

8. Indian Child Welfare and Working with Native Families

When department staff work with a family who is American Indian, it is important the department comply with the Indian Child Welfare Act and with agreements made between the nine federally recognized tribes of Oregon and the State of Oregon. These procedures document the processes to be used by caseworkers to clarify tasks they need to accomplish.

A. ICWA Procedures at Initial Contact

Determination of Indian status

Procedure

Worker will make diligent efforts to identify children who are subject to the ICWA within 24 hours of case opening for assessment. Refer to screening procedure in Chapter 2 of the procedure manual for more information.

- Determination of Indian Status: The screener requests American Indian heritage information from the caller making a report of child abuse or neglect. If the reporter says the family has American Indian heritage:
 1. The screener notes the information in FACIS using the GAP tool.
 2. If the family's heritage is from an Oregon tribe, the screener or the CPS worker contacts the tribe within 24 hours. Even if the call is "closed at screening," the screener notifies the Oregon tribe.
 3. The screener will review the "personal detail" and "ethnicity" screens to see if the child is listed as an Indian child. The screener documents the verification of ICWA status in the screening narrative.
- The CPS worker makes oral inquiry in every case that involves or could involve changes in custody to determine whether the case involves an Indian child. Department staff shall routinely request racial/ethnic data of parents or guardian and document the American Indian information on the CF 1270 form Verification of ICWA Eligibility. If the child's parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their child, the CPS worker or other designated staff shall consider the following in determining a child's Indian heritage:



2007 ICWA conference, Warm Springs dancers

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1. A thorough review of all documentation in the file and FACIS (including contact with previous caseworkers, if any).
 2. Consultation with relatives and others who know the family providing information that suggests the child or parent may be Indian.
 3. Examination of any other information bearing on the determination of the child's Indian heritage, such as communication from other sources including Indian tribes and organizations.
- If information obtained suggests the child may be of Indian heritage but a specific tribe cannot be determined, the CPS worker shall contact the local ICWA liaison first and then the ICWA manager to determine if the birth place of the child or parent, or the current or former residence of the child or parent, is known to be a common residence of Indian families.

Determination of Indian tribe

Procedure

- If it appears the child is of Indian heritage, the CPS worker must determine the tribe in which the child is a member or eligible for membership. The CPS worker or other designated staff shall ask the child's parents or custodian the tribe(s) with which the child may be affiliated. If this inquiry does not provide the necessary information, the CPS worker or other designated staff shall, at a minimum, contact the following:
 1. Relatives and extended family members.
 2. Indian tribes and organizations in Oregon, such as the Commission on Indian Services. – OR –
 3. The appropriate Bureau of Indian Affairs (BIA) Office.
- To determine whether any child is subject to the ICWA, consider these questions:
 1. Is the child a member of a federally recognized Indian tribe. – OR –
 2. Is the child the biological child of a member of a federally recognized Indian tribe and eligible for enrollment in any federally recognized Indian tribe?
- The CPS worker will ask the child (if age appropriate), caregiver and any other person with knowledge of the child, parent, or alleged parent whether the child, parent, or alleged parent has any American Indian ancestry and document on the CF 1270 form Verification of ICWA Eligibility.

- If the child or the child's parent or alleged parent has American Indian ancestry, gather the following information, if available, from the child, parent or alleged parent and any other person with knowledge of the child's or parent's tribal affiliation:
 1. The name of the tribe of which the child, parent, or alleged parent is a member or eligible for membership.
 2. The tribal enrollment or identification numbers of the parents or alleged parents and child(ren).
 3. Name of the following relatives of the child:
 - a. Birth mother's maiden name.
 - b. Maternal and paternal grandparents.
 - c. Alleged biological and/or legal father(s).
 4. Birth dates and birthplaces of the child, parents, and alleged parent.
 5. Social Security Numbers for the child, parents, and alleged parent.
 6. Degree of Indian Blood and/or Certificate of Degree of Indian Blood (CDIB) of the child, parents, alleged parent, and grandparents (this information is to be provided to the child's Indian tribe and is not to be considered for purposes of exclusion of the child from coverage under ICWA).
 7. If either birth parent was adopted, obtain the name of his or her birth parents (if available). –AND –
 8. Other information about extended family members including the names, clan affiliation, dates of birth, and addresses of grandparents, aunts, uncles, cousins, great grandparents, stepparents, first and second cousins.
- Confirm the tribe's status as a federally recognized tribe by reviewing the most current Federal Register. If the tribe is a federally recognized Indian tribe, identify:
 1. The geographic location and Bureau of Indian Affairs Regional Office of the tribe, using the Federal Register. – AND –
 2. The name, telephone number and address of the Indian Child Welfare Designated Agent for the tribe as provided in the Federal Register.
- Contact the Indian Child Welfare Designated Agent and identify the name, telephone number and address of the local tribal social service program and/or ICWA representative of the tribe.

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- Contact the tribal social service and/or ICWA representative and request the tribe confirm the child's membership or eligibility for membership in the tribe. Provide the social service and/or ICWA representative with all identifying information listed above to assist in the confirmation or determination of membership.
- Document the child's tribe on FACIS on the child's individual member screen by highlighting "yes" under the ICWA box for the child when the tribe has confirmed the child's enrollment status.
- It is extremely important to document in case notes all investigation inquiries and contacts made to investigate whether or not a child is an Indian child. Support staff can assist when appropriate and add case notes.
- When the whereabouts of the child's parent or Indian custodian are unknown, complete a diligent absent parent search including, but not limited to, contacting the tribal social services and questioning the tribal social services and extended family members.
- File a copy of the child's and the parent's tribal enrollment or identification numbers in the case record and document the numbers using the case notes window.
- File copies of all written correspondence to the tribe and original correspondence from the tribe in the case record.
- The CPS worker or the department designated staff person will contact all potential tribes of the child.

Determination of tribal membership

A tribal determination of membership is conclusive because each tribe defines the criteria for membership in the tribe and determines who meets those criteria. CPS workers who send inquiries to the tribe must send the letters of inquiry by registered mail with "Return Receipt Requested" to a membership committee, an enrollment clerk, or individual who is accustomed to responding to questions about tribal membership. If the tribe does not respond, department staff shall send a second letter to the tribe also by registered mail, "Return Receipt Requested." When making contact with the tribe in writing, use the notification letters 1 through 5, found on the Child Welfare website at: <http://www.dhs.state.or.us/policy/childwelfare/icwa/icwa.htm>

Procedure

- If the child is a member of one tribe and eligible for membership in others, the tribe of actual membership is the child's tribe. If the child is not now a member of a tribe, the CPS worker must ascertain whether the child is eligible for membership and is the biological child of a member of an Indian tribe. To do this, the CPS worker shall:
 1. Ask the child (if old enough to respond).
 2. Ask the parent(s) or relatives, including in-laws, as appropriate.
 3. Ask the tribe.
 4. A search underway needs to be coded in FACIS on the personal detail tab at this point in the case.

Bureau of Indian Affairs (BIA) assistance

Procedure

- If the tribe does not respond to the two letters sent "Return Receipt Requested," the CPS worker or designated staff person shall write the Bureau of Indian Affairs Area office.

Multi-tribal membership

Procedure

- The child may be eligible for membership in more than one tribe. In that case the Indian child's tribe is the tribe with which the child has the most significant contacts. In considering with which tribe the child has the most significant contacts, the CPS worker shall investigate:
 1. The length of residence on or near the reservation of each tribe and the frequency of contacts with each tribe.
 2. The child's participation in activities of each tribe.
 3. The child's fluency in the language of each tribe.
 4. There has or has not been a previous adjudication with respect to the child by a court of one of the tribes.
 5. Residence on or near one of the tribe's reservation of the child's relatives.
 6. Tribal membership of custodial parent or Indian custodian. – AND –
 7. Interest asserted by each tribe in response to the notice.

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- Documentation of such investigation shall be submitted to the court so the court can consider the comparative interests of each tribe in the child's welfare in making its decision on the matter.

Enrollment of the child

Procedure

- If the child is not a member of his or her tribe but is applying to become a member, the CPS worker shall proceed as though the child is a member and follow the requirements of the Act. Department staff shall assist the family in completing and returning required paperwork to the appropriate tribe and, as necessary, counsel parents hesitant to enroll a child by emphasizing the positive benefits of tribal enrollment/membership. Department staff will ensure this procedure occurs either by assisting the family or enrolling the child. **The worker has no authority to determine the child's tribe.**

ICWA not applicable

Procedure

- Once determined, tribal status should be clearly documented in the case record by appropriate department staff, along with the date and source of documentation. An Indian child who is officially determined by the tribe not to be a member or eligible for membership is not subject to the requirements of the Indian Child Welfare Act. In such cases, department staff shall:
 1. Document in the case record steps taken to determine the child's Indian/tribal ancestry and the tribe's written statement declaring the child ineligible for membership;
 2. Document any phone call from the tribe stating the child is not eligible in a case note and put a hard copy of the case note in the ICWA section of the case file.
 3. Incorporate in any court hearing the tribe's written statement or documented phone call declaring the child ineligible for membership.
 4. On the child's personal detail page in FACIS, the ICWA coding should be changed to "no."

Cultural heritage protection

Procedure

In instances where the ICWA does not apply, but the child is biologically an Indian or considered an Indian by the Indian community, the department shall ensure the child's culture of origin is maintained and respect the child's right to participate in the culture of origin in case planning.

B. Tribal Involvement Prior to Filing a Dependency Petition

Legal basis

The Indian Child Welfare Act of 1978 (25 USCA §1901 et seq.) requires notice be provided to the parent or Indian custodian and the Indian child's tribe by registered mail with return receipt requested, of the pending dependency proceedings and of the right to intervene.

ICWA mandates that in any state court proceeding for the foster care placement of, or termination of parental rights to an Indian child, the Indian custodian of the child and the Indian child's tribe shall have the right to intervene at any point in the proceeding.

Procedure

- Within 24 hours of the child being taken into custody, the caseworker shall make active efforts to contact the social services program of the Indian child's tribe to:
 1. Notify the tribe that the child is in the department's custody.
 2. Explore available services of the tribe that may address the safety needs of the child.
– AND –
 3. Assist the parent to retain custody of the child.
- The caseworker shall explore with the tribe whether the tribe will accept responsibility of the child.

Ensure the child's tribe has been added to the case as a case resource

Procedure

The caseworker must:

- Within 24 to 48 hours of the child being taken into custody, contact the tribal social service and/or ICWA representative and inform the tribe of the child's removal and that a dependency petition may be or has been filed in state court concerning a child who may be a member or eligible for membership. Ask the tribe's designated social service and/or ICWA representative if the tribe can assume custodial responsibility for the child.
- Assist the Indian child's tribe to determine the tribe's ability to assume custodial care, or offer services or placement assistance for the child, by providing the following information:

1. Information about any relative or other significant person who is willing and able to care for the child, at least on a short term basis.
 2. Special needs the Indian child may have.
 3. Resources needed to meet the needs of the child.
 4. Legal status of the child, alternatives to filing a dependency petition and time frame for filing a dependency petition. –AND –
 5. Services available to the parents and child.
- If the tribe indicates the tribe will assume responsibility for the child:
 1. Obtain the parent's, guardian's, caregiver's or Indian custodian's (if available) agreement with the child's transfer to the tribe (if the parent objects to transfer to the tribe, contact the Attorney General's office).
 2. Obtain the date, time and name of the tribal representative who will take physical custody of the child.
 3. Provide the following information to the tribe:
 - a. The identified safety threats and why temporary custody is necessary.
 - b. The ongoing safety plan, recommendations concerning continued custody of the child and conditions for return.
 - c. Identifying information about the child and parent.
 - d. A copy of the temporary custody notice. –AND –
 - e. Any other available information the tribe may request.
 - Coordinate with tribal social services and/or an ICWA representative regarding transfer of the case. Provide protective services to the child until responsibility for the case is resolved.
 - Request dismissal of the dependency petition if the court transfers jurisdiction of the case to the tribe.
 - If the tribe does not assume responsibility for the child, follow procedures in chapter 2 of the procedure manual for CPS cases. It is extremely important to document in case notes all contacts with the child's parents, Indian custodian and tribal social services.
 - File copies of all written correspondence to tribes and original responses from tribes in the case record.
 - If the tribe takes physical custody of the child, the acceptance and transfer of custody should be documented using the case notes window. Written verification of the tribal representative's authority and acceptance of custody should be obtained and filed in the case record, if possible.

C. Removal and Temporary Custody of an Indian Child

Legal basis

The Indian Child Welfare Act (25 USC §1912(d) and (e)] requires any party seeking to effect a foster care placement of an Indian child shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the break up of the Indian family and be prepared to show that these efforts have been unsuccessful. The intent of the Act is that these services will be provided prior to removal of the child, except in extreme circumstances such as severe physical abuse or abandonment.

The Act (25 USC §1922) provides the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs Reservation with exclusive jurisdiction of an Indian child who is a resident of or domiciled on an Indian reservation, but allows the state to take emergency custody of a child who is temporarily located off the reservation in order to prevent imminent physical damage or harm to the child. The emergency placement must terminate immediately when such removal is no longer necessary to prevent such damage or harm.

Procedure

- If an Indian child, regardless of his or her residence or domicile, is in danger of imminent abuse or neglect, the caseworker shall provide emergency intervention to ensure the child's safety.
- The caseworker shall engage the child's family and Indian tribe to the greatest extent possible in planning for voluntary interventions that minimize Child Welfare intrusion while ensuring the safety of the Indian child. Alternatives that may be considered include:
 1. Designing an in-home safety plan which provides additional safeguards or resources so the Indian child can remain in the home.
 2. Implement a protective action by assisting the child's parent(s), guardian or Indian custodian in identifying a relative or friend who can care for the Indian child temporarily during the investigation. – OR –
 3. Implement a protective action by assisting the child's parent, guardian or Indian custodian and child to leave the home and go to a safe situation.
- If no protective action or in-home safety plan can ensure the Indian child's safety, the caseworker shall take temporary custody of the child to provide emergency out-of-home placement, following the ICWA placement preferences.

- An Indian child who is taken into temporary custody because he or she is suffering or will imminently suffer abuse or neglect (imminent physical damage or harm) must be returned to the parent within 24 hours, excluding weekends and holidays, unless a dependency petition is filed.
- The caseworker shall make every effort to contact the child's parents, guardians or Indian custodians and the child's tribe immediately, either in person or by phone, if a child is taken into temporary custody when the parent, guardian or Indian custodian is not present. In addition, parents, guardians, or Indian custodians and the child's tribe, shall be provided with written notice of the temporary custody. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe, except in the case of the emergency removal of an Indian child.

NOTE: An Indian child who is a resident or domiciled on an Indian reservation and taken into temporary custody because he or she is suffering or will imminently suffer abuse or neglect (imminent physical damage or harm) must be returned to a parent or custodian, or transferred to the jurisdiction of the Indian child's tribe, when the reason for removal is no longer necessary to prevent imminent physical damage or harm to the child.

Assess the health and safety of each child in the home following current assessment policy

Procedure

- If any child appears to be at risk of imminent harm, work with the family to identify and implement any emergency interventions that can ensure the child's safety.
- If no voluntary emergency intervention can ensure the child's safety, consult with your supervisor before removing the child from the home.
- If a parent, guardian or Indian custodian is present at the removal of the child, provide him or her with:
 1. A Summons to appear in juvenile court. – AND –
 2. Pamphlet: What You Need to Know about a Child Protective Service Assessment, CF 1536

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- If a parent, guardian or Indian custodian is not present when the child is removed:
 1. Attempt to notify the parent, guardian or Indian custodian and the child's tribe immediately, either in person or by phone.
 2. Notify the parents, guardian or Indian custodian in writing.
- If the address of the parent, guardian or Indian custodian is not known, make active efforts to obtain it by contacting the tribe, relatives, friends, and/or employers. If the address cannot be obtained, initiate a search for absent parent according to local practice.
- Send a copy of the Petition and Summons to Appear by registered mail with return receipt requested to:
 1. Any divorced, non-custodial parent, regardless of the specific arrangements of the divorce agreement. – OR –
 2. The Indian custodian, if applicable. – AND –
 3. The Indian child's tribe. [USC, Title 25, § 1912 (a)]
- If the identity or location of the parent or Indian custodian and the tribe cannot be determined, provide notice by registered mail with return receipt requested to the Secretary of the Interior. [USC, Title 25, § 1912 (a)]
- Prior to an emergency out-of-home placement with a relative, follow procedure manual Chapter 7 for expedited certification of a relative or of an adult known to the child.
- Ensure the child's tribal contact has been added to the case as a resource on FACIS.
- Document the following using the case notes window:
 1. Pre-placement preventative efforts and alternatives to placement that were discussed with the parent, guardian or Indian custodian.
 2. Recommendations concerning continued custody of the child. –AND –
 3. Dates and results of any medical or psychological examinations of the child.
- Document removal and temporary custody of the child in FACIS.

D. Consent for a Voluntary Placement Agreement or a Voluntary Custody Agreement

- If the parent, guardian or Indian custodian requests family support services to place the child in substitute care through a voluntary placement agreement (due to the need to obtain services for the child's emotional, behavioral, or mental disorder or developmental or physical disability, ORS 418.312 and OAR 413-020-0060 thru 414-020-0090) or a voluntary custody agreement (ORS 418.015 and OAR 413-020-0000 thru 0050), consult with your supervisor, seek the approval of the child welfare program manager and follow chapter VI of the procedure manual regarding family support services. In the case of an Indian child, written consent for voluntary placement must be executed before a judge and must follow ICWA placement preferences.
- An Indian child cannot be placed through the department through either a voluntary placement agreement or voluntary custody agreement within ten days of the birth of the Indian child.
- The caseworker must provide full explanation in the language the parent understands to ensure the parent fully understands the consequences of his or her consent.
- The caseworker shall return the child to the custody of the parent at any time upon request.
- Child Welfare shall give preference to placement of an Indian child with:
 1. A member of the Indian child's extended family.
 2. A foster home licensed, approved, or specified by the Indian child's tribe.
 3. An Indian foster home licensed or approved by an Indian tribe. – OR –
 4. An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's needs.

Procedure

- Inform the parent of placement preferences and state active efforts will be made to notify the child's tribe and extended family members.
- Make the necessary arrangements to have the parent sign a voluntary placement agreement or voluntary custody agreement in the presence of a judge.

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- Explain the terms and consequences of the parent's consent in a manner to ensure the parent understands what he or she is doing, including providing an interpreter if necessary.
- Ensure the child's tribe has been added to the case in FACIS.
- It is extremely important to document all contacts with the Indian child's and/or the parent's tribe including the name, address, title, telephone number of the person contacted and the results of these contacts using the case notes window designated as collateral contact type and in a case note.
- File copies of all correspondences sent to tribal staff and the original responses from the tribe in the ICWA section of the case record.
- File a copy of signed consent documents and the judge's certification in the legal section of the case record.

E. Providing Services to Facilitate Family Reunification

The Indian child's health and safety shall be the paramount concern when making permanency planning decisions and providing services.

Procedure

- The caseworker shall provide reunification services to the family of an Indian child when the child is placed in out-of-home placement. The caseworker's first priority shall be to facilitate family reunification as quickly as possible.
- In all cases involving an Indian child, active efforts to reunify the family must be made.
- From the beginning of the case, the caseworker shall involve parents, other family members and, to the greatest extent possible, the Indian child's tribe in developing a case plan aimed at enabling the family to care for the Indian child safely at home and a concurrent plan should a return home not be possible. If it appears that, even with active efforts, it is unlikely the child will be returned to the parent(s) within 12 months after the date of jurisdiction, the department, in collaboration if possible with the Indian child's tribe, the parents, and extended family members, will implement the concurrent case plan aimed at placement with the identified permanent placement for the child. The caseworker will strongly and regularly encourage the tribe to assist in the early identification of an appropriate permanent placement for the child and will place the child with the tribe's identified resource, unless there is an identified safety threat with the placement resource.
- To facilitate family reunification, the caseworker shall provide services that support families in developing their protective capacities and address the safety threats that necessitated the Indian child's out-of-home placement. Services may be delivered either directly by Child Welfare staff, through referral to community resources, or referral through tribal social services or organizations, which provide remedial services and rehabilitative programs to Indian children and families.
- The caseworker must ensure that remedial services and rehabilitative programs shall be provided in a culturally competent manner consistent with the child's and parents' wishes and delivered in a manner that incorporates, when appropriate, American Indian ceremonial and religious practices, family group decision-making, talking circles, and tribally operated programs which reflect American Indian values and the beliefs of the family.
- Ensure the child's tribe has been added to the case in FACIS.

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- Make active efforts to ensure the Indian child's tribe and/or Indian parent's tribe participate in the protective capacity assessment and the development of the case plan. The tribe's participation may be in person, by telephone or another effective means of communication.
- Develop and implement the case plan with the family.
- Contact the tribal social services and/or ICWA representatives and ask the tribe to assist with the identification and provision of culturally appropriate services and programs available through the tribe and/or an organization such as an American Indian cultural and/or service center that may assist the child and parent.
- Ask the tribe to provide the following information:
 1. The name, address, telephone number and a contact person of a tribal program or an organization that provides services to American Indian families; and
 2. When appropriate, information about any known person recognized by the Indian community as medicine men or other traditional tribal leaders, such as elders, whose skill can be used to keep the family together.

NOTE: It is extremely important to document all contacts with the Indian child's and/or Indian parent's tribe including the name, address, title, telephone number of the person contacted and the results of these contacts using case notes.

- File copies of all correspondences to tribal staff and originals from tribal staff in the ICWA section of the case record.

F. Indian Child Placement and Placement Preferences

The Indian Child Welfare Act of 1978 [25 USC §1915] sets forth standards that govern where Indian children accepted for foster care or adoption may be placed. These standards are as follows:

- The child must be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met.
- The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.
- In any foster care placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:
 1. A member of the Indian child's extended family.
 2. A foster home, licensed, approved, or specified by the Indian child's tribe.
 3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority. – OR –
 4. An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable, to meet the Indian child's needs.

These standards apply from the initial placement of the child and through the entire case should a placement change ever be necessary.

Procedure

- The caseworker must inform the parent, legal guardian, or Indian custodian:
 1. Of the placement preference requirements. – AND –
 2. That the tribe will be contacted to develop placement resources.
- Consult with the parents and any known extended family regarding the availability of relatives and family friends as placement resources. Notify potential placements of the need for an assessment of the family and the availability of kinship care resources.
- Contact the tribal social services and/or ICWA representative to identify placement resources such as tribally licensed foster homes and relative placements. Consider foster homes licensed or approved by the tribe for placement. Consult with an ICWA liaison regarding tribally licensed foster homes.
- If potential placements are located on the reservation, request tribal social services conduct family assessments of potential placements.

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- Ensure the child's tribe has been added to the case in FACIS.

NOTE: It is extremely important to document all contacts with the Indian child's and/or Indian parent's tribe including the name, address, title, telephone number of the person contacted and the results of these contacts using case notes.

- All contacts with extended family to develop placement resources should be thoroughly documented in the case record.
- File copies of all correspondences to tribal staff and original letters from tribal staff in the ICWA Section of the case record.

G. Permanency Planning for American Indian Children

The Indian Child Welfare Act of 1978 (25 USC §1912) requires any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law make active efforts to remedy the situation which caused the child to be in an out-of-home placement. Active efforts are a higher standard than the reasonable efforts standard.

The Adoption and Safe Families Act of 1997 (P.L. 105-89) significantly amends Titles IV-B and IV-E of the Social Security Act by establishing safety, permanency and well-being as national goals for children in the child welfare system.

ASFA requires the court hold a permanency hearing not more than 12 months from the date jurisdiction is established or 14 months from the child's initial removal from the parent or guardian, whichever is earlier. The purpose of the hearing is to determine the future permanent legal status of the child and to order the accomplishment of the permanency plan within a specified time period. Examples of a permanency plan include reunification, adoption, permanent guardianship, permanent placement with a fit and willing relative, and another planned permanent living arrangement. Most tribes do not support adoption as a permanent plan for the child based on their cultural practices and beliefs. Consult with the tribe early regarding the tribe's position on permanency for a child. When developing a case plan for the child, consider the tribe's position on concurrent permanent plans.

Reunification

Procedure

- Ensure the child's tribe has been added to the case as a resource on FACIS.
- Unless the court has ordered immediate reunification, convene a staffing to determine the conditions for return. Include the tribal social worker or tribal representative in this meeting.
- Bearing in mind the requirement to make active efforts, assist the parent, guardian or Indian custodian in arranging for the child's re-entry into the family by ensuring the following have been considered and implemented where appropriate:
 1. Housing assistance.
 2. Childcare arrangements.
 3. School placement.
 4. Health care and mental health services.

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5. Physical needs (e.g., bed, formula, etc.).
 6. Community or recreational activities for the child. – AND –
 7. Other services as needed to ensure safe reunification.
- Transition the child from substitute care placement to home with the parent, guardian or Indian custodian by following the procedures outlined in chapter 3, section 14 of the procedure manual, utilizing support from the current placement and tribal resources if available and appropriate.
 - Upon the child's return home, provide support and supervision following the steps outlined in the procedure manual, chapter III, section 4. A. for an in-home safety plan. In particular, during this period:
 1. Monitor the child's continued safety by visiting the child and parent in the home the day following the return home and at least monthly until the case is closed.
 2. Discuss any adjustment problems with the family and tribal caseworkers.
 3. Assist the family in securing needed services. – AND –
 4. Encourage the family to utilize extended family members, churches, neighborhood organizations, and community and tribal networks as an ongoing source of support and assistance.
 - It is extremely important to document all contacts with the parent, guardian, Indian custodian, and the Indian child's and/or Indian parent's tribe including the name, address, title, telephone number of the person contacted and the results of these contacts using case notes.
 - File copies of all correspondences to tribal staff and original letters from tribal staff in the ICWA Section of the case record.

Guardianship

Procedure

- See Child Welfare procedure manual, chapter V for guardianship information.
- Ensure the child's tribe has been added to the case as a resource on FACIS.
- Document the selection of guardianship as a permanency goal.
- It is extremely important to document all contacts with the parent, guardian, Indian custodian, and the Indian child's and/or Indian parent's tribe including the name, address, title, telephone number of the person contacted and the results of these contacts using case notes.
- File copies of all correspondences to tribal staff and original letters from tribal staff in the ICWA section of the case record.

Termination and Adoption

Procedure

- The cultural and social values of the Indian child's tribe regarding termination of parental rights and adoption shall be considered. If the child's tribe opposes termination of parental rights based on cultural and social values, a case plan staffing which specifically includes tribal representatives shall be held to identify potential permanent placement alternatives to termination of parental rights and adoption.
- When adoption is selected as the permanency plan, unless the Indian child's tribe has established a different order of placement preference, the caseworker shall give preference to adoptive placement of an Indian child with:
 1. A member of the child's extended family.
 2. Other members of the Indian child's tribe. – OR –
 3. Other Indian families, including single parent families.
- The caseworker shall consider any placement preferences expressed by the parents.
- Before considering placement outside the placement preference order, the caseworker shall conduct and document a diligent search to identify a placement within the preference categories by contacting extended family, members of the child's tribe, and through

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local registries, Indian and tribal organizations, and regional and national adoption exchanges. (See section 6, Indian Child Placement and Placement Preferences of ICWA Procedures.)

- The caseworker shall provide a copy of the final adoption decree to the Department of the Interior, Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, MS-4603-MIB, Washington, D.C. 20240, and to the child's tribe within 30 days of the adoption finalization. The copy to the child's tribe shall also be sent to the tribe's social worker or, if none is available, to the tribal enrollment office.

Procedure

- To assess the child's placement needs, gather information by:
 1. Interviewing the child and his or her caregivers.
 2. Reviewing the recommendations of the child's immediate and extended family.
 3. Reviewing the recommendations of medical and behavioral health providers and other professionals who have worked with the child, including tribal representatives and service providers.
 4. Reviewing the recommendations of representatives of the child's tribe(s), including recommendations to maintain and develop the child's essential cultural and tribal identity.
 5. Reviewing the recommendations of other professionals who work with the child;
 6. Completing a family history (Social History).
 7. Determining the child's need for adoption assistance.
- If the child is at risk of, or has one or more of, the following conditions, obtain an evaluation from one or more professionals regarding the impact of the condition on the child's placement needs:
 1. Developmental disability.
 2. Emotional disturbances.
 3. Physical disease or disability. – OR –
 4. Mental disease or disability.
- Conduct a search through available resources to identify and locate an American Indian adoptive family. These may include tribal social services, Indian communities and organizations, Cherokee Nation Registry of Native American Children, Wednesday's Child, National Adoption Exchange, Communities for Children, and Adopt US Kids prior to considering a non-Indian adoptive family.

- When providing the final adoption decree to the Bureau of Indian Affairs and the child's tribe(s), include the following information:
 1. The name and tribal affiliation of the child.
 2. The child's enrollment number and certificate of Indian blood, if available.
 3. The child's social security number.
 4. The names, addresses and social security numbers of the birth parents.
 5. The names and addresses of the adoptive parents. – AND –
 6. The identity of any agency having files or information relating to the adoption.
- Document all contacts relating to placement efforts, including but not limited to the Indian child's tribe(s), extended family, and all alternative resources using case notes and the resources list on FACIS.
- For more information on adoption, refer to chapter V of the procedure manual.

Another planned permanent living arrangement

Permanency options under another planned permanent living arrangement may include:

- APPLA - Permanent Foster Care.
- APPLA - Independence. – OR –
- APPLA – Other.

If any of the APPLA permanency plans are being considered for an Indian child, the tribe needs to be involved in the permanency planning process.

APPLA – Permanent Foster Care

- Ensure there is a compelling reason a more permanent permanency option is not feasible for the child.
- Follow administrative rules for executing the permanent foster care agreement.
- Support continued contact between the child and his or her parents, siblings, other relatives, and extended family members, unless such contact would be detrimental to the child, pose a safety threat to the child, or when a therapist has made a recommendation that it is not in the child's best interest at this time without further mental health treatment services to address the child's identified needs.

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APPLA – Independence

- Ensure there is a compelling reason a more permanent permanency option is not feasible for the child.
- Ensure there is an adequate transition plan and that the child has developed relationships with adults who can play a significant role in the child’s life after the child leaves substitute care.
- Refer the youth to the area Independent Living Program area coordinator, within 30 days of the youth’s 14th birthday to enroll the child with independent living services.
- For more information on independent living program services, refer to chapter IV, section 29, Youth Transitions.

APPLA – Other

- Ensure there is a compelling reason a more permanent permanency option is not feasible for the child.
- Ensure that the child’s permanency plan is adequate to transition the child to adulthood and that the child has developed relationships with adults who can play a significant role in the child’s life after the child leaves substitute care or that appropriate adult care services are available to the child into adulthood.

H. Consent to Adoption

Oregon statute allows the birth and adoptive parents to enter into a written agreement for post-adoption communications and/or contact which may be approved by a court order, if the adoptive parents and the court agree such contact is in the child's best interests.

A consent to place an Indian child for adoption may be accepted from a mentally competent parent of a child who is in the care, custody and control of Child Welfare.

- The caseworker shall consult with the assistant attorney general (with supervisory approval) in making the necessary arrangements to have the parent sign a consent to adoption or voluntary termination of parental rights in the presence of a judge of competent jurisdiction. If the child's tribe has intervened or is involved, the appropriate tribal representative shall be notified of the parent's decision and of any court hearing.
- The consent must be in writing and signed before a judge and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and understood by the parent.
- A consent to place an Indian child for adoption may be withdrawn, for any reason and at any time, before entry of the final order of termination or decree of adoption.
- A consent to place an Indian child for adoption may be withdrawn up to two years after entry of the final order of adoption upon finding by a court that the consent was obtained through fraud or duress.
- Parents of an Indian child who wish to consent to the adoption of a newborn should be encouraged to contact an appropriate tribal social services agency provided that a dependency petition has not been filed and there is no valid issue of abuse or neglect. If the parent releases the child to Child Welfare in lieu of contacting a tribal social services agency, Child Welfare will file a dependency petition.
- Obtaining a consent to place a child for adoption is preferable to initiating an involuntary termination of parental rights proceeding.
- The parent of an Indian child may give consent for a specific person to adopt his or her child. However, if the specified individual(s) does not adopt the child, the consent likely will be deemed void and a new consent (or in the alternative, a proceeding to terminate parental rights) may be necessary to allow for adoption of the child.

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- Unless the Indian child's tribe has established a different placement preference order, Child Welfare shall give preference to placement of an Indian child with:
 1. A member of the Indian child's extended family.
 2. Other members of the Indian child's tribe. – OR –
 3. Other Indian families.
- To determine whether voluntary relinquishment is appropriate for the parent of an Indian child, consult with the tribal social services and/or ICWA representative and inform the tribe of the parent's desire to place her or his child for adoption.

Procedure

- Inform the parent of the placement preferences;
- Inform the parent that in order to find an appropriate adoptive placement, Child Welfare will notify the Indian child's tribe. Unless the consenting parent has requested anonymity, Child Welfare will also notify extended family members; and
- Consult with the tribal social services and/or ICWA representative and the parent's attorney, if any, and inform the tribe of the parent's desire to place his or her child for adoption, and of the parent's request for anonymity, if applicable.
- Refer the parent to counseling to ensure the parent understands the meaning of consent, its implications for the child and parents, and information regarding access to non-identifying information in adoption records.
- Conduct a search through available resources to identify and locate an American Indian adoptive family. These may include tribal social services, Indian communities and organizations, Cherokee Nation Registry of Native American Children, Wednesday's Child, National Adoption Exchange, Communities for Children, and Adopt US Kids prior to considering a non-Native American adoptive family.
- Request the Attorney General's Office (with supervisory approval) file a motion for a hearing on the ICWA consent. Inform the assistant attorney general if an interpreter is needed.
- Arrange for the parent to be at the hearing.

- At the hearing, obtain the original and a certified copy of the ICWA consent and certification order. Provide a copy to the parent, parent's attorney and to the child's tribe.
- It is extremely important to document all contacts with the Indian child's and/or Indian parent's tribe including the name, address, title, telephone number of the person contacted and the results of these contacts using case notes.
- File copies of all correspondences to tribal staff and original letters from tribal staff in the ICWA section of the case record.
- File the original and certified copies of the adoption consent and judge's certification in the case record.

The Supervisor's Role

- The supervisor will ensure the worker is complying with the Indian Child Welfare Act and will use the local ICWA liaison to assist in ICWA compliance.
- The supervisor shall use the criteria of the current CPS guidelines regarding the immediate safety threat to the child. Criteria include tribal child protective service history with the family, which will be considered regarding the current safety threat.
- The supervisor ensures the child's tribe has been contacted and is included in case planning throughout the life of the case.

Forms and References

Federal Law

- Indian Child Welfare Act
- Adoption and Safe Families Act of 1997, P.L. 105-89

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Oregon Revised Statutes

- ORS 419B.100
- ORS 419B.340
- ORS 419B.476
- ORS 419B.875
- ORS 419B.878
- ORS 109.312

DHS Policy

- I-E.2.1, Placement of Indian Children – Oregon Administrative Rule 413-070-0100/0260
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e21.pdf
- Federal Register, April 23, 1979: Guidelines for State Courts; Indian Child Custody Proceedings

Data Entry

- Document the child's American Indian status in FACIS
- Document the tribal social worker/tribal representative in Resources Section of FACIS
- Document in case notes any contact with the tribe and tribal representatives
- Document in case notes contact with relatives regarding ICWA eligibility

Forms

- CF 1270, ICWA Eligibility form
http://dhsresources.hr.state.or.us/WORD_DOCS/ce1270.doc

Exhibits

A. DEFINITIONS

To ensure ICWA compliance, it is important to remember that when proceedings involving an Indian child invoke the Act, terms used are as defined in the Act.

- (1) “Act” or “ICWA” refers to the Indian Child Welfare Act.
- (2) “Active Efforts” require a worker to actively assist the client in accessing and participating in necessary and culturally appropriate remedial and rehabilitative services. Examples of active efforts may include making appointments for the client with particular providers, providing transportation to and from such appointments, closely monitoring a client’s participation in such services, and continuing with ongoing efforts to secure a placement within the ICWA placement preferences.
- (3) “Adoptive Placement” is the permanent placement of an Indian child for adoption. Such action includes voluntary relinquishment of a parent’s rights.
- (4) “Department” means Department of Human Services, Child Welfare.
- (5) “Child Custody proceeding” for placement purposes includes:
 - Foster care placement which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where the parental rights have not been terminated.
 - Termination of parent rights which shall mean any action resulting in the termination of the parent-child relationship.
 - Pre-adoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement. – AND –
 - Adoptive placement, which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act, which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, or custody to one of the parents.
- (6) “Clan”: means a Tribal system of kinship/extended family relationships.
- (7) “Culturally appropriate services”: means services that will support and recognize a parent or child’s cultural customs, traditions, and beliefs. Examples include healing ceremonies, consultation with a traditional practitioner, and referral of parents to professionals trained in provision of services to American Indian people. Services should

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- be sought from community and tribal resources as well as from contracted providers.
- (8) “Diligent Search” means that, at a minimum, there will be contact with the child’s tribal social service program, a search of all county or state listings of available Indian homes, and contact with local, regional, and nationally known Indian programs that have placement resources available for Indian children (Placement of Indian Children, I-E.2.1)
 - (9) “Exclusive Tribal Jurisdiction” Indian tribes have exclusive jurisdiction over child custody proceedings involving children who reside or have a permanent home on an Indian reservation. The only exception is where Congress has transferred jurisdiction over family welfare matters to a state and the tribe in that state has not completed an administrative process to reassume exclusive jurisdiction. (NOTE: In Oregon, only the Warm Springs and the Burns Paiute Tribes have such exclusive jurisdiction; however, it is important to see if other tribes have reassumed jurisdiction.)
 - (10) “Expert Witness” is a person with the following characteristics: a member of the child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices; a lay person having substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the child’s tribe; or a professional person having substantial education and experience in the area of his or her specialty along with substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.
 - (11) “Extended Family” is defined by the law or custom of the Indian child’s tribe. In the absence of law or custom, it shall be a person who has reached the age of 18 or over and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.
 - (12) “Foster Care Placement” is any action removing or which could result in the removal of a child from his or her parent or Indian custodian (such as court-ordered supervision in the home) for placement in foster care or institution or with a guardian, where the parent(s) or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated (Placement of Indian Children, I-E.2.1)
 - (13) “Indian” is any person who is a member of or eligible for membership in an Indian tribe or who is an Alaskan native and a member of a Regional Corporation as defined in 43USC §1606.
 - (14) “Indian Child” is any unmarried person under age eighteen who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

- (15) “ICWA Eligibility Form” is the CF 1270 form to document pertinent information regarding an Indian child and his or her family and Tribal relationships.
- (16) “Indian Child Welfare Act Manager (ICWA Manager)” staff person who monitors DHS Child, Adult and Family Services (CAF) policy and procedures towards compliance with the Indian Child Welfare Act; investigates complaints from Tribes of non-compliance; provides consultation to caseworkers relating to law and administrative rules; and provides ICWA materials and training.
- (17) “Indian Child’s Tribe” is the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member or eligible for membership in more than one Indian tribe, it is the Indian tribe with which the Indian child has the most significant contacts.
- (18) “Indian Custodian” is any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.
- (19) “Indian Organization” is any group, association, partnership, corporation, or legal entity owned or controlled by Indians or a majority of whose members are Indians, such as an Indian Child Welfare Committee.
- (20) “Indian Tribe” is any Indian tribe, band, nation or organized group or community of Indians who are recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in 43 USC §1606, and any tribe whose federal relationship has been terminated by congressional action. This includes tribes joined together by the US government.
- (21) “Involuntary Proceeding” is any action removing a child from a parent/Indian custodian and such parent/Indian custodian cannot have the child returned upon demand.
- (22) “Judicial Hours” means the number of hours a court is available to hold a hearing. Legal holidays and weekends do not count as judicial hours.
- (23) “Native American” is any person who is a member of an Indian tribe, or who is an Alaska native and a member of a Regional Corporation and may be referred to as an American Indian.
- (24) “Parent” is any biological parent or parents of any Indian child or any Indian person who has lawfully adopted an Indian child. This includes adoption by tribal law or custom. It does not include unwed fathers where paternity has not been established or acknowledged.

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- (25) “Pre-Adoptive Placement” is the temporary placement of an Indian child after termination of parental rights in a foster home or institution prior to or instead of an adoptive placement. This definition includes, but is not limited to, the following: placement of the child in a foster home prior to the selection of an adoptive family; placement of a child in a foster home which becomes the child’s adoptive home once the child is legally free; and placement of the child in an adoptive home which is used as a foster home until the child is legally free.
- (26) “Rehabilitative services and programs” means services and programs individually tailored and designed to assist the family in improving a parent’s ability to safely care for the child in the home. Services should be culturally appropriate, identified in the case plan, and may include but are not limited to substance abuse treatment programs, vocational training, parenting classes, and psychological counseling.
- (27) “Relative” is an individual related to an Indian child by blood, marriage, or Tribal custom.
- (28) “Remedial services” are services designed to remedy the circumstances that cause or may cause continued placement of the child outside the home.
- (29) “Reservation” means Indian country as defined in 18 USC §1151, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.
- (30) “Secretary” means the Secretary of the Interior.
- (31) “Termination of Parental Rights” is action, which results in the termination of the parent-child relationship.
- (32) “Tribal Court” is the court that holds jurisdiction over Indian child custody proceedings and is either a Court of Indian Offenses, a court established and operated under code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.
- (33) “Voluntary Proceeding” is any action in which a parent/Indian custodian has voluntarily given custody of his or her child to another and such voluntary action does not prohibit the parent/Indian custodian from regaining custody of the child at any time.

B. Notification Letters

<http://www.dhs.state.or.us/policy/childwelfare/icwa/icwa.htm>

April 2008