Implementation of ICWA:
ACTIVE EFFORTS PRINCIPLES

The Indian Child Welfare Act of 1978 requires that any party seeking to remove an Indian child from his or her home must provide remedial or rehabilitative services to the family to avoid removal of the child. Therefore, FACS staff must make active efforts to provide services subsequent to a child protection investigation and before a decision is made to place an Indian child out of the home. *(NOTE: This does not supercede the need for emergency removal to prevent imminent physical damage or harm to the child.)* Case records should document factual evidence that the conduct or condition of the parent(s) and/or custodian will result in serious physical or emotional harm to the child, and that efforts were made to counsel and change the parent's harmful behavior and these efforts did not work. The services offered must demonstrate that prior to petitioning the Court for removal of an Indian child, active efforts were made to alleviate the need for removing that child.

While active efforts to provide services to prevent the removal of the Indian child are required in all eligible cases, this document directly applies to the active efforts requirement to provide services to allow a child to safely return home AFTER they have been placed in substitute care.

I. Goals

Every effort made with an Indian child and family will be measured against these goals:
- Commitment to the requirements and the spirit of the Indian Child Welfare Act;

- Early contact with and active engagement of the child's tribe. Active efforts does not require or imply agreement on case issues but does create an expectation that the agency and tribes will work closely together in an atmosphere of mutual respect and honesty to achieve understanding;

- A more vigorous and higher level of effort than those that typically constitute reasonable effort -- casework that GOES BEYOND
  - referring for service to arranging services and helping families engage in those services
  - managing a case to proactively engaging in diligent casework activity
  - meeting the minimum requirements set by policy to creatively meeting the needs of children and families;

- Using methods and providing services that are culturally appropriate.

II. Applications

The Active Efforts Principles and Expectations outlined in this document apply to the federal requirements that the Department must make active effort to "make is possible for

the child to safely return home" in each case determined to be ICWA eligible. If it is yet to be determined whether a child is eligible for membership, notify the Indian child's tribe of the pending proceeding and of the tribe's right to intervene. The case will be treated as an Indian Child Welfare Act case until such time as the tribe determines that the child is not an Indian child.

> *Only the services and activities that affect the reunification plan are the services and activities to be evaluated in determining whether active efforts have been made. The adequacy of services will be judged by their appropriateness in addressing the needs that caused the child(ren) to be removed from the home.*

Active efforts are meant to provide reunification services to the eligible Indian child and his or her parents or Indian custodians. Since the federal laws mandate that state agency must make active efforts "to make it possible for the child to safely return home," services will be made available to all other household members who will be in a caretaker role with the child, whether they have custodial or parental rights or not, since this is the "home" to which the child well be returned.

III. Principles

A.   The cornerstone of active effort is active and early participation and consultation with the child's tribe in all case planning decisions. Each tribe has its own expectations for active efforts. The facts of each case dictate the level of active efforts required.

B.   Department staff should inquire about the applicability of the Indian Child Welfare Act immediately upon a child being taken into protective custody.(10) These efforts must be documented. If the information is not available at that time, on-going inquiries need to be made as the case progresses as more information becomes available.

C.   The health and safety of the child are of paramount concern in every case. In some cases, the return of the child to the biological parent or Indian custodian may result in serious physical or emotional damage to the child. However, every case must receive active efforts, which should include at a minimum, a diligent assessment of the reasons for removal of the child, the risk for further harm of the child and the ability of the parent or Indian custodian to safely care for the child. Consultation with the Indian child's tribe is critical to determining what and how active efforts should be provided.

Active efforts are to be evaluated throughout the **entire time period** covered by the court until the plan changes to something other than return to parent, which may occur quickly in cases of severe harm to the child.

In all ICWA cases, prior to the adjudication of the petition, the Department is obligated to provide active efforts to offer services to make it possible for the

child to safely return home. The parents' or Indian custodians' obligation to participate begins when the court make a finding on the allegation of the abuse/neglect and takes jurisdiction. When parents or Indian custodians agree to participate in services, active efforts will be based on the services provided. When the parents or Indian custodians refuse to participate the active effort will be based on the offer of services. Consultation with the Tribe is important in these circumstances. Efforts to engage the child's tribe should be documented.

D.   If CFS has made the effort to provide a service and another person or entity has not fulfilled their responsibility to provide the services, the active efforts finding should be made based on our effort to provide the service in a more creative manner. For example, if the Department has referred a parent or Indian custodian to parent training and a waiting list has kept the parents or Indian custodian out of the class, the Department staff, in spite of the failure of the other person or entity, should make active efforts to find another class, contract with a provider to make the service available, or use some other effective method to make the service available to the parents or Indian custodian.

E.   Utilizing Family Decision models (FDM), or other culturally-relevant approaches, for case planning creates unique family specific service plans. The plans often specify certain tasks to be done by family members. If those tasks directly affect the reunification and a family member has not completed the task, the Department will actively assist and support the family in completing the tasks and document all efforts to do so.

F.   Given that a child's health and safety are the paramount concerns, the Department has an obligation, in consultation with the child's tribe to offer relevant services to all member of the household who will have responsibility to provide care for the child even of that person does not have legal right to the child. If any household member refuses to participate in services offered, active efforts will be made on the offer of services. The child's tribe should be kept informed of the status of the case on an on-going basis regardless of whether the child's tribe chooses to intervene or not.

G.   In making active efforts to reunify families, if services needed are not readily accessible, the Department will make active efforts to develop, modify, and coordinate services that will address the conditions and circumstances. Access to cultural and tribal services, and frequent face-to-face contact between the worker and the child and family need to occur.

H.   Documentation of all casework activity is important. While this document specifically mentions documentation in certain areas, the best course of action is to document all casework done to achieve positive active efforts.