

ICWA: The Indian Child Welfare Act

SUMMIT COUNTY CHILDREN SERVICES

<p>ORC: N/A</p> <p>OAC: 5101:2-53-01 through 5101:2-53-09</p> <p>USC: 25 U.S.C. 1901, <i>et seq.</i></p> <p>CFR: 25 CFR Part 23</p>	<p>ORIGINAL: 1/18/2019</p> <p>REVISIONS: N/A</p> <p>RELATED FORM(S): ICWA Inquiry Form</p> <p>RELATED PROCEDURE/POLICY(IES): N/A</p>
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| <input type="checkbox"/> Administrative
<input type="checkbox"/> Fiscal
<input type="checkbox"/> Human Resources
<input type="checkbox"/> Information Technology | <input checked="" type="checkbox"/> Legal
<input type="checkbox"/> Safety & Security
<input checked="" type="checkbox"/> Social Services - All Departments
<input type="checkbox"/> Social Services - Foster & Adoption |
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All Staff Bargaining Unit Non-Bargaining Management

POLICY:

To detail the requirements of the Indian Child Welfare Act (ICWA) and ensure compliance with all rules and regulations.

PROCEDURE:

When Summit County Children Services (SCCS) has reason to know that a child is an Indian child, SCCS must follow all federal and state ICWA rules and guidelines until it is determined the child is not a member of and/or is not eligible for tribal membership. ICWA requirements apply when a child is determined to be an Indian child and is the subject of child custody or emergency proceedings. Failure to properly identify Indian children can nullify court proceedings that have not been conducted in accordance with ICWA.

SCCS has reason to know that a child is an Indian child if:

- Any individual or agency relevant to the case informs the agency that the child is an Indian child or has discovered information indicating the child is an Indian child;
- The child gives the agency reason to know he or she is an Indian child;
- The agency is informed the domicile/residence of the child, parent or Indian custodian is on a reservation or in an Alaskan native village;
- The agency is informed that the child is/has been a ward of a tribal court; and
- The agency is informed that either parent or child possesses an identification card indicating membership in an Indian tribe.

An Indian Child is defined as any unmarried person under 18 who is either:

- A member or citizen of an Indian tribe, or
- Eligible for membership or citizenship in an Indian tribe, and is the biological child of a member or citizen of an Indian tribe, or An Alaskan native, as defined by the Alaska Native Claims Settlement Act.

New Intakes/Referrals and ICWA Inquiry

For every screened-in referral, the caseworker must ask case participants if the participant knows or has reason to know that the child is an Indian child. Such inquiry should be made upon the initial face-to-face contact with the child or the child's parent, guardian or custodian. Workers should ask the following:

- Is there Native American heritage in the family?
- Is the child an Indian child?
- Is the child or parents a member or citizen of an Indian tribe? If yes, which tribe/tribes?
- Is or has the child ever been a ward of a tribal court?
- Is or has the child, parent or custodian ever been domiciled on a reservation or Alaskan native village?
- Do the parents or child possess an identification card indicating tribal membership? If yes, make a copy of the card for agency records.

Such inquiry should be at first face-to-face contact with fathers who have established paternity, even where that father is identified later in the case.

ICWA inquiry should also be made by the Juvenile Court at hearings, and caseworkers should be prepared to update the Juvenile Court about ICWA status.

If the child's parents, guardian or custodian are unavailable/unable to provide information regarding whether the child may be an Indian child, the agency shall consult with relatives/collaterals and review all case file documentation, including contact with previous caseworkers and communication from other sources (i.e. Indian tribes and Indian organizations).

The caseworker shall notify the SCCS Legal Support Specialist of any custody proceedings involving a child believed to be an Indian child, and return the completed ICWA Inquiry Form to the Legal Support Specialist within 14 days of the date information is obtained suggesting the child is an Indian child.

If a Team Decision Making Meeting (TDM) is scheduled, TDM staff shall forward all Native American heritage information obtained during the meeting to the Administrative & Legal Services Department. If any additional information regarding Native American heritage is requested following the TDM, the caseworker shall gather that information as soon as possible and forward to Legal within 14 days. Information to be gathered for completion of the ICWA Inquiry Form includes:

- Child, mother, and father's name, date of birth, and birthplace including any former names/aliases, and tribal enrollment numbers, if known;
- Legal Custodian's name & address, if applicable;
- Names, birthdates, birthplaces of maternal & paternal grandparents, if known;
- Whether the child is or has been a ward of a tribal court;
- Whether the child or parent has ever resided on a reservation or Alaskan Native village;
- Whether the child or parent(s) are members/citizens of a tribe (state which tribe);
- What documentation the family provided of tribal membership;
- Whether the parents/Legal Custodian need an interpreter.

The Administrative & Legal Services Department will review the completed ICWA Inquiry Form. If SCCS has reason to know the child to be an Indian child, SCCS will notify the tribe or possible tribes within 14 calendar days to verify tribal membership, follow up as necessary with the Bureau of Indian Affairs, and notify the Juvenile Court. Notice is sent by registered or certified mail with return receipt requested as well as to the child's parents and the child's Legal Custodian if applicable. Notice will advise the tribe of the custody proceedings and rights, including right to intervene, and shall include all information required by OAC 5101:2-53-04 in addition to a copy of the pleading.

Documentation

Once tribal eligibility/ ineligibility is determined, the Legal Support Specialist will notify the Caseworker and supervisor, who shall document in the Statewide Automated Child Welfare Information System (SACWIS).

ICWA information is documented in SACWIS under the Person Profile, under the Demographics Tab. There is a narrative box for comments, and SACWIS case contacts can also be used to document any ICWA information not covered by the specific ICWA questions and boxes.

If Child is an Indian Child

In the event that SCCS receives notice that a child is a member of an Indian tribe or is eligible for membership in a tribe, the caseworker and supervisor should confer with the Administrative & Legal Services Department as soon as possible in order to determine how to proceed with the case and ensure compliance with all state and federal mandates.

Emergency removal of an Indian child is permissible if the child is in danger of imminent physical damage or harm. At hearings, SCCS must utilize a qualified expert witness to show the causal link between conditions in the home and likelihood of serious emotional and physical damage. The tribe has the right to intervene at any point during the case, and transfer to tribal court may be requested.

SCCS must utilize active efforts. Active efforts are affirmative, active, thorough and timely efforts to maintain the child with family or to reunify the child, and include:

- Conduct comprehensive assessment of the family's circumstances;
- Notify and invite tribal representatives to participate/attend TDM's, and permanency planning meetings;
- Diligent relative search & engagement;
- Keep siblings together whenever possible;
- Identify services and actively assist parents in overcoming barriers to services and recommend resources to satisfy the case plan;
- Trial home visits during any period of removal, consistent with the child's health, safety & welfare;
- Offer/employ all culturally appropriate family preservation strategies provided by the tribe;
- Provide post-reunification services and monitoring.

Placement of an Indian Child

An Indian child in agency custody shall be placed in the least restrictive substitute care setting that most approximates a family, taking into consideration sibling attachment, allows the Indian child's special needs to be met, and is in reasonable proximity to the Indian child's home, extended family or siblings. Any placement determination made by SCCS shall be recorded in SACWIS.

Placement preference for any substitute or pre-adoptive placement is as follows:

- Extended family member;
- Foster home that is licensed, approved, or specified by the Indian child's tribe;
- An Indian foster home certified by the Ohio Department of Job and Family Services (ODJFS) or another state agency with such authority, or
- An institution for children approved by an Indian tribe operated by an Indian organization.

Placement preference for an adoptive placement, where the tribe has not established a different order of preference, is as follows:

- Extended family member;
- Other member of the Indian child's tribe;
- Other Indian families; or
- Other non-Indian prospective adoptive families.

SCCS may find there is good cause not to abide by the order of placement preference when one or more of the following situations apply:

- The request of one or both of the Indian child's parents, upon their review of the placement options;
- The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

- The presence of a sibling attachment that can be maintained only through a particular placement;
- The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preference live, as determined by a qualified expert witness;
- The unavailability of a suitable placement after a determination by the court that a diligent search has been conducted.

Multiethnic Placement Act (MEPA)

The Multiethnic Placement Act (MEPA), as amended by the Interethnic Adoption Provisions (IEP) of the Small Business Act of 1996, does not apply to Indian children.

Records Requests/Requests for Information

Each party to an emergency proceeding, foster home placement or termination of parental rights proceeding under state law involving an Indian child has a right to timely examine all reports and other documents filed with the court upon which any decision may be based.

The agency shall maintain a record of every foster care, pre-adoptive and adoptive placement of an Indian child and make the record available within fourteen days of a request by an Indian child's tribe or the secretary.

Upon application by an Indian who has reached age eighteen (18), who was the subject of an adoptive placement, the agency that facilitated the adoption shall inform the individual of the tribal affiliations of the biological parents and provide information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.