

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 2:</b> Administration of Child Welfare	<b>Effective Date:</b> October 1, 2010
	<b>Section 12:</b> Indian Child Welfare Act (ICWA)	<b>Version:</b> 2

**POLICY [REVISED]**

The Indiana Department of Child Services (DCS) will ensure that any child who is a member of a federally recognized Indian tribe is afforded all rights under the Indian Child Welfare Act (ICWA) in order to promote the stability and security of Indian tribes and their families.

DCS will make diligent efforts beginning at Intake, to determine if a child is a member of an Indian tribe or eligible for membership in an Indian tribe. These efforts will continue throughout DCS involvement with the child(ren) and family. DCS will comply with all rules, regulations and laws governing ICWA and make a diligent effort to identify those children and families subject to the Act.

DCS will notify the Indian child's parents or Indian custodian and the Tribe whenever there is an action pending regarding placement or termination of parental rights involving a child who is or is believed to be a member, or eligible for membership in an Indian tribe. DCS will also send a copy of the notice to the appropriate Area Director of the Bureau of Indian Affairs and to the United States (U.S.) Secretary of Interior. If DCS is unable to identify or locate the parent, Indian custodian, or the Indian tribe, DCS will notify the appropriate Area Director of the Bureau of Indian Affairs and the United States (U.S.) Secretary of Interior.

All notices will be sent by certified mail, return receipt requested, and DCS will not make a foster care placement or hold a termination of parental rights proceeding until at least **ten (10) days** after receipt of notice by the parent or Indian custodian and the tribe or the United States (U.S.) Secretary of Interior. The parent, Indian custodian, or the tribe can, upon request, will be granted up to **twenty (20) additional days** to prepare for the proceeding. If there is imminent risk of physical harm, DCS may detain an Indian child in order to prevent imminent physical damage or harm to the child but must provide the notifications addressed above.

Preference for placement of an Indian child must be given in the following order to:

1. A member of the child's extended family;
2. A foster homes licensed, approved, or specified by the Indian child's tribe;
3. An Indian foster home licensed, 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.

Applicability of the ICWA depends upon whether the proceedings in question (Child in Need of Services, Detention, Termination of Parental Rights, etc.) involve an “Indian child” within the definition utilized in 25 U.S.C. §1903(4). Whether or not a child is an Indian child for purposes of ICWA is determined by federal law and is not an arbitrary label assigned at the discretion of the parent.

#### Code References

- 25 U.S.C. §1903(4): Indian Child Welfare Definitions
- 25 U.S.C. §1911: Indian tribe jurisdiction over Indian child proceedings
- 25 U.S.C. §1913: Parental rights; voluntary termination
- 25 U.S.C. §1915: Placement of Indian children
- 25 U.S.C. §1916: Return of custody
- 25 U.S.C. §1922: Emergency removal or placement of child; termination; appropriate action
- 25 C.F.R. §23.1: Definitions
- 25 C.F.R. §2311: Notice

## PROCEDURE

**[REVISED]** The Family Case Manager (FCM) will:

1. Engage the child (if age appropriate) and family, during the initial contact, to assist in determining if the child and/or family are of Indian heritage or if the child is eligible for membership in an Indian tribe; and
2. If the parent or Indian custodian states that they are a member of an Indian tribe or that the child eligible for membership, engage the family to obtain information regarding the tribe and if the child is involved in any current legal actions.
3. If the parent or child states that they are of Indian heritage, contact the Hispanic Initiative Program Manager to proceed with the steps below.

The Supervisor will:

1. Ensure that the FCM is asking each child and/or family which DCS is involved if they are a member of an Indian tribe or eligible for membership; and
2. Assist the FCM to ensure adherence to ICWA.

**[NEW]** If it is determined that the parent, guardian or Indian custodian is a member of an Indian tribe or that the child is eligible, the FCM will contact the Hispanic Initiative Program Manager.

The Hispanic Initiative Program Manager will:

1. Obtain the telephone number for the tribe or look for the tribe in the Federal Register, Volume 75, No. 96 - Indian Child Welfare Act: Designated Tribal Agents for Service of Notice (May 19, 2010): If you cannot locate this document, ask the DCS Local Office Attorney to locate it on SharePoint.
2. Immediately notify by telephone, the Indian tribe that there is a pending proceeding in Indiana involving the placement of an Indian child and notify them that the Indian child has been or is being detained.
3. Complete the ICWA Notification Form and mail it certified with return receipt requested to the child's parents, guardian (or Indian custodian) and the tribe with copies (also certified mail, return receipt) to the Minneapolis Area Director of the Bureau of Indian Affairs and the United States (U.S.) Secretary of Interior. Any hearings regarding

placement (including pre-adoptive placement) may not be held until ten (10) days after the latest receipt by the parent, tribe, Minneapolis Area Director, Eastern Region Area Director, and Secretary of Interior.

4. Notify the Minneapolis Area Director and the U.S. Secretary of Interior if the identity or location of the parent or Indian custodian and the tribe cannot be determined.

## **PRACTICE GUIDANCE** **[NEW]**

The FCM should engage every child (if age appropriate) and/or family in a discussion to determine if the child and/or family are of Indian heritage or the child is eligible for membership in an Indian tribe.

Indiana is in the Eastern Region. If any questions arise, contact the Regional Social Worker:

Department of Interior  
Bureau of Indian Affairs  
Eastern Regional Office  
545 Marriott Dr., Ste 700  
Nashville, TN 37214  
Gloria York  
Regional Social Worker  
Phone No: (615) 564-6740;  
Fax: (615) 564-6547

Although Indiana is in the Eastern Region, the Code of Federal Regulations require that DCS send the ICWA notice to the Minneapolis Area Director. DCS should also send a copy of the notice to the United States (U.S.) Secretary of Interior.

Department of Interior Minneapolis Area Director Bureau of Indian Affairs One Federal Drive, Room 550 Ft. Snelling, MN 55111	Secretary of Interior Office of Indian Services 1849 C St., N.W., MS-4513-MIB Washington, DC 20240
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The U.S. Secretary of Interior has fifteen (15) days after receipt to provide the required notice to the parent or Indian custodian and the tribe.

## **FORMS**

[ICWA Notification Form](#)- Available in ICWIS

## **RELATED INFORMATION**

### **[REVISED]** Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act of 1978 was enacted by Congress to assure that agencies meet the cultural needs of Indian children requiring out-of-home placement and to protect the

continue existence and integrity of Indian tribes. It gives the Indian child's parents or Indian custodian and their tribe the right to intervene or request transfer to their tribal court of any proceedings involving out-of-home placement of or termination of parental rights to an Indian child.

There is one(1) federally-recognized tribe in Indiana, the Pokagon Band of Potawatomi. If a case involving an Indian child comes to the attention of DCS, contact the address below to verify the child's eligibility for tribal membership:

Pokagon Band of the Potawatomi Indian  
Social Services Director  
58620 Sink Road  
Dowagiac, MI 49047  
(269) 782-6323  
Mark.Pompey@pokagon.com

### **[REVISED] Indian tribe membership and eligibility**

If the child is a member of a tribe or eligible for membership in a tribe, the family, the Indian custodian and the tribe have rights under the ICWA. These rights apply to any child protection case, adoption, guardianship, termination of parental rights action, runaway, or truancy matter involving the placement of an Indian child (foster care placements, termination of parental rights, pre-adoptive placements, adoptive placements, both voluntary and involuntary placements, transfers of placement and placements due to failed adoptions)

1. "Foster care placement" means any action removing an Indian child from the parent or Indian custodian for temporary placement in a foster home or institution or in the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
2. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship;
3. "Preadoptive placement" means 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
4. "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

### **Indian Child**

Any unmarried person who is under age eighteen and is determined by the tribe, Bureau of Indian Affairs, or Department of the Interior, and is either:

1. A member or eligible for membership of an Indian tribe as determined by the Tribe and/or Nation, the Bureau of Indian Affairs, or the Department of the Interior; or
2. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

### **Indian Tribe**

The Indian tribe in which an Indian child is a member or eligible for membership or in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

**[NEW] ICWA protection for parents and Indian custodians**

ICWA also provides several protections for parents or Indian custodians of an Indian child. These protections include the right to revoke voluntary consents to placements and to adoptions at any time prior to a decree of termination or adoption. If a consent is withdrawn, the Indian child shall be immediately returned to the parent or Indian custodian. After a Decree of Adoption is entered based on a voluntary consent, the parent may petition court to vacate the adoption decree based on fraud or duress. Upon a finding that consent was obtained through fraud or duress, the court shall vacate the adoption decree and return the child to the parent. However, no adoption in effect for at least two years may be challenged on this basis.

If a decree of adoption is ever vacated or set aside or the adoptive parents voluntarily consent to termination of their parental rights, the Indian child shall be returned to the biological parent or prior Indian custodian absent a showing that return is not in the best interests of the child.

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