

ACF

**Administration for
Children and Families**

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Dual Eligibility

CHILD CARE AND DEVELOPMENT FUND

POLICY INTERPRETATION QUESTION

TO: Child Care and Development Fund (CCDF) Lead Agencies, Grantees and Other Interested Parties.

SUBJECT: Dual Eligibility for Indian Children

LEGAL AND RELATED REFERENCES: The Child Care and Development Block Grant Act of 1990 (P.L. 101-508) as amended by P.L. 102-401, P.L. 102- 586, P.L. 103-171, and P.L. 104-193.

BACKGROUND: A question has arisen concerning whether the State must provide child care services to Indian children when tribes receive direct funding for child care.

INQUIRIES: Direct all inquiries to the appropriate ACF Regional Administrator.

James A. Harrell
Acting Commissioner
Administration on Children, Youth
and Families

DUAL ELIGIBILITY FOR TRIBAL CHILDREN

Background

The Child Care and Development Block Grant (CCDBG) Act does not allow a State to have a blanket policy making Indian children ineligible for the State's child care program.

The CCDBG Act asserts that, for child care services funded by the Child Care and Development Fund (CCDF), the eligibility of Indian children for a tribal program does not affect their eligibility for a State program. This is referred to as dual eligibility. To receive services under a program, the child must still meet the other specific eligibility criteria of that program.

Specifically, the CCDBG Act indicates, "The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter." [Section 658O(c)(5)]. This provision was in the original CCDBG Act. It was not affected by the recent welfare reform amendments.

Furthermore, regulations at 45 CFR 98.20(b)(1) provide that CCDF grantees may establish eligibility requirements, in addition to Federal eligibility requirements, so long as they do not "discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability."

"Notwithstanding Any Other Provision of Law"

The amended Social Security Act declares, "notwithstanding any other provision of law," a State's Mandatory and Matching funds must be transferred and integrated into the CCDF and be subject to the requirements and limitations of the CCDBG Act. [Section 418(c)]. Thus the dual eligibility provision of section 658O(c)(5) applies to the Mandatory and Matching funds, as well as to the Discretionary funds.

TANF Prohibition in Section 412(b)(1)(D) is not Applicable to CCDF

A provision in the amended Social Security Act prohibits a family who is receiving Temporary Assistance for Needy Families (TANF) from a tribal program from receiving duplicative assistance from other State or tribal programs. [Section 412(b)(1)(D)]. However, the words "notwithstanding any other provision of law" [section 418(c)] void, for purposes of the CCDF, the prohibition in section 412(b)(1)(D). Therefore, the prohibition in section 412(b)(1)(D) does not apply to the CCDF. As discussed previously, the CCDBG Act says that Indian children have dual eligibility for CCDF child care services. As a result, States cannot have a blanket policy of refusing to provide child care services to Indian children.

Need for States and Tribes to Cooperate

Because tribes receive two percent of the total fiscal year 1997 CCDF, they are a valuable source of child care for Indian children--including children whose families receive TANF. In particular, a tribe that operates its own TANF or work program (or both) may have an important role in promoting self-sufficiency for its low-income families, including the provision of adequate child care. However, Indian children have dual eligibility for CCDF child care services regardless of whether a tribe operates its own TANF or work program. Therefore, we encourage States and tribes to work closely together on child care services. Coordination of child care resources will be needed to ensure adequate child care for eligible Indian children.