



DFS Director	Trenee Parker	<i>Trenee Parker</i>
Policy Author(s)	Keith Zirkle, Management Analyst	

POLICY 1013 – INDIAN CHILD WELFARE ACT (ICWA)

A. POLICY

Child welfare policies, interventions and services recognize, affirm and value unique cultural beliefs. Indian children, families and tribes are assigned legal and child welfare practice protections to preserve cultural heritage.

B. PROCEDURES

Definitions

1. **Indian** means any person who is a member of an Indian tribe, or who is an Alaska Native. Federally recognized tribes are listed each year in the Federal Register
 - <http://www.bia.gov/cs/groups/xraca/documents/text/idc1-033010.pdf>
2. An **Indian child** is defined as any unmarried person who is under age 18 and is:
 - a member of an Indian tribe; or
 - eligible for membership in an Indian tribe and is the biological child of a tribal member.
3. Tribal eligibility must be determined and/or verified by the tribe identified by the family. Each tribe sets its own criteria for membership.
4. For purposes of this policy, Native American and Indian will be used interchangeably as it is in the law.

Identification and Eligibility

5. The Division will protect the best interests of Indian children and promote the stability and security of Indian tribes and families in accordance with the Indian Child Welfare Act of 1978 (updated 2015).
6. The federal requirements apply to state child custody proceedings and placement involving an American Indian or Alaskan Native child who is a member of or eligible for membership in a federally recognized tribe.
7. While collecting demographic data on a case, caseworkers shall ask the parent(s) and child if they have Native American heritage. This should be done at intake, investigation, placement, and any time the permanency plan is changed.
8. If a family identifies as having Native American heritage and the child is subject of a custody proceeding as a result of abuse/neglect/dependency, the caseworker shall ask the family what tribe the family is a member of or is eligible for membership in. If the family is unwilling or unable to identify Native American heritage, the worker shall follow-up with relatives. Efforts to determine Native American heritage must be documented in the case file and asked or revisited at any case decision point and in every court proceeding.
9. The caseworker/supervisor must notify the assigned Deputy Attorney General when an eligible Indian child enters state custody or as soon as eligibility is known throughout the life of the case.

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10. The tribe must be a federally recognized tribe in order for the protections of ICWA to apply; however, caseworkers shall continue to search for and engage family members and make efforts to maintain cultural connections.
11. ICWA outlines requirements and procedures to be followed in State proceedings involving the child's custody as a result of abuse/neglect/dependency.
12. If the family identifies a specific tribe, the caseworker must contact the tribal contact within 24 hours (via phone or e-mail) to determine if the family is a member or if they would be eligible for membership. Contacts should be documented in case notes.
13. Within 7 days, the caseworker shall send the tribe a letter providing information gathered on how the child is of Native American descent (extended family connections, for example who are tribal members) and requesting verification that the child is an enrolled member or eligible to be enrolled. This must be sent by certified mail with return receipt requested. Use this site to identify the tribe and tribal contact www.bia.gov.
14. Cases will follow ICWA procedures until the verification of Indian status is received by the tribe.
15. When no specific tribe can be ascertained, but ICWA eligibility is possible, the Bureau of Indian Affairs shall be notified by certified letter with return receipt required. If there is no federally recognized tribe identified, the caseworker will continue to follow policy that applies to all children and families where abuse/neglect/dependency is identified.
16. If the family indicates that they are affiliated with the two Indian tribes in Delaware, the Nanticoke and Lenape, and they wish to have the tribe involved in planning or tribal families considered as a placement resource; the caseworker should contact the tribal leader for assistance in identifying families (look up each tribe online and contact the chief using the contacts provided).
17. The local tribe may also offer suggestions of services that are culturally appropriate and opportunities for the child to be connected to their heritage. These resources may also be accessible for any Indian child and family who is interested.

Investigation and Treatment Services

18. The caseworker should be aware that reasonable efforts to prevent removal of a child has a higher standard for Native American families. Called "Active Efforts" it is defined as affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. For example, the caseworker must actively engage the family in services if they are referred for services. This may include providing transportation if needed. Other examples may include any and all concrete services provided to the family such as financial assistance, food, housing, and so forth, if needed. Including tribal representation in all planning is also considered an active effort. All efforts must be documented in FOCUS (For Our Children's Ultimate Success – automated information system) in case notes and included on the family plan. The

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provision of Active Efforts also must be judicially determined should custody/placement occur.

19. The Team Decision Making Meeting (TDM) is another way to document efforts to prevent placement. The caseworker shall invite relevant tribal members to be part of the discussion.
20. If there is any indication that the child has Native American heritage or the child belongs to a federally recognized tribe, the caseworker shall provide the child and family information on ICWA and an ICWA contact person as well as Native American advocates in the community, and available services.
21. The court shall also be notified that a child who is subject of a custody proceeding may belong to a recognized tribe.

Foster Care and Pre-Adoptive Placement

22. If the result of the TDM is placement of the child, the caseworker must consider tribal placement. The preferred order of placement for Native American children includes:
 - A member of the Indian child’s extended family
 - A foster home licensed, approved, or specified by the Indian child’s tribe
 - An Indian foster home licensed or approved by an authorized non-Indian licensing authority
 - An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child’s needs
 - A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child’s tribe, in accordance with 25 U.S.C. 1915 (c). This requires the caseworker to ask the tribal contact if the tribe has an approved order of preference.
23. Preference options must be strictly followed. Placement of a Native American child into a non-Native American home is the last option after all other options are exhausted. When appropriate, the preference of the child and parent shall be considered. However, parental preference alone is not sufficient reason for not following the placement preference requirement.
24. The caseworker shall document in case notes that each option was explored and the outcome of each.
25. As with any child needing placement, the caseworker will also consider the least restrictive setting, proximity to parents and the ability of the placement resource to meet the child’s needs.
26. If the caseworker and supervisor believe that good cause exists for not placing the child in one of the placements in the order of preference, the caseworker/supervisor shall seek approval from the court.



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27. Any party may assert that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.
28. The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from the placement preferences.
29. A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:
 - The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.
 - The request of the child, if the child is able to understand and comprehend the decision that is being made
 - The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by a qualified expert; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the ICWA.
 - The unavailability of a placement and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

Court Proceedings

Caseworkers are to be aware:

30. State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. If a new child-custody action (such as a proceeding to terminate parental rights, obtain guardianship or adoption) is initiated for the same child, the court must make a new determination as to tribal membership and eligibility.
31. If the child belongs to a federally recognized tribe, the caseworker must notify the parents and the tribe regarding State proceedings involving the child and their right to intervene. Tribes have the right to intervene in State proceedings or request a transfer to tribal jurisdiction.

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32. When placement preferences are not followed, the court will determine if DFS made active efforts to find placements meeting the preference criteria. Caseworkers must provide evidence of active efforts to find placements meeting the placement criteria.
33. The court should consider only whether a placement in accordance with the preferences meets the physical, mental, and emotional needs of the child; and may not depart from the preferences based on the socio-economic status of any placement relative to another placement.
34. A qualified expert witness, not the child’s caseworker, must testify as to best interest of the child to not follow placement preferences.
35. Either parent, the Indian custodian, or the Indian child's tribe may request, orally on the record or in writing, that the State court transfer each distinct Indian child custody proceeding to the tribal court of the child's tribe.
36. Upon receipt of a transfer petition the State court must promptly notify the tribal court in writing of the transfer petition and request a response regarding whether the tribal court wishes to decline the transfer. The notice should specify how much time the tribal court has to make its decision; provided that the tribal court has at least 20 days from the receipt of notice of a transfer petition to decide whether to accept or decline the transfer.
37. The court shall determine good cause in cases where the state court denies the transfer.
38. The caseworker shall close the case once the case is transferred to tribal court.

Tribal Rights and Responsibilities

39. If a child is determined to be a member or eligible for enrollment in a federally recognized tribe, the tribe has a right to the following:
 - Be informed of all progress and proceedings regarding the child
 - Determine placement (tribal home)
 - Allow the placement of a child by the local department
 - Intervene in court proceedings including termination of parental rights and adoption proceedings

C. FOCUS

Caseworkers complete ICWA records in FOCUS
Caseworkers document ICWA related activities in progress notes

D. FORMS

N/A

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