

# Indian Child Welfare Act Desk Aid

## Steps to Improve Compliance:

- Identify Native American nation/tribe
- Provide tribal notification
- Engage tribe in service plan development
- Follow placement preferences
- Make active efforts to provide remedial services and rehabilitative programs

## Who Is an Indian Child?

**Indian child** shall mean any unmarried person who is under age 18 and is either

- (a) A member of an Indian tribe or
- (b) Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

## What Does Tribal Enrollment Mean?

- Tribal rolls are the official record of legal status for Native American people.
- Being on the tribal rolls of a Native American nation/tribe is equivalent to citizenship in that nation/tribe.
- Every tribal government determines its own rules of enrollment criteria.
- The United States government maintains the tribal rolls through a cooperative arrangement with each Native American tribe.

## How Do I know if a Child is Eligible for Tribal Membership?

- Ask the child's family if they are aware of any tribal affiliation.
- Find out if a parent or grandparent has a tribal enrollment card.
- Develop a family tree indicating the mother's and grandmother's maiden names and the names of the father and paternal grandparents.
- Contact the Tribal Office Directly

## What About Clan Identification?

**Clan Identification** can assist caseworkers in identifying extended family members for placement:

- Clans are matrilineal and identify traditional kinship resources.
- For example, the clans of the Haudensosaunee (Iroquois nation) are Bear, Beaver, Deer, Eel, Hawk, Heron, Snipe, Turtle, and Wolf.
- The caseworker should ask if the family member knows the name of their clan.

## Facts:

- According to the 2000 U.S. Census Bureau data, the most recently available, there were 12, 281,054 people living in Pennsylvania at that time with 18,348 identified as Native American or Alaskan Native.
- The Indian population is widely scattered throughout the entire Commonwealth with small concentrations in the northwestern sections of Pennsylvania and in the large urban areas of Philadelphia and Pittsburgh. They originate from various tribes and nations throughout the entire United States and Canada.
- While there are no federally-recognized tribes in Pennsylvania, there are Indian organizations, most notably The Council of Three Rivers American Indian Center, Inc., located in Pittsburgh, and the Lenape Nation in Southeastern Pennsylvania.
- As of September 30, 2008, there were 44 children noted in the Adoption and Foster Care Analysis and Reporting System (AFCARS) as Native American or Alaskan Native.

*Facts from OCYF Bulletin Number 3130-09-01, Issue date: March 9, 2009*

# Indian Child Welfare Act Compliance Desk Aid, continued

## **Notification Requirements**

If the agency plans to petition the court for any child custody proceeding, that involves any child who has been identified as, or may be, Native American, the agency must insure the identified tribe or nation receives proper notification. (Notification of any such proceeding involving a juvenile for any status offense(s) is also required.)

The Department of the Interior, Bureau of Indian Affairs, maintains a list of 'Designated Tribal Agents for Service of Notice'. It is a comprehensive listing of over 500 federally-recognized tribes throughout the United States, by Region, with contact information for the individual tribes, as well as each regional office, included. This listing may be accessed at the following link:

<http://www.doi.gov/bia/docs/ICWA%20Tribal%20Agents@3008-02w.pdf>

If the tribal affiliation is unknown, the agency needs to send the notice to the Regional Office (if known) of the Department of the Interior, who will then have 15 days to get the notice to the appropriate tribe or nation. If the region is not known, use the address below:

U.S. Department of Interior  
Division of Human Services  
Bureau of Indian Affairs  
1849 C Street, NW, Mail Stop 4513-MIB  
Washington, D.C. 20240  
(202)513-7621

*(Address from the May 19, 2010 Federal Register Notices, Vol. 75, No. 96, page 28104.)*

### **Notification letters must include the following information:**

- The name, date and place of birth of the Indian child;
- His or her known or possible tribal affiliation;
- The names, dates and places of birth of the child's parents, including mother's maiden name;

- A copy of the petition, complaint or other document by which the proceeding was initiated;
- The name of the petitioner and the name and address of the petitioner's attorney;
- A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceedings;
- A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them;
- A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings;
- The location, mailing address and telephone number of the court;
- A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court;
- The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians; and
- A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Indian Child Welfare Act.

# Indian Child Welfare Act Compliance Desk Aid, continued

## Qualified Expert Witness

The testimony of a qualified expert witness is required in any foster care placement and in any proceeding for the termination of parental rights. A qualified expert witness is meant to be someone with expertise beyond a social worker and includes:

- Tribal members recognized by the tribe as knowledgeable in family organization and child rearing,
- Lay experts with substantial experience in Indian child and family services, or
- Professional persons with considerable experience in their respective field.

## Efforts to Prevent Placement of an Indian Child

Per 25 U.S.C. 1912 (d) of ICWA, when an agency petitions the court for removal of an Indian child from his or her parent(s) or Indian guardian(s), the court must make a determination that the agency has made **active efforts** to provide remedial and rehabilitative services to the family, and that these efforts failed to prevent the removal.

## Indian Child Welfare Act and Pennsylvania

### Social Work/Diversity Statement

The Indian Child Welfare Act promotes permanency for Indian children by underscoring the importance of the continuity of community and cultural connections. To understand the relevance and significance of the Indian Child Welfare Act (ICWA), the Child Welfare Professional must recognize and value the history and diversity of the many tribal cultures within the borders of our country.

## Foster Care Placement Preferences

An authorized agency providing foster care to an Indian child in the absence of good cause to the contrary is required to place the child with:

First, a member of a child's extended family;

Second, a resource home approved or licensed by the tribe;

Third, an Indian resource home of another tribe, licensed by the appropriate agency; or

Forth, a tribal-approved institutional placement for children that is suitable to the child's needs.

*Note: The nation/tribe may establish a different order of preference by tribal resolution.*

## Adoption Placement Preferences

An authorized agency providing adoption services to an Indian child is required, in the absence of good cause to the contrary, to place the child with:

- ❖ First, a member of the child's extended family;
- ❖ Second, other members of the child's tribe;
- ❖ Third, members of other tribes; and
- ❖ Fourth, a non-Indian family

*Note: The nation/tribe may establish a different order of preference by tribal resolution.*