

EXHIBIT 1

- providing for legal representation of children (attorneys or guardian *ad litem*s) in judicial proceedings

Recipients of CAPTA funds, including DFPS, are required to submit a state assurance plan every five years specifying their use, or intended use, of funds. Recipients must also submit notification to the federal government when there are substantive changes in state law and when there are significant changes to how CAPTA funds are being used.

For more information, see:

[Child Abuse Prevention and Treatment Act](#)

The Children's Bureau analysis [CAPTA2003](#)

1225 Indian Child Welfare Act

CPS February 2013

The Indian Child Welfare Act (ICWA) is a federal law aimed at keeping Native American children who are involved in child welfare cases with Native American families. The stated intent of the legislation is to protect the best interests of Native American children and to promote stability amongst Native American families.

ICWA sets federal requirements that apply to state child custody proceedings involving Native American children who are members of, or eligible for membership in, a federally recognized tribe. ICWA establishes standards for removing Native American children from their families and for placing them in foster and adoptive homes. It also allows for a child's tribe to intervene in the legal proceedings.

A child must meet the criteria of an "Indian child" as defined by federal law in order for ICWA to apply. However, CPS policy requires workers in every abuse or neglect case to determine whether a child or the child's family has Native American ancestry or heritage. If Native American ancestry is claimed, CPS workers are required to follow specific procedure to ensure compliance with ICWA.

See:

[Indian Child Welfare Act](#)

[Federally Recognized Tribes](#)

For information on CPS policy related to ICWA, see:

[Form 1706](#) Checklist for Compliance with the Indian Child Welfare Act

For information about the ICWA and DFPS's responsibilities under it, see:

[Appendix 1226-A](#): Child-Placing Requirements of the Indian Child Welfare Act and Related Guidelines and Regulations

[Appendix 1226-B](#): Checklist for Compliance with the Indian Child Welfare Act

1240 General Eligibility Criteria for Child Protective Services

CPS 96-8

Law

DFPS provides protective services to children as required by the Texas Family Code, Chapters 261 and 262, and the Human Resources Code. DFPS provides services to the families of children receiving protective services under Titles IV-A, IV-B, IV-E, and XX of the Social Security Act, the Intended Use Report, and Chapter 47 of the Human Resources Code.

Texas Family Code Chapters [261](#) , [262](#)

Texas Human Resources Code Ch. 47

Management Policy

To receive child protective services, the child or the child's family must be eligible at the time service is rendered.

The state plans contain the services offered by DFPS. Clients must meet the eligibility criteria for the specific service as detailed in the state plans.

Law

DFPS must not discriminate on the basis of race, color, national origin, sex, religion, or handicap in providing child protective services.

1241 Child Protective Services Priorities

CPS 96-8

Management Policy

DFPS is committed to providing at least minimally adequate protective services to all children who need them. Because of limited resources, however, DFPS must establish priorities for provision of services.

DFPS priorities for child protective services are based on the purposes and objectives of the program. (See Item [1110](#), Purpose and Objectives.) By establishing priorities, DFPS has provided statewide criteria for the types of situations and responsibilities DFPS staff respond to before others. The priorities also indicate which children DFPS is not required to serve and which responsibilities DFPS is not required to perform statewide.

Priorities are subject to change.

If a child leaves the court's geographic jurisdiction, the caseworker must notify the court.

Notification is not required if there is no motivating reason, such as a judge expressing an interest in a particular case.

DFPS Rules, 40 TAC [§700.1107](#)

5332.4 Notifying the Court When Subsequent Removal

CPS December 2013

If DFPS finds it necessary to remove a child who has been returned to the parents and place the child in foster or substitute care, the caseworker must notify the court.

DFPS Rules, 40 TAC [§700.1107](#)

5332.5 Notifying the Court About a Designated Medical Consenter

CPS December 2013

If DFPS is authorized by the court to consent to the medical care of a child in DFPS conservatorship, the caseworker must provide the court with the name of the person designated by DFPS to consent to the child's medical care.

See [11118](#) Notifying the Court of the Designated Medical Consenter.

Texas Family Code [§266.004\(c\)](#)

5340 Indian Child Welfare Act (ICWA)

CPS December 2013

If a DFPS lawsuit involves a Native American child, the Indian Child Welfare Act (ICWA) applies and the legal requirements change dramatically.

The legal requirements related to ICWA are discussed primarily in [5840](#) The Indian Child Welfare Act (ICWA); however, while ICWA requirements do not apply in every case, it is critically important that the caseworker *inquire* about Native American history in *every* case.

The only way to determine whether a child may be a Native American child is to ask available parents, relatives, and children who are old enough to be interviewed whether there is any family history connected to a Native American tribe. The caseworker documents the responses by individual family members, whether a Native American history is reported or denied.

If there is any indication that a child may have a family member or ancestor affiliated with a tribe, the caseworker follows ICWA policies at [5840](#) The Indian Child Welfare Act (ICWA).

5350 Seeking Child Support for Children in Substitute Care

CPS December 2013

Even when DFPS has been appointed as temporary or permanent managing conservator of a child, the parents still have support obligations to their child. DFPS, therefore, has the legal authority and obligation to seek child support and medical support from the parents.

5351 Requesting Child Support From the Parents of Children in DFPS Conservatorship

5351.1 Requirements for Requesting a Court to Order Parents to Provide Support

CPS December 2013

In CPS cases involving a suit affecting but not terminating parental rights, DFPS *must* ask the court to order the parents to provide child support and health insurance.

If the court terminates parental rights, DFPS *may* request that the parents be ordered to provide support.

Texas Family Code, [§154.001](#)

Although it may appear that the parent is financially unable to provide support, the court is the entity that evaluates the parent's ability to pay. Even a small amount of support allows the parent to share the responsibility of providing for the child's care and ensures some level of parental involvement. The court may or may not order support as requested, but it is duty of DFPS to make the request.

The caseworker must inform the parents that DFPS will request that the parents pay child support and health insurance.

DFPS Rules, 40 TAC [§700.1108](#)

5351.2 DFPS's Right to Review Child Support Payments

CPS December 2013

DFPS is entitled to receive all child support paid for a child, as of the date that the child is placed in substitute care.

For more information about working with consular staff, see the [When a Child or Youth in CPS Conservatorship Travels Resource Guide](#) .

5840 The Indian Child Welfare Act (ICWA)

5841 Purpose of ICWA

CPS December 2013

The Indian Child Welfare Act (ICWA) is a federal law that applies to any DFPS case involving an Indian child, as the term is defined by ICWA. See [25 U.S.C. §1901](#) et seq.

Although the law refers to and applies only to an Indian child, as defined by the ICWA, *this policy uses the term Native American where the context allows, because it is accurate and is generally preferred for its recognition of Native American origins.*

The purpose of the ICWA is to preserve Native American tribal cultures (including Native Alaska tribal cultures), by giving legal rights to the children, parents, and tribes protected by this law.

Failure to comply with the ICWA can result in a final order being reversed on appeal.

To avoid having a final order reversed and a child's chance for a permanent home affected, the caseworker:

- routinely asks families whether they are Native American;
- documents the families' responses; and
- consults with the attorney representing DFPS and the regional attorney, if the caseworker believes that a case may involve a Native American child.

5842 Identifying a Native American Child

CPS December 2013

The law defines a Native American child as an unmarried person under age 18 who is either:

- a member of a Native American tribe; or
- eligible for membership in a Native American tribe and the biological child of a tribal member. See [25 U.S.C. §1903\(4\)](#) .

To find out whether a child has Native American family history, the caseworker routinely asks:

- any child old enough to be interviewed;
- any parent of the child who is available to be interviewed; and

- any relatives who are available to be interviewed.

Because key facts about a child's family history may not be available when a case is first investigated, the caseworker routinely asks, throughout the case, about whether a child has Native American family history, especially when new family members are identified.

Whether family members deny or report tribal family history, the caseworker documents the information on:

- the removal affidavit; and
- any reports filed with the court.

For example:

Information about the Child's Native American Status: Mother denies tribal family history; father reports that his great-grandfather may be Sioux. Paternal grandmother says that her husband's family was from the Cherokee tribe in Oklahoma.

If the caseworker obtains information indicating that there is a possible tribal heritage, the caseworker:

- completes [Form 1705](#) Indian Child and Family Questionnaire;
- confers with the regional attorney and attorney representing DFPS as soon as possible; and
- refers to the following CPS policies:

[1225](#) Indian Child Welfare Act

[Appendix 1226-A](#): Child-Placing Requirements of the Indian Child Welfare Act and Related Guidelines and Regulations

[Appendix 1226-B](#): Checklist for Compliance With the Indian Child Welfare Act

As much information must be provided on [Form 1705](#) as possible to determine whether a child is a member of a tribe or is eligible for membership in the tribe.

5843 Decision Regarding Native American Status

CPS December 2013

There are more than 500 federally recognized Native American tribes in the U.S., and children from any one of these tribes may be living in Texas. Three federally recognized tribes have reservations in Texas: the Kickapoo, near Eagle Pass, the Alabama-Coushatta Tribe, near Livingston, and the Ysleta del Sur, also known as Tigua, near El Paso.

Each tribe has its own membership requirements and only the tribe can decide whether a child is a Native American child, as defined by the Indian Child Welfare Act (ICWA).

A child may be a Native American child, even if:

- the child's Native American relative is a distant one;
- the child's parent or grandparent was never enrolled as a tribal member;
- one or both parents are opposed to the tribe being involved;
- the child and family do not observe tribal traditions and practices; or
- the child is not enrolled in the tribe

If there is any indication that a child's family may have a tribal connection, the caseworker gives the relevant information to the tribe and ask that membership or eligibility be confirmed or denied.

5844 Legal Requirements If the ICWA Applies

CPS December 2013

If a Native American child, as defined by the Indian Child Welfare Act (ICWA), is taken into DFPS custody, almost every aspect of the social work and legal case is affected, including as follows:

- The legal burden of proof for removal is higher, as is the legal burden of proof for obtaining any final order terminating parental rights or restricting a parent's custody rights.
- DFPS must serve the child's parents, tribe, Native American caretakers, and the Bureau of Indian Affairs with a specific notice regarding ICWA rights.
- ICWA requires that the caseworker must make active efforts to reunify the child and family.
- The child must be placed according to ICWA statutory preferences.
- Expert testimony on tribal child and family practices may be necessary.
- A valid relinquishment of parental rights requires a parent to appear in court and a specific statutory procedure.

All of these requirements apply to both a Native American parent and a parent who is not Native American.

For a quick reference, see:

- [Form 1700](#) Indian Child Welfare Act Resource Guide
- [Form 1705](#) Indian Child and Family Questionnaire
- [Form 1706](#) Indian Child Welfare Act Checklist

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Appendix 1226-A: Child-Placing Requirements of the Indian Child Welfare Act and Related Guidelines and Regulations

CPS 92-7

I. Introduction

The Indian Child Welfare Act (ICWA) seeks to protect the best interests of eligible Indian children and to promote the stability and security of eligible Indian tribes and families. The ICWA establishes federal standards for the removal of eligible Indian children from their families and for placement of the children in foster or adoptive homes that reflect the unique values of Indian culture. The Act also provides for assistance to eligible Indian tribes to operate child and family service programs.

Three documents govern implementation of the ICWA:

1. The Indian Child Welfare Act (ICWA) of 1978 (PL 95-608)

The ICWA has the force of law without reference to interpretations. However, the Department of the Interior's Bureau of Indian Affairs has interpreted portions of the ICWA in the two documents described below.

2. Guidelines for State Courts: Indian Child-Custody Proceedings (See the *Federal Register*, Volume 44, No. 228/Monday, November 29, 1979)

The Bureau of Indian Affairs issued these guidelines to help courts interpret the portions of the ICWA that courts must implement. Under the ICWA, state courts and tribal courts are responsible for conducting most aspects of Indian child-custody proceedings. Each court must

establish rules and procedures for carrying out its responsibilities under the ICWA.

The Guidelines for State Courts do not have the force of law. They are intended to help state and tribal courts guarantee rights protected under the ICWA. Courts have the authority to disregard the guidelines when they consider them unnecessary to implementation of the ICWA.

3. Federal Regulations (25 CFR, Part 23)

These regulations govern the Bureau of Indian Affairs' responsibilities under the ICWA.

The ICWA and the guidelines and regulations specified above apply to DFPS, other state agencies, and private child-placing agencies whenever they place eligible Indian children in protective placements covered under the ICWA.

II. Definitions

The following definitions are derived from Section 4 of the ICWA, the Guidelines for State Courts, and the federal regulations specified above. The definitions have been rephrased to match state laws and other requirements governing DFPS services.

A. Indian — Any member of an Indian tribe.

Note: The ICWA and related guidelines and regulations do not include criteria for determining membership in specific Indian tribes. Each tribe is responsible for establishing membership criteria and determining who meets them. Information about tribal membership is available from the tribes themselves and from the Bureau of Indian Affairs. (For information about contacting the Bureau of Indian Affairs, see item K below.)

B. Indian tribe — Any Indian tribe, band, nation, or other organized group or community of Indians that is eligible for services provided to Indians by the Secretary of the Interior.

Note: The ICWA applies to the following tribes in Texas:

1. the Traditional Kickapoo Indians of Texas, who live on land near Eagle Pass in Region 09 (The tribe is part of the Kickapoo Tribe of Oklahoma.);
2. the Alabama-Coushatta Indian tribe and reservation near Livingston in Region 10; and
3. the Tigua Indian tribe and reservation near El Paso in Region 12.

The ICWA also applies to children who are members of federally recognized tribes when the children are in Texas, even though the tribe and reservation are not in Texas. The ICWA does not apply to children who are not members of federally recognized tribes.

C. Indian child — Any person who fits the definition of a child under Chapter 11 of the Texas Family Code (TFC) and who

1. is a member of an Indian tribe; or
2. is both
 - a. eligible for membership in an Indian tribe, and
 - b. the biological child of a member of an Indian tribe.

Note: Part B.1. of the Guidelines for State Courts addresses the determination of eligibility as an Indian child.

D. Indian child's tribe — Either

1. the tribe in which the child is
 - a. a member, or
 - b. eligible for membership; or
2. the tribe with which the child has the most significant contacts, if the child is a member of more than one tribe or is eligible for membership in more than one tribe.

Note: Part B.2. of the Guidelines for State Courts addresses the determination of an Indian child's tribe.

E. Indian parent — Any Indian who fits the definition of a parent under TFC, Chapter 11, including a parent who has adopted a child under tribal law or custom.

F. Extended family member — Either

1. a member of an Indian child's extended family as defined by tribal law or custom; or
2. in the absence of a tribal definition, an adult who is an Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent.

G. Indian custodian — Any Indian

1. who has legal custody of an Indian child under tribal law or custom or under state law; or
2. to whom an Indian child's parent has temporarily transferred the child's physical care, custody, or control.

H. Child-custody proceeding — Any of the following:

1. A suit affecting the parent-child relationship under TFC, Title II, or a judicial proceeding for an Indian status-offender under TFC, Title III, when the suit or proceeding involves a foster care placement, the termination of parental rights, a pre-adoptive placement, or an adoptive placement.

This definition includes proceedings that involve any action in which

- an Indian child is removed from his parent or Indian custodian for any length of time, and
 - the parent or custodian does not have the right to return of the child upon demand.
2. An affidavit of relinquishment of parental rights executed under TFC, §15.03, with respect to an Indian child.
 3. The voluntary placement of an Indian child by the child's parents.

Note: The term "child-custody proceeding" does **not** apply to

- a divorce proceeding, parental separation, or similar action in which the child is placed in the managing conservatorship of one of the parents; or
- a delinquency proceeding under TFC, Title III, caused by an action which would be a crime if committed by an adult.

Note: Part B.3. of the Guidelines for State Courts provides criteria for determining whether a child-custody proceeding is covered by the ICWA.

I. Tribal court — A court that

1. has jurisdiction over child-custody proceedings; and
2. is
 - a court of Indian offenses,
 - a court established and operated under the code or custom of an Indian tribe, or
 - any other administrative body of a tribe that has authority over child-custody proceedings.

J. State court — Either

1. a district court that has jurisdiction over suits affecting the parent-child relationship, as defined in TFC, §11.01; or
2. a juvenile court that has jurisdiction over children in need of supervision (CHINS), as defined in TFC, §51.03.

K. Bureau of Indian Affairs — The Bureau of Indian Affairs (BIA) is part of the Department of the Interior. There are 12 BIA offices in the United States. The office to contact for court proceedings involving Indians in Texas is located in Anadarko, Oklahoma.

Every BIA office offers the following services:

1. assistance in locating a child's tribe and his biological parents or Indian custodian to prevent involuntary removal when
 - the child is involved in involuntary state-court action, or
 - the child's adoption is terminated (see 25 CFR 23.11(f) and 23.93);

2. arrangements for paying court-appointed attorney fees for indigent parents or Indian custodians when applicable requirements are met in involuntary state-court action (see 25 CFR 23.13);
3. assistance to the court, the child-placing agency, or any other party in identifying qualified expert witnesses for involuntary state-court action (see 25 CFR 23.91); and
4. assistance to the court, the child-placing agency, or any other party in identifying interpreters for an Indian child-custody proceeding (see 25 CFR 23.92).

The BIA's Division of Social Services in Washington, D.C., maintains a central file of all Indian adoptions.

L. Qualified expert witness — An expert who

- can give competent testimony, and
- is qualified to specifically address the question whether continued custody by the parents or Indian custodian is likely to result in serious physical or emotional damage to the child. (See Part D.4. of the Guidelines for State Courts.)

III. Services to the Indian Child and Family to Prevent Involuntary Removal

Under ICWA, §102(d), before seeking involuntary removal of a child, the child-placing agency must try to provide remedial services and rehabilitation programs designed to prevent the breakup of the child's family.

Under Part D.2 of the Guidelines for State Courts, the child-placing agency must demonstrate to the court that

- A. it has tried to provide remedial services and rehabilitation programs to prevent removal as specified above; and
- B. its efforts to do so
 - took into account the prevailing social and cultural conditions and way of life of the Indian child's tribe; and
 - involved and used the available resources of the extended family, the tribe, Indian social-service agencies, and Indian care givers.

IV. Removal of the Indian Child

Under ICWA, §101(a), a child-placing agency may only seek state-court jurisdiction when the Indian child is not the ward of a tribal court.

A. Involuntary Removal of an Indian Child by a Court

If the suit is not transferred to an Indian court, ICWA, §102(e) and (f), prohibits the court from ordering involuntary foster-care

placement or termination of parental rights of an Indian child unless the proceedings include both

1. the testimony of a qualified expert witness; and
2. a determination that the parents' or Indian custodian's continued custody of the child is likely to result in serious emotional or physical damage to the child.

B. Emergency Removal

Under ICWA, §112, Indian children may be protected by an emergency removal under TFC, Chapter 17.

Under Part B.7. of the Guidelines for State Courts, the petition for the emergency hearing under TFC, §§17.02 or 17.03, must be accompanied by an affidavit containing

1. the name, age, and last known address of the Indian child;
2. the names and addresses of the child's parents and Indian custodian, if any (If these persons are unknown, a detailed explanation must be given of the efforts made to locate them.);
3. the facts necessary to determine the residence and domicile of the Indian child (If the residence and domicile is on an Indian reservation, the name of the reservation must be stated.);
4. the tribal affiliation of the child and the child's parents or Indian custodian;
5. a specific and detailed account of the circumstances that led to emergency removal of the child;
6. if the child is believed to live on a reservation over which the tribe exercises exclusive jurisdiction in matters of child-custody, a statement of the efforts made to transfer the matter to the tribe's jurisdiction; and
7. a statement of the actions taken to provide services to the parents or to the Indian custodian to permit the child to be safely returned to the parents' or the custodian's custody.

Under ICWA, §112, the child-placing agency must ensure that the emergency placement ends as soon as it is no longer necessary to prevent imminent physical harm or danger to the child. However, this requirement does not apply if a court orders or the parents consent to continued placement.

C. Voluntary Placements (Temporary and Permanent)

Provisions for voluntary placements under the ICWA apply both to temporary and permanent voluntary placements made by child-placing agencies. Under ICWA, §103(a), the parents' or Indian custodian's consent to foster care placement or to termination of parental rights is not valid unless the following conditions are satisfied.

1. The child's parents or Indian custodian cannot consent to the placement or to the termination of parental rights until at least 10 days after the child's birth. No child-placing agency, therefore, may place an Indian child in foster care based on the parent's or custodian's consent until 10 days after the child's birth.
2. The parents' or Indian custodian's consent must be recorded before a district judge of a court of competent jurisdiction. The judge must certify in writing that
 - a. the terms and consequences of the consent were explained fully and in detail to the parent or Indian custodian; and
 - b. the parent or Indian custodian either
 - fully understood the explanation in English, or
 - fully understood it after it was interpreted or translated into a language the parent or custodian knows.

Affidavit of relinquishment. Under Part E.2 of the Guidelines for State courts, in addition to containing all of the information required in TFC, §15.03, an affidavit of relinquishment of parental rights must contain

1. the name of the Indian child's tribe; and
2. the identifying number or other indication of the child's membership in the tribe, if any.

Withdrawal of consent. Under ICWA, §103(b), a child's parent or Indian custodian has the right to withdraw consent to the child's foster-care placement at any time, except as noted below. If a parent or Indian custodian withdraws consent, the child-placing agency must return the child to the parent or Indian custodian immediately.

If a child-placing agency has managing conservatorship of a child or has validly evoked the provisions of TFC, Chapter 17, as a basis for the child's continued placement in foster care, the child's parent or Indian custodian cannot withdraw consent to the child's foster care placement.

Note: This citation (TFC Ch. 17) is out of date since the 1995 reorganization of the Texas Family Code. We can tell where some of these clauses went, but we couldn't find this one. Please request the correct citation from Legal staff. --H&RS

Withdrawal of an affidavit of relinquishment. Under ICWA, §103(c), an Indian parent may withdraw an affidavit of relinquishment of parental rights that designates a child-placing agency as managing conservator of the parent's child. The parent may withdraw the affidavit of relinquishment for any reason and at any time before the court's decree of termination. This provision may take precedence over Section 15.03 (d), Texas Family Code, which states that an affidavit of relinquishment designating DFPS as the child's managing conservator is irrevocable.

If an Indian parent withdraws an affidavit of relinquishment as specified above, the child-placing agency must return the child to the parent unless the child-placing agency obtains court-ordered managing conservatorship or validly evokes the provisions of TFC, Chapter 17, as a basis for the child's continued placement in foster care.

V. Choosing Placements for Indian Children

A. Preferred Placement Settings

Foster care placements. Under ICWA, §105(b), the child-placing agency must apply the following criteria when placing Indian children in foster care.

1. The placement must meet all the special needs of the child that the child-placing agency has identified.
2. The placement setting must be
 - a. reasonably close to the child's home, and
 - b. the least restrictive and most family-like setting available.
3. The following foster-care placement settings are preferred in the order listed unless there is good cause to the contrary (For definition of the term "good cause to the contrary," see item C below.):
 - a. a member of the child's extended family;
 - b. a foster home licensed, approved, or specified by the Indian child's tribe;
 - c. an Indian foster home licensed by DFPS or certified by a non-Indian, licensed, child-placing agency;
 - d. a child-caring institution approved by an Indian tribe or operated by an Indian organization which has a program to meet the Indian child's need.

Adoptive placements. Under ICWA, §106(b), the following adoptive placement settings are preferred for Indian children in the order listed unless there is good cause to the contrary:

1. a member of the child's extended family,
2. another member of the Indian child's tribe,
3. another Indian family.

Additional considerations. Under ICWA, §105(d), the child-placing agency determines what foster-care or adoptive placement is most appropriate for a particular Indian child based on the prevailing social and cultural standards of the Indian community in which the child's parents or extended family reside or with which they maintain social and cultural ties.

Under ICWA, §106(b), subsequent foster care and adoptive placements are made according to provisions of the ICWA unless the child is returned to the person from whom he was removed.

B. Good Cause to Modify Preferences

Under ICWA, §105(c), the following conditions constitute good causes to change the order or types of preference specified in item A above:

1. The Indian child's tribe establishes a different order of preference by resolution. The tribe's order of preference must be followed subject to one condition: In a foster care placement, the tribe's preferred placement setting must be the least restrictive setting available that meets the child's particular needs.
2. The Indian child or his parent has a different, but appropriate preference. The child-placing agency must take the child's and the parent's preferences into consideration.

Note: When a parent requests anonymity in a voluntary placement, the child-placing agency must apply the preferences specified above in a way that meets the parent's need for anonymity.

C. Good Cause to the Contrary

Under Part F.3(a) of the Guidelines for State Courts, good cause to the contrary is based on

1. the request of the biological parents or the older child (The guidelines do not specify the meaning of "older."),
2. the extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness, or
3. the unavailability of a suitable placement setting after the child-placing agency has searched for one that meets the preference criteria.

Under Part F.3(b) of the Guidelines for State Courts, the burden of establishing good cause to the contrary rests on the party that requests an exception to the order or types of preferences specified above.

D. Documentation of Consideration Given to Placement Choice

Under ICWA, §105(e), the child-placing agency must document each foster care or adoptive placement of an Indian child, and the efforts made to comply with the order and types of preference specified above. The child-placing agency must provide a record of these efforts to the Secretary of the Interior or to the Indian child's tribe on request.

VI. Agreements between Child-Placing Agencies and Indian Tribes

Under ICWA, §109, a child-placing agency may enter into agreements with an Indian tribe regarding the care and custody of Indian children and regarding the agency's and the tribe's respective jurisdictions in child-custody proceedings. Agreements about jurisdiction may include provisions for

- A. the orderly transfer of jurisdiction on a case-by-case basis; and
- B. concurrent jurisdiction of both the child-placing agency and the tribe.

Either party may revoke such an agreement upon 180 days written notice to the other party. The revocation cannot affect any action or proceeding over which a court has assumed jurisdiction, unless the agreement provides otherwise.

VII. Observing the Rights of Adult Indian Adoptees

A. State Court

Under ICWA, §107, if a court with jurisdiction receives a request from an Indian adoptee who is 18 or older, the court must inform the adoptee about:

1. the adoptee's tribal affiliation, if any;
2. the identity of the adoptee's biological parents; and
3. any other information necessary to protect the rights pertaining to the adoptee's tribal relationship.

If the court does not reveal the identity of the adoptee's biological parents, the adoptee may obtain help from the Bureau of Indian Affairs to secure the necessary information for enrollment of the adoptee in a tribe.

When presented with a valid court order, [DFPS's] Special Services Division provides information necessary for the adoptee's enrollment in a tribe, subject to the requirements regarding the charge and receipt of reasonable fees for determining and sending information specified in TFC, §11.17 (c).

B. Bureau of Indian Affairs (BIA)

Under ICWA, §301(b), and 25 CFR 23.81(b), the BIA must give the foster or adoptive parent or the tribe of an Indian adoptee who is 18 or older and eligible under the ICWA all information needed to enroll the adoptee in a tribe or to determine the adoptee's rights and benefits associated with tribal membership. If the adoptee's biological parent has filed an affidavit of confidentiality with the court and the affidavit has been forwarded to the Bureau of Indian Affairs, the BIA will not reveal the parent's name.

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Appendix 1226-B: Checklist for Compliance with the Indian Child Welfare Act

CPS 92-7

To ensure compliance with the Indian Child Welfare Act (ICWA) in any court action regarding an Indian Child, staff may refer to the following checklist.

Note: To determine whether a court action falls under the ICWA, see [Appendix 1226A](#), Child-Placing Requirements of the Indian Child Welfare Act and Related Guidelines and Regulations.

1. Does the petition for custody include the following elements?
 - the child's name, age, and address;
 - the parents' names and addresses;
 - a record of the diligent search for each missing parent, if any;
 - information needed to determine the child's residence (including the name and location of the reservation, if applicable);
 - the child's and the parents' tribal affiliation(s);
 - a record of the efforts made to transfer the proceeding to a tribal court;
 - the facts leading to the child's removal from his home; and
 - a specification of the reasonable efforts made to provide remedial and rehabilitative services to the parent(s) in order to prevent removal.
2. Has the court served notice of the suit on the parents and the Indian tribe? The notice must include
 - the child's name;

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- the child's date of birth;
 - the child's place of birth;
 - the names of the child's parents, the dates and places of their births, and the mother's maiden name;
 - a copy of the petition;
 - the name of the petitioner and his attorney;
 - a notice of the right to intervene;
 - a notice of the right to appointed counsel;
 - a notice of the right to request 20 additional days to answer or prepare for the suit;
 - a notice of the right to transfer the suit to tribal court;
 - the number or name, the mailing address, and the phone number of the court;
 - a notice of the potential consequences to the parents' rights; and
 - a notice of the confidential nature of the proceeding.
3. Have staff verified the child's status with the tribe? If the tribe is unknown, have staff sent notice of the suit by registered mail with return receipt requested to the following address?
- Anadarko Area Director,
Bureau of Indian Affairs,
P.O. Box 368,
Anadarko, Oklahoma 73005
4. Have all notices of the suit and all responses (if any) from the parents, the tribe, or the Bureau of Indian Affairs been filed with the court?
5. Have the parents hired an attorney? If not, has one been appointed for them?
6. Have staff made a diligent effort to find a suitable placement according to the orders of preference specified in [Appendix 1226A](#)?
7. If the orders of preference specified in [Appendix 1226A](#) have not been followed, has good cause to the contrary been shown as specified in the same appendix?
8. Have staff kept a written record of the placement decision in order to document their efforts to observe the orders of preference specified in [Appendix I/1226A](#)?
9. Have staff ensured that the Indian child is enrolled in his tribe before referring him for adoption?

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