

INDIAN CHILD WELFARE
POLICIES AND PROCEDURES

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I. INTRODUCTION

A. PURPOSE

The Indian Child Welfare Act of 1978 [Public Law 95-608] was enacted by Congress after a finding that state and private child welfare agencies were removing Indian children from their homes at a much higher rate than other children. The Indian Child Welfare Act (ICWA) was passed to reduce this large percentage of unjustified removals of Indian children. Additionally, ICWA provides guidelines for placing Indian children in foster or adoptive homes that reflect the values of Indian culture. Guidelines are set by ICWA to protect the integrity of Indian tribes and assure that state child welfare practices acknowledge the vital role that the child's cultural heritage and tribal community must play in child welfare decision-making for Indian children.

This policy provides guidance on child welfare case management and practice procedures specific to working with Indian and Alaskan Native children and families. Information in this policy is used in conjunction with other existing DHR policy/procedures when working with Indian children and their families. A glossary of terms used in the policy is located at the end of the policy

B. LEGAL BASE

Congress recognized a special government-to-government relationship between the United States and Indian Tribes and their members and also recognized the Federal responsibility to Indian people. The political status of Indian tribes is the basis for the passing of the Indian Child Welfare Act of 1978, [Public Law 95-608, 92 Stat. 3069 codified at 25 U. S. C § 1901-23]. The United States Congress passed the Indian Child Welfare Act "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 and the placement of such children in foster or adoptive homes which reflect the unique values of Indian culture..." [§ 1902].

II. ICWA APPLICABILITY

In order to make a decision about whether ICWA requirements apply to an Indian child, it is necessary to determine whether the child meets the ICWA definition of a child; and whether the child is a member or eligible for membership in a federally recognized tribe. Child welfare workers will use the comprehensive family assessment (CFA) process [Refer to Individualized Service Plan Policy] of gathering information about the Indian child and family in order to make these determinations. Comprehensive assessments are needed

to gain an understanding of needs of the Indian child and family and how to meet those needs.

A. DETERMINATION OF WHETHER CHILD MEETS ICWA'S DEFINITION OF INDIAN CHILD

ICWA applies to Native American/Alaskan children. For ICWA applicability, a child must meet the ICWA definition of child which is defined as:

- unmarried;
- under the age of eighteen;
- a member of a federally recognized Indian tribe; or
- eligible for membership in a federally recognized Indian tribe and the biological child of a member of an Indian tribe.

B. DETERMINATION OF WHETHER CHILD IS MEMBER OF OR ELIGIBLE FOR MEMBERSHIP IN A FEDERALLY RECOGNIZED TRIBE

ICWA applies to all Indian /Alaskan children and their families who are members or are eligible for membership in an Indian tribe/Alaskan village that is federally recognized and under the jurisdiction of State courts. Currently, there are over 560 Indian tribes recognized by the United States. Refer to the Appendix for a listing of Indian tribes and Alaskan Native Regional Corporations and villages published in the Federal Register and federally recognized by virtue of their government-to-government relationship with the United States. ICWA provisions do not apply to Indian children and their families who are not members or eligible for membership in at least one Indian tribe listed on the Federal Register.

In order to determine a child's Indian Tribe, the worker should gather, through the CFA process, basic identifying information that includes, but is not limited to the following:

- Child's name, address, birth date, and birthplace;
- Parents'/Indian custodians' name, address, birth date, birthplace;
- Mother's maiden name and legal relationship to the child(ren);
- Tribal name/affiliation; and
- If available, enrollment number or other indication of tribal membership.

The terms "Tribe" and "Tribal member" as used in ICWA are applied to "Indian tribe" as defined in Section V. Glossary. Each Indian Tribe determines its tribal membership, and each Tribe may do so in a different

manner. Children may be tribal members or eligible to become tribal members if their biological parents are tribal members or eligible to become tribal members. Both biological parents' names are necessary in order to determine if they are members of a federally recognized Indian tribe. If neither parent is a member or eligible to become a member of a federally recognized Indian tribe, ICWA requirements do not apply in working with the child and family. NOTE: A Certificate of Degree of Indian Blood (CDIB) card does not determine tribal enrollment.

If there is a verbal acknowledgement by the parents or a relative or other reason for DHR to know that a child is of Indian or Native Alaskan heritage, the child welfare worker must make efforts to determine the Indian tribe in which the child is a member or eligible for membership. The child's parents or custodian should know whether the child is a member of an Indian tribe and if so, the name of the Indian tribe, and whether the child and family have ever lived on the tribal reservation. If a tribal determination is still unclear, the worker may contact:

- Relatives and extended family members;
- The Poarch Band of Creek Indians agrees to assist county Departments to determine the Indian tribe of an Indian child when the child's tribe is unknown. The Department is responsible for contacting the child's Indian tribe after the tribe is determined.
- Regional Office of Bureau of Indian Affairs (BIA). Alabama is in the BIA's Eastern Region, with an office located in Nashville, TN, (615) 467-1700. This office works with the federally recognized tribes.

1. Child's Tribe is Known

Within five (5) working days of having information of possible tribal affiliation for the child, the worker should notify the tribe's Social Services Program and share the identifying information and confirm membership in the tribe. (Refer to the Forms Section, "Tribal Membership Inquiry Form," to notify a child's tribe of involvement during a child abuse/neglect investigation or prevention assessment. Follow the instructions in Section IV (F), for "Notification Required for Involuntary Foster Care/Termination of Parental Rights."). If the child and family have lived on the tribal reservation at any point in their lives, the worker should inquire if the tribe has relevant information about family history, including abuse/neglect reports, which will assist in assessment of the family. Multiple

tribes may need to be contacted if the child is a member or eligible to be a member of more than one tribe.

2. Child's Tribe is Unknown

If there are pending legal proceedings, and there is reason to believe the child may be a member or eligible for membership in a tribe, and parents'/Indian custodians' and tribe's identity or location cannot be determined, notification shall be provided to the Secretary of Interior, Room 6352, 1849C Street N. W., Washington, D. C. 20240. Notification must be by registered mail with return receipt requested. The Secretary has fifteen (15) days after receipt of the notification to provide the required notice to the parents or Indian custodians and the tribe. Except for emergency removals to prevent harm to an Indian child (§1922), no foster care placement or termination of parental rights proceedings shall be held until at least ten (10) days after the parents or Indian custodians and the tribe have received notice from the Secretary of Interior. The court may grant an additional twenty (20) days if requested by the parents, Indian custodians and the tribe for time to prepare for the proceedings [§ 1912(a)].

III. WORKING WITH INDIAN CHILDREN AND THEIR FAMILIES

A. SAFETY NEEDS OF INDIAN CHILDREN

ICWA itself does not address the investigation of child abuse and neglect reports on Indian children. Section 1922 of the Act recognizes that states may need to do "emergency removals" of Indian children who reside on or are domiciled on a reservation, but are temporarily off the reservation, "in order to prevent physical damage or harm" to an Indian child.

When DHR receives a child abuse or neglect report (CA/N) on a child with possible Indian/Alaskan Native heritage and the child is not residing on a

reservation, the assessment of the child's safety is conducted by county DHR child welfare staff according to *Child Protective Services Policy and Procedures, Safety Assessment*. DHR child welfare workers shall provide protection and meet the immediate safety needs of Indian/Alaskan native children when emergency situations arise in the following circumstances:

1. Indian children are residents of or are domiciled within an Indian reservation but are temporarily located off the reservation and safety threats have been identified. It is the responsibility of the Department to protect all children within the state and to accept CA/N reports on Indian children off a reservation when information received rises to the level of a CA/N report.
2. Regardless of whether the child is a ward of the tribal court, or the tribe has exclusive jurisdiction, DHR child welfare workers shall provide protection and meet Indian children's immediate safety needs. (Refer to Section D (1) below for a discussion of "exclusive jurisdiction").

B. ACTIVE EFFORTS TO KEEP INDIAN FAMILIES TOGETHER

Prior to initiating court proceedings to remove Indian children from their homes, ICWA requires that active efforts be provided to maintain the Indian family unit [§1912 (d)]. Active efforts to provide remedial services and rehabilitative programs to family members to prevent placement are made before out-of-home placement is considered. Child welfare workers' documentation (e. g. case narratives, petitions and court reports) must reflect that these efforts were made and that they were unsuccessful prior to the children's placement in out-of-home care.

When the court considers foster care placements, there must be clear and convincing evidence that continued custody by the parents/custodians is likely to result in serious physical or emotional harm to the children [§1912 (e)]. If placement is required, it is done according to the placement preferences outlined in ICWA. (Refer to Section III. "Out of Home Placement of Indian Children" for a discussion of placement preferences and deviation from these preferences).

C. WORKING WITH THE POARCH BAND OF CREEK INDIANS

The Poarch Band of Creek Indians (PBCI) is the only federally recognized Indian tribe in the State of Alabama. Tribal administration offices are located at 5811 Jack Springs Road, Atmore, Alabama 36502, and telephone (251) 368-9136. The Reservation's Social Services Program serves a five-county service area that includes the Alabama counties of Baldwin, Escambia, Mobile, and

Monroe and Florida's Escambia County. For purposes of this policy, the PBCI's Reservation land is located in Escambia County, Alabama.

Section 1919 of the Indian Child Welfare Act authorizes states and Indian tribes to enter into agreements with each other respecting care and custody of Indian children; jurisdiction over child custody proceedings; orderly transfer of jurisdiction on a case-by-case basis and concurrent jurisdiction between the state and the Indian tribe. Thus, Congress recognized that states would need working agreements with tribes that have reservations located within the state.

The current agreement between the State of Alabama and the PBCI addresses protective services for children and how reports of abuse and neglect of children are received and investigated. While most of the protective service involvement with PBCI will be between those counties in the service area of PBCI, particularly Escambia where the Reservation is located, the agreement applies to all counties. DHR will report suspected child abuse or neglect of a child residing on the Reservation to the Poarch Band Creek Indians Family Services Department (PBCI) within twenty-four hours of receipt of the report. The PBCI will report suspected child abuse or neglect of a child, Indian or non-Indian, residing off the reservation to DHR the next working day. Both DHR and PBCI will follow verbal reports with written reports.

In accordance with the agreement and 25 U. S. C §1903 the PBCI has exclusive jurisdiction over child custody proceedings as defined in §1903 of the Act involving an Indian child who resides or is domiciled within the Reservation of the tribe located in Escambia County. For ICWA purposes, PBCI's Reservation is located in Escambia County Alabama. The tribal caseworker is responsible for conducting all investigations of child abuse/neglect involving Indian children that occur on the Reservation. When a report of child abuse/neglect is received on a non-Indian child that occurs on the reservation, the PBCI contacts the county and a joint investigation is completed. With concurrence from PBCI, the county department enters the Reservation to complete the investigation on non-Indian children. A report on all non-Indian related investigations conducted by PBCI is sent to the county department and includes whether the report is "indicated." Each report and investigation of child abuse and neglect that involves the department and the PBCI is evaluated by the county department and PBCI to determine how best to investigate the report and resolve any jurisdictional concerns.

DHR is responsible for investigating child abuse/neglect reports on Indian children who live off the PBCI Reservation. Additionally, DHR investigates that part of a child abuse/neglect report that occurred off the Reservation but involves an Indian child who resides on the PBCI Reservation. For example, if a report of an incident involving a Poarch Creek child occurred off the Reservation and a similar incident occurred within the same time frame on the Reservation involving the same child, the county department investigates that

part of the report that occurred off the Reservation and the Tribe would be responsible for investigating the allegation as to what occurred on the reservation. It is possible that an investigation will need to be jointly completed by the county department and PBCI depending upon where the incident occurred. When an incident (same child) occurs off and on the Reservation and the Indian child lives on the reservation, the PBCI takes the “lead” role, and the county department investigates the incident off the Reservation. When the incident occurs off the Reservation, but the child resides on the Reservation, the county department takes the lead role in the investigation. The county department will enter into the Central Registry all reports of abuse/neglect on Indian children who live on the reservation but that the county has a role in investigating.

If a county Department becomes involved with children and/or families who may be members or for whom the possibility of membership may exist with the Poarch Band of Creek Indians, child welfare staff should contact the Poarch Band of Creek Indians’ Family Services Department (PBCI) to determine whether the child is a member or eligible to become a member of the tribe. Counties should use the form “Poarch Band of Creek Indians Tribal Membership Inquiry Form,” located in the Forms Section, to notify PBCI. This is a “notification of involvement” to the PBCI, not the statutorily required notification discussed in Section III, E below, and it too should be sent registered mail, return receipt requested. The “notification of involvement” can only be used during a child abuse/neglect investigation or prevention assessment without written consent of the parent/Indian custodian of the child. Child welfare staff should obtain relevant information on the child and family that PBCI may have; and provide an opportunity for the Tribe to be involved in the ISP process, inasmuch as ISP policy allows. Additionally, the Tribe can be a resource for the Indian family and assist in providing services to a child and family prior to considering any removal. If the children will enter care, the notification to PBCI must adhere to the ICWA notification requirements.

D. TRIBAL/STATE COURTS’ JURISDICTION IN ICWA CASES

After the child welfare worker has ascertained that an Indian child is a member of a federally recognized Indian tribe, and the tribe has been contacted, the jurisdiction of the state court must be established. When the assessment is that an Indian child living off the reservation needs to come into care, the state court has jurisdiction. A flow chart is located in the Appendix of this policy that depicts “Jurisdiction In ICWA Cases” and may be used to assist the child welfare worker in determining the state court’s and tribal court’s jurisdiction.

1. Jurisdiction in ICWA cases includes the following:

Exclusive Tribal Jurisdiction: Tribal courts have exclusive jurisdiction over child custody proceedings defined in ICWA that

involve Indian children who reside on the reservation or are “domiciled” within the reservation [§ 1911 (a)]. The tribal court will determine whether a child is “domiciled” on the reservation and this determination should be afforded “full faith and credit” by state courts [§ 1911 (d)]. If a child is domiciled on the reservation but lives off the reservation, the Tribal court can exercise jurisdiction over the matter. Under ICWA, the Indian child’s tribe has a right to intervene at any point in the proceeding for both foster care placement proceedings and termination of parental rights proceedings. A tribe’s right to intervene in those child custody proceedings defined in ICWA is absolute.

Tribal Court Ward: Tribal courts have exclusive jurisdiction in cases that involve an Indian child who is a ward of a tribal court. If an Indian child has previously resided on the reservation, the state court shall contact the tribal court to determine whether the child is a ward of the tribal court.

Emergency Removal – DHR Authority: When an Indian child who resides on an Indian reservation, is domiciled on a reservation or is a ward of the tribe, is temporarily off the reservation and is in imminent danger, the Department has authority to take custody and assure the safety of the Indian child, regardless of whether the Indian child is a ward of the tribal court. When this occurs, child welfare staff shall follow the *Child Protective Services Policies and Procedures, Safety Assessment* policies. If an Indian child requires emergency custody and/or placement, the order of placement preferences set by the ICWA shall be followed or good cause to deviate from order of placement preferences must be documented. When an emergency placement of an Indian child requires immediate placement and an Indian placement is not immediately available, safety is paramount. Emergency custody will be terminated when removal is no longer needed to prevent imminent danger or the tribe exercises jurisdiction over the case.

2. When a State Court May Retain Jurisdiction

State courts are responsible for transferring jurisdiction to tribal courts upon the petition of either parent, Indian custodian or Indian child’s tribe, absent “good cause” or absent the objection of either parent for Indian children not residing or domiciled on a reservation [§1911 (b)]. A trial court determines “good cause” not to transfer jurisdiction to a tribal court on a case-by-case basis. A court hearing may not be necessary as the case could be decided on briefs filed or by agreement of the parties.

ICWA does not define nor provide circumstances that constitute “good cause” but leaves this within the jurisdiction of the trial court. The Bureau

of Indian Affairs, Department of Interior has published non-binding federal guidelines interpreting “good cause to the contrary.” [Bureau of Indian Affairs, Department of Interior, Guidelines for State Courts, Child Custody Proceedings, 44 Federal Regulation 67,591 (1979)]. The guidelines include the following:

- The proceeding was at an advanced state when the petition to transfer was received because the petition was not filed promptly by the parents, Indian custodian or the tribe after having received timely notification of the proceedings;
- The Indian child is over the age of twelve (12) years old and has personal objections to the transfer;
- The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses and parties; or
- The parents of an Indian child over age of five years of age are not available, and the child has had little or no contact with the child’s tribe or members of the child’s tribe.

Bullet three above is used by courts to invoke a modified version of the doctrine of *forum non conveniens*. Basically, the trial court decides to retain jurisdiction based on practical factors that make the trial of a case easy, expeditious and inexpensive. By using this doctrine, the trial court considers factors such as relative ease of access to sources of proof, cost of obtaining attendance of witnesses and ability to secure attendance of witnesses through compulsory process.

The socio-economic conditions of the tribe and the adequacy of the tribal social services or judicial system are not to be considered in a determination of whether good cause exists. The burden of establishing “good cause” shall be on the party opposing the transfer.

When Indian children need out-of-home placement to ensure their safety, active efforts should be made to transfer jurisdiction to the appropriate tribal court, absent the trial court’s “good cause to the contrary” determination, or to safely return the children to the parents or Indian custodian. County child welfare supervisors should notify Family Services, Office of Permanency when plans are made to place any Indian or Native Alaskan children in out-of-home care. Child welfare staff shall follow *CPS Policies and Procedures* and other applicable policies and procedures if the information obtained during the assessment process shows that ICWA does not apply. If ICWA does apply, but the tribal court declines jurisdiction, ICWA requirements continue to apply provided the trial court has not ruled that ICWA does not

apply. If the trial court decides that “good cause” exist for not transferring jurisdiction to the tribal court, ICWA requirements continue to apply, provided the trial court has not ruled that ICWA does not apply.

E. QUALIFIED EXPERT WITNESS

ICWA recognizes that Indian children may need emergency removals (§1922) to prevent harm. When such removal has occurred, to sustain or continue custody of Indian children, testimony of a qualified expert is required. Before termination of parental rights of an Indian parent(s) is ordered, testimony of a qualified expert witness is required. [25 U. S. C. Section 1912(e) (f)]. “Qualified expert witness” may include:

- a member of the child’s tribe recognized by the tribe as knowledgeable in tribal customs and child rearing practices.
- a lay expert having substantial experience in delivery of child and family services to Indians and having extensive knowledge of prevailing social and cultural standards and child rearing practices within the tribe; or
- a professional person having substantial education and experience in his or her specialty. [Bureau of Indian Affairs Commission, Section D. 4(b)] Upon request the BIA will assist in locating a qualified expert witness.

When the “qualified expert” charges a fee for testifying, the attorney representing the County Department shall contact SDHR Legal to discuss the case and to obtain prior approval for payment to the expert witness.

IV. OUT-OF-HOME PLACEMENT OF INDIAN CHILDREN

A. ICWA PLACEMENT REQUIREMENTS

When a Native American or Alaskan Native child is removed from his/her own home, the law requires that the child be placed with extended family members, other tribal members, or other Indian families, if possible. If there are no family members available, the child must be placed in a foster home approved or specified by the Indian child’s tribe. The next possible placement is an Indian foster home licensed or approved by an authorized non-Indian licensing authority. Lastly, an Indian child may be placed in a children’s institution approved by the tribe or one that is tribally operated to meet an Indian child’s needs.

Consistent with other DHR placement requirements, the placement setting must be least restrictive and most family-like; meet any special needs the child may have; and be in close proximity to the child’s own home. Changes in out-of-home

placements of an Indian or Alaskan Native child must also follow these ICWA provisions.

When termination of parental rights has occurred, ICWA still applies and requires compliance with placement preferences in the absence of good cause to the contrary as determined by the court [§1915 (a)]. ICWA order of adoption preferences must be given to a member of the child's extended family, other members of the child's tribe, or other Indian families unless there is good cause to deviate from the order of preferences.

B. ICWA PLACEMENT CATEGORIES

There are two placement categories that may be selected: foster care/pre-adoptive placements and adoptive placements [§ 1915].

1. Foster Care/Pre-adoptive Placements includes
 - a. member of the child's extended family;
 - b. a foster home licensed, approved or specified by the child's tribe;
 - c. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - d. an institution for children approved by an Indian tribe or operated by an Indian organization which has a suitable program.
2. Adoptive Placements includes
 - a. a member of the child's extended family;
 - b. other members of the Indian child's tribe; or
 - c. other Indian families.

C. DEVIATION FROM PLACEMENT PREFERENCES

U. S. C. A. Title 25, Chapter 21, § 1915 (c), provides for tribal resolution for different order of preference, personal preference considered, and anonymity in application of preferences. If the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child.

The Bureau of Indian Affairs, Guidelines for State Courts Section F.3, provides that for purposes of foster care, pre-adoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:

1. the request of the biological parents or the child when the child is of sufficient age;

2. the extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness; or
3. the unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

The burden of establishing the existence of good cause not to follow the order of placement preferences for an Indian child shall be on the party urging that the preferences not be followed.

D. VOLUNTARY PLACEMENT OF INDIAN CHILDREN

1. Consent for Voluntary Placement

When an Indian parent/custodian voluntarily consents to a foster care placement or to termination of parental rights, the consent is not valid unless executed in writing and given at least ten (10) days after the birth of the child. The written consent must be recorded before a judge of a court of competent jurisdiction, accompanied by that judge's certificate that the terms and consequences of the consent were fully explained and fully understood by the parent or Indian custodian and interpreted into a language that the parent or Indian custodian understood [25 U. S. C. §1913 (a)].

The consent form signed by the Indian parent/custodian must contain the following:

- The name and date of birth of the Indian child;
- The name of the child's tribe;
- The child's enrollment number or other indication of the child's membership in the tribe;
- The name and address of the prospective parents or substitute care placement, if known;
- The name and address of the person/agency arranging adoptive placement.

2. Withdrawal of Voluntary Consent For Foster Care

ICWA provides that any parent or Indian custodian may withdraw a consent to foster care placement under State law at any time and upon such withdrawal, the child shall be returned to the parent or Indian custodian [U. S. C. Title 25, Chapter 21, §1913 (a) (b)].

3. Termination of Parental Rights or Adoptive Placement

ICWA provides for an Indian parent to withdraw consent to terminate parental rights any time prior to a final decree of termination or adoption. The Department's *Adoption Policies and Procedures, Section, Termination of Parental Rights, III. Relinquishments* establishes the preferred procedure of obtaining permanent custody of a child rather than use of relinquishments or consents in agency adoptive placements. Prior to accepting a relinquishment or consent to adoption and termination of parental rights, the county department must consult with the Office of Permanency. The fact that the parent is unwilling to care for the child may be used as evidence in the hearing on the county department's petition to terminate parental rights. (Refer to *Adoption Policies and Procedures, Termination of Parental Rights, Section III, Relinquishments*).

E. INVOLUNTARY FOSTER CARE AND TERMINATION OF PARENTAL RIGHTS

When an Indian child is being involuntarily placed into foster care or termination of parental rights (TPR) is being considered, federal law mandates that clear and convincing evidence, and in the case of TPR, beyond a reasonable doubt, be presented to the court that the Indian child is likely to experience serious emotional or physical harm if custody remains with the parent or Indian custodian. Expert witness testimony must demonstrate that the child's continued custody with the parents or Indian custodian is likely to result in serious physical or emotional harm to the child.

F. NOTIFICATIONS REQUIRED FOR INVOLUNTARY FOSTER CARE OR TERMINATION OF PARENTAL RIGHTS

In cases involving involuntary placement in foster care or termination of parental rights ICWA requires certain notifications. The Department must notify the child's parent(s) or Indian custodian and the child's tribe of the pending legal proceedings. Notification must be by registered mail with return receipt requested. No foster care placement, except for emergency removal, or termination of parental rights proceedings shall be held until at least ten (10) days after the parents or Indian custodians and the tribe have received notice. The court may grant an additional twenty (20) days if requested by the parents, Indian custodians and the tribe for time to prepare for the proceedings [§ 1912 (a)]. (Refer to Section II (B) (2) (b) above for a discussion of notification if the "Tribe is Unknown". Refer to the Forms Section for "Required Notification To Tribe and Tribal Reply to Notification" and "Required Notification to Parents or Indian Custodian").

G. ICWA AND MULTIETHNIC PLACEMENT ACT
INTERETHNIC ADOPTION PROVISIONS (MEPA-IEP)

The Multiethnic Placement Act and the Interethnic Adoption Provisions (MEPA-IEP) specifically provides that it has no effect on the Indian Child Welfare Act. MEPA-IEP does not alter ICWA's recognition of tribal rights, nor does it affect ICWA's preferences for placing Indian children with members of their extended families or other tribal members.

In order to comply with ICWA requirements, the exemption of ICWA from MEPA-IEP underscores the importance of early and comprehensive assessments of a child's history. Should the assessment indicate some Indian heritage, but the child is not an "Indian child" under ICWA, the child's placement is not subject to ICWA, but the child is entitled to the MEPA-IEP protections against discriminatory placement decisions. Because MEPA-IEP does apply to activities not covered by ICWA, Indian adults are protected by MEPA-IEP if they want to become foster or adoptive parents of non-Indian children.

H. INFORMATION REQUIRED AT TIME OF TRANSFER OF
PLACEMENT AND CARE RESPONSIBILITY OF AN INDIAN CHILD
TO A TRIBAL TITLE IV-E AGENCY OR A TRIBE WITH A IV-E
AGREEMENT

Certain information is required to be provided to a tribe when there is a transfer of placement and care responsibility of an Indian child from the Department to an Indian tribe approved as a title IV-E agency or a tribe with a IV-E agreement with the state title IV-E agency in which the tribe is located. Placement and care responsibility means that the title IV-E agency or a tribe with a IV-E agreement is legally accountable for the day-to-day care and protection of the child who has come into out of home care through either a court order or a voluntary placement agreement. Placement and care responsibility allows the title IV-E agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child.

Federal law [45 CFR 1356.67] provides procedures for the transfer of information of an Indian child should an Indian tribe wish to take placement and care responsibility for the child. The overriding purpose of such procedures is to assure that such transfer procedures retain an Indian child's IV-E eligibility, receipt of services, or payment under the Medicaid program. These procedures apply regardless of whether there is a federally recognized Indian tribe within a State's geographic boundaries. These procedures apply in all states that are administering a title IV-E program. **These procedures in no way change or modify the ICWA requirement for the notification to Indian Tribes of Indian children in the Department's custody and care.**

There is the potential for any county DHR to have an Indian child in out of home care and that child's Tribe expresses the wish to take placement and care responsibility of the child. The county department should inquire if the Tribe is an approved title IV-E agency or has a IV-E agreement [Public Law 110-351 § 301(e) (1)]. In such situations, the following minimum elements for such transfer must be followed.

1. Determine if the eligibility for IV-E has already been completed. If not, the child's IV-E eligibility must be determined by the Department before the transfer of placement and care responsibility of the child to a Tribal IV-E agency or an Indian Tribe with a title IV-E agreement. The IV-E eligibility is based upon the child's circumstances at the time the child entered care with the Department and therefore, is determined prior to transfer.
2. Provide essential documents and information necessary to continue a child's eligibility for IV-E and Medicaid including but not limited to the following:
 - (a) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in *Out of Home Policies and Procedures* Section III Permanency/Concurrent Planning Section D have been made. This also includes any permanency hearing orders required to establish on-going title IV-E eligibility.
 - (b) Other documentation the Department may have that relates to the child's title IV-E eligibility for foster care maintenance payments or adoption subsidy payments.
 - (c) Information and documentation available to the Department regarding the child's eligibility or potential eligibility for other Federal benefits. Examples include, but are not limited to, a child's eligibility for Supplemental Security Income (SSI) including a pending application for these benefits, or any existing child support case with the Child Support Enforcement Division or existing child support court orders.
 - (d) The Department is required to provide the child's Individualized Service Plan (ISP) to the Indian Tribe which includes the health and educational records that are required elements of the ISP. The ISP contains critical information for determining the child's existing safety, permanency and well-being status as well as future plans for the child. There is no requirement to release the entire case record.
 - (e) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

Copies of the approvals and licenses for providers can be retrieved in FACTS. The transfer of placement and care responsibility of a child to a Tribe does not necessitate that the child move to a different provider. The Tribe will need information on whether the foster family home or childcare institution the child is living in is licensed or approved for title IV-E eligibility purposes.

The format in which the required information is provided to the Tribe is to be discussed with the Tribe to determine how the Tribe can best receive the information. The information may be provided through hardcopy, or electronic transmissions. Tribes do not have access to FACTS, but information in FACTS may be retrieved and copied into a document that can be transmitted either by hardcopy or electronically.

In the process of transferring a case to a tribe, the county department needs to be relieved of legal custody of the Indian child. Procedures on the legal transfer of responsibility are addressed above in Section III D regarding the jurisdiction of state and tribal courts.

Medicaid for title IV-E eligible Indian children will continue as long as the child receives title IV-E foster care or title IV-E adoption assistance payments. If a title IV-E eligible child is moving from one State's geographic boundaries to another in the course of a transfer of placement and care responsibility to an Indian Tribe, the child is eligible for Medicaid in the State where the child actually resides.

V. ICWA AND INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN (ICPC)

In the course of working with Indian children and families, situations may arise that involve placing Indian children across state lines. The following information is used as a supplement to the existing ICPC policies and procedures when working with Indian children and families. County Departments should contact the Interstate Compact Office if questions arise.

A. APPLICABILITY

ICPC policies/procedures apply to ICWA cases. Any interstate placement request of an Indian child comes through the Interstate Compact Office. The amount of involvement that a county Department has with the interstate placement of an Indian child is determined on a case-by-case basis. There are factors that contribute to a county's involvement including whether the placement request originates on a reservation or is destined to a reservation, e.g. Other factors include whether the sending reservation has a tribal court with jurisdiction or the state court has jurisdiction; and whether the reservation is providing services or whether the state agency is providing services. The Interstate

Compact Office will guide county departments in working with Indian children being placed out of state or in Alabama from another state.

B. RESPONSIBILITY

Tribal authorities hold financial and service delivery responsibility when they assume jurisdiction of Indian children pursuant to the ICWA and make placements other than those proposed by the county DHR. For ICPC purposes, the tribe becomes “the sending agency” by assuming jurisdiction and making alternative placement arrangements. DHR can also be the “sending agency” for placement of an Indian child.

C. PLACEMENT SUPERVISION

When Indian children are under tribal jurisdiction and ICPC policies apply, supervision of interstate placements is determined by the extent of the Indian tribes’ involvement in the planning. If the tribe merely approved or consented to the sending agency’s placement plan, existing ICPC provisions for both the sending and the receiving state apply.

D. JURISDICTION

Sending agencies, including Indian tribes, have jurisdiction per ICPC Article V (a) when children are validly placed with families on Indian reservations.

E. REPORTS

Supervisory reports may be required of tribes if they are functioning as “receiving states” or as the agents of receiving states.

VI. CONFIDENTIALITY AND ACCESS TO CASE INFORMATION

Statutory provisions and DHR policies regarding confidentiality and the release of information from DHR case records apply to all cases involving Indian children and families. In addition, the following requirements regarding release of information apply only to cases involving Indian children.

A. REQUEST FROM PARTIES TO STATE COURT PROCEEDINGS

Individuals who are parties to any State court proceeding involving foster care placement or termination of parental rights have the right to examine all court-filed reports or other documents upon which the court decision may be based.

B. REQUESTS FROM INDIAN TRIBES

When ICWA applies, DHR shall provide to a federally recognized Indian tribe and/or the Secretary of Interior, upon written request of either, information concerning placement of Indian children that provides evidence of the Department's efforts to comply with the order of placement [§ 1915 (e)].

Certain case material cannot be released verbally or in writing. Review the case information and remove or do not reveal the following:

1. Any information not related to the Indian child;
2. Any information which unduly invades the privacy of someone else and is not needed to evaluate the need for placement, the order of placement preference or the appropriateness of services provided to the Indian child and family; and
3. Any information concerning voluntary placements, other than information which indicates efforts to comply with ICWA placement preferences, where a parent has requested anonymity provided under Title 25 U. S. C. Chapter 21, §1915 (c) unless the parent has specifically authorized disclosure to the tribe.

C. INQUIRIES FROM ADULT INDIAN ADOPTEES

An Indian individual who has reached the age of eighteen (18) and who was the subject of an adoptive placement, may file with the court that entered the final decree an application for information. The court that entered the final decree shall inform the individual of the tribal affiliation, of the individual's biological parents and provide other information necessary to protect any rights flowing from the individual's tribal relationship [§ 1917].

VII. POWERS AND DUTIES OF THE ALABAMA INDIAN AFFAIRS COMMISSION

Code of Alabama Section 41-9-708 to Section 41-9-716 created the Alabama Indian Affairs Commission and the powers and duties of the Commission. The Alabama Indian Affairs Commission (AIA) is located at 771 South McDonough Street, Suite 106 Montgomery, Alabama 36104. They can be reached at (334) 240-0998. AIA can assist with searching for a particular tribe and works with the eight non-federally recognized tribes and the one state/federally recognized tribe making a total of nine Indian tribes in Alabama. It is imperative for the rights of Alabama Indians that if someone contacts the Department for services, as an American Indian, that the Department verify legitimacy with the Alabama Indian Affairs Commission.

Refer to the Forms and Instructions for the list of the tribes in Alabama.

VIII. GLOSSARY

Throughout the Indian Child Welfare Act there are terms that have specific meanings. Used in other child welfare policies and programs they may not have the same meaning as in ICWA. Therefore, child welfare staff working with an Indian child and family needs to be familiar with the terms defined below.

Adoptive Placement – the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Child Custody Proceeding – there are four (4) types of child custody proceedings defined in ICWA. Such proceedings do not include a placement based upon an act, which if committed by an adult, would be deemed a crime, or upon an award of custody to one of the parents in a divorce proceeding.

- **Foster Care Placement** – any action removing an Indian child from its parent or Indian custodian for temporary placement in out-of-home care where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- **Termination of Parental Rights** – any action resulting in the termination of the parent-child relationship;
- **Pre-adoptive Placement** – the temporary placement of an Indian child in a out-of home care after the termination of parental rights, but prior to or in lieu of adoptive placement; and
- **Adoptive Placement** – the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Domicile – This is a term used to determine whether ICWA applies to an Indian child and if an Indian tribe has tribal jurisdiction of that Indian child. While the term is not statutorily defined, Congress intended that the term be uniform among all states. For adults’ “domicile” is established by physical presence in a place with intent to remain there. “Domicile” for Indian children is established by their parents’ “domicile” since minors are generally legally incapable of forming the requisite intent to establish domicile. Indian children can be domiciled within a tribe’s reservation without ever having been physically present on the reservation. Indian children whose paternity has not been established take the domicile of their mother. The child’s tribe will determine whether an Indian child is domiciled on the reservation.

Extended Family Member – (a) any person defined by the law or custom of the Indian child’s tribe or (b) in the absence of such law or custom, any person who has reached the age of eighteen (18) and 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.

ICWA Children – children to whom ICWA requirements apply.

Indian – any person who is a member of an Indian tribe.

Indian Child – any unmarried person who is under the age of eighteen (18) and is either (a) member of a federally recognized Indian tribe or (b) is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of an Indian tribe. Confirmation of a child’s tribal membership or eligibility for tribal membership is obtained from the tribe’s social services program.

Indian Child’s Tribe – (a) the Indian tribe in which an Indian child is a member or eligible for membership, or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

Indian Custodian – (a) any Indian person who has legal custody of an Indian child under tribal law or custom or under State law; or (b) any Indian person to whom temporary physical care, custody, and control has been transferred by the parent of such child.

Indian Organization – any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of the organization’s members are Indians.

Indian Tribe – any Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U. S. C § 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Parent – the biological parents of an Indian child or any Indian person who has lawfully adopted (includes adoptions under tribal law or custom) an Indian child. “Biological parents” does not include unwed fathers where paternity has not been acknowledged or established.

Qualified Expert Witness – any persons who, based on their level of education and experience with Indian people and culture, are recognized by courts of law to be experts on Indian culture.

Reservation – Indian country as defined in U. S. C. Title 18, Section 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.

Secretary – the United States Secretary of Interior

Tribal Court – a court with jurisdiction over child custody proceedings and which is either 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 which is vested with authority over child custody proceedings.