

<b>Policy Title:</b>	Placement of Indian Children – OAR		
<b>Policy Number:</b>	I-E.2.1 413-070-0100 thru 0260		<b>Effective Date:</b> 01-02-96

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

Definitions

References

Contact

History

## Reference(s):

- None.

## Form(s) that apply:

- None.

## Rules:

### **POLICY STATEMENT AND PURPOSE OF RULES**

**413-070-0100 (1)** On November 8, 1978, under its power over Indian affairs and its "responsibility for the protection and preservation of Indian tribes and their resources," Congress enacted the Indian Child Welfare Act (the Act or ICWA) of 1978. The Act was passed because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children" by courts and welfare departments and placed in non-Indian homes and institutions.

**(2)** The Act sets forth that it is the policy of this nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families. Further, placement of such children will be made in foster or adoptive homes which will reflect the unique values of Indian culture.

**(3)** This remedial aspect of the Indian Child Welfare Act establishes the manner in which the administrative rules will guide the State Office for Services to Children and Families in adhering to the letter and spirit of the Act.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## Legislative Authority

**413-070-0110** These rules are promulgated pursuant to the statutory authority granted to the State Office for Services to Children and Families in ORS 418.005.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## Definitions

**413-070-0120** To ensure total compliance, it is important to remember that when proceedings involving an Indian child invoke this Act, terms including, but not limited to foster care, termination of parental rights, pre-adoptive and adoptive placement have the meaning stated in the Act, not the meaning as established by Oregon law.

**(1) "Act" or "ICWA"** means the Indian Child Welfare Act.

**(2) "Adoptive Placement"** is the permanent placement of an Indian child for adoption and includes any action which results in a decree of adoption. Such action includes voluntary relinquishment of a parent's rights.

**(3) "Agency"** means the State Office for Services to Children and Families (SOSCF).

**(4) "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.

**(5) "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 18 or over 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.

**(6) "Foster Care Placement"** is any action removing or which could result in the removal of a child from his/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.

**(7) "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 43 USC §1606.

**(8) "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.

**(9) "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.

**(10) "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.

**(11) "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.

**(12) "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.

**(13) "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.

**(14) "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.

**(15) "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.

**(16) "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.

**(17) "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.

**(18) "Secretary"** means the Secretary of the Interior.

**(19) "Termination of Parental Rights"** is action which results in the termination of the parent-child relationship.

**(20) "Tribal Court"** is the court which 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 which is vested with authority over child custody proceedings.

**(21) "Voluntary Proceeding"** is any action in which a parent/Indian custodian has voluntarily given custody of his/her child to another and such voluntary action does not prohibit the parent/Indian custodian from regaining custody of the child at any time.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Applicability**

### **413-070-0130 (1) General:**

**(a)** The Indian Child Welfare Act affects all placements of Indian children taking place after May 8, 1979, and also applies to changes or possible changes in placement of Indian children already under SOSCF authority as a result of a proceeding prior to May 8, 1979;

**(b)** The Act does not cover the full range of procedures involved in a juvenile court proceeding; where it is silent, the usual state court procedure should be followed. Under constitutional law, the federal Act takes precedence where it conflicts with state law. When the state law affords a higher standard of protection of the rights of the parents or Indian custodian, it applies.

**(2) Exceptions.** Child custody proceedings not covered by the Act are:

**(a)** An award of custody to one of the parents in a divorce proceeding;

**(b)** A placement based upon an act which, if committed by an adult, would be a crime (unless the juvenile delinquency proceeding results in the termination of a parental relationship).

**(3)** Although initial placements of an Indian child based upon a law violation may not be covered by the Act, subsequent placements resulting from petitions alleging dependency, or status offenses that can only be committed by a minor (runaway, beyond control, etc.), are covered by the Act.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Agency Authority**

**413-070-0140** Once it is found that an Indian child is involved, and the tribe or tribes which have an interest have been determined, the authority of the agency must be established. In some instances, the agency will have no authority to become involved in the case:

**(1) 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 check to see if other tribes have reassumed jurisdiction.)

**(2) Tribal Court Ward.** The agency has no authority in cases involving an Indian child who is a ward of a tribal court. Agency staff shall ask the child's parents/Indian custodian if the child is a ward of the tribal court. If there is reason to believe that the child has previously resided or been domiciled on the reservation, the service worker shall contact the tribal court to determine whether the child is a ward of that court. If so, except as follows, the agency has no authority over the child.

**(3) Emergency Removal-Limited Authority.** Notwithstanding paragraphs (1) and (2) above, if an Indian child who resides or has a permanent home on any Indian reservation is off the reservation and is in danger of suffering imminent physical damage or harm, the agency has authority to take custody regardless of whether the child is a ward of the tribal court or the tribe has exclusive jurisdiction. This authority is subject to the requirements set forth in OAR 413-070-0150.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Emergency Removals**

**413-070-0150 (1)** The agency can take emergency protective custody of any Indian child (who resides or is domiciled on a reservation, but who is temporarily located off the reservation) regardless of the jurisdictional status of his or her tribe as long as the following criteria are met:

**(a)** The child is not located on an Indian reservation where the tribe has exclusive jurisdiction over child custody matters; (In Oregon, at present, only the Warm Springs and Burns Paiute tribes have such jurisdiction.) and,

**(b)** The child is in danger of imminent physical damage or harm.

**(2)** Whenever a child is taken into protective custody, agency staff shall inquire as to the child's racial or ethnic background, unless circumstances do not permit such routine inquiry. (In such cases, once the child is taken into protective custody, the service worker shall take the required steps to determine racial/ethnic category, as described in OAR 413-070-0170(1).)

**(3)** If there is reason to believe the child may be Indian, and in order to determine if the tribe has exclusive jurisdiction, agency staff shall immediately inquire as to the child's residence or domicile (since the child may be a resident of or domiciled on a reservation but is temporarily off the reservation). If the child is believed to be Indian, efforts shall be made to place the child during emergency custody in a setting which follows the placement priorities established by the Indian Child Welfare Act or the tribe and set forth in OAR 413-070-0220.

**(4)** Emergency custody shall be terminated when:

**(a)** Emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; or

**(b)** The appropriate tribe exercises jurisdiction over the case.

**(5)** In order to terminate an emergency removal or placement, the agency shall return the child to his or her parent, or the service worker shall initiate an expeditious transfer of

jurisdiction to the appropriate Indian tribe. If termination of an emergency removal or placement is not possible, the agency shall obtain a court order authorizing continued protective custody within 24 judicial hours of the removal or placement. The petition filed in such proceeding must contain the following, in addition to that information required by state law:

- (a) The name, age, tribal affiliation(s) and last known address of the Indian child;
- (b) The name and address of the child's parent(s) and/or Indian custodian(s), if any, and tribe. If unknown, the agency shall provide a detailed explanation of efforts made to locate them;
- (c) If known, whether the residence or domicile of the parent(s), Indian custodian(s) or child is on or near a reservation, and which reservation;
- (d) A specific and detailed account of the circumstances which led the agency to conclude that the child would suffer imminent physical damage or harm;
- (e) A specific plan of action the agency is following, including services provided, to restore the child to his/her parent(s) or Indian custodian(s), or to transfer the child to the jurisdiction of the appropriate Indian tribe.

(6) Where the danger to the Indian child persists and the child's tribe does not have exclusive jurisdiction and will not request transfer of the case to its court, the service worker shall, in consultation with the child's parent(s) and tribe, if known, explore available placement resources which meet the placement requirements in OAR 413-070-0220.

**Statutory Authority: ORS 418.005**  
**Stats. Implemented: 25USC ¶1901**

## **Remedial Services**

**413-070-0160 (1)** Subsequent to an investigation and prior to a determination of the need for out-of-home placement services, the service worker shall offer the provision of services of a remedial nature designed to rehabilitate and prevent the breakup of Indian families to the same extent that they are available to non-Indian families when eligible.

(2) To reduce the potential for cultural bias when evaluating home and family conditions and making decisions affecting Indian children and families, the agency shall involve Indian tribes and organizations at the earliest possible point in intervention. Services in the community specifically designed for Indian families are to be used where available, including resources of the extended family, the tribe, urban Indian organizations, tribal family service programs and individual Indian caregivers. Individual Indian caregivers may include medicine men and other individual tribal members who may have developed special skills that can be used to help the child's family succeed.

(3) Prior to initiating a petition before a state court for foster care placement or termination of parental rights, the service worker shall undertake active efforts to provide remedial services and rehabilitative programs to the family designed to prevent its breakup.

(4) In order to demonstrate that active efforts have been made, the service worker must:

**(a)** Assure that due consideration has been given to the cultural needs and values of the family and that resources have been diligently sought to provide family services. Such assurances may be demonstrated by the following:

**(A)** Making direct contacts with the family, including the parent or Indian custodian, the child and members of the extended family, if known or available;

**(B)** Making an evaluation of the circumstances of the family taking into account the prevailing social and cultural conditions and way of life of the child's tribe and/or the Indian community;

**(C)** Intervening in the parent-child or Indian custodian-child relationship only when intervention is supported by relevant prevailing Indian social and cultural standards regarding intervention into familial relationships by nonfamily members;

**(D)** Providing a plan formulated with direct collaboration of the parent or Indian custodian, taking into account prevailing social and cultural conditions, designed to effectively address and eliminate problems destructive to the family involving:

**(i)** Extended family members;

**(ii)** Tribal social service programs;

**(iii)** Tribal organization programs aimed at preventing family breakup;

**(iv)** Traditional tribal community therapy practices, administered by Indian practitioners, where available and applicable. This includes spiritual leaders, medicine men, and other individual tribal members who have developed special skills that can be used to help the child's family succeed.

**(E)** Providing time and resources in prevention of family breakup in equal measure to time and resources devoted by the agency to all families;

**(F)** Assuring that while efforts at prevention of family breakup are proceeding, the parent or Indian custodian and the child are encouraged to maintain an ongoing familial relationship in ways that are socially and culturally compatible with the values of the child's Indian community;

**(G)** Having a plan that encourages maintenance of the Indian child in his/her own familial residence except when to do so would result in serious physical or emotional harm;

**(H)** Providing that where the Indian child is of sufficient age, he or she is involved in the design and implementation of the plan to prevent family breakup.

(b) Demonstrate to the court that such efforts were made prior to the filing of the petition, including an account of the efforts made and why they failed.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC §1901**

## **ICWA Procedures at Initial Contact**

**413-070-0170** This section presents the initial steps to follow in providing services and taking legal action for child custody proceedings covered by the ICWA.

### **(1) Determination of Indian Status:**

(a) Oral inquiry shall be made in every case which involves or could involve changes in custody to determine whether the case involves an Indian child. Agency staff shall routinely request racial/ethnic data of parents or guardian by reading aloud from the intake form the racial/ethnic categories for the client's self-identification. If the child's parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their child, agency staff shall consider the following in determining a child's Indian heritage:

(A) A thorough review of all documentation in the file (including contact with previous caseworkers, if any);

(B) Close observation of the child's physical characteristics and the physical characteristics of parents, as well as other siblings or relatives accompanying the child;

(C) Consultation with relatives/collaterals providing information which suggests the child/parent may be Indian;

(D) 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.

(b) If, in following the above steps, information obtained suggests the child may be of Indian heritage but the tribe cannot be determined, staff shall contact the agency ICWA Specialist to determine if:

(A) The birth place of the child/parent, or the current/former residence of the child/parent is known to be a common residence of Indian families;

(B) The surname of the child/parent is one which is known to be common among members of Indian tribes.

**(2) Determination of Indian Tribe.** If it appears the child is of Indian heritage, the service worker must determine the tribe in which the child is a member or eligible for membership. Agency staff shall ask the child's parents or custodian tribe(s) the child may be affiliated. If this inquiry does not provide the necessary information, agency staff shall, at a minimum, contact the following:

(a) Relatives and extended family members;

(b) Indian tribes and organizations in Oregon, such as the Commission on Indian Services;

(c) The appropriate Bureau of Indian Affairs (BIA) Office.

**(3) ICWA Eligibility.** For a child to be considered an Indian under the Act, the child must be:

(a) An unmarried person under the age of eighteen; and

(b) A person who is either: a member of an Indian tribe, or eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe;

(c) In order for the worker to determine if the child is a tribal member or eligible for membership, the tribe or possible tribes identified must be contacted.

**(4) Tribal Membership:**

(a) A tribal determination of membership is conclusive because each tribe defines the criteria for membership in the tribe and determines who meets those criteria. Inquiries to the tribe must be sent "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, agency staff shall contact the tribe by telephone. The service worker may request that all information given be treated confidentially.

(b) 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 service 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 service worker shall:

(A) Ask the child (if old enough to respond);

(B) Ask the parent(s) or relatives, including in-laws, as appropriate;

(C) Ask the tribe.

**(5) BIA Assistance.** If the tribe does not respond to a letter sent "Return Receipt Requested" and cannot be reached by phone, the service worker shall write or call the Bureau of Indian Affairs Area (local) Office for assistance.

**(6) Out-of-State Tribes.** When an Indian child is a member of or eligible for membership in a tribe located in another state, the Act still applies and all applicable provisions, including provisions governing notification of the tribe, must be followed.

**(7) Multi-Tribal Membership:**

(a) 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 service worker shall investigate:

(A) The length of residence on or near the reservation of each tribe and the frequency of contacts with each tribe;

(B) The child's participation in activities of each tribe;

(C) The child's fluency in the language of each tribe;

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes;

(E) Residence on or near one of the tribes' reservation of the child's relatives;

(F) Tribal membership of custodial parent or Indian custodian;

(G) Interest asserted by each tribe in response to the notice specified in OAR 413-070-0210.

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

**(8) Enrollment of Indian Clients.** If the child is not a member of his or her tribe, but is applying to become a member, the service worker shall proceed as though the child is a member and follow the requirements of the Act. Agency staff shall assist the family in filling out 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.

**(9) ICWA Not Applicable.** Once determined, tribal status should be clearly documented in the case record, along with the date and source of documentation. An Indian child who is officially determined by the tribe not to be a member nor eligible for membership is not subject to the requirements of the Indian Child Welfare Act. In such cases, agency staff shall:

(a) 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;

(b) Incorporate in any court hearing the tribe's written statement declaring the child ineligible for membership.

**(10) Cultural Heritage Protection.** In instances where the ICWA does not apply, but the child is biologically an Indian or considered an Indian by the Indian community, the agency shall respect the child's right to participate in the culture of origin in case planning, particularly if such child is identifiably Indian by physical features and/or social relationship.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Tribal-State Agreement**

**413-070-0180** These rules may be superseded by an agreement signed between the state and a particular tribe. Such agreement shall be available in the Director's Office of the State Office for Services to Children and Families.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Documentation of Serious Emotional or Physical Damage to Child Prior to Removal**

**413-070-0190 (1)** Prior to removal of the child from a parent/Indian custodian and initiation of court proceedings, the agency's records shall contain documentation demonstrating that:

**(a)** It is likely that the conduct or condition of the parents will result in serious physical or emotional harm to the child; and

**(b)** If it is likely that such harm will occur, efforts have been made to counsel and change the parents' behavior and have not worked.

**(2)** In making such a determination, agency staff shall relate indications of the likelihood of serious emotional or physical damage to particular conditions in the home, showing a causal relationship between the conditions and the serious damage which is likely to result to the child. For example, it is not adequate to show that the parent abuses alcohol. It is necessary to show how, because of alcohol abuse, the parent may cause emotional or physical damage to the child.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Element of Proof**

**413-070-0200 (1) Foster Care Placement.** In order to ask the court to authorize the placement of the child in foster care, the agency must demonstrate to the court by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that the child's continued custody with the child's parents or Indian custodian is likely to result in serious emotional or physical damage to the child.

**(2) Termination of Parental Rights.** In order to ask the court to terminate parental rights, the agency as petitioner must show the court by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**(3) Qualified Expert Witnesses.** The agency recognizes that persons with the following characteristics are most likely to meet the requirements of a qualified expert witness for purposes of Indian child custody proceedings:

(a) A member of the Indian 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;

(b) 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 Indian child's tribe;

(c) 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.

This list is not meant to be exhaustive or limited in any fashion. The service worker should enlist the assistance of the Indian child's tribe or the ICWA Specialist in locating persons qualified to serve as expert witnesses. The BIA is also required to provide this assistance.

**Statutory Authority: ORS 418.005**  
**Stats. Implemented: 25USC ¶1901**

## **Involuntary Proceedings**

**413-070-0210 (1) Notice.** Except for emergency placements made pursuant to OAR 413-070-0200, agency staff shall not request a court proceeding to authorize foster care placement of an Indian child until the following time frames have been observed:

(a) Not less than ten days after receipt of notice by the parent or Indian custodian, or thirty days after receipt of notice by the parent or Indian custodian if an additional twenty days has been requested by the parent/Indian custodian to prepare for the proceeding;

(b) Not less than ten days after the Indian child's tribe has received notice, or thirty days after the Indian child's tribe has received notice if an additional twenty days has been requested to prepare for the proceeding;

(c) Not less than fifteen days after the receipt of the notice by the Secretary of the Interior.

(2) The service worker shall be responsible for providing notice to the parties listed below, and for notifying the court of the agency's requirements, and requesting a hearing not be scheduled until the time limits in paragraph (1) have been met:

(a) Notice to Parent or Indian Custodian. The parent of an Indian child shall always receive notice. An Indian custodian, if any is involved, should also receive notice;

(b) **Notice to Tribe.** Whenever an Indian child's parent or Indian custodian are entitled to notice, then the tribe is entitled to notice also. The tribe entitled to notice is the tribe in which the child is a member or eligible for membership. If the child is affiliated with or eligible for membership in more than one tribe, notice shall be sent to all potential tribes since the court can permit intervention by more than one tribe;

**(c) Notice to BIA.** If the identity or location of a potentially interested Indian party to the proceeding cannot be determined, agency staff shall notify the local Bureau of Indian Affairs Office which is given fifteen days to locate and notify that party.

**(3) Service of Notice.** Notice can be given by personal service (handing it directly to the person), if possible, but shall always be given by registered mail, return receipt requested.

**(4) Form of Notice:**

**(a)** If a tribe has declined jurisdiction, it still retains the right to participate as an interested party or to intervene at any point in the proceeding. If the tribe intervenes, it is a party to the proceeding and has the same rights to notice of all hearings, motions, etc., related to the case, the right to participate fully in such hearings and assert its interest, the right of access to court records, the right to retain counsel if it chooses, and the right to appeal. Therefore, even if a tribe has declined jurisdiction, notice to the tribe's designated agent (or the tribal court if no agent has been designated) of every proceeding affecting their tribal member shall be given. Notice shall contain, at a minimum, the following:

**(A)** The name of the Indian child and his or her tribal affiliation;

**(B)** A copy of the petition, complaint or other document by which the proceeding was initiated;

**(C)** The name of the petitioner and the name and address of the petitioner's attorney, if any;

**(D)** A statement of the right of the biological parent(s) or Indian custodian(s) to participate and the Indian child's tribe to intervene in the proceeding;

**(E)** A statement that if the parent(s) or Indian custodian(s) are unable to afford counsel, counsel may be appointed by the court to represent them;

**(F)** A statement of the right of the biological parent(s) or Indian custodian(s) and the Indian child's tribe to have, on request, twenty days to prepare for the proceedings;

**(G)** The location, mailing address and telephone number of the court;

**(H)** A statement of the right of the parent(s) or Indian custodian(s) or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court;

**(I)** The potential legal consequences of an adjudication on future custodial rights of the parent(s) or Indian custodian(s);

**(J)** A statement that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not

reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Act.

(b) Agency staff shall file with the court a copy of each notice sent pursuant to this section together with any return receipts or other proofs of service.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Placement of Indian Children**

**413-070-0220 (1) General.** Agency staff shall make a diligent attempt to find a suitable placement within priorities described below before considering a non-preference placement. A diligent search for an appropriate placement includes, at a minimum, contact with the child's tribal social services department, a search of Oregon state and county listings of available Indian homes, and contact with other Indian tribes and Indian organizations with available placement resources.

**(2) Tribal Placement Priorities.** In determining the appropriate placement for an Indian child, the service worker shall contact the child's tribe to see if the tribe has established by resolution an order of placement preference different from those described below and/or has any placement resources.

### **(3) Foster or Preadoptive Placements:**

(a) In any foster care or preadoptive placement of an Indian child, the child shall be placed in the least restrictive setting which most approximates a family and in which the child's special needs, if any, can be met. The child shall also be placed in reasonable proximity to his or her home, except as provided in (7)(b) below;

(b) In considering foster placement for a child, agency staff shall follow the placement priorities below unless the Indian child's tribe changes the order of preference by resolution; or, in absence of such tribal resolution, the court modifies the order of preference by a showing of good cause:

(A) A member of the Indian child's extended family;

(B) A foster home licensed, approved, or specified by the Indian child's tribe;

(C) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;

(D) 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.

**(4) Adoptive Placements.** Where no different order of preference has been established by the child's tribe for adoptive placement, the agency shall, in the absence of the court's determination that good cause to the contrary exists, give preference to placing the child with:

- (a) A member of the child's extended family;
- (b) Other members of the Indian child's tribe; or
- (c) Other Indian families.

**(5) Change of Placement.** If an Indian child in a foster or preadoptive placement is to be moved from one placement setting to another; or, if the foster family moves (requiring a change in placement) the placement preferences outlined above must be followed, unless the child is returned to the parent or Indian custodian from whose custody the child was originally removed. The service worker shall notify the parent and/or Indian custodian and the child's tribe in writing prior to a change in placement or before the foster family moves.

**(6) Disrupted Adoptive Placements.** If a final decree of adoption is vacated or set aside or the adoptive parent(s) voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may petition for a return of custody. In voluntary relinquishments, the service worker shall notify the parent and/or Indian custodian by registered mail at their last known address of the disruption in the adoption and their right to petition for a return of custody. The notification to the parent of the right to petition shall include a statement that the petition will be granted unless it is established by a court of law that return of custody is not in the best interest of the child. In the event that custody is not returned to the parent or prior to such return custody, any subsequent placements shall follow the placement priorities outlined in sections (3) or (4) above, as appropriate. In instances where parental rights have been terminated and the adoption has been disrupted, the agency may elect to notify the parent and/or Indian custodian of their right to petition the court for a return of custody.

**(7) Records of Placement:**

(a) The agency shall maintain a written record of each placement of each Indian child and of efforts to comply with the preferences listed above. This record shall be maintained on forms separate from the court report and shall contain, at a minimum, the petition or complaint, all substantive orders entered during the proceeding, and the complete record of the placement determination;

(b) Where the placement does not meet the preference priorities set out above, the efforts to find suitable placement within those priorities shall be recorded and documented in detail. Documentation shall also be provided showing that the placement chosen is in the least restrictive setting possible, meets the child's special needs, and as much as possible, in cases of foster care placement, is close to the child's own home;

(c) At any time, upon the request of the Indian child's tribe or the Department of the Interior, the agency shall make available records of every foster care, preadoptive and adoptive placement of each Indian child maintained by the agency.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## ADULT ADOPTEES

**413-070-0230 (1)** An adopted Indian person who is age eighteen or older may apply to the court that entered the final adoption decree for information on his or her biological parents' tribal affiliation and any other information necessary to protect any rights flowing from the tribal relationship.

**(2)** An adopted Indian person may also request from the Secretary of the Department of Interior any information necessary for enrollment in his or her tribe or for information determining any rights or benefits associated with tribal membership. Where the Secretary has an affidavit requesting anonymity from the biological parent(s) of the Indian person, the Secretary shall certify whether the person is entitled to enrollment under criteria established by the tribe.

**Statutory Authority: ORS 418.005**  
**Stats. Implemented: 25USC ¶1901**

## VOLUNTARY PROCEEDINGS

**413-070-0240 (1) SOSCF Can Accept Voluntary Placements.** The agency can accept voluntary custody of any Indian child based upon consent of the Indian parent or Indian custodian, but shall not accept such consent unless:

**(a)** The child is more than ten days old;

**(b)** The voluntary consent is given in writing and recorded before a judge in the appropriate jurisdiction;

**(c)** The consent is accompanied by a judge's certificate which meets the requirements listed in paragraph (2); and

**(d)** The agency files a petition with the juvenile court pursuant to ORS 419B.100.

**(2) Court Hearing on Consent.** The service worker shall request a hearing in circuit court to obtain a voluntary consent. The service worker shall assure before the proceeding occurs that the court hearing will be recorded and that the parent/Indian custodian's written consent is accompanied by a certificate signed by the judge ensuring that the terms and consequences of the consent were:

**(a)** Fully explained in detail and fully understood by the parent or Indian custodian;

**(b)** Fully explained in English, or interpreted into a language understood by the parent/Indian custodian.

**(3) Content of Consent Form.** The consent form signed by a parent/Indian custodian who voluntarily agrees to placement shall, at a minimum, contain:

**(a)** The name and birthdate of the Indian child;

- (b) The name of the child's tribe;
- (c) The child's enrollment number or other indication of the child's membership in the tribe;
- (d) The name and address of the consenting parent/Indian custodian;
- (e) The name and address of the prospective parents, if known, for substitute care placements;
- (f) The name and address of the person or agency through whom placement was arranged, if any, for adoptive placement.

**(4) Request for Anonymity.** If a parent who has voluntarily given custody of his or her child to the agency requests anonymity, the service worker shall discuss the situation with the parent and describe the advantages of working cooperatively with the tribe. If the parent still evidences a desire for anonymity, the service worker shall contact the ICWA Specialist who will:

- (a) Contact the tribe to determine if a tribal system exists for keeping child custody matters confidential;
- (b) Meet with the parent and service worker to document the parent's reasons for requesting anonymity and to explain the Act's requirement for contacting the tribe in order to learn if there are tribal placement preferences and resources;
- (c) Should a parent still request anonymity, the ICWA Specialist or service worker shall tell the parent that the agency may not be able to guarantee that such request will be followed, but that it will be taken into consideration. The service worker must then document the parent's request for anonymity and advise the court that such request must be provided when the child's adoption records are mailed to the Secretary of the Interior.

**(5) Voluntary Foster Care:**

**(a) Placement Preferences to Follow.** Indian children who have voluntarily come into substitute care shall be placed according to the preference priorities outlined in OAR 413-070-0220.

**(b) Withdrawal of Consent.** The parent/Indian custodian may withdraw consent either orally or in writing at any time. If consent is withdrawn no reason need be stated, no evidence produced, and no hearing need be conducted. The service worker shall:

**(A)** Except as provided in paragraph (c) of this rule, immediately return the child to the parent/Indian custodian; and

**(B)** Notify the court that consent has been withdrawn and the child has been returned to parental custody.

**(c) Initiation of Protective Service Custody.** If the service worker believes that returning custody of the child to the parent/Indian custodian would place the child in imminent danger or harm, the following should occur:

**(A)** Service worker shall immediately initiate further proceedings before the juvenile court and secure an order from the court authorizing the agency to retain custody of the child;

**(B)** Where court proceedings for protective custody are initiated and the child is not returned to a parent upon withdrawal of consent, the service worker shall notify the child's tribe of this decision;

**(C)** All rules regarding involuntary proceedings shall be followed.

**(d) Changes in Placement Must Follow ICWA.** Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive or adoptive placement, such placement shall be in accordance with the ICWA unless the child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

#### **(6) Voluntary Adoptive Placement:**

**(a) Voluntary Termination of Parental Rights or Relinquishment.** If the parent of an Indian child wishes to consent to the termination of his or her parental rights, and free the child for adoption, the service worker:

**(A)** Shall arrange to have relinquishment documents signed which meet the requirements of sections (1), (2), and (3) of this rule;

**(B)** Shall ensure that the relinquishment is fully understood by the parent and that it is not taken when the parent is under duress since the relinquishment and the adoption could be set aside if the court finds the relinquishment was obtained through fraud or duress.

**(b) Placement Preferences to Follow.** Placement preferences outlined in OAR 413-070-0220 shall be followed in the voluntary adoptive placement of an Indian child;

**(c) Withdrawal of Consent.** A voluntary consent to termination of parental rights or to the adoption of an Indian child may be withdrawn for any reason at any time prior to the entry of the final decree of termination or adoption, as the case may be. Again, no reason nor evidence is needed. The placing agency, when notified, must return the child to the parent/Indian custodian as soon as practicable. Where no placing agency is involved, the court is responsible for notifying the family with whom the child has been placed that consent was withdrawn and the child must be returned to the parent or custodian;

**(d) Protective Service Custody.** If the parent voluntarily withdraws his or her consent to termination of parental rights, and the agency believes the child should not be returned to parental custody, the service worker can initiate a protective service custody proceeding with the court in order for the agency to retain custody of the child;

**(e) Disruption of Foster Care Placement.** When a foster care placement is changed prior to a termination or relinquishment, the agency shall notify the parent/Indian custodian and the tribe;

**(f) Adoption Vacated or Set Aside.** Whenever a final decree of adoption has been vacated or set aside, or the adoptive parent has voluntarily consented to the termination (relinquishment) of his or her parental rights, agency staff shall send a registered letter to the parent/Indian custodian stating the parent may petition the court for return of the child. The tribe shall also be notified of such changes or disruptions in adoptive placements.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **INVALIDATION OF STATE COURT ACTION**

**413-070-0250** Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated provisions of the Act.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Full Faith and Credit**

**413-070-0260** The United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to Indian tribes.

**Statutory Authority: ORS 418.005**

**Stats. Implemented: 25USC ¶1901**

## **Contact(s):**

- **Name:** CAF Reception; **Phone:** 503-945-5600

## **Policy History**

- No other history