilize non-relative foster placements, they realized there was little incentive for anyone to step forward to be a foster care provider. I asked tribal members to “put the word out” that the social work department was interested in developing more foster care homes. We created a 15-page application for foster care providers, bringing the tribe more up to speed with the standards around the country. We were also careful to preserve tribes’ cultural standards. Then we created a committee of five people who made decisions regarding whether a home will be licensed or not.
- Therapeutic foster care is available to state IV-E kids but not for tribal children in tribal custody. A budget request has been submitted for therapeutic foster care, which would be funded by the federal and state governments.
- The tribe issues its own [foster home] licenses but uses the state guidelines. Tribal services do not differ from those of state except they are culturally and traditionally oriented.

- Tribal services honor preferences for Native American homes; IV-E empowers tribes to maintain children in Native American communities.
- Tribal services are more flexible than state services.
- Tribal services are more intensive than state services.
- The tribe can operate with more awareness of tribal tradition and culture whereas the state does not attempt to involve relatives or members of the child's clan.

One tribal representative noted that the tribe has its own foster home licensing standards but that their services do not really differ from those of the state. Most of the tribes represented were using tribal licensing standards while others were exercising the option to use state standards.

As a final note on the delivery of foster care services, it was reported that a tribe in South Dakota does not have a social services department, so it designated BIA to run the program and receive the IV-E funding. According to another interviewee, a similar approach was attempted by a tribe in another state. Originally, it was expected that the tribe could sign the IV-E agreement but that the social work services would still be provided by the BIA. The BIA declined to do so and agreed to transfer the services to the tribe.

Adoption Assistance. About half of the tribes represented indicated their IV-E agreements included provisions for adoption assistance,

although many of these tribes do not access adoption assistance because they do not support involuntary termination of parental rights (TPR). A summary of comments related to this issue include:

- Adoption assistance is included in the agreements but hasn't been utilized. Adoption assistance has not been accessed by some tribes because the tribe doesn't do termination of parental rights (TPR). The only way the tribe will do an adoption (with a TPR) is if a father or mother has a child, they remarry, and their new spouse wants to adopt the child. The biological mother or father must agree to relinquish parental rights in order for the stepparent to adopt the child.
- Yes [adoption assistance is included] but adoptions are very rare. With the federal waiver tribes have created subsidized guardianships that don't sever parental ties but allow for continued subsidy from the IV-E program. If adoption is not in the best interest of the child, tribes can better honor tribal customs and traditions by using guardianship, while the children in state custody have no choice; they have to go through with terminations of parental rights. Guardianship preserves the parental bond and keeps the families from being blown apart (comment from a state participating in the federal waiver demonstration).

Other tribes do adoptions only after voluntary relinquishments. One tribal ordinance states that guardianship is preferred over adoption (Guardianship is included in this state's IV-E agreements because the state is part of the federal waiver demonstration).

In Oklahoma, only one tribe includes adoption assistance in their IV-E agreement. However, other tribes in the state are eligible to receive the same services without formalized agreements. At least one tribe indicated that their adoptions are still funded by the BIA. In Montana, adoption assistance is not included in current IV-E contracts, but tribes complete their own adoption home studies and negotiate funding agreements with the state on a case-by-case basis. Finally, one tribal representative noted that the tribe had their first adoption case during the past year: “This child is eligible for all the benefits that state children get. Tribal members who have dealt with the state on adoptions describe state workers as intrusive and offensive.”

Independent Living. Approximately one-third of the tribes represented indicated that independent living was part of their tribal/state agreements. However, it was noted in several states that tribes can access the same services that states provide (for example, under the new Chafee Independent Living Program). A summary of comments on this issue include:

- Independent Living is not in our state’s agreements but it’s one of the federally funded services that tribes can access. This assistance is available to all children whether they’re IV-E eligible or not.
- Some assistance is provided but nothing formal. The tribe provides some services. The state provides independent living funding but the tribes don’t use it.

- Independent living is not in the initial agreement but it’s starting to come up.
- The state has subcontracted [for independent living assistance] with local community colleges that provide life skills education, including budgeting, resume writing, etc. The Independent Living Program manager for the state included in their Independent Living Plan that they want to pursue culturally relevant [Independent Living assistance] providers for Indian tribes.
- Youth in care can access whatever is available through the state. State is in planning process to access Chafee funding; tribes will be involved.
- We mention independent living assistance in our agreement but when kids get close to aging out of the system, we haven’t provided [very effective] services to help them out; our services are not well implemented yet.
- The tribe has no one who qualifies for independent living assistance right now but we will certainly provide this in the future.
- Independent living is part of our IV-E agreement but services are provided by the state.

Training. Training provisions were not clearly specified in IV-E agreements and focus group/interview results confirm that both tribal staff and foster/adoptive parent training is provided on an as needed basis. In most cases, states and tribes indicate that both tribal service providers and foster parents are able to participate in training provided to state workers and foster parents for the state. Tribal social workers in a number of

states are eligible to participate in graduate training at state universities (with tuition and expenses covered by the state with federal dollars) but few tribes are taking advantage of this opportunity. A summary of comments related to staff and parent training include:

- The state conducts training for foster care parents and tribal members can participate.
- The state made promises for training and technical assistance but the tribe never received these; they were just given a pile of paperwork to complete.
- Foster care parents and tribal staff can attend state training. The state has worked with [a national training institute] and tribes have paid for [the institute] to come in and train county workers on ICWA. Tribes could use more training. The state also pays for foster parent training. Training for tribes is provided through the federal regional office, by NICWA, and by the state.
- The state of Montana requests tribes to develop training plans and submit them for approval. The training that can be accessed is offered by the state but national conferences would also be acceptable. The state is holding discussions with a state university. In the state's training provisions, there is an agreement that there will be two slots available for tribal representatives. This doesn't always work because of turnover in the state training manager position and turnover in university staff who do the conference planning and do not know this information. "A tribal representative

may call to sign up, and these people act like they've never heard of that agreement." State staff agree that "having Indian Child Welfare staff trained as MSWs would be to everyone's advantage."

- Training of parents is done by the tribes and the state. Tribes do most of the training of workers. Masters-level training is available and one tribe in the state has participated through their training contract. Other tribes are planning to participate.
- The tribe is aware of the graduate scholarships available but hasn't sent anyone for MSW training yet.
- Some tribes have sent foster parents to state training sessions but the tribes have not used state training opportunities to a great extent. Training is provided free of charge. Social work education/stipends are also available but not used.
- Tribes [in North Dakota] have accessed a lot of IV-E training dollars. IV-E used to fund a training institute which is funded by the state, but is a tribal organization. There is a board of directors with representatives from all of the tribes. Tribes are also eligible for reimbursement for attending a IV-E training class, including master's and undergraduate degrees. Tribes have never sent anyone to school for undergraduate or master's degrees on state dollars. This component may be included in a renegotiated agreement. Tribes can access different training programs but the reimbursement comes through the state.

Barriers to IV-E Implementation

Both tribal and state representatives mentioned a number of barriers to IV-E implementation.

These include a high rate of turnover among state staff (mentioned three times); billing/reimbursement issues (mentioned twice); lack of timely response on administrative issues from tribes (mentioned by two state representatives); and lack of required wording in tribal court orders (mentioned twice). The following comments illustrate the range of barriers from both tribal and state perspectives.

Tribal Perspectives. Most of the barriers to IV-E implementation mentioned by tribal representatives involve tensions in tribal/state (or county) relationships as the following summaries of comments suggest:

- There's a lot of turnover among state staff. A lot of times tribes have to reeducate different people as they come in; there's no consistency. We meet with the top people, but the information doesn't filter down from the top.
- There's a large turnover rate in [the state Department of Human Services]. When the tribes eventually have one person in a certain county who finally understands what needs to go on, there is a turnover and the tribes have to start over ... The implementation is hard only because of lack of knowledge. When you have such good people at the state level, it's hard to believe that you would run into these problems at the county level.
- Most tribal governments do not have the resources to keep programs going on a regular basis. As a director, I'm caught between two systems, trying to please the state and the feds plus the tribal system. I have to account for every penny.
- Sometimes the state will not approve reimbursements. State requires that tribes submit billings within two months or reimbursements will be denied yet the state has up to one year to make the reimbursement. Errors in billing cause trouble for the tribe and foster parents.
- The state bureaucracy is inflexible.
- Interface with the state is very poor. We don't speak the same language.
- Paperwork is a problem. If the state could provide some of the infrastructure and direct connections to their information system to our tribe, it would help.
- When tribes are dealing to make their contracts/plans, they deal with the state office. The state office has been very cooperative, but then the agreement is put together and has to be implemented by 77 different counties. It is implemented differently in each county. Workers themselves don't have knowledge of the contract and some of the supervisors don't even have any knowledge of the contract. It puts a lot of responsibility on tribal people because they're the ones with the knowledge who go into these counties, and it's perceived that we're telling the county people what to do. It's like "breaking in" each county.

- There are 37 tribes in Oklahoma. One barrier [for the state] is the sheer number of tribes in the state. There are just too many different people to deal with. You get the vision that if you've had trouble with one tribe, you've had trouble with them all.
- It took four years to get training on compliance issues. Some state people seem to have the attitude that if Indian people know too much they'll take control.

However, one tribal representative noted that a barrier to IV-E implementation comes from within the tribe:

- There's no real commitment for the tribe to do IV-E. Tribal leaders don't really understand it. It's maintained through advocacy done by social work staff; there's a new tribal chair every year so you have to reorient the new chair to all of the issues each time.

It should be noted that four interviewees (tribal representatives) did not perceive any specific barriers to IV-E implementation.

State Perspectives. A summary of barriers mentioned by state representatives included issues related to compliance and accountability:

- We experience difficulty with accountability [on the part of tribes]. Sometimes we wonder where the money is going. We often deal with untimely reporting.
- Making sure the tribes are compliant is a challenge. Due to the complexity of IV-E, program people see IV-E as a lot of work.

Another barrier addressed fiscal issues that were also discussed by tribal representatives:

- The state has to contract according to their state's fiscal year while tribes are on a federal fiscal year schedule. This leads to tension. ... Because contracts must be renewed each year, if there are any difficulties in resigning contracts, the IV-E funding is cut off for a time period; due to this, some tribes have had to lay off workers until funding begins to flow again.

One comment addressed the complexity of implementing IV-E in the most effective way possible:

- One barrier is how to make sure that the children benefit from these dollars in the most effective way. When you really want to do something innovative or creative, is that allowable? Sometimes I think we spend more time thinking about protocol than funding the kids, which becomes an issue.

During focus groups, state representatives were able to address a couple of the issues raised as barriers by tribal representatives:

- A lot of what I'm able to accomplish hinges upon what's on my plate. Reservations are spread out in this state. If I can get out there more to work on issues the tribes have, things will improve. We have tried for the past two state legislative sessions to get a full-time tribal liaison added to the state staff but the proposed addition of staff was taken out at the department level. No staff can be added without legislative approval.
- Tribes see it as the state coming in and telling them what to do but what we're really working

toward is compliance with federal requirements. That's what our contracts focus on – meeting the federal requirements.

In Arizona, state administrators have worked with a number of tribes for many years exploring tribal interest in IV-E. One state official noted, “Unfortunately, something would be started and break off, then something would be started again and break off.” and added that the main barriers involved compliance with federal law rather than difficulties in tribal/state relationships. For example, tribal codes specify policy and procedures that run counter to IV-E requirements regarding court order language, judicial determination, and the timing of dispositional hearings. One tribe has had a work group consisting of social workers, police officers and prosecutors examining and revising their tribal code, but their tribal representative commented, “With the tribal process, it will be a long time before we have anything official.” The state administrator added that larger tribes were more interested in pursuing IV-E “while other smaller tribes express an interest but don't take a hard look at what they need to do internally in order to apply for assistance.” Another focus group member noted that, for smaller tribes, the fewer number of IV-E eligible cases made it questionable whether the complexities of complying with IV-E were worth it. He added that some tribes are also concerned that 638 funding may be in jeopardy if tribes access IV-E. Additional barriers discussed by both tribal and state representatives include:

- the lack of start-up costs provided for tribal IV-E programs;
- the lack of technical support and training for tribes so they know exactly what is expected in implementing IV-E; and
- the lack of state/federal recognition of tribes as sovereign nations.

Special Supports in IV-E Implementation

Interviewees and focus group members also mentioned a number of supports that facilitate the implementation of IV-E. As previously mentioned, the assistance of a state tribal liaison or other state official was a support in the agreement development stage; for most of those interviewed, this assistance continued to be a support during the implementation stage. Relationships with other state and county workers, as well as positive relationships with DHHS regional representatives, were also mentioned, as summarized below:

- A big support is having a liaison and a regional representative to help us understand all the procedures.
- We experienced no real barriers because there was a good relationship between tribal and county social workers.
- The biggest support we have in implementing anything is our relationship with the state courts. Building relationships with the state courts makes all the difference in the world. If you've shown yourself to be reliable to that judge/court, it's a good way to get your way.

If you build that relationship with the judge, then you can get what you want.

- The State Attorney General's Office has been a big support. Long-term relationships help. We can move forward when relationships have been established.
- The state was willing to try to accommodate the needs of the tribe regarding contradictions between Title IV-E and ICWA. The tribe has a good law firm and the state was willing to let the lawyers handle the negotiations.

As summarized below, the benefits of supportive relationships were also mentioned by state representatives:

- The input of tribal service providers has been a support from the state perspective. There has been a lot of open dialogue and discussion.
- The relationships between local county managers and tribal governments have been a support. They have to agree that they are working for the benefit of the children.
- I have appreciated how progressive the federal region has been and the technical assistance they're willing to provide; they have been willing to come to the table and have discussions ... they are very willing to discuss and debate the issues. This has helped in working out the IV-E agreements and getting things done between the state and tribes.

Several interviewees/focus group participants mentioned holding regular meetings to further build relationships in support of IV-E implemen-

tation. A tribe in Oklahoma holds monthly Child Protection Team meetings, and their representative stated, "We're building a relationship with each [county] worker, not just as a whole, but each of us will sit down to talk. I mean, it's tough, it's hard to get in there with an individual when each of you has your own way of doing it." In the same state, focus group members considered the mutual interest of tribal and state workers in what is best for the children as a support to IV-E implementation:

- One other strength is that both the tribe and DHS consider their best interest as the interest of the children. [Workers] don't look at whether they're Indian or non-Indian, they are just looking for the best place for the children.
- DHS workers appreciate the tribe's help because, when the tribe goes in to state courts, they don't go in with an adversarial role, they go into the state courts as an advocate for the child and the whole family; they have a "what's best for the child" attitude.

In North Dakota, tribes formed a coalition approximately five years ago that meets quarterly and votes collectively on a number of issues related to IV-E. A formal outcome of this coalition is a training institute, which is funded by the state, but is a tribal organization that included members of the Board of Directors from all of the tribes in the state.

Finally, to illustrate the range of special strengths or supports to IV-E implementation, focus group members in Oregon agreed upon the following list:

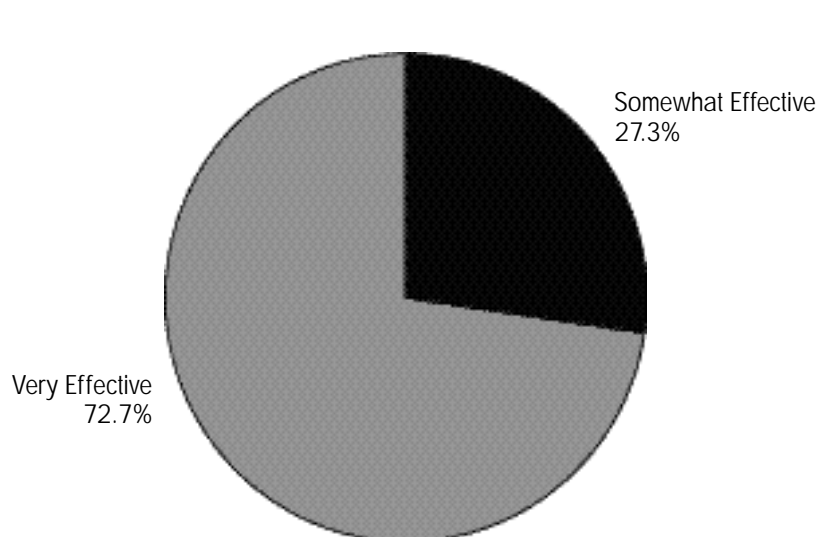
- The state tribal liaison
- Tribal ICWA managers
- The state department head being available for quarterly meetings with the Native advisory groups
- A governor's executive order in support of government-to-government relationships with tribes
- Executive meetings of the state tribal liaison and child welfare advisory members as well as local meetings
- The annual ICWA state conference
- Other conferences like the Adoption and Safe Families Act conference

Agreement and Service Effectiveness

Overall, focus group participants and interviewees perceived a range of positive outcomes associated with tribal/state IV-E agreements. When asked, "Overall, how is the agreement working out in providing the basis for your collaboration with the state/tribe? Would you say your collaborative relationship with the state/tribe is very effective, somewhat effective, or not effective in providing child welfare services in your community?"

72.7% of tribal and state interviewees responded "very effective," with the rest responding "somewhat effective." In addition, the consensus at focus group sessions was that tribal/state agreements were also effective in providing services to children and families in need. This consensus was

FIGURE 7. AGREEMENT EFFECTIVENESS IN STATE / TRIBAL COLLABORATION



shared by both tribal and state representatives (among focus group participants and interviewees).

Responses were similar to the question, “Would you say the provision of foster care and other services in your community has become more effective, less effective or stayed about the same since the tribe began administering IV-E?” Specifically, 68.2% of tribal representatives responded “more effective,” 27.3% responded “stayed about the same,” and 4.5% responded “less effective.”

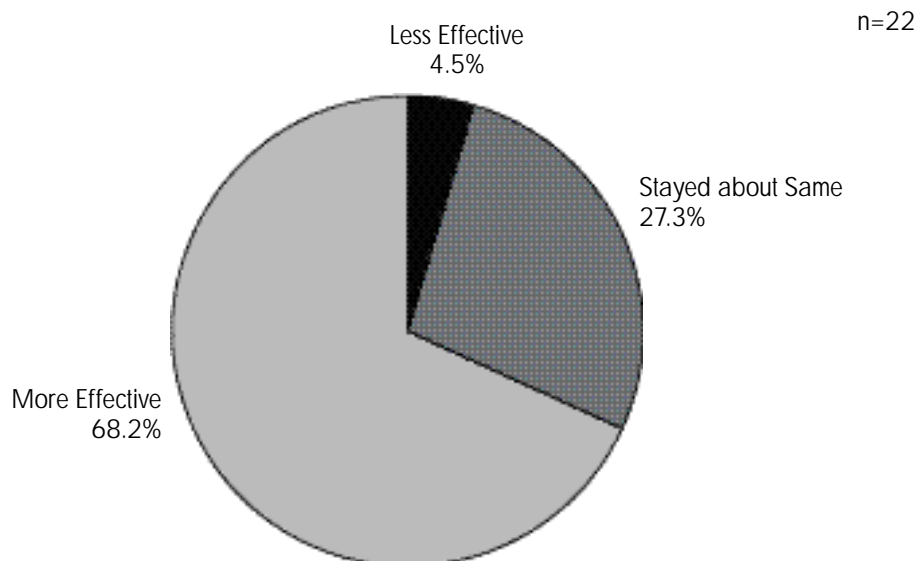
Some of the important aspects of agreements or tribal/state relationships that support their effectiveness include the following:

- The increased ability of tribes and states to provide culturally sensitive services and to keep

children with tribal members (mentioned eight times). Related comments include, “We’re in a better position to keep children in the tribe,” and “We have a commitment to maintaining the cultural aspect of children’s lives.”

- The increased ability of tribes to address community issues, run their own programs and maintain tribal sovereignty (mentioned six times). As one tribal representative stated, “[The IV-E agreement] recognizes our sovereign nation status.” A state representative indicated, “The agreement has allowed the tribe to develop their own goals and objectives. It’s mutually beneficial because the state knows care is provided.” In addition, two tribal representatives commented that they had received further training through their agreements and were able to provide better case management services. Another respondent commented that

FIGURE 8. TRIBALLY ADMINISTERED IV-E SERVICE EFFECTIVENESS



tribes were now spending more time discussing issues related to child welfare as well as problem-solving with members of other tribes.

- Increased funding, benefiting children and families (mentioned six times). For example, one tribal representative commented, “The benefit [of our agreement] is that 65 children are receiving \$341 per month equaling \$265,980 that was not otherwise coming into the tribe for the direct care of children. It goes a long way in buying necessary items for the children. The immediate benefit is the financial support it provides for children that doesn’t have to come out of the pocket of the foster care providers themselves.” Other tribal representatives indicated that their tribes would not be able to afford foster care assistance without IV-E funding.
- Improved relationships between tribes and states, including increased respect for the ability of tribes to run their own programs (also mentioned six times). A summary of related comments include:

“Very Effective” Comments from Tribal Representatives

- All of the tribes have taken a real leadership role with the state. Tribes are actually presenting their ideas on cases more, whereas before, the state would tell tribes what to do. Tribes have earned a lot of respect.
- There’s better networking, collaboration and coordination between tribal and state services. Tribes are more aware of what’s going on between the tribes and the state regarding current legislation; tribes are more on top of what

is going on. Tribes are being asked to participate and the state is listening to their input more. IV-E gave a ‘heads-up’ for child welfare services in Indian country to be able to provide better case management services to tribal children and families and working with state government.

- The tribe has gained the respect of the state through their services and child protection work, whereas before it was questionable. The tribe has been empowered, and we have helped our own tribe by working together.

“Very Effective” Comments from State Representatives

- We have seen an impact. Permanency for kids is really happening. Tribal case managers are getting results without the involvement of state social workers, and tribes are maintaining kids in their own communities.
- Preventive services are reaching more families than the services previously provided by the state. The tribe has a group home for teens and the purposes of ICWA are being met.
- In tribal programs, children go home faster. Placements last longer.
- Going into the first agreement, there was a question about the capacity of the tribe to administer the program. Tribes have to do as well or better in the administration of IV-E programs or the state falls back into the ‘I told you so’ attitude of state employees that tribes can’t run their own programs.
- The state and tribe coming to the table more

as equals; they are in the process of building capacity and relationships on long-term basis.

A summary of comments from those who indicated that agreements were “somewhat effective” or that the provision of services has “stayed about the same” include the following:

“Somewhat Effective/Same” Comments from Tribal Representatives

- [The provision of services has] stayed about the same. We need more resources.
- We are more effective in the provision of foster care services but as we have not been fortunate enough to provide adoption assistance or independent living services to our clients, we feel we are lacking in these areas.
- We have some difficulties implementing the agreement, including budget problems. More money for training is needed.

“Somewhat Effective/Same” Comments from State Representatives

- [The level of effectiveness] depends on the tribe. Large federally recognized tribes have a good monetary base, good social services departments, and the impact has been very beneficial. They are able to provide better services to Native children.
- There is still a ‘natural’ mistrust present. This is an evolving process and we are still building trust.
- Generally, services are somewhat effective. We have a long way to go to get the tribes where they want to be.

Tribal Comments on Agreement and Service Weaknesses

In addition, tribal representatives noted a number of weaknesses in their current IV-E agreements or in their relationships with states:

- Our tribal chairman’s opposition to the agreement was that the initial IV-E agreement was not a government-to-government agreement. It was the state Department of Health and Human Services making an agreement with the tribe. ... If our tribal chairman has to sign the agreement, then the governor should sign the agreement.
- It’s still a state-run program, and even though I agree with most of the practice models that the state uses, it’s still not our program. The fact that we don’t have any real say in what the state does is a barrier.
- IV-E is seen more as a state program than a tribal program. The tribe didn’t know what it was getting into. It seems like the state implements what they want but not what the tribe wants. The state used IV-E funding to “buy out” the tribe. The tribe doesn’t really know what’s in the IV-E contract and the contract doesn’t have what the tribe wants. ... A lot of our cases are not being transferred to IV-E.
- When it’s time to sign the contract, the tribes are given limited time to review them while the state has had months. There is no parity. The money is dangled in front of us, but if it were a true government-to-government agreement, the governor of the state would sign.
- Services are driven by money instead of principles of social work practice.

Prospects for the Future

All focus group and interview participants indicated that their tribes/states plan to continue implementing IV-E in the future, although two tribal representatives noted that requirements of the Adoption and Safe Families Act (ASFA), which has implications for foster care and adoption services, present problems for tribes. As one tribal service provider stated:

We plan to continue with IV-E although ASFA has put that into question for a lot of tribes [whether they want to comply with the Act to receive federal funding]. [Complying with ASFA requirements for] foster care alone is going to kill us. We have very few foster homes as it is, and with ASFA going back to day one on specific crimes [in terms of background checks for foster parents], I don't know what we're going to do. What we're going to end up doing, I think, is we're going to end up assuming the costs [of foster care] ourselves. Our Tribal Council has given us direction that they are not going to let us lose any of our kids, and so I guess it becomes this legal game of how to get as much as we can until we have to take it on ourselves. ... A lot of the ASFA regulations don't make sense in Indian Country.

A number of tribes were currently negotiating changes in their agreements and others anticipated future changes, including expanding services and gaining reimbursements for administrative costs and foster parent training. However, one state representative commented, "We're trying to strengthen relationships with the tribes and

provide the resources necessary so they can run and develop their own programs. Regarding administrative and training costs, it would be improbable to try and access these funds because it would cost more to access them than it would be worth." In another state, administrators noted that current IV-E contracts are renewed on an annual basis due to state administrative rules; however, they are making efforts to move to two-year contracts and would eventually like to implement six-year contracts. A consultant from that state noted, "In hindsight, when the state went from [more general] agreements to contracts, the agreements should have been kept department-wide, covering issues broader than IV-E, existing in perpetuity but with both sides having the ability to renegotiate. Agreements could serve as bridges. Then the [annual] contracts could provide the pass-through funding and be renewed on an annual basis."

In four states, administrators noted that additional tribes are interested in entering into IV-E agreements. In New Mexico, nine more tribes have expressed some interest in implementing IV-E. According to the state IV-E manager, three are very close to developing agreements.

Another possible future change in IV-E is the potential for direct funding for tribes if an amendment is pursued and enacted in the U.S. Congress. A final question for interviewees and focus group participants addressed the interest of tribal and state representatives in direct funding to tribes for IV-E. Tribal reaction to direct

funding was mixed, with nine tribal representatives indicating their tribes would prefer their current tribal/state relationship over direct funding, given the uncertainty of the proposed federal legislation related to direct funding; seven indicating their tribes would go with direct funding; and the others expressing uncertainty about what tribal preferences would be.

A summary of tribal comments from those in support of direct funding include:

- [With direct funding,] access to administrative and training costs would follow and the tribe would get to make initial eligibility determinations.
- When you get up to the tribal council and higher, they're not in agreement with what the state does. They're trying to become totally sovereign on their own without any assistance from the state because trust in the BIA and the state has pretty much disappeared.
- We would support direct funding because of sovereignty.
- We are absolutely in favor of direct funding. We are one of the tribes to implement our own TANF program and we would love to get IV-E funding directly.
- Our tribe has let the state know that we want direct funding. The tribe gets direct funding for IV-B, so why not for IV-E?

A summary of tribal comments from those who preferred their current tribal/state relationship over direct funding include:

- If tribes got money directly they would probably get shafted.

- The tribe could not afford direct funding on a reimbursement basis because they could not make the match.
- The infrastructure to generate the foster care payments and the staff you would have to add to determine eligibility would be a problem. Those are pieces the state is currently taking care of, and it would be a big burden to pick up even though costs would be reimbursable. By the time the tribe set up all of the things necessary for running a program with direct funding, you come out behind.
- All of that and then we might also have to provide the match if we go to direct funding because the state would not have an incentive to provide the match if the tribes are running their own programs. I think it's a "lose-lose" situation.
- The tribe is not ready for it. I don't see any good reason to change the way it is now.
- I like working with the state. We spend a lot more money for non-IV-E cases.

Those tribal representatives who expressed uncertainty or "mixed feelings" about direct funding made the comments summarized below:

- It would be difficult for the tribe to come up with matching funds. The match would be a big obstacle.
- I think the tribe would be willing to look at direct funding, but it wouldn't be good in the long run for the welfare and interest of our children and families.
- You will someday hear that tribes are directly funded by the feds, and that the feds do not

even dictate child welfare regulations to the tribes. The federal government will have to look at whether they really consider tribes as sovereign nations. I foresee the day when IV-E will be taken out of federal and state hands and given directly to the tribes although tribes may want to continue federal funding. We would take a “wait and see” approach at first and watch other tribes who have put themselves out there as experimental test cases.

- Direct funding would be wonderful if tribes were able to run the program effectively. We are not there yet.
- It would be a big decision to make and a lot of evaluating would have to happen to see whether or not that would be to the tribe’s advantage.

State representatives also had mixed reactions to the idea of direct funding for tribal IV-E. Those in favor of direct funding made the following comments:

- The state would like to see direct funding. But states will do what they can to make sure the tribes are able to run their programs if the tribes want to continue the current system.
- I support direct funding. While the match may be an obstacle to tribes, they could get more money from the federal government through direct funding.
- Direct funding makes sense. It doesn’t make sense that tribes have to go through states to get funding. There’s something philosophically wrong with that. However, I don’t think it will happen because it would cost the feds too much money.

Other state representatives noted that tribes benefited from state involvement:

- Running a IV-E program is a big pain. There are two separate audits (including a IV-E eligibility audit and a child and family service review). You’re subject to financial sanctions if you’re running your own program. The state is running all the risk right now in audits.
- Currently the preference [in this state] is to establish a different Intergovernmental Agreement so that a block grant could be provided to the tribes to give them fiscal control. Maybe the state could take over the data reporting because most tribes do not have the data system/infrastructure to report data and let the tribes provide the services.
- Direct funding would probably provide more money to the tribes. The downside is that the relationship between the state and tribe is important. Geographically the tribe is here; we must work together. Agreements prevent state and tribes from being ambivalent to one another. Ending the relationship would not be beneficial to kids.

Finally, the State Regional DHHS Director interviewed noted that direct funding “would be up to the tribes. Some tribes have the capacity to manage direct funding very well while others may not have the capacity or the numbers to justify it. The Region would support [those interested in direct funding] because of a commitment to tribal sovereignty.” A consultant also observed that “IV-E is so complicated and a lot of tribal leaders don’t understand it. If tribes want to push for

direct funding, there needs to be involvement on the part of tribes to advocate for it.”

Summary

Both tribes and states reported a range of motivations for implementing Title IV-E. Specifically, tribal representatives reported that accessing funding, affirming tribal sovereignty, and the further development of tribal child welfare programs were important incentives for pursuing IV-E agreements with state governments. In nearly all cases, tribes initiated the agreement development process with their respective states.

Overall, tribes that initiated the IV-E process and received state cooperation during the stages of agreement development and program implementation were more successful in completing and maximizing their agreement in a timely manner. In particular, tribal representatives reported that state/tribal liaisons and interested state administrative officials were instrumental in advancing both agreement development and program implementation. Many states also provided initial support to assist in developing tribal capacity to implement services. This support included initial training and technical assistance, and in some instances, access to computer hardware and information systems.

Current tribal/state IV-E agreements focus mainly on the provision of foster care maintenance payments and foster care services. Most tribal representatives reported using tribal licensing stan-

dards for foster homes but delivering services that were generally similar to those offered by their states. Adoption assistance is not included in approximately half of the agreements, and many of the tribes that have provisions for adoption assistance in their agreements do not access the assistance. This is due in large part to cultural norms that exclude the involuntary termination of parental rights.

Training for both tribal service providers and foster/adoptive parents is not a major focus of current IV-E agreements. While training is provided through the state and national or regional organizations, this is not explicitly stated in their respective IV-E agreements. Tribes are not accessing available funding for training to the extent that states are accessing training dollars under IV-E. Also, tribal social workers are eligible to participate in graduate training at state universities (with tuition and expenses covered by the state with federal dollars), but few tribes are taking advantage of this opportunity. A number of barriers exist to IV-E implementation, including high rates of turnover among state and tribal personnel, billing and reimbursement issues between tribes and states, and communication problems (involving tribes, states and counties). In addition, the legal and administrative complexity of IV-E makes compliance a challenge and can create tensions in tribal/state relationships.

In spite of these barriers, a large majority of both tribal and state representatives perceive their IV-E agreements (and working relationships) to be

effective in making foster care assistance available to American Indian communities. This effectiveness stems from the increased ability of tribes and states to provide culturally sensitive services, by the increased ability of tribes to implement their own programs and exercise tribal sovereignty, and by increased funding and resources for tribal children and families.

While a number of tribal representatives perceived weaknesses in their IV-E agreements or in their relationships with states, all those interviewed indicated that, since there was no other option available⁸ for accessing IV-E funds, they plan to continue utilizing their IV-E agreements in the future. A number of tribal representatives hope to expand services and gain reimbursements for training and administrative costs through revised agreements. While many tribal representatives perceive their IV-E agreements to be effective, several expressed mixed interest for direct funding. Primary concerns related to direct funding include: 1) the need for tribes to develop the infrastructure, 2) the need to provide the matching funds required to implement IV-E independently, and 3) the need for further discussion and clarification of Senate Bill 1478.

Conclusions and Recommendations

Tribal/state implementation of Title IV-E agreements has allowed 71 tribal governments to access additional funds and services from 13 states, thus benefiting children and families in American Indian communities as well as tribal and state social services. However, there are a number of weaknesses in current IV-E agreements as well as in the IV-E implementation process that limit the effectiveness of this federal child welfare program. These weaknesses include:

- a lack of uniformity in tribal/state agreements that reflect a formal government-to-government relationship;
- a lack of specificity within agreements detailing standards and practices; and
- the limited scope of many agreements (focusing mainly on foster care maintenance payments and excluding adequate provisions for administration and training).

Some agreements are termed “contracts” and view tribes as subcontractors and subject to state authority. As a further indicator of the lack of government-to-government relationships, only eight agreements are signed by state governors while all are signed by top elected tribal officials.

Currently, IV-E tribal/state agreements vary widely from state to state, with some agreements being very general and containing few specific provisions regarding the relationship between tribal and state governments and roles and responsibilities in providing services.

Provisions for administrative costs and training of tribal social service providers and foster care/adoptive parents tend to be either vague or non-existent in the agreements. Interviewees and focus group participants report that training is provided on a somewhat informal basis. It appears that tribes are not adequately accessing IV-E funding for administration and training purposes.

In order to strengthen IV-E tribal/state agreements and the provision of needed services in American Indian communities, the following recommendations are offered.

RECOMMENDATION ONE: Develop a model agreement for consideration by tribes and states.

A model agreement that would identify key components and potential model contract language would assist tribes and states in examining pertinent issues when developing intergovernmental agreements. Don Schmid’s (2000) guideline considerations (see p. 30–31 for a detailed list), with the exclusion of specific components⁹, could serve as a starting point, with the addition of model contract language added to each identified component. This model agreement could serve as a reference for tribes, who could then modify their agreements according to their specific needs and state resources. As a guideline for agreement components and content, each tribal/state agreement would take into account the historical context of tribal/state relationships and help standardize IV-E agreements from state to state.

RECOMMENDATION TWO:

Develop tribal/state IV-E agreements to include: 1) a general agreement recognizing a government-to-government relationship; and 2) a contract to provide for pass-through dollars from states to tribes.

As noted in this report, current IV-E documents include general agreements which are rather broad and open-ended, as well as time-limited contracts which contain more detailed information on financial responsibilities and IV-E compliance. In order to support effective tribal/state government-to-government relationships and to ensure timely and efficient implementation of Title IV-E, both approaches appear to be necessary. Thus, it is recommended that each tribe and state develop two documents to guide IV-E implementation. The first document would be a general "umbrella" agreement that would include the following:

- A statement of the relationship between the tribe and state, recognizing tribal sovereignty and the government-to-government nature of the agreement. This would include state recognition of tribal licensing standards and affirmation of other tribal policies and procedures associated with IV-E. In addition, general agreements would be signed by top elected officials of both the tribes and the states (i.e., tribal chairpersons and state governors).
- The purpose or philosophy of the agreement, identifying mutual interests and benefits of IV-E implementation for both tribes and states. This may include a reaffirmation of

provisions of the ICWA as well as other areas of tribal/state cooperation in implementing services for children and families.

- Provisions for conflict resolution between tribes and states in agreement implementation that are consistent with true government-to-government relationships.

These agreements would be open-ended (rather than time-limited) and would remain in effect unless one of the parties to the agreement notified the other of needed modifications or of decisions to terminate the agreement for some reason. The agreements would serve as an "umbrella" document in support of continued tribal/state cooperation in IV-E implementation.

The second document recommended for implementation by tribes and states is a contract that allows for the provision of pass-through dollars from states to tribes. These contracts, which would be negotiated and renewed on an annual basis, would include the following:

- Detailed statements of the financial responsibilities of the tribes and states in implementing IV-E, including clear indications of whether the state provides matching funds to the tribes, and if so, at what rate. Sources of tribal matching funds may also be included. In addition, projections of actual IV-E reimbursements (in dollar amounts) for foster care maintenance, adoption assistance, administration, and training should also be included.
- Detailed statements of the roles of tribal and state personnel in the determination of IV-E eligibility, payment and reimbursement

procedures, and the provision of case management and related casework services under IV-E.

- Provisions for audits and compliance monitoring that satisfy federal and state needs for accountability while not encroaching upon tribal sovereignty.

These contracts would also include components needed to satisfy the legal requirements of both tribal and state governments as well as information regarding the key contact people responsible for implementing the terms of the contract.

**RECOMMENDATION THREE:
Inform tribes and states as to the provisions of Title IV-E that allow tribal access to funding for training and administrative costs.**

Currently, the main focus of tribal/state IV-E implementation is on the provision of foster care maintenance payments. It appears that tribes are not fully accessing IV-E funds for training and administration; instead, other sources of funding are used for service provision and other allowable administrative costs while training is largely provided on an ad hoc basis. In order for tribes to further develop their own foster care and related child welfare programs, staff training and funding for administrative costs is critical, and IV-E is a vital source of federal dollars for these purposes.

Finally, Title IV-E is potentially a greater source of funding for tribal foster care and related services in American Indian communities;

however, weaknesses exist in current IV-E agreements and tribal/state working relationships. The recommendations included in this report will strengthen tribal/state relationships, resulting in even more benefits for American Indian children and families.

In conclusion, an additional recommendation concerns the provision of direct federal IV-E funding to tribes. As discussed in this report, tribes have indicated various reactions in regards to direct IV-E funding, including:

- 1) Tribes would prefer a direct federal relationship whenever possible.
- 2) Given the uncertainty of the federal legislation and subsequent regulations, tribes have expressed caution as to the potential impact of direct funding on current resources and services.
- 3) Some of the tribes have already established a good, effective procedure with the state, and have indicated they would want to continue this state relationship.

Thus, if direct funding legislation was approved by Congress, it is recommended that the option for tribes to maintain their relationship with state governments or enter into direct funding relationships with the federal government be retained within proposed legislation.

References

- American Indian Law Center. (1976). Study of statutory barriers to tribal participation in federal domestic assistance programs Albuquerque, NM: Author.
- American Indian Law Center. (1981). Handbook on state-tribal relations Albuquerque, NM: Author.
- American Indian Law Center. (1985). Workshop on developing tribal-state agreements on child welfare issues Albuquerque, NM: Author.
- American Indian Policy Review Commission. (1977). Final report, (Vols. 1-2). Washington, DC: U.S. Government Printing Office.
- Brown, J. G. (1994). Opportunity for ACF to improve child welfare services and protections for Native American children Washington, DC: Department of Health and Human Services, Office of Inspector General.
- Canby, W.C., Jr. (1981). American Indian law in a nutshell St. Paul, MN: West Publishing Co.
- Cornell, S., and Taylor, J. Sovereignty, devolution and the future of tribal-state relations Paper presented at the National Congress of American Indians, Mid-Year Session, June 26, 2000.
- Cross, T.A., Earle, K.A. and Simmons, D. (2000). Child abuse and neglect in Indian country: Policy issues. Families in Society: The Journal of Contemporary Human Services, **(81)**, 49-58.
- Deloria, V., Jr., and Lytle, C.M. (1983). American Indians, American justice Austin, TX: University of Texas Press.
- Funk, K. (2000). Title IV-E Foster Care and Adoption Assistance Act: Funding for Indian children
- Goodluck, C. (1997). Tribal-State Child Welfare Project Final Report. Prepared for the National Center on Child Abuse and Neglect. Engelwood, CO: American Humane Association.
- Grossman, T. (1986). Model tribal/state Indian child welfare agreement Albuquerque, NM: American Indian Law Center, Inc.
- Johnson, S., Kaufmann, J., Dossett, J., and Hicks, S. (2000). Government to government: Understanding state and tribal governments Washington, DC: National Conference of State Legislatures and National Congress of American Indians.
- Jones, B.J. (1999). In their native lands: The legal status of American Indian children in North Dakota. [On-line]. Available: North Dakota Law Review <http://web.lexis-nexis.com/universe/document>.
- Kunesh, P. (1996). Transcending frontiers: Indian child welfare in the United States. Boston College Third World Law Journal 16 (17), 17-34.
- Kunesh, P. (1993). Building strong, stable Indian communities through the Indian Child Welfare Act. Indian Law Support Center Report, 1(12), 1-7.

- MacEachron, A.E., Gustavsson, N.S., Cross, S., and Lewis, A. (1996). The effectiveness of the Indian Child Welfare Act of 1978. *Social Service Review*, 70(3), 451–463.
- Mannes, M. (1995). Factors and events leading to the passage of the Indian Child Welfare Act. *Child Welfare*, 74 (1), 264–282.
- The National Foster Care Awareness Project. (2000). Frequently asked questions about the Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program [On-line]. Available: www.connectforkids.org.
- The National Indian Child Welfare Association. (1999). Tribal Title IV-E Foster Care and Adoption Assistance advocacy packet (June 15, 1999). Portland, OR: Author.
- The National Indian Health Board. (1998). Tribal perspectives on Indian self-determination and self-governance in health care management (Vol. 4). Denver, CO: Author.
- Plantz, M., Hubbell, T., Barrett, B., and Dobrec, A. (1989). Indian child welfare today: A status report. *Children Today*, 18(1), 24–29.
- Schmid, D. (2000). Potential for Washington State Indian tribes. Seattle, WA: Casey Family Programs.
- Simmons, D., and Trope, J. (1999). Pub. L. No. 105-89 Adoption and Safe Families Act of 1997: Issues for tribes and states serving Indian children. Portland, OR: National Indian Child Welfare Association.
- State of Oregon. (nd). Federal funding: Resources for Indian tribes and tribal organizations in Oregon.
- U.S. Department of Health and Human Services. (2000). Federal Register, 65(16), (Tuesday, January 25, 2000), 4020–4093.
- U.S. House of Representatives. (1997). Statement of Congressman Miller on the Tribal Self-Governance Amendments of 1997 [On-line]. Available: http://www.house.gov/resources/105cong/democract/record/t5_stm.htm.
- U.S. House of Representations. (1998). 1998 green book: Background material and data on programs within the jurisdiction of the Committee on Ways and Means [On-line]. Available: <http://aspe.os.dhhs.gov/98gb/11cps.htm>.
- Utter, J. (1993). American Indians: Answers to today's questions. Lake Ann, MI: National Woodlands Publishing Co.
- Waldman, C. (1985). Atlas of the North American Indian. New York: Facts on File.

APPENDIX A

Tribes/States with Title IV-E Agreements

TABLE 2. TRIBES/STATES WITH IV-E AGREEMENTS

STATE	TRIBE
COLORADO	Southern Ute Ute Mountain Ute
KANSAS	Kickapoo Tribe Native American Family Services (e.g. Iowa and Sac and Fox) Prairie Band of Potawatomi
MICHIGAN	Bay Mills Indian Community Grand Traverse Band of Ottawa and Chippewa Indian Nations Keweenaw Bay Chippewa Nation
MONTANA	Assiniboine and Sioux Tribes of the Fort Peck Reservation Blackfeet Tribe* Chippewa Cree of Rocky Boy's Reservation* Confederated Salish and Kootenai Tribes Crow Tribe* Fort Belknap Indian Community Northern Cheyenne Tribe*
NEBRASKA	Omaha Nation Winnebago Nation
NEW MEXICO	Cochiti Pueblo Jicarilla Apache Nambe Pueblo Picuris Pueblo Santa Ana Pueblo Zuni Pueblo
NEW YORK	St. Regis Mohawk
NORTH DAKOTA	Spirit Lake Tribe* Standing Rock Sioux* Three Affiliated Tribes* Turtle Mountain Band of Chippewa*
OKLAHOMA	Absentee Shawnee Apache Tribe Caddo Tribe Cherokee Nation* Cheyenne and Arapaho Tribes* Chickasaw Nation Choctaw Nation Citizen Potawatomi Nation

TABLE 2. TRIBES/STATES WITH IV-E AGREEMENTS, cont.

STATE	TRIBE
OKLAHOMA, cont.	Comanche Tribe
	Delaware Tribe
	Eastern Shawnee Tribe
	Fort Sill Apache
	Iowa Tribe
	Kaw Tribe
	Kialegee Tribal Town
	Kickapoo Tribe
	Kiowa Tribe*
	Modoc Tribe
	Muscogee Creek Nation
	Osage Nation*
	Otoe-Missouria Tribe
	Pawnee
	Peoria Tribe
	Ponca
	Quapaw Tribe
	Sac and Fox Nation
	Seminole Nation*
	Seneca-Cayugo
Tonkawa	
Wichita and Affiliated Tribes	
OREGON	Confederated Tribes of Grand Ronde*
	Confederated Tribes of the Warm Springs Reservation*
	Coquille Tribe
	South DakotaCheyenne River
	Crow Creek
	Sisseton-Wahpeton Dakota Nation
	Standing Rock Sioux
UTAH	Ute Tribe of the Uintah and Ouray Reservation
WISCONSIN	Bad River Band of Chippewa
	Lac Courte Oreilles
	Lac du Flambeau
	Menominee
	St. Croix Chippewa

* denotes tribes that attended IV-E focus groups. It should be noted that a focus group was also held in the state of Arizona, where currently, there are no IV-E agreements.

APPENDIX B

**Title IV-E Agreement Analysis:
General Agreement Information**

State: _____ Tribe: _____

Effective date: ___/___/___ Duration of agreement _____

Agreement Contents:

IV-E Definitions and General Requirements:

Check if agreement contains info on IV-E definitions and/or general requirements: _____

Philosophy/Purpose: Check if agreement contains info on philosophy or purpose of tribal/state agreement: _____

Check if material would be a good example to include in report: _____

Services Provided and Who Provides: (check appropriate box)

SERVICE / PROCEDURE	NOT PROVIDED	STATE PROVIDES	TRIBE PROVIDES	UNKNOWN
IV-E eligibility determination				
IV-E foster care maintenance payments				
Non-IV-E maintenance payments				
Case management				
Case plans				
Case reviews/permanency planning				
Court hearings/testifying in court				
Foster home licensing studies				
IV-E adoption maintenance payments				
Non-IV-E adoption maintenance payments				
Adoption home studies				
Legal proceedings for adoption				
Criminal record checks for foster/ adoptive parents				
CPS checks for foster/adoptive parents				
Conducting child abuse and neglect investigations				
Training of foster parents				
Training of tribal social workers				
Guardianship payments				
Provision of family preservation/				
Reunification/family support services				

Compliance:

Check here if agreement contains material on complying with IV-E requirements: _____

Relationship between federal Administration for Children, Youth and Families (ACYF), Bureau of Indian Affairs (BIA), ITO and State:

Check here if agreement contains material on this topic: _____

Financial:

Check here if agreement contains material on state/tribal financial responsibility for IV-E: _____

STATE Responsibility	Title IV-E	Other Federal Funds	State Funds	Title XIX
Check if the following STATE funding sources are mentioned:				
TRIBE Responsibility	638	ICWA	Title IV-B	Other Tribe Revenue
Check if the following TRIBAL funding sources are mentioned:				

Check if information regarding the following are present in the agreement:

Financial responsibility of BIA _____

Tribal billings/certification of expenditures _____

Personnel time studies _____

Federal approved indirect rate for tribe _____

Access to computer information system _____

State and federal audits _____

Other tribal or state requirements:

Check if other tribal or state requirements are mentioned: _____

List below additional requirements:

List below additional agreement components not addressed above:

APPENDIX C

Title IV-E Tribal/State Agreements Project Focus Group Questions

(for Tribes/States with IV-E Agreements in Place)

- 1) As we understand it, all of you currently have intergovernmental agreements for administering IV-E. How long have these agreements been in place?
- 2) What were your initial motivations for working with the state/with tribes to implement IV-E? (i.e., what were the reasons the tribe/state was interested in taking this on?)
- 3) What process was used to develop the intergovernmental agreement? What barriers did you encounter?
- 4) Do your agreements include provisions for:
Foster care? What are some of the specifics of these provisions?
Adoption assistance? What are some of the specifics of these provisions?
Administration, including case work and preparing for hearings?
Independent living? What are some of the specifics of these provisions?
Training? Does the tribe receive IV-E funds for training or are tribal service providers included in state training?
- 5) How are your IV-E agreements working out in practice?
What barriers do you face in implementing IV-E?
Are there special supports or strengths that are especially helpful in your relationship with the state/tribe?
- 6) Would you say that tribal foster care and adoption assistance services are more effective, less effective, or about the same as they were before you began implementing IV-E?
- 7) As far as you know, will your tribe/the state continue implementing IV-E in the future?
Do you envision future changes in the way services are delivered or in the way your agreement(s) is/are implemented?

APPENDIX D

Tribal IV-E Administrator Telephone Survey

Tribe: _____ **State** _____

Name: _____

Title: _____

Mailing Address _____

Phone No: _____

1. When did your tribe decide to implement its own IV-E child welfare services?
What were the reasons the tribe was interested in taking this on?
2. When were you first in contact with the state about implementing tribal IV-E?
Who did you contact? Had you been in contact with this person before? In what way(s)?
3. How did you build the institutional capacity to administer tribal IV-E services in your community?
Did you hire new personnel? 1 Yes 2 No
If yes: for what positions?
Did your staff participate in specialized training? 1 Yes 2 No
If yes: who provided the training?
Who is paying for the training?
Did you invest in new computers or other equipment? 1 Yes 2 No
How were these things paid for?
4. Tribes are able to administer services in three areas through Title IV-E, including foster care, adoption assistance, and independent living. Does your tribe deliver services in all three areas?
Foster care: 1 Yes 2 No
If yes: Who provides case management? 1 Tribe 2 State
Who recruits foster homes? 1 Tribe 2 State
Who conducts foster home licensing studies? 1 Tribe 2 State
Do your services differ in other ways from those of the state? In what way?

Adoption assistance: 1 Yes 2 No

If yes: Do your services differ from those of the state? In what way?

Are services provided by the tribe or other service providers?

Independent living: 1 Yes 2 No

If yes: Do your services differ from those of the state? In what way?

Are services provided by the tribe or other service providers?

Training: 1 Yes 2 No

If yes: Do your services differ from those of the state? In what way?

Are services provided by the tribe or other service providers?

5. What barriers did you encounter in developing the agreement?

Were there special supports that facilitated your relationship and agreement with the state?

6. In your estimation, what are the most important provisions in your agreement?

Do they contain provisions for covering training? 1 Yes 2 No

Do they contain provisions for covering administrative costs? 1 Yes 2 No

7. Have you revised your agreement at any time?

If so, what were the revisions and why were they made?

8. Overall, how is the agreement working out in providing the basis for your collaboration with the state? Would you say your collaborative relationship with the state is very effective, somewhat effective, or not effective in providing child welfare services in your community?

1 Very effective

2 Somewhat effective

3 Not effective

9. Would you say the provision of foster care, adoption assistance and independent living services in your community has become more effective, less effective, or stayed about the same since the tribe began administering IV-E? (Probe for specifics.)

1 More effective

2 Less effective

3 Stayed about the same

What are the benefits for the community in tribal implementation of child welfare services?

10. As far as you know, will the tribe continue implementing IV-E child welfare services in the future?

Do you envision future changes or improvements in the way services are delivered or in the types/number of services currently contracted?

Do you envision changes or improvements in the way your agreement is implemented with the state?

11. If direct funding to Tribes were available, would your Tribe prefer direct funding to the current Intergovernmental Agreement with the State?

APPENDIX E

State Administrator Telephone Survey

State: _____ **Tribe(s):** _____

Name: _____

Title: _____

Mailing Address _____

Phone No: _____

1. When did your department first become involved with the _____ tribe in tribal implementation of IV-E child welfare services?

As far as you know, what were the reasons the tribe was interested in taking this on?

2. As far as you know, how did the tribe build the institutional capacity to administer IV-E services?

Was the state involved in capacity building? If so, in what way(s)?

3. As you know, three types of services are reimbursable through Title IV-E, including foster care, adoption assistance, and independent living. Does the tribe deliver services in all three areas?

Foster care: 1 Yes 2 No

If yes: Who provides case management? 1 Tribe 2 State

Who recruits foster homes? 1 Tribe 2 State

Who conducts foster home licensing studies? 1 Tribe 2 State

Do your services differ in other ways from those of the state? In what way?

Adoption assistance: 1 Yes 2 No

If yes: Do your services differ from those of the state? In what way?

Are services provided by the tribe or other service providers?

Independent living: 1 Yes 2 No

If yes: Do your services differ from those of the state? In what way?

Are services provided by the tribe or other service providers?

Training: 1 Yes 2 No

If yes: Do your services differ from those of the state? In what way?

Are services provided by the tribe or other service providers?

4. What is the process that was used to negotiate and finalize your intergovernmental agreement with the tribe?

5. What barriers did you encounter in developing the agreement?

Were there special supports that facilitated your relationship and agreement with the tribe?

6. In your estimation, what are the most important provisions in your agreement?

Does your agreement contain provisions for covering training and administrative costs?

1 Yes 2 No

7. Has the agreement been revised at any time?

If so, what were the revisions and why were they made?

8. Overall, what would you say are the strengths of the agreement?

How about the weaknesses?

9. Overall, how is the agreement working out in providing the basis for the state's collaboration with the tribe? Would you say the collaborative relationship is very effective, somewhat effective, or not effective in providing child welfare services for the tribe?

1 Very effective

2 Somewhat effective

3 Not effective

10. From your perspective, what has been the impact of the tribe implementing its own foster care, adoption assistance and independent living services?

11. As far as you know, do you think the tribe will continue implementing IV-E child welfare services in the future?

Do you envision future changes or improvements in the way services are delivered or in the way the intergovernmental agreement is implemented?

12. As far as you know, are there other tribes in your state who are interested in entering into Title IV-E agreements who have not yet done so?

13. If direct funding were available, would the state prefer that tribes take direct funding rather than receive funding from the current Intergovernmental Agreement?

Footnotes

- 1** It should be noted that the Devil's Lake Sioux Tribe has changed their name to the Spirit Lake Tribe.
- 2** Independent Living assistance to young people ages 18 to 21 in foster care was a significant feature of the Title IV-E program until the passage of the Foster Care Independence Act of 1999. This Act established the John H. Chafee Foster Care Independence Program which replaces the former Independent Living Initiative established by Section 477 of the Social Security Act (NFCAP, 2000).
- 3** The Adoption and Safe Families Act of 1997 amended the “reasonable efforts” requirement of Title IV-E by requiring that a child’s health and safety be the foremost concerns in determining when reasonable efforts are required. Tribes/states are exempted from reasonable efforts requirements when “aggravated circumstances” are present, including situations in which the child’s parent(s) had parental rights involuntarily terminated in the case of the child’s sibling; the parent has committed or aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent (Simmons and Trope, 1999).
- 4** Two tribes in South Dakota were identified by ACF as having IV-E agreements, but during the interview process, two additional tribes (Crow Creek and Standing Rock Sioux) were identified as having agreements, and thus participated in the formal interview process. One agreement from Michigan (Bay Mills Indian Community) and one agreement from Wisconsin (Bad River Band of Chippewa) were obtained for this analysis, while no agreements were obtained for the analysis from Nebraska.
- 5** Additional participants included representatives from the National Indian Child Welfare Association (NICWA), Casey Family Programs, and a IV-E legal consultant.
- 6** 70 agreements were identified by the research team, however, the Native American Family Services in the state of Kansas represents two distinct tribal governments (Iowa and Sac and Fox).
- 7** Percentages are used to suggest the proportion of agreements which share certain characteristics. However, it should be noted that, because not all of the Oklahoma agreements are included in the analysis, the percentages are not representative of all IV-E agreements across the country. If all the Oklahoma agreements were included, the analysis would be heavily skewed toward what was occurring in one state rather than giving a nationally representative picture of IV-E agreements. It should also be noted that agreements in New Mexico and Montana tended to be similar although not identical.
- 8** Due to federal legislation regarding IV-E funding, tribes currently have limited options when accessing IV-E dollars. As it stands, tribes have to enter into an agreement with the state or they cannot access this funding source.

9 The following components were excluded: non IV-E maintenance, criminal record checks, child protective services check, child abuse and neglect investigations, guardianship payments, provision of family preservation services, provision of reunification services, and BIA responsibility.