

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 2: Administration of Child Welfare	Effective Date: July 1, 2013
	Section 12: Indian Child Welfare Act (ICWA)	Version: 4

POLICY [REVISED]

[REVISED] The Indiana Department of Child Services (DCS) shall take measures to 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).

DCS will make **active efforts**¹ 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 an active effort to identify those children and families subject to the Act.

DCS will notify the Indian child's parents, 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 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 **10 days** after receipt of notice by the parent, Indian custodian, and the tribe or the U.S. Secretary of Interior. The parent, Indian custodian and the tribe may, upon request, be granted up to **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 home licensed, approved, or specified by the Indian child's tribe;
3. An Indian foster home licensed, or approved by an authorized non-Indian licensing authority; or

¹ State of Michigan in the Native American Affairs Glossary (2013) defined active efforts as more intensive than "reasonable efforts" [diligent efforts] and require the worker to thoroughly assist the family in accessing and participating in necessary services that are culturally appropriate, and remedial and rehabilitative in nature. "<http://www.mfia.state.mi.us/olmweb/ex/NA/Public/NAG/GLOSSARY.pdf>

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.

[NEW] DCS will follow established procedures for the transfer of responsibility for the placement and care of a child to a Tribal Title IV-E agency or Indian Tribe with a Title IV-E agreement. See [Tool 2.A Procedure for Transfer of a Child to a Tribe or Tribal Agency](#).

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. §23.2: Definitions](#)
- [25 C.F.R. §23.11: Notice](#)

PROCEDURE [REVISED]

[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;
2. Engage the family to obtain information regarding the tribe, if the parent or Indian custodian indicates that they are a member of an Indian tribe or that the child is eligible for membership, and complete the [Indian Status Identification Form](#), if the child is involved in any current legal actions;
3. Give the [Indian Status Identification Form](#) to the FCM Supervisor for review and forward to the DCS Local Office Attorney (LOA) to proceed with the steps below; and
4. Document the verified tribal identity of the child and/or family in the Management Gateway for Indiana's Kids (MaGIK).
5. Continue to review the [Indian Status Identification Form](#) with the family throughout the life of the case.

[REVISED] Note: If it is determined that the parent, guardian or Indian custodian is a member of an Indian tribe or that the child is eligible for membership, the FCM will send the information to the DCS International and Cultural Affairs mailbox at InternationalandCulturalAffairs@dcs.in.gov

[REVISED] The FCM Supervisor will:

1. Ensure that the FCM is asking each child and/or family with which DCS is involved if they are a member of an Indian tribe or eligible for membership;
2. Ensure that the [Indian Status Identification Form](#) is completed fully prior to forwarding to the LOA; and
3. Assist the FCM to ensure adherence to ICWA.

[NEW] The DCS Local Office Attorney (LOA) will:

1. Review the [Indian Status Identification Form](#) upon receipt to ensure that it is complete;
2. Obtain the address for the tribe on the legal SharePoint or in the Federal Register, Volume 77, No. 148 - Indian Child Welfare Act: Designated Tribal Agents for Service of Notice (August 1, 2012) at <http://www.gpo.gov/fdsys/pkg/FR-2012-08-01/pdf/2012-18594.pdf>.
3. Notify the Indian tribe immediately that there is a pending proceeding in Indiana involving the placement of an Indian child and that the Indian child has been or is being detained. Complete and send the [ICWA Notification](#) by certified mail with return receipt requested to the child's parents, guardian, Indian custodian and the tribe; and
4. Notify the FCM of the child's tribal eligibility;
5. Send copies, via mail, to the Midwest Regional Director and the U.S. Secretary of the Interior.

U.S. Department of Interior
 Bureau of Indian Affairs
 Midwest Regional Director
 ATTN: ICWA
 Norman Pointe II Building
 5600 W. American Blvd., Suite 500
 Bloomington, MN 55437

U.S. Department of Interior
 U.S. Secretary of Interior
 Indian Services
 1849 C Street, N.W., MS 4513-MIB
 Washington DC, 20240

[REVISED] Note: If contact information cannot be found for the child's parents, guardian, Indian custodian and tribe, the [ICWA Notification](#) must be sent certified mail with return receipt requested to the Midwest Regional Director of the Bureau of Indian Affairs.

The U.S. Secretary of the Interior has **15 days** after receipt to provide the required notice to the parent or Indian custodian and the tribe.

Any hearings regarding placement, including prospective placement, may not be held until **10 days** after the latest receipt by the parent, custodian, tribe, Midwest Regional Director of the Bureau of Indian Affairs, and the U.S. Secretary of Interior.

PRACTICE GUIDANCE

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 if the child is eligible for membership in an Indian tribe.

If any questions arise, contact the Midwest Regional Office:

U.S. Department of Interior
Bureau of Indian Affairs
Midwest Regional Office
Norman Pointe II Building
5600 W. American Blvd., Suite 500
Bloomington, MN 55437
Telephone: (612) 713-4400
(612) 725-4500
Fax: (612) 713-4401

Regional Director
Phone: (612) 725-4502
Fax: (612) 713-4401

Regional Social Worker
Phone: (612) 725-4571
Fax: (612) 713-4439

FORMS [REVISED]

[ICWA Notification](#) – Legal document
[Indian Status Identification Form](#)
[Tool 2.A Procedure for Transfer of a Child to a Tribe or Tribal Agency](#)

RELATED INFORMATION

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 continued 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.

[REVISED] Pokagon Band of Potawatomi Indians

The Pokagon Band of Potawatomi Indians are a federally-recognized tribe. Six (6) northern counties in Indiana are home to some of the Pokagon members, although the Pokagon Band of Potawatomi Indians headquarters remains in Michigan. If a case involving an Indian child, identifying as a member of the Pokagon Band of Potawatomi Indians, comes to the attention of DCS, contact the Tribe at the address below to verify the child's eligibility for tribal membership:

Pokagon Band of the Potawatomi Indians
Social Services Director
58620 Sink Road
Dowagiac, MI 49047
Phone: (269) 462-4277
Fax: (269) 782-4295
Mark.Pompey@pokagonband-nsn.gov

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, prospective 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, 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. "Prospective adoptive 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.
5. "Indian Child" means any unmarried person who is under age 18 and is determined by the tribe, Bureau of Indian Affairs, or U.S. Department of the Interior to be either:
 - a. A member or eligible for membership of an Indian tribe; or
 - b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.
6. "Indian Tribe" means the tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

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, **with court approval**, be immediately returned to the parent or Indian custodian. After a final Decree of Adoption is entered based on a voluntary consent, the parent may petition the 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 (2) two years may be challenged on this basis.

If a final Decree of Adoption is ever vacated, 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 **unless the court determines returning the child** is not in the best interests of the child.